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## LEGAL SCHOLARSHIP NETWORK: LEGAL STUDIES RESEARCH PAPER SERIES UC DAVIS SCHOOL OF LAW

- "Rising Multinationals: Law and the Evolution of Outbound Acquisitions by Indian Companies"**   
*UC Davis Law Review, Vol. 44, 2011*  
*UC Davis Legal Studies Research Paper No. 228*

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India is one of the fastest growing economies in the world and is predicted to become the third-largest economy in the world after the United States and China. India's economic transformation has allowed Indian firms to gain significant attention in the world economy, particularly as acquirers of non-Indian firms. In the past decade, Indian companies have launched multimillion and multibillion dollar deals to acquire companies around the globe, with a significant concentration of targets in developed economies, in particular the United States and the United Kingdom.

Finance and business scholars have addressed outbound acquisitions by Indian multinationals, emphasizing the

business and economic motivations for such transactions. However, there has been little analysis from a legal perspective of the significance of India's legal norms and rules, including recent shifts in the country's regulatory and legal regimes, in the rapid expansion of Indian multinationals. This Article fills this void by analyzing the role of India's post-liberalization legal reforms in outbound acquisitions by Indian companies. This examination presents a more complete picture of the legal environment and legal rules that have facilitated outbound acquisitions by Indian multinationals, but also reveals how limitations in India's legal reforms have constrained these deals.

This Article argues that Indian corporate law plays a number of important roles in the emergence of Indian multinationals. First, legal reforms since economic liberalization have set the stage for outbound acquisitions by Indian multinationals. Second, Indian legal reforms and legal history have shaped outbound acquisitions both in terms of transaction structure and transaction size. Third, legal constraints on Indian firms' mergers and acquisition activity impose substantial restrictions not only on the methods that Indian multinationals use in pursuing outbound acquisitions, but also on the future potential of Indian multinationals.

### **"Reviewing Associational Freedom Claims in a Limited Public Forum: An Extension of the Distinction between Debate Dampening and Debate Distorting State Action"**

*Hastings Constitutional Law Quarterly, Forthcoming*  
*UC Davis Legal Studies Research Paper No. 234*

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In this article, Professors Amar and Brownstein analyze the arguments made by the parties and the Supreme Court in the recent *Christian Legal Society v. Hastings* case, in which the Court upheld Hastings College of the Law's non-discrimination policy as applied to registered student organizations (RSOs). The authors discuss what the Court's use of the "reasonable and viewpoint neutral" test for limited public forums in this setting means for future doctrine.

Among other things, the authors argue that even had the Hastings policy focused on prohibiting religious discrimination in particular (rather than requiring RSOs to "take all comers"), the *Christian Legal Society's* argument that the policy was impermissibly viewpoint discriminatory should have failed. Laws that target and prohibit religious discrimination in some respects favor (rather than discriminate against) religious speech, by protecting religious adherents. Moreover, if singling out religious discrimination constitutes viewpoint discrimination against religious groups, then accommodating religion would also violate free speech neutrality norms by unlawfully favoring religious viewpoints, a result that would hinder rather than promote religious liberty.

### **"Welcome to Amerizona – Immigrants Out!: Assessing 'Dystopian Dreams' and 'Usable Futures' of Immigration Reform, and Considering Whether 'Immigration Regionalism' is an Idea Whose Time Has Come"**

*Fordham Urban Law Journal, Forthcoming*  
*UC Davis Legal Studies Research Paper No. 230*

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In this essay, we introduce the heuristics of "dystopian dream" and "usable future" to assess competing visions for immigration reform. We apply these heuristics to visions for immigration reform, efforts to change the U.S. immigration system, and specific possible changes to immigration federalism as reflected in legislative and law enforcement activities, policy proposals, speeches, and scholarship. We consider President Obama's recent revival of Emma Lazarus's "The New Colossus" and aspects of the Schumer/Graham blueprint for comprehensive reform alongside the dystopian dream of immigration reform reflected in Arizona's SB 1070 and other state- and local-level efforts to regulate both immigrants and immigration. We also consider side-by-side recent work on immigration and localism and comprehensive immigration reform by urban futurist Joel Kotkin and immigration law professor Dean Kevin Johnson, respectively. In addition providing valuable insights on the relationship between immigration and economic, social, and cultural dynamism and the prospective parameters of much-needed "truly comprehensive" reform, their work illustrates the ambivalent attitudes about localism within contemporary immigration policy debates, even amongst those who emphasize the fundamentally economic and labor-driven forces behind immigration today.

Our bottom line recommendation is that immigration policy formulation and implementation occur on a regional basis, federally created with strong federal oversight and without constitutional disruption of immigration federalism. What we call "immigration regionalism" would move debate beyond the state power v. federal power question that has taken center stage with the Rehnquist Court's so-called "New Federalism." Acting pursuant to the Commerce Clause, the Supremacy Clause, and foreign policy objectives, the federal government would create immigration regions and a governance structure that incorporates representatives of state and local governments,

as well as private sector and civil society groups. The regional units would gather and assess data and formulate policy recommendations. In this way, immigration regionalism would split the difference between a purely federal approach and a subnational one as exemplified by states like Arizona and municipalities like Hazleton, Pennsylvania, wherein legislators take dangerous, overreaching self-help measures. An "immigration regionalism" would also feature core commitments and principles and promote salutary outcomes that bring together what is best in Kotkin's and Johnson's respective "usable futures" and that resonates with recent important work on equitable regionalism and rethinking immigration federalism.

### **"Serendipitous Timing: The Coincidental Emergence of the New Brain Science and the Advent of an Epistemological Approach to Determining the Admissibility of Expert Testimony"**

*Mercer Law Review, Forthcoming*

*UC Davis Legal Studies Research Paper No. 231*

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The recent surge in brain science research has roughly coincided with the courts' development of a new approach to the admissibility of scientific evidence. This coincidence is serendipitous.

The prior approach to the admissibility of scientific testimony traced its origins to the 1923 Frye decision. Under Frye, to determine whether scientific testimony was admissible, the judge inquired whether the underlying technique was generally accepted. However, "general acceptance" is a poor proxy for reliability. To make matters worse, most Frye jurisdictions recognized a number of exemptions from the scope of the test, including a vague exemption for medical opinion testimony.

In 1993 in its Daubert decision the Supreme Court announced that Frye is no longer good law in federal court. The Court replaced the general acceptance standard with a validation test derived from the reference in Federal Rule of Evidence 702 to "scientific, technical or other specialized knowledge." Adopting an epistemological approach, the Court emphasized the importance of the word "knowledge" in the statutory text. In Daubert, the Court listed several factors that a trial judge should consider in deciding whether proffered expert testimony qualifies as reliable "scientific . . . knowledge." In 1999 in Kumho, the Court added that whenever the proponent tenders any type of expert testimony, the proponent must demonstrate that the expert's testimony rests on more than the expert's ipse dixit or unsubstantiated belief.

This new epistemological approach is much better suited to analyzing the admissibility of the products of the new brain science. This article uses the illustrations of electroencephalography (EEG) and Blood-Oxygenation-Level-Dependent functional Magnetic Resonance Imaging (BOLD fMRI) to demonstrate that the Daubert-Kumho framework can enable the courts to differentiate between brain scientists' knowledge claims that have a sufficient basis and claims that at least currently lack an adequate warrant.

### **"DNA Theft: Recognizing the Crime of Nonconsensual Genetic Collection and Testing"**

*Boston University Law Review, Vol. 91, 2011*

*UC Davis Legal Studies Research Paper No. 232*

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The fact that you leave genetic information behind on the discarded tissues, used coffee cups, and smoked cigarettes everywhere you go is generally of little consequence. The trouble arises when third parties are interested in retrieving this detritus of everyday life for the genetic information you've left behind. These third parties may be the police, and the regulation over their ability to collect this evidence is unclear.

And the police aren't the only people who are curious about your genetic information. Whether the victims are celebrities, private persons with secrets to keep, or just the targets of nosy third parties with bad intentions, if someone wants to collect and analyze another person's DNA without consent, they can do so. Committing DNA theft is as easy as sending in a used tissue to a company contacted over the internet, and waiting for an analysis by email. A quick on-line search reveals many companies that offer "secret" or "discreet" DNA testing. The rapid proliferation of companies offering direct-to-consumer genetic testing at ever lower prices means that both the technology and motives exist for DNA theft.

Yet in nearly every American jurisdiction, DNA theft is not a crime. Rather, the nonconsensual collection and analysis of another person's DNA is virtually unconstrained by law. This article explains how DNA theft poses a serious threat to genetic privacy and why it merits consideration as a distinct criminal offense.

### **"A Case Study of Color-Blindness: The Racially Disparate Impacts of Arizona's SB 1070 and the Failure of Comprehensive Immigration Reform"**

*Arizona State Law Journal for Social Justice, Forthcoming*

*UC Davis Legal Studies Research Paper No. 229*

This Article develops the theme that U.S. immigration law allows for coded, and thus more legitimate, arguments in favor of racial discrimination as well as for the pursuit of immigration law and policies with as extreme a set of racially disparate consequences as can be found in American law. Such arguments find legitimacy in the public discourse because they highlight notions of racial neutrality, color-blindness, and the moral call for obedience to the law. In this regard, the color-blind, pro-law enforcement approach to the debate over immigration serves a noteworthy legitimating function. Moreover, that approach provides plausible deniability to accusations of racism for advocates of immigration positions with blatantly discriminatory impacts. One glaring example is the law passed by the Arizona legislature in 2010 that was designed to address the state's perceived immigration crisis. Opponents of comprehensive immigration reform also would achieve racially disparate ends through facially neutral measures. When the color-blind approach prevails, it effectively assists in ensuring racially disparate impacts of the operation of the immigration laws.

Part I of the Article offers an analysis of the deficiencies of the state of Arizona's controversial recent endeavor to participate in immigration enforcement, as well as a study of the current debate over immigration reform. In so doing, this Part explains how debates over laws permitting discrimination based on a person's immigration status, given the racial demographics of immigration to the United States today, allows for coded discussions about race and the civil rights of immigrants and people of color generally.

Part II of the Article analyzes the most obvious racially disparate impacts of the failure of comprehensive immigration reform, as well as the less visible racially disparate impacts of the failure of Congress to act now on immigration. It further spells out how the failure to reform the U.S. immigration laws, albeit in a facially neutral way, will injure people of color both inside and outside the United States.

One might wonder why race, even though perhaps animating the positions advocated by some restrictionists, tends to be buried in the modern debate about immigration. The answer is relatively simple. Times unquestionably have changed, even if not as much as those who suggest that the election of a Black President marks the beginning of a new post-racial America. Unlike the hey-day of Jim Crow, people in polite company today rarely contend that racial discrimination in the immigration laws – or in law generally – can be justified by the biological, or innate, inferiority of people of color. Indeed, the demise of Jim Crow, combined with the civil rights movement, contributed to the removal of the most blatant forms of racial discrimination from the U.S. immigration laws in 1965. However, racism still exists in the modern United States and arguably has often in recent years been transferred or displaced from domestic minorities to immigrants of color.

It often is argued that immigrants, especially those who are "illegal aliens," warrant discriminatory treatment, punishment, and little sympathy because of their immigration status. An often accompanying argument is that race has nothing to do with the desire to make distinctions on the basis of immigration status. Rather, it is only a desire to "enforce the law" and "secure the borders." The harsh treatment of immigrants has disparate racial impacts without the need to invoke discredited notions of racial inferiority as a justification, which certainly would bring out in force those committed to civil rights.

What does this in the end all mean? In the modern United States, the debate over immigration ultimately allows a convenient and legitimate place for venting racial antipathy and frustrations, whether it be about changes in the neighborhood, shifting population demographics and changing political power, languages other than English being spoken in public places, the decline in the economy (and loss of jobs), the poor quality of the public schools, health care reform, the fact that workers congregate on street corners, and virtually anything and everything.

### **"Protecting Children (?): Marriage, Gender, and Assisted Reproductive Technology"**

*Southern California Law Review*, Vol. 83, No. 101, 2010  
*UC Davis Legal Studies Research Paper No. 233*

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The Supreme Court has declared that children should not be penalized based on the circumstances of their birth. In the context of assisted reproductive technology ("ART"), however, parentage provisions that apply only to children born to heterosexual married couples continue to be the rule rather than the exception. Many of the policymakers resisting the calls for reform have been influenced by the debate currently playing out in the same-sex marriage context regarding the causal connection (or lack thereof) between marriage and gender, on the one hand, and positive child welfare outcomes, on the other.

This Article approaches this increasingly contentious debate in a novel way by focusing on an issue on which both sides converge - the desire to protect the well-being of children. Using this lens, the Article accomplishes two things. First, this Article offers a doctrinal analysis of an issue that, until now, has remained almost entirely unexplored. Specifically, the Article demonstrates that, contrary to the asserted child welfare goals of marriage-preference proponents, marriage-only ART rules harm the financial and, in turn, the overall well-being of nonmarital children. Second, the Article considers how to reform the inadequacies of the current regime. After

assessing a range of potential normative solutions, the Article concludes by proposing a new theoretical framework for determining the legal parentage of all children - both marital and nonmarital - born through ART.

## "Intuit's Nine Lies Kill State E-Filing Programs and Keep 'Free' File Alive"

*State Tax Notes, Vol. 555, No. 57, 2010*

*UC Davis Legal Studies Research Paper No. 227*

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Under the auspices of the Free File Alliance (FFA), Intuit, manufacturer of TurboTax, has been attacking state-run, free e-filing services for several years. The latest victim, Virginia's successful iFile program, succumbed late last year. Through it all, the unquestioned crown jewels of state e-filing programs – California's CalFile and ReadyReturn – have managed to survive. But this year, Intuit has ratcheted up its annual campaign to end the two programs. In the process, it is peddling some familiar falsehoods as well as some newly crafted misrepresentations.

This article describes Intuit's nine lies, the false arguments about ReadyReturn and CalFile that Intuit and its lobbyists have been telling elected officials, staffers, and nonprofit organizations serving California's low-income communities. It also evaluates Intuit's proposed Free File alternative to the state's existing programs. For all of Intuit's assertions – whether regarding the purported shortcomings of the state programs or the purported benefits of the Free File initiative – the article offers a point-by-point refutation.

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