Monsanto: A discussion of Intellectual Property as it applies to “The World’s Most Evil Corporation”

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Introduction
Monsanto has engaged in many morally questionable activities, ranging from their production of Agent Orange (used on citizens in the Vietnam War) to their creation of genetically modified organisms (which some claim have negative health effects on consumers). The maneuver that has garnered the most attention from everyday Americans, however, is Monsanto’s litigious action against small farm owners who “violate” its patent rights for genetically modified (GM) seeds. This action brings up the morality of intellectual property (IP) protection, especially as it is applied to items necessary for survival, such as food. In this paper, I will survey the moral arguments that justify and criticize IP protection overall, evaluate these principles in regards to Monsanto, and discuss the implications patent law has on governance and society.

Founded by drug company purchasing agent John F. Queeny in 1901, Monsanto originally manufactured saccharin, a synthetic sweetener, which was only produced in Germany at the time. After diversifying its portfolio to include caffeine, vanillin, and other foodstuffs, Monsanto changed its name from Monsanto Chemical Company (1933) to the Monsanto Company in 1964 to reflect its variety of products. In the 90s, Monsanto acquired Calgene Inc., DEKLAB Genetics, and other biotech firms, paving the way for its leadership in the development and production of GM seeds.¹

Today, Monsanto is primarily an agriculture and biotech company, producing seeds for corn, cotton, oilseeds, fruits, and vegetables.² The company dominates the seed industry with products such as Roundup Ready® Corn 2 seed³, which was planted on more than 40 percent of

³ It’s interesting to note that Monsanto is creating a seed that is resistant to its own weed killer, creating a double monopoly.
the U.S.’s corn acres in the 2006 crop season.\(^4\) Monsanto spends $10 million per year monitoring and suing farmers for patent infringements on these seeds.\(^5\) In 2013, Monsanto sued Hugh Bowman, who acquired seeds from a local gain elevator and planted the second and third generations of the seed without proper licensing from Monsanto. Monsanto won the suit against Bowman, who was ordered to pay over $84,000 in damages.\(^6\) While Bowman appealed all the way to the Supreme Court on the basis of patent exhaustion\(^7\), the court again ruled in favor of Monsanto. Since then, Monsanto has engaged in numerous other lawsuits against farm owners, prompting family farmers and farm organizations including the Organic Seed Growers and Trade Association (OSGATA) to file their own lawsuits against Monsanto in March 2011. OSGATA aimed to protect organic and non-GMO family farmers from the contamination of Monsanto seed on their land and invalidate Monsanto’s patents.\(^8\)

**Intellectual Property**

Because patents award Monsanto the basis to pursue legal action against small farm owners, the morality of protecting IP is at the core of Monsanto’s “cruel” relationship with farmers. Generally, there are three arguments for and against IP, which can be applied to the Monsanto case. The arguments in favor of IP are those of personality theorists, utilitarians, and Lockeans.

Hegel and other personality theorists argue that IP is a part of a larger claim we have to our feelings, experiences, talents, and traits. When we mix ourselves with both tangible and

\(^7\) Bowman lost the case based on the fact that the exhaustion clause does not give the right to create a new product, which the court contends he did by replanting the seed (https://www.supremecourt.gov/opinions/12pdf/11-796_c07d.pdf)
\(^8\) "Farmers VS. Monsanto." Food Democracy Now. Accessed March 6, 2017. http://www.fooddemocracynow.org/farmers-vs-monsanto It is also important to note here that it is really quite difficult to prevent corn seeds from blowing from one farm to another, for example, given that it is wind-pollinated. This makes it really quite unfair for farmers, but is a separate topic from the one discussed in this paper.
intangible items through our ideas, there is an element of self-actualization because we take control over physical and intellectual objects. Thus, we become ourselves more, and our freedom as individuals relies on having protection of this property. Additionally, once our “personality” becomes one with an object, we have a moral claim on that object, just as we would have moral claims to our own personalities. Since we infuse ourselves in the objects and ideas we create, we have a justification for legal protection of those things. Though we cannot say that Monsanto infuses its “personality” into the seeds it creates, the amount of energy, effort, and money that is poured into engineering the seeds—and, therefore, how much Monsanto deserves to have these creations protected—is still relevant.

The Utilitarian argument for IP states that overall prosperity is increased when intellectual works are created, and that IP protection is a necessary condition for the creation of intellectual works for authors and inventors. The worry is that without such protection, inventors and authors will be less inclined to create new things. According to Moore, though, these rights do not ensure that intellectual works will be created, the absence of such a protective measure will result in “inevitable” failure since anyone can reproduce others’ intellectual works. By having copyrights and patents, the optimal amount of intellectual works will be produced—from this, it follows that social utility will also be optimized. Because of this benefit,

11 I think the strongest objection to the personality-based argument is the claim that these objects become “infused” with tangible or intangible works, since we could say that instead of “infusing” ourselves with it, we lose ourselves or give up a part of ourselves. Also, as briefly mentioned, this theory might be limited to inventions that clearly have elements of personality in them—Hughes (1998) brings up the example of the safety pin.
14 ibid
we find protection of property rights a necessity in society.\textsuperscript{15,16} In fact, some utilitarians would agree that if such an item has a direct impact on social utility, society is able to violate an individual right or claim to the item in order to benefit the whole.\textsuperscript{17}

A Lockean justification for IP would maintain that individuals have a claim to the “fruits of their labor.”\textsuperscript{18} Since doing work, producing, and thinking are all voluntary, we have a right to what results from them. Locke’s more formal argument says that because people own their bodies and the labor that they produce, when an individual works on another object or creates an object, her labor and the thing with which she labors becomes infused. Once this fusion occurs—namely, once the labor and the object are together and cannot be separated—the same rights we award to the individual are expanded to that object, so that that object must be protected in the same way we are protected.\textsuperscript{19} The Lockean argument can be expanded from a one-to-one scenario in which Person A comes up with an idea that Person B likes or wants to buy, to apply to larger groups. In the initial scenario, we recognize that Person A has the right to whatever thing she created and that Person B has to have the permission of Person A to use it, reproduce it, license it, etc. On a larger scale, this entails authors and innovators to secure access to their products among the entire population who want to have access to it.\textsuperscript{20}

The main objections to IP are summarized as follows. First, scholars disagree on the idea

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\item [15] Scholars point out, however, that there is no clear empirical evidence that there is a relationship between protecting property rights and encouraging social utility at this point.
\item [16] This point brings up the need for society to incentivize innovation even without patent and copyright protection. Some put the responsibility to do this on the government, which is able to fund projects and research, which will then make any invention or product of such a process public property immediately. Furthermore, Shavell and Van Ypersele (2001) argue that reward models—whose funds could consist of taxes or percentages of the profits from these inventions—could be a potential way to support intellectual property rights while avoiding monopolies and restricted access to inventions.
\item [19] Unsurprisingly, there are objections to this claim about “infusing” yourself with the things you work on. It’s a nice metaphor—though some take it literally—but thinkers such as Jeremy Waldron (1983) argued that actions cannot be mixed with objects, while others have questioned whether mixing one’s labor warrants rights.
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that information in itself is property. Critics argue that ideas are not property in same way that a car is our property, and that some information are abstract objects that cannot “casually interact with material objects,” and thus cannot be owned in the same way that physical objects can. A common example is the idea of owning the number “2;” one could not possibly own the concept behind the number 2. Some critics say that even the term IP is at its best inapplicable, and at its worst, an incoherent way to justify putting limitations on things. Second, the idea that information is “non-rivalrous” creates a prima facie against restricting access to it. Non-rivalrous means that many people can enjoy the invention or the benefits of the invention concurrently and that producing many things does not deprive anyone else of enjoying its benefits. Since creating more of the product will not prevent someone else from enjoying its benefits, proponents of this theory questions why restrictions are imposed in the first place. A formalized version of this argument states that if tangible or intangible work is non-rivalrous, then there is a prima facie argument against intellectual property rights and allowing the most access to these works.

Finally, there is the “social nature of information argument” which states that information in itself is a social product. This argument redefines IP protection as giving undue benefits to creators rather than upholding their individual rights. Since the authors and inventors are

22 I am not totally convinced of this, though. What if someone did copyright the number 2 under the argument that she was the one to first come up with that idea? Is that not what artists and creators do when they trademark a certain word or phrase? Perhaps the bigger factor here is that we realize that the number 2 is such an important part of the everyday lives of all people, that trying to patent something like that would be inhibiting to people.
23 A valid counterargument to this is that even though ideas may not be property in the same sense we view our car or our computers being our property, it does not negate the legitimacy of putting limitations on the way others can utilize or exploit our creations.
25 The non-rivalrous argument against intellectual property highlights the huge factor of profitability based on inventions and the role it plays in patent and copyright law—indeed, most things are non-rivalrous in nature, but people aren’t willing to recognize that because there is a potential to profit off of them.
26 Moore and Himma argue that the first premise to this argument is weak, however, citing the example of sensitive personal information—just because this information may be able to be used by many people, it doesn’t establish a right to do so/a prima facie moral claim to maximum access. Just because something can be used for a wider purpose doesn’t mean that it should or must be. The non-rivalrous nature of some inventions shows that there is nothing to lose by not restricting access, but it also does not create a claim, which is much stronger, to the objects. Thus, even though we can say non-rivalrous nature does give us a reason against intellectual property protection, it doesn’t create a requirement on the creator to do so. (Himma 2005).
nurtured and raised in societies that provide them with information and access that contribute to their abilities, society is indirectly a creator of the products that an individual makes. In essence, society provides the building blocks to intellectual creation that the author needs in the first place. This shared intellectual knowledge in society necessitates, then, that any product from this process is also shared.\(^{27}\) An example cited by proponents of this theory is a dam—a social product that is built up by collective knowledge and understanding.\(^{28}\)

**The Monsanto Case and Comparison to Medical Patents**

Applying these principles to Monsanto, there are many considerations to make. First, if we want to apply the personality principle to corporations, for example, are we saying that we should treat corporations the same way we treat individuals? Would we find it morally acceptable for one person to own such an expansive amount of intellectual property? Second, if we allow seeds to be patented, could it set a precedent for other agricultural or food items to be patented, leading to a monopoly over necessary items to survival? On the other hand, if we don’t award patents at all—namely, if Monsanto can’t profit off of its inventions—what would motivate them to invest millions of dollars into research to make these patents? Would the items we have today be at their current caliber if there is no incentive to push the boundaries? Would they exist at all?

This is the concern raised in regards to medicine patents as well. Proponents of medical patents argue that without patents, the pace of innovation and development would not have been what it has been in the modern age. On the other hand, critics of medical patents point out the socioeconomic issues patent law causes for patients who desperately need certain medicines.\(^{29}\)

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\(^{27}\) Moore, Adam, and Ken Himma. "Intellectual Property."

\(^{28}\) Proudhon 1840; Grant 1987; Shapiro 1991; Simmons 1992, as in Moore, Adam, and Ken Himma. "Intellectual Property."

\(^{29}\) This topic is truly fascinating, because a way people have avoided paying high prices for drugs has been to buy the generic versions instead. This, however, can sometimes lead to the patient becoming resistant to drugs or having to increase dosage to have the same effects as the original drug, creating more problems for the patient. When things like this happen, we are forced to
On the dichotomy between patent law and access to healthcare, bioethicist Dan Brock wrote that it is important to keep the global impacts of patenting decisions in mind: “…When developing countries choose not to respect product patents as their only effective means of making available pharmaceuticals necessary to save lives and protect the health of their citizens, doing so is arguably a step towards justice between the developed and developing world.”

Monsanto’s patenting practices will undoubtedly create precedents that will affect worldwide access to food, as it has already come into conflict with European companies and Indian companies in regards to its patent rights. Similarly to Brock, the UN ECOSOC said in a General comment, “States parties should … ensure that their legal or other regimes for the protection of the moral and material interests resulting from one’s scientific, literary or artistic productions constitute no impediment to their ability to comply with their core obligations in relation to the rights to food, health and education[.]”

Joseph Millum, at the Clinical Center Department of Bioethics and National Institutes of Health, interprets this to mean that IP rights are not human rights in the same way access to healthcare is, and that the comment “appears to rule in favor of the right to health.” In terms of Monsanto, the potential Bayer acquisition for $66 billion (announced in

ask ourselves whether it is right to have patents on things like medicines. For food, the morality is not as clearly one-sided because technically, creating patents has not yet caused an inequality in access, but there is potential for this to happen as agribusinesses build monopolies. More to the point, however, is the moral strain the idea of patenting something like medicine or food evokes in us, because these things are necessary for life.


Millum, Joseph. "Are Pharmaceutical Patents Protected By Human Rights?"
2016) has made it likely that food prices will increase, since farmers will have to pay more for the seeds as product ranges are rationalized\textsuperscript{35} and their bargaining power becomes limited.\textsuperscript{36}

Since patents often limit access to the product they protect, we have to consider why we are awarding a patent in the first place when it comes to items necessary to survival. This is because once we award patents to organizations, they have all the right to monitor their constituents—and, in fact, should be doing so in order to maintain the integrity of patents. We should expect that companies will take measures to ensure their rights as awarded by the government. As Monsanto spokesman Darren Wallis pointed out, Monsanto spends more than $2 million a day to engineer these GM seeds—a tool in protecting this “investment” is through legal means.\textsuperscript{37} Just as we would not condemn Samsung for suing Apple if they violated patents or copyrights, we cannot not be critical of Monsanto for safeguarding what is rightfully given to them via patent law. If we have a problem with Monsanto’s practices, we have to consider the act of awarding the patent in the first place. A moral argument against certain patents could be as follows.

1. Everyone has a right to survival.
2. Food and medicine are necessary items for survival.
3. Patents protect intellectual property, but also give unwieldy control to the creators\textsuperscript{38} and/or creates barriers to the access of these items by people who need them.
4. It is immoral for companies to create barriers to items necessary to survival for personal profit.
5. Patents are immoral when they are applied to items necessary for survival.\textsuperscript{39}

\textsuperscript{38} This draws on one of the arguments against intellectual property as expressed above—that patents give undue power to the creator.
\textsuperscript{39} I am not trying to offer this argument as the best argument or the only argument. Rather, I came up with this and am including this to highlight the root of the problem: which is awarding the patent in the first place. Monsanto’s non-altruistic desire to patent something that is so necessary to life is what is morally questionable, not their practices once the patent is awarded.
Implications for Government and Conclusions
From this discussion on the scope of IP protection, the role the government plays in this process is accentuated. While it is important for the state to protect individual liberties, the state also has a responsibility to improve the welfare of its citizens. Interestingly, the government’s reasoning for not awarding patents for seeds until 1930 in the Plant Patenting Act was not based on a moral or ethical concern for patenting a source of livelihood. Rather, it was because of the technical nature of patenting seeds—people did not think that seed composition was something that could be written about in such a way that would “enrich public knowledge” and be helpful.40 Some hope that the government gathers more motivation to base its laws on morality rather than technicality. Perhaps a way to alleviate the problem of the IP issue is for the government to fund the projects to the point where the innovators will feel rightly compensated for their innovation, but also eliminate the patent aspect to the objects so that it is not unfair, or limit the time patents are viable for. For an immediate solution, Michelle Ma offers the possibility for the Digital Millennium Copyright Act’s notice-and-takedown regime to be applied to inadvertent seed patent infringement by small farmers. This would put responsibility on Monsanto to notify the farmers of infringement and allow them time to take necessary actions (whether it be removing seed or buying licensing), before filing a lawsuit.41

With these factors in mind, I arrive at the conclusion that Monsanto is immoral not because it targets farmers, but because it seeks to patent items necessary to our survival. Furthermore, it is striking that the government helps bring this about. We certainly cannot diminish the contribution patents have made to the innovation and free market practices that our

society is built upon, and we cannot deny that the protection of our ideas is related to the protection of our selves.\textsuperscript{42} However, we may rightly have a moral hesitancy against granting patents for items that are crucial to life. If we hope to get rid of the Monsanto monopoly, the government must take the first step in changing the patent process, and take on a burden—both financially and morally—to support its citizens and the society it is charged to protect.

\textsuperscript{42} See above arguments in favor of IP protection.
Bibliography


