

Beyond the Progress of the Useful Arts: The Inventor as Useful Citizen

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Abstract:

There is a robust scholarly discussion about whether and how the United States patent system fulfills its constitutional directive to promote the progress of the useful arts. There is also increasingly a discussion that investigates extra-constitutional roles for the patent system, from signaling and credentialing to self-expression and bolstering nationalism. This Article argues that there is a significant overlooked extra-constitutional role for the patent system that links these discussions. As the Founders and their legislative and executive branch colleagues in the early republic worked to develop a US patent system that would promote the progress of the useful arts in a struggling post-colonial country, they also defined the inventor-patentee in unique ways that defined patentees as useful citizens in a democratic republic. A patent certified originality and independent thought, abilities defined as crucial for participation in democratic self-governance. I argue that this unacknowledged sociopolitical role for patents explains in part the persistence of the US patent system in the face of the long-running critique of its efficacy in promoting innovation and economic growth; this technoeconomic role was not the only valued role for the patent system. Further, I argue that the ideology of inventor as useful citizen reveals the role of patents and invention in the restriction of full citizenship rights in the United States to white men and both the causes and costs of historic and present gaps in patent rates by race and sex.

To make this argument, this Article develops the first comparative legal history among the early United States, the Republic of Texas (1836-46), and the Confederate States of America (1861-65), contrasting the US patent system to the short-lived patent systems in each of these two imitative democracies formed by former US citizens. I analyze how these two new countries, engaged in desperate battles for survival, devoted scarce resources to establishing a patent office, tracing the constitutional, legislative, and bureaucratic history of the Texas and Confederate patent systems. In each case, politicians looked to the US patent system as a model even as other patent systems, such as those of Britain and Mexico, offered examples seemingly advantageous to these cash-strapped and under-industrialized nations. I argue that the form each new patent system took demonstrated that the white men who created it believed, based on their US experience, in the inventor as useful citizen. I also argue that the unique aspects of the Texas and Confederate patent systems responded to the racial politics of the United States. White Texians and Confederates were working to establish countries in which the future of racial slavery would be assured. Their decisions about how best to create a patent system reflected their assumptions that only white men were suited to be full citizens and that inventiveness was racialized, and thus illuminate the often-overlooked assumptions in the United States that both inventiveness and the ability to assume full citizenship were limited to white men.