

The Polanyian Perspective in the Era of Neoliberalism: The Protection of Global Intellectual Property Rights

Chakkri Chaipinit

Christopher May

Introduction

In light of the continuing interest in his work, this article aims to further illustrate the contemporary utility of Karl Polanyi's theoretical perspective. As is well known, his most famous book, *The Great Transformation*, sets out the so-called 'double movement' to explain the rise and decline of the liberal 'self-regulating market'. According to Polanyi, this market served to transform natural resources and social life into the 'fictitious commodities' of land, money and labour, which destroyed the previous social embeddedness of traditional communities. This confrontation prompted collective resistance in the form of 'self protectionism' to impair the market, leading Polanyi to argue that the liberal market society was a stark-utopia that could never be finally consolidated (Polanyi, 1957a: 3).

We argue, as have others, that these insights can be applied to analyze the market economy under neo-liberalism which emerged in the late 1970s. This new 'self-regulating market' included a new set of fictitious commodities by which knowledge and information have been vigorously commodified: patents, copyrights, and trademarks or (collectively) intellectual property rights (IPRs), making knowledge and information costly to access (Jessop, 2003: 18-22). Again market developments have led to a counter movement (Munck, 2007: 34-9), which suggests that the Polanyian perspective remains a useful political economy analysis.

However, rather than limiting this analysis to the double movement here we utilise additional elements of Polanyi's approach including his concepts institutional

strain and the impaired market, alongside his understanding of the drivers of social change, to develop a contribution to the contemporary political economy of global IPRs.

Part one: Karl Polanyi's the Great Transformation: The Rise and Fall of Liberal Market Economy

In discussing the theoretical framework of Polanyi, we mainly draw from *The Great Transformation*, where he describes the rise and fall of liberal market society in England during the nineteenth century. Polanyi argues there were two critical transformations in this period: the emergence of market society out of mercantilism; and the collapse of market society into the First World War and subsequently Fascism (Block and Somers, 1984: 53). These transformations underpin the two main elements of Polanyi's analysis: the double movement; and the impairment of market self-regulation.

The Double Movement

In early nineteenth century England, the rise of liberal market society alongside the early Industrial Revolution transformed a traditional-agricultural society into an increasingly industrialised society. This undermined social embeddedness by introducing the market into the allocation of previously social resources prompting, in Polanyi's account a reaction towards social self-protection. These are two ongoing opposite movements: the movement that disembed markets from society and renders them separate; and the counter movement against the self-regulating market that seeks to re-embed markets in social relations (Polanyi, 1957a: 99).

a. Self-regulating market and the fictitious commodities

The expanded reach of the market mechanism was supported by a conception of economic man driven by maximizing profit gains; supported by the argument that markets and money were best suited to respond to such needs (Polanyi, 1957a: 43). Thus, economic man needed the price mechanism and the laws of supply and demand

(Watson, 2005: 146). From this point of view, humans are always willing to sell either their labor or lands into the market as commodities, and gain incomes in form of wages and rents fixed by the price mechanism. If labour, land, and money, are essential elements of industry, they must be organized in the market (Polanyi, 1957a: 68-72; Polanyi, 1968: 26-32).

Before the early of the nineteenth century there was no thorough-going attempt to expand markets into new social areas, despite the importance of the market for local and long-distance trades; therefore Polanyi points this can hardly be said to be a natural process of economic development. The development and expansion of market society was driven by state mercantilism by which the state (or more accurately its government) perceived economic development as state strength (Block and Somers, 1984: 53-4). The state was indispensable for the market: in the political sphere, states as institutions created the conditions suitable for market exchange by providing security and protection to support economic actions exchanging labor, money, and land in the market; in economic sphere, states as economic agents created further (fictitious) commodities by converting natural resources into market commodities (Polanyi, 1957a: 72-6; Polanyi, 1968: 32-7). In this state driven 'self-regulating market' all transactions are monetised and increasingly resources are changed into commodities through the application of technology (Polanyi, 1957a: 40-2). In this 'market economy', Polanyi argues, 'fictitious commodities' have not been produced for sale, but rather are subsequently commodified for commercial purposes, and exchanged as if they were simple goods and services (Baum, 1996: 4, cited in Watson, 2005: 150-1).

Economic practices drastically changed when the market economy began to be established by the state in Britain. For the commodification of labour, Polanyi focused on the example of the repeal of the Speenhamland Act which had allowed the landed class to maintain their local political powers against the full-fledged market economy. The Speenhamland Act was a new relief law for the poor, which Polanyi refers to as the 'right to live', an outdoor relief through an establishment of grants-in-aid wages based on the price of bread. The Act was intended to generate employment in the rural area of Speenhamland and prevent the spread of pauperism. However, with the political

triumph of the new industrial middle class, the Act was repealed and replaced by the New Poor Law Reform in 1834, eliminating outdoor relief and forcing parish workers into the workhouses or factories. For Polanyi this is a key example of the enforcement of the wage system (Polanyi, 1957a: 77-102; Block and Somers, 1984: 54-6). Polanyi also paid attention on the historical commodification of land and money. Agricultural tariffs were an important mechanism to protect farmers from competition, benefiting traditional groups, like the old landed class, the church, or the army and underpinned their political support for the state (Block and Somers, 1984: 58-9). Under feudalism and the guild system, the possession of land, the rights of property, and their transfer were controlled by legal and customary rules benefiting from local interests. However, the introduction of the market wiped out these rules, and subjected these relations to market forces dependent on money (Polanyi, 1957a: 69-70, and 72).

Polanyi (1957a: 130-1) pointed out that *"while production could theoretically be organized in this way, the commodity fiction disregarded the fact that leaving the fate of soil and people to the market would be tantamount to annihilating them"*. The price mechanism separated labour and land from other activities of life and replaced them with an individualistic organization that in turn destroyed the non-contractual organizations, traditional life, and the societies which they had constituted (Polanyi, 1957a: 162; Watson, 2005: 151). The problem was that humans respond to social claims, social assets, or social standings not merely than economic self interests (Polanyi, 1968: 3-16, and 203-37; Polanyi, 1957a: 43-55). This social disembedding prompts the second leg of the 'double movement'.

b. The self protection of societies and the class interest

Polanyi's criticism of the self-regulating market is founded on his criticism of the economic man of neo-classical economic theory.¹ For Polanyi, without contextual social relations, the market could not work properly. However, as the free market is the product of state planning (Polanyi, 1957a: 141; Watson, 2005: 143-4; Jessop, 2001: 222-3), it was a utopia that could never be fully achieved. Nevertheless, the 'birth of the liberal creed' and the pretense of the possibility of the disembedded market, built on

human greed, to destroy local society, to degrade the environment and exploit workers. Polanyi regarded the 1832 Poor Law Amendment Bill as an attempt of the new industrial middle class to broaden the market economy, but this attempt ultimately failed because the new wage system and associated labour exploitation did not meet long term social needs (Polanyi, 1957a: 130-1; Block and Somers, 1984: 57)

For Polanyi, the movement to ameliorate the effects of the market was not just defensive behavior, but a reaction against the dislocation of society. Here, Polanyi drew on the ideas of Robert Owen who believed that societies cannot leave the market to its own devices as this paves the way for 'great and permanent evils' (Polanyi, 1957a: 130). The self-regulating market was dangerous and was not stable; it fragmented society while expanding the exploitation of labour, through rising costs of living and food prices, low wages, and the incomplete social freedom of labor, alongside the commodification (and thus constructed scarcity) of land, and money (Polanyi, 1957a: 201-4). Self-protection, Polanyi argued, unlike the self-regulating market, is spontaneous and occurs when social forces are faced with the negative effects of the market; it is not directed by opinion, but purely motivated by a pragmatic spirit (Polanyi, 1957a: 141).

Polanyi went on to argue that it was too narrow to explain such reactions on a class-based explanation, although others might see the movement as influenced by class interest (Polanyi, 1957a: 161). Whereas Marxist's class analysis insisted on the individual self-interest, Polanyi based his argument on the development of society as a whole; 'class' was one only part of the forces of self protectionism. These were people affected by the liberal-creed (Polanyi, 1957a: 154). The movement was a collective reaction to protect the interests of society as a whole, and could not be explained by purely economic interests (Polanyi, 1957a: 161-2; Polanyi, 1968: 52-3).

Drawing from the discussion of the 'double movement', self protectionism acted as a counter movement to protect people, welfare, culture, environment, and natural resources from the deleterious effects of the market economy, and produced an impairment of the market (Watson, 2005: 144-5).

The Impaired Self-Regulating Market and the Progress on Social Change

The issue of the impaired market is an important element in Polanyi's work but has hitherto often been neglected. There are two critical routes to the impaired market; an imperfection of market economy; and the collapse of separation between politics and economics. Both prompt major social changes.

a. The impaired market economy

During 1879-1929, Polanyi observed, markets became increasingly impaired. As the market system assigned a pricing system for the elements of production and fictitious commodities, this began to threaten societies, and self-preserving action from communities began to interfere with the market (Polanyi, 1968: 238). Market ideology was compromised and constrained in at least two dimensions; the wage system; and economic growth.

Discussing the wage system, and relying on (then) recent analyses by J.M.Keynes, Polanyi criticised the notion that an aggregate demand for labour could be maintained through the price mechanism, in the sense that the price of labour and its demand will adjust the level of supply to reach an equilibrium point. However, like Keynes, Polanyi argued that the tension between trade unions supporting certain wage levels and an industrial middle class trying to maintain the level of production, meant that industrial investment would be diminished so that the demand on labour shrank and became inadequate (Block and Somers, 1984: 58). Between the 1830s and the 1920s, working class organizations had strengthened, so that the market economy became imperfect in neoclassical terms, culminating in the 1930s Great Depression (Polanyi, 1957a: 176-7; Block and Somers, 1984: 58).

The other signal of market imperfection was the failure to maintain steady economic growth. Since the early nineteenth century, the gold standard mechanism ensured that once any country was in deficit, its gold reserve would flow out, reducing the money supply and constraining economic growth. However workers could not

accept lower wages and unemployment; farmers could not bear falling agricultural prices; and the capitalist class certainly did not want a fragile banking system. Therefore, the government had to maintain growth, by manipulating the gold standard through currency exchanges and the credit system. However, this signaled a fragile market system, or indeed an impaired market, and encouraged governments to impose trade protectionism against each other. Polanyi argued that this had led to economic imperialism to guarantee European states' markets in Africa and Asia (Polanyi, 1957a: 194-5; Block and Somers, 1984: 58-60). The failure of the market economy to maintain the equilibrium in the wage system and steady growth demonstrated that the market system had become impaired.

The second element of the impaired market is the collapse of the separation between political sphere and economic sphere, intended to guarantee the security of market economy, and at the same time, to secure the institutional authority of the ruling class themselves. As Wood suggested, the separation between the political and economic spheres allowed capitalism to become more complex, freed from much of the political pressure for social control (Wood, 2003: 13). If maintained, the market economy could penetrate into the social fabric far beyond its institutional limits within states, as the economy would potentially be unbounded by political control (Wood, 2003: 23). However, Polanyi argued that such a development could never be completed, as the associated stress generated in the economy would always impact on the realm of politics, leading to the continual (re)demolition of the boundaries between economic and political arena whenever they might be erected rhetorically or through political action (Polanyi, 1957a: 217-8). Understanding the impaired market and its associated institutional strains also clarifies Polanyi's understanding of social progress.

b. Progress on social change: after the market impaired

Market impairment leads to economic disorder and a strong protectionism movement (Block and Somers, 1984: 58). Polanyi argued this prompted three major consequences in the (then recent) history of political economy: the First World War, the rise of Fascism, and the New Deal in the USA.

Under the international liberal system that was broadly established in the half century before 1914, Polanyi argued, whenever it seemed likely that a conflict would lead to a war the financial sector would seek to find a quick solution through mediation, since any war would undermine their profit. However, as imperialism gathered pace, such a solution became less effective as financiers were not so dependent on the 'free' international market outside the imperial political economy (Block and Somers, 1984: 60). However, after the First World War ended, the reestablishment of the gold standard was politically difficult due to the conflict between parliamentary democracy and capitalism. Under expanding democratic arrangements, the working class sought to protect themselves from the market economy by legislative means, while, the capitalist class desired to maintain the competitiveness at the international level; stalemate ensued (Block and Somers, 1984: 60-1).

To escape from this logjam, Polanyi argued, Fascism opened a chance for the market to function without social oppositions, with the dichotomy between the economic and political spheres, reestablished, albeit with brutal force (Ozel, 1997: 117). Such a solution required a 'reeducation' of the people 'designed to naturalize the individual and make him unable to function as the responsible unit of the body politics', erasing the idea of the brotherhood of man in all its forms, 'through an enforced conversion against disobedient by means of scientific methods of torture' (Polanyi, 1957a: 237-8). In societies where democracy was more strongly grounded, alternatives to resolve the market economy's problems were developed (Block and Somers, 1984: 61); governments abandoned the gold standard and focused on the national economy, most famously in America's New Deal (Polanyi, 1957a: 229).

To sum up, in discussing self protectionism, Polanyi provides an explanation of how reactions against the deleterious effect of the market occur where social dislocations become evident. The notion of the impaired liberal market allows us to recognize the possibility of the social role of market 'distortions' and 'imperfections'. Lastly Polanyi's view of social change provides a link between adjustments within capitalism, and counter movements after market impairment. We now move to focus on

how these insights may illuminate the current neo-liberal system through an examination of the contemporary political economy of intellectual property.

Part Two: Beyond Polanyi: An Adaptation on the Neoliberal Market Society

We will now demonstrate one way to use Polanyi's idea of the double movement in the era of a neoliberal market society. Here, "*the neoliberal market society*" is intended to refer to the characteristics of twentieth century capitalism that (re)emerged during the late 1970s, particularly under the Reagan and Thatcher administrations (Harvey, 2006: 12; Harvey, 2007: 1-4), and includes the development of the knowledge-based economy (Jessop, 2007: 270). Through this analysis we seek to explore commodification, the institutional strains caused by the market and self protectionism, alongside the state's role in legalizing an attempt by corporate power to strengthen the intellectual property regime (Harvey, 2007: 64-70).

The Neoliberal Self-Regulating Market, Fictitious Commodities, and States' Actions

In general sense, we might say that the neoliberal self-regulating market is merely a more developed form of laissez-faire economy that reflects the power of market ideology (Birchfield, 1999: 38). However, there have been some changes in the character of the market and its mechanisms, particularly the establishment and expansion of a knowledge-based market, including fictitious commodities, and the enhanced role of states to maintain this 'new' form of market exchange.

a. The neoliberal self-regulating market: the knowledge-based market

In the early of 1980s, the ideas of laissez-faire liberalism were revived under the label of Neoliberalism. This ideology prompted deregulation, privatization, and liberalization as a response to economic globalization, often referred to as the "Washington Consensus" (See Williamson, 1990). Harvey argues that as Neoliberalism has become a hegemonic mode of discourse so states around the world appear to have embraced its policies. The influence of this approach to economic governance has been

broadened through education, media, corporate and financial sectors, state institutions, and international bodies, especially the International Monetary Fund, the World Bank, and the World Trade Organization (WTO) (Harvey, 2007: 3). This notion has expanded its influence directly through support for privatization, deregulation, trade liberalization, and the expansion of intellectual property rights (IPRs). Drawing a parallel with Polanyi's *great transformation*, a new process of disembedding process has prompted the '*re-commodification of political, educational, health, welfare, scientific, and other activities organized by businesses oriented to exploiting opportunities for profit without regard to possible extra-economic costs and benefits*' (See Jessop, 1996).

In this article, however, we focus on the expansion of protection of IPRs. Like Jessop, we recognise that it is widely accepted that knowledge and information has become "the most important factor of production and the key to economic competitiveness", often referred to as a "knowledge-based economy" (See Jessop, 2007). The construction of scarcity where none necessarily obtains is part of this commodification of knowledge and information. While the use of material things is competing and rivalrous, mediated by markets and prices, the use of common knowledge in societies undermines its social utility: knowledge, formerly not scarce, becomes a scarce commodity governed by market relations (May and Sell, 2006: 5-6; and Polanyi, 1968: 145). Therefore, in Polanyian terms intellectual properties represent new neoliberal fictitious commodities (Jessop, 2001: 18-22; Jessop and Rieu, 2006).

Under a legal regime of IPRs, market mechanisms assign prices for knowledge and information and accelerate full commodification. In the international realm, the prime institution to achieve this end is the Trade-Related Aspects of Intellectual Property Rights (TRIPs) agreement within the WTO which is designed to produce a "*singular globalised conception of the legitimate protection of intellectual property through the harmonization of the effects of diverse legislation across members of the WTO*" (May, 2000: 85). The rise of modern capitalism signaled the expansion of the commodification of knowledge, based on three elements: *technological*; *legal/political*; and *philosophical*, which were required to underpin the forms of intellectual property

laws promoted by the WTO thought the TRIPs agreement (May, 2007: 2; May and Sell, 2006: 25-8).

b. The neoliberal fictitious commodities: copyright, trademark, and patent

In parallel to Polanyi's argument, we consider 'patent', 'copyright', and 'trademark', to be 'neoliberal fictitious commodities'. The market economy disembodies knowledge, information, traditional knowledge, and even folklore out from social relations. Indeed, the principles of reciprocity, redistribution, and house holding, from traditional societies, have been replaced by the exchange principle (Polanyi, 1968: xiv; Munck, 2007: 15); scientific knowledge, cultural knowledge including traditional knowledge and folklore have been intentionally integrated into the market economy, restricting their use and access through market regulations. This market penetration has caused some dislocations and social concerns, especially among developing countries, not least as regards economic development, public health, and technological transfer (May and Sell, 2006: 176; Dutfield, 2003: 18). In primitive and archaic economies, traditional knowledge and folklore is a collective resource in common that communities shared, cultivated, and maintained them for the sake of interest of a whole (Weeraworawit, 2003: 159). As Dutfield (2003: 12) points out "*traditional peoples and communities are responsible for the discovery, development, and preservation of a tremendous range of medicinal plants, health-giving herbal formulations, and agricultural and forest products that are traded internationally and generate considerable economic value*". The establishment of fictitious commodities has changed this picture: it creates prices and restricts use for these would-be intellectual commons (May and Sell, 2006: 194-5).

These commonly held resources are not limited to cultural products but encompass indigenous knowledge of bio-resources (See Sahai, 2003). As May and Sell (2006: 195) point out: "*In the turmeric and neem tree cases, US researchers and foreign corporations respectively were granted on what Indians considered to be traditional uses for these substances. These cases raised the larger question of the status of traditional methods and practices passes down orally, sometimes referred to as*

"folklore". Many so-called scientific discoveries are nothing more (or less) than folklore that researchers may stumble upon or seek out among indigenous peoples, farmers, shamans, and healers. Western patent systems have no protections for this type of innovation".²

Copyright also entails similar issues: throughout recent years, the unauthorized reproduction of traditional-cultural expressions has been condemned by traditional communities. With the rise of global IPR regime, cultural products drawing on traditional knowledge and folklore are commercially exploited with few benefits flowing back to traditional people and communities. The reproductions of traditional expression, such as artistic works, handicrafts, designs, dances, and musical and dramatic performances is conducted without asking permission from traditional people and crediting the source of the creativity (Dutfield, 2003: 12-3).

Even trademark, names, alphabets, labels, or symbols that one company intends to register may be subjected of indigenous knowledge. For example, in case of Thailand, a powerful Japanese massage company registered its trademark as "*rusiedutton*", which is the name of famous Thai traditional massage folk practice, with the Japanese Patent Office. Because of this, Thai people can no longer use this word for naming the Thai massage even for the advertisement of massage classes. The introduction of the market for intellectual property is disturbing not only traditional modes of economic activity but also (re)shaping economic power relations.

Underpinning the (global) neoliberal market is the need to establish national rules that are compatible with the market-access by enforcing states to comply with internationally agreed standards; for example, technical or health standard for goods and services (Picciotto, 1999: 22). In order to integrate the market economy into the market society as well as to adopt an international legal into a national level, states have necessarily taken a prominent role in creating the neoliberal market society.

c. The role of state under the neoliberal market society

Governments under neoliberalism are meant to minimise their interference with the economic affairs, but at the same time open spaces for individual market agents, or 'entrepreneurs' (Munck, 2007: 15). However, as Polanyi discussed, without political action by states, the self-regulating market and its associated fictitious commodities could not have been established. Indeed, the neoliberal market mechanism will function properly only if certain rules are established: private property must be guaranteed and incentives must be given to compete for scarce resources (Birchfield, 1999: 32). Now, instead of states intervening in the market to prevent the use of knowledge as monopolistic commodities (in all but tightly specified circumstances), as occurred during the liberal period with patents, leading capitalist states are intervening to support the treatment of knowledge as a resource for the profit-making market (See Jessop, 2007).

Jessop (2007) suggests that states have four prominent roles under the knowledge-based market. Firstly, neoliberal states have a key role in creating IPR laws on the condition that they are capable of gaining comparative advantage in information and communication technology products. Secondly, states must resolve contradictions in knowledge of production by avoiding hierarchical control over it, balancing the need to stimulate inventive activity and the protection of vital intellectual commons. Thirdly, states have an obligation to promote 'the commoditization of knowledge and the integration of knowledge and intellectual labour into production', to increase flexibility in manufacturing and services. Lastly, states have to rapidly encourage 'the dynamics of technological rents generated by new knowledge as part of a more general promotion of innovation'. In practice, this means the acceptance of the exchange value over IPRs.³ Harvey (2006: 25-9) argues that states attend to business interests to foster growth and innovation as well as reduce poverty and increase living standards, through programmes of privatisation and marketisation, which provide the 'flexibility' of maximizing-profit business (see also Mittelman, 2000, cited in Berger, 2001: 223).

However, as Polanyi suggested, this market-promoting, disembodiment process challenges the social-protective measures designed to protect society. Those scholars who criticize the neoliberal policy on the basis merely of inefficiency or market failure, therefore revive the market utopia that was once analyzed and criticized by Polanyi (Drahokoupil, 2004: 836; Block and Somers, 1984: 47-8). Here, the market inevitably stimulates self protectionism from societies and leads an impaired market, and can only be understood on that basis.

The Comprehensive Self-Protectionism Force and the Impaired Neoliberal Market

For Polanyi, (neo)liberalism presents a 'stark-utopia' through its fundamental discourse and can not work for a length of time without annihilating human and natural substance of society: the emergence of a counter movement will seek to protect societies from these deleterious effect of the market (Munck, 2007: 16 and 34). Drawing our inspiration from Polanyi, we suggest that the counter movement against the knowledge-based market is overt and comprehensive. Some recent trends show that the neoliberal globalization is now being challenged in more complex ways. Fictitious commodification in knowledge and information has stimulated a wide range of public-regarding opposition, not only farmers, patients, or commoners, but academics, intellectuals, and doctors are also concerned with the obtrusive market for knowledge and information, where stronger forces are needed to protect communities from the market.⁴

As Munck (2006: 183) puts it, the Polanyi *problematique* allows us to examine the complexity and tensions between the different reactions to globalization, through the recognition of 'new localisms' that cause the market to be impaired. By drawing from Polanyi the argument of the impaired neoliberal market, the incomplete double movement (where the state does not offer socially protecting regulation) does not undermine the recognition of the move to social self-protection. The neoliberal market is impaired for two reasons: the imperfection of the knowledge-based market; and the collapse of the attempt to maintain the widest (policy) gap between politics and economics.

As we have discussed in the first section, without proper mechanisms (the Gold Standard in the nineteenth century; IPRs, here), industrial investment is paused so that the demand is diminished and became inadequate (Block and Somers, 1984: 58). Following Polanyi, in the globalised knowledge-based economy, has led to the attempted internationalisation of the legal regime around IPRs through the TRIPs agreement. Many developing and less developed countries cannot meet that standard: some seek to buy time to develop their own technologies (for example, Brazil or India); others do not want to enforce the use of IPR regime in their countries so that it restricts the freedom use of knowledge and information usage (for example, China, or a number of African states). This failure to fully instigate the promised single global regime for IPRs, means that despite claims otherwise, the knowledge-based market is both fragile and impaired, in that it fails to provide a clear and stable context for profitable cross-border investment (in IPRs).

The impaired market is also revealed by the failure to maintain the disengagement between politics and economics. This was intended to guarantee the security of market economy, and at the same time, secure the institutional authority, or the ruling class themselves. In Polanyi's original analysis economic strain prompted a spilling over to an associated strain in politics, causing the dismantling of the boundary between economic and political arenas (Polanyi, 1957a: 217-8). Similarly, now that neoliberal states have an obligation to promote IPR-related laws (due to their TRIPs-commitments) and 'the commoditization of knowledge and the integration of knowledge and intellectual labor into production' the appearance of severe social costs has undermined the attempt to present IPRs as a neutral and technical market solution, allowing the reassertion of a *politics* of IPRs.

Discussing the separation of politics and economics in the neoliberal period, Gill suggests that the 'new constitutionalism' is the contemporary governance framework that underpins the division of economic policies from broad political accountability. The new constitutionalism prompts states to embrace the discipline of market forces and be correspondingly less responsive to popular-democratic forces and processes. As Gill (1998: 5) puts it: the "*Central objectives in this discourse are*

security of property rights and investor freedoms, and market discipline on the state and on labour to secure 'credibility' in the eyes of private investors, e.g. those in both the global currency and capital markets". To this extent, states are encouraged to operate within the greater market discipline, and then institutionalize liberalization of markets for capital, goods, and labour to extend the liberal capitalist market (Gill, 2008: 170-3).

However, when the (re)construction of knowledge as a fictitious commodity has been heavily challenged, the authoritative power and the legitimacy of governments is questioned. This reflects the powerful spillover from economic strains to political strains; or collapse of the distinction between politics and economics. Thus, to be fully stabilized and work properly, private knowledge-deploying corporations need states to protect them from political questions and challenges that the social costs of the commodification of knowledge engender (Harmes, 2006: 732-4).

Progress on Social Change: Toward the Clash of Market and Self-Protectionism Forces

We now move to the last element of our Polanyian analysis: social change. In the first instance, the impact of protective forces on the neoliberal market can develop into an anti-capitalist movement; but equally market actors may adjust their practices and demands in order to accommodate rising social protectionism. The self protective forces can be perceived horizontally, whereas, the forces that expand deep into an anti-capitalist movement can be viewed vertically. Harvey argues that since capitalism treats the 'web of life' as commodities that effect daily life, the reactions that break out during the neoliberal period are more or less minimal forms of anti-capitalism. However, such movements are not exactly 'class struggles' and are not necessarily concordant with other movements. They aim at to counter the destructive consequences of commodification; therefore, the anti-capitalist movements are different depending on the cause that prompts their development (Harvey, 2006: 113-5). Considering recent trends on the emergence of global civil society, the rise of a new socialist bloc, the active and continuing World Social Forum, or even the European Social Forum have primarily justified the 'double-movement' explanation. Such movement includes trade unions, new, radical unions and social movements to contest the agenda of

Neoliberalism. It is therefore arguably that the movements are developing into a so-called 'anti-capitalist' movement (Bieler and Morton, 2004: 305-27).

Wallerstein used the term "*antisystemic movement*", a notion that sits well with Polanyi's self-protecting protectionism and Harvey's differentiation of movements. Wallerstein proposed that since the end of 1960s, an "antisystemic movement" had arisen across the world. The groups that form this 'movement' generally perceive the United States as the core cause of global inequality, and criticise the failure of 'Old Left' to ameliorate social problems. The antisystemic movement fights against capitalism, rather than statehood; seeing the state as a critical tool of self-protection (See Wallerstein, 2000; Wallerstein, 2002; Wallerstein, 2004).

On the other hand, those supporting market forces have to adjust their strategies to cope with the wider protective forces. As noted above, Polanyi mentioned three major consequences of the great transformation: World War One, the rise of Fascism, and the New Deal. These consequences can be used as a metaphor for the adjustment of market forces in the neoliberal era.

As we have seen, Polanyi argued that the World War erupted as a result of the decay in the international gold standard and credit system. Before it broke out, the international gold standard and credit system remained working, but once the protectionism and imperialism had been widely adopted so that the conflicts in the international arena became more intense (Block and Somers, 1984: 60). Stretching this metaphor a little; many developing and less developed countries refuse to comply with the TRIPs agreement in practice (even if adopting its requirements *de jure*). However, leading industrial countries do not accept alternative measures, leading to a number of IPR-related disputes at the WTO. While many developing nations delay institutionalizing the new IPR structure within their countries, developed nations desire to impose the IPR regime more strictly seeking to halt compulsory licensing, parallel importation, and revocations of patents (Kuanpoth, 2005: 32-8). Thus, metaphorically, a conflict has emerged within the realm of global governance as rather than maintain a global system, the system has been fragmented by the carving out of specific

arrangements (bi-lateralism acts as an imperial arrangement in the metaphor). Thus, following Polanyi, the neoliberal market leads to similar social changes: the harsh pressure of bilateral free trade agreements (FTA) and the loophole for developing countries in the Doha round as the metaphor of the fascism and the New Deal policy respectively.

The metaphor of fascism suggests that the wave of FTAs which allow the advanced capitalist countries to negotiate with each country more flexibly to divide off (again) politics from economics by forcefully peeling off countries from collective political groupings (and by offering the promise of economic benefits). In case of the US-FTAs, those parties who accept the trade agreement will have to embrace a so-called 'TRIPs-plus' conditions extending the reach of IPRs (See Schott, 2004). Such a dynamic allows the neoliberal market to escape from the deadlock of conflict, while, at the same time, getting more countries to legalize the IPRs laws, standardize the IPR ideology, and institutionalize state's institutions to work in line with the IPR regime.

However, according to Polanyi, for the nations which did not adopt fascism, the New Deal policy was an alternative way to ameliorate the impassable market economy. During 1930s, the New Deal provided public welfare and justified state's increasing social expenditures. This is to compensate people for their loss from the market; such policy serves the market by removing much of the anti-market reaction. In the same manner, the Doha Development round and other initiatives to allow flexibility (and transitional support) have attempted to get developing countries to accept the TRIPs agreement's implications. Developed nations could then pursue IPR universalization in exchange for a promise to developing nations that international trade would be more equal and more flexible as regards IPR; a project that as yet has not conclusively convinced the sceptics and thus remains moribund.

Concluding Remarks

We have argued that Karl Polanyi's "*The Great Transformation*" remains a powerful tool for explaining the neoliberal market economy. In the first part, we revised

the notion of double movement and its implications for market impairment and social change. Polanyi illustrated two social forces in socio-economic relations; those who acted on behalf of the self-regulating market and those who supported the self-protecting movement. His analysis helps us understand market forces and the resistance to them in the neoliberal age. Following Polanyi, the neoliberal market economy that comes to threaten societies cannot work for long without the protective reaction that is prompted by the dislocation of the market.

In the new knowledge-based economy, states have a key role in strengthening the IPR regime that creates the neoliberal fictitious commodities; copyrights, trademarks, and patents. At the same time, the commodification of knowledge (pricing the use of knowledge) has compromised the traditional life of communities since it constrains citizens' access common knowledge on which communities depend.

However, the knowledge-based economy like other market societal arrangements inevitably leads to the rise of self-protection; this embraces a wide range of people who have been affected by the rise of a neoliberal market economy. In order to match the extensive functions of neoliberalism, protectionism must be strong enough to ameliorate the social costs of commodification. As a result, state authority is challenged since the bifurcation of economic and political is undermined by demands for political responses, and corporations have to adjust their strategies to protect their benefits from the forceful protectionism of the reaction (compulsory licensing for instance). This protectionism will link together both horizontally and vertically; self-protectionist forces have cross-linked with the anti-capitalism movement, and without much delay, market governance has required adjustment as well.

Therefore what is clear is that rather than merely the double movement of much commentary, what we see in the realm of IPRs is first the movement towards extensive commodification through the introduction of new fictitious commodities, then the development of a reaction, that has not merely prompted new regulatory responses by the state (prompted by the reaction) but also the movement within the market to establish different modes of response (be this the expansion of FTAs or new ways of

responding to state demands). The motif of the double movement is certainly useful, but at least in the political economy of IPRs, does not fully identify the multifaceted reactions that Polanyi's work suggests we should expect.

Acknowledgement

This article is partly drawn from Chakkri Chaipinit's PhD thesis under the supervision of Professor Amara Pongsapich, and was developed in discussion with Professor Christopher May while Chaipinit was a visiting scholar at Lancaster University. The thesis is granted a financial support from the Thailand Research Fund through the Royal Golden Jubilee Ph.D. Program (Grant no. PHD/0032/2549).

Notes

1. Polanyi criticized a dominant explanation based on pure economy in the early nineteenth century as an 'economic determinism' and an 'economic fallacy'. The central of this critique came from the field of cultural anthropology by which Polanyi focused on primitive economies (see Polanyi, 1977, 5-17, and 49-56; Block and Somers, 1984: 63).
2. Vandana Shiva also discussed this point in her book, "Protect or Plunder?: Understanding Intellectual Property Rights". She strongly argued that there are greatly differences among 'patents for conquests', 'patent for inventions', and 'patent for imports'. Nonetheless, 'patent system' in legal tools has never been enough to cover different socioeconomic contexts, histories, and subjects yet. This rater leads patents as instruments of conquest (Shiva, 2001).
3. For example, in case of the relationship between state and pharmaceutical corporations, and their role in monopolizing drug patents, the Department of Commerce of Thailand, with a support from WIPO as well as Pharmaceutical Research and Manufacturers Association (PReMA), has convinced the government to strengthen the IPR regime. The Minister of Commerce established the Department of Intellectual Property (DIP) to monitor the use intellectual property in Thailand, and works with the PReMA to promote the use of patented drugs. This

has led to a reduction in access to essential life-saving drugs, and the effective end of pharmaceutical R&D in Thailand.

4. Returning to Thailand, support for compulsory licensing in Thailand, includes various groups, ranging from civil servants, academics, NGOs, and doctors. They have gained support from other developing countries (especially Brazil and India) and international NGOs (for examples Oxfam, Medicines Sans Frontiers, Focus on the Global South, etc.) which share the same intent to protect societies from the socially destructive impact(s) of the neoliberal market. Central to the counter movement, activists and others are involved in providing public knowledge of the costs of commodification, and are collectively demanding for the canceling of specific drug patents, the opportunity to access live-saving drugs, alongside the condemnation of the big pharmaceutical companies for profiteering.

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