Editorial

Since the late 1970s, *empirical science studies* have developed into a key field of research at the intersection of science, technology and society. This field merges a repertoire of theories and methods stemming primarily from cultural anthropology, sociology, linguistics and history. Its main characteristic is the detailed analysis of scientific practices and epistemic cultures and how these become entangled with public discourses and everyday life. This focus tries to reveal specific, local configurations and their epistemological as well as social consequences. Beyond a mere deconstruction, science studies are constantly looking to engage with the fields in which they do their work. The goal of this book series is to offer to scholars a German and English speaking Forum that

- develops inter- and trans-disciplinary bodies of knowledge in the areas of medicine and the life sciences and makes these nationally and internationally available;
- supports young scientists through opening up a new field of work which runs across existing disciplinary structures;
- encourages the formation of *tandems* through co-authorship. In particular, it supports, evaluates and comments on collaborative projects with colleagues from the natural and engineering sciences.

The series is directed towards scholars and students from both the empirical science/social studies and the natural sciences and medicine.

Paul Wenzel Geissler, Richard Rottenburg, Julia Zenker (eds.)

Rethinking Biomedicine and Governance in Africa

Contributions from Anthropology

[transcript]

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Content

21st century African biopolitics: fuzzy fringes, cracks and undersides, neglected backwaters, and returning politics

P. Wenzel Geissler, Richard Rottenburg, Julia Zenker

Introduction

This volume, based on a workshop organised by the research group Law Organisation Science and Technology (LOST), and held at the Max Planck Institute of Social Anthropology, Halle, Germany, in June 2009, is about biomedicine and governance in Africa. Biomedicine was introduced to the continent in line with its own evolution as 19th century scientific endeavour, and its engagement with African maladies—new germs, new modes of transmission, and new measures of experimentation and control—has in turn profoundly shaped the universal forms of "modern" biomedicine (see e.g. Vaughan 1991; Baronov 2008; Tilley 2011). The intimate entanglement between medical endeavours and government—notably the nation-state and its colonial precursors—has been particularly marked in Africa given the limited availability of private biomedical practice during most of the 20th century, and due to the contrast to the much more prevalent *non*-biomedical ideas, organisations, and practices of healing which until fairly recently, and with few exceptions were distinctly non-government in the sense of not being endorsed by state institutions and not pursuing a governmental, population-wide perspective (see e.g. Last 2012). Biomedicine in Africa affords thus a privileged perspective on the relationship between government—in a wide sense comprising direct state policies and practices, as well as other forms of control ranging from subjects' own self-making within wider power relations, to population-wide efforts of categorisation and discipline—and its evolution across the tides of history.

pretensions of these doctors and humanitarians, both of the colonial doctors of yore and of today's heroes of "global health".

A final question: did Commandant Dr. David actually "go crazy", as the missionaries thought? It is hard to answer. He was promoted to head the Cameroonian Health Service in 1944 but passed away shortly after the war. He was buried near Abong-Mbang, where his grave apparently became a shrine.[12] One piece of evidence, reported in the oral accounts collected by Wang Sonné: Dr. David, a referee in pole-vaulting and foreman at construction sites, an obstetrician and demographer, a cacao-farmer and builder of schools, left behind the memory of a "very dreaded" man. He was known as "the Emperor of the East" (Sonné 1998).

Dr. Koch, his deputy and head of the Messamena subdivision, pursued his career after the war, drawing on the expertise he had acquired. Stationed in the early 1950s at the Federal Hygiene Service's headquarters in Bobo-Dioulasso, he conducted demographic and statistical studies (Koch 1949, Le Rouzic/Koch 1949) before turning to the ethnology of "his" tribe, the Bidjoués of Messamena (whose language he spoke) and publishing a book on them in 1968. Faithful to the ambitions of the Haut-Nyong utopia, he penned, in 1967, an esoteric, meditative reflection on the "medicine of hope". A quotation chosen by chance gives the tone of this book and lets us free to imagine what the medical rationality in power in Haut-Nyong amounted to during the long years of war and the rubber trade: "No sick person and no doctor, no individual and no society, will ever be able to deny that the druid's dolmen is alone in its place in reason on this earth." (Koch 1967: 120)

12 | Fieldwork is needed to corroborate this point and confirm the grave's location. In a private communication, Peter Geschière stated that, in the 1970s, locals said that pupils laid their workbooks on Col. David's grave for luck in passing examinations.

Intellectual Property Designs: Drugs, Governance, and Nigerian (Non-)Compliance with the World Trade Organization

KRISTIN PETERSON

INTRODUCTION: THE WTO AND GLOBAL GOVERNANCE

The launch of the 1995 Trade Related Intellectual Property (TRIPs) Agreement, a global trade treaty housed in the World Trade Organization (WTO), coincided with a number of key events that tied intellectual property (IP) to global trading governance for the first time. Beginning in the late 1970s, global pharmaceutical industry profits were on the decline. In order to counter decline, the drug industry turned to more speculative practices,[1] which promised high economic growth. Through industry lobbying efforts, TRIPs was implemented to protect both speculative pharmaceutical capital and future drug product sales around the world. It mandated that IP linked commodity distribution be governed by an enforcement mechanism carried out by the WTO. It also mandated that new pharmaceuticals be patented for twenty years.[2] In effect, these rules gave drug companies the right to set the price of products and sell them in competitive-free markets of their choosing. At the same moment that TRIPs was implemented, a massive HIV/AIDS crisis was in full force across the African continent. Moreover, anti-retrovirals for HIV/AIDS were being newly marketed and no generic equivalents were available. As TRIPS, antiretroviral production,

1 | These practices included acquisitions, mergers, initial public offerings on the stock market, and connecting upstream and downstream activity between long established drug companies and start-ups (Sunder Rajan 2006; Cooper 2008).

2 | TRIPs also created provisions that allowed living material such as microbes, DNA sequences, genomic plant varieties, molecules, etc., to be patented, leading to similar global debates (Juma 1989; Peterson 2001; Coombe 2003; Dorsey 2003; Nnadozie et al. 2003; Anderson 2009; Mushita and Thompson 2007).

and HIV/AIDS converged, treatment was widely unavailable or unaffordable in Africa in the 1990s and early 2000s.

All nation-state TRIPs signatories, that is, all WTO nation-state members, are required to recognize this IP linked trade regime.[3] Specifically, signatories are required to rewrite their intellectual property laws at the national level to match globally governed WTO rules. Five to ten years after TRIPs was launched, agencies and organizations including the US Department of Commerce, the World Intellectual Property Organization, the United Nations Development Program (UNDP), and many international NGOs provided competing services to African states to help them ratify TRIPs. Each was invested in drastically different, yet legally allowable, ideas of compliance. What was perceived to be at stake? The US, for example, viewed infringement of U.S. products in different parts of the world to be a threat to U.S. IP driven industries such as pharmaceuticals, music, and film. Other organizations such as UNDP believed that TRIPs would limit the prospect of widespread generic antiretroviral drug circulation to low-income countries.[4] TRIPs allows complying countries to incorporate flexible rules into their national laws, which in turn impacts the potential sales and availability of generic and proprietary drug products. At stake for both health advocates and drug companies was *how* countries would comply.

This chapter foregrounds ethnographic research conducted on Nigeria's efforts to comply with the TRIPs Agreement, where the U.S. 'assisted' the country in these efforts. The U.S. was concerned about pirated products that widely circulate in Nigeria. Pirated products began to emerge on Nigerian markets just after the oil shocks of the 1970s. As oil was, and still is, Nigeria's primary form of revenue, the country garnered a severe economic and debt crisis.[5] The country's creditors insisted upon austerity measures in exchange for new loans, otherwise known as Structural Adjustment programs (SAPs), which

3 | TRIPs, however, allows for a *sui generis*, or alternative notions of ownership, albeit one that is difficult to conceptualize. However, one such attempt, the Africa Model Law, articulates community based ownership, long in existence, as legitimate IP rights (which in orthodox terms, favors individual ownership, including corporations) that is legally binding with TRIPs (Ekpere 2001, 2003; Zerbe 2007); it took nearly ten years to conceptualize reconciling community and individual knowledge within the scope of TRIPs among many Organization of African States (OAU, now the African Union) scientists and lawyers who were charged with this task by the OAU Scientific and Technical Commission (Ekpere, personal communication).

4 | Health advocates, scientists, physicians, legal scholars, and policy makers have made a direct link between TRIPs and the number of people who have died around the world without access to affordable pharmaceutical treatment (Pecoul et. al. 1999; Correa 2000; Trouiller et. al. 2001; MSF 2001; Ford 2003; Cullet 2005; 't Hoen 2005).

5 | For work on oil in Nigeria see Okonta and Douglass 2003; Apter 2005; Watts 2008.

were overseen by the International Monetary Fund. SAP ended state subsidies and devalued the currency leading to a crash in manufacturing and high levels of household poverty.

Indeed one outcome of SAP was the immense growth of an informal economic realm where buying, selling, and trading thrive in the interstices of legality and illegality (Bayart/Ellis/Hibou 1999; Roitman 2005; Larkin 2008). Nigeria became home to one of the largest national drug markets in Africa where millions of drugs—generic, adulterated (referred to as 'fake' in Nigeria), substandard, 'dumped', and to a much lesser extent, proprietary[6]—are imported from countries all over the world (Peterson 2012). Moreover, software, music, and film, many of which are proprietary US products, circulate in this unregulated space. They represent the massive global circulation of goods linking Africa not to North American and European markets, but rather to Asian and Middle Eastern ones.

Critically, state privatization was the cornerstone of SAP. Because the state was massively downsized, existing and future regulatory bodies were incapacitated to do the work of the law. Specifically they did not possess the ability to curtail perceived infringement of proprietary products. And yet, just ten years later, the WTO mandated that Nigeria and other African states perform the robust task of protecting transnational capital by regulating counterfeit capital within the scope of the TRIPs Agreement. As an IP linked trade law is imagined to police and curtail pirated products, what do globally governed patents produce in a legally indeterminate environment?

This chapter considers this question by first discussing understandings of intellectual ownership that vary or inhabit differing legal subjectivities across Anglo-American and Nigerian contexts. Such differences emerge out of histories of market competition and business practices rooted in late colonial and early post-colonial periods. Here I show the legal and historical disconnects between Nigerian and WTO understandings of intellectual protection.

Second, is the role of the U.S. Department of Commerce (DoC) program that 'assists' Nigerian in complying with the WTO. The program constituted

6 | My definitions of generic, fake, and substandard follow both biological and legal understandings of these categories in Nigeria. I do not critically review these terms here. Generic is a manufactured non-patented copy of a proprietary pharmaceutical product. The manufacturing process usually attempts to exactly match the chemical make up of the product, referred to as bioequivalence. Fake is a drug, which is deliberately adulterated and is not intended to not meet the bioequivalence standard of a proprietary product; it is widely viewed as hazardous to human health. A substandard product may contain more or less bioequivalent standards in either proprietary or generic form. It is not always considered hazardous to human health. But often concerns arise around questions of especially drug resistance due to the wide variance in bioequivalency.

a series of meetings from 1999-2005 that I attended, which were hosted by several Nigerian actors and institutions. I discuss how over the course of this period, Nigeria's intellectual property law was essentially drafted by the U.S. DoC in a manner that complied with TRIPS, but also favoured U.S. business interests. AIDS activists contesting proposed U.S. patent legislation and musicians supporting the Americans in copyright legislation were the main contenders at these meetings. All of these actors—US representatives, Nigerian lawyers, and Nigerian non-governmental organizations—represent a divergent swirl of interests in considering the contours of a new Nigerian IP law. While TRIPs compliance is often portrayed as a struggle between large corporations and poor people, there are numerous local actors, some who interface with international actors, contesting their own stakes in the making of new rules and trading hegemonies.

LEGAL SUBJECTIVITIES AND DISCONNECTS: UNDERSTANDING PATENTS AND PROPERTY IN AFRICA

When the TRIPs Agreement was launched in 1995, signatory states agreed to adopt legislation within a given deadline, one that had to be harmonized across nation-states. Nigeria's deadline was 2000, the same year I arrived to conduct fieldwork. At that time, Nigeria established conferences and workshops that private lawyers and government workers attended. I was curious why Nigeria had waited until its deadline to initiate compliance. One reason had to do with how the signing of TRIPs was carried out. In my interviews with participants at these meetings, many claimed that the Nigeria's Geneva representatives do not communicate with either the government or the private sector. Some of the most prominent IP lawyers in Nigeria even claimed that no one really knew the names of the representatives who signed TRIPs on behalf of Nigeria.

This disconnect between different levels of government might be indicative of common civil service communication. But it also represents a particular moment in Africa's engagement with international trading disputes. TRIPs was first negotiated at the 1986 Uruguay Round of the General Agreement on Tariffs and Trade (GATT), a former Bretton Woods Institution that was implemented just after World War II. The GATT's objective was to facilitate consensus agreements among empires on global trade. Decolonization rapidly changed the terms of trade as many African countries entered global debates that were once the privy of an old boys' European diplomatic network.

Newly independent African states arrived at the Uruguay Round relatively unprepared to negotiate a new IP-trade framework (UNECA, 1996). The lack of preparedness had to do with practices of production as well as epistemological differences pertaining to the law (Ekpere no date; Sodipo 1997). On the one hand, the U.S. turn to IP driven innovation governed by global trade rules was motivated by a new phase of innovation that matched a neoliberal turn to speculative capital and practices in the drug industry. On the other hand, a small manufacturing industry in Nigeria was in the midst of complete collapse at the time of the negotiations. These industries relied upon relatively unsuccessful import substitution policies and not intellectual property as their driving force.

The Nigerian lawyers with whom I spent time over the years engaged these politics in various ways. Most lawyers do not have the luxury to specialize in intellectual property or other legal arenas, as they may elsewhere. Like African physicians, most are generalists, practicing law for the few who can afford it. Moreover, the public does not widely consider IP necessary to the work of commerce. That is, the primary form of business is trading—buying and selling imported products—and not necessarily IP linked innovated work.

As there are very few Nigerian patents filed in the Nigerian patent office, private lawyers mostly represent foreign IP interests. At the same time, they must juggle their analysis of what a 'negative' TRIPs patent compliance potentially looks like for Nigeria versus their client's interests. Despite being told by a few lawyers that, "I speak for whomever I'm representing," the contradictions of the legal circumstance that they must navigate are always present with them. One lawyer told me:

> "The patent system or the contemporary orthodox intellectual property regime emphasizes individual rights. On the other hand, the knowledge systems that exist traditionally in Africa involve a communal ownership of knowledge as well as some kind of obligation to share the knowledge inasmuch as there are some restrictions or conditions on them. In this case, knowledge and ownership can be shared freely in society. Even where the knowledge is located with one individual, say for a traditional healer, he holds it in custody for the entire community and that knowledge is constituted by virtue of his membership of that community. So it does not give him any personal or private rights to own that knowledge."

While this lawyer identifies one aspect of intellectual ownership in Nigeria, there are other forms. Intellectual property in pre-English civil code Nigeria included the equivalent of copyright, trademark, and patent protection. In the case of patents and marks, works in brass, bronze, gold, and wood had characteristics such that their origins could be identified. Some art often maintained insignias from different regions of the country (Asein 1994; cf. Sodipo 1997). Asein (1994) argues that there was not so much a recognition of individual authors, but rather the actual patterns of textiles, blacksmith work, or designs on pots, for example, could be decoded (via colour, design or quality) and their origins and communal reputations identified. Particular individuals or sectors of society produced certain works and exclusive rights to produce (from industrial

inventive works to praise songs) were granted by local governance or leadership (Sodipo 1997).[7] An intellectual property lawyer describes how these systems to protect knowledge have long been in place in Nigeria, but conflict with the WTO system of protection:

"The guys who are in guilds[8] and cults who had inventive and arguably patentable processes, methods, and products had their own way of protecting. They could not read or write. The patent system demands people who can read and write. The patent system encourages you immediately to document it and put it in the patent office. [But] [t]heir own way of protecting is to initiate you into an oath of secrecy, into a system of taboos. And mythology and myths and so on are shrouded in secrecy. Now, since education came, and the patent system came, we want to encourage them to share their knowledge and we'll protect them with patents. The question is whose knowledge is it? Is it the individual's knowledge or the group's knowledge? The patent system doesn't recognize group's knowledge as community knowledge."

Patent law requires that one disclose the secret of one's invention. But in these artistic guilds, the moment one discloses a secret it can no longer be protected. In contrast, patent law protection is only rendered as such the moment a secret is disclosed. The same lawyer continues:

"If you want me to divulge it [referring to the reasoning of those poised to patent their innovations], you are now telling me it does not need standard of lenience because we have been using it. Then that means [the patent] system is not for me. So, that's the disconnect. You've introduced a system and you've not met the fears and the apprehensions of the people who are supposed to use the system."

Indeed, is the patent system meant for Nigerian use? The WTO's epistemological construct of property is adopted from Lockean terms of ownership—the mixing of labour and nature—which holds hegemonic interpretive sway in trade-related IP law (Locke 1698). But in Nigeria, many forms of intellectual labour

7 | Boatema Boateng (2011) argues that in contemporary Ghana, kente and adinkra cloth weavers identify multiple forms of authorship, including individual and communal. The communal aspect acknowledges that patterns and weaving emerge out of previous works of art. This is not uncommon to any works of art but because the author is privileged in IP law, these histories of intertextuality get erased.

8 | Similarly, Stephen Brush (1993: 654-655) describes that IPR grew out of Medieval European guilds. Like their African counterparts, they relied upon secrecy and treated the fruit of their labor as common property of the guild. He describes how the English Parliament in 1623 sought to restrict the power of the Crown's monopolies in order to encourage industry growth by creating a single monopoly, the patent.

are temporally dispersed in a way that cannot explicitly show who precisely did the labouring—a phenomenon that is hitched to practices of custodianship. Moreover some forms are not contributable to the single author, but rather, to multiple forms of authorship. Even though there are many kinds of ownership, trusteeship, and custodianship practiced in Nigeria, the country's IP law—inherited from English civil code—cannot account for these, much less international legal rules.[9] They must inhabit "unfamiliar forms of legal subjectivity" (Boateng 2011: 12).[10]

Built into negotiating frameworks that hitch the term 'global' next to 'harmonization' of IP across nation-states, Marilyn Strathern (1999: 186) argues that there are divisions between multinationals and indigenous people/Third World enterprise based upon ideas of a socialized technological competence. That is, "one side is embued with 'knowledge' made possible through 'technology' and the other side of this division has 'society' made effective through 'community'" (Strathern 1999: 187). Other Melanianist scholars have shown how there is little distinction between ritual and economic spheres of practice, meaning that it is difficult to actually distinguish knowledge through its potential in economic terms, as they are in IP trade frameworks (Harrison 1992; Leach 2000; see also Odell 2006).

Compliance with TRIPs means that there must be a move from domination to hegemony; and at stake are two legal sensibilities and subjectivities. One is mandated to become the main paradigm across nation-states while the other is meant to transform so that the legitimacy of this global model is acknowledged. Complying with TRIPs means installing an infrastructure that is more amenable to protecting foreign capital. It was not designed to protect local innovation. Indeed, in order to police Third World production and trade, TRIPs was designed to outsource protecting intellectual property and combating counterfeiting to the Third World itself.

By the late 1990s—four to five years after most countries signed the TRIPs Agreement—the U.S. became concerned that African signatories were not complying (or going to comply) as expected. What happens when knowledge regimes, linked to technology and geopolitics, are brought together in the realm of compliance?

9 | Nigeria Patent and Designs Act, Cap. 344.

10 | African policy makers analyzing the stakes of TRIPs, and of free-trade agreements in general, saw these differences as a way of establishing new trading hegemonies in Africa (Ekpere 2003; Nnadoze et al 2003).

A NEW NIGERIAN IP LAW: DIVERGING CONCEPTS, INTERESTS, AND INFRASTRUCTURES

In December 2000, representatives from the U.S. Department of Commerce as well as the U.S. Patent Office arrived in Nigeria ready to meet with their Nigerian counterparts. All were attending a conference called "Administration of Intellectual Property in Nigeria: A Stakeholders Conference", which was held in Abuja, the capital of Nigeria. This meeting was one of the first in a series, most of which I attended. On the agenda were two major tasks: the first was to elucidate the current status of IP in the country and the second was to brainstorm and make suggestions on overhauling Nigeria's IP law in order to come into compliance with TRIPs.

Two institutions organized these conferences—the Intellectual Property Law Association of Nigeria (IPLAN) and the Commercial Law Development Program (CLDP), a U.S. Department of Commerce (USDOC) initiative funded by the United States Agency for International Development. IPLAN is a Nigerian association of over fifty law firms and companies, which are either representatives or owners of intellectual property and/or are interested in the development of a regulatory framework. IPLAN's work is based on the conviction that IP rights can encourage local technical growth and foreign investment, and it lobbies the government for future changes. Many Nigerian lawyers attending these meetings have foreign clients invested in overseas IP protection. At the same time, many of the same lawyers have local clients wishing to protect their own IP in-country.

The U.S. Department of Commerce's CLDP mission is to support economic, legal, and political reforms around the globe. CLDP was founded in the late 1980s when the former Soviet block fell. It was tasked with assisting newly transforming states with "commercial law changes necessary for a successful transition to market economies" (CLDP no date). The ultimate goal was to establish the legal requirements necessary to accede to the WTO. These international technical assistance programs also aimed to improve oversight of publicly financed projects, rework regulatory functions, rewrite patent law, and enforce intellectual property rights IPR protection. The team from the CLDP was comprised of employees of the USDOC and the U.S. Patent and Trademark Office. The CLDP emerged out of the 1980s bilateral strategies to get TRIPs in place.[11] Coinciding with the declared 'war on terror' and various Bush II

11 | Peter Drahos describes how the "bilateral strategy had 'nice guy, tough guy' parts to it. The 'nice' guy part consisted of suggesting that proselytizing work be done by intellectual property experts in developing countries preferably under the aegis of some economic assistance program like U.S. Agency for International Development [USAID] (1995: 9)." The tough guy part involved creating strategies that would link foreign trade privileges to the quality of a country's work in curbing counterfeits and enforcing intellectual property protections. The U.S. Generalized System of Preferences and African Growth and Opportunity Act (which allows duty free and tariff free privileges in the U.S. market) are examples. Other examples included advocating linking debt reduction programs as well as IMF and World Bank loan programs to the legal infrastructure and implementation of IP law (Drahos 1995: 9; see also Drahos and Braitewaith 2007).

administration policy initiatives such as the U.S. Department of State's Middle East Partnership Initiative, CLDP expanded its operations into the Middle East and North Africa.[12] Around the same time, CLDP also expanded into Sub-Saharan Africa—mostly West Africa, where oil and U.S. security interests became increasingly important.[13]

The U.S. presence in Nigeria and other parts of the world was strongly motivated by a number of factors. First, U.S. software and pharmaceutical industries faced increasing global competition during the late 1970s and early 1980s. Instead of working toward improving its manufacturing competitiveness, these IP driven companies lobbied the U.S. government for an enforceable IP regime across nation-states via the TRIPs Agreement. Indeed, patent protection for many drug company products were nearing an end while at the same time global generic companies were outcompeting proprietary products. Second, by the late 1990s—five years after most countries signed the TRIPs Agreement—the US was motivated to protect copyright, specifically for software, and American films and music. It was also motivated to protect pharmaceuticals especially since demands for generic versions of antiretroviral drugs were on the rise. In Nigeria, there are (illicit) markets that are entirely dedicated to pirating and selling pharmaceuticals and software–the biggest in Lagos are *Idumota* (drugs) and 'Computer Village' (software). Indeed, one lawyer's interpretation of the US presence was that:

> "[t]he US is pushing very hard to create an environment for companies that want the strongest intellectual property protection possible–interests that are solely driving the current developments. Those in power do not understand the implications. They only see these new developments in terms of getting foreign investment and don't see the impact on social welfare. They are willing to bend over backwards to foreign investors."

12 | Countries involved all include current US client states for which either oil and the war on terror are key issues of interest: Egypt, Bahrain, Oman, Qatar, UAE, Algeria, Morocco, and Tunisia (CDLP no date).

13 | It has also conducted work in the Southern Africa region, where South Africa has one of the most important markets for foreign goods on the continent. Angola is singled out on CLDP's website with its own description—one of the few sites of Cold War military conflicts that still rages (CDLP no date).

At the Abuja meetings, there were two different dominant discourses articulated by the U.S. team at this conference: first was the role of the law; and second, a correlation was made between strong intellectual property frameworks and economic growth. In my conversations with the U.S. representatives as well as observing and re-reading their presentations, it is clear from their view that the law is an "artifact of state power" or that it is made up of "norms" or a "coherent system" (Riles 2008: 606) that imagines the law to do certain things and not others. U.S. lawyers' understanding of how IP works in actual practice comes from their experience in the US court system—the enforcement mechanism for IPRs, which constitutes legitimate contours of property. While Nigerian lawyers (and perhaps more importantly the Nigerian public) may agree in theory that the adjudication of property is finalized in the courts, this is largely not their experience. For example, in any given legal scenario exercised in the court, settlements may be reached but not always acted upon (such as payments to an offended party, reinstatement of employment when unfairly terminated, etc.). And for the public, the judiciary is widely viewed as corrupt. The "rule of law" is differently encountered and understood.

The U.S. at these meetings explicitly articulated the second issue of economic growth, as a direct outcome of strong intellectual property laws. A representative from the CLDP presented statistical data that correlated this positive relationship:

"One of the key ways in which IP protection is critical to economic growth is as a *precondition for financial and technological investment* [his emphasis]... In short, moving up the economic ladder is clearly correlated with exercising intellectual property rights. There is good reason to think that the causal relationship goes in both directions: that increasing wealth makes a country increasingly concerned about its intellectual property and increasing attention to its intellectual potential makes a country more wealthy."

Indeed, the data he presented articulated the boom story of the life sciences, whose growth was tied to speculative capital and IP-linked trade regimes (Cooper 2008). Taken as a given, the nuts and bolts of how 'good and harmonized' laws actually increase economic growth was never explained in his or other presentations. But the lack of explanation is built into the logic of the meetings themselves. The entire paradigm for economic growth, one that is connected to trade and investment, is driven by the belief that more economic stability comes when the state is privatized and barriers to foreign direct investment are removed. This discourse is extremely powerful, and indeed the entire structural premise of the WTO. Yet for Nigerian and other African economies it has been detrimental as they have suffered negative growth and difficult debt management under such logics.

At the Abuja meetings, there was no real discussion regarding the capacity of the Nigerian state agencies to operate in a way that would be expected in regards to TRIPs compliance. A lawyer who works closely with the Nigeria Patent Office told me:

"We don't have substantive examination in the Nigerian Patent Office. All they do is make sure that the forms are correctly filled and they grant a patent. So you can get a patent for almost anything in Nigeria today, even if it is expired. I mean it could fall into public domain in some other place and they may not scrutinize it. The reason for this is that there is no infrastructure in place: we need pharmacists, researchers, and so forth to do the examination."

The primary techniques needed for making IP do the work it is intended to do are 'search' and 'surveillance'; and Nigerian law requires that a patent application must be filed where the holder is a resident and expects that holder to seek out infringers. This requires the national patent office to have the capacity to discern questions or notions of infringement. However, Nigerian workers in the patent office have indicated to me that they are more often pre-occupied with a lack of steady electricity or interrupted salary payment. In my time spent there, I found little activity in an empty room of computers. Indeed, the US and European patent offices not only possess the capacity to build and search global data bases of IP awards, but also employ some of the top IP lawyers in the world to carry out search and surveillance.

The capacity to discern notions of infringement is not limited to the patent office. Also required are several state agencies to do the actual surveillance, policing, and punishing, meaning that the patent office, the drug regulatory agencies, drug enforcement agencies, and the courts all must work in concert to make this happen. Bringing Nigeria and others into the realm of enforcement indexes new economic and political obligations of the state, where a politics of enclosing the public realm is integral to regulatory politics.[14] In the new IP-global trade framework, regulation is not so much about how the state will police certain forms of capital over others. Rather, it is about how legal transformations recreate the state and its capacity to function in ways that match the demands of foreign market makers rather than the demands of its own public or private sector. Public expectations and demands on the state versus the state's non delivery of public goods, provides an air of systemic ambivalence that facilitates

14 | By enclosure I refer to how various publics such as the state must be erased or curtailed in the making of new property forms. There are a number of important works that draw on enclosure in numerous ways, most particularly privatization of the state, the public realm, public office, and regulatory politics. See Ake 1996; Mamdani 1996; Bayart/Ellis/Hibou 1999; Mbembe 2000; Chalfin 2010; Roitman 2005; Ferguson 2006.

an ideal US lobbying environment, where social and economic devastation meets promises of future prosperity of stringent IP law.

FAKES AND COPIES: MUSICIANS AND AIDS ACTIVISTS DEBATE COPYRIGHT AND PATENT LAW

At successive US-Nigerian forums on IP law, several organizations lobbied to make their concerns about the content of the IP law known. Especially prominent were AIDS activists organized around patent concerns and musicians organized around copyright concerns. Over time the U.S. developed a friendly relationship with the musicians who had long organized campaigns to raise awareness about copyright violation. Indeed their work is rampantly copied and used without permission, although they themselves buy pirated products because it is often the only way that one can access international film and music. Nigerian musicians, who had long orchestrated protests against the pirated use of their copyrighted music at both home and abroad, generated a particular understanding of IP protection that at the surface appeared to resonate with US concerns over counterfeiting. But the Americans were not so much interested in the protection of locally generated products like music. Rather they were invested in regulating counterfeited US products. Nevertheless, musicians' desires for a strong copyright law converged with U.S. desires for the same and an important alliance was built between the two parties.

In contrast, AIDS activists opposed the drafts on patent legislation. Activist interests lay in accessing much cheaper generic versions of HIV/AIDS medication. In the private markets, both generic and proprietary HIV drugs are not widely available. The main reason has to do with the fact that free drug programs outcompete the private market. But both AIDS activists and drug companies are equally wary of the availability of anti-HIV drugs on the private market. The former due to fears of self-medication, which is widely practiced in Nigeria and the latter because of profit margins as drug companies are subsidized in free programs. However, AIDS activists understood that access to generic antiretrovirals could be secured in future free drug programs including the potential for Nigerian companies to manufacture generics, rather than be limited to proprietary drugs.

Activist demands conflicted with U.S. desires to develop strong intellectual property protection for the U.S. based pharmaceutical industry. The U.S. DoC hired Nigerian and other attorneys living in the U.S. to write new drafts of Nigeria's patent law that restricted the circulation of generic copies of proprietary drugs in ways that exceeded the requirements outlined in TRIPs. At that time, the Nigerian government had initiated one of the first free HIV anti-retroviral programs in Africa, initially meant for 20.000 patients. All the drugs came from the Indian company *Cipla*. If the government had implemented the first draft, it would have made its own national HIV treatment program illegal.

An important issue at stake at these meetings was parallel importation laws. Once a more or less obscure concept in patent law, it had been harnessed in social movement slogans ("Demand Parallel Import Laws Now!" was adopted by the Treatment Action Campaign in South Africa). Parallel importation is significant because global pharmaceutical companies set different prices for the same products being marketed in different countries. The prices match what country elites can afford especially in the absence of widespread health care coverage. This means that the same anti-retroviral drug that sells in Nigeria can be cheaper than what it sells for in Spain or India. Parallel importation as outlined in TRIPs legally allows for a country to 'shop around' for the lowest price on the same product wherever it may be distributed in the world, so long as the parameters of such circulation are revised and stated in a country's IP law.[15]

For AIDS activists, the U.S. proposals were not the only obstacle to accessing generic HIV treatment. Nigerian patent law does not allow for any kind of parallel importation. The main reason is that among pharmacists and regulators, the term 'parallel importation' is used interchangeably with smuggling of usually adulterated (referred to as 'fake' in Nigeria) drugs. While this may sound like a minor problem, I witnessed several disputes including a great impasse on this definition at a 2005 conference on access to HIV drugs in Lagos where drug regulators and pharmacists could only make connotations to fake drugs and smuggling, and AIDS activists to generic drugs and patent law.

The resistance by pharmacists and regulatory officials is understandable. Products that sell well and fast are identified by international 'faking' companies and their Nigerian counterparts[16] for manufacturing and are priced lower for distribution. There are several countries that the public and regulatory agencies associate with fake products (India and China mostly) and those with what Nigerians refer to as 'original' or proprietary (Britain and the US, for example).

15 | These parameters of circulation in TRIPs are referred to as "national," "regional," and "global." If a country chooses "national" it means that parallel importation is essentially not allowed as proprietary products are limited to consume only what is marketed in-country. "Global" allows for the greatest circulation where products from around the world can be imported to compete with in-country marketed products. Activists argued for global circulation offering the widest possible search for cheaper version of the same product or its generic equivalent.

16 | For drugs, most of these companies are located in China and India, according to regulatory agencies and drug enforcement officials who have created "partnerships" in these countries in an attempt to stop piracy. Nigerian counterparts are those who work with such companies to import fake products.

If generics hit the market at already lowered prices, the potential for faking poses extraordinary regulatory challenges. Therefore, reconciling legal room for parallel imports with fake drug flows remains difficult with a state infrastructure that cannot entirely secure drug safety.

Fake drugs are born out of an infrastructure that developed at the height of structural adjustment. In this environment commodities linking West Africa with Middle Eastern and Asian markets, circulate on Nigerian markets that straddle licit/illicit and formal/informal realms. For instance, pharmaceuticals are considered legal products if they are copied or substandard, but not faked. They travel through legally defined 'illicit' markets, which are protected by organized unions and officially registered professional organizations. The substance of drugs and their routes of travel bestride realms that are never easy to discern by either pharmacists or regulatory agencies.[17] Yet, the global drug companies derive the bulk of their income from such markets and heavily rely upon them. Even though they are sites for which many fake drugs pass, global companies do not want these markets to disappear.

During one of the conference breaks, a doctor friend, who attended because of his interest in access to generic drugs, was agitated about the discourse of the discussion. He rhetorically asked me, "how many of the people on the panels, who claimed that piracy was evil, could actually avoid purchasing music and video in Nigeria that are not pirated?"

FINAL LEGISLATION IS DRAFTED BUT NOT IMPLEMENTED

With different interest groups contending the anatomy of a new law, the U.S. kept returning to Nigeria. It continued to set up different forums and conferences, all of which were financially supported by USAID (about $1.2 million total).[18]

17 | Others have reported the same kind of effects in different market sectors: Guyer 2004; Meagher 2007; Larkin 2008. The proliferation of second hand products that have "migrated into the mainstream" (Larkin 2008)—like spare parts, pirated video, etc—gives the WTO free trade anxiety yet is part of an infrastructure that got built out of SAP policy when many people were ejected from the formal economy. AbdulMaliq Simone (2006) demonstrates how notions of piracy help to understand the everyday practices of African urban residents attempting to create resourcefulness in cities that lack resources.

18 | At that time, AIDS activists had organized themselves in NGOs almost for the sole purpose of gaining access to HIV treatment, which was not widely available in Nigeria at the time. Yet, the donors to which they were linked, provided funds to organize workshops on human rights for people living with HIV and not on the possibilities of IP and access to drugs in Nigeria. Indeed, for US based donor agencies, the idea of commencing such

Lawyers and policy makers throughout West Africa were invited to a significant 2001 meeting. This meeting was advertised in the national newspaper, *The Guardian*. Among many items on the advertised agenda was a panel called, "Problems with Parallel Importation." When I arrived at the meeting, I was surprised to see that the panel was taken off the agenda. Presentations made by the US contingent directed attention away from parallel importation and instead focused almost exclusively on patents connected to internet and genetics technologies.

On the one hand, giving presentations on patents and genetics makes sense to the U.S. contingency. The reason is that patents under TRIPs were designed to protect new molecular technologies in order to promote financial growth for the pharmaceutical and biotechnology industries. Yet, on the other hand, West African lawyers and policy-makers at the meeting did not have clients or contingencies that were concerned about cybersquatting and single nucleotide polymorphisms.[19] The question and answer period during such presentations continued to bring up the issue of parallel importation, and more generally, generic drug circulation, which received virtually no attention. This was a crucial turn in these meetings—it was the point at which the U.S. limited its invitations to Nigerian musicians. When it came to patents, no invitations were extended to the Ministry of Health, state health agencies, drug authorities, or to local health and HIV NGOs.

After 2001, the meetings focused on finalizing IP legislation. The U.S. introduced stringent measures to draft legislation other than parallel importation. One of these measures was compulsory licensing—a government directive that can issue a license to a drug company to manufacture a patented drug without permission. Under current Nigerian law, a compulsory license can be issued by a government official to a drug manufacturer of its choosing for almost any reason. But this draft, written by the U.S., made it illegal. The TRIPs Agreement stipulates that compulsory licenses can only be issued in the case of health emergencies. There is still a dispute over what constitutes health emergencies at the WTO: the U.S. and European countries argue that a health emergency should be limited to malaria, tuberculosis, and HIV. African and other countries argue that a health care emergency should not be limited to three specific diseases. Despite disputes over these definitions, the TRIPs Agreement outlines a series of long and drawn-out steps that must be taken before a compulsory license is issued. Moreover, compulsory license rules apply to manufacturers, exporters, and importers; crucially, the change to one

activities were in contrast to US foreign trade interests. That is, access to generic drugs was viewed as impinging on the proprietary rights of the drug industry.

19 | SNPs are DNA sequence variations that occur when a single nucleotide in the genome sequence is altered.

country's IP law could impact not only domestic markets, but global circulation patterns—this especially true of Indian generic drug companies which are the largest exporters to Africa.

With health and patents off the public meeting agenda, Nigerian AIDS activists found out by accident about the meetings and muscled their way in. While activists could not successfully demand parallel importation, they did manage to keep compulsory licensing in the draft law, which was viewed as a great victory. But less than a year later the US returned apparently dissatisfied with this outcome and produced a new draft, this time under less public circumstances. That is, no announcement of the meeting took place and AIDS activists and even government health officials informed me that they did not know about it until its "successful conclusion" was announced on the evening news.

I acquired this new draft and it should be noted that one never knew where the real draft was actually located—even those people who appeared to be responsible for its existence. At several points I was literally chasing 'latest drafts' or pieces of them across ministries, hotel lobbies, and the National Assembly, more often in vain. This new draft turned up at the poolside of a posh hotel on Victoria Island in Lagos. It kept the compulsory licensing intact but now included "data exclusivity" otherwise known as an anti-Bolar provision. When a patent is awarded, an inventor must disclose how an invention is made in order to get a patent. The Bolar provision is a measure that allows researchers to use the disclosed data of an invention in order to understand it more fully—a measure used to advance science and technology in low income countries. An anti-Bolar provision allows the inventor to keep the data secret until the expiration date of the patent. Keeping data secret until expiration effectively reduces the generic drug industry's capacity to quickly manufacture generics and extends the life of the patent. Such an act actually undermines the original intent of a patent that exchanged inventive data for short-term exclusive marketing. Patents can additionally be taken out on all aspects of a compound—dosages, the compound itself, methods for making it—which creates a 'thicket' of intellectual property rights. Trade secret, copyright and trademarks are also imposed. All are typical strategies for dominating market segments.

Since the last organized meetings, several government sectors have worked out a new draft of the legislation, with some help from the US. No one to my knowledge knows what the draft contains and it has been sitting in the National Assembly since at least 2008. Nigeria was supposed to comply with TRIPs in 2000 and still has yet to do so, to the utter dismay of the US DoC.

CONCLUSION:
NON-COMPLIANCE AND DISRUPTIONS OF GOVERNANCE

One of the reasons for creating TRIPs under the WTO was to attach a sanctions mechanism to the already existing GATT dispute resolution so that highly competitive 'copying' industries could be deterred. Plenty of actions were threatened or taken against countries such as Brazil, India, Cambodia, and Thailand since the establishment of TRIPs, all of which manufacture reputable pharmaceuticals that command regional or global circulation. Indeed just about any WTO member state that bans imports or which does not comply with TRIPs and other WTO agreements face trade sanctions. This could be devastating if a country relies upon one or a few principle exports for national revenue. However, sanctioning Nigeria would amount to sanctioning transnational oil companies whose extraction activities make up the bulk of Nigeria's GDP and a good chunk of US oil exports; and so trade sanctions are not imposed upon Nigeria.

As both SAP and TRIPs together were a two-pronged strategy for the U.S. to regain control of its 1970s position in the global economy, different infrastructures to facilitate goods emerged and conflicted. The infrastructure in Nigeria, characterized by legal indeterminacies, emerged out of the logics of devaluation and market reform (SAP), which in turn were woven into routine, everyday life. TRIPs' IP-trade regime was meant to stop the very market logics of copied and pirated goods that the 1970s crisis set into motion, and that SAP later exacerbated. A global system cannot apprehend the protracted ruptures that were in fact generated by earlier and similar logics of state privatization. So what of governance? While TRIPs continues to be debated at the global level, the question of local actors with local stakes may indeed thwart much of these desires for global harmonization of IP-linked trade.