

# The constitution of intellectual property as an academic subject

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*This essay offers a reinterpretation of the constitution of intellectual property as an academic subject by focusing on the work of Thomas Anthony Blanco White (1916–2006). His textbooks were fundamental for the development of ‘intellectual property’ in Britain and the Commonwealth. Not only did they provide the basis for a discipline in the making, their timely publication also helped to connect and, more importantly, constitute a diverse audience of articulated clerks, practitioners and students. This essay traces the making of Blanco’s first booklets and his subsequent rewriting of them, which culminated in the publication of what would become a standard textbook writing technique in British intellectual property in the twentieth century. In explaining the history of these textbooks and their pivotal role for the recognition of intellectual property as an academic subject in the university curriculum, the essay explores the ways in which a distinctive knowledge of and writing about intellectual property emerged in Britain in the post-war years.*

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[Corrections added on 23 June 2017, after first online publication: Updates have been made to footnote 66, and minor typographical errors have been corrected in footnotes 4, 107, 120–122 and 136.]

## INTRODUCTION

Intellectual property is currently popular in the curricula of most university law schools, both at undergraduate and postgraduate levels. There are multiple textbooks devoted to its explication. Yet the emergence of intellectual property as an academic subject in Britain is a relatively recent phenomenon. The current generation of intellectual property scholars considers Bill Cornish’s intellectual property textbook, published in 1981, a seminal text.<sup>1</sup> The book tackled a whole range of intellectual property issues in a

\* Thanks to Henry and Anne Blanco White, Iain Ross, Sir Robin Jacob, Anna McNally, John Call, Fiona Clark, Peter Fisher, David Lobenstein, Donald Vincent, Julian Jeffs, Franceys Allen, Liz Larby, Anthony Kinahan, Lionel Bently, Jane Belford, Chris Rycroft, Dick Greener, Barbara Grandage, Carol Tullo, Kamran Noorani, Dominic Smith, David England, John Maher, Malcolm Langley and Ruth Frendo.

1. L Bently ‘Trade secrets: “intellectual property” but not “property”?’ in HR Howe and J Griffiths (eds) *Concepts of Property in Intellectual Property Law* (Cambridge: Cambridge University Press, 2013) pp 63–67; see also G Dworkin ‘Book review – *Intellectual Property: Patents, Copyright, Trade Marks and Allied Rights*. By W.R. Cornish London: Sweet & Maxwell, 1981’ (1982) 45 MLR 113–115; G Dworkin ‘Unfair competition: is it time for European harmonization?’ in D Vaver and L Bently (eds) *Intellectual Property in the New Millennium: Essays in Honour of William R. Cornish* (Cambridge: Cambridge University Press, 2004) p 175; and L. Bently ‘What is intellectual property?’ (2012) 71 CLJ 501.

single volume. As one of the first intellectual property textbooks specially produced in and for the university,<sup>2</sup> Cornish's book was fundamental, and unique, in bridging the gap between education and profession. His textbook was a tool for the transmission of knowledge about intellectual property law even *before* it was practiced.<sup>3</sup> Yet this turning point, and the constitution of the discipline as a taught subject, cannot be fully understood without taking into consideration the *oeuvre* of Thomas Blanco White, QC (1916–2006). Blanco was a pioneering figure, a practitioner writing for student and lay markets, and thus enabled intellectual property to be incorporated in college and then university syllabuses. Although there were precursors to Blanco, such interventions were somehow intermittent and sporadic. For instance, a barrister from Lincoln's Inn, John Cutler, delivered a series of lectures on passing off in November 1903, at King's College, London, that were published one year later.<sup>4</sup> However, Blanco's work was different and remarkably original precisely because of its recursive amalgamation and repetition and because of its impact on future academics. Blanco's textbooks were also decisive for the adoption of the subject in university syllabuses.

In this sense, Blanco's work can be seen as the forerunner of later comprehensive intellectual property textbooks, not only Cornish (1981), but also Bently and Sherman (2001).<sup>5</sup> Indeed, Cornish was explicit about Blanco's influence: 'My largest debt overall is undoubtedly to Thomas Blanco White, QC. He has done far more than anyone else over the last 30 years to provide British intellectual property law with a worthwhile literature. His highly informative introduction is well-known; so is the perceptive criticism that informs the various texts that he has written or edited'.<sup>6</sup> More specifically, the intellectual property booklets written by Blanco after the Second World War, published in a collection edited by Stevens & Sons, were decisive for the introduction of intellectual property into the education system; the importance of that collection was proclaimed by its bold, premonitory title – *This [Is the] Law*.<sup>7</sup> Over the next three decades, Stevens & Sons published more than two dozen short books within this collection.<sup>8</sup> The value of the collection lay precisely in its serialisation, as it covered disparate fields ranging from family law and industrial injuries to income tax.<sup>9</sup> Since the publishers' aim was to reach 'all who [were] interested in the subject',<sup>10</sup> these tiny (and cheap) books offered information only on basic legal principles. In so doing, they enacted the dream of bringing 'the law to the millions'; as one commentator noted,

2. WR. Cornish *Intellectual Property: Patents, Copyright, Trade Marks and Allied Rights* (London: Sweet & Maxwell, 1981).

3. M Langley 'The Weston Papers: intellectual property law and the origins of the Centre for Commercial Law Studies at Queen Mary, University of London' (2011) 1 *Queen Mary Journal of Intellectual Property*, 2–20.

4. J Cutler, *On Passing Off, or Illegal Substitution of the Goods of One Trader for the Goods of Another Trader* (London: Gay and Bird, 1904). Similarly, Leone Levi's lectures on commercial law at King's College had covered copyright and patents as 'topics'; see L Levi *Manual of the Mercantile Law of Great Britain and Ireland* (London: Smith, Elder & Co. Cornhill, 1845).

5. L Bently and B Sherman, *Intellectual Property Law* (Oxford: Oxford University Press, 2001).

6. Cornish, n 2 above, pp x–xi.

7. (1946) 7 *NILQ* 192.

8. *Stevens' Complete Catalogue* (London: Stevens & Sons, 1950) 59–60 (Thomson & Reuters Archives).

9. CN Beattie, *Income Tax* (London: Stevens & Sons, 1949); see also 'Book review – Copyright by TA Blanco White (Stevens & Sons, 1949)' (1950) 13 *MLR* 277.

10. *Stevens' Complete Catalogue*, n 8 above, p 6.

'This is the age in which the common man must have his share of all treasures even including those within the temple of law'.<sup>11</sup> Ironically, the very fact that they targeted non-specialists made them appealing to students, managers and also prospective lawyers.<sup>12</sup> Perhaps there was no better marketing strategy to attract these readers than to invoke their most alluring and elusive prospect: potential clients.<sup>13</sup> In a highly compartmentalised discipline such as intellectual property, the introduction of the subject in this series was crucial to its development in the coming decades as a subject in universities and polytechnics. By making the law accessible to different audiences, these books were successful in breaking the traditional boundaries between the Bar and the university. As this essay shows, it is possible to trace the way that Blanco's books moved beyond the Temple and began to circulate in higher education settings (especially the emerging polytechnics) in Britain and all over the Commonwealth. As such, these books were embedded in a particular economy of factors that conditioned their writing and publication. Whereas standard historiographies of intellectual property have considered the emergence of legal concepts as a means to understanding the development of the subject, this essay, however, focuses on the different ways in which Blanco's booklets facilitated the constitution of the discipline as an academic endeavour.

## 1. FROM NUTSHELLS TO TEXTBOOKS

### (a) Introducing the law

Overshadowed by the monumental scope of major legal treatises, the importance of 'nutshell' books is often neglected in legal historiography.<sup>14</sup> There is a simple explanation for that scholarly oversight. Legal scholars and practitioners have tended to view these marginal and peripheral books – usually reserved for paralegals, clients and those who 'do not know the law' – with suspicion.<sup>15</sup> Why study these 'tiny books' meant to fit into those ignorant pockets? What is the legal significance of a genre which might be considered the equivalent of today's 'For Dummies' series? If such slim volumes only made it onto lawyers' bookshelves 'surreptitiously',<sup>16</sup> as one scholar suggests, how can we claim that they had a broader effect on the development of intellectual property law? Part of the importance of Blanco's intellectual property 'nutshells' is that they were, indeed, exceptions to the rule. Significantly, they helped to give prestige to the troubled genre and achieved the unimaginable: converting intellectual property pocketbooks into essential reading both for laymen and specialists.<sup>17</sup> Although these books were written primarily for laymen and businessmen, they soon became indispensable for those who wanted to become intellectual property lawyers, who found them useful

11. (1946) 7 NILQ 192.

12. *Law Times* – Trade Marks and the Law of Unfair Competition by Blanco White, This is the Law Series, Stevens & Sons, 1947' *Stevens' Complete Catalogue*, n 8 above, p 63.

13. *Copyright*, This is the Law Series, Stevens & Sons, 1949' *Stevens' Complete Catalogue*, n 8 above, p 63.

14. RA Danner 'Oh the treatise!' (2013) 111 Mich L Rev 821–834.

15. Since the books were 'written primarily for the layman and the business man' (1948) 10 CLJ 168.

16. D Conkle Book 'Review. *Constitutional Federalism in a Nutshell*, 2nd ed. by DE Engdahl' *Faculty Publications*, (1988) Paper 869.

17. Quoting one of these booklets, see R Jacob 'Patents and Pharmaceuticals' (2008) CIPA Journal 711; see also R Jacob, D Alexander and M Fisher *Guidebook to Intellectual Property* (Oxford: Hart Publishing, 2013) p v.

for acquiring knowledge on what were then considered difficult and complex subjects.<sup>18</sup> Such books were particularly appropriate since they offered a paradoxical simplicity in a complex area. The story of how these books came to be written is not quite clear. Blanco was called to the Bar in the 1930s but did not have time to establish his practice before he was called up for war service. After the war, he probably found himself back at the Bar with no clients, no income and competing with well-established barristers.<sup>19</sup> Hence he began teaching introductory evening law courses in a variety of places, such as Morley College,<sup>20</sup> an innovative adult education centre located in Lambeth, London, where his mother, Amber Blanco White [née Amber Reeves] (1887–1981), had been teaching since the 1920s.<sup>21</sup> If the series editor for *This [Is the] Law* had been searching for a suitable person to write a couple of booklets on intellectual property law, Blanco might be considered an ideal candidate. Having read physics at Cambridge, where Benjamin Britten (1913–1976) described him as ‘one of the cleverest boys he [has] ever met’,<sup>22</sup> the course at Morley had made him fully aware of the intricacies of explaining the law to the layman. One could also speculate that Blanco, a barrister of Lincoln’s Inn, saw an opportunity to overcome the prohibition on barristers from engaging in any advertising. The fact is that these cheap texts were circulated far more widely than the usual legal tomes, and with his name on the cover. Nevertheless, it is almost certain that the booklets emerged as a response to pedagogical demands. Blanco seamlessly moved from teaching ‘law’ to non-lawyers at Morley to introducing ‘intellectual property’ to non-specialists. Both challenges were met by highlighting the importance of ‘everyday’ examples and the need to know the audiences beforehand. Blanco’s eagerness to know his audience was clear in a letter he wrote to the principal at Morley College: ‘It would help very much in this if I could know rather precisely what its function would be: what the audience would want to know and from what sort of aspect, and what sort of people you expect them to be’.<sup>23</sup>

In the late 1940s and early 1950s, Blanco started teaching courses in patent and trade mark law at Sir John Cass College<sup>24</sup> and Princeton College of Languages and

18. *Stevens’ Complete Catalogue*, n 8 above, p 63.

19. Interview with Henry Blanco White, Philadelphia, September 2012; see also Stuffgownsmen ‘The Young Barrister’ *The Sunday Times*, 11 January 1953 in ACLE 40/4 (IALS Archives).

20. ‘Law and Everyday Life’ taught by TA Blanco White, Morley College for Working Men and Women, *Syllabus 1946–7*; 6, and ‘Law and Everyday Life’ taught by TA Blanco White, Morley College for Working Men and Women, *Syllabus, 1947–8*, 10 (Morley College Archives).

21. D Richards *Offspring of the Vic: A History of Morley College* (London: Routledge and Kegan, 1958) p 276. See also R Fry, *Maud and Amber: A New Zealand Mother and Daughter and the Women’s Cause, 1865–1981* (Canterbury: Canterbury University Press, 1992) and M. Drabble ‘Amber Reeves (1887–1981)’ in B Passmore (ed.) *Breaking Bounds: Six Newnham Lives* (Cambridge: Newnham College, 2014) pp 41–51.

22. J Evans *Journeying Boy: The Diaries of the Young Benjamin Britten 1928–1938* (London: Faber & Faber, 2009).

23. Blanco White to the principal of Morley College, Eva M. Hubback, 4 August 1946 (Morley College Archives).

24. Beginning in 1947, the course (Patent Law) consisted of eight lectures and was intended to give ‘industrial administrators and executives a working knowledge of the problems of Patents and Registered Design protection’; see Sir John Cass Technical Institute *Prospectus for the Session, 1947/8*, 31 (Metropolitan University Archives). Although Blanco does not appear as a lecturer until 1954–1955, he had already substituted Eric Walker occasionally, as Donald Vincent recalls in his ‘Blanco White. Letters to the Editor’ (2006) *The CIPA Journal* 429; see also ‘Sir John Cass College’ *Minutes of Meeting of the Council*, 19 January 1954 (ITMA Archives).

Commerce in London.<sup>25</sup> These were also evening courses, intended for people who were not lawyers, but were interested in legal matters – described by one commentator as ‘the oldest form of technical, or what we now call further education’.<sup>26</sup> In other words, these colleges, located around the Inns of Law and within the city boundaries, acted as a catalyst for an interest in these subjects (patent, copyright and trade mark law), a student base that required the creation of an introductory literature.<sup>27</sup> Likewise, the two relevant professional bodies, the Institute of Trade Mark Agents (ITMA) and the Chartered Institute of Patent Attorneys (CIPA) identified this need and its surrounding difficulties. While CIPA recognised their endeavours ‘to initiate closer contacts with universities, technical colleges and schools’,<sup>28</sup> ITMA struggled to find a suitable student textbook on trade marks to attract and introduce the field to future agents.<sup>29</sup> It is ironic that the now mighty educational field of intellectual property law in the UK was nurtured by the once humble environment of further education evening classes. That the courses and the booklets were definitely connected is evident when we compare the course syllabuses and the books’ tables of contents.<sup>30</sup> After publishing *The Conflict of Laws in a Nutshell* in 1947,<sup>31</sup> Blanco published three more booklets over the next three years, covering the three areas that are now viewed as the core of intellectual property law: copyright, trade marks and patents.<sup>32</sup> Each contained fewer than a hundred pages – as one reviewer wrote, ‘I do not know of any other book where the manufacturer can obtain this information in such a concise and readable form’<sup>33</sup> – and looked

25. The Patent Law course at Princeton College of Languages and Commerce in London began in 1950, having 24 students on its roll; see *Princeton College of Language and Commerce 1952–1953*, 40 (University of Westminster Archives).

26. PFR Venables *Technical Education* (London: Bell & Sons, 1956) 119. This trend continued in Manchester. In 1957, the Manchester and District Advisory Council for Further Education also arranged a course of five lectures on patents; see LHA Carr and JC Wood *Patents for Engineers* (London: Chapman & Hall, 1959).

27. The Northampton College of Advanced Technology, the predecessor of The City University (London) was also engaged in teaching industrial property and copyright since March 1961; see LA Fairbairn ‘University training in industrial property’ (1976) *The CIPA Journal* 371.

28. E Williamson ‘Twenty years onward’ (1955/1956) *CIPA Transactions* 190, at 197.

29. ‘Textbook of trade marks’, *Minutes of the Meeting of the Council*, Institute of Trade Mark Agents, 20 June, 1950 (ITMA Archives).

30. Compare, for instance ‘Common mistakes in the handling of Trade Marks’ (syllabus) and ‘Pitfalls in Trade Mark Law’ (booklet). (Metropolitan University Archives).

31. TA Blanco White *The Conflict of Laws in a Nutshell* (London, Sweet & Maxwell, 1947). Six years later, Fenton Shea Bresler (1929–2003) took over the job and prepared a second edition based on Blanco’s booklet; see ‘Conflict of laws in a nutshell. By Fenton S. Bresler’ (1953) 11 *CLJ* 512.

32. TA Blanco White *Trade Marks and the Law of Unfair Competition*, (London: Stevens & Sons, 1947); TA Blanco White, *Patents and Registered Designs* (London: Stevens & Sons, 1947); TA Blanco White *Copyright* (London: Stevens & Sons, 1949). These three booklets were revised and published together in a single volume entitled *Industrial Property and Copyright* (London: Stevens & Sons, 1962)

33. *Modern Law Review*, Patents and Registered Designs by Blanco White, This is the Law Series, Stevens & Sons, 1947 *Stevens’ Complete Catalogue*, n 8 above, p 63.

noticeably different from the typical (thick) legal tome.<sup>34</sup> In November 1946, Blanco finished the first of his three intellectual property booklets, *Patents and Registered Designs*,<sup>35</sup> which was published six months later by Stevens & Sons. Almost simultaneously, he published the second booklet, *Trade Marks and Unfair Competition*.<sup>36</sup> Two years later his third and final booklet, *Copyright*, was published.<sup>37</sup> Perhaps the most prominent characteristic of the patent booklet was its attempt to bridge the legal and technical gulfs between the expert and the layman.<sup>38</sup> Instead of trying to close the profession, it opened it up to the uninitiated. Blanco made a huge effort to prevent the technicalities of the law (and science) becoming an obstacle to the untrained reader.<sup>39</sup> The booklet made a strategic decision to eliminate any direct reference to existing legal statutes, to ‘the numbers of the sections of the Patents and Designs Acts’.<sup>40</sup> The smooth character of the text was one of its most interesting stylistic devices, and would be repeated in Blanco’s other two publications as well. All three booklets were thus freed from the direct dependence on specific statutes, enhancing their readability and making the information contained therein useful and interesting even today.<sup>41</sup> Although some readers did not understand this and criticised the book for what they perceived as a shortcoming,<sup>42</sup> the text of each pamphlet was performative, self-sufficient and, in that sense, ground-breaking. Furthermore, such a distinctive departure from orthodoxy facilitated and enabled the possibility of comparison. For instance, one US commentator was struck by how ‘a reading of the books reveals that practically all the more difficult problems in trade-mark, patent, and copyright law with which we are faced in this country equally arise abroad’.<sup>43</sup> Although simplicity and clarity characterised the pamphlets, with a style that one could describe as ‘Edwardian’,<sup>44</sup> the booklets were full

34. Standard practitioners’ books such as *Copinger* (copyright); *Terrell* (patents) and *Kerly* (trade marks) were indeed legal tomes or ‘treatises’ written by practising barristers for practising barristers. They were certainly not introductions to the subject. For a study of this form of legal writing, see B Simpson ‘The rise and fall of the legal treatise: legal principles and the forms of legal literature’ (1981) 48 U Chi L Rev., 632–679. Comparison with the rise of the textbook tradition in other legal disciplines might be instructive here. However, the chance of finding suitable comparative parallels is haunted by the special ‘technical’ features exhibited by patent law. For an interesting study of ‘treatises’, ‘textbooks’ and other literature in criminal law, see L Farmer, *Making the Modern Criminal Law: Criminalization and Civil Order* (Oxford: Oxford University Press, 2016) p 149 and L. Farmer, ‘Of treatises and textbooks: the literature of criminal law in nineteenth century Britain’ in A. Fernandez, and M. Dubber, (eds.) *Law Books in Action: Essays on the Anglo-American Legal Treatise* (Hart Publishing: Oxford, 2012) pp 145–164.

35. Blanco White, n 32 above.

36. Ibid.

37. Ibid; see WJ Brown ‘Book review: *Copyright*. By TA Blanco White (Stevens & Sons, 1949)’ LS Gaz. 303.

38. The historical tension between different kinds of legal and technical expertise embedded in the patent profession is described in KW Swanson ‘The emergence of the professional patent practitioner’ (2009) 50 Technology and Culture 519.

39. More recently, the booklets’ custodians have suggested that this is why ‘there are no footnotes, few case references in the text and little attempt at any detailed exposition’; see Jacob et al., n 17 above, at v.

40. Blanco White, n 32 above, p ix.

41. Jacob et al., n 17 above, 711.

42. A Clark ‘Book review: *Patents, Trade Marks, Copyright and Industrial Designs* by TA Blanco White and R. Jacob (London: Sweet & Maxwell, 3rd edn, 1982)’ (1987) 19 BLJ 86, 87.

43. WJD ‘Book review’ (1952) 1 The American Journal of Comparative Law 302–303.

44. Interview with Sir Robin Jacob, London, October 2011.

of paradoxes, witty comments and interesting reflections. Along with their concision, these booklets shared a common thread: a sharp sense of humour for which Blanco was well-known.<sup>45</sup> Although the booklets were full of witty comments, the best example of this feature was in the announcement of the patent course at the Sir John Cass College, written by Blanco himself. The following epitomised his style: ‘the carrying on of a business in total ignorance of the patent system is about as safe, and about as common, as searching for leaks in gas pipes with a petrol lighter. These lectures are intended first to provide the minimum of knowledge of the system needed for safety, and then go on, and explain how the system (and the analogous system of registration of industrial designs) can be useful commercially instead of a source of possible calamity’.<sup>46</sup> It is to Blanco’s credit that he shared these reflections with the reader. One well-known reviewer, a barrister specialising in patent law, highlighted one of these paradoxes and suggested that Blanco was right in drawing attention to them, for ‘the value of a patent depend[ed] greatly on its not being too important, because in the latter case it is worthwhile for the would-be infringer to spend a lot of money and trouble to prove its invalidity’.<sup>47</sup>

Not only were these books unique in their stylistic simplicity and small size,<sup>48</sup> but the reader was also drawn in by the innovative narrative constructed by Blanco. By showing how threats could come into play before any legal dispute, the importance of patents and designs in commercial strategies was made explicit. Blanco noted, for example, ‘There is another reason for getting applications in early. If rival firms attempt to patent exactly the same thing, the first to apply can prevent the grant of a patent to the second’.<sup>49</sup> Knowledge of the basic features of patent law was thus recommended as a pre-emptive mechanism; Blanco warned readers of the risk of infringement, and offered recommendations to anyone running their own business, advice that would become standard in the decades to come. For example, Blanco suggested that ‘in the case of designs, the *risk* [was] not usually very serious and [could] be easily be avoided by a proper search [...] The *risk* of innocent infringement of patents, however, in any industry where there [was] appreciable technical progress, will usually be a serious one if the new product [was] noticeably different from the old’.<sup>50</sup> The emphasis on awareness of the law was, Blanco said, especially important at a very specific and decisive moment: ‘when a new line of goods is put onto the market’.<sup>51</sup> Following the logic of the legal nod towards commercial decisions, the possibility for practical guidance presented by the tiny books attracted managers and businessmen of all stripes. Looking back at these books twelve years after their publication, Blanco referred to them as ‘a popular outline’,<sup>52</sup> and in fact, there was no better way of describing them. Rather than mystifying the discipline, they went straight to the point. The books aimed for something exceedingly simple and yet deceptively complex: to show how the law

45. His Honour Judge Fysh QC ‘Commemoration Speech on the Life and Death of Thomas Blanco QC’ [2006] RPC 480–481.

46. Sir John Cass College ‘Patents and Industrial Designs Protection – Syllabus 1953/4’ *Hand-bills* (London Metropolitan University Archives).

47. P Meinhardt ‘Book review – *Patents and Registered Designs and Their Exploitation*. By TA Blanco White, London: Stevens & Sons, 1947’ (1948) 11 MLR 366.

48. *Ibid.*

49. Blanco White, n 32 above, p 16.

50. *Ibid.*, p 7 [my emphasis].

51. *Ibid.*, pp vii–viii.

52. Blanco White, n 32 above, p 19.

‘worked’. As Jacob writes, ‘Despite all the changes in IP law over the years, the heart of what the greatest of all IP lawyers, Thomas Blanco White, wrote in the three little pamphlets just after the War remains unchanged – for this book tries not so much to expound the detail of the law (which has changed a lot) but how it actually works’.<sup>53</sup> There are many examples of the innovative ways that these books embraced such logic.<sup>54</sup> For instance, the structure of the patent booklet was particularly ground-breaking. Instead of framing the question of patent law in the typical manner such as ‘what is a patent?’ it began by examining the products that are the end result of patents, reflecting the way that most laymen first encounter the complex issue.<sup>55</sup> It is not that Blanco’s booklet avoided the definition of ‘invention’ or other legal terms;<sup>56</sup> but that all such technical detail was explained not via definition, as such, but rather by example.<sup>57</sup>

### (b) Industrial property and copyright

Central to Blanco’s clarity was the idea of imitation and copying as the unifying theme behind the different branches protecting intangible property.<sup>58</sup> Going for the jugular of what would soon become a central commercial concern, the booklets introduced a remarkably forward-thinking understanding of intellectual property law, one that brings it closer to competition.<sup>59</sup> This framework was enhanced almost a decade later, when the three little books were put together by Stevens & Sons into a single and solid textbook entitled *Industrial Property and Copyright*.<sup>60</sup> Not coincidentally, the term ‘industrial property’ had become a buzzword in both international and domestic legal discourse.<sup>61</sup> However, more interesting than the title was the form of the book. When compared with other law books published at that time,<sup>62</sup> the codifying gesture was distinctive.<sup>63</sup> While the standard intellectual property books were manuals of practice, academic discussions or practitioners’ books, there was arguably no overall introduction to all the subjects simultaneously aimed at different audiences. Blanco’s textbook became a unique

53. Jacob *et al.*, n 17 above, p v [my emphasis].

54. See, for instance ‘Pitfalls in Trade Mark law’ in Blanco White, n 32 above, pp 37–49.

55. ‘There are three forms of legal monopoly that may be available to prevent imitation of a new product’ in Blanco White, n 32 above, p 1.

56. Pottage and Sherman have recently considered the fact that patent lawyers so rarely ask ‘what is the invention?’. They note that ‘[i]nstead of asking the question directly, they are more likely to ask what types of subject matter should be protected, or how the scope of patents should be regulated’; A Pottage and B Sherman *Figures of Invention. A History of Modern Patent Law* (Oxford: Oxford University Press, 2010) p 3.

57. Blanco White, n 32 above, pp 1–2.

58. *Ibid*, p 7.

59. In a similar vein, see also Cornish, n 2 above, p 18.

60. Blanco White, n 32 above, 3–12.

61. See, for instance, GA Bloxam, *Licensing Rights in Technology* (London: Gower Press, 1972) pp 1–3.

62. A non-exhaustive list showing their range might include: P Meinhardt *Inventions, Patents and Monopoly* (London: Stevens & Sons, 1946); LHA Carr *Patents for Engineers* (London: Chapman & Hall, 1959); KE Shelley *Terrell and Shelley on the Law of Patents* (London: Sweet & Maxwell, 1951).

63. ‘Mr H. Saunders: I agree with Mr. Edmunds on the importance of educating undergraduates in basic patent principles. I expressed my personal appreciation of the services of a University professor as expert witness in a recent High Court action by sending him copies of Clifford Lees’ book, *The Inventor and his Patent*, and Blanco White’s *Industrial Property and Copyright*. I would commend this as a way of ‘spreading the gospel’ in ‘Changing attitudes’ (1967/1968) CIPA Transactions 184, 188.



element in the specification of incipient intellectual property courses introduced in the late 1960s and early 1970s, not only in Britain but as far afield as Australia.<sup>64</sup> For it offered a sweeping vista of rights that were becoming important in making intellectual property a distinctive and different area of what was then called business or commercial law. In size and scope, the volume anticipated the intellectual property textbooks that would emerge in the second half of twentieth-century Britain. In the following paragraph written by Cornish (1981), it is possible to appreciate Blanco's influence:

I have, indeed, had three types of reader in mind. First, students in universities and polytechnics [...] Secondly, there are lawyers, business executives and civil servants who come in contact with the field in the course of their careers and need to look at its structure systematically. Thirdly, there are specialists in the subject abroad who are looking for a relatively succinct presentation of United Kingdom law.<sup>65</sup>

Blanco's influence is implicit here in the attempt to address a wide range of audiences simultaneously, something that Blanco had in mind since his time teaching at Morley College. This aspect became the main feature that characterised Cornish's textbook (1981), as well as other intellectual property textbooks published in the late twentieth and early twenty-first centuries such as Bently and Sherman (2001).

### (c) Connecting categories

It is ironic that these later textbooks can be traced back to the work of a barrister. Certainly, Blanco's influence on the textbooks that appeared over the following fifty years can be explained, in part, by personal and professional networks; some of Blanco's pupils would eventually become academics themselves, and some of the members of his chambers were influenced by his work.<sup>66</sup> Far more significant though, just as with the three original booklets, was the remarkable way that Blanco rendered the order of topics when the booklets were amalgamated. Blanco's *Industrial Property and Copyright* (1962) foreshadowed what would become one of the main academic interests in the field: the interrelations between copyright and confidence, patents and designs, trade marks and passing off.<sup>67</sup> As Blanco suggested, 'one of the functions of a book of this sort [was] to show the interrelations between these different subjects, in a way that more specialised works cannot easily do'.<sup>68</sup> The textbook achieved a great

64. 'Seminar (industrial property) course taught by Jim Lahore' Monash University, Faculty of Law, *Student Handbook*, 1970, p 73 (Monash University Archives). Blanco's patent booklet also appeared as prescribed reading in 'Industrial and commercial property – taught by Profs. WL Morison, E Solomon and W Gummow' Faculty of Law, *Handbook*, 1966, pp 65–66 (University of Sydney Archives); 'Law of industrial property' (Australian National University, *Faculty Handbook*, 1971; ANUA143 (ANU Archives)).

65. Cornish, n 2 above, p ix.

66. For instance, Bill Cornish (LSE and Cambridge). It is equally significant to follow Blanco White's influence on the career of some members of his chambers, such as Hugh Laddie or Sir Robin Jacob, who became professors at University College, London. See Cornish, n 2 above, p xi; and D Vaver 'Laddie, Sir Hugh Ian Lang (1946–2008)' in L Goodman (ed) *Oxford Dictionary of National Biography*, 2005–2008 (Oxford: Oxford University Press, 2013) pp 666–668.

67. Following this approach, in 1955 Blanco read a paper at the Institute of Trade Mark Agents entitled 'On the borderline of trade marks: copyright and designs'; see 'Activities of the Institute' *Minutes of the Meeting of the Council*, 18 January 1955 (ITMA Archives).

68. Blanco White, n 32 above, at 5. For a recent overview of the literature interested in these connections, see N Wilkof and S Basheer (eds) *Overlapping Intellectual Property Rights* (Oxford: Oxford University Press, 2012).

deal by directly connecting or opposing a variety of terms and categories. For instance, the textbook laid out the differences between ‘patents’ and ‘designs’, thus allowing readers to judge between them and identify their own preferences.<sup>69</sup> Similarly, it connected ‘imitations’ to ‘remedies’ from the outset.<sup>70</sup> These cardinal connections facilitated a series of productive links.<sup>71</sup> Surely, the focus on ‘imitation’ established a certain order of topics in the discipline that was predominantly provocative since it exposed itself to the mantra that ‘there is no developed concept of unfair competition in English law’.<sup>72</sup> This provocative character was one of the features of a textbook that was once described as ‘pithy, full of deep insight and yet immensely readable’.<sup>73</sup> Blanco’s ironic twists and the spark of his prose appeared everywhere. For instance, no author had ever introduced an intellectual property textbook by raising the law of unintended consequences. In Blanco’s own words the ‘legal rights with which this book is concerned are by no means always used for the purposes that the law supposes them to serve’.<sup>74</sup> The same could be said for the uniqueness of a law textbook that acknowledged how other professions valued intellectual property rights, and how those professions might also be right. Blanco did both. In contrast with typical textbook introductions, which justified or criticised the existence of patent or copyright law, Blanco’s textbook made no apology for its unusual style and omitted all justification whatsoever. More interestingly, instead of criticising the possible incoherence of legal doctrine in its attempt to coincide with emergent commercial and technological practices,<sup>75</sup> it opted for acknowledging the differences of value among professions. For instance, he noted that the value of patents is, to some businesses, ‘the purpose of patents. To others, however, the mere possession of a patent, however rubbishy to the lawyer’s mind, may be of real value for advertising purposes. Others again treat patents merely as cards in complicated games of business politics that no lawyer understands’.<sup>76</sup> The textbook was already aware of the failure of any critique that did not acknowledge the simple fact that lawyers and businessmen think differently. In the late 1960s, the combined textbook gained an additional incarnation. It was incorporated into the *Concise College Texts*, a collection of student textbooks launched by Sweet & Maxwell.<sup>77</sup> More than five decades later, the survival of the main structure of the three original booklets, even after the passage of numerous new statutes and the ‘re-writings’ of the original texts, indicates that Blanco’s approach to intellectual

69. Blanco White, n 32 above, pp 15–21.

70. *Ibid.*, pp 3–12; see also Cornish, n 2 above, pp 31–73.

71. For instance, in relation to enforcement and costs of litigation, see Blanco White, n 32 above, pp 6–7.

72. Clark, n 42 above, at 79, 87

73. J Jeffs ‘Obituary – Thomas Blanco White’ *The Times*, 11 February 2006, 75; see also EP Ellinger ‘Book review: *Industrial Property and Copyright*. By TA Blanco White (London: Sweet & Maxwell, 1962)’ (1963) 5 *Mal Law Rev* 421.

74. Blanco White, n 32 above, at p 3.

75. Clark, n 42, above, at 86–87.

76. Blanco White, n 32 above, pp 3–4.

77. See J Burke and P Allsop ‘Law Publishing Today’ in Sweet & Maxwell (ed) *Then and Now 1799–1974: Commemorating 175 years of Law Bookselling and Publishing* (London: Sweet & Maxwell, 1974) 137, 145; see also A Firth ‘Book review: Blanco White and Jacob, *Patents, Trade Marks, Copyright and Industrial Designs* (London, Sweet & Maxwell, 3rd edn, 1986)’ (1987) 12 *EIPR* 376 [‘As always, the book will make valuable reading for those engaged on a course of study in intellectual property law; the new edition should charm a wider readership’].

property law was remarkably robust.<sup>78</sup> However, the feature that made them truly significant was their unique role in paving the way for intellectual property to be taught in universities in Britain and beyond.<sup>79</sup> For the key element to enable and constitute a growing student audience was the appearance of a popular literature that demystified the esoteric and intimidating character of the law and, in particular, of patent law. Even though Blanco's booklets are still read and enjoyed today, it is possible that Cornish's book superseded them, in so far as it inherited, refined and advanced some of the features already established by Blanco.<sup>80</sup>

## 2. THE ROLE OF THE LONDON SCHOOL OF ECONOMICS

### (a) Institutional failures and successes

In the early 1960s, Blanco began teaching a pioneering course entitled 'Introduction to the Law of Industrial and Intellectual Property' at the LSE,<sup>81</sup> just when Cornish, a graduate from the University of Adelaide (Australia) and the University of Oxford, had been appointed assistant lecturer in the law department.<sup>82</sup> The course was taught in the evenings as an undergraduate option in 1962–1963.<sup>83</sup> Although it only lasted for three weeks and was cancelled due to a lack of students,<sup>84</sup> it was an important milestone since it constituted the first attempt from the LSE to place the subject under its law programme, an initiative to foster a 'neglected area of study' that had been announced in its quinquennial plan in the late 1950s.<sup>85</sup> In fact, the then professor of law at the LSE, Sir Otto Kahn-Freund (1900–1979), observed how the institution was 'anxious to initiate some instruction' on the subject and noted with surprise that 'not one of the law schools in this country has so far provided any teaching in these important matters'.<sup>86</sup> Despite this initial institutional failure to develop an intellectual property option,

**78.** TA Blanco White and R Jacob *Patents, Trade Marks, Copyright and Industrial Designs* (London: Sweet & Maxwell, 1970; 2nd edn, 1978 [with J.D. Davies]; 3rd edn, 1986) and more recently, R Jacob and D Alexander *A Guidebook to Intellectual Property. Patents, Trade Marks, Copyright and Designs* (London: Sweet & Maxwell, 1993); R Jacob, D Alexander and L Lane *A Guidebook to Intellectual Property. Patents, Trade Marks, Copyright and Designs* (London: Sweet & Maxwell, 2003); and Jacob et al, n 17 above.

**79.** For instance, in India, see N Khodie and N Ponnuswami 'A short report on the present status of teaching and research in intellectual property law in India' in *Regional Symposium on Intellectual Property Law Teaching and research in Asia and the Pacific: Beijing, China November 9–13, 1987* (Geneva: WIPO, 1988) pp 263–278; at 274 [*Copyright by Blanco White*] and 276 [*Kerly on Trade Marks by Blanco White*].

**80.** Interview with Chris Rycroft, Oxford, April 2014.

**81.** The London School of Economic and Political Science, *Calendar 1962–63* (London, 1962) at 381–382.

**82.** *Ibid* at 27.

**83.** 'Time-table of courses- LL.B- 1962–1963' p 3; LSE/Unregistered/27/4/5 (LSE Archives).

**84.** H Kidd (LSE Secretary) to Blanco White, 2 November 1962; LSE/Staff File/Blanco White, TA (LSE Archives).

**85.** Sidney Caine (LSE Director) to Kahn-Freund, 21 May 1962; LSE/Staff File/Blanco White, TA (LSE Archives).

**86.** Kahn-Freund to Sidney Caine. 9 May 1962; LSE/Staff File/Blanco White, TA (LSE Archives).

Kahn-Freund told Blanco of his desire not to ‘give up the attempt to establish this subject altogether’.<sup>87</sup> Ironically, the subject was finally introduced at the LSE but just a few years after Kahn-Freund had left it and moved to the University of Oxford.

The definitive and successful attempt to introduce the subject came in 1967, when Cornish drafted a syllabus for a postgraduate course to be taught at the LSE entitled ‘Industrial and Intellectual Property’.<sup>88</sup> Although the structure was similar to the course tried by Blanco five years earlier, the course now proposed was not an undergraduate but an optional postgraduate subject offered by the LSE in an intercollegiate programme (LL.M) from the University of London.<sup>89</sup> This programme, which consisted of almost forty different optional law subjects, had become increasingly popular among international students since 1965, when it began to be run as a one-year course.<sup>90</sup> The proposal to introduce ‘industrial and intellectual property’ as a subject was accepted and the list of recommended reading was approved.<sup>91</sup> However, the only issue that attracted some discussion was, interestingly, the inclusion of the term ‘know-how’ in the syllabus circulated.<sup>92</sup> While the term was finally retained, this minor bureaucratic incident somehow echoes the problems of categorising confidential information under the rubric of intellectual property, an issue recently highlighted by several scholars.<sup>93</sup> Crucially, the course introduced by Cornish considered Blanco’s textbook, *Industrial Property and Copyright*, as the best work to study the subject. And it did so from 1968 to 1981, until Cornish’s textbook was published.<sup>94</sup> This LL.M course was highly significant in the history of British intellectual property because it constituted the first inclusion of the subject in the university curriculum on a permanent basis.<sup>95</sup> In other words, it introduced the subject into the regular (annual) teaching programme of a British university, becoming a template for the intellectual property courses that emerged in the following decades. However, its importance was also derived from other factors. The course occupied a pivotal place for a generation of Australian and British intellectual property scholars who taught it under Cornish’s convenorship or continued the same course after Cornish left the LSE

87. Kahn-Freund to Blanco White, 30 October 1962; LSE/Staff File/Blanco White, TA (LSE Archives).

88. Minutes, Board of Studies of Laws, 24 May 1967, AC8/33/1/7 (University of London Archives).

89. LSE, *Calendar 1968–69* (London 1968) 421. For a brief history of the LL.M programme, see W Twining ‘Laws’ in FML Thompson (ed) *The University of London and the World of Learning, 1836–1986* (London: Continuum-3PL, 1990) pp 108–110.

90. University of London, Institute of Advanced Legal Studies, *Nineteenth Annual Report, 1965–1966*, 20.

91. Minutes, Board of Studies of Laws, 18 October 1967, AC8/33/1/7 (University of London Archives).

92. Minutes, Board of Studies of Laws, 13 December 1967, AC8/33/1/7 (University of London Archives).

93. T Aplin ‘Right to property and trade secrets’ in C Geiger (ed) *Research Handbook on Human Rights and Intellectual Property* (London: Edward Elgar, 2015) pp 421–437; and Bently ‘Trade Secrets’, n 1 above, pp 60–93.

94. In 1980 the course was called ‘Intellectual Property’ and still had Blanco’s textbooks as recommended reading; see LSE *Calendar 1980–81* (London, 1980) 445.

95. D Vaver and L Bently ‘Preface’, n 1 above, p xii.

for the University of Cambridge in the early 1990s.<sup>96</sup> While some scholars, such as Gerald Dworkin, had been former colleagues from the law department at LSE, others such as Mary Vitoria, QC or Sir Robin Jacob were barristers coming directly from Blanco's chambers. In that sense, the postgraduate course established by Cornish served as a hub where scholars and barristers of different jurisdictions met and taught a new generation of students, some of whom ultimately became leading intellectual property scholars.<sup>97</sup>

### (b) Academic enhancement

While the encounter between Blanco and Cornish could be described as one of those happy historical coincidences, it is true that the LSE appeared then as one of the most suitable places for intellectual property to finally enter the university curriculum. Its location, near Lincoln's Inn Fields, was surely one of the crucial elements that enabled barristers such as Blanco to come to teach the subject there in the early 1960s.<sup>98</sup> Its law department, inaugurated in 1895, had grown significantly in number and reputation under the aegis of Kahn-Freund and it incorporated staff from different nationalities who focused on the study of law as a 'social science'.<sup>99</sup> Significantly, the teaching of and the specialisation in commercial law, one of the roots from which intellectual property could be academically conceived, also flourished at the LSE in the 1960s.<sup>100</sup> In retrospect, it is possible to say that if there was a place where 'intellectual property' could succeed in becoming a university subject in Britain it was the LSE. Its law department had developed an alternative tradition, a distinctive liberal approach to law.<sup>101</sup> Furthermore, two specific journals somehow related to the LSE contributed to the academic enhancement of intellectual property in the 1960s, guaranteeing its suitability to enter the university curriculum as a distinct area of law. The first was the *Journal of Business Law*, a law review published by Stevens & Sons and edited by another Anglo-German scholar and LSE graduate, Clive M. Schmitthoff (1903–1990).<sup>102</sup> What made the journal remarkable for the discipline was its explicit

96. Mary Vitoria QC (*LSE Calendar*, 1977–78, pp 408–409); James Lahore (*LSE Calendar*, 1978–79 pp 422–423); Brad Sherman (*LSE Calendar* 1990–91, p 637); Gerald Dworkin (*LSE Calendar*, 1992–93, p 704); David Llewelyn (*LSE Calendar*, 1992–93, p 704); Robin Jacob (*LSE Calendar*, 1995–96, p 729); Anne Barron (*LSE Calendar*, 1995–96, p 729); Lionel Bently (*LSE Calendar*, 1994–95, p 769); see also JH Baker *750 Years of Law at Cambridge* (Cambridge: University of Cambridge, 1996) 15 [mentioning the establishment of the chair in 1993]; *Law 1* (5), (Cambridge University Archives).

97. S Ricketson 'Intellectual property as a field of research and inquiry: Jim Lahore as the pioneer', (2005) *Intellectual Property Forum*, 10.

98. That Houghton Street is 'near the Law Courts' was one of the features often advertised in LSE brochures and handbooks; see for instance, LSE, *Handbook for Undergraduate Studies*, 1964–5, p 3; LSE/Unregistered/27/4/5 (LSE Archives).

99. KW Wedderburn 'Law as a Social Science' (1966) 9 *J Soc'y Pub Tchrs L* 335, at 342.

100. R Cranston 'Praising the professors: commercial law and the LSE' in R Rawlings (ed) *Law, Society, and Economy: Centenary Essays for the London School of Economics and Political Science 1895–1995* (Oxford: Oxford University Press, 1997), 117.

101. W Cornish 'LSE and the Law' *LSE Centenary Review*, December 1994, pp 14–15; LSE/Unregistered/27/4/7 (LSE Archives).

102. J Adams 'Clive M. Schmitthoff (1903–1990)' in J. Beatson and R. Zimmermann (eds) *Jurists Uprooted: German-speaking Émigré Lawyers in Twentieth-century Britain* (Oxford: Oxford University Press, 2004) pp 367–380.

incorporation from the outset of a regular section or ‘department’ with comments on the different branches of intellectual property.<sup>103</sup> Interestingly, the section smoothly moved its coverage from ‘patents, trade marks, designs’ to embrace a more contemporary trinity: ‘patents, trade marks, copyright’, echoing the conceptual development of the core of intellectual property.<sup>104</sup> Blanco became the first editor of that section (1957–1967) and Cornish took over that editorial role after him.<sup>105</sup> The second important law review that facilitated the introduction of intellectual property to a general legal audience was the flagship journal of the law department at the LSE, the *Modern Law Review*, also edited by Stevens & Sons.<sup>106</sup> The generalist journal played a significant role in providing home and recognition to a subject that was attracting greater academic interest, reviewing important books such as Blanco’s publications,<sup>107</sup> publishing interesting articles on the subject and introducing timely comments on intellectual property cases.<sup>108</sup> While this was again nothing ‘new’; the regularity and the openness of the journal towards a subject often accused of being ‘too technical’ and of no great academic interest were highly significant. This even meant that some early courses on intellectual property at the polytechnics began recommending the reading of this journal together with ‘specialist’ sources.<sup>109</sup> Significantly, some intellectual property journals ended up re-printing material already published in the *Review*.<sup>110</sup> In fact, a cursory glance at the articles, case notes and book reviews published in the *Review* throughout the post-war decades indicates a remarkable sensitivity to the discipline. For instance, it is not only that the journal paid a particular attention to new intellectual property statutes and contemporary Committee reports,<sup>111</sup> it is also that it published stimulating specialist articles reviewing, for instance, the forms of intellectual property protection in the Soviet Union and Czechoslovakia, as they then were.<sup>112</sup> Although the receptivity to the possibility of industrial and intellectual property as legitimate subjects of academic inquiry that could attract the interest of a general audience could have been

**103.** The journal began as a quarterly in January 1957 although the publishing agreement was signed a couple of months later; see ‘Agreement between Clive M. Schmitthoff and Stevens & Sons, 15 March 1957’; PP20/CMS/10/18; (Queen Mary University Archives).

**104.** The change took place in [1966] JBL 74–75.

**105.** Schmitthoff’s appointment diary in 1962 shows the connection between him and Blanco; see for instance ‘Appointment Diary – 1962’; PP20/CMS/13/1 (Queen Mary University Archives).

**106.** For a history of the birth of the journal, C Glasser ‘Radicals and refugees: the foundation of the *Modern Law Review*’ (1987) 50 MLR 688–708; 699.

**107.** P Meinhardt ‘Book review: Blanco, *Patents and Registered Designs*; Blanco, *Patents for Invention*’ (1951) 14 MLR 380–381; F.E. Skone James ‘Book review: Blanco, *Industrial Property and Copyright*’ (1963) 26 MLR 744–745.

**108.** See, for example, O Kahn-Freund ‘English Contracts and American Anti-Trust Law: the Nylon patent case’ (1955) 18 MLR 65, 67; FG Guttman ‘Supervision of expert Tribunals by the Courts’ (1959) 22 MLR 671–675; G Dworkin ‘Privacy and the press’ (1961) 24 MLR 185–189; LW Melville ‘Trade mark licensing and the Bostitch decision’ (1966) 29 MLR 375–388.

**109.** Material recommended, ‘Law of Intellectual Property’ (third-year option), City of London Polytechnic, *Annual Report 1974/75*, 54 (Metropolitan University Archives).

**110.** For instance, see L Melville ‘Trade mark licensing and the Bostitch decision’ (1961) 57 *Trademark Reporter* 255.

**111.** P Leopold ‘The Whitford Committee Report on Copyright and Designs Law’ (1977) 40 MLR 685.

**112.** SJ Soltysinski ‘New forms of protection for intellectual property in the Soviet Union and Czechoslovakia’ (1969) 32 MLR 408; see also Cornish to Soltysinski, 18 October 1968 [recommending minor changes to the article]; MLR/3/2/4 (LSE Archives).

one of the consequences of having Bill Cornish and Gerald Dworkin among its editors,<sup>113</sup> such a sympathetic approach seems also to have been derived from the fundamental aims of the *Review*, that was, to treat law ‘as it function[ed] in society’.<sup>114</sup>

### 3. INTELLECTUAL PROPERTY FOR UNDERGRADUATES

#### (a) Professional, vocational or academic

The intercollegiate course taught at the LSE constituted a milestone for the academic incorporation of ‘intellectual property’ in Britain. However, it was still a postgraduate module. In fact, the perception from British universities in the early 1970s, including the LSE, was that the subject was still not ready for studying at undergraduate level.<sup>115</sup> Although some of its constituent parts had incidentally appeared in commercial and property law courses, particularly those which engaged with ‘property’ broadly defined,<sup>116</sup> intellectual or industrial property ‘as such’, that is, as a distinct academic subject, had several difficulties for its incorporation as an undergraduate subject in the university curriculum. There were many reasons why administrators from British universities considered the subject conditioned by the stage at which it could be offered, and hence did not find the undergraduate option either attractive or realistic. The first obstacle to the widening of university syllabuses came – they argued – from ‘severe financial restraints’ which came upon the universities in that decade.<sup>117</sup> The second, and more important, was surely the longstanding perception that intellectual property was a professional subject not suitable for the ‘rather academic and literary’ courses which universities offered.<sup>118</sup> The highly specialised nature of the subject had also elicited some doubts and frictions for a possible inclusion in professional educational ‘safeguards’, that is, in the exam routes established by professional bodies to qualify then as a solicitor or as a barrister. Since these exams tended to focus on foundation (or ‘core’) subjects such as tort, land and criminal law, ‘intellectual property’ (or its constituent parts) played a very marginal role in the system of legal instruction and

**113.** See, for example, Dworkin to Cornish, 7 October 1968 [sending a copy of the new edition of *The Patents Acts 1949-1961* for review]; Cornish to Melville, 5 June 1967 [regarding the publication of Melville’s article ‘Trade Mark Licensing and the Bostitch Decision’] MLR/3/2/4 (LSE Archives).

**114.** Glasser, n 106 above, at 699; see also ‘Editorial’ (1937) 1 MLR, 2 and ‘Twenty first birthday’ (1958) 21 MLR, 1–2.

**115.** C Grunfeld (LSE) to Weston, 26 July 1974; Weston Papers (Queen Mary Intellectual Property Archive)

**116.** Copyright, trade mark and patents had also been incidentally incorporated as ‘topics’ (and not subjects) in law syllabuses. Their inclusion often came through property, commercial law or tort courses. For an overview, see FH Lawson ‘Changes in the law courses at the University of Oxford’ 1 *J. Soc’y Pub. Tchr.* L. (1947–1951) 112, at 113. Similarly, courses entitled ‘Industrial Law’ at the University of Glasgow and the University of Manchester began to incorporate intellectual or industrial property in its outlines in the 1960s; see ‘United Kingdom’ in *Teaching of the Law of Intellectual Property throughout the World* (Geneva, WIPO 1972) pp 73–74; ‘Industrial Law’ University of Glasgow, *Calendar* 1961/2; SEN10/104, p 278 (University of Glasgow Archives).

**117.** Cyril Grunfeld (LSE) to Walter Weston (CIPA), 26 July 1974; Weston Papers, Queen Mary Intellectual Property Archive. Similarly, RH Graveson (KCL) to Walter Weston (CIPA) 9 February 1968; Weston Papers (Queen Mary Intellectual Property Archive).

**118.** Arthur Tattersall (UCL) to Walter Weston (CIPA), 30 May 1974; Weston Papers (Queen Mary Intellectual Property Archive).

examination developed by the Law Society and the Inns of Court, only appearing incidentally. The Law Society eventually introduced a question on either copyright, patents or trade marks in the optional paper for those articled clerks who wanted to become solicitors.<sup>119</sup> For instance, questions covered the grounds to give notice at the Patent Office of opposition to the grant of a patent,<sup>120</sup> the essential particulars for trade mark registration under the Trade Marks Act, 1905<sup>121</sup> or the term of copyright applicable to prints and engravings, drawings, sculptures and photographs.<sup>122</sup> After reviewing the papers, it is possible to say that the pattern of questions established by the examiners at the Law Society limited the intellectual property questions to one question out of ten included in Head II of the exams, and that they tended to use one of the three different branches of intellectual property (patents, copyright, trade marks), distributing them accordingly in the three annual papers.

These questions were set up using the few pages on those topics from the book selected by the examiners: *Stephens' Commentaries on the Laws of England*.<sup>123</sup> In the 1930s, and for almost a decade, the Society changed the division of papers, including, to the despair of many candidates, 'patents, copyright and trade marks' as an optional paper.<sup>124</sup> The inclusion was not particularly successful since only a handful of candidates took it, with the result of the optional paper being dropped in the early 1940s.<sup>125</sup> Although calls to reinstate this paper re-emerged a decade later, the fact is that 'intellectual property' (or its constituent parts) had difficulties to be definitely selected as a permanent optional exam in the system of articles.<sup>126</sup> If we pay attention to the Committee discussions when selecting the optional papers, it is possible to infer that one of the problems for the subject was precisely the lack of a suitable 'set book'.<sup>127</sup>

As the university was the main source of recruitment for the Bar and the Law Society, the lack of relevance of intellectual property before practice is worth noting. Precisely because of the fact that the Law Society had only sporadically included the subject in its options, universities found little value in introducing an undergraduate option of a discipline with such a preponderant professional or practitioner ethos, that is, in a discipline where the knowledge was primarily acquired 'in practice'. For instance, I. Shaw (KCL Secretary) highlighted that 'in general the Faculty of Laws at College does not consider it part of its responsibilities to provide technical courses for professions and any teaching that could possibly in the future be given would be in the field

**119.** Although I have looked through the relevant papers at the IALS Archives, this is however a speculative conclusion since the collection is not complete.

**120.** Questions for the Intermediate Examination, Head II, January 1910; LSOC 1/1 (IALS Archives).

**121.** Questions, Head II, April 1910; LSOC 1/1 (IALS Archives).

**122.** Questions, Head II, November 1910; LSOC 1/1 (IALS Archives).

**123.** *Handbook of the Law Society* (London: Published by authority of the Council of the Law Society, 1905); A Gibson, *The Intermediate Law Examination Made Easy: A Complete Guide to Self-preparation* (London: Law Notes, 1904) pp 232–238.

**124.** Report from the Special Committee upon the Training of Articled Clerks (1933) recommending 'Patents, Trade Marks and Copyright' as an optional subject on the Final Examination, vol 23, p 12 (Law Society Archives).

**125.** Report to Council by the Articled Clerks Committee, 1940, 11 (Law Society Archives).

**126.** Report to Council by the Articled Clerks Committee, 1952, 8 (Law Society Archives).

**127.** In selecting the subjects of optional papers, one of the factors the Committee took into account was the existence of student textbooks because 'a set book undoubtedly simplifi[ed] the task of the candidate and of his teacher and of the examiner by prescribing exactly the scope of the examination'; see Report to Council by the Articled Clerks Committee, 1952, 10 (Law Society Archives).



of industrial property of a general postgraduate standard'.<sup>128</sup> Similarly, the Bar did not find it essential for the budding barrister to know such a 'specialised' subject. Intellectual property was never a subject on which Bar candidates were examined, that is, its knowledge was never a qualification requirement. Moreover, the Bar could not deny the glaring and longstanding fact that most patent barristers were not law graduates.<sup>129</sup> To sum up, neither the examination for solicitors nor the call to the Bar ever consistently used 'intellectual property' or its component parts as key subjects for entry into the profession. Taking all this into account, it is no surprise that some universities recommended in the early 1970s that the Chartered Institute of Patent Attorneys (CIPA) ought to consider the Polytechnics, Brunel University or the Institute of Licensing Executives as more suitable places to set up their course on intellectual property instead of the undergraduate system offered by traditional British universities.<sup>130</sup> Rather surprisingly, such strong reluctance to introduce industrial and intellectual property as an undergraduate course was not found in Australia. Some Australian universities began offering industrial and intellectual property as undergraduate 'options', that is, as 'elective subjects in the last or second year of the law course' earlier than their British counterparts.<sup>131</sup> For instance, the University of Sydney, the Australian National University, Monash University and the University of New South Wales began offering undergraduate courses embracing copyright, trade marks, patents and trade secrets from the late 1960s and early 1970s.<sup>132</sup> The introduction of intellectual property as an undergraduate option in Australia coincided with important educational transformations such as the emergence of 'legal workshops' as a distinct form of university learning.<sup>133</sup> These courses were often 'elective' and their teaching had the aspiration of combining technical and academic knowledge.<sup>134</sup> In doing so, they served as an interesting way of accommodating what was then perceived as an 'urgent' area of academic interest: business and commercial law.<sup>135</sup>

### (b) The circulation of Blanco's books

The most interesting feature of these Australian courses was that they all tended to incorporate Blanco's textbooks as their prescribed reading.<sup>136</sup> Blanco's quick success

128. I Shaw (KCL) to Weston, 10 June 1974; Weston Papers (Queen Mary Intellectual Property Archive).

129. Although the history of the Patent Bar is yet to be written, some reminiscences of the post-war years are found in A Gilchrist *After Court Hours* (London: Butterworth & Co., 1950) pp 44-50. More recently, see R Jacob *IP and Other Things* (London: Hart Publishing, 2015).

130. A Tattersall (UCL) to Weston, 30 May 1974; Weston Papers (Queen Mary Intellectual Property Archive)

131. DJ Ryan 'Consideration of Industrial Property as a University Law Subject' Melbourne University Law School, 1973, 16; Weston Papers (Queen Mary Intellectual Property Archive).

132. 'Industrial and commercial property ...' n 64 above; 'Seminar (industrial property) ...' n 64 above; 'Law of Industrial Property' n 64 above; see also the 'Proposal by Professor Donald Harding for the introduction of a set of subjects relating to business law, including the industrial and intellectual property elective' University of New South Wales, 1973 (UNSW Archives).

133. ANU *Calendar*, 1972, 'The work of the law school', 129 (ANU Archives).

134. MP Ellinghaus, 'Some aspects of Australian legal education' 20 *Ala. Law Review* (1960) 280-284.

135. Faculty Board Minutes, 1/69 (Monash University Archives).

136. 'Industrial and commercial property ...' n 64 above; 'Seminar (industrial property) ...' n 64 above; 'Law of Industrial' n 64 above.

abroad had been aided not only by the distinctive approach of his writing but also by other factors and circumstances, particularly the circulation of his books. Quite unexpectedly, his books coincided with a key strategic alliance in the history of legal publishing in the English-speaking world. In the early 1950s, Stevens & Sons, a small family-run publishing house,<sup>137</sup> merged with one of the major players in the book industry, Sweet & Maxwell.<sup>138</sup> The merger probably took place because Sweet & Maxwell felt that Stevens & Sons had ‘some fine copyright of textbooks’,<sup>139</sup> including those with Blanco’s signature; yet the companies initially decided to keep their imprints separate in order to sustain their already established catalogues and specialisations. However, they chose to share what they called their ‘sister companies’,<sup>140</sup> a network of agents and commissioners that enabled the distribution of their catalogues throughout the world, with special emphasis on the Commonwealth countries.<sup>141</sup> Stevens & Sons’ publications were the immediate winners, since they were suddenly marketed by a much larger sales team than prior to the merger. In the decades after the merger, it is possible to follow the reception of Blanco’s textbook in Malaysian, Canadian and Australian legal journals.<sup>142</sup> It is not only that his books were reviewed; it is that they began to be integrated into the commentaries and arguments surrounding their corresponding laws.<sup>143</sup> But for this commentary to take place and for a legal tradition to be followed or criticised, law books had to circulate. That is, they required an underlying infrastructure that disseminated catalogues and distributed books, a key factor that materialised with the strategic alliance between Stevens & Sons and Sweet & Maxwell. The LawBook Co. (Australia),<sup>144</sup> the Carswell Company (Canada and USA),<sup>145</sup> the N. M. Tripathi Private Ltd. (India),<sup>146</sup> the Law House (Pakistan)<sup>147</sup> or Sweet & Maxwell (New

137. ‘Obituary – Mr R. Hilary Stevens’ (1961) 24 MLR 689; NS Marsh ‘Notes: the late Mr. R. Hilary Stevens’ (1962) 11 ICQL 251.

138. For a history, see MW Maxwell ‘The development of Law publishing 1799–1974’ in Sweet & Maxwell (ed) *Then and Now: 1799–1974. Commemorating 175 years of Law Bookselling and Publishing* (London: Sweet & Maxwell, 1974) pp 121–156; esp. pp 135–136.

139. Memorandum regarding Stevens & Sons from Butterworths, dated 24 February 1941 in Ms 35288/2 Butterworths Co. & Co, Sweet & Maxwell – Correspondence 1939–1960 (London Metropolitan Archives).

140. Interview with Barbara Grandage, December 2011.

141. For a study of the development of industrial property laws within the ‘Commonwealth’, see WR Cornish ‘Patents and innovations in the Commonwealth; (1983) 9 *The Adelaide Law Review* 173.

142. See, for instance, Ellinger, n 73 above

143. WM Gummow ‘Abuse of monopoly: industrial property and trade practices control’ *Sydney Law Review*, 1972 (2), pp 339–359, at 357; WL Hayhurst ‘Industrial property: part I’ (1983) 15 *Ottawa Law Review* 38, 106.

144. A quick glance at the books published by LawBook shows the impact the company had on the crystallisation of legal doctrine in Australia, see H Lücke ‘Legal history in Australia: the development of Australian legal/historical scholarship’ (2010) 34 *Australian Bar Review* 109.

145. See *Industry ‘67: Centennial perspective* (Toronto: Canadian Manufacturers’ Association, 1967) and PT Murphy ‘The role of publishing houses in developing legal research and publication in Canada’ in *Contemporary Law: Canadian Reports to the 1990 – International Congress of Comparative Law, Montreal, 1990* (Cowansville: Éditions Yvon Blais, 1992) 732.

146. M Mehta *Indian Merchants and Entrepreneurs in Historical Perspective* (Delhi: Academic Foundation, 1991) 195.

147. Pakistan Law House was established in 1950 by Malik Noorani. It became the exclusive distributing agency of Sweet & Maxwell in Pakistan.

Zealand) represented and distributed books such as Blanco's *Industrial Property and Copyright* and *Patents for Inventions*. Such networks facilitated and enabled the constitution of new audiences abroad. Additionally, Blanco's presence as counsel in a number of courts such as the House of Lords in the United Kingdom,<sup>148</sup> the Court of Appeal of Bermuda<sup>149</sup> or the Bombay High Court, also brought him recognition as one of the most prominent patent barristers, making his name well-known in Britain and beyond.<sup>150</sup> His relationship with colleagues from other 'common' jurisdictions did not only hinge upon specific cases, it also included occasional collaborations on foreign publications as a preface writer.<sup>151</sup> Furthermore, engagement with experts from other jurisdictions became more visible in each new edition of his books, as he added new text. For instance, Blanco acknowledged his particular debt to Christopher Robinson QC., of the Canadian Bar, 'who showed [him] that [his] treatment of the relation of width of claim to utility was wrong; and to the late Dr Brent, who introduced [him] to the Canadian cases on assignment of the right to damages for past infringements'.<sup>152</sup> In fact, one of the key ways that Blanco's books became useful in Britain and beyond was the deepened perspective they acquired through the publication of successive editions.<sup>153</sup>

### (c) Common prescribed reading

One of the Australian courses mentioned above that included Blanco's *Industrial Property and Copyright* in its compulsory reading material was an undergraduate option introduced at Monash University in 1970.<sup>154</sup> While the course first appeared as one of two honours seminar subjects ('industrial property' and 'copyright'), two years later the seminars merged to constitute a subject called 'Industrial Property and Copyright'.<sup>155</sup> It was taught by James Lahore, a young Australian lawyer, who after a recommendation by the Dean, David Derham (1920–1985), had travelled to the University of Pennsylvania to specialise in intellectual property.<sup>156</sup> There he obtained a LL.M degree and continued his professional career at the World Intellectual Property Organisation (WIPO). Interestingly, he later moved to Britain in the early 1970s to set up an undergraduate course at the University of Southampton, a course that constituted the first undergraduate course on intellectual property taught in Britain.<sup>157</sup> The module, a third year option, began to be offered in 1975 and was taken over later by Gerald

148. *Fluffon Limited v William Frost & Sons Limited* [1966] FSR 184 [HL]; *Rodi and Wienenberger A.G. v Henry Showell Limited* [1968] FSR 100 [HL].

149. '*AIRCO Trade Mark* [1977] FSR 485 [Bermuda].

150. *FarbwerkeHoeschst Aktiengesellschaft v Unichem Laboratories* [1969] AIR Bom 255 [India] reported in Britain as [1969] RPC 55.

151. See, for instance, KS Shavaksha *The Trade and Merchandise Marks Act, 1958* (Bombay: Tripathi Private Ltd, 1974), with a preface by TA Blanco White.

152. TA Blanco White *Patents for Inventions and the Registration of Industrial Designs* (London: Stevens & Sons, 4th edn, 1974) at vi.

153. TA Blanco White 'Fifty years in patents' (1987) 11 EIPR 311 at 314.

154. 'Seminar (industrial property) ...' n 64 above

155. 'Industrial Property and Copyright' *Monash University, Faculty of Law, Student Handbook* (1972) 78 (Monash University Archives).

156. Communication from Professor Louis Waller, October 2015; see also P Yule and F Woodhouse, *Pericleans, Plumbers and Practitioners: The First Fifty Years of the Monash University Law School* (Clayton: Monash University Publishing, 2014) pp 121–122

157. J Luck 'Intellectual property as a university subject I' (2005) *Intellectual Property Forum*, 28.

Dworkin.<sup>158</sup> Curiously, as had occurred previously with the postgraduate course at the LSE, the introduction of intellectual property in Britain was carried out by an Australian. However, the most interesting feature that linked the courses at LSE and Southampton, as well as the Australian courses mentioned above, was their reliance on Blanco's textbooks as the introductory material for the topic. Although subsequent textbooks were published and eventually superseded it,<sup>159</sup> and while Blanco eventually published major practitioners' books,<sup>160</sup> his *Industrial Property and Copyright* was at once a crucial and an elemental book, a temporal hinge that facilitated the emergence of intellectual property law as a university subject in Britain and beyond. Almost simultaneously with the introduction of the subject at the University of Southampton, Warwick University and the University of Kent began offering an undergraduate course in intellectual property.<sup>161</sup> A number of British universities and polytechnics followed suit.<sup>162</sup> The proliferation of intellectual and industrial property courses that characterised the following decades can be explained by reference to other factors such as the internationalisation and Europeanisation of the discipline and the increasing demand for skills to handle statutes and statutory instruments.<sup>163</sup> In fact, the growth in the educational offer can also be understood as an attempt to respond to the need for academic knowledge in a subject that had begun to be perceived as crucial for the creation of the common market in Europe.<sup>164</sup> Interestingly, arguments for the creation of a Chair in Intellectual Property resembled the discourses that had surrounded the conceptual emergence of the subject, that is, discourses underpinned by a belief that there was 'a British style of intellectual property'.<sup>165</sup> Hence, it is possible to argue that the establishment of intellectual property academic institutes in Strasbourg and in Munich played an important role in channelling and crystallising the desire for a local

158. 'Intellectual Property' University of Southampton, *Calendar* 1975/76, p 396 (University of Southampton Archives).

159. J Lahore *Intellectual Property in Australia* (Sydney: Butterworths, 1977); see also S Ricketson *The Law of Intellectual Property* (Sydney: Law Book Company, 1984).

160. Blanco White, n 152 above; TA Blanco White *Kerly's Law of Trade Marks* (London: \*\*\*\*, 9th edn, 1966); TA Blanco White, et al. *Encyclopaedia of UK and European Patent Law* (London: Sweet & Maxwell, 1977).

161. Cornish, n 2 above, p 20; JF Wilson and SB Marsh 'Second survey of legal education in the United Kingdom' (1975) 13 J. Soc'y Pub. Tchrs. L. 239 at 282. 'The Law of Mass Media and Intellectual Property' taught by Harry Bloom at Kent Law School; Faculty of Social Sciences, *Handbook* 1974, 64–65 (University of Kent Archives).

162. For instance, the City of London Polytechnic began offering a one year part-time course introducing 'the law of industrial and intellectual property' entitled 'The law of trade marks and industrial property' in 1975; see *Minutes of the Education and Training Committee*, Institute of Trade Mark Agents, 27 January 1975 (ITMA Archives).

163. In fact, BIRPI (Bureaux Internationaux Réunis de la Protection de la Propriété Intellectuelle) changed its name to WIPO (World Intellectual Property Organisation) in 1967. See A Bogsch *The First Twenty-Five Years of the World Intellectual Property Organization from 1967 to 1992* (Geneva: International Bureau of Intellectual Property, 1992).

164. Such factor is inferred in the creation of what would become the most distinctive British academic journal in the field, the *European Intellectual Property Review* (EIPR). Kahn-Freund had also expected the rise of academic and educational interest on the discipline 'if we enter the European Economic Community'; see Kahn-Freund to Sidney Caine, 9 May 1962; LSE/Staff File/Blanco White, TA (LSE Archives).

165. B Sherman and L Bently *The Making of Modern Intellectual Property. The British Experience, 1760–1911* (Cambridge: Cambridge University Press, 1999) pp 212–215.

educational centre in London,<sup>166</sup> triggering the creation of the first Chair of Intellectual Property at Queen Mary University, a chair that was first occupied by James Lahore in the early 1980s.<sup>167</sup> However, if there was ever a British style of intellectual property, it might not be only found in rules or concepts but in the more intangible side of things, for instance, the common underlying material that was read by so many, and that circulated widely, and that served to introduce the subject to a new generation of scholars.

## CONCLUSION

Intellectual property scholarship has recently turned its attention to law books, in an attempt to trace how concepts and laws emerge both inside and outside specific jurisdictions. A few years ago, Ronan Deazley published an essay on the making and the reception of Copinger's *Law of Copyright* (1870).<sup>168</sup> More recently, Christopher Wadlow has written about the editorial changes of *Terrell on Patents*.<sup>169</sup> and the present author has considered the impact of Lyon-Caen and Delalain's book, *Lois françaises et étrangères sur la propriété littéraire et artistique*, in enabling the internationalisation of copyright.<sup>170</sup> Writing about writing is particularly productive as a self-reflexive effort within the discipline. While the study of law books serves scholars in tracking the most distinctive features of the making of legal knowledge, the focus on legal literature is also useful for emphasising the temporality of law and the changes of intellectual property law over time.<sup>171</sup> Finally, and most importantly, law books tend to expose another important historical feature of legal cultures: the tension between the legal profession and legal education. In that sense, Blanco's *oeuvre* is a paradigmatic example of a significant moment in legal culture, and a particularly important attempt to negotiate that tension and shorten the distance between education and profession. Written in post-War Britain, his booklets not only provided a basis for a discipline – intellectual property – in the making; their distinctive design also helped to connect and, more importantly, *constitute* an audience comprised of articulated clerks, practitioners and students. By taking his original nutshell-type books and converting them into one *Concise College Text*, Blanco and his publishers managed to release the first work dealing with all the constituent parts of what later came to be conceived as intellectual property law in Britain and the Commonwealth. In so doing, he wrote and rewrote the

**166.** 'There is a complete lack of research on industrial property in this country and the Max-Planck Institute and Strasbourg are likely to monopolise this field' said AW White in 'University Training in Industrial Property' (2006) *The CIPA Journal*, 429 at 188–202, 200.

**167.** 'University Chair in Intellectual Property Law' Council Minutes, 6 February 1980, p 72 (*CIPA Minutes*); see also J. Lahore 'University teaching in intellectual property' 3 *EIPR* [1986] pp 67–68; 'University Foundation' (1978) *The CIPA Journal*, 123; G Hargreaves 'Memories of Herchel Smith' (2002) *The CIPA Journal*, pp 219–220; and Langley, n 3 above.

**168.** R Deazley 'Commentary on Copinger's law of copyright (1870)' in L Bently and M Kretschmer (eds) *Primary Sources on Copyright (1450–1900)*, available at [www.copyrighthistory.org](http://www.copyrighthistory.org).

**169.** C Wadlow 'New life and vigour at Terrell?' (2011) 6 *Journal of Intellectual Property Law and Practice* 833.

**170.** J Bellido 'The editorial quest for international copyright (1886–1896)' (2014) 17 *Book History* 380.

**171.** Sherman has also compared successive editions of *Copinger on Copyright* from 1904 to 1915 to appreciate the impact of codification, see B Sherman 'What is a copyright work?' (2011) 12 *Theoretical Inquiries in Law* 99.

booklets successively in an iterative process that would result in the publication of the first genuine 'intellectual property textbook'. This textbook has served us as a vantage point to study the recent introduction of intellectual property as a subject into the university law degree curriculum, both at postgraduate and undergraduate level.

The London School of Economics played a particular role in this history since it showed an active interest in establishing the subject in its programme. In the early 1960s, the LSE called Blanco to teach an introductory course on intellectual and industrial property, and although the course failed to attract students, this circumstance brought him into contact with an academic who had just joined the law department at the LSE, Bill Cornish. While Cornish finally established the first regular course on intellectual property in Britain at the LSE a few years later, two journals somehow related to the LSE, the *Journal of Business Law* and the *Modern Law Review* were also fundamental in paving the way for intellectual property to be recognised as an autonomous academic discipline. Especially through Blanco and Cornish's editorial roles, these journals provided an important forum for the study of intellectual property as a distinct area of law. By the late twentieth century, as seen in the work of Cornish and others, Blanco's model would become standard textbook writing technique in British intellectual property. More importantly, his textbook facilitated the constitution of intellectual property as a subject into the university law degree curriculum. It was not that patents, trade marks and copyright were new, nor had the areas not been linked before. Instead, it was that they were previously the domain of practitioners, and practical reasons explained their linkage.