

Identifying Information

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Paper Information

Title:	Impoverished IP
Abstract:	<p>Intellectual Property (IP) scholarship is generally concerned with how innovation policy impacts social welfare by providing appropriate incentives for innovation. But lately, the question of who participates in IP creation—with an eye to distributive justice as well as social welfare more broadly—has been getting more attention. Most scholars writing in this vein acknowledge IP's shortcomings in achieving proportionate participation and representation across socioeconomic, race, and gender lines. But many argue that in spite of these flaws, IP regimes can advance distributive justice by giving the poor and other members of disadvantaged groups opportunities to accumulate wealth and improve their position in society. Yet the aspiration some hold out for IP as this particular type of tool for distributive justice is, unfortunately, doomed to failure, because it overlooks how poverty impacts creative decision-making. A large and growing body of psychological research shows that poverty changes the decision-making of those experiencing it. This Article argues that in fact, poverty makes it very difficult to think in ways that bring about the creative advances IP requires. IP is thus inherently limited as a mechanism for escaping poverty. Poverty's impact on creative thinking also has wide-ranging implications for innovation theory and policy that reach beyond specific demographic groups. This Article explores how the psychology of poverty intersects with IP, and in doing so, makes four main contributions to the literature. First, it calls into question the feasibility of scholarly calls for IP to act as a mechanism for empowering the poor. Second, it offers an additional, novel explanation for why we see lower levels of IP participation among socioeconomically disadvantaged groups. Third, it argues that IP scholars need to start looking beyond incentives in their quest to optimize socially beneficial innovation. While IP's dominant utilitarian theory posits that IP provides needed incentives to innovate, what the account fails to consider is the possibility that some otherwise willing participants are unable to respond to these incentives. Finally, in offering policy recommendations, it turns IP scholars' current thinking about IP and distributive justice on its head. While these scholars argue that IP—a mechanism traditionally used to spur innovation—should be used to achieve distributive justice, this Article proposes that policies more directly aimed at attaining distributive justice will not only be more effective, but should also help promote innovation.</p>