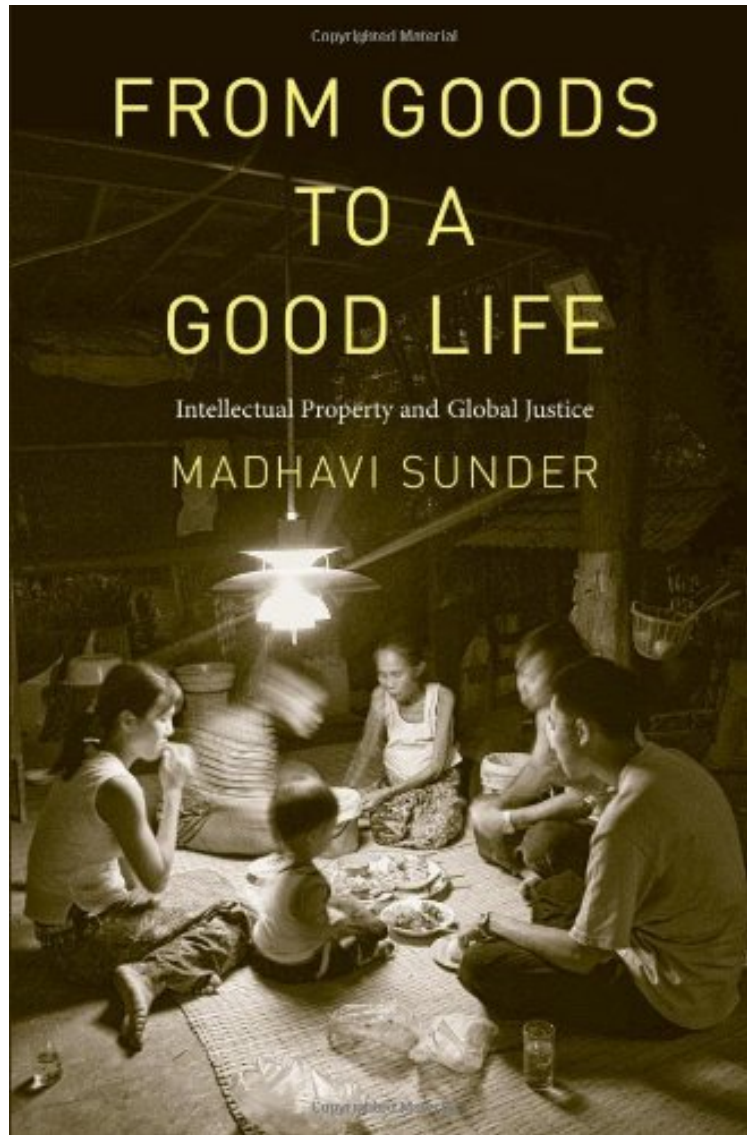


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From Goods to a Good Life: Intellectual Property and Global Justice

Madhavi Sunder J.D.

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Madhavi Sunder J.D. : From Goods to a Good Life: Intellectual Property and Global Justice before purchasing it in order to gauge whether or not it would be worth my time, and all praised From Goods to a Good Life: Intellectual Property and Global Justice:

8 of 8 people found the following review helpful. Passionate, overstated, but good if you're new to the issues By A. J.

Sutter This book is a passionate, even romantic, book about the importance of intellectual property law not just for innovation, but for justice. Its author (MS) sincerely believes both that current IP laws have been misused to stifle "participatory culture," and that stronger home-grown IP protection can benefit developing countries. She deeply questions the usual economic narrative about the sole purpose of IP laws being to incentivize inventors, authors and other creators, i.e. the idea that without being able to rely on the financial benefits of a temporary or partial monopoly, creators wouldn't create. The point of the title is that IP laws should help people to have a good life. MS shares the vision of a good life implied by the "capabilities approach" (CA) of Nobel economist Amartya Sen and eminent philosopher Martha Nussbaum, who in turn based their ideas on Aristotle's. The CA is quite popular in social science these days; the basic idea is that a government should guarantee or provide its citizens with certain "capabilities" to enjoy certain aspects of life, such as physical security, health, political involvement, being able to work "as a human," and even being able to play, laugh and enjoy leisure. The book is clearly written compared to much other recent legal scholarship, especially IP scholarship. It's also filled with real-life anecdotes and examples. If you believe that economic incentives are the true purpose of IP, or if you've never thought about the connection between IP and justice, then it's worth reading this book -- it may show you that IP has much deeper significance than you thought. That's why I give it four stars. That said, I do have some reservations, which I'll describe in the rest of this review.

1. When making the case that stronger IP will benefit the poor, MS's rhetoric too often runs ahead of the evidence. Take one of the book's featured cases, that of Solomon Linda, a poor South African who wrote the song variously known in the West as "Wimoweh" or "The Lion Sleeps Tonight." Having sold his rights to the song for less than a dollar during the apartheid era, Linda lost two of his children to malnutrition, and himself "died destitute from a curable kidney disease in 1962, at age fifty-three, with less than \$25 to his name;" his family was unaware of his "intellectual property claims" until 2000, and by the time the publishing house settled with the family, his daughter had died of AIDS because she couldn't afford antiretroviral drugs (@82-83). No question, this is a sad case. But MS claims that "a misrecognition of Linda's contribution led to his inability to pay for food and drugs that could have saved his and his children's lives; conversely, recognizing Linda's cultural contribution would have given him the agency to provide for himself and his family. Intellectual property governs the flow of *free* culture, allowing Solomon to remix American jazz with his own South African music, and yet is also raises issues of *fair* culture" (@8, emphasis in the original). Is this really an IP issue? Plenty of black musicians in the American South were paid a pittance for their songs notwithstanding strong copyright laws -- they were cheated not because of weak IP laws but because they lacked social power. From a legal point of view, this was more because Linda's and the Americans' *contracts* were unconscionable, not because IP laws were weak. Elsewhere, MS urges "We need to turn our attention to helping the poor to use intellectual property to protect their own inventions" (@140). However, she entirely ignores scholarship suggesting that Western-style IP can be disruptive of local culture. E.g., social anthropologist James Leach has shown that attributions of ownership required under both copyright law and trademark law would threaten or even eradicate traditional principles of collaboration and attribution in Papua New Guinea. See, e.g., his chapters in "Trade Marks and Brands: An Interdisciplinary Critique," Bently al., ed. (CUP 2008), and in "CODE: Collaborative Ownership in the Digital Economy," Rishab Aiyer Ghosh, ed. (MIT 2005). The tendency to overstatement also extends to MS's argument that IP laws are sometimes too strong (a critique with which I generally agree). Citing the battle over access to AIDS drugs and the unfair impositions of the TRIPS treaty (one of the WTO agreements) on poor countries, she says that countries like "Brazil and Thailand ... have been sued by multinationals and pressured and threatened by Western governments for defending the rights of their citizens against Big Pharma. In short, the 'one-size-fits-all' approach to patent law threatens democracy itself" (@184). Democracy, really? The rights being defended are rights to health, not political rights. In fact at the time Thailand declared it was subjecting the drugs to compulsory licensing (November 2006), it was under the rule of a new military dictatorship. Apropos of this rhetorical category, I should also mention that it was striking how the most prominent victims in the book come from non-Western countries: e.g., the South African Linda, the Indian film-maker Satyatjit Ray (whose story was stolen to make "E.T.") and Tezuka Osamu's "Kimba, the White Lion," which was stolen to make "The Lion King". These examples are fine, but no mention is made of, e.g., the American and other Western musicians whose songs were bought for almost nothing, nor of the countless taxi drivers, waiters and other hopeful writers in Los Angeles who submitted screenplays or treatments "on spec" and got ripped-off, thanks to Hollywood studio submissions agreements or simple theft. A kind of "orientalism"?
2. Generally, the book is quite short on suggesting solutions. An exception is Chapter 7, about AIDS drugs, where MS suggests several alternatives to the current patent regime. However, she's silent on what changes to IP law would constitute "fair culture," as in the Linda case -- so the reader can only guess. For example, Linda's problem was that he had assigned his rights. Should he have some inalienable right to receive some royalty for each performance of the song? If so, how would this be valued? If not, what would be a better solution? MS doesn't give us any clue.
3. By citing mostly to what other law professors have written, the book makes the IP-and-justice theme seem newer than it really is. Political scientist Susan Sell, soil scientist Geoff Tansey and others have been writing on this topic since the 1990s at least, but never are mentioned. (See also anthropologist James Leach, mentioned above.) Aside from a narrow and passing reference in a footnote (@234n67), the topic of food isn't discussed -- a missed

opportunity, because it could have provided very persuasive illustrations of how IP, health, culture and justice intersect. See, e.g., the terrific edited volume from 2008, "The Future Control of Food," Geoff Tansey Tasmin Rajotte, eds. (Earthscan/IDRC 2008). You can download an e-book version for free. BTW, it's far more detailed about how the nuts and bolts of IP laws affect justice issues than is the present one. Some earlier works by legal academics connecting the CA with IP aren't cited either, although some of their authors (e.g., Margaret Chon, Julie Cohen) are at least given generic mention in the Acknowledgments. And as for cites to non-lawyers: to be fair, a few of the fave philosophers of cultural studies do get mentioned in this book, e.g. Foucault, Bourdieu, Habermas and Walter Benjamin, though this last, at least, is given an interpretation not readily found in his text (@55).⁴ Smaller things: (i) From an IP law practitioner's POV, the book is overly optimistic in believing that, thanks to the Internet, difficulties in finding owners of IP interests and in getting them to agree to licenses will "vanish" (@102). One problem is that the impacts of deaths and divorces on IP ownership don't always show up, promptly or sometimes at all, in public records; nor does the Internet eliminate individual orneriness and greed. (ii) For a book so concerned with "misrecognition" of cultural contributions (@2), it's sad to see Winnie the Pooh described as "Disney's most valuable character" without naming his literary creator (A.A. Milne), the original illustrator (E.H. Shepard), or -- and this is a *perfect* illustration of MS's theme -- the unnamed designers of Milne's son's actual stuffed animal toys, which are the obvious role models for Shepard's drawings in the original books. Check out the Wikipedia photo of the toys, which have been displayed in NYC's 42nd Street Library for 25 years. (A more arcane misrecognition: the attribution of the term "lifeworld" to Habermas @62, without mentioning he got it from Edmund Husserl.) (iii) And in a couple of places "Antarctica" is stated as the name of a drink made from guaran berries (@144, p.3 of illustrations), when actually it's the name of a hugely popular Brazilian beer, and before some mergers, the largest beverage company in South America. The brand of drink MS means is "Guaran Antarctica" -- trivial thing, perhaps, but it is a book about IP and "misrecognition," after all. A wag of the finger to Yale University Press for the double-whammy of omitting a list of references, and failing to include the endnotes when indexing. As a result, it's impossible to see what authors MS cites to, or what topics she mentions in the longer endnotes, without reading them all seriatim. Despite the depth with which I've described some of my reservations about the book, I definitely recommend it if it never occurred to you that IP and justice have any connection to each other -- which unfortunately describes not only many non-lawyers, but many IP practitioners as well.² of 2 people found the following review helpful. A must read for people engaged in or interested in intellectual property issues!

By Anjali Dalal As someone who has been interested in this field for the past few years, I loved this book because it articulated an alternate theory of intellectual property law. It moves us beyond the current hyper focus on economic efficiency to a more robust theory that captures the multitude of values embedded in the way we regulate the production and dissemination of culture. Sunder writes clearly and persuasively, punctuating the book with examples that vividly illustrate her point. Sunder's holistic approach to intellectual property law is especially timely in the wake of what seems like a global outcry against increasingly severe and unjust intellectual property laws. For those who have been engaged in or intrigued by the SOPA/PIPA battles in the U.S. and the ACTA/TPP battles internationally, this is a must-read!

² of 2 people found the following review helpful. A fascinating read

By Customer The author masterfully weaves together historical, philosophical, legal, and contemporary cultural ideas to create a compelling narrative. She re-examines the very meaning of "culture" and goes on to confront questions regarding "the good life," and the implications of intellectual property law on the just distribution of such. With her clear and concise style and use of remarkable anecdotes, the author takes the reader on a fascinating journey, effortlessly bouncing between the first and third worlds. The author is a most knowledgeable guide who gently but confidently leads her readers into new terrain.

Most scholarship on intellectual property considers this law from the standpoint of law and economics. Under this conventional wisdom, intellectual property is simply a tool for promoting innovative products, from iPods to R2D2. In this highly original book Madhavi Sunder calls for a richer understanding of intellectual property laws effects on social and cultural life. Intellectual property does more than incentivize the production of more goods. This law fundamentally affects the ability of citizens to live a good life. Intellectual property law governs the abilities of human beings to make and share culture, and to profit from this enterprise in a global Knowledge economy. This book turns to social and cultural theory to more fully explore the deep connections between cultural production and human freedom.