

## Whose Is Whose

Reviewed by Kembreu McLeod

EARLIER THIS YEAR IT CAME to light that guerilla artist Shepard Fairey, whose iconic poster helped to define Barack Obama's presidential campaign, based his design on a 2006 photograph by an Associated Press freelancer. The fact that it was well over a year before someone tracked down the source material indicates the extent to which Fairey altered the photographic image. Now the AP—which claims the rights to the photo—is caught up in a legal battle with Fairey, who argues that he didn't violate copyright law because he dramatically changed and reinterpreted the original work. Whatever the outcome, this incident underscores how the once obscure body of intellectual property law has crept into virtually all areas of contemporary life—sometimes for better, but often for worse.

It's this point that Duke law professor James Boyle hammers home in his remarkable book *The Public Domain*, the long-awaited follow-up to his deliciously titled study of rights in the information age, *Shamans, Software, and Spleens* (1996). Today's restrictive intellectual property laws don't just make it possible for recording industry executives to sue teenagers who download music from the Internet. They help determine the food we eat (a patent has been granted for making a sealed crustless peanut butter and jelly sandwich), the medicines available to us, and how freely information can spread. Exploring an eclectic range of topics—the book's index lists Benjamin Franklin directly below actor/singer Jamie Foxx—Boyle makes imaginative connections between environmentalism, the Internet, home video-recording technologies, and open-source software.

Boyle worries that culture and knowledge are increasingly fenced off and privatized, despite the fact that the Constitution articulates a theory of intellectual property law that is much more open than what we have today. In the early 19th century,

### THE PUBLIC DOMAIN:

Enclosing the Commons of the Mind.

By James Boyle.  
Yale Univ. Press.  
315 pp. \$28.50

a copyright lasted 14 years and could be renewed just once. Under legislation passed over the last three decades, a copyright now lasts the life of the author plus 70 years. Furthermore, in 1980 the U.S. Supreme Court ruled that patent law covers living organisms, such as bacteria, paving the way for patents on human DNA sequences. These expansions occurred as intellectual property was becoming an engine of the economy and, not coincidentally, as technological advances were making copy production increasingly easy.

The intellectually dexterous chapter "I Got a Mashup" underscores what is at stake when copyright extends its reach into previously untouched areas of culture and creativity. Boyle traces a genealogy of rapper Kanye West's 2005 hit "Gold Digger," a song that has already been sampled, and which itself quotes from Ray Charles's 1955 breakthrough hit "I Got a Woman." That song heavily borrowed from one, perhaps two, earlier gospel songs. This sort of appropriation was common in the mid-1950s, when Charles and other singers



Artist Shepard Fairey had the audacity to hope he wouldn't have to credit the photo that inspired his iconic poster.

such as Sam Cooke scandalized the gospel world by secularizing church songs—inventing soul music along the way.

While jazz and soul were able to evolve and thrive midcentury, hip-hop, a more recent African-American musical genre, has been stymied by heightened copyright restrictions. Multiplatinum artists such as West can afford to pay \$50,000 or even \$100,000 for the use of a song snippet that may last only a few seconds. But the dense sonic collages produced in the late 1980s by experimental artists the likes of De La Soul and Public Enemy would be prohibitively expensive to distribute today.

Boyle persuasively maintains that we cannot continue to turn a blind eye to the harm that pervasive intellectual property law is doing. “A better intellectual property system certainly will not end world hunger;” or, for that matter, cure AIDS, fight malaria, or save the planet. “But,” he concludes, “overly broad, or vague, or confusing patents could (and I believe have) hurt all of those efforts.” Still, Boyle assures us that there is no need to succumb to doom or gloom. In the final chapters, he documents the ways ordinary citizens have successfully pushed back against the law’s expansionist tendencies—for example, by attaching generous terms of use to their own work. The future is still up for grabs.

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## India’s Pilgrims

Reviewed by Vikram Johri

AMITAV GHOSH’S EXCELLENT 2008 novel *Sea of Poppies* acquainted readers with early-19th-century India, delving into the lives of “coolies”—indentured laborers—who were transported to islands as distant as Fiji and Mauritius to work on British plantations, even after slavery was

**LEAVING INDIA:**  
My Family’s Journey  
From Five Villages to  
Five Continents.

By Minal Hajratwala.  
Houghton Mifflin  
Harcourt. 430 pp. \$26

outlawed in the British Empire in 1834. When I picked up Minal Hajratwala’s *Leaving India*, I was delighted at the prospect of reading a tale about a real family from the state of Gujarat that spread across the globe. The book did not disappoint. It is a fascinating study of a few of the emigrants whose tentative steps eventually resulted in today’s Indian diaspora of as many as 30 million people.

Hajratwala, a journalist who currently lives in San Francisco, begins by drawing an elaborate portrait of her paternal clan, the Solankis. According to the *varna* system that designates social standing, Hindus descended from four distinct groups: Brahmins (priests), Kshatriyas (warriors), Vaishyas (artisans), and Shudras (laborers). The Solankis are Kshatriyas, and Hajratwala builds on this seemingly inconsequential fact to narrate an account, based on community lore, of how her ancestors turned from warriors to weavers, and how that dovetails with her paternal great-grandfather’s intrepid journey in 1909 to seek his fortune in Fiji. There he worked as a tailor—a first step on the way to building one of the South Pacific’s largest department stores.

Hajratwala’s maternal grandfather, Narotam, also left India to improve his lot. In 1930, he walked with Gandhi during the famous march to Dandi to protest a colonial salt tax. A year later, to support his young family, Narotam joined the Gujarati community in Fiji and began sewing women’s clothes. Eventually, he and his brother opened a store that sold ready-made clothing. His last child, Bhanu (the author’s mother), was born in 1946, a year before India gained independence from Britain.

It is a tribute to Hajratwala’s writing that she is able to coalesce the disparate factions of her family into a satisfying whole. And we are not even halfway there. It’s 1963, and a young man is about to make use of the recently relaxed U.S. rules for foreigners wishing to study in America. Bhupendra, the author’s father, enrolled at the University of Colorado, Boulder, to study manufacturing. He was among the first generation of Asian immigrants to come to the United States for skills