LEGAL SCHOLARSHIP NETWORK: LEGAL STUDIES RESEARCH PAPER SERIES
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"A Transparent Oversight Policy for Human Anatomical Specimen Management: The University of California, Davis Experience"

Academic Medicine, March 2014, Volume 89, Issue 3, pp. 410-414
UC Davis Legal Studies Research Paper No. 379

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The authors describe the development and implementation of a University of California (UC) system of oversight, education, tracking, and accountability for human anatomical specimen use in education and research activities. This program was created and initially implemented at UC Davis in 2005. Several incidents arising out of the handling of human anatomical specimens at UC campuses revealed significant challenges in the system for maintaining control of human anatomical specimens used in education and research. These events combined to undermine the public perception for research and educational endeavors involving anatomical materials at public institutions. Risks associated with the acquisition, maintenance, and disposal of these specimens were not fully understood by the faculty, staff, and students who used them. Laws governing sources of specimens are grouped

with those that govern organ procurement and tissue banking, and sometimes are found in cemetery and funeral regulations. These variables complicate interpretations and may hinder compliance. To regain confidence in the system, the need to set appropriate and realistic guidelines that mitigate risk and facilitate an institution's research and educational mission was identified. This article chronicles a multiyear process in which diverse stakeholders developed (1) a regulatory policy for oversight, (2) a policy education program, (3) procedures for tracking and accountability, and (4) a reporting and enforcement mechanism for appropriate and ethical use of human anatomical specimens in university education and research.

"Design Patents: Law Without Design"
Stanford Technology Law Review, Vol. 17, p. 277, 2013
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Design patents have recently burst onto the intellectual property stage, but they are surprisingly underdeveloped for a body of law that is more than a century and a half old. Design patents are, quite simply, a body of law without design: there is little coherent theoretical underpinning for this long overlooked form of intellectual property. Now, as design patents are poised to assume greater prominence in the legal and economic realms, the time is ripe for examining myriad justifications for exclusive rights in design in order to develop a richer theoretical foundation for this body of law. To that end, this Article draws from statute, doctrine, legislative history, and academic commentary to identify various theoretical justifications for design patents related to promoting progress, beautifying the human environment, rewarding creative labor, and reducing consumer confusion and promoting distinctiveness. We critically examine the cogency of these justifications and identify hidden tensions among them. Our ultimate aim is to help develop a body of design patent doctrine that is more accountable to theory. We conclude that even the most persuasive and defensible justifications for design patents counsel a limited right at best.

"Acting White? Or Acting Affluent? A Book Review of Carbado & Gulati's *Acting White? Rethinking Race in 'Post-Racial' America*"
UC Davis Legal Studies Research Paper No. 381

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Acting White? Rethinking Race in "Post-Racial" America (2013) is the latest installment in Devon Carbado and Mitu Gulati's decade-plus collaboration regarding issues of race and employment. This review lauds the book's comprehensive treatment of the double bind that racial minorities — especially blacks — experience within principally white institutions. In this volume, the authors expand on their prior employment-centered work to consider, for example, Barack and Michelle Obama's presence on the national political stage, racial identity and performance in the context of higher education admissions, and racial profiling by law enforcement. With a focus on intra-racial diversity, Carbado and Gulati begin to gesture to the intersection of class (more precisely, the struggle for upward class migration) with blackness in the high-brow settings that are the employment staple for *Acting White?*'s analysis.

What Carbado and Gulati overlook, however, is intra-racial diversity among whites. While the authors give a nod to aspects of identity such as gender and sexuality, acknowledging that, like race, these may render individuals "Outsiders," they otherwise treat whiteness as monolithic, as simply the foil for black identity work. In so doing, Carbado and Gulati overlook the struggle for assimilation that poor and working class whites — aspiring, striving class migrants — experience when they seek to integrate these same "white institutions." The point is that all employees are expected to assimilate to institutional norms that, in elite professional settings, are as much about class (affluence) as about race (whiteness). I thus suggest that the book might have been titled, *Acting Affluent?*, although that alternative would have been misleading, too, because the identity work expected in these upscale milieu implicates both race and class. Ultimately, neither the title Carbado and Gulati chose nor the one I suggest is very precise because affluent black identity and affluent white identity are unlikely to be identical. While *Acting White?* grapples with some very complex and potent intersections of race and class, it looks right past many other such intersections, including that of white skin privilege with class disadvantage.

"Urbanormativity, Judicial Blind Spots and Abortion Law"
Berkeley Journal of Gender, Law and Justice, 2015, Forthcoming
UC Davis Legal Studies Research Paper No. 384

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State laws regulating abortion have proliferated dramatically in recent years. Twenty-two states adopted 70 different restrictions in 2013 alone. Between 2011 and 2013, state legislatures passed 205 abortion restrictions, exceeding the 189 enacted during the entire prior decade. The U.S. Court of Appeals for the Fifth Circuit recently upheld as constitutional several such restrictions, parts of Texas H.B. 2 (2013), in Planned Parenthood of Texas v. Abbott. That court is currently considering the constitutionality of a similar Mississippi law. These and other recent cases raise issues likely to be heard soon by the U.S. Supreme Court. Among the regulations at stake in Texas H.B. 2 was a requirement that doctors performing abortions have admitting privileges at a hospital within 30 miles of the abortion clinic. The Texas law also limits the use of medication-induced abortions.

Rarely acknowledged in academic literature or media coverage of these laws and constitutional litigation arising from them is the fact that the greatest impact of these regulations — like that of many other state abortion laws enacted since the U.S. Supreme Court's 1992 decision in Planned Parenthood v. Casey — is on those who live farthest from major metropolitan areas, where abortion providers tend to be located. Indeed, these laws exact the greatest toll on women who are both rural and poor. We argue that, contrary to the Fifth Circuit's decision in Abbott, these laws place undue burdens on the abortion rights of a significant number of women and that they should be declared unconstitutional.

In addition to these doctrinal arguments, we draw on three complementary critical frames — legal geography, the concept of privilege, and rural studies concept of urbanormativity — to articulate new ways of thinking about the recent spate of so-called incremental abortion regulations and federal courts' adjudication of the constitutionality of these laws. First, legal geography provides a frame for theorizing the relationship between the abortion regulations and rurality, revealing how law's impact is variegated and variable, dictating different outcomes from place to place because of spatial differences. Second, we deploy the concept of privilege in arguing that many federal judges are spatially privileged but blind to that privilege. In our increasingly metro-centric nation, where rural populations are dwindling and marginalized literally and symbolically, most federal appellate judges appear to have little experience with or understanding of typical socio-spatial features of rurality: transport challenges, a dearth of services, lack of anonymity, and frequently extreme socioeconomic disadvantage. Yet those same spatially privileged judges are applying the undue burden standard to laws that require women to travel hundreds of miles, sometimes on multiple occasions, to access abortion services. Those judges are also typically upholding laws that burden women's access to medication-induced abortions, which have the potential to ameliorate rural women's spatial burdens. This spatial privilege and judges' obliviousness to it are most evident among U.S. Courts of Appeal judges and Supreme Court justices construing the "undue burden" standard, as evinced most recently in Abbott but also on display in Casey v. Planned Parenthood and in many U.S. Courts of Appeals decisions in Casey's wake. The spatial privilege phenomenon is closely linked to the third frame: critical rural studies' concept of urbanormativity. By treating urban life as a benchmark for what is normal and, in Abbott, dismissing as constitutionally insignificant some ten percent of Texas women who live more than 100 miles from an abortion provider, federal appellate judges are increasingly articulating an urbanormative jurisprudence.

"Everybody in the Tent: Lessons from the Grassroots About Labor Organizing, Immigrants, and Temporary Worker Policies"

Harvard Latino Law Review, 2014, Forthcoming
UC Davis Legal Studies Research Paper No. 382

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Why are so many immigrant workplaces non-unionized and what can the labor movement do about it? The questions about whether and how effectively to bring immigrant workers into the labor movement involve not just the impact of immigrant labor on organizing efforts, but also the effect of the labor movement's policy positions on immigrant labor. According to the American Federation of Labor and Congress of Industrial Organizations ("AFL-CIO"), protections for immigrant workers are as important to the labor movement as protecting jobs for U.S. workers. While there are great examples of union success in organizing immigrant workplaces, however, the vast majority of immigrant workers remain unorganized. The residential construction industry is one of the areas where low-skilled, non-unionized immigrant workplaces dominate the landscape. Unions have had some limited and scattered success in rebuilding the residential construction industry labor movement in places like Los Angeles, California, but the success has not been sustained.

In this article, I share perspectives of local residential construction workers and labor leaders collected from a series of interviews in Las Vegas, Nevada about obstacles to organizing immigrants. I conducted over 100 interviews between 2006 and 2008 that are the basis for a larger project on working conditions among immigrant workers in the residential construction industry in Las Vegas. In this article, I explore how immigrant workers and local organizers respond to questions about the difficulties in organizing immigrants. Their responses should provide some guidance to policy advocates and the labor movement as they formulate positions around comprehensive immigration reform proposals.

In Part I of this article, I describe what academics view as obstacles to immigrant worker organizing, including changes in the structure of the construction industry, and restrictive immigration laws. In Part II, I describe the Las Vegas Residential Construction Industry Study and explore the gap in perceptions between local union leaders and non-union workers about obstacles to organizing. I conclude in this part that the construction trade union

movement must incorporate aspects of immigrant organizing strategies that have occurred in the service industry. In Part III, I explore the effects of union activity in the most recent negotiations over comprehensive immigration reform, analyzing how the AFL-CIO's position might work at cross-purposes to its stated goals of organizing immigrant workplaces and bringing immigrants into the labor movement. I conclude that by conceding the contingent nature of construction work and then limiting the legal avenues for immigration into construction work, the AFL-CIO's compromises further weaken local labor organizers' attempts to organize immigrants.

"The Feds are Already Here: The Federal Role in Municipal Debt Finance"
33 Review of Banking and Financial Law 795 (2014)
UC Davis Legal Studies Research Paper No. 383

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Should the federal government be involved in the regulation of municipal debt finance? The answer is arguably not. But this theoretical dispute is not the focus of this Article because, in fact, the federal government already regulates municipal debt finance extensively, generally much more extensively than the states regulate their municipalities' use of debt. The primary source of federal regulation is the securities laws. Less well-known is that federal tax law also serves as an important constraint. This Article surveys and critically evaluates these federal laws, and comes to three tentative conclusions. First, the current federal oversight "system," unplanned and ad hoc as it is, has been effective. Second, in part because the current system has never been thought of as a comprehensive system, there are low-hanging fruit in terms of making the system work better. To the extent the federal government does not put these reforms in place, states should. Third, even an optimally operating federal overlay does not absolve the states from more careful regulation of the financial affairs of their localities, particularly as to the use of debt. Above all, what the federal government does not - and ought not - do is provide localities with the expertise to use debt optimally; this is another area where the states should focus their reform efforts.

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