

Moral Exclusions on Patents: In Search of Foundations

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Moral exclusions are ubiquitous in national, regional and international patent law yet largely dormant outside the European Union system. Their origin and rationale is unclear. This paper retraces the genealogy of moral exclusions on patents in European and international patent law. It examines the evolution of moral exclusions through the prism of moral theories and theories of epistemic justice, procedural justice and distributive justice with a view to assessing their possible future role in the face of globalization. The initial hypothesis is that patent laws are liable to generate forms of injustice which can be illuminated by moral theory but moral exclusion clauses are only distantly connected to moral theory and a largely ineffective tool to address the harms and injustice caused by unbalanced patent laws.