PROPERTY RIGHTS, INDIVIDUAL RIGHTS, AND THE VIABILITY OF PATENT LAW SYSTEMS

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Every society, every legal system is a prisoner of its history; tradition has its effect even if the world around has changed.[1]

INTRODUCTION

People like things. Around the world, people share a primal enjoyment of things. As a natural response to this innate covetousness, people are driven to develop means and systems to encourage the creation, protection, and codification of the things they treasure. To a great extent, the resulting protection derives its characteristics from the variance in the histories and cultures of different countries. This variance leads to profoundly different approaches to the things people value and the way in which they are valued.

One such approach to placing value on things is intellectual property law, which has taken on an increasingly global significance with the advent of the information age.[2] As the world becomes more interconnected through the rapid dissemination of concepts and ideas, intellectual property law serves as the primary medium for protecting these concepts and ideas from piracy or misappropriation. Therefore, intellectual property law is one of the most topical models for examining how

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1. BERNHARD GROSSFELD, THE STRENGTH AND WEAKNESS OF COMPARATIVE LAW 43 (Tony Weir trans., Clarendon Press 1990).

2. The information age has altered the landscape of intellectual property debate. "With the proliferation of the Internet and the World Wide Web into everyday life, along with the corresponding international concerns of the information 'haves' and 'have-nots,' the ranks of those with a vested interest in the control of intellectual property . . . have swelled." Adam D. Moore, *Introduction* to INTELLECTUAL PROPERTY: MORAL, LEGAL AND INTERNATIONAL DILEMMAS 12 (Adam D. Moore ed., 1997).

different countries' cultural and legal values impact their treatment of things. Different countries' systems of property values and the resulting respect and esteem accorded to their patent laws illustrate the proposition that the way in which a culture values property rights and individual ownership manifests itself in the effectiveness, or lack thereof, of its patent system.

Patent protection figures prominently in today's marketplace of intellectual property protection and high-technology transfer.[3] This paper presents certain cultural markers and guideposts for gauging a patent system's efficiency. These guideposts would allow businesspeople to understand the degree to which they could rely on a country's patent laws to safeguard their inventions, or to what degree they would have to seek out other forms of protection.

Indonesia and Slovenia share some fundamental characteristics, which provide a uniform framework for an efficient comparison. The cultures of these two countries, and their divergent levels of adherence to Western thought, however, could hardly be more different. This difference acts as a backdrop against which to compare the level of effectiveness of the patent systems of each country. As a result of the geographic, cultural and economic disparity of these two countries, their unique positions establish diametrical frameworks that lend themselves clearly to a comparative analysis of the nascence, evolution, and implementation of patent systems in different cultures. The manner in which the Indonesian and Slovenian systems of property values incorporate their respective patent laws, show that the way in which a culture values individuality and property rights is reflected in its patent system.

To demonstrate the usefulness of a cultural analysis to determine the strength of a patent system, this comment initially examines the cultural underpinnings of our own patent system in the United States. Against this backdrop, this comment then examines two countries, Indonesia and Slovenia, and their respective treatments of property and intellectual property. The relative successes of these countries' respective patent systems demonstrate the proposition that a patent system de-

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3. "According to the Pasadena-based Patent & License Exchange, trading in intangible assets in the United States has risen from $15 billion in 1990 to $100 billion in 1998." *Fear of the Unknown*, ECONOMIST (U.S. ed.), Dec. 4, 1999 .

pends heavily upon the manner in which a country's cultural framework supports the concepts of property and ownership.[4]

The concept of property rights has existed since time immemorial.[5] Systems for the protection of intellectual property, though comparatively more adolescent, also have a rich and textured history.[6] The successful comparison of these countries' patent systems necessitates a comparative law framework to contextualize individual ownership and property rights, and an historical overview of the evolution of intellectual property. Moreover, because each country's specific approach to property rights governs its approach to drafting and adopting intellectual property rules, this comment will also present an historical overview of these countries' cultural views of property.

The reason Indonesia and Slovenia lend themselves so well to a comparative analysis of their patent law systems is that they share numerous temporal and structural characteristics. Historically speaking, both Indonesia and Slovenia have tumultuous backgrounds featuring marauding tribes, rapacious politicos, and the generalized subjugation of the native peoples.[7] Moreover, both are evolving away from cultural moorings that espouse markedly anti-individualistic views of property rights. Indonesia still operates under the traditional

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4. Naturally, there are other frameworks within which to compare or analyze the patent systems of different countries. Examining the patent systems in the context of the relative economic prosperity of each country, for example, might yield different results. Likewise, examining other aspects of cultural valuation in addition to valuation of property and individual ownership rights might yield worthwhile insights. However, this comment will be limited to examining the patent systems in the context of each country's treatment of property and individual ownership rights.

5. *See* JESSE DUKEMINIER & JAMES E. KRIER, PROPERTY xxxiii (3d ed. 1993)

> Property is a thoroughly modern subject of thoroughly antiquated origins. Probably in no other area of law does one see more, or even as many, strains of old in the new . . . with rules and concepts drawn from age-old ways of looking at social relations in an ordered society . . . . to study property is to study social history, social relations, and social reform.

Id.

6. *See generally* PETER DRAHOS, A PHILOSOPHY OF INTELLECTUAL PROPERTY 13–39 (1996).

7. *See generally* Carole Rogel, *The Slovenes from the Seventh Century to 1945, in* INDEPENDENT SLOVENIA: ORIGINS, MOVEMENTS, PROSPECTS (Jill Benderly & Evan Kraft eds., 1994); *see also* MOCHTAR LUBIS, INDONESIA: LAND UNDER THE RAINBOW (1990).

system of local and colonial laws dating back to Dutch rule.[8] Slovenia spent its recent past under the thumb of the Eastern Bloc and the anti-individualistic tenets of communist law.[9]

Following World War II, both countries experienced drastic social and political upheavals. In Indonesia's case, the country emerged from wartime occupation by the Japanese and a century of Dutch colonialism to attain nationhood.[10] During this time, Slovenia, on the other hand, experienced the proliferation of communism through Yugoslavia and the rest of post-war Eastern Europe.[11]

Today, both countries have emerged from very different pasts to operate under civil law systems,[12] which place great weight on statutory language. Patent law statutes in civil law countries are interpreted on a case-by-case basis, and need not adhere to case law precedent; they lend themselves to a more direct analysis than do patent law systems in common law countries, which must be viewed through the dual lenses of statutory law and case law.

Both countries enacted their current systems of patent protection within the past ten years, providing a similar time frame in which to compare the relative merits and evolution of these laws. Indonesia's current patent laws were set out by presidential decree in 1989 and became law in 1991.[13] Slovenia's patent laws, promulgated in 1991 and enacted in 1992,[14] followed on the heels of that country's 1991 declaration of independence.[15]

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8. *See generally* CIVIL CODE (1847) (Indon.); *see also* SUDARGO GAUTAMA & ROBERT N. HORNICK, AN INTRODUCTION TO INDONESIAN LAW: UNITY IN DIVERSITY 122–24 (1974).

9. *See* YUGOSLAVIA: A COUNTRY STUDY 42–57 (Glenn E. Curtis ed., 3d ed. 1992).

10. *See* ADAM SCHWARZ, A NATION IN WAITING: INDONESIA IN THE 1990S 4–5 (1994).

11. *See* YUGOSLAVIA: A COUNTRY STUDY, *supra* note 9, at 42–57.

12. *See* CIVIL CODE (1847) (Indon.); CIVIL CODE (1992) (Slovn.).

13. *See* Presidential Decree No. 6 (1989) (Indon.); Presidential Decree No. 34 (1991) (Indon.).

14. *See Uradni List* no. 13 item 676 (1992) (Slovn.), *cited in* 2-A THOMAS H. REYNOLDS & ARTURO A. FLORES, FOREIGN LAW: CURRENT SOURCES OF CODES AND LEGISLATION IN JURISDICTIONS OF THE WORLD at Slovn. 28 (Supp. 1999).

15. *See generally* INDEPENDENT SLOVENIA, *supra* note 7; MAKING A NEW NATION: THE FORMATION OF SLOVENIA (Danica Fink-Hafner & John R. Robbins eds., 1997).

During the brief period since their creation, these two systems have experienced and continue to experience varying degrees of success. The temporal and cultural parallels of these two countries' systems, when contrasted with the United States patent system, provide a meaningful ground for the comparison, based upon the timelines and cultural practices that have led the two countries to enact their current patent systems.

Part I of this comment outlines the comparative law approach to examining sources of law from different countries. Part II provides an overview of the philosophy of intellectual property law and the underpinnings of intellectual property theory. Part III briefly discusses the history of the United States patent system—one of the more successful in the modern world—as a background against which to compare the patent systems of Slovenia and Indonesia. In Parts IV and V, the comment focuses on the cultural and legal histories leading to the enactment of patent laws in Indonesia and Slovenia, as well as the extent to which culture and history affect the protection of patent rights in these countries. This comment's comparison demonstrates that the relative regard for the concept of property, and, by extension, of intellectual property, foreshadows the extent to which a country has the capacity to value a patent, and the resulting protection afforded to the patent itself.

I. THE COMPARATIVE LAW FRAMEWORK

The Slovenian, Indonesian, and United States systems of property values, and the countries' respective systems of intellectual property law, illustrate the proposition that the value a culture places on its property rights manifests itself in the effectiveness of its patent system.

This proposition is most readily approached through a comparative law analysis. Comparative law, "the field of study devoted both to describing the content and style of local, national, and religious legal systems and to exploring the similarities and differences among them,"[16] looks to extratextual support for the reasoning behind a country's legal system. In today's global world of transplanted laws, the comparative law

16. Richard Hyland, *Basic Theories in Comparative Law, in* A COMPANION TO PHILOSOPHY OF LAW AND LEGAL THEORY 184 (Dennis Patterson ed., 1997).

method looks to a wider context to determine the true application and applicability of such laws.[17]

In this case, the comparative law analysis begins by looking at the background factors at work in the United States, Slovenia, and Indonesia. These background factors, existing outside the wording of the patent laws themselves, dictate the likelihood of the success of such laws. Because the text of the laws themselves, for the most part, varies little,[18] the most ready explanation for the wide degrees of success among the patent systems is found through a comparative law analysis.[19]

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17. Although underutilized in the research to date, comparative law may take on increasing importance in the years to come:

> [W]hen you consider that so many systems have transplanted and borrowed so many concepts from the major legal systems and adapted them, it is becoming increasingly necessary to be *au fait* with a range of traditions and doctrines, not just because of closer inter-regional cooperation and trade but also because of the setting up of transnational law firms, transnational litigation, the ever-growing influence of American corporations in foreign countries, drafting of transnational contracts, and international credit arrangements.

PETER DE CRUZ, COMPARATIVE LAW IN A CHANGING WORLD 22 (1995).

18. Although the differences are small, and treated in Parts III–V *infra*, the similarities evident in the codes are too numerous to detail. *See generally* 35 U.S.C. §§ 1–376 (1994); Presidential Decree No. 6 (1989) (Indon.); Law on Industrial Property (1992) (Slovn.).

19. The figures regarding patent applications in these three countries speak to the relative success of the three patent systems.

Year	United States		
	Domestic	Foreign (%)	Total
1991	87,955	76,351 (46.5)	164,306
1992	92,425	80,650 (46.6)	173,075
1993	99,955	74,788 (42.8)	174,743
1994	107,233	82,624 (43.5)	189,857
1995	123,958	88,419 (41.6)	212,377
1996	106,982	88,295 (45.2)	195,187
1997	120,445	94,812 (44.0)	215,257
1998	135,483	107,579 (44.3)	243,062

U.S. Patent and Trademark Office, *U.S. Patent Statistics, Calendar Years 1963–1998* (visited Jan. 27, 2000) <http://www.uspto.gov/web/offices/ac/ido/oeip/taf/brochure.htm#PSR>.

Comparative law breaks down into several different paradigms, all of which have select applicability to different problems in the field. Universalism theory suggests that, although legal systems differ fundamentally, the destiny of law is to evolve to a system of globally uniform legal principles.[20] Functionalism theory examines the practical consequences of a country's law, rather than differences in the text or ideas behind the law, and compares the legal remedies provided by each system.[21] Family theory places legal systems into four different groups based on the philosophical, political, and economic principles of the country and analyzes the systems in the context of each macro-group.[22] Ideal types theory bases its analysis on the legal education offered to the country's practitioners.[23] Finally, difference theory seeks "to discover the par-

Year	Slovenia		
	Domestic	Foreign (%)	Total
1991	22		22
1992	597		597
1993	1061		1061
1994	687	1035 (60.1)	1722
1995	385	1589 (80.5)	1974
1996	373	2120 (85.0)	2493
1997	330	2506 (88.4)	2836
1998	325	2706 (89.2)	3031

Slovenian Patent Office, *Statistical Data* (visited Jan. 27, 2000) <http://www.sipo.mzt.si/STATIST.htm>.

Year	Indonesia		
	Domestic	Foreign (%)	Total
1991	53	1283 (96.0)	1336
1992	79	3948 (98.0)	4027
1993	66	2074 (96.9)	2140
1994	62	2365 (97.4)	2427
1995	122	2884 (95.9)	3006
1996	99	4033 (97.6)	4132
1997	159	4109 (98.3)	4178
1998	202	1785 (90.2)	1978

Erna L. Kusoy, Indonesia Country Report for 43rd Council Meeting, Asian Patent Attorneys Association 8 (Oct. 2–5, 1999) (unpublished manuscript, on file with author).

20. *See* Hyland, *supra* note 16, at 186.
21. *See id.* at 187–88.
22. *See id.* at 191.
23. *See id.* at 192.

ticular vision of justice and the conception of life under law that is implicit in each individual legal system."[24]

Of the foregoing theories, difference theory and the subtheory of legal transplants[25] provide the most facile framework for analyzing the patent systems of different countries. Difference theory looks at the broad cultural and ideological circumstances surrounding a law. Legal transplants theory suggests that, even though a law may not be "native" to a certain culture, it may still have a good chance of being adopted into the new culture's canon. The basic methodological principle of difference theory is that the analysis of a legal system should acknowledge all levels of difference, whether outcome- or concept-based.[26] Such an analysis, as evidenced in this comment, leads to a broader perspective on the context in which a law must take shape. The United States patent laws, having had more time to develop, require a greater breadth of chronological analysis. Indonesia and Slovenia, despite the similarly short time frames in which their patent laws were enacted, possess many more differences than similarities. The difference theory approach highlights these differences and examines why the patent systems have met with such varying levels of success.

From the earliest expressions of difference theory, academics have acknowledged that "[e]very nation . . . has a particular understanding of life and its own conception of the law. For this reason, it will—indeed, it must—achieve something particular."[27] The Slovenian and Indonesian patent laws may differ little from each other in the time of their implementation. The wording of all three patent systems may be very similar. Nevertheless, the effect the laws will have in the society must differ because of the differences in their societies.

"[L]aw appears . . . more as the expression of a certain civilization, the manner of satisfying a certain conception of the organization of human relations and a certain sentiment of jus-

24. *Id.* at 193.

25. *See generally* ALAN WATSON, LEGAL TRANSPLANTS (1974).

26. *See* Hyland, *supra* note 16, at 194.

27. Josef Kohler, *Uber die Methode der Rechtsvergleichung*, *in* RECHTSVERGLEICHUNG [COMPARATIVE LAW] 18 (K. Zweigert and H.-J. Puttfarken eds., 1978), *cited in* Hyland, *supra* note 16, at 194.

tice . . . ."[28] This view indicates that the strong sentiments regarding individual and property rights present at the founding of the United States, and present to this day, will dictate a certain outcome. Similarly, the blend of principles underlying Indonesian law, such as *adat,* Islam, and colonialism, and the blend of principles underlying Slovenian law, such as communism and some measure of Western democracy, will dictate a different, unique outcome for the implementation of a patent law.[29]

Patents, and today's global conception of patents, stem primarily from Western logic.[30] In the context of this comment, a country's Westernization can be measured, in a concept-based format, by the degree to which its philosophies of property and individual ownership complement those of Westernized countries. In an outcome-based format, this same degree of Westernization can be measured by how successfully the country has protected the patent rights of the individual.

Western philosophy conflicts on many fronts with other world views; Eastern world views, such as the Indonesian *adat,*[31] or Eastern Bloc dogma, such as Yugoslavian communism,[32] advocate their own particular brand of thought on property and individualism. Consequently, trying to insert a patent system deriving primarily from tenets of Western thought into a country shaped primarily by non-Western thought may invoke the classic square-peg-in-round-hole situation. Given the examples of Indonesia, Slovenia, and the United States, it is therefore reasonable to presume that patent law will "take" more readily in a country with a stronger Western outlook.

Despite the apparent differences among these three countries, the legal transplants subtheory of difference theory suggests that a system of law that is "foreign" to its host country will not necessarily fail.[33] A body of law "transplanted" from

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28. René David, *Existe-t-il un Droit Occidental?, in* XXTH CENTURY COMPARATIVE AND CONFLICTS LAW: ESSAYS IN HONOR OF HESSEL E. YNTEMA 58 (Kurt H. Nadelman et al. eds., 1961), *cited in* Hyland, *supra* note 16, at 194.

29. *See infra* Part V.A (discussing Indonesian law); *infra* Part IV.A (discussing Slovenian law).

30. *See infra* Part II.

31. *See infra* Part V.A.

32. *See infra* Part IV.A.

33. In his book, Alan Watson examines several instances of successful transplants: Roman law in early modern Europe, English law in the British colo-

one culture to another, like an organ transplanted from one body to another, does not necessarily meet with rejection. Although it may take time[34] for the law to metamorphose from its original form to one more acceptable to the culture that harbors it, the process is possible. Indeed, history has shown that legal transplants occur with some frequency, suggesting that initially "foreign" laws can, over time, be tailored to a country's particular cultural needs.[35]

This comment's application of difference theory analysis, however, illustrates that that the more Westernized a culture becomes, the greater chance its patent laws have of initial success. A patent system "transplanted" into a country, although it may succeed, requires a strong national commitment and spirit to reach fruition. The degree of national commitment and spirit, in turn, is predicated upon the country's legacy of treatment of property ownership and individual rights. The philosophy of Western countries stresses individual property rights and ownership,[36] which readily accepts the idea of a monopolistic patent system. Therefore, patent systems in Western, or quasi-Western, countries stand a much better chance of taking root than patent systems in less Western, more community-oriented cultural soil. This idea provides a "shorthand" for evaluating, near the outset of its implementation, the likelihood of a patent system's success.

II. BACKGROUND OF INTELLECTUAL PROPERTY PROTECTION

Western philosophical discussions about property invariably pay homage to philosophers such as John Locke and Georg Wilhelm Friedrich Hegel, whose ideas lay a foundation for modern Western views of property theory.[37] Both Hegel and

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nies, and other integrations of European law into non-Western countries. *See* WATSON, *supra* note 25.

34. For example, the introduction of Islam to Indonesia represents a mode of thought taking root in foreign soil. The current speed of globalization, however, may enable patent law to take root in less time than the several hundred years it took Islam to spread throughout Indonesia. *See* discussion *infra* note 156.

35. *See* Hyland, *supra* note 16, at 197.

36. *See* discussion *infra* notes 37-57 and accompanying text.

37. The multiplicity of Locke and Hegel cites in property law theory supports the assertion that their works are seminal to the field: reference to Locke is "almost obligatory" in essays on property, Justin Hughes, *The Philosophy of Intellectual Property,* 77 GEO. L.J. 287, 296 (1988), while Hegel is considered "too important to ignore in discussions of property," DRAHOS, *supra* note 6, at 73.

Locke contributed to the now-baseline European view of intellectual property, stressing: (1) the importance given to individual human will in justifying and defining property rights, and (2) the fact that European tradition places the individual and society in a relationship that is at least partially adversarial, rather than community-oriented.[38]

By extension, their theories have come to apply to the field of intellectual property as well. Because the earliest systems of intellectual property protection arose in the Western world,[39] and because most current intellectual property systems are modeled after these earliest systems,[40] it is logical that Western theories of property dictate much of the philosophical foundation for current intellectual property systems.

Section A of this Part explores some such formative philosophies, examining their relevance to the fields of property and intellectual property. Section B considers the application of these philosophies to the justifications for intellectual property rights and the importance of intellectual property protection on the international scale.

A. Theories of Intellectual Property

By definition, intellectual property rights *are* a type of property right.[41] This syntactically logical notion is by no means a conclusive statement, but provides a convenient starting point for the establishment of theories of intellectual property.[42] Property rights, as classically understood in the

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38. *See* David Hurlbut, *Fixing the Biodiversity Convention: Toward a Special Protocol for Related Intellectual Property*, 34 NAT. RESOURCES J. 379, 384 (1994). This view contrasts with other world views, such as communism or *adat*, which prioritize the community over the individual. *See infra* Parts IV.A., V.A.

39. *See* RICHARD D. WALKER, PATENTS AS SCIENTIFIC AND TECHNICAL LITERATURE 22–40 (1995) (outlining a history of early Western European measures for protecting inventions).

40. *See generally* MARTIN J. ADELMAN ET AL., CASES AND MATERIALS ON PATENT LAW 26–28 (1998).

41. *See* Willard Alonzo Stanback, *International Intellectual Property Protection: An Integrated Solution to the Inadequate Protection Problem*, 29 VA. J. INT'L L. 517, 524–25 (1989).

42. Certain opinions on the theories of intellectual property protection make a marked distinction between the property right in an invention and a property right in a patent. *See* F. Machlup, *An Economic Review of the Patent System*, U.S. Senate Committee on the Judiciary, 85th Cong., 2d Sess. at 53 (1958). However, this comment does not address the treatment of the "natural right" of an inventor to an invention, but rather the ability of a country's philosophical underpinnings

Western world, have evolved from years of philosophical observation[43] and economic justification. More so than the views of non-Western countries, European views have found adherents in the realm of intellectual property legislation and philosophy, and these views have fostered and sustained the development of intellectual property theory.[44]

Scholars often refer to Locke as the father of modern property theory: "[I]t is not surprising therefore, that modern theorists discuss a 'Lockean labour theory' of intellectual property."[45] Locke's labor theory, essentially the idea that adding one's work to a natural object creates "property" owned by that individual, gave rise to the "natural-rights approach" to property theory.[46] By extension, using one's mental labor to create an invention or process, as occurs in the realm of patent law, would give the inventor a property right in the novel entity.

"Current intellectual property systems give rights in excess of what a Lockean model would justify."[47] According to this assertion, patent rights give the patent owner a monopoly disproportionate to the amount of effort invested in the invention. A discussion of disproportionate worth necessitates cost-benefit justifications for the protection afforded the creator by the monopoly time period in a patent grant.[48] Justifications for such a monopoly may exist in a country such as the United States, where the economy is shaped by capitalist theory, and

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to allow for property rights in any type of monopoly, such as a patent, relating to an often intangible entity.

43. *See* DRAHOS, *supra* note 6, at 1.

44. *See* ROBERT P. BENKO, PROTECTING INTELLECTUAL PROPERTY RIGHTS: ISSUES AND CONTROVERSIES 16 (1987).

45. DRAHOS, *supra* note 6, at 41.

46. "Whatsoever then he removes out of the State that Nature hath provided, and left it in, he hath mixed his *Labour* with, and joyned to it something that is his own and thereby makes it his *Property*." JOHN LOCKE, TWO TREATISES ON GOVERNMENT, *quoted in* DRAHOS, *supra* note 6, at 42–43.

47. Wendy J. Gordon, *A Property Right in Self-Expression: Equality and Individualism in the Natural Law of Intellectual Property*, 102 YALE L.J. 1533, 1608 (1993).

48. For example, the time period for a U.S. patent is currently twenty years from the earliest filing date. Prior to June 8, 1995, the time period was seventeen years from the issue date of the patent. The change was undertaken primarily to harmonize the U.S. patent system with those of its trading partners, but the change has sparked some debate in patent circles as to whether the lengthened period is helpful or harmful. *See* Mark A. Lemley, *An Empirical Study of the Twenty-Year Patent Term*, 22 AM. INTELL. PROP. L. ASS'N Q. J. 369 (1994).

the economic benefits of invention can be very visible.[49] In countries whose markets are not as developed, finding such cost-benefit justifications poses a problem. In such countries, such as Indonesia or Slovenia, the mechanism of the intellectual property system may not be as established, and the fruits of intellectual property protection have yet to manifest themselves.[50] Developing countries, therefore, may encounter difficulties in justifying the monopoly of a patent.

Hegel's view of property, with its foundation on the notion of the individual and the formation of self-identity, "is perhaps most directly applicable to the narrower notion of intellectual property."[51] Also characterized as the "personality theory" of property, Hegel's rationale suggests that the inventor has imbued the invention with his personality or will, making the process of creation an intensely individualistic one.[52] Hegel postulates that property and ownership are important milestones in the journey toward self-development, and are essential to survival as well.[53] These are ideas that should make sense to emerging countries seeking to justify their protection of intellectual property rights. However, this view may not successfully justify intellectual property rights in cultural systems that are less centered on the individual and more focused on the identity of the community and on the protection of community property. The individualistic underpinnings of patent law, expounded by philosophers such as Hegel, may be difficult to incorporate into more community-oriented societies.

Although philosophers such as Locke and Hegel set the baseline for property theory, it is not necessarily the case "that the [Western] philosophy of intellectual property is correct and everyone else in the world is wrong—or vice versa . . . . [T]here are many different historic and cultural assumptions about the ownership of ideas."[54] In the West, however, the "first in time,

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49. *See generally* Edwin C. Hettinger, *Justifying Intellectual Property, in* INTELLECTUAL PROPERTY, *supra* note 2, at 17.

50. In the Western world, policy makers generally use the argument that "monopoly profits create incentives for invention to defend and encourage international patent protection," despite dissent in the ranks as to whether "this logic is relevant to the international patent system, or to all nations, for that matter." BENKO, *supra* note 44, at 20.

51. Hurlbut, *supra* note 38, at 383.

52. *See* Hughes, *supra* note 37, at 331–40.

53. *See* DRAHOS, *supra* note 6, at 88.

54. Hurlbut, *supra* note 38, at 387.

first in right" concept[55] appears to apply to systems of intellectual property as well as to traditional property itself. Since the Europeans were the first to enact the precursors of our modern patent systems,[56] the Western view prevails in defining the basis of current global intellectual property law. The adaptability of such a system of law to countries that do not subscribe to the entirety of Western philosophy, however, is questionable.[57]

B. Purposes of Intellectual Property

Intellectual property protection factors greatly in today's global exchange of information.[58] To the extent arguments for stringent protection for intellectual property were historically viable, these arguments are even more viable in the technological age.

In defense of the idea of more stringent protection, intellectual property differs from other forms of property in that it is not an exclusive *res,* like a car. Rather, intellectual property can be used by many people at once, like the blueprint for a car. Since so many can benefit financially from one piece of intellectual "property," there exists an enormous potential for piracy or misappropriation without the owner's knowledge. The perceived specter of "free-riding" off such information supports protective economic measures for intellectual property, especially in the United States, which values individual ownership of property.[59]

In seeking justification from the United States's perspective, there is not only the economic justification, but four historical arguments in support of patent law:

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55. This idea is also attributed to Lockean philosophy. *See* DUKEMINIER & KRIER, *supra* note 5, at 14.

56. *See* DRAHOS, *supra* note 6, at 14.

57. The existence of legal transplants, and successful ones at that, may counter this assertion. *See generally* WATSON, *supra* note 25, at 95–101. However, the subject of this comment is not whether a patent system can be transplanted (because, in the cases of Slovenia and Indonesia, it already has been), but how well it "takes" to the culture into which it is transplanted.

58. Certain cultures, such as the Andaman Islanders, the Kai, the Koryak, and the Plains Indians, have succeeded in fostering invention without the aid of the type of intellectual property protection found in the United States today. However, these societies also had a highly developed sense of "incorporeal property." *See* DRAHOS, *supra* note 6, at 16.

59. *See* BENKO, *supra* note 44, at 16–17.

(1) the "natural rights" thesis;
(2) the "reward by monopoly" thesis;
(3) the "monopoly profits incentives" thesis; and
(4) the "encouraging inventors to disclose their secrets" thesis.[60]

Modern justifications, however, rely primarily on arguments (3) and (4)—"economic incentives" and "disclosure,"—which illustrate "two competing social objectives: the need to encourage technical innovation and the need to disperse the benefits of that innovation throughout society."[61]

It is generally accepted that economic growth is an important goal in society.[62] For that reason, the economic justification, which speaks in numbers and dollars, is more practical than the disclosure justification for intellectual property rights. To the extent that economic evidence is available on the subject, "technological change seems to have been a very important factor, perhaps the most important factor, underlying long-term economic growth in the United States and elsewhere."[63]

In fact, "[e]mpirical work on the link between patents and [research and development] confirms an association between intellectual property protection and innovation."[64] This suggests that protection of intellectual property rights leads to innovation and technological advancement, which in turn leads to the aforementioned goal of economic growth.[65]

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60. *See id.*

61. Hurlbut, *supra* note 38, at 383.

62. *See* Edwin Mansfield, *Intellectual Property, Technology and Economic Growth, in* INTELLECTUAL PROPERTY RIGHTS IN SCIENCE, TECHNOLOGY AND ECONOMIC PERFORMANCE: INTERNATIONAL COMPARISONS 17 (Francis W. Rushing & Carole Ganz Brown eds., 1990).

63. *Id.* at 19.

64. Alden F. Abbott, *Developing a Framework for Intellectual Property Protection to Advance Innovation, in* INTELLECTUAL PROPERTY RIGHTS IN SCIENCE, TECHNOLOGY AND ECONOMIC PERFORMANCE, *supra* note 62, at 311, 323.

65. David Silverstein summarizes a syllogism of the three key premises underlying the Western intellectual property model:

> 1. that 'development', defined at least in part as including economic growth, is a desirable goal for all modern societies;
> 2. that technological innovation contributes in some beneficial way to economic growth; and,
> 3. that the existence of a legal framework which protects inventions from theft or copying by others stimulates technological innovation.

David Silverstein, *Intellectual Property Rights, Trading Patterns and Practices, Wealth Distribution, Development and Standards of Living: A North-South Perspective on Patent Law Harmonization, in* INTERNATIONAL TRADE AND

Furthermore, the globalization of the world market, in "things" as well as in cultures, necessitates a common language in which nations can parlay their technological advances. "Were it not for trade, international law would be unconcerned with so many different international regimes for intellectual property because each would be strictly a matter of domestic policy. But the fact is that nations *do* trade, so the differences matter."[66] Creating an international arena and a corresponding international language for science and technology in the form of globally compatible patent systems would facilitate international trade and, by extension, international relations. Therefore, an understanding of the viability of patent regimes in the world market is crucial not only for its own sake, but also for the sake of continued growth, communication, and understanding in the international economy.

III. THE UNITED STATES

This part briefly discusses the United States patent system, from its origins and underpinnings to its current incarnation and application. The United States patent system and its workings support the theory that countries with Westernized philosophies allow for the fruition and success of a national patent system.

The United States, from its earliest days, has supported the idea of protecting the fruits of labor and invention. On May 10, 1646, Joseph Jenks applied for what is considered the first "patent" in America.[67] In his application, addressed to the General Court, he cited as supporting authority the English practice of granting patents for fourteen-year terms. His invocation of English law traces a "common thread" through the annals of Western patent history, back to the Venetian general patent statute.[68] Part of this "common thread" is the inventor's

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INTELLECTUAL PROPERTY: THE SEARCH FOR A BALANCED SYSTEM 155, 158 (George R. Stewart et al. eds., 1994). However, economists are still uncertain about "whether patents adequately solve the problem of knowledge goods but generally support them because of past technical achievement under a patent system." BENKO, *supra* note 44, at 19.

66. Hurlbut, *supra* note 38, at 387 (emphasis omitted).

67. *See* BRUCE W. BUGBEE, GENESIS OF AMERICAN PATENT AND COPYRIGHT LAW 62–63 (1967).

68. *See id.* at 63.

assertion to the courts, using the familiar Lockean rhetoric, that he "has applied his own resources" to the invention[69]

The Lockean philosophy of property figured prominently in the ideology underlying the Constitution.[70] As the provision for protecting intellectual property rights, the Constitution lays out the authority for Congress to "promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries."[71]

Commentary on the intellectual property clause of the Constitution is astonishingly sparse.[72] There are no records of any debate about the clause, which was passed unanimously.[73] The lack of controversy surrounding this provision indicates that the Framers viewed it as a clear necessity. The one comment regarding the intellectual property clause, by James Madison in *The Federalist*, emphasizes this lack of controversy: "The right to useful inventions seems . . . to belong to the inventors. The public good fully coincides . . . with the claims of individuals."[74]

Congress acted upon this constitutional grant of power in 1790, passing the first act designed to give federal protection to the individual inventor.[75] The patent act was revised on several occasions between 1790 and the present:[76] the 1793 revi-

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69. *See id.* Bugbee finds that each of the notable patent documents he examines asserts the following:

(1) that an invention has been devised,

(2) that in creating it the inventor has applied his own resources, variously described as his "genius," "intellect," "invention," "study," "skill," "industry," "searching," "labor," "expense," and "estate,"

(3) that the invention is valuable to the public,

(4) that it will be pirated without credit or compensation to the inventor if he should choose to reveal it, but

(5) that if he is encouraged by governmental protection he will not only employ it openly but will also be stimulated to devise other inventions, which in turn will benefit the public.

Id.

70. *See id.* at 128.

71. U.S. CONST. art. I, § 8, cl. 8.

72. *See* EDWARD C. WALTERSCHEID, TO PROMOTE THE USEFUL ARTS: AMERICAN PATENT LAW AND ADMINISTRATION, 1798–1836 59 (1998).

73. *See* BUGBEE, *supra* note 67, at 129.

74. THE FEDERALIST NO. 43, at 271–72 (James Madison) (Clinton Rossiter ed., 1961).

75. *See* ADELMAN, *supra* note 40, at 19.

76. *See* WALTERSCHEID, *supra* note 72, at 21–22.

sion was formulated in response to the inadequacies in the 1790 Act,[77] and the 1836 Act added further requirements.[78] The most recent overhaul occurred in 1952, and the 1952 Patent Act[79] continues to serve as the law today. Under today's Act, the government essentially grants a twenty-year[80] monopoly to an inventor in exchange for a complete disclosure of the invention to the public.[81]

The United States patent system contains some provisions not widely accepted or subscribed to by the rest of the world. For example, the "first-to-invent" provision allows the first person to invent to claim her right to the patent over the first person to file a patent application.[82] Although this may seem to be a trivial detail, the Lockean approach would indicate that the individual that first successfully put her labor into inventing is more deserving of the monopolistic protection of a patent than the first individual to submit an application to the United States Patent and Trademark Office.

Another unique provision is that patent rights adjudication and enforcement in the United States is the domain of the federal courts, which are widely regarded as more experienced than the state courts. Therefore, the inventor seeking to protect her rights to her invention in the United States has the strength and the uniformity of the highest courts in the land on her side.

These unique provisions, as well as the strong property rights and individual rights history of the United States, combine to give the patent system a strong foothold in the body of American law. The patent system, now in the beginning of its third century as a federal institution, has had time to evolve to its present level of efficiency. At its outset, however, it was essentially a legal transplant from England,[83] which the Framers of the Constitution chose to adapt and perpetuate: "[The United States Patent system] did not spring out of nowhere in

77. *See id.* at 21.

78. These included giving the priority of invention to the first to invent, rather than the first to file. *See* ADELMAN, *supra* note 40, at 20.

79. 35 U.S.C. §§ 1–376 (1994).

80. *See* 35 U.S.C. § 154(a)(2) (1994).

81. *See id.*

82. *See* 35 U.S.C. § 102(a) (1994).

83. *See* WALTERSCHEID, *supra* note 72, at 36.

1790, nor was it a mere imitation."[84] Though much of the success of this system stems from the environment into which it was adopted, its very success shows that legal transplants can thrive in foreign soil. The same may be possible for newly emerging patent systems.

IV. SLOVENIA

This part discusses Slovenia's past and the effect of this past on the current system of intellectual property protection in that country. The first section covers Slovenia's history and current cultural outlook. The second section discusses Slovenia's laws and patent law in particular, and the effect of history and culture on the enactment of those laws.

The country now known as Slovenia has only existed since June 25, 1991, when this diminutive republic declared its independence from the crumbling communist nation of Yugoslavia.[85] The adoption of a new constitution on December 23, 1991[86] marked the legal system's departure from communism and move toward a sovereign statehood with new laws and practices.

A. History and Culture

Until the time immediately preceding the recent independence, Slovenes harbored limited hope of nationhood.[87] The comparatively small population and inconveniently central location rendered the Slovenes powerless to assert their independence against neighboring entities; consequently, most of their history involved the rule of a dominant empire or confed-

84. BUGBEE, *supra* note 67, at 158.

85. *See* Janko Prunk, *The Origins of an Independent Slovenia, in* MAKING A NEW NATION, *supra* note 15, at 21, 29. For a chronology of the events leading to the independence of Slovenia, *see* MAKING A NEW NATION, *supra* note 15, at 295–307 app. I.

86. *See* MAKING A NEW NATION, *supra* note 15, at 306 app. I.

87. *See* Peter Vodopivec, *Seven Decades of Unconfronted Incongruities: The Slovenes and Yugoslavia, in* INDEPENDENT SLOVENIA, *supra* note 7, at 23, 23. The author notes that "it might seem paradoxical that the first to leave Yugoslavia were the Slovenes. They had no tradition of an independent state. Never in modern history had they considered very vocally or decisively full independence as a national state." *Id. But see* Prunk, *supra* note 85, at 21 ("[F]or the Slovenes, greater autonomy within Yugoslavia's illusory federation was of vital importance.").

eration.[88] While under these various types of rule, Slovene nationalism kept its fire alight primarily through culture and religion;[89] strong nationalistic drives only emerged in the events leading up to liberation.[90] Slovenes did not assert an independent legal or social system, but adhered to the laws of the current governing body. This adherence merits an examination of the laws before, during, and after the communist period.

Before Slovenia became part of Yugoslavia, it was part of the Austro-Hungarian Empire. Relatively liberal laws bookend the communist era, and the current laws of Slovenia find their roots in the pre-communist, pre-1918 era:

> The Austrian Civil Code . . . of 1811, was in force [in Slovenia] at the time of first independence in 1918 and continued as the basis for much civil activity, particularly for property rights and relationships. Even though altered by socialist practice, the basic property concepts continued throughout the postwar period: social and cooperative property, private property and personal ownership of dwellings (limited to a certain number per owner) were all acceptable and applied legal concepts.[91]

This relatively liberal view of property and individualism, which would indicate hospitability to a patent system, conflicted directly with Marx's hard-line approach to ownership. Marx himself said: "[T]he theory of the Communists may be summed up in the single sentence: Abolition of private property."[92]

Yugoslavia's relatively liberal heritage colored its adoption of the communist doctrine, which took on a somewhat less absolute form. "[B]ecause of its isolation from the Eastern block, the Communist regime in Yugoslavia had to find its own form

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88. *See generally* INDEPENDENT SLOVENIA, *supra* note 7; MAKING A NEW NATION, *supra* note 15. Before becoming an independent nation, the Slovenes were under the rule of, in turn, the Franks, the Austro-Hungarians (with interludes of Turkish marauders and Napoleonic French rule), and finally the Yugoslav Federation. *See* YUGOSLAVIA: A COUNTRY STUDY, *supra* note 9, at 7–10.

89. *See* Rogel, *supra* note 7, at 5–7.

90. *See id.* at 3.

91. 2 REYNOLDS & FLORES, *supra* note 14, at Slovn. 4.

92. KARL MARX & FRIEDRICH ENGELS, MANIFESTO OF THE COMMUNIST PARTY (1848), *reprinted in* THE ESSENTIAL LEFT: FOUR CLASSIC TEXTS ON THE PRINCIPLES OF SOCIALISM 14, 28 (Barnes & Noble 1961).

of social and political development."[93] Josip Broz Tito, Yugoslavia's charismatic leader from 1945 to 1980, played an enormous role in shaping his country's political landscape.[94] Although a "communist" nation by affiliation, Yugoslavia did not take the more extreme path of its colleagues in communism, due to factors such as Tito's personality and political skill,[95] the country's proximity to Western Europe, and influences flowing from nearby socialist countries rather than entirely from Moscow.[96]

Although communism defined the political climate of Yugoslavia in the post-World War II era, three distinct political stages illustrate the plunge into and subsequent evolution away from communism in pre-1991 Yugoslavia: the 1945–48 orthodox allegiance to the Soviet-led communists; the 1948–80 nonaligned communist dictatorship, which stressed "brotherhood and unity" among Yugoslavia's six republics and two provinces;[97] and the 1980–91 period of existence as a decentralized federation, with more regionally centered forms of government.[98] Although the country's first constitution, enacted in 1946, closely followed that of the Soviet Union's 1936 constitution,[99] Tito soon broke with the dogmatic doctrines of the Soviet system and enacted progressively more liberal constitutions in 1953, 1963, and 1974.[100]

This last period and last constitution, respectively, allowed the republics a degree of freedom unavailable to other commu-

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93. Ivan Svetlik, *Slovenia—A Portrait of a New European Country, in* SOCIAL POLICY IN SLOVENIA: BETWEEN TRADITION AND INNOVATION 1, 4 (Ivan Svetlik ed., 1992).

94. *See* YUGOSLAVIA: A COUNTRY STUDY, *supra* note 9, at 172.

95. "From [1946], Tito fashioned an independent political leadership that soon moved away from the rigid state domination of Stalinism." *Id.* at 173.

96. *See* Vodopivec, *supra* note 87, at 25.

97. The six republics, outlined in the Constitution of 31 January 1946, were Serbia, Croatia, Slovenia, Bosnia and Herzegovina, Macedonia and Montenegro. The Constitution of 7 April 1963 added the two autonomous provinces of Kosovo and Vojvodina. THE 'YUGOSLAV' CRISIS IN INTERNATIONAL LAW: GENERAL ISSUES, PART I at xix (Daniel Bethlehem & Marc Weller eds., 1997).

98. *See* YUGOSLAVIA: A COUNTRY STUDY, *supra* note 9, at 171.

99. *See id.* at 173.

100. The 1963 Constitution "increased decentralization instead of reducing it," providing provisions that "were unique among the constitutional systems of contemporaneous communist states." *Id.* at 174. The 1974 Constitution, while cutting back on some of the decentralization provided for in the 1963 version, "tried to refine the balance between economic and ethnic diversity on the one hand and the communist ideal of social unity on the other." *Id.* at 177.

nist nations, and encouraged the burgeoning of independent paths of development which would later lead to the demise of the artificial conglomeration of Southern Slavic states. This steady evolution away from the hard-line doctrine of communism indicates that Yugoslavia's collective heart and mind was not as dedicated to communist ideals as Moscow would have liked,[101] and that it expressed more interest in property and ownership than Marx would have condoned.

B. The Patent System

Before its integration into the country of Yugoslavia and its system of communist rule, Slovenia's levels of scientific and artistic development were close to those in the rest of Western Europe.[102] However, due to relatively "low levels of industrial development and national assertion, the humanities had the advantage over the natural sciences."[103] Therefore, the need for a patent system would have been comparatively less than the need for a copyright or trademark system. However, under the Yugoslav federation of states, the Slovene Republic posted the most impressive indices in economic development and technology.[104] Despite its comparatively exemplary performance among the states, most gains were diverted by the central gov-

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101. A property-related example of housing policies in the former Yugoslavia illustrates this liberalization of views regarding property. Unlike Russia, which kept a tight reign on housing, the "introduction of self-management shifted responsibility of housing provision from the state to enterprises. This was the distinguishing feature of the housing policy in former Yugoslavia." Srna Mladic, *Restructuring of the Housing Policy System in Slovenia: Its Logic and Anticipated Effects, in* SOCIAL POLICY IN SLOVENIA, *supra* note 93, at 68.

102. *See* Ervin Dolenc, *Culture, Politics and Slovene Identity, in* INDEPENDENT SLOVENIA, *supra* note 7, at 77.

103. *Id.*

104. "Slovenia's level of prosperity remained higher than that of the other Yugoslav republics throughout the socialist era. Because its per capita income was the highest, the republic contributed a higher per capita share to Yugoslavia's federal funds than any other republic." YUGOSLAVIA: A COUNTRY STUDY, *supra* note 9, at 82; *see also* Zarko Lazarevic, *Economic History of Twentieth-Century Slovenia, in* INDEPENDENT SLOVENIA, *supra* note 7, at 58–64. More specifically, with only 8 percent of Yugoslavia's population, Slovenia contributed 25 to 30 percent to Yugoslavia's foreign exchange, without which "the Potemkin prosperity Yugoslavia managed to exploit in the 1980s would not have been possible . . . ." Kenneth C. Danforth, *Why Slovenia? Small Country Has Big Plans for EU Membership,* EUROPE, Oct. 11, 1997, *available in* 1997 WL 19387344.

ernment of Yugoslavia.[105] Today, freed from that restriction, the country is "in transition from a socialist (i.e. planned) economy to a market system,"[106] and it is seeking to establish firm ties with the West through economic means and modernized laws.[107]

Prior to its departure from the Yugoslav federation, Slovenia, as one of the republics, operated under the auspices of the Yugoslav patent system and all other aspects of Yugoslav law. Article 169 of the Yugoslav Constitution of 1974, which remained valid until 1990, enumerated the rights granted to inventors, which included the inventors' "moral and material" rights to their "achievements."[108] Patents were administered by the Federal Organization for Patents,[109] which operated under the Federal Executive Council ("FEC"), the body responsible for the daily workings of the government.[110]

Despite its provisions for patent "rights," the property provisions of the 1974 Constitution adopted more of a communist

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105. *See* Jeremy Keller, *Slovenia, Croatia, Bosnia: The Economics of Independence*, BUS. AM., May 18, 1992, *available in* 1992 WL 3078887. "For decades . . . the Slovenes were denied the opportunity to profit from their industriousness, as profits were siphoned off the by the Yugoslav Federal Government to pay for vague, ill-defined development projects in less advanced republics." *Id.*

106. Bojan Pretnar, *SIPO Annual Report 97, Slovenian Intellectual Property Office Website*, (visited Nov. 15, 1999) <http://www.sipo.mzt.si/REPORT.htm> [hereinafter *Annual Report*].

107. Slovenia, even before attaining independence, was already increasing its trade with the United States. *See* Keller, *supra* note 105. Today the country exports primarily to Germany, Italy, France, Austria, Russia, the United States, Macedonia, and the United Kingdom. *See* Nina Morgan, *Slovenia Shows the Way for Europe*, CHEM. & IND., July 7, 1997, *available in* 1997 WL 1310636.

108. The Article provides:

> Scientific, scholarly and artistic creation shall be free.
>
> Authors of scientific, scholarly and artistic works and of scientific discoveries and technical inventions shall have moral and material rights to their achievements. The rights of creators to their works may not be used in a way contrary to society's interest in new scientific achievements and technical inventions being applied.
>
> The volume, duration, restriction, termination and protection of the rights of creators to their works, and the rights of the organizations of associated labour in which these works were created as a result of the pooling of labour and resources, shall be laid down by statute.

YUGO. CONST. (1974) art. 169. In a sense, this is even more expansive than the stance taken by the United States Supreme Court, which has expressly rejected the idea of the inventor's natural or moral right to the invention. *See* Diamond v. Chakrabarty, 447 U.S. 303, 308 (1980).

109. *See* YUGOSLAVIA: A COUNTRY STUDY, *supra* note 9, at 188.

110. *See id.* at 185.

tone, stating that "movables which serve personal needs and which are subject to the right of ownership may be used as a means for earning income only in the way and under conditions spelled out by statute."[111] Thus, the government kept a close watch on the use of its citizens' "personal" property. Further provisions for land allotted to farmers[112] and expropriation of land as seen fit by the State[113] lend credence to the idea that Yugoslavia, although more liberal than many other communist countries, was far from the free market state in which the monopoly granted by patents vests in the inventor rather than in the State.

The progressively loosening reins of communist rule, especially with regard to property and intellectual property, may have added to the Slovenes' desire for individual ownership and independence, and encouraged the splintering of the former Yugoslavia. Yugoslavia's approach to patent law immediately prior to the breakup of the country certainly evidenced a loosening of the reins, and helped ease Slovenia's adoption of a more modern system. The transition was helped along by the "policy of the Federal Patent Office [of the former Yugoslavia] in the last few years towards 'Europeanisation' of Yugoslav legislation . . . [which was] appreciated and firmly supported by Slovenia."[114]

The Slovenes were determined to establish their own system of intellectual property protection, cobbled together from the remnants of the Yugoslav law, provisions from other European countries, and World Intellectual Property Office documents.[115] Slovenes have been described as "an industrious and sophisticated people . . . poised . . . to modernize their legal system."[116] These characteristics have led them to fashion intellectual property laws that have received acclaim in their application, both upon first issuance, when the law "drew the attention of the professional public owing to certain original solutions"[117] and through the present day.[118]

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111. YUGO. CONST. (1974) art. 78.
112. *See id.* at art. 80.
113. *See id.* at art. 81.
114. Bojan Pretnar, *Protection of Inventions in Slovenia*, 24 IIC 50, 59 (1993).
115. *See id.*
116. 2 REYNOLDS & FLORES, *supra* note 14, at Slovn. 4.
117. *Annual Report, supra* note 106.

Bojan Pretnar, Director of the Industrial Property Protection Office of Slovenia, stated that the new country "has devoted noticeable attention to the protection of intellectual property rights from the very beginning of its short path towards full independence."[119] Praise from Western countries has been duly noted. "The U.S. Embassy in Ljubljana recently praised newly-enacted [intellectual property] legislation in Slovenia as 'highly advanced.'"[120] A spokesperson of Microsoft, which recently built a plant in Slovenia, noted that "intellectual property law in Slovenia did play an important part in our decision to open an office here . . . ."[121]

The new industrial property law, comprising 127 articles,[122] came into force on April 4, 1992, and was the first of Slovenia's intellectual property laws to come into being.[123] The new Constitution of Slovenia included provisions for the Industrial Property Protection Office;[124] this later turned into the Slovenian Intellectual Property Office ("SIPO") in 1994.[125] The rapid establishment of such an office enabled the correspondingly rapid implementation of the industrial property law.

The alacrity of the law's passage speaks to Slovenia's sense of the importance of adopting a system of protection for inventions.[126] The Slovenian Parliament heard the law for the first time on December 11, 1991, and passed it with an "over-

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118. *See U.S. Issues Report on Slovenia's IP Laws*, J. PROPRIETARY RTS., Nov. 1997, at 34, 34.

119. Pretnar, *supra* note 114, at 50.

120. *See U.S. Issues Report on Slovenia's IP Laws*, *supra* note 118, at 34.

121. Morgan, *supra* note 107.

122. *See* Law on Industrial Property (1992) (Slovn.).

123. Copyright laws and laws protecting "Topographies of Integrated Circuits" followed approximately three years thereafter. *See Intellectual Property Rights in Slovenia, Slovenian Intellectual Property Office Website* (last visited Nov. 12, 1999) <http://www.sipo.mzt.si/RIGHTS.htm>.

124. *See* Pretnar, *supra* note 114, at 50.

125. *See* Miha Trampuz, *Slovenia Enacts Strong Copyright Protection*, 10 WORLD INTELL. PROP. REP. 29 (1996).

126. Slovenia's intellectual property laws have been compared favorably to those of most Central and Eastern European countries, notably in the area of jurisdiction. These countries' intellectual property cases fall under the general jurisdiction of courts whose judges have little knowledge of intellectual property. By contrast, the District Court of Ljubljana has been designated by Slovenia as the exclusive court of original jurisdiction for intellectual property law; the judges of that court receive specific training. *See* Silke von Lewinski, *Copyright in Central and Eastern Europe: An Intellectual Property Metamorphosis*, 8 FORDHAM INTELL. PROP. MEDIA & ENT. L.J. 39, 60 (1997). This is similar to the United States's practice of having patent law cases heard exclusively by the federal courts.

whelming majority (one vote against, two abstentions)."[127] Exactly three months later, the final version of the law was "promptly and smoothly adopted."[128]

Statistically speaking, SIPO and the application process certainly experienced growing pains. Despite a slow beginning, attributable to the novelty of a patent office and the uncertainty with which the people of a formerly communist country approached patents, the number of patent and industrial property applications submitted and processed has risen steadily since the law's implementation,[129] and the office has garnered praise for its innovative policies and movement toward integration with the rest of the European community.[130]

Although Slovenia's signatory status to several treaties is a remnant of its ties to the former Yugoslavia,[131] membership in the European Patent Organization indicates that Slovenia is moving away from the former Yugoslav policies and firmly toward Western Europe in its patent system evolution. Slovenia is even going above and beyond the requirements necessitated by the guidelines of international agreements; despite the time exemptions offered to transitional nations, the Slovenian patent office decided to forgo the specified grace period, basing its decision on "a firm conviction that effective protection of intellectual property is an important factor in economic and social development."[132]

Slovenia's hearty embrace of intellectual property implementation, including expeditious establishment of a patent office and the passage and protection of patents, evidences a zeal

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127. Pretnar, *supra* note 114, at 50.

128. *See id.* at 51. This figure compares with the passage of Indonesia's intellectual property laws, which, respectively, took 36 years not to pass at all (in the first iteration), *see infra* note 170 and accompanying text, and then two years to implement, *see infra* note 163 and accompanying text.

129. *See* tables *supra* note 19. *See generally Statistical Data, Slovenian Intellectual Property Office Website* (last visited Nov. 12, 1999) <http://www.sipo.mzt.si/STATIST.htm>.

130. SIPO cut down on potential bureaucracy by bringing the protection of patents, trademarks, and copyrights under one roof; the office also, in conjunction with the European Patent Organization, pioneered extension agreements, allowing European patent applicants to expedite their Slovenian patents. *See* Morgan, *supra* note 107.

131. Slovenia endorses the WIPO convention, the Paris Convention, the Berne Convention, the Madrid Agreement, the Locarno Agreement and the Nice Agreement; Slovenia is also party to the Patent Cooperation Treaty. *See Intellectual Property Rights in Slovenia, supra* note 123.

132. *Annual Report, supra* note 106.

that has gained the attention of the rest of the world. Slovenia can credit its more lax, "Tito-style" communist past for the relatively smooth transition; since Yugoslavia's ideology progressively strayed from that of Moscow, Slovenia did not have to take a quantum leap into the world of Westernization. Prior to its "communist" era, Slovenia embraced Western conceptions of property, resulting in a shallower interment of non-individualistic tenets.

V. INDONESIA

This part discusses Indonesian history and systems of law, and examines the effect of the multiple layers of law, such as *adat,*[133] Islam, and current law, on intellectual property protection. The first section will discuss Indonesia's history and integration of numerous cultural elements into its systems of law. The second section will discuss the status of Indonesia's laws and its patent law in particular, and the relative success thereof.

A. History and Culture

Despite its status as the fourth most populous country on our planet,[134] Indonesia until fairly recently stayed out of the headlines. However, the 1998 overthrow of President Suharto, the thirty-year incumbent whose New Order regime encouraged progress as well as corruption and graft,[135] set off riots within the country and shock waves around the world as the quiet archipelago caught the attention of the public eye.[136] The international media has continued to give extensive coverage to

133. *Adat* is defined as the traditional, customary law of Indonesia. *See* discussion of *adat infra* notes 148–60 and accompanying text.

134. *See* BRUCE GRANT, INDONESIA 124 (Melbourne Univ. Press 3d ed. 1996). The four most populous countries of the world, in rank order, are China, India, the United States, and Indonesia. *See United Nations Population Division, World Population Prospects: The 1998 Revision* (visited Nov. 11, 1999) <http://www.popin.org/pop1998/2.html>.

135. "The New Order's driving feature has been economic development.... Above all the New Order is notable for a powerful government and a weak civil society." SCHWARZ, *supra* note 10, at 2–3.

136. For an excellent review of the events of May 1998, *see* Susan Berfield & Dewi Loveard, *Ten Days that Shook Indonesia,* ASIAWEEK, July 24, 1998, at 30.

events such as the freeing of East Timor[137] and the conflicts in other provinces of Indonesia.[138] The political instability exposed by the overthrow continues to this day,[139] indicating that the people of this seemingly idyllic island chain harbor volatile reserves of resentment.[140]

Although Indonesia has only existed in its current incarnation since 1945,[141] its widely recognized name of "the Spice Islands" hearkens back to the era when traders and pirates from around the world plied the archipelago for its exotic wares.[142] The Dutch were among these traders and pirates, and current codes in the country's civil system of law date back to the era when Indonesia was known as the Dutch East Indies.[143] During that time, the Dutch adopted a dual system of law to encompass what they perceived to be the needs of the Indonesian people.[144] The 1945 Constitution of Indonesia[145] and multiple layers of presidential decrees[146] should dominate today's legal

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137. *See* Lisa Rose Weaver, *On a Hard, Dangerous Road in East Timor,* BUS. WK. ONLINE, Sept. 28, 1999, *available in* <http://www.businessweek.com/bwdaily/dnflash/sep1999/nf90928c.htm>.

138. *See* Maggie Ford, *At the Breaking Point,* NEWSWEEK, Dec. 6, 1999, *available in* <http://www.newsweek.com/nw-srv/printed/int/asia/a49048-1999nov29.htm>.

139. As of the present day, the violence continues in various parts of Indonesia. *See Troops Kill 17 in Indonesia as Christians Fight Muslims,* N.Y. TIMES, Jan. 5, 2000, at A3.

140. *See Indonesia: More Bloodshed,* ECONOMIST, Nov. 21, 1998, at 42.

141. *See* INDONESIA: A COUNTRY STUDY 43 (William H. Frederick & Robert L. Worden eds., 1993).

142. *See* SCHWARZ, *supra* note 10, at 3.

143. *See* 3 REYNOLDS & FLORES, *supra* note 14, at Indon. 2.

144. The segregation of laws was egregious:

> The Dutch simply created a dual system; one for them, another for us. It was the Dutch who first recognized the principle of *adat*, the observance of regional cultural traditions among Indonesia's diverse societies. The legal system they created, with its emphasis on separateness, inequality and strong central control, passed more or less unchanged into the hands of the newly independent Indonesian government.

MICHAEL R.J. VATIKIOTIS, INDONESIAN POLITICS UNDER SUHARTO: ORDER, DEVELOPMENT AND PRESSURE FOR CHANGE 55 (1993). However, the system might even be viewed as a "triple" system of law, if one factors in the Dutch deference to and creation of a separate code for Chinese Indonesians.

145. *See also* Commentary, *in* The 1945 Constitution of the Republic of Indonesia (Dep't of Information, Republic of Indonesia, 1989). *See generally* INDON. CONST.

146. The instability of Indonesian law is described as such:

> Most measures have been introduced through the mechanism of presidential decree and have yet to be enacted as laws. As presidential de-

landscape, but the daily workings of the legal system still depend heavily upon the Dutch Civil Code of 1847.[147] However, the constitution, the code, and the decrees often do not affect the lives of the more agrarian populations, who look to a more ancient system of ethics to guide their daily decision making.

This much more historical, and perhaps more elucidating, system is the traditional Indonesian "customary" law, known as *adat*.[148] *Adat* is not so much a clear legal code as it is a malleable, yet deep-seated, way of making sense of the world. *Adat* today might be compared to the Victorian social code exemplified in Jane Austen's novels: although formal law governed certain aspects of the era, the more important "law" was that found in a complex system of unwritten social rules, enforced by the willing compliance of those who played by those rules.[149]

To further complicate the concept, *adat* is not a single, unified system of law, but rather is comprised of regional variants of the same ephemeral approach to law. In fact, these may differ among themselves even more than they differ, as a whole, from Western law.[150] Nevertheless, these principles encounter multiple conflicts with Western ideas and Western conceptions of rights,[151] where:

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crees they are subject to reversal by presidential decree. Legislation is a slow and cumbersome process in Indonesia. Because each department in the bureaucracy has to be consulted, the scope for deadlock over issues perceived as depriving the government of its power over resources or decision-making is endless.

VATIKIOTIS, *supra* note 144, at 48.

147. *See* 3 REYNOLDS & FLORES, *supra* note 14, at Indon. 1. The availability of multiple translations of the code coupled with the absence of an officially sanctioned translation leads to syntactic uncertainty with regards to interpretation of the code. Interview with Dwi Anita Daruhendari, Litigator with Hadiputranto Hadinoto & Partners, in Jakarta, Indonesia (Aug. 3, 1998).

148. *See generally* GAUTAMA & HORNICK, *supra* note 8, at 12–24 (1973); BAREND TER HAAR, ADAT LAW IN INDONESIA (1948); CAROL WARREN, *ADAT* AND *DINAS*: BALINESE COMMUNITIES IN THE INDONESIAN STATE (1993).

149. *See generally* JANE AUSTEN, EMMA (1816); JANE AUSTEN, PRIDE AND PREJUDICE (1813).

150. *See* GAUTAMA & HORNICK, *supra* note 8, at 9.

151. *See id.* at 122–23. Gautama outlines four major differences between *adat* law and Western law: (1) no distinction between real rights and personal rights; (2) no distinction between moveable and immovable property; (3) no distinction between public and private law; and (4) no distinction between civil and criminal delicts. *See id.*

> [O]f paramount importance [in *adat* law] is the potential impact which a particular action will have on the overall stability of the community. It would therefore be reckless . . . to prescribe a hard and fast rule . . . since the cosmic implications of favoring one or the other will vary from one day to the next, and will be so intimately bound up with the particular facts of the situation, that the interests of the community are best served by relying for solution on the discretion and informed instincts of village elders.[152]

This more flexible approach to rights and law, still integral to modern Indonesian society,[153] presents clear obstacles to the adoption of a patent law. A law which effectively grants a monopoly to an individual for a prescribed period of time, as the patent law does, would be construed as an advantage to the owner at the expense of the community, and thus as a disruption to the vital societal equilibrium.

Furthermore, on a practical level, "the adat concept of an interest in property is never defined in terms of its enforceability."[154] Since enforceability, or lack thereof, remains one of the primary problems with intellectual property rights in developing countries, the underlying principles of *adat* give rise to greater cause for consternation by virtue of the lack of cultural precedent regarding enforcement.

Adat has persisted despite the influences of various religions brought to Indonesia, some more forcibly than others, by traders and conquerors.[155] Islam, for example, was brought to Indonesia by Indian and Middle Eastern traders approximately seven hundred years ago.[156] Today, approximately ninety percent of Indonesians practice some form of Islam, giving Indonesia the largest Islamic population in the world.[157] In many

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152. *See id.* at 124.

153. *See* WARREN, *supra* note 148, at 4.

154. GAUTAMA & HORNICK, *supra* note 8, at 122–23.

155. *See* ROBERT CRIBB & COLIN BROWN, MODERN INDONESIA: A HISTORY SINCE 1945 4–5 (1995).

156. *See* SCHWARZ, *supra* note 10, at 165. The relatively peaceful introduction of Islam allowed for its gradual integration into Indonesian culture. *See id.; see also* ALLEN M. SIEVERS, THE MYSTICAL WORLD OF INDONESIA 44–46 (1974). The first Islamic kingdom, Perlak, was established in Sumatra in 840 A.D., and was followed by Aceh in 1025, Samudra Pasai in 1402, Tamiah in 1184, and Darussalam in 1511. *See Banda Aceh* (visited Jan. 18, 2000) <http://www.jakarta.wasantara.net.id/warsi/PROVINCE/ACEH/WELCOME.HTM>.

157. *See* VATIKIOTIS, *supra* note 144, at 120.

ways, Islam's teachings with respect to adherence to the community are even more vehement than the tenets of *adat*:[158]

> Islamic . . . cultures go so far as to define self-identity not according to individual liberty but according to the individual's relationship with and contribution to society . . . . Concepts of property are therefore different; if individual liberty is not the basis for self-identity, then the moral foundations of property must rest somewhere else.[159]

Such non-individual, non-Hegelian views of property are reinforced by the cultural pervasiveness of *adat* and the religious pervasiveness of Islam.[160] These two complementary forces make the concept of intellectual property rights even more difficult to introduce.

Therefore, the historical groundwork upon which today's intellectual property rights would have to be built may be described as a series of layers. The historical system of law, *adat*, forms the enigmatic, impenetrable bedrock. Slightly less ancient is the Islamic influence imported to Indonesia; this is integrated somewhat into the *adat* bedrock but remains sufficiently independent to constitute its own layer. Atop this second layer of Islam, the Dutch Civil Code of 1847 comprises a layer of completely foreign material, separate from both *adat* and Islam. Coming nearly a century later, the 1945 Constitution serves as today's most important law, at the same time depending on all the layers beneath it. Finally, continually adding matter to an already hearty loam are the presidential decrees, which dictate practical, modern matters such as patent law.

B. The Patent System

The current patent system finds its origins in a series of presidential decrees[161] and Indonesia's recent subscription to

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158. *See* SIEVERS, *supra* note 156, at 48.

159. Hurlbut, *supra* note 38, at 385.

160. *See* VATIKIOTIS, *supra* note 144, at 120.

161. *See* Presidential Decree No. 34 (1991) (Indon.) (concerning the patent application procedure); Presidential Decree No. 33 (1991) (Indon.) (concerning registration of patent consultants); Presidential Decree No. 32 (1991) (Indon.) (concerning importation of materials for the domestic production of patented

several international intellectual property treaties.[162] Law Number 6 of 1989 on Patents was ratified by the former President Suharto on November 1, 1989 and came into effect on August 31, 1991.[163] This law overturns all patent laws before it.[164] This law was later revised by Law No. 13 of 1997, which was implemented on May 7, 1997.[165] These laws are supplemented by a series of governmental regulations, most importantly Governmental Regulation No. 34 of 1991, which concerns the patent application procedure[166] and which, together with the aforementioned laws, comprises the substantive body of Indonesian patent law.

The patent system's ancestry can be traced back to the externally-imposed and administered Dutch colonial patent law, or *Octrooiwet,* of 1912.[167] After the 1945 independence, the new government expunged this law in the spirit of anti-colonialism.[168] This led to an eight-year gap during which time no provisions for enacting a patent existed.[169] In 1953, the Minister of Justice issued a regulation indicating that the Ministry of Justice would soon pass a patent statute, and inviting patent submissions in anticipation of the new legislation.[170] Unfortunately, the Ministry never passed the promised law. As a result, about 13,400 patent applications were sub-

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medicines); Presidential Decree No. 6 (1989) (Indon.) (describing the primary law on patents).

162. *See* HADIPUTRANTO, HADINOTO & PARTNERS, INTELLECTUAL PROPERTY LAW BULLETIN 5–6 (Jan. 1998). Indonesia revoked its previous reservations and became a full signatory to the Paris Convention by Presidential Decree No. 15 (1997) (Indon.). In the same round of legislation, Indonesia became a signatory to the Patent Cooperation Treaty ("PCT") by Presidential Decree No. 16 (1997) (Indon.); to the Trademark Law Treaty ("TLT") by Presidential Decree No. 17 (1997) (Indon.); to the Berne Convention by Presidential Decree No. 18 (1997) (Indon.); and to the World Intellectual Property Organization Copyrights Treaty by Presidential Decree No. 19 (1997) (Indon.). *See* HADIPUTRANTO, HADINOTO & PARTNERS, INTELLECTUAL PROPERTY GUIDE: INDONESIA 2 (1999).

163. *See* Carl-Bernd Kaehlig, *Patents, in* INDONESIAN INTELLECTUAL PROPERTY LAW 1 (Indon. L. and Prac. Series, Gregory J. Churchill ed., 1993).

164. *See* Presidential Decree No. 6, art. 133 (Indon.) (1989).

165. *See* INTELLECTUAL PROPERTY GUIDE, *supra* note 162, at 23.

166. *See* Kaehlig, *supra* note 160, at 2.

167. *See* INTELLECTUAL PROPERTY GUIDE, *supra* note 162, at 23.

168. *See id.*

169. *See id.*

170. *See* Fabiola M. Suwanto, Comment, *Indonesia's New Patent Law: A Move in the Right Direction,* 9 SANTA CLARA COMPUTER & HIGH TECH. L.J. 265, 266 (1993).

mitted to the Ministry between 1953 and 1989, all of which stagnated in the bureaucracy without examination.[171]

Not surprisingly, Indonesia's record on intellectual property rights protection is dubious at best.[172] In the interest of bettering its image, Indonesian lawmakers have sought to enact more stringent legislation to heal its "image as one of the world's worst intellectual property protectors."[173] The new patent laws of 1989 and 1991, characterized as "the government's most earnest attempt to cast off Indonesia's image"[174] were part of a push for image reform.

Another impetus for the new set of intellectual property laws[175] was the role they could possibly play in attracting investors from outside the country. As a relatively recent entrant into the world market, Indonesia realized that foreign investors would be more likely to come to their country, and that the country would be better able to compete with other countries, if

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171. *See* INTELLECTUAL PROPERTY GUIDE, *supra* note 162, at 23. However, the new 1991 law allowed a ten-year grace period, during which time the patents filed under the nonexistent earlier law could be re-filed under the new system.

172. Examples of copyright and trademark piracy in Indonesia are rampant; designer knockoff clothing is hawked by street vendors, and designers are virtually without legal remedy to rectify the situation. "We can feel with Pierre Cardin, who returns to Indonesia to see if bogus registrations [which were allowed by the trademark office] have meanwhile been struck from the register, only to find they have increased from sixteen to twenty-eight." Christopher Heath, *Indonesian Law*, 44 AM. J. COMP. L. 669, 671 (1996) (reviewing Kaehlig, *supra* note 163, and CHRISTOPH ANTONS, URHEBERRECHT UND GEWERBLICHER RECHTSSCHUTZ IN INDONESIEN (1995)).

173. Suwanto, *supra* note 170, at 284. Western countries, including the United States and members of the European Union, have repeatedly criticized Indonesia's record on protecting intellectual property rights. *See Indonesia Passes Amendments to Intellectual Property Law*, AGENCE FR.-PRESSE, Mar. 22, 1997, *available in* 1997 WL 2082386. Currently, it is estimated that 75% of software in circulation in Indonesia is counterfeit. *See* Kusoy, *supra* note 19, at 10.

174. Suwanto, *supra* note 170, at 265. Because the United States still places Indonesia on its priority watch list of countries that have poor enforcement of intellectual property rights, the Indonesian government continues to harbor a heightened awareness that the quality of the intellectual property laws and enforcement thereof will "help improve the image and standing of Indonesia as a member of the international community." *RI Fails to Implement WTO Commitments*, JAKARTA POST, Dec. 22, 1999, at 1.

175. Indonesia's intellectual property laws are all of relatively recent vintage and subject to even more recent revisions. The Copyright Law, Law No. 6 (1982) was amended by Law No. 7 (1987), and further amended by Law No. 12 (1997). The Patent Law, Law No. 6 (1989) came into effect in 1991, and was amended by Law No. 13 (1997). Also, the Trademark Law, Law No. 19 (1992) was amended by Law No. 14 (1997). *See* INTELLECTUAL PROPERTY GUIDE, *supra* note 162, at 1, 5, 17, 23.

a secure system of intellectual property protection existed.[176] Furthermore, the aforementioned international exposure exerted a pressure that provided a powerful push in the pro-intellectual property protection direction. Consequently, the forces driving the intellectual property legislation revolution came from outside of the country rather than from within the country.[177] *Adat* and Islam would not, by themselves, generate intellectual property laws; the patent laws are Indonesia's response to the pressures of the global economy.

Even Indonesians in high government positions acknowledge the difficulty of introducing intellectual property concepts into a primarily agrarian society with strong community values. The importation of new ideas, may not take so well in a primarily agrarian society with numerous other obstacles to overcome outside of the realm of protecting intellectual property. During his term as president, B.J. Habibie, who formerly held the post of Minister of Research and Technology, adopted an ambitious pro-intellectual-property approach.[178] Although the then-current figure of domestic patent submissions was holding steady at three percent,[179] Habibie insisted that this figure rise to ten percent by the year 2000.[180] His emphasis on continuing research was admirable, and boded well for a coun-

176. *See* Suwanto, *supra* note 170, at 269.

177. Numerous sources support the assertion that Indonesia's passage of international treaties and implementation of intellectual property legislation results from external pressure rather than an internal impetus. *See, e.g., Indonesia Amends Intellectual Property Legislation*, ASIA PULSE, Mar. 24, 1997, *available in* 1997 WL 10152617 (describing amendments "aimed at adjusting with" TRIPs agreement); *Indonesia Amends IP Laws*, J. PROPRIETARY RTS., July 1997, at 25, 25 (describing revisions necessary to bring Indonesia "into line" with international treaties); *Indonesia Passes Amendments to Intellectual Property Law*, AGENCE FR.-PRESSE, Mar. 22, 1997, *available in* 1997 WL 2082386; *Three Intellectual Property Bills Given to House*, JAKARTA POST, Dec. 14, 1996, *available in* 1996 WL 15975269 (describing revisions necessary "as a consequence of" TRIPs ratification).

178. For a general description of Habibie's rise to the Presidency and previous occupations, see *B.J. Habibie, Profile of the New President, BBC News Site* (visited Apr. 24, 1999) <http://news1.thdo.bbc.co.uk/hi/english/events/indonesia/special_report/newsid_58000/58602.stm>.

179. *See Habibie to Protect Intellectual-Property Rights*, ASIAN WALL ST. J., Aug. 11, 1998, at 12.

180. As Habibie is no longer the president of Indonesia, his questionable credibility makes him a well-intentioned, yet perhaps not completely reliable, source for such projections. *See id.*

try with a clear need for internal intellectual property rights support.

However, "Indonesia remains a society where the idea that property can be something other than an object is difficult to understand."[181] Indonesia's agrarian character, corrupt bureaucracy,[182] unstable political situation, and vast geographic reaches work against the likelihood of the immediate success of a patent law.[183] Nevertheless, increased participation in the global forum may drive Indonesians to look to intellectual property as a protective tool.[184]

Encouraged by continuing developments and bolstering statistics, however, the proponents of intellectual property in Indonesia retain a positive outlook.[185] With the implementa-

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181. RAMELAN, INDONESIA POST APEC 1994: FACING THE GLOBAL ECONOMY, *in* THIRD ECONOMIST ROUNDTABLE WITH THE GOVERNMENT OF INDONESIA 83 (Mar. 21, 1995).

182. Corruption lies at the root of most of Indonesia's current problems, including problems with legal enforcement. In a recent survey of one hundred countries, Indonesia ranked as the third most corrupt, after Cameroon and Nigeria. *See* T. Sima Gunawan, *Corrupt Legal System Blocks Justice for All*, JAKARTA POST, Nov. 7, 1999, at 3. Harkiristuti Harkrisnowo, a professor of law at the University of Indonesia, expresses skepticism that the people of Indonesia, long dissatisfied with the poor implementation of the law, will accept any law as effective: "[B]ecause the implementation of the law is contrary to the peoples' feelings of justice, in the eyes of the public, the law is nothing but garbage." *Lawyers Cash in on Era of Reform*, JAKARTA POST, Aug. 22, 1999, at 1.

183. *See* Heath, *supra* note 172, at 674. Some tinkering with the fundamentals of the patent system, such as implementing a first-to-use system rather than a first-to-file system (as the United States does), makes sense in light of the fact that Indonesia has to adjust the details of a Western patent law to a non-Western country's particular circumstances. A macroscopic, difference theory look at Indonesia and its people "enables [the] . . . understand[ing] that such oddities as the first-to-use system make sense in a country so vast that registration is difficult to obtain and with a bureaucracy so corrupt that a correct implementation of the first-to-file system cannot be taken for granted." *Id. See also supra* Part I.

184. For example, Balinese jewelry designer Suarti, accused of infringement by an American designer who had copied Suarti's unprotected designs, said she "has a psychological obstacle to patenting her works." *Balinese Designer Fights Copyright Violation Claim*, JAKARTA POST, Oct 4, 1999, at 4. She nevertheless sought intellectual property protection and legal assistance, evincing a subtle shift toward the acceptance of intellectual property protection in Indonesia. *See id.*

185. An examination of recent intellectual property registration figures, and an optimistic, linear (in light of current economic conditions) projection of continued increase in intellectual property registration would suggest that there is reason for hope. For example, in 1990, no patents were registered, a logical figure considering the lack of a patent law or patent office. However, the numbers have increased admirably since then; in 1991, 1336 patents were registered, in 1993, 2140; in 1995, 3006; in 1996, 4136; in 1997, the number rose to 4550; and the

tion of new patent laws, the adoption of numerous international treaties, and the creation of a supporting organization[186] for the intellectual property network, the future certainly looks brighter since 1989 than before.[187] However, the earnest adoption of the patent laws may not be an instantaneous process; even the most staunch champions of Indonesian intellectual property law, when commenting on the transition from intellectual property rights infringement to intellectual property rights maintenance, admit that, "this . . . will be a slow transition."[188]

CONCLUSION

International intellectual property protection takes on increasingly greater significance as the reach of patented products stretches around the globe. For economic players and international legislators, understanding the cultural factors underlying the potential success of patent protection in different countries acquires corresponding magnitude. The realization that not all patent systems are the same serves as a starting point for a global understanding of the protection that will be given to patents in countries with less-developed patent systems. This sort of examination, however, is only the first step. Questioning and examining the multitude of ways in which patents are enforced and valued has perhaps greater weight as a factor in understanding the scope of foreign patent protection.

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projected figure for 2000 is 6500. *See Intellectual Property Registration Increase Indonesia*, INDON. TIMES, Oct. 14, 1997, at 9, *available in* 1997 WL 8762908. Similar increases were projected for trademark and copyright registration figures. *See id.*

186. *See* INTELLECTUAL PROPERTY LAW BULLETIN, *supra* note 162, at 8. The Indonesian Intellectual Property Society was officiated on April 7, 1997, with the aim of "promot[ing] Indonesians' social awareness and understanding of the importance of effective intellectual property rights protection and enforcement." *Indonesian Intellectual Property Society Officiated*, JAKARTA POST, Apr. 8, 1997, *available in* 1997 WL 10557303. Society membership is determined by democratic principles; anyone with an interest in the development of intellectual property policy in Indonesia may join. *See id.*

187. An interesting intellectual property aside, illustrating Indonesian efforts to synthesize and combine the indigenous with the foreign, is the attempt by the country to patent *tempe*, a fermented soy bean cake that is growing in popularity around the world as a result of its low-calorie, low-cholesterol nutritional value. *See Indonesia Wants to Patent Fermented Soybean Cake*, AGENCE FR.-PRESSE, May 9, 1997, *available in* 1997 WL 2111448.

188. RAMELAN, *supra* note 181.

In an attempt to understand the parameters of global protection, this comment has presented a difference theory analysis of the patent systems of the United States, Slovenia, and Indonesia. The United States, as a country with a strong history of valuing individual rights and property rights, and as a country with a longstanding patent system, illustrates the degree to which a patent system can evolve. The respect accorded to a United States patent's grant of a monopoly in an invention serves as a backdrop against which to contrast the patent protection available in other countries.

Slovenia and Indonesia, with younger, "transplanted" patent systems and weaker histories of individual ownership and property rights, have further to go in fine-tuning their patent systems. The foregoing outlines of historical Slovenian and Indonesian approaches to property rights, as well as their modern manifestations, illustrate the potential differences in otherwise chronologically and textually similar patent laws. Slovenia's patent system, although suffering through growing pains as well, has gained momentum side by side with, and perhaps as a result of, the country's thrust for Westernization. Indonesia enacted its patent system primarily as a result of external influences; consequently, the country's acceptance of such a system is slower and more tenuous.

Slovenia, an independent country since 1991, adapted its patent system from the Yugoslav version that same year. Although similarly subjugated throughout its history, Slovenia has made a less abrupt transition into intellectual property protection. The dearth of historical independence and the shadows of Communism notwithstanding, the Slovenes expeditiously set up a Patent Office and began processing local and international applications. Resurrection of the concept of individual ownership, unfettered by the State, led to an enthusiastic response and international praise for the new intellectual property system. Prospective European Union membership and the potential for increased world economic participation appear to be giving Slovenia greater incentive to maintain its standards of patent protection. The era of communist rule stymied the country's economic and industrial development, but Slovenia's emergence into nationhood concurred with a push for Westernization. While Indonesia remains allegiant to its history, Slovenia is more than eager to shed the shackles of communist thought and to embrace Western theories.

The most profound illustration of the previously mentioned square-peg-in-a-round-hole conundrum[189] is Indonesia. Indonesia, an independent country since 1945, promulgated its current patent system in 1989. Although the patent statute itself appears legislatively sound, the historical and cultural value of "property" in that country, coupled with the lesser degree of regard for personal ownership of intangible ideas, leads to a lack of widespread understanding of the concept of patent rights. Despite its up-to-date statutory provisions for the protection of intellectual property, and despite the country's recent commitment to the gamut of international intellectual property treaties, the success of the Indonesian patent law is limited at best. The explanation for this lies in the relative infertility of Indonesia's cultural soil to nurture the seeds or to support the trellis for maintaining such a harvest of invention.

The mentality of Indonesia, shaped by years of *adat*, Islam, agrarian existence, and colonial rule, places a premium on the idea of community ownership and shared assets—a contrary view to the individualistic, monopolistic tenets of patent law.[190] Furthermore, the social structure of colonial rule, followed by regimes in which a top-heavy bureaucracy supplanted the previous despots, reinforced the mindset of perpetual serfdom and subjugation. Such a mindset, though dissipating with the modernization of the country, continues to influence the status of intellectual property law in Indonesia, as evidenced by the country's retiring and leisurely approach to legislation and its weak record of enforcement.[191]

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189. *See supra* Part V.

190. In fact, the very language of the Indonesian patent law illustrates the aversion to individualism and monopoly. Although the law uses language similar to patent laws around the world, the Indonesian version changes the customary term "exclusive right" to the term "special right," despite the fact that the two are essentially functionally identical in their application. In explaining the apparently unnecessary change, a news source commented that "Indonesia appears to be somewhat allergic to this monopolistic connotation." *Patent Protection System Application,* JAKARTA POST, May 1, 1997, *available in* 1997 WL 10557149.

191. In contrast to Slovenia's passage of intellectual property laws, the 1997 amendments to Indonesia's intellectual property laws took the government ten years to prepare, *see* (*Three Intellectual Property Bills Given to House, see* JAKARTA POST, Dec. 14, 1996, *available in* 1996 WL 15975269), and the House of Representatives two months to deliberate, *see* (*Indonesian Intellectual Property Society Officiated,* JAKARTA POST, Apr. 8, 1997, *available in* 1997 WL 10557303). Moreover, in Indonesia, opinions on intellectual property and its legislation tend to take on more amorphous forms, phrased in terms of general impressions rather than specific goals. For example, when commenting on the 1997 passage of intel-

Although rich in the arts and humanities, Indonesia regards the notion of "invention" as less important than the notion of perfecting what already exists. This background, coupled with the New Order regime's suppression of ideas and free speech, lack of adequate enforcement, and current economic and social dilemmas, translates into difficulties for the inventor seeking protection of ideas in that country. However, adoption of recognized treaties and increased participation in a worldwide market may improve the outlook of patent protection in Indonesia, if the country does not first collapse under the weight of its own political problems.[192]

In short, the United States sets a standard for patent systems in today's global context. Against this standard, despite the temporal and textual similarities of the patent laws (Indonesia's in 1989; implemented 1991; Slovenia's in 1991, implemented in 1992), and despite the countries' emergence from histories characterized by lack of individual ownership, the two patent systems have met with markedly disparate degrees of success. These results, which contradict the expectation that similar laws may have similar effects, reinforce the conclusion that the success of a patent law system depends heavily on the country and on the culture in which that system is enacted rather than its year of enactment or its supposed statutory provisions.

Therefore, the global businessman or the international inventor curious about the potential of obtaining a secure patent right could, as a general guideline, look to broader cultural contexts and observe the Westernization of the country as a whole. As illustrated by the analysis in this comment, the macroscopic view of a country's respect for individual ownership and prop-

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lectual property amendments, Minister of Justice Oetojo Oesman "expressed hope" that "the amendments . . . would create a more conducive climate for the development of creativity" as well as "a climate more conducive to research, trade and investment." *Indonesia Amends Intellectual Property Legislation*, ASIA PULSE, Mar. 24, 1997, *available in* 1997 WL 10152617.

192. Commentators express skepticism that Indonesia will prioritize its intellectual property reform over more broad-based and urgent economic reform. "Should current socioeconomic and cultural conditions in Indonesia be taken into consideration, it is most unlikely that there will be radical and effective changes of the existing IPR system . . . ." *Patent Protection System Application*, JAKARTA POST, May 1, 1997, *available in* 1997 WL 10557149. The ongoing economic crisis has done little to aid the evolution of the patent laws. Currently, more than 500 patent applications have been awaiting substantive examination for more than three years. *See RI Fails to Implement WTO Commitments, supra* note 174.

erty provides an instructive gauge of the efficacy and likelihood of success of protecting one's patent rights in that country.