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THE EUREKA MYTH: CREATORS, INNOVATORS, AND EVERYDAY INTELLECTUAL PROPERTY, by **Jessica Silbey**. Stanford University Press, 2015. 356 pp. Softcover, \$25.95, Hardcover, \$85.00

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Silbey's book is a masterful analysis of the results of four years of fifty face-to-face interviews with scientists, engineers, musicians and artists, their business associates and intellectual property (IP) lawyers. Rather than use the normative categories of IP law to organize the insights gleaned from the interviews, Silbey uses a more emergent methodology that allows the results of the interview to organize the themes of the book. The book takes us on a journey through the creative process, making the links to black letter law where appropriate without making chirographic law the core of the analysis. Each chapter, however, is carefully crafted to address some of the justifications that motivate changes in IP laws or policy. A good example is the first chapter, "Inspired Beginnings," which adds depth and weight to the story of why people initially create and innovate. This is a core question for policy makers as one of the perceived justifications for IP laws is that they inspire creation. In fact, as Silbey shows, the creation story is much more complicated and personal and barely (if at all) inspired by IP. Silbey's relational account paints a more realistic picture of the multiple influences on the individual that lead to creation, in particular supportive community relationships and intellectual debts to others in their field. Refreshingly, Silbey recounts that creators often play and have fun while making their IP-worthy artifacts, a part of the story rarely present in simpler, starker utilitarian accounts of the creation of IP artifacts destined for markets.

Silbey moves from inspired beginnings to consider what motivates creative and innovative work on a day-to-day basis. She finds that all sorts of things keep people working but it is rarely the promise of IP on the final product. In fact, IP development was often "considered a nuisance" by her respondents and a more marginal component of their business development plans (p. 61). Silbey recounts how, for many of her interviewees, it was simply that their work was integral to their professional identity and was unlikely to diminish lest that identity also be lost. The innovators and creators she interviewed seemed more interested in controlling the conditions of their work than its outcomes. That control was the best measure of their success. Further, under-enforcing their IP, i.e. giving away artifacts for free to build market share, was an essential strategy for many.

Significantly, the interviews showed how important the freedom to work and to influence the world were to the creators compared to the importance of the work product itself (which IP law tends to focus on). In many ways, interviewees felt that IP law did not adequately protect this freedom to work, particularly as regards relationship-building or autonomy. It speaks to the power of what she heard that Silbey does not hesitate to say at the end of the chapter that her results undermine the explanatory power of the utilitarian justification for IP which for so long has explained IP and justified its legal expansion.

In Chapter 4, Silbey gets to the heart of what many creators and innovators want, which is protection of their reputation, a role for which IP is poorly suited. From the interviews, Silbey points out that this misalignment may have something to do with the fact that reputation “feels deeply personal, [but] its lifeblood requires public circulation and engagement” (p. 152). IP is not a useful tool because its personal property-like protection of wealth and investment does not work for creators who feel personally tied to their reputations embedded in relationships with others. Reputation seems to be the thing that creators and inventors value the most and yet the claims they’d wish to pursue to protect it barely fit established IP categories, if at all. Silbey, thus, finds a minimal role for IP and legal processes in protecting reputation. As she argues, “beyond that basic protection of trademark as one’s business identity, interviewees successfully build, protect, and distinguish their valuable reputation in many other ways” (p. 183).

The part of the book that resonated most for me was Chapter 5, when Silbey explained something that I had observed. This chapter titled “Instruction: How Lawyers Harvest Intellectual Property” is the first elaboration I have seen of how lawyers act as IP teachers or translators outside of the university technology transfer context. For many years teaching IP law I have noted that students who pursue IP law often end up spending much of their time teaching it to others, as opposed to litigating or engaging in other more traditional forms of lawyering. Silbey explains that IP lawyers will disrupt a creator or innovator by identifying a previously unknown (legal) risk present in a situation. The lawyer then has to teach those clients how to manage the risk. This they do through seminars, teaching materials and other training to self-consciously shape behavior and culture to be more IP-centered. This process of norm creation is interesting as it suggests IP law does not very accurately reflect endogenous normativity, an unsurprising conclusion given the other findings in this book. It has significant implications for the type of education and training that might best aid students who wish to work in IP law.

Silbey wraps up the book by bringing her relational focus to the traditionally one-sided issue of IP distribution. The distribution discussion is normally framed as being about how best to distribute IP artifacts to users for money. Silbey extends this discussion to focus on the overlooked “public” feature of IP dissemination, i.e., how dissemination can constitute a public or community interest. Silbey finds that not only are her interviewees making money through distribution, but in many cases they are also engaging with one another and developing core competencies. The most intriguing parts of the chapter were the sections on sharing and holdouts. Silbey finds that sharing is the most popular form of distribution among the interviewees. One of the more interesting findings on sharing was that not only is it

passively tolerated but in many cases, encouraged, by taking steps to free an invention, in this case, from the bankruptcy of its patent holders (p. 257). Sharing, rather than the “many and more” strategy that characterizes traditional distribution methods, builds relationships, while stimulating reuse and further creativity. The counter-intuitive holdouts are folks who choose not to circulate their works because of identity interests, or to maintain the quality or integrity of their works. In many cases, these holdouts sounded like they would be served well by some sort of moral rights, as Silbey points out (p. 270). The chapter ends with an appeal to lawmakers to look to practice for the signals about what creators and innovators think IP law should look like, rather than accepting IP law’s excessively broad exclusivity rules.

IP scholars have for many years now been attempting to reconcile the canonical story of innovation, as told through the lens of IP law, and how people actually create and innovate. They have been aided by the growth of an IP scholarship that has become more critical, empirical, interdisciplinary and curious. Silbey’s wonderful book is an example of the best of this scholarship applied to questions at the core of IP anomie. Her book is authoritative and satisfying to read, drawing as it does from a solid foundation of multi-year empirical work understood through rigorous qualitative research methods and data analysis, a type of scholarship still relatively uncommon in IP studies. The best part about Silbey’s book is the extent to which she refocuses IP policy discussion on the day-to-day work and the emotional, multi-dimensional people who create and innovate, as she moves discussion away from the product. When stressing the product, conversation inevitably becomes focused on its abundance, ownership, and location. Discussion about the work leading to the product considers the relationships that are created and sustained by the product and leads to a better understanding of the nature of IP law and labor. Silbey’s processual approach allows us to ignore the tediously predictable rational actor and gives shape to the more familiar, empathetic, nuanced and inspiring people that Silbey interviewed. She explores the relatively uncharted affective dimension of IP creation which is often about preserving, creating or nurturing identity, reputation and relationships. Silbey’s call to consider the constitutional ideal of “progress” in IP as more than economic is shown so clearly by the interviews that it almost does not need to be stated. When I finished, the only thing I wanted from the book was more - more interviews with respondents in the context of others with whom they work, more detail about the interviewees (impossible given research ethics), more about whether their behavior over time reflected what they stated in the study and more. My desire for more told me that Silbey has authored a dexterous, foundational work that should become the starting reference point for anyone involved in IP advocacy, policy change, and research into creativity and innovation.

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