leave (as was the case from South Africa) rather than by right (as was the case from Canada), begrudging agreement was reached and the Privy Council appeal made its way into the draft Constitution.

Controversy and dispute continued, however, to plague the Irish Privy Council appeal that "would never entirely escape the serious complications that had accompanied its birth". Mohr sets these out comprehensively and engagingly, detailing the slide from the brief period of goodwill between 1923 and 1926 to the deterioration of relations that followed. That deterioration arose at least in part from Lord Cave's perceived bias against the Irish Free State, which crystallised in the grant of leave to appeal in the case of *Lynham v Butler* [1925] 2 I.R. 82 (it should be noted, however, that, following the passage of legislation by the Oireachtas, the appeal was not in fact pursued), and in his judgments in the controversial case of *Wigg and Cochrane v A-G for the Irish Free State* [1927] I.R. 285 (PC) and the Canadian case of *Nadan v The King* [1926] A.C. 482 (PC). Another facet that Mohr identifies as being damaging to the Irish Government's relationship with the Privy Council was the latter's purported role as a safeguard for Protestant minority rights – an insinuation that the Irish Government felt to be insulting of their protection and treatment of Protestants.

By 1930, the abolition of the Privy Council appeal was one of the main policy objectives of the Irish Government and, by the middle of 1931, five draft bills to do just that were circulating. As Mohr describes, however, none of these was introduced to the Oireachtas and it was not until the de Valera Government came into power in 1932 that concrete progress towards abolition was made. The abolition of the Privy Council appeal (by way of constitutional amendment in 1933) then formed part of de Valera's wholesale withdrawal from the terms of the 1921 Treaty and his consequent restructuring of the relationship between the Irish Free State and the UK.

When, notwithstanding this piece of legislation, the *Erne Fishery Case* (*Moore v A-G for the Irish Free State* [1935] A.C. 484) made its way to the Privy Council in 1935, a preliminary issue was whether the abolition was effective. Despite no participation from the Irish Free State in the proceedings, the Privy Council "upheld the validity of de Valera's amendments of the Irish Constitution and so upheld the legality of its own abolition in relation to the Irish Free State" because the passage by then of the Statute of Westminster had "removed any fetters that might have been placed on the Irish Free State in amending its own law". Those fighting for Irish sovereignty were vindicated, and no more Irish appeals ever came before the Privy Council.

In detail and in an engaging style, Mohr comprehensively charts this chronology, and draws out its relevance to the key events in and the development of the fledgling Irish state. In *Guardian of the Treaty*, Mohr has created an accessible and interesting volume that will surely consolidate his status as one of the key figures in Irish constitutional and legal history.

Lord Kerr of Tonaghmore
Supreme Court of the United Kingdom

Hollywood and the Law. By Paul McDonald, Emily Carman, Eric Hoyt and Philip Drake (eds.) [London: British Film Institute/Palgrave, 2015. 288 pp. Paperback £26.99. ISBN 978-1-844-57477-3.]

It is widely recognised that James Boyd White's critiques of technical legal language influenced the growth of the Law and Literature movement, and the wider

Law and Humanities movement. A comparatively recent offshoot of the Law and Humanities movement has been Law and Film. Law and Film scholars have critically examined how films portray courts, lawyers and themes concerning law and justice. Such analysis has focused not just on overtly "legal" films – of the *Twelve Angry Men* variety – but also ostensibly "non-legal" films. For example, in one of Law and Film's founding texts (*Film and the Law* by Steve Greenfield, Guy Osborn and Peter Robson (1st ed., 2001)), the authors discussed films with themes such as vigilantism and racism.

Law and Humanities has had its share of critics. Richard Posner once argued that law is a firmly technical subject where Law and Literature contributes little (see R. Posner, "Law and Literature: A Relation Reargued" (1986) 72 Virginia L.R. 1351). Posner has since revised his "negative tone", acknowledging Law and Literature as "rich and promising" and engaging with Law and Film. However, Posner has expressed concern over the "amateurishness" of some humanities scholars' writing on legal issues. Posner has thus called for more emphasis on "lawyers' professional concerns", such as the possible impact of copyright and defamation law on storylines (R. Posner, *Law and Literature*, 3rd ed. (2009), pp. 6, 51–5, 545). Arguably, Posner's remarks reflect a broader disenchantment with "Law and" movements for neglecting opportunities for practical legal analysis, and instead focusing on abstract scholarship (critiques by Judge Harry Edwards and Brian Tamanaha being two examples). In *Hollywood and the Law*, a neat little collection of essays, a group of Anglo-American scholars have responded to the need for a practical turn in Law and Film scholarship.

The four editors of *Hollywood and the Law* all hail from non-legal, humanities backgrounds. The editors are, in fact, scholars teaching at film and media departments, with the lead editor, Paul McDonald, heading the Department of Culture, Media and Creative Industries at King's College London. Yet, much like Posner, the editors begin the book by calling on Law and Film scholars to consider a "different critical direction", moving beyond "literariness" and delving into "very real practical problems". The editors acknowledge that Law and Film scholars have failed to study films as "legal artefacts". Thus, their book consists of nine essays, grouped into three broad categories: (1) Ownership and Infringement (with two essays on copyright and one on trade marks), (2) Competition and Circulation (with essays on antitrust, film censorship and global film exhibition) and (3) Negotiation and Labour (with essays on talent contracts, taxation and labour unions). The essays have been written by law professors as well as humanities professors.

The question of whether practical legal analysis has a place within Law and Film was addressed in the founding text, *Film and the Law*. Although a heavily theoretical book, the authors of that book had said that "the delineation of subject matter is highly subjective" in studies of law and popular culture, and conceded that studies in Law and Film could include "the legal regulation of issues within contemporary cultural life … akin to traditional blackletter analysis" (pp. 2–3). *Hollywood and the Law* fills this vacuum not just through a conventional analysis of case law and statutes, but also by delving deeper into issues of historical, social and aesthetic relevance. An excellent illustration is the book's opening essay by Peter Decherney, "One Law to Rule Them All". Decherney, in many ways, is an uncommon Law and Film scholar. Although a film studies professor at the University of Pennsylvania, Decherney has engaged closely with the legal community, filing amicus briefs in important copyright cases and joining law professors in leading the venerable International Society for the History and Theory of Intellectual Property (ISHTIP). Decherney begins his essay by reminding the reader of

Thomas Jefferson's prescient observations on the need to balance the monopolistic tendencies of copyright. Decherney then walks the reader through US legislation and case law on myriad aspects of copyright. He peppers this with copious film trivia and also considers the law's impact on creativity.

Decherney argues, among other things, that Hollywood has suffered from "copyright ambivalence" in the context of storyline copying. He contrasts early-twentieth-century developments, where studios fought for the right to reuse ideas, with more restrictive attitudes in "New Hollywood". For instance, Thomas Edison's production house once successfully defended a lawsuit where it was sued for using a storyline of a man who advertises for a bride. The court held that there is no copyright in broad plot devices. Decherney notes that this plot device was later used in a host of films, ranging from Buster Keaton's *Seven Chances* to the 1990s film, *The Bachelor*. In contrast, Decherney argues that a court "overdetermined Spielberg's influence on the shark-attack genre" by holding that the film *Great White* infringed the copyright of *Jaws*. Decherney also discusses the US Supreme Court's decisions in *Eldred v Ashcroft* 537 U.S. 186 (2003) and *Golan v Holder* (565 U.S. (2012)), noting that the consequence of these decisions is a "shrinking public domain" that leads to copyright hindering rather than fostering creativity. On the subject of authorship, Decherney criticises a ruling that denied screenplay co-authorship of *Malcolm X* to a technical consultant. He argues that the court, instead of viewing film production as a collaborative effort, gave precedence to cultural norms according to which the director, Spike Lee, was to be viewed as the sole author. Decherney wonders: how were the facts much different from the nineteenth-century case of *Burrow-Giles v Sarony* 111 U.S. 53 (1884), where the US Supreme Court held a person who arranged the setting of a photograph of Oscar Wilde to have the rights of a co-author?

Like Decherney, McDonald mixes legal analysis with fascinating historical insights. In "Piracy and the Shadow History of Hollywood", McDonald discusses provisions of the Berne Convention, the WIPO Copyright Treaties, the US's Digital Millennium Copyright Act, Preventing Real Online Threats to Economic Creativity and Theft of Intellectual Property Act (actually a failed Bill) and Stop Online Piracy Act (another failed Bill), along with classic case law such as the Sony Betamax case (*Sony Corp. of America v Universal City Studios Inc.* (464 U.S. 417 (1984))) and the *Napster* case (*A & M Records Inc. v Napster Inc.* (239 F.3d 1004 (2001))). However, he situates this amidst a broader "hidden history" of "pirate entrepreneurship", dating back to "proto-piracy" in the early years of the industry. McDonald provides glimpses into the evolution of the US film global industry's anti-piracy strategies, backed by the US Government. He provokes the reader into thinking about the relationship between piracy and access, using the example of a trial of pirates of the film *Paper Moon*. McDonald points out that leading cast members had testified to having accessed pirated copies of the film after being unable to secure a legal copy. Among other humanities scholars contributing to the book, Laura Wittern-Keller's essay, "Governmental Censorship, the Production Code and the Rating System", examines case law where the US judiciary ruled against state censorship. However, she argues that social pressures can still determine cinematic content indirectly. In two essays, "The Preservation of Competition: Hollywood and Antitrust Law" and "Asset or Liability? Hollywood and Tax Law", Jennifer Porst and Eric Hoyt, respectively, address technical topics. But they do so in a manner that is accessible and absorbing, and place the topics in historical and political context.

The law professors contributing to the book understandably adopt a more legalistic approach than their humanities counterparts. Yet, their essays are still engaging

and address important artistic and commercial concerns. An example is the essay "The Changing Landscape of Trademark Law in Tinsel Town", by Mark Bartholomew and John Tehranian. In his acclaimed book *Infringement Nation* (2011), Tehranian had addressed the growing conflicts between copyright law and freedom of speech. In his essay with Bartholomew, he carries forward that debate in the context of trade mark law. Bartholomew and Tehranian contrast two US cases separated by a decade – *Dallas Cowboys Cheerleaders v Pussycat Cinema* 467 F. Supp. 366 (SDNY 1979), where a court found the use of a trade mark in a pornographic film to be infringing, and *Rogers v Grimaldi* 875 F.2d 994 (2d Cir 1989), where Ginger Rogers failed to prevent the use of her name in Federico Fellini's film *Fred and Ginger*. The authors argue that the latter decision has gradually influenced US courts to be "filmmaker-friendly". Among the cases they discuss to illustrate this is *Louis Vuitton v Warner Brothers* 868 F. Supp. 2d 172 (SDNY 2012), where the producers of the *Hangover II* were (unsuccessfully) sued over a scene where a character misidentifies a knock-off Louis Vuitton bag as genuine.

However, the authors also point out that the liberal judicial trend has not prevented rights owners from frequently demanding the removal of logos from films. Among the instances they cite is one in which the makers of Budweiser beer demanded the removal of their logo from the Oscar-nominated film, *Flight*, in which an alcoholic pilot is shown drinking Budweiser. The authors argue that, while large film studios have the resources to defend lawsuits from brand owners, smaller filmmakers may prefer to capitulate. Indeed, this is a problem that resonates worldwide among intellectual property lawyers. In India, for example, the reviewer is aware of several instances of small filmmakers ignoring legal opinion (including the reviewer's) and giving in to baseless threats from brand owners. In another essay by a law professor ("Will Work for Screen Credit"), Catherine Fisk discusses questions of employment law. Fisk notes how a lawsuit filed by unpaid interns, who worked on the film *Black Swan*, has led to studios' re-examining their practices, and argues that the law greatly defines "good" and "bad" jobs in the film industry.

In the founding text *Film and the Law*, the authors had observed that lawyers advising the cultural industries "may not much care" about the subject matter of the cases they handle (p. 5). This is a gap that *Hollywood and the Law* bridges extremely well. By investigating how the jumble of statutory and case law regulating the film industry shapes the content of cinema and its consumption, the book distinguishes itself from traditional blackletter scholarship on the film industry. Of course, one can always nitpick and look for shortcomings in the book. For example, although the editors have sought to bring together researchers "from inside and outside of law schools", only two of the nine essays are actually by law professors. Another flaw is noted by the editors themselves – a bias towards US scholarship, evident in the very title of the book. With many major film industries existing outside the US (along with plentiful case law), the editors could have considered a more international approach. One might also complain that the book could have contained more than just nine essays.

In conclusion, the essays in *Hollywood and the Law* make for thoroughly enjoyable reading. As a whole, the book represents an important milestone in Law and Film scholarship. The reviewer hopes that the book will serve as a primer for Law and Film scholars, and also prompt other Law and Humanities scholars to reflect on whether their scholarship ought to adopt a more practical direction.

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