

tion, the connections, and everything else it takes to exploit inventions by modern organization. (See ¶ 321.)

[155] Really, though, we should not call those hired scientists, etc. "the inventors." They are only a part of the inventing team, along with their mechanics, librarians, clerks, *et al.*, the employer who organizes and pays them and decides their goals, the scientists and professors who outfitted their minds, and many other folk. These diverse contributors cannot all be paid in the same coin. Many enterprisers and a few freelance inventors will accept payment in patents, highly speculative unless you can average the chances by holding 100 or so. All the other parties must be paid off with other values, the favorite being some steady source of income. (N 193 and ¶ 521 ff.)

THE ECONOMIC THEORY OF PATENTS

[156] Having placed on trial the classic view of patents and found it mostly fallacious, let us now take up the economic theory of patents. It has always been accredited along with the dismissed theories, and is not only much more satisfying intellectually, but will better support the institution, explain what it is like and how it got that way, and afford many suggestions on how the system might perhaps be modified for the better¹⁹⁴ (particularized in chap. 10).

[157] What class of thing is the patent system?¹⁹⁵ It is an economic institution, adopted to serve economic ends; therefore it must be judged and appraised by economic (and occasionally other social) criteria. This applies to whether each several invention and class of inventions merits patents, as well as applying to the whole system. The patent system involves legislation too, and can be studied as a branch of Law. But one cannot study what kind of laws were best, i.e., go into Jurisprudence, and stick to Law; one must bring in Economics, Sociology, Psychology and other lights, to see what kind of patent laws would best serve.

[158] Next most fundamentally, the patent system is an economic institution involving monopolies on inventions, limited to 17+ years. Yet in most of our economy we disfavor monopoly. And not only disfavor, but fight doggedly, and call the struggle against it one of the greatest issues of contemporary politics. Patents are often extended in effect beyond the inventions patented, in which limited monopolies may be quite unimportant or wholly beneficial. They tend to create *industrial* monopolies of unlimited duration, when gathered by dozens or hundreds in pooled, trust, or great corporate hands, the valid and the bogus patents bundled together, forming a frightening barrier to all competition, a monopoly against consumers of the goods, and a monopsony to the freelance and foreign inventors, who find no market for their patents but this monopsony, this pool. The longrun nature and effects of patent monopolies may be very different from the short, 17-year run intended in the grant of each single patent; and this big, longrun monopoly effect may be quite undesirable, although it still encourage inventing and patenting.

[159] To this situation different thinkers respond according to their lights. Those with legal learning try to draw fine distinctions, as to how far the monopoly in a patent may and may *not* be extended toward monopoly of the industry. We respectfully leave these questions to their many writings, in the current series and elsewhere.