

A Justification of Intellectual Property

Intellectual Property is an intangible and abstract notion of what we as society consider to be property, especially in the case of *owning* an idea. The difficulty in understanding this notion comes down to attempting to visualize owning an immaterial and conjectural entity, which is a stark difference between the easy visualization of owning land or physical possession of an object. Despite this, Intellectual Property played a vital role in the development of human creativity, innovation, and arts since the Venetian Patent Statute - the first law granting inventors and artisans protection of their work - instituted in 1474. The argument, and justification, I shall provide in this essay is that the ownership of Intellectual Property is justified through its historical and utilitarian merit. Specifically, my argument aims to show the utilitarian benefit Intellectual Property has had to society, the structure that Intellectual Property rights have provided to the development of the creative arts and sciences, and the refutation and defense against claims arguing for the dissolution of Intellectual Property rights.

To provide a preliminary background, I shall begin with a topical overview of the impact that Intellectual Property rights have had on a global scale throughout history. Though not exhaustive nor the primary point of this essay, this background will serve as future reference to the utilitarian impact Intellectual Property rights have had on society. The Venetian Patent Statute was implemented during the middle stages of the Renaissance Era, coinciding with the increase in arts and sciences in Europe. While the Venetian Patent Statute was not implemented until 1474, approximately 150 years after the start of the era, the statute was implemented 16 years prior to the High Renaissance Period - the period within the renaissance that saw a significant increase in the arts and sciences. A similar correlation can be found across history. The English Statute of Monopolies and Statute of Anne provided structural

frameworks that allowed for the increase in the creative arts and the amount of Renaissance and Restorationist literature produced. Inspired by English Intellectual Property rights, the United States Constitution incorporated a clause in the first article - Art. I, §8, cl. 8 - that allows for legislative power to “promote the progress of Science and useful arts”. In the years following the enactment of the United States Constitution, the United States saw an increase in technological advancement. This technological advancement allowed the United States to quickly industrialize and created the Industrial Revolution in the United States. Likewise, Japan had instituted similar Intellectual Property rights near the start of the Meiji Restoration period. These rights allowed for the industrialization of Japan and the flourishing of Japanese art and literature. Thus, as shown with the multiple global cases of Intellectual Property rights, it can be topically extrapolated that the creation and implementation of these Intellectual Property rights led to a causation of scientific and artistic development, of which led to tangible utilitarian merit that benefited society technologically and culturally.

Intellectual Property in a Lockean Perspective

A preliminary perspective one can take to understand is that of labor. For the purposes of this argument, we shall begin with the Lockean notion of labor and property to construct a justification for Intellectual Property. The Lockean argument of property as a general idea revolves around the notion of labor. This argument revolves around the notion of labor mixing, of which, in a Lockean point of view, grants a person ownership of some unclaimed property that the person has labored on. In this viewpoint, the person is able to gain ownership in the first place due to their natural right to own themselves and their labor.

Consider a farmer who comes across a 1 acre tract of land that is entirely unclaimed. The farmer raises a fence surrounding the acre then tends to the land by planting crops. At the end of the year, the quality of the land has increased drastically due to the grown crops. By

virtue of his labor, a Lockean argument can be made that the farmer has justifiably come to own that acre of land. It is the natural right of the farmer that has granted them the justification to the ownership of the property of the acre, of which the justification is provided by the farmer's labor. As such, the farmer is logically the owner of that acre of land.

Now consider a person who thinks of some original idea. The person puts effort and writes their idea to provide more details. Is not the act of detailing and elaboration a form of labor? The person has invested their time and intellect into expanding their idea through their own labor. As such, is this person not so different from the farmer who came across a 1 acre tract of land? An original idea can be thought of as an unclaimed idea, as prior to the inception of the idea, its very existence did not exist. Likewise, is detailing and elaboration different in essence from tending crops? While these examples differ in how tangible they are, as it is not possible to mentally grow a crop or physically elaborate an idea, do they not share the attention to detail someone must put in for a successful yield? As such, a Lockean connection can be drawn from the very notion of the creation and labor needed to have a fully developed idea.

This Lockean connection is thus logically drawn through the concept of labor. Furthermore, the differences of Intellectual Property and physical property can further justify Intellectual Property. Departing from the previous two examples into a more concrete example, consider a person who comes up with a novel and detailed idea for an invention which serves some use, of which they wish to patent. For the sake of the current argument, we shall assume the idea which the person wishes to patent is not obvious or some basic scientific discovery. Since the idea is novel and thus had not existed prior to the conception of the idea, as outlined above, we get the ethical notion of just acquisition. This idea is further exemplified by the Nozickian idea of entitlement. Using Nozick's idea of Justice in Acquisition of his Entitlement Theory, we can come up with a logical and ethical reason for the justification. The person came

across the idea that had previously been unclaimed, which is brought on by the fact that the idea was brought into existence by that person. Thus, it follows that this person has rightfully acquired the ownership of that idea through Justice in Acquisition. Now, presume the person begins to draw out schematics and other details regarding the invention. The work that they are putting into converting their intangible and abstract idea into a detailed report - and especially that of a physical manifestation - has allowed the person to pull ownership from the intangible into the physical. As such, the person now has claimed both ownership of the intangible and physical implementations of their idea.

Incentivization

For many, the act of labor is arduous and seems counterintuitive to human nature; however, many people still labor over the ideas they have to claim rights over them. This contradiction can be explained by the incentivization that Intellectual Property rights give to the creation of these ideas. States that contain protections of people's Intellectual Property rights often have the highest yield of scientific innovation and the arts. This is because the laborers who create these ideas are being rewarded for their labor. This reward often comes in the form of protection of their ideas and monetary benefits that result from the utilization of the physical manifestation of that idea given by people who utilize that manifestation.

In this system of incentivization, creators are encouraged to create what they want according to their own free will, of which is an exercise of their natural rights. While social and market pressures may play a role in the decision of a person choosing to make a physical manifestation of their idea, the decision is ultimately up to the individual, and the individual is free to choose how to make manifest their idea. This plays into the key role of incentivization - reward and freedom. Consider two states, State A and State B. State A provides Intellectual Property rights to a person's labor, whereas State B provides a Communist right to society of the

person's work. The effectiveness and implementation of states such as State B will be considered in a later section under Marxian Arguments, but for the time being, we shall assume the outlined conditions of State B. In State A, a person comes up with an idea and works on the physical manifestation of that idea. This person is guaranteed certain rights regarding his Intellectual Property, of which they have gained through their labor. The primary right many states of this nature will give is exclusivity to their idea. In essence, no one is allowed to copy, steal, or benefit off of their labor. This results in the rewards earned through the merit of their intellectual property being solely granted to the person who came up and labored with the idea. Now consider State B, wherein a Communist system of rights is implemented. Consider the same person who came up with an idea and labored to make a physical manifestation of that idea. In State B, the ownership of the idea and physical manifestation would be handled and executed by the state. As a result, the laborer has lost the freedom to do what they originally intended to do with the idea and physical manifestation. Their freedom of choice has thus been restricted, and thus, their ownership of their work has been infringed upon. Likewise, while the laborer might still gain some initial reward or stipend from the state for their work, they would not be able to benefit from the same freedoms granted by the passive rewards that they would have received in State A. Thus, another violation of a person's natural right to freedom has occurred. As a result of their loss of freedom and reward, the person in State B has lost incentive to continue or even begin their work. Conversely, the person in State A has some incentive to their labor, as the state has granted them the right to freedom and reward of their labor. State B not only has a lack of incentivization for creators, but, in the act of a communal sense of property, has discouraged most individuals from creating, actively going against the principle of promotion of the sciences and arts.

A critique of this claim can be made through the people in State B, or even in some neutral State C where no Intellectual Property rights exist, as it can be argued that people will

still create despite the lack of incentivization due to their own personal interest. This critique claims that many philosophers of the ancient world, and other scientists and artists, still made physical manifestations of their labor without Intellectual Property rights; however, I shall counter this claim with two counter arguments. The first is that of sponsorship. Many of the people who completed their work without Intellectual Property rights were able to receive some form of reward from a patron, academic institution, state sponsored program, and previous wealth. For example, many of the most famous scientists in history were some combination of previously wealthy and a recipient of aid from an academic institution. The second is that of loss of possibility. While it is true that many people were able to create without a structure of Intellectual Property rights, it is also true that there would have been more creators who would have been able to produce work. Many such creators, especially those in the arts, likely could not find the sponsorship to help with their endeavors, and without a system in place of Intellectual Property rights, there was no guarantee of return and reward for their labor.

Scientific Phenomena and Non-Obviousness

One critique of this argument that can be made against my claim is that of scientific phenomena and people patenting as many things they can in order to claim ownership of as much as they can. This critique is extremely valid, and plays a vital role into discerning the natural limitations of what people can come to own through Intellectual Property rights. As an analogy, we shall begin with one of Nozick's most famous critiques of Locke's theory of labor - The Tomato Juice Critique. Here, Nozick argues against Locke's theory of Labor Mixing, in which Nozick argues that mixing a can of tomato juice into the sea does not constitute the person who mixed the can of tomato juice ownership of the sea. This analogy can be applied to my claim of the natural limitations of Intellectual Property rights. We shall first liken the sea to that of a scientific phenomenon and the can of tomato juice to an invented device that cosmetically utilizes, but does not manipulate or transform, that scientific phenomenon. Since

the device's function does not provide any meaningful manipulation or transformation of that scientific phenomenon, it cannot be owned by the person who made the device. This is because the person would be attempting to own the scientific phenomenon, as the person is only making a cosmetic utilization of the phenomenon through the device. Additionally, from the point of view of a learned academic in the field of the scientific phenomenon, the cosmetic utilization of the device is obvious. The role of non-obviousness of a device allows us to remove the assumption we had previously made. If a device is that of a cosmetic utilization of an obvious phenomenon, even if it is not obvious to the unlearned population in that scientific field, it cannot be owned, as the claim of ownership would apply more so to the scientific phenomenon instead of the device.

We shall now consider the negative societal consequences of ownership of scientific phenomena. The ownership of scientific phenomena would directly violate the rights of others. Consider the US Supreme Court case *O'Reilly v. Morse*, wherein Samuel Morse (the inventor of the Telegraph and Morse Code). Morse had filed a patent to claim intellectual property over the Telegraph, of which was successfully filed; however, Morse had also filed a patent to the device that allowed the telegraph signal to traverse a long distance - the Galvanic Repeater. Morse was unsuccessful obtaining the intellectual property ownership of the latter, as the United States Supreme Court ruled against Morse due to his claim of the ownership of the electromagnetic phenomena that allowed for the functionality of the Galvanic Repeater, of which only applied a cosmetic utility to electromagnetic phenomena. In understanding the philosophical and political implications of the ownership of electromagnetic phenomena, we would find the degradation of the social benefit of the sciences. Additionally, the ownership of electromagnetic phenomena, and scientific phenomena in general, would result in the delay of scientific development. This, I believe, is contrary to the spirit of Intellectual Property rights, which serve to promote the sciences and arts. Had Morse been given the right to own electromagnetism as a phenomena, Einstein would not have been able to complete his work in understanding the universe, nor

would many of the inventions and scientific discoveries of the early 20th century, of which are still pertinent today, be able to come to fruition.

Utilitarian Merit of Intellectual Property

The historical and present significance of Intellectual Property can be argued from a utilitarian perspective, of which I shall demonstrate below. In order to develop a utilitarian argument for Intellectual Property, I will break apart the main aspects of what Intellectual Property aims to achieve - the promotion of the arts and sciences through what provides and maximizes good. The promotion of these virtues provides a societal utility, of which advances the benefit to society.

This benefit can be understood in the increase of quality of life and technology through scientific innovation as well as the increase in the diversity and richness of many of the cultural aspects of society. It is without a doubt that the proliferation of technology has helped our society advance. This advancement is the result of various physical manifestations of ideas that have come to market and have a utilitarian benefit to society by means of increasing our quality of life. Likewise, the artistic benefit of intellectual property has led to the creative expressions of art, which provides a utilitarian benefit through the understanding of culture and people.

“Greatest Good for the Greatest Number”

The “Greatest Good for the Greatest Number” utilitarian argument proposed by Mill and similar utilitarians readily applies to Intellectual Property through an economical argument. The basis for this argument arises in the abstract and intangible nature ideas exist in and the individual creativity of people. Consider a novel idea for an invention that aims to solve some problem found commonplace in society. We shall now presume that the person who worked on

the idea has managed to successfully create a physical manifestation of their idea through some device, and that the person has brought that device to the market to be sold. Regardless of how many devices that person is able to sell, that person has provided a utilitarian benefit to society. This is proved by understanding the economic argument of this claim. Even though only some members of society were able to acquire the device, the device has maximized the greatest amount of good for the greatest number of people. As previously mentioned, this is because of the abstract and intangible nature of ideas. Without the original conception of the idea to solve the problem, and thus, without the device to solve the problem, no one in society would be able to solve that problem. Thus, by providing the greatest amount of devices that people in the market were able to buy, the greatest amount of good has been produced. Because of the existence of the device, the greatest amount of good presently made is done, as society as a whole is made slightly better off than it would have been without the existence of the device. As a result, the person's Intellectual Property has resulted in the greatest amount of good for the greatest amount of people at that present time.

Maximizing the Good

We shall now take a wider look at how the greatest good for the greatest number can be maximized. Let's assume that the device that aimed to solve the problem above is still in the market. We shall now also assume that another person, seeing that, even though the greatest good has been presently satisfied, wishes to maximize the amount of future good. As a result, the person will come up with a new idea to solve the problem - one in which a greater number of people have access to. This person comes up with a novel idea and then creates a physical manifestation of that idea through a new device. The new device is brought to market and is bought in a higher volume than the old device. The second person's Intellectual Property, inspired by the societal effect of the first person's Intellectual Property, has now increased the present amount of good compared to the previous amount. This is because the good is now

available to a greater number of people. The existence of the first device has maximized the amount of good compared to the lack of such a device, and the existence of the second device has maximized the amount of good compared to the first device. Thus, because of the recursive nature of this property, Intellectual Property creates a utilitarian ecosystem in which good is promoted through the innovation of new solutions that increase the total amount of good by either: increasing the effectiveness of how a physical manifestation of an idea is able produce good or by increasing the number of people that can own a physical manifestation of an idea to solve a problem.

Societal Structures Provided By Intellectual Property

A benefit of Intellectual Property beyond those of utilitarian merit are those of the societal structures Intellectual Property rights have helped cultivate. Intellectual Property offers a structural way to approach the arts and sciences. This structure has become increasingly pertinent to the sciences, as it provides for an ethical and logical methodology for cooperation. Ownership can be shared amongst cooperators, where cooperation can serve as a solution to solving difficult problems that a single person cannot solve.

Against the Hobbesian State of Nature

To understand the importance of cooperation, we shall consider the Hobbesian State of Nature wherein everyone exists as a rational egoist. The rational egoist, as a single individual, will look out for their own interests; however, the primary problem with the State of Nature is that of overcompetition, which results in a detrimental effect to society as a whole. In order to escape the State of Nature, a social contract must be made between the members of society such that parts of the natural rights of individual members of society are transferred to a societal authority, such as a government. In terms of Intellectual Property rights, the government and the governed

make a social contract to uphold these rights. This serves as the primary escape from the Hobbesian State of Nature, and thus allows us to build more structures of cooperation.

Now presume a person wishes to invent a device that will solve some complex problem; however, this person finds that the problem is much too complex to solve on their own and requires the aid of another person or multiple people to be solved. In the Hobbesian State of Nature, this person would not be able to find help, as there is no mode or incentive to cooperation. The person seeking help is susceptible to getting their idea stolen by the person or people that they are trying to get help from. Likewise, the person or people that help are incentivized to steal the idea. Even if a person manages to steal the idea and cannot solve it, the person who originally created the idea has had their rights infringed upon. This process is susceptible to be repeated recursively, and would result in the eventual loss of rights to that of the person who came up with the idea. However, as previously mentioned, Intellectual Property rights give rise to structures to help secure a person's right to own their idea. Consider a person who is attempting to create the same device as before but lives in a state with Intellectual Property rights. Here, the person is more likely to seek help from others for the following reasons: there are benefits to cooperating, there are protections in place to help them have some ownership of that idea, and there are ways in which the property can be shared amongst cooperators.

The benefits of cooperation is the union of perspective and knowledge that people can provide to solve a problem, such as that of the device. More complex problems can be solved through the work of multiple people, as it allows for people to specialize in what they are able to come up with and physically manifest. An advantage that also arises from this benefit is that of quality. For the most part, the work done by multiple, specialized people rather than a singular person is of higher quality. This is because the person initially seeking to solve the problem can

freely seek out experts who have the knowledge and expertise to solve individual parts of the problem. Another advantage that arises from this benefit is that of production time. Since the joint effort is that of multiple people, progress on solving the problem can be made faster. Thus, this structure provides an opportunity for better and faster development of solutions to problems.

The person who originally came up with the idea is also able to receive protection of their idea from the state. By definition, Intellectual Property rights serve to protect the rights of the person who created the idea, along with any other collaborator. This can be exemplified in two ways: protection from other collaborators and protection from outsiders. For example, consider if the person who originally wanted to create the device approached two other people to collaborate with to solve the problem. The three people work on solving the problem and making manifest the idea, but the third person is secretly planning on stealing the idea and manifestation and presenting it on as their own. This would infringe upon the rights of the other two people, and would thus provide an unethical advantage for the third person; however, the social contract Intellectual Property rights being protected by an overseeing authority provides recourse to the other two people, as they can jointly work to provide evidence claiming their rights have been violated. The social contract structure, which is upheld for the purpose of ensuring the fairness of the division of Intellectual Property rights between the collaborating parties. This structure also provides the three collaborators protection from outside parties seeking to copy the collaborators' work. The same social contract applies in ensuring the fairness of the division of Intellectual Property rights.

Additionally, both the original creator of the idea and their collaborators receive protection through the way this social contract is structured. The social contract structure ensures that, once the problem has been solved and the physical manifestation has been made, every party is ensured and entitled to some previously agreed upon share of the ownership of

the Intellectual Property. This benefits the person who originally created the idea and problem, as it provides an economical benefit to the ownership of the idea. Without the help of the other two parties, the person would not have any claim to ownership of the property as there would be nothing to own. Likewise, the two other parties benefit from the cooperation through the shared ownership of their work, of which they would also not have had originally. Thus, all three parties are made better off through their collaborative effort.

Counter Arguments and Refutations

One common argument made against Intellectual Property rights is the commodification of ideas into things to be withheld and sold. Likewise, other arguments against Intellectual Property are those of Marxian Nature, namely that of the justification of property as a whole. Here, we shall address some of the issues and weaknesses that these arguments possess. Though not exhaustive, this section provides a preliminary case in the argument against the justification of Intellectual Property.

Commodification

The Argument of Commodification revolves around the basis that Intellectual Property rights prohibit the societal access of that idea to the general public by treating the idea as a good to be sold rather than something to be shared. While this argument holds merit in cases of abuse of Intellectual Property Rights, it seems to misunderstand the purpose for which Intellectual Property rights exist in the first place. As discussed above, the historical and present reasons for the creation of Intellectual Property were the protection of the labor that someone must do in order to create the idea and physical manifestation in the first place. This returns us to the justification of Intellectual Property rights through the labor argument. Likewise Commodification Argument fails to understand the economics of the development of someone's

access to Intellectual Property rights through their labor. Without their labor, the physical manifestation of the Intellectual Property would not exist, and, thus, would not be able to provide a benefit to society. Thus, it is a disservice to the creator and an infringement of that creator's rights to not give them the Intellectual Property rights over their labor.

Marxian Arguments

The Marxian Arguments can be broken down into the 3 primary claims Marx and Engels make regarding property as a whole: the alienation effect of property, property as a class control, and property as a way of keeping power. These arguments seek to reevaluate property in terms of the laborer, but can ultimately fall short due to the laborer being able to reap the rewards of their property in systems with Intellectual Property rights.

The first claim is that property alienates the laborer from the product of their labor. The basis of this argument is that property is a manifestation of alienation rather than a cause. In terms of Intellectual Property rights, Marx's argument fails, as the conception of the idea to the physical manifestation of the idea is done by the person who came up with the idea. The weak point of this argument is the fact that the person who came up with the idea must labor on the idea in order for it to become physically manifest, thus, it is impossible for the person who originally came up with the idea, labored, and manifested the idea to become alienated from their own work.

The second claim is that of class control, of which argues that property seeks to divide the bourgeois and the proletariat worker. For this counterargument, we shall consider a case wherein a person who owns the Intellectual Property rights to a device hires workers to help manufacture these devices. In this example, using Marxian terms, the owner of the Intellectual Property will act as the bourgeoisie and the workers as the proletariat. The weak point in this

argument comes down to the economic argument of the existence of the idea. Assuming fair work conditions for the workers, the owner is justified in the ownership of his Intellectual Property, especially considering the owner is providing a utilitarian benefit to society and the workers. The utilitarian benefit to society is the promotion of the arts and sciences, depending on what the owner's Intellectual Property is. The owner also provides a utilitarian benefit, still assuming fair working conditions, to the workers by providing them with a job and monetary income. In essence, while the workers do not own the Intellectual Property, they still get to enjoy parts of the rewards the Intellectual Property garners.

The third claim is that of property as a way to keep power. Similar to the first claim, this claim is especially weak against Intellectual Property, as it relies under the presumption that the power of every idea is the same and the number of ideas is finite. A person who previously had no stake in a field, and thus, no property, can come up with an idea that is vastly superior to current ideas and manifestations in that field. Once this person is able to create the physical manifestation of their superior idea and bring it to market or to a cultural event, that person will be able to rise from having no stake in the field to having a considerable stake in the field for their creative contribution of their Intellectual Property. Thus, there is little claim that Intellectual Property rights are a method of keeping power. Likewise, the number of ideas that a person can produce is not finite, and thus, there are multiple ways in which someone can come to have a significant claim in a field through their Intellectual Property as there are multiple ideas and manifestations one can have when presented with a scientific or artistic problem.

Another argument that can be made against Marxist Communism and Applied Communism is that of incentive. As previously discussed, a person living in some State A where they are able to be granted Intellectual Property rights for their work is more likely to be incentivized compared to that of another person living in some State B where property is collectively owned by all members of society. In Marxist Communism, a person loses the

incentive to labor, as they would receive either: no fruits regarding their labor or diminished fruits of their labor. While State B will provide for the basic needs of the person, the person will lose the reward of their labor, of which disincentivizes the laborer from more labor than what is minimally necessary to survive. Furthermore, in Applied Communism, such as in the case of the former Soviet Union, the person would generally have less freedom to labor on what they wish due to the state's execution of the ownership of the property. A person in this form of Communism also faces the same disincentivization to that of the person in Marxist Communism.

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