What Developments for the International Intellectual Property System?

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“Framing” Intellectual Property

- Duncan Matthews, Intellectual Property Law, Human Rights and Development: The Role of NGOs and Social Movements 7-9 (Edward Elgar 2011) (framing strategies connected to human rights and development)
- Peter Drahos, Does Dialogue Make a Difference? Structural Change and the Limits of Framing 117 Yale Law Journal Pocket Part 268, 272 (2008) (discussing dangers of framing as a “master mechanism” for the development of international IP)
- Rochelle Dreyfuss and Cesar Rodríguez-Garavito (ed), Balancing Wealth and Health: The Battle Over Intellectual Property and Access to Medicines in Latin America (Oxford University Press 2014) (discussing effect of reframing trade issue as a public health issue)
“Framing”

- Frame: “a rigid structure that surrounds or encloses something such as a door or window.”
  - Frame as Constraint
    - TRIPS as a Frame?
      - Floors and Ceilings
  - Constraints: Loose or Tight?
    - TRIPS confines but does define
  - Porous Structures by Design
    - Use of external influences/frames to inform/shape
Frame as Constraint: Rigid?

• Reasons for Impervious frame
  – Political Economy
  – Fundamental rights
    • human rights as rights “that exist independently of the vagaries of state approval, recognition, or regulation” (Helfer)
Frame as Support

• Frame: “basic structure that underlies or supports a system, concept, or text”
  – Many of frames seen as challenges
  – But actually sustain or support, lending legitimacy

• Concept of Frame Most easily fitting academic work
Framing as Skewing

- fix or predetermine an outcome (cf behavioural economics)
  - Human rights?
    - A myth
      - see Anheuser-Busch
      - See Charter, art. 17
  - Trade?
    - A function of political or institutional concerns
      - But these are important
Characteristics of the Different Frames

• Economics
  – justification or support

• Trade and human rights
  – brings institutional baggage
    • May affect what frame can legitimately do

• Culture and Development
  – Political resonance greater

* If frames have different characteristics, perhaps they have different roles?
The Role of Frames

• Do they constrain, do they justify, or do they shape?

• International versus national
  – Margins of appreciation for diverse countries
  – Entrenchment

• Explanatory versus Doctrinal

• Institutional competence/legitimacy
  – WTO as the World Court

• The False allure of Conceptual Order
  – The strategic value of outsider institutions and frames
  – Value of integration?