

Kava Pirates in Vanuatu?

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Abstract: Cultural property activists have worried about the bioprospecting, or even biopiracy, of kava (*Piper methysticum*), a plant exchanged and consumed for many Pacific social and ritual purposes. By the 1990s, kava and concoctions made from the plant's component kavalactones were increasingly popular products within global markets for recreational and medicinal drugs. Starting in 2002, however, a number of European countries among others banned kava imports after initial reports that some heavy users suffered liver damage. This has complicated the kava story as producer efforts shifted from protecting rights to the plant to reopening blocked export markets. The difficulty is to both push kava into global markets while protecting local rights to the plant. A promising strategy may be developing consumer awareness of geographic indicators and “noble” kava varieties that Vanuatu's local producers may control yet globally market as “the best in the world.”

INTRODUCTION

In the mid-1980s, I was at a truck stop in the remote desert town of Seligman, Arizona, when I caught a first glimpse of kava's (*Piper methysticum*) global prospects. There for sale to restive truckers were small bottles of Black Fire Kava-Kava Herbal Beverage (see Figure 1). Sweetened, licorice-flavored, and at \$4.99 for 22 mL, the bottle promised that kava

has been cultivated by South Sea Islanders for over 3000 years. Their consumption of this beverage has evolved from ancient Polynesian religious ceremonies to modern day Kava Bars where Islanders go to relax. Black Fire is pleasurable anytime, especially at the end of a busy day.

A decade later, kava and kava products had moved well beyond interstate highway truck stops in the United States and into the larger global marketplace. In the late

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FIGURE 1. Black Fire Kava-Kava.

1990s, worldwide interest in kava's recreational and therapeutic uses (see Figure 2) simultaneously peaked with activist concerns about *bioprospecting* and *biopiracy*. Bioprospecting labels the scientific pursuit and investigation of new medical, agricultural, and other uses of the world's lesser-known biota. And biopiracy refers to the misappropriation of such resources by pharmaceutical and other commercial enterprises, given that indigenous people have known, cultivated, and used many of these plant and animal species for centuries within folk medical and subsistence economic systems.¹

Islanders in a range of Pacific societies, from New Guinea to Hawaii, ingest kava's psychoactive chemicals by drinking cold-water infusions of chewed, ground, or pounded kava roots and stumps to promote an atmosphere of relaxation and easy sociability. Islanders also employ the drug as a means of religious inspiration and to transcend normal consciousness. Kava has been classified as a narcotic and hypnotic drug, but it does not induce hallucinations. The plant is incorporated within a variety of ritual events, including the ceremonial display of relative status discriminations in Polynesia, for example.

Given its escalating global popularity in the 1990s, those suspicious of bioprospecting used kava as a poster child, identifying it as seriously at risk of appropriation by multinational corporations, especially pharmaceutical companies. Activist broadsheets frequently listed kava, along with ayahuasca, quinoa (an Andean grain), sangre de drago (an Amazonian medicinal tree), turmeric (the dye, spice, and medication), and bitter melon as species already pirated by outside in-



FIGURE 2. Kava (*Piper methysticum*).

terests.² But kava differs from most plants identified as biopirated booty. As a biopiratable drug, its complex uses most closely parallel ayahuasca, the psychoactive Amazonian vine locally used to induce trances and purificatory vomiting. The global recreational market for ayahuasca is limited, however, given bureaucratic suspicion of hallucinogens and declining popular interest in purging.

Indigenous peoples have long used these and other plant species for a variety of medical purposes. As such, new patents on their chemical components, or on genetically engineered derivatives, disregard the claims of original knowledge holders and might even violate the standard principle where prior arts negate patent claims. The American Association for the Advancement of Science has established an online database to document such prior arts in hopes that this might help to forestall biopiracy. This web site, Traditional Ecological Knowledge Prior Art Database (TEK*PAD), continues to feature kava in its “Biopiracy Hot List.”³

Prior arts and prior claims certainly distinguish kava. On the basis of botanical, chemical, and genetic evidence, Vincent Lebot⁴ has argued that Pacific Islanders domesticated kava somewhere in northern Vanuatu between 2500 and 3000 years ago. They developed the plant from local varieties of a related pepper species, *Piper wichmannii*.⁵ In subsequent millennia, island farmers, traders, and migrants carried the plant across much of rest of the Pacific to Fiji and parts of New Guinea, to Pohnpei and Kosrae in Micronesia, and throughout Polynesia (except for New Zealand, Rapa Nui, and the low archipelagoes of Tuvalu and the Tuamotus). Kava’s medicinal, social, and recreational uses were not much appre-

ciated outside the Pacific region, however, until the seventeenth century. European explorers, including the Dutch navigators Le Maire and Schouten who encountered kava on Wallis and Futuna Islands in 1616,⁶ brought preliminary descriptions and collections of the plant back to Europe. Kava's first global steps were tentative and slow: not until 1920 did the plant and its extracts appear in European pharmacopeias.⁷

In concluding their overview of the drug, Lebot, Merlin, and Lindstrom only guessed that kava might spread beyond the Pacific to become a world drug.⁸ Until the beginning of the 1990s, most kava users still lived on Pacific islands. But during that decade kava took off. As more and more users around the world discovered the drug and its extracts, the future looked either rosy (for those in the booming business of selling kava) or bleak (for those concerned with protecting indigenous rights to the plant). During that one heady decade, kava markets flourished, growers profited, and indigenous advocates rebuked biopirates and remonstrated against the plant's increasing commercialization. Then, in 2002, the Germans (or rather a few German livers) threw a monkey wrench into the global kava business. News quickly spread that kava might kill; the budding market crashed and has yet to recover.

WORLDWIDE KAVA

Kava's global popularity and spread in the 1990s reflected its use in two different markets: the pharmaceutical and the recreational. Some new users were attracted by an expansive range of therapeutic claims that marketers made for the plant, and they purchased kava extracts in prescribed and over-the-counter concoctions. Others turned to kava for more pleasurable and/or social purposes. More concerned with the immediate physical effects of the drug, they sought out dried root (rather than kava pills or tinctures).

The lessons of biohistory must appear bleak for those who hope to beat back kava biopiracy, or at least to preserve the rights of those who first domesticated and then developed *Piper methysticum*. Recreational drug plants turn greater profits than most used within the pharmaceutical and health food industries. Today's world drugs spread widely even before the beginnings of world capitalist trade, as users and aficionados swapped and borrowed plant stock and consumption techniques alike. Today, for instance, marijuana grows far beyond its Asian homeland, as does American tobacco, South Asian tea, North African coffee, the Mediterranean poppy, European grapes and hops, and even South American (Andean) coca, which came to be cultivated far from home, in Florida and elsewhere. Should kava join these other popular world recreational drug species, many of its new users might presumably also attempt to grow their own, particularly those blessed with tropical climates. Several nurseries and botanical gardens in Hawaii sell kava plants and cuttings, and growers and gardeners today also can buy kava from online

sources such as Aloha Seed and Herb, which sells kava cuttings out of El Centro, California. Outside the tropics most European, Australasian, and American consumers would find it difficult to grow their own kava. Nonetheless, commercial enterprises could step in to organize and capture the global production of the drug—growing it on plantations and marketing it as they do other drug plants such as tobacco, coffee, tea, hops, barley, and grapes.

Recreational users generally buy the dried, ground, or powdered kava root that is widely available from online sources as well as on eBay (see Figure 3). In addition to micronized powdered kava root, some recreational marketers (e.g., KavaLand out of Santa Barbara, California) sell cold extracted kava that “will NOT leave a bloated starchy feeling in your stomach” and that “mixes well with drinks of all sorts and in doing so overcomes the taste barrier that prevents many from enjoying kava. GUAVA JUICE IS OUR FAVORITE MIXER.”⁹

Those using the plant for therapeutic purposes usually are not too concerned with kava’s earthy, sometimes dank, musty flavor. Instead, they generally purchase various extracts, concoctions, pills, and lotions that contain kava or kava-based chemicals (usually some mix of the kavalactones that are the plant’s principal active chemical ingredients).¹⁰

By the 1990s a wide range of kava products was also on sale in stores that specialized in herbal supplements, health foods, and homeopathic medicines.¹¹ As Marshall notes, marketers sell kava products as treatment for stress, anxiety, depression, and tension, drawing here on island appreciation of the plant as a relaxant.¹² Global kava dealers have also advertised the drug as alleviating other conditions including headaches, insomnia, and “frustration”; as an aid in weight



FIGURE 3. Dried Vanuatu kava.

reduction; and even as enhancing sexual pleasure. Kava's new taste, so it seemed, was "the taste of money."¹³ And if money was to be made, who would make it?

PIRATING KAVA

The term *bioprospecting* emerged around the 1992 United Nations (UN) Earth Summit where delegates drafted the Convention on Biological Diversity. One aim of the convention was to create a legal structure that would allow the sustainable commercialization of plant species while recognizing local rights to the plants.¹⁴ Intrepid bioprospectors, perhaps guided by indigenous healers and experts who had given their prior informed consent, would comb the earth's jungles, plains, and deserts, seeking new plants with chemical compounds that had potential market value. Should any such plants be located, profits would flow back to the communities that had first discovered these species. Or so they hoped.

As Hayden and others have noted, this bioprospecting approach soon ran into trouble.¹⁵ How were local *communities* to be defined? How were the claims of a state to be weighed against those of its component communities and groups, whether these groups be a village, a tribe, or a set of kin? What would happen if, as in the case of kava, traditional users inhabited a number of countries? Bioprospectors also ran into vigorous nongovernmental organization efforts to protect indigenous rights to local flora and fauna. Organizations such as RAFI (Rural Advancement Foundation International), which has morphed into ETC Group (Action Group on Erosion, Technology and Concentration), and GRAIN (Genetic Resources Action International) pursued various strategies in support of indigenous claims to biological cultural property. Activists attacked bioprospecting from various directions. Some criticized initial royalty agreements that reserved the largest share of profits to the companies that would market bioprospected products. Others criticized the commercialization of species, such as kava, arguing that these plants had sacred and ritual purposes that the marketplace would only pollute.¹⁶

To regulate bioprospecting and combat biopiracy, some have turned to language that was first introduced in the 1994 World Trade Organization (WTO) agreement, Trade-Related Aspects of Intellectual Property Rights (TRIPS). Although article 27.3(b) allows signatories to choose to *exclude* plants and animals (other than microorganisms, nonbiological, and microbiological processes) from patentability, it also permits signatories to choose to protect ownership of plant varieties through patents or through *sui generis* systems of recognizing intellectual property in these. Activists also sought to strengthen international protection of the cultural and/or intellectual property rights that indigenous peoples have in their local flora by calling for ratification of the UN's Draft Declaration of the Rights of Indigenous Peoples. Several draft articles recognize indigenous folks' inalienable rights to land and other resources within their territories, advance concepts of cultural and intellectual property, and call for those wishing to exploit

such cultural property to engage in informed consultation with indigenous peoples and to obtain their “participatory consent.”¹⁷

After much deliberation, on September 13, 2007, the Draft Declaration was passed by the UN General Assembly. A large majority (143) of countries voted in favor, 11 nations abstained, and 4 voted against it: The United States, Canada, Australia, and New Zealand. These four metropolitan nations obviously have complicated political arrangements with their indigenous populations. These also are countries where bioprospectors and corporations have sought to discover, develop, and turn a profit from knowledge that indigenous peoples may well claim.

During the 22 years in which the United Nations deliberated its declaration on the rights of indigenous peoples, the biopirates plundered happily. By 1998 RAFI had determined that patents on kava concoctions already had been taken out in 11 countries including the United Kingdom, Germany, Spain, Poland, Hungary, Japan, China, and the United States.¹⁸ The most infamous of these is a patent that the French cosmetics company L’Oreal obtained in 1995 for using kava-based chemicals to reduce hair loss and promote hair growth.¹⁹ A search of the United States Patent and Trademark Office web site turns up more than 175 patent claims in which kava is somehow involved. Wall Street pirates also piled on, joining industrialists who hoped to profit from kava. A 1998 advisory from American investment advisors The Motley Fool promoted the stock of PureWorld, a kava-extract marketing firm listed on the NASDAQ: “If you think kava leads to a pleasant high, imagine if you had invested in a company that produces the stuff! The craze for the anti-anxiety herb—and some say, sexual stimulant—has so pumped up Pure World’s stock that Viagra’s impact on Pfizer looks rather lame by comparison.”²⁰

Rumors also circulated widely that multinational interests were fast establishing kava plantations outside the Pacific Island region—either in Australia or in one or more Central or South American countries. Dear quotes kava marketer Paul Koether, chairman of PureWorld, who had pondered the possibility of

taking some tubers and experimenting with growing them in South America . . . Vanuatu is a fairly Third World kind of place. It wouldn’t be too hard to get something on a plane and off the islands. Just slip a customs guy a twenty, tell him to take a coffee break—or a kava break . . . The stuff can get out.²¹

Kava researcher Vincent Lebot confirms that kava plantations of Hawaiian stock were in fact established in Guatemala and New Caledonia (and perhaps Australia), but all subsequently failed—their failure also connected to the abrupt collapse of the global kava market.²² Within the kava-growing South Pacific, of course, traditional growers likewise expanded their kava plantings in response to the global kava boom of the 1990s. Small farmers in Hawaii, particularly on the Big Island, for example, increased kava plantings, but much of their crop serves local demand.

PROTECTING KAVA

Unlike cultural property activists and international law drafters, most ni-Vanuatu do not talk explicitly in terms of biopiracy per se. *Paerasi* (piracy) is not yet a common term in Bislama (Vanuatu's national language). There are, however, strong local notions of property attached to particular kin groups and specific places, and these traditional expectations parallel, in significant ways, global formulations of rights to traditional knowledge.²³ In addition, most ni-Vanuatu disputes over kava have concerned rights to produce, sell, and export kava within Vanuatu itself; worries about international kava pirates remain on the horizon. The former director of the National Cultural Centre and current member of Vanuatu's parliament, however, has called for an advisory council to be established that could protect Vanuatu's biodiversity from uncontrolled bioprospectors.²⁴ Other ni-Vanuatu have worried about local rights to produce, sell, and export kava. One leader from Espiritu Santo island, for example, "has said that no outside company or person should have the right to own kava."²⁵ Also on Santo in 2007, the Luganville town municipal environmental officer confiscated liquid kava from a Chinese store owner, stating that "only locals are allowed to operate businesses that involves [sic] kava under the reserve list."²⁶

Global complexities of Vanuatu copyright claims do appear in a different example of piracy concern. Peter Ngwele, of Ambae Island, attempted to register the name "Bali Hai," which he claimed is a female name belonging to his lineage. James Michener wrote the first draft of *Tales of the South Pacific* looking east toward Ambae while stationed on Espiritu Santo during World War II and borrowed, without permission, the identity of a local ancestress to rename that fantastic island, or so Ngwele argued.²⁷ But claims of one individual, or even of his lineage, would no doubt meet local resistance from other Ambae families if not also from Michener's estate and publishers.

Many have argued that sui generis patent systems to counter biopiracy are needed insofar as most existing law recognizes individual and corporate property rather than communal or cultural rights in traditional plant resources, such as kava. And, moreover, patents expire after an established time period, whereas cultural groups may wish to assert their rights to some traditional practice or object in perpetuity. To be sure, activist demands for communal rights to cultural property often evoke sweetly romantic notions of customary property and tenure, for example, "Traditional knowledge is regarded as *common heritage* and not as a commodity to be patented for commercial exploitation . . ."²⁸ These evocations of communal property overlooked fundamental complications within traditional intellectual and cultural property regimes.

The Convention on Biological Diversity, TRIPS, and other international agreements in large part presume the existence of communal entities with common rights with which bioprospectors might negotiate. In actuality, though, prospectors sometimes purposefully have avoided dealing with often nebulous local groups

and, instead, have struck deals with state authorities. Following mostly unsuccessful bioprospecting efforts in Mexico, Hayden notes that plant researchers there dodged around dealing with communities and instead obtained their botanical material in town markets or along public roadsides. She concludes that drug and biotechnology companies have come to realize that they can leave plants with their legal heritage implications back in the jungle and instead prospect for terrestrial and deep sea microbes that are too small for any indigenous farmer or shaman to have claimed.²⁹

Those closer to the ground have documented complicated indigenous property and tenure systems that a simple distinction between individual and communal interests much distorts. Strathern, for example, introducing a collection of anthropological and legal analyses of ownership in Papua New Guinea, explains that

the notion of “communal rights” falls far short of the social realities of Papua New Guinean ideas about the interest of groups such as clans or tribes. The kinds of social procedures to which people resort show a dovetailing of individual and collective expectations socially richer and more complex than “communal” suggests.³⁰

In Vanuatu, likewise, individuals (and their families and lineages) may claim overlapping rights to this or that kava variety, and would deny common cultural heritage. There are also (chiefly) titled versus untitled, and male versus female, claims to use and exchange kava. On the island of Tanna, for example, certain families have the right to consume specially grown and decorated kava *tapuga* at festivals celebrating boys' circumcisions (see Figure 4). Overlapping claims to this sort of kava by scattered families across the island would be difficult to adjudicate. Any sui generis patent system that awarded general rights to kava to all ni-Vanuatu, or to the state, also could spark opposition from individuals, regions, kin-groups, and classes jealous of their particular kava claims. Similarly, many ni-Vanuatu have



FIGURE 4. Kava *tapuga* on Tanna, Vanuatu.

inherited, or themselves discovered, recipes for pharmacological concoctions based on island flora. These are kept partially secret—the secret bits might be ancestral names or incantations that ensure the plant's medical efficacy. Individuals are known for the cures that they command, and clients who are afflicted with one condition or another know who to call on for an appropriate *lif meresin* (leaf medicine). Kava is a common ingredient in folk pharmacological concoctions and many people throughout Vanuatu (and much of the rest of the Pacific) would claim overlapping knowledge of the plant's medical uses.³¹

Presumably, cultural property law might recognize joint, even if different, levels of claim to a plant like kava among members of a community. For example, the University of California at Berkeley has signed an agreement with the government of Samoa to use a gene sequence of Prostratin, a compound extracted from *Homalanthus nutans* (the mamala tree), that has shown some promise against the HIV virus. Although negotiated with the Samoan state (following the WTO TRIPS model that presumes that state bureaucracies will mediate between indigenous communities and global corporations), some royalties will also flow down to villagers “and to the families of healers who first taught ethnobotanist Dr. Paul Alan Cox how to use the plant.”³² It is unclear whether *other* Samoan healers, unknown to Dr. Cox, who might also have knowledge of the plant, will assert their own particular claims should the agreement produce any royalties. Nor is it clear, for that matter, exactly how monies might be divided among those healers who led Dr. Cox to the tree.

Taken either as a network of indigenous communities or as nation state, Vanuatu has strong intellectual property claims to kava. Analysis of the distribution of kava morphotypes and chemotypes suggests that kava was first domesticated in the northern part of the archipelago.³³ Vanuatu's parliament has deliberated mechanisms to protect the country's kava resources from global pirates. A Kava Act (No. 7 of 2002), which kava agronomist Vincent Lebot helped draft, was billeted in 2002, but as of 2009 it has yet to be gazetted and so made into law. Some Port Vila-based kava exporters object to several of the proposed law's provisions, notably section 8 that requires that kava exporters be Vanuatu citizens or companies controlled by citizens.³⁴ Supporters of the bill have offered to remove this prohibition to ensure its passage, but many in Port Vila continue to back this limitation. They point to equally discriminatory U.S. constitutional restrictions that limit the foreign born, such as Arnold Schwarzenegger, from serving as the American president.³⁵

Vanuatu's parliament has also moved to protect more usual sorts of intellectual and cultural property claims, in part responding to international and corporate pressure. It passed in 2000 the Copyright and Related Rights Act, but this, too, has not been gazetted and therefore as yet is unenforceable.³⁶ Should the act become law, however, it would recognize copyright or patents to “indigenous knowledge and expressions.” A person who pirates “expressions of indigenous culture . . . is guilty of an offence punishable on conviction by a fine not exceed-

ing 1,000,000 vatu [US\$8,800] or a term of imprisonment not exceeding one year, or both.”³⁷ Geismar points out that the act would also validate customary mechanisms of enforcing traditional copyrights including sorcery and violence.³⁸

But could Vanuatu’s kava producers put the hex on global kava pirates? Globalization makes local knowledge claims tricky. Just as one community’s rights to its intellectual and cultural property are good only insofar as national legal systems recognize these, a kava patent in one country cannot govern global trade in the plant unless operational international legal structures are instituted. As yet there is no certainty that international agreements such as TRIPS would, in fact, serve as such effective structures.³⁹ Attempts have been made elsewhere to divide cultural property royalties among communities that span several countries. For example, the San Hoodia Benefit Sharing Trust promises to divide royalties derived from obesity treatments based on the appetite-suppressing hoodia plant among indigenous San communities in South Africa, Botswana, Namibia, and Angola.⁴⁰ Chennells, however, says nothing about the mechanisms through which funds received by each national group might be distributed further among families and individuals. At the moment, the Internet is flush with hoodia advertisements, and it is a good guess that little income from such sales of the plant is finding its way back to southern Africa even though, as one such ad notes, “Bushmen have used it for many thousands of years.”⁴¹

Vanuatu’s efforts to maintain local control of kava and forestall pirates must similarly deal with kava’s distribution beyond Vanuatu’s borders. Vanuatu and its citizens are not the only possible claimants to cultural property in kava. Although there is evidence that the plant was first domesticated in northern Vanuatu, it soon spread (perhaps in some earlier phase of biopiracy) to Fiji, much of Polynesia, Pohnpei, Kosrae, and scattered areas of Papua New Guinea and West Papua. Vanuatu lacks the authority or ability to protect access to any but its own kava crop and kava propagation stock, and even some of this already has escaped the country. The University of Hawaii, for example, has maintained an extensive herbarium of kava varieties for some years, many of which originated in Vanuatu.

A few Pacific-wide efforts have emerged to claim kava as a sort of joint oceanic cultural property and to demand royalty payments from marketers and users elsewhere. Attendees at the 1998 South Pacific Forum’s second Kava Symposium established a Pacific Kava Council “to protect the tiny island nations’ intellectual and financial interests regarding kava.”⁴² The Pacific Kava Council hoped to unite the various kava-producing countries and existing national associations such as the Fiji Kava Council. The new regional council also planned to disseminate technical and marketing information to growers; strengthen the hand of kava-producing countries within the global marketplace; and possibly patent kavalactones, chemotypes, and chromotypes. It also eyed staking a claim to the name *kava* itself: “Kava should be patented in a similar way to Coke, so that only

the Pacific Island countries as a group can use the name kava to market their products internationally.”⁴³

In 2002, spurred by the TRIPS call for states to develop their own unique local forms of patent and copyright, the South Pacific Commission sponsored the drafting of the “Model Law for the Protection of Traditional Knowledge and Expressions of Culture.”⁴⁴ This draft law was intended as a model for Pacific Island countries to adapt and adopt to shore up both state and local claims to a variety of knowledge and expressions, including biological heritage items such as kava. The model set forth the notion of *traditional cultural rights* and proposed that anyone seeking to commercialize tradition must obtain prior and informed consent, either from custom owners or from regulatory *cultural authorities* that states would establish.

Neither Model Law (yet to be enacted into law by any Pacific country) nor the Pacific Kava Council noticeably succeeded in rechannelling the kava boom’s global flows to ensure greater benefits to growers and island exporters. In fact, rather than uniting the Pacific’s kava-producing countries, the plant instead featured in a 2005 trade war between Vanuatu and Fiji. Fiji blocked imports of Vanuatu kava in response to Vanuatu’s imposition of import restrictions on Fijian-produced cabin biscuits. Like many small countries with limited local markets, Vanuatu occasionally attempts to protect its nascent industries and manufacturers with tariffs and import restrictions. Alarmed at losing access to Port Vila’s biscuit eaters, Fiji retaliated by blocking kava—one of the few items Vanuatu exports to Fiji in any quantity. (In 2004 Vanuatu imported \$1.5 million worth of biscuits while reportedly exporting some \$3.6 to \$5.0 million worth of kava.) By August 2005 both countries had retreated from this biscuit-kava war. While awaiting Melanesian Spearhead Group mediation, Vanuatu lifted its total biscuit import ban but limited annual imports to 2000 kg and also levied a 50% duty on Fiji biscuits; in response Fiji also lifted its kava ban, but it required that all imported kava be licensed—a new regulation that would apply principally to Vanuatu producers.⁴⁵

Kava piracy narratives became more complicated when, beginning in 2001 and 2002, Germany, France, Japan, Switzerland, the United Kingdom, Australia, Canada, New Zealand, and Singapore banned sales of kava products following scattered reports of liver damage among heavy users. These bans shut down most of kava’s market, far more so than had earlier Australian prohibitions on kava imports. Although Australian health authorities had worried mostly about heavy recreational kava use by Aboriginal residents of Queensland and the Northern Territory, widespread new prohibitions in Europe, Canada, and Asia undercut both the recreational and pharmaceutical marketplaces. Producer efforts to protect kava abruptly changed at the national and regional levels. The pressing problem now was not to safeguard a valuable plant resource from international pirates. It became, instead, imperative to convince users of kava’s safety and to entreat them to buy more of the drug.

PUSHING KAVA

A few bum livers and kava suddenly lost its cachet as a wonder drug, a natural product of tribal wisdom. European Union regulatory bans on kava followed reports of cases of liver toxicity and failure in some users of kava dietary supplements. The plant remained legal in the United States, but the Food and Drug Administration issued an advisory about its possible side effects on the liver, and most U.S.-based kava marketers currently report this in their printed and online sales material. The export market collapsed (from \$6 million a year to \$1.4 million in Fiji, with a similar decline in Vanuatu). The value of Vanuatu's kava exports had increased notably up until 2002, from 48,000,000 vatu (US\$432,000) in 1995 to 503,000,000 (US\$4,527,000) vatu in 2001.⁴⁶ In 2002 Vanuatu's kava export value began to decline, falling to 230,000,000 vatu (US\$ 2,070,000), and continued to fall over the next few years, although 1,225 tons of kava were exported in 2002.⁴⁷ Producer prices did not return to their late 1990s level of \$100 a kilogram until 2006.⁴⁸

At least one New York City law firm sniffed out possible profits by suing kava marketers. Could kava be the next asbestos or tobacco legal money tree? Kava users were invited to fill out an online evaluation form: "If you have had adverse effects after taking dietary supplements containing kava, you may have a legal claim." The firm's web site enumerated kava's perils: liver damage and failure; mental confusion; discoloration of the skin, hair, nails, or eyes; pupil dilation and difficulty focusing; loss of balance; diarrhea; abdominal pain, nausea, and/or vomiting; deep sedation and/or coma; hepatitis; cirrhosis; and "other trouble symptoms."⁴⁹

Some blamed the effects of biopiracy here, too, suggesting that devious kava marketing companies had added dangerous chemicals to their kava concoctions that caused subsequent liver damage in users.⁵⁰ Others accused greedy Pacific kava exporters of selling dangerous kava basal stem shavings, or even *Piper aduncum* (spiked pepper or false kava), to the hungry world market to cunningly profit from rising prices for bulk dried kava root. And some suggest that the pharmaceutical industry itself came to encourage kava bans after suffering growing and alarming losses on sales of patented benzodiazepines like Prozac and Valium to European consumers who had instead turned to natural kava. If this conspiracy theory is even slightly correct, kava presents a unique case where the pirate booty proved too hot to handle insofar as it came to displace more profitable patent drugs in global pharmacies.

Back in Fiji in 2004, desperate kava producers formed a new organization, the International Kava Executive Council (IKEC).⁵¹ Although the previous regional body, 1998's Pacific Kava Council, was instituted to protect the Pacific's intellectual property rights to its kava resources, 6 years later some of the same parties organized the IKEC better to sell kava. Specifically, the IKEC would work "to remove the current bans and restrictions on kava and its derivatives in key export markets."⁵² On its web site, the IKEC offers a 305-page report that documents

and refutes supposed cases of kava-caused liver damage in European consumers.⁵³ Although the new council did recommend that stakeholders “should also take the necessary steps of patenting, branding of Pacific Kava, including intellectual property rights” these steps would take place in context of “impending global opportunities for kava and its related value-added products.”⁵⁴

Efforts in the Pacific and in Europe succeeded in convincing the World Health Organization, in 2003, to recommend additional scientific investigation of kava’s medical side effects. In May 2005 Germany at last revoked its kava ban, accepting that the presumed connections between heavy kava use and liver damage were as yet scientifically unfounded. Nevertheless, German health authorities still did not permit kava concoctions back into their market, this time seeking scientific proof that kava products do, in fact, reduce anxiety and help treat stress and depression, as many marketers advertise.⁵⁵ German authorities have invited kava marketers to furnish clinical data about the medical efficacy of specific kava products and will revisit the issue in the future. Should global kava bans one day be lifted, the weight of Pacific concern presumably would shift once again from efforts to market legal kava back to issues of intellectual and cultural property rights. Producer success at reopening global markets may well bring the biopirates back around.

PIRATE-PROOF KAVA

Kava’s economic potential as both a therapeutic and recreational substance, and its spread within the Pacific and beyond, make the plant difficult to police and make cultural and intellectual claims difficult to pursue under the aegis of TRIPS or other international trade structures. However, Vanuatu’s Kava Act of 2002 proposes one shrewd strategy to assure that at least some benefits of the global kava trade might flow back to Vanuatu’s farmers and traders. It hopes to tutor kava users around the globe, educating them that Vanuatu’s kava is *the best in the world*. This campaign has partly succeeded as global kava marketers often sell their product as *100 Pure Vanuatu*. More ambitiously, the Kava Act seeks to play on varietal kava differences that local drinkers much appreciate, but which remain largely unrecognized outside the islands. The act would require Vanuatu’s producers to label the place of origin and the recognized, local variety of each kava plant sold. This would serve to distinguish and then popularize *noble* varieties of kava—those strains with the most powerful, most appreciated recreational affect or with high concentrations of kavalactones.

The model followed here is that of wine and, more recently, coffee and tea. Although piratical corporations might sell this or that kava-based concoction to treat depression (or even low libido or hair loss) without acknowledging kava’s Pacific origins or paying royalties to the island communities that originally developed the drug, these communities could maintain monopolies on the high-prestige kava varieties sold in the recreational marketplace. Alongside kava variety, consumer

appreciation of kava *terroirs* would also benefit island farmers. Anyone might produce a shabby Cabernet Sauvignon in Argentina or Australia, but to enjoy a true Bordeaux one must buy from a French chateau. Similarly, why not drink a fine Pentecost Island kava brew that reflects the special soils of this island and that can grow nowhere else? Or why not enjoy a kava *Pwia*, a noble variety only available from Tanna growers?

In this way, kava would be marketed like champagne, burgundy or port, or perhaps feta, Cheddar, or Gouda cheese. Real champagne, of course, comes only from Champagne, and recreational consumers of kava, likewise, might come to appreciate the Pacific roots of their root. Although the use of such geographic indicators is also currently in dispute among various signatories of the TRIPS agreement, international trade organizations and the European Union increasingly recognize monopolistic rights to such appellations. Californian and Australian producers of so-called sparkling wine, for example, are now reduced to label this wine blandly as *sparkling*. Similarly, should pirate multinationals attempt to market kava as *Pwia*, *Apsan*, or other of Vanuatu's distinct varietal names, island farmers could well challenge them in international legal trade fora. Adding exchange value to kava by situating the plant within its terrain and its customary cultural horizons would make the plant's economic benefits more difficult to biopirate. So if you're buying kava, why not hold out for some Vanuatu kava, the world's best?

ENDNOTES

1. Brown, *Who Owns Native Culture*, 3; Mead and Ratuva, *Pacific Genes and Life*, 12.
2. For example, International Indian Treaty Council, *Promotion and Protection*; Indigenous Peoples' Caucus, *Indigenous Peoples' Settle Declaration*, 2; Dutfield, "Protecting and Revitalising"; and Mead and Ratuva, *Pacific Genes and Life*.
3. See <http://ip.aaas.org/tekindex.nsf/>.
4. Lebot, Merlin, and Lindstrom, *Kava: The Pacific Drug*.
5. Lebot, Merlin, and Lindstrom, *Kava: The Pacific Drug*, 51–52.
6. Brosse, *Histoire des navigations*.
7. Lebot, Merlin and Lindstrom, *Kava: The Pacific Drug*, 195.
8. *Kava: The Pacific Drug*, 198.
9. <http://kavaland.com>
10. Lebot, Merlin and Lindstrom, *Kava: The Pacific Drug*, 60–66.
11. Marshall, "Market Highs: Alcohol," 204–06.
12. "Market Highs: Alcohol," 206.
13. Dear, "The Taste of Money."
14. Blakeney, "The International Framemework of Access"; Hayden, *When Nature Goes Public*, 1–2.
15. *When Nature Goes Public*.
16. Greene, "Indigenous People Incorporated?" 213.
17. Chernela, "The UN and Indigenous," 14.
18. See http://www.etcgroup.org/upload/media_element/26/01/badpats.jpg
19. Forsyth, "Cargo Cults and Intellectual," 200; see also Mead, "The Polynesian 'Excellence' Gene," 41–42.
20. See <http://www.fool.com/DDouble/1998/DDouble980824.htm/>.

21. Dear, "The Taste of Money," np.
22. Vincent Lebot; personal communication.
23. See Geismar, "Reproduction, Creativity, Restriction," for a discussion of the complexities of Vanuatu's traditional copyright and local knowledge systems; see also Lindstrom, *Knowledge and Power*, 77–82.
24. Radio New Zealand, "Vanuatu Centre Seeks Bio-diversity."
25. Sumbe, "Dried Kava, Cultural Product," np.
26. Waiwo, "Chinese Shops Found Selling," np.
27. Binihi, "Ambae Man Claims Bali Hai."
28. Bengwayan, *Intellectual and Cultural Property*, 4 (my emphasis).
29. Coombe, "Protecting Traditional Environment Knowledge"; *When Nature Goes Public*, 235.
30. "Introduction: Rationales of Ownership," 3–4; see also Greene, "Indigenous People Incorporated?"
31. See Lebot, Merlin, and Lindstrom, *Kava: The Pacific Drug*, 112–17.
32. Sanders, *Landmark Agreement between Samoa*.
33. Lebot, Merlin and Lindstrom, *Kava: The Pacific Drug*, 53.
34. Regenvanu, personal communication
35. Lebot, personal communication.
36. Geismar, "Copyright in Context," 438.
37. Geismar, "Copyright in Context," 454 n. 6.
38. "Copyright in Context," 439.
39. Geismar, "Copyright in Context," 30; see Kirsch, "Property Limits: Debates," 37 n. 14.
40. Chennells, "Ethics and Practice"; Wynberg, "Rhetoric, Realism and Benefit;" see also Hayden, *When Nature Goes Public*, 103, on Mayan plant claims that extend across communities.
41. See http://www.healthyou naturally.com/edu/san_bushmen_hoodia.htm.
42. Seneviratne, "South Pacific: All Worked," np.
43. Seneviratne, "South Pacific: All Worked," np.
44. Forsyth, "Cargo Cults and Intellectual," 203.
45. See <http://archivespireport.org/archive/2005/december/12-08-12.htm>.
46. Vanuatu Statistics Office, *External Trade Statistics*; see also Marshall, "Market Highs: Alcohol," 206.
47. Makin, "Keep Vanuatu Commodities Marketing."
48. Pacific Magazine, "Vanuatu: Kava Price Rises."
49. Belluck and Fox, "All about Kava Dangers," np.
50. Palmer, "The Highs and the Lows," 11.
51. See <http://www.ikec.org/>.
52. International Kava Executive Council (IKEC), *Resolutions of IKEC 2004*, 1.
53. Gruenwald, Mueller, and Skrabal, *Kava Report 2003*.
54. International Kava Executive Council (IKEC), *Resolutions of IKEC 2004*, 4.
55. See <http://www.cropwatch.org/kavapr.htm/>.

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