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TITLE

Globalizing governance: the case of intellectual property rights in the Philippines.

ABSTRACT

This article aims to shed light on processes of neoliberal restructuring by tracing the ways that a WTO-compliant law allowing for intellectual property on plants in the Philippines was developed and passed. The law creates a new form of property right (for the Philippines) restricting the ability of farmers to save and exchange seed. The Philippine Plant Variety Protection Act, passed in 2002, nominally responds to the requirements of the WTO but contains proscriptions well beyond what is required under the WTO's TRIPS agreement. How and why did this situation come about? In investigating this case, my attention is on the 'messy actualities' (Larner 2000: 14) of change - not to divert attention from the significance of the power moves involved but to tease out how such changes are enacted in practice. Drawing on 30 interviews with politicians, policy makers, social movement participants and industry representatives in the Philippines, my account reveals a diverse array of techniques, practices and relationships at work. Rumors about the levels of compliance required under the WTO's TRIPS agreement, fear of being made an example of, desire to build respect by working on 'important' laws combine with other hybrid pressures and motivations, both intimate and distant, to form a powerful geography of change. What emerges is an embodied geography of neoliberal restructuring informed both by processes of broad political economic transformation and by the contextually important, active nature of Filipino social and political life.

KEYWORDS

Globalization, Intellectual property rights, Philippines, Legal geographies, Neoliberal restructuring, Governance.

GLOBALIZING GOVERNANCE: THE CASE OF INTELLECTUAL PROPERTY RIGHTS IN THE PHILIPPINES

INTRODUCTION

With the establishment of the agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) in the World Trade Organisation (WTO), intellectual property emerged as a key area of contention in the arena of neoliberal global restructuring. Strong intellectual property laws were redefined as a crucial feature of 'free' trade while increasingly uniform standards became, not just desirable to facilitate the global circulation of transnational capital, but, for WTO member countries at least, mandatory. One of the most controversial aspects of this new regime of intellectual property has been the move towards protection on plants and life-forms that provide rights to recognized breeders over their invention (in this case seeds), and any duplicates (the seeds of protected plants.)

Throughout the world, countries are responding by drafting and passing stronger intellectual property laws with criminal penalties (up to seven years jail for selling protected seed in the Philippines for example), and creating the offices, boards, processes and government departments needed to deal with this shift. Indeed, there has been a massive expansion in intellectual property both in geographic spread as more and more countries adopt and/or strengthen laws on intellectual property and in intensity as intellectual property is extended to processes and things previously not eligible for coverage. In terms of intellectual property on seeds, there is widespread concern that such laws will curtail the free exchange of seeds, commodify knowledge and disempower farmers in local and national food production processes.

My focus in this article is not so much on the impacts and implications of these new legal frameworks, though these are pressing issues, but on the question of how the regulatory regimes associated with intellectual property come about. Property, after all, is created, maintained and regulated by the state. Even demise-of-the-state globalists point to property as one key function of the state that will act to secure its relevancy in the contemporary era. Yet countries throughout the Third World are passing laws above and beyond the requirements of the WTO that are both unpopular with their constituents and, according to many economists, against their national interest. What then, is going on?

The relationship between national and global scales, and indeed what precisely such a phrase signifies, has provided much controversy in analyses of globalization. While there has been a general shift away from analyses that speak of the terminal decline of the nation-state to approaches that incorporate complexity and contestation, reregulation and reterritorialization, the interactions between national and global scales remain the focus of a great deal of discussion (Bruff 2005; Fine 2004). Certainly, a reading that posits a country (or indeed any combination of people or place) as a canvas upon which a global scale is enacted is highly problematic. Yet it is also important to pay attention to the power dynamics and processes of coercion that have informed the ways neoliberal restructuring plays out.

In this article I aim to contribute to understanding the processes of neoliberal globalization through a detailed account of the negotiations over intellectual property on plants in the Philippines. In doing so, my goal is to draw out the elusive ways that neoliberal globalization actually gets done. I trace the development of the Filipino Plant Variety Protection Act enacted in 2002 and explore the roles of social movements, scientists,

corporations, government departments, US-funded consultancies and others as they struggled to bring about a law in line with their own needs and priorities.

I am responding here to calls for ‘embodied geographies’ of political and economic change that grapple with meta processes associated with neoliberalism while attending to real-world specificities, calculative practices and place-based reworkings (Katz 2004; Sparke 2006). It is thus my aim to focus on the ‘how’ of neoliberal globalization and to pry open some of the ‘messy actualities’ of changing patterns of globalizing governance (Larner 2000:14). In doing so, I draw on insights from Swyngedouw (1997, 2003), Routledge (2003) and Kelly (1999) that reveal the importance of understanding globalization and the construction of the global scale as an iterative process. A focus on process allows for attention to the diverse ways globalization is produced, resisted and remade in practice.

My investigation reveals some of the slippage and complexity associated with the passage of globally mandated agreements through space and scale. While the actions of the WTO around intellectual property are often deployed discursively as powerful manifestations of the global scale – the be all and end all of the story of global regulation – what emerges is a much more complex reality. From the need for Filipino Senators to be seen passing important laws as a way to gain face to the role of carefully placed US consultants in the Filipino Department of Agriculture, this analysis reveals the problems with a simple causal understandings of global processes. What emerges is at once indicative of broad political economic transformation and of the contextually important and active nature of Filipino social and political life.

PONDERING GLOBALIZATION

Globalization is an oft evoked yet imprecise word, deployed as a prime explanatory trope within policy debates, social movement struggles, economic strategies and media constructions of everything from disease to terrorist activity (Haynes 2003; Ong and Collier 2006; Sparke 2006). In the midst of this pervasiveness, however, there is little consensus on what the term means, on its politics or its implications. The term's ambivalence, far from hindering its use, appears to enhance its usefulness in all manner of ways. Globalization is, as O'Tuathail et al. suggest, a 'flexible concept for flexible times' (O'Tuathail et al. 1998: 2).

In mainstream and media accounts, globalization is often posited as an ontological certainty and as a natural, even inevitable, entity. The notion of a globalization-as-juggernaut tends to see globalization marshalled as either a force of goodness, associated with economic growth and opportunity (Friedman 2005) or as a force of evil associated with a global race-to-the-bottom on labor and environmental standards and with unmitigated, unconstrained neoliberalism (Cook 2001; Shah 2007). Whether for good or evil, these accounts imply an inevitability about processes of globalization and a conflation between globalisation and neoliberal policy and practice. Government regulation is reduced, welfare states (where they exist) are dismantled, labor and environmental protections (again, where they exist) are undone, and state assets are privatized (Cox 1996; Opello and Rosow 1999).

The inevitability of globalization is contested by accounts that point out that the state retains an important role in the contemporary political-economic landscape (Hay and Rosamond 2002; Hirst and Thompson 1999). Here, the state is seen as retaining 'considerable room for manoeuvre' (Bruff 2005: 265) and the impact of globalization is mediated as it interacts with national institutions, particularly those of more powerful countries such as the US and European states (Weiss 2003). On the one hand, domestic agendas may propel neoliberal

reforms while on the other, policy outcomes are not necessarily deregulatory but are the outcome of complex negotiations. Globalization is manifested in sharply divergent ways in different places. This then, provides an understanding of context and contingency.

Much contemporary work, however, has increasingly moved away from the notion of a singular, external force of globalization (that may or may not manifest differently in different places) to focus on globalization as a complex set of multi-level economic, political, cultural and social processes (Jessop 2003). Processes of globalization are understood as multiple and contingent, peopled and often resisted (Hay and Marsh 2000). Further, globalization is analysed as a discourse that brings into being the world it purports to describe (Jepson 2002; Lemke 2002). Philip Kelly (1999) suggests that while globalization has been frequently associated with neo-liberal strategies of government, such representations are, in a kind of self-fulfilling prophecy, empowered by a discursive framing that sees globalization as inevitable and intrinsically associated with a neoliberal approach. This approach, then, resists privileging the material or discursive aspects of this construct but rather looks to the interaction between them.

Such insights invite attention to the ways that globalization is created, sustained, contested and variously brought into being at different scales. No longer can globalization be understood as something that exists independently from the diverse human and non-human actors that create it; it is neither a causal agent, nor a 'thing,' but an explanatory framework that guides interpretations, that suggests understandings and empowers certain interventions (Larner and Le Heron 2002). It is in the continual process of being brought into being. In this process oriented approach, neoliberal globalization is understood as being produced by and through multiple actors at multiple scales (Routledge 2003; Swyngedouw 1997, 2003).

It is not only that the trajectory of globalization is constituted differently on-the-ground in different places but that the trajectories (plural) are always grounded, are produced iteratively by and through practice.

This approach contributes then to neo-Foucauldian concerns with the minute, even banal, practices of political economy and governmentality. It combines attention to ‘the “microphysics of power” with the macropolitical question of the state’ (Lemke 2002: 58). There are also resonances with contemporary work in political economy with its calls for understanding the material functioning of neoliberalist globalisation in ways that foreground the imbricated nature of economy and politics. Rather than viewing neoliberalism as either a withdrawal of the state from the economy or as the expansion of the economy into the state (with the associated implication that these two spheres exist independently of each other) such a project recognises neoliberalism as a dynamic political economic project.

This leads me back to my central question, that is, how is an ideological agenda associated with neoliberalism actualized? How does this ‘globalization’ thing work? How are contradictions managed in practice within a framework that locates agency in spaces outside or beyond the state at the same time that the very processes are enacted through law in national judicial systems, by people representing themselves and their constituencies with very particular interests? What we see is a highly politicized process with contours sculpted by a vast array of actors struggling to produce new geographies.

Regulatory processes and changing regulatory landscapes are important ‘iterative and reconstituted’ (Jepson 2002: 909) configurations at the heart of neo-liberal restructuring. Certainly, the role of the WTO, and, as is my particular concern in this article, the agreement

on TRIPS (Trade-Related Aspects of Intellectual Property Rights), points to an emerging transnational regime of rules and new kinds of relationships. Through the WTO, the global is claimed as regulatory space in ways that continue to expand both extensively, as more countries join the WTO, and intensively through the inclusion of new areas of concern such as services and intellectual property. This is a thick regulation converting issues around, for example, food standards and ownership of knowledge from being a matter of personal or group preference to the highest concern of international trade (Delaney 2001).

The incorporation of the TRIPS agreement into the WTO has placed questions of ownership over knowledge squarely in the realm of neoliberal, globalizing regulation. TRIPS mandates that every member state of the WTO have in place an 'adequate' intellectual property rights regime with 'effective and appropriate' measures for enforcement (TRIPS agreement page 2). Patent protection is to be extended to 20 years from the date of application, limits have been placed on compulsory licensing, and a dispute resolution system has been put in place allowing for cross retaliatory action. In other words, countries can face trade sanctions for not updating and implementing their intellectual property systems. A specific, Westernised style of IP protection has become the global standard. Transition periods of one year for industrialized countries and 5-10 for developing countries were granted. Least Developed Countries have longer, negotiable transition periods (currently conditionally until 2013 and until 2016 for patents on pharmaceuticals.)

In the fiercely contested area of patents on plants and animals, TRIPS contains a section [27.3(b)] that allows countries to exclude patents on life forms (other than micro-organisms). They are, however, required to put in place either patents or an 'effective' *sui*

generis system that provides private rights to breeders. The *sui generis* option thus provides scope for a degree of national flexibility.

While the process through which TRIPS was imagined, drafted and negotiated was itself a highly contested process, as one of the WTO's founding agreements it now stands as a central (though still contested and continuously evolving) pillar of globalizing regulatory architecture. An emphasis on process should in no way occlude the political-economic importance of this feat that saw certain situated understandings of knowledge and property normalized and brought into law as the global standard (Wright 2005). Rather, attention to process can highlight the ways that coercive geographies of power manifest, and illuminate some of the practical techniques, relationships, processes and interactions that realise them. To explore this issue in more depth, I turn to the Philippines.

INTELLECTUAL PROPERTY IN THE PHILIPPINES

In May 2002, Gloria Macapagal Arroyo, president of the Philippines, signed into law An Act to Provide Protection to New Plant Varieties, Establishing a National Plant Variety Protection Board and For Other Purposes (known as the Plant Variety Protection Act). The law is based largely on the requirements of the International Union for the Protection of New Varieties of Plants (UPOV), a European-based intergovernmental organization that is designed to ensure 'the protection of new varieties of plants by an intellectual property right' and with strictures well beyond a minimalist interpretation of the *sui generis* option outlined in TRIPS (UPOV 2002). The law is similar to the laws adopted by countries all over the world from Belgium, Bolivia, Brazil, and Bulgaria, to the United States, Ukraine and Uruguay (UPOV 2002). This law regulates the sale, exchange and saving of seed in the Philippines for the first time.

This discussion is based on research conducted in the Philippines throughout the period that the law was being developed. I interviewed politicians (5) and policy makers (5), and representatives from industry (5), nongovernmental organizations (NGOs) and peoples' organizations¹ (5), the church (5), the scientific establishment (5) and the International Rice Research Institute (IRRI) (5) variously involved in drafting, consulting on, trying to change and/or advocating against the law. The process leading up to the final Act was a convoluted one involving three waves² of proposed legislation and a diverse set of players. There was no uniformity of response and the actions of different respondents transcended any easy categorization as pro or against intellectual property or pro or against the WTO.

To illustrate this point, and to speak to some of the complexities, I begin with an interview with a government scientist/policy maker that took an unexpected turn. Sitting in an office within a major scientific institution within the Philippines and conducting an interview about changing modes of intellectual property, I asked whether the Philippines could affect the kinds of agreements negotiated at the WTO. The respondent's manner changed and he answered with surprising vehemence: 'That is a moot and academic question!' he said quite angrily:

The Philippines is a signatory to the WTO and so are committed. We cannot renege on our commitment! That question should have been asked *before* the Philippines signed GATT... Come on! You know geopolitics. We are not China with 200 million people. We cannot afford to be an island by ourselves and take on the might of the US. They would say, fine, and no aid for you. Does it seem like we can afford that?

That a question focused on the ability of the Philippines to influence the character of the WTO provoked this kind of response points, to say the least, to a deeply troubled relationship between the Filipino state and the WTO. The perception that the Philippines had signed away its rights and committed to an all-encompassing, non-negotiable program of liberalization on joining GATT is widespread among the government sector and politicians in the Philippines. Certainly, the geopolitical pressures cited are profound and the US has proven itself more than willing to use its trade and aid muscle, not to mention its military might (Harvey 2003; Putzel 1992) to bring about structural economic change. Yet the self-defeating fatalism here also needs to be treated with some scepticism. After all, when the Majority world negotiating block lead by India and Brazil was trying to bar, or at least radically redefine the place of, TRIPS in the WTO, the Philippines was conspicuously absent aligning itself with the pro-IPR States.

While the speeches and public relations associated with the Filipino official stance in the WTO tend to be progressive and assertive, the reality in meetings is quite different. As one respondent stated, a lawyer who has attended trade negotiations in the past:

The problem is that the delegation the Philippines sends to the WTO are not assertive or forceful. They believe they should be diplomatic in these meetings. They try to be nice. But the point of the negotiations is not to be nice and they get eaten up as if by sharks... It is not their fault. They don't get a chance to develop the relationships which are so important. So much is decided in one to one meetings and through lobbying in the hall. Also they are intimidated by the scene and are not assertive as they need to be. Look at the US team, they have a

negotiator and a whole cast of people to back him up and also to go and individually lobby. These problems make it very difficult for the Philippines national interest to be met.

The quote speaks both to the broader structural and cultural issues at work that underpin such issues as the size and resourcing of delegations and the culturally contextual nature of the 'universal' negotiating styles used at the WTO, and to the technical minutiae through which such inequities operate. It is in interactions in the halls, through one-on-one meetings that global agreements get forged. Cleaving through these interactions, relationships, norms and technicalities are deeply inequitable relations of power. Within the meetings, Philippine negotiators are placed in ways that create and recreate their economic, political and cultural marginalisation from the major players.

At the same time, a stance that focuses attention and agency on external 'global forces' is a continuing source of frustration to many social movement actors who find it incomprehensible that government and other elite players continue to act in a way that seems, to them, so against the national interest. The invocation of the global scale to justify certain actions from politicians acts, in many ways, to deflect criticism to a conveniently distant entity. The Philippines, after all, went both faster and further to implement the intellectual property provisions of the WTO than required under the TRIPS agreement. While social movements do point to the global, and the WTO in particular, as having an inappropriate influence on national policy, they bemoan the actions of the Filipino elite not only to implement WTO decisions but also to initiate neoliberal reforms well beyond 'global' requirements. This is a point Philip Kelly (2000) makes in his study of the human geographies of economic change in the Philippines. He sees the framing of economic and

social change in the Philippines as resulting from 'global forces' as, in part, a strategy of pro-neoliberal administrations to justify their policies of deregulation and liberalization.

Certainly, there was a complex raft of influences at work as the Philippines developed its new IP law. When I asked one social movement participant whether he thought that politicians were really worried about sanctions from the US he responded that no, NGOs had clearly explained the Philippines' obligations under the WTO and highlighted the flexibilities associated with the WTO timeline, the existence of an ongoing review of TRIPS and the possibility of a *sui generis* option in such a way that he could not believe the politicians were really acting under pressure of global regulation. His analysis pointed to different kinds of pressures:

Partially it is a political showoff. The people on the agricultural committee are worried they will have nothing to present to negotiators because there are only a few pieces of legislation related to agriculture that come to the Senate. They need to show they are important and busy and doing things related to the WTO gives them that. They want to show that they can enact agriculture related policies for this year. And the Philippines is very obedient at fulfilling contracts for the WTO.

The desire to consolidate and improve one's position within a political and business elite, and the need to maintain face and to accrue respect, play important parts in shaping the contours of the Filipino response. This is not Sklair's (2001) transnational capitalist class circuiting the globe but it is nevertheless a powerful and important elite (for a thorough analysis of the role and history of Filipino elites see Sidel 1999). For the negotiators, the

WTO presents the opportunity to participate in an elite global gathering, to rub shoulders, indeed to be, one of the movers and shakers of the world (albeit in a marginalized position). For senators, handling WTO oriented legislation and therefore enacting change associated with the 'global' allows one's reputation and importance to be increased. Such dynamics reveal the importance of class-based aspirations in line with the norms offered by a neo-liberal agenda.

It is clear that Filipino politicians, negotiators, scientists, policy makers and social movements hold complex and occasionally contradictory positions as they negotiate the terrain of neoliberal restructuring. Even the most dedicated adherents of implementing WTO policy can be surprisingly negative about the WTO itself and suspicious of its motives. After extolling the need for the Philippines to improve its intellectual property protection in order to attract foreign investment and reward its own gifted scientists, I was surprised when a high official of the Intellectual Property Office vehemently stated that he felt the intellectual property system was being forced on the Philippines from overseas, theorizing that it was the lack of biodiversity of developed countries that led them to try and enforce a global mechanism to facilitate their efforts to search and secure the biodiversity inherent in developing countries.

Similarly, a key government player who took a large part in developing the PVP law and who had told me that it was 'important for the Philippines' to do so replied to my question of whether I thought the framework was fair with the response: 'No, it is not fair. The Philippines is still waiting for a decrease in domestic support, export subsidies and barriers to trade from the US but it hasn't happened. There is a one-size fits all approach imposed on us that is neither equitable or efficient.' There was a significant fear of the unknown

associated with not complying to the fullest with the (real or imagined) requirements of the WTO and the US position. Although the law allows for an effective *sui generis* system, there is no legal precedent for the definitions of effective. Few countries would like to find themselves arguing that definition against the US in front of a WTO dispute resolution panel.

These deeply ambivalent positions coming from those in the frontline of the design and implementation of intellectual property in the Philippines point to the complexity of the way global treaties and agreements are internalized, contested and reworked in the national setting. It is not a simple case of neoliberal theory being rejected by farmers and social movements or enthusiastically embraced by Filipino elites hoping to join the cosmopolitan core. Rather, politicians, scientists and advocates are thinking and acting in ways that reflect the hybrid nature of their experience. This response reflects the real world fractures of Filipino political economy, culture and ideology as they interact with non-unitary, globalizing forces contested at every turn. To draw out some of the specificities of this contestation, and to point to the unexpected players and opportunities involved, I will turn now to the development of the Filipino law.

The First Wave

The first move towards responding to the TRIPS agreement in the Philippines came, not from a conservative coalition of right-leaning politicians, transnational corporations or even from the scientific establishment, but from social movements. Meeting at the end of the Uruguay round of GATT negotiations before the official launch of the WTO, a coalition of NGOs, social movement actors and their supporters in the Philippines decided a proactive approach would be the best way to head off a rout in intellectual property by TNCs and

conservative forces. Noting that the newly created TRIPS agreement contained a *sui generis* option that would allow for a degree of yet untested flexibility, they thought that the Philippines could help lead the developing countries in a broad interpretation of TRIPS and set a precedent of community based, public interest oriented legislation. Their aim was to create a legal response that would allow some form of intellectual protection on plant varieties but in a form that would benefit the Philippines and allow for community property rights.

Clearly, this is not a situation of a passive national sphere being impacted upon by an all-powerful global agreement. Rather, social movements used the TRIPS agreement to seek new geographies of knowledge and to proactively define knowledge and property in more communal and pro-poor ways. Rather than an intellectual property law that would facilitate exploitation, social movements decided to redefine intellectual property as a means to recognise Indigenous knowledges, protect biodiversity and promote an inclusive notion of stewardship rather than an individualist, liberal and exclusive understanding of property. As one of the major participants in this attempt described:

It was one response of NGOs to GATT and TRIPS. A group of NGOs got together before the WTO met and decided that they didn't have to rush, that the 4 year deadline was flexible. But there was a lot of pressure from corporations and so it was decided to try and preempt them. Many corporations wanted to bring in varieties and they were pushing hard. We decided to try and beat them to it.

The original bill was developed in consultation with church representatives, NGOs, scientists and government policy makers. A workshop held at the University of the Philippines at Los Baños in 1994 broadened the process still further with delegates from government organizations (six representatives), NGOs (22 representatives), peoples' organizations (five representatives), media (eight representatives), industry (two representatives), scientists (18 representatives) and observers (18) (UPLBCA-MODE 1994).

The aims of the bill (UPLBCA-MODE 1994: 116) were as follows:

- a. to promote the conservation, evaluation and sustainable utilization of plant genetic resources including those of agronomic, horticultural, silvicultural and medicinal value;
- b. to promote and strengthen the *in situ* conservation of folk seeds and varieties which are the result of thousands of years of natural and human selection by local communities;
- c. to achieve continuous improvements in the productivity, profitability, stability and sustainability of the diverse cropping/farming systems, by focusing attention to farmer-based crop improvement and maintenance of on-farm genetic diversity;
- d. to ensure that the plant genetic resources are utilized in an effective and equitable manner, to strengthen the food security of the ecologically, economically and socially underprivileged sectors of the Philippine society;
- e. to improve the quality of life of resource-poor farmers of the country;
- f. to bring the benefits of advances in science to the people of the Philippines through greater improvement in technology development, transfer and genetic conservation by the public sector, and,

g. to ensure a reliable supply of good quality and adapted seed and planting materials to the farmers.

These aims reflect a radical re-imagining of the idea of intellectual property. Indeed, the notion of ‘property’ was marginalized in the proposed legislation which instead hinged upon the issue of ‘intellectual rights protection.’ Neoliberal neither in intention nor emphasis, the proposed law was primarily an effort at articulating the relationships between knowledge, property and biodiversity in fundamentally different ways. The bill was more than resistance to neoliberal privatized property relations with its concomitant expansion of capitalist relations into seeds and knowledge. It took the push associated with privatized, individualized, corporatized intellectual property and attempted to transform it into something entirely different. Behind this effort is the agency and ingenuity of social movement actors; a far cry from the passive and agent-free canvas upon which globalizing processes may be writ large.

The legislative effort, however, was not supported by all players in the debate for a variety of reasons. Some peoples’ organizations and NGOs were against the idea of intellectual property altogether and felt it was both a tactical and ideological mistake to enter into the legislative fray in this manner. These groups tend to believe that any laws drafted were bound to be co-opted by conservative forces and that NGO/PO energies would be better spent working directly with farmers in educating and empowering them. Other NGOs while not ideologically against the idea of taking such a proactive role, were afraid that the generous definitions contained in the bill, which had been kept as flexible as possible to allow the widest involvement of farmer-innovators, would be exploited by TNCs and capitalist elites. A loose definition could be used by TNCs to claim IP over a farmer or

Indigenous variety and so would be more vulnerable to the abuses of ‘biopiracy.’³ Others felt that the effort, while laudable, would not be picked up in Congress. Instead, it would languish in committee as it did not have the necessary backing of powerful elements.

A revised version of this bill was submitted to the Ninth Congress of the Republic of the Philippines in 1994 with the objective: ‘to provide for a system of community intellectual rights protection which acknowledges the innovative contribution of local and indigenous communities with respect to the development of genetic resources and the conservation of the country’s biological diversity’ (Mercado 1994). A wide range of forces were against this bill on the grounds that it deviated too far from UPOV and the upwards harmonization of intellectual property promoted by the US and other elites. UPOV, although not directly mentioned in the TRIPS agreement, hovers behind the allusion to an ‘effective *sui generis* system’ mentioned in 27.3(b). UPOV acts as a standard against which the notion of ‘effective’ can be judged and exerts a normalizing pressure that marginalizes other forms of *sui generis* options. Established by the International Convention for the Protection of New Varieties of Plants in 1961, UPOV outlines a European alternative to patents called plant variety protection (PVP). PVP mirrors patents in its emphasis on ‘breeders’ rights’ and a Westernized, corporatized approach to intellectual property. The convention does, however, establish certain exceptions to the monopoly of plant breeders including provisions for ‘farmers’ privilege’ which allows farmers to collect seed. The scope of these exceptions has been reduced in each revision of the UPOV treaty in 1972, 1978 and 1991.

As a result of the forces arrayed against the bill, and despite lobbying by progressive politicians within the congress and the senate and by social movements, the bill did not receive administrative support and was eventually discarded.

The Second Wave

In 1996, a second effort to formulate a Filipino plant variety protection law was launched. The impetus for this second generation came from the Department of Agriculture which was looking for a way to develop compromise legislation. Pressure from pro-industry groups had been mounting and the Department had also been approached by USAID with funds to produce a PVP law. The Department of Agriculture approached the University of the Philippines at Los Baños and the College of Law and a new process began. The second generation bill was initially drafted by a progressive lawyer, Marvic Leonen, from the College of Law who was active in the Philippine NGO scene, in particular with The Legal Rights and Natural Resources Center-Kasama sa Kalikasan.

The bill was a generally liberal progressive piece of proposed legislation that drew on existing international agreements and recognized interpretations of TRIPS. The bill contained provisions targeted to both protecting farmers and Indigenous people and to advancing the Filipino national interest. Based on an older, more liberal version of UPOV (1978) and the Convention on Biological Diversity, the second generation bill was much more mainstream and pragmatic than the first. The aim was a piece of legislation that would allow for different options depending on the needs and interests of Indigenous communities and farmers. The bill recognized that some communities may want to commercialize varieties while others may want their knowledge resources to be placed in the public domain. Further, with changing (often contested) leadership and changing (often contested) priorities, communities should not be viewed as static in their needs and interests. The question of how to exercise these options in a genuine way, however, presented a major problem.

Another dilemma was that if varieties were to be recognized as ‘public’ (and so not eligible for intellectual property protection) there still would be nothing to stop corporations or others taking an inventive step and then claiming IP over the results. The dilemma reflects some of the problems of trying to respond progressively to IPR from within the system. A small manipulation (the so-called inventive step) is all that is required for a farmer-bred variety or a medicinal plant to be legitimately covered under the existing norms. Thus, not only does the idea of ‘public domain’ ignore that fact that many Indigenous bred varieties are not indeed ‘public’ at all but are bound with complex webs of (either exclusive or non-exclusive, individualized or non-individualized) ownership and responsibility, but it fails to protect such varieties from being used as ‘raw material’ for a slightly changed and thus IP eligible variety.

The result of these concerns was a proposed law that tried to be liberal and supportive of communities and farmer-innovators but was strict enough to control excesses and manipulation of law by TNCs. The new bill contained various provisions targeted to both protecting farmers and Indigenous people and to advancing the Filipino national interest. The proposed law explicitly prohibited the granting of patents on life and recognized that, with any kind of registration system (be it patents, PVP or some kind of community-rights based framework) legal and financial resources are needed to back up more vulnerable groups. The need to navigate the bureaucracy associated with a registration process will always work in favor of bigger players and better resourced and educated groups. To help respond to this issue, the proposed legislation required the government to install an alternative, prioritized system of registration to support claims of communities and farmers. It placed restrictions on reselling protected seed but allowed farmers to collect and reuse it

indefinitely. The bill also required corporations to conduct an environmental impact statement (EIS) before being granted rights over a variety. TNCs objected particularly fiercely to the need for an EIS and to the provision explicitly banning patents on life. As long as they could keep an explicit ban on patents on life out of the legislation, regardless of the outcome of the PVP law, they could pursue other options at a later date either through the existing patent law or through other forums to obtain the ultimate goal of patents on plants.

After much negotiation and several amendments, the then President, Fidel Ramos, designated the second generation bill as the administration bill, the bill that would get the technical and other support of the administration and provide the working document for the committees and hearings. However, with the change of government after a presidential election, there was a change of guard at the Department of Agriculture and a third generation bill was proposed. One study participant told me that a 'legal expert' had informed the incoming administration that to comply with the TRIPS agreement, the new Filipino plant variety protection law must meet the standards outlined in UPOV 1991. Under TRIPS there is no obligation for intellectual property arrangements to comply with the more stringent UPOV 1991 framework. This claim, then, was false. Whether or not such legal advice was received by the incoming administration, and what impact the erroneous information had, is not known. Certainly, the role of rumor and hearsay in this account suggests a need to incorporate attention to diverse drivers of change within accounts of neoliberal restructuring.

The Third Wave

Throughout the late 1990s as the original deadline for the implementation of TRIPS grew nearer, then passed, the range of actors involved in lobbying for specific intellectual property interventions broadened. Other actors including agro-chemical corporations, US-based consultancies and conservative politicians became increasingly prominent in the debate. With the conception of a third generation bill, the direction of the proposed legislation once again took a turn for the corporate and conservative.

Representatives from transnational corporations were known to have had meetings directly with the President at Malacañang, the Presidential residence, and were directly lobbying members of congress and representatives of the Department of Agriculture. The hand of the US was revealed when key players were invited to the US embassy to discuss the drafting of the legislation. One academic expressed his resentment and disgust at being asked to travel outside the Filipino national space and into the diplomatic official residence of the US in the Philippines to develop national policy. As a result, he refused to attend the meeting.

The USAID funded program Accelerating Growth, Investment, and Liberalization with Equity (AGILE) was an active, and controversial player, in the development of this third bill (Kanniah 2005). AGILE was a \$41.2 million dollar project of the Maryland based consulting firm Development Alternatives Inc (DAI) aimed at policy intervention in macro-finance, trade, finance, telecommunications and agriculture in the Philippines. The project was focused on achieving an economic policy environment 'conducive for investments and growth of the country's economy.' This would be done by 'conducting policy studies, formulating recommendations for policy reform, providing information about the benefits of

policy change, facilitating public discussion of proposed policy reforms, and facilitating the implementation of legally enabled reforms’ (DAI 2003; Gordon nd).

The group maintained ‘satellite’ offices in many major Filipino departments such as the Central Bank, the Department of Finance, the Department of Budget and Management, the Department of Trade and Industry, the Securities and Exchange Commission, the Bureau of Customs, the Philippine Stock exchange, the National Telecommunications Council, the National Economic Development Authority, the Department of Transportation and Communications and the Department of Agriculture (DAI 2003). As AGILE/DAI boasted on its website, ‘this direct pressure in the vital government agencies has allowed AGILE to make great strides in policy reform’ (cited in SEARICE 2002: 2).

DAI/AGILE consultants were intimately involved in the drafting of the new plant variety protection bill for the Department of Agriculture in 1999 and paid for the public consultations in Metro Manila in 1999 and 2000. AGILE staff members were housed in the Planning and Monitoring Service of the Department of Agriculture, the very office that drafted the bill. Many of the staff of the Department of Agriculture were on and off the AGILE payroll during this period. Circulars from the budget department discouraged the hiring of outside consultants when the tasks could be undertaken by existing staff of the department – a policy that supported AGILE paying government employees for their services (SEARICE 2002).

The NGO SEARICE’s (2002) ‘exposé’ on the role of AGILE in the development of the plant variety protection bill strongly criticized the role of AGILE in the development of the PVP. The exposé questioned the ‘highly schizophrenic organizational arrangement and

institutional loyalty' associated with AGILE paying Department of Agriculture staff. The exposé challenged the transgression of boundaries perpetuated by the consultancy maintaining that it advanced the needs of US interests and transnational capital at the expense of the Philippines' national interest, and particularly the interests of Filipino farmers. The exposé (SEARICE 2002: 5) questioned the fine line between such consultancy fees and bribery, and charged that the use of US funds to develop Filipino legislation was inappropriate and neo-colonial:

With the AGILE agenda in PVP, the Philippines has clearly fallen victim to a sophisticated ploy to subordinate its national interest to the US agenda. There may be nothing new but it is a cause of alarm if the tools being used to advance that agenda are government agencies and officials... The Department of Agriculture, particularly its Planning Service, has knowingly or unknowingly, allowed itself to be used to ram down the government's throat a policy agenda that will not at all benefit the majority of Filipino farmers. It has allowed itself to serve as 'front' that gives legitimacy and provides an official stamp to the US agenda on the PVP bill.

Following the passage of the PVP Act, AGILE/DAI once again became embroiled in controversy because of its actions associated with the passage of an anti-money laundering bill. It was alleged that members of AGILE had passed a confidential committee report associated with the bill to the Financial Action Task force, an intergovernmental body established by the 1989 G7 Summit with the aim of developing and promoting 'national and international policies to combat money laundering and terrorist financing' (FATF/OECD 2008). Representatives from the organisation were called in for questioning by the Senate

while a House Resolution (No. 1317) was drafted calling for an immediate investigation in light of reports ‘that DAI/AGILE has been actively pushing the USAID agenda by influencing the formulation of major Philippine Legislation in congress’ (House Resolution No. 1317). Some politicians called for treason charges to be leveled against those Filipino government workers on the payroll of AGILE if they did not answer to the Senate probe. Senator Ralph Recto, one of the authors of the Senate resolution to investigate AGILE/DAI, publicly stated, ‘Philippine policy-making is directed from Maryland where a US government lobby group is shaping the Philippine laws to serve American interests’ (Vanzi 2003: par 7). Osmena III, one of the most influential figures in the Philippine Congress/Senate, also commented, ‘Philippines has become a colony again of the United States. It has become apparent that most of the economic measures enacted were made to appear that these were legislated by Filipinos for Filipinos but were in fact for the Americans’ (Vanzi 2003: par 15-16) (For further discussion of the enduring influence of US colonial and neocolonial relationships in the Philippines see Sidel 1999; Vitug and Gloria 2000). The controversy came too late for the PVP Act which, by that time, had already passed and been made into law.

The result of the conservative shift and in particular AGILE's involvement in the PVP drafting process was a third set of bills based closely on UPOV 1991 with provisions beyond those required by TRIPS. The final Act, for example, recognizes applications filed overseas under certain conditions. Any application previously filed in the US or the EU (or anywhere else) can be transferred to the Philippines in a straightforward manner. The Filipino application will be dated with the date that the foreign application was filed (thus gaining precedence over other applications). This provision, introduced in the AGILE draft, is an example of where the Act goes well beyond the provisions required by TRIPS in a way

clearly in the interest of foreign (elite) IP holders. The article is nominally reciprocal which plays an important legitimizing role but is virtually meaningless in a practical sense.

When the 12th Congress began, both second and third generation bills were filed. In Committee, the two bills were combined and the resulting version was largely based on the third generation bill. The Senate version, due to the continued sponsorship and interest of Senator Flavier (sponsor of the second generation bill) retained a few provisions from the second generation bill but the Congress version was almost the same as the third generation bill. A flurry of last minute lobbying saw both sides working on trying to retain or to eliminate the extra provisions.

In the technical working group, which worked on a final draft, major pro-IPR institutions were represented. The group's position was one centered on what it saw as a technical understanding of the bill. Any questions of social accountability or national interest provisions were seen as adding unnecessary layers to a straightforward technoscientific endeavor. Seed associations that represented groups of large scale seed growers and industry, transnationals like Monsanto, and pro-biotech private and public research groups all lobbied to keep the bill free of 'political' elements such as the need for prior informed consent from Indigenous people. By marking intellectual property and breeders rights as technical questions on the one hand, and Farmers Rights and other pro-farmer/pro-Indigenous positions as political on the other, the knowledge/power lines were drawn in a way that effectively depoliticized the intensely political pro-IPR agenda.

The International Rice Research Institute (IRRI), which is the CGIAR (Consultative Group on International Agricultural Research) research center focused on rice and based in the

Philippines, was another important player. When I interviewed one officer of IRRI, the draft of the PVP was on the desk where he had been working on it prior to the interview. IRRI's comments were to the effect that a 'straightforward' plant variety protection law - that is, one that followed closely UPOV 1991 - would be best. This is despite a complicated internal relationship within IRRI on the question of intellectual property rights. Many within IRRI are concerned that IRRI's role as an international seed bank will be compromised if member countries strengthen their intellectual property rights and become less willing to share germplasm without material gain. Indeed many countries have slowed or stopped contributions until the international situation stabilizes.

On the other hand, some NGOs and farmers organizations, mostly led by SEARICE, were continuing to lobby hard for provisions supporting Farmers Rights and community ownership. There was a growing disenchantment among some NGOs that the endless lobbying and committee hearings were a waste of time and extremely scarce resources. One day spent on a trip to Metro Manila to a hearing was a morning not spent doing innumerable other tasks including farmer outreach and education. Worse, some groups worried that any provisions that did get through would be gutted of any real ability to protect farmers and would act as a veneer to confuse further education and advocacy on the issue.

While this frenzy of activity occurred at the domestic level, in Geneva, the Philippines was actively lobbying for a full review of 27.3(b). Although the Philippines along with other developing countries was supposed to comply with TRIPS by January 1, 2000, the existence of a still incomplete full review process and the slow pace of other countries in implementing the law meant the deadlines were not being imposed. In the TRIPS council, the Philippines has supported the position of the Africa group and other developing

countries in calling for a thorough review procedure, an extension of the transition period and other clarifications in the wording of the agreement. Thus, proponents of the more stringent draft within the Philippines were pushing ahead seemingly in contradiction of the Philippines official negotiating position. This led to some tension between the mission in Geneva and the workings of the government back in the Philippines. Some members of the mission, for example, were politely confused as to why the congress was pushing so hard to go ahead with UPOV style legislation with the TRIPS review still underway and with possibilities of extending the deadline unexplored.

In the Philippines, the Congress bill was pushed through as a priority and no public consultations were held throughout the process. The (highly contested) rationale being that the bill had reached third hearing in the 11th Congress and did not need further public comment. This legality of this rationale had been questioned by some Senators and NGOs who maintain that to be a priority a bill needs a specific order/categorization from the president. The PVP bills did not have such a classification.

The Senate, however, was following the ordinary process and was more open to comments from community and NGO actors. Both during the process of merging the two bills and during further deliberations, some provisions from Flavier's bill were incorporated. The final Senate version that entered the bicameral session included the following provisions: the creation of a community gene trust fund; the need for prior and informed consent of Indigenous people; that stipulation that small farmers may save, exchange and sell farm-grown seeds with the definition of small farmers to be decided by the newly created National Plant Variety Protection Board, and the provision of a community seed registry. The community seed registry would give farmers the option to register farmer-bred varieties

and so keep them in the public domain. These varieties would then no longer be eligible for IP protection (without modification).

When the Senate and House version were combined in a bicameral session, only the skeleton of these provisions remained with the result largely based on the UPOV 1991/AGILE version. In a sense, the inclusion of the provisions on a gene trust fund and exceptions allowing for small farmers to save seed on their own land for their own reuse was a victory for farmers groups and NGOs. The law fell short of outlawing the saving of seed. Social movement actors, however, condemned it. Even those who had taken the most moderate line in lobbying politicians and trying to amend the bill criticized those remaining provisions pointing out that they could be manipulated by TNCs, that the gene banks would be larger mainstream banks run by universities and IRRI rather than farmers, that the definition of small farmers was in the hands of the new National Plant Variety Protection Board and that real restrictions on seed saving had been introduced where none had been before. Some groups, such as MASIPAG, a Filipino network of small farmers, and GRAIN, an international research/advocacy NGO with an office in the Philippines, worried that a register of traditional varieties would act as a veritable menu for TNCs who could scan the varieties looking for certain attributes. They could then either isolate the relevant gene or else make some modification to the initial variety and be free to claim IP protection. What is certain is that the Philippines ended up with a plant variety protection act that goes well beyond that mandated by the WTO. It is also a law that contains no provision explicitly against patents on plants and animals so leaves open the possibility of the laws moving in that direction.

CONCLUSIONS

The story of how the Philippine state created, through its Plant Variety Protection Act of 2002, a new system of intellectual property on plants within the country is a story of profound neoliberal restructuring. Indeed, with the passage of the Act it has produced a new (for the Philippines) form of property right and plotted the infrastructure to enact and enforce it. It has worked to ‘upwardly harmonise’ its intellectual property laws to meet and so contribute its part to the creation of a global standard. The Philippine state has participated fully in the reconfiguration of governance associated with knowledge-as-property within its boundaries. In doing so, it has contributed to building a globalizing, networked neoliberal infrastructure within which capital can move through terrains at least partially recognizable and conducive to its interests. In the meantime this infrastructure has the potential to negatively impact small farmers of the Philippines, privatising knowledge and extending capitalist relations even deeper within the processes of production and reproduction of the Philippine countryside.

Clearly, the role of the Philippines in bringing about this new terrain of knowledge belies any conception of globalization as a stable, natural, and quantifiable set of processes that exist separately from the state, acting upon it from the outside. States and other diverse interests work to bring about the conditions of neoliberal globalization deploying discourses of globalization to empower and justify their actions while strategic alliances of corporate interests, policy makers and negotiators work to bring about mutually beneficial (for them) outcomes (Gill 1995; Helleiner 1994; Tanzer 1996). Indeed, the discourse of neoliberal change provides promise, justification and threat to proponents of IPR functioning, in part, as a form of regulatory practice. To say this is not to imply a uniformity in the ways discourses are produced or materialized or a simplicity to the positions inhabited by those

involved in developing the law. The actors involved work within complex, occasionally contradictory positions.

In trying to get a sense of the intimacies that make up this grand assemblage of restructuring, I have taken a specific set of processes – those associated with the development and passage of the Plant Variety Protection Act. This is in no way to suggest that the story of neoliberal restructuring of knowledge-as-property in the Philippines begins or ends with the passage of this law. Of course, the multiscalar historic processes that led to this point, the yet-to-be-determined question of implementation and the other beyond-the-legal sites through which this will play out (in the practices of farmers, the decisions of boards and of courts, the ongoing struggles within and beyond the WTO) are all of fundamental importance. Yet even with my incomplete account, unexpected issues emerge. Social movements, for example, were able to use the fissures associated with the implementation of TRIPS to advance a different kind of regulation around knowledge-as-property. They imagined and enacted new ways of developing legislation and forged unexpected alliances. Through their pro-active efforts of drafting an early IPR bill they pursued and brought into being a different kind of global and articulated different kinds of relationships between knowledge over plants and ideas of ownership.

The efforts of social movements were certainly not uniform and revealed a wide range of approaches both in terms of strategy and in ideological orientation to the question of knowledge-as-property (for further discussion of social movements in the Philippines see Silliman and Noble 1988). Neither were there clear lines of distinction between proponents of intellectual property and opponents. Those involved in the process negotiated hybrid and sometimes contradictory positions and responded to a diverse set of pressures beyond a

limited notion of global pressure emanating from the WTO. The need to generate respect, negotiate allegiances and to do ‘important work,’ for example, interwove with aspirations to join or come into contact with a transnational elite. Relationships emerge as an important feature of this geography - the ability to forge relationships in the halls of the WTO, relationships built through placing US-funded consultants in positions of day-to-day interaction with Department of Agriculture staff, relationships among social movement actors, and between academics and the US embassy. It is in this web of interaction that the power-riven practice of restructuring is negotiated and brought into being.

My attention in this paper to the technicalities, relationships and minutiae that combine to bring about neoliberal restructuring is not done to divert attention from the significance of the power move involved. Rather it is to tease out how such changes are enacted in practice and to contribute to nuanced accounts of political-economic change. While to a certain extent the outcomes of the process are predictable – a law in line with elite capitalist interests was passed – the analysis allows interesting discrepancies, processes and resistances, that shed light on the mechanisms of power, to emerge. Here, I build on calls for accounts of ‘actually existing neoliberalism’ in ways that reveal them as productive of diverse cultural, political and economic geographies (Brenner and Theodore 2002. See also Nagar et al. 2002). The globalizing space of geogovernance is a hierarchical space that has facilitated the emergence of diverse (variously coercive and consensual) ‘political geographies of control’ (Sparke 2006: 1). These geographies are produced in complex ways, through technicalities and a wide range of formal and informal institutions and relationships (for example, through rumor, the ways that some things are defined as technical and others political, and by cultures of negotiation).

There is no uncomplicated and linear process through which decisions made in spheres associated with the global such as those of the WTO impact upon the Philippines. Although the pressures coming from pro-IP negotiators, regulatory bodies, aid consultancies and corporations might be towards a globally uniform legal regime, the spaces within which these pressures are applied are far from uniform. Rather, there are multiple nuances and diverse strategies through which laws are disrupted, contested, (re)worked and/or enthusiastically embraced. Such interactions are integral features of contemporary spaces of regulation and of the impure, hybrid reworking of scalar relations associated with the global.

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FOOTNOTES

1. The term 'peoples' organization' is widely used in the Philippines to refer to membership-based mass organizations accountable to a broad constituency.
2. I have used the term 'wave' as each legislative effort was made up of several bills, altered and resubmitted with different identifying numbers. There were also different bills at the Senate and Congressional levels and in several instances, more than one version submitted by different congress people and/or senators.
3. Biopiracy refers to the 'appropriation of the knowledge and genetic resources of farming and Indigenous communities by individuals or institutions seeking exclusive monopoly control (usually patents or plant breeders' rights) over these resources and knowledge' (ETC

2007). The precise meaning of the term and the limits of what does and does not count as biopiracy are fiercely contested.