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The New Future for Intellectual Property

There is a movement afoot in intellectual property law claiming that in our digital age intellectual property should be freer. This movement – a law reform effort that I call the Access Movements – critiques traditional intellectual property protection. I have argued elsewhere that traditional intellectual property law is organized around a deep narrative structure: the origin story. As a persuasive narrative that glorifies and valorizes beginnings (authors, inventors and source-identifiers), origin stories tend to justify the economic and social hierarchies that result from intellectual property law. If the Access Movements are a true countermobilization to traditional intellectual property regimes, they should rehearse an anti-origins rhetoric that supports their looser exclusivity model. It turns out, however, that the Access Movements continue to rehearse central features of the origin stories of intellectual property law in their language and argument structure.

Divided into two parts, this article first discusses the origin story genre that I argue structures the dominant explanations for intellectual property protection. This part shows how origin stories embed in them the justification for certain hierarchies (who owns property and who does not) that resonates with a theory of possessive individualism and excludes communal notions of property and social relations. The second part of the article investigates the rhetoric and substantive goals of the Access Movements showing how, on the surface, the Access Movements embrace ownership models based on sharing and community. It seems, then, that the Access Movements deemphasize singular beginnings (individuality) and instead value peopled networks (community). In so doing, the Access Movements appear to reject the hierarchies of traditional intellectual property law and embrace instead a principle of equality. This would suggest that the Access Movements are fomenting a true revolution in intellectual property law. But the conclusion of this article shows how the Access Movements remain committed to central themes of the origin stories of intellectual property, namely autonomy and consent. *Can the change the Access Movements call for occur if these central features of intellectual origin stories remain?*

This article contributes to the current debate among intellectual property lawyers and scholars about the virtues and stamina of the Access Movements. If the digital culture has irreversibly changed our world (our social, political, and economic relations), is it time for the law that structures digital culture to change too? Are the Access Movements on to something when they clamor for more openness? Are they really singing a new tune – embracing this new era – or are they stuck in old ways, language and values?

As a cultural analysis of law, this article participates in a growing field of legal scholarship that takes seriously the permeable boundaries of law in society. It also relies on qualitative empiricism to identify the discourse of the Access Movements in order to

evaluate the communities they constitute through their writings and law reform efforts. Finally, this article is traditional in its scholastic orientation insofar as it looks closely at a legal regime and asks whether the social good it seeks is attainable through the legal means established.