

Intellectual Property and Economic Development
by Robert M. Sherwood Boulder: Westview Press, 1990

— A Review

ISBN 0-8139-8019-7

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Questionable assumptions, generalizations, predictions and 200 pages of a myopic view of Intellectual Property Protection,¹ that is all what "Intellectual Property and Economic Development" by Robert M. Sherwood is about.

Although Sherwood brings out with clarity the object of the book *viz.* that when IPP is viewed as a component of infrastructure and not just as a trade sector, it becomes a fresh object of study and such a study focusses on assessing the contribution to economic growth and development arising from the presence of reliable safeguards for new technology and creative expression in a developing country, he proceeds to do so by trading on a series of questionable assumptions. For example, the so-called biases present in a developing country and the dearth of research in a developing country. He commits the same mistake when he draws an inference of a "growing awareness" of lack of adequate protection in many countries from the attempt of the developed countries in trying to force their standards of protection through the GATT. Sherwood tries to question, quite unconvincingly, the assumption that imitation necessarily precedes innovations. One might agree that the value of a book depends not merely on its utility but also the on language employed. Sherwood fails to realise this when he remarks that the developing countries provide a laboratory for studying the inter-relationship among innovations, activity and protection. One hopes that with the passage of time, no one would be able to get away with such a crucifying statement in public.

In purporting to examine the conceptual nature of intellectual property in Chapter II, Sherwood falls back into the line of making the assumption that intellectual property is a result of private activity, thereby completely excluding the societal input towards the creation of Intellectual Property.² Although initially Sherwood states that a product of the mind may be accorded the status of protection in one location and not in another, since protection is a function of national law, by trying to make out a case for bringing IPP within the GATT framework, in essence, he is arguing for an international minimum standard of IPP using GATT. An informative component of this chapter is the historical evolution of IPP.

The author examines the common elements of "advanced" regimes, which he terms as "mature" and which have given "careful thought" to IPP. Does it not suggest that regimes of weak IPP have not given careful thought to the same? Such manifestation of biases of the author undermines the very object and purposes of the book. His pre-conceived notions and biases come to the fore once again when he describes regimes in which supervening public interest is narrowly defined as "advanced". This is re-affirmed by the fact that he describes regimes which define an abuse of patent narrowly so as to limit extinguishment of the right of exclusivity, as "mature" regimes. The common elements which he so identifies are based

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1. Hereinafter IPP.

2. Hereinafter IP.

on the premise that private interest is created on a calculation that it in turn serves public interest. This is certainly not true in the case of developing countries where public interest *per se* is the prime concern of the law. The crux of a mature regime is that human creativity is given special treatment through an array of legal mechanisms which balance public and private interest. He then proceeds to discuss the public policy theory of protection and sets up a base for propounding his own theory.

In chapter III, Sherwood tries to examine how IPP works. He examines the process of adopting traditional forms of protection to new technology with reference to computer software and bio-technology. According to him, only a comprehensive intellectual property protection would produce results. If certain parts are missing, the system would produce, "a little like a hole in a dam." He supplements his arguments for comprehensive protection by saying that financial support for commercialisation would be contingent upon protection.

Chapter IV begins with a review of the existing material on the relationship between a hard IP regime and economic development. This review, which is fairly comprehensive and informative, begins by pointing out the dearth of research in the relationship between law and economics in general and IPP and economic theory in particular. He is quite right in saying that economic theory is moving towards appreciation of the fact that apart from the role of labour, capital and resources, technology and innovation appear to account for a major portion of productivity gains. But, keeping in tune with the previous chapter, Sherwood falls back into the line of questionable assumptions and generalisations, which stand as a black spot in an otherwise creditable contribution. For example, when he says "public statistics in the developing countries are of generally poor quality and businessmen in developing countries typically do not respond to questionnaires." From the studies conducted in the United States and other developed countries, he tries to bring out the importance of new technology in economic growth. This approach is flawed because these studies were based on a different socio-economic background and by a mere suggestion that this invests a possibility that protection of new technology could have a significant beneficial effect on developing countries, he tries to get away with his IPP perspective. Keeping in mind that this is the basis of his whole argument, one might see that by doing so Sherwood has placed himself on a very shaky foundation.

He brings out certain propositions which are well supported by case studies, in chapter V on the impact of a weak regime on economic development in terms of new technology and finance. These propositions assume concrete terms in chapter VI. Lack of strong protection, forces technology to be kept as a secret, even among the workforce of a unit. This, according to Sherwood, and very rightly so, is an invisible barrier to acceleration of technological advance within the units. This is a silent barrier but yet one with potentially profound consequences for the speed and quality of industrial development. He links this factor to the lack of competition among national firms. The emphasis of the chapter is on the point that the path from the laboratory to the market place can be long and difficult and from the experience of the developed countries, IPP is an important lubricant for that journey.

He attempts to convince the reader that the basic arguments for a weak regime has only a textual basis. He tries to meet the argument of the developing countries that a strong regime would be one of high costs by saying that low-cost options could be employed, coupled with international co-operation, to reduce cost.

He further analyses the impact of a strong IPP on the various institutions of national life including culture. He even sounds a warning to the developing countries that in the years to come, the developed world would become indifferent to IPP in the developing countries. By tie-ups with firms, they might shift their key activities, sensitive to Intellectual Property Protection, from one location to another. This unveiled threat, gives us in a capsule the effect of having a strong IPP in developing countries. It would enable the developed countries to operate in the developing countries from outside. They would have their production centres in their own countries and market the products elsewhere. By shifting the production centres from place to place, they can hold the developing world to ransom. The developing countries would serve as a market place for the developed world.

A concluding remark about the statistics appended — they are quite comprehensive except for the fact that they do not disclose whose interest the regime seeks to protect.