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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 Jaszi[4] 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, Shenzen 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 of simplified recommendations, and instead ask the reader to reflect upon what they have written, 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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THE STATE OF COPYRIGHT: THE COMPLEX RELATIONSHIPS OF CULTURAL CREATION IN A GLOBALIZED WORLD, by Debora J. Halbert. Routledge, 2014. 267 pp. Hardback $155.[00]

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In THE STATE OF COPYRIGHT: THE COMPLEX RELATIONSHIPS OF CULTURAL CREATION IN A GLOBALIZED WORLD, Debora Halbert examines the transformation of the (mainly American) state and its relationship to copyright and the culture industries.[1] She tracks a number of trends: the transformation of intellectual property piracy into a national security threat; the increasing, and increasingly problematic, role of the state in policing national culture in an age of globalization; and challenges to the dominance of the culture industries in social life, economic relations, and foreign affairs. Grounded in critical political economy, Halbert's argument also draws on critical and postmodern theory to critique the role of the state in an increasingly commodified and increasingly globalized culture.

Halbert argues that the shape and role of the American state in creating and enforcing copyright law has transformed dramatically since the 1990s. These transformations take a number of forms. First, in Chapter 2, Halbert describes the reconfiguration of the US government bureaucracy to prioritize intellectual property enforcement—a reconfiguration that serves a rising class of intellectual property owners by producing a managed population of consumers for the information age (p. 28). From the establishment of the Under Secretary of Commerce for Intellectual Property heading the United States Patent and Trademark Office (USPTO)(p. 33), to the establishment of intellectual property subdivisions within government departments ranging from the Library of Congress to the State Department and the White House, to the creation of the intellectual property tsar and the establishment of an intellectual property committee at cabinet level (pp. 34-36), the bureaucratic transformation of the American state is far-ranging. With revolving doors between government and industry (p. 44), the newly-configured state stands ready to shore up concentration of ownership in IP-related industries, whether American or foreign-owned (pp. 48-49).

In Chapter 3 Halbert outlines a second transformation: the reconfiguration of the American foreign policy agenda and the framing of intellectual property piracy as a new national security threat. The construction of this discourse frames foreign states and intellectual property infringers as enemies, criminals, and terrorists who engage in cyberattacks and support terrorism. Such framing paves the road to increasing surveillance and to new forms of warfare (pp. 68 and 75). While some states, such as the UK, have resisted this IP-maximalist approach to some degree, many others have adopted it (pp. 78-79), making for possible fractures in the global community between IP-maximalists and opponents of the maximalist agenda (p. 80).

In Chapter 4 Halbert outlines a third transformation: the growing efforts of the American state to achieve legitimacy as the protector and promoter of American culture. Simultaneously, Halbert tracks the shift since the Cold War from state funding to market forces as the mechanism for cultural and economic promotion. Prior to the turn to copyright as a driver of information exchange (p. 88), the American state promoted American culture abroad and emphasized state funding of the arts, both as weapons in the Cold War. The end of the Cold War meant a drastic reduction in funding and an increasing reliance on market forces in the arts (p. 96). The American state, in adopting the neoliberal model of globalization, cultural export, and intellectual property, Halbert argues, has attempted to maintain a form of economic and cultural hegemony while simultaneously undermining the territorial boundaries of the nation state itself (p. 111).

In Chapters 5 and 6 Halbert troubles the connection between the nation state and culture. Drawing, in Chapter 5, on the example of the FIFA 2010 World Cup theme song Waka Waka—This Time for Africa, Halbert points to the fundamental hybridity of culture, and its tendencies to flow outside of national boundaries. The Waka Waka theme song, performed by Columbian pop star Shakira in an event based very much around "the national container", was adapted from a song by the Cameroonian band Golden Sounds, who had adapted it from historical military marches. The words to the song, as well as the music and style, had circulated internationally for decades (pp. 118-119). Noting these international flows and the hypocrisy of cultural conglomerates in often failing to acknowledge their indebtedness to them, Halbert troubles the notion that the global South is one of the greatest sources of piracy. She draws on three case studies of Pablo Picasso's "African" period, the Red Bull energy drink (which is the version of a Thai drink as marketed outside Thailand), and fan fiction to show that Western culture appropriates local and peripheral cultures in ways that cause that appropriation to be hidden and unacknowledged: "The West, especially the United States, tends not to acknowledge its cultural debts, even while demanding that the rest of the world pay it for its originality and commercial cultural products" (p. 137). While the appropriation and sharing of culture happens in many directions, the state, as well as international institutions, insert themselves into cultural flows, "reterritorializing" them, and establishing "rules of the game" that favor corporate entities (p. 136).

In Chapter 6, Halbert brings her discussion of cultural appropriation to bear on indigenous knowledge in particular. Too often, researchers and cultural producers have taken the knowledge and culture of indigenous peoples as "raw material" for knowledge and cultural production of the West (p. 149). Against this appropriation, Halbert notes that indigenous peoples have, in efforts to establish autonomy, made efforts to bypass the nation state, turning directly to systems of international governance to forge international community and to gain visibility. Indigenous peoples' struggles at local, national, and international levels to disrupt traditional ideas about intellectual property offer "a catalyst for others who are also interested in a future for creativity that is more flexible than that advocated by the culture industry" (p. 144)—one that takes place outside of capitalist production. Rather than offering a policy prescription, Halbert outlines three possible paths forward: strategies to close and protect indigenous knowledge and culture, efforts to embrace market forces, and the construction of a new global indigeneity that ignores elusive "authentic" indigenous culture to construct a new sense of indigenous identity.

In Chapter 7 Halbert outlines a manifesto, or a set of policy proposals, regarding user generated content. She describes the history of the term "user-generated content" and the myths that the concept disrupts: the myth that creators create to make money, that culture is produced by professionals, and the myth of the romantic and original artist (p. 183). Halbert lauds the "disintermediated, and thus more authentic, political experience" that YouTube offers (p. 189) and the social and political value of user generated content (p. 188). She proposes that copyright law be loosened to allow "maximum creation of derivative works" (p. 197), the exemption of liability for platforms on which non-commercial derivative works are published (p. 197), penalties for overly aggressive notice and takedown procedures (p. 198), the preservation and protection of user generated content (p. 198), a shorter term of copyright with a renewal period (p. 198), and the expansion of the fair use provisions of American copyright law (p. 199).

Deeply interested in the idea of a non-commodified cultural future, Halbert, in her concluding chapter, draws richly on the Frankfurt School to condemn the culture industry (p. 221) as a form of prison that, mounted on digital wheels, becomes "a surveillance system built into the concept of the state itself" (p. 224). While revolutions, as the Frankfurt School scholars also noted, have failed, resistance is "as much about building something new as it is tearing down the old" (p. 225). User generated content is one remedy. Halbert therefore advocates "self-expression outside the framework of modern consumer culture" to create "a good life—a do it yourself (DIY) life" (p. 225).

While at times, such as in her discussion of indigenous knowledge, Halbert appropriately avoids policy prescriptions, this reader still feels that a broader manifesto or set of policy proposals, beyond the topic of user generated content, might help to address some of the other problems outlined so well in her book. How might the growth of the American intellectual property bureaucracy be transformed or curtailed? How might the American foreign policy agenda, which

frames piracy as a national security threat, be redrawn? What is the appropriate role of the state in promoting national culture?

It would be interesting, also, if Halbert were to expand her discussion of the transformation of the "state of copyright" to encompass the important transformations made not only to the American IP bureaucracy but also the similar transformations of other states, including other major power, middle powers, and countries of the South. The World Intellectual Property Organization (WIPO), sometimes working in conjunction with transnational rights holder groups, has undertaken massive projects and studies to transform the IP institutions of countries of the South, some under the rubric of its "development agenda". These transformations seem as integral to the "state of copyright" as does the transformation of the American state that Halbert describes.

One of the tremendous strengths of Halbert's work is her rich drawing upon the literatures of political science, law, cultural theory, and critical theory. As a result, her work speaks to readers in the field of law, but also to readers in political science, political economy, anthropology, cultural studies, and communication studies. THE STATE OF COPYRIGHT provides great insight into some of the most important questions of our time in the field of culture and creativity.

ENDNOTES

[1] THE STATE OF COPYRIGHT follows Halbert's two previous books, INTELLECTUAL PROPERTY IN THE INFORMATION AGE: THE POLITICS OF EXPANDING PROPERTY RIGHTS (Quorum, 1999) and RESISTING INTELLECTUAL PROPERTY (Routledge, 2005); as well as her co-edited COPY/SOUTH DOSSIER (2006); and her co-EDITED SAGE HANDBOOK ON INTELLECTUAL PROPERTY (Sage, 2013).

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INTELLECTUAL PROPERTY, INDIGENOUS PEOPLE AND THEIR KNOWLEDGE, by Peter Drahos. Cambridge University Press, 2014. 262 pp. Hardback $99.[00]

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INTELLECTUAL PROPERTY, INDIGENOUS PEOPLE AND THEIR KNOWLEDGE provides a critical account of the relationship between intellectual property (IP) and "the non-developmental state" (p. 1). Professor Peter Drahos argues that indigenous peoples' knowledge has been systematically enclosed through pervasive and displacing strategies that have simultaneously excluded indigenous peoples from exploiting their own knowledge, while providing tools to allow others to appropriate that same knowledge. The book's fundamental thesis—anchored in a deep skepticism about the role of IP as an instrument of economic development—is that indigenous people can adapt to, and benefit from, the utilization of their knowledge in Western-style economic markets with simple changes to existing intellectual property regimes associated with the leading developed countries.

The book starts with a compelling frame: the relatively high scores that economically successful states obtain in rankings about innovation, human welfare, political integrity, and economic progress stand in sharp contrast to the conditions of life that indigenous groups in these countries face on a regular basis. What defines this gap, how national and international regimes manage and perpetuate it, and what types of policy tools may facilitate a greater capacity for indigenous people to control and benefit from their own knowledge drives the books' central purpose.[1] Based on detailed case studies in Australia, Professor Drahos analyzes challenges faced by Aboriginal groups who want to use their customary knowledge assets in formal market sectors (pp. 108-127). The case studies are not solely about indigenous knowledge rendered in the form of IP notions of creativity and innovation. Rather, in Chapters 2 and 3 Professor Drahos introduces a thorough and integrated value system that encompasses land, intellect, social order, and political structures among indigenous people. He describes how membership in kinship systems encompass a range and variety of property interests, including instantiations of intangible property that could "fit" under certain intellectual property categories such as trademarks or copyrights.

These early chapters proceed from an internal examination of how indigenous peoples view and understand their world, including the systematic risks posed by the imposition of foreign (and often hostile) legal cultures on their way of life. Professor Drahos tells *their* story, using their words and their worldview of the past, present, and future.

In sharing detailed insights about the power of land ownership and "cosmological connectionism," (pp. 69-94) Professor Drahos, in Chapter 4, makes a compelling case for the economic value derived from indigenous peoples' knowledge and why the official recognition of the value of this knowledge has historically had even greater adverse effects on Aboriginal communities. He demonstrates how, with the development of an international treaty complex recognizing the value of traditional knowledge,[2] states have conferred symbolic value on indigenous knowledge but did not fundamentally alter the extractive systems that devalued and misappropriated it. He argues that "rule ritualism"—representing a change in the law rather than "some deeper attitudinal and behavioral change" (p. 72) towards indigenous knowledge—has "given mythical assurances while denying tangible benefits" to indigenous peoples (p. 72). This Chapter illustrates a pattern also pervasive in intellectual property relations, a pattern in which treaties and text produce governance rules that appeal to economic development as the core objective behind the grant of proprietary rights, but in the end set very few meaningful standards that actually deliver development outcomes for indigenous people (or developing countries). Professor Drahos' analysis offers cautionary lessons about the dangers associated with the recognition of indigenous knowledge, using these Aboriginal experiences in Australia as vivid examples of the costs of a relentless rise of administrative rules to govern knowledge networks on a global scale.

Since the twentieth century, the international community has engaged in ever-increasing levels of symbolic assurance of indigenous people and their knowledge. Professor Drahos in Chapters 5, 6, 7 and 8, offers a sustained analysis of the various ways such assurance has harmed indigenous people and placed ancestral systems of knowledge governance under immense strain (pp. 94-154). He gives examples of government projects, policies, and bureaucratic structures in Australia that ultimately legitimized the subordination of indigenous knowledge systems to formal state control, or otherwise structured economic interests in ways that destabilized the social networks and values central to indigenous populations (pp. 108-127). These chapters also reveal the outline of a regulatory approach that Professor Drahos hopes may accommodate the integrity of indigenous peoples' interests in the control and use of their productive assets, while facilitating opportunities to participate successfully in economic markets governed by intellectual property and other legal orders. His potential solutions are not to disengage or remain in conflict with the IP regime; instead, he emphasizes the importance of simplicity in the rules that are extended to

indigenous knowledge and the establishment of institutions (e.g., national commissions such as the one recommended by the Waitangi Tribunal in New Zealand) to help forge and administer common understandings of indigenous intellectual property (pp. 194-208).

Professor Drahos' arguments point to the system of intellectual property—the rights it confers, the actors involved in it, and the system's rules and values—as a key facilitator of the twin forces of exclusion and enclosure of indigenous peoples' knowledge. He illustrates how the methodical de-valuation of indigenous knowledge provided opportunities to extract that knowledge, leveraging doctrines such as "novelty," "originality," "duration," or the "public domain" as barriers to a participatory discourse about indigenous knowledge as appropriate subject matter for protection under the intellectual property regime or other legal normative orders (pp. 6-11). This knowledge could materialize not only as a quantifiable input in formal scientific endeavors, thereby resulting in significant commercial outcomes for the traditional actors and recipients of intellectual property's solicitude, but also as a key component in aiding contemporary scientific research in tackling various global challenges of our time such as climate change and other symptoms of ecosystem crises.

There are a number of important themes in INTELLECTUAL PROPERTY, INDIGENOUS PEOPLE AND THEIR KNOWLEDGE, at least three of which should be highlighted. First, intellectual property regimes facilitate the non-developmental state and, yet, they are deeply entrenched in the narrative of economic and political successes that have long-been associated with developed countries. Second, there are few *sui generis* regimes that have effectively overcome the extractive tendencies of the intellectual property system. Intellectual property rights play an important role in the means and processes by which indigenous groups are methodically carved out of the economically successful state. This point is well noted in the "IP and development" literature.[3] Professor Drahos advances the critique by showing how the presumed legitimacy of intellectual property regimes makes the adverse consequences on the welfare interests and rights of indigenous groups *okay*, and thus numbs the moral critique that even so-called benign justifications for intellectual property deserve. The power of such symbolic virtue for IP makes it extremely difficult to disgorge the profits or challenge the behavior of economic agents responsible for transforming indigenous peoples' knowledge assets into commercial products for the state. Third, indigenous knowledge and the scientific enterprise may benefit from changes to the intellectual property system, particularly when research is derived from partnerships that allow formal science to engage meaningfully with the methods and practices of indigenous custodians of ancestral knowledge systems.

The consequences of super-imposing intellectual property rules on these native systems are not trivial, whether to the indigenous groups or to the modern state. The stunningly low rates of education, high poverty, maternal death, and other

welfare indicators among indigenous groups living in developed countries are partly a reflection of these consequences. And despite the creative ways indigenous peoples have responded to "the state's extractive order," (p. i) both in regard to intellectual property rights and other legal regimes, Professor Drahos' arguments make clear that the existential risks for indigenous groups remain.

Professor Drahos does not entirely eschew the possibility that intellectual property regimes can be useful for the protection of indigenous peoples' knowledge, and he recommends simple rules for a regulatory system that meaningfully engages with indigenous knowledge systems. Such rules include a veto power for indigenous peoples over negotiations that affect their property interests, the recognition of duty-based notions of stewardship, trusteeship, and guardianship, and a disclosure requirement in intellectual property applications that reveals when indigenous knowledge has been utilized (pp. 94-108).

Professor Drahos prefers these changes to *sui generis* or otherwise "autonomous" legal regimes to protect indigenous knowledge. He argues that such regimes exacerbate and extend the extractive consequences of intellectual property rights (pp. 94-108). Citing India's traditional knowledge digital library as an example, he notes that occasional victories for the knowledge assets of indigenous people are short-lived because these are merely "rule adjustments" that do not undo the propertization impulse of the state (pp. 154-175). At the same time, such rule adjustments fail to advance development among indigenous groups and provide a gloss of legitimacy that hides the structural causes of the non-developmental state of indigenous groups. In this view, creating policy space for indigenous knowledge within contemporary intellectual property regimes may facilitate indigenous economic activity by allowing markets to capture the value of activities within the customary economy. Copyright and trademark rules in particular have already engaged many customary practices, creating branding opportunities and niche markets for "authentic" indigenous stories, arts, crafts, and foods (pp. 175-202).

I am not as sanguine as Professor Drahos about the constructive prospects of accommodation for indigenous people's knowledge within the intellectual property system for at least two reasons. First, the intellectual property system itself has come under serious criticism for failing to promote the quality and scope of innovation for which it was originally designed. Placing indigenous knowledge within this deeply flawed knowledge management system may serve only to entrench the longstanding distrust and devaluation of indigenous knowledge by most developed countries. The risks of gilding the historically dismissive view of indigenous knowledge with the deep discontent shared among many citizens, policymakers, and firms about the modern IP system are too great to be ignored. Second, as Professor Drahos himself observes, changes in the rules and institutions of the intellectual property game will not be enough to forestall extractive effects on indigenous peoples; meaningful efforts to recognize

indigenous people's knowledge — both in its scientific and economic dimensions — requires partnerships between scientists and indigenous peoples. By sharing and observing certain aspects of indigenous knowledge systems, the methodology of formal or "normal" science can be more systematically challenged, assumptions tested and, if necessary, discarded, and new findings gained more quickly (pp. 202-221). For example, in Chapter 2, Professor Drahos describes how the Aboriginal use of fire systems to manage the landscape was thought to be destructive by early colonizers (pp. 31-56). It was more than three decades later before "scientific" study revealed the beneficial effects of such fire systems. Similarly, indigenous knowledge has helped scientists better understand the links between groundwater hydrology and sustainability of wetlands. Indigenous cosmology can help identify plants for specific therapeutic use, aid in understanding the relationship between a combination of plant compounds, and so on (pp. 31-56).

Examples of the contributions of indigenous knowledge to scientific endeavor are numerous; numerous enough to have galvanized a multilateral effort at the World Intellectual Property Organization (WIPO) to create a *sui generis* regime to protect against the misappropriation of Genetic Resources, Traditional Knowledge, and Traditional Cultural Expressions.[4] Professor Drahos gives surprisingly brief treatment to this fifteen-year effort, which now incorporates elements of the proposals he outlines in the latter half of the book. In part, as noted earlier, Professor Drahos does not consider this effort as ideal for the multidimensional value sets embedded in indigenous knowledge systems. But it is important to acknowledge, too, that indigenous peoples are not the only groups with traditional knowledge; local communities have knowledge assets and, in many cases, different needs that also deserve recognition. The complexity of indigenous people's knowledge, the inextricability of their *living* from their *knowing*, and the legacy of highly evolved social, religious, and political ordering cannot be easily captured in a single regime. I agree with Professor Drahos that trying to do so places indigenous institutions, rules, and processes that are so deeply embedded into the cultural fabric of the people at great risk, in part because such a regime necessarily implicates the state apparatus. But many indigenous peoples and local communities have expressed a desire for a multinational regime, and those expressed desires cannot be discounted for fear the process may add a disabling complexity.

While states certainly can (and undoubtedly will) try to limit the potential efficacy of new legal instruments to protect indigenous knowledge, the fact of the normative recognition of indigenous peoples' knowledge, and the formal acknowledgement of alternative knowledge systems, is a positive step in the international legal system. At a minimum, it sets up a counter-regime to the global intellectual property system, in which countries who wish to can implement meaningful instruments of control and place them in the hands of

indigenous peoples to facilitate their control over their productive assets. The genetic resource disclosure of origin requirement, which is now part of the patent law in a number of developed and developing countries,[5] illustrates that changes to the structure of the intellectual property system are not implausible, and that firms who wish to engage in international trade will be subject to disclosure obligations even when countries such as the U.S. or Canada decline to join the Convention on Biological Diversity and the recently ratified Nagoya Protocol. In other words, the dense transnationalism of the intellectual property system makes it impossible for even the most powerful countries to avoid the consequences of normative change occasioned outside the international intellectual property regime, but that are implemented within its gates.

Indigenous peoples' knowledge is not valuable simply because of what it tells us about the past; it is not a historical relic or a romantic tradition. Professor Drahos demonstrates that indigenous knowledge is a living institution with deeply complex values embedded in well-grounded institutional forms and with dense rules governing its interaction with the state. The case studies show an indestructible link between the past, present, and future in the generation, use, and adaptation of knowledge for on-going productive purposes in indigenous communities. Any effort to "make room at the table" for indigenous people's knowledge, and to do so on functionally equivalent grounds, will require adjustments to the rules of the intellectual property system, to its processes and its core assumptions about what constitutes valuable knowledge, how such value is determined and who determines it. In his book, Professor Drahos notes early on that the effects of extractive property regimes go beyond economic loss, physical degradation of territories, or marginalization from the welfare ambit of the state's political obligation to facilitate development of all people. Rather, the battle for the protection of indigenous people's knowledge is "also a fight to preserve or rebuild ancestral systems of decision-making" (p. 10) or in other words, to maintain the right and the space to live who they are as indigenous groups. I should hasten to add that although this may echo strains of a right to self-determination, which is certainly part of the narrative of indigenous peoples under international law,[6] the fight for indigenous knowledge is more than that. It is, most fundamentally, a right for *equality* — the civil and political equality that enables indigenous groups to choose their own values and to hold firm to their self-association as a group.

While Professor Drahos' caution about the dangers of a new legal regime for indigenous knowledge must be well taken, the emergence in WIPO of a new alliance of developed, developing, and indigenous groups committed to an ecologically-oriented intellectual property order that also supports indigenous innovation should not be underestimated. This uncommon partnership at the multilateral level simulates the virtues of partnerships between indigenous peoples and scientists described in Chapter 11, in which a key requirement is to

overcome the "trust gap" between indigenous peoples and the state (pp. 202-221). As this Chapter suggests, the capacity to overcome this trust gap will lie partly in the development of indigenous developmental networks that function both offensively and defensively in the strategic management and oversight of indigenous people's knowledge. At a minimum, such networks can serve as trust arbiters assessing when particular forms of intellectual property and other property arrangements operate in the best interest of indigenous groups.

Professor Drahos' book is a remarkably powerful analysis of the failed promises of formal law to advance the interests of all people, particularly those whose knowledge assets remain so crucial for their and our collective well-being. In the dreaming tradition of some of the indigenous peoples that are the focus of this rich analysis of the knowledge ecology of competing worldviews, he has written a book to be "read, kept, and remembered."

ENDNOTES

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[1] Although the book focuses on indigenous populations as the object of study, many of the insights shared and lessons elicited are applicable to other marginalized populations and, to some extent, developing countries.

[2] This complex regime includes international instruments such as Agenda 21, the Rio Declaration on Environment and Development, the Statement of Forest Principles, the United Nations Framework Convention on Climate Change, and the United Nations Convention on Biological Diversity. *See* Report of the United Nations Conference on the Human Environment, Stockholm, 5-16 June 1972, U.N. Doc. A/Conf.151/26 (Aug. 12, 1992).

[3] See, e.g., Danielle M. Conway, Indigenizing Intellectual Property Law: Customary Law, Legal Pluralism, and the Protection of Indigenous Peoples' Rights, Identity, and Resources, 15 TEX. WESLEYAN L. REV. 207, 207-08 (2009) ("Cultures die, in large measure, because of exploitation of peoples and the knowledge they possess.").

[4] WIPO, INTELLECTUAL PROPERTY AND GENETIC RESOURCES, TRADITIONAL KNOWLEDGE AND TRADITIONAL CULTURAL EXPRESSIONS: AN OVERVIEW 22–30 (2012), *available at* http://www.wipo.int/edocs/pubdocs/en/tk/933/wipo_pub_933.pdf.

[5] See INTERNATIONAL UNION FOR CONSERVATION OF NATURE AND NATURAL RESOURCES ET AL., DISCLOSURE REQUIREMENTS: ENSURING MUTUAL SUPPORTIVENESS BETWEEN THE WTO TRIPS AGREEMENT AND THE CBD 9 (Martha Chouchena-Rojas, Manuel Ruiz Muller, David Vivas & Sebastian Winkler eds., 2005), *available at* http://www.ciel.org/Publications/DisclosureRequirements_Nov2005.pdf.

[6] See Russell A. Miller, Collective Discursive Democracy As the Indigenous Right to Self-Determination, 31 AM. INDIAN L. REV. 341, 341 (2007).

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