S O C I A L S C I E N C E R E S E A R C H N E T W O R K

LEGAL SCHOLARSHIP NETWORK: LEGAL STUDIES RESEARCH PAPER SERIES
UC DAVIS SCHOOL OF LAW
Vol. 8, No. 2: April 18, 2006

Editor: KEVIN R. JOHNSON
Associate Dean for Academic Affairs, School of Law, and Mabie/Apallas Professor of Public Interest Law and Chicana/o Studies, University of California, Davis
KRJOHNSON@UCDAVIS.EDU

T A B L E O F C O N T E N T S

"The Unifying Role of Harm in Environmental Law"
UC Davis Legal Studies Research Paper No. 74
Wisconsin Law Review, Vol. 3, 2006

Contact: ALBERT LIN
University of California, Davis - School of Law
Email: aclin@ucdavis.edu
Auth-Page: http://ssrn.com/author=345050

Full Text: http://ssrn.com/abstract=889775

Environmental law concerns itself largely with the prevention, mitigation, or correction of harm. Despite the importance of harm in motivating - and justifying - environmental law, relatively little attention has been devoted to understanding the concept.
This article begins to bridge this gap by introducing a theoretical framework for analyzing harm in environmental law. A brief examination

of harm in various environmental contexts not only reveals long-standing struggles with the concept, but also suggests the impossibility of defining harm in an objective manner. Concluding that harm is a normative concept based on underlying value judgments, this article adopts a framework that defines harm as a setback to interests in human autonomy that community norms have deemed significant. Under this framework, physical injury, emotional injury, and damage to property present easy cases of harm. Other effects, however, such as chromosomal damage from exposure to toxic substances, uncertain effects of emerging technologies, and damage to the environment itself, present more difficult cases. Application of the framework in these contexts suggests how society might accommodate changing understandings of the world and changing values while safeguarding personal autonomy.

"'Eggshell' Victims, Private Precautions, and the Societal Benefits of Shifting Crime"
UC Davis Legal Studies Research Paper No. 76
Michigan Law Review, Vol. 105, 2006

Contact: ROBERT A. MIKOS
University of California, Davis - School of Law
Email: ramikos@ucdavis.edu
Auth-Page: http://ssrn.com/author=272612

Full Text: http://ssrn.com/abstract=895222

Individuals spend billions of dollars every year on precautions to protect themselves from crime. Yet the legal academy has criticized many private precautions because they merely shift crime onto other, less guarded citizens, rather than reduce crime. The conventional wisdom likens such precaution-taking to rent-seeking: citizens spend resources to shift crime losses onto other victims, without reducing the size of those losses to society. The result is an unambiguous reduction in social welfare. This Article argues that the conventional wisdom is flawed because it overlooks how the law systematically understates the harms suffered by some victims of crime, first, by ignoring some types of harm altogether in grading and sentencing decisions, and second, by ignoring wide disparities in the amount of harm caused in individual cases. It follows that the same "crime", as defined by the law, may inflict significantly different amounts of harm on different victims, and by aggregation, on society. Thus it cannot be safely assumed that displacing a given crime from one citizen to the next is necessarily wasteful, from a social point of view. Indeed, this Article argues that shifting crime may be beneficial to society, from an economic point of view, since eggshell victims - those who are harmed more by crime - tend to take more precautions. The implication is that private crime fighting efforts that displace crime - universally criticized in the literature - may be more socially useful than previously acknowledged. The Article discusses the implications for the ongoing debates over the regulation of precaution-taking.

"The Invention of Traditional Knowledge"
UC Davis Legal Studies Research Paper No. 75

Contact: MADHAVI SUNDER
University of California, Davis - School of Law
Email: msunder@ucdavis.edu
Auth-Page: http://ssrn.com/author=280597

Full Text: http://ssrn.com/abstract=890657

James Boyle's cultural environmentalism metaphor laid the foundation for the recognition and protection of traditional knowledge and natural resources found in the developing world.
The theory underlying the Convention on Biological Diversity (CBD) was that while traditional communities may not have invented knowledge about the medicinal properties of local plants, they ought to be rewarded nonetheless for their preservation and conservation of biodiversity through limited rights to control and compensation. Taking a cue implicitly from the environmental justice movement, which demonstrated the disparate effects of environmental harms on disadvantaged minorities, the cultural environmental movement illustrated how Third World peoples are disproportionately disadvantaged by intellectual property law, which historically has not recognized their cultural contributions as protectable works of authorship.
But while this paper credits cultural environmentalism with offering theoretical legitimacy for traditional knowledge protection, it further considers whether the metaphor may also disable a more dynamic and modern view of traditional knowledge.
In fact, traditional knowledge is far from static and archaic and much more dynamic than the environmentalism metaphor acknowledges. The makers of Mysore silk sarees in India respond to new market, technological, and cultural needs, for example, offering waterproof sarees in hi-tech designs to today's global consumers. I consider how the environmentalism metaphor may impede an understanding of poor people's knowledge (a term I prefer to traditional knowledge) as creative works of authorship deserving of ex ante intellectual property rights rather than just as rights afforded ex post to reward preservation of ancient traditions or to correct longstanding cultural and distributive injustice.
