VII. Conclusion

While it is relatively undisputed that the BDA fostered uniformity among federal agencies, which led to more licensing by universities and less uncertainty with respect to ownership, the ultimate effect on technology transfer is not unanimously agreed upon.[290] Though the number of patents to universities has increased drastically since the passing of the Act, some Bayh-Dole detractors contend that the BDA was an effect, not the cause, of the explosion in innovation. However, the Act has empirically been shown to have improved the technology transfer of federally funded university inventions, with commercialization and licensing of patents increasing substantially post-1980. Further, it seems clear that the BDA has neither hampered scientific progress nor misdirected research any more than what would occur in a regulation-free system. The major concern of many critics is the possibility of an anticommons effect pursuant to the increase in early stage patenting. Evidence of commercialization shows that, to this point, an anticommons has not occurred.

Despite the successes of the statute, the provision for the march-in by the government in specific cases has proved to be a failure. The government has never marched in and asserted its power, and the statute needs to be reworked to incentivize the government to do so when the situation is warranted. The options that can instigate a march-in have merit; the hesitance of the government to use these options needs change. Explicitly defining examples that should lead to march-in and including a reasonable pricing requirement will make the march-in provision more effective as both a deterrent and a tool to ensure commercialization occurs.

The *Stanford* case has given rise to a previously unexamined limitation of Bayh-Dole—specifically the fact that the Act does not automatically override the rights given to an inventor under patent law. Thus, universities will have to be more vigilant in ensuring that inventors contract their rights in patent to the university. Further, the increased likelihood that a commercial invention will have multiple owners of patents forming the invention may create an anticommons effect, and thus faintly harm the technology transfer system. Despite these consequences, the case was correctly decided from a policy standpoint. If Bayh-Dole were to be interpreted to override patent law principles, the effect on technology transfer would prove to be more harmful, as individual researchers will be even less incentivized to work towards creating patentable products.

290 *See* Managing University Intellectual Property in the Public Interest 1 (Stephen A. Merrill and Anne-Marie Mazza eds., The National Academy Press) 2011.

Though the BDA has proved worthwhile in the United States, great care must be taken to create similar statutes abroad. The differences between the United States university system and those in other countries are substantial, and must be considered when creating a provision to allow for universities to keep rights to their patents. India is a classic case where a country has acknowledged differences between itself and the United States, and the result is a bill that has been under construction for several years. To increase the chances of progression in its university technology transfer sector, a country must narrowly tailor any regulations to account for the university structure, commercialization tendencies, and cultural makeup. While time will be the ultimate judge of the effect of "Bayh-Dole-esque" provisions, studies and analysis of Bayh-Dole in the United States and the similarities and differences of technology transfer in the relevant country will maximize the opportunities for improvement in university technology transfer.