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PUTTING INTELLECTUAL PROPERTY IN ITS PLACE - RIGHTS DISCOURSES, CREATIVE LABOR AND THE EVERYDAY, by **Laura Murray, S. Tina Piper and Kirsty Robertson**. Oxford University Press, 2014. 224 pp. Hardback \$95.⁰⁰

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The recently published interdisciplinary volume **PUTTING INTELLECTUAL PROPERTY IN ITS PLACE** is authored and curated by three well regarded academics working at Canadian universities in the fields of Intellectual Property Law (Tina Piper), English and Cultural Studies (Laura Murray) and Visual Art (Kimberly Robertson). The book is a genuine attempt to engage with the legal, social, and anthropological logic of intellectual property law, and as such it is constitutive of what Anupam Chander and Madhavi Sunder have recently called the “cultural turn” in intellectual property discourse - the opening up of IP law to insights from outside the traditional legal and economic arenas.¹ Recent works by Pottage and Sherman,² Frischmann, Madison, and Strandburg,³ and Biagoli, Woodmansee, and Jaszi⁴ are also part of this emerging trend.

Key debates the book engages with are the critiques of intellectual property law from the subaltern and from indigenous communities. Taking these perspectives on board, the authors go so far as to refer to themselves as “settler scholars” who are genuinely trying to piece together the varying critiques of IP into a coherent whole, with the aim of finding areas of common ground between indigenous critiques of IP and the recent “free culture” movement that has thrived in the West, including the highly successful Free and Open Source Software (FOSS) community (pp. 1-3). Central to the authors' framing of the subject of IP – “putting it in its place” so to speak - is the idea that there is no one correct model of regulating creativity that can, or should, be imposed in every circumstance. In fact, over the course of the book the authors show that innovative practices within communities tend to be contingent on time and place, and thus, they deserve to be investigated from this perspective. As the authors say, “our starting point is that local practices or norms are foundational and persistent, not ancestral or supplemental” (p. 6). Meanwhile, their understanding of “place” refers to the “matrix of relations, enforcement regimes and (mis)information campaigns” that exists within various creative contexts (p. 64).

In Chapter 2, the authors critically discuss the “free culture” movement, noting in particular that it often fails to take account of the plethora of lived experiences that govern every day creativity in many of their surveyed environments. In fact, the authors are left somewhat cold by the free culture movement as a whole, even while recognising the movement's successes and undoubted virtues (p. 17):

One of its strengths is its ability, through emphasis on freedom of expression, to resonate with political positions on both the left and the right. However, it is ultimately limited and limiting in its ability to articulate compelling opposition to neoliberal ideologies and models of cultural life. Individualist in its bones, it is weak in its capacity for theorizing power, ideology or complex collective action and experience.

Turning away from “free culture”, the authors then proceed to investigate a number of creative contexts, including those in the online knitting community (Chapter 3), plant hormone researchers (Chapter 4), journalists (Chapter 5), lawyers and judges (Chapter 6), potters (Chapter 7) and art copyists (Chapter 8). In different ways, all of these investigations shed new light on the way that people individually and collectively engage in creativity, as well as illuminating their motivations for doing so. The authors argue that in all of these creative contexts the property incentives provided by IP are not the primary motivating factors - instead, community needs, professional relationships, and personal desires all play a major role in stimulating acts of creativity.

With respect to journalism in Chapter 5, Laura Murray's focus is on the “exchange practices” of 19th Century newspaper editors in the USA (p. 86). While giving a splendid account of the growth of the daily newspaper as a popular work to be read, Murray also draws out the importance of co-operation and borrowing from a range of different sources, noting that a high level of co-operation occurred even as newspapers began to compete with one another. In fact, she argues that the practices of co-operation are precisely what enabled competition within the burgeoning newspaper market in the United States. As she relates, during the 19th century a newspaper's quality largely depended upon the capacity of its editor to maintain close and respectful “exchange relations” with other newspapers (p. 88). In other words, editors recognised the need to co-operate with one another to obtain news stories so that they could successfully compete within the market. Murray goes on to describe the tensions that occurred between different editors when the accepted practices of borrowing and exchange were violated. For instance, a crucial distinction emerged between “cutting” (borrowing on the newspaper exchange in accordance with the norms of attribution) and “cabbaging” (a kind of plagiarism). In the absence of direct legal norms to fall back on, these “unethical” practices eventually moved editors to keep “hot” news items away from the exchange for as long as possible (p. 99-103).

Chapter 6 is one of the most intriguing chapters in the book, providing an exploration of the practices of copying and reproduction in the context of the legal profession in Canada. Piper's is the first authoritative account I have read on the subject and it is certainly worthwhile. For one thing, the question of how to deal with the copyrights that judges hold over their judicial decisions and documents is a highly important one since it impacts on the availability (or non-availability) of judgments for legal scholars not just in North America, but also in the UK, Germany, and many other jurisdictions. Moreover, as Piper explores, judges are typically seen as the “authors” of their decisions even though the judgments “may include substantial, often unacknowledged, contributions” from clerks and lawyers involved in the case (p. 112). Piper concludes the chapter by taking account of two interesting, and perhaps even contradictory, perspectives that emerge from her examination. The first of these centres on the fact that while those in the legal profession work to interpret and uphold the law, in practice judges and lawyers often “copy liberally from others, often without attribution” (p. 127). In this respect, she notes that “formal law has little purchase on lawyers' own information norms and practices” (pp. 127). The second point Piper identifies is that the way lawyers “manage their special professional knowledge has shaped contemporary copyright law in Canada” (pp. 127). In this regard, Piper argues that the judiciary in Canada tends to apply a “lawyers' view” of copyright in the research context, with activities that serve the public interest seen as particularly valid and worthy of protection.

Although the main focus of the book is on “North American spaces” several of the book's most valuable insights arise from the authors' investigations into the actions of creative communities outside of the West. Most prominently, in the penultimate chapter Kimberly Robertson examines the “Art of the Copy” in Dafen Village, Shenzhen province, China (p. 158). This is the (in)famous site in China where many (often superb) copies of objects and paintings of Western fine art are mass produced in assembly-line fashion, then shipped to customers all over the world. Robertson's analysis illuminates the real labor and skill involved in the creation of these high quality copies, which emerge out of a community where skilled craftsmanship is valued more highly than originality, and notions of “authenticity” in art have little resonance. In this context, IP law plays little role. Indeed, Robertson's analysis demonstrates that copyright has little regard for such copies, given the emphasis within copyright discourse on valuing originality qua intellectual creativity, as opposed to the quality of the “mere” craft and labor involved (p. 168-169).

In the concluding chapter - Chapter 8 - the authors state that while exploring the various contexts “we often could not find anything recognisable as an alternative to IP - incentives and regulation occurred through interpersonal relationships, institutional or governmental structure, or other modes that had nothing to do with rules for ownership or use” (p. 183). Rather than a coherent theme, what emerged was a sense of “disintegration” with respect to the normal rules of IP (p. 183). At the publication stage, the authors even found attributing their own chapters to each other “as author” problematic given the fact that their research projects had

ended up being highly collaborative. Nonetheless, they did manage this in the end, falling back on the authorial model, albeit with caveats.

In fact, it is the attempt to highlight the “disintegrated” state of IP concepts within certain creative contexts that represents the ultimate value of the book: the authors do not end up simply abandoning IP law and recommending the imposition in its place of an overarching alternative model of protection - such as “traditional knowledge”, a concept that scholars have struggled to produce a core accepted definition for, or even a resolute *raison d'être* for, in recent years. Indeed, it is to the author’s credit that they refrain from making overbroad or simplified recommendations, and instead ask the reader to reflect upon what they have rewritten, and to seek to apply their insights in questioning IP’s place in law and in society.

ENDNOTES

¹ A. Chander and M. Sunder, Copyright’s Cultural Turn, 91 *Texas L. Rev.* 1397.

² A. Pottage and B. Sherman, *FIGURES OF INVENTION: A HISTORY OF MODERN PATENT LAW* (Oxford University Press, 2010).

³ B. M. Frischmann, M. J. Madison, and K. J. Strandburg (Eds.), *GOVERNING KNOWLEDGE COMMONS* (Oxford University Press, 2014).

⁴ M. Biagoli, M. Woodmansee and P. Jaszi (Eds.), *MAKING AND UNMAKING INTELLECTUAL PROPERTY* (University of Chicago Press, 2011).

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