Legal Studies, Vol. 37 No. 1, 2017, pp. 186–189
DOI: 10.1111/lest.12157

# Book Review

*IP and Other Things, A Collection of Essays and Speeches* by Robin Jacob. Oxford: Hart Publishing Ltd, 2015, 536 pp (£65.00 hardback). ISBN: 978-1-84-946595-3

Motivated by a suggestion from the Hon. Mr Justice Arnold, the Rt. Hon. Professor Sir Robin Jacob has collected a miscellaneous compilation of his essays and speeches into a book.[1] The result is what he calls 'an eclectic mix'.[2] Although the collection might occasionally fall into anecdotage, there is much of interest in its eclecticism. *IP and Other Things* is a combination of memoir, a gloss on the activities and language peculiar to the author's profession, a biography of case-law and, in sum, a book of many parts. The collection also serves as an introduction to the rise of the 'Intellectual Property Bar' in the second half of the twentieth century.[3] While Gilchrist Alexander, Fletcher Moulton and Richard Webster have offered glimpses into what was then a highly specialised area of legal practice,[4] their work concentrated on earlier periods and did not cover the subsequent elevation of 'intellectual property' into a major area of law.[5] The recent history of 'intellectual property' practice has yet to be written, but the prospective historian will find here some significant keys and signposts. References to cases, laws and legal connections are intertwined with biographical and professional details.[6] This gallimaufry is full of gossip, humorous and witty remarks and 'first-hand experience'.[7] In that vein, the collection is a fascinating document, a *vade mecum* for the consideration and evaluation of something that has preyed on the minds of scholars for the last few decades: what is 'intellectual property'?[8] A partial answer might be found in the observation of professional practices. Although such practices have changed since Jacob began his career, the

**1.** PBA Munnik 'Interview with Sir Robin Jacob' *Ius & Vita*, 19 April 2015.
**2.** R Jacob *IP and Other Things A Collection of Essays and Speeches* (Oxford: Hart Publishing, 2015) at v.
**3.** The 'Patent Bar Association' was officially named so in the early 1970s. In 1992, it was renamed the 'Intellectual Property Bar Association' precisely when Robin Jacob, QC was the chairman; see 'Minutes, 5 November 1992', Intellectual Property Bar Association Archives.
**4.** G Alexander *After Court Hours* (London: Butterworth & Co., 1950) pp 44–50; Right Hon. Viscount Alverstone *Recollections of Bar and Bench* (London: Edward Arnold, 1914); H. Fletcher Moulton *The Life of Lord Moulton* (London: Nisbet, 1922).
**5.** Similarly, Blanco White QC shared his reminiscences of the profession in TA Blanco White 'Fifty years in patent' [1987] EIPR 311.
**6.** 'In part this an essay of personal reminiscence and in part a commentary on some bits of the law' in Jacob, above n 2, 163.
**7.** Jacob, above n 2, pp 50, 85, 96, 99–119, 446; 477, 481. Jacob's appeal to his experience at Bar and Bench as a way to justify and develop his arguments is evidenced in many essays; see, for example, pp 86, 139, 178, 181, 233 ['I begin by qualifying myself to speak. From the late '60s a significant part of my work has involved the pharmaceutical industry: first when I was a barrister and from 1993 as a judge'].
**8.** L Bently 'What is intellectual property?' (2012) 71 CLJ 501.

different perspectives offered by him are enriched by the care he has taken in preparing the collection. While some of the pieces had previously been published elsewhere, Jacob reframes them, adding some material in italics or in the form of postscripts. He explains that the intention is to give the reader his 'then and now view' and to describe 'what has happened since'.[9] These supplements pick up stories, arguments and narratives years later, serving to enhance and amplify the material. A substantial number of essays, speeches and e-mails arose as responses to specific requests and circumstances. The postscripts give him an opportunity for further comment, and also serve to explain and criticise legislative developments,[10] to confess that he might have been wrong or that he still stands by what he wrote or said – judicially or extrajudicially.[11] It is this creative attempt to incorporate an updated perspective that makes the book interesting and relevant. This feature also enables the perceptive reader to identify some of the professional shifts that have taken place in a relatively short time. As such, the book highlights emerging procedural codifications, controversial legislative changes, and many other pressing issues in the sphere of intellectual property in the twenty-first century.[12]

A much admired barrister, judge and academic, Jacob is also generous in his recollections. When he selects essays, speeches and other texts and looks at them in retrospect, there is a great deal of self-disclosure going on. For instance, he remembers his friendship with Sir Hugh Laddie (1946–2008) and how they developed a 'rapport – almost like twins'.[13] For those intellectual property scholars who witnessed the last decades of the century, their almost symbiotic competitiveness was remarkable. In a sense, Jacob's career cannot be understood without Laddie.[14] They began almost at the same time, they were nurtured at the same chambers, and they were often on opposing sides of an argument.[15] They were brilliant barristers and, later, judges; intelligent and articulate, colleagues and rivals, prolific authors and co-authors of major reference books,[16] they became, above all, key references in the development of British intellectual property law (and its commentary). The pair constituted the leading intellectual property figures in Britain throughout the late twentieth-century. One of the reasons for their success was their ubiquitous presence across different areas of intellectual property at the level of practice just when the field was developing rapidly,

**9.** Jacob, above n 2, at v.

**10.** Jacob, above n 2, pp 412–414 ['parody and copyright'].

**11.** Jacob, above n 2, pp 51–52 ['My Opinion'], 82 ['I stand by this'], 88 ['I am now quite satisfied that this paragraph was completely wrong'], 126 ['I don't think I was entirely wrong about the *Myriad patents'*], 212 ['I am sure that I was wrong in thinking that economists could help, see Chapter 8. Things did not look up'].

**12.** Jacob, above n 2, pp 144, 99–119.

**13.** Jacob, above n 2, p 480. In the late 1990s, Jacob described Laddie as 'his brother judge' [p 148].

**14.** David Vaver completes Laddie's biographical entry with a reference to Jacob, see 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.

**15.** Jacob, above n 2, p 164, 421, 481.

**16.** See, for instance, TA Blanco White and R Jacob *Kerly's Law of Trade Marks and Trade Names* (London: Sweet & Maxwell, 1972); TA Blanco White, J Jeffs, R Jacob, WR Cornish, M Vitoria, *Encyclopaedia of UK and European Patent Law* (London: Sweet & Maxwell, 1977); A Walton and H Laddie, *Patent Law of Europe and the United Kingdom* (London: Butterworth, 1978); H Laddie, P Prescott, and M Vitoria *The Modern Law of Copyright and Designs* (London: Butterworths, 1980).

precisely when 'intellectual property' became an autonomous academic subject.[17] The kaleidoscopic vision they achieved in the course of moving from the Bar to the Bench and from there to the Academy was not only vivid in itself, it also helped to develop distinctive scholarly trajectories.[18] For this reason, but in many other ways as well, this is not a typical book about intellectual property. Jacob featured in landmark intellectual property cases such as the *Wombles*, *Interlego*, *Jiff Lemon*, *Aerotel* and *L'Oréal* as either barrister or judge. And the book offers some hints as to background to these and how he sees them in retrospect.[19]

Given that the collection is by someone who spent the greater part of his career receiving briefs and deciding cases,[20] it is no surprise that a practice-orientated *ethos* has left its mark on the structure and writing. It is not only that part of the collection echoes the specific rhetorical exercises, forms of reasoning and forensic skills that are part of the barrister's repertoire, such as 'oral' arguments, opinions and submissions, it is also that Jacob's essays and speeches tend to be attentive to pragmatic issues not often attended to by academics. The collection emphasises procedural questions and interests frequently faced by those in practice.[21] As the collection often focuses on the idea of law as 'conflict',[22] Jacob consistently wonders why some litigants decided to sue, how cases were 'fought',[23] and whether or not the intellectual property system actually 'works'.[24] There is also a special focus on evidence,[25] a particular interest in debates,[26] and a significant emphasis on 'rights' and 'remedies' in several essays and speeches.[27] In an intellectual property system increasingly tied and defined by its value, Jacob's lucid engagement is refreshing. Remarks such as 'the more I look at competition law, the more I think it is unable to cope with IP rights, especially patents' are certainly provocative.[28] This direct approach, already present in the titles of many essays and

**17.** Interestingly, Jacob considers that 'giving them [patents, designs, trade marks and copyright] a common name has hindered rational thought' in Jacob, above n 2, p 101.

**18.** For instance, see H Laddie, 'Copyright: over-strength, over-regulated, over-rated?' (1996) EIPR 253; R Jacob 'Industrial property – Industry's enemy?' (1997) IPQ 3 [also included in Jacob n 2, pp198–212]. See also H Laddie 'The insatiable appetite for intellectual property rights' (2008) 61 Current Legal Problems 401 and R Jacob 'IP Law: Keep Calm and Carry On?' (2013) 66 (1) Current Legal Problems 379 [also included here in Jacob n 2 pp 99–119].

**19.** Jacob, above n 2, pp 95–96, 159,; 376 [*L'Oréal v Bellure* [2010] EWCA Civ 535], 384 [*Wombles Ltd v Wombles Skips Ltd* [1977] RPC 99], 391 [*Reckitt & Colman Ltd v Borden Inc* [1990] 1 All E.R. 873], 423 [*Interlego v Tyco* [1989] AC 217].

**20.** 'But I have spent all my life working to a brief. Argue for this, or for that at the bar, decide the answer to this or that case as a judge' in Jacob, above n 2, p 415.

**21.** Jacob, above n 2, pp 43–52, 277 ['expert witness'], 142 ['experts and discovery'], 143, 274–275, 460 ['legal costs'], 150 [locus standi].

**22.** Jacob, above n 2, pp 326–334 ['patent litigation'], p 341 ['the challenge for Europe is to produce a really good litigation system for patents'].

**23.** Jacob, above n 2, pp 60–61, 150, 384.

**24.** 'All attention should move away from attacks on the principle behind patent law, and concentrate on improving its machinery' in Jacob, above n 2, p 269.

**25.** Jacob, above n 2, pp 20, 107, 165, 342, 438–440, 474.

**26.** Jacob, above n 2, p 387. Quite tellingly, Jacob highlights a specific debate that consisted of 'articles and counter-articles' between an academic and a barrister in the *European Intellectual Property Review*; see Jacob, above n 2, pp 209–210.

**27.** Jacob, above n 2, pp 85–86, 130 ['rights'], 152; 163–164 ['remedies'], 198 ['The general area of law now called 'intellectual property' is in the main a law conferring private rights on one party to prevent competition from others'].

**28.** Jacob, above n 2, p 84.

speeches,[29] conveys both the author's skilful legal mind and someone simultaneously sceptical and critical of current policy making initiatives.[30] Nevertheless, this way of writing and formulating questions is also characterised by limitations and constraints. For it is not always crucial to win an argument, nor always imperative to make a case. And the importance and relevance of intellectual property law goes beyond professional and expert knowledge. Academics increasingly maintain that intellectual property cannot be reduced to a normative problem since it can be considered as a product of historical contingency.[31] Rather than looking for answers to practical questions, scholarly attention tends to be much more speculative and more sensitive to the indeterminate character of intellectual property. Additionally, the salient feature of intellectual property as a legal subject might not just be its validity or its enforceability, but also its technicalities and how these actually began to constitute a specific social and academic field. As some scholars have recently noted, '[n]o single master narrative can account for the extraordinarily broad range of issues, positions, participants, and proposals that make up the conversations and disputes about IP, or for their intensity'.[32]

Perhaps the most interesting feature of the collection lies not in the sharp advocacy skills developed by Jacob, but in the 'other things' he includes. These are 'thresholds' – forewords, prefaces and other fragments.[33] These convey how people and institutions shaped his life and work, and give a personal dimension to the first part comprising essays and speeches. Such links, and the way Jacob makes them *legible*, are historically relevant to an appreciation of the British experience of practising intellectual property in the last few decades. These 'other things' show a particular culture and a tradition, a codified system of practice and acknowledgment defined by collective and symbolic rituals. Valedictory remarks, obituaries and other texts are not just individual homages, they are also means of developing a community. Jacob writes warmly and movingly about his father, his former master, head of chambers, clerks, colleagues and friends.[34] Often quirky, often touching, he also evokes places of education and rites of passage *en route* to becoming a barrister and a judge.[35] Similarly, he shares jokes and rumours on such matters as the speculation regarding whether Margaret Thatcher (1915–2013) ever applied to the Patent Bar,[36] or the story behind the delightful nickname of a well-known judge.[37] While by no means a comprehensive overview, this book might serve, among other things, as a good place to start assessing the rise of the 'Intellectual Property Bar' in the late twentieth-century.

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**29.** Jacob, above n 2, pp 198 ['Industrial property – Industry's enemy?']; 327 ['Patent litigation: Why everyone gets it wrong and what should we do?']; 335 ['The community patent or a European Patent Court? Is it time to choose?'].

**30.** Jacob, above n 2, p 101.

**31.** See, for instance, L Bently and B Sherman 'Great Britain and the Signing of the Berne Convention in 1886' (2001) Journal of the Copyright Society of the USA 311–340.

**32.** M Biagioli, P Jaszi and M Woodmansee (eds) *Making and Unmaking Intellectual Property: Creative Production in Legal and Cultural Perspective* (Chicago, IL: University of Chicago Press, 2011) p 9.

**33.** Jacob, above n 2, pp 435–452.

**34.** Particularly moving is the piece on Cyril Glasser in Jacob, above n 2, pp 492–493.

**35.** Jacob, above n 2, pp 13–20, 55, 473, 477–478.

**36.** Jacob, above n 2, pp 28–29.

**37.** Jacob, above n 2, p 487.