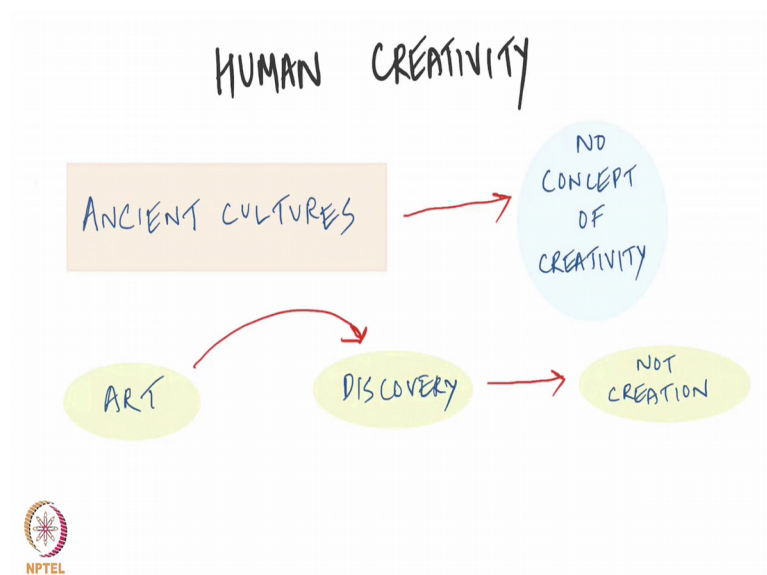


Intellectual Property
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Lecture - 10
The Origin of Intellectual Property

If you look at the origin of intellectual property we will find that intellectual property can be attributed to human creativity itself.

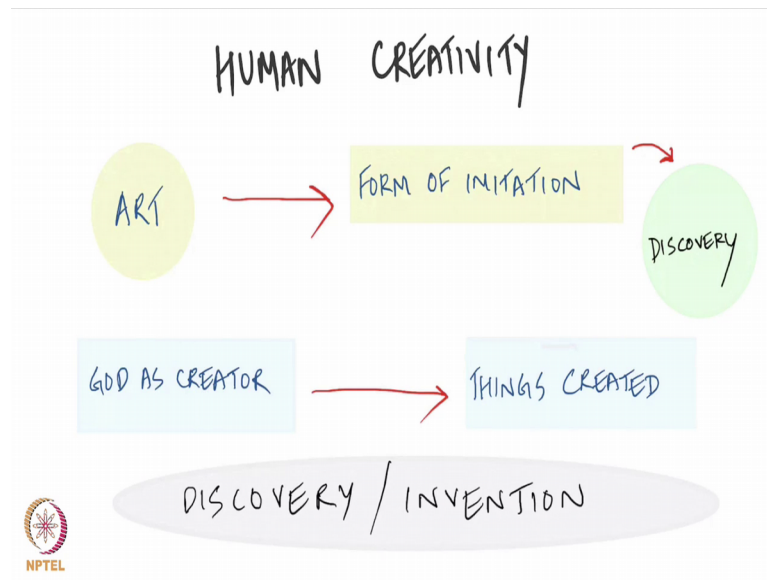
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Human creativity as we know from certain Asian cultures. There was no concept of creativity that existed in ancient cultures it just the fact that they did not respected or identify it as a concept is an important thing for us to note.

In fact, creativity was attributed only to divine origin. In fact, at 1 point in the ancient cultures art was at regarded as a discovery that you make and not something which you create on your own. So, art was a discovery and discovery is not something that was created. So, the concept that existed in ancient cultures was the fact that human beings did not create anything on their own rather they discovered or converted 1 form of thing to another.

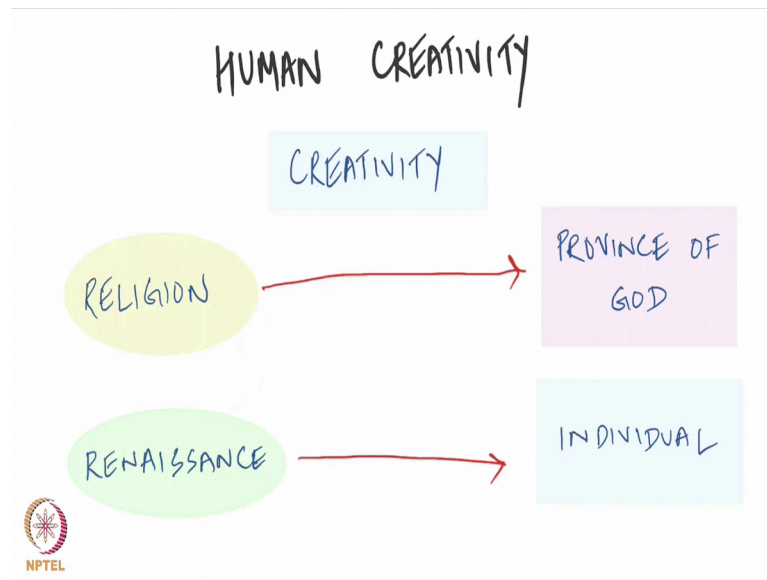
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So, art was regarded as a form of imitation and imitation as you already saw came through the process of discovery. Now this philosophy regarded that god was the creator and all the other things were the created things, so you had the created things and you had a creator now human creativity did not seem to fit into this very well, because creativity was understood as a form of imitation.

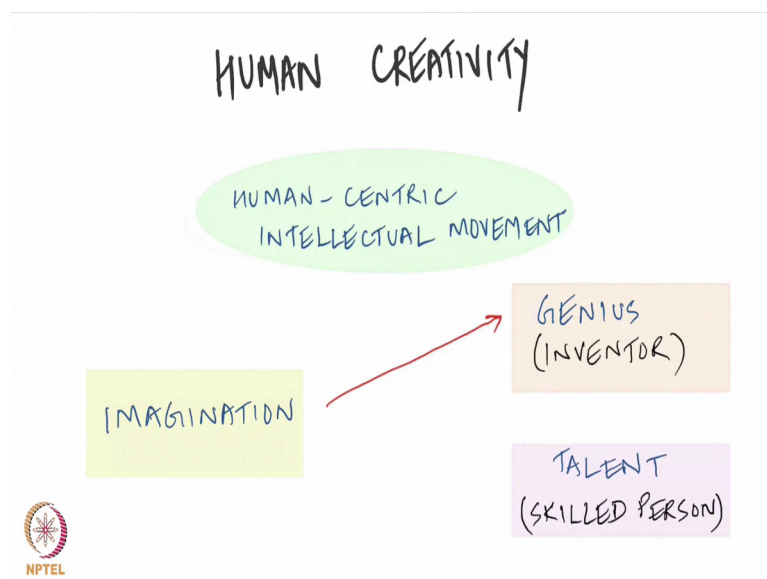
If we find struggle even in modern intellectual property law, where especially when it comes to patent law there is a conundrum between discovery and invention. Discoveries are not regarded as inventions because discoveries do not lead to inventing or coming up with something new something existed and you merely revealed it. So, this issue that existed between the people in the ancient cultures you see that it also the same debate also requires in the modern times.

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So, when we look at creativity we can look at 2 broad classes of thinking: one we had religion which initially told us creativity was the province of god and then we had the renaissance where the individual was given more importance. So, we came to a individual centric model where we moved forward and said that it is not just creation that is of divine origin, that matters even the creations by the individual itself could be a thing to be considered.

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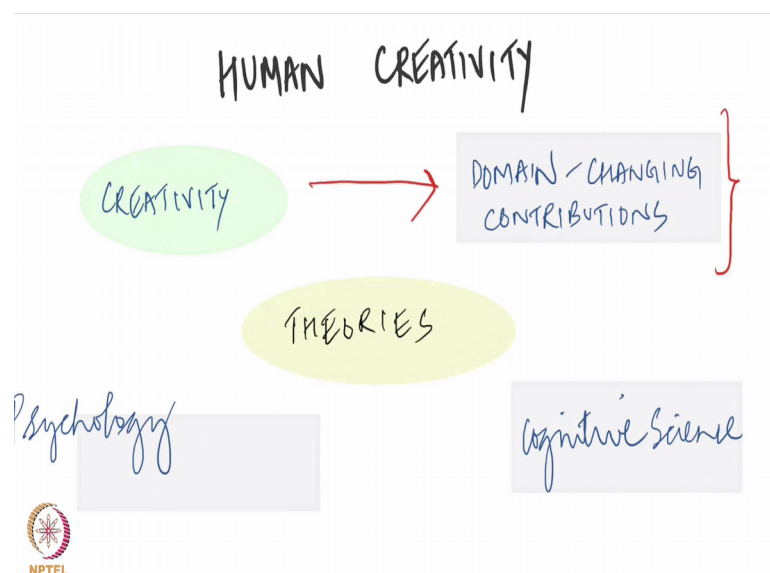


The human centric intellectual moment had imagination at its centre, it was regarded that a genius is a person who was imaginative and over a vibrant imagination; where has talent or something which was below the level of a genius.

So, you could have talent to do ordinary tasks, but to do the extraordinary you had to be a genius. Again this is something which we will find in modern intellectual property debates in inventor is somebody who has the spark of a genius, whereas a skilled person or a person skilled in the art is just a talented person. So, how does patent law decide or how does patent law determine that there is a difference between normal talent and that of a genius they nearly look at the fact whether a skilled person who is an ordinary person in that field could have come up with the invention.

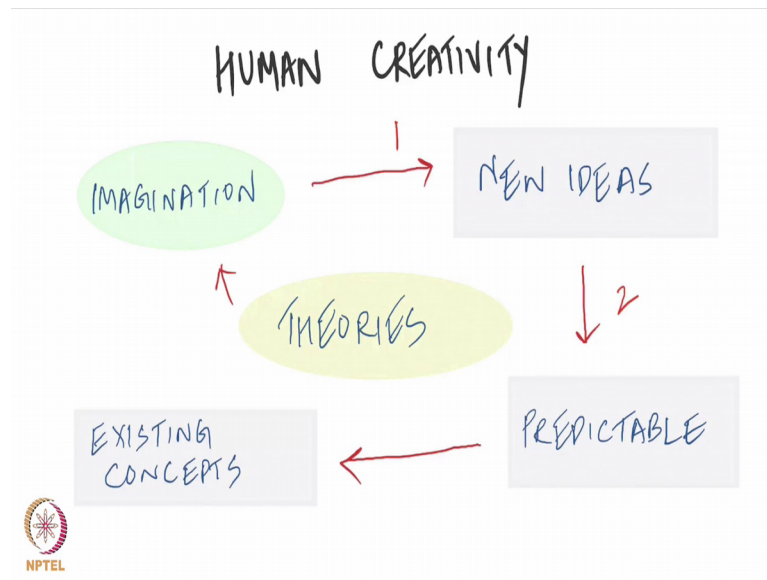
If the skilled person could not have come up with the invention, then patent law regards that as a work of invention or rather the patent law regards that there is an inventive step, which is similar to the contribution of a genius. So, human creativity revolved around human imagination and human imagination was something that was attributed to the work of a genius.

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So, creativity came to be equated with domain changing contributions, so you could look at some similar contribution that led to creation of a domain or changing the knowledge and that domain. They were various theories on creativity you had psychology theories in psychology and theories in cognitive science as well.

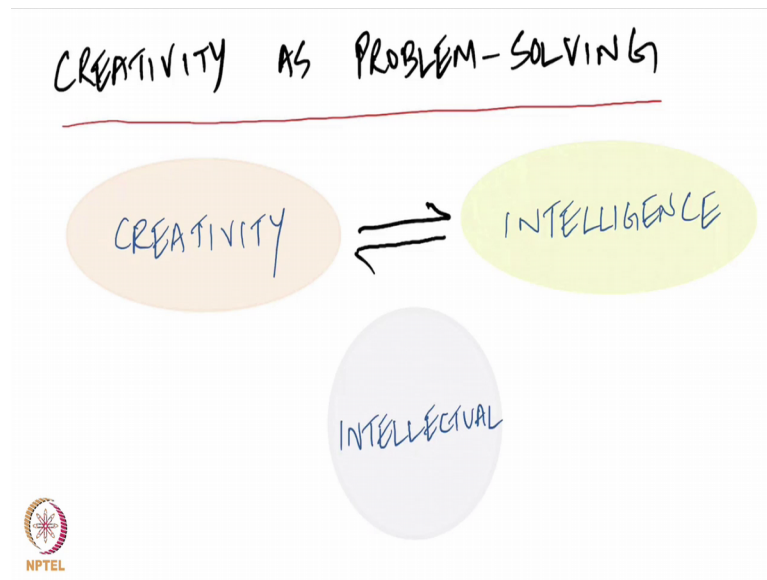
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Now, imagination it was believed that imagination led to new ideas and the new ideas came up because of operating in predictable ways and this predictable ways mapped or had relevance to existing concepts. So, in a way imagination had to do something with what was already there. In fact, we had statements from scientist who have said that if I could look for it is because, I stood on the shoulders of giants.

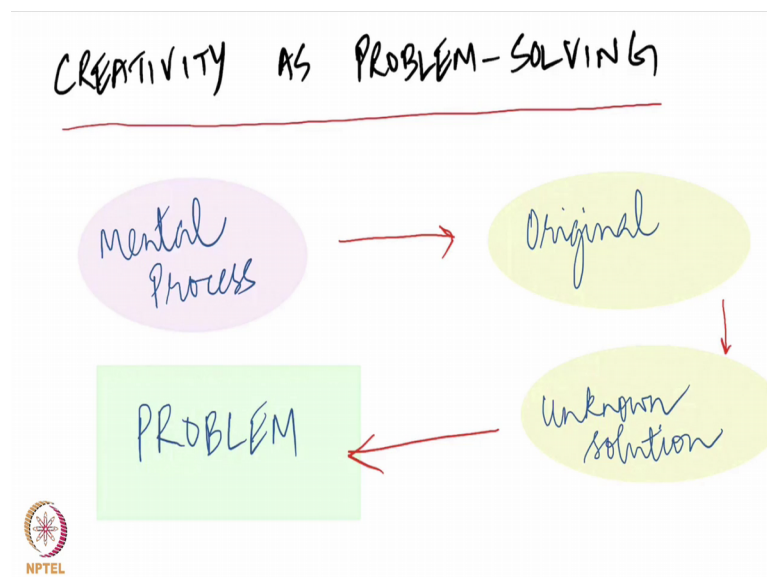
Now, this is a code that is attributed to Isaac Newton. So, all of knowledge or all of creativity can be regarded as building on existing knowledge. So, when you look at creativity from the perspective of intellectual property rights, intellectual property rights are creative endeavors or rather the rights that come out of creative endeavors. And if you look at human creativity itself human creativity can be attributed to how we build on existing knowledge. So, just how creativity comprises of building on existing knowledge, so also intellectual property is something which is build on what is already known.

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Now, creativity also has a bearing on problem solving. Now creativity can be something that overlaps with what we called intelligence and that is why we get the term intellectual from.

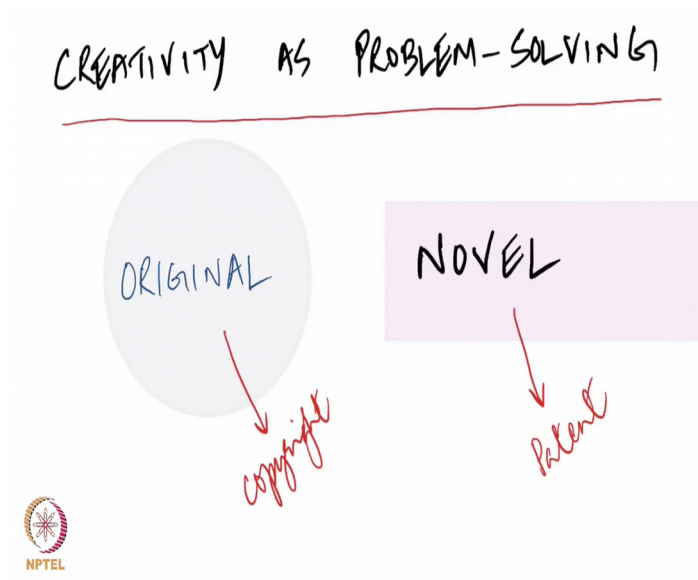
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So, the mental process when it comes up with an original idea and the original idea results in an unknown solution to an existing unsolved problem. We say that it results in creativity in solving a problem.

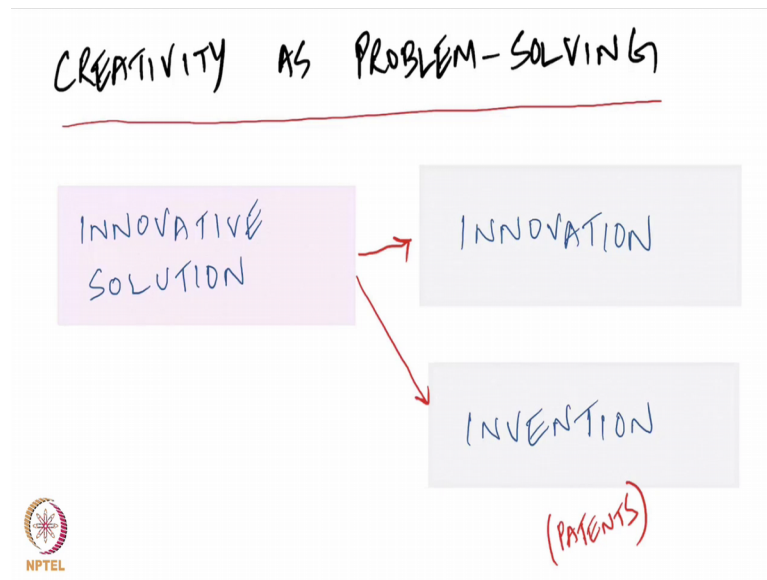
Now, creativity in solving a problem is again what we call creativity as problem solving has its relevance to intellectual property rights, because when it comes to an invention one of the ways in which we attribute of invention has a unique is by looking at whether it is solved preexisting problem or an unsold problem.

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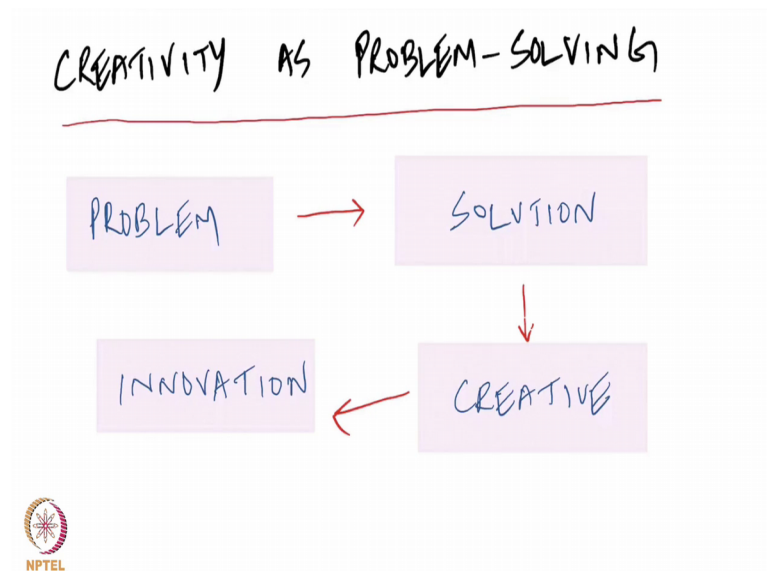
So, this is how creativity came to be attributed to originality or the thing being original or the thing being novel. Now originality is a requirement under the copyright regime, the copyright regime requires copyrighted works to be original and novel or novelty is something that is relevant to the patent regime. So, patent law requires inventions to be novel and copyright requires works to be original. Copyright and patent are 2 branches of law under intellectual property rights.

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So, an innovative solution could either result in an innovation or it could result in an invention, innovation is a very broad term intellectual property is more concerned about invention, because patents would protect inventions. We do not say that all innovations can be protected we only say that inventions can be protected by way of patents and invention is the subject matter of patent law.

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So, when we look at the problem solution approach in or when we look at creativity as a process of problem solving, you have a problem for which we find the solution and if the

solution is creative then we call that as innovation there is an innovation. When there is a problem that is solved using a creative process this entire process is called Process of Innovation.