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In the article “faith-based intellectual property”, Lemley criticizes the view that intellectual property does not need to prove its being and we need to protect it without the need for evidence. While Lemley’s paper mainly focuses on the U.S. context, Chubb’s article, “China’s Shanzhai Culture: ‘Grabism’ and the politics of hybridity”, by discussing the shanzhai phenomenon in China, which happens under the loose control of intellectual property, pushes the thinking of intellectual property to an international level. Viewing the two articles together, the paper will show that it is questionable whether the spread of Intellectual property rights constructed by the West can create more benefit than its damage.

In Lemley’s article, one of the reasons he criticizes intellectual property rights is that it protects too much the first person who generates an ideal but gives much less right to the people that come up with the same idea later or use the idea productively. As he mentions the potential objection that “[protecting the first] privileges creativity and therefore encourages someone to strive to be first” (1340). Yet, “it is an empirical prediction, not one we can simply assume to be true” (1340). As Lemley mentions, the evidence about whether intellectual property can boost innovation is complicated and depends on industries (1334). Therefore, intellectual property, by giving the right to the first idea generators, can harm the right of the following people and hinder innovation.

He argues that we need to analyze intellectual property by valuing its cost and benefit to see whether the benefit of protecting intellectual property can outweigh the cost or not. As Lemley’s essay is based mainly in the Western (America more specifically) context, the cost and benefit he mentions confines the cost and benefit to the country. It can be seen that the organizations he mentions, like the Environmental Protection Agency, the White House Office of Information and Regulatory Affairs, and Congress are all American agencies and the article he cites are from Western writers. Yet, as the notion and the protection of the intellectual property is spreading across the world with the increase in international trade, it is necessary to think about its cost and benefit to the world.

Lemley argues that the intellectual right benefits the first person that comes up with an idea and sacrifices the benefit of the people that thinks about the same idea later or want to produce practical products Though his argument is based on the American context, it can also apply to the international context. Nowadays, the companies from the technology frontier countries are always the first to come up with an innovation. With intellectual property rights that spread internationally, the companies can control their products to be at high prices and constrain the use of their ideas by companies in other countries. Therefore, the companies in other countries that are the potential to make use of the frontier ideas to produce pragmatic products face many hurdles, which as not sure whether it benefits the globe or not. International IP might encourage innovations, yet it might also hinder some underprivileged people to share the benefit of innovations. We can start thinking about the cost by viewing the benefit of relatively loose carrying out of Western standards’ intellectual property right in China.

The shanzhai manufacture, described by Chubb, happens when the idea of intellectual property starts to construct in China but still didn’t have the power to restrict the spread of copying. One of the features of shanzhai is the “mobile phone handsets that in some way imitated more expensive models, either in shape, brand-name, logo, functions or just by being a mobile phone, and cost a fraction of the price” (264). From the fact that shanzhai phones are named “Blockberry”, “Nckia” and “iPhoue” (263), we can see that shanzhai phones are mimicking famous Western brands. IP hadn’t gained its power to control the Chinese market yet and allowed shanzhai products that violate Western standard IP law to spread through China. Though China had established its State Intellectual Property Office, and its director criticizes shanzhai “[its] production model as based on piracy and intellectual property violation” (267), it couldn’t stop the widespread shanzhai culture.

The free space from intellectual property that China had provided it with the possibility for shanzhai products to appear, and the products benefit a group of people, especially those who are unprivileged. As Chubb points out, “… shanzhai ji producers’ incremental innovations reducing the cost of the objects helped consumers, especially migrant workers, avoid major global manufacturer’s price-based barriers to enjoyment of the fruits of global technological advancement” (276). In other words, shanzhai products help more people benefit from the global technology which will otherwise benefit the people in privilege only. Low price is not the only one of shanzhai products’ benefits, they also add functions to the original products. Chubb mentions that “the producers of shanzhai ji were free to incorporate highly useful functions like the famous dual SIM card slots” (268). The added functions, cited by Chubb, “[were] largely reflective of the needs and desires of the Chinese migrant workers who produced them” (270). In this way, shanzhai products can promote the just of society as it helps the underprivileged people to engage in technology growth and shorten their life experience with the top class. What’s more, the benefit of shanzhai products is not confined to China but spread through other countries as well. According to Chubb, Chinese shanzhai products were exported to other countries in Asia and Africa (269), which shares the advantages of shanzhai products with other parts of the world.

The shanzhai products interpret that when IP rights haven’t confined too much the latecomers to use the idea first generated by the other, the followers can create pragmatic products and benefit a group of consumers. Nowadays, the notion of intellectual property is spreading worldwide, as well as its restriction on the people that have new ideas based on the original ideas. Lemley argues that IP “requires some cost-benefit justification before we accept it” (1331). Though his discussion is in the context of America, it applies to the international context as well. We need to think about the cost and benefit of the spread of IP worldwide, analyzing what global citizens lose and gain with IP law. With the benefit of shanzhai products mentioned above and its disappearance partly because of the stricter intellectual property law, it is questionable whether the spreading of IP is a good thing, and whether countries following the West to build their IP system is on the right track.

Some people might object that the West is in the frontier of technology, and their intellectual property system helps encourage innovation to keep the West in its position, so the rest of the world should follow what the West did to stimulate innovation worldwide. Yet, as Lemley points out, the connection between IP regulation and innovation is unclear and varies from industry (1334). He also mentions that “some evidence suggests that the patent system is worth the cost in the biomedical industries but not elsewhere” (1334). Therefore, IP regulation is not the proper reason to explain Western being in the innovation frontier. In fact, the IP regulation could be the upshot of technology improvement rather than the reason.

To conclude, using the cost and benefit analysis that Lemley argues for and viewing the benefit of Chinese shanzhai products, it is questionable whether the IP regulation should be spread worldwide. The thinking above stands on a global perspective to think about the benefit of the globe, it another question whether it is possible for people to analyze globally instead of caring about the profits of their own countries.

Questions:

1. Is  intellectual property undesirable during the long-run development of the world?
2. Does intellectual property harm the profit of developed country? Is there any negative influence?
3. Do you think China needs to promote intellectual property right now?

Works Cited

Chubb, “China’s Shanzhai Culture: ‘Grabism’ and the politics of hybridity.” *Journal of Contemporary China*, vol. 24, no. 92, 2015, pp. 260-279.

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