

Introduction

Active trust is the basis of the self-culture.¹

Intellectual Property, Medicine and Health

The complexity and controversy of debates on global health equity and private intellectual property rights are somewhat betrayed by the containment of those discussions within one text. However, what is attempted here is the articulation of those debates around the central concept of use.

Private Property Rights and Democratic Models

The private property rights in public knowledge goods, created by intellectual property systems, demonstrate the way in which modern western-styled democratic principles presuppose the nature of property rights as the basis for freedom and will-formation. However, in the context of the knowledge economy, this articulation of the totality of values upon the nature of the market and private property as the crucial starting-point, undermines the characterisation of different perspectives upon the debate as nonsensical, as it were. That is, private property discourse presumes a position of ethical priority and common-sense, marginalising other perspectives as unworkable in a market economy. Taking this premise upon private property, it is possible to appropriate these debates in order to realise important interests in the benefits of scientific research that cannot be defeated by trade rules.

Cooperation and Trust

Throughout this book, the significance of civil society is acknowledged as the means by which individual actors can participate in the public sphere and are motivated to recognise legitimacy in subsequent legal developments. This cooperation between government, civil society and the private sector is recognised by international institutions, including the World Health Organization (WHO). This cooperation is also significant to the political culture in which global health

1 Beck, U. and Beck-Gernsheim, E. (2002), *Individualisation: Institutionalised Individualism and its Social and Political Consequences*, Camiller, P. (trans.), London, SAGE: 46.

policy and reform is being addressed. It is also implied in the notion of genuine democratic participation in the public sphere.

Trust also implies the presumption of a certain degree of risk and indeed recognises the vulnerability of those with varying life chances within systems directed solely or even primarily by the market. Indeed, there is a distinct crisis in the 'trust' of the institutions responsible for health research and development and the diffusion of the subsequent benefits among users. This is important not only for the legitimacy of laws and the lawmakers, but also for the sustainability of business models built upon those laws, including pharmaceutical companies.

Use and the Constitution of Possession

Use constitutes possessory relationships to knowledge and manifests the important beneficial interest to be enjoyed by all citizens in inventions and scientific progress. Furthermore, use constrains the time-limited legal rights in an invention created by the patent document. This vital concept of use articulates the simultaneous rights to be found in an invention – the legal rights of the patentee and the equitable rights of citizens to the benefits of scientific research. That is, use both constrains the scope of legal rights (for example, in the purpose-bound approaches to patent infringement) and constitutes the equitable rights in the invention.

The Global Medicines Trust

These principles are characterised in this book in the idea of a beneficial interest in all medicinal inventions – the global medicines trust. These beneficial rights in the invention are recognised in the provision for compulsory licensing and the public health amendment to the World Trade Organization (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). These revisions to TRIPS demonstrate international cooperation towards global health equity that is evidence of both political and commercial will towards fulfilling the beneficial interests in these inventions related to health.

Trust realises in the one trusted the obligation of trustworthiness. This book considers debates throughout global health in the context of human rights and intellectual property frameworks. The availability and accessibility of medicines, innovation models and research and development agenda are driven by not only the access provided by intellectual property rights but also the use limited by such rights. Ultimately, without fulfilling obligations to facilitate the realisation of rights to health, development and culture, the global institution of health (including its systems of innovation, research and development, diffusion and dissemination) will betray the trust.