

# Preface and Acknowledgments

This book explains China's intellectual property perspective by reference to European theories, Locke and Hegel's property theories in particular, through a critical examination on intellectual property theory and practice by reference to China's TRIPS compliance. The book's critical review of contemporary intellectual property philosophy at the beginning suggests that justifying intellectual property protection through Locke or Hegel's property theories internalizes a theoretical paradox. While being recognized as self-sufficient private rights gives intellectual creations constitutional significance, it also traps the legal regime in an intrinsic dilemma of private-public confrontation. In contrast to WTO's private-oriented perspective, China's response to this private-public dynamics indicates a clear public interest orientation. This is evident in imperial China's reliance on criminal and administrative but not civil protection for intellectual endeavors, in contemporary protection of Olympic marks, and in the *ex officio* action system of enforcement in China's TRIPS implementation. In addition, an empirical survey study suggests that China's public-oriented cultural imperative shapes people's ways of perceiving private rights from their social embedment and further constructs people's perception of intellectual property protection.

Further jurisprudential analysis reveals that the self-sufficient ontology since the Enlightenment that constructed the modernity of law has shaped TRIPS' self-sufficient private rights perspective. When private rights are made self-sufficient and the intellectual property regime becomes indifferent to public concerns and development, the TRIPS Agreement internalizes a birth defect, modern law becomes "self-evident," and legitimacy collapses into legality as norms collapse into facts. This public-private orientation contrast between China and the WTO not only explains the "how" and the "why" of China's TRIPS compliance but also reveals a compliance paradox. While foreign pressure on China for establishing an omnipotent administration to protect private-rights-in-nature intellectual property is squaring a circle in vain, China's effort to embrace the private-right-oriented regime is cutting off its toes to fit into foreign shoes. The balance between the private rights and public interests is the key of the legitimacy of the TRIPS regime.

The book proposes a jurisprudential reconstruction building on a relational instead of self-sufficient ontology to restore international compliance to the process of constant “selective adaptation” and dynamic growth of legitimacy. During this process, the dynamics between international norms and local imperatives provides a driving force for law’s development, where “to be” meets with “ought to be” and facts are in harmony with norms, through which international norms and local regimes evolve.

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