

shari'a. Chapter 3 looks at the postcolonial period from 1961 to 1991, when governments implemented laws with the goal of constraining Islam. Much of this period was marked by the brutal authoritarian regime of President Mohamed Said Barre, who advocated the compatibility of socialism and Islam to push forward his socialist and national agenda. Nonetheless, his rule was marked by controversy, as many who challenged him on religious grounds, including Sheikhs, were executing, ultimately alienating Somalis from the state.


Chapter 4 explores the rise of warlords following the collapse of the Barre regime and the subsequent emergence of the Islamic Courts Union (ICU) under the leadership of local religious leaders. The ICU and its Islamic courts provided locals with a short period of respite from factionalism and warlordism. However, the ICU stoked US fears over terrorism, and a military invasion swiftly dismantled the ICU after just 6 months in operation. Chapter 5 shifts attention to the Somaliland region in the North, which declared independence following the 1991 state collapse. Somaliland integrated the shari'a into its state-building efforts to protect against the dual threats of authoritarianism and religious extremism. In Somaliland, the region's constitution, state institutions, customary norms, and private arbitration offices manned by local Sheikhs all invoke the shari'a. Nonetheless, this reliance on the shari'a also creates tension with international NGOs that prefer more secular forms of political development.

Chapter 6 showcases how women activists in Somaliland use the shari'a to assert women's rights, while fighting against both the patriarchy that dominates the political and legal landscape and western feminists who view Islam as regressive. Women activists view the shari'a as enshrining gender equality and women's rights, which they promote by co-opting the support of like-minded male sheikhs, and also by opposing customary practices that deny women's rights. The book concludes with Chapter 7, where Massoud discusses the relationship between the rule of law and religion, arguing that just as the rule of law may promote stability and accountability within a society, so too may religion place limits on unfettered authority, especially when religion has widespread appeal.

Shari'a, Inshallah provides a superbly constructed narrative of the twists and turns of shari'a politics in Somalia. The book draws from a variety of sources including archival research across different continents, extensive interviews, and participant observations. The analysis is at once expansive, covering varied episodes of Somali legal history, and meticulous, astutely concerned about the fine-grained nuances of each case study. For example, his interviews with women activists demonstrate how the shari'a is liberating for some while constraining for others. The overall result is a pioneering work that transforms the way we think about the interplay of law and religion in state-building and the creation of legal and social order, in fragile states and beyond.

DOI: 10.1111/lasr.12627

Against progress: Intellectual property and fundamental values in the internet age. By Jessica Silbey. Stanford: Stanford University Press, 2022. 448 pages, \$90.00 hardcover/\$30.00 paperback.

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Jessica Silbey has done it again: Like her previous book (Silbey, 2015), Silbey's new work, *Against Progress: Intellectual Property and Fundamental Values in the Internet Age*, urges us to rethink the very conception of intellectual property (IP) and the role it plays in society.

The conventional understanding of IP is that it creates rights designed to incentivize innovation. Once public, unprotected creative works and inventions can easily be replicated by others, diminishing the motivation to engage in the intellectual labor of producing them. Therefore, society grants creators and innovators limited, exclusive rights to their works to allow them to recoup their investments. In this way, the theory goes, IP regimes encourage creativity and innovation. Silbey

refers to this conception as “the grand incentive narrative,” (Rose, 2013, pp. 1205–07) which reflects the prevalent economic underpinnings of IP regimes (pp. 4–5).

In recent decades, however, an increasing number of scholars and activists have questioned whether this narrative reflects the actual function of IP, as well as whether this is its desired role in modern society (Heller & Eisenberg, 1998; Stallman, 2013). Silbey’s book joins this thread; its stated objective is “to demonstrate how contemporary debates about intellectual property may be moving away from the classic story of private property rights that incentivize creativity and innovation and embracing new understandings with other fundamental values at their center.” Consistently with the principles expressed in the Intellectual Property Clause of the U.S. Constitution—“to promote the progress of science and useful arts”—Silbey examines how copyright, patents, and trademarks can and should promote fundamental values that better represent “progress” in modern society, rather than merely create commercial incentives.

Silbey’s book offers a much-needed bridge between IP rights and the contemporary, evolving social justice environment. Though critical, studying this intersection has thus far been relatively marginal in the IP literature (Chon, 1993; Pollack, 2004). Silbey takes an important step towards bringing this topic to the forefront. She argues that “progress” no longer means what it meant 230 years ago; at that time, “progress” implied “more” (namely, economic progress), leading to an overexpansion of IP rights. Today, she contends, sociopolitical interests such as equality, privacy, distributive justice, and institutional resiliency reflect a more modern understanding of “progress” (namely, social progress) that is based on promoting these interests rather than on strengthening monopolistic rights. Notably, the book explores the interplay between IP and fundamental values in the context of Web 2.0 and the Digital Age, as society has become much more networked and virtual.

Through her analysis of caselaw and observations drawn from interviews with creators and innovators, Silbey underscores how everyday IP matters contribute to and are influenced by the discourse of fundamental values. For instance, the *Naruto* case—the monkey who took a selfie and “claimed” copyright (pp. 1–4); a patent dispute regarding the reselling of genetically modified seeds (pp. 126–130); and IP initiatives such as the Innovator’s Patent Agreement and patent pledges by mega-corporations (pp. 261–265) demonstrate, respectively, that IP plays a role in the fields of animal rights, equal treatment, and autonomy.

Chapter 1, *Everybody’s a Photographer Now*, illuminates how the concept of photography authorship is being reshaped in the digital environment. Chapter 2, *Equality*, reveals equality-related principles, specifically nondiscrimination and anti-hierarchy, in IP caselaw. Chapter 3, *Privacy*, addresses the interrelationship between IP and privacy. Chapter 4, *Distributive Justice*, suggests that creators and inventors are more tolerant and accepting of unauthorized uses than is commonly assumed. Finally, Chapter 5, *Prearity and Institutional Failures*, contours a relatively new trend in IP law: a focus on communities and institutions rather than on individuals.

A particularly interesting argument that emerges from Silbey’s work concerns the complex reciprocity of IP and privacy. Silbey points out a two-directional interaction: Parties annex IP-related arguments to privacy arguments to secure a legal advantage, such as to overcome First Amendment constraints that may otherwise block privacy claims, or to acquire priority in the legal balance of rights (pp. 168–169). Conversely, parties invoke relational privacy rights—mainly the control of identity—as an instrument to secure IP-like interests, among others (pp. 192–193). Silbey interlaces this argument beautifully with insights from multiple legal cases, anchoring her analysis in real-life examples and illustrating the sophisticated, underexplored relationships between IP and democratic (though not necessarily constitutional) principles.

Silbey also forcefully underscores the tension between values advanced by IP law and those creators and innovators wish to protect. This dissonance is especially evident in the practices and business models of photographers in the Digital Age. High connectivity has given some entities, according to Silbey, “inordinate market power.” These parties (e.g., Getty or Flickr) serve as intermediaries, not as creators of artistic works; nevertheless, they are the primary beneficiaries of the

current copyright regime. Silbey emphasizes the mismatch between creators of original digital content and those who reap the benefits of current copyright law, noting that it can yield absurd results: copyright enforcement sometimes prohibits uses that most photographers would tolerate or even encourage, while other uses that threaten photographers' interests and professional standards are practiced freely (pp. 46–66, 80–86).

Against Progress not only extracts observations from numerous cases, it also draws insights from 107 interviewees, including scientists, photographers, engineers, and IP attorneys (pp. 311–333). Silbey's qualitative methodology—her close reading of court cases and investigation of her interviewees' practices and considerations—collects both legal and sociological understandings of IP and merges them into one constructive corpus. However, the conclusions she draws would benefit from quantitative research to provide measurable evidence for her study's findings. Indeed, Silbey calls on others to verify her results (p. 318). I believe that a widely distributed, cross-sectional survey would fit the task. For example, Silbey's findings could be tested through research involving two separate surveys: one for IP lawyers to assess what legal players think of the *actual* status of fundamental values in IP law as arising from statutes and caselaw; and a second for creators and innovators to examine which values they *desire* to protect through IP rights.

I conclude with a critical observation. Throughout the book, Silbey often presents a confrontational relationship between the economic progress and social progress approaches to IP, using terminology such as “tension,” “alternative,” and “shift gears,” and juxtaposing the “old story” with the “new story” (pp. 4–5, 214, 271, 307). But economic progress and social progress are not necessarily binary alternatives. Enhanced autonomy and equality, for instance, may lead to further creativity and innovation as individuals have more liberty and access to engage in the arts and sciences. Indeed, Silbey acknowledges the potential for positive synergies between economic and social interests (e.g., pp. 261–265); yet she does not give this idea the attention I believe it is due. Portraying these interests as complementary rather than confrontational would have made the book's argument even more compelling.

Nonetheless, this criticism does not alter my view that Silbey's latest book is a necessary contribution to the extant literature. While the book will undoubtedly be of great interest to IP scholars, it also offers valuable insights to sociologists and legal scholars engaged in the discourse of fundamental values, as well as to researchers interested in the effects of a changing social and technological climate on longstanding narratives, norms, and legal systems.

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