CRAFT BEER AND THE RISING TIDE EFFECT: AN EMPIRICAL STUDY OF SHARING AND COLLABORATION AMONG SEATTLE'S CRAFT BREWERIES

by
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This qualitative empirical research project studies Seattle's craft brewing industry as a thriving entrepreneurial ecosystem that displays widespread collaboration and innovation. Drawing on data collected in 22 face-to-face formal interviews conducted with industry participants, the Article explores the community's attitudes, practices, and norms with respect to collaboration and intellectual property (IP). It joins a growing body of qualitative empirical IP scholarship that maps misalignments between law and practice "on the ground," seeking to offer a more accurate and pluralistic account of an innovative industry. The craft brewing community in Seattle cooperates extensively while continuing to compete actively for consumers. In service of this collaborative ethos, brewers often quote, and seem to live by the motto, "a rising tide lifts all boats:" helping each other helps the group as a whole. These interviews help frame an important inquiry—why do brewers cooperate so extensively when they would be expected to compete with each other, especially as the industry only grows more crowded and, in theory, more competitive? This Article offers, if not the answers, at least some plausible explanations of craft brewing's cooperative spirit. IP's focus on exclusive rights does little to explain craft breweries' cooperation, but organizational theory posits that under certain circumstances competitors find it valuable to engage in "coopetition," or behavior that is simultaneously competitive and cooperative. Coopetition is likely to arise in emerging markets and also when a group shares a putative enemy, as many craft brewers feel they do with "Big Beer." Coopetition strengthens when "collective oppositional identity" forms. Yet craft breweries in Seattle provide examples of commitments to resource-sharing and collaboration that transcend the simplest forms of coopetition and call for a more textured account of the interplay between innovation, group belonging, and IP. The study is timely: the craft brewing industry nationally has witnessed near-constant growth for over a decade, along with a recent wave of mergers and consolidation. These market factors make it a particularly charged time to be collecting views about craft beer's culture and what it means to belong to it. These interviews provide evidence that collective identity and belonging can *have powerful but underappreciated implications for theorizing innovation and for ownership and enforcement of IP rights.*

INTRODUCTION

Contemporary craft brewing is pushing the frontiers of entrepreneurship and science, with innovations in agriculture, biology, chemistry, and manufacturing.[1]

[*] Associate Professor of Law, University of Washington School of Law, Visiting Professor, Stanford University School of Law (2018). The Article benefitted from the feedback of participants at several events and workshops including: Intellectual Property Scholars Conference (IPSC) at Cardozo Law School (2017); UCLA Entertainment, Media, and IP Law Colloquium; University of Florida College of Law Faculty Workshop; University of Michigan

Innovation and experimentation have changed how craft beer is brewed, served, cellared, packaged, labeled, marketed, distributed, and sold. The consumer demographic has changed along with the price point.[2] And in turn, brewers' aspirations for beer have evolved.[3] In spite of all this newness, brewing consists of something old, a process fundamentally unchanged by history.[4] Craft brewing is thus both "slow"—an artisanal movement, committed to tradition, process, quality, experimentalism, and play—and "fast"—changing as a function of technology, brewing science, branding, and capricious consumer whims. This blend of old and new, craft and science, mapped onto a dynamically growing industry, make it an area of considerable relevance for scholars of innovation and intellectual property (IP).

Because of the role craft brewing plays economically and culturally, policymakers and academics alike have a strong interest in understanding it.[5] Craft

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1 For examples, see *Nuclear Physics and the Fight Against Beer Fraud*, ECONOMIST (Mar. 8, 2018), https://www.economist.com/news/science-and-technology/21738352-isotopes-levels-could-reveal-adulterated-hops-nuclear-physics-and-fight (linking scientific innovation to brewers' need to "be rather particular about specific types of hops from specific plants in specific places . . . ."); Russell Shorto, *How Craft Brewers Advance Science, and Make Better Beer*, NEW YORKER (July 8, 2016), http://www.newyorker.com/business/currency/how-craft-brewers-advance-science-and-make-better-beer (describing agricultural and scientific innovation in beer).

2 Jay Gatrell et al., *Branding Spaces: Place, Region, Sustainability and the American Craft Beer Industry*, 90 J. APPL. GEO. 360, 361 (2017).

3 *See infra* Part I.A (discussing contemporary craft beer's many innovative features).

4 Emerging Technology from the arXiv, *This Technology Is About to Revolutionize Beermaking*, MIT TECH. REV. (Sept. 26, 2016), https://www.technologyreview.com/s/602464/this-technology-is-about-to-revolutionize-beer-making/ ("[T]he basic beer-making process has not changed for hundreds, if not thousands, of years.").

5 Gatrell et al., *supra* note 2, at 361.

beer now accounts for somewhere around 12% of overall market share of beer by volume in the United States, representing a $23 billion segment in a $108 billion market.[6] What is more, craft brewing is closely connected to place: breweries often invest resources and energy into maintaining, reviving, and improving their surrounding communities.[7] The link between breweries and urban revival translates into jobs and increased property values, and breweries might foster non-economic benefits like community cohesion and the pleasures associated with brewing and consuming beer collectively.[8] Indeed, craft beer and brewing have become understood as "markers" for community thriving and urban health.[9] It has been suggested that the success of craft breweries may even be attributable to the desire to reestablish community connection and reject the monolithic sameness of national corporate culture. Known as "neolocalism," the movement to focus on place and to support local businesses allows people "to reclaim a sense of place and a distinctive landscape in the face of our globalizing economy."[10]

The industry deserves the special focus of those who study innovation and its regulatory counterpart, IP.[11] IP law is the primary domain through which law stimulates, shapes, and regulates innovation. IP scholars have also explored arenas of creative practice that thrive beyond the reach of IP law, or in spite of it, such as open-access domains, or ones they variously call "low-IP," "negative spaces," or "IP without IP."[12] In light of craft brewing's blend of innovative features, there is much for IP and innovation theorists to explore.[13] Additionally, that multiple forms of IP law could be used to protect craft brewers' interests (but usually are not) underscores that the domain of craft beer is ripe for theorization, especially in terms of IP and alternative modes of governance, such as norms.[14] As craft beer's

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[6] John Kell, *How Craft Beer's Popularity Is Hurting Craft Beer*, FORTUNE (Mar. 28, 2017), http://fortune.com/2017/03/28/craft-beer-sales-fall/.

[7] *See* Tali Arbel, *Build a Craft Brewery, Urban Revival Will Come*, USA TODAY (July 6, 2013), https://www.usatoday.com/story/money/business/2013/07/05/in-urban-revival-beer-creates-small-business-hubs/2487625/.

[8] Gatrell et al., *supra* note 2, at 365.

[9] Gatrell et al., *supra* note 2, at 361 (internal citations omitted). Breweries "stand in as a sort of short hand for a city's competitive 'place-brand'" and "serve as a proxy for a community's economic sophistication.'" *Id.*

[10] Steven M. Schnell & Joseph F. Reese, *Microbreweries as Tools of Local Identity*, 21 J. CULT. GEO. 45, 45, 46 (2003).

[11] *See* Shorto, *supra* note 1.

[12] *See, e.g.*, Amy Kapczynski, *Order Without Intellectual Property Law*: *Open Science in Influenza*, 102 CORNELL L. REV. 1539 (2017); Dotan Oliar & Christopher Sprigman, *There's No Free Laugh (Anymore): The Emergence of Intellectual Property Norms and the Transformation of Stand-Up Comedy*, 94 VA. L. REV. 1787 (2008); Elizabeth L. Rosenblatt, *A Theory of IP's Negative Space*, 34 COLUM. J.L. & ARTS 317 (2011).

[13] *See generally* STEVE HINDY, THE CRAFT BEER REVOLUTION (2015).

[14] *See infra* Part III (discussing attitudes towards IP) and Part IV.B.3 (identifying a norm

importance grows,[15] it becomes increasingly surprising that no studies of craft brewing's innovative culture and practices have yet been conducted by IP and innovation policy scholars. This Article investigates craft brewing with special focus on the ways in which collaboration can foster innovation and progress, even among direct competitors.

Craft brewing's innovative spirit is matched by a widely used rhetoric of collegiality. This collaborative ethos is easy to discern and there may be many reasons to celebrate it.[16] For instance, it may make beer better, and it almost certainly makes the craft brewery culture more enjoyable for many industry participants. But craft brewing's cooperative ethos confounds the standard IP theory of competitive markets and incentives.[17] As the number of breweries rises basic economic theories might predict increased competition for market share resulting in business practices designed to undercut competitors, and dominant IP theories would predict a turn toward propertization, that is, exclusivity and enclosure rather than sharing and openness.[18] Yet in the case of craft brewing, at least in Seattle at the moment, that simple view is off by a long shot. Instead, Seattle's craft brewing industry is full of examples of breweries helping each other, sharing knowledge and resources, attempting to speak only good, not ill, of each other, and generally promoting an environment of intergroup collaboration even while they continue to compete for the same consumers.[19]

Seattle's craft brewers seem to live the motto, "all for one, and one for all." In fact, it is very common in the industry to hear the phrase: "A rising tide lifts all

against the use of legal tools).

[15] *See* Derek Thompson, *Craft Beer Is the Strangest, Happiest Economic Story in America*, THE ATLANTIC (Jan. 19, 2018), https://www.theatlantic.com/business/archive/2018/01/craft-beer-industry/550850/.

[16] Sandra P. Thompson, *Collaboration, Not Litigation! The Craft Beer Spirit*, 58 NO. 1 DRI FOR DEF. 48 (2016) (referring to this ethos as "unique, perhaps, to the craft-brewing industry" and characterizing its message as "respect one another, collaborate, and make great beer.").

[17] Chris Herron, *Watch the Hands, Not the Cards: The Magic of Megabrew*, GOOD BEER HUNTING (May 5, 2017), http://goodbeerhunting.com/blog/2017/5/5/watch-the-hands-not-the-cards-the-magic-of-megabrew (celebrating "the culture of collaboration over competition. Being small and independent is not a requirement to partake in the collaborative spirit, it just takes caring about what is good for the beer industry in conjunction with what is good for your brands."); Martin Johnson, *Collaborative Brewing Is Heating Up in the Beer World*, EATER (June 5, 2015), https://www.eater.com/drinks/2015/6/5/8734935/collaborative-brewing-is-heating-up-in-the-beer-world ("Many of the most interesting beers on the market today are a result of two or more breweries teaming up to produce one stellar beverage.").

[18] James Boyle, *The Second Enclosure Movement and the Construction of the Public Domain*, 66 L. & CONTEMP. PROBS. 33, 37 (2003); Mark A. Lemley, *Property, Intellectual Property, and Free Riding*, 83 TEX. L. REV. 1031, 1031–32 (2005).

[19] All 22 of the 22 interviews refer to the collaborative nature of Seattle's craft brewing culture; most refer to it extensively.

boats:"[20] by helping each other, one helps the whole group. This rhetoric of generosity comes with a significant limitation however: it appears to apply only among craft brewers.[21] A rising tide lifts all *craft* boats, but "Big Beer" vessels can founder on the rocks. Or—to squeeze the last hoppy drop out of the maritime metaphor here—macro brewers can use the high-speed shipping channel they have built for their exclusive use; they do not need the tide with the massive freighters they operate. Indeed, they displace sufficient water on their own to disrupt and threaten the natural tide.

These assertions—minus the overwrought seafaring conceit—find support in a set of 22 formal, semi-structured interviews I conducted in and around Seattle, Washington, between April 2016–September 2017, with diverse figures in the local craft brewing community. The study aims to capture aspects of the lived experience and business of craft brewing as relayed by participants within it. It also aims to offer an account of a flourishing and dynamic entrepreneurial ecosystem, taken at a pivotal moment in its evolution. That craft beer is flourishing both locally and nationally is undeniable. There has never been this much craft beer or this many beer choices available nationally.[22] In fact, there have never been this many breweries in the United States; in 2017 there were around 5,300 craft breweries in operation, with another 1,500 planned, compared with 40 or fewer in the late 1980s.[23] The growth in number of breweries has continued to climb over the past few years,[24] with 7,000 breweries predicted to be in operation, even as

[20] Interview #4.

[21] Interview #4.

[22] William Bostwick, *We're in the Golden Age for American Beer*, FAST CO. (May 20, 2011), https://www.fastcompany.com/1754467/infographic-day-were-golden-age-american-beer; Matt Egan, *How to Start a Successful Craft Beer Brewery*, CNN (Mar. 3, 2015), http://money.cnn.com/2015/03/03/smallbusiness/craft-beer-startup-how-to-guide/index.html ("Between 2007 and 2013, the amount of craft beer produced in the U.S. nearly doubled to 15.6 million barrels, according to the Brewers Association.").

[23] Though it can be difficult to find accurate numbers, many estimates suggest there are some approximate numbers researchers can trust. In 1985 there were around 37. Gatrell et al., *supra* note 2, at 360. By contrast, before Prohibition the number may have been as high as 4,000. *Id.* at 361. Other sources put the number closer to our current number. *Where Is Craft Beer Most Popular in America?*, DATAFINITI (Apr. 28, 2017), http://datafiniti.co/craft-beer-popular-america (claiming that the number of breweries prior to Prohibition was as high as it is now). The Brewers Association asserts that in 1873, there were 4,131 (compared with 5,301 as of 2016). *Number of Breweries*, BREWER'S ASS'N, https://www.brewersassociation.org/statistics/number-of-breweries/ (last visited Sept. 28, 2018).

[24] Emily Price, *The Number of Breweires Operating in the U.S. Grew 16% Last Year*, PASTE MAG. (Mar. 30, 2018), https://www.pastemagazine.com/articles/2018/03/the-number-of-operating-breweries-in-the-us-grew-1.html (updating the number of craft breweries in existence in 2017 to 6,266, and noting that there were 4,544 in 2015, 3,739 in 2014, and 2,898 in 2013). Up, up from the 5,424 breweries that were around at the close of 2016, according to the Brewers

some breweries close and the industry undergoes some contraction overall.[25] The greater metropolitan Seattle area is home to a craft brewing community with over a hundred commercial breweries, and Washington State boasts more than 369 craft breweries (a number that has risen from 134 in 2011).[26] In fact, the only state with more craft breweries than Washington is California, a state that is larger and considerably more populous.[27] These figures reflect that Washington is significant in the national craft beer movement, and they suggest that Seattle is at, or near, the heart of it. But all the numbers alone do not tell the full story: measurements that tell us there are lots of something do not say anything about the thing's identity or quality or culture.[28]

Qualitative empirical research can provide complex information about the nature of this golden age of craft brewing, its innovative and entrepreneurial culture, and the many people making the craft brewing movement thrive. By providing ground-truth to the practices and attitudes of craft brewers in Seattle these interviews offer glimpses into what makes some members of a community tick, how a subset of the community engages in widespread innovation, and the extent to which collaboration and knowledge-sharing may condition that innovation. Empirical research methods can help scholars identify various phenomena that standard doctrinal legal studies might miss. The research questions that can be posed and answered, and the kind of information one seeks, may determine which methods will best serve a given study.

Association. Brewer's Association, *Small and Independent Brewers See Sustained Growth In 2017* (Mar. 27, 2018), https://www.brewersassociation.org/press-releases/small-and-independent-brewers-see-sustained-growth-in-2017/.

[25] Justin Kendall, *7,000 Breweries to Operate in U.S. in 2018*, BREWBOUND (Sept. 7, 2018), https://www.brewbound.com/news/7000-breweries-operate-u-s-2018.

[26] BREWERS ASSOCIATION, *Washington Craft Beer Sales Statistics, 2017*, https://www.brewersassociation.org/statistics/by-state/?state=WA (last visited Jan. 1, 2019); Stephanie Forshee, *Washington State's Breweries Double Capacity in 4 Years: Here's a Map of the Top 25*, PUGET SOUND BUS. DIRECTORY (July 6, 2015) https://www.bizjournals.com/seattle/blog/2015/07/washington-states-breweries-double-capacity-in-4.html; *Number of Breweries*, *supra* note 23; Michael Rietmulder, *Seattle Has More Breweries than Any Other City in America*, SEATTLE MAG. (May 8, 2017) https://www.seattlemag.com/eat-and-drink/seattle-has-more-breweries-any-other-city-america.

[27] *Washington Craft Beer Sales Statistics, 2017*, BREWERS ASSOCIATION, https://www.brewersassociation.org/statistics/by-state/?state=CA (last visited Jan. 1, 2019).

[28] ROSEMARIE ANDERSON ET AL., FIVE WAYS OF DOING QUALITATIVE ANALYSIS: PHENOMENOLOGICAL PSYCHOLOGY, GROUNDED THEORY, DISCOURSE ANALYSIS, NARRATIVE RESEARCH, AND INTUITIVE INQUIRY 2 (2011) ("[M]easurement tells us only *magnitude*, and even when many measurements are made with the finest instruments and rationally analyzed with the most sophisticated statistical procedures, they do not themselves provide *qualitative knowledge of what is being measured*.").

The Article contributes generally to the growing empirical literature on the conditions under which creators and businesses create and the extent and ways in which IP law matters to them. IP scholars have used qualitative research methods in a variety of creative and technical domains including cuisine, fashion, comedy, magic, tattoos, roller derby names, and photography.[29] This body of work has considered the relationship between formal law and community governance through norms and alternative mechanisms, and suggested that the misalignment between law and practice calls for richer accounts of innovative activity "on-the-ground."[30] Craft brewing is, like cuisine, magic, and the other norms-governed domains above, a creative and technical activity that requires skill and experience. It, too, features an innovative domain that IP law does not regulate as effectively as its norms do. The story here, however, is not merely about norms, but about a system of sorting norms along identity lines.

Accordingly, this Article makes four specific contributions. First, it provides a thick description of the practices and norms in Seattle's craft brewing industry. The basis for this description includes roughly 2,000 double-spaced pages of transcribed interviews as well as observations from experience, triangulation of interview evidence with many additional informal interviews and conversations with industry participants, and research on the local industry through various sources, such as the Washington Beer Blog and various periodicals. As a member of the very active Facebook group, Beer Tasting Seattle, I have also "listened in on" (and occasionally participated) in conversations about the culture of craft brewing in Seattle. Second, the Article identifies a few IP-related norms and knowledge-sharing practices in the craft-brewing industry. In particular, it identifies a bimodal norms system that often works to sort informal governance along group membership lines. This norms-sorting is important for IP because it suggests that IP creation and enforcement might be powerfully affected by group identity. Third, it frames a set of inquiries that emerged during this research as the central puzzle here for innovation and IP theorists: why do craft brewers collaborate so extensively, sharing resources so freely, and even sharing intangible property as openly as they do, given the growing competition in the field? What underpins this collaborative ethos, what limits it, who benefits from it, and what might cause it to change? Fourth, the Article argues that collective identity and coopetition offer plausible ways to make sense of some of the openness and generosity among Seattle's craft breweries.

Seattle's craft brewing industry thus provides a case study for theorists interested in how community membership can stimulate and support innovation. These interviews suggest that belonging—in the sense of being part of a local

[29] *See infra* note 169.

[30] Kate Darling & Aaron Perzanowski, *Introduction*, *in* CREATIVITY WITHOUT LAW: CHALLENGING THE ASSUMPTIONS OF INTELLECTUAL PROPERTY LAW 1, 2 (2017).

community, a national trade organization, and a larger movement—may have powerful implications for when, how, and against whom IP rights are likely to be enforced. Last, the study is timely: the industry has witnessed a wave of mergers and consolidation since 2011,[31] making craft breweries vulnerable to acquisition and market domination by the largest players. These market factors make it a particularly charged time to be collecting views about craft brewing and identity issues that shape innovation. Indeed, in 2015, Anheuser-Busch ("AB InBev") purchased Elysian Brewing, one of Seattle's pioneering and beloved craft breweries.[32] That transaction provides a crucial anchor in the story of how craft beer constitutes itself in Seattle and the role belonging can play in innovation.

Part I describes the innovative culture of craft brewing and its oppositional stance with respect to Big Beer. Part II offers a "thick description" of local craft brewing, drawing on interviews to provide details about the background, daily routines, and practices of craft brewers in Seattle. Part III describes several general norms that characterize Seattle craft brewing, which are selected from among other possible norms for discussion because of their relevance in developing a theory of collaboration and coopetition. Part IV first identifies what it terms a bimodal norms system: other craft brewers may be treated as fellow members subject to in-group norms; outsiders are more likely to be treated to a different norms regime (or perhaps subject to legal rules instead of norms). It then turns to candidate theories to make sense of the way Seattle craft brewing's innovative culture flourishes even in ways that are at odds with IP. Coopetition highlights how belonging to a community shapes practices and can augment innovation and, in combination with collective oppositional identity, does much to generate a theory of how craft brewing in Seattle is thriving and growing. Part V concludes with a sounding note about the need to consider norms as contingent—perhaps even fragile—and dynamic. The Appendix contains a full description of the study's methodological structure and choices.

I. THE INNOVATIVE (AND OPPOSITIONAL) CULTURE OF CRAFT BREWING

This Part provides background information on the innovative culture of contemporary craft brewing in the United States and its relationship to the overall market for beer. It catalogs some of the innovations shaping craft brewing to provide the reader with an up-to-date view of the field. It describes craft brewing's

[31] Jim Koch, *Is It Last Call for Craft Beer?*, N.Y. TIMES (Apr. 7, 2017), http://www.nytimes.com/2017/04/07/opinion/is-it-last-call-for-craft-beer.html.

[32] Lisa Rabasca Roepe, *Craft Brewers: Can They Keep Gaining on the Industry Giants?*, SAGE BUS. RESEARCHER (May 27, 2017), http://businessresearcher.sagepub.com/sbr-1863-102426-2775628/20170327/craft-brewers.

rallying around a common ethos—all for one and one for all—as well as its corresponding cohesion around a common enemy: "Big Beer," or the multinational beverage conglomerates that dominate the field globally and engage in mass production. Both the collective oppositional identity of craft brewing on the national stage and its innovative drive help make sense of what interviewees report about craft brewing in Seattle, ultimately shedding light on their practices and norms.

A. Contemporary Craft Brewing's Culture of Innovation

Innovation pervades craft brewing's current practices at every level. Innovation and experimentation have changed how craft beer is brewed, served, cellared, packaged, labeled, marketed, distributed, and sold, as this Part will show. Its advances in science have involved experimenting with yeast strains and exploring new styles of brewing.[33] In some cases, brewers blend new ingredients with old techniques, and in some cases it is the reverse.[34] Craft brewing invites experiments with ingredients and techniques, thus providing a terrain for creative play and constant discovery.

> [B]eer is something created; it is a recipe, constantly tweaked. More hops; different hops. New yeasts; a little bit of this, a little bit of that. New styles [are] being created constantly, using herbs, spices, fruit, coffee, barrel aging and more.[35]

Brewing is quintessentially innovative, even as it works with certain traditional processes and building blocks. This spirit of innovation leads craft brewers to embrace new brewing ideas and styles; such as, the West Coast IPA, the Cascadian Dark Ale, or more recently, the New England IPA.[36] The turn to sour ales—and the Gose in particular—a few years ago, reflects a similarly innovative spirit even if

[33] *See* Jennifer Billock, *Wild-Fermented Beer Is the Best Way to Drink Pond Water*, EATER (Nov. 2, 2015), https://www.eater.com/drinks/2015/11/2/9655580/wild-beer-yeast-craft-cultures (describing craft brewers' experiments with diverse and novel strains of yeast); Zachari Turgeon & Matthew Dahabieh, *Harnessing Yeast's Natural Biodiversity to Help Fuel Innovation in Craft Brewing*, BEVERAGE DAILY (Jan. 10, 2017), https://www.beveragedaily.com/Article/2017/01/10/Yeast-s-natural-biodiversity-and-innovation-in-craft-brewing (describing how experimenting with yeast is "helping brewmasters innovate for the ultra-competitive craft marketplace").

[34] Craft beer may be brewed using a blend of traditional and new recipes and techniques. *See, e.g.*, Aaron Goldfarb, *America's Most Innovative Breweries*, FIRST WE FEAST (July 7, 2016), https://firstwefeast.com/features/2016/07/most-innovative-breweries-in-america/ (describing innovations with brewing techniques, ingredients, and styles).

[35] *The History of Beer in Seattle*, SEATTLE MAGAZINE (Sept. 16, 2011), http://www.seattlemag.com/article/history-beer-seattle.

[36] Mike Pomranz, *New England-Style IPAs Hit Peak Mainstream as Sam Adams Takes the Style National*, FOOD & WINE (Feb. 22, 2018), http://www.foodandwine.com/news/sam-adams-new-england-ipa.

the style is not new: returning to older styles with new updates is another version of innovative brewing. Brewers in this sample discuss the need to offer such styles even when they do not like them themselves, because consumers demand them. There is also some sense expressed in the interviews of the need to keep up and keep innovating.[37]

There are also significant innovations in other aspects of the industry. For instance, brewers have explored how to use less water in brewing and manufacturing so as to promote environmental sustainability.[38] Along those lines, craft brewers have long embraced packaging their beer in cans rather than bottles due to the lower environmental impact of cans.[39] Craft beer is increasingly packaged in large cans, known as "Crowlers" (a neologism that combines "can" and "growler"), because they are deemed more affordable and sustainable than growlers.[40] The move to adopt crowlers has multiple justifications, including keeping beer fresher and avoiding problems associated with refilling dirty growlers as well as promoting sustainability through a lighter carbon footprint.[41]

A variety of innovations diversify the ways craft beer may be served, including the newly popularized "nitro" style of beer. This is beer processed via nitrogen infusion (a method pioneered by Guinness and now used more broadly, especially among craft brewers).[42] Craft beer may also be served with various infusions. The beer is typically infused, after brewing, with hops or other ingredients, perhaps according to seasonal availability (examples include spices, fruits, spicy peppers, and tea).[43] The infusion may happen through a process like steeping tea, or it

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[37] *See* Interviews # 3, 5, 14, 16, 19.

[38] Robert Glennon, *How Craft Brewers Are Embracing New Water Technologies*, WATER DEEPLY (Dec. 18, 2017), https://www.newsdeeply.com/water/articles/2017/12/18/how-craft-brewers-are-embracing-new-water-technologies.

[39] A Colorado brewery, Oskar Blues, led the trend by rolling out canning in 2002, but the trend has continued to grow. In 2017, a quarter of craft beers consumed will be in a can. Irina Plakas, *Oskar Blues Dale's Pale Ale Celebrates 15 Years of Canning with 16oz Draft Cans*, CRAFT BEER AUSTIN (May 5, 2017), https://www.craftbeeraustin.com/oskar-blues-dales-pale-ale-celebrates-15-year-of-canning-with-16oz-draft-cans/.

[40] Mike Pomranz, *Behold, The Resealable Craft Beer Can*, FOOD & WINE (Mar. 31, 2017), http://www.foodandwine.com/beer/worlds-first-resealable-beer-can. Growlers—resealable glass bottles—had become the industry standard for transporting fresh beer from breweries, but they do not travel well, clean easily, or keep beer as fresh as crowlers. Alex Delany, *Why the World Needs More Crowlers*, BON APPETIT (Feb. 11, 2016), https://www.bonappetit.com/drinks/beer/article/what-is-a-crowler-beer.

[41] Mark Denote, *Crowlers Are a Kick in the Glass*, CRAFT BEER (Mar. 10, 2015), https://www.craftbeer.com/craft-beer-muses/crowlers-are-a-kick-in-the-glass.

[42] Markam Heid, *Nitro Beers, Explained*, FOOD & WINE (Dec. 27, 2017), http://www.foodandwine.com/news/nitro-beers-explained.

[43] Jim Busch, *Brewing with Herbs and Spices*, MORE BEER (Apr. 4, 2013) https://www.morebeer.com/articles/brewing_with_spices.

might happen through a device specially designed to infuse beer, such as a "Randall."[44] Craft brewers have experimented with different kinds of cellaring processes and storage units. For example, craft beer may be cellared for longer than usual to age it and develop particular flavors, or it may be stored in a wood barrel (returning to traditional brewing methods) or some other specially selected kind of barrel (bourbon, whisky, bacteria-infected).[45]

Many business innovations have changed how brewers market and distribute their beer. Technologies for printing and labeling are now increasingly available to craft breweries, thus increasing their agility and independence.[46] Mobile canning services allow brewers to more nimbly bottle a small batch or to change their production schedule.[47] Changes in some states' laws have made it easier for brewers to self-distribute, thus eliminating a middle tier in the distribution system (and causing other changes and innovations).[48] The way to reach consumers has also changed: in the digital era, apps enable new forms of sales, as do online platforms. Craft beer may be sold online through various apps like Drizly, and distributed through beer delivery services like Tavour, a national organization headquartered in Seattle that sends consumers lush descriptions of its craft beers, which have been selected from all over the United States and shipped at a customer-friendly discount.[49] Consumers also play a role in shaping craft brewing through engagement on social media when they review and track craft beers. Many apps cater to the craft brew consumer. Untapp'd may be the most dominant social media app of craft brewing fans, "the Facebook of the beer drinking world" as well as its Twitter and Foursquare.[50]

[44] *What the Hell Is a Randall?*, BEERKNEWS (Aug. 31, 2015), http://beerknews.com/what-the-hell-is-randall-the-enamel-animal/.

[45] *See, e.g.*, Kate Bernot, *Barrel-Fermented vs Barrel-Aged: What's the Difference*, DRAFT MAGAZINE, http://draftmag.com/barrel-fermented-barrel-aged-whats-the-difference/; Chris Davison, *Barrel-Aging Experiments: What Flavors Can You Expect from Each Barrel Type?*, CRAFT BREWING BUS. (Dec. 6, 2016) https://www.craftbrewingbusiness.com/featured/barrel-aging-beer-experiments-what-flavors-you-can-expect-from-each-barrel-type/; Andy Sparhawk, *Cellaring Beer: To Age or Not to Age*, CRAFT BEER (Apr. 10, 2014) https://www.craftbeer.com/craft-beer-muses/cellaring-craft-beer-to-age-or-not-to-age.

[46] *See* Delany, *supra* note 40.

[47] *See* John M. Verve, *Cans on The Run: Mobile Beer-Canning Services*, BREWING INDUSTRY GUIDE (Feb. 7, 2017), https://brewingindustryguide.com/cans-on-the-run-mobile-beer-canning-services/.

[48] Kary Shumway, *Brewbound Voices: Deconstructing Self-Distribution (Part I)*, BREWBOUND (July 3, 2017), https://www.brewbound.com/news/brewbound-voices-deconstructing-self-distribution-part.

[49] Dina Bass, *A New Delivery Service Gives Beer Geeks Their Monthly Fix*, BLOOMBERG (Nov. 27, 2015), https://www.bloomberg.com/news/articles/2015-11-27/tavour-a-delivery-service-for-beer-geeks.

[50] Chris Morris, *6 Great Apps for Craft Beer Lovers*, FORTUNE (Aug. 8, 2015), http://

Customers in the current era demand and drive craft brewing's innovation, through consumption, purchasing, and other lifestyle choices. It was not always that way, however. Early marketing efforts for craft beer confronted the challenge of trying to convince consumers to try new things, and attitudes that shaped the early strategy—pick fights and do not conform—have endured as part of the shared industry rhetoric.[51] Traditional marketing does not work well with craft consumers, thus requiring innovative strategies.[52] In some cases, innovative marketing efforts involve collaborations and cross-marketing, perhaps even by supporting a larger cause.[53] What is clear now, however, is that many of today's consumers of craft beer seek innovation and crave novelty. The phrase "Rotation Nation" describes the constant changing of tap handles at bars, in an effort to meet what brewers describe as consumer demand for continual novelty in their beer selection.[54] Merely to compete, bars may have to offer many more choices than they used to because consumers crave choice and diversity.[55] The consumer demographic itself is changing, thus opening opportunities for new products and practices.[56]

B. Craft Beer's Culture of Collective Oppositionality

Craft beer is typically defined in terms of size (under 6 million barrels per year); independent ownership (less than 25% ownership stake by non-craft brewery); and brewing philosophy (use of traditional methods and grains, not corn or other cheap substitutes).[57] Craft brewing is defined by the industry standard—

fortune.com/2015/08/08/apps-craft-beer-lovers/.

[51] *See* Robin D. Schatz, *How to Market Like an Arrogant Bastard*, INC. (Feb. 2014) https://www.inc.com/magazine/201402/robin-schatz/marketing-stone-brewing.html.

[52] Paul Talbot, *The High Stakes of Craft Beer Marketing*, FORBES (July 6, 2015), https://www.forbes.com/sites/paultalbot/2015/07/06/the-high-stakes-of-craft-beer-marketing/#a63a5b93e421.

[53] Chris Crowell, *13 Best Craft Beer Marketing Ideas of 2017*, CRAFT BREWING BUS. (Dec. 26, 2017), https://www.craftbrewingbusiness.com/featured/13-best-craft-beer-marketing-ideas-of-2017/.

[54] Matthew Thompson, *Rotation Nation: Getting the Most of out of Draft Beer Rotation*, LINKEDIN (Dec. 1, 2017) https://www.linkedin.com/pulse/rotation-nation-getting-most-out-draft-beer-matthew-thompson/ ("The growth of craft breweries has increased proportionally to the consumer's desire for more choice.").

[55] Joe Boomgaard & Nick Manes, *Rotation Nation: Pressured from Above and Below, Larger Craft Brewers Seek Out Their Place in the Market*, MIBIZ (May 29, 2016) https://mibiz.com/sections/food-agribusiness/rotation-nation-pressured-from-above-and-below,-larger-craft-brewers-seek-out-their-place-in-the-market.

[56] *See* Julia Herz, *Today's Craft Beer Lovers Millennials, Women, and Hispanics*, BREWERS ASS'N (Aug. 15, 2016), https://www.brewersassociation.org/communicating-craft/understanding-todays-craft-beer-lovers-millennials-women-hispanics/.

[57] *Craft Brewer Defined*, BREWERS ASS'N, https://www.brewersassociation.org/statistics/

small, independent, and traditional—but also by a spirit of camaraderie and kinship.[58] In brief, craft brewers use traditional methods and smaller batches, whereas Big Beer engages in mass production and may prioritize price over process.[59] Beyond these defining features, craft beer speaks in a rhetoric of fierce independence and it displays a commitment to openness within the community. Craft stands at odds with market practices that put profit before community, or that seek to maximize one participant's place in the market at the expense of the community as a whole. In the way it defines itself, craft brewing creates an identity that is opposed to that of large-scale industrial brewing. In this sense, it is consciously creating an "oppositional collective identity."[60]

A sharp dividing line separates big, corporate beer production ("macro") from smaller-scale, artisanal craft brewing ("micro"). Sometimes referred to as the "beer wars," the divide is economic and cultural, but it is also increasingly fraught as Big Beer buys craft breweries as part of a larger corporate strategy to win market share.[61] In 2015, AB InBev aired an advertisement during the Super Bowl that exemplified, and probably deepened, the macro-micro beer divide, stirring up controversy locally and nationally.[62] The ad, "Brewed the Hard Way," mocked both drinkers and makers of craft beer, suggesting that they were fussy, attracted to beer flavors that were bizarre or precious, like "pumpkin peach ale," and contrasting AB InBev's own beer as straightforward ("not brewed to be dissected") and classic ("golden suds").[63] The ad showed a glimpse of a hipster (thick mustache, retro glasses) with his nose in a glass of beer, sniffing pretentiously, and the camera work moved rapidly through many shots of powerful machinery which, along with a pounding soundtrack, seemed to symbolize strength, anti-intellectualism, and industrial might.[64] There were no images of the brewers who make Budweiser, but several pictures of Budweiser's historic branding, with labels

craft-brewer-defined/.

58 *Id.*

59 Blake D. Mathias et al., *An Identity Perspective on Coopetition in the Beer Industry*, STRATEGIC MGMT. J. 1, 1 (2017).

60 *Id.*

61 A documentary film captured some of the early controversies associated with the conflict between Big Beer versus smaller brewers. ANAT BORAN, BEER WARS (Ducks in a Row Entertainment Co. 2009).

62 Andrew D'Aversa, *Brewing Better Law: Two Proposals to Encourage Innovation in America's Craft Beer Industry*, 165 U. PA. L. REV. 1465, 1468–69 (2017); Tom Acitelli, *Winning the Revolution, Losing the Peace: Exploring the Ups and Downs of the Recent History of Craft Beer*, ALL ABOUT BEER MAGAZINE (July 1, 2017), http://allaboutbeer.com/article/craft-beer-revolution/.

63 Acitelli, *supra* note 62.

64 *Budweiser Super Bowl Commercial 2015 USA Today Vote: 5.15*, YOUTUBE (Mar. 22, 2015), https://www.youtube.com/watch?v=yyVgO_j8vxw.

and logos from its earliest ad campaigns.[65] Pronouncing itself "proudly a macro beer," it declared that it makes beers "for people who like to drink beer."[66] AB InBev's ad was aimed at bolstering its brand in the face of weak sales, and at making fun of "the overwrought pretentiousness that exists in some small corners of the beer landscape . . . around beer snobbery."[67] Somewhat paradoxically though, "Brewed the Hard Way" followed a year of mergers and acquisitions in the industry, with Big Beer buying craft breweries in order to take advantage of craft's growth, innovativeness, and cachet among consumers.[68] AB InBev was at the forefront of this movement. In fact, earlier that same year, it had purchased the beloved Seattle craft brewery, Elysian Brewing Company (an event that reverberates throughout interviews in 2016–2017, demonstrating considerable and long-lasting impact on the community).[69]

The ad was widely seen and hotly debated.[70] Super Bowl ads are often "the star of the show," famous as cultural touchpoints that reflect the zeitgeist, spur copies, parodies, and controversies, and generally seize on the fact that they are embedded in one of the most important moments of American television viewing each year.[71] Yet this ad was received with puzzlement, and in some quarters, anger. For one thing, AB InBev had been trying to win the 75-million strong millennial market, yet was clearly mocking it here, suggesting a thoughtless or self-defeating marketing campaign.[72] For another, by spending $9 million on airtime during the Super Bowl, AB InBev came across as desperate and defensive to some, rather than

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65 *Id.* The text of the ad reads: "Proudly a macro beer. It's not brewed to be fussed over. It's brewed for a crisp, smooth finish. This is the only beer Beechwood aged since 1876. There's only one Budweiser. It's brewed for drinking. Not dissecting. The people who drink our beer are people who like drinking beer. To drink beer brewed the hard way. Let them sip their pumpkin peach ale. We'll be brewing us some golden suds. This is the famous Budweiser beer. This bud's for you." *Id.*

66 *Id.*

67 Conor Friedersdorf, *The Super Bowl's Riskiest Ad: Is Budweiser Laughing with or at Millennials?*, THE ATLANTIC (Feb. 2, 2015), https://www.theatlantic.com/business/archive/2015/02/budweiser-super-bowl-commercial-brewed-the-hard-way/385072/.

68 Koch, *supra* note 31.

69 Roepe, *supra* note 32.

70 *See* Tim Arnold, *Budweiser: Brewed the Hard Way. A Reality Check.*, HUFFINGTON POST (Apr. 21, 2015), http://www.huffingtonpost.com/timarnold/budweiser-brewed-the-hard_b_6715724.html.

71 Jordan Golson et al., *The Seven Best Super Bowl Commercials – And the Three Worst*, THE VERGE (Feb. 6, 2017), https://www.theverge.com/2017/2/6/14519284/best-super-bowl-commercials-2017. Super Bowl XLIX, in particular, featuring the New England Patriots and the Seattle Seahawks, became the most-watched event in the history of American television. Acitelli, *supra* note 59.

72 Friedersdorf, *supra* note 67.

confident, undercutting its own message about its pride in its "macro" status.[73] Finally, it was downright bizarre: because of its recent purchase of Seattle's Elysian Brewing, which had been brewing at least two pumpkin beers, it seemed as though it was deriding a brand newly within its own corporate family. At a minimum, it seemed like poor brand portfolio management, indirectly mocking Elysian's pecan peach pumpkin amber, "Gourdgia on My Mind," and angering one of Elysian's founders, Dick Cantwell, a giant in Seattle's craft brewing scene and a reluctant participant in Elysian's sale who left the brewery ten days after the sale took place.[74] It was an ad that would predictably reach loyal craft beer drinkers in Washington state and Seattle, many of whom were boisterously rooting (in vain) for the Seattle Seahawks to win the SuperBowl.

The anecdote points to the uneasy accord between the macrobrewer's flagship brand and its newly-purchased "craft" brand, and it captures what has come to be a kind of culture war between giant industrial behemoths on the one hand, and craft brewers of all sizes on the other. It was such bad public relations for Big Beer, even MillerCoors (since that time merged with AB InBev) tried to distance itself from the message, tweeting: "We believe each and every style of beer is worth fussing over."[75] Oregon craft brewer Ninkasi released a mordant parody of the ad, "Brewed the Easy Way," which emphasized many of the values that shape contemporary craft brewing.[76] In marked contrast with the AB InBev ad, Ninkasi depicted many people involved in the process, it did not show its own branding, and it emphasized community over machinery. Ninkasi ironized AB InBev's message that there were "hard" and "easy" ways to brew beer, humorously framing its team as clumsy (tripping and dropping a box of beers) and lazy (lying on a couch next to brewing machinery and throwing handfuls of hops at a large kettle). It poked fun at the idea that beer might be drunk for reasons other than its good taste, with a shot of someone pouring beer on his head. It even included puppies at the start of the ad to invert the idea that beer had to be serious or powerful rather than playful and innocent. Other brewers, and many consumers, similarly mocked AB InBev, online, and in taprooms through their beer lists. One of the

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[73] Acitelli, *supra* note 62.

[74] John Kell, *Craft Beer's Big Dilemma: Hold Out or Sell Out*, FORTUNE (Oct. 10, 2015), http://fortune.com/2015/10/10/craft-beer-sell-out/ (quoting Cantwell: "We made a pumpkin peach ale. . . . They called us out specifically in a mocking tone to show just how ridiculous craft breweries were.").

[75] Brad Tuttle, *Budweiser Doubles Down by Mocking Craft Beer Again in Super Bowl Ad*, TIME (Feb. 6, 2016), http://time.com/money/4210344/budweiser-super-bowl-50-ad-mock-craft-beer/.

[76] *"Brewed the Easy Way?" Ninkasi Craft Beer Budweiser Super Bowl Commercial Parody*, YOUTUBE (Feb. 3, 2015), https://www.youtube.com/watch?v=ZEKqLxtjwDQ.

best known craft breweries in the Midwest released two cases of Pumpkin Peach Ale, calling it "a fuck you to Anheuser-Busch because they sent us a fuck you."[77]

The controversy over this ad, and the beer wars more generally, give some credence to the idea that craft brewing represents a major threat to settled corporate interests, in volume of beer produced as well as in innovativeness and consumer preference. The macro-micro divide could have been nothing more than a difference in approaches to brewing (artisanal, traditional, small-scale versus mass-manufactured, profit-driven and industrial-scale). But market forces set in motion through a variety of Big Beer's actions created pressures on craft brewers' resources and distribution channels, thus making craft brewers feel in some sense attacked by, or even at war with, Big Beer.[78] That AB InBev has spent hundreds of millions of dollars acquiring small craft brewers lends further support to the notion that craft threatens Big Beer.[79] From 2011-2018, Big Beer acquired at least a dozen craft brewers; ten of those belong to AB InBev.[80] Consumer backlash has been pronounced in many cases; after the Elysian purchase, it reportedly experienced "hate tourists" visiting the brewery to purchase beer and then pour it on the floor in protest.[81] In every community where an acquisition like this has taken place, the ripple effects are palpable; Seattle is no exception, making it an especially interesting place and time to collect the attitudes and norms of local craft brewers.[82]

II. A THICK DESCRIPTION OF CRAFT BREWING IN SEATTLE

Interview evidence paints a picture of an energetic and skilled community of craft brewers in Seattle, many of whom have professional experience in big companies, or scientific education or training, and most all of whom describe deep passion for their work. Brewers adopt a rhetoric of respect for others in their community, and their accounts attest to long hours at work, even when financial rewards are slow to come (or are obscured in the short term by other rewards such as personal satisfaction).

[77] Acitelli, *supra* note 62.

[78] Alastair Bland, *Craft Beer, Brought to You by Big Beer*, NAT'L PUB. RADIO (July 28, 2017), https://www.npr.org/sections/thesalt/2017/07/28/539760477/craft-beer-brought-to-you-by-big-beer.

[79] John Kell, *Big Beer's M&A Bender*, FORTUNE (Jan. 26, 2016), http://fortune.com/2016/01/26/big-beer-craft-beer-merger-acquisition/.

[80] Bland, *supra* note 78.

[81] Dave Infante, *The Great Craft Beer Sellout*, THRILLIST (Oct. 13, 2016), https://www.thrillist.com/drink/nation/craft-breweries-selling-out-big-beer-companies.

[82] Interview # 17 (describing experience working for national brand that provided experience working with craft brewers all around the country, and finding the same phenomenon replicated).

Brewers and owners alike speak of the hard work, the stamina it requires and the long-delayed (or missing) financial rewards. Most notably, perhaps, is the extent to which brewers describe sharing and collaboration as central to their professional lives. This Part begins by setting the stage in Seattle: what, if anything, makes this location distinct? It next creates a "thick description" of the background, daily routines, and practices of craft brewers in Seattle, with the goal of reflecting their views about what they do, how they learn, how they work together, and why. Anthropologist Clifford Geertz deployed the term "thick description" to refer to an account that described behaviors and practices but that did so "embedded in the cultural framework" of those described.[83] The account is thus one that aims to describe, from a particular perspective only made possible by learning from those within a group, how they feel, what they do, and what they report about both. Any interview-based study is subject to the difficulties of distinguishing actual and revealed preferences, that is, what people actually do, from what they will reveal that they do, a point to which the Article returns below. Hence it is important to reiterate that qualitative work of this sort does not aim to represent an objectively verifiable world, one subject to the strictures of statistical research (such as randomization and use of control groups). Qualitative empirical research offers accounts of communities whose perspectives can be investigated through quantitative research, but whose voices may only be audible through open-ended, inductive, and more subjective methods like data collection through one-on-one interviews.

A. Seattle as a Distinct Location for a Case Study of Craft Brewing

As noted above, Seattle boasts more craft breweries than any other U.S. city. Indeed, it is considered a top-three beer tourism destination.[84] Seattle may have been unusually likely to welcome a craft brewing movement. Some have mused that it has the kind of weather that encourages beer-drinking and pub culture. Historically, Seattle has had both big brewers (Olympia and Rainier) and many smaller brewing entities; liquor licensing laws also encouraged consumption of beer, thus giving the craft brewing movement something of a head start in this state.[85] More recently, it appears that craft brewing thrives in states in which

[83] Joseph A. Maxwell, *Understanding and Validity in Qualitative Research*, 62 HARV. EDUC. REV. 279, 288 (1992) (reprinted).

[84] Julia Herz, *Travelocity Debuts New Beer Tourism Index*, BREWERS ASS'N (Oct. 19, 2016), https://www.brewersassociation.org/communicating-craft/travelocity-debuts-new-beer-tourism-index/.

[85] Eric Scigliano, *Here's to Washington's 35-Year-Old Craft-Brewing Industry*, THE SEATTLE TIMES (Oct. 12, 2017), https://www.seattletimes.com/pacific-nw-magazine/cheers-to-beers/ ("State licensing law favored taverns serving no liquor and beer that was 3.2 percent alcohol, so Washingtonians drank more draft than almost anyone else.").

cannabis use is legal, a correlation of interest given the possible overlaps in consumer base.[86] The city's strength in the coffee and wine industries may also have helped local entrepreneurs, who could use their acumen in agricultural commodities, manufacturing, bottling, distribution, retail, and service to launch and grow the fledgling beer market.[87] In the current era, Seattle's being home to many powerful tech companies who are contributing to rapid population growth, and increasing the demographic of craft consumers, likely increases the city's prominence in craft brewing.[88] Multiple interviewees discuss the high level of beer education and the wealth of local consumers; Seattlites have money to spend on beer, a non-trivial factor in the success of a luxury product like craft beer, which is available at a much lower price-point in its macro, non-craft form. Many of Seattle's brewers begin their businesses equipped with a science background, a former career in tech or engineering, or other experience working at a global company headquartered locally, such as Amazon, Boeing, Microsoft, or Starbucks, to name a few, suggesting that Seattle's business backdrop might not be irrelevant to the composition of its craft brewing industry.[89]

Beyond Seattle's business landscape lays its agriculture. Seattle's innovative brewing culture owes at least some debt to its proximity to the agricultural bounty of Eastern Washington and especially the Yakima Valley, which has become a national leader in barley-production and global leader in hop production.[90] Washington State, a significant source of hops since at least 1865, has more recently come into prominence as one of the world's top producers of the most valuable and interesting hops currently used in brewing.[91] Not just volume of hops, then, but quality, contribute to the state's craft brewing movement.

[86] Kendall, *supra* note 25.

[87] Interviews # 2, 4, 5, 7, 19, 22.

[88] Rather like Bend, Oregon, the consumers fit craft brewing's profile: they are tech-oriented, beardy (a term multiple interviewees actually use), perhaps geeky, tinkerers and experimentalists who may have science and/or home-brewing experience themselves. Hindy, *supra* note 13 (discussing Bend's consumer base).

[89] Interviews # 5, 6, 12 (discussing brewers' backgrounds generally).

[90] *See* Sarah Dewey, *Head of the Class: Craft Beer Puts Spotlight on Washington Hops*, SEATTLE BUS. MAG. (May 2013), http://www.seattlebusinessmag.com/article/head-class-craft-beer-puts-spotlight-washington-hops ("'Yakima is the world's most focused point of [hop] sourcing' . . . ."); Jonathan Glover, *Washington Tops in Hops*, THE SPOKESMAN-REV. (Nov. 25, 2016), http://www.spokesman.com/stories/2016/nov/25/washington-tops-in-hops/#/0 ("In 2015 and 2016, the Yakima Valley has grown more hops than any other place in the world, surpassing Germany . . . ."). Washington is one of the five biggest barley-producing states in the United States. *Barley Resources*, BREWERS ASS'N, https://www.brewersassociation.org/best-practices/malt/barley-resources/ (last visited Sept. 28, 2018); Don Tse, *Booming Beer Culture – Why We All Envy the Northwest*, 28 ALL ABOUT BEER MAG. (May 1, 2007), http://allaboutbeer.com/article/booming-beer-culture—why-we-all-envy-the-northwest/.

[91] MICHAEL JACKSON, ULTIMATE BEER 11, 15 (1998) (referring to the importance of the

In sum, many factors make Seattle ripe for study: the number of its breweries, its more than three decades in the craft beer industry, its proximity to unique agricultural bounty, its expertise in other brewing and bottling industries, its urban growth, and the composition of industry participants. Maybe even its storied weather.

B. Backgrounds

This Part describes the various backgrounds of participants before they entered the craft brewing industry in Seattle. My 22 interviews featured 16 interviewees who were primarily brewers or had extensive industry brewing experience. Of those, most (14 of the 16) had years of home-brewing experience as amateurs before entering the business. There were of course exceptions; some people came to brewing from cuisine or hard science, or other industries that lent themselves to picking up brewing quickly, and some apprenticed and worked their way up as cellarers and then assistant brewers, but were professionally in the industry from the very start.[92] But these apprentice-style brewers were the exception. Most did not expect to become professionalized, but after years of enjoying their hobby, and having friends and family declare their beer excellent, may have decided to make a go of it. Some received accolades or awards early on; others left careers that they had decided did not fit them, their values, or their ideas regarding creating beer or community.[93] Interviewees report that many people in the industry home-brewed but now are in the industry in another capacity, such as sales or marketing.[94] There are many scientists in the community, some with bench science backgrounds who left labs, drawn to the opportunity to be valued for contributions to biology and organic chemistry in a lower pressure, higher-collegiality environment.[95] Some have speculated that this is a good way for women to enter the field because, as the next part discusses, certain obstacles to women's participation in brewing remain.[96]

A good number of brewers or owners in the Seattle-area craft brewing industry came from a corporate background, with large companies whose focus on

Pacific Northwest's hop and making special mention of Yakima Valley in Washington); *see also* Nick Hines, *Beer Nerds Drive Hops Innovation, and That Should Matter to You*, VinePair (Sept. 28, 2016), https://vinepair.com/articles/branded-hops-innovation-matters/ ("The term hops doesn't even start to breach the distinctive nuances that brewers travel to central Washington to find. . . . There are more than 170 hop varieties and the list is only growing.").

[92] Interviews # 2, 3, 8, 9, 12, 18.

[93] Interviews #15, 16, 19.

[94] Interview # 15.

[95] Informal Interview with a woman who had recently completed her Ph.D. in Biochemistry and was headed to work in a craft brewery.

[96] Interviews # 4, 10.

engineering or technology may have provided especially good training for brewing, where getting the science right is sort of a sine qua non. There are also those who came from Big Coffee, and left because the coffee industry in Seattle is not (reputedly) all that collegial. While I cannot state whether that claim is accurate, it is one that I have heard repeated often—coffee in Seattle is cutthroat. If brewers came from that business, they brought with them some understanding of retail, distribution, perhaps bottling, and the importance of certain sorts of secrets: roasting curves are, for instance, extremely proprietary at some coffee companies.[97]

The ex-professional class forms a substantial subset of Seattle's craft brewers and owners; over half of my interviewees either were formerly employed by big companies, or were partners with someone who had been. A few had law degrees, and some had practiced law before escaping to hoppier shores. A number of the ex-professional set could talk about academic issues; one spoke passionately about cultural anthropology and held forth on the history of brewing in at least one different culture.[98] Another could speak with erudition about the history of ideas and science, and connect it to craft brewing as a vocation.[99] There are important class implications to explore in further work; one theme in these interviews is that people can become brewers when they have significant savings from a prior career; they may buy a very large building for the purpose of building community with their brewery, but their ability to do so might rely on considerable prior success at say, Microsoft or Amazon.[100]

Some brewers and owners came up through the restaurant or service industry, and they are erudite in different ways: knowledgeable about the nuances of brewing techniques, what made things good, or consistent, or both.[101] These understand the service sector especially well and speak of the importance of relationships with consumers and the value of distribution and retail networks. Often, those who have been in brewing the longest have deep personal connections to the craft, like the person who recalled hearing about brewing from their earliest days at home:

> I guess I [was] raised on stories, even [about] Prohibition. … Grandma used to make, uh, bathtub wine [laughs], beer… Uh, even had some uncles that would run moonshine across the Missouri river. So [brewing] goes way, way back. Um, I don't know. I just… fell in love with the…art and the science of it… watching, you know, that there are so many little nuances to it and how you can build something from nothing.[102]

97 Interview # 9.

98 Interview # 8.

99 Interview # 14.

100 Interview # 18.

101 Interviews # 2, 9, 10, 14.

102 Interview # 2.

This brewer finds a meaningful legacy handed down to him through his family history in the stories he heard while growing up, but he connects his own pleasure to the complex and satisfying work itself. Despite the many different backgrounds—and the class and capital implications of those—brewers come to professional craft brewing with dedication to making excellent beer and to the idea that the product they make, and the process they vigilantly master and then spend a lifetime refining, will produce something bigger than a barrel of beer. Almost every brewer speaks of the pleasure of creating something patrons love, and building a community of drinkers to enjoy it. Some of them expressly link those efforts and even their satisfaction to ownership rights, as when this brewer, asked why they brew beer, responded:

> Because, I make music. I like building things. I like machining things, like physically. It's really gratifying to make something and then have it be something you're proud of. I think it's just a pride issue like, hey, I built this from scratch, and it came out really good. It was my intellectual property and my efforts that made this thing that's super awesome.[103]

C. *Daily Routines and Practices*

The research protocol begins by asking brewers about their daily routines. The first commonplace was that as small business owners—or as head brewers—there was no one typical day. If it was a brewing day there was a routine, a schedule, and a timeline. But interviewees brewed anywhere from two to three times a month[104] or several times per week.[105] Their other days were spent on "everything else!"[106] That might have meant e-mails: hours and hours of emails managing accounts, dealing with sales representatives (or acting as sales reps themselves), communicating with consumers, and yes, posting on social media.[107] One reports spending over four hours a day on e-mails.[108] On most days, there are levels to check, processes to follow, and lists to check off.[109] Some describe detailed means of list-making to ensure that tasks can be delegated and completed and to keep the organization coordinated.[110]

Almost all interviewees describe a big variety of tasks and some cite that variety as a chief incentive for picking this career, or for the satisfaction it

[103] Interview # 1.

[104] Interviews # 1, 3, 18.

[105] Interviews # 7, 12, 21.

[106] Interview # 22.

[107] Interviews # 5, 6, 7, 10, 14, 17, 19.

[108] Interview # 17.

[109] Interviews # 2, 5, 12, 14.

[110] Interview # 12.

delivers.[111] Those that do have routines, such as checking chemical levels, do so as a ritual or program within a larger, constantly changing set of things that need to be done. Anything can arise as a problem that needs immediate attention, whether it's chemical, mechanical, or business-related, like demand outstripping inventory, accounts needing resolution and production schedules misaligning with distribution contracts.[112] Interviewees describe the need to fix things: all things break down, at some time, and something is broken at pretty much all times. They sometimes describe relishing the task of learning how to do something new (figure out toilet plumbing, master a particular kind of wiring, modify some system to accommodate a brewing need or physical constraint of the layout).[113] Some derive satisfaction from the process, whether the job is borne out of necessity and frustration, or curiosity (how can I make this better), or because they possess mechanical acuity and can figure out how to solve a problem. Actually building or tweaking things by hand is among the things many report doing regularly.[114] Many brewers are tinkerers and puzzle-solvers,[115] and this theme of solving for ingenious (or workable, or cost-effective) solutions pervades the interviews.

1. Physical Labor

Brewing is a labor of love, with one's body on the line. Interviews contain references to the enormous amounts of cleaning required. One estimates that "90% of my job is stacking and cleaning" (and this is a head brewer, not someone at the bottom of the brewery's food chain).[116] At least one other also offers the same: "You're – you're working really hard, and you're doing a lot of cleaning. *[Laughs]* It's not very glamorous. You . . . got to spend 90 percent of the . . . day cleaning stuff, you know?"[117] When I asked one brewer about it ("I hear a lot about the cleaning . . . ."), she assented with a small laugh: "Yeah, that's *mostly* what it is."[118] Perhaps because cleanliness translates into consistent, safe, and delicious product, there is a note of pride detectable as brewers talk about just how much cleaning they have to do; the flipside is that they report being able to detect off-flavors in other breweries at times that make them wonder about cleanliness

111 Interviews # 16, 19.

112 Interview # 14.

113 Interviews # 5, 14, 16.

114 Interviews # 5, 14, 16, 19.

115 A pioneer in the field, founder of Sierra Nevada's Ken Grossman, speaks passionately in his memoir about his love of taking things apart and putting them back together, starting from his very earliest memories. KEN GROSSMAN, BEYOND THE PALE 1 (2013).

116 Interview # 2.

117 Interview # 7.

118 Interview # 11.

there.[119] The cleaning is no joke; nor is the lifting, carrying, and generally moving around for much of the day.

Some jobs in the field still list being able to lift a 145-pound keg as a required qualification; after hearing reports of this, I confirmed it for myself in a handful of recently posted ads I found online for jobs in Seattle breweries. Without citing interviews that might compromise anonymity, I can say that some of the women interviewed believe this to be unfair, rather like a glass ceiling, while other women, who report that they have worked hard to develop the strength to meet those requirements, feel the requirement is fair because brewing is a highly physical endeavor. The point made by those who believe it is unfair is that many men who lack such strength make their way into the industry anyway, and those men adapt by using tools—a dolly, a forklift, or even joists and mechanized lifts in larger breweries. Moreover, they point out that injuries are frequent because of the constant lifting, and even if someone *can* lift a 145-pound keg doesn't mean it's good for them to do so.[120] Often longtime brewers, perhaps with legacy injuries, stop doing this kind of lifting unassisted by tools, precisely because of the associated risks.

Physical parts of the job are a defining feature, whether one uses adaptive tools or not. Consider the way one woman talks about the labor involved and the notoriety of one long-established Seattle brewery with a tricky physical terrain:

> *Interviewee:* You have to—I mean, the grain bags weigh 55 pounds each . . . and then if you're working at Hale's you have to take those upstairs . . . up, like, three flights of stairs.
>
> *Interviewer:* Fifty-five pound bags?
>
> *Interviewee:* Yeah, so I mean . . .—there's that. The kegs weigh 150 pounds, um, and you have to move those around, sometimes lift them and stack them. Um, so there—there's just a lot of physical work.

Because of this work, and the need for safety on the brewing floor, brewers need to wear particular clothes and shoes. Women dress in a very different way than they might in the taproom, and occasionally get comments about that.[121] The job's

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119 Interviews # 12, 14.

120 Interview # 11, and additional informal conversations after a meeting of the Pink Boots Society, an organization dedicated to assisting women in the professional beer industry. Once men are injured they may need or use the accommodations that might have removed a barrier to entry for many women had these accommodations been in place at the start.

121 *Id.* (noting with dismay the sexualization and unrealistic depiction of some women brewers for marketing on social media: "'Hey, I just so happened to notice, like, your female brewers are really hot and wear really tight jeans. I don't know how the hell you can work in that,' or you know—Who are the pictures on Instagram that breweries are posting??" [Interviewer: Why is brewing in tight jeans difficult?] "Well, you—you're movin', and you need to, one, you gotta lift with your legs. Right? It's really hard to get in that squat pose with a tight

sheer physicality also affects when women—or people unable to lift heavy weights, which interviewees told me often overlaps with gender—can work. If closing, shiftworkers need to be able to lift, stack and replace kegs at some breweries, and they may have shelving systems to navigate that make lifting even harder.[122]

Gender recurred as a theme and it ended up expanding in the second half of the interviews, as I learned more about the sociology of craft brewing in Seattle.[123] Many male owners and brewers discussed attempts they had made to hire or retain females in brewing positions. A number describe challenges they face that scholars would find familiar from other industries' attempts to increase employment diversity, such as pipeline problems and cultural hurdles.[124] An experience I heard multiple people describe, both on and off the record, can be cast as a trope of invisibility: a female brewer, say at a beer festival, will be standing next to a male salesperson, yet she will be treated as invisible by consumers, even after that sales rep indicates that the person best suited to answer the question is the brewer standing next to him.[125] Brewers also describe the "beardy" culture of brewing and the way that gender may bias beer judging at festivals.[126] Female brewers may have challenges that are structural or physical then, but they may also face subtle discrimination from consumers who assume that only men really understand beer and brewing.[127] Gender, and its role in excluding women from some parts of the industry (and possibly enabling inclusion in others, whether sales, service, organizational leadership or brewing science), deserves further attention and a focused study of its own (certainly it warrants more than being considered, as it is here, mainly as a function of the physical demands of brewing).

Brewing, and the sociology of bars and taprooms, make non-negligible demands on the body and normalize the need for particular body types. The brewer's body is actually an important site: before standardized weights and

pair of jeans. And I don't wanna be hoisting my jeans over my butt crack all day. . . . Which is gonna happen. . . . Carhartts are kinda the way to go.").

[122] *Id.* ("That's also why you may not see women by themselves in a tap room at night. It's mostly men closing up because of some of those things. Like, you know, um, Naked City has a two-tier keg setup in the back. Their beer bench. Those kegs are stacked up. There's one—[gesturing] and then there's a shelf. How do you get that keg to the second shelf?").

[123] *See infra* Appendix I.C, discussing gender as an emergent questions in the research protocol, and describing attempts to address gender as an issue of possible sampling bias.

[124] Interviews # 2, 9, 14, 16.

[125] Informal conversation with female brewer. The issue came up in interviews with both men and women, so pointing to particular interviews does not run the risk of deanonymizing. Interviews # 1, 11, 12.

[126] Interviews # 14 and 10, respectively.

[127] Interviews # 7, 10, 11, 12. But cf. interviews # 2, 13, 17 treating gender as largely irrelevant except for pipeline issues (not enough women training or experienced enough to enter brewing, or not enough women seeking such positions).

measures and contemporary thermometry existed, the common means of assessing temperature was for brewers to dip an elbow or a thumb into hot water or mash.[128] While that particular practice is no longer necessary, brewers do describe embodied knowledge. Though some processes have shifted to automation, there are many that still rely on the human body; for example, a brewer'se sense of smell;[129] their gut instincts;[130] and their visual (or combined perceptual) capacity play a significant role in evaluating and brewing beer.[131] Because of the role the human body plays, and the sense of hard work and personal investment that brewing entails, it is easy to see how labor could create a sense of ownership or entitlement. That is, after all, the classically understood Lockean basis for our modern IP rights.[132] That does not seem to track here, as discussion below will reflect. The "sweat of the brow," as it is referred to in copyright doctrine where it demarcates labor that does not give rise to copyright protection in the United States, similarly here does not appear to give rise to a desire for exclusivity (at least not with respect to brewing; branding is a different matter). Sweat of the brow may even be one of the many ingredients that create collegiality in the industry: many hands make light work, misery loves company, and any other number of adages capture the common-sense ideas that when we must accomplish drudgery, it is much better to do so with other similarly situated people, than to do so solo.

2. Non-Physical Labor: Learning

Learning is such a key part of brewing that one might practically consider continuing education a necessary element of the career. The learning curve is steep at first—usually when brewing as a hobby—but even after they attain basic skills, many brewers continue to seek knowledge. They learn through reading, doing, collaborating in various ways, and attending industry conferences. There are also institutional certifications such as the Cicerone training (similar to sommelier training in the wine industry) and the Beer Judge Certification Program.[133]

Learning by Reading. Some brewers I interviewed describe reading almost insatiably. Some did so more as they were starting out, thirsty for knowledge and lacking key information in the areas in which they would eventually become experts. One interviewee describes leaving their high-pressure professional day job

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[128] James Sumner, *Early Heat Determination in the Brewery*, 121 BREWERY HIST. 66 (2005), http://www.breweryhistory.com/journal/archive/121/bh-121-066.htm.

[129] Interview # 10.

[130] Interview # 1, 2, 16, 22.

[131] Interview # 21.

[132] *See* Justin Hughes, *The Philosophy of Intellectual Property*, 77 GEO. L.J. 287, 296–97 (1988).

[133] *Beer Judge Certification Program*, BEER JUDGE CERTIFICATION PROGRAM (BJCP), https://www.bjcp.org (last updated Feb. 5, 2017); *Cicerone Certification Program*, CICERONE.ORG, https://www.cicerone.org (last visited Sept. 28, 2018).

during lunch and walking to the local library to pore over brewing books as they contemplated their upcoming career switch (the interviewee speaks lovingly about a particular book on water, and its profound impact on their understanding of brewing).[134] Some breweries report that their head brewer may spend ten hours a week reading[135] to conduct research in existing books and to read trade publications simply to keep on top of breaking developments.[136] Several brewers I spoke with had stacks of brewing magazines in view during our interview. One brewer, recalling the early internet era when such print publications were a quintessential source of learning for amateur brewers because online resources weren't yet widely available, recalled a recipe they had tucked away as too difficult for them then, only to remember it and revisit it two decades later, going on to win accolades and renown upon perfecting it.[137] Some brewers are introverts, preferring time away from the crowds at festivals where demand for brewers' time can be intense, because brewers are "rock stars" and quasi-celebrities.[138] For them, reading in online brewing forums and in trade publications may represent the main mode of learning at first, and it may taper off as their expertise develops; periodicals simply bring news of trends or new discoveries. Another brewer—trained as a research scientist, describes the process this way: "Half of it is just reading and then the other half is probably just experimenting. Kind of like a scientist. You read papers, papers, papers."[139]

Learning by Doing. Of course, there are multiple ways to learn, and most of the brewers I interviewed have spent a good deal of time learning by doing, sometimes in conjunction with learning by reading.[140] Starting out at home, often with a "Mr. Beer" kit, or similar small-scale system, they experimented, tweaked recipes, developed better technique, and eventually progressed.[141] There are phases to developing brewing technique: following brewing kits, brewing clones (which consists of recreating others' recipes), and then developing one's own recipes.[142] Some move through these phases quickly because of culinary or scientific experience; some serve as assistants in breweries for many years, and learn through apprenticing and collaboration.[143] Most ex-homebrewers have failure stories they

[134] Interview # 16.

[135] Interview # 9.

[136] Interviews # 9, 14.

[137] Interview # 10.

[138] Interviews # 14, 12.

[139] Interview # 1.

[140] Interview # 14 ("I learned by doing. . . . Homebrewing is very much an experiential thing where you . . . do it over and over again, you get better, you learn from your mistakes, and then reading—just reading, reading, reading.").

[141] Interviews # 1, 9, 13, 22.

[142] Interview # 9.

[143] Interviews # 6, 11, 18, 22.

recall fondly and can pinpoint lessons learned from mistakes, risks, and experiments.[144] Most professional brewers will say they very rarely make mistakes now. When asked what they do if a batch is bad, they are often brought up short; in one or two cases, a story about an accidental oversight provides detail (and humor).[145] But generally the answer is: once you're good, mistakes don't happen much. When asked how they know if a beer is good or when it's ready, they have technical answers as well as subjective ones, and the technical answers offer them quality control that ensures that their product is on track and consistent at each step of the brewing process. Their knowledge of the process and science behind it are typically extensive.

Learning by Playing. Brewers can be divided into one of two camps: the first are those for whom perfecting a beer or style is the key achievement: they seek consistency, fidelity to style (of the sort required for awards at beer competitions), and at least one, or a few beers they would make the same way, for at least a little while, if not for years.[146] The second are those who love innovating or experimenting or tweaking recipes. Interviewees in this camp chafe at making the same beer twice. They find it more fun, more interesting, and more challenging to keep reinventing the brewing wheel, so to speak, constantly seeking answers to "what if I did this, instead of that?"[147] Far from evoking a lack of responsibility, this kind of playfulness and experimentation are revered by many in the field so long as they don't mean a lack of quality or care; experimental brewers are considered high-status or high-skill and they may be allocated a wider berth. This sense of playfulness was evident in many breweries and in the widespread references in my interviews and beyond to the concept of a "one-off." A "one-off" in brewing is a beer brewed once, perhaps for a special occasion, without a brewery's having any plan to brew it again.[148] The term captures the idea that brewers will often try anything that sounds good… once. The one-off provides room to take an idea to production on a small scale, for limited distribution or only for the taproom, to test out a flavor or style, or to perform an experiment. Because consumers are willing to try new things and in fact may be bored when they cannot, as interviewees report, one-off's have a built-in market and a low level of risk. They often are used as a small partnership with another brewery, too, as a means of collaboration for fun, or for learning.

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[144] Interview # 1.

[145] Interview # 17.

[146] Interview # 12.

[147] Interview # 1.

[148] BEERADVOCATE, *Definition of 'One-Off'* (Jan. 13, 2014), https://www.beeradvocate.com/community/threads/definition-of-one-off.144793/

3. Collaborating

Collaboration is a major means of learning and it can be a source of connection and fun.[149] However, collaboration in the industry is larger than just a source of learning. It works in a number of different ways, but often an individual or a team from one brewery will meet with the same from another brewery, usually at one of their breweries, perhaps over a beer. Sitting down, they'll discuss an idea they have, or toss ideas back and forth in a process of playful exchange, perhaps revolving around a theme, a cause, an event like a festival, or some other goal they are seeking to meet together. The process is casual; often it originates because brewers are sharing a beer in one of their taprooms after work and someone comes up with a "what if" question: what if we put non-traditional hops *you* have access to in a traditional recipe *we* have brewed? What if we used a wild yeast, which *you* have experience brewing with, on *our* flagship beer? At its most formal, brewers may be invited to pair with another brewery, or actually matched with one, to enter a beer in a collaboration festival, a source of creative cross-pollination and exploration that may pair unlikely parties and that helps diversify the field while simultaneously unifying brewers in creative and collective purpose.[150]

The explicit purpose of these collaborations varies. Sometimes breweries collaborate on a beer when two breweries might have an interest in trading recipes, or generally cross-pollinating what their brewing teams know.[151] Sometimes they collaborate when one is in imparting knowledge of a style or method,[152] or when a more established brewer is trying to help a newer entrant through the former's name-recognition and existing consumer base.[153] The larger brewer may benefit as well, because getting big or established can lead to seeming stodgy and working with a tiny new brewery imparts credibility among craft brewers and consumers.[154] Sometimes collaborations celebrate the hop harvest, or in other ways mark the seasons and agricultural cycles.[155]

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[149] A new award category was added to Washington's beer competition in recognition of the importance of collaboration beers. The event's organizer describes the rationale behind celebrating collaboration beers: "Half of the time they're just going in, brewing the same recipes, but this is a chance to go play with your friends." Robin Saenz, *Washington Beer Awards Adds Collaboration Category to This Year's Competition*, SEATTLE MET (Mar. 8, 2018), https://www.seattlemet.com/articles/2018/3/8/383ashington-beer-awards-adds-collaboration-category-to-this-year-s-competition.

[150] *Washington State Craft Beer*, WASH. BEER, http://washingtonbeer.com/festivals/washington-beer-collaboration-festival.php.

[151] Interview # 22.

[152] Interview # 17.

[153] Interviews # 7, 15.

[154] Interview # 19 ("It's often like the brewery with the smallest system will be the one doing the collaboration because the one with the bigger system is too busy making IPA.").

[155] The Harvest Collaboration Series is run by Bale Breaking Brewing Company, a

The method of collaboration differs. In some cases, brewers coauthor a recipe, or use one of theirs as a starting point to which they jointly make modifications to a single batch. They typically then brew at one location, say Brewery 1, with employees from Brewery 2 on hand the day of the brewing (though usually not too involved that day). Brewery 1 then owns the beer: for legal purposes there needs to be an owner (alcohol cannot be given away for free and there are a variety of state and federal taxes the owner will need to pay).[156] After the beer is ready to distribute, Brewery 2 will take some agreed-upon amount, perhaps decided in barrels, and simply pay Brewery 1 for that. The precise arrangement may vary: whether the breweries share the cost of ingredients up front, for instance, may depend on why the collaboration exists. Where one brewer has no way to brew (because their brewery is new, relocating, or facing a physical constraint such as not enough space or broken equipment), a collaboration might exist to help out a fellow brewer and the one being helped may supply all the materials in recognition that they are the one calling in a favor.[157]

Another means of collaborative brewing exists when the idea is an experiment to see how a beer might turn out when brewed in two different places, either using the same recipe (but different equipment) or varying some ingredient, say using different hops, different water, different grains, or different yeast. In Seattle, a playful question recently led to a collaboration beer made by Georgetown Brewing (one of the most established, biggest, and most-loved craft breweries in Seattle) and Chainline Brewing Company (a new and fast-rising brewery in Kirkland, located on a bicycle path and themed around cycling). What if you took top-fermenting yeast and bottom-fermenting yeast, and used those to make two different beers, with most everything else the same? They used a shared recipe, and came up with a creative way to spin the experiment, with a pun on "top" and "bottom" bunks, that reflected the different fermentation characteristics:

> Georgetown Brewing [used] a single mash infusion method and . . . ferment[ed] the beer using ale yeast, with the result being an India Pale Ale. Chainline Brewing [used] a step-mash system and then ferment[ed] the beer using lager yeast, with the result being an India Pale Lager. Ale yeast is

brewing and hop producing company in the Yakima Valley. *Harvest Collaboration Series*, BALE BREAKER BREWING CO., https://www.balebreaker.com/beer/harvest-collaboration.html.

[156] Interviews # 7, 19.

[157] For instance, before Red Hook's brewery had opened, their head brewer Nick Crandall partnered with 16 local breweries to create collaboration beers that would be ready by Red Hook's opening. Kendall Jones, *Redhook Brewlab Opens in Seattle on Thursday August 17th*, WASH. BEER BLOG (Aug. 12, 2017), http://www.washingtonbeerblog.com/redhook-brewlab-opens-in-seattle-on-thursday-august-17th/.

> often referred to as a "top fermenting" yeast, while lager yeast is often referred to as a "bottom fermenting" yeast. Bottom, top, bunk beds.[158]

Yoking their brands together with a logo they created for their collaboration beer, varying just the names (Top Bunk IPA and Bottom Bunk Pale Lager), and blending their trade dress meant that the two breweries were engaged in a form of collaborative branding as well as brewing, all apparently done in the common mode of the industry's friendly and casual collaboration beers. (See images below, which show that the collaboration beers' labels drew from the logos, trade dress, and branding style of both beers).

Fig. 1. The collaboration beers' labels.

Fig. 2. Georgetown Brewing's logo

Fig. 3. Chainline Brewing's logo (and trade dress)

These collaborations help transfer knowledge informally. Collaboration beers are typically brewed in small amounts and interviewees report that brewers feel they will be able to sell them in their taproom because, even bizarre collaborations or slightly less successful experiments are likely to appease the craft consumer's demand for variety and novelty.[159] Because the amounts are low, as one brewer explains it, there is no fear of having a lot of excess inventory on hand and they do not worry too much about specifying or protecting anybody's legal rights.[160] Every interviewee asked about collaborations stated that these operated "on a handshake," that is, these collaborations among craft brewers are not governed by formal contract.[161] The point of these collaborations is also more social, or

[158] Kendall Jones, *Chainline Brewing and Georgetown Brewing Sharing Bunk Beds: A Collaboration*, WASH. BEER BLOG (Aug. 6, 2017) http://www.washingtonbeerblog.com/chainline-brewing-and-georgetown-brewing-sharing-bunk-beds-a-collaboration/.

[159] Interviews # 5, 13, 15, 17.

[160] Interview # 7.

[161] *Id.* [Interview # 7 gave a particularly thoughtful response discussed in the norms section, *infra* note 194].

experimental, than financial: "The accounting on a small collaboration batch is usually pretty loosey-goosey… it's more of a social thing."[162]

When pressed about what might happen in the sorts of risky scenarios lawyers are experienced in predicting and resolving—such as a difference in estimation of the quality of the output, a brewer reneging with respect to attribution, or not meeting the terms of the handshake agreement with respect to paying for their portion of the output—brewers reveal that they see most collaborations as relatively low-risk and wouldn't take such significant risks that contracts would be required.[163] Interviewees suggest that brewers feel they can count on trust, and they rely on the compliance produced by the common desire to avoid reputational harm.

When I asked if their views would change if they were collaborating with a much larger player, all interviewees said that they would expect a larger collaborator to have, and to insist on using, a standard contract. The assumptions were that a larger partner would have broader distribution, a more formal culture, more exposure to liability, and more market power to insist on doing things their way.[164] While I do not know what legal arrangements lay behind the following example, one collaboration with national visibility and reach can be found in Sierra Nevada's Beer Camp, a dozen collaboration beers it undertakes annually—bottling, distributing, and promoting the collection as a single twelve-pack item.[165] By contrast, interviewees report that collaborations in Seattle's craft brewing scene are usually not bottled or distributed, other than in kegs in the taprooms of the two collaborating breweries, or in some cases, in other distribution outlets, though usually still only tap throughout Seattle.[166] An exception is the bottleshop collaboration series designed to create bottled beers.[167] For the most part, collaborations, like most craft brewing in Seattle, remain local and small-scale.[168] These collaborations run on trust and mutual respect.[169]

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[162] Interview # 14.

[163] Interview # 16 ("You're never putting enough on the line to really make it worth anyone's stress.").

[164] Interview # 7. Another interviewee pointed to the existence of non-compete contracts among larger brewers, and said that he had not signed any nor would expect others to do so in his brewery. Interview # 2.

[165] J. Travis Smith, *The 2017 Sierra Nevada Beer Camp 12-pack Just Dropped, Here's How to Buy It*, Hop Culture, https://www.hopculture.com/how-to-buy-2017-sierra-nevada-beer-camp-across-12-pack/ (last visited Oct. 24, 2018).

[166] Interview # 7 ("[M]ost of the collaborations end up being just small, one-off batches just for fun—or for special events . . . ."); Interview # 14 ("Most collaborations aren't bottled.").

[167] Kendall Jones, *Collaboration Project Released this Friday*, WASH. BEER BLOG (Feb. 27, 2018), http://www.washingtonbeerblog.com/next-beer-in-the-bottleshop-collaboration-project-released-this-friday/.

[168] Collaborations with non-brewers, notably with coffee producers, and in at least one case

Craft brewing's collaborations in Seattle serve many different purposes, and operate in many different modes. They appear consistent with patterns of brewing and branding collaborations nationally. As a category, craft brewing collaborations deserve further study by scholars interested in the knowledge transfers (and perhaps, specifically, the knowledge commons framework), as well as those who study sociologies of innovation, organizational theory, and joint ventures and strategic alliances.[170] They frequently present challenges and opportunities for trademark law. For instance, there is a fundamental misalignment between treating brands as property, with distinct boundaries and legal requirements to maintain ownership, and the informal ways that brewers collaborate and coproduce beers without always hewing to those distinct boundaries. There are also branding challenges reflected in the increasing pressure to find viable names.[171] Empirical and doctrinal work both could offer helpful interventions.

4. Sharing

Brewers share knowledge to a remarkable extent. Swapping knowledge or simply asking fellow brewers for help is an established behavior more widespread in this industry than any other with which I am familiar. Additionally, all the brewers I spoke with mentioned their comfort with calling a friend with a brewing question or asking a fellow brewer at a festival or taproom how to do something, how to fix equipment, or how to diagnose a problem. They all indicated they would share what they knew just as readily as they would ask for help. When asked if they would help a direct competitor, the question is almost always instantly that they would do so, and the willingness to help extends to their own

with a local fruit producer, are likelier to be bottled, and labels for beers from Rooftop Brewing and Ghostfish, to name two I have seen on store shelves, bear the logos of both the beer and the other brand (coffee, and cranberries).

[169] Interview # 7 ("[T]he corporate policies aside of . . . the breweries that are larger, you know—there's still an understanding between the brewers where everybody respects each other—I don't think anybody's— . . . um, trying to take advantage of another brewer").

[170] Brett M. Frischmann, Michael J. Madison, and Kathy Strandburg proposed the knowledge commons framework as a way to understand innovative environments in which collective use of resources, and shared governance, challenged the individual-owner assumptions of standard IP doctrines. Knowledge transfers and informal governance of information can be helpfully approached through a set of research questions developed in connection with economic theories applied to governance of real property and transferred by these scholars to the arena of intangible property. BRETT M. FRISCHMANN ET AL., GOVERNING KNOWLEDGE COMMONS 1, 3 (Brett M. Frischmann et al. eds., 2014).

[171] Interview # 14. ("All of these people trying to name beers with usually hop puns in the name. Every hop pun in the world is done now. They're all taken. Trust me. . . . So from a trademark perspective, like, somethin's gotta give.") I discuss Seattle craft breweries' attitudes towards IP in Zahr K. Said, *Collegiality Costs: Craft Beer's Untapp'd Problem* (draft on file with the author).

knowledge about brewing, running a business, using or repairing equipment, navigating a regulatory difficulty with the health department, or even handling tricky employee issues.[172] They will help with some area in which they have painstakingly gained expertise, like distribution, or addressing complex regulations.[173] Interviewees describe many ways in which Seattle's craft breweries help each other when faced with a puzzle or problem and when starting something new, even when it takes a lot of time and time is a precious resource.[174]

They will share what they have whether it's hops or grains, in what interviewees often refer to in terms of neighborly assistance:

> There's a lot of "cup of sugar" type of stuff where, you know, we loan equipment or we loan some malt props, you know, just to help someone 'cause their delivery didn't show up or whatever it is. There's a lot of those things that happen. And it's great 'cause you know that you can count on them for that as well. But I think maybe the secondary way to . . . explain why you do it and maybe it's the innate reason why we do it, is that there is this kind of rising tide aspect. But I do think that rising - rising tide aspect of, you know, if I can help create better beer by having an open community, and we can all create better beer, then that means that consumers in general think craft beer is . . . in a better state than if . . . they're getting burned by brewery after brewery that's making beer that they're not into. . . . [T]he more folks that you can convert to really enjoying craft beer, the better.[175]

Generally, as this indicates, the sharing is reciprocal, but it is not carefully tracked or contractually arranged in any way. The reciprocity feels community-oriented rather than individually accounted-for, reflecting a kind of "pay it forward" attitude: brewers may help someone in the community, and then receive help from someone else in the same community.[176] The interviewee also explicitly links sharing with a strategy of industry-wide quality control, a horizontal check on competitors bringing everybody else down through a lapse in quality.

Even as the field grows more crowded, the community ethos mandates "feeding" and "helping" each other:

> Right now, with—there's so many breweries opening constantly— . . . It's tough. . . . It's getting real, real competitive. I mean, even on a level, yes, we're all trying to sell beer, but like, it goes back to the community aspect where we all feed and try to help each other, so – [*trails off*].[177]

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[172] Interviews # 5, 6, 17, 19, 20.

[173] Interviews # 1, 3, 15.

[174] Interview # 6.

[175] Interview # 4.

[176] Mathias et al., *supra* note 59, at 4.

[177] Interview # 22.

The competition increases, but so does the reputation of craft beer, which will redound to the helper's benefit. Note, in the following interview, the shift from borrowing and sharing to collaboration, quality control, and knowledge transfer.

> Let's say we're short on a bag of grain or a bag of hops… We'll literally just call somebody, be like, "Hey, do you have a bag I can borrow until I do my—an order" They're like, "Yeah, no problem." . . . It's really cool. I've never seen that with any other industry. You know, I don't see Starbucks lending beans to Tully's, . . . or . . . making a special blend of coffee together. Yeah. Where I can show up some place and they'll be more than happy to help me out . . . .
>
> [Why do you think that is?]
>
> I think it's just the openness, as the craft brewing industry is, just to make itself better.
>
> [What do you mean?]
>
> Well, we all have things that we know, I guess . . . as an individual brewer . . . but we also like trying and experimenting [with], what everybody else does as well . . . . [S]ometimes it's just as simple as, like, "Oh, how'd you do that," or "What'd you put in it?" And you know, 99 percent of the time, it's gonna be, like, "Yeah, this is what we did," you know, or "This is what we used," whereas like I said, most other industries never do that.178

The rhetoric of the rising tide that lifts all boats serves as a refrain and reminder as well as an informal mode of quality assurance: helping other brewers increases the quality in the field. But it also encapsulates the ethos which underpins a social structure engineered for reciprocal knowledge sharing and collaboration.

III. SEATTLE CRAFT BREWERS' NORMS

The past decade has seen the development of a voluminous body of IP norms scholarship studying various creative communities, and noting where norms diverge from, overlap with, or supplement formal laws.[179] Norms in the legal

[178] Interview # 21.

[179] *See, e.g.*, Christopher Sprigman & Kal Raustiala, THE KNOCKOFF ECONOMY: HOW IMITATION SPARKS INNOVATION 1 (2012); Rebecca S. Eisenberg, *Property Rights and the Norms of Science in Biotechnology Research*, 97 YALE L.J. 177 (1987); Jacob Loshin, *Secrets Revealed: Protecting Magicians' Intellectual Property without Law*, *in* LAW & MAGIC: A COLLECTION OF ESSAYS 123 (Christine A. Corcos ed., 2010); David Fagundes, *Talk Derby to Me: Intellectual Property Norms Governing Roller Derby Pseudonyms*, 90 TEX. L. REV. 1093, 1094 (2012); Emmanuelle Fauchart & Eric Von Hippel, *Norms-Based Intellectual Property Systems: The Case of French Chefs,* 19 ORG. SCI., 187 (2008); Catherine L. Fisk, *Credit Where It's Due: The Law and Norms of Attribution*, 95 GEO. L.J. 49 (2006); Oliar & Sprigman, *supra* note 12; Aaron K. Perzanowski, *Tattoos & IP Norms*, 512 MINN. L. REV. 98 (2013); Arti Kaur Rai, *Regulating Scientific Research: Intellectual Property Rights and the Norms of Science*, 94 NW. U. L. REV. 77

literature generally arise where they supplement or substitute for legal rules, thus drawing attention to a "policy choice" between law, norms, or a combination.[180] In studies of various communities, including roller derby teams, magicians, tattoo artists, pornographers, graffiti artists, fans, and photographers, scholars have offered thick descriptions of behavior that often did not align with or seem to be based on formal legal rules. In some of these studies, legal rules did not apply; in others, scholars have argued that informal norms were more efficient, or that their use reflects community preferences for mechanisms that govern in lieu of law.[181] That scholarship provides a helpful backdrop here since craft brewing displays norms that supplement and perhaps substitute for legal rules. This Part identifies certain general norms in evidence in Seattle's craft breweries as well as a meta norm that governs these norms. Specifically, the general craft-brewing norms discernible in Seattle include a norm against slander; a norm disfavoring use of formal law; and a norm that compels resource-sharing. The meta-norm requires policing group boundaries in order to include community members and exclude outsiders, thus, as Part V will explore in greater detail, effectively creating a bimodal norms governance system: the first set of norms applies to relations with insiders, but not to outsiders.[182]

A. *Defining Norms and Identifying Sanctions*

As I use the term, "norms" are rules that govern behavior, enforceable with sanctions when violated, but arising informally rather than through law.[183] Norms are not, in other words, merely actions individuals undertake out of a sense of internal obligation (although some have used the term in that broader way).[184] In order to get analytical value out of norms, it is important to try to distinguish compliance with a norm from mere behavior, that is, to avoid reductive

(1999); Elizabeth L. Rosenblatt, *A Theory of IP's Negative Space*, 34 COLUM. J. L. & ARTS 317 (2011).

[180] Richard H. McAdams, *The Origin, Development, and Regulation of Norms*, 96 MICH. L. REV. 338, 340 (1997).

[181] Darling & Perzanowski, *supra* note 30 (collecting numerous articles by authors documenting the operation of norms in creative and business fields from pornography to fan fiction to tattoo parlors and roller derby names).

[182] This is far from an exhaustive list of norms. Indeed, naming beer alone is subject to multiple norms pertaining to selection, sharing, amending/withdrawing, and formally abandoning names. I take this up in follow-on work currently in progress. Said, *supra* note 171.

[183] ROBERT ELLICKSON, ORDER WITHOUT LAW: HOW NEIGHBORS SETTLE DISPUTES 167 (1991) ("[M]embers of a close-knit group develop and maintain norms whose content serves to maximize the aggregate welfare that members obtain in their workaday affairs with one another.").

[184] McAdams, *supra* note 180, at 340.

behaviorism.[185] Behavior differs from a norm because one may behave a certain way out of habit, convenience, or pleasure, and if so, compliance with what appears to be a norm may actually be merely behavior, explained by something else entirely.[186]

An example of a *norm* might be promise-keeping: if a brewer promises to give credit to another brewer when they undertake a collaboration beer (jointly creating a recipe, and brewing at the brewery of one or the other), unless he has a contract, he violates no laws if he breaks his promise. My interviewees unanimously report that craft brewers rarely use contracts in such scenarios, and thus normally breaking a promise would not result in any penalties based on contract law. IP law is also unlikely to trigger penalties in this scenario. With some exceptions, IP law rarely requires attribution. Legal rules do not give rise to penalties for breaking a promise, but there may other reasons that explain why people keep promises. On the one hand, a behavioral explanation might suggest that a brewer might wish to keep a promise because he wishes to be considered a trustworthy person, or he is collaborating with a friend and cares about how they fare, or he has a strong innate sense of fairness, etc. A norm, on the other hand, must demonstrate that sanctions change the calculus for behavioral choices and may trump determinants like reputational interests, relationships or ethics. Here, if the brewer violates this promise-keeping *norm*, he will face reputational loss and sanctions. He probably will not be asked to collaborate again. Regardless of the lack of applicable law, and regardless of the internal aspects, the external penalty will likely force his hand (and protect his collaborator). This simple example suggests that a norm is not just a demonstrated behavior but a rule, whether or not backed by a law, that a community develops as a reflection of its decisions about community governance. Numerous norms govern how brewers treat each other, and how they act with respect to their craft and their business.

There is evidence that many sanctions operate to give teeth to craft brewing's norms. Some of these sanctions are internal to the community, such as warning fellow brewers[187] and owners about someone's behavior or character (very

[185] Stephen R. Galoob & Adam Hill, *Norms, Attitudes, and Compliance*, 50 TULSA L. REV. 613, 614 (2015) ("Reductive behaviorism sees norms primarily as patterns or regularities of behavior. An implication of this definition is that to behave in accordance with a norm is to comply with it.").

[186] The distinction seems especially important in the arena of qualitative empirical research: teasing out nuance and interpreting interviews for patterns of meaning depend on understanding motivations as accurately as possible.

[187] Interview # 1 states that he would be likely to warn fellow brewers if he were exploited by Big Beer. This is a brewer who has engaged in a collaboration with Elysian even after the sale occurred, because of the friendships he has with the brewers who remained there initially. He jokes about it first "I mean, since it's Budweiser, I'm surprised they wouldn't have already bought my brewery," but he concludes that he would not try to "get embroiled in like a huge

carefully, to avoid violating a different norm against speaking ill of others, discussed below); refusing access or withholding resources to those who have refused to share; and refusing to collaborate or even boycotting a taproom or product.[188] For example, asked about whether he would go to a taproom in Seattle that is owned by a former-craft brand, one brewer categorically says he would not go even though the brewery is only partially owned by Big Beer, and he states that he would not drink their beer even if it were free.[189] Internal sanctions also include expelling from craft industry associations anyone whose brewery ceases to qualify as "craft" due to an acquisition or change in ownership.[190] Some sanctions are external-facing. Flouting the relevant norms can lead to shaming through social media and on blogs to make consumers aware of the opprobrium. This is especially effective for shaming those who violate the norm of law-avoidance, that is, those who try to enforce their legal rights: consumers hate to see brewers airing their intra-industry laundry.

Several interviewees mentioned the conflict between Lagunitas (no longer a craft brewery) and Sierra Nevada (a craft brewery), when the former sent the latter a legal letter attempting to claim they owned a trademark in the descriptive term "IPA" (India Pale Ale). In response, Sierra Nevada made the letter public, and, as described in an interview, "It was like, "you guys are idiots," "that was the stupidest thing [they'd] ever done," "and everyone laughs at them."[191] The episode concludes with the founder of Lagunitas retracting his claim and allegedly admitting on Twitter: "Alright. This is the stupidest thing we've ever done. I'm really sorry, everybody."[192] While this example points to behavior that overclaimed IP (since no-one owns trademark rights in a given beer style), it appears in interviewees' discussions of enforcing rights more generally.

Shaming and mockery may also occur through irreverent beer names, such as when Elysian produced its Loser Pale Ale, marketed with the tagline "Corporate Beer Still Sucks." (This was yet another of the factors making AB InBev's acquisition of Elysian ironic).[193] Boycotting can be done on a local or national

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legal battle" and instead, he would "definitely bitch to anyone nearby that would listen" and he adds that he "might tell other brewers about it and be like, hey, here's a heads up. Look out . . . They're just stealing beer ideas."

[188] Interview # 4.

[189] Interview # 14 ("Interviewer: Do you drink their beer? Interviewee: No. Interviewer: Would you drink it if it was free? Interviewee: No. [*Laughter*] Interviewer: Would you collaborate with them? Interviewee: No. We got invited to Pumpkinfest after they got bought and we're like, "no, we're not going." Like—yeah, they're dead to us.").

[190] When asked point-blank whether the only factor driving his decision was the change in ownership, the interviewee responded: "Correct." *Id.*

[191] Interview # 22.

[192] *Id.*

[193] E.J. Schultz, *A-B to Buy Brand with Tagline: 'Corporate Beer Still Sucks*,*'* ADAGE (Jan.

scale. In the craft brewing world beyond Seattle, a recent example may be found in Asheville, North Carolina. Wicked Weed, a highly respected brewery, held an annual festival, The Funkatorium Invitational, dedicated to wild and sour ales, and typically attended by breweries and consumers all around the country. Following AB InBev's purchase of Wicked Weed, a huge backlash and planned boycott led to the festival being canceled. A new festival was announced a few weeks later to be held in Charleston, South Carolina.[194] Sanctions exist, and they demonstrate that norms can rival or outperform law in their ability to shape the behavior of those in the craft brewing community.

B. Three General Norms and a Meta-Norm

There are at least three basic norms that can be strongly identified in the interviews.[195] The first is a norm against gossip, or speaking ill of others in a way that causes reputational harm. The second norm urges against using legal tools. Certainly, the norm encourages brewers to try alternatives first, and using legal tools as a last resort if at all. Third, there is an important sharing norm. The expectation is that one will share knowledge and resources, and be shared with in turn.[196] Finally, there is a very strong norm, better considered as a metanorm, that guides the application of these norms: police group boundaries. There are, therefore, two sets of norms, those that apply to craft brewers, and those that apply to everybody else. I refer to this as a bimodal norms system and I argue that its operation is important to understand with respect to IP ownership and enforcement.

1. The Slander-Contravention Norm: Speak No Evil (in Public)

Brewers are reluctant to speak ill of other craft brewers. Reputation being incredibly important in this tightknit community, and interviews reveal that brewers try to avoid publicly speaking ill of other craft brewers, absent unusual circumstances. This desire not to speak ill is different from avoiding judgment or criticism of brewers; when reminded that these interviews were confidential, and would remain anonymous, brewers seemed to feel freer to say what was on their

23, 2015), http://adage.com/article/cmo-strategy/a-b-buy-brand-tagline-corporate-beer-sucks/296773/.

[194] Chris Mottram, *Wicked Weed's Loss is South Carolina's Gain with a New Sour Beer Festival*, CHARLESTON CITY PAPER (May 26, 2017), https://www.charlestoncitypaper.com/Eat/archives/2017/05/26/wicked-weeds-loss-is-south-carolinas-gain-with-a-new-sour-beer-festival.

[195] Indeed, many other norms can be discerned, but for the sake of identifying norms that, together, play a strong role in establishing an infrastructure for innovation and knowledge-sharing, these three possess more explanatory power than certain other norms.

[196] Interviews # 4, 9.

minds (even if it meant speaking ill of a brewery identified by name, since that name was not going to be made public).[197] In other words, the norm was a rule against speaking ill of others *in public*, where it might cause reputational harm. One brewer relayed that he would not publicly "bad mouth a brewer for just making bad beer" and that speaking ill of another brewery would require really bad actions, like "ripping off everyone else around them" or "something else nefarious."[198] Multiple interviewees described outliers who did otherwise as "gossips," or as people not integrated or well respected in the community. The sanction for speaking ill of others is thus exposing oneself to ill speech in turn: reputational harm that arises when the norm against speaking negatively no longer protects you. This may be a broader ethos in the craft brewing industry: critic Michael Jackson was famous for never panning a brewer; if he had nothing good to say, he preferred to say nothing at all and would simply pass over a brewery and (albeit conspicuously) refrain from reviewing it.[199]

2. The Sharing Norm: Share What You Know, Share What You Have

Several interviewees describe with discernible pleasure the openness in the craft brewing community and sometimes note what a difference it is from other industries they have experienced.[200] Merely sharing because one wants to help, or has enough to share is a practice that reflects generosity, but not a norm: recall that the key is whether sanctions exist that back these norms. In this case though, sanctions for not sharing include disdain, shaming, exclusion and withholding. Consider the following exchange (in which two brewers were being interviewed at once):

> *Interviewee 1:* It's pretty amazing, like, the amount of openness. . . . [A] lot of people that come from outside the industry . . . from other—maybe . . . even, like, food science, . . . are just stunned at the amount of knowledge that just freely floats around where, yeah, you want to know exactly how I did that? Sweet. I will tell you.
>
> *Interviewee 2:* I think - I think that comes from us being generally good—good-natured and good-willed as a—as a brewing entity in the community. [I]t's just—it's open, . . .and you react to it by being open as well.

[197] Interview # 14. Even then, however, a brewer might describe another incompetent brewer in a roundabout way, as "less than awesome at the whole beer thing," or "less good at beer."

[198] Interview # 1.

[199] HINDY, *supra* note 13, at 18–19. This attitude is echoed in Interview #16, when describing the disciplining effect of fearing disapproval on social media: "The beer bloggers around are—generally very respectful and . . . *they don't really say anything bad*, but—there always can be. . . . [shrugs] And . . . you don't wanna be the first one."

[200] Interviews # 5, 8, 9.

> *Interviewee 1:* Um, and it's very off-putting when people are not, and you're usually kind of like, what's wrong with them? *[Laughter]*
>
> *Interviewer:* That's interesting. Would it make you less likely to share something with them in the future?
>
> *Interviewee 1:* Potentially.
>
> *Interviewee 2:* Usually if they're not open with you, there's – there's no exchange at all.[201]

The brewers find it unsettling when brewers do not share because it departs from community expectations and signals extraction rather than sharing. Big Beer takes; craft beer shares.[202] In some cases, brewers may find themselves subjected to mockery for refusing to participate in the open exchange of informational resources. In some cases, informational resources will be withheld in the future. Note that this brewer indicates that sharing is a precondition. If he has reason to believe the one seeking information will not reciprocate, he will refuse the request from the start.

3. *The Anti-Law Norm: Avoid Formal Law When Possible*

A strong norm urges against using legal tools first if one uses them at all. There are myriad legal issues brewers face with respect to incorporation, zoning, liquor sales and service, and taxation, and those are run-of-the-mill business issues. The norm discussed here pertains to partnerships and ownership and IP-related rights, not the everyday legal issues brewers cannot avoid. There is an uneven level of knowledge in the industry about IP rights that may by default make a practice of not registering rights or rarely enforcing them.[203] Sometimes brewers sound defeated, sheepish, or reluctant when stating they would enforce their rights under certain circumstances. It seems to go against the community's grain to some extent to stake out ownership rights and then defend them through law. In the words of one brewer: "Craft brewing's all about little guys versus big guys, and enforcing

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[201] Interview # 4.

[202] This is a striking theme in many interviews that discuss allowing visitors or apprentices to tour or visit during a brewing day: craft brewers embrace the mission, reminiscent of the guild era, of passing on knowledge. When they describe Big Beer, however, they describe companies that spy, or send agents to get the lay of the land. Interview # 12, for instance, describes a visit from a macrobrewer shortly before that entity bought and converted a local craft brewery. The macrobrewer came in and made themselves known but seemed to be casing the joint rather than interacting collegially.

[203] Of course, those that register IP rights will likely have a bias towards enforcing them, and sometimes display what seems like a sense of obligation to enforce when I tweak a fact pattern to make a hypothetical trademark similar to theirs suddenly closer to their market. *See, e.g*, Interview # 16: "Well then we would have to [enforce], yeah."

trademark law is kind of a big guy thing."[204] All brewers I interviewed state that they would generally try to resolve a possible infringement scenario with a friendly call first. More than one interviewee suggests turning the moment of potential conflict into a moment of cooperation. As one explains, "[i]deally, it would turn into a collaboration—an east coast, west coast collaboration."[205] A powerful example was set nationally and much discussed in the craft brewing community, when two breweries, Avery Brewing, and Russian River Brewing, decided that rather than fight over the name "Salvation," in connection with their Belgian beer, they would blend their Salvation beers and produce "Collaboration Not Litigation Ale."[206]

Beyond ownership, there is a certain reluctance to use law during collaborations too, even though, in the eyes of lawyers, many collaborative practices among brewers may rise to the level of joint ventures, the kind of partnerships that law usually has a hand in shaping and governing.[207]

> I think especially with the brewers—if we're collaborating with brewers in the area— . . . there's—it's almost—I mean, brewing's almost old school in that certain way—where it's just a handshake. . . . And just because reputation means so much in the brewing industry and—if you start doing something sketchy, then people will know and . . . ignore you.[208]

A handshake matters and it is backed by the knowledge that reputational risk disciplines industry participants, as do sanctions like being ignored. Note that the interviewee above qualifies her claim: it pertains to collaborations with brewers in the area. Others similarly qualify those with whom they would engage in "handshakey" collaborations.[209]

4. *The In-Group Membership Meta-Norm: Police Group Boundaries*

This norm operates as a strong meta-norm to delimit the boundaries of the craft brewing community and distinguish friend from enemy, in-group from out-group. By meta-norm, I mean that it dictates whether to operate in friendly

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[204] Interview # 14.

[205] Interview # 22. Interview # 3 also mentions that the ideal outcome would be for two competitors to arrive at a collaboration as compromise.

[206] *Collaboration not Litigation Ale*, AVERY BREWING CO., https://www.averybrewing.com/beers/collaboration-not-litigation-ale.

[207] Here the brewers' preference for informal rather than formal relations recalls the pioneering work of Lisa Bernstein. *See Opting Out of the Legal System: Extralegal Contractual Relations in the Diamond Industry*, 21 J. LEGAL STUD. 115 (1992).

[208] Interview # 7.

[209] Interview # 14 (noting that a brewery from Oregon whose beer he knew would likely given him enough faith to pursue a collaboration even without a personal connection); Interview # 22 (noting that a larger brewer would likely require more than a handshake).

"rising-tide-lifts-all-boats" mode or not. As discussed in further detail in the next Part, norms in Seattle's craft brewing community are bi-modal, and many brewers may operate by different norms depending on the identity of the party with whom they are dealing.

In some cases the norm was, loosely: do not collaborate with the enemy. For instance, one brewer interviewed stated that they would not partner with Big Beer even though that would give their brand a boost and make them more visible.

> [W]e've had a couple opportunities to collaborate with some of the larger breweries, but we've—just based on kind of the principle thing—we have not . . . [but it] would've been . . . part of me is kinda sad about it, but it's almost like a reputation thing where I can't support somebody whose company is actively getting tagged by Washington State Liquor Control Board for pay to play, things like that.[210]

The reference to "pay for play" refers to a violation of liquor laws despite undue influence (paying to monopolize distribution channels, in brief).[211] (The brewer declined to state the entity at first, in keeping with the "speak no evil" norm; my reminder of anonymity caused him to reveal the name to me immediately). Moments later, he states wistfully that he might have enjoyed the opportunity ("it'd be a big boost for us in terms of visibility"), but he just cannot bring himself to do it. He cites both the reputational harm associated with partnering with Big Beer, and the principle of the thing based on his own values about the shady use of "pay to play."

His expressions grow even more nuanced when he is given a hypothetical in which Elysian Brewing Co—again, the Seattle-brewery purchased by AB InBev—is in the picture: Big Beer as an abstraction is easier to avoid than the particular instance of it embodied by Elysian. The people who work there, whom he knew before the sale and some of whom wound up there after the change of ownership are fellow travelers in the industry.

> So again, I really like the brewers. . . . They're all still really good guys—but—I have no desire to support financially *that*—I've known the [brewers at Elysian] for a while, and they're great guys, but—I still can't support the business practices that the corporate entity supports . . . whether knowingly or not . . . they kind of—[the employees] still enable it. . . . They're there.[212]

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[210] Interview # 20.

[211] Kendall Jones, *Anheuser Busch Gets Fine for Liquor Violations in Seattle*, WASH. BEER BLOG (May 17, 2016), http://www.washingtonbeerblog.com/anheuser-busch-gets-fine-for-liquor-law-violations-seattle/; Scott Pelton, *AB InBev Fined $150,000 for Illegal Tied-House in Seattle*, TAP TRAIL, http://www.taptrail.com/ab-inbev-fined-150000-for-illegal-tied-house-in-seattle/ (last visited Sept. 28, 2018) (reporting that "AB InBev has been fined $150,000 for running an illegal exclusivity deal with Seattle's Showbox Sodo.").

[212] Interview # 20. Note that the Elysian Head Brewer stayed on after the sale to ABIn

He struggles to keep a positive light trained on his friends and in the unedited version he emphasizes a few more times that they are really good guys. Still, by the end of his statement he has reluctantly confessed that merely by being there, being employed by Big Beer, these "good guys" are tainted somehow. Their remaining there suggests acquiescence and perhaps moral culpability for the values shaping Elysian's culture today. With a quick pair of follow-up questions, he confirms where he stands:

> *Interviewer:* "Would you buy their beer?"
>
> *Interviewee:* "Um, no."
>
> *Interviewer:* "Okay, would you drink if somebody came to you with it… and it was free?"
>
> *Interviewee:* "Yep… I'll drink it, but I'll never buy it on my own." [213]

The problem is not with the beer or with the people, it's with the corporate entity, the practices it uses and that its employees implicitly endorse, and the harm associated with other people knowing you are doing business with Big Beer. The fear of reputational sanctions makes this a norm of exclusion, with an added layer of moral valence that may strengthen adherence to the norm.

The norms also reflect brewers' relationship to the local community. Another brewer echoes this concern, noting that his brewery would collaborate and has already collaborated with Elysian or Red Hook, two formerly craft breweries. Yet those collaborations exist because the companies have local people whom he knows, and the companies themselves are local. Asked about the taproom that Lagunitas, a California former-craft brewery, had recently opened in Seattle, he says he would not visit it or work with them: "Just because they've opened a location here doesn't make them a local brand. . . . They employ a few people in their taproom here, but . . . . That's all they're doing. It changes the calculus, definitely . . . I personally don't buy Elysian beer anymore, and I try to avoid A/B [AB InBev] brands where possible."[214]

The justifications for this meta-norm vary. Put informally, they go something like this: Big Beer is a corporate giant focused on profits, Big Beer cuts corners on quality in their brewing, or Big Beer is anticompetitive and plays by rules our kind cannot support. At times, interviewees provide an initial answer almost as if by reflex, a form of pro-craft anti-Big Beer jingoism. But subsequent questioning in such cases typically reveal that interviewees had a welter of details and experiences

Bev. In their answers, many interviewees noted the personal connections they had with him in particular, or with others still employed there. It would be reasonable to speculate that the reactions against Elysian would be even more harsh if no personnel had remained from the craft era.

[213] *Id.*

[214] Interview # 13.

to support their position, including industry knowledge about distribution channels, corporate strategies, and brewing methods; secondhand knowledge of employee conditions; and perhaps experience as a consumer drinking the beer in question before they found (craft beer's) religion. The position, in other words, reflects a complex combination of beliefs and knowledge. The strength of the conviction varied too, and it dictated an array of different behaviors.

IV. MAKING SENSE OF CRAFT BREWING'S NORMS AND PRACTICES

This Part first describes the operation of a bimodal norms system, which sorts actions and norm selection along party lines. While this bimodal norms system does not reflect the views of all interviewees, it is broadly representative of them.[215] The bimodal norms system, in turn, shapes various creative and business practices as well as playing a role in creating and enforcing legal rights. Next, this Part turns to coopetition theory, a concept borrowed from organizational theory literature, where it helps explain why firms (or entities) might cooperate even when economics might otherwise predict that they would instead only compete.[216] Seattle's craft brewing scene lends credence to theories of coopetition and its role in the development of emerging markets. Craft brewing offers evidence of a market (well beyond the world of this study) that continues to embrace coopetition even after the market's initial emergence would seem complete. Part V concludes that coopetition's continued salience highlights cultural and ideological commitments among craft brewers that support innovation and increase collaboration.

A. The Bimodal Norms System

The majority of interviewees tended to think bimodally about their interests and rights based on group membership lines.[217] If that tendency were found to apply more broadly, significant legal implications would attach to in-group status since enforcement of legal rights would track identity rather than the merits of a given claim, at least in terms of how the dispute was initially handled. Consequently, the norms and meta norms identified in the study indicate

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[215] *See supra* note 183.

[216] Mathias et al, *supra* note 59, at 2.

[217] Of 22 interviewees, only three answered that they would behave the same towards group insiders and outsiders in possible legal skirmishes. In the case of one, the interviewee was an extremely recent entrant from an adjoining professional field, but unfamiliar with craft brewing culture, thus giving some reason to discount this part of their answer. One view was that selling one's brewery should not be held against one so long as the beer remained good, but it was not representative of the others in this sample. "People wanna retire someday. I don't hold anything against [Lagunitas for selling half its company to Big Beer] . . . I still think they make really good beer. Until the beer—I don't enjoy it anymore, I'll buy it."

important potential connections between innovation, identity, legal rights, and enforcement of those rights.

For many craft brewers, the meta-norm to police group boundaries informs the rest of the decisions they make about sharing, ownership, and litigation. This is why it may be better thought of as a metanorm that shapes the application of the general norms. While one or two of my interviewees did not strongly differentiate between craft brewers and Big Beer (just one of the 22 formally interviewed said they still happily buy Elysian beer), the overwhelming majority use language that signals antipathy to what Big Beer represents. When I ask brewers to consider various hypothetical circumstances, most interviewees change their answers depending on whether the action involved a craft brewer or a large brewer. In fact, some even differentiated between small, local craft brewers (who received the most solicitude).

1. The Departing Employee Scenario

I asked brewers to reflect on their relationship to a close employee, such as a head brewer, and then to imagine that the brewer left to accept employment elsewhere. I asked brewers what expectations they would have regarding recipes, secrets, company information, and so on.

> *Interviewer:* How would you feel . . . if your brewer left and took the recipe or their knowledge of how [Brewery Name redacted] is making its beer, and either started repeating—
>
> *Interviewee [interrupting]:* I think that's just part of the game. That's just part of everything. Brewers leave.
>
> *Interviewer:* Yeah?
>
> *Interviewee:* Yeah . . . [*nodding towards the brewing equipment where the head brewer is working*] I imagine, off the record, him leaving within the next four to five years to start his own brewery somewhere. You know? And is that, is that worth it with the capital investment? Is it worth it with a reputation investment? I mean, you're going to be suing another, another brewery? You could—you could easily say, you know, there—he's—that's our recipe, but then you kinda think about the effort you're gonna have to go in just to—what are you gonna do, sue him? Are you gonna sue him? Are you gonna take him to court? So I—I think, I don't—like, I wouldn't even think about doing that. You know? Just because . . . I think how microbreweries think of themselves as they're part of a team that's not—we're not the enemy.[218]

The interviewee is dismissive at first: "brewers leave," it's part of how the industry progresses, and even if it were not, the investment in litigating the issue would not be worth it. His voice rises in disbelief, "suing another . . . brewery??" His refrain

[218] Interview # 3.

of "are you gonna sue him" suggests just how implausible and unappealing that sounds to him. He conveys his disbelief with a "team" metaphor, united against a common enemy. Then I change the hypothetical.

> *Interviewer:* What if your brewer left and didn't go to like another microbrewer, though? What if they went and set up in like Elysian?
>
> *Interviewee:* I'd sue the shit out of them.[219]

He does not miss a beat and there are no extra words, repeated clauses, or questions: Interviewee #3 knows what he would do—or at least, he is clear on what he will state that he will do. Whereas a norm against using legal tools causes hesitation in the first hypothetical, in the second instance he has no compunctions, and he now expresses solidarity with craft brewers by showing that he would not let behavior like this go unpunished.

2. *Trademark Infringement Scenario*

I asked interviewees to imagine that they have a registered trademark when they discover that a microbrewer on the other side of the country is using a very similar mark. In the excerpt described below, the interviewee had very recently discovered two such uses with respect to his "Rainfall Lager."[220] Both uses were plausibly infringing (in both his and my opinion). He revealed that he had been mulling over what action to take in response to both. The first is a tiny brewery operating in three counties in the Midwest; the second is a nationally dominant but still independent craft brewery. The interviewee begins by saying he'd start with a call to the brewer if possible, keeping in mind the volume and reach of the other brewer's business. He states that it might be hard to get the owner or lawyer on the line if attempting to reach the very large craft brewer, which might cause him to send a letter instead. He works through the considerations that would shape his decision:

> [I]f they're makin' [small amounts] at a time—you know, whatever, like, a few kegs get sold in some city in Illinois, it's not really affecting my mark. If Brooklyn Brewing,[221] who's a national brand, wants to ship a keg of Rainfall to Seattle, then they are, you know, not just, like, using my trademark. They're *using my trademark in my own market*. . . . It's like I don't wanna be asshole-ish about it, but, you know, c'mon, guys. So I'm probably gonna have to write them a nasty-gram. . . . Or it could turn out they're absolute

[219] *Id.*

[220] Names are changed to protect anonymity.

[221] Brooklyn Brewing was selected to stand in for the larger craft brewery mentioned in the interview because both are large, well-established, and very well-respected craft breweries that operate on a national scale.

> assholes and they're like . . . 'Well, you know, we're big, and you're small, and prepare for litigation you can't afford.' So.[222]

He is seeking a reasonable position and emphasizes that using a federally registered mark in the same business and very market of its owner crosses a line. Yet using law to enforce trademark rights is something to apologize for: "I don't wanna be asshole-ish." At the same time, the brewer displays impatience ("c'mon guys") with breweries not bothering to run trademark searches or ignoring search results, given that he owns a federally registered mark in the name "Rainfall" for beer. Size of the brewery plays a role in the calculus and stimulates fear of unevenly matched resources. His concern is that this national craft brewer might have more legal capacity, might be unfriendly and—in contravention of the norm against legal tools—actually use it to the fullest extent. His reflective answer shows he is considering many variables. And then I change the hypothetical.

> *Interviewer:* What if it were Anheuser-Busch?
>
> *Interviewee:* Oh, god. I'd sue them immediately. *[Laughter]*
>
> *Interviewer:* Can you say why?
>
> *Interviewee: [Shaking his head]* Fuck those guys . . . there's a camaraderie, like I said, which I think is a better term than brotherhood. Right? Like, it's—just—within the industry,—we're all in this together—so if Elysian had started releasing Rainfall, I'd rain as much fire as I could afford upon them.[223]

His answer reflects the way the bimodal norm system sorts actions almost reflexively, as though it is principle, rather than a calculus of costs and benefits, that drives the decision. It may be a matter of common sense that plaintiffs are likelier to pursue defendants with more resources (the phrase "deep pockets" is a common trope in discussions of litigation strategy). But the language above does not emphasize getting much more bang for the litigation buck, nor does it center on reward to the plaintiff. Instead, "raining fire" is a metaphor of punishment, not of reward and extraction. He does not say, "I'd take them for all they are worth," for example. Instead, his rhetoric signals a desire to make Big Beer suffer. Since we are talking about the same trademark behavior and have simply changed the defendant, the imagined harm is not necessarily different, so the issue is not compensatory, it's punitive.

His response poses a problem commonly encountered in empirical research, which is the possible tension between revealed and actual preferences (that is, the difference between what one would actually do and what one reports that one would do). On some level, it is impossible, without further investigation, to discover whether the rhetoric interviewees use to describe their imagined responses

[222] Interview # 14.

[223] *Id.*

to hypothetical scenarios is predictive, or mere bluster.[224] Providing this response could simply be towing the "party line," a signaling mechanism that reaffirms the speaker's identity and values for the listener (and thus subject to both reporting and credibility issues). If punishing Big Beer *is* the party line, however, it is still revealing, it merely conveys different information. Consider this analogy involving a child who is regularly bullied on the school playground. If, when asked what he will do next time, he says, "I'm gonna punch him in the face and make him wish he never picked a fight with me in front of all my friends!" then I might reasonably suspect he is speaking wishfully rather than accurately. He may be exaggerating his courage or his punching skills or both. Nonetheless, for the purposes of qualitative research, he is speaking volumes about what he wishes for, what matters to him, and how he feels. In that spirit, the rhetoric interviewees use when they evoke bimodal norms suggests the existence of a system that reinforces group membership lines and reaffirms a commitment to the clear underdog. Bimodal norms may also reflect a system of beliefs and unstated assumptions, as when a brewer faced with a hypothetical trademark infringement by a craft brewer describes a response that would be measured: "Oh, they're not intending to [infringe my mark], and we can work it out."[225] But his immediate follow-up clarifies a different starting point with Big Beer: "Whereas InBev, I assume they're evil."[226]

At a minimum, the bimodal norms system carries important expressive value and it suggests that identity plays an important role in evaluating the strength and availability of legal rights in practice. Further work could explore bimodal norms in the context of collaborations because those are visible and sometimes require craft brewers to make their underlying commitments explicit.

B. Coopetition and Belonging

Coopetition refers to a theory of market relations drawn from organizational studies that seeks to explain "why organizations simultaneously compete and cooperate with each other."[227] In some sense, the question is only a genuine question within the logic of the market; even small children know at an early age that cooperating and being helpful can feel good and make work easier, thus potentially providing its own incentives. But within a market orientation where the primary pressure is profit-oriented and competition the means to an end, cooperation seems antithetical. Coopetition, therefore, posits that under

[224] A separate problem was that for a few newer or smaller-scale brewers, these hypotheticals failed to get much purchase because interviewees could not imagine being copied (and thus, exploited through free riding).

[225] Interview # 5.

[226] *Id.*

[227] Mathias et al., *supra* note 59, at 2.

certain circumstances competitors are better off helping each other, thus ensuring higher market quality and, perhaps, increasing their market position against a larger, dominant player.[228] Earlier theories had understood such behavior narrowly in terms of strategic alliances, or perhaps joint ventures, but not in a way that considered the effect of engaging broadly in both cooperative and competitive relations at the same time.[229] Coopetition thus provided a way to reconcile behavior that was both strategic and rational even though it appeared at first glance not to be. However, early theories of coopetition lacked an understanding of why such behavior would be more than temporary. It was understood, in other words, in terms of a dynamic need such as might be present in an emerging market or other conditions of necessity and transition.[230] As a market matured, the theory went, the economic rationality of remaining cooperative ceased, and the imperative to compete surged back into primary position.[231]

Organizational studies scholars have recently expanded and updated coopetition theory through qualitative research that used the craft brewing industry as a case study. They picked craft brewing primarily because of its reputation for continued coopetition even though the once-emerging market now seems established, if still evolving.[232] The authors found that a strong component of coopetition was not economic, but identity-driven, and constitutive of group identity:

> [B]eing helpful and cooperative was not just something craft brewers did, but a crucial element of what it meant (and continues to mean) to be a craft brewery. This strong collective identity, which emerged in ideological opposition to incumbent mega-breweries and mass-production, led to cooperation on a variety of fronts.[233]

Craft brewing's cohesion is cultural but it is also ideological and economically oriented as well. The group achieves a distinct identity and authenticity through shared attributes that stand in opposition to a dominant player or culture, in this case Big Beer.[234] All this is to say, craft brewing is a paradigmatic example of sustained coopetition. Coopetition helps account for "the rising tide effect" among Seattle's craft brewers, that is, the ways in which craft brewers demonstrate their commitment to resource-sharing and collegiality within group boundaries, all while bolstering their collective identity as a force for Big Beer to take seriously.

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[228] *See generally* Maria Bengtsson & Sören Kock, *"Coopetition" in Business Networks—to Cooperate and Compete Simultaneously*, 29 INDUS. MARKETING MGMT. 411 (2000).

[229] *Id.*

[230] Mathias et al., *supra* note 59, at 2.

[231] *Id.*

[232] *Id.* at 5.

[233] *Id.* at 12.

[234] *Id.* at 3–4.

Coopetition theory, as understood in not just economic but identity terms, provides one way of understanding the relationship between innovation and belonging. Even though coopetitive-competitors, well, *compete*, they belong to something larger than that and they unify their efforts in that spirit. The industry's main trade organization, the Brewers' Association, centrally coordinates craft brewers and thus serves as the institutional agent responsible for instantiating some of this coopetition and belonging. It does so very effectively, through an active web presence and through rhetoric and political action that define and strengthen craft brewing's collective identity. The role of a central trade organization such as this one, and its impact on innovation, have not received much treatment in the IP and innovation literature, but it merits further study. Most recently, the Brewers' Association formally turned to IP to provide a means of demarcating the boundaries of craft brewing's belonging more clearly. In July 2017, it issued a seal to be used exclusively by its members as a certification mark of belonging.[235] With this move, it linked collective identity to the formal rules of the federal trademark regime and it strengthened its role as the central arbiter of craft brewing identity. There may be reason to consider this development with concern, lest it play an anticompetitive role[236] rather than an authenticating role.[237] It is difficult to assess its impact now, just one year after the rollout.[238] As of February 2018, 3,000-some brewers had adopted the seal, or over half of the nation's craft brewers.[239] The Brewers' Association has recently released marketing data that suggests that the seal may matter to consumers, and thus for trademark law: 90% of consumers surveyed "showed interest" in the seal and what it represented,[240] and the seal

[235] Kyle Kastranec, *Craft Beer Enters the Upside Down – A Design Analysis*, GOOD BEER HUNTING (July 5, 2017), http://goodbeerhunting.com/blog/2017/7/5/craft-beer-enters-the-upside-down-a-design-analysis-of-the-new-ba-indie-logo.

[236] Jeanne C. Fromer, *The Unregulated Certification Mark(et)*, 69 STAN. L. REV. 121, 196 (2017).

[237] Margaret Chon, *Marks of Rectitude*, 77 FORDHAM L. REV. 2311, 2315 (2009).

[238] Most of my interviewees did not have the opportunity to weigh in about it. Less than one year later, about 3,000 breweries reportedly have adopted the seal. Chris Crowell, *Independent Craft Brewers Seal Now Adopted by 3,000 Breweries*, CRAFT BREWING BUS. (Feb. 26, 2018), https://www.craftbrewingbusiness.com/news/independent-craft-brewers-seal-now-adopted-by-3000-breweries/.

[239] *Id.* As of July 31, 2018, the number is closer to 3,635. *Independent Craft Brewer Seal*, BREWERS ASS'N, https://www.brewersassociation.org/business-tools/marketing-advertising/independent-craft-brewer-seal/ (last visited Sept. 28, 2018).

[240] Julia Herz, *The Seal Distinguishes Small and Independent Craft Brands for Beer Lovers*, BREWERS ASS'N (June 13, 2018), https://www.brewersassociation.org/communicating-craft/the-seal-distinguishes-small-and-independent-craft-brands-for-beer-lovers/ ("Additionally, beer drinkers who have been exposed to the seal demonstrated a 24-point lift and 77 percent increase in being more likely to prioritize beer from independent breweries.").

drives sales and increases purchase size.[241] This data should be evaluated in light of the organization's promulgation of the seal in the first place and its vested interest in its use by independent brewers. However, additional data supports the conclusion that the label may be more important than taste in at least some cases, perhaps with respect to a significant market segment, given that independent audits show that 70% of consumers choose their beer at the point of purchase.[242] The "independent" certification mark emblematizes the importance of belonging to a particular kind of community united by certain values. Its use in the craft brewing industry calls for greater attention to the role a central trade association plays in shaping the market, and the culture, of innovative industries.

Beyond the role that belonging plays in fostering creativity, it deserves deeper consideration in craft brewing for the ways it operates through the bimodal norms system and through other informal arrangements such as collaboration beers, name-sharing, and knowledge-sharing. Belonging also matters deeply to job satisfaction. Interviewees speak of the satisfaction derived from watching people in their taprooms enjoy their beer and of the joy they experience in creating community through beer. They speak passionately about certain personal and community values having to do with creativity, science, ownership, innovation, consumer demand, and knowledge-sharing. And nearly unanimously they talk about the importance of belonging to a community they believe in, as distinct from being elsewhere in the industry.

Translated into IP terms and drawing on work by Professor Betsy Rosenblatt, we might say that they identify personhood interests as central to their craft.

> Human flourishing demands not only creation, but also the ability to connect with others to form communities of interest. These personhood interests are closely linked, since communities often develop around creative endeavors; people define themselves not only by what they make but by association with others who make similar things.[243]

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[241] *Independent Craft Brewer Seal POS for Retailers*, BREWERS ASS'N, https://www.brewersassociation.org/business-tools/selling-your-beer/independent-craft-brewer-seal-pos-retailers/?highlight=POS (last visited Sept. 28, 2018).

[242] Keith Gribbins, *A Reminder: 70% of Consumers Choose Their Beer at Time of Purchase (a 2017 Nielsen Update)*, CRAFT BREWING BUS. (May 30, 2017), https://www.craftbrewingbusiness.com/featured/reminder-70-consumers-choose-beer-time-purchase-2017-nielsen-update/ (stating some 70% of consumers choose their beer at time of purchase, according to Nielson's recent 2017 Craft Beer Category Design Audit, and that means the label is usually more important than the taste of the beer).

[243] Elizabeth L. Rosenblatt, *Intellectual Property's Negative Space Beyond the Utilitarian*, 3 FLA. ST. UNIV. L. REV. 441, 470–71 (2013); *see also* Kal Raustiala & Christopher Sprigman, *The Piracy Paradox: Innovation and Intellectual Property in Fashion Design*, 92 VA. L. REV. 1687, 1764 (2006).

If collaboration beers represent one of the highlights of craft beer's current era of consumer choice and brewer playfulness they also reflect the industry's celebration of the idea of belonging. In fact, some collaboration-based events undertake to pair brewers with others they might not know, precisely to cross-pollinate and build networks of new friendships. Many—perhaps most—interviews reflect the interconnectedness between creative production and community membership. Brewers express gratitude for how others have shared, and admiration for the skills and friendships of their fellow brewers.

Before launching this study, I had not anticipated how much brewers would emphasize the sense of human connection in their work and their belief that craft brewers were common kin. Nor was I aware of how personally the breweries have taken the wave of acquisitions that have affected the industry, including in Seattle, with AB InBev's purchase of Elysian. Describing the effect of that change, one interviewee sought to rationalize the choice to sell, wanting not to judge and citing the need for cash flow:

> I think it's hurting people's souls, . . . people feel betrayed. *[Laughter]* . . . there's a lot of investment companies who are buying breweries right now, but these breweries need cash flow. How do you fault anyone for trying to improve their business? I mean, you really can't. You can't be judgmental about that kind of thing. But when it comes to, yeah, the AB InBev acquisitions and [unfair pricing and] the other stuff . . . it's just the folks that you were hanging out and having beers with, you know, suddenly, they're being associated with mobsters—and bean counters kind of like, where does that leave us, man?. . . like, we were buds, and now you're the man—so I think it's—this industry where people do this because they love it, and now your - your - your psyche is being *[laughter]* hurt by what's going on.[244]

Despite the effort to contextualize the sale to AB InBev, the interviewee cannot help revealing judgment for the decision to associate with "mobsters" (referring to pay-for-play and other unfair trade practices) and "bean counters" (referring to the perception that once a brewery is acquired craft brewers who are told they will be allowed to continue just as before will find themselves accountable to business-oriented, not beer-oriented, constraints). The impact of this change causes pain to "people's souls" and "your" (she stutters here) "your *psyche*," a kind of betrayal by former "buds" that causes the speaker a pained laugh.

Dick Cantwell (former owner of Elysian, mentioned above in connection with his reluctant participation in the sale to AB InBev) neither blames the "hate tourists" who protest onsite through spilling Elysian beer nor finds their behavior sociopathic. According to Cantwell, they are simply expressing the same sentiment as this interviewee: "People in that community were just wounded . . . . They felt

[244] Interview # 6.

betrayed and sad."[245] In other words, the issue is not merely one of boundaries drawn by contract or by boundaries set by a trade organization. It goes deeper than that. It is an issue of belonging, and it defies or would be overlooked by the standard IP account. Yet this kind of belonging can be central to motivating and advancing innovation and it is properly considered as part of scholarly considerations of IP and creativity. Rosenblatt has shown that a sense of belonging can foster innovation, and these interviews suggest that it deserves serious consideration in the study of creative ecosystems and their practices and norms.[246]

In sum, there are sociological, psychological, economic, and legal reasons for which group membership and membership in the industry's trade organization needs to be more fully understood. Interviews provide evidence of myriad ways in which group membership facilitates innovation and may shape IP enforcement in Seattle's craft brewing industry. Quantitative research could be extremely valuable in testing enforcement actions taken (perhaps against those available in a given infringement setting). Quantitative analysis could also assess the impact of trademark congestion among beer names, building on the work of Jeanne Fromer and Barton Beebe.[247] As the Brewers' Association's certification mark in the form of the "independent" label approaches its second anniversary in July 2019, many quantitative questions could be asked and answered about its use. Qualitative empirical research helps launch a conversation about the kinds of questions that might be fruitful to pursue and the ways in which the rhetoric and the actions of craft brewers in Seattle might be investigated comparatively, or more broadly, through different approaches and frameworks.

CONCLUSION

Craft brewing's idealism and collaborative ethos align better with coopetition theories and norm-based governance than they do with traditional accounts of IP. It is my hope that these interviews offer compelling evidence of the value of seeking more nuanced, context-sensitive, and pluralistic accounts of innovation—accounts capable of capturing a broader range of incentives and values than the traditional model has done. Qualitative research is a good method in service of this goal because it "is a situated activity that locates the observer in the world" and, through "interpretive, material practices" attempts to "make the world visible."[248]

[245] Infante, *supra* note 81.

[246] *See* Elizabeth Rosenblatt, *Belonging as Intellectual Creation*, 82 MO. L. REV. 91, 117 (2017) ("[B]elonging motivates the creation of more and better stuff and promotes stable management regimes for how people use, copy, and attribute stuff within creative communities.").

[247] Barton Beebe & Jeanne C. Fromer, *Are We Running Out of Trademarks? An Empirical Study of Trademark Depletion and Congestion*, 131 HARV. L. REV. 945, 950–51 (2017).

[248] Norma K. Denzin & Yvonna S. Lincoln, *Introduction*, *in* THE SAGE HANDBOOK OF

Julie Cohen has written that "an account of artistic and intellectual creativity must situate creative practice within the material and spatial realities that shape and constrain it."[249] To capture these realities, it is necessary to rely less on abstract models and more on grounded research despite the time it takes to generate such research. While a love of beer, I cannot lie, may have served as partial inspiration at the start of this study, it is brewing, and really brewers, not beer, that sustained it.

Relatedly, it is imperative to move beyond a teleological focus on products, works, and outcomes to the conditions of production, the creative processes, and the relationships and lives of creators.[250] To expand on the sylvan metaphor used at the start of the article: a detailed close-up of trees, with all their nuance, is ultimately necessary, if not sufficient, for a robust, pluralistic understanding of the regulatory forest. And while we are at it, policymakers should want to know who walks in the forest, who tends to the trees, who enjoys climbing them, and whether lumberjacks and birdwatchers can coexist (peaceably, or perhaps efficiently) in the existing regime. Humans are, or ought to be, at the center of IP and innovation.[251] Qualitative empirical research of this kind serves these aspirations by giving voice to the members of (and those outside) an innovative community, speaking in their own words (albeit through the study's framing) about their cultural ideals, scientific and business norms, and philosophical values.

This case study of craft brewing in Seattle offers the opportunity for scholars to deepen our collective understanding of how belonging plays a role in innovation. Whether belonging is cast in legal, economic, or cultural terms, it may shape innovation meaningfully in ways researchers have only begun to study. More grounded research is needed to continue to map craft brewing's knowledge-sharing practices and norms, and I suspect that work will be most powerful when anchored in specific locales. Scholarship that studies norms as dynamic mechanisms that change over time and that may be market-sensitive and context-sensitive will be helpful, given the many factors—cultural, economic, scientific,

QUALITATIVE RESEARCH 1, 3 (2005).

[249] Julie E. Cohen, *Creativity and Culture in Copyright Theory*, 40 UC DAVIS L. REV. 1151, 1177 (2007).

[250] LAURA J. MURRAY ET AL., PUTTING INTELLECTUAL PROPERTY IN ITS PLACE 7 (2014) ("We wish also to recognize outcomes or products beyond cultural or intellectual property, such as community relationships, consolidation of professions, quality of life, and the education of [the] next generation[s].").

[251] I hasten to add that in endorsing a human-centered approach I am not suggesting that the forest's flora and fauna are irrelevant; a pluralistic approach to IP can account for IP's impact on and interdependence with non-human agents and domains and need not be extractive, either. It should also account for the fact that not all humans may experience the same kinds of privilege from the vantage point of intellectual property rights. *See, e.g.*, Andrew Gilden, *Raw Materials and the Creative Process*, 104 GEO L.J. 355, 357 (2016).

psychological, and philosophical—that shape contemporary craft brewing. As innovations continue to reshape the distribution and business of craft brewing, its culture and norms may change considerably. More work is also needed to develop a fuller picture of interfirm behaviors and overall market dynamics. This need will become more pressing as craft brewing evaluates new models of funding and ownership.[252] To the extent that IP plays a significant role in this industry, it is worth understanding how it does so in the contexts of market structure as well as local knowledge-sharing ecosystems in which norms, relationships, and non-economic motivations may map better than law alone onto what craft brewers do, want, and need. I leave it to future thirsty researchers to build on this work by conducting qualitative empirical research in their own local craft brewing communities.

APPENDIX

I. PURPOSE AND METHODOLOGY

This study seeks to describe and understand the practices and norms of a subset of participants in Seattle's craft brewing industry.[253] It relies on qualitative empirical methods and a phenomenologically-oriented approach to interviewing. Qualitative empirical research can provide powerful insights into the lived experiences of a group or industry by giving voice to group members and looking for the ways their rhetoric and stories bring certain themes and subtexts to the surface. Perhaps most importantly, it provides a case study which contributes to the richness of scientific and scholarly inquiry and from which further work can be developed.[254] Those working in a larger context such as IP law, can then use these accounts as a means of reflecting particular case studies, for legal scholars and policymakers, on how law may align, or misalign, with the hopes and experiences of those whom the law purports to reward and incentivize.[255]

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[252] *See, e.g.*, Adam Lewis, *PE, Pints and PBR: Investors Pouring Money into Beer Industry*, PITCHBOOK (May 24, 2017), https://pitchbook.com/news/articles/pe-pints-and-pbr-investors-pouring-money-into-beer-industry; Peter Rowe, *Venture Offers Craft Breweries an Alternative to 'Selling Out to Big Beer*,*'* L.A. TIMES (May 4, 2016), http://www.latimes.com/business/la-fi-0504-truecraft-20160504-story.html.

[253] *See generally* MAX VAN MANEN, RESEARCHING LIVED EXPERIENCE: HUMAN SCIENCE FOR AN ACTION SENSITIVE PEDAGOGY (1990).

[254] Bent Flyvbjerg, *Five Misunderstandings About Case-Study Research*, 12 QUALITATIVE INQUIRY 219, 223 (2006) (noting that the social sciences would be impoverished without thoroughly executed case studies, and that while case studies can be used to generate hypotheses for further work, their utility is not limited to generating hypotheses).

[255] For sophisticated examples of this work, see generally: MARTA ILJADICA, COPYRIGHT BEYOND LAW: REGULATING CREATIVITY IN THE GRAFFITI SUBCULTURE (2016); LAURA J. MURRAY ET AL., PUTTING INTELLECTUAL PROPERTY IN ITS PLACE (2014); JESSICA SILBEY, THE

A. Summary of the Study's Methods and Purpose

This Part summarizes how I determined how to define the population to be studied, how many interviews to conduct within that population, how to select interviewees, what to ask them, and what I did with my interview data. It also points to the data gathering I did beyond conducting formal interviews. It highlights a few areas in which emergent issues reshaped my methodological choices. For reasons of economy, feasibility, and depth of existing community, I chose to study craft brewers located within Seattle's city limits. At times this seemed an unnatural constraint because informal knowledge transfers and, friendships and formal collaborations all crossed city lines. Still, attempting to capture all or most of the nearly 150 brewers in Seattle's greater metropolitan area would have been impractical and would have limited the kind of study I could do. Moreover, certain Seattle-specific concerns exist that helped confirm that this boundary made a certain sense. Following best practices in qualitative empirical research methodology, I decided I would aim for 20-25 interviews, and to date, I have conducted 22. I used a combination of methods to select interviewees, relying on alphabetical order, luck, snowball sampling, and networking. I used a preset list of questions (my "research protocol"); gained approval to conduct research on human subjects (or technically, exemption from review) through my university's institutional review board process; and began with those preapproved questions.
I varied the questions to some extent by the identity and role of the interviewee because brewers and non-brewing owners had different experiences, which was true also of those charged with marketing, distribution, or sales for a brewery, or those who had worked in the industry but were no longer affiliated with one particular brewery. I allowed some questions to emerge dynamically in interviews, then posed some of those emergent questions in subsequent interviews. For instance, as I learned more about gender, market dynamics, and other sociological factors that shaped power relations, I began to ask more about those topics. I then interpreted—or coded—the professionally-transcribed interviews, forming patterns and seeking to understand and characterize those patterns. Finally, I also immersed myself in the community to the greatest extent possible, attending festivals, visiting breweries in Seattle and around the country even when off the interview clock, and regularly reading news and scholarship about the industry.

EUREKA MYTH: CREATORS, INNOVATORS, AND EVERYDAY INTELLECTUAL PROPERTY (2014). Silbey's work, in particular, provided the impetus for studying craft brewing in Seattle. Silbey's book demonstrates with nuance that there is a powerful misalignment between IP law, on the one hand, and everyday practice among those in the copyright and patent industries on the other hand. Her study focused on the Northeast and on two areas of law. This study began with a set of questions: would the misalignment Silbey demonstrated exist to the same extent in the Pacific Northwest? Could it be discerned in areas beyond copyright and patent, such as trademark and trade secret law? And would a study of a single industry capture the effects of any such misalignment, if so?

B. *Purpose of the Study*

The purpose of the study is to gain greater understanding of the lived experience of craft brewers in Seattle and to describe the way they make meaning of their lives and work.[256] It uses qualitative empirical methods, in part because of the nuance and information those can yield, and in part because the burgeoning empirical research literature in IP has largely been on quantitative, not qualitative research, and more of the latter is sorely needed.[257] Fieldwork—interviews and observation of creative and business communities in action—affords scholars an opportunity to understand what drives creators and thus what serves as incentives and rewards.[258] This fieldwork allows scholars to reveal "on-the-ground practices of a range of previously ignored creators and innovators" and, in so doing, to "challenge . . . intellectual property orthodoxy."[259] The orthodoxy of course, is the utilitarian one undergirding the "incentives theory" in IP, which flattens creative experience and renders an unrealistic picture of how and why creators create. Instead, fieldwork goes to the source for evidence:

> Short of living with and shadowing the inventors and artists, accounts from a cross section of diverse actors provide the most reliable evidence concerning purposes and interpretations of intellectual property for its producers. Given the choice between abstract theories based on hypothesized models of economics or organizational behavior and the experience of individuals in those organizations who make (or fail to make) a living from their creative or innovative work, lessons from experience are preferable.[260]

Lessons and stories from lived experience emerge vividly out of these extended conversations with brewers and others in the industry. With each one at 40-90 minutes, or anywhere from 50-90 pages of double-spaced transcribed interviews, the data that emerge from this set of conversations are plentiful and full of common themes and values. Contradictions exist too, and those help paint a picture of diversity and complexity in the craft brewing community.

The study does not test a causal hypothesis or *evaluate* behaviors or attitudes; instead it seeks to *understand* and *characterize* a group's way of representing its experiences. Instead of taxonomizing or seeking causal explanations qualitative

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[256] IRVING SEIDMAN, INTERVIEWING AS QUALITATIVE RESEARCH: A GUIDE OF RESEARCHERS IN EDUCATION AND THE SOCIAL SCIENCES (4th ed. 2013).

[257] SILBEY, *supra* note 255, at 287 ("[T]here is a growing body of quantitative empirical work in intellectual property scholarship providing data on the collection and assertion of intellectual property but very few qualitative studies of the experiences of creators and innovators, be they individuals or organizations.").

[258] *Id.* at 288.

[259] Darling & Perzanowski, *supra* note 30, at 2.

[260] SILBEY, *supra* note 255, at 288.

empirical research of this kind seeks to describe, understand, and interpret lived experience through stories.[261] In the words of one of the classic scholars in the field, "stories are a way of knowing."[262] Through interviews, people speak about their experiences in ways that offer rich narratives about the world and their place in it.[263] My approach borrows from phenomenology in its focus on lived experience and in its emphasis on uncovering meanings, essences, or qualities of the experience of the world, rather than demonstrating or rebutting empirical facts.[264] Using this kind of phenomenological approach, researchers "attempt to uncover and describe . . . the internal meaning structures of lived experience."[265]

> Phenomenology is, on the one hand, description of the lived-through quality of lived experience, and on the other hand, description of meaning *of the expressions* of lived experience. . . . [T]he first one is an immediate description of the lifeworld as lived whereas the second one is an intermediate (or a mediated) description of the lifeworld as expressed in symbolic form.[266]

The approach in this study thus asks interviewees to detail their daily lives, to share their attitudes about situations they know, and to react to situations they can imagine (or often scarcely imagine), as I put hypotheticals before them and ask them to weigh the sorts of actions they might take. Above all, it seeks information through the stories interviewees tell about their experiences, looking at symbolic meaning as one way to identify themes that unify and define Seattle's craft brewing scene when viewed through constructs that emerge from the perspectives of those within the scene itself.

Quantitative empirical research can provide measurement data and generalizable insights beyond the specific data collected and evaluated.[267] Experimental studies are, likewise, designed to provide insights that can be generalized both within and beyond the study.[268] Such methods are helpful when seeking to establish causation, test verifiable theories, or rule out alternative explanations and causes. Tools such as randomization, control groups, and quantifying evidence can help bring quantitative empirical research a kind of

[261] VAN MANEN, *supra* note 253, at 4.

[262] SEIDMAN, *supra* note 256, at 7.

[263] *Id.*

[264] VAN MANEN, *supra* note 253, at 10.

[265] *Id.*

[266] *Id.* at 25.

[267] *See generally* JASON OSBORNE, BEST PRACTICES IN QUANTITATIVE METHODS (2008).

[268] DONALD T. CAMPBELL & JULIAN C. STANLEY, EXPERIMENTAL AND QUASI-EXPERIMENTAL DESIGNS FOR RESEARCH 5 (1963) (discussing threats to internal and external validity).

positivist rigor associated with objectivity.[269] However, these methods work less well when seeking particular kinds of data, perhaps because the data are personalized or below the surface and thus not amenable to certain methods of collection. For instance, if seeking to understand "private and personal phenomena" in order to construct an account of how people experience life, it can be both helpful and necessary to relax the methodological restrictions of quantitative or empirical investigations; doing so is typically the only way to gather intimate, or open-ended, or first-hand accounts.[270] This starting premise is now known as "the qualitative research stance" and it assumes a different set of goals as well as correspondingly different methods to meet those goals.[271] Likewise, if seeking to construct an account of a community that embeds the perspectives of those in it, the most effective evidence will be found in the words and concepts of those in the study. Collection of such data may depend in the first instance on cultivating a genuine relationship with the researcher that enables interviewees to develop trust and comfort. In turn, the researcher's understanding of the perspectives of the speakers will also depend to some extent on the quality of that relational interaction. Quantitative research validity relates to data and methods; qualitative research validity relates to rigorous *accounts* of that data.[272]

Qualitative empirical research can be preliminarily understood through a framework noted empiricist Joseph Maxwell set out. Maxwell identifies three main types of validity: descriptive, interpretive, and theoretical.[273] In qualitative empirical work, in which data includes reliance on interviews, validity can be framed as a series of questions. *Descriptive validity* asks whether the researcher has accurately reported what she says she has.[274] As applied to this study, for example, did a brewer actually say that he changed his beer's name when a senior brewer stopped by and asked him to do so, given its similarity to the senior brewer's beer's name? Were the beer names in question accurately recorded and transcribed? Did the excerpt provided in the paper omit material details or edit the quoted language in a way that reduces its reliability or accuracy? Is the frequency with which names

[269] Denzin & Lincoln, *supra* note 248, at 8.

[270] ANDERSON ET AL., *supra* note 28, at 25 (discussing the data collection methods of William James, a forefather of modern psychology, and Abraham Maslow, a pioneer in moral psychology).

[271] *Id.*

[272] Joseph A. Maxwell, *Understanding and Validity in Qualitative Research*, 62 HARV. EDUC. REV. 279, 283 (1992) (reprinted).

[273] *Id.* at 279, 293–95. Maxwell lists five types of validity: the three described here, along with generalizability, and "evaluative validity," or what legal scholarship typically thinks of as normative judgment. Generalizability is typically not the aim of qualitative research, and evaluative validity simply refers to scholarship that describes its evidence in terms of whether it is normatively good or bad.

[274] *Id.* at 285.

get changed accurately recorded and reported? Descriptive validity concerns itself with reportage, in other words.[275] It is like quantitative work in being independently verifiable.[276]

Interpretive validity poses the question of what the interviewees may have meant by what they said. Understanding the meaning of the words requires interpreting within the framework of the interviewees, not imposing on them a set of constructs or interpretations that do not "fit."[277] For instance, if a craft brewer in Seattle changes his beer's name and reports that he did it to "avoid being a jerk" some interpretation will be required. Under these circumstances does his language suggest that he believed he was in the wrong and wanted to remedy the situation or that while he was not in the wrong, the cultural context would make him a "jerk" to dispute or refuse the request? Or is his choice not anomalous but a reflection of the preponderance of "jerks" around him? Similarly, if he reports that he changed the name "because he had no choice" interpreting this sense of necessity requires reference to the speaker's perspective and attitudes towards the alternatives available to him, though it also must be set into the context. Why did this seem to be the only course of action? The answers may lie partly in other things the particular brewer says but the larger framework around the speaker will also offer interpretive clues quite apart from what the language might seem to say if interpreted in a different context or if interpreted solely from the researcher's perspective rather than from the speaker's. Either way, interpretive validity relies on inference-drawing and it requires a reasonable demonstration of available evidence from which to draw inferences.[278] Qualitative empirical work diverges substantially from quantitative work with respect to interpretive validity because interpretations are rarely verifiable in an objective sense; they build authority and persuasiveness from their transparent and rigorous reliance on evidence. Interpretive accounts are always constructed but their construction can be careful or careless and accordingly more or less valid.

Finally, *theoretical validity* assesses the researcher's efforts to create a theory of the phenomenon or community under study. It poses the question of *why* the interviewees appear to feel and act as they do.[279] The theory will take concepts identified in the evidence and construct some sort of relationship among them.[280] The relationship might be causal, correlative, or explanatory in some other way.[281] If a brewer changes beer names he might do so for fear of legal sanctions, for fear

[275] *Id.* at 285–86.

[276] *Id.* at 288.

[277] *Id.* at 284.

[278] *Id.* at 289.

[279] *Id.*

[280] *Id.* at 291.

[281] *Id.*

of consumer confusion, or he may do so because of the internal sense that the rhetoric of collegiality in his community has a corresponding code of behavior, and belonging to the community means behaving a certain way or facing sanctions (that exist in addition to but apart from direct legal or business repercussions). Developing a theory of the data is subjective and iterative, but practices such as interpretive coding and drafting research memoranda can provide structure and accountability as researchers develop a "grounded theory."[282]

C. Defining and Sampling the Study's Population

Target Population. For qualitative empirical research studies based on interviews a key initial step is determining what population will most helpfully contribute evidence, that is, will serve as a primary data source. I defined the boundaries of the population I would interview based on pragmatic factors including cost, access, efficiency, and abundance of interviewees.[283] I knew I wanted to study craft beer in Washington State and before setting out I did not know precisely how many breweries existed here in Washington. At nearly 400 breweries, the number is daunting for anything more than a survey questionnaire, which could be sent out in a batch of communications and which would presumably not require travel, coordination, and time to meet each interviewee. Because I had not planned simply to send a survey—which would be feasible with that number—I had to rethink my target population. Even narrowing my sights to Seattle revealed that the greater Seattle metropolitan area was still too large a population, given the length and detail of the interviews to be conducted, and the number of breweries I would want to interview in orderto reach "saturation."[284] Roughly 55-60 breweries operate within Seattle proper's city limits,[285] and this provided a better study size for my purposes. While the concept of "city limits" provides a somewhat artificial boundary line, given that brewers on either side of it share a similar culture, are often in dialogue, and move fluidly back and forth over that line, it nonetheless provided a manageable outer boundary for my study. Speaking with breweries in Seattle reaffirmed my decision in certain respects because many "beer tourists" come to Seattle with the plan of exploring the close-in local breweries; the same is true of cruise tourists.[286] I also interviewed a handful

[282] KATHY CHARMAZ, CONSTRUCTING GROUNDED THEORY: A PRACTICAL GUIDE THROUGH QUALITATIVE ANALYSIS (2006).

[283] Peter Brown, *The Rise and Rise of Craft Beer*, SHORTLIST (2012), https://www.shortlist.com/food-drink/the-rise-and-rise-of-craft-beer/64885.

[284] Glenn A. Bowen, *Naturalistic Inquiry and the Saturation Concept: A Research Note*, 8 QUALITATIVE RES. 137, 139 (2008).

[285] *Breweries*, WASH. BEER, https://washingtonbeer.com/breweries/ (last visited Sept. 5, 2018).

[286] Interviews # 18, 21.

of brewers outside of Seattle's city limits, either because they qualified under rules I used to determine whom to interview (discussed *infra*) or because it seemed potentially of interest to hear whether just outside Seattle some different attitudes or constraints might exist.

Sampling Size, or Number of Interviewees. Most commonly, the methodology literature for qualitative empirical research states that no single number can be prescribed for all studies.[287] The "right" number of interviews depends on a study's goals and needs, to be calibrated relative to the researcher's capacity, methodology, and population.[288] To conduct an in-depth case study a single brewery or brewer could be interviewed multiple times, perhaps across a period of time. To conduct an ethnographic study, one might aim for upwards of 35 interviews. The heterogeneity of the population matters too. The more homogenous, the lower the number of interviews will likely need to be (some scholars advise 4-12, as against 12-30 for a heterogeneous population).[289] For semi-structured interviews, depending on their depth and whether or not one repeats interviews with the same interviewees, prescriptions may run from 5-25 interviews.[290] There are limits to all the approaches for determining how many participants to interview and potential concerns with how to select those to interview.[291] I interviewed people who met at least two of the three following criteria: (a) people who founded, owned, or were currently employed at craft breweries; (b) people who had verifiably been employed in the brewing industry in Seattle within the past few years; or (c) people who were mentioned as significant during interviews with people who met either (a) or (b). The population is relatively homogeneous and all selected had previously met at least two of three selection criteria, thus providing definitional structure for the group I would likely be interviewing. Ultimately, I decided to attempt to interview 20-25 of the breweries on the theory that reaching roughly half the breweries in operation was likely to achieve a reasonable level of data saturation and, that 30-40 hours of interviews were likely to provide a deep and detailed body of evidence.

Sampling Frame, or Selection of Interviewees. In order to determine whom to interview among those breweries that fit my basic criteria for inclusion, my research assistant and I made, cross-referenced, and ordered lists of local

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[287] Greg Guest et al., *How Many Interviews Are Enough? An Experiment with Data Saturation and Variability*, 18 FIELD METHODS 59, 61 (2006).

[288] Mark Mason, *Sample Size and Saturation in PhD Studies Using Qualitative Interviews* at 3–4, 11 FORUM: QUALITATIVE SOC. RES. (2010).

[289] Guest et al., *supra* note 287, at 62.

[290] *Id.*

[291] *See* Guest et al., *supra* note 287, at 64; Ray Galvin, *How Many Interviews Are Enough? Do Qualitative Interviews in Building Energy Consumption Research Produce Reliable Knowledge?* 3 (J. Building Engineering, Working Paper No. 2014B, 2015*)*; and Denzin & Lincoln, *supra* note 248, at 4.

breweries. Consistent with best practices in qualitative empirical research, no need for random sampling was present since there was no claim of statistical representativeness.[292] A non-probabilistic (or non-random) purposive sampling approach was used; that is, my interviewees were not randomly selected. Sampling purposively helps make research manageable, saves costs associated with research of this kind, and increases accuracy and efficiency.[293] I adopted several strategies minimize the bias of this "judgment sampling" that might skew the way I selected interviewees,.[294] First, I tried to minimize the impact of this not insignificant time demand on interviewees. One thing that helped was taking 18 months, thus minimizing scheduling constraints that might have prevented participation of certain of the busiest participants. I traveled to them and tried to fit interviews around brewers' working hours or needs and preferences. Second, I selected interviewees using multiple strategies, including access and diversity. With respect to access: my first two interviews were close to campus or in some way connected to the University of Washington, which made the interviewees more receptive to my request. This proximity should not be understated: interview requests like these are a form of cold calling, coming as a stranger to ask for a favor in the form of two or more hours of time in an industry where time means a great deal and most participants already work long hours. Also, for an industry with little confidence that law or lawyers do anything but spell trouble and increase expenses, coming from a law school was probably an additional barrier and getting interviews was, especially initially, a challenge. Another problem was that many brewers when speaking face to face would agree to meet, consistent with the rhetoric of collegiality in the field and the expressed desire to be helpful. But getting them to pin down a time for interviews was often much harder (consistent with the enormous demands on the time of brewers and owners in small breweries, and also in part due to scheduling constraints of my own that sometimes made finding mutually workable times difficult).

With respect to diversity, I used multiple channels of communication: I sent emails to a number of brewers, working down a spreadsheet in a particular order. (To specify the precise order selected might risk deanonymizing participants, but the order was followed for the first group of interviews.) Next, I attended brewers' festivals, introducing myself, leaving cards and letters explaining the contours of my project, and seeking cards and contact information. Typically, I followed up by email, and sometimes phone, brewery visits, or a combination of those. That yielded a number of additional interviews. Similarly, as noted below at page 57, I attended an industry organization meeting that enabled introductions and

[292] Maxwell, *supra* note 272, at 293.

[293] Bowen, *supra* note 284.

[294] Martin N. Marshall, *Sampling for Qualitative Research*, 13 FAM. PRAC. 522, 524–25 (1996).

facilitated further interviews. I regularly visited breweries and left information about my study along with an invitation to be in contact, though that approach had a lower conversion rate. Finally, I spoke with people in the industry (some of whom I had interviewed) and requested introductions. Many brewers generously introduced me to others in the industry or in other ways provided leads that would help me establish a connection. As might be supposed, this network-based approach was the most successful one for gaining the trust—and earning the time—of interviewees.

Sampling Bias. As my list of interviewees grew, I continually cross-checked it for things like size of brewery, seniority in the field, geographic location in the city, and identity of owner (by gender, race, and ethnicity), and I attempted to create a balance within the constraints of the population. This combination of approaches meant that while I sought out particular brewers within the study's population, some amount of order, industry prominence and participation, and serendipity all contributed to the final list of interviewees. After a number of interviews had been with men only, for instance, I went in search of women in the industry. Ultimately, I interviewed a number of women, who did not all have the same perspective on the industry, but who affirmed that it was often difficult for women to break into brewing—for reasons both physical and sociological.

In terms of brewery size, I interviewed three of the largest breweries and three with a claim to being the smallest breweries; as for individual time in the industry I interviewed people with 15 or more years of experience in the field, people with three to five years' experience, and one with five months' experience. I interviewed breweries and brewpubs with claims to being the oldest and newest (or close to those superlatives, I'll say, to preserve anonymity). I spoke with brewers about race and ethnicity and three or so of my interviewees were of color, as far as I was aware or as far as was discussed. We discussed racial bias, but ultimately it seemed like a lower priority to report on for brewers (even those of color) than gender, size of brewery, and other forms of hierarchy in the field. With this cross-checking, I was seeking to neutralize biases as much as I could. It is worth noting here that minimizing bias is consistent with qualitative research best practices and indeed, can allow researchers to test their developing theories by seeking to collect and verify particular kinds of information from particular sources. If judged by quantitative research methodology's preference for random sampling, however, such attempts to neutralize bias would work in exactly the opposite direction: they skew data further. This underscores the need to judge qualitative work from a qualitative set of standards of validity, not those of quantitative work.

The phenomenological approach acknowledges the subjectivity and bias of the interviewer and demands that the researcher return to their own goals and framing self-critically and regularly.[295] I routinely acknowledged that I was "in the

[295] VAN MANEN, *supra* note 253, at 11.

tank," for craft beer and at some point I would reveal that I disapprove—as an IP scholar as well as a member of the craft community—of some of the methods I see Big Beer using: they strike me (and in some cases, courts and regulators) as descriptively anticompetitive and sometimes deceptive. Therefore, I had to be careful in how I framed my own positionality and only raise this clear bias *for* craft beer and *against* Big Beer as part of an exchange in which my interviewees had themselves already expressed a view on the topic. At times, empathizing and providing my own examples, or sharing my genuine dismay, appeared to allow interviewees to relax inhibitions and provide details or opinions they had seemed reticent about, or might not have opened up to me about, not knowing my bona fides. Where such antipathy was not expressed by interviewees first, I kept my views to myself (and found the divergence from what I was finding to be a consensus to be of great interest).

I also discovered that my study was unintentionally biased towards institutions and against individuals. Initially, I had planned to interview only people currently employed by craft breweries within Seattle city limits. I realized soon enough that this choice reflected a flaw in the study's design: to the extent there were social or economic factors excluding from participation those who wished to be employed at these breweries but had not succeeded in this wish or who had not remained employed there, I might be missing an important part of the story of craft brewing in Seattle. For instance, some women feel excluded by the culture of some breweries in Seattle and either leave the city to work elsewhere or leave the field to do something else. Others left after injuries from lifting or other brewing-related activities had, over time, forced them to seek work in other industries. I interviewed a few such "outsiders" who nonetheless had had significant experience in Seattle's craft brewing industry and they could discuss it in detail. While errors in quantitative design study ex ante can be fatal to its findings, in fact, in qualitative research, many of the threats to validity come later, after data collection and with respect to descriptive and interpretive and theoretical practices.[296] Catching such errors is thus an implicit part of the iterative and emergent process of improving the study's validity.

II. DATA COLLECTION AND ANALYSIS

Questions Posed. In my formal interviews, I used a semi-structured, open-ended research protocol with a single-spaced page of questions—around twenty—and various prompts that also allowed interviewees to respond freely and raise new ideas and questions.[297] These questions were grouped in clusters pertaining to background, daily practices, ideas about ownership, views about the industry and

[296] Maxwell, *supra* note 272, at 296.

[297] Galvin, *supra* note 291, at 2.

competitors, views about the law, and so on. The protocol was intended not only to allow open-ended conversation and emergent discussion but also to facilitate in-depth conversation that would go beyond surface-level accounts. Some interviews proceeded fairly straightforwardly down the path of those questions. However, I adapted the interviews to the identity of the interviewee (different questions were appropriate for brewers versus owners, brand managers, or service and sales people, for instance). I also adapted the questions to the pressing issues in the field as those rose to the surface in interview after interview. For example, my original protocol had no questions about gender, nor did it explicitly ask about industry consolidation and "Big Beer." But as I became attuned to the concerns of my interview population these questions became among the most important ones to pose. Often, I discovered that the questions I had imagined in my office or in conversation with other academics and my research assistant bore little relevance or interest for my interviewees. The fact is, most of my interviewees informed me that there was no copyright in recipes and a few asked why I was studying IP in craft brewing at all, thus prompting me to provide additional background for the study.

Data Interpretation. After the interviews were conducted and transcribed through a professional transcription service, I read, reread, and coded them. Often I went back and listened again to parts, or all, of an interview. Following the grounded theory approach to qualitative empirical research I created research memos for each interview.[298] Grounded theory refers to a form of qualitative empirical research in which researchers collect evidence and then work through that evidence interpretively multiple times. Such researchers are seeking to identify themes that emerge as opposed to merely taking at face value the interviewees' literal answers to the exact questions listed on the research protocol and using that narrower scope to define the field of inquiry.[299] In many respects, the kind of interpreting done in grounded theory resembles forms of close reading in literature, in which the texts—interview data—can be read and reread, sometimes against the grain or in ways that reflect deeper or ironic meanings.

This phase of my study focuses on interpretive coding, or discourse analysis.[300] This mode of inquiry considers how words are used and what expressions mean; it also draws on my field notes that may detail how people tell particular stories, emphasizing meanings in context and through body language and other social cues. Discourse analysis is nuanced reading, focused on meaning,

[298] *See* CHARMAZ, *supra* note 282.

[299] ANSELM STRAUSS & BARNEY GLASER, THE DISCOVERY OF GROUNDED THEORY: STRATEGIES FOR QUALITATIVE RESEARCH (1967). *See generally* CHARMAZ, *supra* note 282; SILBEY, *supra* note 255.

[300] *See generally* JOHNNY SALDAÑA, THE CODING MANUAL FOR QUALITATIVE RESEARCHERS (2013).

not on hypotheses or generalizations, and not concerned with statistical analysis.[301] It is less concerned with facts in the world and more with experiences of purported facts: "It is not the temperature of the room that is important, but the meaning the interviewee ascribes to the feeling of warmth or cold," whatever the actual temperature may be.[302] Just as you and I may have different feelings about the same weather, by analogy, the feelings or meanings associated with warm or cold may surface during an individual interview, and it is this sense of significance that discourse analysis seeks as it attaches meaning to particular words and phrases and to their delivery.[303] We make meaning of our lives through stories; in a fundamental way, these stories make us who we are.[304] These stories emerge not through quantifiable data but through interviews and other modes of qualitative evidence.

A subsequent study (which will benefit from recently awarded grant funding from the University of Washington's Royalty Research Fund) will use software further to analyze this rich collection of data, to understand it from a different vantage point. In both phases of interpretation, bias is inevitable and my interpretations are necessarily subjective. Part of the strength of qualitative approaches lies in the ability of a researcher to engage personally with participants and draw them out conversationally, as one does when empathizing, sharing experiences, and indeed, raising a glass—all things that inevitably import some subjectivity.

Additional Data Gathering. In addition to the formal interviews I conducted, I had many informal interviews and participated in the craft brewing scene as a member/observer. I attended two brewing festivals, speaking with many brewers and consumers there, and I attended two meetings of the Pink Boots Society (dedicated to women in the brewing industry). Whenever I visited a location that sold or served craft beer, I documented what I was seeing with photos of tap-lists and beer selections available on shelves and by taking notes as I conducted informal interviews or collected impressions after conversations with bartenders and brewers. I supplemented my own observation with extensive documentary research, reading industry news and blogs, listening to podcasts, and reading extensively in the academic literature on craft brewing and the history of

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[301] Galvin, *supra* note 291, at 2 (internal citation omitted).

[302] *Id.*

[303] Denzin & Lincoln, *supra* note 248, at 68.

[304] SILBEY, *supra* note 255, at 289 (internal citations omitted) ("[S]tories people tell and the language they use to describe their work . . . are important in and of themselves. Stories are political insofar as they are justifications for the status quo or change. Language and narratives participate in the constitution of consciousness and community. The repeated use of words, phrases, and stories reify concepts, categories, and expectations that structure our identities and our relationships in society.").

brewing more generally. I maintained a research diary collecting these notes, in addition to the research memos I prepared following interviews.

Finally, I spoke—informally—with many brewers and brewery employees throughout Washington state and around the country (in Chicago, Grand Rapids and Whitehall, Michigan, Maui, Los Angeles, New York City, Palm Springs, Portland, and San Francisco) to try to triangulate information with what I was hearing in Seattle and what I was reading about craft brewing generally. These cities were not selected for their representative status but reflect my travel schedule for work and leisure, so I make no prevalence claims about the evidence I gathered there. However, it was of note that in those communities there were clear signs of some of the phenomena I heard described repeatedly in my interviews, including establishments where the tap handles offered only non-craft (or only craft) beers; a strong commitment to local beers that, anecdotally, appears to be more pronounced than I can recall its ever being in my lifetime; and equally strong antipathy towards "Big Beer." (In one grocery store in Hawaii, I observed neon stickers differentiating local from non-local beer. This is especially notable given that a prominent but non-local (and non-craft) beer is called "Kona," after the Hawaiian region. In fact, the brewery in question faced false advertising litigation as a result).[305] In these cities, I was also told that it was rare for women to own breweries, and rarer still for women both to own and to be head brewer. A number of the other workplace-oriented phenomena brewers in Seattle described were also present.

[305] Jonathan Stempel, *UPDATE 1-Kona Beer is Not from Hawaii, Consumers Say in Lawsuit*, REUTERS (Feb. 28, 2017), https://www.reuters.com/article/craft-brew-alliance-lawsuit-kona-idUSL2N1GE017.