

## ***Virtuous Progress***

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What is the appropriate interpretation to “progress” in the U.S. Constitution’s Progress Clause? What should be the approach to the laws granting authors and inventors exclusive legal rights so as to achieve “Progress of the Science and the useful Arts” in society? As commonly understood, the U.S. copyright and patent systems are utilitarian regimes that provide incentives to induce creative and inventive progress respectively to promote social welfare. While originalist Constitutional interpretation, Lockean property theory, and the incentive narrative have pervaded U.S. history and seem like reasonable lenses for interpretation, scholars have argued for reorientation of intellectual property (IP) to consider critical and progressive perspectives, distributive values and social justice, and observational attitudes and motivations, among other interpretative lenses. These contemporary perspectives represent a significant shift for reevaluation of the Progress Clause in terms of expanding public interests as a more progressive progress.

Neglected, however, has been the lens of ethics, which is concerned with human conduct and values by which humankind should live, asks: What kind of author or inventor should one be? What are the responsibilities of authors and inventors as members of U.S. society? How can authors and inventors decide problems they face? What is a good outcome or the appropriate path to follow in discharging authors’ or inventors’ duties to themselves and others while attempting to help achieve progress? While ethics is essentially diverse and not homogeneous—it is not a question of how far any member of society can standardize, pigeonhole, or essentialize ideas or experiences—learning to use it as a lens can help achieve a new interpretative account of the purpose of IP that drives accompanying behaviors of authors and inventors. Drawing on ethics, this Article argues that the scope of U.S. copyright law and patent law should encompass secular ethical aims, which should be linked to the Progress Clause of the U.S. Constitution and recast the interpretation of progress. It proposes calibrating principles of beneficence (“do good as a guide for ethical conduct”) with the principle of utilitarianism (“the greatest good for the greatest number”) to refocus U.S. copyright law and patent law and the notion of “progress” with broader secular ethical concerns.