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## **RESEARCH AGENDA**

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*Summary:* My research interests are in corporate governance, intellectual property, and jurisprudence. Across these fields, I maintain interest in the following broader issues, uniting these topics: (1) the organization, actions, and intentions (or lack thereof) of groups (e.g. legislatures, corporations); and (2) the nature of rights (e.g. property, intellectual property, claims against corporations). A more detailed description follows, organized by topic.

### **Corporate Governance**

My primary interest in corporate law involves the relationship between different groups participating in corporate governance, with particular interest in the roles of attorneys and accountants and their professional obligations, as well as public perception of those obligations. I am also interested in the nature of corporations, and particularly whether a corporation (as opposed to the individuals running it) can be said to have intentional actions at all.

#### Articles:

***Accounting's Nadir: Failures of Form or Substance?*** 12 U. PA. J. BUS. L. \_\_\_\_ (forthcoming 2010)

Concluding that the regulation of accounting is ineffective and unseemly, even while certain controversial substantive standards (e.g. fair value or mark-to-market accounting) are appropriate and at risk of being revoked because of political pressures which ignore the theoretical, practical, and historical process that led standard setters to adopt these rules. Fair value is not necessarily better than other methods, but neither is it inappropriate. The article also advocates decreased uniformity in financial accounting, relying on pluralism as a hedge against systemic errors, in conjunction with increased disclosure requirements, to provide the information for third parties to make their own alternative valuations of assets and liabilities.

***Whither and Whether Auditor Independence***, 44 GONZAGA L. REV. 365 (2009)

Questioning whether independent auditors are methodologically superior or if previously allowable services actually further audit objectives instead of merely offering potential cost-efficiency for audit firms. While indentifying independence as the fundamental and unresolved question in auditing, this piece also suggests that allowing opt-out to Financial Statement Insurance (FSI) regimes effectively bypasses the independence question for those companies adopting FSI.

#### Future Projects:

***I, Corporation: Stakeholder Theory, Third-Party Rights, and the Entity Theory of Accounting***

Is the corporate person an intentional actor? This article would construct a theory of corporate reification, rights, and duties rooted in an action-based theory of intention (i.e. not mental states or motivational), and discuss the range and types of claims that could be brought under such a theory. Also reintroduced here is the "Entity Theory" of accounting advocated primarily in the 1920's through the 1940's, a theory of accounting anticipating and internalizing many of the underlying concerns of stakeholder theorists, while not providing such sweeping practical implications as contemporary stakeholder theories generally do.

## **Intellectual Property**

Doctrinally, I am interested primarily in trademark and copyright law, but also in the nature of all forms of intellectual property and the ways in which intellectual property differs from other forms of property. I am especially interested in comparisons between trademark and copyright, and ways in which the two fields might converge in policy and doctrine towards common goals of promoting clear source designation and minimizing consumer confusion, even while expanding current fair use doctrine.

Articles:

### ***Gulliver's Trials: A Modest Proposal to Excuse and Justify Satire***, 11CHAP. L. REV. 183 (2007)

Satire and parody are both examples what copyright law denominates “derivative works,” yet the status of the two genres in fair use defenses is somewhat uncertain, and varies significantly amongst the circuit courts, generally allowing parody but not satire. This article suggests a way of refining, without changing, adjudication in satire cases to protect this “Useful Art,” while leaving the current treatment of parody untouched. The article calls for generalizing the common law doctrine of excuse to include satire—condoning satire on a case by case basis, but neither endorsing nor barring the genre categorically.

### ***Indigenous Intellect: Problems of Calling Knowledge Property and Assigning it Rights***, 15 TEX. WESLEYAN L. REV. 335 (2009) (symposium piece)

Arguing that questions of the very nature of claims to intellectual property are even more critical to discussions of indigenous IP than they are in other areas, where the Lockean paradigm is virtually unchallenged. Some indigenous groups' claims border on claims to protect the dissemination of knowledge through intellectual property law and should thus be viewed skeptically as arguments about property. Existing actions, within intellectual property and from other areas of law, may also provide remedy without expanding intellectual property law to cover such cases.

Future Projects:

### ***Genericness and Genericide***

Attempt to assimilate trademark doctrine of private label brands (“generic” or store-brand products) and trademark genericide (loss of all protection as a result of ubiquitous, “generic” use). While trademark currently recognizes that consumers are not confused between private label and brand name products, the law paradoxically assumes that consumers cannot distinguish between generic references to a product (e.g., “Kleenex” for all facial tissues, “Google” for internet searching) and specific references to denote source (e.g. Kleenex, not Puffs; or Google, not Yahoo). While individual cases may prove difficult, trademark genericide doctrine should allow for the same, higher level of consumer sophistication as in private label law.

### ***Intellectual Personality***

Reframing the justification for intellectual property as an argument of personal expression as the foundation for property rights and suggesting that intellectual property (in all forms) more closely resembles this conception of property than Locke's physical property argument which has traditionally been employed, especially in copyright scholarship. Starting with Hegel's personality theory of property, but also looking beyond, to other, more recent personality conceptions of property, the article compares these theories to trademark law. Because trademark already exhibits elements of a personality theory of property, trademark law could serve as a model in reinterpreting or restructuring other areas of intellectual property along Hegelian/personality terms.

## **Jurisprudence/Philosophy of Law**

My interest in jurisprudence has centered on questions about the use and meaning of language, intentions, and interpretation in law, focusing especially on the context of statutory and constitutional interpretation. Other jurisprudential interests include theories of rights and constitutions (also bridging to intellectual property work) and general analytical jurisprudence (e.g. inclusive and exclusive legal positivism).

In Progress:

### ***Intention and Interpretation*** (available at [Thttp://ssrn.com/abstract=1404203](http://ssrn.com/abstract=1404203))

A discussion of interpretation drawing parallels between “intentionalism” in law, philosophy, music, and literature, arguing that theories of legal interpretation should abandon their originalism versus non-originalism orientation in favor of discussing intentionalism versus non-intentionalism. Because originalism is a form of intentionalism and textualism a form of non-intentionalism, this distinction also separates, and opposes, originalism from textualism.

### ***Faithful Interpretation***

This paper examines the question: What constitutes a ‘faithful’ interpretation of a text? Comparing law to literary and religious texts, the article argues that the epistemic demands of faith in legal texts (i.e. belief in law’s content) are higher than other types of textual interpretation. Lawyers are more often expected to profess agreement with the substantive provisions of a text in order to be taken seriously in their interpretation of them (“epistemically faithful interpretations”). In part because of this misplaced demand for belief, intentionalism has unnecessarily cemented as the dominant mode of constitutional interpretation, among originalists and non-originalists alike. Non-intentionalist interpretations, however, are not only plausible readings but may still be ‘faithful’ in another sense—that is, performed with integrity (“semantically faithful interpretations”). Only this latter sense of faithfulness should be the expectation of legal interpretation, notwithstanding whether the interpretation relies on intentionalist methodologies.

Future Projects:

### ***Dynamic Textualism, Evolutionary Literalism***

Describing a non-intentionalist theory of legal interpretation in which the text, absent intentions, is interpreted literally; yet the theory is dynamic, or evolutionary, because it embraces that the literal meaning of words can change. Such change virtually always expands the meaning of a word, either by adding new senses or broadening existing definitions. By implication, legal texts may also liberalize, and this paper argues that such a process is an integral part of democratic government.