Book Review

On the Origin of the Right to Copy: Charting the Movement of Copyright Law in Eighteenth-century Britain (1695-1775), *by Ronan Deazley*
Oxford: Hart Publishing, 2004. 320 pp (incl. index), ISBN: 1-84113-375-2. £45.00

In the last decade or so, copyright law has had some fine histories (B. Sherman and L. Bentley, The Making of Modern Intellectual Property Law: The British experience, 1760-1911 (1999) and M. Rose, Authors and Owners: The Invention of Copyright (1993) are the highlights). What does Deazley's book bring? The author seeks to show that copyright was not initially a printer's right. Nor did it evolve into an author's right. One of the major rationales was rather free dissemination of information. The key lies in what early copyright did not protect.

In the strongest section of the book, the author examines the legislative history of the Statute of Anne (1709), discussion of which will not be easily found elsewhere. In chapter 3, Deazley publicises original research from the PRO: instances of the early application of the statute in chancery proceedings. Thereafter the book keeps the reader interested with detailed discussion of the major cases including *Miller v Booksellers of Edinburgh and Glasgow* (1739), *Miller v Taylor* (1768), *Hinton v Donaldson* (1773) and *Donaldson v Beckett* (1774). But interest is coloured by frustration; of frustrations there are three.

First, style: normally style is to be enjoyed or endured in silence. For writing grating on one reader may flow with ease for another. But large sections of this text read like a student essay. There is no preface, so we cannot be sure whether this is a published version of a thesis (there is a reference to the author's doctorate from Queen's, Belfast in 2000: 134, n 7). But perhaps the author has not been able to develop his style. For the reader does not hear much from him. His strength lies in highlighting passages in the original sources. Often this is done well, but too often it is over-done. Too much of the text is in the form of abridged quotation, not always easy to follow. Deazley has a weakness for other people's words. Quotations are offered at every opportunity. On occasion apt, they are often irrelevant and self-indulgent. And while the proliferation of footnotes may be a cancerous growth in modern academic writing, a complete absence of references is equally alarming: pages 152-167 for example, despite constant quotation, suddenly eschew footnotes entirely.

Second, there is little critical or doctrinal analysis. This is particularly frustrating because Deazley does identify, sometimes perceptively, areas to criticise. Take the discussion of injunctions. Deazley rightly questions how a temporally limited statutory right could become perpetual merely by enjoining an infringer, without really delivering a telling punch. At the other extreme, stinging criticism is delivered but not defended. The author is particularly prejudiced against Blackstone: this great jurist being variously labelled as 'misguided' (65) 'logically spurious' (142) and conceited (160) without the argument to make such charges stick.

Third, the book places heavy reliance on Scots law to reinterpret English law, without much detailed discussion of the Scottish background. The comparative references beyond Scots law are skipped over (125). And no secondary sources are provided for

the inquisitive reader. There are also numerous infelicities (Court of 'Sessions'; 'Advocate's Library', 'plaintiff'). Sometimes it is doubtful whether Deazley understood the Scottish material. The Court of Session in the eighteenth century regularly asked for opinions on English law, so as to inform their opinion on Scots law. But that does not mean that they ever sought to pronounce on English law. Nor has Deazley appreciated the subtleties of 'Equity' in Scots law. Other statements about Scots law and the civil law are just wrong. Deazley quotes one set of pleadings where it was argued that the 'only literary property acknowledged in the civil law was that which was in the owner of the paper or parchment'. From this Deazley draws the wild conclusion that 'In short, Roman law did not admit of incorporeal properties' (183). By 'civil law', it is likely that the pleader meant *ius commune*, not classical Roman law. But, in any event, both reflected, rightly or wrongly, the Gaian division of things into *res corporales* and *res incorporales* (see Gaius *Inst* I, 8 and II, 128).

The book does have strengths. It helpfully offers a different perspective on a mine of historical material from which the specialist will benefit. In a Scottish based journal we might also mention that Deazley has emphasised more than others the contribution of Scots to the development of the law of copyright in the courts (including the English courts), as booksellers in both London and Scotland, and in Parliament. And Deazley also subjects the cases prior to *Donaldson v Beckett* to detailed and critical analysis; analysis which cannot be found elsewhere. For these reasons and despite our criticisms, this is a book to be welcomed. From this mine of material, however, there remain seams, particularly of comparative doctrinal analysis, that may yet be profitably worked.

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