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In Conversation with **Lawrence Liang**, *Alternative Law Forum*

**LL:** Your work has really been at the cutting edge in terms of the intersection between law and anthropology, intellectual property and anthropology. Could you tell us how you brought these two together, and what the terms mean to you?

**RC:** I come from a background in cultural anthropology, which in those days was called ‘symbolic’ anthropology. When I went to law school, it struck me that the only field of law that I came across where judges and lawyers seemed particularly concerned with issues of cultural meaning was in intellectual property. However, the scholarly literature at the time didn’t seem to address IP as the protection of cultural forms in any way. It was very much an abstract debate about incentives to create, with no attention paid to what was getting created, or the social roles of these creations.

At the same time, I was aware of how my students reacted to the teaching of IP, how excited they got when we were talking about movies we knew, or trademarks they came across in their everyday life. And it occurred to me that these trademarks, these copyright texts, these advertisements, these jingles, everything was protected by IP in very important ways, as part of the public culture, at least of North American society, which did sculpt my purview at the time.

But I was also uncomfortably aware of the beginnings of rumbles about whether or not IP could be used as a way to help Indigenous peoples to protect their cultural innovations. And coming from anthropology, which primarily studies non-Western societies, I thought I’d done something fairly original, which was to think about consumer patterns and Western society as an anthropologist, see them as cultural forms. In addition, I was aware that this intersection between IP and Indigenous peoples was something I would eventually have to explore, given these two backgrounds.

That came about a bit more suddenly than I wanted, because I also knew that I would have to inevitably learn a big field of international law. The TRIPS agreement came about, it became necessary to understand a lot more about trade, in order to understand even domestic IP law. But I did get a phone call from Canada’s Ministry of Industry, which actually administers most domains of property (besides property rights, which is within the Ministry of Heritage). They were trying to find a specialist who knew something about IP because they were having to think about how to implement the Convention of Biological Diversity, a mandate to find a means of protecting traditional knowledge. They said to me, “Well, we’re thinking this isn’t really an IP issue, it is a human rights issue, and we want to explore that, but we can’t find anyone who knows anything about IP, who also knows anything about human rights...”

So I came up to speed on those issues pretty quickly. I think the most basic and fundamental thing that I learned – and I think I was somewhat ashamed to realise, as I was learning this for the first time – was that IP is part of the human rights system. It is not legally, in the larger sense of the term, i.e., how it is positioned globally, a property right at all; it is a cultural right within the larger human rights framework. And when you think about it that way, a whole other series of questions opens up around what cultural policy should attempt to do.

**LL:** Do you find a tension between these two dimensions of your work? On the one hand, it’s the ethnography of the everyday, vis-à-vis consumer culture, and on the other hand, it’s really in terms of your anthropological skills in dealing with IP issues relating to Indigenous people.

**RC:** I do, and I don’t. From a very formalistic perspective, I can see why some people think there is a contradiction or tension there: because if you simply look at the activity involving the

appropriation of cultural forms that are claimed within some kind of an ownership regime, or even a liability regime, then you're saying, "Well, these two activities are the same." But I think that begs a larger question, of how actors are socially situated in the world. The kinds of appropriation I was originally concerned with are the appropriation of those who are excluded from the production of cultural texts through their position as consumers.

There are ways of consuming these corporate texts that are active interventions in the world. And in a mass-mediated environment – of course, things have changed a lot with digital technology – you get spoken to, and it is very difficult to speak back. Forms of appropriation are a particular kind of politics in regard to a particular set of hegemonic texts.

I was interested in thinking about hegemony as something which has to be constructed and reconstructed and maintained, and it is constantly resisted. With respect to Indigenous peoples, I was realising that they are perhaps, in cultural terms, even more disenfranchised than the consumer is, vis-à-vis the corporation. Indigenous peoples, at least in North America, have a history of being represented by others, and very little history of being able to represent themselves. And they are often represented falsely, and represented in stereotypical ways...

Most stereotypes reproduce a skewed understanding of the social positioning of a people. But to have that continually reproduced in the public domain is a reproduction of your social position of being abject, marginalised. These are often very offensive images in US/Canadian culture. The 'squaw' image, the 'lazy Mexican' image... And we have a long history of studies done by civil liberties unions, for instance, which show that these kinds of images are dangerous: they reduce the self-esteem of a people.

I was working on trademarks involving stereotypes of Indian people, used in sports teams – perhaps the most egregious examples. But I was also thinking, since we do have laws designed to protect against consumer confusion, that there's no reason why, at least within commercial fields, Indigenous people should not be able to use those kinds of laws to protect against commercial forms that allegedly depict them, thus leading consumers to believe that these products are made by Indigenous people.

Homi Bhabha talks about the stereotype being both something that you desire as well as something you resist; there is attraction and revulsion at the same time. You see a sort of imaginary version of the Indian being used to market everything, especially with the dawn of New Age culture: certain kinds of spirituality are thought to attend, or certain kinds of 'naturalness', from within the imagery. But the people who seem to benefit most from this normally have no connection to Indigenous people at all. So I thought Indigenous people were between a rock and a hard place... It struck me that there were certain laws implemented, and others that could be expanded, to enable Indigenous people to more fully represent themselves and prevent their misrepresentation by others.

I don't think that this is exactly the same as a corporation wanting to maintain goodwill, because a corporation only gets its goodwill from the way it behaves in public, and the quality of its goods. A lot of the appropriations I was concerned about were not simple parodies – they were often parodies that spoke to the way in which a corporation pulls power in society. I think it is fair to comment upon that. And if the corporation puts its trademark out there, as representing itself, as its corporate presence, I think it is fair, if any corporation wants to use a trademark to do that. But Indian people were not putting these stereotypes out there as representations of themselves.

The other issues have to do with more sacrilegious usages of Indigenous symbolism, which I think raise a separate set of concerns...but they are also concerns which are very differently construed in different jurisdictions.

**LL:** On the question of traditional environmental knowledges, one of the problems in the Indian context is that you encounter the system of property, which creates a set of conflicts, negotiated by modern IP law. In India, the problem has been that instead of thinking out the issue a little more thoroughly, the response has been a greater system of property, even if it has been a *sui generis* form. What has your experience been, in dealing with alternatives to the modern IP regime?

**RC:** I don't come across many Indigenous people who are very interested in an IP regime as a means of protecting traditional knowledge. But I feel that thinking about it as IP, or beginning to articulate it as an IP problem, probably drew much wider attention and much greater public focus on the issue, than it would have otherwise have gathered. I think that's been good. I believe that for many of the world's Indigenous peoples, the ability to claim some kind of rights to traditional knowledge, or some kind of rights to be treated with respect, is just one part of a larger set of claims relating to self-determination. Certainly, rights with respect to cultural heritage have been critical to a larger set of rights that have been negotiated within the United Nations system over the past decade, part of the Draft Declaration of Rights for Indigenous Peoples.

There are of course many interesting and complicated questions with respect to Indigenous identity. Certainly, there is no singular definition of Indigenous peoples that travels globally. But as you well know from the Indian context, these rights are supposed to attach to some peculiar entity known as "local communities" embodying traditional lifestyles. Now that clearly is not a term with any fixed referent, and I think it's one that's subject to various uses. Which communities can represent themselves as "local", and under what conditions? It seems to me that there is an awful lot of activity to suggest that NGOs, for instance, are very interested in helping particular villages, interested in positioning certain communities as "local" and constructing those communities' relationship to knowledge as "traditional".

The charges against such activity that I take most seriously are the ones suggesting that this creates a new set of inequalities – in the sense that perhaps those more marginalised, who might actually have greater and more important knowledge, are less likely to be able to find those kinds of cultural brokers capable of representing them in terms that can make them viable recipients of these new rights, whatever they might be.

I've always been much more in favour of a cultural policy approach, which says that maintaining diversity is important, that we should consider such diversity as a public good. Certainly, in Canada there's a long history of that kind of approach. What I would like to encourage is cross-cultural exchange and the capacity of peoples with certain kinds of knowledges of the environment to be a part and parcel of the more public process of thinking about environmental impact assessment, for example.

Indigenous people would like to be able to keep their languages alive, to be able to teach children in those languages, thus bring the value of their agricultural knowledge into the school system. This would also go a long way towards making people think those languages were valuable, and to make them understand that the traditional knowledge held by their grandparents is also valuable. This would create some intergenerational bonds, which would contribute towards cultural revitalisation. That will happen only if there are benefits, even if these are only in terms of the new employment prospects opened up by that activity.

**LL:** The dominant paradigm in the social sciences in India after the 1970s has been this entire tradition/modernity debate, as configured in the context of the postcolonial. Your work clearly attempts to move beyond that, and avoid the setting of the tradition/modernity debate, especially in terms of the romanticising of the Indigenous community as the eternally fixed, as “the static”. In what ways have you tried to do this?

**RC:** I’m not sure this approach is particularly original to me. I believe that in many ways, those dichotomies are already being overturned, out in the world, in practice. Indigenous people have actually been very effective, in the global lawmaking context; to the extent that they have shown that their knowledge is innovative, it changes with time, it is not static...

This sounds a bit more radical to IP scholars than to human rights scholars, among whom this mode of assertion has been accepted for a long time. Or even to cultural policy scholars. UNICEF has certainly accepted those principles for a long time. Cultural Survival, a major organisation in the US, has propounded those ideas and shown how it is through traditions that one incorporates modernity and modern forms, and that we live in a necessarily hybridised world. But again, I think it was the Subaltern Studies school in India that made these arguments most forcefully a few decades ago. Most recently, you find a very strong statement of it in Dipesh Chakravarty’s book *Provincialising Europe*.

Tradition continues to live on in the ways in which people live modernity, even while the “modern” and its reception have been infused by specific traditions today. The problem is that the traditional knowledge debate came into the legal discussions, and that most legal scholars were completely unaware of the reconstruction of traditions that has gone on.

**LL:** I’m also curious about how you speculate upon the intersection between the different cultures and communities you’ve been working with, and the market. For instance, in the Indian context, in many ways, a lot of the local languages and traditions that we speak of really received a major impetus with the emergence of cassettes. For a long time there was very little state patronage, the regional recording industry had been almost killed off with the state’s setting up of Hindi as the national language, out of a political need to have a lingua franca. The emergence of cassette culture was characterised by this curious phenomenon, where a lot of the traditions would borrow from Bollywood pop tunes, and there was the counter allegation that Bollywood picks up the folk music of a large number of communities without offering any remuneration. A complex dynamic plays itself out in this manner. Where do you see some of these issues in terms of the North American context, in the future?

**RC:** Well, I’ve always thought that both the enforcement of IP and the lack of enforcement of IP are actually productive activities. They give rise to particular kinds of new cultural forms, new forms of identity and community. I have also heard, for example, that the idiom of Bollywood characters forms a kind of lingua franca for subcultures of Senegalese youth. So we are seeing, on the one hand, ways in which the global is localised. But as you mentioned, the other, perhaps surprising, development is how these new technological capacities to distribute cultural texts, and to share them, are in fact revitalising marginalised identities. We have examples of languages that people thought were extinct; surviving speakers of these have come together via the digital, though they’re not physically together any more. Diasporic communities have also been similarly enabled by new technologies; and the fact of technology re-nationalising many groups in this way is also a very interesting phenomenon.

**LL:** A lot of progressive scholarship on IP – I’m talking about the public domain, the big names, Lessig, Boyle, Benkler, etc. – speaks in a particular manner about piracy, claiming piracy can be redeemed through acts of creativity, through the “transformative author” being resurrected. How do you make sense of the political economy aspect, as well as the anthropological, when it comes to understanding piracy that does not necessarily have a transformative author?

**RC:** I’ve always thought that the term “piracy” was not very helpful. It needs to be analytically explored; the etymology would be interesting. The distinction between transformative and non-transformative appropriations is, of course, a legal one in the first instance. And it’s not particularly radical, in the sense that it’s always thought of in terms of whether or not those usages were going to be considered fair use, or not.

**LL:** Lessig would account for a lot of what’s happening in terms of peer-to-peer, through the transformative author argument; and he would dismiss the rest of what’s happening as what he calls “Asian piracy” – a term considered highly objectionable and everything else, but that’s the framing...

**RC:** He actually calls it that...?

**LL:** Yes, in *Free Culture*...

**RC:** “Asian piracy”?

**LL:** Yes, piracy that takes place in Asia.

**RC:** I think, again, that he’s making a safer argument within the American context. With regard to whether those acts of piracy that involve large-scale unauthorised reproduction and distribution should be considered “productive” or not: are you asking an analytical question, a social and cultural question, or a legal question?

**LL:** A combination of all three, actually.

**RC:** As a legal question, I doubt if those acts would ever be considered productive, or acts productive in such a way that they would be overlooked in terms of royalties due to the owners of the intellectual property. From a social and cultural perspective, it’s what is done with these products, and the act of producing these products, that needs to be examined more carefully. But the law is not likely to take great count of this.

It’s very hard to make arguments on expressive grounds alone, particularly outside the US, because the First Amendment simply doesn’t permit. It’s a local ordinance that doesn’t even travel across the border to Canada, for instance. Almost nothing you do with the work is considered a fair dealing with it. And in fact, it’s even less likely to be appreciated when you’ve got a moral rights tradition that prevents forms of appropriation that distort the work to the detriment of the author’s reputation.

All these are situated arguments, made to particular audiences, and they don’t necessarily travel. I believe that the kinds of ways that people I’ve met here are thinking about these issues are in fact so much more sophisticated than the debates we get in North America.

And for that reason, I would stop reading Lessig, and stop feeling insulted by a footnote or an offhand comment made there. Instead, start making the more rigorous arguments on the basis of the practices you see, and the ethnographies of those practices, here. We need stronger policy arguments coming from places like India, that are going to have far greater purchase in the rest of the world than the kinds of arguments we see coming out of the United States.