Knowledge Goods and Nation-States

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ABSTRACT. The conventional justification for global IP treaties such as TRIPS begins from the premise that absent coordination, nation-states will rationally underinvest in innovation incentives such as IP protection, grants, tax credits, and prizes and will free-ride on each other's knowledge production (the "underinvestment hypothesis"). Next, the conventional account posits that IP treaties are the only plausible solution to this problem in the absence of a global public finance system (the "uniqueness hypothesis"). Finally, it claims that coordination at the global level leads to harmonization at the domestic level: nation-states converge toward uniform IP laws because their international obligations require them to (the "uniformity hypothesis"). Previous authors have adopted this logic while lamenting its implications: IP appears to be a necessary evil in an interconnected world—necessary because it is a unique solution to the free-rider problem; lamentable because it results in sizeable deadweight losses.

This account is incomplete in three respects. First, the underinvestment hypothesis depends upon specific assumptions about the nature of knowledge goods and the behavior of nation-states, and the hypothesis is robust only to the extent those assumptions are accurate. Notably, not all knowledge goods are global public goods, and even insofar as knowledge goods *are* global public goods, nation-states have motivations to invest in knowledge production that the conventional account fails to capture. Second, the uniqueness hypothesis overlooks the practical challenges of coordination on IP as well as the plausibility of non-IP alternatives. These non-IP alternatives are more than theoretical: states *do* use non-IP institutions to coordinate investment in knowledge production. Third, the uniformity hypothesis rests on a misapprehension regarding the link between global and domestic IP laws. States can comply with international IP treaties such as TRIPS while relying primarily on non-IP incentives for encouraging innovation and non-price mechanisms for allocating knowledge goods within their own borders.

Our more nuanced account of information production at the global level does not necessarily imply that TRIPS is misguided; rather, our analysis highlights the specific function that TRIPS serves. Most significantly, TRIPS establishes a structure for setting the size of rewards for innovation, while at the same time allowing each signatory state to choose its own menu of innovation incentives and its own method of allocating access to knowledge goods within its own borders. Put differently, TRIPS does not relegate nation-states to a subordinate position in the production of knowledge goods; rather, it creates a framework in which nation-states still are dominant players in the innovation game.