

# BOOK REVIEW: *WEAVING INTELLECTUAL PROPERTY POLICY IN SMALL ISLAND DEVELOPING STATES*

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*Book review of Miranda Forsyth and Sue Farran Weaving Intellectual Property Policy in Small Island Developing States (Cambridge, Intersentia, 2015).*

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The impact of intellectual property rights on development has been the subject of scholarly as well as political debate for many decades. The topic also fits within the growing literature on the relationship between intellectual property rights and human rights- many of which directly or indirectly affect development. *Weaving Intellectual Property Policy in Small Island Developing Countries* explores intellectual property policy and law in small island and less and least developed countries. The book offers a guideline on how to "weave" an intellectual property regime "based on both local and international regulatory systems".<sup>1</sup>

The purpose of the book is to identify ways in which intellectual property can make a positive contribution in the context of countries such as small island Pacific states. The book aims to offer solutions for achieving this goal through alternative approaches different from the already available mechanisms. Such approaches would focus on respecting the local context and would be "based on indigenous or local understandings about use, knowledge and transfer of intangible property".<sup>2</sup>

Chapter 1 discusses the effect of a neoliberal development paradigm on intellectual property. In this chapter, the authors argue that to effectively critique the impact of intellectual property on development, the "normative, ontological and epistemological assumptions" that underlie this neoliberal framework need to be questioned.<sup>3</sup> Referencing empirical research in Fiji, Samoa, the Cook Islands and

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1 Miranda Forsyth and Sue Farran *Weaving Intellectual Property Policy in Small Island Developing States* (Intersentia, Cambridge, 2015) at 1.

2 At 16.

3 At 17.

Vanuatu, chapters 2 and 3 highlight the impact of imported global intellectual property regimes on health and education, as indicators of development. Chapter 4 draws on the historical lessons learnt from the regulation of land tenures in the Pacific island countries and contrasts that with the treatment of intangible property in the region. Chapter 5 offers alternative approaches to the development of intellectual property policy through adoption of a wide, localised, and cultural perspective to intellectual property regulation that challenges and distances itself from the universality claims of the global regime. Chapters 6, 7 and 8 examine the potential of the mentioned perspective in the context of three case studies in the Pacific islands. The final chapter provides a number of overarching conclusions based on the arguments that the authors develop throughout the book.

The book belongs to the body of literature that studies the relationship between intellectual property and development. What distinguishes the book from other scholarly work is its focus on small island developing states. According to the authors, the existing literature on the topic tends to focus on the most developed of developing countries such as rapidly growing Asian economies.

Moreover, the book offers empirical evidence on the impact of intellectual property on development in small island countries. The authors conducted 170 interviews with various stakeholders in the Cook Islands, Fiji, Kiribati, Samoa, and Vanuatu between 2011 and 2014 over the course of three years. Through living and conducting research in Pacific island countries, the authors witnessed first-hand the relationship between intellectual property and development that is shaped by factors such as limited state capacity, the inaccessibility of the law for all but a few, and the challenging living conditions of the majority of the population. When discussing the impact of intellectual property law and policy in developing countries, or across the world generally, the authors also rely extensively on studies conducted by other researchers.

While the literature on intellectual property and development mostly focuses on how high levels of intellectual property negatively affect development, *Weaving Intellectual Property Policy* asks the question of whether "any" level of intellectual property can hinder development.<sup>4</sup> The authors recommend a holistic approach to intellectual property and development "within the particular development agenda of individual states".<sup>5</sup>

In order to tackle the issue of intellectual property in small island developing states the authors take a broad view of intellectual property rights that include local

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4 At 144.

5 At 1.

and indigenous knowledge regulation systems in addition to intellectual property legislation and case law. This approach draws upon the work of legal pluralists that focus on what the community considers to have normative force in comparison to what the state authorises. This approach fits these countries because of the often limited reach of state law compared with the actual social practices with regards to knowledge resources. The authors emphasise that social reality, in addition to an economic perspective, needs to be considered when evaluating the effect of existing and new intellectual property regulatory frameworks on development and lives of individuals.

The book highlights the challenges arising as a result of using intellectual property frameworks developed by the global North in the small Pacific island countries where knowledge resources are treated differently and where the Westminster model of governance sits uneasily with custom traditions. In small island countries, the ordinary citizens do not engage with the state and, moreover, the governments are centralised and thus ill-equipped to take into account local concerns when developing intellectual property strategies.

Another problem identified by the authors is the lack of expertise among people in charge of implementing or enforcing intellectual property in small island countries and their reliance on WIPO or technical assistance from the North that foster "a very specific perception about what intellectual property rights are and what they can achieve".<sup>6</sup>

The authors also acknowledge that there is no one intellectual property solution for all the Pacific island countries because of locally varying norms and values.

When providing examples of the negative effects of intellectual property on development in Pacific island countries, the authors mostly focus on education and health. For instance, the authors highlight that large pharmaceutical companies have a role in the high price of medicine due to the patents on them. They also argue that most of resources for research and development are dedicated to development of drugs and treatments for the wealthy thus ignoring many of the illnesses that are common in developing or least developed countries. The book also discusses the indirect impact of copyright on development through its effect on education.

When discussing the difficulties that exist with regards to copyright and development in small island countries, the book refers to the bigger context of the interface of interests of the authors of copyright works and those of the public. The authors place the countries in the region in this bigger context by identifying various

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6 At 37.

interest groups with potentially clashing interests such as the local musicians in Vanuatu, rural students, librarians, or teachers. The authors identify the "historically timid" approach of the small island Pacific countries to copyright flexibilities (limitations and exceptions to copyright) as one of the underlying reasons for the challenges raised by copyright to development in these countries.<sup>7</sup> This is line with the argument that small island developing countries lack the resources and expertise to use the manoeuvring room in the otherwise 'one-size-fits-all' global approach to intellectual property.

The book successfully debunks a number of myths in the existing discourse on intellectual property and development in the context of small island Pacific countries. For instance, chapter 1 points out a number of the shortcomings of intellectual property in protecting traditional knowledge and traditional cultural expressions. The current global intellectual property rights framework is incoherent with some aspects of traditional knowledge, mainly its collective, communal, and timeless creation and protection. Therefore, the authors argue, expansion of intellectual property rights for the sake of traditional knowledge is nonsensical.

The authors skilfully and interestingly use the example of land tenure in a number of Pacific islands to point out the difficulties that arise when dealing with concepts of ownership, individual rights, and registration in the region. The authors draw on the land experience to argue that the interface of customary practices and introduced ones in the social framework of small island developing states should be given due consideration.

*Weaving Intellectual Property Policy in Small Island Developing States* offers helpful insight as to why the current critiques of intellectual property and development is not suitable for these countries. The authors argue that the intellectual property model that the global North has created is ill-suited to the global South (eg heavy burden of joining WTO or joining bilateral and multilateral Free Trade Agreements). The authors identify two causes for expansion of ill-suited intellectual property norms in small island developing countries. The first impetus is the trend that sees these countries entering into Free Trade Agreements in exchange for promised benefits. Second, the authors highlight the ideology that advertises intellectual property as a "power tool for economic growth".<sup>8</sup>

The authors argue that the realpolitik of the engagement of small island Pacific countries in Free Trade Agreement and their adoption and enforcement of

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7 At 92.

8 At 37.

intellectual property regulations is being hidden by the development cloak.<sup>9</sup> They suggest that the discourses surrounding development depoliticise intellectual property by focusing on the need for it in order to commodify knowledge for the sake of development, rather than as a tool for enforcing rights imported from the global North.

Furthermore, the authors argue that the analysis of intellectual property and development is done within a neoliberal framework that is North focused and ignores indigenous or unwritten regulatory framework; and therefore, any existing critique of the impact of intellectual property on development is made within the contours of the neoliberal framework of development and "in forums dominated by actors driving that agenda, such as WIPO, WTO, and other international treaty making bodies".<sup>10</sup>

In order to break free from the limits of the current discourse, chapter 5 of the book provides alternative conceptual frameworks for critiquing the impact of intellectual property on development in small island Pacific countries. To do so, the authors make references to a range of disciplines including post-development, post-colonial, decolonial, critical development, anthropology, socio-legal theory, and human geography. The authors argue that to have intellectual property law that contributes to development in small island countries, there is a need to initially enquire into the pre-existing local systems of knowledge governance. This initial enquiry helps bring into light these systems that are "largely invisible when viewed through a positivist lens".<sup>11</sup>

To counter the effects of current intellectual property frameworks on development in small island Pacific countries, the book advocates "weaving" together state and non-state regulatory mechanisms in line with the social and cultural realities of the region. To explore the application of such pluralistic approaches, the authors use three case studies of sea transport and technology, locally modified branding mechanisms, and regulation of traditional medicinal knowledge in the region.

Due to the complexity of the issue, the book does not offer a silver bullet for addressing the negative effects of the existing international IP framework on development in small island developing states. However, after laying out well supported arguments, the authors make the conclusion that for intellectual property

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9 At 36.

10 At 143.

11 At 45.

rights to make a positive contribution to development in such countries, they need to be "local, nuanced and idiosyncratic".<sup>12</sup>

The book offers invaluable insight into many economic, social, and cultural aspects of the fascinating states that are small island Pacific countries. In the Introduction, the authors promise a fresh perspective on IP and development in small island developing states and a fresh perspective is indeed what the book delivers.

While the book is written with a focus on small island countries in the Pacific, insights of the book can be used by developing and least developed countries particularly in places where the state has a weak presence in dealing with intellectual property issues. Many of the problems that are identified and discussed are not specific to the small island developing countries. Therefore, the book is an impressive and well-focused scholarly work with significant contributions to the ever-growing literature on the impact of intellectual property on development as well as other human rights. *Weaving Intellectual Property Policy* can act as a case study that helps further map the global interface of intellectual property and human rights.<sup>13</sup>

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12 At 276.

13 Laurence Helfer and Graeme Austin *Intellectual Property and Human Rights: Mapping the Global Interface* (Cambridge University Press, 2011).