BOOK REVIEW

ABBE E.L BROWN, *INTELLECTUAL PROPERTY, CLIMATE CHANGE AND TECHNOLOGY: MANAGING NATIONAL LEGAL INTERSECTIONS, RELATIONSHIPS AND CONFLICTS* (EDWARD ELGAR, 2019)

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This book explores the role of intellectual property (IP) law in incentivising the creation of new technologies to mitigate climate change. It is part of a burgeoning literature in this area which includes: *Intellectual Property and Clean Energy. The Paris Agreement and Climate Justice* edited by Matthew Rimmer, Springer, 2018; Wei Zhuang, Intellectual Property Rights and Climate Change: Interpreting the TRIPS Agreement for Environmentally Sound Technologies, Cambridge University Press, 2017; *Patents and Climate Change: There's No Place Like Home,* Michael J. Dochniak, Cambridge, Scholars Publishing, 2017; *Research Handbook on Intellectual Property and Climate Change*, edited by Joshua D. Sarnoff, Edward Elgar, 2016 and Matthew Rimmer. *Intellectual Property and Climate Change. Inventing Clean Technologies*. Edward Elgar, 2011, as well as Abbe E.L. Brown's edited collection *Environmental Technologies, Intellectual Property and Climate Change. Accessing, Obtaining and Protecting*, Edward Elgar, 2013.

Nobel Laureates, Joseph Stiglitz and William Nordhaus have also explored the ways in which research and development and the transfer of clean technologies might address the climate crisis. Stiglitz and his collaborators have argued that 'A substantial recalibration of the international approach to Intellectual Property Rights is required to ensure the advancement of standards of living and well-being of the entire world' to deal with climate change and challenges to public

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health.[1] Nordhaus in his 2018 Economics Nobel Prize Lecture urged 'rapid technological change in the energy sector is essential'.[2]

Innovation has a central role to play in tackling climate change. Article 10 of the Paris Agreement on Climate Change states that '[a]ccelerating, encouraging and enabling innovation is critical for an effective, long-term global response to climate change and promoting economic growth and sustainable development.' The principal objectives of the IP property system are to promote innovation, as well as the transfer and dissemination of technology.[3] IP rights provide economic incentives to develop new solutions, such as climate-friendly technologies, as well as assisting in diffusing innovation to the places of greatest need, through for example, licensing agreements and joint ventures.

The World Intellectual Property Organization (WIPO) launched WIPO GREEN in 2013 in a bid to catalyse and accelerate green technology innovation and its transfer to expand the uptake and use of environmentally friendly technologies in support of the transition to a low-carbon future. WIPO GREEN is a public-private partnership, which seeks to bring together green technology innovators and those seeking green solutions. The WIPO GREEN Strategic Plan for the period 2019 to 2023 identifies as one of its three strategic goals the need 'to support member states to leverage IP and innovation in global efforts to address major policy issues related to climate change, food security and the environment.'[4]

The introductory chapter to Brown's latest book, which is the subject of this review, explores the international legal landscape relating to the intersections between IP and climate change. It commences with a survey of the international instruments dating back to the 1972 Stockholm Declaration of the United Nations Conference on the Human Environment, through the 1992 United Nations Framework Convention on Climate Change, the Kyoto Protocol, 1997, culminating with the 2015 Paris Agreement. The chapter then looks at the linkages between IP and climate change. Interestingly, South Africa in the 2017

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[1] Dean Baker, Arjun Jayadev and Joseph Stiglitz, *Innovation, Intellectual Property and Development: A Better Set of Approaches for the 21st Century*, Columbia Academic Commons, 2019, available at https://academiccommons.columbia.edu/doi/10.7916/d8-xg80-ct59, accessed 28 April 2020.

[2] William Nordhaus, Climate Change: The Ultimate Challenge for Economics, available at https://www.nobelprize.org/prizes/economic-sciences/2018/nordhaus/lecture/, accessed 28 April 2020.

[3] See Article 7 of the World Trade Organization Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS).

[4] See A. Dietterich, 'WIPO GREEN: supporting green innovation and technology transfer', *WIPO Magazine*, March 2020, 17 at 20.

Conference of Parties to the Convention on Biological Diversity urged that 'climate technologies need to flow, without hiding behind Intellectual Property Rights'.[5] South Africa's scepticism about the role which IP might play in promoting technology transfer may well flow from its difficulties in overcoming retroviral patents in securing access to HIV AIDS medicines.[6]

The wider legal environment within which climate change is addressed by a consideration of international conventions dealing with sustainable development and human rights. The author explains at the end of the introductory chapter that the impact of the international legal landscape upon domestic law will be explored through an examination of the situation in the UK. Although this may be modified in the post-Brexit world.

Thus chapter 2 describes the laws and policy frameworks in the UK which are relevant to IP and technology-based responses to climate change and the reduction of greenhouse gas emissions. Chapter 3 looks at the possibilities in the UK for legal tensions in aligning IP, technology and climate change, by examining competing philosophies, legal theories and legislation.

Chapter 4 sets up a number of hypothetical case studies, to be explored in later chapters, which are intended to be a base for the assessment of the extent to which the values and goals of particular fields might be problematic in others. These case studies stem from a scenario in which an Australian company has a patent in the UK for a technology which enables wind farms to be quieter. These case studies purport to exemplify Douglas-Scott's observation that 'contemporary legal space is becoming a space of overlapping jurisdictions, segmented authority and multiple loyalties….'[7] This applies equally to other areas of patenting with contemporary moment, such as access to medicines and food security[8].

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[5] Abbe E.L Brown, *Intellectual Property, Climate Change and Technology: Managing National Legal Intersections, Relationships and Conflicts* (Edward Elgar, 2019) 18.

[6] See T K Mirabile, 'Aids, Africa and Access to Medicines' (2002) 11 *Michigan State University-DCL Journal of International Law* 175; H. Hestermeyer, H *Human Rights and the WTO: The Case of Patents and Access to Medicines,* Oxford, OUP, 2007; R. Roumet, 'Access to Patented Anti – HIV/AIDS Medicines: The South African Experience' [2010] *European Intellectual Property Review* 137; E. George, 'The Human Rights to Health and HIV/AIDS: South Africa and South-South Co-operation to Reframe Global Intellectual Property Principles and Promote Access to Essential Medicines' (2011)18 *Indiana Journal of Global Legal Studies* 168, Z.A. Zainol, A. Latifah, K. Amin, et al, 'Pharmaceutical patents and access to essential medicines in sub-Saharan Africa' (2011) 10 *African Journal of Biotechnology.* 123.

[7] Sionaidh Douglas-Scott, Law After Modernity, Oxford, Hart, 2013, 22.

[8] See M. Blakeney, 'Climate change and gene patents' (2012) 1(2) *Queen Mary Journal of Intellectual Property* 2; Mary Jane Angelo and Anél Du Plessis, *Research Handbook on Climate Change and Agricultural Law,* Cheltenham, UK, Edward Elgar 2017.

Chapter 5 speculates on how UK courts can deal with the legal issues arising from the case studies. This leads on to the consideration in chapter 6 of the new approaches which courts might adopt in dealing with these issues. Chapter 7 argues for new courts and rules of process to deal with climate change issues. This might seem to be an extravagant approach to dealing with the climate change phenomenon, but separate IP courts have been created in countries to deal with the new IP landscape created by the TRIPS Agreement.

Chapter 8 proposes new model clauses to deal with investor-state dispute settlement (ISDS) as a way of accommodating the public-private tensions which characterise the climate change arena.

In the final chapter the author acknowledges the ways which IP rights can facilitate the exploitation of technological solutions to climate change problems and at the same time how IP rules may at the same time act as a constraint upon the resolution of these problems.

In his foreword Professor Matthew Rimmer describes the book as providing a blueprint for future climate action by international institutions, parliaments and courts and in providing inspiration for innovation policy. In seeking to introduce a greater role for IP law in dealing with climate change, the author adopts the words of Richard Collins and Maria Mercedes Albornoz on the dwindling divide between the Public and the Private:

> …taking a strictly public law-inspired perspective we will have good reasons for concern over the accountability, overall coherence and legitimacy of the range of institutions and actors, formal and informal, that characterize contemporary global governance. However, it may be that taking a private law-inspired perspective allows us to be more comfortable with such normative and institutional plural whilst providing a lens through which a more decentred and transparent form of order can be achieved.[9]

[9] Richard Collins and Maria Mercedes Albornoz, 'On the Dwindling Divide between the Public and the Private: The role of Soft Law Instruments in Global Governance' in Veronica Ruiz Bou-Nign, Kasey McCall-Smith and Duncan French (eds) *Linkages and Boundaries in Private and Public International Law*, Oxford, Hart, 2011, 113.