

Property's Intellect

Molly S. Van Houweling

Professor of Law, University of California, Berkeley
msvh@law.berkeley.edu | [Bio](#)

IP scholars and tangible property scholars have in recent years engaged in productive dialogue about the theoretical and doctrinal overlaps and divergences between their fields. This paper will synthesize and build upon this prior work, highlighting—in particular—important themes that emerge from the tangible property canon that can inform our thinking about tricky IP problems. These themes include: the importance and limits of the “first in time” principle, the relationship between property and personhood, tragedies and comedies of the commons, overlapping rights and the anti-commons, dead hand control and the problem of the future, and the question of property rules versus liability rules. If we are attentive to both the similarities and differences between tangible property and IP regimes, exploring these themes can generate new and valuable insights for both fields.