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Intellectual Property and Religious Thought

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FOREWORD

FOREWORD: INTELLECTUAL PROPERTY AND RELIGIOUS THOUGHT

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I. PROPERTY, INTELLECTUAL PROPERTY, AND RELIGIOUS THOUGHT

This issue of the *University of St. Thomas Law Journal* collects the published papers from the April 2013 symposium *Intellectual Property and Religious Thought*, in which a dozen scholars from three continents and the fields of law, theology/religion, and technology/communications gathered at the University of St. Thomas School of Law in Minneapolis, Minnesota.¹

Intellectual property (IP) as a subject matter has exploded in importance in the last thirty years. Simultaneously, new technologies have challenged some of the basic principles in the field and presented new questions about its foundational purposes. Globalization has further raised the stakes in IP debates, as developing and developed nations have clashed over the value of IP rights versus open access to patentable technologies such as essential medicines and copyrighted works such as educational materials.² All these factors have sparked a wealth of commentary, both scholarly to popular, on the proper purposes and scope of IP rights. Like many other areas of law, IP has increasingly been examined through the lenses of other disciplines, including microeconomic theory,³ Lockean labor- and natural-

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1. See Spring 2013 Symposium: Intellectual Property and Religious Thought, UNIVERSITY OF ST. THOMAS, <https://www.stthomas.edu/murphyinstitute/upcomingevents/spring-2013-symposium-intellectual-property-and-religious-thought-.html>. The symposium was co-sponsored by the *University of St. Thomas Law Journal* and the university's *Terrence J. Murphy Institute for Catholic Thought, Law, and Public Policy*. The author, as the symposium's faculty organizer, express thanks for work of the *Law Journal* editors as well as Seanne Harris, the Institute's program manager, and Lisa Schiltz and William Junker, its co-directors.

2. For a summary of various disputes, see, e.g., INTELLECTUAL PROPERTY AND HUMAN DEVELOPMENT: CURRENT TRENDS AND FUTURE SCENARIOS (Tzen Wong & Graham Dutfield eds. 2010) [hereinafter CURRENT TRENDS AND FUTURE SCENARIOS].

3. See generally WILLIAM M. LANDES AND RICHARD A. POSNER, THE ECONOMIC STRUCTURE OF INTELLECTUAL PROPERTY LAW (2003); F. Scott Kieff, *Property Rights and Property Rules for Commercializing Inventions*, 85 MINN. L. REV. 697 (2001) (defending patents as eco-

rights philosophy,⁴ literary and other cultural theories,⁵ empirical institutional and public-choice analysis,⁶ social-justice and critical perspectives,⁷ and others.

In the midst of all this activity, IP scholars have only begun to mine the intellectual lodes of the world's historic religious traditions: Buddhism, Christianity, Hinduism, Islam, Judaism, and others. A few books and articles have appeared, many of them by contributors to this symposium.⁸ But the time was ripe, the symposium organizers thought, for wider exploration: for a conversation between scholars of law and of religion about how religious themes, practices, and communities may inform law and policy concerning IP. For one thing, the scope of IP rights can no longer be seen simply as a technical/economic matter of productivity or efficiency: recent disputes over the patenting of the human genome, the costs of patented AIDS drugs in poor nations, and the effect of seed patents on farmers show that IP has moral and social implications. Moreover, several of the great

nomically necessary to support commercialization of inventions and efficiently allocate investment in commercialization).

4. See, e.g., ROBERT P. MERGES, *JUSTIFYING INTELLECTUAL PROPERTY* (2011).

5. See, e.g., JAMES BOYLE, *SHAMSN, SOFTWARE, AND SPLEENS: LAW AND THE CONSTRUCTION OF THE INFORMATION SOCIETY* (1997); ROSEMARY J. COOMBE, *THE CULTURAL CONSTRUCTION OF INTELLECTUAL PROPERTIES: AUTHORSHIP, APPROPRIATION, AND THE LAW* (1998); JULIE E. COHEN, *CONFIGURING THE NETWORKED SELF: LAW, CODE, AND THE PLAY OF EVERYDAY PRACTICE* (2012); Anupam Chandler & Madhavi Sunder, *Copyright's Cultural Turn*, 91 *TEX. L. REV.* 1197 (2013) (reviewing Cohen, *supra*).

6. See, e.g., JAMES BESSEN & MICHAEL J. MEURER, *PATENT FAILURE: HOW JUDGES, BUREAUCRATS, AND LAWYERS PUT INNOVATORS AT RISK* (2009); ROBIN FELDMAN, *RETHINKING PATENT LAW* (2012); See, e.g., Stewart Sterk, *Rhetoric and Reality in Copyright Law*, 94 *MICH. L. REV.* 1197 (1996).

7. See, e.g., MADHAVI SUNDER, *FROM GOODS TO A GOOD LIFE: INTELLECTUAL PROPERTY AND GLOBAL JUSTICE* (2012); CURRENT TRENDS AND FUTURE SCENARIOS, *supra* note 2; Symposium, *Intellectual Property and Social Justice*, 40 *U.C. DAVIS L. REV.* 563 (2007); Margaret Chon, *Intellectual Property and the Development Divide*, 27 *CARDOZO L. REV.* 2821 (2006).

8. See, e.g., DAVID CAREY, *THE SOCIAL MORTGAGE OF INTELLECTUAL PROPERTY* (2012) (analyzing IP through principles of Catholic social thought); ROBERTA ROSENTHAL K WALL, *THE SOUL OF CREATIVITY: FORGING A MORAL RIGHTS LAW FOR THE UNITED STATES* 11-22 (2009) (using Jewish and Christian sources to identify dignitary and spiritual elements of human creativity); Thomas C. Berg, *Intellectual Property and the Preferential Option for the Poor*, 5 *J. CATH. SOC. THOUGHT* 193 (2008) (applying Catholic social thought to issues of IP, poverty, and development); Thomas C. Berg & Ruth Okediji, *Intellectual Property and Religious Thought, Perspectives*, UNIVERSITY OF ST. THOMAS NEWSROOM, Dec. 15, 2009, <http://www.stthomas.edu/news/2009/12/15/intellectual-property-and-religious-thought/>; Roman Cholij, *IP in Christian Law*, 16 *INTELL. PROP. Q.* 137 (2012); Helena Howe, *Copyright Limitations and the Stewardship Model of Property*, 15 *INTELL. PROP. Q.* 183 (2011); Roberta R. Kwall, *The Author as Steward for "Limited Times"*, 88 *B.U. L. REV.* 685 (2008); Gabriel J. Michael, *Catholic Thought and Intellectual Property: Learning from the Ethics of Obligation*, 25 *J. L. & REL.* 415 (2009); Neil W. Netanel and David Nimmer, *Is Copyright Property?—The Debate in Jewish Law*, 12 *THEORETICAL INQUIRIES* 241 (2011); Frank Pasquale, *Joining or Changing the Conversation? Catholic Social Thought and Intellectual Property*, 29 *CARDOZO ARTS & ENT. L.J.* 681 (2011); Peter K. Yu, *The Second Coming of Intellectual Property Rights in China*, 11 *CARDOZO SCH. OF LAW OCCASIONAL PAPERS IN INTELL. PROP.* (2002) (attributing much of Chinese resistance to IP rights to Confucian ethical outlook).

religious traditions have long histories of thought about property rights and obligations that might be applied fruitfully to IP. Third, the increasing extension of IP rights over natural processes and living things raises bioethics questions that have long been a concern of religious ethics.

In a pluralistic society, no one religious approach can dominate. But religious ideas are legitimate contributors to democratic conversation and debate. They can deepen our appreciation of shared concepts that are central to IP: ownership, creativity, justice, and fairness. They should expand, not constrict, discussion. That proposition is, among other things, a central affirmation of the University of St. Thomas School of Law. This Foreword, after summarizing the symposium papers, concludes with brief reflections on the potential contributions of religion to IP law and policy and on directions for further research.

II. SYMPOSIUM PAPERS

A. *God, Ownership, and Intellectual Creation*

Two symposium papers set basic theological challenges by noting that Christianity and Judaism, the West's most influential religious traditions, express ambivalence about human ownership of information or ideas. The Catholic intellectual tradition, theologian Paul Griffiths argues, has been ambivalent about individual property ownership in general, seeing it not as an ultimate ideal (it is absent in Eden and heaven) but as a necessary response to a fallen world in which acquisitive humans compete for resources and take from each other.⁹ Thus property rights, while important, remain qualified by the common good. "Intelligibles"—information or ideas—present further problems. Griffiths takes as a representative thinker St. Augustine, whose ontology distinguishes "private" things, which are owned and are subject to depletion, from "public" and common things—including mathematical concepts—which are "'experienced by all those who experience, without change or corruption,'" and whose value is lost by attempts to sequester rather than share them.¹⁰

Griffiths recognizes that IP laws will not disappear and that they support intellectual and artistic work in a "degraded world in which [it is] . . . otherwise likely to get short shrift." But he urges Catholics to support limiting IP laws and relying more on modern-day forms of patronage, the model

9. Paul J. Griffiths, *The Natural Right to Property and the Impossibility of Owning the Intangible: A Tension in Catholic Thought*, 10 U. ST. THOMAS L. J. 590, 591 (2013).

10. *Id.* at 596 (quoting Augustine in PAUL J. GRIFFITHS, *INTELLECTUAL APPETITE: A THEOLOGICAL GRAMMAR* 139 (2009)). On this reading, Augustine presages Thomas Jefferson's famous dictum that ideas are "less susceptible than all other [things] of [being] exclusive property," since ideas can be shared without reducing the creator's use just as "he who lights his candle at mine, receives light without darkening me." Letter from Thomas Jefferson to Isaac McPherson (Aug. 13, 1813), in *THE FOUNDER'S CONSTITUTION* available at http://press-pubs.uchicago.edu/founders/documents/a1_8_8s12.html.

that supported creativity for many centuries. He refers approvingly to various secular skeptics of IP, who have proposed, for example, to award prizes rather than patent monopolies to the inventors of beneficial drugs, and to eliminate the right of government-grant recipients to obtain patents on their subsidized work.¹¹ In opposing expansive IP rights, Griffiths concludes, Christians should look for “allies in unexpected places.”¹²

Scholar and attorney Jeremy Stern examines the analogous question why Jewish law has never clearly approved IP rights: “most rabbis today hold that Jewish law proper does not forbid using a pirated copy of Windows, downloading music through µTorrent, or using pictures owned by Getty images on a website.”¹³ Jewish law, Stern says, values tangible-property rights highly because, although God ultimately owns all things, “the physical world is given to humans once there has been an acknowledgement that God is the source.”¹⁴ But scholars were reluctant to acknowledge property rights in intellectual creations. Even the leading rabbinic opinion endorsing author’s and inventor’s rights, issued in the 19th century, relied not so much on their inherent justice, Stern argues, but on the fact that the governing civil authority, the Czar, had instituted them.¹⁵

Although Stern acknowledges social-political reasons why Jewish law never accepted IP rights as such, he attributes it primarily to the fact that both major strains contributing to Jewish law—rationalism and mysticism—treat thought and intellect as spiritual, even divine, features.¹⁶ Jewish law prohibits charging fees for spiritual teaching, and if all wisdom is “divine” wisdom, then the development of IP rights—which “allow for thoughts to be owned, traded, and restricted”—becomes “inconceivable” even if it is not consciously rejected.¹⁷

However, IP rights also find plenty of support among interpreters of the monotheistic religions, as is shown in the article on Islamic law by Bashar Malkawi, a law professor in Sharjah in the United Arab Emirates. He argues that Islamic law provides grounds, albeit implicit rather than explicit, for affirming IP rights.¹⁸ Only one of the four main schools of Sunni legal scholars, he notes, rejects property in incorporeal things such as intellectual creations; the others hold that “[p]roperty can be anything that is

11. Griffiths, *supra* note 9, at 591.

12. *Id.* at 592.

13. Jeremy Stern, *Spiritual Property, “Intellectual” Property, and a Solution to the Mystery of IP Rights in Jewish Law*, 10 U. ST. THOMAS L.J. 603, 604 (2013) (citation omitted). Jews have the obligation to obey IP laws as “external” law (of the civil state), but not as “internal” (Jewish) law. *Id.*

14. *Id.* at 605.

15. *Id.* at 611-12.

16. *Id.* at 613-16.

17. *Id.* at 617.

18. Bashar H. Malkawi, *The Alliance Between Islamic Law and Intellectual Property: Structure and Practice*, 10 U. ST. THOMAS L.J. 618 (2013).

useful or of value.”¹⁹ Islamic justifications for property rights, he argues, include recognizing the value added by human work, encouraging work through the provision of profits, and acknowledging the connection between authors and their creations—all of them analogous to major justifications for IP rights.²⁰

Because Islamic law permits IP rights, Malkawi turns to ask “why there are many violations of [IP] in Arab countries.”²¹ He suggests that some opponents of IP associate it with Western individualism and commercial imperialism, and he urges Arab governments to emphasize that IP “can be traced back to concepts found in Sharia and is not, as commonly perceived, a Western phenomenon.”²² And because Arab populations may resist IP for the same reasons as in other developing nations—namely, the benefits of technological advances are outweighed by the cost increases in goods for poor people—Malkawi, like many other religious IP theorists, urges that IP laws “must incorporate . . . a more comprehensive development approach to achieve social welfare and to benefit the most vulnerable populations.”²³

B. *Gene Patents, Religion, and Social Justice*

If, as Stern and Griffiths propose, there is a basic religious worry about IP laws—that truth and wisdom are God’s creation and should be maintained for common use and benefit—one would expect the worry to intensify when people claim ownership in the materials of life itself, such as human gene sequences or genetically modified plants or animals. Indeed, as Audrey Chapman’s paper recounts, religious leaders have raised concerns about life patents ever since the Supreme Court first approved them in 1980.²⁴ Most prominently, in 1995 more than 200 leaders from 80 denominations issued a public statement asserting that “humans and animals are creations of God, not humans, and as such should not be patented as human inventions.”²⁵

Yet as is shown by Chapman—an ethicist who has long studied the connections between IP, religion, and social justice—religious opposition to human gene patenting has turned out to be “quite sporadic” and ineffective. For example, in *Myriad Genetics*, the recent Supreme Court case on the

19. *Id.* at 624.

20. *Id.* at 624-33.

21. *Id.* at 642.

22. *Id.* at 643.

23. *Id.* at 648.

24. Audrey Chapman, *Religious Contributions to the Debate on the Patenting of Human Genes*, 10 U. ST. THOMAS L.J. 650, 652-53 (2013) (citing *Diamond v. Chakrabarty*, 447 U.S. 303 (1980) (patent on genetically engineered bacterium)).

25. *Id.* at x15 (quoting General Board of Church and Society of the United Methodist Church, “Joint Appeal Against Human and Animal Patenting,” press conference announcement, Washington, D.C., May 17, 1995).

permissibility of patenting unmodified human genes, “only one denomination, the Southern Baptist Convention, [contributed] an amicus brief to express its views.”²⁶ Chapman analyzes the arguments raised by religious opponents of gene patenting—that it assumes the place of God as creator, violates human dignity by allowing ownership of parts of human beings, and injects commodification into a new sphere of life—and diagnoses why they were less effective than they could have been.

The religious opponents, she concludes, raised legitimate concerns but too often failed to confront legal, ethical, and theological complexities. Relying on an “ontological” conception of property as ownership of a thing, they were subject to the counterargument that patents give only limited rights, conferring no right to possess or use a patented object, only the right to stop others from making, selling, or using it.²⁷ Critics also neglected to counter the instrumentalist claim that patents promote commercialization of beneficial inventions: had they used evidence that patents have actually blocked scientific research, “restricted the availability of needed genetic testing and obstructed patient care,” the religious critics might have “collaborate[d] with secular critics.”²⁸ Finally, the critics failed to confront theological counterarguments: that “divine creativity” is consistent with gene patents because it “works through human creativity,” and that human dignity inheres in whole persons and is not violated by patenting knowledge about body parts.²⁹ Chapman’s article reminds us that the relevance of religion to IP law is complex: “opting for a prophetic approach does not excuse imprecise and inadequate theological and ethical reasoning.”³⁰

Another set of life patents, on genetically modified crops, have generated extensive litigation between agribusiness companies, like Monsanto, and farmers. Margo Bagley, a legal scholar with a longtime interest in the morality of patents, examines these disputes in the light of Jesus’s multiple parables about seeds.³¹ Interpreters often assign the parables spiritual, allegorical meaning, but Bagley finds thought-provoking, more literal applications. For example, the parable of the growing seed, “which sprouts . . . [a]ll by itself,”³² “though [the sower] knows not how,” may represent quiet spiritual growth within the heart. But it also speaks critically, Bagley says, to the Supreme Court’s recent ruling in *Bowman v. Monsanto Co.*³³ that a farmer could not replant seeds from a genetically-engineered, pesticide-resistant soybean crop, because to grow another generation infringed Monsanto’s

26. *Id.*; see *Association of Molecular Pathology v. Myriad Genetics*, 133 S. Ct. 2107 (2013).

27. Chapman, *supra* note 24, at 667.

28. *Id.* at 681.

29. *Id.* at 669-70, 672.

30. *Id.* at 682.

31. Margo A. Bagley, *The Wheat and the (GMO) Tares: Lessons for Plant Patent Litigation from the Parables of Christ*, 10 ST. THOMAS L.J. 683 (2013).

32. Mark 4:26-29 (New International Version).

33. 133 S. Ct. 1761 (2013).

patent. The Court rejected the farmer's defense based on the "first sale" doctrine, which allows a purchaser to reuse his copy of the invention: Bowman had made impermissible new copies, the Court said, by purposefully and systematically replanting seeds. But Bagley observes: "It is God, not the farmer, and certainly not Monsanto, that makes the seed grow into a plant that produces progeny."³⁴ Notwithstanding *Bowman*, she suggests, in future cases—where, for example, patented seeds grow on a farmer's land without his intent—courts should decline to extend patent rights further; they should recognize both the farmers' interest and the "God-created, self-replicating nature of seeds."³⁵

C. IP, Religion, and Social Relationships/Obligations

Several symposium papers reflect a concern—characteristic of the great world religions—that legal rights should not undermine social relationships or obligations to others and the common good.

Marco Fioretti, a technology writer and activist, argues that there are "many links" and "possible synergies" between Catholic social doctrine (CSD) and the "Openness" movement that seeks, in software development and other areas, to develop and refine knowledge through a "share-and-share alike" approach to ownership and reuse of goods" and through "affordable, large-scale collaborative design and mutual support" via the Internet.³⁶ CSD's prominent emphases, summarized by Fioretti, include human dignity, which requires development of the whole person; the "social nature" of human beings, which implies duties to promote the common good; and subsidiarity, the principle that power should reside at the "most local level compatible with the common good" so that people can "practice as much freedom and responsibility as is possible."³⁷ These themes, Fioretti says, fit with openness projects such as free software (free to anyone to use as long as he in turns shares improvements freely with others) to open education (developing course books and other information under free and open licenses).³⁸ Because such methods are characterized by decentralization, broad voluntary participation, and availability to people of modest means,³⁹ Fioretti urges Catholic institutions to practice them: "[W]hile Openness is good in and by itself, Catholics have even more reasons than others to promote, teach, and use it."⁴⁰

34. Bagley, *supra* note 31, at 704.

35. *Id.* at 705.

36. Marco Fioretti, *Catholic Social Doctrine and the Openness Revolution: Natural Traveling Companions?*, 10 U. ST. THOMAS L.J. 714, 714 (2013).

37. *Id.* at 718-19.

38. *Id.* at 726-33.

39. *Id.* at 735.

40. *Id.* at 736.

The article by David Opderbeck, a law professor with a grounding in Christian theology, starts from a dissatisfaction, widely felt among scholars, with IP theories based solely on economic incentives for creation. He explores the potential for an IP theory that treats human beings as social creatures, not just “utility maximizing machines.”⁴¹ Surveying various “social relations” theories of IP, he concludes that they fall short because they are “ontologically thin,”⁴² failing to give accounts of human persons that explain how they should relate to each other and how property should constitute their relations. Opderbeck then offers a “Christian ontology” based on themes of gift, grace, and love. Creativity is a gift from God; human acts of creativity are (or should be) gifts to others as well as expressions of gratitude; and IP rights can express the community’s “gratitude for the generativity of its creators.”⁴³ Opderbeck’s prescriptions parallel those of other religious IP scholars—a focus on ensuring benefits to the poor, moves toward patronage-type rewards, and open production—but at points he pushes further, for example, decrying the “foul and ugly” nature of much content on the open Internet and calling for “[p]ublic patronage of the arts that includes discernment of beauty as a meaningful aspect of created reality.”⁴⁴ Conceding that many of his proposals are “not in themselves novel,” he argues that a Christian approach “root[s them] in a richer social imagination that gives them meaning and weight.”⁴⁵

Law professor Alina Ng Boyte also criticizes economic-incentive theories in her article on “copyright’s core content”; she proposes an alternative focused on duties to the community and on the inherent morality of actions.⁴⁶ For Boyte, the incentive justification is inadequate because it imposes “an undeniable social cost”—restraints on the use of works for further knowledge—based on indeterminate predictions about long-term benefits.⁴⁷ To be justified, she argues, copyright rules, like other laws, “must be inherently moral,” embodying “ends in themselves and not [simply] instruments to achieve policy goals.”⁴⁸ Relying on natural-law methods of reasoning, Boyte argues that the good recognized in copyright is “the human dignity inherent in expressive endeavors.”⁴⁹ This entails, for example says, that to justify an injunction for infringement, the law must expect not merely “a minimal degree of creativity from the author”—as currently

41. David W. Opderbeck, *Beyond Bits, Memes, and Utility Machines: A Theory of Intellectual Property as Social Relations*, 10 U. ST. THOMAS L.J. 738, 738 (2013).

42. *Id.* at 746.

43. *Id.* at 763, 767.

44. *Id.* at 771.

45. *Id.* at 773.

46. Alina Ng Boyte, *Finding Copyright’s Core Content*, 10 U. ST. THOMAS L.J. 774 (2013).

47. *Id.* at 775, 776-79.

48. *Id.* at 779.

49. *Id.* at 794.

suffices⁵⁰—but rather “authentic creations that resonate with an individual author’s basic human need to express and create.”⁵¹

Boyte also argues for moral duties on copyright owners “to make the[ir] works reasonably accessible to the public” and “avoid the imposition of monopoly prices that could prevent easy access.”⁵² She relies here on insights from Catholic social thought (CST), which says that rights holders have accompanying duties to others and to society, as a matter of reciprocity, since one’s holding of a right imposes duties on others to respect it.⁵³

Religious ethical traditions, including CST, have generally tended to emphasize duties and obligations—either as a corollary to rights or as a check on self-interest—when compared with liberal theories. Religious insights therefore may contribute to justifying and defining the duties of IP owners. In his symposium contribution, law professor Shuba Ghosh likewise seeks to transcend narrowly consequentialist IP theories and integrate consideration of duties, but without eliminating consideration of consequences altogether.⁵⁴ Ghosh uses a story from the great Hindu epic, *The Bhagavad-Gita*—a conversation between the warrior Arjuna and the lord Krishna (disguised as a charioteer) over whether Arjuna should proceed into battle—to explore the tension between duties and consequences in ethical decision-making.⁵⁵ The story points, Ghosh argues, toward a “nuanced consequentialism,” which evaluates an actor’s conduct by the effects it will have on others’ ability to carry out their independent duties and obligations.⁵⁶ He gives several examples where IP law does or should consider such effects—for example, the negative effect that diagnostic-treatment patents might have on doctors’ ability to serve their patients, a concern the Supreme Court voiced in rejecting such a patent in *Mayo Collaborative Services v. Prometheus Labs*.⁵⁷

D. *The Sabbath and Creativity*

Finally, the symposium papers include a keynote address by Roberta Kwall, a scholar of IP and of Jewish law, dealing less with legal questions than with the underlying relationship between creativity and religion, in this case the Jewish duty of Sabbath rest.⁵⁸ Kwall details how “science now seems to be documenting the benefits of Shabbat, an institution dating back

50. *Feist Publications v. Rural Telephone Co.*, 499 U.S. 340, 358-59 (1991).

51. Boyte, *supra* note 46, at 796.

52. *Id.* at 797.

53. *Id.*

54. Shubha Ghosh, *Duty, Consequences, and Intellectual Property*, 10 U. ST. THOMAS L.J. 801 (2013).

55. *Id.* at 803.

56. *Id.* at 814.

57. 132 S.Ct.1289, 1304-05 (2012); see Ghosh, *supra* note 54, at 815-18.

58. Roberta Rosenthal Kwall, *Remember the Sabbath Day and Enhance Your Creativity*, 10 U. ST. THOMAS L.J. 820 (2013).

to over three thousand years, by demonstrating the importance of break or incubation periods as a boon to human creativity.”⁵⁹ She connects specific scientific findings about the benefits of rest to specific features of Sabbath laws. Although Kwall’s paper touches only briefly on legal principles, it exemplifies one way in which religion may provide insight for IP law. Kwall writes: “Although modernity often creates difficulties and newfound challenges with respect to the observance of the Jewish tradition, including the laws of Shabbat, this Article demonstrates that modern science also has the potential for validating the wisdom of the tradition.”⁶⁰ Judaism and other longstanding religions embody centuries of accumulated understanding about human nature, social relations, and the world. Law and policy can draw on these sources of wisdom, as it does on others.

III. RELIGION’S CONTRIBUTIONS: FUTURE DIRECTIONS

This symposium comes at an early stage in the application of religious thought to issues in IP law and policy; there remain many areas for both theoretical and practical research. It also remains a challenge to determine just what religious thought can contribute. How, especially in secular and pluralistic societies, can religious thought avoid the twin pitfalls of being irrelevant to society’s public values or simply ratifying them? Here I can offer no more than a few brief conclusions.

First and least controversially, religious reflections on creativity and ownership should influence the practice of religious communities and individuals, quite apart from any effects on the content of civil IP law. The Vatican stirred controversy several years ago when it copyrighted Pope Benedict’s writings;⁶¹ Marco Fioretti’s symposium article argues that the Church and its entities should broadly embrace “open” methods of knowledge generation and dissemination. Religious communities should provide models for collaborative, sharing, and gift-giving methods. And IP owners who reflect on their moral obligations should be led to withhold certain destructive content, or to provide necessary goods to poor people—for example, essential medicines or basic educational materials—at affordable prices. A recent report for the Pontifical Council on Justice and Peace offered business owners a helpful framework for ethical decision-making;⁶² a similar report targeted to IP owners might be very useful too.

Second, in its potential effects on civil law, religious thought may not have entirely unique prescriptions to make—but as David Operbeck says,

59. *Id.* at 821.

60. *Id.* at 843.

61. Vatican Defends Copyright Protection of Papal Pronouncements, ASSOCIATED PRESS, Jan. 25, 2006, available at <http://legacy.utsandiego.com/news/world/20060125-0841-vatican-copyright.html>.

62. PONTIFICAL COUNCIL FOR JUSTICE AND PEACE, VOCATION OF THE BUSINESS LEADER: A REFLECTION (2012) available at <http://stthomas.edu/cathstudies/cst/VocationBusinessLead/>.

it may “root” themes such as social obligation, or the sense of creativity as a gift, “in a richer social imagination that gives them meaning and weight.”⁶³ Many of the symposium papers—Professor Kwall’s on creativity and Sabbath rest, Professor Bagley’s on lessons from the seed parables, and others—exemplify how religious thought can intersect with and deepen the meaning of ideas and norms shared by many people outside the particular faith.

Third, religion has particular relevance to issues concerning IP and development in the global South, including U.S. policy on international IP and trade. As Bashar Malkawi’s paper on Islam emphasizes, for IP rights to be accepted in much of the developing world, they must find some support in religious traditions and must accommodate some of the values of those traditions, especially obligations to the common good. The poorer nations tend to be highly religious. Sub-Saharan Africa, for example, now “is clearly among the most religious places in the world,” with ninety-plus percent of the people in many nations calling religion “very important in their lives”; the vast majority of religious Africans are Christian or Muslim, and both faiths are growing there far faster than in the rest of the world.⁶⁴ Moreover, religious relief and social-service agencies operate on the ground throughout the developing world, including on matters with IP ramifications such as health and agriculture. Fostering and incorporating more insights from them could be of significant value in the future.⁶⁵

We hope the symposium will provide impetus for research in these directions and others.

63. Opderbeck, *supra* note 41, at 773.

64. *Tolerance and Tension: Islam and Christianity in Sub-Saharan Africa*, PEW RELIGION AND PUBLIC LIFE PROJECT, <http://www.pewforum.org/2010/04/15/executive-summary-islam-and-christianity-in-sub-saharan-africa/> (Last visited Feb. 26, 2014).

65. For one such contribution, see Catholic Relief Services, *Recommendations to the United States Trade Representative on the Negotiation of the Central American Free Trade Agreement*, CATHOLIC RELIEF SERVICES, Oct. 2003, <http://www.usccb.org/issues-and-action/human-life-and-dignity/global-issues/trade/recommendations-from-catholic-relief-services-to-us-trade-representative-2003-10.cfm> (criticizing overprotection of seed and essential-medicine patents in regional trade agreements).