

Legal appropriation: taking of and by law

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This special issue is formed of papers presented at, or inspired by, a workshop held in November 2011 on the theme of 'Legal appropriation: taking of and by law' at the London International Development Centre.³ The purpose is to explore the many, often unexpected, ways in which law both enables appropriations and is also itself appropriated.

In order to facilitate broad discussion, the term 'appropriation' was not explicitly defined at the outset of the project. Nonetheless, a generally shared understanding is apparent in the papers collected in this special issue that: appropriation is the setting aside of a resource for a specified use; and that of special interest are cases in which the resource in question belongs, or perhaps ought to belong, at least in part, to another. Any potentially innocent appropriation is of concern when it is done without the informed consent and/or compensation of those present and future generations in whom the resources appear rightly to vest. So, it is also especially important to identify and dwell upon cases in which consent cannot ever be 'informed' and/or the appropriation can never be 'compensated'.

Law – of copyright, planning, environment, investment, land, labour – is a key technology of appropriation. It enables the appropriation of physical resources, such as when Chinese businesses buy up agricultural land in Africa, US soft-drink manufacturers dominate groundwater consumption in South India, and an Olympic park erases allotments in London's East End.⁴ Law enables the appropriation of cultural resources when the stories and songs that are distinctive to the culture of a developing country are used in Hollywood films. It enables the appropriation of biological resources when European companies make pharmaceutical products based on traditional Indian remedies; and of labour when undocumented migrant workers are criminalised and

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4 For links to news reports, images and film footage, see the website in support of the Manor Gardens Allotments Society www.lifeisland.org.

subject to working conditions and poverty wages amounting to coerced or bonded labour. Contributors to this special issue show law enabling the appropriation of an enormous range of material and immaterial things: of land development rights (Xu and Gong) and women's reproductive labour (Kotiswaran); of history, and how such history 'relates to, or is translated into present-day identity' (Macmillan); of the rhetoric of sovereign credit ratings (Williams) and the discourses of Colombian gold-mining (Kane); of subversive (aboriginal and lesbian and gay) identities (Keenan); and of 'local realities' targeted by international aid projects in Afghanistan (Wimpelmann). Several papers document the facilitation by law of the appropriation of social relations – including 'networks and assemblages' in Dover (Bottomley and Moore), communal relations in the Chinese city of Wugang (Xu and Gong), and aboriginal communities in Australia's Northern Territory (Keenan). In these cases, law is seen to enable the (re)creation of insiders and outsiders; and of winners, to whom resources are given, and losers, from whom they are taken away.

Law is itself appropriated when it is reformed to support the interests and values of individuals (foreign or local) at the expense of the interests and values of those present and future generations whose welfare law ought also to serve. Law is stolen when environmental impact assessments are deregulated out of the pathway of investors in India;⁵ when the laws of Iraq are rewritten by its conquerors (in preparation for further appropriations);⁶ when copyright law permits an American film corporation to assert proprietary rights over a depiction of a traditional Balinese dance.⁷ Participants in this special issue note the actual and attempted appropriation of whole justice systems, such as the informal justice sphere in Afghanistan (Wimplemann); and of substantive sections of the legal framework, such as the Indian criminal law regulating sex work, licensing law regulating bar-dancing and contract law regulating surrogacy (Kotiswaran).

Appropriators come in many guises: multinational corporations (Kane), governments (Xu and Gong), credit-rating agencies (Williams) and international aid organisations (Wimpelmann). Nor is there uniformity in the practicalities of appropriation. So, Anne Bottomley and Nathan Moore (in this issue) argue that we should think more of 'processes' – that is, of 'a series of asserting procedures' of appropriating. For appropriation is not only about 'the annexation of some pre-existing "thing", by some pre-existing entity that can subsequently act as "owner"'. It is also about how 'processes of appropriating assemble different agents and agendas, so as to constitute the possibility of both the "owner" and the "property" as such' (365). This processual point is also pursued by Sarah Keenan, who draws on legal geography to present appropriation 'as a spatial process' (299). The processes of appropriation may be quick, slow or of varying speed, continuous or intermittent, uni-directional or recursive: for appropriations are never fixed or complete; reshaping is an ongoing process, as is resistance of law's appropriations (Keenan). As Shimrit Lee shows, such resistance is to be found in some unlikely places – even in the unique methodology of oral history. Furthermore, resistance

5 A Perry-Kessarisi, *Global Business, Local Law: The Indian Legal System as a Communal Resource in Foreign Investment Relations* (Ashgate 2008).

6 See U Mattei and L Nader, 'Constructing the Conditions for Plunder', in *Plunder: When the Rule of Law is Illegal* (Blackwell 2008) ch 5; Open Society Institute, 'III. The History of International Obligations in Iraq' and 'V.A Financial and Economic Reconstruction' in *Iraq in Transition: Post Conflict Challenges and Opportunities* (Open Society Institute and United Nations Foundation 2004) 9–20 and 55–74 <www.soros.org/initiatives/washington/articles_publications/publications/iraq_20041112>; Coalition Provisional Authorities: Regulation 1, Order 39, Order 54 <www.iraqcoalition.org/regulations/>.

7 See P Yu, 'Cultural Relics, Intellectual Property and Intangible Heritage' (2008) 81 *Temple Law Review* 433, 471–73 as cited by Macmillan in this volume.

to appropriation is also itself always open to appropriation: '[a]n oral history methodology does not preclude the danger of appropriation or exploitation of people's stories by researchers and practitioners' (346).

The intention of this brief introduction is to hint at the range of topics and approaches covered in this special issue. We warmly invite you to explore these and many other threads in the articles that follow.

