

How I Changed My Mind on Intellectual Property

I'd been solidly libertarian for many years the first time I gave thought to "intellectual property" (copyrights and patents) at all. Someone mentioned the protection of property, including intellectual property, as the root of prosperity and freedom. I agreed without hesitation.

It just seemed to make sense. Now and then I would read or hear someone reiterate this position and it always seemed right to me. I had spent a lot of time working through the arguments in favor of private property – both philosophical and economic – and I didn't think IP required any special arguments to augment what I already believed about other forms of property.

Then a quote by Thomas Jefferson caught my eye:

"If nature has made any one thing less susceptible than all others of exclusive property, it is the action of the thinking power called an idea, which an individual may exclusively possess as long as he keeps it to himself; but the moment it is divulged, it forces itself into the possession of every one, and the receiver cannot dispossess himself of it. Its peculiar character, too, is that no one possesses the less, because every other possesses the whole of it. He who receives an idea from me, receives instruction himself without lessening mine; as he who lights his taper at mine, receives light without darkening me."

This bothered me. It kept rattling around in my brain and the more I thought about it, the more it seemed that IP was not just like any other form of property. Indeed, it became clear that IP rights required a new set of arguments; arguments for physical property rights were insufficient in defense of IP. So I started to poke around.

Rethinking Everything

My instincts were so strongly in favor of IP that I began by looking primarily for arguments that would bolster my bias. After all, the people who criticized IP in my experience were the same people who hated markets and businesses and all individual property, or else people who just wanted to get movies and music without paying for them because they didn't work and had no money. They seemed to be complainers and looters, not thinkers, producers and achievers. They had to be wrong.

Once I began looking for theoretical arguments in favor of IP, I realized that a great many people who were not market-hating hippies or Marxists or welfare queens did not find a credible case for IP. This was a disturbing discovery. The more I looked and read and thought, the more problematic the idea of IP became. It was a philosophical problem.

For starters, how was IP to be defined? Any mental exercise I tried presented insurmountable problems with even defining it reliably. If someone writes a certain combination of words on a page in a certain order, do they own it? What if they never show anyone else? What if someone else with no knowledge of the first person has the same combination of words in mind or on paper? What about simultaneous discovery, which is not infrequent in the history of great ideas?

These puzzles and many others forced me to acknowledge the strange characteristics of IP which made any consistent definition or enforcement impossible. Ideas are non-scarce. They could hardly be defined as property at all. What kind of law makes someone a criminal by adding a chemical to another chemical and selling it, even if they had no idea someone else had done the same and gotten government approval? It began to seem more like a violation of property rights than a protection. Why should my use of my property be confined to things other people have never done before?

The Slow Change

I read many more articles and had many late night discussions on the theory of IP over the course of about a year. I came to the unhappy conclusion that ideas were not property, IP was impossible to define, and therefore enforcement was a game of favoritism fraught with all the rent-seeking problems that any regulatory hurdle presents. I didn't like IP because it was not a coherent concept. But I still believed it was necessary.

I maintained a philosophical disbelief in IP and a pro-IP policy position for some time. Even though it seemed an incoherent concept, I could not wrap my head around how innovation would occur absent patents. I didn't care much for copyrights, and I thought trademark issues could be handled via fraud protection, market pressure and contractually without recourse to special IP laws.

But patents seemed an absolute must. It was the production of prescription drugs that got me. I failed to see any possible way in which advanced pharmaceuticals could be produced in a world without IP. Though I was not a pure consequentialist, this concern was enough for me to resist a strict anti-IP position even though I couldn't justify it philosophically.

The IP issue was never (and is still not today) the most interesting issue to me, so I let it be. It only occasionally came up, and I was content to somewhat awkwardly debunk it in theory but support it in practice. My quest for IP consistency was shelved as my intellectual journey took me elsewhere.

The more I learned about economics and political philosophy, the more ridiculous and far-fetched the state became – even a minimal state – and my ideas grew more radical. When I ran out of arguments for the existence of the state – both moral and practical – IP reared its head again. Someone asked me if I thought any form of IP could survive without the state's initiation of force. I could not conceive of any way in which it could.

How Would It Work in Practice

This left me in a weird place. I had been dragged, again kicking and screaming, to a disbelief in the state as an ethical or practical form of social organization, yet I had always believed that without state created patents, major innovations would cease. Then I came across Boldrin and Levine's, *Against Intellectual Monopoly*. I read it and my eyes were opened. I wondered how I could have been so dull and lacking in imagination and a grasp of history!

They argued not from a philosophical standpoint, but from a practical and historical standpoint that, far from spurring innovation, IP was one of the greatest stranglers of progress. In fact, the entire purpose of IP laws has been from the beginning to restrict innovation and experimentation and ensure the benefits of good ideas are concentrated on privileged groups, not according to how much they help consumers, but by how well they navigate the bureaucracy.

It was all so simple and obvious; I wondered how I could have missed it. I marveled at how I got by for so long with a worldview so full of the inconsistent and unexplainable. How could I see so clearly that occupational licensing didn't protect consumers but instead protected the big industry players who lobbied for it while failing to see the same about IP?

Upon reflection, it seems the reason my belief in IP was so strong was that it was planted in intellectual soil that had been cultivated since childhood to see the world as on the brink of chaos and disaster, only held together and kept sane by the force of law. Life on this planet was the Hobbesian jungle, and in every facet – from basic survival to usable language to a medium of exchange to innovation and common decency – we needed the strong arm of Leviathan to keep us on track.

When I began to realize how utopian this view of the state was, and how complex the real world was with all its intersecting norms and institutions, it became possible at last to see what should have been rather obvious; that ideas needn't be held hostage in order to be put to use and that the incentive to innovate needs no special nudge from the state.

This is how I came full circle on the issue of IP. I don't want or expect you to read this and be convinced I'm right. I haven't even really presented any arguments. I do hope, however, that you may be inspired to keep an open and inquiring mind and the topic and keep poking around.

If you do, check out Boldrin and Levine's book on the practical case against IP, and Stephan Kinsella's on the theoretical case. Think about your instinctual position on the issue and ask yourself what worldview it comes from.

Don't assume anyone who doesn't favor IP is a property-hating socialist. And for goodness sake, enjoy the process!