

TEXASLAW

Commentary on R. Epstein's “The Basic Structure of IP Law”

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Overview of “Basic Structure”

- **Commons v. Private Property (PP)**
 - Social-Loss Minimization Theorem
 - Problems of Conflict & Holdouts
 - Key Concerns of Encouraging Investment and Facilitating Communication and Transport
- **Structuring Property**
 - Rules for Acquisition and Alienation
 - Scope, Including Duration
 - Remedies/Consequences for Violation
 - Rules for Government Takings and Regulation

Overview of “Basic Structure”

- **6 Major Legal Regimes for IP**
 - Patent
 - Copyright
 - Trademark
 - Trade Secret
 - Rights of Publicity
 - Misappropriation

Select Points/Contentions in “Basic Structure”

- **Analog/Restatement of General Commons v. PP Concerns**
 - “Theft of Labor” v. Undue Interference with Public Discourse and Knowledge
 - *But problem of saying what is what*
 - *Difficulties with delimiting patentable subject matter*

Select Points/Contentions in “Basic Structure”

- **Minimizing Acquisition Formalities**
 - For tangible things, “legal system demands *as little as possible* from the initial possessor owner.”
 - For IP likewise, “key insight is that the statutory formalities required for the acquisition of rights should be kept as simple as possible.”

More on Demarcation, Notice & Clearance?

- **“Fluid Tangibles”**
 - Air, Water & Beaches
- **Patents**
 - J. Bessen & M. Meurer, Patent Failure
 - “If You Can’t Tell the Boundaries, Then It Ain’t Property” (chapter 3)
- **Copyright**
 - Orphan Works

Other Authors

- Yochai Benkler, *The Wealth of Networks*
- Julie Cohen, “Property as Institutions for Resources,” 94 *Tex. L. Rev.* 1
- Molly Van Houweling, “The New Servitudes,” 96 *Geo. L.J.* 885
- Henry Smith, “Intellectual Property as Property,” 116 *Yale L.J.* 1742

Conclusion

Thank you for your attention!