Preface

Innovation is turning information into tangible realities. By no means all innovation is economic, but when it is, individual property rights have shown themselves to be the most effective way to make it possible. This is because they set the widest range of human creative energy free to act in ways that can be measured by money. They provide the best environment for the activities of people who have both the imagination to be able to grasp the implications of a new concept and the practical ability to deploy the resources of society to turn it into a tangible embodiment.

Individual property rights were themselves a wonderful social invention, part of 'the glory that was Greece', and then the economic basis of 'the grandeur that was Rome'. The incomparable wealth and prosperity of the modern world since the sixteenth century has depended upon further social inventions in terms of rights and privileges. Not only do these enable creative energy to express itself in economic ways, they can also force self-interest to serve the public good – they are able to *civilize* it. Self-interest is disciplined in this way through markets, which exist only as a result of property rights, and the kinds of markets there will be, depend upon the kinds of property rights there are. Adam Smith could envisage the operation of 'the invisible hand' because he could assume rights of property that led private and public interests to converge. Even as late as 1913, Edward Cannan was able to write that 'the working of self-interest is generally beneficent, not because of any natural coincidence between the self-interest of each and the good of all, but because human institutions are arranged in directions in which it will be so'.¹

But these assumptions no longer hold good. Because property rights and the markets they bring into being are human constructions, they are subject to imperfection, decay and manipulation. It does not take genius on the part of those who are being disciplined by market forces resulting from property laws drafted with the public good in mind, to grasp the advantage they would gain if they could modify these laws to suit themselves. Pleas for free markets are invariably made by those who want markets to be shaped in ways from which they will benefit. The last thing business people want is a genuinely free market, since this would have no barriers to new entrants who would erode the incumbents' profits.

1 Cannan, E. (1913) 'Review of N. G. Pierson *Principles of Economics*' *Economic Review* 23, 331–33.

In democratic societies, as the cost of getting elected has escalated, politicians have become correspondingly more vulnerable to those who provide party or individual finance, resulting in laws that are increasingly shaped by interests. Nothing better illustrates how property rights can become corrupted than the 2008–9 worldwide financial collapse, which is a direct result of allowing bankers to escape from the laws that used to discipline them. Capitalism can only operate to the extent that capitalists are denied the power to decide their own working conditions.

PROTECTING INFORMATION

In terms of the subject-matter of the present book, a significant aspect of this evolution of property rights has been increasing concern with invention and innovation. It would be altogether irrational to invest in developing information with economic potential if it were not legally protected. But the scope of the laws which do this go well beyond those which are grouped in what has come to be called intellectual property. Rights in information have also suffered in the same way as all other property rights, in that they have progressively fallen under the control of those who can benefit from them. Of course, there has never been a time when interests have not played a part in law-making, but in the past, there have been strong countervailing forces to them, articulated both by widely held societal values and by quite different types of public bureaucracies to those which exist today.

This book sets out to explain how this has happened, to identify what is wrong and to propose remedies in the form of changed rules for information protection. The first four chapters discuss how current arrangements for protecting information relevant to economic innovation have evolved. The next three explore this history specifically in terms of the interaction between visions of the public good and interests. The third chapter in this group explains why the current domination of policies by vested interests makes the need for reform urgent; and the next group of four chapters of the book offer specific proposals for this reform. A brief Epilogue then sums up the arguments.

Some, but by no means all, of the proposals would require changes in legislation. Whether these changes can be made depends upon whether ways can be found to break the present link between vested interests and law-making through their funding of democratic politics. Clearly, all legislation which results in property rights must be the product of a combination of interests and visions of the public good. We do not live in Plato's ideal world where laws are made by selfless 'guardians', which is no doubt why John Stuart Mill pointed out that: 'the laws of property have never yet conformed to the

principles on which the institution of private property rests'.² But they do not have to conform as badly as we have allowed lobbying by interests make them do. Searching for a better match between property laws and their principles therefore needs to be pursued optimistically, even though the problem of who is to articulate the public interest now seems to be almost insuperable.

Many of the ideas which follow appeared earlier, as they were developed, in journals such as *Creativity and Innovation Management*, *Economie Appliquée*, *European Intellectual Property Review*, *European Journal of Law and Economics*, *Industry and Innovation*, *Intellectual Property Quarterly*, *International Journal of Entrepreneurship and Innovation*, *Journal of Evolutionary Economics*, *Journal of the History of Medicine and Allied Sciences*, *Oxford Development Studies*, *Prometheus*, *Regulation*, *Research Policy*, *Science and Public Policy*, and *Studies*.

I owe a debt, not only to their editors for giving a platform to ideas which must sometimes have seemed controversial, but in particular to their reviewers, from whom I invariably learned. The original research behind some of the proposals for reform of the international information protection system was funded by the European Commission, the European Patent Office, the National Science Foundation of the United States and Columbia and George Mason universities, as well as my own university, and this support is gratefully acknowledged.

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2 Mill, J.S. (1848) *Principles of Political Economy*, Book II, Chapter I. London: John Murray.