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

"Exporting DMCA Lockouts"
UC Davis Legal Studies Research Paper No. 88
Cleveland State Law Review, Vol. 54, 2006

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ABSTRACT: In her lead paper for a symposium in her honor, Margaret Jane Radin warns that our intellectual property laws are being rewritten in ways that neglect values embedded in neighboring legal subdisciplines, such as contract, competition, and free speech law. The effect has been to aggrandize the rights of intellectual property holders, at the expense of others in society. In my comment, I apply her elegant insight to an oft-neglected realm: our spirited efforts to export our ever-strengthening intellectual property law through bilateral trade agreements. Radin critiques the Digital Millennium Copyright Act's anti-circumvention provisions, which some companies have cleverly sought to deploy to bar competition in the after-market. Companies are seeking to exploit DMCA anti-circumvention to obtain monopolies, with varying success, in unexpected areas such as garage door openers, printer cartridges, and online multiplayer games.

I show how, through bilateral and regional free trade agreements, the United States is exporting the DMCA's controversial and strict anti-circumvention provisions. All of the free trade agreements negotiated by the United States post-DMCA mandate the adoption of anti-circumvention provisions by our partners. A review of each of these agreements demonstrates that they carry the DMCA's cramped vision of permissible circumvention. They thus ignore what Radin describes as the legal milieu of intellectual property, in particular, competition law, foisting upon our trading partners rules that corporations may exploit to gain monopolies in the after-market for their products. This leads to the irony that measures to free trade might lead to a legal framework that facilitates monopolies in the after-market.

"Inverting the Logic of Scientific Discovery"
UC Davis Legal Studies Research Paper No. 92
Harvard Journal of Law and Technology, Vol. 19, p. 79, 2005

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ABSTRACT: This Article addresses a problem that has attracted significant attention from patent scholars: the potential for patents on research tools - technological products and processes that are critical inputs of scientific experimentation - to inhibit basic scientific research. The Article first argues that a fundamental distinction between "upstream" intellectual assets and "downstream" particularized technologies is central to the structure of patent law and its contribution to scientific progress. In this system, patent law specifically prohibits the patenting of upstream assets such as natural laws, natural phenomena, and abstract principles on a "fundamentality" rationale; these assets enable wide varieties of derivative applications and are better suited for common ownership in the public domain where all persons can freely draw upon them in their innovative endeavors. Rather, patent law reserves proprietary rights - and the monopoly profits they confer - for downstream, particularized technologies such as end-user goods.

Drawing from studies in the sociology of science concerning the "material culture" of scientific exploration, this Article shows how some patented technologies may be even more foundational than knowledge itself. For example, human embryonic stem cells, which are patentable technologies when isolated and purified outside of the human organism, hold the key to revealing basic biological knowledge. Patents over this resource effectively create exclusive individual rights over an area of immense scientific importance and wide downstream applicability. This Article argues that the common law prohibition against patenting natural laws, natural phenomena, and abstract principles provides a legal and prudential basis for constraining patents on human embryonic stem cells and other similarly-situated biotechnology research tools.
Just as knowledge itself is not patentable, courts should constrain patents on the necessary technological fountains from which it springs.

"Reshaping the 'Grotesque' Doctrine of Character Evidence: The Reform Implications of the Most Recent Psychological Research"

UC Davis Legal Studies Research Paper No. 91
Southwestern University Law Review, Forthcoming

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ABSTRACT: One of the arguments in favor of the enactment of Federal Rules of Evidence 413-15 was that recent psychological research indicated that a person's character traits are more predictive of conduct than had previously been assumed. The advocates of the new statutes pointed to the emergence of the interactionist school in psychology. The proponents of interactionism asserted that given an adequate sample of a person's conduct in similar situations, a reasonably confident prediction of the person's behavior in an analogous situation can be made.

The purpose of this article is to update the psychological research on personality and explore the implications of the most recent research for Evidence law. After surveying the 21st century psychological literature, the article initially finds that the most recent research essentially confirms the interactionist position. However, the article also points out that modern psychologists have largely abandoned attempts to predict future conduct on the basis of a single other instance of the person's conduct - the very type of inference that Rules 413-15 allow the trier of fact to draw. Thus, the article concludes that the behavioral assumption underlying Rules 413-15 remains suspect.

In addition, the article notes that interactionists reject notions of global character traits and have in effect redefined character traits as behavioral tendencies in particular types of situations. That redefinition has several implications for evidence doctrine: The minority view on character evidence, permitting an accused to introduce testimony about general, moral, law-abiding character, is unsound; it is equally indefensible to permit impeachment with convictions for conduct unrelated to truthfulness; and in determining under Rule 403 whether conduct otherwise admissible under Rules 413-15 is sufficiently similar to the charged offense, the trial judge should consider the situational cues presented by the two fact situations.

"Size Matters: Regulating Nanotechnology"
UC Davis Legal Studies Research Paper No. 90
Harvard Environmental Law Review, Vol. 31, 2007

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ABSTRACT: Nanotechnology - the design and application of structures and devices measuring one hundred nanometers or less - lies behind a growing number of innovative products and promises to revolutionize manufacturing processes. Nanomaterials are made from conventional chemical substances, but often behave very differently than the materials from which they are derived. The small size and relatively large surface area of nanoparticles enhance their mechanical, electrical, optical, or catalytic properties. Although nanomaterials are useful because of these special properties, they also may pose health and environmental risks that conventional substances do not. Early studies suggest that nanomaterials have unique abilities to penetrate the body's defenses or to persist in the environment, but much research remains to be done to identify and characterize specific risks.

Legal attention to nanotechnology has focused on intellectual property issues. Those commentators who have turned to health and environmental concerns generally believe that existing statutes can address potential risks. Departing from the prevailing view, this Article concludes that nanotechnology poses distinct and serious concerns warranting legislation

specific to the manufacture and use of nanomaterials. The Article proposes notification and labeling requirements for all products containing nanomaterials. For products containing nanomaterials in a "free" form, which pose potentially greater health and environmental risks, the Article also proposes a screening process, post-marketing monitoring, and a requirement that nanotechnology companies post a bond to cover potential liabilities. The proposal creates an incentive to perform much-needed research, establishes funding to redress adverse effects, and sets the stage for further public consideration of nanotechnology's future.

"Toward a Feminist Theory of the Rural"
UC Davis Legal Studies Research Paper No. 89
Utah Law Review, 2007

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ABSTRACT: Feminists have often criticized law's ignorance of women's day-to-day, lived experiences, even as they have also sought to reveal the variety among those experiences. This article builds on both critiques to argue for greater attentiveness to a neglected aspect of women's situation: place. Specifically, Professor Pruitt asserts that the hardships and vulnerability that mark the lives of rural women and constrain their moral agency are overlooked or discounted by a contemporary cultural presumption of urbanism.

Professor Pruitt considers judicial responses to the realities of rural women's lives in relation to three legal issues: domestic violence, termination of parental rights, and abortion. In each of these contexts, she scrutinizes judicial treatment of spatial isolation, lack of anonymity, a depressed socioeconomic landscape and other features of rural America. Pruitt contrasts responses to the plight of rural women in these legal contexts, which are generally lacking in empathy or understanding, with responses to the vulnerability and hardships that are judicially recognized in relation to rural livelihoods in non-gendered contexts.

Drawing on rural sociology and economics, as well as from judicial opinions, Pruitt argues that the cocktail of features that constitute rural America seriously disadvantages rural women. She further maintains that this disadvantage is aggravated when society's prevailing urban perspective obscures its legal recognition. Unlike Catharine MacKinnon's landmark work, Toward a Feminist Theory of the State, Pruitt does not purport to articulate epic theory. Nevertheless, by showing how features of rural life have been unseen or misunderstood by legal actors, and by explaining the legal relevance of these features to critical junctures at which rural women encounter the law, Pruitt begins the process of articulating a feminist theory of the rural.

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