

# Intellectual Property Rights: A Western Tale

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## Abstract

Even today, when the development and expansion of intellectual property protections is justified or criticised, the Western philosophical tradition is generally evoked. Appeals to natural rights, Lockean labour theories of property and Kantian or Hegelian theories of personality abound. Alternatively, economic principles and utilitarian rationales are drawn upon to rationalise or question intellectual property laws as incentive structures that produce a socially optimal supply of intellectual creations. In both these moral and utilitarian arguments, scholars address intellectual property laws purely abstractly, as promoting reified rights in unremarkable and indistinguishable intangibles.<sup>1</sup>

## 1. Introduction

A sophisticated analysis of intellectual property law demands not only an understanding of its underlying philosophy, but also an appreciation of its structural base. The purpose of this article is to trace the contours which have shaped intellectual property's story. This article takes the view that intellectual property is not only a Western concept, but also a thoroughly modern one. As Rosemary Coombe poignantly asserts, both the justifications and criticisms of expanding rights in intellectual property are generally based in *Western* philosophical traditions, even today.<sup>2</sup> Moreover, Western constructs, such as

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<sup>1</sup> Rosemary J Coombe, *The Cultural Life of Intellectual Properties: Authorship, Appropriation, and the Law* (Duke University Press, Durham and London, 1998) p 7.

<sup>2</sup> *Ibid.*