1. Introduction

Megan M. Carpenter

In the book *Creativity, Law, And Entrepreneurship*, I discussed growing up with the comforting undertones of the mine reports on radio stations in Appalachia in the 1970s. “Loveridge, will work. Blacksville, will work. Sentinel, will work.” For a mining community, the mine reports provided announcements for the workers as to which coal mines (and therefore, which coal miners) would and would not work on any given day. More indirectly, those reports served as an indicator of economic vitality. There was a comfort in hearing those reports in the mornings. There was stability in the mines. Men would set their career path at the age of 18 or 19, and they were thereafter part of a much larger economic engine. Eventually, however, the economic climate shifted. Mechanization of mining activity created less demand for workers. The mine reports did not report “will work” as often. Eventually, the reports stopped altogether.

The small town where I grew up is like thousands of other communities in the United States. This small town had in its boom been dependent upon primary and secondary sector industries—specifically, mining and manufacturing. Because of a decrease in traditional industry, the economy of the town at large began to suffer; this problem was exacerbated in the downtown area when a shopping mall was built outside city limits. By the time I was growing up, the town seemed much closer to bust than boom. The tales recounted to me by my grandmother, tales of a thriving and vibrant community, had long passed. In those days, when her father was the Sheriff and the family lived downtown in the Sheriff’s residence, people would gather and greet each other outside, shop and eat, walk and busy themselves on the downtown streets. As my generation entered high school in the mid-1980s, we walked past shuttered shops to get to the movie theatre. As my generation graduated from college, we knew we had

---

to seek professional opportunities elsewhere. I watched my peers leave, one by one, and they left nearly always with some measure of wistfulness and a longing to return. I did the same.

Across the United States, primary and secondary sector industries are no longer as viable as they once were—because the particular businesses are no longer profitable, because the underlying resources are no longer as plentiful or desirable, or because human activity is not essential to various aspects of an industry’s operations. In character, the foundation of our very economy is changing. As early as 2004, Alan Greenspan noted that the U.S. economy is no longer based on traditional industries, but rather on content and information. As economies evolve from traditional industrial resources, such as mining and manufacturing, to “new” resources, such as information and content, innovation and entrepreneurship become key.

Cities such as Detroit are exemplars of this kind of transition, where the automotive manufacturing industry suffered a substantial collapse, and more auto industry-related jobs were lost than were left in the region as a whole. While there ultimately may be some resurgence in these sectors, thus far it has not reversed the overall trend. Rather, cities like Detroit are seeking necessarily to diversify their economies, looking for ways to embrace new sectors of the economy. This is an issue that communities of all sizes face across the country and around the world as one of the key issues of modern entrepreneurship. In part, these economic transitions involve a move away from the old and into the new. But also in part, the new must at some level utilize traditional resources in new economy ways.

While the seeds of this project germinated in my childhood, they began to sprout when I returned home to teach law as a Visiting Associate Professor. I organized a conference in 2006 called “From Coal to Content: The Role of Intellectual Property and Technology in a New Economy.” This project sought to begin a dialogue about the role that intellectual property can play as communities evolve from primary and secondary sector industrial resources to new economy resources, such as intellectual property and high technology. The conference speakers included policy-

---

4 One such resurgence is discussed, in part, in Chapter 8.
makers, thought leaders, foundations and non-profit organizations, attorneys, entrepreneurs, and prominent members of the arts community. The dialogue focused on the ways that technology and intellectual property resources can foster a dynamic and profitable environment for entrepreneurship, including how to best protect and make effective use of human capital and natural resources.

However, it is clear that the legal structure that has developed to incentivize innovation and creativity is not enough. Intellectual property law seeks in part to incentivize creativity by creating legal mechanisms for the protection of inventions and creative works, but it does little to facilitate entrepreneurship or the business side of innovation. This book operates within that space: it examines the role of law in supporting innovation and entrepreneurship in communities whose economies are in transition. It contains a collection of works from different perspectives looking at questions of policy and practice, including how support for entrepreneurship can be translated into policy, as well as more concrete questions of practical efficacy, including measures of how successful or unsuccessful legal efforts to incentivize entrepreneurship may be, through intellectual property law and otherwise (and what might define success to begin with). We ask: What role does the law play in this transition? Does it play any role at all? And by what measurement do we determine success?

This book is unique in a couple of ways. First, its direct focus on economies in transition is something that distinguishes it from other books on entrepreneurship or law. Second, the book pulls together a set of works that in their compilation create a unique mix—pieces that focus on the role of individuals, including both lawyers and non-lawyers, in supporting entrepreneurship; pieces that present specific examples or proposals for creative thinking that address the realities of modern innovation; practical pieces on legal education and experiential learning; and a discussion about the social justice implications of the rule of law. Within this collection is a rich diversity of experience, thought, and scholarship. As such, it is relevant not just to scholars, but to practitioners, policy-makers, and others interested in entrepreneurship and innovation from many angles.

In the first section, authors examine the role that various societal actors play in supporting entrepreneurship and innovation in transitional economies; in the second section, the focus will transition from policy to application, including specific pragmatic perspectives related to a variety of particular endeavors. In Chapter 2, Professor Brian Krumm examines efforts by state legislatures toward venture capital funds formed with the intent to support fledgling entrepreneurs. Krumm notes that because the initial stages of venture capital are the most risky, it is a particularly open area for state involvement. In that vein, he evaluates the pros and cons
of differing state programs, and provides a thorough explication of one program as a model for future legislative efforts. In Chapter 3, Professor Eric Gouvin discusses how the infrastructure of a particular area can either clear the path for business start-ups or threaten to obscure it. In that vein, he notes the importance of details such as municipal licensing requirements, land use ordinances, employment law issues, and regulatory schemes. Professor Sean O’Connor extends this discussion in Chapter 4 to examine the role that professional service providers play in supporting new technology sectors, including not just lawyers, but accountants, architects, designers, management consultants, and fellow entrepreneurs. Professor O’Connor discusses the important characteristics of these professional service providers and advocates for building this part of the innovation ecosystem. In Chapter 5, Professor Shubha Ghosh focuses on lawyers as entrepreneurs. Professor Ghosh argues that lawyers can aid the entrepreneurship process through changing the culture, and that change in attitudes towards law and business can affect the shaping of rules that are the most suitable for a particular local business climate. Chapter 6 wraps up the first section of the book, and lays the groundwork for the second, by considering the social justice implications of fostering entrepreneurship through policies and law. By using copyright as an example, Professors Steven Jamar and Lateef Mtima discuss how intellectual property law can empower individuals as well as advance societal development collectively.

The second part of the book focuses on specific pragmatic perspectives on the topic related to a variety of particular endeavors. In Chapter 7, Professor Michael Madison takes a snapshot of one recovering post-industrial economy, Pittsburgh, Pennsylvania. After the collapse of the steel industry, the city has spent the last 30 years building a new economy, one that has been frequently hailed as a success story. Professor Madison dives deeper into that story, describing the characteristics of Pittsburgh today and measuring the state of its rebirth. He considers the extent, if any, to which law and the legal system have contributed to Pittsburgh’s modern success, and identifies lessons that this case study might offer for other transitioning regions. In Chapter 8, Professor Michael Risch provides a narrative discussion of his experience creating an entrepreneurship clinic at a law school in the context of an evolving economy. Risch generalizes from his experience to note that an entrepreneurship clinic’s best clients may be the least expected—that is, other university and law school students—because of the symbiotic relationship they can bring to an IP-based business culture. Professor Patricia Lee follows this groundwork by providing a synopsis of the history and current state of clinical entrepreneurial programs in law schools across the United States. In Chapter 9, Professor Lee assesses the relationship of these programs to economic
growth, and presents a conceptual model to examine the importance of clinical programs. Professor Andrea Johnson looks at another specific application of policy to practice in Chapter 10, through her examination of the insufficiency of legal and regulatory infrastructure and the possibilities for trans-border licensing to fit within those gaps. Like other authors in the book, Professor Johnson emphasizes the importance of non-legal factors in providing a stimulus for sustainable economic development in a transitional economic structure. Finally, Professor Elizabeth Townsend Gard wraps up the book in Chapter 11 with a first-hand account of her experience at the intersection of law, entrepreneurship, and innovation from the ground level. Professor Townsend Gard recounts her experience as a tenure-track law professor who found herself playing the part of unexpected entrepreneur, needing to come up with a “pitch”, a business plan, and an appropriate choice of corporate entity for a university spin-out. She discusses some of the challenges she has encountered along the way at the intersection of law, business, and personal entrepreneurship.

This project departs from the notion that intellectual property law is itself an instrument of innovation and entrepreneurship. It moves into a larger space, one that considers the role of law both generally and particularly in the context of evolving economic realities. One challenge is to consider ways that this evolution demands a different role for the law, with different responsibilities and opportunities, than that demanded by primary and secondary sector economies. Another challenge is to consider the role of law in what are, in part, extra-legal endeavours. In this book, we seek to do this by exploring both policy and practice (and the interplay between them). Several authors consider the role that various societal actors play in facilitating entrepreneurship and supporting the business side of innovation, from funding to infrastructure, from innovation ecosystems to creative lawyering. Several others contribute pragmatic, empirical perspectives on the issue, whether in the context of case studies, law clinics, or personal entrepreneurship. All of them offer insights relevant to quintessential questions of entrepreneurship and innovation for communities transitioning from traditional, industrial economies to economies largely based in information and content—the communities we live in today. The daily mine reports no longer exist as a barometer of vitality in our current economic climate. And the decline of vertically integrated, primary sector industries has often left communities struggling. As communities seek to find a foothold in a new economy through entrepreneurship and innovation, it is my hope that this book can help scholars, policy-makers, and innovators navigate space – to “will work” in new economic times.