

Patents and the Independence of Innovators

Mark F. Schultz, Assistant Professor, Southern Illinois University

Property rights were once widely considered inseparable from liberty for moral, philosophical, and practical reasons. That tradition has largely been eclipsed, but this Article contends that it can still help us better understand intellectual property today. Although a handful of scholars have recently made the moral and philosophical case for intellectual property as integral to individual liberty, a fuller account is needed of the concrete, practical ways in which intellectual property rights promote liberty. This Article particularly focuses on the underappreciated ways in which patents foster and support civil and economic liberties

Property is a bulwark against coercion. A person with property has the means to support himself and thus has greater freedom to think, act, and speak as he desires. A person without property is beholden to the government or patrons and must think, act, and speak far more cautiously, lest he displease his benefactors and lose support. Patents serve this pivotal role for innovators by providing them with a means of support that is not subject to the political controversies of the moment. Freedom of inquiry is an empty ideal if one must rely solely on government for the resources one needs to pursue inquiry. Patents enable innovators to set their own research agendas. This is no small benefit at a time when many are concerned that scientific inquiry is becoming increasingly politicized.

Property rights also help to ensure that people have the means and incentive to defend themselves in the political process. Property owners have more clout in the political process than those who do not have property. While such concentrations of power and interest are often decried, they can be an important countervailing force against rent-seekers and ideologues who seek to curtail others' freedom.

Patents serve such a function by helping to create a powerful constituency for innovation. Innovation often upsets settled social and economic arrangements. It is thus often in peril from entrenched economic interests and ideologues who try to use government to preserve the status quo. By creating property interests, patents enable people to make a living by upsetting the status quo. Companies and entire industries rely on their ability to develop and market innovations freely. As a result, they oppose government regulation calculated to retard innovation, both as a matter of principle and of economic interest. Science and innovation thus have political support not just in the universities and laboratories, but also in the boardroom and on Wall Street.

The support that patents provide for individual and economic liberty is not just theoretically significant. Although the developed world can probably take these benefits of the patent system for granted, the developing world is a different story. A debate is raging regarding whether intellectual property rights truly benefit developing nations. At the same time, many decry the lack of political and economic institutions necessary for development in these countries. This Article contends that a patent system can make a

modest contribution toward building those institutions by fostering the independence of researchers and innovators and by building political support for innovative activity.