International Journal of Cultural Property (2010) 17:519–546. Printed in the USA.
Copyright © 2010 International Cultural Property Society
doi:10.1017/S0940739110000251

Intellectual Property for Mystics? Considerations on Protecting Traditional Wisdom Systems

Rosanne Trottier*

Abstract: Efforts to protect, if not revitalize, intangible cultural heritage in its traditional communities, cannot succeed without due attention to issues of ownership—cultural, environmental, intellectual, economic . . . "intellectual property" categories in a wisdom system such as that of the Baul of Bengal show that Traditional Knowledge, Customary Law and Traditional Cultural Expressions are inseparable "property," and that "ownership" should be understood on traditional terms. Within such an integrated continuum, knowledge itself is not limited to it modern meaning.

Is it possible to bring about a true and equitable dialogue between radically antagonistic intellectual property universes—the modern one driven by profit, and traditional ones rooted in complex systems of multiple values?

The death of a wise old one is the loss of a whole library

—L. S. Senghor

INTRODUCTION

The trigger for this article was a call for comments in 2007 by the World Intellectual Property Organization (WIPO) on intellectual property (IP) protection for traditional knowledge (TK) and traditional cultural expressions (TCEs). Unlike its original draft, this version is not an attempted response to the questions asked at the time by WIPO. The pioneering efforts of WIPO to recognize IP status for

*Anthropologist, traditional knowledge heritage project developer. Email: rosanne@sawangboran.com

ACKNOWLEDGEMENTS: This article is informed by the author's experience in a grassroots wisdom tradition of Bengal and in cultural community projects celebrating traditional material, intangible, and knowledge heritage. The author is currently in charge of a silk-weavers' project in rural Thailand, for a culture-in-development project using cultural wealth, information technology resources, fair trade, and social-cultural entrepreneurship, to restore something of what used to be a female spiritual economy.

https://doi.org/10.1017/S0940739110000251 Published online by Cambridge University Press

such marginalized but immense forms of knowledge are commendable, including the acknowledgment that modern IP laws, originating in Western capitalistic understandings of knowledge and IP, may be of limited use. Also commendable is its joint work with organizations such as UNESCO to address a complex challenge. There is a sense that making real space for those TK paradigms not just to survive, but to flourish again on their own terms, is a matter of urgency in this world in crisis—after all, for millennia they held the real keys to the now-so-elusive substance of sustainability and holism.

Holistically speaking, the fundamental lesson in those systems is that elements now separately labeled TK, TCEs, genetic resources (GRs), customary law, and intangible and tangible heritage cannot be conceptually segmented. In traditional cognitive systems, they make up a continuum or a totality both in the mind and in concrete reality, with none of the cognitive boundaries that modern education, science, religion, production, and consumption have erected in the mind and in reality. The intellectual and the cultural cannot be separated, nor can "culture" and "nature." Specific objects or inventions of creativity cannot be separated from their roots in communities, places, and ecosystems; in lineages of transmission; and in realms of spirit. In such systems where everything is in everything, conventional terminology misrepresents the real significance of so-called cultural goods (in French) and intellectual "property."[1] Modern European languages are ill-equipped for even a respectful and informed scholar to do justice to those realities[2] of the "other." For want of better terminology, in this article the phrase "traditional knowledge systems" is a generic way of naming these cognitive totalities.

Thematic boundaries have resulted (in an organization such as UNESCO) in a proliferation of international cultural law making, as tangible cultural property eventually had to be supplemented with the intangible, world cultural heritage sites had to extend into their natural environments, and natural sites also needed heritage recognition. Boundaries need to be further stretched when successfully protected heritage and local people lose their soul to commercial commodification, and when it is belatedly realized that intangible heritage involves complex functions and a whole way of life. The dominance of economic considerations in protecting the survival of heritage—with budgets to protect, and the commercial returns from, a given expression or heritage property—results in only temporary reprieve from extinction, as the heritage becomes a frozen, reified object, while its local holders or communities lose the living ability to further evolve a tradition's creative potential.

Consequently, if TK systems, and the broader agenda of desirable cultural diversity, are to be preserved both for their own sake and for a sustainable future, preservation ideally should not be about segmented and decontextualized pieces or achievements of those systems; it should rather enable their systemic ability to live on, precisely, as interconnected systems of human and natural vitality and creativity. They should be able to operate both according to their own dynamics and somehow within the dynamics of an increasingly standardized and globalized

https://doi.org/10.1017/S0940739110000251 Published online by Cambridge University Press

world operating under intellectual and economic rules that are radically different from, and largely hostile to, their interconnectedness.

Modern minds turn most obviously to economic and legal means to address preservation. Fair enough, TK systems cannot be allowed to remain on the margins of value creation, especially if there is to be any hope of reconnecting disenfranchised youth with older knowledge holders before it is too late. Many projects now seek to ensure livelihoods, or fair trade, for traditional heritage-related communities, but the vision seldom encompasses more than segmented or often frozen bits of what is or was an otherwise complex and interconnected living system. Approaches that seek to bring some element (a useful piece of plant knowledge, a craft, or an artistic form) of TK systems from the margins to the mainstream of intellectual creativity go further as they variously try to combine economic benefits, some kind of intellectual recognition, and relevant environmental resources. While such combinations still fall short of the reality of TK systems as complexities whose elements cannot validly be isolated, their effectiveness under the present economic and intellectual order is necessarily constrained by the rigid boundaries of modern law—in particular considering the predictable difficulty in applying complicated, artificial constructs of IP and non-IP mixes that they seem to require.

Theoretically, a fairness-minded global market economy would have to rescue and value TK systems out of multiple ghettoes—the cheap knowledge ghetto (public domain), the cheap labor ghetto (low or zero wages to local people), the cheap resources ghetto ("commons" and communities' natural resources)—all of which would go hand in hand with proper valuation of environmental services preserved by local cultures. If this improbable scenario were to be implemented, the dominance of economic value would have the probable consequence of overall commercialization of tremendous fields of complex (cultural, natural, social, spiritual) value that never could be reduced to the monetary in traditional minds. The further transmission of traditional interconnectedness values to youth who inevitably belong in the modern world more than their elders then becomes totally impossible—which in turn means extinction of their TK systems.

In real terms, that impossible scenario—amounting to an economic package beyond calculation—goes beyond the cognitive abilities of a market economy that has always relied on consistent cheapness, predicated on segmentation and disempowerment of labor, resources, and local knowledge, to produce profits far away from these sources. The correlated intellectual package is also beyond the abilities of systems of law that operate on a cognitive continuum with the market economy—segmented, individual ownership of things and of ideas. The whole paradigm of (under)development is rooted in the global predominance of those economic and legal systems, and the world is in no hurry to act on the call of indigenous groups for that paradigm to shift away from the "values" upheld by those systems.

Exploring possible forms of IP recognition for hitherto neglected knowledge wealth, largely under WIPO's auspices, has sensibly resulted in a first achieve-

https://doi.org/10.1017/S0940739110000251 Published online by Cambridge University Press

ment: mapping the fundamental differences between modern and TK paradigms. WIPO efforts seem to give hope that systems of modern law can be somewhat creative or afford mixes with non-IP devices. But can modern IP categories acquire more complex meanings of value from other knowledge systems beyond their limited intellectual and property concepts, away from their fundamental focus on individualistic economic and commercial interests? Would this in turn mean further unwieldy proliferation of already enormous bodies of law and hence unenforceability? Conversely, would TK systems be able to preserve themselves if they were more deliberately to uphold their customary rules and shun IP law wholly or partially, as do certain professional communities successfully operating in the modern economy? And do they have the power to make such a decision, when they must exist within states that are increasingly appropriating powerful roles in IP protection for TK and genetic resources?

An anthropologist with no legal expertise can only try to highlight a few essential points that are still too vaguely addressed in the ongoing debate, even though they are consistently present in traditional communities' discourse and practice. Customary law and knowledge systems, where the law is organically and fluidly close to human life, reveal deeper layers in concepts such as knowledge, profit, ownership, rights, and duties. The case study to introduce the discussion here encompasses all the components—traditional form of (artistic) expression, traditional science, genetic resources, and customary law—that make up a veritable wisdom tradition that is very specific, yet on a cognitive continuum with indigenous and traditional cultures of the world. Its sheer complexity and connectedness illustrate the possibly hopeless challenge of protecting such traditions to restore them to their true creative and sustainable values—or the challenge for us of allowing them to protect us.

CASE STUDY—THE BAUL OF BENGAL AND THE SOUTH ASIAN CONCEPT OF *SADHANA*

A Grassroots Wisdom Tradition

The Baul of Bengal[3] are a surviving grassroots wisdom tradition, akin to others across South Asia that are now largely extinct; it is characterized by a religiously syncretic, noncommunalist spirit of humanism that refuses caste-based differentiation and upholds a path of life celebration, human salvation and self-realization for the "little people." Its initiates claim universalism, in the sense that it is a human path—and it does indeed seek to go to the core of reality that is experienced by deep initiates of all the major esoteric traditions. It is deeply esoteric,[4] yet no less deeply embedded in real and material life, and it thus informs every aspect of initiates' life, linking up the mundane and the lofty. Initiates were, and sometimes

https://doi.org/10.1017/S0940739110000251 Published online by Cambridge University Press

still are, a kind of village elite providing various sorts of guidance, teaching, dispute settlement, and healing services.

Its chief transmission vectors are oral, made up of master–disciple dialogues, initiate debates, and a vast repertoire of signature esoteric songs, all rooted in the creative ingenuity of a formerly illiterate society. These oral vectors are in turn totally embedded in practices, chiefly esoteric and secret (they belong to the South Asian continuum of unorthodox *tantra*), without the embodied benefit of which the oral vectors are ineffective. For Baul initiates it is inconceivable to separate TK (the wisdom knowledge pervading all of life, material and spiritual) and TCE (the songs), both of which share a special coded language that is "Bengali" yet incomprehensible to noninitiate Bengalis and embodied practices inseparable from the cognitive content.

Creatively Embodied Spirituality

The Baul path belongs to the vast spiritual category of South Asian *sadhana* ("quest" can be a shorthand equivalent), a term that denotes the cultivation by a person called a *sadhu* of self-improving effort (be it spiritual, artistic, creative, service to others, or any deeply ethical or aesthetic pursuit) over a long period. Whatever the chosen form and theme of the effort, the aim is always spiritual in essence; as in traditional societies elsewhere, spirituality informs all domains of life and is inseparable from materiality and embodiment. This category of *sadhana*, severely endangered in the rapid changes of modernization and globalization, used to belong to various degrees to holy people (explicitly) and to ordinary people (implicitly) as a shared behavioral and cognitive value system shaping harmonious human individuality and collectivity. *Sadhana* was the foundation of indianity's great and numerous contributions to intellectual, scientific, artistic, and artisanal heritage—an all-pervasive category of elites', as well as common people's, sustained creativity.

Scientific Knowledge

In the case of the Baul, *sadhana* underpinned the cultivation of a remarkable body of illiterate esoteric and mundane wisdom, with unique grassroots scientific knowledge—especially in natural science and medicine. The medical knowledge of Baul people would be applied differently when healing ordinary people (to whom largely plant medicine would be administered) and helping initiates (for whom more esoteric drugs and practices would be prescribed).

Overall, and like other "little traditions" of South Asia, Baul medical wisdom is, in the grassroots realm, on an intellectual continuum with the codified traditions of Ayurveda[5] and Yunani. But it is not specialized in medicine, for its knowledge is considered medicine to multiple domains of human life—given that in indigenous and peasant societies, knowledge circulates between categories, and the cir-

https://doi.org/10.1017/S0940739110000251 Published online by Cambridge University Press

culating or encompassing agent is spirituality as the celebration and meaning of all life, knowable and unknowable (i.e., partly attainable through esoteric cognition). Like other domains of cognitive excellence, it demands lengthy studies, where theory and practice are mutually reinforcing.

Secrecy

Like other systems of deep knowledge, the more advanced one's level of esoteric practice, the more secrecy is required. Secrecy is a form of responsibility, both inwardly and outwardly oriented—to protect overenthusiastic novices from dangerous effects of uninformed use, to protect the core essence of the knowledge from abuse by wrongly intentioned acquisitiveness, and simply to protect Baul people as unorthodox minorities within mainstream societies that have historically inflicted persecution on them out of orthodoxy, caste mentality, and power-seeking motivations.

While there is a rule of secrecy, much of the confidentiality surrounding the core wisdom is self-generated by the very language used for expressing esoteric teachings and tenets, in particular in the songs. Indeed, the songs can be heard strictly at an exoteric level by ordinary Bengali speakers, while initiates can also hear the deeper messages encrypted in coded terminology and phrases (much of which is derived and *bengalized* from Sufi and Tantric heritage).

Customary Law

The Baul system has its built-in customary law, by now vestigial and no longer enforced. Major Baul saints contributed to its evolution, particularly with respect to gender relations, moral and behavioral standards, types and grades of practitioners, and esoteric practices.

There would be specific laws governing forms of marriage, status and roles of women and men in their esoteric and ordinary life activities, and issues of property—all inspired from esoteric wisdom to govern both esoteric and ordinary life. There would be lineage-related rules. Overall such a system ensured respect for knowledge holders and protection of core wisdom goods, while also affording very sensible ethical guidance for day-to-day human relations.

Failure to pass tests in esoteric practice would lead to irrevocable exclusion from the community of deep initiates. The failed seeker would return into ordinary society, either by entering into the orthodox mainstream or exploring some alternative path, or by retaining the Baul title and some of the practices as a householder engaged in normal livelihood activities (householders nowadays make up the majority of the Baul movement). To this day, many Baul frown upon brethren, male and female, whose behavior deviates from a certain standard. On the whole, Baul customary rules of conduct were organically rooted in proper practice of the esoteric doctrines. Baul householders were generally known to be

https://doi.org/10.1017/S0940739110000251 Published online by Cambridge University Press

self-reliant and law-abiding good citizens, while wise Baul would be called upon to offer guidance to ordinary villagers or to settle disputes. Customary rules were not codified as law, since they would be constantly repeated and commented in the songs.

Gendered Knowledge-Power

Baul wisdom, like other traditions, had plenty to do with knowledge as a special form of power, and especially with gendered specializations as the necessary spiritual-and-material complementarity of male and female knowledge-and-agency characteristic in peasant societies. In particular, female knowledge-power was crucial in agriculture (especially in seed management, deemed to inhere in women), the multiple abilities of caring for others, and the life-promoting processes of family-based subsistence economies. Most of the esoteric Baul knowledge, more intellectually cultivated by males, revolved around such female knowledge-power, the latter being cognitively on a continuum with life, nature, subsistence prosperity, and the Mother Goddess. Women, as embodiments of the Mother Goddess, were bearers of traditional life-wealth and knowledge of nature, now wiped out by poverty, resource depletion, drastic changes in economic production, and consumption processes.

The importance of the feminine survives vestigially in now frozen tenets of doctrine and songs, in coded language that most Baul no longer understand. While it is still acknowledged that initiate women are the best teachers of the path, many women intuitively attracted to the path find no real teachers, male or female.

A Not-So-Little "Little Tradition"

In its own lands, Baul wisdom's anchorage in the lower classes does not relegate it to the position of a minor tradition. It has been cultivated across the territorial breadth of Bengal. The name Baul appears in written sources as of the early sixteenth century,[6] but the origins of the path are much older. In spite of much high-caste and mainstream contempt as well as outright persecution over the past two centuries, and even though the essence of the tradition is now severely endangered, the name "Baul" is still invoked and cherished by countless Bengalis through both East and West Bengal. This humble grassroots path was possibly the single most important influence on Nobel Prize winner Rabindranath Tagore, scion of a wealthy and refined family, who found in its "rustic philosophy the true roots of the Bengali soul and mind." The Baul as a figure has been emblematically invoked in the constitution of a national Bengali identity, a figure celebrated as free-minded mystic minstrel who refuses hierarchies of castes and conflicts of religions.

https://doi.org/10.1017/S0940739110000251 Published online by Cambridge University Press

Baul Songs

In relation to that identity-building role, Baul songs with their distinctive style have become highly popular in Bengal as one of the chief Bengali musical genres. Beyond Bengal and India, world music enjoys their dynamic musical texture, and new-age seekers want their tantric spirituality as (mis)understood by Western audiences. By now, a majority of consumers—and, alarmingly, of performers—of Baul songs have little or no idea of the meanings they convey. In other words, the songs have become divorced from the wisdom largely due to their popularity, which then contributes to erosion of the wisdom itself.

The wisdom and *sadhana* that had successfully survived many disruptive evolutions in history, including the colonial period, are being torn apart by the disproportionate forces of economic and cultural globalization commodifying a local practice that is now, at best, artistic. The songs are now more often heard performed by artists and noninitiates on large stages or in recordings than by genuine holders of the wisdom under a tree. They have fed into musical fusion. Carelessly distorted lyrics are perverting the language and meanings. As the songs are also increasingly professionalized and appropriated by polished urban artists, villagers grow self-conscious about their rustic voices and stay quiet or disastrously imitate the artists' amplified effects.

In Bangladesh there has been talk of introducing the songs into school curricula—a seemingly virtuous plan fraught with the risks of mainstreaming and sterilizing their real living content.[7] Bangladesh has obtained the listing of Baul songs as one of UNESCO's Intangible Heritage Masterpieces—as the legacy of mystic minstrels but with no reference to the underlying body of knowledge. The listing, and the misleadingly superficial description given for the songs as heritage, has little to do with promoting the effective ownership of the songs by the people who still cultivate (or might cultivate) their meanings—arguably, it further undermines potential for such ownership as it rather encourages artistic appropriation.

Without such ownership, the underlying wisdom can hardly be expected to survive, which of course means that the songs themselves can only become the empty shells of masterpieces that depend on the perpetuation of living meanings. This is tragic for the Baul themselves, but also for the many disorientated Bengalis who still, intuitively at least, perceive that there is fundamental value in those meanings[8] and have trouble deciphering the songs, be they correctly or incorrectly performed. Indeed, would-be seekers consistently complain about the dearth of authentic Baul masters.

Formerly at the center of the Baul cognitive quest, women are now utterly marginalized from residual male wisdom and circles of transmission. Indeed, it is easier for women to claim a Baul identity as (preferably successful) singers, and women seeking Baul wisdom are utterly on their own.

https://doi.org/10.1017/S0940739110000251 Published online by Cambridge University Press

INTELLECTUAL PROPERTY ISSUES

Who Makes Up the Community and Who Are Its Authoritative Leaders?

Wise old Baul lament the loss of real power of the songs and are all too aware that nowadays an artistic career, earnings, and celebrity are more attractive than a path that remunerates more deeply but more demandingly. Their greatest grief is to lose to the stage even their best disciples, for whom spiritual exclusion from initiate ranks is no longer a major spiritual price to pay.

While in the past, wise Baul would locally have ethical leadership roles, individually or as small councils, they never seem to have established a central body of customary authority. Historically, the Baul did not organize as a deliberately structured broader community (although there would be small communities living around a revered master or in particularly holy locations). This is largely because they were/are esoterically inclined individuals living among more exoterically minded people on a shared social-economic-cultural continuum. They did not create a specifically delineated secret society, as they were not intrinsically different from their neighbors, but differed only in the depth of their personal commitment as seekers. In grassroots society where most people would be farmers and artisans, there was no boundary (ethnic, geographic, social) to demarcate the Baul from their non-Baul neighbors. Even in linguistic terms, the coded language they use(d) is still Bengali, with added layers of esoteric idiom. Traditionally, there would just be degrees of *Baulness* to differentiate a deep initiate from lesser ones or orthodox people, and this diversity rather contributed to neighborly exchange and mutual interest. Because Baulness was fluidly ubiquitous across the grassroots fabric of Bengal, it never needed to establish itself as a separate identity—rather, it eventually contributed to national identity building!

Thus we have a paradoxical situation: a whole nation (both East and West Bengal) somehow owning a vanishing Baul identity, a whole nation where the superficial success of the identity betrays its own deeper reality and those few people who still have access to it. Unlike endangered traditional communities across the world, the strange feature in this case is that these few wise people are not constituted as a leadership group of elders who would be the authoritative representatives of the community and the recognized role models and teachers for the next generation of leaders, as well as the interlocutors for negotiating Baul affairs.

Art and Wisdom in Spiritual Cultural Expressions

In a leaderless and indefinable community, Baul songs raise difficult questions in terms of ownership and authenticity of an oral tradition where the songs as cultural expression are in principle inseparable from the underlying body of knowl-

https://doi.org/10.1017/S0940739110000251 Published online by Cambridge University Press

edge as spiritual and wisdom based. Only initiates can adjudicate the extent to which performers of the heritage own it as wisdom or only as expression, while widespread secularization and mainstreaming of esoteric wisdom songs generate two diverging strands, the more spiritually informed strand now being the loser.

Around the world, spiritual songs are public domain that can legitimately be rendered by laypersons—but there are sensible norms for venues, timings, and performers' qualifications for public performance. Negro spirituals, for instance, are best sung by people with the right voices, personal backgrounds, and deep faith, for like-minded listeners, but nonbelievers can also sing (and listen to) them nicely enough because the power of inspiration in these songs is direct, hence relatively unproblematic. Here the spiritual dimension is a matter of faith, and faith is not the same as the spiritual in wisdom so characteristic of most endangered traditional systems.

Faith is very much a concept of monotheistic religions, for which there is no equivalent in other religious systems that do not have a duality of believing versus not believing. In the Baul wisdom tradition, seekers are encouraged specifically *not* to take anything on faith, but to build up their ability to *know* deeper. In traditional wisdom systems, it is not just faith but the cultivation of deep knowledge that produces spirituality capable of interconnecting all the components of life. Faith can be kept quite separate from everyday life, as churches can keep separate from states—but wisdom spirituality is everywhere in life. This distinction between knowledge wisdom and faith—not found in the IP literature where it does acknowledge TK as spirituality informed—is crucial to the meaning of spirituality as *part and parcel of TK* systems, and consequently to possible IP approaches to them.

In the case of Baul songs, the initiate knows that the uninitiated singer is necessarily distorting the meaning out of ignorance, that is, lack of wisdom (not a matter of faith), and *should normally be corrected*. Sincere masters of sincere disciples are very strict about this correct knowledge and the demanding learning curve that it entails. They are helpless to impose their rules against the sheer number of increasingly artistic singers whose ignorance is contributing to wiping out the whole way of life that created the songs and kept their transmission alive through generations. The lay person and their audience derive their own level of enjoyment from the performance, but their narrow scope diminishes the true deep value that the song has when performed by an initiate. The tradition is acutely endangered when audiences enjoy that performance more than the rendition of the same songs by a true initiate. At issue then is the legitimacy of mainstream enjoyment when it creates higher value for superficial derivatives that distort the inventions of wiser minds.

Noninitiates never were denied the right to sing such songs, deemed to be all-Bengali heritage, especially since the songs are or were vectors of awakening and transmission. However, with the repertoire being layered with more or less esoterically oriented songs and more or less esoterically layered meanings in the deeper

https://doi.org/10.1017/S0940739110000251 Published online by Cambridge University Press

level songs, only initiates can truly differentiate between the layers—each song could be said to belong to the Bengali public domain in its cognitively most accessible layer of meaning, while the crucially significant esoteric layers belong solely to the public domain of those who are, were, and will be conversant with them. This layering involves a factor akin to trade secrets, the secrecy being inherent in the coded language of esoteric layers, thus producing a kind of de facto defensive copyright, for hidden IP that is nevertheless a public domain awaiting any seeker's wise appropriation. Respectful people would not, in principle, sing a song beyond their understanding unless the riddle in the song was being cultivated precisely for heuristic purposes by a seeker, in which case, it would be sung only in private. Nowadays lay people lack humility in acquiring such songs to add to their repertoire—something of the artist's acquisitive greed for an artifact known to hold some mysterious and desirable special power. In terms of power then, the undigested charge of such songs and their inevitably erroneous rendition are offset by the size of audiences and loudness of amplification, abundant musical effects, and the multiplying power of recordings. The charge of secret meanings is drowned out and lost in erroneous rendition.

Another important copyright aspect that uninformed performers naturally neglect is the tradition of authorship attribution that normally reinforces the value of correct rendition of a song's text. Sincere disciples always make the right attribution of songs to their authors, whose names are usually inserted more or less overtly toward the end of the song. A further layer of respect that was quite frequent in the past was for disciples to attribute their own compositions to their masters, in which case only people truly in the know could decipher authorship. The point here was not just reverence to masters but also the acknowledgment that a seeker's main job prior to becoming truly creative within the tradition was to cultivate the existing wealth of knowledge of masters and that of nature as mistress of all masters. A great many composers of Baul songs would feel no desire to insert their signature. There is thus plenty of scope today for dubious or erroneous attributions, as well as Baul singers copyrighting their own artistic renditions of the songs of others' deeper inspiration.

The Baul case shows a further layer of fluidity in authorship and ownership—a master's song is his gift that belongs to the whole Baul movement (or even to the whole of humankind) as an inspirational contribution, and what he owns is nothing more, and nothing less, than his own life-path of quest that resulted in that song. The deep truths that masters can successfully utter are those of the universe, which cannot possibly belong to them; rather they celebrate the masters' belonging to the universe, and their invitation to others to join them![9] In this sense, ownership of the songs is for all who aspire for such belonging. Yet the deeper esoteric layers of the songs, as layers of knowledge, can only really belong to those who have reached those layers tangibly—in this sense they could be deemed proprietary. The tangibility of such levels of attainment is clearly perceived only by other true initiates.

https://doi.org/10.1017/S0940739110000251 Published online by Cambridge University Press

The sui generis copyright system and the rule of correct rendition of masters' songs might be construed as imposing an undesirable freezing of those particular artifacts, hence a limitation on others' creativity. This is not so. If masters' authoritative songs are not to be modified it is precisely because they are expert teachings, powerful riddles[10] that *open* gateways of the mind to prod the quest along, and this very power would be diminished by a change in the words. As such, they are a compelling stimulus to the seeker's eagerness to seek, which makes the seeker in turn compose more songs.[11] Many songs are in fact responses—and further questions—to others' songs. In the past, there used to be a practice of initiate sessions where knowledge holders would challenge each other through improvised songs charged with such questions and answers. Baul creativity was thus cumulative, a constantly growing body of composition exploring a shared esoteric core.

The Baul IP system, involving the songs as included in the overall wisdom, was the most appropriate to the realities of a knowledge system where authorship protection was of a different order altogether. The all-powerful wisdom of the universe had no need for protection (such a need being eventually generated only by the foolishness of humans!). Baul copyright with trade secrets never prohibited anyone trying to sing or to decipher a powerful song belonging to a sui generis public domain, but it had built-in defenses that remain operational today, since the deeper meanings remain inherently inaccessible to noninitiates.

Importantly, copyright never entailed monetary gain to the rights holder—authorship attribution rather celebrated the holder's gift of the song to the community, adding a gain of authoritative prestige for the holder, and it celebrated what was the latter's true profits: wisdom.

The embodied spiritual cognitivity of the Baul as an age-old deep exploration of the frontiers of human wisdom knowledge is an invention that the collective Bengali mind (and humankind's intellectual heritage) can perhaps ill afford to lose. Having contributed to Bengali cultural and national identity building, it could also, ideally, have tremendous potential for a highly relevant agenda of human rights, poor people's dignity, gender, and environmental cultural sustainability.

PARALLEL CASES

What insights are there to be gained from other IP situations that partly overlap with Baul features?

The Case of Yoga

Authentic yoga is an immense and diverse knowledge system of the Indian subcontinent. It is one of the best known types of spiritually informed *sadhana*, which

https://doi.org/10.1017/S0940739110000251 Published online by Cambridge University Press

is a fundamental part of deep South Asian culture, broadly on an ethical continuum of constructions of "virtuous living" in traditional cultures.

Commercial yoga[12] is, to many people, a shocking case of segmenting off and rearranging for commercial purposes selected pieces of the vast heritage of yoga, in itself a whole/holistic and interconnected TK system. It claims to do customers a lot of good, while in fact it may well make it impossible for such customers to attain the wholeness that yoga is really all about. By segmenting what is a total knowledge system, it evidently attacks the systemic integrity of yoga. It further consolidates its conquests through the patenting and branding of yoga.

The customary law inherent in *sadhana* pursuits gives a direct and unambiguous response to such IP appropriations. In the ethical regime of teacher–disciple interactions in all types of *sadhana*, the intrinsic value of teachings is so great as to reside beyond the realm of monetary transaction: Customary rules of *guru*s preclude any direct payment, and greed is foolishness that disqualifies greedy masters on substance. With the invasion of that universe, formerly congruent with the surrounding material economy, by the powerful dynamics of the monetarized market economy, and with the worldwide export of yoga's promises, such a straightforward rule of ethics is conveniently ignored. New-age and well-being services now intensely compete in a spirituality-hungry market. They brand as "authentic" certain yoga creations that are at best appropriations of instrumentalized authentic material. IP tools are evidently used for rich profit in clear violation of traditional rules.

A recent legal battle in the United States involved copyrights and trademarks of the Bikram Yoga College of India on a yoga-derived well-being commercial service. It appears to have ignored both the customary prohibition of profit seeking and the intellectual illegitimacy of an individual's extracting, appropriating, branding, and copyrighting a segment of an encompassing knowledge system. In the intellectual logic of yoga, there can be no individual gainful ownership of a part of it as an invention—historically, great contributors to yoga gained far higher recognition as saints whose sole profit taking was in the ineffable benefits of their own practice and in the preference for profit sharing, that is, free dissemination of access to such benefits.

In this sort of case, ethically minded IP lawyers could turn to the source heritage for clear and unambiguous customary law guidance on nonpayment, and the latter should have precedence over modern IP considerations.

An extension of the profit-related contradiction is the further contradiction residing in advertising practices necessary for providers of new-age and exotic well-being services to compete in the modern market. Self-advertising is frowned upon in customary law, traditional healing, and traditional attitudes in general—the large-scale costly publicity that bolsters branding as IP and image is an alien phenomenon to them. Not only is authentically effective TK not advertised, it is often deliberately concealed by secrecy and initiation, while the grapevine affords suf-

https://doi.org/10.1017/S0940739110000251 Published online by Cambridge University Press

ficient publicity for a master's skills. The fact that IP-protected TK derivatives use modern publicity budgets and tools would thus, in customary law terms, be an unambiguous indication of disqualification as TK on ethical grounds. It would actually reveal the substance of their performance as fake and fraudulent (e.g., ineffective or possibly harmful to users).

Ethical customary rules show the deeper contradiction: The dominance of modern individual profit seeking, namely, greed, deemed a necessary condition for promoting human inventiveness, is the denial of the far larger (historically and geographically) reality of inventiveness motivated by all sorts of other profits including the wide distribution of benefits. Logically, nothing but patterns of ignorance and narrow self-interest precludes IP law from opening its intellectual interests to the broader forms of equity and diversity of human creativity.

Yogic practices are variously found in Baul masters' paths, including certain more esoteric layers of yoga. Baul mind–body practices amount to a considerable wealth of grassroots unorthodox medicine that is remarkably effective, economical, and self-contained. Its unorthodoxy makes it off-limits for noninitiate consumption, let alone any form of product development or IP. Yet the greed factor under economic market conditions has kicked in: Some initiates sell esoteric medicine at exorbitant prices—such items, tainted by indiscriminate distribution and personal greed, are said to be ineffective if not harmful.

A different form of modern inventiveness in yogic Baul know-how takes the other route—distribution of benefits rather than greed. Some practitioners in recent decades have pragmatically isolated a particular body-based discipline from the overall regime of practices and taught it to ordinary villagers for purposes of birth control. Many of the latter are said to have taken superficial initiation for this purpose of acquiring an objectively useful skill, contraception without chemicals, operations, or costs, and with a reputed psychological benefit for couples. None of this happened through outside interference or advice—Baul people and their neighbors simply found their own cheap method to deal with overpopulation. That the authorities ignore this valuable piece of Baul TK in these regions could be viewed as a missed opportunity,[13] compared with the cost, effort, and partial success of official population control programs. Grassroots low-tech sexuality methods are of course unorthodox in the eyes of all the dominant orthodoxies—religious, political, economic, scientific, medical, gendered, and the like—so the people are well advised to keep such ingenious TK know-how in a deliberately negative IP space!

From the perspective of serious practitioners, however, the spontaneous adaptation to modern grassroots needs of a useful pro-poor piece of Baul TK is erroneous in terms of true *sadhana*, a utilitarian distortion of authentic salvation purposes,[14] pretty much as serious tantric initiates might dismiss new-age versions of tantric sexuality. Arguably, this position of elders would deserve discussion in the community—is their position a freezing that prevents the traditional heritage from recreating its resources in tune with social change?

https://doi.org/10.1017/S0940739110000251 Published online by Cambridge University Press

Should the State Step In?

Yoga (among other *sadhana*) collectively and individually belongs to many schools and lineages and to all its practitioners. It requires recognition of moral rights, inseparably collective and individual, embedded in generational continuity since time immemorial, and prohibiting apportionment in the present in a way detrimental to future integrity potential.

Arguably, there can be no rights holders since no single individual or group can legitimately represent the whole. Yoga is not one invention, but a continuum across time and space of multiple invention using a huge range of techniques and interpretations, where each practitioner literally invents, literally discovers for him- or herself—day after day, a never-ending process. A derivative, IP-sanctioned application of yoga TK (not to mention a multiplication of such applications) amounts to diminishing or preempting the immeasurable potential, over immeasurable time, for such an invention by an immeasurable number of people. This invention of one's inner self, in a process unique to each practitioner, is both systematic in its own TK terms and nonstandard. It is anonymous, yet its great practitioners can stand out as saints. Unlike art, it is not at all a form of expression—indeed, it is all about the cultivation of impression toward one's inner self.[15] Only technicalities of yoga postures can be given expression, but people's individual realizations of the inner goal cannot—and this is where the authentically desirable property resides.

When spiritual totalities are thus in substance (and not just as public domain) beyond IP protection, yet in effect endangered by narrow-minded uses of IP protection away from the public domain substance, when they are as huge as yoga, and moral rights holders are beyond counting, is it up to the state to come in as representing those rights? It could be said that such a public domain being a common good (like health protection) of public interest (like national culture) should naturally be taken care of by the state. India seems to have taken this path and has launched a fittingly gigantic project—an online inventory of yoga texts to establish prior art.

But state custodianship, potential legal action, and law making in such a multiple and multidimensional field as yoga is fraught with all sorts of risks of dispossession for yoga practitioners, if ownership creeps into custodianship. Yoga is a commons that as such should be tended by its communities, and perhaps a wise state should rather seek to reempower that level of broad-based and diffuse responsibility. Besides, is it not contradictory for the secular state to take over protection of what is a spiritual wisdom system that should normally be left in the care of its own institutions and guides?

Conversely, the online project will not, and cannot, document all the unwritten and local variations of yoga *sadhana*, which go well beyond what yoga means to Western or modern minds and include all sorts of vernacular and secret variations. In terms of recognition of knowledge traditions, this means perpetuating the invisibility of nonscripture schools. But might such invisibility, in a negative

https://doi.org/10.1017/S0940739110000251 Published online by Cambridge University Press

IP space, be a lesser evil than state protection? In the same sense, would a negative IP space perhaps be less detrimental to the substance of Baul songs than international masterpiece status that divorces the songs from their *sadhana* moorings?

Negative IP Space and the Cases of Magicians and Chefs

There might be some interesting clues for Baul wisdom protection in the way professional magicians protect their secrets, the intangible assets of an ancient craft. Magicians use very little by way of conventional IP tools, preferring reliance on their own community ethics. Aspects of self-management of their knowledge by magicians is consonant with customary protection of Baul esoteric wisdom.

It has been noted that magicians' "innovation does in fact need intellectual property. But it does not necessarily need intellectual property *law*."[16] IP law is bypassed in favor of much more effective IP norms. Magic secrets per se cannot, for obvious reasons, be protected by tools such as copyright or patents. There are grades of magic, from the lowest level to the highest, with a corresponding deepening of secret content whereby the deepest level open to only a few experts is deemed proprietary. Expert magicians have an ethos of sharing information within their community, as part of a strategy to minimize theft and exposure of their secrets—they must never reveal secrets, even their own, outside the community. They have a firm custom of creative attribution of inventions and a strong ethical or norm-based regime of IP that even has effective enforcement mechanisms, with no dependence on conventional IP law. Adherence to this set of norms is important for a crucial asset, reputation within the community.

In view of these similarities with the Baul case, why is it that magicians can flourish while the Baul are in decline? For one thing, magicians are well organized in associations and have clearly articulated their norm system—the Baul are not at all organized, and their customary rules are implicit, embedded in their whole knowledge system. Magicians need their system to work so that they can derive meaningful incomes from their performance—the Baul arguably need their system to work for the sake of their esoteric income, what they themselves call "profit." The income of magicians is aligned with a monetary economy, while that of the Baul belongs in the realm of nonmonetarized spiritual economies themselves marginalized even more, for example, in yoga, by the fashionable gurus whose highly sought-after teachings reap large profits. The ancient craft of magicians has modernized successfully, something that only Baul singers have managed, at the expense of Baul initiates.

Another parallel case is that of chefs,[17] who also have stronger norm-based than law-based IP, and honor ethics, along similar lines to magicians. Like both magicians and Bauls, they have rules of attribution, disclosure policies are selective and targeted, and their rules for using others' recipes are an effective informal code, violations of which are promptly sanctioned by community contempt and bad publicity.

https://doi.org/10.1017/S0940739110000251 Published online by Cambridge University Press

While secrets in magic and recipes can be copied exactly, Baul secrets are not imitable since they can only be cognitively reached within an individual's inner esoteric practice. But across all three communities, it is interesting that a practitioner is respected as an expert when he or she has attained a level of creativity capable of generating innovations from what is the common stock of knowledge content. For a Baul, innovation means the person's ability to make the wisdom knowledge alive and operational rather than a capacity to invent a recipe—although esoteric practices involve lots of secret recipes that are or were perpetually reworked by generations of practitioners, strictly for their own use and certainly not for producing income-generating dishes, unless the income is here again seen on Baul terms as wisdom profit. As in the earlier comparison with magicians, the loss of spiritual economies or ecologies is to blame for the devaluation of wisdom profits, whereas chefs' appropriate use of their recipes is highly profitable.

Fundamentally, the comparison with chefs and magicians who need their norm-based IP, and deliberately not legal IP, to maintain the commercial value of their creativity cannot be taken any further than the translation described earlier into wisdom profits for a Baul practitioner. Any IP system that seeks to generate economic benefits from human creativity runs the risk, in spiritually grounded TK systems (not the case for chefs and magicians), of commercializing and trivializing the sacred connectivity of knowing that is precisely what makes such systems effective.

But a clear practical lesson does apply for the Baul—they need to establish a true community, capable of discussing their own issues and articulating rules explicitly.

IN A TRADITIONAL SYSTEM, WHAT IS KNOWLEDGE IN THE FIRST PLACE?

Traditional knowledge systems are not consciously geared to innovation as such or to monetary rewards for segmented creativity on discrete lumps of knowledge. In them, knowledge is a complex continuum rather than specific things known. It is collectively owned and perpetuated and replenished, and inventive contributions by individuals remain embedded in, and responsible to, the chain of transmission and creativity preceding and following them in time, including the chain and web of all surrounding life. It is also embedded in and responsible to nature, the ultimate owner upon whose continued existence the whole system depends—when an ecosystem is depleted, ownership of related knowledge loses substance.

Knowledge is not something a person has or things learned in a thematic and measurable fashion as in the modern school system. Knowing is active—there is no real distinction between learning and knowing until one reaches the status of wise elder. Knowledge is not possessive—to say "I know this" does not mean "I have this piece of knowledge." Knowledge is seldom purely abstract, contrary to what it is in school education—it is made of the same stuff as experience, as doing

https://doi.org/10.1017/S0940739110000251 Published online by Cambridge University Press

and as nondoing. It is not separate from memory; rather, it *is* memory. Rather than the drudgery of learning by heart, it is organically learning by the heart.

Traditional systems do not understand the segmentation of knowledge into subjects or objects owned by knowing subjects or, for that matter, subject–object dualities. As is particularly well perceived in Baul esoteric wisdom, knowledge is all at once what is known or being learned, the act of knowing as a kind of digestion (never purely intellectual) of the knowable substance, and the incremental essence of what makes a knowing person, which is qualitative as well as quantitative. All of this of course means utterly different contents and forms of education. As the essence of being knowledgeable rather than having knowledge, it is clearly a quality of humans that is cultivated over years and matures into producing a wise elder or initiate. Being such a quality, it translates as character in a person—necessarily dictating appropriate ethical judgments and behavior. Knowledge is thus to be understood as knowingness. This quality seems to be far more difficult to mature in a literate person than in illiterates, because the abstraction and subject–object separation necessary for literacy are of course obstacles to connective knowing.

A knowledge holder is a person who has the essence and quality of knowing—a spiritual achievement that may or not involve quantities of things objectively known but that crucially makes these things alive and effective in life. It is not necessarily straightforward for outsiders to determine who is a knowledge holder, although the criterion of recognized maturity and skill in elders and deeply committed individuals is a reasonable one. The determination of holders is best made from within the community. This is not self-evident in the Baul case today, since such wise people are increasingly rare and neglected, and where they exist, they tend to keep to themselves. As in the case of yoga described earlier, a self-advertising elder may have a lot of knowledge and appear authoritative, but checking his credentials with others would soon reveal the cracks (self-advertising is a sure sign that the knowledge is no longer working for that person's wisdom profit). An elder who reveals easily, or even sells, esoteric secrets is clearly not to be trusted.[18]

Knowingness in TK systems involves cognitive attitudes or patterns that interconnect all facets of life as woven together by spirit, and thus, as already mentioned, such knowingness is intrinsically spiritual. Nonobjectifying knowing is relational, knowing the connectivity of everything in life and nature, and spirituality simply is connected cognition, connected knowingness. The business of human life is to cultivate this or simply to live it correctly. The circularity of knowing as spirituality, and vice versa, seems to be such a commonality across traditional communities, and such an organic engine of communities' sacred knowledge protections, that the anthropologist cannot resist the notion of *an underlying (structural?) invariant in how TK systems operate as knowingness—as spirituality*. The beauty of such an invariant is that, far from obliterating cultural diversity, its organic ability is to produce diversity in the myriad ways of weaving connective cultural forms into the warp of local ecosystems. A further, and related, pattern that seems pretty

https://doi.org/10.1017/S0940739110000251 Published online by Cambridge University Press

constant as long as there is no major disruption affecting a community, is that diverse cultures learn and create from, rather than impose themselves upon, these intrinsically diverse ecosystems.

Baul wisdom further clarifies that local variability, natural and cultural, expressing the diversity of Mother Nature is part and parcel of her as one, yet a further layer of invariant made of perpetual change—life. Ultimately, Mother Nature is the great inspirer of traditional human groups' propensity to creatively shape landscapes in nature, in societies and in the mind. *Connective cognition or spirituality as one and the same thing* is the dynamic force of knowledge creativity where the individual and the collective co-own their knowing and are in turn owned by the larger culture and by nature. From this angle, the real need for protection into the future is beyond knowledge—it is about the knowingness within places and fundamentally about reempowering communities' whole ways of life.

Consequently, well-informed and sincere policies are needed rather than IP tools or mixes. If the notion of invariants as outlined earlier is of any practical use, it should not, however, be interpreted as offering a one-size-fits-all solution—rather, connective-spiritual knowingness can be both a lever and a goal to empower cultural communities to devise localized modalities and implementations. The notion might also be helpful in formulating a possible international framework to encourage reempowerment of such knowledge systems within their communities. It can give more substance—from within the reality of TK systems—to the emergent role of customary law in the efforts of international bodies (WIPO and the International Labor Organization's *Indigenous and Tribal Peoples Convention*) whereby authority can be returned to the spirit, inseparable from the letter, of customary law.

SPIRITUALITY AND MODERN LAW

It is precisely traditional communities, and their kind of spiritual knowing, that have had to suffer the most under the modern world order. In parallel, it is not fortuitous that modern IP law deliberately and legitimately stays away from what it calls spiritual beliefs. This could, however, serve to highlight a fundamental lacuna in respect of TK systems—Baul wisdom discourse clearly claims that the stuff of spirituality is indeed intellectually charged, not faith.

Ethically, and intellectually, modern knowledge systems should not be content with just leaving such spiritualities beyond their legal-cognitive borders where beliefs are not credited with much knowledge creativity—it is beyond those borders that the plundering of objectively valuable knowledge is so easy. Where such spiritualities embody so much more knowledge wealth than the modern sense of religion, global human self-interest needs knowledge diversity to flourish again, if it is true that we now live in knowledge-based societies.

It is worth insisting that spirituality in knowingness is not to be confused with spirituality as beliefs, where fittingly, modern law demarcates its boundaries from

https://doi.org/10.1017/S0940739110000251 Published online by Cambridge University Press

the law systems of officially recognized churches and faiths. Modern law and states appear to uphold similar boundaries vis-à-vis traditional communities' freedom to celebrate their own beliefs. But relegating customary rules to marginal authority over harmless folklore, subaltern beliefs, and rituals, in fact pushes the real substance of these subaltern activities further down the value ladder than the accepted respectability of official churches.

Official religions seem to need no modern IP protection, given that they have plenty of their own safeguards for the legacy of major founding figures enshrined in scriptures. These institutions are expert interpreters of tenets, specific bodies of religious, moral, and personal rules, all of which offer sui generis IP protection for contents of doctrines underpinning beliefs. Subaltern traditional wisdom systems such as the Baul also have laws, experts, and institutions, in various configurations and weightings, with or without scriptural heritage. The difference is that official religions are nonproblematic to (if not helpful for) the dominant knowledge and power system precisely if they accept to remain in their separate universe of beliefs,[19] while the little traditions have necessarily been relegated into disempowerment. As their communities held onto their own terms, in holistic spiritualities of knowledge connectedness, not amenable to secular or spiritual (and intellectual or cognitive) separation, they could obviously not be allowed to thus challenge the dominant order.

The most fundamental challenge for a TK IP agenda is then, logically, that of reconciling the spiritually connected nature of knowledge and the intrinsically nonholistic nonspiritual modes of modern cognition and law. The core of the modern IP conundrum in TK systems is perhaps the very core of these systems, that is, spirituality itself. This cognitive thing that IP law cannot and will not address due to confusion with the psychological thing of beliefs is not credited with the cognitive power that elicits intellectual status. Spirituality, now readily listed among attributes of traditional systems, is not credited with the main ingredient needing proper recognition. The challenge is for the modern legal mind to recognize the other's spirituality as a complex human cognitive activity, after centuries of contempt for its backwardness.

Protecting such wisdom property can only be for its holders to ensure due to the very nature of what makes these people wise, something too complex and simple for the modern mind to manage. Building broad safeguards for communities to have the safety they need to address that challenge is the business of committed policies, possibly including IP or non-IP packages for specific knowledge communities, to serve primarily as strong messages of recognition—including *intellectual* recognition. Reempowerment for spiritual wisdom and its continued creativity (not just for its expressions or separable products) is reempowerment of the agency and freedom of the people themselves to protect their heritage, on their own terms.

Modern secular law governing most aspects of people's lives, and leaving to customary law just bits peripheral to a state's secular jurisdiction, has been part of colonial and state action resulting in very effective disempowerment. The cogni-

https://doi.org/10.1017/S0940739110000251 Published online by Cambridge University Press

tive wealth or poverty of TK systems as marginalized or recognized by the dominant intellectual paradigm is thus a fully political issue. If now the agenda of sustainability and ethics requires TK systems to thrive again, it takes nothing short of true political commitment, ambitious yet humble. But is it conceivable to effectively equalize the authority, if not reverse the hierarchy, of modern and customary law and knowledge systems so that communities can recover their holistic-spiritual cognitive agency? In other words, is it conceivable for our world to move away from the dominance of the Western intellectual paradigm? Can law diversity be allowed to belong in the (still patchy) agenda of restoring cultural diversity?

ETHICS, ETHICS, AND MORE ETHICS—TRADITIONAL WISDOM LESSONS IN A NUTSHELL

The Power of Names

Names of traditions or of bodies of knowledge can be very powerfully charged words—for example, yoga, or in Bengal, Baul. Traditional people are very careful about not uttering certain charged names, generally very ancient names. Conversely, but in the same realm, modern corporations go to great branding lengths to appropriate powerful names or to generate power for new names. These considerations hint at the possibility of recognizing TK systems' names for their own sake and their own meanings of value. Illicit use of names away from where the customary rules of a tradition want to keep them should be prohibited.

The power of names having currency in spiritual economies should not be appropriated as carrying equivalent substance into derivative products for the market economy—the latter being unfair both to the original source (thus distorted or impoverished) and to their customers (deceived into buying false original goods). Clearer regimes of moral rights resting with all who are responsibly concerned by such names could be given official recognition, rather than entrusted to state custodianship. They could have empowering effects for the relevant knowledge communities to reclaim active ownership and find effective forms of enforcement.

In a world where branding is a strategy for loading names artificially with shallow substance that charges them with market power, the reverse, that is, protection of old names really charged by long histories of real content building, makes sense. It is also a route that could help in broadening the scope of conventional profit seeking to other sorts of profits (cultural, environmental, social, etc.) dictated by the knowledge systems bearing such names. Names are a category that can be owned by relevant communities far more readily than they can claim property of their knowledge systems as IP. Thus communities could also more readily step in to decide on whether such names are used dubiously or illegitimately, better ensuring informed custodianship than outsider authorities for their own her-

https://doi.org/10.1017/S0940739110000251 Published online by Cambridge University Press

itage. Protecting the name "yoga" would mean that derivative products would have to pass specific tests, regulated by authentic holders of the name, or to forego using the name. Protecting the name "Baul" with respect to Baul songs would require informed judgment by initiates, leading to proper attribution of qualification as "popular Baul" or "authentic Baul."

The *right* to use a powerful name should rest upon the *duty* to use it responsibly.

The Power of Duties

Indigenous peoples are the most articulate advocates of the urgent need for a shift in the dominant global paradigm. Much of what they advocate stems from another invariant in cognitive spirituality-connectivity and customary law systems—common ethical principles that can intellectually be shared by modern law, on the assumption that the legitimacy of law is grounded in ethics.

These systems all tend to emphasize the *duties*, explicit and implicit, of humans far more than their rights. These duties include various types: to nature, divinities, ancestors, and elders; reciprocal and/or asymmetrical duties; and, in all *sadhana* cultures, duties to the self, because ultimately the self is the microcosm containing/contained by the macrocosm. Such a sense of duties larger than rights has everything to do with the sense of being owned by larger entities including nature, the land, and the culture, and of being both indebted to ancestors and accountable to future generations. This resonates with today's clamorous calls for accountability and responsibility in state and corporate governance.

While under modern IP, a knowledge holder's or inventor's rights increase in tune with the person's inventiveness, customary law gives ever-greater duties to individuals who become more knowing and wise. Customary law simply knows that knowledge as the quality of knowing gives the holder the supreme distinction and entitlement, which is the right to hold responsibilities—it recognizes that the knowing person has these important abilities.

The emphasis on duties is radically different from modern law and indeed from the whole momentum of modern humanism, with its ever-expanding realm of consumable rights and entitlements, and little emphasis on concomitant obligations (most of which appear to reside with the downtrodden classes, and, unrealistically, with states). Diverse values attaching to diverse duties make for connective-spiritual economies that are radically different from the modern reduction of value and rewards to monetary vectors, from the modern market that encourages selfish interests over duties, and from modern trade's despiritualized/deconnective material and utility flows.

In healthy traditional settings (not in declining or unhappily modernizing ones), the clear understanding by all of the duties of all tends to result in the reliable enjoyment of suitable rights by all, congruent with the roles, gender, age group, and knowing of each person. In modernity, proliferating rights and entitlements, especially in a profit- and consumer-oriented mentality, do little to promote a spon-

https://doi.org/10.1017/S0940739110000251 Published online by Cambridge University Press

taneous sense of duties for all that can balance those rights—hence an ever-expanding need for new legislation and enforcement mechanisms, as expanding rights tend, like opportunities and money, to accrue to those who already have more than others.

It is also seldom noted today that the effects of predominantly rights-oriented agendas (as the logical response to rampant denial of human dignity) are often far less empowering, in particular for the agency and creativity of the underprivileged and marginalized, than a good balance of rights and duties inside the community and at its interface with the wider world. People in traditional mind-sets are generally far more empowered when they have the agency to fulfill their duties correctly than when they are given new rights to which their mentalities are not accustomed—these newly given rights can be counterproductive and create imbalances within communities and families, while real agency in performing duties gives meaning to life.

Performing one's duties correctly within traditional values helps the maturing of a knowing essence, that is, the connectivity dimension of cognitivity, because it helps the development of wise elders (now in increasingly short supply in social groups). Conversely, disoriented youth in such societies, who do not yet have the knowing essence, are more open to the attractiveness of modernity's rights and consumption messages. While there is no denying that awareness of rights is crucial, precisely in situations of marginalization and dispossession, younger people are alarmingly, and universally, losing receptivity to their elders' values and knowledge—justifiably so when the latter become ossified conservative rules. Youth easily perceive how much more power resides in the mainstream of rights and opportunity than in the shrinking local effects of correctly performed customary duties.

The many risk factors documented for indigenous and other grassroots youth find their roots largely in these contradictions. To address these successfully, the underlying disruptions in connective-spiritual cognitivity dictating formerly relevant systems of duties have to be understood.

The learning and performing of duties in turn involve the whole complex issue of education, where traditional transmission of knowledge and values should be given more than marginal space for the meanings of heritage to be revitalized into the future.[20] This is also relevant for modern countries' educational (and broader value forming) systems, where the many problems of youth can usefully be analyzed through empowering/disempowering imbalances in the rights-and-duties paradigm.

CONCLUSION

Reempowerment of TK for its inherent capacity to operate multidimensionally has to be a matter of commitment, not just legal but political, to reempower the communities where such knowledge is rooted.

https://doi.org/10.1017/S0940739110000251 Published online by Cambridge University Press

Whether individual situations, communities, and countries choose to use IP law or not, care must be taken to assess all possible contradictions to the customary rules and wisdom of the tradition. While ownership and agency must be restored to the communities concerned, it is necessary to inculcate respect for these in the surrounding mainstream societies and the states.

Hypothetically, in the Baul case, sensitive facilitators would need to help the formation of a more structured institution of elders, on the basis of a delicate consultative exercise among holders of the Baul title to determine who are the remaining authentic initiates, and to establish a community consensus on such determination. A council of recognized figures would at last be an identifiable body of authoritative people to defend the name Baul, to represent the overall Baul heritage, and to explore ways of giving shape to the broader community that does not formally exist at present. They would need much capacity building to restart their ability to update their wisdom knowledge and reempower its creativity for today's agendas. In fact, there is no shortage of fields in which the harnessing of their wisdom expertise could operate beneficially and restore positive power of influence to them,[21] for example, environment, biodiversity, gender, health, and education. Such larger causes could be valid triggers to restart the wise creativity of the tradition. In addition, informed debates around the vexing issues of song ownership and rights of performance should be respectfully facilitated and legal awareness nurtured so that IP-related decisions can be reached as appropriate to the wisdom knowledge. This of course is a highly hypothetical scenario, as long as Baul wisdom as a noncommunalist grassroots counterculture of self-empowerment is stuck between two extremes—being a part of the Bengali soul and being the repressed opposite of orthodoxies, Muslim, Hindu, and the social orthodoxy of a growing middle class.

While traditional systems use multiple currencies in their spiritual economies—different meanings of value—rather than strictly monetary value, it is unfair nowadays to deny them the economic means to get out of modern poverty. Yet economic fairness to them should only be seen as the preliminary recognition, by the modern value of money, that their knowledge systems are valuable—helping them to uphold multiple kinds of values is the broader challenge.

In most local situations, it is short-sighted to reduce the giving back to monetary profit sharing, as this leaves most of the real power and profit in outsider hands and offers little empowerment for the local culture, if not plenty of room for intracommunity disruption. Giving back should seek to restore agency and creativity on a community's own terms, culturally, socially, and environmentally. The prerequisite for such engagement is that partner entities must have a clear and ethical duties agenda and the humility to learn from their beneficiaries. Such encounters are indeed learning opportunities and a challenge to experience unexpected nonmonetary profits.

It is the world's cultural loss to limit our sense of profit to reductive economic meanings and narrow corporate ambitions. Baul initiates have taught for centu-

https://doi.org/10.1017/S0940739110000251 Published online by Cambridge University Press

ries that the human body is a *market*, where all sorts of *transacting* takes place, and where knowing literally yields *profits*.

The challenge of TK systems is to recover what one might call their knowledge sovereignty. More broadly, especially in a globalized world, it is also a challenge to the substance and functioning of the development paradigm—a challenge for the reality rather than the empty discourse of sustainability. Corporations, markets, states, and international organizations are not yet ready to forego economic growth, fragmented knowledge, and unsustainable inequities that deplete all the components of healthy local knowledge systems and ecosystems. The developed mainstream is not yet ready to give culture, nature, and continuity precedence over fast profits, technologies, and development. But voices of connective wisdom economies are increasingly firm in asserting their knowledge sovereignty, their connected knowing, and the need to pull down the walls of knowledge.

ENDNOTES

1. In the field of culture, Prott, in "Cultural Heritage or Cultural Property?", specifically argues the case of cultural heritage as against the reductive meanings of cultural property. Traditional worldviews lead into deeper questioning of heritage, property, and ownership—of what and whom—by individuals, communities, and cultures themselves as both encompassing and encompassed entities in time and space.

2. In this article, the use of quotation marks for some terms expresses a conceptual discomfort with the lack of translation equivalence between terms from fundamentally different knowledge systems.

3. This very condensed summary of Baul intellectual-cultural heritage is from Trottier, *Fakir, la quete d'un Baul musulman*; Fakir, *The Goddess and the Slave*; and the bibliographies therein.

4. Esoteric is the nonexoteric, the inner core of spiritual wisdom that is pursued by seekers and initiates, while the mainstream is governed by the exoteric or external body of doctrine. This distinction is broadly applicable to most religious systems and is an important criterion in determining who are/were TK holders.

5. Reddy, "Making Heritage Legible," on IP ownership of Ayurveda.

6. The literature seems to say that the Baul path around that time had an exceptionally large population of devotees. Since then, the numbers, albeit considerable, have never made up a majority.

7. The intrinsically nonconventional wisdom embedded in the songs and its highly unorthodox aspects are also totally incompatible with the mainstreaming and standardizing effects of schooling in such countries.

8. It is also a loss on a broader human scale, if one accepts the humanist tenets of Baul wisdom to be of universal value.

9. Across the subcontinent, accomplished seekers are those who have merged into oneness, transcending the boundaries of human individuality. Wisdom is theirs, or rather they are wisdom embodied.

10. Not unlike the koan in Japanese Zen: particular words in seemingly meaningless sequence.

11. In all traditions, there tends to be fundamental respect for the integrity of originals, be they a tangible or intangible heritage, as inspiration to lively continued creativity.

12. Fish, "The Commodification and Exchange of Knowledge."

13. This notion is not mine—the idea, and the sense of underrecognition, were expressed to me by a politically active Baul villager.

14. This illustrates a frequent problem from within traditional communities—elders whose conservatism in the face of overwhelming changes all around them does not allow the tradition to move along creatively. There is thus a mismatch between deep knowledge holders whose wisdom is needed

https://doi.org/10.1017/S0940739110000251 Published online by Cambridge University Press

to guide such evolution and the less informed but more realistic aspirations of their juniors who feel misunderstood and may well betray the tradition.

15. In a similar vein, the term "traditional cultural expressions" is somewhat reductive or misleading. While traditional people do indeed express their cultural values, those expressions are celebratory cultural gestures and practices that largely serve to impress these values within the group and within its individual members. This circularity, and spiritual feature, of traditional cultures is obscured by modern terminologies.

16. Loshin, *Secrets Revealed*, p. 3.

17. Fauchart and von Hippel, *Norms-Based Intellectual Property Systems*.

18. Most researchers who have worked on the Baul tradition are not reliable; Baul practitioners blame them for having acquired degrees, positions, and status at the expense of the Baul, and of the esoteric wisdom that most publications misrepresent.

19. The nonseparation of secular and religious law in Islamic states is indeed problematic for the ideology of modern Western states.

20. Best practices are not unavailable. Sustainable excellence in certain crafts and professions where handwork is both useful and artful, and specifically rooted in tradition, has been nurtured by rigorous educational systems—as in Living Treasure systems of East Asia, or French *compagnonnage*.

21. Such appropriate investment of Baul wisdom has a successful precedent in Bangladesh. In the 1990s, the NGO Nabapran Andolon mobilized Baul sensitivities in considerable numbers of villagers, including many women, for the cause of preserving the biodiversity of seeds and chemical-free farming.

BIBLIOGRAPHY

Fakir, Rudrani. *The Goddess and the Slave: The Fakir, the Mother and Maldevelopment*. Varanasi, India: Indica, 2005.

Fauchart, E., and E. von Hippel. *Norms-Based Intellectual Property Systems: The Case of French Chefs*. Cambridge, MA: MIT Sloan School of Management, 2006.

Fish, Allison. "The Commodification and Exchange of Knowledge in the Case of Transnational Commercial Yoga." *International Journal of Cultural Property* 13 (2006): 189–206.

Loshin, Jacob. *Secrets Revealed: How Magicians Protect Intellectual Property without Law*. Working draft. New Haven, CT: Yale Law School, 2007.

Prott, Lyndel. "Cultural Heritage or Cultural Property?" *International Journal of Cultural Property* 1, no. 2 (1992): 307–20.

Reddy, Sita. "Making Heritage Legible: Who Owns Traditional Medical Knowledge?" *International Journal of Cultural Property* 13 (2006): 161–88.

Trottier, Anne-Helene. *Fakir, la quete d'un Baul musulman*, Paris: L'harmattan, 2000.

BACKGROUND MATERIAL

Addison Posey, Darrell. "Can Cultural Rights Protect Traditional Cultural Knowledge and Biodiversity?" In *Cultural Rights and Wrongs*, edited by Halina Niec. Powys: UNESCO/Institute of Art and Law, 1998.

Aust, Anthony. "Treaties and domestic law." In *Modern Treaty Law and Practice*, 143–61. Cambridge: Cambridge University Press, 2000.

Brown, Michael. "Heritage Trouble: Recent Work on the Protection of Intangible Cultural Property." *International Journal of Cultural Property* 12 (2005): 40–61.

https://doi.org/10.1017/S0940739110000251 Published online by Cambridge University Press

GRAIN. "Community or Commodity: What Future for Traditional Knowledge?" 2004 (http://www.grain.org/seedling/?id=291).

Honko, Lauri. "Copyright and Folklore." *Folklore Fellows Network* 21 (2001): 8–10.

International Labor Organization (ILO). Convention No. 169: *Indigenous and Tribal Peoples Convention*, 1989.

Organization of African Unity (OAU). *African Charter on Human and Peoples' Rights*, 1981.

Prott, Lyndel. "Cultural Rights as Peoples' Rights in International Law." In *The Rights of Peoples*, edited by James Crawford. New York: Oxford University Press, 1988.

———. *Cultural Heritage Law as Part of International Humanitarian Law*. Geneva: ICRC, 1996.

———. "Understanding One Another on Cultural Rights." *Art Antiquity and Law* 4, no. 3 (1999): 229–41.

Roy, Devasish. *The International Character of Treaties with Indigenous Peoples and Implementation Challenges for Intra-State Peace and Autonomy Agreements between Indigenous Peoples and States: The case of the Chittagong Hill Tracts, Bangladesh*. Background paper for UNHCR Expert Seminar on Treaties, Agreements and Other Constructive Arrangements between States and Indigenous Peoples, 2003.

Secretariat of the Pacific Community/UNESCO. *Pacific Regional Framework for the Protection of Traditional Knowledge and Expressions of Culture*, 2002.

Shyllon, Folarin. "The Right to a Cultural Past: African Viewpoints." In *Cultural Rights and Wrongs*, edited by Halina Niec. UNESCO, 1998.

Suozzi, Marguerite. *Native Delegates Challenge Development Orthodoxy*. IPS press release, April 14, 2010.

United Nations Permanent Forum on Indigenous Issues. *Analysis and State of Implementation of the Recommendations of the Permanent Forum at Its Fourth Session*, E/C.19/2007/5, 2007.

Conventions and Treaties

UNESCO:

- *Convention on the Safeguarding of the Intangible Cultural Heritage, 2003.*
- *Convention on the Protection and Promotion of the Diversity of Cultural Expressions*, 2005.

United Nations:

- *International Covenant on Civil and Political Rights*, 1966.
- *International Covenant on Economic, Social and Cultural Rights*, 1966.
- *Draft Declaration on the Human Rights of Indigenous Peoples*, 1993.
- *Principles and Guidelines for the Protection of the Heritage of Indigenous Peoples*, 1995.

https://doi.org/10.1017/S0940739110000251 Published online by Cambridge University Press

World Intellectual Property Organization (WIPO):

- *Intellectual Property Needs and Expectations of Traditional Knowledge Holders.*
- *Revised Provisions for the Protection of Traditional Knowledge.*
- *Revised Provisions for the Protection of Traditional Cultural Expressions.*
- *Draft Questionnaire* in annex to WIPO/GRTKF/IC/7/INF/4.
- *Customary Law and the Intellectual Property System in the Protection of Traditional Cultural Expressions and Traditional Knowledge*. Issues paper, December 2006.
- *Matters concerning Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore*, GA/26/6.
- Co-authored with L'auravetlan Information and Education Network of Indigenous Peoples. Traditional Knowledge and Indigenous Peoples, 2009.

https://doi.org/10.1017/S0940739110000251 Published online by Cambridge University Press