Improvising Intellectual Property in Saigon

David A. Bergan*

ABSTRACT

How does intellectual property become part of the structure of social practice? The traditional answers are enforcement, education, and incentivized self-interest. This Article challenges that understanding by examining the social field of young engineers in Vietnam. In Ho Chi Minh City, Vietnam, intellectual production is not only about producing the legal commodity we call intellectual property. For many young engineers working with multinational companies, it is not about producing a product at all. It is about improving their position in society. Relying on over a year of qualitative, ethnographic fieldwork from 2012 to 2014, this Article develops a critique of intellectual property scholarship that limits its own remit to the maximization of such product or access to it. Whether such intangible objects as patents, trade secrets, and copyrights are protected by law or left unprotected, the legality of their protection is embedded in social practices that transcend jurisdictional limits. Research participants in this city formerly known as Saigon report the extent to which intellectual property concepts already structure their practice, while at the same time they describe the legal system of Vietnam as socially distant and potentially hostile. They are engaged in improvising a practice with respect to intellectual objects, and in the process they participate in the construction of legality around these objects and around themselves.

TABLE OF CONTENTS

I. INTRODUCTION..............................................................442
II. THEORETICAL FOUNDATIONS .............................................447

* PhD, NYU Institute for Law and Society; JD, Columbia Law School. This Article revises portions of my doctoral dissertation, accepted April 20, 2018, which was based upon work supported by the National Science Foundation under Grant No. SES-1250885. In addition to others I acknowledged there, I thank Barton Beebe, Greg Vetter, Lee Ann Lockridge, and all the participants in WIPIP 2019 at the University of Houston Law Center.
I. Introduction

Intellectual property scholarship has a fetish problem. Just as economists of Karl Marx’s time had an irrational reverence for the commodity that inhibited analysis of its social function, the great majority of debates about intellectual property law revere creative output. Such debates turn on whether the law maximizes the benefit to society from objects deemed creative expression, invention, innovation, or progress. According to such scholarship, on one hand, IP protection limits access to such objects, meaning fewer people enjoy any benefits they produce. On the other hand, those same restrictions incentivize investment in the creation and promotion of those objects and compensate their creators. The debate is limited to discussing how we can get more of these objects, or more from them. Scholars rarely, if
ever, ask why we want these objects or how they are produced as valuable in the first place. Their value seems obvious, even natural.

This is a problem because it limits how we think about the law. If legal scholarship focuses solely on how intangible products relate to each other and to money, then our analytical models will fail to capture at least some of the law’s effects on how natural persons relate to each other. Economic models may improve productivity or efficiency. Moral models may improve distributional or procedural justice. But the assumptions implicit in these models built around the exchange of a product blind their analysts to the social forces that IP laws represent and reproduce. By paying greater attention to the cultural practice of intellectual production itself, rather than to intellectual product alone, IP legal scholarship can be expanded to account for the law’s economic effects but also for its social effects. By studying the law’s social effects, perhaps IP law can be improved.

In addition to being limited by an irrational reverence for creative output, legal scholars generally limit the scope of their study to what they can do with the law. They often fail to ask what the law does to them. Recent scholarship in anthropology has questioned the globalization of intellectual property rights, especially its adoption by indigenous communities or the states that claim to speak for them. Legal scholarship in the United States has similarly questioned the propriety of the global harmonization of IP rights, but by attributing compliance problems both at home and abroad to differences of practice or culture. Despite significant attention to problems of noncompliance, direct study of the relations between the institutions and individuals that construct these discourses has been neglected in favor of the study

---

of imagined communities in isolation. Such communities are projects that are constantly works in progress, and their internal and external relationships affect and are affected by their relationship to law.

Even studies that purport to focus on social structures only do so to analyze whether intellectual output is maximized. The branch of intellectual property scholarship sometimes called “intellectual production without intellectual property” provides most of the rare examples of focus on practices rather than products. These studies have shown that objects of creative production are still produced even where the law does not provide additional incentives for their production, either by the encouragement of social norms or by technology-facilitated intrinsic motivations. In 1973, Robert Merton observed that in the scientific community, freely sharing potentially protectable IP against economic interests is a common practice. Robert Merges later studied what he called “private intellectual property systems” in twentieth-century US movie script writing, manufacturing, fashion design, and computer software. Emmanuelle Fauchart and Eric von Hippel also discovered a practice respecting recipes as a form of property outside of the legal system in the community of Michelin-rated chefs de cuisine in France. Numerous studies have since found similar practices in professional groups including stand-up comedians, magicians, tattoo artists, and drag queens, to name a few.


Amy Kapczynski categorizes and “reorients” this literature with her recent study of the World Health Organization’s Global Influenza Surveillance and Response Network (the “Flu Network”).

The network generates the annual seed virus information that enables manufacture of seasonal flu vaccines and is the first line of defense against the potential for a pandemic influenza. Through a detailed case study, Kapczynski demonstrates that such “capital-intensive information production” can be maintained in the loose-knit network under appropriate conditions. A supply-side model that maintains “Ostrom goods” (after Elinor Ostrom’s work on structures of productive commons) is the secret to the production of these valuable social goods.

In particular, Kapczynski argues, the most important intellectual production without intellectual property requires support not only from strong organizations that cultivate group values but also from law in the form of contracts and licenses.

But Kapczynski’s conclusion misses the forest for the trees. The Flu Network relied on law to fight law: its contracts and licenses resolved a crisis of unfair propertization enabled by IP law. The result was the construction of a new legality for the organization, a new social structure of the “meanings, sources of authority, and cultural practices... commonly recognized as legal.”

Formal law became one of the group values cultivated by the organization’s structure. Strong organizations and legal agreements cultivate such values not just in coordinated open-science settings but also in competitive settings that promote the model of intellectual property exclusivity. This Article analyzes some of the ways such organizations structure the environment of their employees and the discourses used in that setting. It asks what discourses the employees use that frame the work they do as a process that generates intellectual property and how these discourses are mediated by their everyday practice. Investigating the practices that construct the output of intellectual production as a product that can either be shared or be sold takes an analytical step

Sarid, Don’t Be a Drag, Just Be a Queen—How Drag Queens Protect Their Intellectual Property Without Law, 10 FLA. INT’L L. REV. 133, 133 (2014).

13. Kapczynski, supra note 7, at 1539.
14. Id. at 1542.
15. Id. at 1607.
16. Id. at 1604–09 (coining the term “Ostrom good” to refer to “preconditions of successful cooperation in the material commons” identified by literature testing the theories of economist Elinor Ostrom, such as clear group boundaries, effective sanctions, and management of the boundary with the outside).
17. Id. at 1607–12.
18. Id. at 1579–82.
back from the market for that product. It allows us to look at how law informs the way these intellectual objects become marketable to begin with.

The setting for this case study is the Vietnamese city formerly known as Saigon, a commercial capital of Southeast Asia where the government’s encouragement of foreign investment has brought numerous multinational employers. Renamed Ho Chi Minh City at the end of the “American War” in 1975, this historic entrepôt is a magnet for young Vietnamese knowledge workers who flock to apply to foreign companies seen as “suitable” places to work. These workplaces are the first places many of them encounter licensed software, nondisclosure agreements (NDAs), and the alienability of the intangible output of their work from any tangible thing, including themselves.

I call the introduction these engineers are getting to these group values improvising intellectual property for a couple of reasons. First, they have to accept the reality of the players they are performing with in the same way improvisers do by saying, “yes, and.” And second, in doing so they exercise a certain amount of agency and add to the social structures they are accepting.

Improvisation is how we all participate in the construction of popular legal culture and the social structure of legality. As Stewart Macaulay once wrote, most participants in the legal system and “even people standing at a working class bar are all jazz performers. They play variations on legal themes, and sometimes attempt to put new melodies to the chords.” The system of valuing intellectual production written into intellectual property law is being constructed in Vietnam through these improvisations, as a cultural product that has acquired distinction.

Part II provides background on the sociolegal and social theory I use to explore improvisational meaning-making in law: legal consciousness analysis and the theory of practice of Pierre Bourdieu. Part III describes the study’s empirical research methods, which include ethnographic observation and semistructured interviews. Part IV develops an empirical account of how intellectual property is structured as a cultural practice by the practice of four industries in Saigon. And Part V categorizes seven recognizable discourses that employees of these industries use as they struggle to participate in the

---


IMPROVISING IP IN SAIGON

structuring of their practice. They spoke about law and IP in terms of temporality, of place, of things, of filing suit, of fear, of fairness, and of triviality. In the conclusion, I remark on the importance of looking beyond law’s effect on intellectual objects to the importance of law to the structure of social interaction that makes possible the objectification of intellectual output.

II. THEORETICAL FOUNDATIONS

In my analysis, I rely primarily on two bodies of theory to help organize my observations of the improvisations that Saigon’s social agents perform, which construct intellectual products, intellectual property, and law. The first is legal consciousness analysis, which pays unique attention to the role of everyday actions by individuals in producing the structure of law in society. The second is practice theory, which focuses analysis on the reproduction of social structures within a practice that both constrain and generate possibilities of social action within its field.

The analytical construct of legal consciousness is a feature of legal culture that is either potentially universal or uniquely American. Scholars using the term have found rich variation in the lived experience of law by individuals with different social position or experience, by the same individuals in different contexts, and by similarly situated individuals in different time periods. But some question the implicit assumption in some work on legal consciousness that law pervades everyday experience, and raise the concern that such a broad view of law marginalizes the importance of specific laws or legal regimes.

As used here, legal consciousness should be understood as a social, not an individual, construct, denoting participation in the

25. Merry, supra note 22.
27. Engel & Engel, supra note 24, at 108.
construction of a social structure of legality. In their book, *The Common Place of Law*, Patricia Ewick and Susan Silbey introduced three forms of such participation: “conformity before the law, engagement with the law, and resistance against the law.” They found that these three forms predominated in their sample of 430 people from New Jersey in 1990–1993 and that each form “invokes a particular cluster of cultural schemas and resources that position the law and the individual in relation to each other.” Importantly, Ewick and Silbey argue that individuals cannot be characterized by a single form but may express “multifaceted and possibly contradictory” forms of participation in different contexts. It is precisely these contradictions that construct legality, they find, as “[t]hese alternative meanings and multiple interpretive schemas simultaneously sustain each other in symbolic tension.”

In contrast with New Jersey, the hegemony of law is not a safe assumption in the bustling commercial capital of Vietnam, Ho Chi Minh City (HCMC). But neither can one assume a single “society” there with a limited repertoire of interpretive schemas that can be considered “common.” Rather, such commonality is alternatively aspired to and disdained by the international “community” of expatriate managers, investors, or diplomats and the local hodgepodge of merchants, employees, entrepreneurs, and officials who work with them. In this zone of contact, what is common is the struggle to define the boundaries between what is common and what is distinct.

It is in this context that practice theory can be used to investigate the conditions of legal consciousness that make legality possible in a specific social field. Participation in the construction of legality can be used analytically to describe the recursive relation between individual understanding and social structuration. The

---

29. Ewick and Silbey use the term “legal consciousness” to denote such practical participation in a process of social construction. See Susan S. Silbey, *Legal Culture and Cultures of Legality*, in HANDBOOK OF CULTURAL SOCIOLOGY 470, 475 (John R. Hall, Laura Grindstaff & Ming-Cheng Lo eds., 2010) (citing Ewick & Silbey, supra note 19); see also GEORGE HERBERT MEAD, MIND, SELF, AND SOCIETY: FROM THE STANDPOINT OF A SOCIAL BEHAVIORIST 332 (1934) (“Consciousness as such,” and even more so legal consciousness, “refers to both the organism and its environment and cannot be located simply in either.”).

30. *Id.* at 47.

31. *Id.* at 50.

32. *Id.* at 52, 248. It is “a false dichotomy” to distinguish between legality as an ideal and legality as a field of practice. *Id.* (“Because legality has this internal complexity—among and within the schemas—legality can be a hegemonic structure of society.”).

34. The theory of structuration holds that the structural properties of social systems and of agency within those systems are mutually dependent and participate in the continuing reproduction and change of each other. ANTHONY GIDDENS, CENTRAL PROBLEMS IN SOCIAL THEORY: ACTION, STRUCTURE, AND CONTRADICTION IN SOCIAL ANALYSIS 75 (1979).
articulation of such participation both in what we say (discourse) and in what we do (practice) is a collective enterprise undertaken by those with rights and by those recognizing rights in the context of constructing a shared field in which they act.

The importance of specific legal rules or legal regimes to participation in society may be practice specific. In each social field defined by a practice, legality is constructed by participants in that practice for that practice. In US corporations, for example, the meaning of sexual harassment may be even more broad than that required by law, while in the equivalent French workplace the meaning of sexual harassment is not something the corporation finds necessary to define. Its treatment as a criminal matter, rather than one that may subject the employer to civil liability, affects the structure of the workplace field in which workers construct legality. National boundaries are not necessarily boundaries of these practice-defined fields, however, which must be defined by the participants themselves. Participants in practices that cross jurisdictional boundaries construct social fields that reflect multiple traditions of related practices like law. To the extent that a social field of study (e.g., engineering for international employers) is structured by the recursive interaction of agents to include practices defined internationally, the field may be semiautonomous of national legal rules or regimes.

In Vietnam, the national legal system has not been given the capacity by the government nor the authority by the people to affect many fields of social practice. Vietnam has a long history of legal borrowing, but legality at the local level has hardly been researched. Prior to the recent importation of liberal commercial law, the

---

35. See, e.g., Merry, supra note 22.
Vietnamese legal system was structured according to Soviet conceptions of legality, French colonial legal pluralism, or modifications of Chinese codes first introduced during a millennium of domination. Litigation rates were low, even considering the disruption of decades of war, and domestic patent applications averaged only one per week for the entire decade of the 1980s. Legal protection for trade secrets has only recently been introduced. Like in China, legal control of publishing has historically focused more on censorship than on monetization of intellectual output.

The statutory changes required to join the World Trade Organization have largely harmonized the legal treatment of IP there with global minimum standards required by the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), including possible corporate liability for infringement of patents and trademarks or misappropriation of trade secrets. However, litigation there is still disfavored, uncertain, and unlikely to impose liability of any substantial deterrent effect. The legality of IP—the naturalization of intangible aspects of innovation as property—is constructed alternatively in the discourse and practice surrounding potentially proprietary ideas: classmates’ designs, suppliers’ methods, and competitors’ products. Especially in fields of contact between participants in the legal regimes of multiple nations, an utterance or an action involves an inherent ambiguity that encourages attention to what Mary Louise Pratt called “the improvisational dimensions of meaning-making.” Participants make up the meaning of intellectual property and its legality as they go along with using the language of it. My research positions legal consciousness as the improvisation of legality in these social fields in which foreign investors, employers, and educators have contact with locals “appropriating and intervening” in global legality in practice.

42. PENELope NICHOLSON, BORROWING COURT SYSTEMS: THE EXPERIENCE OF SOCIALIST VIETNAM 211 (2007).
43. Id. at 216.
44. MINISTRY OF SCI. & TECH. NAT’L OFFICE FOR INTELLECTUAL PROP. OF VIET., 2016 ANNUAL REPORT OF INTELLECTUAL PROPERTY ACTIVITIES 64 (2017).
45. ALFORD, supra note 4, at 79 (the 1990 Copyright Law in China “echo[ed] historic efforts to use copyright as a means of limiting the spread of heterodox ideas”).
48. Id. at 61.
These social fields are regulated not by codified law but by relationships among business partners, competitors, administrative bureaucrats, and family. Among such participants of a social field, “[i]t is the presence of ongoing personal relationships . . . that appears to form cognitive understandings”\(^{49}\) in Vietnam. Participants’ investments in their respective social fields produced “a sense of collective identity and common purpose,” hope for “improv[ing] their position in Vietnamese society,” and “the need for . . . group solidarity to protect the village and traders from a venal state.”\(^{50}\) Integration of foreign educators and employers into these networks of personal relationships changes the structuration of such understandings of law, be they cognitive, discursive, or matters of nondiscursive practice. Practice informs social actors’ participation in the construction of legality on a nondiscursive level and structures it as a disposition on a global field.\(^{51}\)

### III. Empirical Methods

In order to interrogate the social construction of intellectual objects, my research question was phrased: What discourses that frame the production and communication of ideas as a process that generates legally defensible property are being adopted or intervened in by local engineers, and how are these discourses mediated by practices? To answer this question, I set out to collect primarily two types of evidence: evidence of what people do and say in context (mediating practices) and evidence of what people say about what they do (discourses participants adopt or intervene in). In this Part, I first explain the two types of data I collected, and then I go into more detail about whom I collected them from.

---

49. Gillespie, Relocating, supra note 40, at 50; Gillespie, Localized Global Competition Law, supra note 40 (“Conventional legal training programmes are too impersonal to convey tacit knowledge because effective communication requires some form of personal interaction and cultural intermediation.”); see also David M. Engel & Frank W. Munger, Rights of Inclusion: Law and Identity in the Life Stories of Americans with Disabilities 236, 242–43 (2003) (finding that differences in their disabled research participants’ legal consciousness were closely associated with how they continually constructed a sense of their “distributed self” in and through life narratives, particularly with respect to legal protections for their employment opportunities under the Americans with Disabilities Act).


51. Structured dispositions in a participant of a field are a part of that person’s *habitus*, according to Bourdieu’s theory of practice. Bourdieu, supra note 23 (explaining *habitus* as “systems of durable, transposable dispositions, structured structures predisposed to function as structuring structures” that constitute practical reality by embodying a sense of the futures immanent in the present based on experience of the structures of the practice).
A. Data Collection and Analysis

I collected data through qualitative methods of ethnographic observation and semistructured interviewing.\(^{52}\) My approach was interpretive and nonpositivist\(^{53}\): I sought to identify patterns that emerge from the practices and discourses I observed as well as from the discourse between the participants and me as the researcher. But it is clear to me that what I observed may look different to others, including those who participated in my research. Diversity of perspective on a discourse is a fundamental premise of this study. Changes in the “footing” of participants, how they perform their relationships to each other,\(^{54}\) and therefore ambiguities of contextualization\(^{55}\) were expected.

I engaged in ethnographic observation over a period of more than a year at multiple sites. I completed sixty-seven days of visits to these sites between October 2012 and March 2014. I was not able to record verbatim discourse during observation. Instead, my observations focused on identifying contextual cues and methods of framing what employees were engaged in. I recorded fieldnotes in English, noting some comments in Vietnamese. My observations raised questions such as: Are employees expected to sign agreements not to compete or to assign rights to the company? Are some and not others asked to sign? Are they held to these agreements? How are local employees expected to relate to international contacts? How are customers in Asia handled? What is said about the company’s international competitors? Cues such as these acted as ideological markers, engaging the workers in the construction of a kind of legality.

I also collected thirty-eight semistructured interviews of Vietnamese engineering employees and engineering students. These were supplemented with numerous interviews with managers, owners, investors, lawyers, and other expatriate workers. My interview protocol addressed each participant’s social background and work history, legal experience, and perceived relationship to coworkers and employers, while encouraging the participant to talk in response to open-ended

---

\(^{52}\) All notes and transcripts related to interviews are on file with the Author. For safety purposes, identifying information is kept confidential.

\(^{53}\) In social science, “positivism” refers to an approach that assumes the researcher can be objective in observations of social fact, which are external to the observer and independent. This was not the case for my study, because I was intentionally part of the social field that provided my data. Positivism Research Philosophy, RES. METHODOLOGY, https://research-methodology.net/research-philosophy/positivism/ [https://perma.cc/9MDN-2DJK] (last visited Oct. 14, 2019).


questions about particular experiences with potentially valuable ideas and ways of doing things. Personal narratives have been a particularly fruitful form for the collection of data concerning the participation of individuals in the social construction of legality.\textsuperscript{56}

My goal was to identify how social actors perceive the relationship between themselves and others with respect to the use of ideas. The social identity of the individual with respect to distribution of ideas and ways of doing things is central to my use of legal consciousness as participation in ideological construction of legality. My questions explored the individual’s understanding of how he or she handles ideas and ways of doing things that he or she learns from others, of how others treat his or her ideas and their own, and why such practices exist. As expected, these understandings and perceptions reflected diverse forms of legal consciousness, which occasionally contradicted each other and even themselves.\textsuperscript{57} The way that each engineer or student explains her or his participation (and that of others) in the practices of the workplace or university with respect to IP, including patterns of emergent contradiction, are empirical data points in a legal consciousness of contact.\textsuperscript{58} In each working environment, practices central to the legal protection of ideas are emergent from the discursive contact going on there. Contact communicating valuable ideas, attribution, sharing, and the identification of the new or novel structures those practices.

\textbf{B. Research Participants}

Engineers as new employees in global workplaces are a rich source of data for messages that frame the production and communication of ideas as a process that generates legally defensible property. As both producers and consumers of innovation, understanding engineers’ participation in the legality of IP is crucial to understanding its ideological construction.

Vietnam is rapidly developing through trade with both the United States and China, positioning itself in the middle of international struggles over intellectual property.\textsuperscript{59} Global corporations in Vietnam are introducing a new generation of engineers into practice

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{56} See Engel \& Engel, \textit{supra} note 24, at 17; Engel \& Munger, \textit{supra} note 49, at 87; Ewick \& Silbey, \textit{supra} note 19.
\item \textsuperscript{57} See Ewick \& Silbey, \textit{supra} note 19.
\item \textsuperscript{58} Pratt, \textit{supra} note 6.
\end{itemize}
\end{footnotesize}
designed for the international marketplace. Learning in these environments is formative for these engineers’ framing of IP as a cultural practice.

This Article discusses worksites of two such global corporations, each of which is a foreign-registered corporation holding 100 percent ownership of the local subsidiary. All thirty-eight of my participant engineers had worked for or sought to work for one of these two companies or another similarly situated one. Supplemental interview participants interacted with such companies in a variety of ways: as their employers, their clients, or their investments.

All of the engineers that participated in my study spoke English, and they were eager to practice it by speaking with me, a US engineer and lawyer. This raises issues of potential bias in my data. Participants were self-selected and therefore do not represent others who did not volunteer, and even less represent engineers who do not speak English or who work in fields less exposed to foreign influence. Moreover, what each participant said in our interview was intended for me and would not be identical to what might be said to a Vietnamese engineer, a Vietnamese lawyer, an American who is not a lawyer, or an American who is not an engineer.

My findings are clearly affected by these limitations, but I cannot know how with much precision. Some likely accommodated sensitivities they presumed I had by being more charitable towards law, or towards the United States, than they would otherwise be. But that did not stop some from defending differences between the United States and Vietnam or from challenging the moral or ethical value of law. A couple participants expressed sophisticated arguments against the state of the law on IP, intervening in the discourse of legality on its own terms. Several distinguished the fairness of IP from its legal basis, adopting a discourse of gift-reward. Many were resolutely indifferent to the role that law played in their field, rejecting law as ineffective or incomplete. And a few expressed an unquestioning certainty that legal rights would be enforced.

But the narrowness of this self-selecting group has the advantage of representing a common commitment to a certain field of practice. These engineers are committed to participating in an English-speaking professional field of practice that has a specific logic to its operation.60 Like in the fields of academic or literary practice, what is logical or necessary for an engineer in this field may not appear

60. Pierre Bourdieu & Loïc J.D. Wacquant, An Invitation to Reflexive Sociology 96–98 (1992) (describing the field as having “a logic and necessity that are specific and irreducible to those that regulate other fields”).
to make sense to an outsider. The discourses that my research participants use to explain their competences and their dispositions with respect to IP and to their participation in the construction of its legality are expressions of this specific logic and necessity.

Even when used with me, they remain expressions useful for analysis not only despite the fact but because I am a part of their field of practice. Discourses of temporality, of spatial relations, of objects that structure relations, and of various positions to law and social exchange express their participation in this logic with me. That the discourses were specifically chosen to explain these things to a US lawyer and engineer, me, is important to understand. The logics of these discourses express positions they take with respect to the structure of their relations with others in the field as they chose to explain it to me.

All participants and sites have been given pseudonyms to preserve anonymity and to encourage candor and openness.

IV. IMPROVISING IP AT WORK

As Pierre Bourdieu pointed out in *Distinction*, the social recognition of a work of cultural practice involves the construction of norms of its legitimate perception that are bound up with specific dispositions and competences. In their workplaces around HCMC, Vietnamese engineers and their managers express their social recognition of intellectual property in terms that suggest such a project of construction. The norms around objects like intellectual property are bound up with competences and dispositions that they recognize as cultural. And in fact, the construction of these norms may even go without explicit reference to the coercion of law.

Though it is a figment of law, intellectual property does not appear to rely on the law for its materiality in these workplaces, but on the construction of value in the cultural practices of international business. Employers of distinction in Vietnamese engineers’ field of practice require the capacity to recognize IP in their employees, and they require the disposition to recognize its value. But the objectification and naturalization of intangible property in closely held secrets of business value, creative works, and inventive solutions are potentially more powerful because intellectual property has such an ambiguous relation to law. IP’s recognition is not universal and ubiquitous but select and elite.

---

61. Pierre Bourdieu, *Distinction: A Social Critique of the Judgement of Taste* 28 (Richard Nice trans., 1984) (1979) (“Any legitimate work tends in fact to impose the norms of its own perception and tacitly defines as the only legitimate mode of perception the one which brings into play a certain disposition and a certain competence.”).
In these sites, managers and employees talk about the cultural work that they perceive needs doing as that of moving from conscious effort, to practiced habit, to instinct: embodying practices that are not yet embodied. They distinguish the future—when such norms are second nature—from the present—when they are not even norms—in terms of new bodies, a new generation. The next generation, they hope, will embody the competences and dispositions necessary to legitimately perceive intellectual property objects and give them the proper social recognition. Even legality itself, in this field, may be reproduced as a work of this cultural practice, as a cultural product.

The argument of this Part proceeds as follows. Section A describes how my participants described how they saw certain differences in practice between Vietnam and abroad as cultural differences, which implied to them that they would take a long time to change. Section B explains how one business tries to make room for the practice of global standards of IP in today’s HCMC, where such practice is a future not yet embodied in workers. Sections C and D compare and contrast the built environment of two workplaces, one of which protects IP belonging to its customers and the other of which has IP of its own. Section E uses these descriptions to show how the law of IP has been built into these workplaces despite claims from leaders of both that legal enforcement would be ineffective and unnecessary. Section F summarizes the results of one of the first litigation campaigns for IP rights in Vietnam, a series of suits against book pirates by a publishing house that claimed purposes of cultural development. Section G discusses the effort by one of my research participants to get his customers to license a new process. And Section H concludes by arguing that these attributes of the social structure of IP in HCMC give it the status of a cultural product, an arbitrarily valued output of a field of practice granted a position of cultural distinction in the larger social structure.

A. Making It Cultural: Naming Difference in Practices

A pronounced feature of the multinational business community in HCMC is that returned emigrants, known as Việt Kiều, hold a number of the linchpin positions. The government has specifically
encouraged these formerly undesirable nationals to return and reinvest in the country of their birth, noting in the 2013 revision of the constitution that they “make up an inseparable part of the community of Vietnamese ethnicities” and that the state “shall encourage and create the conditions for overseas Vietnamese to . . . contribute to the construction of their native land and the country.” On return, they bring back not only connections and bilingual language skills but a set of understandings and dispositions that were embodied during their time abroad that are recognized as important human resources.

The market effects of the Việt Kiều attract notice in surprisingly everyday activities, in rural communities and urban centers, and in small business and national politics. Over the course of living in Vietnam for fourteen months to conduct this fieldwork, I could not escape examples even while not formally observing. On a holiday trip to the colonial mountain resort of Đà Lạt, for example, a local guide pointed out that the nicest house on one street was the home of a woman whose children lived in the United States. When I vacated my house at the end of my fieldwork, its next inhabitants were the family of a successful Vietnamese Australian Việt Kiều chef and restauranteur. And on another occasion singing karaoke in HCMC’s District 3 with US friends, we were joined by a Harvard classmate of theirs who turned out to be a well-known Việt Kiều entrepreneur and investor.

I sat down for breakfast one day with another Việt Kiều investor to discuss his business and the practices he requires of his Vietnamese employees. The Founder, as I will call him, is now running his second business in Vietnam, after starting a previous business and another in California with mixed success.

The Founder is ambivalent about the legality of intellectual property in Vietnam. He says that he requires all his employees to sign nondisclosure agreements and noncompete agreements but that he considers them useless. They are not effective at all, he says, but you have to do what you can. “You have to be practical.” Besides, he says, he enjoys buying the fifty-cent pirated DVDs in Việt Nam when he needs something to do for a night alone. He said he had done it just last

63. Ivan V. Small, Embodied Economies: Vietnamese Transnational Migration and Return Regimes, 27 SOJOURN: J. SOC. ISSUES SE. ASIA 234, 244–46 (2012) (detailing the transition in government attitude toward overseas mobility from “suspicion” of “anti-nationalist . . . former ‘puppets’” who had fled communism in the late 1970s and 80s to “welcome” of these same exiles and their money after the collapse of the Soviet Union in the early 1990s).

week. Even if the movie ends in the middle, it’s a good price, he says, and “you can take a nap.”

The Founder blames the lax attitude to IP in Vietnam on differences in “culture.” The country has competitive advantages internationally that could be taken advantage of, if “culture” could be successfully changed. He says that the problems he has experienced with his employees’ handling of IP are not from malice but from “carelessness.” He hopes that if he continues talking about intellectual property, eventually his employees will understand. But “changing the culture” has to happen early in life, he says, while people are still in school. It is his kids, he offers by way of example, who tell him if he has made an illegal turn while driving them. They are culturally aware in ways that he is not.

But this cultural shift from one practice to another will not happen if habits of the older generation are reproduced in the younger ones. Mr. H is a generation younger than the Founder, and when I spoke to him, he was pursuing a Master’s degree in engineering. As a part of his degree program he planned to spend a semester overseas, and he visited an HCMC branch of an overseas bank to establish an account. While at the bank he happened to observe an expat mother with her children, and he told me how foreign their interactions seemed to him:

So I see the, the two children talking to their mum, very, in a very nice way. Like, first of all, the woman gave the cell phone—iPhone—for the children, for her children to play. And then two, [the] two girls they argue. Her children argue and then she said, “Be nice,” and then very quietly they keep quiet. [They] stop arguing. And then after that when she came out of the office, the bank, and she said, “Can I have the phone back?” And then the, the children give back to her. But it’s never happen in Việt Nam. No, no, it’s never happened in Việt Nam, even in my family! Like, my sister-in-law has [a] daughter, but the way she talk to her, I can’t understand it!

At this point, Mr. H was clearly very excited. Laughing, he moderated the loud, high-pitched voice he had worked himself into, and continued:

[E]ven with the neighborhood, like, the way the parents talks to their children is totally different. They use violence to force their children, not as nicely way like I see the, this other, the Australian woman talk to her children. Like in Vietnamese it’s like, “Give it to me! I’ll, I will beat you!” [Laughs.] . . . So, in the future when their children grow up they will behave the same, what their children behave when they was a child. So I think parents’ behavior affect very, have big influence in the children’s behavior. Yeah.

Like the Founder, Mr. H describes the change he wants to see as cultural, in terms of social reproduction. Dispositions to violence will be reproduced, and capacities for desirable behavior will fail to be created.
He imagines instead that the foreign family has educated their children so as to avoid the violence and coercion he sees in his own family.

It is not so much the march of technology into the new and novel that epitomizes the passing of time in Vietnam, as it is the march of society from a past seen as culturally dominated to a future imagined as culturally developed. Street names in the centers of both Hanoi and HCMC continue to require those finding their way to remember the “two ladies Trưng” (Hai Bà Trưng), who revolted against the Han dynasty Chinese nearly two millennia ago. Since the long struggle for an independent, unitary country has come to an end, development of the economy has been the most visible success of the Vietnamese state. But at a minimum, development in Vietnam today means legitimate participation not just in world markets but in global cultural practices, including technology but also including fields such as science, business, art, and law. A big part of this development is the development of social structures that support the international practices that the people of Vietnam want to engage in legitimately.

The construction of such structures may allow the participants in their construction to invest themselves in distinguishing the future from the present, and the present from the past. In his work with Loïc Wacquant, An Invitation to Reflexive Sociology, Pierre Bourdieu expounded a theory that denaturalized time and treated it as a product of practice. “[T]ime is what practical activity produces in the very act whereby it produces itself,” he claimed:

Because practice is the product of a habitus that is itself the product of the embodiment of the immanent regularities and tendencies of the world, it contains within itself an anticipation of these tendencies and regularities, that is, a nonthetic reference to a future inscribed in the immediacy of the present. Time is engendered

---

65. The periods in which China ruled what is now Viêt Nam, nearly continuously between 111 BC and 926 AD, are commonly referred to in English as the periods of “Chinese domination” (thời bắc thuộc, or “time belonging to the north”). See, e.g., Bắc thuộc, WIKTIONARY, https://en.wiktionary.org/wiki/B%E1%BA%AFc_thu%E1%BB%99c [https://perma.cc/4VDS-8WMS] (last visited Oct. 11, 2019).

66. See CHRISTOPHER GOSCHA, VIETNAM: A NEW HISTORY 21 (2016); Trưng Sisters, NEW WORLD ENCYCLOPEDIA (Jan. 27, 2009), https://www.newworldencyclopedia.org/entry/Tr%C6%B0ng_Sisters [https://perma.cc/TZ3K-39WU].


70. See id.
in the actualization of the act, or the thought, which is by definition presentification and de-presentification, that is, the “passing” of time according to common sense.\textsuperscript{71}

The “immanent regularities and tendencies of the world” are being written into workplace structure in Vietnam so that they can be embodied by those who work there.\textsuperscript{72} But they are not yet embodied.\textsuperscript{73} There is no anticipation of them in the habitus of the employees, in their competences or dispositions, unlike those of expats or even Việt Kiều.\textsuperscript{74} The presentification of those regularities by the western architects of these workplaces cannot be assumed to be depresentified by employees.\textsuperscript{75} This is the cultural work that is perceived to need doing.\textsuperscript{76}

\textbf{B. Making Room for the Future (IP) in Present Practice (The Workplace)}

The general manager (GM) of the Founder’s factory welcomed me at the door to his mezzanine-level office when I visited and offered me a Vietnamese iced coffee (cà phê sữa đá). He said that the Founder always claims that at this worksite, one of a handful of offices each in a different country, they have the best coffee in HCMC.

The GM explained to me their business by means of a PowerPoint presentation marked “COMPANY CONFIDENTIAL” on every slide. The security is integral to what they offer their customers, who are front-end semiconductor manufacturers in Japan and Singapore. Their core business is “field service” engineering, which means sending engineers to install, maintain, repair, upgrade, and relocate equipment where it is used. This kind of work requires his engineers to know nearly every detail of the equipment they are working on and how it works, which his customers are understandably sensitive about sharing. But at least the equipment itself stays under protection at the customer’s site, somewhere outside of Vietnam.

That is not the case for the company’s secondary business, in which they offer product manufacturing support. Manufacturing support and contract manufacturing include the design, manufacture, repair, refurbishment, and automation of equipment that supports their customers’ manufacturing operations. This is what goes on in this GM’s shop. His facility manufactures the equipment that helps global

\begin{itemize}
\item \textsuperscript{71} BOURDIEU & WACQUANT, supra note 60, at 138.
\item \textsuperscript{72} See id.
\item \textsuperscript{73} See Viet Nam 2016 Report, supra note 68.
\item \textsuperscript{74} See, e.g., Tran Thien Quynh Tran et al., Cultural Distance in the Workplace: Differences in Work-Related Attitudes Between Vietnamese Employees and Western Employers, INT’L J. BUS. & MGMT., October 2017, at 91, 98.
\item \textsuperscript{75} See id.
\item \textsuperscript{76} See Viet Nam 2016 Report, supra note 68.
\end{itemize}
semiconductor fabrication facilities—so-called chip foundries—run. And his customers trust him to do it in Vietnam.

But there is a price for this trust. The GM readily admitted that this exchange is not fully compensated by the price he quotes his customers for manufactured support equipment. The customer not only gets the hardware but also owns the IP on anything they do. All of the manufacturing documents they generate are provided to their customer, including drawings and specifications, workflow and process requirements, and bills of material. The customer has every right to take all that and give it to some other supplier to make the stuff for them. If you fully captured all the costs in your price, he says, you would never grow or even get a job. The relationship is important. Profits come later, with continuing orders and further business. That’s why he no longer does business with Chinese companies, after an experience with a Chinese customer who took his prototype and never called him again. “Once they have the idea,” he said, “they do it themselves. They’re so good.”

The relationship between his company and his employees also involves uncompensated elements of the employment exchange. The employees give up ownership of any IP that they generate. But also, they receive hands-on training on two semiconductor processing furnaces housed on-site. In a country like Vietnam that has no commercial front-end semiconductor manufacturing, the opportunity to train on furnaces like these is rare. Even rarer is the opportunity to be sent abroad to front-end foundries to gain experience on furnaces actually being used in manufacturing. Part of the employees’ compensation, you might say, is their training on these furnaces and in other current processes.

C. Workplace One: Protecting IP for Others

Manufacturing someone else’s technology requires that you make your customers feel their intangibles are safe, especially in Vietnam. In the case of the Founder’s factory, that perception of safety and security is constructed with walls.

At the heart of the building are two large assembly rooms with ceilings approximately twenty feet high, one on top of the other. We could view the room most easily through long narrow windows, about one foot high and six to eight feet long, from a gallery area that surrounded the perimeter of the lower assembly room.

Entering the gallery, we walked to our left around the corner of the assembly room. The gallery then formed a long hall to the rear of the building, with well-lit rooms on our left housing big equipment.
These were furnaces used for training. No front-end semiconductor manufacturer currently had any facilities in the whole country of Vietnam, so this equipment was very attractive for recruits. The GM explained that they were used to prepare employees for training at customer sites, so that his employees would have hands-on experience with similar equipment. He pointed out his training supervisor, sitting with an engineer near the smaller furnace. They both looked about twenty-four, and the supervisor was calmly looking on as she picked up small pieces slowly, wearing plastic gloves.

Along the side of the assembly room, partitions separated a series of about four test and inspection rooms. Each room cordoned off a different project, one per customer. The GM pointed out to me that the eye-level gallery windows installed in these walls were opaque. His customers had demanded that the windows be screened to prevent prying eyes. As the GM directed, I noted that the perimeter of the obscuring, adhesive film applied to the window interior edges was separate from the main sheet; about an inch all the way around was separate. He had tried to leave a transparent boundary, he said, but the customers objected even to that.

At the end of the hall, a sign on the door to the last room said no cellphones, no cameras, no laptops. A keypad lock hung on the wall at shoulder level, and a table stood next to the door. The GM said that a guard ordinarily stood at this post to demand these prohibited items be set aside on his table. But that line had finished work for the day, so the guard had gone.

Though such jobs are in high demand, working with so many walls and security measures can be associated with an alienation from the work. A Vietnamese engineer whom I call Mr. Q, for example, described to me how restricted he felt in his role at a Japanese semiconductor design company. “The headquarter[s] is in Japan,” he said, “and the headquarter[s] is also the main design center. So they . . . they deliver, you know, smaller and easier tasks to Vietnam for Vietnamese engineers.” When we spoke, his former company employed around five hundred Vietnamese engineers at an urban site in HCMC. After a couple years, he led a group of engineers, but he denied that he had any significant influence at that point. “No, no, no, even the leader in Vietnam is not the one who create the path for the whole group,” he protested. “The decision maker people is . . . were in Japan.” He laughed.

Mr. Q’s perceived lack of agency affected his perception of the importance of the intangibles he worked with. Though they encouraged employees to report patentable ideas, Mr. Q could not think of a single one of the hundreds of engineers they employed who had been awarded
a patent. That level of creativity was not what he felt anyone he was working with was engaged in. And despite similar security measures to those described above at the Founder’s factory, Mr. Q was convinced that nothing that he was told by his Japanese employers, or given access to, was secret. “Oh, I mean . . . at my level is . . . information is not very . . . very, very important,” he told me, “Let’s say . . . Because if that important, they will not disclose to me.” He laughed again.

**D. Workplace Two: Protecting IP for Us**

The disconnection from decision-making and from truly important information that Mr. Q described is not limited to workplaces in the semiconductor industry. Mr. T, another engineer I talked to who had worked abroad in Japan, chafed at the false logic that separated him from decision makers at his company, which manufactures high-precision mechanical components. He grew up in a neighboring province to HCMC and called himself a “countryside guy.” He came to HCMC to attend university, and successfully found work with a labor exporter who sent him to Japan to do design work on contract. He returned after one year and has since worked for two foreign companies in and around HCMC. He explained to me his experience in Vietnam, that his employers would not even consider ideas that he brought to them:

> You know that, normally Vietnamese people . . . [are] working for the foreign company. And they, the foreign company they come to my country, they bring machine, they bring equipment, the technology and the employers working for them. And when we talk to our boss, normally about the creation, innovation for something, they normally, they didn’t trust us [laughs], because they think everything they already know. They use very high technology. When they come here, they want us to follow their instruction, follow their technology, something like that. So we just, just do what they say; normally like this. . . . In normal thinking, I think normally they . . . just want us to follow their technology, or something. . . . So there is not too much seek for innovation, or for creation or something like that. . . . [For example, we want to . . . to prove to them that, “Okay, we should do like this. We should try this one or that one.”] They said, “Oh we already do that; we already try. We already have experience so, just don’t do that.”

Like the semiconductor contract-manufacturer described above, the company that employs Mr. T is multinational but not a household name. Its manufacturing site for high-precision mechanical components is outside HCMC.

The factory floor is accessed through a door at the back of the reception area that features signs cautioning about the manufacturing area: no food, wear safety glasses, etc. I am not offered safety glasses as we move through the door. In contrast with the clean room of the Founder’s plant, this worksite is a large open shed, with the roof about
fifty feet above the wide-open expanse of poured-concrete floor. To the right are two long machines with a long metal rod set on temporary supports (like cinderblocks) between them. Three Western men are moving between the machines and the long rod, which has periodic increases in its diameter along its length. These middle-aged men and the two or three somewhat younger Vietnamese men in similarly dark-blue shirts shadowing them all wear safety glasses. The plant has recently received some new fixtures and tools made by a German company. Two of the Western men are Germans from the tool company, and one is from the Italian company that makes the boring machines. Inside a walled-off section of the shop floor, there are more tools and fixtures for the borers. In-house designed fixtures for the two boring machines are stored in this enclosure, he says, where access to them can be controlled. When they are needed, only the team leader has access to them and must collect them for the boring technician.

At Mr. T’s workplace, there is a physical division of space between most of the facility and the one machine in this enclosure. A seven-foot-high wall rises around it. The machine itself has a sliding enclosure near the turning head that differs from the borers. The entire enclosure is about fifty feet by twenty-five feet, and there is no ceiling until the ceiling for the larger building, fifty feet up. Along this side of the plant an overhead crane is installed, which moves parts from the borers to the walled-off machine and back. Some of the most advanced machines in the country fill this plant, but the wall is not around those. It surrounds a basic machine that is commonly available. And Mr. T is not one of those allowed inside the wall.

The wall does not protect the machine but rather a process used on the machine that Mr. T’s employer considers proprietary and takes precautions to maintain confidential. The wall—and the radio-frequency identification (RFID) card reader at the door marked “authorized employees only”—are two such precautions. For those who are allowed to cross this division of space regularly, there is another: the legal device of the nondisclosure agreement. In contrast with other multinational employers, Mr. T’s employer does not ask every employee to sign the NDA; it only needs a few employees to have access to this area, and only these few have this added contractual obligation.

Ask Mr. T, and he understands exactly why his employer needs to separate space this way. It’s because the wall protects an investment in a manufacturing process important to their business that anyone could copy:

[T]hat machine, the technology is not too much difficult. . . . And other people can do it. That’s why they don’t want other people to know, they will allow you see
and they make another machine similar, or something like that. And, yeah I think like that. And sometime they will make [laughs] another machine. 

I . . . I mean, how do you say, there is some know-how. There's some know-how about that kind of machine. And they have to pay a lot in the past, they have to do a lot to, to get that kind of know-how, to make some equipment, special one, not all the machine have, only—because to do that there are so many ways can do. And they find out the know-how, special equipment, something like that for the machine. And they . . . another people you can, they can see and they can do. But that is secret, like, something like Coca-Cola. It's this—[Laughs:] The secret, yeah.

E. Protecting IP from the Necessity of Protection

Just as Mr. T and Mr. Q express a similar perspective on their position in their respective companies, the work environments of these two shops have certain similarities. Both feature a front section of offices, with the majority of the rear of the building arranged for their respective manufacturing needs. Both feature separations of space for greater or lesser accessibility in order to protect the confidentiality of certain technology. Both have RFID readers in certain locations. Both have several dozen young Vietnamese people employed there, with a handful of non-Vietnamese staff in supervisory positions. Both have Việt Kiều staff, as the technical manager of Mr. T's plant, like the Founder, grew up in the United States.

But there are differences too. Perhaps the largest difference is in the ease of moving through one plant rather than the other. In the semiconductor plant, controls are much more pervasive than at the machining contractor. RFID was required at the front door. Booties were required for the gallery. Windows from the gallery, which is a control stage itself, were opaqued. Separate quality control rooms were provided for each customer, in some cases separately guarded.

At Mr. T's plant, there was no RFID scanner at the front door, and in fact, no receptionist inside it. The admonition to wear safety glasses could be ignored, on occasion. All manufacturing took place under one roof, with certain controlled activities and materials separated in one walled-off section. Spaces were separated by function, not by customer. Where there was technology to keep confidential, it belonged to Mr. T's employer and not to its customers. And yet, Mr. T and most of his fellow employees were not required to sign an NDA as

77. The term “know-how” has a long history of use in the United States despite no recognition there in statute or case law as a category of intellectual property independent of trade secrecy. It is used not just colloquially among engineers and technicians but appears often as an object of technology agreements and licenses. Like in those agreements, its use here by Mr. T appears to be precisely because of its amorphous quality and not a little because its boundaries are difficult to define. See Carlos M. Correa, Legal Nature and Contractual Conditions in Know-How Transactions, 11 GA. J. INT'L & COMP. L. 449, 458–69 (1981).
all employees at the semiconductor plant were required to do. Most of Mr. T’s fellow employees were not bound by any legal requirement to keep anything confidential.

The GM of Mr. T’s plant, a European man, explained this approach to me by echoing something that the Founder said about his semiconductor business. Both of them said they had confidence that know-how would not leave their respective worksites, because the techniques their employees learned in their work were unhelpful to other employers in Vietnam. In Mr. T’s plant, the GM was not aware of any other shop in the country with the complex, computer-controlled five-axis machines used there. And he was entirely confident that the company’s only competitors in their specialized market had no worksites in Vietnam. Similarly, the Founder said to me that the techniques for manufacturing semiconductors that his employees learned had no application in the country, because no company manufactured the raw materials of semiconductor wafers there. If you stole methods for heating the process equipment, he offered hypothetically, what are you going to use it for? Pizza ovens?

As travelers to foreign lands must commit to meet conditions of their visas, employees granted access to these walled and opacified spaces must commit to nondisclosure. Natural as this may seem to those habituated to it, it is not a necessary condition of social reality. The divisions of space are not there to protect naturally originating secrets. They are there in part to preserve the definition of an intangible, by law, as a secret. Whether the company took adequate measures to protect the secret in its Vietnam facility matters just as much as whether it took adequate measures in its home country, because, under the law, the measures are a condition of the very existence of the secret. Legality is immanent in this social sorting, because the protected legal status of the secrets in these spaces is conditioned on restricting the number of people with access to them. If reasonable measures are not enforced, then not only does the risk increase that secrets may be misappropriated but what is misappropriated may not even be recognized as a secret at all.

78. Like in the United States, trade secret law in Việt Nam conditions legal protection on measures being taken to keep such information from being disclosed or easily accessed. Law on Intellectual Property (Act No. 50/2005/QH11) (2005) (Viet.), art. 4 ¶ 23, art. 84 ¶ 3 [hereinafter Law on Intellectual Property]; see LE NET & HELEN ALEXANDRA MORRIS, INTELLECTUAL PROPERTY LAW IN VIETNAM 110–12 (2011); ROGER M. MILGRIM, MILGRIM ON TRADE SECRETS § 1.04, 1-314.10 (2015) (“Thus, courts find in some cases that a secret process which is employed in a plant with little or no measures to keep it from public view ceases to be a secret.”).

79. See Law on Intellectual Property, supra note 78, art. 4 ¶ 23, art. 84 ¶ 3.

80. See id.

81. See id.; MILGRIM, supra note 78.
Without the support of the law that constructs the secret as an asset, these multinational companies would never have brought these secrets to Vietnam. The secret and the wall enter Vietnam together or not at all. Trade secret protection entered the jurisdiction of Vietnam for the first time through the treaty requirements imposed by the United States.\footnote{LE & MORRIS, supra note 78, at 108 ¶ 244 (citing its origin in an ordinance issued in the year 2000 “as a result of Vietnam entering into the Vietnam-US Bilateral Trade Agreement”).}

F. Constructing a New Legality in Practice: Distancing from Necessity

Recent landmark copyright litigation demonstrates the importance of the narrative of cultural development in Vietnam to IP in social practice. At the time I was there, the Vietnamese courts began to take on what newspapers called the first “book piracy” cases in the country.\footnote{Local Publisher Continues to Sue Copyright Violators, TUÔI TRẺ NEWS (Sept. 27, 2012), https://tuoitrenews.vn/lifestyle/1927/window.print() [https://perma.cc/K48N-J64J]; Publisher Sues Aussie English Schools for Pirating Books, CDs, VIỆT NAM NEWS (Feb. 23, 2012), https://vietnam-news.vn/politics-laws/law-justice/221194/publisher-sues-aussie-english-schools-for-pirating-books-cds.html#4dYbgr8x4sRj2WVw.97 [https://perma.cc/GU96-7H5B].} The cases were a part of a campaign to obtain compensation for the widespread use of unapproved photocopies of entire books, common in Vietnam as it is in many countries.\footnote{See SOC. SCI. RESEARCH COUNCIL, supra note 5, at 106–07, 266–68; U.S. Commercial Serv., Vietnam – Protecting Intellectual Property, EXPORT.GOV (July 12, 2018), https://www.export.gov/article?id=Vietnam-Protection-Intellectual-Property [https://perma.cc/G8KK-WKZW].} In fact, in Vietnam the law specifically excludes several uses of copyrighted works from the definition of infringement, including “[d]uplication of works for personal scientific research or teaching purpose.”\footnote{Law on Intellectual Property, at art. 28 ¶ 6, art. 25 ¶ 1(a), as amended by Act No. 36/2009/QH12 (2009), art. 1 ¶ 6 (adding the word “personal”).} But this carve-out for personal use did not stop the rights holder from pursuing legal remedies against the providers of such copies.\footnote{See Local Publisher Continues to Sue Copyright Violators, supra note 83; Publisher Sues Aussie English Schools for Pirating Books, supra note 83.}

The plaintiff in these cases was a Vietnamese-owned local publisher in HCMC known in English as First News-Tri Viet Publishing Co. Ltd. (Công ty văn hóa sáng tạo Trí Việt).\footnote{Local Publisher Continues to Sue Copyright Violators, supra note 83; Publisher Sues Aussie English Schools for Pirating Books, CDs, supra note 83.} An important part of the First News business is to bring wonderful and creative content from the world to Việt Nam by licensing exclusive Vietnamese translation rights from foreign publishers for such English-language bestsellers as The Seven Habits of Highly Effective People and How to
Win Friends and Influence People. In 2012, just after its first court filings, First News claimed that it spent annually 2.2 to 2.8 billion VND ($105,000 to $133,000) for the rights to approximately one hundred titles. By all accounts, it has become a successful and respected publisher in Vietnam. An important part of that success has been to distinguish itself not only by publishing such foreign content but by publishing legally licensed translations. The First News website now boasts that it has signed rights agreements for over eight hundred titles.

The inaugural targets of the First News campaign were two Australian language schools operating in HCMC, which as part of their service to their students sold bound photocopies of test-prep materials. Though some may not consider test-prep aids for the standardized English language tests the Test of English as a Foreign Language (TOEFL) and the Test of English for International Communication (TOEIC) to be “wonderful and creative content,” the rights to these materials were among those exclusively licensed to First News. First News filed suit in November 2011, demanding damages of VND 380 million ($18,100 at the time) from each of the schools. In June and September 2012, each school settled with First News, agreeing to pay the full compensation requested and to make public apologies. First News later sued additional targets in Hà Nội, including educational

See id.

See Publisher Sues Aussie English Schools for Pirating Books, CDs, supra note 83.

See History of Formation and Development, supra note 88.

See id.

Id.

See Local Publisher Continues to Sue Copyright Violators, supra note 83; Publisher Sues Aussie English Schools for Pirating Books, CDs, supra note 83.


Publisher Sues Aussie English Schools for Pirating Books, CDs, supra note 83.

Local Publisher Continues to Sue Copyright Violators, supra note 83.
IMPROVISING IP IN SAIGON

institutions and a private printing business. In the last case, however, First News was not awarded damages for admitted infringements that had been destroyed by administrative action.

To pursue such a legal campaign in Vietnam might fairly be called quixotic. Though two targets have settled, no court has yet issued a supportive decision. The only court decision reported by the press—the decision not to award damages for the unauthorized copies destroyed—was a disappointment. Without demonstrated support from the Vietnamese legal system, why would any business invest in intangible rights?

First News is investing in more than the business of printing and selling books. It is investing in the cultural legitimization of intellectual property in Vietnam and in the construction of a field of legitimate legal products in the country. The suit for book piracy launched by First News acts to claim for itself the distinction of being the only culturally legitimate mode of appropriation for the intellectual property of these works. And that mode is not only of investment in domestic production but investment of cash payments to the rights holders.

First News is a publisher. This lawsuit is not a case of an author who needs legal protection to make a living off her work. First News had a choice whether to republish works first published overseas, and indeed, whether to pay for the rights to foreign works if it did. For First

99. Id.
102. See Tri Viet Publishing House Loses Copyright Infringement Case, supra note 101; Local Publisher Continues to Sue Copyright Violators, supra note 83.
104. See Tri Viet Publishing House Loses Copyright Infringement Case, supra note 101 (quoting founder Nguyễn Văn Phước saying that First News must appeal “for the honour and justice of writers and publishers”); Publisher Sues Aussie English Schools for Pirating Books, CDs, supra note 83 (quoting director of communications saying that First News pursued the cases “not for the compensation, but to set a precedent for the country's publishers to fight illegal copiers”).
105. Compare the litigation campaign of First News with the exhortation of the Deputy Head of the Customs IP enforcement group at the Eurocham lunch described in Chapter 2.
107. Id.
News, investing in these legal rights reflects a disposition to distance itself from the necessity to refuse the claims of intellectual property and a competence to contribute to the legitimacy of the work of intellectual property law.\textsuperscript{108} Having the resources necessary to pursue this strategy also reflects a preexisting distance from the immediate necessities of the printing business in Vietnam.

Reports of the campaign by First News also include indications that even its litigation was a choice motivated more by association with the globally legitimate field of authorized publishing than by business necessity.\textsuperscript{109} First News demonstrated this by committing a significant portion of each settlement won to fund scholarships for poor students.\textsuperscript{110} Also, the company has repeatedly promoted the message that the campaign is about more than money.\textsuperscript{111} It is about respect for the identity of the authors—and of First News.\textsuperscript{112} In one report, the communications director of First News is quoted as saying that the lost sales caused by “book piracy” could be quantified easily, but the impact on the company’s reputation from the First News trademark on the substandard copies could not be.\textsuperscript{113}

\textit{G. The Jump to Licensing: Selling IP}

Pouring metal is a more common business around HCMC thanfabbing semiconductors, high-precision machining, or book publishing. A young, energetic materials engineer whom I will call Mr. V caters to that business as the sole representative in Vietnam for a multinational foundry supplier. Mr. V has roughly ten large clients, and approximately fifty small ones that he supports in and around HCMC by visiting their facilities and consulting on ways his company can help improve each foundry’s processes. Like Mr. Q and Mr. T, Mr. V attended the HCMC University of Technology, one of the best universities in the country and the alma mater of two of his family members.

Mr. V expressed to me one of the purest statements of engineering ethos that I may have ever heard. He said that his greatest pleasure in his job is helping his customers find ways to improve their processes and sharing the benefits. If he can save them ten dollars, he

\begin{itemize}
  \item[108.] \textit{See Tri Viet Publishing House Loses Copyright Infringement Case}, \textit{supra} note 101; \textit{Publisher Sues Aussie English Schools for Pirating Books, CDs}, \textit{supra} note 83.
  \item[109.] \textit{See Tri Viet Publishing House Loses Copyright Infringement Case}, \textit{supra} note 101; \textit{Publisher Sues Aussie English Schools for Pirating Books, CDs}, \textit{supra} note 83.
  \item[110.] \textit{First News Sues Huy Tri for Illegal Printing, supra} note 100.
  \item[111.] \textit{Tri Viet Publishing House Loses Copyright Infringement Case, supra} note 101 (quoting the founder as saying, “We need to do that for the honour and justice of writers and publishers”).
  \item[112.] \textit{Id.}
  \item[113.] \textit{Publisher Sues Aussie English Schools for Pirating Books, CDs, supra} note 83.
\end{itemize}
wants to take home five. Up until recently, that had been relatively easy to do. Each process enhancement that he shared with a customer typically required the purchase of a “consumable,” such as a chemical that reduces waste when added to the liquid-metal melt. With this business model, it hardly matters if a process improvement is kept confidential because the more sites that adopt the process, the more consumable will be sold. However, Mr. V recently had been trained on a new process that would reduce consumables by a third, while improving important material properties.

For this process to be profitable, Mr. V must convince his customers to accept a new model of sharing the benefit: a license fee. When we talked, they had not yet been receptive. “[F]or me is . . . this one is very new,” Mr. V told me. “New product and new approaching. New way of approaching. . . . New way of approaching a customer life, because we have to share a license fee. This never happened in the foundry in Vietnam.” Mr. V said that his customers did not understand why their relationship had to change this way. But his company must charge a license fee, he said, for two reasons. First, he said, “because it’s really innovation.” It had “changed the way of making” the relevant product, he said, by improving a desirable material property by nearly a factor of two:

It is the first one; it is, you can make very good casting. The first one. The second is we can save the consumable costs. For example, before you use . . . for example you use 1.2 percent of consumable. Now you only use 0.8 percent. 0.8 percent: this means you save on the consumable—this means that [company] loss. [Company] loss on the selling consumable; that’s why we charge the license fee to balance.

This sales pitch had not yet been successful when we talked, but Mr. V had hopes that he could interest some customers.

Also, of course, this process belongs to his company, so the customers of Mr. V must commit not to disclose the process. However, Mr. V had little faith that such an agreement would be enforceable. When I asked him what he would do if he found his customers had violated the terms of their agreement, he laughed. “Oh . . . maybe in another, other country they have to sue,” he said.

So, in here, no. If you do that, you lost the customer. It’s just when we make, okay, we make a agreement. But it’s like respect from each other. And no, and if I know that, I just call and say, “Oh, you do something very bad to [my company].”

H. IP as a Cultural Product

Though Mr. V would not, US lawyers would recommend litigation like that of First News to establish a legally defined right as a relevant influence on social action. Activation of the coercive force of
the state to pronounce the law protecting such a right and to apply the law in judgment of a violator of the right has been effective in the United States.\textsuperscript{114} In analytical terms, this approach is called “rights mobilization.”\textsuperscript{115} A similar literature has been generated for an analytical category at least one step removed from filing suit, which has been called “rights consciousness.”\textsuperscript{116} First News can certainly be said to be both conscious of and actively mobilizing the intellectual property rights that it paid to license.

But neither rights mobilization nor rights consciousness explains the choice by First News-Tri Viet Publishing Co. Ltd. to pursue the business strategy of investing in exclusive licenses for translations of foreign works. These rights are not rights that inhere in First News, nor were they conferred by law on the company equally with every other publisher in Vietnam. First News bought into this game and chose to bring it to the local practice field of publishing. In contrast with “inalienable” human rights, these rights were only mobilized because they were alienable and because they were alienated by their foreign owners to First News.

The practice of alienating the rights, and not just the expressive content, is at the heart of what is persistent about IP law.\textsuperscript{117} As a practical matter, the foreign works that First News publishes did not have to be licensed to be first published in Vietnam—and probably were not. The content of them is freely alienable and rapidly alienated in unauthorized printings around the world. But First News invested not just in the content, by expending resources to print and distribute it as the infringing publisher in Hanoi did, but in the rights to exclude others from printing and distributing it.\textsuperscript{118} Those rights, in practice, have a value derivative but separable from the value of the expressive content itself. The practice of separating those and making them an alienable and marketable product has shaped the global market that First News


\textsuperscript{115} See, e.g., Michael McCann, Rights at Work: Pay Equity Reform and the Politics of Legal Mobilization 160 (1994).

\textsuperscript{116} Lianjiang Li, Rights Consciousness and Rules Consciousness in Contemporary China, 64 CHINA J. 47, 53 (2010).


\textsuperscript{118} Tri Viet Publishing House Loses Copyright Infringement Case, supra note 101.
and the other companies in this chapter operate in, and it has shaped the workplaces of their employees.\footnote{See, e.g., Jonathan M. Barnett, \textit{Intellectual Property as a Law of Organization}, 84 \textit{S. Cal. L. Rev.} 785, 831 (2011) (discussing markets for “old ideas”).}

IP is reproduced in these workplaces not through rights consciousness but through a distinction of the workplace practice as something to aspire to, as a cultural improvement. In the global engineering field, as in the global publishing field, an intellectual property is often discussed in the terms of a cultural product.\footnote{For a discussion of intellectual property and cultural product, see Folarin Shyllon, \textit{Cultural Heritage and Intellectual Property: Convergence, Divergence, and Interface}, in \textit{A Companion to Heritage Studies} (William Logan et al. eds., 2016).} As a work of literature is to the book it inhabits, an intellectual property is to the process that makes use of it. As an intangible object that has to be socially constructed through social institutions like law, an intellectual property reifies the social relations of service around it that define its properties. It allows the alienation of such service from those who serve, as well as from those who use the content of such a commodity. Users may consider attribution important, but they may alternatively value an IP commodity without any thought about the social relations that led to its creation.

The value of the expressive content in a closely held technique or a licensable method has been constructed in all the businesses here discussed, and the practice of alienating it without any associated rights is ubiquitous. Mr. V says that his customers would undoubtedly value a technique that gave their casting better mechanical properties while using fewer costly consumables. But they do not understand why they should pay a license fee for it. The value of the expressive content is obvious, but the value of a market relation with its provider is less so. The reified “thing” takes the place of the relations that made it possible.

Mr. T, like Mr. V and in contrast to his customers, has adopted certain discourse about the “know-how” and special equipment that his corporate employer had to spend a great deal of money and time to develop. This discourse helps explain the built environment he works in, why he himself must be excluded from parts of it, and may justify protections designed to keep secret the resulting, easily copied techniques. Even more so, the Founder’s HCMC worksite has been built to segment and control access to its customers’ technology. According to the GM, the technology would not even be there if the rights could not remain abroad. Like the authors of First News’s TOEFL test-prep books, its creators are of no concern to those consuming the valued information. The thing itself is what is valued, and only if necessary,
the market relationship with the provider of a thing that has become a product.

But IP is more than a reification\textsuperscript{121}; it is itself both a product with cultural importance and a product of specific cultures of particular fields of practice. As a cultural product, the intellectual property form has a number of features. First, it is shaped by practice and becomes the arbitrary repository of value constructed in that practice.\textsuperscript{122} The form of an intangible intellectual property institutionalizes an accretion of cultural constructions—\textsuperscript{123}—a cultural capital if you will—and individual examples of IP commodities represent objectifications of the same constructions. Individual IP commodities like protected secrets, exclusive rights, and licenses are objectified in Vietnam as the targets of desire.\textsuperscript{124} More particularly, they are targets of Vietnamese engineers’ desire in that IP is a necessary input to their practice.

Moreover, such a cultural product distinguishes those with the dispositions shaped by the practice to value it and those with the competences recognized by the practice to manipulate it. As First News attempted to educate the general Vietnamese public through reports on its litigation campaign, Vietnamese engineers are being educated to have a taste for the cultural product of IP commodities.\textsuperscript{125} Engineers are being introduced to the competences required not only to appropriate these commodities but to distinguish those that are better from those that are worse. To those with such dispositions and competences, the cultural product may be naturalized in discourse as an independently occurring feature of the field.

The work of reproducing these dispositions and competences is not accomplished through news reports. In practice, it is done by generating business around these products, by structuring the work

\begin{footnotesize}
\begin{enumerate}
\item \textsuperscript{121} \textit{Christopher May}, \textit{The Global Political Economy of Intellectual Property Rights: The New Enclosures} 148–55 (2010) (arguing that the universality of intellectual property rights promoted by the TRIPS agreement has contributed to the reification of intellectual property as a natural right, dehumanizing the political process of establishing these legal privileges); Mark Rose, \textit{The Author as Proprietor: Donaldson v. Becket and the Genealogy of Modern Authorship}, 23 \textit{Representations} 51, 63 (1988) (“The complex social process of literary production consisting of relations between writers and patrons, writers and booksellers, booksellers and readers was rendered peripheral. Abstracting the author and the work from the social fabric in this way contributed to a tendency already implicit in printing technology to reify the literary composition, to treat the text as a thing.”).
\item \textsuperscript{122} See discussion \textit{supra} of trade secrets as shaped by the contract manufacturing practice of Workplace One and the easily copied technology of Workplace Two, and of licensable rights shaped by the aspirations of First News and by the cost-reduction sharing of Mr. V.
\item \textsuperscript{124} See, e.g., the story of Ms. N, \textit{infra}.
\item \textsuperscript{125} See \textit{Tri Viet Publishing House Loses Copyright Infringement Case}, \textit{supra} note 101; \textit{Publisher Sues Aussie English Schools for Pirating Books, CDs}, \textit{supra} note 83.
\end{enumerate}
\end{footnotesize}
environment to reflect the importance of the products to the business, and by engaging people in the game. The work of reproducing competences and dispositions in Vietnamese engineers falls to the engineers, managers, and educators who embody them and embody the cultural work they represent. The work of passing on those dispositions and competences involves the production of this familiar culture in a new field of practice and the identification of it as a cultural advance, for engineers just as it does for publishers, or as it would for producers of other more familiar cultural products like films, novels, music, or visual art. Engineering is no less subject to the social forces that structure those fields. Its attributions of value are arbitrary in importantly similar ways, and those who engage in the practice perceive themselves as similarly disinterested: motivated by altruistic principle rather than monetary gain.

As a cultural product, the IP commodity can be more or less legitimate according to the constructions of the culture of its field, which in IP’s case include a sense of ambivalence about the limits established by law. Mr. V, for example, denied that his company would ever sue a customer, even for breach of legal agreements of confidentiality. First News showed ambivalence in its litigation campaign when it protested that it demands not compensation for itself but respect for its authors. Both workplaces were designed to avoid resorting to courts to protect IP, by designing physical barriers to its circulation, limiting employees’ access to only the information they need, and leading employees like Mr. Q to believe that most of that information is trivial. Though legal instruments like NDAs are utilized, there is every hope that they will never be relied on because, as Mr. V suggests, there is little hope that they would be useful.

Legal limits are not automatically the source of legitimacy for the production of the IP commodity just because professionals in law say that they are. The practical limits of law—like other questions of legality—are contested in the field of global engineering, as they are in art or literature. However, the struggle for monopoly of the definition of “legitimate production” of the cultural product of IP in Vietnam contributes to the field’s production of belief in the game of IP objectification. The production of belief in the stakes—that is, the investment of value in objectified IP commodities—both presupposes


and produces an investment in struggles over legality as an arbiter of legitimacy.

V. IMPROVISING IP IN TALK

When you set out to talk to engineers in HCMC about intellectual property and law, the resulting conversations end up being about many things. They articulated a diversity of viewpoints on law and therefore on how it relates to the intangible objects it defines. Among the thirty-eight engineers I interviewed, all had a decent understanding of what constitutes intellectual property, but few agreed on what it meant for their lives. They spoke about law and IP in terms of temporality, of place, of things, of filing suit, of fear, of fairness, and of triviality.

These systematic and facially objective ways of speaking are acts of participation in the construction of a social field of practice that I call “discourses.” I use the word “discourse” in the sense that Bourdieu does, in that such a way of speaking is part of a cultural practice through which experiences are formed and which is difficult to consciously challenge.128 A discourse is, therefore, a means of exercising power in a disguised way, as Michel Foucault has used the term.129 To adopt such a discourse is to adopt more than just a pattern of speech, but a set of interrelated names and explanations that both embody and embed culturally specific ideas about why people do what they do.130

As expressed to me, the discourses are examples of participation in the construction of legality. This Part identifies seven such discourses. The first three—of temporality, of spatial relations, and of objects—express to me the structure of their field of practice. The specific logic of the field is constructed from the logics of these discourses, which are not expressly about legality but demonstrate legality's effects. The remaining four express dispositions with respect to legality that are not objective but are structured by their interactions with me. Two discourses directly focusing on law contrast sharply: one of filing suit and another of particularizing disputes away from law. But two more discourses specific to intellectual property, of fairness and of triviality, express a disposition to participate in constructing a legality specific to this practice. Though these discourses are generated by interaction with me in the context of an interview, they are acts of participation.

128. See generally BOURDIEU, supra note 23.
130. MERRY, supra note 22, at 107–11.
A. Talking About Time—The Temporal Logic

To live in HCMC recently is to live in a city racing toward a future the possibilities of which can already be perceived in the present, eagerly anticipated, and strongly willed. The feeling of constant change, in policy as in life, is pervasive. While I was there, the passage of time was marked by the entry into the local market of various global consumer brands. Starbucks Coffee, for example, entered in 2013.

The progressive opening of the Vietnam market to global brands has been made possible in large part by changes in law and policy. 131 Intellectual property rights are the subject of the second chapter of the US-Vietnam Bilateral Trade Agreement, effective December 10, 2001, but first drafted over five years earlier in May 1996. 132 Notably, implementation of a registration system for trademarks was the first priority of United States business interests for this chapter. 133 The brands themselves arrived before the companies they represent, but many such companies hesitated to invest in the market without protection from imitators. When I first visited HCMC in 2002, there were no retail stores for global US brands like Nike, The Coffee Bean & Tea Leaf, Pizza Hut, or Baskin Robbins. 134 All of them were easy to find in HCMC in 2012.

This business strategy, shot through with legality in its reliance on legal protection for IP, creates a temporal logic that shows up in engineers’ discourse about law in Vietnam. For those who have been raised amid this change, like Mr. Q, Mr. V, Mr. T, and Mr. H, the temporal logic they bring to their field reflects a time scale different from that of an expat like me. Rather than a window on change of a few years’ posting, the pace of change for those living through it is set by practical activity reproducing itself on a cultural time scale: the scale of generations. As the Founder and Mr. H described, the development of their practice of global engineering can only be envisioned in generational terms, because they see it as a cultural change. The future of the practice is not yet made present, anticipated in the habitus of the

---

133. Id.
134. KFC is the exception, which then had a few locations in HCMC and nearby Đồng Nai province. KFC is an early entrant to many markets. See, e.g., Dionne Searcey & Matt Richtel, Obesity Was Rising as Ghana Embraced Fast Food. Then Came KFC., N.Y. TIMES (Oct. 2, 2017), https://www.nytimes.com/2017/10/02/health/ghana-kfc-obesity.html [https://perma.cc/3HLG-92HA].
engineers. This discourse of time is an important contribution to the cultural logic that affects the strategic dispositions structured into the discourse of the global engineering field.

Multiple participants in my interviews brought up the timing of changes in Communist Party policy that affected long-term life choices. I spoke to Mr. C, for example, just before he left HCMC for the Tết holiday to go home to the central city of Đà Nẵng. For Mr. C, a smart and ambitious engineering graduate student, the Communist Party’s economic policy to support or not to support certain fields of the economy affected his choice of field. He explained to me that he did not want to repeat the mistake of his brother, who had studied telecommunications engineering at university but could not find a job in that field. “Let me remember the economic policy at that time,” he began:

>[A]t that time I heard that it is easy to open up a bank. So that’s the reason why after that there are a lot of massive expansion in the bank area. So you see when it easy to open the bank so the student study in banking easy to get job and the bank need lots of them. So it encourages the student go to that field rather than other fields.

To US ears “policy” may not sound like law,\(^{135}\) but in Vietnam even the courts treat policy not as subordinate to law but as a particularly real form of it.\(^ {136}\) As put by one legal practitioner, “The primacy of legislation is not yet the prevailing characteristic of the Vietnamese legal system; many executive organs also exercise legislative functions.”\(^ {137}\) “Policy” among the engineers was an explanation for many things: why one had entered engineering, or why not many had entered engineering in a previous era.

What is decided “policy” in Vietnam is quickly reflected in various forms of law, including not just statutes but ordinances of the Standing Committee of the National Assembly and decrees by the government. The first IP regulations of the Socialist Republic of Vietnam included the Trademark Regulations of February 14, 1982, and their implementing Decree No. 197/HĐBT of December 14, 1982.\(^ {138}\) These were shortly followed by the Technology Licensing Regulations of December 28, 1984. After the market reforms of the \textit{Chính sách Đổi}...
Mỗi, the Standing Committee issued regulations on Industrial Design on May 13, 1988, and the Offshore Technology Transfer Ordinance of December 5, 1988, which was later implemented by Decree No. 49/HDBT of March 4, 1991. Decree No. 214/HDBT on Copyright of 1988 was also issued. The Industrial Property Protection Ordinance of February 11, 1989, was implemented by Decree No. 84/HĐBT of March 20, 1990. And a last Copyright Protection Ordinance of February 10, 1994, was issued by the Standing Committee before the Civil Code of 1995, addressing IP, was finally passed by the National Assembly of Vietnam. This law and others that do not clearly determine decision, including the Law on Intellectual Property of 2005, are further interpreted by statements of state policy, including circulars, decisions, and directives.

Mr. H also mentioned that the shape of his career had been defined by changes in “policy” and law. When I asked why he had gone into engineering, he told me that the university he attended was the only good one that would admit him. It did not require a high school degree, which, at the time, he was prevented by law from getting. He had been forced to attend vocational school because his family had migrated from the north. As he put it:

Yeah, before 2006 the Hồ Chí Minh City . . . they prevent other people from other province to come to live in Hồ Chí Minh City. If they can take their children here, and their children can study in public school, every people will come to Hồ Chí Minh City and it’s overpopulated, you know. So they, they have the policy to manage that, to prevent that, so people can come to work in Hồ Chí Minh City, but they cannot take them, their family here. They have to leave, leave their family in the countryside, study there.

When I asked Mr. H how he found out that was the law, he told me that he had been denied admission to his local high school. Laughing, he told me that they had said to him, “No, you are not allowed to study. ’Why?’ ‘Because . . . this is the law. You don’t know it?’”

Mr. H said that without what he called “the resident paper,” he could not prove he was an HCMC resident, and so public high schools would not admit him. Lacking the funds for a private school education, his only recourse was a state-funded vocational school for electricians. Most universities would not consider him without a high school degree. But some schools selected their students by open examination with no degree required. The best of these was the University of Technical Education, which Mr. H successfully tested into.

140. LE & MORRIS, supra note 78, at 18 ¶ 11.
But Mr. H also told me that this was no longer the law. The law had changed in 2006, just as he enrolled at university. When I asked how he knew that, he sighed:

I, 'cause, this is my, you know, when, when you was in that situation, and this is the, the only thing prevent, prevent me to study and, and prevent my career and my life. So I, I, I remember it, and I followed the information about that. And I always update, and I know about the law changing in 2006 when I enter the university. Then I heard the information about the law, the policies. . . . At the time that I entered the university, “Oh my god! Why don't you change it before three years?” [Laughs]. . . . So I can do another thing. . . . Yeah, 2006.

Though the unfairness of the limitations imposed on Mr. H by legality gives his story emotional impact, its structure suggests a more practical impact on his practice. He keeps repeating the year that the law changed. 2006 became a very meaningful date for Mr. H because it defined who he became, especially in relation to those the law previously privileged to choose their field. His experience with legality gave the year meaning by setting the course of his life.

The discourse of time used by an engineer in his late twenties, whom I call Mr. L, also expresses a view of legality’s effects on relations among players in his field of practice. In Mr. L’s telling, the law affords some a choice about how to enter the field of practice, but the power of law’s effects on the field can be determined only in the field itself. He described to me how he had developed his specialty in computer-aided design with various software packages. The first he was introduced to was AutoCAD, but he subsequently moved on to the more capable Pro/ENGINEER (“Pro/E”) package.

Unlicensed copies of software, called “cracked” versions, are ubiquitous in Vietnam, and being an enterprising young Saigonese, Mr. L himself has used, uses, and will continue to use cracked versions of Pro/E. Until recently, however, the maker of Pro/E had no presence in the country except through its enforcement efforts to curtail unlicensed use of the program. Mr. L explained to me that it had had no representative office and no legally authorized distributor doing business in Vietnam. There was no customer support, so users had no reason to build a relationship with the company. In fact, they had a reason to avoid the company, which engaged in suing its potential customers, its users.

The makers of Pro/E entered the national market in 2012 and reportedly stopped suing users. Instead, they called Mr. L and tried to hire him as their chief technical consultant for Vietnam. “[T]he general

---

141. I have some professional experience with this software, which was introduced to me around 1997 by a Vietnamese American engineer named Long Duong.
142. “Pro/E” (pronounced “prō-ē”) is a common abbreviation of “Pro/ENGINEER.”
manager said, ‘Now I want to sell in the normal way,’” Mr. L reported to me, “Not sue. Just call, support, and sell in the normal way.” They sought to offer user support and have begun to build working relationships with their users in the country. Like the entry of many other foreign brands, Pro/E’s entry into the market for legal distribution divides time into an era before its entry and another era after.

PTC, the maker of Pro/E, was perceived as absent, though it engaged with the legal system in Vietnam. It attempted to achieve its goals only at a distance, purely through legality. In practice, this failed to make it present. But once it engaged in personal interactions outside the legal system, it became a social actor in the locally defined engineering field. And its entry into the market affected how engineers like Mr. L perceived it. “I think they look serious in the Vietnam market,” he told me. “Yeah, AutoDesk have the office in Vietnam, and the second office in Vietnam is PTC. . . . Only AutoDesk and the second is PTC. This mean they are serious about the Vietnam market.”

B. Talking About Space—The Spatial Logic

The most keenly felt division in the discourse of my young engineer research participants is the division between the territory of Vietnam and the spaces in which one can work overseas. Though nearby places like Singapore attract attention, the division with the developed territories of the United States and Europe is especially stark. As Mr. Q observed, design decisions are not made in Vietnam but rather at headquarters abroad. This division is given a social meaning much more potent even than the great geographical distances that are now crossed so easily by jet in a few hours. Because of the limited infrastructure linking HCMC to other cities within Vietnam, Los Angeles or Paris may even seem closer than some Vietnamese hometowns.143 The division between national spaces is much more meaningful than the geographic distance.

For many, crossing this division of both physical and social space was seen as vital to future career possibilities. Nearly every engineer made reference to this division in one way or another when we talked, expressing a spatial logic strategically important to the field. This belief has many rational grounds: compensation is widely known to be higher in developed markets, experience and education in those markets can differentiate an engineer within Vietnam, and notable professional success overseas is held up at home as a success for all Vietnamese. A

---

143. Travel from HCMC just to the central city of Đà Nẵng by rail or car takes over seventeen hours, which is a longer duration than flights to Sydney (eight hours, twenty minutes direct), Paris (thirteen hours, thirty minutes direct), or Los Angeles (sixteen hours).
few multinational employers offered the possibility of rotation to an overseas posting as a reward for a set number of years of valued service.

Việt Kiều, the overseas Vietnamese who have crossed this divide and come back, are central to the construction of this discourse. Access to this distinct space appears to be what my participants consider the source of success for many Vietnamese. Their successes figured in stories from three of the engineers I talked to.

The first story about Việt Kiều, told by Mr. Y, is about one who succeeded in bringing foreign practices home to Vietnam. Raised in the center of HCMC, Mr. Y made every effort to engage with foreign spaces, by studying English and applying for scholarships to foreign universities. One of his first lessons in engaging with foreign practice came from a professor at his undergraduate program.

Mr. Y’s thesis advisor had included him as a coauthor on a paper he published in the widely cited electronics journal of the Institute of Electrical and Electronics Engineers. But such publishing was not what most Vietnamese professors did. Mr. Y described the practice of publishing research as foreign. “[T]he scientific paper is not a problem of Vietnam,” Mr. Y claimed. This professor had done so because he had spent five years working in Korea. “But when he come back to Vietnam and he like us to do this project, I think he makes us something different from the others, you know, in my university.” The experience of foreign practices distinguished this professor and his students, socially, “[b]ecause like before my professor comes . . . come back to Vietnam there’s no one do research like him.” His paper came out in Korea.

Mr. Q recounted a lecture he recently attended by a visiting Việt Kiều professor. “That is a very, very famous professor,” Mr. Q told me. “He is Vietnamese but he did . . . he finished his undergraduate and graduate study in France.” This man had been the chief engineer of Eurocontrol for approximately ten years, according to Mr. Q, and the chief researcher.

Mr. Q reported that this lecturer described himself as very motivated. “One of the lessons that he tell us about doing research is that he . . . he’s very, very curious,” he told me. At one time, the lecturer said, his group was asked to devise a way to detect explosive substances within passengers’ bags. “Many, you know, intelligence heads of the

---

144. See discussion of Việt Kiều supra Section IV.A.
146. Eurocontrol is an intergovernmental organization of forty-one member states that provides network design, construction, coordination, and other support to the air traffic management bodies across Europe. See Europe’s Current Air Traffic Situation, EUROCONTROL, https://www.eurocontrol.int/ [https://perma.cc/AJ76-UKSM] (last visited Oct. 9, 2019).
whole Europe come in his lab and could not figure out how to do it.” The solution came to him overnight, he said. “He just thinking, thinking, and then he wake up in the midnight and . . . and he drove from his house to the lab to test his idea.” Working through the night, the lecturer found that his solution was effective, and it proved to be patentable. But he told his class that, in the first instance, curiosity and persistence were more immediately important to motivating him than money. Nevertheless, as a result of his success, he was given a Mercedes car as a gift, and, “after that he get more motivation.”

Mr. Q made the point that even though the generous gift was not the reason the lecturer made his success, it reinforced those more altruistic reasons. “His first priority motivation is the . . . the joys, the happiness, when he think about something that nobody had ever thought of,” Mr. Q expounded. “But then the money also a good motivation for him because he got his first car in his life. . . . It supports the initial motivation that didn’t come from money. But, yeah. . . . Mercedes for that new solution.”

The environment in which such reward practices are possible is a source of fascination for many of the engineers I talked to. But the difference in productivity between spaces inside and outside of Vietnam in this schema is only partly transferable with the individual crossing the border. As discussed above in the context of workplaces, the difference is discussed as cultural, and transportable qualities of the individual do not fully capture its social and environmental nature. It is the space itself that seems to be given the power in these stories, in which the achievements of Vietnamese overseas are constructed as impossible in the differently constructed environment of Vietnam. The distinction of the “overseas space” is an important contribution to the cultural logic structured into the discourse of the global engineering field.

In contrast to Mr. Q’s lecturer, some successful Việt Kiều who return to Vietnam find themselves disconnected from the environment they need to continue their work. Mr. H, for example, told me a story about the Việt Kiều mathematician Ngô Bảo Châu. Châu is a 2010 winner of the prestigious Fields medal.147 He was raised in Hanoi, was educated in France, and has taught in France and the United States. According to Mr. H, he returned to Vietnam but found the conditions

---

unsuitable and returned to the United States. He is now a member of the faculty at the University of Chicago. According to Mr. H:

But when he come to Vietnam, the government pay him five million per month [Việt Nam Đồng, worth about $250], put him in the mathematics office, and there is nothing for him to do. [Laughs.] Nothing for him to do! So in this condition, can you be innovative and creative? What can you innovate, and what is [the] product? What is the result of innovative and creative in this condition? [Laughs.] This is the reason why a lot of Vietnamese student, excellent Vietnamese student, they go abroad, they study, and then they live there. They never come back to Vietnam. But it depends on the conditions, working conditions, I think it’s very important. And living conditions also. They don’t have enough money to live; how can you be innovative and creative when you don’t have enough money to live? Every day, every time your, your brain, your thinking is just about how to get money, to live and to survive in this life. Innovative and creativity at that time will be dead; it will be killed by the living conditions and other factors. So, this is most reason for excellent Vietnamese student go abroad and stay there, and they never come back to Vietnam. So the condition is very important.

C. Talking About Things—The Object Logic

Property law scholars often state that rights in property regulate a relationship between persons as much or more than they regulate a relationship between a person and a thing. It is even more intuitive that rights in intellectual property regulate relations between persons, as the intangible object of such rights—the invention, the work, the secret—is expressly separated from the tangible objects in which it appears. But even aside from legal rights, what is socially negotiated to

148. See William Harms, From Humanities to Sciences, Six Faculty Members Receive Named Appointments, UCHICAGO NEWS (May 16, 2011), https://news.uchicago.edu/article/2011/05/16/humanities-sciences-six-faculty-members-receive-named-appointments [https://perma.cc/X278-9GND]. The story told by Mr. H is difficult to date. Ngô Bảo Châu received his doctorate in France in 1997, and he held appointments at the University of Paris-North from 1998 to 2004 and at the University of Paris-South from 2005 to 2010. He was made a member of Princeton’s Institute of Advanced Study in 2007 and has been a member of the faculty of the University of Chicago since September 2010. See id. In Việt Nam, the state awarded him the title of “Professor” in 2005 and named him a director of the Institute for Advanced Study in Mathematics in 2011, but it is not clear when he has spent more than summers there. Neal Koblitz, Interview with Professor Ngô Bảo Châu, 33 MATHEMATICAL INTELLIGENCER 46, 48 (Feb. 2011); Kieu Giang, Fields Medalist Ngô Bảo Châu Visits HCMC, SAIGON TIMES (Mar. 10, 2011), https://english.thestaigontimes.vn/15605/Fields-Medalist-Ngo-Bao-Chau-visits-HCMC.html [https://perma.cc/L9TR-LG29]. It is not the facts of the story but Mr. H’s telling of it that is an act of position-taking on the spatial logic in his field that I find relevant.


150. See, e.g., Felix S. Cohen, Dialogue on Private Property, 9 RUTGERS L. REV. 357, 363 (1954) (“Property . . . is basically a set of relations among men, which may or may not involve external physical objects.”).
be a classifiable object is part of what defines our relations with others. The objects that we get from others may be partially defined by our relations to those others, and the objects we transfer to others may be defined partially by our relations to the recipients. What counts as an object, its identity and value, is important to the structure of a practice. In the field of global engineering in Vietnam, the engineers and engineering students I talked to expressed a discourse about things, including IP things, as important to the logic of the field in this way.

An older Vietnamese engineer told me that the inputs to the systems he designs are intentionally obfuscated. Part of his company’s business is to sell spare parts for the systems they design, and many of these are customized for their systems. Such customizing (with authorization, of course) means that the parts in his customers’ systems are not always what they appear to be. But his customers sometimes disregard that. Occasionally, a customer orders a replacement directly from the manufacturer when one of the customer’s parts malfunctions or fails. When the customer receives the generic part, it will not work. Eventually, the system designers from the engineer’s company are called in to debug the problem and explain that the parts are custom manufactured for them. In the future, the customer is advised to simply order the parts from the engineer’s company, despite the higher cost.

Keeping close what goes into your design is part of the preexisting structure of the field of engineering in Vietnam. Things are not necessarily what they appear to be, and the dispositions of customers are structured by this environment. Customers are conditioned to rely on a network of service providers not only for the things they do but for identification of the things with which they do them. The identities of objects themselves define relations between field participants. The distinctions between proprietary designs, custom designs, and generic parts are not observable and intentionally discourage self-reliance. The identity of the thing is dependent on the relationship generated by the service that the engineer’s company provides the customer, which divides the custom part (which will work) from the generic part (which will not).

In contrast, young engineers in Vietnam may alternatively choose transparency in identifying the things they use, in order to represent themselves as trustworthy partners—as global engineers. This choice is part of the structuration of legality for intellectual property in Vietnam because the engineers’ choice is importantly

---

151. The structure of legality for intellectual property in Vietnam and the agency of those engaging with that structure (both in Vietnam and outside it) are mutually dependent. The structure is essentially involved in the production of their action, and their action contributes to the production or reproduction of that structure. GIDDENS, supra note 34, at 69–70.
conditioned on legal distinctions, such as those that define trade secrets as well as license requirements. It is part of the object logic specific to the global engineering field, which helps to define relations between the participants’ positions, and their strategic dispositions in the field.

The talk about IP objects among the Vietnamese engineers fits with the practices around them that differentiate the culture of practice they aspired to. The intangible of a license, for example, can acquire not only the material “thinginess” of an IP but it can acquire value in such a differentiated practice. Like the distinction of authentic trademarked goods, the distinction of a license even for software that is ubiquitous can be valued in the discourse of engineers in Vietnam. Attributing value to the object makes the object even more socially real as a thing. Another engineer, Ms. N, told me how proud she felt when a teacher of hers arranged for her class to get licensed copies of Microsoft Windows 7.

“When I have the lee-cense,” she mispronounced, “I feel very proud, because I can get the license of this Windows 7. [A]t the time that’s the, Windows 7 [is] just new for everyone. . . . Yes, and I can get the . . . the key. So I very proud.” She felt proud because most users of Microsoft’s software in Vietnam used unlicensed “cracked” copies. “Very few of them . . . use the, the license,” she said. “So I, when I have the key . . . It’s special for me.” She said that she bragged about it to her friends. “Yes. I showed it off to my friends who he, he use the Windows 6P. . . . and I show that ‘I have key, key lesson four.’” She laughed, as she explained his reaction. “And he also, he asked me why can I have this key. . . . He say just, ‘You are very lucky.’”

Being this kind of lucky person is important. These are young people, defining themselves and each other by what they have around them and at least partially by its legal status. Having the right motorbike has long been a symbol of status. So, too, is having the right phone, or the right camera, or the right . . . rights.

Rather than being distinguished by having a license, one can also fail to distinguish one’s self by not having it. Another participant, Mr. Z, described to me his awareness of the rights that may or may not accompany his inputs in a project that he worked on as his undergraduate thesis. Like Ms. N, Mr. Z attended a selective school in Đà Nẵng and prided himself on his place in the class. Unprompted, he mentioned that “the code for C” that he used in the project “[is] open-source, so we can redistribute it.” I asked him to explain why opensource was important, and he responded, “[M]aybe we know that

we can redistribute, we can modify the, the program. So it’s so important because if I use another program maybe some copyright problem. So something about the copyright program is why.” Mr. Z was the first to mention copyright in our interview, upon raising this issue of code he used in his project.

Why was copyright an issue? “Because I, I consider that when you do a thing, at least you should do from what they give you, what they allow you to do instead of doing something that they do not want you to do,” Mr. Z continued. I raised the alternative of cracked software, which we discussed a little bit. Mr. Z then made the point that the object that he was producing, his product, was not just an isolated thing but a reflection on himself:

MR. Z. And in the case, in the case that there are cracked software for the decoder, we do not use it. If we have—

INTERVIEWER. Why?

MR. Z. —because I consider, we use it, so it only affect ourselves, a cracked software. If we use a, in, for the normal tasks it only affects us. But if we produce the problem, a product, so it’s like we lie to lots of people.

INTERVIEWER. Ah, so it affects many more people if you’re—

MR. Z. Yes.

INTERVIEWER. —if you’re providing the product to others.

MR. Z. Yes.

INTERVIEWER. I see, okay.

MR. Z. And it’s like I betray their belief in our ability as well.

INTERVIEWER. And what do you mean by that?

MR. Z. Like my friend and my teacher think that we can do that, so if we use the cracked software we must hide the information about the software.

INTERVIEWER. You must hide the information?

MR. Z. Yeah, so they, they think that our ability is more than the ability we actually have. So that’s a problem, betraying other people.

INTERVIEWER. Okay I see, so, so because you used the open source software you could say—

MR. Z. I used it.

INTERVIEWER. —I used open source.

MR. Z. Yes.

INTERVIEWER. Everybody knows now and so it’s not, there is no question of you appearing to do more than you actually did. But if you had used—

MR. Z. We, we cannot play some game, we cannot tell the, we can’t tell lie. The teacher, you know that some teachers will not know. But we think that it’s a lie in ethics, in doing research.
He admits that he uses cracked software. But not in producing a product. A product makes it social. When the activity is social, the cracked software is not just affecting himself. It affects his relations with others. Misrepresenting the software as his own product—hiding its origin—would be misrepresenting himself. In this case, Mr. Z links the legal status of the code he uses to his own social relations. The legal permission to modify and distribute the open-source software is an important division for him in the context of his professional reputation. For Mr. Z, in such a case, the thing that he uses helps define who he is.

This object logic in the field of global engineers, like the other logics of their field, smuggles legality into their definition of themselves through an almost unacknowledged role in the definition of their social environment. Like the logics of time and space, the logic of this discourse of objects expresses the dynamics of my participants’ relations with others in their field of practice through structures of the field itself. Like the cultural approach to accommodating foreign customers’ or employers’ legal expectations in the workplace, this logic transposes talk about law into a talk about things. The logic of the discourse of objects transposes talk about what people should do into talk about what people do do. It makes the capacity and disposition to use the correct inputs a condition that distinguishes some individuals from others. Mr. Z is clear about this approach when he says that he uses open-source software to avoid having to “lie to” or “betray” others. Access to licensed software also helps define Ms. N to her friends. But it is just as true that access to company-customized parts defines my older participant to his customers.

D. Talk of Lawsuits: The Minority Discourse of Rights Mobilization

The majority of my participants had a good understanding of at least one or two of the traditional legal categories of intellectual property. Patent, copyright, and trademark were more often recognized than unknown. But only a few also did not distance themselves from legal mobilization and freely talked of suing infringers. These engineers expressed that they expected that rights they developed in IP—like inventions they patented or business information they had invested in—would be protected. They expressed a disposition to bring law into their practice in some circumstances.

153. Other participants made similar points, saying they would copy homework for some required courses (like “Hồ Chí Minh Thought”), but that in their chosen field copying would violate their sense of respect for themselves.
Statistics from the National Office of Intellectual Property of Vietnam demonstrate that IP enforcement does occur. Annual reports of over twenty-five years show that administrative enforcement actions through the office are primarily trademark related, that trademark registrations primarily come from Vietnamese nationals and not foreign entities, and that license registrations primarily originate between two Vietnamese parties.\footnote{MINISTRY OF SCI. \& TECH. NAT'L OFFICE FOR INTELLECTUAL PROP. OF VIET., 2016 ANNUAL REPORT OF INTELLECTUAL PROPERTY ACTIVITIES 55, 86–87, 94 (2017); MINISTRY OF SCI. \& TECH. NAT'L OFFICE FOR INTELLECTUAL PROP. OF VIET., 2015 ANNUAL REPORT OF INTELLECTUAL PROPERTY ACTIVITIES 53, 84–86, 94 (2016).} The commonness of trademark experience, it seems, has led some to feel justified invoking legal institutions at least on this issue.

Mr. C surprised me by talking boldly about protecting ideas he had invested in. As a part of an entrepreneurship class, he had convinced his team to propose exclusively licensing a prizewinning door handle design to manufacture in Vietnam. When I asked him what he would do if a competitor copied it, he responded, “So we just sue them. . . . So no other company can copy, and if others do, we just sue them. And we probably win.” Mr. C had never talked to a lawyer. He didn’t even know any personally. He had no experience interacting with legal institutions that I could discover. But he reads a lot about technology, and “I read about the case of the many different companies sue each other from infringement. So I know that.”

Mr. C mentioned not only the Apple-Samsung litigation abroad but also cases within Vietnam. He said he had read about a bed design that had been patented in which a Vietnamese court had ruled for the patentee. But then he expanded the discussion from patent to trademark, describing a case he was aware of in which one company sued another with a name they claimed was confusingly similar. “But the big one, the big company, the huge company sued the small company that you cannot use that name because it sounds similar to our brand name,” he recalled. “So the court did decide that, that’s why, don’t use that name.”

In this trademark context, another engineer I call Mr. B also expressed willingness to sue another company using his trade name. Mr. B, the son of white-collar workers in retail and telecommunications, grew up in the city of Nha Trang on the south central coast. Earlier in our interview, Mr. B talked about not wanting to be sued. He mentioned a story he had read about a Chinese company threatening to sue Apple. But the only time he suggested he might be on the side of initiating a lawsuit was when I asked about trademarks. “[Y]ou have already built your reputation, so any company use your name, it is against the
trademark rule,” he explained to me earnestly. “You have the authority rights to keep your name is, as exclusive.” And what would you do, I asked, if somebody used your name? “I would sue them,” he said with a laugh. “Of course [laughs], sue them.”

This discourse of legal mobilization was rare, but present. Only two of thirty-eight spoke of legal enforcement of intellectual property. Most of my participants, if they spoke about mobilizing legal machinery at all, spoke about wanting to avoid it. Few had ever spoken to a lawyer in even a social setting, much less a professional consultation. Only three of my participants admitted to seeking an attorney’s advice, and those consultations were in personal matters of an insurance claim, a friend’s divorce proceeding, and a land dispute. But on these and some other issues, law is apparently not to be avoided.

E. Talk Away from Law: The Common Discourse of Avoiding Law

For many of my research participants, the social practice of IP was distinct from its legal ramifications. When the subject of law came up, many of them expressed a disposition against resorting to legal principles. They expressed a preference to find alternative structures to resolve a dispute. As a Saigonese engineer I call Mr. X put it, “In Vietnam contacting a lawyer is not like a habit; it’s not common for people to contact lawyers.” He contrasted this with what he said he saw on TV. “[W]hen you watch a company in a TV show and something happens they always try to sue other people,” he said, “and so it’s like some common words in the movies, but in Vietnam we settle this with each other.”

The dispute settlement process that Mr. X described was not free of government intervention. “If anything happens,” he said, “there is somebody from the local government who comes in to reconcile everything, . . . Vietnamese people, they are afraid of the government. They are afraid of law. So they don’t want to get everything to the law.”

Mr. X described dealing with local government as more familiar, using the term “friendly” with examples of intimate social interaction. “Because local government, local government or local officials, they are friendlier to the people around,” he said. At this point, Mr. X completed the shift in his speech from institutional government to personal officials, further distinguishing those officials from law. “[N]ear my house there are many people who are in charge of the local security, they’re also local officials but we usually hang out and have dinner together,” he said. “So they’re kind of friendlier with the people around them. They’re like neighbors.”
The law as a social institution seemed to suffer from its association with the government institutions of the legal system. Other participants made this more clear. “Honestly I don’t respect the law in Vietnam much,” Mr. A told me. “So I don’t think it’s kind of going to work. Because when the law is issued many people don’t like it, and the working procedure is not good at all . . . . Maybe some law is good but and some law is . . . is useless.”

Like Mr. X, Mr. A grew up in HCMC and received his bachelor’s degree from the University of Technology there. He distinguished his disposition to do original work from any legal obligation, saying that for him it was a matter of professional integrity not to copy. He would never pass off others’ work on a technical project, for example. But in a course required of all students in Vietnam, like Hồ Chí Minh Thought, neither his professional integrity nor the law would stop him from copying. Hồ Chí Minh Thought had no significance for his career, and whether he copied in that course had no impact on who he intended to be.

Another engineer I call Mr. E described the failings of the law as those of a work in progress, saying, “Really . . . the national laws of my country lack many rules.” There are holes in the law, he said, and so people deny knowing that what they do is wrong. Mr. E attended the Đà Nẵng University of Technology where he completed the new English-language program in digital systems. “Whenever the police get the people that do the crime,” he explained to me, “they say that, ‘We do not know . . . . we do not know the rule. We do not know the laws.’” Mocking criminals who feign ignorance before the law, he protested in character, “It is the first time I against the law, so please forgive me.”

Mr. L, on the other hand, placed the blame not on the law but on the habit in Vietnam of people taking things into their own hands. “[T]he Vietnamese people not clearly understand about the laws, the rules,” he told me. “They be afraid, go to the courts, the lawyer.” When I asked him to explain their fear, he contrasted Vietnamese practice with his understanding of US practice. “[I]n USA,” he offered, “you have a house and you want for rent, the contract, the lawyer make for you. All things make by lawyer.” But this was not the case in Vietnam, he said, where people prepare their own, less precise agreements. “[Y]ou want to rent my house, just paper, write write write—clear,” he pantomimed. “This [is] normal, like this. But . . . . if any problem, that need occurs, how to choose, how to look to lawyer, everyone [is] afraid . . . . Afraid. And don’t know how to do it.” Expense was part of the fear, especially the cost of court proceedings and lawyers. “So when everything happens,” he said, switching into a low, unenunciated voice to play act his character for me, “Oh, how to do, how to do, what to do? Don’t know.”
The way that Mr. L contrasts the common practice in Vietnam with what he imagines to be the common practice in the United States sets up the United States as a country of laws, more formal than it can actually claim to be. The imagined US community is an ideal foil for the perceived lack of legal structure in Vietnam. Mr. X, too, distinguishes dispute resolution in Vietnam from the typical dispute portrayed in imported television shows and movies. Though he does not explicitly call out the United States for distinction, like Mr. L he explains the difference in habits as a difference of dispositions rooted in unfamiliarity and fear.

F. Talk of Fairness: An Accommodating Logic of Gifts

Although many of my research participants expressed distrust of law, some of those same participants adopted discourses specific to IP that illustrate their willingness to participate in the construction of its legality. The first example is a discourse that values the intellectual property object without making observance of the legal dictates around it mandatory. It is an ethical discourse on a social scale that avoids constructing legal universals. It is the discourse of the fairness of IP, of the worthiness of giving IP to others, and of the deservingness of a reward for creative contributions and nontrivial innovations.

Mr. X, for example, made clear that he was convinced of the value of the content of multiple types of intellectual property. Trademarks were important to protect by law, Mr. X said, but he saw no need for patents. “Most of the innovation I made is for a study in my project,” he told me, “in my studies, so to me knowledge is like universal.” Extending his experience of freely sharing innovations in an academic environment, he reasoned further, “If you’re creating something new you should give it to everybody else, so they can use that knowledge to do something new.” Based on his experiences in different aspects of his life, Mr. X linked the need for legal protection to profit and growth. “[T]he knowledge is not for sale,” he explained to me. “We do not make a profit on the knowledge; but on the trademark side it is different, because the company makes the profit based on the trademark.” As a consumer, Mr. X relied on trademarks to indicate products of quality. He enthusiastically defended the importance of trademark protection and claimed never to buy knockoffs or products that he knew to be inauthentic. “So if they do not protect the trademark, it can affect their profit,” he went on to clarify. “It can affect the growing of the company, so it’s very important to protect the trademark. But in my opinion,
knowledge is not only universal but it should be free; it should be free to everybody so there is no reason to protect the knowledge.”

Mr. X has adopted the economic discourse of the market for trade in physical goods, but not for innovation or invention, which he does not think of as traded. But he does recognize that “knowledge” is something that can be exchanged, which he has some experience with in the context of his scholarship-funded, nonmarket education. Instead of a market value, Mr. X recognizes the value of invention reflected by a patent but in the alternative social form of gift exchange. Creators of a new way of doing or making something should “give it” to everybody, he says. It’s a different kind of exchange but still the exchange of an object of value.

Mr. L actually did what Mr. X advocated. When we spoke in 2013 about his experience with the well-known software package Pro/E, Mr. L had recently changed jobs. In his new position for a different software company, he would no longer be supporting users of Pro/E. So he decided to share the experience he had gained by writing a book for users in what he thought of as the “community” he was leaving. He told me, “I said, oh, six years’, eight years’ experience with Pro/ENGINEER, and I want to make the... I said a gift for the community, the use Pro/ENGINEER community.” Three times he said he made a gift, impressing his motivation quite clearly to me. “I write a book, I publish. Yeah,” he said. “It’s the... like the gift, the present to the Pro/ENGINEER users.” Bye-bye, he said, to his old company, where he used Pro/E. “I change to [a new software], and I want to give a present to the Pro/ENGINEER users,” he said with a laugh.

Mr. L found a publisher for his book, and when I spoke to him had sold over 80 percent of an official print run of one thousand books. He suspected that more had been sold through unauthorized copies, however, because he had spoken to readers who lacked the CD of material that accompanied the original book. Even so, he answered readers’ questions regardless of how they had acquired his book. He told me again, “I published the book not for money, not for profit. It was just a gift I give to the community [of] users.” He priced the book to avoid creating a need for his readers to make unauthorized copies. “I think in Vietnam, you cannot earn the money from the book publish, because you have to spend too many, too much money. But when you get back, [it’s] not easy,” he explained. “And the book, I um, the price [was] only, I think like, three dollars. Very cheap price. ... People can buy; it’s easy to buy.”

155. At the time we talked, three dollars were worth approximately VND 63,000.
But despite his effort to keep costs low, he went out of his way to do things right. As he said, he worked “with my highest responsibility, for the community user,” so that his material would be as easy to understand as possible. Particularly the clarity of the illustrations, the images captured from his computer screen, was the subject of great effort. In one set of illustrations, he used a model by others, so he decided to get authorization to use it.

For example . . . I read the book have the 3D model, and the publisher in the UK. I just catch the picture, but I had to write out the email, send the publisher, say it okay or not that I used your paper, your picture, to modeling the model. Actually, I use the illegal software—okay, because—I don’t know why—but if I can do something for legal thing, I also do. I just see the picture and I built up the model, but I also write down the email, sent to the publisher, get the license for using . . . And they accept.

Mr. L’s concern to have approval to publish an adaptation of the design he found in the British e-book resonates with the importance that Mr. Z expressed of using open-source software in his project. Like Mr. Z, Mr. L seemed to want to avoid misrepresenting himself or his abilities by incorporating unlicensed IP into a product that affects others. Especially in the context of gift giving, researchers have found that donors will spend money on getting the “legal thing” to give to others.\textsuperscript{156} Here, the discourse of giving and the disposition to engage with IP legality are similarly adopted together, regardless of any apparent contradiction.

The discourse of value for the “legal thing” can be adopted without the disposition to contribute to that value, however. Mr. Y, who had been included as an author on his professor’s paper in the Institute of Electrical and Electronics Engineers (IEEE), also discussed with me his habits of listening to MP3 music files that he downloaded from various websites. He appeared to have adopted discourses of “fairness” and of a “reward” for creative products that demonstrated his competence in IP matters, as did the similar discourse of giving. But in music listening, he described having no partner for such a social exchange of value whom he could compensate for the enjoyment he got out of it.

Mr. Y brought up the subject of copyright in Vietnam, saying that it is a problem on the internet. “Like now we can download every song on internet with no money,” he said. “So the musician they want to get the money from this.” He said he was annoyed by the change, but he felt he had to accept it because it was only fair. “And we know it’s fair because this song,” he told me, “to compose this song, the music, the

\textsuperscript{156} See generally Soc. Sci. Research Council, supra note 5, at 34.
musician, they have to work. It’s fair when we listen to the song.” For his benefit, someone had to work, and he saw it as fair to ask him to help give something back. “If the musician, they compose the music and they have no reward so they won’t do it anymore,” he said to me. This was the “problem.” “They need that. They need money to survive when they compose the music. Yeah.”

Mr. Y recognized copyright as a solution to this problem “because . . . with the copyright law whenever people download the music they have to pay money.” On iTunes, for example, he would have to “buy” the song. But this solution had been enabled only partially on his website of choice when we spoke. He explained to me that at that time, the website charged only for Vietnamese music and not for “English music.” “It’s like a contract between the Vietnam company and other company in other country,” he explained:

I mean just now, with the Vietnamese song, when we download we have to pay a little money. But it’s because the contract between this website to the musician in Vietnam. But they don’t make the contract with the musician from other country. . . . So now it’s a problem.

Though annoyed to have to pay, Mr. Y called it a fair solution to a problem he saw positively as one of integration with more developed countries. “Yeah, it’s fair,” he laughed, “because like now the Vietnam . . . it’s . . . working with many country. And, like, we need to be like them. We need to.” Mr. Y said Vietnam needed to learn from its developed partner countries. “[T]hey have some development that we need to study from them. Yeah, it’s like the way the society develop so we want to learn this from the developed country. . . . And copyright is one of them . . . copyright and patent is one of them.” While that learning and integration progressed, however, he was not conflicted about not paying for the “English music” he preferred. “[N]ow I think I can, like, a little bit can exploit it,” he told me when I asked how he felt. “[M]aybe I will have to pay it in the future. But now if I can use it free, I will use it. And if in the future I have to pay it, I will pay it.” For the time being, he felt, he had no partner to get the foreign musicians their reward. And he was not disposed to go looking for one. “Because if I pay no one take the money so I just use it.”

Mr. Q’s story about his Việt Kiều professor being gifted a new Mercedes also demonstrates this same discourse of reward and the linkage of this discourse to desirable foreign practice. He told me the story as a way of explaining that valued creative activity should be rewarded with money. As he put it, laughing, “[M]oney is the . . . the best motivation for every people. . . . Not for all people, but most people, for most people it’s true.” As much as they like doing it, he felt, even academics need a financial return on their accomplishments. “So for the
academia, they need money to do their research, pay salary, and also to buy equipment,” he detailed, “and also to . . . to reward people who have good results.”

Though these engineers may differ on how to structure compensation for creative work, the language of gift or reward is used consistently in this area of intangible contributions. New creations should be given, says Mr. X. They are not for sale. Accumulated experience of many years motivates Mr. L to make a gift, a present. But a present he makes for a “very cheap price!” It is fair to give musicians a “reward” for their work, according to Mr. Y. Especially so, since that is what the countries that the Vietnamese work with do. In the developed countries of Europe, according to Mr. Q, intrinsic motivations like “the joys, the happiness” are reinforced not just by patents but by rewards with intuitive monetary value, like Mercedes cars.

This gift-reward discourse is not one I heard from Việt Kiều, even though it is common in the United States. One philosophical justification for intellectual property has traditionally been a natural rights argument; the law ought to “secure” an already deserved return. But academic views of IP law in the United States (usually contrasted with that of continental Europe) have historically resisted natural rights reasoning in favor of utilitarian and economic rationales. Recent US scholarship has further drawn attention to the “misfit” in the United States between creators’ needs and what IP law provides, as well as that between the laws’ purposes and users’ understandings of them.

But the language of gift giving used in these interviews is not just a misperception of law but an accommodation of the “cultural” structure of these associated discourses in the field of objectification, space, and time. In order to practice in their chosen field of global engineering, these young engineers must interact with the object logic of IP that defines their practice, the spatial logic of where development comes from, and the temporal logic of development. Their capacity to perceive intellectual property must be developed, regardless of their

---


158. See, e.g., Merges, supra note 2, at 68, 79.

159. See id. at 94.


opinions of its efficiency, its failings, or its fairness. But how they choose to understand what they perceive—their dispositions towards IP—is formed not only by the structure of this field and other fields in which they live but also by their trajectories through those fields. The potentials that they must perceive for themselves and for the field, the immanent futures of promise and of peril, provide a context for the discursive framing of IP that they are strategically disposed to adopt.

G. What Makes an IP Thing a Thing: The Logic of Triviality

A few of my participants expressed their disposition against IP legality by engaging in a discourse of triviality. These well-educated participants in the field demonstrate their erudition by questioning examples of recently litigated IP and rejecting innovations that they consider illegitimate as intellectual properties. A number of times in my interviews, engineers raised the then-current litigations between Apple and Samsung over their respective smartphone patents, which were also reported in the Vietnamese press. But when asked their opinion of the claims, many said that the patents asserted were for “trivial” inventions, such as a smartphone with rounded corners or the cross-screen swipe to unlock.162

An engineer I call Ms. P told me in our interview about how she discussed Apple’s patent litigation with her father, who is an accountant. Ms. P earned a bachelor’s degree in computers and embedded systems from the University of Science in HCMC. She said that she and her father had discussed how her feelings about patents were mixed because the patented inventions were not the truly important innovations.

As we sat together in a library Ms. P told me, “[A]t some times, I don’t have a good feeling about it, patents. Because to some extent it’s good because it protects the product or the achievements of someone else, of someone; but, you know, these days they can get patents for everything.” This wastes time in designing around trivial protections, she explained:

[Y]ou know, instead of just . . . focusing on doing something differently because they don’t want to be the one to be sued, or things like that, they can develop other things that you can say more innovative. Because for example, in the phone, it just slide to lock, it don’t, it is patent! And they have to try to draw circle.164 things like that. If

164. The method of unlocking a phone by drawing a circle was proposed as a noninfringing alternative to methods recited in US Patent No. 8,046,721 originally assigned to Apple, Inc., which includes claims directed to unlocking a phone by “performing gestures” on a touchscreen such as
they just try to change something like that, they cannot change something better, something more important. . . . It is a patent, and if another company wants to use it they need to pay money or else they will be sued. And if they don’t want to be sued, and if they don’t want to lose money they have to think another way. But they just, you know, instead of slide-to-lock, they draw in a circle, or things like that. But in the phone, it’s not the most important function of the phone; but they just focus on it, they focus on every details. Even trivial details. So they cannot, because even they are good, but it would take their times. I think so. . . . Yeah. And if in the world people just, just think of some trivial things and then get the patent for it, and so we just go around with changing some small things.

Ms. P’s sense of triviality seems to turn on an assessment of the opposite of importance, or insignificance. She argues that patents are good in theory but a waste of time and energy in practice. To her, IP law encourages too much effort to be expended on small, trivial details, which crowds out more important innovations even if innovators are good at what they do.

Another engineer I call Mr. M gave two examples of inventions he thought “trivial,” appearing to define that word by ubiquitousness rather than obviousness. “[S]ome patent is so trivial for the people,” Mr. M said. “It’s like the product that can contribute a lot to the people’s life and without that people . . . it’s really difficult to live. And if you try to keep it, like the monopoly, so at that time . . . it violates ethics.” Later, when asked for examples, he began:

It’s like about connectivity when . . . some company, they also received the patent for the 3G connection, where you get the data from the mobile network. And they want to charge this to every other company. It’s so trivial, for the phone you cannot get . . . you have to have that, so they cannot sue all the companies. They have to negotiate to get small fee for the license because it’s existing in many, many products. So it’s just a small fee for one product, they still can get a lot of money. But some patent is so trivial.

Mr. M did not seem to be arguing here that the 3G network technology was simple to develop. He was arguing it was everywhere. Every phone had to have it, and a small royalty on each phone adds up to a large compensation for the inventor. The problem of being “trivial” is not that it is a small advance but a single instance of it is a small part of the effect on society.

And then Mr. M continued, expanding the account from his first, serious example that involved the required standard of 3G connectivity. He next raised a design issue that he could not take seriously. “It’s like the Apple one,” he started again, laughing:

It has the patent about the design for the smartphone. Smartphone has to be rectangle with rounded corner. [Laughs.] It’s like every smartphone, if you want to have a nice one, you must do it that way. You cannot do a square smartphone, it’s

Mr. M’s examples suggest a definition of “trivial” that does not exclude the important but requires the common. It is a definition that makes social ubiquity more essential than lack of technological accomplishment. If compared to the dictionary definitions provided by Merriam-Webster, Mr. M’s criterion for “trivial” was not the first definition, “of little worth or importance,” so much as the second, “common, ordinary.”

How radical a change must be to earn a patent monopoly has long been a contentious issue in the law of invention. Novelty is obviously necessary, but “small” changes have historically been contested as unworthy. In patent law today, insufficiently large advances from existing technology are variously considered to be “obvious” in the United States or to lack an “inventive step” in most European law, and therefore not to be patentable. Defining the boundary between what is rewardable invention and what is mere skill has occupied many legal decision makers, for whom it has been clear that the popularity of a novelty is important but not for which side. Despite hundreds of years of legal development, vigorous debates continue about the proper criteria to separate the invention from the “trivial” advance and the integral component from the “trivial” contribution.

Rather than undermine the social construction of intellectual property, this engagement with the terms of continuing legal debate demonstrates the commitment of these two engineering students to the stakes of the game. In each of the examples Ms. P and Mr. M cite, “trivial” seems to have a different flavor of unimportance: unnecessary and wasteful, necessary but overcompensated, and useful but straightforward. What is everywhere cannot be patentable, they argue,
especially if it is what everybody wants. More important than the specific meaning of “trivial” to Mr. M and Ms. P is the fact that they are using the term to criticize how the law defines what they appear to see as the cultural product of intellectual property. Drawing the boundary to exclude these “trivial” inventions defines by exclusion the region in which invention legitimately deserves to be protected by law. This may not be it, they say, but it exists.

This use of a discourse of triviality suggests the development of an aesthetic of IP that allows participants in the field to engage in a contest for distinction. Mr. M and Ms. P are disposed to take a position on what constitutes a legitimate application of the law on IP, and the positions they take resonate with debates that generate productive disputes in courts and in newspapers. The rejection of the trivial, being common, is an element of the practices of distinction that construct aesthetic taste as valuable. Like the rejection of ordinary objects of admiration in the field of aesthetic value, the rejection of the inventions of these Apple patents in the field of engineering contributes to the construction of legitimate works of intellectual property.

Rejection of trivial inventions contributes to the legitimacy of legality by reserving it for objects that engineers see as having true technical value. The fact that legality’s stakes are important enough to contest demonstrates an illusio specific to the field of practice as a global engineer. In claiming to perceive the existence of legitimate intellectual property, these engineers distance themselves both from undistinguished design and from the legality they see as common. The intellectual objects that the law defines have a reality in their

---

172. BOURDIEU, supra note 61, at 42 (“[T]his ‘aesthetic’, which bases appreciation on informative, tangible or moral interest, can only refuse images of the trivial, or, which amounts to the same thing in terms of logic, the triviality of the image: judgement never gives the image of the object autonomy with respect to the object of the image.”).

173. Id. at 35 (“[O]ne finds that the higher the level of education, the greater is the proportion of respondents who . . . refuse the ordinary objects of popular admiration—a first communion, a sunset or a landscape—as ‘vulgar’ or ‘ugly’, or reject them as ‘trivial’, silly, a bit ‘wet’, or . . . naively ‘human’”).

174. BOURDIEU, supra note 50 (explaining illusio as a nonpecuniary sense of interest that is “the enchanted relation to a game that is the product of a relation of ontological complicity between mental structures and the objective structures of social space”); BOURDIEU, supra note 23, at 66–67 (analogizing illusio to learning a first or second language as a “commitment to the presuppositions—doxa—of the game” that “is made more total and unconditional by the fact that it is unaware of what it is”).

175. A third use of “trivial” came up when a participant noted he had two friends who are lawyers. He said the only discussions of law he had had with his friends were “very trivial things, normal things. . . . just like how . . . how when I beat someone, kill someone, how many years I will be imprisoned. Just like that.”
global field of practice, a field that distinguishes these engineers from those who participate in the more ordinary practice in their country.\textsuperscript{176}

\textit{H. Intellectual Property, the Legal Field, and the Field of Practice}

These discourses tell a story both of intellectual property and of legality more generally. In Sections A, B, and C, practices of IP legality appear alongside examples of legality more generally that illustrate discourses from my research participants expressing the structure of their field of practice. In Sections D and E, a willingness to litigate IP issues expressed by a couple of engineers contrasts with expressions from others that position themselves farther from legal institutions. But in Sections F and G, general dispositions are left behind, and discourses specific to intellectual property illustrate dispositions adopted by my participants to participate in constructing IP’s specific legality.\textsuperscript{177}

The expression of these discourses from my research participants implies a tension: a struggle to assert agency in the face of their participation in what they see as powerful cultural change. In this case, IP serves as a case study of the larger question of legality construction in Vietnam. The field of global engineering in HCMC is only partially autonomous and overlaps with numerous other social fields for my research participants. Each participant’s own set of competences and dispositions, or habitus, is constructed by the various fields in which that individual participates. And part of that participation is improvisational position taking. How these engineers express the relationship of legality to structures of time, space, and objects that define their relations with others in their field of practice positions their own identities with respect to legality. At least a few of my participants express a disposition and profess a competence to engage with this field if profit is to be made. But expressions of distrust

\textsuperscript{176} These engineers fail to appreciate what Bourdieu calls “the autonomy of the representation.” \textsc{bourdieu}, supra note 61 at 35 (“T]he higher the level of education . . . the greater is the proportion who assert the autonomy of the representation with respect to the thing represented by declaring that a beautiful photograph, and a fortiori a beautiful painting, can be made from objects socially designated as meaningless—a metal frame, the bark of a tree, and especially cabbages, a trivial object par excellence.”). In the aesthetics of IP, the law determines autonomously what may be the subject of a patent monopoly, even on something as common as rounded corners. \textit{See, e.g.}, U.S. Patent No. D593,087 (filed Jan. 30, 2007) (issued May 26, 2009). Mr. M and Ms. P reject the trivial object of the patent monopoly and refuse to give the law autonomy with respect to the thing monopolized.

\textsuperscript{177} The discourses of gift-reward and of triviality also appear in more developed states. That they appear in Việt Nam may be either noteworthy or unsurprising, depending on whether each discourse is considered culturally specific or inherent in the law of IP. As an empirical matter, proof of the latter is wanting, and in this field, evidence here shows they are popularly considered the former. Therefore, their appearance seems noteworthy.
for their national legal institutions, and of preference for more socially local methods of dispute resolution, suggest an effort to avoid engagement with what might be called the “legal” field of practice.\footnote{178}

Mediation of these discourses by their practice was not the same for all my participants. Many of these engineers express skepticism that legal process, a fundamental principle of Anglo-American legal justice, has much relevance to the fields of practice in which they feel themselves engaged. Reliable procedures and reproducible results have not historically been promoted by the legal system of Vietnam.\footnote{179} Some were not bothered by that, expressing confidence in legal proceedings. But many express a more social approach to daily experience in which social distance, or its absence, is essential to negotiating relations. The universalism of modern law—the formalism that holds that social interactions should in principle follow the same rules regardless of the relation between people or their status groups\footnote{180}—appears in conflict both with their observable practice and with the cultural norms they express.

This tension\footnote{181} between the demand for the objective social structure that supports the logics of their practice field and the universalism of law is accommodated, by some, through a discretionary discourse of gift-reward. Physical distance, yes, but more importantly social distance separates global engineers in HCMC from those they perceive construct the market for their field. They invest their efforts in the strategic pursuit of their practice even at this distance and construct in themselves the capacities and dispositions to perceive objects as required in the field, including legally structured objects like IP. But in verbalizing their relation to these objects they have invested in perceiving, the discourse of gift-reward reframes it away from universal values of legality that orient the relation as person-object. Instead, they express the importance of person-to-person relations to

\footnote{178. The relationship between the legal field, as a social field, and other fields of practice is determined by the relations of their mutual participants in the greater field of power. See Pierre Bourdieu, The Force of Law: Toward a Sociology of the Juridical Field, 38 HASTINGS L.J. 814, 831 (1987) (“As is true of any ‘field,’ the constitution of the juridical field is a principle of constitution of reality itself. To join the game, to agree to play the game, to accept the law for the resolution of the conflict, is tacitly to adopt a mode of expression and discussion implying the renunciation of physical violence and of elementary forms of symbolic violence, such as insults. It is above all to recognize the specific requirements of the juridical construction of the issue.”).}

\footnote{179. John Gillespie, Understanding Legality in Vietnam, in VIETNAM’S NEW ORDER 137, 137–38 (Stéphanie Balme & Mark Sidel eds., 2007).}

\footnote{180. Bourdieu, supra note 178. This is a specific aspect of what Bourdieu calls a “universalizing attitude,” which he asserts is the “entry ticket into the juridical field.” See id. at 820.}

\footnote{181. Id. at 841 (“There is constant tension between the available juridical norms, which appear universal, at least in their form, and the necessarily diverse, even conflicting and contradictory, social demand.”).}
the very definition of these objects. Though this resists universalization today, it lays the groundwork of future legal claims by establishing the social reality of the objects through reproduction of the social practice in which these objects were constructed.

Participants in my study thus preserve a sense of their own agency despite the way their participation in the construction of legality for intellectual property in Vietnam is socially structured by their practices. They discuss the practices associated with increasing international trade in a language of cultural change that suggests a strategic perspective on what practices or discourses they adopt. Some are more engaged in pursuing this change than others. For some, the multiple perspectives operating on the same practice appear to have the effect of suppressing legality. Law’s universalism can therefore remain latent, wrapped up in the temporal uncertainty of a strategic choice of frame.

The literature on sociolegal fields that eschew state law, or explicit reference to law, in their social order is extensive. Stewart Macaulay’s study of noncontractual business relations pioneered this finding in the surprising field of US manufacturing. Macaulay’s conclusion that “many, if not most,” business exchanges in 1963 reflected a minimal amount of planning, were often amicably adjusted without reference to legal rights or duties, and relied exclusively on nonlegal sanctions that were reliably effective is likely also true today of repeat relationships in Vietnam. Robert Ellickson’s conclusions in 1991 that farmers and ranchers in Shasta County resolved their differences “beyond” the rights and duties of law despite surprisingly accurate knowledge of where they lay, and treated legal sticklers as “deviants” also resonate. The gift-reward discourse of Vietnamese engineers I identify here echoes Ellickson’s observation that in-kind contributions to fence mending can be likened to “an exchange of gifts, which helps maintain cooperative internighbor relations.”

The “IP without IP” literature is even more relevant. These studies demonstrate both that resort to the legal system may be disfavored and that the cultural product of IP can be supported in some social fields without formal legal protection. But none of these studies found a discourse of cultural difference within the group studied or a discourse of cultural change to be so prevalent. In the Vietnam context,

---

183.  Id. at 60–61, 63.
185.  Id. at 78.
the legality of IP, as a social structure, is perceived by my participants to be neither present nor absent but—unusually for such studies—in transition.

Amy Kapczynski’s study of the Flu Network uniquely demonstrates such a transition. In that case, the growing economy of IP objects put such pressure on the Network that its intellectual production nearly collapsed. As Kapczynski showed, however, the Network has been preserved not by eschewing law but by formalizing its organizational structure with contracts, making explicit what property creation is allowed and what is not. There, as here, increased participation in the practice field by peripheral members seems to result both in their agency and in the formalization of member relations around intellectual property objects.

VI. CONCLUSION

This Article attempts to expand the scope of intellectual property law scholarship through a detailed study of the social construction of the intellectual property object among aspiring global engineers in HCMC, Vietnam. Analysis of the structure of workplaces and business models in four transnational businesses demonstrates the expectations of cultural change immanent in their structure, making intellectual property into a kind of cultural product. Seven discourses used by Vietnamese engineers in these industries demonstrate how law, and IP law in particular, structures their practice and how they attempt to assert their own agency as they participate in its construction.

This kind of interaction between intellectual property, legality construction, and social distance should be an object of study for US IP law scholars. The same tensions are now playing out in the construction of both intellectual property and legality in slightly wealthier countries that trade substantially with the United States, such as China. And the flip side of this story of highly educated and socially mobile engineers in southern Vietnam is that the construction of legality among similarly distinct practice groups in the United States also

186. Kapczynski, supra note 7, at 1539.
187. Id. at 1579–83.
188. Id. at 1607–12.
189. See id.
occurs in discourses similarly mediated by their practice. Analyzing how to promote the output of intellectual production, whether in terms of quantity or social need, should not be the sole purpose of IP scholarship. Even if changes proposed by scholars would generate more knowledge or greater access to knowledge we already have, we should investigate what effect such changes may have on the legality of the field and in general.

Study of such conditions is an important responsibility of the bar in order to promote justice by means of legality and to provide professional services for unmet social needs—whether recognized as legal or not.