

## RESEARCH SUMMARY

# Is Patent Protection Industrial Policy? Notes on the Political Economy of University Patenting

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The Bayh-Dole Act of 1980 allows universities to patent inventions that result from federally funded research. The legislation accelerated a preexisting uptick in university patenting and had the effect of an R&D subsidy for chemicals, pharmaceuticals, and biotechnology. In “Is Patent Protection Industrial Policy?” Walter D. Valdivia argues that when government displaces markets to pick winners, it also creates social costs that subtract from any social benefits accruing from those programs.

### **BAYH-DOLE—IN THE NATIONAL INTEREST?**

A subsidy creates its own interest group to protect the subsidy, and that group invariably links its own interests to the common good. Over four decades, the small coalition that pushed for the Bayh-Dole reform has grown into a well-organized and powerful lobby that is a formidable defender of university patenting. It has done so by:

- highlighting the presumed broad-based effect of the policy across all economic sectors—in contrast with industrial policy, which favors particular sectors or corporations;
- praising university patenting as the nexus between federal R&D funding and national innovation, and as essential to US global leadership; and
- inflating the policy’s social benefits while ignoring its social costs.

### **TELLING THE FULL STORY**

The supporters of Bayh-Dole are well organized and vocal. The narrative they advance, however, seems incomplete and one-sided.

1. The Bayh-Dole Act was not broad-based patent reform. Rather, it was signed into law thanks to sector-specific advocacy by a small group of policy entrepreneurs and universities working upstream in drug R&D.
2. Universities are indeed the nexus between federal R&D and innovation, but there are several channels of technology transfer, of which university patenting is only one.
3. The law, as enacted, placed constraints on university patenting and exclusive licensing. Yet Bayh-Dole defenders denounce any suggestion for self-restraint in patenting as an attack on universities and a betrayal of the original law.

### **A CAUTIONARY TALE**

Enacting industrial policy, even when the policy seems to be neutral with respect to economic sectors, changes the economics of favored sectors but also their politics. The Bayh-Dole Act had the effect of an R&D subsidy for

chemicals, pharmaceuticals, and biotechnology, thus changing the economics of those sectors. It also created a political lobby that effectively resists reform to university patenting.