

PATENTING CULTURE: THE CULTURAL CONFLICT OF INTELLECTUAL PROPERTY

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The debate over intellectual property rights often fails to address fundamental conflicts of culture that are inherent within them. In 1997, the American corporation RiceTec patented basmati rice, arguably appropriating a cultural staple and turning it into a generic brand. Through the lens of the patenting of basmati rice, and by employing the work of Jonathan Lethem, Siva Vaidhyanathan, and Marilyn Randall, I will attempt to bring into focus the cultural context, conflict, and significance that is manifest in not only this appropriation controversy, but in international patent law in general. I will show that when we turn our focus away from the economic and legal aspects of this debate, and focus on the cultural implications, what we will find is a cultural power struggle.

A close examination of this controversy reveals conflicts between different ideologies of ownership, elements of theft, and colonialism within a particular cultural context. RiceTec's patenting of basmati rice is based upon European ideas and traditions of ownership that are foreign to the culture that cultivated and nurtured basmati. If we understand basmati to be a cultural resource, then its appropriation is a blatant theft of one of India's most prized goods. This attempt at appropriation, which was committed by a Western entity and founded on Western legal concepts, can then be seen as an example of twenty-first-century cultural colonialism.

Farming, and the food it produces, is a source of culture, history, and pride for people around the world. Just as farmers are inevitably bound to their land, so too is their culture bound to their crops. The corn, wheat, and rice we eat today are both the products and reflections of the growers' cultural contexts, each occupying an important place in cultural traditions. Basmati rice is one such artifact. For thousands of years, basmati rice has been grown in the foothills of the Himalayas, each generation of Indians passing down this traditional food to the next in line. But this crop represents far more than the region's main source of daily calories and grain exports. Basmati is used in religious ceremonies, weddings, and has even been the subject of poetry for hundreds of years (Arora 3). It is an inextricable component of Indian culture.

So when RiceTec obtained U.S. patent number 5,663,484 in 1997, claiming basmati as its own, the region erupted. What followed was an intense, international legal battle that spawned several movements and began a continuing discussion about intellectual property rights and the economic repercussions of what was soon termed "bio-piracy" (Shiva).

RiceTec claimed it had created an original kind of rice by crossbreeding a basmati strain with a semi-dwarf strain (Arora 4). This "new" strain of rice had one major

advantage beyond simply being patentable: it was more durable and suitable to other climates than traditional basmati. This meant that the natural monopoly over basmati rice that India and Indian farmers had enjoyed for millennia was about to be lost. In response, the Indian government, accompanied by Indian scientists and activists, mounted a strong campaign and challenged the ruling in the courts. In 2001, RiceTec's patent claims were struck down (Arora 5), and in some ways the crisis was averted. Despite this outcome, however, the event is significant and deserves additional consideration.

The RiceTec patent can be understood as an attempt at cultural de-contextualization and as a very real clash of cultures and their norms. In order to analyze this conflict we must first outline the different cultural norms that inform different conceptions of intellectual property. Siva Vaidhyanathan, a writer, cultural historian, and media scholar at the University of Virginia, claims in "Hep Cats and Copy Cats" that the cultural value systems that inform non-European-derived traditions of ownership often differ from the more linear or "progressive" value system that "emanates from the European artistic tradition and informs European and American copyright law" (125). The European tradition emphasizes individual ownership and creativity, whereas non-European-derived traditions tend toward a more communal conception.

This difference in conceptions of ownership helps to explain how the RiceTec patent resulted in a clash of cultures. The cultural context from which basmati was appropriated was inherently different from the world that conceived patent and property law. Jonathan Lethem examines the culture surrounding the ideas of intellectual property in his essay "The Ecstasy of Influence," where he debates the merits of a "public commons," a metaphorical place where ideas are passed down like any other cultural tradition (66). While Lethem discusses the concept in a purely intellectual realm, the idea is entirely applicable to the cultural context in which basmati rice originated. Basmati rice was not the property of any one farmer, or any one group of farmers. It was never owned in the way that the Western world conceives of private property. Basmati rice has always been a symbol of cultural heritage, not just another crop or export item. It has inherent cultural value to the entire community to which it belongs that surpasses its quantifiable value on the international grain market.

A parallel to this cultural understanding of ownership is outlined in Vaidhyanathan's work as well. While Vaidhyanathan refers exclusively to music, we can see the same cultural norms at work. Before basmati rice was patented, it existed—like the elements of Blues music—available "for any skilled and practiced performer to borrow and put to use" (121). Both Lethem and Vaidhyanathan refer to cultural realms and resources that were never governed by theories of individual property rights or conceptions of individual ownership. Basmati's cultural context was a shared existence; the only restraints on its use were the soil and climate to which it was adapted. It belonged to the entire Himalayan region equally; not to any one group.

Significantly, while both Lethem and Vaidhyathan stress the importance of a “commons,” they have different approaches to explaining where it resides. Lethem’s description is conceptual and expansive, and he concludes that it belongs to “everyone and no one” (66). Vaidhyathan is far more specific, perhaps because his reasoning is based on Blues music, where the resources of “the commons” come from a very specific and earthly place: “the cotton fields” (121). He makes an explicit and deeply meaningful cultural and historical reference to the African American community and the cultural context that invented and cultivated Blues music in America. Just as Blues music comes from the cotton fields, basmati, in even more tangible ways, comes from the Himalayan rice fields and Indian culture. In other words, “the commons” in Vaidhyathan’s conception is intended for use by those who have other, even more tangible things in common: culture, identity, and experiences.

When RiceTec patented basmati rice in 1997, it did not remove the rice varieties native to India from “the commons,” since the patent only covered a “new” hybridization of the rice. Thus, the various strains that existed previously in India were not affected. While this might appear to honor the concept of “the commons,” if one uses Vaidhyathan’s analysis, it does the exact opposite. The issue at stake here is not simply whether Indian farmers can still grow and cultivate their cultural heritage; it is the fact that their cultural heritage was being appropriated and essentially exported by a foreign entity. This appropriation then becomes an attempt at cultural de-contextualization. In other words, although RiceTec’s patent would not have removed basmati from its place of origin, by attempting to grow it in other places and contexts, it would have become just another globalized product, and not the rare cultural resource that it is today.

That is why it so disconcerting that when one examines the media coverage surrounding this controversy, it is difficult, if not impossible, to find the voice and opinion of the Indian basmati farmer. Indeed, while the coverage has allowed Indian intellectuals and cultural authorities like Vandana Shiva to speak out, and as much as one might like to provide a platform for the airing of grievances and allow experts to attest to the cultural significance of basmati, the news coverage of this controversy has focused almost solely on the economic and trade impact of the patent. The absence of the basmati farmers’ voices in the debate is yet another example of how basmati has been culturally de-contextualized. The importance of the very individuals who have cultivated basmati and stand to suffer the greatest harm from its appropriation have been ignored and ultimately lost in the legal and economic debate.

RiceTec, in attempting to make basmati a globalized good, was effectively devaluing the cultural uniqueness of basmati. Culture is a finite resource which must be protected. Ironically, there is a Western economic concept called the “tragedy of the commons” that states that a resource left to the public—unowned by any one party—is fated to be abused and depleted by its inevitable overuse. There is no reason we should view the basmati situation any differently. The appropriation of an essential

cultural resource like basmati represents the opening salvo in a potentially dangerous trend. If a cultural resource is removed from its context and distributed around the world, it too could become a tragically depleted cultural commons, sapped of its strength.

It is important to understand that this type of cultural de-contextualization and appropriation does not represent a new paradigm, but rather a historically recurring theme. In her essay “Imperial Plagiarism,” Marilyn Randall shows the interconnected relationship between the metaphors of conquest, colonialism, and plagiarism and examines the shifting rationales upon which they are based. Randall refers to the “the colonial metaphor of legitimate possession through the civilizing work of improvement” (134). Randall’s “colonial metaphor” highlights how the historically Western sense of entitlement to conquest—built upon the notion that foreign lands and people can, and indeed must be, “improved”—has survived to this day. To use Randall’s terminology, the logic and legitimization of RiceTec’s basmati patent is based on a “colonial logic of possession by improvement, which is itself underwritten by the Lockean principles of production and work as sources of legitimate ownership” (134). This Lockean principle that X can be taken, improved upon, and thus newly owned is not only an entirely Eurocentric dynamic of ownership, but is the reasoning behind every European conquest into “savage lands” since Columbus pillaged the Bahamas on his way to America. When looked at through the Randall’s “colonial metaphor,” we can understand the patenting of basmati to embody not only a conflict of ideologies of ownership and a cultural theft, but a form of cultural colonialism.

Terms like “colonialism” can produce strong reactions and carry ethnic overtones, so let us be clear: I am not calling RiceTec or the current system of international patent law inherently racist; what is at play here is one culture exercising its power and influence over another. Indeed, Vaidhyanathan argues that the battle lines drawn during intellectual property disputes are not etched along racial divides, but are in fact a struggle between established and non-established entities (133). In the case of the basmati patent, the established entity is a Eurocentric system of ownership manifested as international patent law regulating and appropriating a foreign culture. When explaining his concept of “imperial plagiarism,” Lethem draws a similar idea, saying that it is the appropriation of a “commonwealth culture for the benefit of a sole or corporate owner” where “cultural debts flow in, but they don’t flow out” (66). This analysis shows that the patenting of basmati is not only a commodification of culture for the economic benefit of an established corporate interest, but is a cultural power grab. Randall says that if we “imagine a context where the ‘right to copy’ construes no economic benefits either on author or plagiarist,” what we will be left with is a “discourse of power” (131-32). This is the most fundamental dynamic at work in the controversy surrounding the basmati patent. Intellectual property rights and copyright law are inherently a “discourse of power.” So when the subject is the patenting of a cultural resource in the way that basmati rice is to the entire sub-continent of India, it

becomes a discourse in cultural power, a discourse that the Western world has dominated for centuries.

This discourse of power not only assigns importance to one culture at the expense of another, but is a modern day manifestation of European ideals and values imposing themselves on foreign peoples in foreign lands. It is a clash of cultures and a revisiting of the “the colonial logic” that justified hundreds of years of economic and cultural appropriation.

While the cultural effects of such an appropriation are harder to measure than the economic consequences, they are nonetheless real. When RiceTec patented a plant that both literally and figuratively constituted the basis of a vast portion of Indian society and culture, they did more than just bite into India’s yearly export numbers. They stole from their cultural tradition. As stated before, basmati rice is a gift from generations of farmers to their children and to their children’s children. Its unique aroma, taste, and texture was created and honed over millennia by Indians—and for Indians. To commodify, rebrand, and decontextualize a gift as sacred as this constitutes more than economic warfare. It is cultural theft.

Basmati rice, like so many cultural artifacts, is more than just a product for sale. It is simultaneously a reflection and an embodiment of a very specific culture and place in history. It has inherent value and meaning beyond its market price. The risk of depleting distinct cultural resources amidst the tides of globalization or in an attempt to make everything common is very real. Certain things belong to certain places, people, and cultures. Basmati rice is special because it is Indian—and because it is grown in the foothills of the Himalayas. The use of another culture’s conception of property and ownership to remove it from that context is a direct threat to India’s cultural heritage. If Basmati became less Indian, then India itself would become less Indian.

Cultural appropriations like the basmati patent continue to this day. As conscientious observers of this era of globalization we should not let economic rationales or our own Westernized conceptions of property explain away a new era of colonialism. The appropriation of traditional knowledge and resources of native peoples without consent or compensation is indeed colonialism, even if it is conducted under a more stylized banner. When we hear of corporations using patent law to reach into foreign cultures to appropriate a new product, we must remind ourselves that this is not just business as usual, or even simple corporate greed. It is the ugly specter of colonial right and justification reborn in the twenty-first century.

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