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BOOK REVIEW

Putting Intellectual Property In Its Place: Rights Discourses, Creative Labor and the Everyday

Laura J. Murray, S. Tina Piper & Kirsty Robertson
(Oxford University Press: New York, 2014)
224 pp.

*Jessica Silbey**

This book is an interdisciplinary marvel. Its focus on creative communities and their practices avoids the frequent pitfalls of intellectual property (IP) scholarship: a myopic focus on the utilitarian and economic theories of IP. The authors acknowledge these dominant themes in much of IP scholarship, but they deliberately take a different tract. As such, this book cannot help but be generous and broad-minded in both its subject matter and range of detail. The authors, a trio of academics — two in the humanities and one in law — set out to explore how creative communities work, theorizing (and they turned out to be right) that creative and innovative practices within communities are contingent on time and place. They posit that creativity and innovation progresses differently within particular communities — be it the knitting community (chapter 3), journalists (chapter 5) or potters (chapter 7) — as each develops its own culturally specific practice. According to the communities studied in this book, the mechanisms and motives for making art and promoting science do not come from property incentives such as those that intellectual property intends to provide. They come from professional rela-

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tionships, personal desires and community needs, which are all particular to a circumscribed time-space coordinate. Diversely shaped and functioning markets form within these networks of people, and art and science occur and circulate in discernible patterns within and beyond them.

The idea that “IP” is rooted in place — and therefore is diversely constituted and functioning — is antithetical to much intellectual property theory, which broadly asserts with one-size-fits-all statutory models that rights of exclusivity (*e.g.*, property rights) are necessary to incentivize the initiation and commercialization of art and science writ large. The authors forthrightly admit in the opening chapter that they begin from a different perspective when investigating creative communities. Although they call their inquiry “an oblique approach to IP law,”¹ the communities they study would hardly concur. One of the many pleasures in reading this book was the near-sighted focus on first-hand stories and particular circumstances of each community. The close-up reality of their professional circumstances makes the creativity and innovation (whether or not protected by intellectual property) anything but “oblique.” The focus on the people and organizations doing the creating, however — as opposed to the legal regulation of those communities and their constituents — is a refreshing and critical reversal. By comparing colonial studies to the typical narrowness of legal studies’ focus on IP when investigating creative and innovative practices, the authors question the premise of intellectual property’s “sovereignty” over creativity and innovation studies.

How did IP get its domain? Was there anything there before? . . . When we start to perceive these new dimensions of practice, we may see IP in a new light as epiphenomenal, superficial or strategic. Whereas other scholars “emphasize the possibility that social norms can supplement . . . legal regulation” . . ., our starting point is that local practices or norms are foundational and persistent, not ancestral or supplemental.²

According to the authors’ in-depth explorations of the six communities studied, IP doesn’t promote science and art, place does. The “place” of the title is broadly construed and means *contextual, situational* and *populated*. Places are made of communities, which adhere

¹ Laura J. Murray, S. Tina Piper & Kirsty Robertson, *Putting Intellectual Property In Its Place: Rights Discourses, Creative Labor and the Everyday* (New York: Oxford University Press, 2014) at 5.

² *Ibid.* at 6.

because of fluid and reliable borrowing practices as well as discernable bonds of loyalty and dependence. “Putting IP in its place” means situating the particular creative act within “a matrix of relations, enforcement regimes and (mis)information campaigns.”³ The authors focus on the *processes and practices* of these communities, identifying their characteristics as working communities more than by the work they produce. “We wish also to recognize outcomes or products beyond cultural or intellectual property, such as community relationships, consolidation of professions, quality of life, and the education of a next generation.”⁴ IP takes a backseat in the investigation and maintenance of the creative communities not because it is unimportant but because it is not as fundamental a value or convention than the labour practices that produced it or the relationships that sustain the labour. This is a book really about work (not works), as well as labour relations and the organizations built around them. And because intellectual property doesn’t care about work — sweat-of-the-brow and duration of labour are irrelevant to intellectual property protection⁵ — IP has less of a “place” than usual when talking about art and science.

Despite its sidelining of traditional IP discourse, there is much to intrigue the intellectual property scholar and lawyer in this book. In addition to the particular communities studied, which I will detail below for the curious and because the variety is noteworthy, this book also excavates two related but apparently oppositional features of intellectual property not often discussed in meaningful detail: markets and borrowing practices. These two features of the communities studied — their mechanisms of coherence and growth — are both essential and elusive. The authors don’t specifically highlight markets or borrowing practices in the book, and focus more on “rights discourses” and “labour” to investigate the “everyday” of creative communities. But as I read the book and engaged with its methods and conceptual project, I recognized these other themes that merit elabo-

³ *Ibid.* at 64. This particular quote is from chapter 4 which is devoted to the development of agricultural inventions during the interwar period in North America by scientific research institutions and their professional staff.

⁴ *Ibid.* at 7.

⁵ *Feist Publications v. Rural Telephone Service Company*, 499 U.S. 340 (1991); *CCH Canadian Ltd. v. Law Society of Upper Canada*, 2004 SCC 13, [2004] 1 SCR 339.

ration alongside the book's stated focus. I turn to both of them after a brief overview of the book's chapters.

OVERVIEW

After an impressive opening chapter about “displacing” U.S.-dominated IP discourse and “replacing” it with a Canadian-centric interpretation of various memes of IP reform — *e.g.*, “free culture,” “appropriation” and “the commons” — the authors structure the book in chapter pairs. Chapters three and four investigate very different communities — the knitting community and the interwar agricultural science community in North America — but arrive at similar conclusions about the role of IP. In both, copyrights and patents function to negotiate *status* relations between actors (rather than property rights) and serve to articulate norms based on the community's professional desires often unrelated to wealth maximization but instead to participating in the generation and flow of work. In chapters five and six, the authors investigate writing and attribution practices in distinct professional communities — journalism and law. Although both communities are dependent on and proliferate copyrighted work every day, neither relies on copyright to sustain or grow the business. To the contrary, both actively eschew copyright's exclusivity. The journalists from the 19th century do so because cutting and pasting from each other's reporting was the bread and butter of every newspaper's content, as long as attribution was provided. And the lawyers do so because asserting exclusivity over content would restrict access to the law (a public harm) and weaken the ability to define and shape authoritative sources (which depends on citation and quotation). Arguments based on legal precedent depend on attribution not copyright. Indeed, the early journalism business and legal practice would suffer substantially if copyright exclusivity (the prohibition of copying and distribution) was enforced. The last pair of chapters, chapter seven and eight, explores two communities on the opposite sides of the earth: Kingston, Ontario and Dafen, China. Both cities house substantial art communities and produce abundant visual art. But in neither city is IP law important to the artists for making a living or distributing their work. In Kingston, the art community develops around shared spaces and the possibility that artists are both makers and promoters of their and each other's work. In Dafen, paintings are produced in assembly-line fashion and are almost all copies of famous works. The copies from Dafen are shipped all over the world to decorate hotels, conference centers and private homes. In both com-

munities, the value of labour predominates over originality, and the value of the art is not measured by authenticity but skill. IP law is far from the forefront in either of these rich and diverse art communities.

From the above description of the book chapters' contents, the authors' focus on labour, professions, rights and everyday practice should appear unifying and consistent. And it is. But, as I mentioned, also emerging through the analyses of these diverse communities are two other features that also require "placement" and contextualization: markets and borrowing practices.

BORROWING PRACTICES

"Borrowing" is a challenging concept within intellectual property law. And yet "borrowing" is essentially what the authors describe occurring on regular bases within the communities studied. "Borrowing" is a challenging concept because IP defines intangible rights and thus there is nothing to "borrow" and "return." Works are either copied unlawfully (in which there is no "borrowing" only a "taking") or they are not. There is nothing to give back according to traditionally construed property regimes. An unlawful copy is a per se harm redressed only through compensation and an injunction. By contrast, "borrowing" implies a bailment and a subsequent return, which is impossible given the nature of IP rights. It also implies a mutuality of exchange (in the absence of money), a normative commitment to reciprocity, and the shared value of maintaining the community's vitality. Despite the seeming incongruence of "borrowing" intangible properties, the authors describe intricate and entrenched borrowing practices that proliferate creative content and inventions. Although there is no "giving back" in the sense of lending and returning objects, the authors provide many examples of the circulation of things (with or without IP attached) as a mechanism for developing creative or innovative skills, building relationships and evolving professional communities. How might we make sense of these practices in the context of intellectual property discourse?

Tina Piper describes lending practices of chemical compounds related to the development of plant hormones between agricultural research scientists in the interwar period. Otherwise called "material transfers" both then and now, the gifting and receiving of chemical and biological materials between research institutions was and remains common. Piper describes generous transfer practices embellished with praise for the use to which the material would be put and

the desire by the transferee of further collaboration and sharing of research results.

Manske [a scientist] recounted that he invited Crocker [a scientific laboratory director visiting from another institution] into his laboratory for a discussion and “gave him a specimen of IAA [a biologic material].” Manske also volunteered a sample of IBA and a list of indole compounds which Crocker’s “[I]nstitute might be interested in trying.” Crocker responded enthusiastically, . . . [and] praised Manske by saying that he seemed “to have shown very much more facility in synthesizing these insoles than did Kogl;” . . . Thanking him for his kindness, Crocker signed off without mentioning paying for these samples. [Later], Manske sent the ten indole compounds on the list plus an additional specimen that he believed “would interest you.”⁶

Piper surmises that “Manske may have been motivated to send the sample out of a sense of professional generosity and shared enterprise, a desire to develop a working relationship . . . , curiosity about the trials . . . , or perhaps personal benefit should the additional specimens prove particular effective.”⁷ And, as Piper recounts, the generosity between the scientists facilitated “fruitful professional correspondence[s] and collaboration[s].”⁸ What makes this circulation of materials without payment a kind of borrowing?

First, although the material was eventually patentable, it was also a “thing,” an object that actually moved from place to place. And it came not with a date and time for return (like a library book does), but analogously with a reciprocal obligation of professional courtesy and expectation of collaboration. It wasn’t returned in any actual way, but other favours were returned, such as attribution and continued professional contact. Second, these norms of professional behavior were not part of a formal IP legal scheme (such as the first sale doctrine in patent or copyright law, which allows lawful owners or possessors to transfer IP-protected works free from liability for violating the exclusive right of distribution). But they were durable and enforceable norms, nonetheless, as later disputes that arose between the scientists demonstrate. Violation of rules of exchange, even informal rules between friends or colleagues, leads to bad feelings, accu-

⁶ *Ibid.* at 69.

⁷ *Ibid.*

⁸ *Ibid.*

sations of transgressive behavior and the demand of the return of “your stuff.”

In this situation, the conflict arose when the recipient of the materials (and his independent research organization, the BTI) decided to patent an invention based on the materials they received from Mansk and the NRC (a government organization), the originator of the compounds. They did this in order to ensure the “satisfactory uses” of the materials in follow-on agricultural products.⁹ The conflict originated here, with differing subjective goals for the material. BTI’s intentions were for widespread use of the material, whereas NRC wished to prevent other for-profit companies from exploiting exclusivity through monopoly prices.¹⁰ “NRC staff wanted to ensure that Canadian growers were not overcharged for an invention developed by Canadian scientists.”¹¹ The patent could achieve both goals, but the goals were incompatible with each other. As such, the instigation of patent filings by BTI alone — without the co-inventorship status of the NRC scientists or side-agreements as to use and availability — created substantial conflict between the research institutions and scientists who had previously been collaborating so well. The norms established earlier over the transfer of the material and through professional courtesy were hereby violated with the intrusion of legal exclusivity through the patent system. It was substantially the same material, but now it was subject to new conditions. As Piper writes,

[t]he BTI’s patent application signaled its commercial intent, complicated researchers scientific exchanges, spurred conflict, and divided loyalties. The secrecy and breadth of those patents, as well as their failure to credit and reward collaborators, seems to have been much more damaging to the scientific networks than the patents themselves.¹²

The borrowing practices predating the patent filing facilitated professional relationships, which were valued for themselves as well as for their promise of scientific progress. The patents that eventually issued choked those relationships and, as it turns out, divided the scientists among various camps of “pure” and “applied” scientists. Although patents, like things, structure relations between people, in this case, the “intrinsic complexity of human interaction[s]” between

⁹ *Ibid.* at 71.

¹⁰ *Ibid.* at 71-72.

¹¹ *Ibid.* at 72.

¹² *Ibid.* at 81.

the NRC and the BTI were reflected in the patenting dispute rather than caused by it. The early borrowing practices, rooted in non-commerciality, a reciprocal exchange and circulation of materials and ideas, and the desire to build collaborative relationships in order to strengthen communities, relied on these unspoken but mutual expectations. Once the mutuality that is essential to borrowing is corrupted, new strategies, motives and behaviours arise. Comparing this scientific community to the knitting community from the chapter previous, Piper says

the entry of crafters or scientists into a market blurs the boundaries of their preexisting ideas of community, particularly in these cases where the new environment is sufficiently unstructured that new norms of institutional practices have not evolved to fill in the gaps. Into these gaps step the enforcers (or perhaps the IP bullies) . . .¹³

This is strong language! But it recognizes a critical distinction between borrowing and IP, which is the former's frequent reliance on cooperation and commonality whereas IP is meant to thrive in a more anonymous market-driven context. (More on markets below.)

Chapter 5, about 19th century journalism in the U.S., is replete with examples of ordered but informal borrowing practices. Again, as with the above example of agricultural scientists, the circulation of a "thing" (here a bit of news reporting or a full news article unprotected by copyright) is central to the establishment of relationships between editors and newspapers that grow the reputations and businesses of both. As with the agricultural scientists, adherence to the borrowing practices themselves was a sign of respect, as well as critical to the functioning of the business (here, the news). Murray writes that "[a] [news]paper was thus only as good as its editor's exchange relations with other papers."¹⁴ And she later quotes an editor saying exactly that: "This doctrine of never borrowing, of saying nothing but what you yourself originated, is cruel in the extreme. It would condemn most men to perpetual silence."¹⁵ Commerciality lived in the background (there can be no borrowing if there is no industry to make the items of exchange), but diverse editors deliberately reprinted and shared articles despite the business competition between newspapers as long as everyone honored attribution and reciprocity.

¹³ *Ibid.* at 82.

¹⁴ *Ibid.* at 88.

¹⁵ *Ibid.* at 92.

Also, as with the previous example of the agricultural scientists, there were rules that could be broken, which could destabilize the borrowing practice, sending some newspapers or editors into professional tailspins. For example, failing to respect the difference between “cutting” (borrowing on the newspaper exchange with attribution) and “cabbaging” (plagiarism) eventually lead to accusations of piracy (although there was as of yet, no legal basis for it). The violations were ethical not legal, although as Murray describes it, they eventually led to the “hot news” doctrine (preventing time-sensitive appropriation of news in order to preserve short-lived market leverage).¹⁶ Once too many newspapers started transgressing and distribution systems advanced (when distant places could be crossed and reached more quickly) new market pressures arose and the borrowing practices based in the smaller and distinct communities also began to change. New laws — intellectual property and quasi-property laws — began to govern the behaviours of market actors anonymous to each other (or who otherwise asserted their distinctiveness from the group whose normative behaviour bound them). And the previous period, in which the “exchange system represented and supported an emerging profession that preferred to govern itself through a performance of editorial virtuosity or community pressure rather than through appeals to legal authority” began to fade.¹⁷

There is yet another dimension to borrowing practices these and other examples in the books bring to the forefront: borrowing (even if it may deplete revenue and require cooperation) is welcome, not threatening. The scientists share to build on each other’s work, to replicate the work, develop their skills and progress their science. The newspapers borrow each other’s reporting — taking the *work* but attributing it properly to those who *worked* — copying the articles, building their papers relying on their editorial skills and circulating needed news. In the chapters about lawyers’ citation practices and Dafen’s art reproduction business, the inoffense of copying can be explained in part because the borrowing — a normative, community-based but professionalized endeavour — does not threaten individuals or communities but helped them thrive. In each case, borrowing develops individual expertise and enriches the community with newspapers, plant hormones, legal practice and ordered justice, the circu-

¹⁶ *Ibid.* at 100–103.

¹⁷ *Ibid.* at 101.

lation of fine art, all by engaging citizens every day doing skilled work. It is the IP, brought into these communities after the borrowing practices are established and strong, that threatens to undermine mutuality of exchange and the benefits borrowing provides. IP is introduced in part because the communities experience the inevitable shifts of geography, membership and time. Critically, the authors do not blame IP for the disruption of community norms — *e.g.*, when legal work and statutes are now locked behind pay walls justified by “copyright” instead of freely circulating — but instead they demonstrate how IP practices are contextually driven and arise from within these communities in different ways and for different reasons often due to outside, unstoppable forces. Two small points to add are that (1) borrowing practices preceded disruptive enforcement of IP rights, and (2) in many cases, the IP rights were born on the strength of the borrowing practices themselves. Furthermore, the notions of “novelty,” “originality,” “the copy” and “the real” are anathema to borrowing practices. There is only one “thing” to exchange, there is no replication that somehow “takes” or “depletes” the original source. In other words, these foundational borrowing practices demonstrate how contingent and culturally specific are the notions of novelty and originality on which IP laws are based.

MARKETS

Borrowing presages the possibility of a market; fervent exchanges are evidence of value to be harnessed and harvested. And if IP (with its alienable rights to sell) arrives on the heels of well-functioning borrowing systems, that would make sense. But, we tend to describe intellectual property law as creating markets where otherwise there would be *free riding*.¹⁸ And yet, the authors rarely describe a persistent problem of free riding that IP solves. Moreover, in these communities in which IP law takes a back seat to other mechanisms and motives for creativity and invention, markets still form and do so robustly. Thus, IP does not function as a solution to free riding. Its “place” is elsewhere.

And perhaps IP is “displaced” as a commodity because the authors do not only describe traditional markets — populated by arm’s-length purchases conducted by hierarchically structured firms — but,

¹⁸ Brett Frischmann, *Infrastructure: The Social Value of Shared Resources* (New York: Oxford University Press, 2013).

as frequently, they describe markets made of and by acquaintances and colleagues. These markets are not only commercial with competitive pricing but are also assisted by volunteerism and underpricing. As such, this book diversifies the concept of “market” as it is typically reified by law and economics literature by providing descriptions of real markets that are not anonymous or competitive but are instead cooperative and built around professional affiliations. The authors allude to this variation on “the market” in their introduction when they write:

While it is quite clear that art and community are a part of economic development, and can be effectively commodified or co-opted to some extent, we focus in this book on how creators understand the value of creativity, not on how economic development officers or managers understand it. We emphasize the friction between market value and lived value, and devote our attention to the latter.¹⁹

Here, the authors’ broadcast their broadening of the term “market” to include not only the situation in which art is bought and sold but the place in which value is articulated and achieved in terms of the lives of those creating art and science. “Market” is the place where value is acquired and exchanged but not necessarily with a basis of fungible currency. Instead, markets delineate the development, success and satisfaction within the communities that create or innovate and, critically, that also exchange creations and inventions among them to continue developing in ways they desire.

Kirsty Robertson provides an example of this revised concept of market in chapter 3 devoted to the knitting community on Ravelry.com and other online craft communities. In this geographically diffuse but issue-focused community, knitting patterns and knitting ideas circulate with value differently than IP law would otherwise provide. Patterns not marked with a price (or otherwise marked as “free”) indicate they are made “by people not looking for monetary recompense” and can be circulated and copied without payment.²⁰ But any pattern with a price — whatever the pattern’s nature — can not be freely copied or distributed. This was not because it was novel or original, or because it could otherwise justify the price from previous sales. Monetary value exists simply because of the seller’s assertion of value, an assertion that is respected as the choice

¹⁹ Murray, Piper & Robertson, *supra* note 1 at 10.

²⁰ *Ibid.* at 45.

of “another crafter to make a living from his or her work.”²¹ By simply attaching a price, the knitting community shapes and propels a market whose rules are fairly robust, but whose driving logic is labour and choice, not supply and demand. Moreover, despite the community being geographically dispersed, Robertson describes the actors in this space as affiliates with known identities and personalities. Finally, IP does not service the market, except occasionally as an empty threat, because IP only weakly, if at all, covers knitting patterns and garments.

A similar example arises in chapter 4, already mentioned, of the interwar agricultural scientists and their innovations. Piper describes how “sharing of compounds (or material transfers) was relatively common, even unremarkable, within th[e] network of plant physiology researchers . . . so long as credit was duly given in published research.”²² As previously mentioned, exchanging valuable (*viz.* useful) scientific material built relationships and reputations. It was a form of friendship between colleagues.²³ It was also understood to propel the progress of science. This wasn’t a market in materials — it was a form of borrowing, as I said — but the borrowing facilitates a market in professional status and development insofar as “market” is defined as the regimented space in which the worth of things is identified, respected and grown through exchange. The *materials* didn’t rise in value; professional status and identity did. Key to this insight is the fact that once the material exchanges facilitated something other than professional development — and instead were being used to develop commercial applications for for-profit organizations — the materials had a new value (a price) and professional relations became strained.²⁴

Piper is really describing two different exchange platforms and identifying the transition between them. Importantly, the original platform where friendship and scientific innovation arose and developed appeared to be the more stable and preferred by participants. Through early borrowing practices, lived value (of professional practices, collaborations and output) was created. Once prices attached to the material transfers and actors more aggressively began acquiring

21 *Ibid.*

22 *Ibid.* at 68.

23 *Ibid.* at 69-70.

24 *Ibid.* at 70-71.

patents, relationships break down because, Piper suggests, a different kind of platform arose. This new platform hosted the competitive negotiation and exchange of now rival agricultural plant hormones. Scarcity and differentiated access displaced the centrality of collegial relations and scientific progress. Here, as with the knitters, IP didn't create a market (something we say IP is particularly good at doing). But exclusivity (through IP) signaled a shift in market dynamics, adding a new dimension to the existing platforms (arm's-length transactions) and shaping new relationships between community actors based on competing notions of the public interest and their profession's role in promoting it. As Piper says,

patenting reflected rather than resolved the intrinsic complexity of human interaction . . . The presence of multiple, overlapping rights [related to research results, including credit and IP] suggests . . . an ethic of working in community is at stake, beyond the strict legal right.²⁵

Here, as in chapter 3, the market originates with a focus on cooperative exchanges for value that is based on respect for work and professional norms sustaining everyday labour. Intellectual property rights do not create or sustain this original exchange platform or the one that arises. But when IP surfaces as an option or factor, it signals a transition in exchange relationships. They are more ably anonymous (and here aggressive and authoritative), are for money rather than status or professional services and they measure novelty or utility rather than skill or labour.

Lest this sound like IP tends to facilitate an orderly market in the exchange of useful or creative works for money, chapters 7 and 8 attest to the fact that a "market" in IP-protected goods is anything but universal or predictable. As Murray describes in her ethnographic investigation of the art community in Kingston, Ontario,

[m]arket values and the IP law that subtends them do not saturate this arts environment either in fact or in general perception, but neither are alternatives to IP or market values formalized or consistently declared. I suggest that this messy in-between mode of cultural production is more typical than most existing research would indicate.²⁶

Murray describes a fluid in-between nature of the art creation and art selling that is not easily reducible to IP units or traditional eco-

²⁵ *Ibid.* at 82.

²⁶ *Ibid.* at 133.

conomic categories of exclusivity/access, supply/demand and scarcity/worth. Murray describes how in the art markets in Kingston, volunteer work is “very prominent” as a “dimension of artistic labor,” both in a “self-interested” way involving “collective sales efforts,” but also as a showing of “community spirit as a value in itself.”²⁷ Moreover, not only is “collective action . . . necessary for the thriving of [the community’s] individual components”²⁸ but the “artists themselves constitute a great portion of audience and market.”²⁹ Critically, Murray provides a much “richer portrait of other mechanisms for enabling art [than IP], and . . . a focus on community dynamics”³⁰ as a central force in the sustenance and growth of art and artists in Kingston and as a way of earning money. It would be a mistake to consider this less of an art market than the market, say, in New York City, simply because so many artists in Kingston are not yet (or ever) fully supporting themselves by selling their own art. Murray defends the existence of the art market because of how it sustains a culture, not because of how it aggregates wealth in a particular direction.

More than one person put the distinction between professional and amateur as a matter of risk or critical edge. Most associated professionalism with being paid for one’s work, although they stopped short (usually laughing ruefully) of making a living wage as a criterion. Money flowing out was a sign of professionalism for one person, who suggested that being willing to “invest in their practice” was a characteristic of professionals . . . Commitment and focus seemed to be a key factor . . . Public recognition was also key . . . [F]inancial success was a fairly minor element of self-definition as professional.³¹

In chapter 8, Robertson describes the city of Dafen, China, a city on the other side of the earth from Kingston, Ontario, but with stunning overlaps in cultural priorities and market dynamics. Dafen is called an “Artist Village” or the “Dafen Oil Painting Village” and is where painters work in assembly-line fashion and produce “60 percent of the world’s supply of cheap replica (but handcrafted oil paintings, exporting some five million paintings per year, most of them

27 *Ibid.* at 143.

28 *Ibid.* at 146.

29 *Ibid.* at 148.

30 *Ibid.* at 135.

31 *Ibid.* at 136.

copies of European Old Masters and moderns . . . paintings.”³² Artists from Kingston, Ontario don’t work in this precise way, but they share an appreciation of and focus on labour, skill and collaboration. Contrasting the art auctions in NYC, Robertson says “were it instead labor that was foremost in the consideration of art buyers, it would be . . . the painters in Dafen, the workers in the studio who were most important.”³³ Despite oftentimes being described in sweatshop terms (akin to the starving artist of the Global North working in coffee shops to make ends meet),

painters in Dafen [do] work long hours, but they often report enjoying the flexibility of their working conditions, the relatively good pay, and being able to work with family members. The small workshops and tiny operations that characterize Dafen could not fulfill the image of factory painting . . . Negative coverage thus shifted to focus on how Dafen artists’ massive output challenges the very tenets of what art is.³⁴

The points to make about the diversity of market structures and IP are several. First, IP values (of scarcity, anti-copying and controlled distributional systems) are subordinate if not entirely undercut in these communities. Second, the commitment to everyday work, the devotion to training and skilled labour, and the reliance on collective undertakings emphasize bodies, people and connections between them rather than intangible goods and fungible values. Depending on one’s definition of “art” and “market,” Robertson explains how the

market both exceptionally overvalues art (imagine how much the oil and canvas, the materials, of a van Gogh painting are worth, versus its market value) and undervalues it (the vast majority of artists do not make a living wage from their art). . . . Value is a tricky thing when it comes to art.³⁵

And so the authors reverse the inquiry. Rather than assuming value in IP terms (originality or novelty), they sideline IP’s sovereignty and its necessity for creating rivalrousness and excludability in the items of art or science to sell and focus instead on the people and practices that are devoted to one or the other and that structure the market itself. Third, as with the borrowing practices that rely on mutual exchanges and reciprocity of intent mostly outside the commercial con-

³² *Ibid.* at 158.

³³ *Ibid.* at 175.

³⁴ *Ibid.* at 162.

³⁵ *Ibid.* at 168.

text, the markets described in this book organize relationships around the exchange of things not intangibles, all the while deriving value from work not works.

Importantly, within the context of these borrowing practices and alternative market structures, the authors are not endorsing the concept of “free.” In one of the most trenchant critiques of “free culture” I have read in the IP reform literature, the authors explain the “limits of free culture,” as “individualist in its bones, [and] . . . weak in its capacity for theorizing power, ideology, or complex collective action and experience.”³⁶ As the above discussions of particular communities doing art and science illustrate, exchanges based on mutuality of interests or polyvalent market practices³⁷ are hardly comprehensible within a “neoliberal discourse of voluntarism.”³⁸ Indeed, the

discourses of “free” may not even resonate in European settings or other settler colony contexts such as Canada, in which the words “public,” “social,” or “national” may appear more than “free,” indicating a tolerance for, or even expectation of, regulation or negotiation amongst groups or parties.³⁹

In other words, borrowing and market practices, like creative and innovative practices, are “contingent rather than universal.”⁴⁰ IP’s one-size-fits-all model, fueled by the dominance of certain national preferences or particular market ideologies, is out of alignment with the diversity of creative and inventive work IP claims to protect and propel. The authors’ rich accounts of variable networks of relationships, including the assemblage of interconnected values (of labour, spending time, honing skills, professional institutions, and geographic specificity), describe dependencies and demands for reciprocity demonstrating how both exclusivity and

freedom [are] not sufficient . . . to produce creativity. Innovation emerges out of family and community preparation and out of education and financial resources. Some of these inputs might be associated with the free market, but others are products of social policy and tax revenue, or nonmarket collaboration and mentoring.⁴¹

³⁶ *Ibid.* at 16.

³⁷ *Ibid.* at 141.

³⁸ *Ibid.* at 22.

³⁹ *Ibid.* at 18.

⁴⁰ *Ibid.* at 23.

⁴¹ *Ibid.* at 18-19.

I could go on extolling the importance of this book and studies like it. But then the reader's time would be taken up reading this review rather than doing his or her own research engaging with these important questions. This book feels like an important milestone in the study of IP, art and science. It is both a study and example of the richness of intellectual work and works that smartly situate the role of law in shaping both. Together, an art historian, cultural studies scholar and legal scholar examine IP's place in the making and distribution of art and science exhuming and reversing assumptions about IP law's dominance and resituating it alongside the consequential aspects of collaboration, bodily effort and labour relations. In doing so, they delineate alternative exchange systems — borrowing practices and polyvalent market structures — that force the re-examination of legal baselines.