

# Book Reviews



**Boyle, James.** *Shamans, Software, and Spleens: Law and the Construction of the Information Society.* Cambridge, Mass.; London: Harvard Univ. Pr., 1996 (text ed., 1997). 270p. \$35 cloth (ISBN 0-674-80522-4); \$15.95 alk. paper (ISBN 0-674-80523-2). LC 95-42433.

The central axiom of this book assumes that our contemporary society is tacitly forging new economic and ideological norms to manage the conflicting interests spawned by newly emerging information technologies. Boyle contends that these norms—as reflected in American legal thought, judicial decisions, and public policy—chart a course headed in the wrong direction. Specifically, “. . . it leads us to have *too many* intellectual property rights, to confer them on the *wrong people*, and dramatically to undervalue the interests of both the *sources of* and the *audiences for* the information we commodify” [emphasis in original]. The discourse is thoroughly academic but in a rhetorical, not an empirical, sense. It has far more to do with scholarly debate over public policy than social theory.

The first two chapters provide orientation to the concept of the emerging “information society.” The conceptual framework unfolds in three brief chapters on problematic areas of capitalist theory, namely, public and private facets of social life, free versus restricted flow of information in the marketplace, and conceptual difficulties in the definition of property. Surprisingly, no formal discussion of method occurs in the early part of this book but, rather, is intentionally presented as an “Afterword” in the first appendix.

Next, Boyle analyzes four puzzling examples of legal explanation: copyright, blackmail, insider trading, and a

judicial opinion concerning a biogenetic patent. The common denominator among these four cases involves commercial exploitation (commodification) of some sort of “information,” including electronic and genetic instructions. The first and last, of course, embody the central policy issue of this work—the allocation of intellectual property rights. The other two areas concern pernicious secrets, which illuminate the structure of legal thought on the exploitation of information for commercial gain.

Boyle’s analysis of the California Supreme Court case of *Moore v. The Regents of the University of California* serves to confirm most of the irrational aspects of Western intellectual property doctrine unmasked in previous chapters. Moore sued to block a lucrative patent for genetically engineered cells derived from the plaintiff’s own tissues during an experimental treatment that cured him of leukemia. The court upheld Moore’s claim that his physicians had withheld knowledge of their patent intentions in securing his consent to the experimental procedures. However, it also upheld the university’s patent against Moore’s argument that he owned the tissues (and genetic instructions) from which the patented cells were created. Boyle contends that the majority opinion appears disjointed, inconsistent, and confused, but not necessarily incompetent. The underlying legal doctrine itself embraces incompatible ideas about rights in property, conflicting values about public and private knowledge, and artificial distinctions among natural and individual creations.

The latter-day expansion of intellectual property protection at the expense

of the "public domain" is examined by Boyle. Examples include U.S. diplomatic efforts to combat international copyright "piracy," commercial "prospecting" in the cultural property of third-world peoples, decisions limiting the original "fair use" exceptions to copyright, extension of patents to include computer software, and proposed legislation restricting personal disposition of information distributed via the Internet. He also addresses the moral abuses made possible by the expansive legal rights to intellectual property. Current enforcement of trademark protection for common words or phrases and copyright protection against distortions of original works by derivatives already abet "censorship"; the ownership provisions of patent law eventually may lead to "enslavement" of advanced biosynthetic creatures or sentient electronic devices.

The last chapter raises and rebuts hypothetical objections to preceding analytical arguments and proposes new policy measures to help shape a more wholesome information society. Boyle advocates more complex and differentiated policies governing intellectual property. He would enlarge the scope of "fair use" exemptions, redistribute proceeds from entitlement more broadly, and shelter cultural heritage from commercial expropriation. He specifically recommends reduced copyright protection (period and extent), regulated compensation for software development, taxes on pharmaceutical patents derived from exotic cultures (to benefit the people and habitats of origin), legal recourse to invalidate patents that prove to overcompensate, and routine GAO audits to identify monopolies that are more lucrative than necessary to sustain innovation.

Boyle concludes with a presentation of the three dimensions of the information trajectory he imagines our society to be following. He foresees increasing

social stratification (from differential access to information), decreasing access to pertinent data (in the flood of available information), and increasing conflict between personal privacy and public disclosure (with the increasing capacity to track and correlate electronic transactions).

Boyle's strategy of combining all manner of "information" into the same sort of commodity may be advantageous for rhetorical argument but is disastrous for empirical consideration. Particularly onerous is the absence of a clear distinction between production of innovations (novel ideas) and production of redundant derivatives (consumer goods). Furthermore, the discussion of "information economics" is woefully inadequate to support Boyle's dismissal of free-market economic theory. In fact, the economics literature on patents generally regards motivation for research behavior (sometimes yielding new discoveries) to be complex; patents account for only a fraction of incentive. Conversely, motivation for keeping mum about new discoveries (trade secrets) is simple, doing so provides advantage in the market for derivative consumer goods. Patents theoretically encourage public disclosure of novel information in exchange for a limited monopoly (fair or excessive) on specific product designs. Exclusive of adequate patents, free markets would tend to overproduce redundancy and underproduce novelty precisely because trade secrecy impedes the free flow of ideas from which subsequent innovations derive.

Finally, this book is a difficult read. The prose is turgid, the vocabulary and grammar impeccable beyond the requirements of proffered insights. One quarter of the book's substantive text lies within its appendixes and endnotes. The notes harbor far more content than simple bibliographic citations and may individually exceed a full page. In the

context of such complexity, the index provides insufficient subject guidance. In short, this work is an indirect and convoluted read, not recommended for a day at the beach.—*Albert F. Bartovics, Harvard Business School, Boston.*

***Documenting Cultural Diversity in the Resurgent American South: Collectors, Collecting, and Collections.*** Eds. Margaret R. Dittmore and Fred J. Hay. Chicago: ACRL, 1997. 122p. \$21 alk. paper (\$17.50 ACRL members) (ISBN 0-8389-7897-5). LC 97-3357.

How does one know the past? Beyond that, how do individuals or groups rephrase and shape changing identities, particularly when those individuals or groups have been, to greater or lesser extents, marginalized? Political documents, journalistic records, personal journals, and letters have informed the written records exemplified by our libraries' holdings of mainstream history books, thereby positing histories as understood by the more educated, and politically and economically powerful, elements of society. Groups such as Louisiana's Cajuns, or Isleños, or upland South Primitive Baptists make and retain their histories and changing identities differently, through orality and folklife practices. Their changing identities intertwine with the culture and histories of both mainstream and nonmainstream groups in complex ways. Regional mythologies and folklore have been emblematic of the American South probably more than of any other region: When not trivialized or caricatured, Southern folk cultures have been loved nearly to death, as in Cajun cooking or "quaint" mountain music. At times, they have been perceptively recognized as expressive art, and outside observers as well as members of diverse groups within the South have amassed invaluable documentation of indigenous history and folk traditions. How this documentation is to be

preserved, understood, and interpreted is the salient question addressed by folklorists and archivists in this important collection of essays.

Editors Margaret R. Dittmore and Fred J. Hay have selected key papers from two conference programs of the Anthropology and Sociology Section of the ACRL. Part I deals with issues of documentation of southern folk culture through strategies such as film, sound recording of musical traditions, and oral history. Part II focuses on one state, Louisiana, and demonstrates how documentary material can be used to reinforce often beleaguered cultural identities by giving a more authentic and resonant voice to these groups vis-à-vis the greater culture.

The contributors address both practical questions of creating, locating, preserving, indexing, cataloguing, and making available archival and documentary material; and larger issues of interpretation and misinterpretation, advocacy, and interfacing of folklife materials with other materials in reaching fuller understandings of people, history, and cultures. In their illuminating paper, "Talk about Trouble!: Documentation of Virginia Culture," Nancy J. Martin-Perdue and Charles L. Perdue Jr., draw on their long-time study of WPA Federal Writers Project interview material from Virginia in the 1930s and early 1940s. They found these materials to be scattered in numerous locations, usually disorganized, frequently in deteriorating condition. One archivist referred to WPA material in his care as "that JUNK in the basement." Beyond the immediate problems of locating, sorting through, and indexing the material, the Perdues alert us that we must not take this fascinating and rich body of oral history at face value, as it usually represents what they term "negotiated biography"—due to the "unequal relations that existed between the person whose life was narrated and the