

## On the Logic of Libertarianism and Why Intellectual Property Doesn't Exist

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This was an interview by Anthony Wile at *The Daily Bell*: "[Stephan Kinsella on the Logic of Libertarianism and Why Intellectual Property Doesn't Exist](#)," *The Daily Bell* (March 18, 2012). I would not word the title this way—the problem with intellectual property (IP) is not that it doesn't "exist" but rather that IP law is unjust. But I didn't choose the title, and have not changed it here.

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**Daily Bell:** Give us some background on yourself. Where did you go to school? How did you become a lawyer?

**Stephan Kinsella:** I was from a young age interested in science, philosophy, justice, fairness and "the big questions." In high school a librarian recommended I read Ayn Rand's *The Fountainhead*, which started me down that rabbit-hole. I ended up majoring in electrical engineering at Louisiana State University, from 1983–87. I liked engineering but over time became more and more interested in political philosophy, economics, philosophy, and so on.

In the late '80s I started publishing columns in the LSU student newspaper, *The Daily Reveille*, from an explicitly libertarian perspective. As my interests became more sharply political and philosophical, my girlfriend (later wife) and friends urged me to consider law school. After all, I liked to argue. I might as well get paid for it! I was by this time in engineering grad school, pursuing an MSEE degree. Unlike many attorneys I now know, I had not always "wanted to be a lawyer." In fact, it had never occurred to me until my girlfriend suggested it over a family dinner, when I was wondering what degree I could pursue next—partly in order to avoid having to enter the workforce just yet. And also to make more money.

At the time I naively thought one had to have a pre-law degree and many prerequisite courses that engineers would lack; and I feared law school would be very difficult. I remember my girlfriend's chemical engineer father laughing out loud at my concern that law school might be more difficult than engineering.

So I walked across the LSU campus one day and talked to the vice chancellor about all this. He tried to dissuade me, saying that engineering undergrads tended to find law school difficult. But he conceded that a pre-law degree is not needed; all one needs is a bachelor's degree in *something*, in anything, really. I took the LSAT and did well enough to get accepted at LSU Law Center. (In the US, law is a graduate degree, the *Juris Doctor*, which requires an initial B.A. or B.S. degree. Because of ABA protectionism. But I digress.)<sup>1</sup>

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<sup>1</sup> I discuss some of this in "How I Became A Libertarian" (ch. 1); additional biographical material is at [www.stephankinsella.com/publications/#biographical](http://www.stephankinsella.com/publications/#biographical).

I actually greatly enjoyed law school. Unlike many of my fellow law students, apparently, who seemed in agony. I was free to talk about laws, rules, human action and interaction. I wasn't stuck with mathematical equations. Norms and opinions were relevant. Human interactions interested me. I enjoyed the Socratic discussion method.

In one sense, it was unlike electrical engineering, which studies the impersonal behavior of subatomic particles. In law, the subject matter is acting humans and the legal norms that pertain to human action. On the other hand, I found it similar to engineering in that it was analytical and focused on solving problems. It is less mechanistic and deterministic than is engineering but it is still analytical. So if you are the type of engineer who can shift modes of thought and who is able to write and speak coherently (not all engineers are), then law school is fairly easy. By contrast, many liberal arts majors are not used to thinking analytically. The first year of law school is meant to teach you to “think like a lawyer”—essentially, to break their spirit and remold them into the analytical, lawyer-thinking, problem-solving mold.

In any case, I became a lawyer and do not regret it. It can be lucrative and mentally stimulating. In my own case, my legal career has complemented my libertarian and scholarly interests. As Gary North has pointed out, for most people there is a difference between career and calling.<sup>2</sup> Your career or occupation is what puts food on the table. Your *calling* is what you are passionate about—“the most important thing you can do with your life in which you are most difficult to replace.” Occasionally they are the same, but often not; but there is no reason not to arrange your life so as to have both. If you can manage it. In my case, my various scholarly publications and networks helped my legal career if only by adding publications to my CV. And my legal knowledge and expertise, I believe, has helped to inform my libertarian theorizing.

**Daily Bell:** You founded your own firm. Tell us how that came about.

**Stephan Kinsella:** After law school my first job was in oil and gas law at a large Houston based law firm, Jackson Walker. I found the work fascinating; it was all about contract and property rights. Then I moved into patent law because it was more in demand at this time (mid '90s) and unlike state-based oil & gas law, it is a national legal field so allows more geographic mobility. My wife's employer at the time was pushing her to take a job in the head office outside Philadelphia. So I switched to patent law in part to accommodate this and in part to capitalize on the then-burgeoning field of IP law.

I recall discussing my career choices at this time with my friend, LSU law professor [Saúl Litvinoff](#), an old-world gentleman, who confessed that he was “nonplussed” that I, a man, a husband, would take into account my wife's career plans in my own career decisions. Oh, well. Different times.

I ended up taking a job with a Philadelphia law firm, Schnader Harrison, doing patents and related IP work. I and others there ended up moving later to Duane Morris, and when I moved back to Houston in 1997 I opened their Houston office and was eventually made partner. In 2000 I decided to join one of my clients, an optoelectronics company (think: lasers), as general counsel. At the time I had been at big law firms for about ten years and had learned a lot and enjoyed it but was ready for a change. And after about ten years as general counsel, I was ready for another shift

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<sup>2</sup> Kinsella, “[Career Advice by North](#),” *StephanKinsella.com* (Aug. 12, 2009).

so I have recently formed my own legal practice, specializing in intellectual property, technology and commercial law.

**Daily Bell:** Why were you attracted to Austrian economics and why did libertarianism attract you?

**Stephan Kinsella:** I was always interested in science, truth, goodness and fairness. I have always been strongly individualistic and merit-oriented. This is probably because I was adopted and thus have always tended to cavalierly dismiss the importance of “blood ties” and any inherited or “unearned” group characteristics. This made me an ideal candidate to be enthralled by Ayn Rand’s master-of-universe “I don’t need anything from you or owe you anything” themes.

Another factor is my strong sense of outrage at injustice, which probably developed as a result of my hatred of bullies and bullying. I was frequently attacked by them as a kid because I was small for my age, bookish and a smartass. Not a good combination.

A librarian at my high school (Catholic High School in Baton Rouge, Louisiana), Mrs. Reinhardt, one day recommended Ayn Rand’s *The Fountainhead* to me. (I believe this was in 1982, when I was a junior in high school—the same year Rand died.) “Read this. You’ll like it,” she told me. I devoured it. Rand’s ruthless logic of justice appealed to me. I was thrilled to see a more-or-less rigorous application of reason to fields outside the natural sciences. I think this helped me to avoid succumbing, in college, to the simplistic and naïve empiricism-scientism that most of my fellow engineering classmates naturally absorbed. Mises’s dualistic epistemology and criticism of monism-positivism-empiricism, which I studied much later, also helped shield me from scientism.

By my first year of college (1983), where I studied electrical engineering, I was a fairly avid “Objectivist” style libertarian. I had read Henry Hazlitt’s *Economics in One Lesson* and some of Milton Friedman’s works,<sup>3</sup> but I initially steered clear of self-styled “libertarian” writing. Since Rand was so right on so many things, I at first assumed she must be right in denouncing libertarianism as the enemy of liberty. I eventually learned better, of course (for example, when I saw Libertarian Party pamphlets on campus before the 1988 Presidential election, and when I attended a Ron Paul appearance on campus as part of his campaign).

**Daily Bell:** How did you meet Lew Rockwell and become affiliated with Mises?

**Stephan Kinsella:** I eventually started reading more radical libertarians like Rothbard and Austrians like Mises and Hayek and soon became an Austrian and anarchist. The Austrian approach to knowledge made so much sense to me. It was rigorous without being mathematical and it was “Kantian” without succumbing to idealism: Like Rand’s epistemology, the Misesian approach is also realistic.<sup>4</sup>

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<sup>3</sup> See Kinsella, “[The Greatest Libertarian Books](#),” *StephanKinsella.com* (Aug. 7, 2006).

<sup>4</sup> Some of my favorite works in this regard are Ludwig von Mises, *The Ultimate Foundation of Economic Science: An Essay on Method* (Princeton, N.J.: D. Van Nostrand Company, Inc., 1962; <https://mises.org/library/ultimate-foundation-economic-science>); Murray N. Rothbard, “The Mantle of Science” in *Economic Controversies* (Auburn, Ala.: Mises Institute, 2011; <https://mises.org/library/economic-controversies>); and Hans-Hermann Hoppe, *Economic Science and the Austrian Method* (Auburn, Ala.: Mises Institute, 1995; [www.hanshoppe.com/esam](http://www.hanshoppe.com/esam)). See also David Kelley’s lecture series, “The Foundations of Knowledge” (YouTube playlist at <https://www.youtube.com/playlist?list=PLnHOyZsmJrozETJ9zzryDhW0kliZkbIsu>).

In 1988, when I was in law school, I read Hans-Hermann Hoppe’s controversial and provocative article in *Liberty*, “The Ultimate Justification of the Private Property Ethic.”<sup>5</sup> In this article Hoppe sets forth his “argumentation ethics” defense of libertarianism. This idea had a profound influence on me. I wrote several papers defending libertarian ethics, based on this theory and I wrote an in-depth review essay of Hoppe’s *The Economics and Ethics of Private Property* (see chapter 22). I promptly sent it to Hoppe, who sent back a warm thank you note. This was around 1994.

Later that year, in October 1994, I attended the John Randolph Club meeting which was held near Washington, D.C., primarily to meet Hoppe, Rothbard and Rockwell. While there I was able to get Rothbard to autograph my copy of *Man, Economy, and State*, which he inscribed “*To Stephan: For Man & Economy, and against the state—Best regards, Murray Rothbard*” (he died the following January). I started attending and speaking at various Mises Institute conferences such as their annual Austrian Scholars Conference.<sup>6</sup> I am now involved with Hoppe’s Property and Freedom Society, which has annual meetings in Bodrum, Turkey, since its founding in 2006.<sup>7</sup>

**Daily Bell:** Tell us about your legal theory of property and how you came to believe that intellectual property doesn’t exist.

**Stephan Kinsella:** My main interest has always been and remains the basics of libertarian ethics: What are individual rights and property, how is this justified and so on. As I discuss in some previous writing, from the beginning of my exposure to libertarian ideas, the IP issue nagged at me.<sup>8</sup> I was never satisfied with Ayn Rand’s justification for it, for example. Her argument is a bizarre mixture of utilitarianism with overwrought deification of “the creator”—not *the* Creator up there, but Man, The Creator, initial caps, who has a property right in what He Creates. Her proof that patents and copyrights are property rights is lacking.<sup>9</sup>

So I kept trying to find a better justification for IP and this search continued after I started practicing patent law, in 1993 or so.

Many libertarians abandon minarchy in favor of anarchy when they realize that even a minarchist government is unlibertarian. That was my experience.<sup>10</sup> And it was like this for me also with IP. I came to see that the reason I had been unable to find a way to justify IP was because it is, in fact, unlibertarian. As the anti-IP Benjamin Tucker said of his pro-IP opponent Victor Yarros, in the IP debate in the pages of *Liberty* in the late 1800s, “if he [Yarros] has failed [in his attempts to justify IP] and, so far as I know it, such is the nearly unanimous verdict of the readers of *Liberty*,—

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<sup>5</sup> See “Dialogical Arguments for Libertarian Rights” (ch. 6); “Defending Argumentation Ethics” (ch. 7); “The Undeniable Morality of Capitalism” (ch. 22).

<sup>6</sup> It was eventually disbanded years later. In recent years, the Mises Institute has revived the Libertarian Scholars Conference and also hosts the Austrian Economics Research Conference.

<sup>7</sup> More at [www.propertyandfreedom.org](http://www.propertyandfreedom.org).

<sup>8</sup> See, e.g., Kinsella, “[Intellectual Property and Libertarianism](#),” *Mises Daily* (Nov. 17, 2009).

<sup>9</sup> See, e.g., my speeches “[KOL012 | ‘The Intellectual Property Quagmire, or, The Perils of Libertarian Creationism,’ Austrian Scholars Conference 2008](#),” *Kinsella on Liberty Podcast* (Feb. 6, 2013) and “[KOL253 | Berkeley Law Federalist Society: A Libertarian’s Case Against Intellectual Property](#),” *Kinsella on Liberty Podcast* (Oct. 12, 2018); and my blog posts “[Objectivist Law Prof Mossoff on Copyright; or, the Misuse of Labor, Value, and Creation Metaphors](#),” *Mises Economics Blog* (Jan. 3, 2008); “[Regret: The Glory of State Law](#),” *Mises Economics Blog* (July 31, 2008); and “[Inventors are Like Unto ..... GODS.....](#),” *Mises Economics Blog* (Aug. 7, 2008).

<sup>10</sup> The old joke is: What’s the difference between a minarchist and an anarchist? A: About six months.

the fault is not with the champion, but with his hopeless cause.”<sup>11</sup> So, too, was my attempt to justify IP a hopeless cause.

In coming to understand IP could not be justified, I was heavily influenced by previous thinkers, such as Tom Palmer and Wendy McElroy.<sup>12</sup> Perhaps the unlibertarian character of patent and copyright would have been obvious if Congress had not enacted patent and copyright statutes long ago, making them part and parcel of America’s “free-market” legal system—and if early libertarians like Rand had not so vigorously championed such rights.

But libertarianism’s initial presumption should have been that IP is invalid, not the other way around. After all, we libertarians already realize that “intellectual” rights, such as the right to a reputation protected by defamation law, are illegitimate.<sup>13</sup>

Why, then, would we presume that other laws, protecting intangible, intellectual rights, are valid—especially artificial rights that are solely the product of legislation, i.e., decrees of the fake-law-generating wing of a criminal state?<sup>14</sup>

But IP is widely seen as basically legitimate. There have always been criticisms of existing IP laws and policies and many calls for “reform.” But I became opposed not just to “ridiculous” patents and “outrageous” IP lawsuits, but to patent and copyright *per se*. Patent and copyright law should be *abolished*, not reformed. The problem is not “abuse” of the system, but, as Burke said, the “thing itself.”<sup>15</sup> The basic reason is that patent and copyright are explicitly anti-competitive grants by the state of monopoly privilege, rooted in mercantilism, protectionism and thought control.<sup>16</sup> To grant someone a patent or copyright is to grant them a right to control others’ property—a “negative servitude” granted by state fiat instead of contractually negotiated.<sup>17</sup> This is a form of theft, trespass, or wealth redistribution.

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<sup>11</sup> Wendy McElroy, “[Intellectual Property](https://perma.cc/ZQM2-82B9),” in *The Debates of Liberty: An Overview of Individualist Anarchism, 1881-1908* (Lexington Books, 2002; <https://perma.cc/ZQM2-82B9>), p. 97, reprinted without endnotes as “[Copyright and Patent in Benjamin Tucker's Periodical](https://mises.org/library/copyright-and-patent-benjamin-tuckers-periodical),” *Mises Daily* (July 28, 2010; <https://mises.org/library/copyright-and-patent-benjamin-tuckers-periodical>). See also Kinsella, “[Benjamin Tucker and the Great Nineteenth Century IP Debates in Liberty Magazine](https://stephankinsella.com),” *StephanKinsella.com* (July 11, 2022).

<sup>12</sup> See Kinsella, “[The Four Historical Phases of IP Abolitionism](https://mises.org/blog/the-four-historical-phases-of-ip-abolitionism),” *Mises Economics Blog* (April 13, 2011); *idem*, “[The Origins of Libertarian IP Abolitionism](https://mises.org/blog/the-origins-of-libertarian-ip-abolitionism),” *Mises Economics Blog* (April 1, 2011).

<sup>13</sup> See Murray N. Rothbard, “[Knowledge, True and False](https://mises.org/library/knowledge-true-and-false),” in *The Ethics of Liberty* (New York: New York University Press, 1998; <https://mises.org/library/knowledge-true-and-false>); Walter E. Block, “The Slanderer and Libeler,” in *Defending the Undefendable* (2018; <https://mises.org/library/defending-undefendable>); “Law and Intellectual Property in a Stateless Society” (ch. 14), n.3; Kinsella, “Defamation as a Type of Intellectual Property,” in Elvira Nica & Gheorghe H. Popescu, eds., *A Passion for Justice: Essays in Honor of Walter Block* (New York: Addleton Academic Publishers, forthcoming).

<sup>14</sup> See “Legislation and the Discovery of Law in a Free Society” (ch. 13), and the James Carter quote at n.154.

<sup>15</sup> “*The Thing! the Thing itself is the Abuse!*” Edmund Burke, “A Letter To Lord\*\*\*\*,” in *A Vindication of Natural Society* (Liberty Fund, 1756; <https://oll.libertyfund.org/title/burke-a-vindication-of-natural-society>) (emphasis added).

<sup>16</sup> See, e.g., Kinsella, “[Intellectual Property Advocates Hate Competition](https://mises.org/blog/intellectual-property-advocates-hate-competition),” *Mises Economics Blog* (July 19, 2011); Karl Fogel, “[The Surprising History of Copyright and The Promise of a Post-Copyright World](https://perma.cc/DV92-TEH3),” *Question Copyright* (2006; <https://perma.cc/DV92-TEH3>); Kinsella, “[Rothbard on Mercantilism and State “Patents of Monopoly,”](https://c4sif.org/blog/rothbard-on-mercantilism-and-state-patents-of-monopoly)” *C4SIF Blog* (Aug. 29, 2011).

<sup>17</sup> See “*Against Intellectual Property After Twenty Years*” (ch. 15), Part IV.B.

So to answer your question: IP rights—patent and copyright—“exist,” but are not legitimate any more than welfare rights are. There are many types of IP;<sup>18</sup> all are illegitimate, in my view. Not only because most of them are based on and require legislation (I view all legislation as unlibertarian; see chapter 13) but because they try to set up rights in non-scarce things, which in effect grants negative servitudes to some people at the expense of the property rights of others.

**Daily Bell:** According to Wikipedia and other sources, “In contract theory, you extend Murray Rothbard’s and Williamson Evers’s title transfer theory of contract linking with inalienability theory.” What does that mean?

**Stephan Kinsella:** I discuss these issues in various articles (see chapters 9 and 10). The basic idea is to root the entire idea of contract in a libertarian theory of property. The latter is based on the realization that the entire purpose of property rights is to solve the problem of incompatible uses of scarce resources. The fact that some things in the world are scarce (or conflictible) resources means that these resources can be used as means of action only if ownership is assigned and socially recognized. For things that are not scarce there is no social problem to be solved. Hans-Hermann Hoppe addresses these issues in the opening chapters of his foundational treatise *A Theory of Socialism and Capitalism*.

Rothbard recognized that all individual rights are property rights and, therefore, that a theory of contract is not about enforceable or binding “promises” but simply about how owners of resources can contractually transfer title to others. As Rothbard recognized, this has implications for alienability or so-called “voluntary slavery” contracts. Many libertarians, assuming contracts are just binding promises, see no reason one could not bind oneself to be a slave. (See chapters 9–11.) But if you view contracts as simply transfers of title to owned objects, then the question arises: Is one’s body alienable, or not? You cannot just assume that it is. Rothbard argued that it was not.

**Daily Bell:** You also attempted to clarify the theory. How so?

**Stephan Kinsella:** Rothbard sketched the theory in 1974; Evers elaborated on it in 1977, based on Rothbard’s insights. Rothbard then built on Evers’s pioneering article in his 1982 *Ethics of Liberty*.<sup>19</sup> But neither were lawyers and only took this analysis so far. I tried to incorporate their insights and integrate them with other Rothbardian, Misesian and Hoppean insights about property rights and liberty and with established legal concepts, such as those developed under the Roman-influenced continental or civil-law systems, which I regard as more libertarian, in some respects, than the more feudalistic common-law concepts.<sup>20</sup>

My basic approach is to recognize that mainstream legal theories of contract have been muddled by unlibertarian and positivistic conceptions of law and rights. Questions about what rights are “alienable” or not, loose talk about how promises should be “binding,” etc., highlight the need for clarity in this area. In my view, to sort these issues out one needs a very clear and consistent

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<sup>18</sup> See Kinsella, “[Types of Intellectual Property](#),” *CASIF Blog* (March 4, 2011).

<sup>19</sup> See “A Libertarian Theory of Contract: Title Transfer, Binding Promises, and Inalienability” (ch. 9); Murray N. Rothbard, “[Property Rights and the Theory of Contracts](#),” in *The Ethics of Liberty*; Williamson M. Evers, “[Toward a Reformulation of the Law of Contracts](#),” *J. Libertarian Stud.* 1, no. 1 (Winter 1977; <https://mises.org/library/toward-reformulation-law-contracts>): 3–13. Kinsella, “[Justice and Property Rights: Rothbard on Scarcity, Property, Contracts...](#),” *The Libertarian Standard* (Nov. 19, 2010), discusses the origins of the Rothbard-Evers contract theory.

<sup>20</sup> See “Legislation and the Discovery of Law in a Free Society” (ch. 13) at n.153.

understanding of the nature of property rights and ownership. First, we must recognize that only scarce resources are ownable; second, that the body is a type of scarce resource; third, that the mode of acquiring title to external objects is different from the basis of ownership of one's own body. The libertarian view is that human actors are self-owners and these self-owners are capable of appropriating unowned scarce resources by Lockean homesteading—some type of first use or embordering activity. Obviously, an actor must already own his body if he is to be a homesteader; self-ownership is not acquired by homesteading but rather is presupposed in any act or defense of homesteading. The basis of self-ownership is the fact that each person has direct control over the scarce resource of his body and therefore has a better claim to it than any third party (and any third party seeking to dispute my self-ownership must presuppose the principle of self-ownership in the first place since he is acting as a self-owner).<sup>21</sup>

So there is a difference between body-ownership and ownership of external scarce goods. An actor is a self-owner; self-owners are able to acquire property rights in external, unowned objects by homesteading them—or by contractual acquisition from a previous owner. Many libertarians simply assume that if you own something, you can sell it. Thus, they conclude that if we are self-owners, we can sell our bodies. (Walter Block makes this argument.) My view is that we start with the nature of ownership: Ownership means the right to exclude others. It does not automatically imply the “right to sell” since this is actually moving from a situation where you have the right to exclude to one where you *do not*. But in the case of formerly unowned resources, because of the way ownership is acquired, it can be undone, in effect. Homesteading an object requires more than just possession—it requires the intent to own. So if the intent to own is abandoned, then the thing is no longer owned, but merely possessed (if that). Thus, an owner of an object can transfer ownership to another by allowing the other to possess the object and then manifesting his intent to abandon ownership, “in favor” of the new possessor. The new possessor then in effect re-homesteads the item, becoming its new owner. In other words, the nature of ownership in external objects means that it is possible to abandon ownership to them or use this abandonment method to transfer title to someone else. So ownership does not directly include the “right to sell,” but it so happens to imply this power, for acquired property. However, the same is simply not true of one's body. There is no way to “undo” the homesteading of your body since you did not homestead it in the first place. There is no way to abandon your ownership of your body since it is rooted in your better claim to it based on your direct control over it. Merely stating “I promise to be your slave” doesn't change your status as having a better claim to your body than third parties. (For more on this, see chapter 11.)

So in exploring the Rothbard-Evers title transfer theory of contract and in building on insights by Hoppe about the crucial importance of scarcity to property rights and his insights as to the nature of self-ownership and homesteading, I tried to identify the difference between body and external resource ownership, the basis and nature of acquisition of rights in each and the nature of what contracts are (transfers of title to alienable owned objects) and what implications this has for body-alienability (namely, that voluntary slavery contracts are unenforceable and invalid).

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<sup>21</sup> See “How We Come to Own Ourselves” (ch. 4), text at n.15; see also “What Libertarianism Is” (ch. 2) and Kinsella, [“The Relation between the Non-aggression Principle and Property Rights: a response to Division by Zer0,”](#) *Mises Economics Blog* (Oct. 4, 2011).

**Daily Bell:** You advance a theory of causation that attempts to explain why remote actors can be liable under libertarian theory. Can you clarify this point, please?

**Stephan Kinsella:** I had long been dissatisfied with the approach various libertarians take to the issue of responsibility for aggression caused by leaders or groups. Too often libertarians made what seemed to me to be too simplistic or unjustified assumptions, which they relied on in their analysis. For example some seemed to assume that there is a fixed amount of responsibility, so that if you say the mafia boss is responsible for ordering a hit, then the lackey who committed the killing is innocent. Or some would argue that a mafia boss or general or president is not responsible for the aggression committed by his underlings, unless he had coerced them or had a “contract” with them.

These all seemed confused to me. As for the latter: a contract is just a title transfer, so it is unclear why *A* hiring *B* to kill *C* means *A* is liable but *A* persuading *B* through sexual favors to kill *C* is not. Focusing on *ad hoc* exceptions to the rule that *A* is not responsible for *B*'s actions seemed confused to me. The Austrian theory of subjective value teaches us that there are many ways to incentivize or motivate or induce someone to commit an action for you: you can promise sexual favors, promise to pay money, hire someone, and so on. Also, there is no reason to think that both the boss and his underling cannot both be 100% responsible: in the law this is called joint and several liability.

So in developing a paper called “Reinach and the Property Libertarians on Causality in the Law” for a Mises Institute symposium in 2001 on Adolf Reinach and Murray Rothbard (see chapter 8), I relied on Mises’s praxeological understanding of the structure of human action and cooperative action in general. Mises points out that in a market economy with the division and specialization of labor, people use others as *means* to achieve their ends. This is the essence of market cooperation.

When the aim is peaceful production of wealth, this is good. But people can cooperate to engage in collective aggression too. In this case the members of the group conspire to achieve an illicit end, such as theft or murder. Just as a man can use a gun (a means) to commit aggression, so people can employ others as means to commit crimes. Sometimes these other people are innocent (e.g., hiring a boy to deliver a bomb concealed in a package) and other times they are complicit (the mafia boss’s underling). In the latter case, both actors are aggressors, as they play a causal role in action that uses efficacious means to achieve the end of invading the borders of the property of innocent victims. The argument is general and praxeological and focuses on the intent of the actor (which relates to the praxeological *end* or goal of the action) and the *means* employed, whether that means be an inanimate good or another human. Thus, there is no need to resort to *ad hoc* exceptions such as “the boss is liable because he was coercing the underling” or “the boss is liable because of a contract with” the underling. (For more on this, see chapter 8; also chapters 9–11.)

**Daily Bell:** You provide non-utilitarian arguments for intellectual property being incompatible with libertarian property rights principles. Can you explain this?

**Stephan Kinsella:** I alluded to this above in my discussion about negative servitudes. An IP right gives the holder the right to stop others from using their property as they wish. For example, George Lucas, courtesy copyright law, can use the force of state courts to stop me from writing and publishing “The Continuing Adventures of Han Solo.” J.D. Salinger’s estate was able to block

the publication of a sequel to *Catcher in the Rye*, for example. This is censorship.<sup>22</sup> And Apple can get a court order blocking Samsung from selling a tablet if it resembles an iPad too closely. This is just protection from competition.<sup>23</sup>

**Daily Bell:** You offer a discourse ethics argument for the justification of individual rights, using an extension of the concept of “estoppel.” Can you expand please?

**Stephan Kinsella:** This approach is laid out in chapters 5 and 6. The libertarian approach is a very symmetrical one: the non-aggression principle does not rule out force, but only the *initiation* of force. In other words, you are permitted to use force only *in response to* some else’s use of force. If they do not use force you may not use force yourself. There is a symmetry here: force for force, but no force if no force was used.

Now in law school I learned about the concept of estoppel, which is a legal doctrine that estops or prevents you from asserting a position in a legal proceeding that is inconsistent with something you had done previously (see chapters 1 and 9). You have to be consistent. I was at this time fascinated with Hoppe’s argumentation ethics, which is probably why it struck me that the basic reasoning of legal estoppel could be used to explain or justify the libertarian approach to symmetry in force: The reason you are permitted to use force against someone who himself initiated force is that he has already in a sense admitted that he thinks force is permissible, by his act of aggression. Therefore if he were to complain if the victim or the victim’s agents were to try to use defensive or even retaliatory force against him, he would be holding inconsistent positions: His pro-force view that is implicit and inherent in his act of aggression and his anti-force view implicit in his objection to being punished. Using language borrowed from the law, we might say he should be “estopped” (prevented) from complaining if a victim were to use force to defend himself from the aggressor or even to punish or retaliate against the aggressor. I tried to work this into a theory of libertarian rights, relying heavily on insights from Hoppe’s argumentation ethics and from his social theory in general.

**Daily Bell:** Please comment on and summarize the following books you wrote, with special emphasis on your IP theory:

- *Protecting Foreign Investment Under International Law: Legal Aspects of Political Risk* (with Paul E. Comeaux). Oceana Publications, 1997
- *Online Contract Formation* (with Andrew Simpson). Oxford University Press, 2004
- *International Investment, Political Risk, and Dispute Resolution: A Practitioner’s Guide* (with Noah Rubins). Oxford University Press, 2005
- *Against Intellectual Property*. Ludwig von Mises Institute, 2008

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<sup>22</sup> See “Law and Intellectual Property in a Stateless Society” (ch. 14), n.57 *et pass*.

<sup>23</sup> See Kinsella, “[Apple Secures Win Against Motorola Over ‘Slide-to-Unlock’ Patent](#),” *CASIF Blog* (Feb. 17, 2012); *idem*, “Intellectual Property Advocates Hate Competition.” For a more recent example, see Blake Brittain, “[US trade commission sides with iRobot, bans SharkNinja robot vacuum imports](#),” *Reuters* (March 21, 2023; <https://perma.cc/2MH9-2ZGG>).

**Stephan Kinsella:** The first three books are legal treatises that have little to do with libertarianism or IP, although the first and third do examine practical ways for international investors to use international law to protect their property from takings from the host state.<sup>24</sup>

The latter monograph was first published as an article in the *Journal of Libertarian Studies* in 2001, with the title suggested by Professor Hans-Hermann Hoppe, then the journal's editor. My initial title had been "The Legitimacy of Intellectual Property," the name of the earlier paper I had delivered at the Austrian Scholars Conference the preceding year. (I discuss this in chapter 14.)

It was only 11 years ago [from 2012], but at the time there was not yet much interest among libertarians in intellectual property (IP). It was thought of as an arcane and insignificant issue, not as one of our most pressing problems. Libertarian attention was focused on taxes, war, the state, the drug war, asset forfeiture, business regulations, civil liberties and so on, not on patent and copyright.

I felt the same way. I looked into this issue primarily because I had been, since 1993, a practicing patent attorney and had always been dissatisfied with Ayn Rand's arguments in favor of IP.<sup>25</sup> Her weird admixture of utilitarian and propertarian arguments raised red flags for me. It included tortuous arguments as to why a 17-year patent term and a 70-year copyright term were just about right and why it was fair for the first guy to the patent office to get a monopoly that could be used against an independent inventor just one day behind him.

I sensed Rand's approach was wrong but I assumed there must be a better way to justify IP rights. So I read and thought and tried to figure this out. In the end, I concluded that patent and copyright are completely statist and unjustified derogations from property rights and the free market. So I wrote the article to get it out of my system and then moved on to other fields that interest me more, like rights theory, libertarian legal theory and the intersection of Austrian economics and law.

In the meantime, with the flowering of the Internet and digital information and with increasing abuses of rights in the name of IP, more and more libertarians have become interested in the IP issue and have realized that it is antithetical to libertarian property rights and freedom.<sup>26</sup> It is in fact becoming a huge threat to freedom and increasingly used by the state against the Internet, which is one of the most important weapons we have against state oppression.<sup>27</sup>

**Daily Bell:** What is the reaction to your theory of IP? Hostility?

**Stephan Kinsella:** At first there was apathy. The few people who thought about it mostly thought my views were too extreme—maybe we need to fix copyright and patent but surely the basic idea

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<sup>24</sup> These books and other strictly legal publications (not libertarian-related) are linked at [www.kinsellalaw.com/publications](http://www.kinsellalaw.com/publications). Since the original article upon which this chapter is based was published in 2012, a second edition of the third book listed above has been published: Noah D. Rubins, Thomas N. Papanastasiou & N. Stephan Kinsella, *International Investment, Political Risk, and Dispute Resolution: A Practitioner's Guide*, 2<sup>nd</sup> ed. (Oxford University Press, 2020).

<sup>25</sup> See "Against Intellectual Property After Twenty Years" (ch. 15), Part I.

<sup>26</sup> See *ibid.*, Part II; and "Introduction to *Originit*" (ch. 16), the section "Historical and Modern Arguments About IP."

<sup>27</sup> See references in "Against Intellectual Property After Twenty Years" (ch. 15), at n.20 and "Law and Intellectual Property in a Stateless Society" (ch. 14), n.56.

is sound. But my impression is that nowadays most libertarians are strongly opposed to IP.<sup>28</sup> And, in fact, scholars associated with the Mises Institute sensed the importance of this issue earlier than most—for example, the Mises Institute awarded my “Against Intellectual Property” paper the O.P. Alford III Prize for 2002.<sup>29</sup>

Laissez Faire Books is coming out with a new edition of my *Against Intellectual Property* later this year.<sup>30</sup> I also plan to someday write a new book on IP, tentatively entitled *Copy This Book*, taking into account more recent arguments, evidence and examples. In the meantime, those interested in this topic may find useful the additional material suggested in “Law and Intellectual Property in a Stateless Society” (ch. 14), n.‡.

**Daily Bell:** How do you think artists and writers feel about it? What do they do to make a living if they do not receive royalties?

**Stephan Kinsella:** Well, sharing is not piracy, and copying is not theft. (And competition is not theft, either.)<sup>31</sup> But people are used to thinking in these terms, due to state- and special interest-inspired propaganda to the contrary.<sup>32</sup> Most artists and writers do not make much money from copyright; if they are successful at all they typically go through a publisher who makes most of the profits and owns the copyrights anyway. Luckily, technology is allowing writers and musicians to bypass the publishing and music industry gatekeepers.

There are any number of models artists can use to profit from their talent and artistry. It is not up to the state to protect them from competition. Musicians can obviously get paid for performing and having their music copied and “pirated” helps them in this respect by making them more well known, more popular. As Cory Doctorow has noted, “for pretty much every writer—the big problem isn’t piracy, it’s obscurity.”<sup>33</sup> Artists are just entrepreneurs. It’s up to them to figure out how or if they can make a monetary profit from their passion—from their calling, as I discussed above. Sometimes they can. Musicians can sell music, even in the face of piracy. Or they can sell their services—concerts, etc. Painters and other artists can profit in similar ways. A novelist could use kickstarter for a sequel or get paid to consult on a movie version (see Conversation with an author about copyright and publishing in a free society). Authors of non-fiction such as academic articles do not even get paid today—but it enhances their reputations and helps them land jobs in academia, for example. Inventors have an incentive to invent to make better products that outcompete the competition—for a while. Or they are hired in the R&D department of a

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<sup>28</sup> See references in “Law and Intellectual Property in a Stateless Society” (ch. 14), n.5.

<sup>29</sup> <https://perma.cc/E33D-JST6>.

<sup>30</sup> See the 2012 Laissez Faire Books edition linked at [www.c4sif.org/aip](http://www.c4sif.org/aip).

<sup>31</sup> See Kinsella, “[Stop calling patent and copyright ‘property’; stop calling copying ‘theft’ and ‘piracy.’](#)” *C4SIF Blog* (Jan 9, 2012); Christina Mulligan & Brian Patrick Quinn, “[Who are You Calling a Pirate?: Shaping Public Discourse in the Intellectual Property Debates](#),” Brandeis University Department of English Eighth Annual Graduate Conference (2010; <https://perma.cc/7SCS-8P3J>); Nina Paley, “*Copying Is Not Theft*,” YouTube (<https://youtu.be/IeTybKL1pM4>); Kinsella, “Intellectual Property Advocates Hate Competition.”

<sup>32</sup> See Kinsella, “[Intellectual Properganda](#),” *Mises Economic Blog* (Dec. 6, 2010); and comments by Machlup and Penrose in “*Against Intellectual Property After Twenty Years*” (ch. 15), n.78.

<sup>33</sup> Kinsella, “[Cory Doctorow on Giving Away Free E-Books and the Morality of ‘Copying.’](#)” *Mises Economics Blog* (Sept. 16, 2008).

corporation that is always trying to innovate. And so on.<sup>34</sup> And if you cannot make your calling your career, then find a way. As director Francis Ford Coppola has observed:

You have to remember that it's only a few hundred years, if that much, that artists are working with money. Artists never got money. Artists had a patron, either the leader of the state or the duke of Weimar or somewhere, or the church, the pope. Or they had another job. I have another job. I make films. No one tells me what to do. But I make the money in the wine industry. You work another job and get up at five in the morning and write your script.<sup>35</sup>

**Daily Bell:** We find your theories reasonable but are you making headway? Are people generally hostile?

**Stephan Kinsella:** As I mentioned earlier, libertarians have, in my impression, generally become more opposed to IP, and generally on principled grounds. Most “mainstream” people are reluctant to take a principled or “extreme” position, instead recognizing that IP is “broken” and needs to be “reformed.” They think IP abolitionism is too extreme, but really cannot articulate why. So they advocate “reform.”<sup>36</sup> Those who stubbornly insist on defending IP have to keep coming up with increasingly absurd arguments to justify it.<sup>37</sup>

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<sup>34</sup> See Kinsella, [“Examples of Ways Content Creators Can Profit Without Intellectual Property,”](#) *StephanKinsella.com* (July 28, 2010); and references and discussion in “Law and Intellectual Property in a Stateless Society” (ch. 14), at n.98.

<sup>35</sup> See Kinsella, [“Francis Ford Coppola, copyfighter,”](#) *C4SIF Blog* (Jan. 29, 2011).

<sup>36</sup> Most libertarian or free-market oriented IP critics, or others who pose as critics of IP, are not actually IP abolitionists; they simply want to reform or tame the “excesses” of the system, e.g., Tom Bell, Jerry Brito, Alexander Tabarrok, Michael Masnick, Cory Doctorow, Larry Lessig, Mark Cuban (who has sponsored a chair at the EFF to fight “stupid patents”; see <https://perma.cc/3K8N-8RMG>), even leftists like Eben Moglen and Richard Stallman etc. who pose as opponents of corporate IP. But none of them want to abolish patent and copyright. They just want to reform it, and/or replace it with some other statist system, like taxpayer funded innovation awards or prizes. E.g., Tom Bell wants to return to the “Founder’s Copyright.” I mean, better than nothing, but thin gruel. As for the others, see Kinsella, [“Tom Bell on copyright reform; the Hayekian knowledge problem and copyright terms,”](#) *C4SIF Blog* (Jan. 6, 2013). Tabarrok supports reducing the patent term, but not to zero, and also supports a tax funded innovation prize. Kinsella, [“Tabarrok’s Launching the Innovation Renaissance: Statism, not renaissance,”](#) *StephanKinsella.com* (Dec. 2, 2011). Lessig things “some punishment” of Aaron Swartz—the brilliant young co-creator of RSS, who committed suicide when facing decades in federal prison on copyright charges for uploading academic articles to the Internet—was justified. See Kinsella, [“Tim Lee and Lawrence Lessig: ‘some punishment’ of Swartz was ‘appropriate,’”](#) *StephanKinsella.com* (Jan. 13, 2013), *idem*, [“The tepid mainstream ‘defenses’ of Aaron Swartz,”](#) *C4SIF Blog* (Jan. 29, 2013), and *idem*, [“Lessig on the Anniversary of Aaron’s Swartz Death,”](#) *C4SIF Blog* (Jan. 10, 2014). See also *idem*, [“Tabarrok: Patent Policy on the Back of a Napkin,”](#) *C4SIF Blog* (Sept. 20, 2012); *idem*, [“‘Intellectual Property’ as an umbrella term and as propaganda: a reply to Richard Stallman,”](#) *C4SIF Blog* (Feb. 10, 2012); *idem*, [“Stallman: An Internet-Connectivity Tax to Compensate Artists and Authors,”](#) *C4SIF Blog* (June 19, 2011); *idem*, [“Eben Moglen and Leftist Opposition to Intellectual Property,”](#) *C4SIF Blog* (Dec. 4, 2011); *idem*, [“Cory Doctorow, Victim of Fox Copyright Legal Bullying, Should Take A Stand Against Copyright,”](#) *C4SIF Blog* (April 27, 2013).

<sup>37</sup> For example:

- “Thank goodness the Swiss did have a Patent Office. That is where Albert Einstein worked and during his time as a patent examiner came up with his theory of relativity.”
- “It is true that other means exist for creative people to profit from their effort. In the case of copyright, authors can charge fees for reading their works to paying audiences. Charles Dickens did this, but his heavy schedule of public performances in the United States, where his works were not protected by copyright, arguably contributed to his untimely death.”

**Daily Bell:** We've come to the conclusion that copyright law and patent law are deterrents to progress and technology. Your view?

**Stephan Kinsella:** The empirical studies all point this direction.<sup>38</sup> And this should not be surprising. Everything the state does, without exception, destroys (okay, it's good at propaganda as well—making people think it's necessary). Patent and copyright are pure creatures of state legislation. The origins of copyright lie in censorship and thought control; the origins of patents lie in mercantilism and protectionism. As Tom Palmer writes, “[m]onopoly privilege and censorship lie at the historical root of patent and copyright.”<sup>39</sup> It should be no surprise that state interventions in the market lead to destruction of wealth, which of course will have an adverse effect on innovation.

**Daily Bell:** What would the world look like without patent and copyright law?

**Stephan Kinsella:** As far as copyright, I think it would look somewhat like what our current world is heading to since there is rampant “piracy” despite copyright law. Except there would be fewer outrageous, draconian results like jail terms and prison.<sup>40</sup> And there would be more freedom to engage in remixing and other forms of creativity and a richer public domain to draw on. We would still have a huge amount of artistic works being created, of course.

Without patents, companies would be free to compete without fear of lawsuits—and without being able to rely on a state-granted monopoly privilege to protect them from competition. I believe that an IP-free world would have far more innovation and diverse creativity than today's world. And there would be fewer barriers to entry so smaller companies could compete with the oligopolies that patent law has helped to create.<sup>41</sup>

**Daily Bell:** Can you explain how patent and copyright law evolved and why it was likely a reaction to the Gutenberg Press and a means of controlling information rather than protecting the public?

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- If you are not for IP, you must be in favor of pedophilia.
  - If you oppose IP, you are advocating slavery.
  - “Patents are the heart and core of property rights.”
  - Song piracy and file-sharing are the cause of stage collapses at concerts.
  - “To make a distinction between things which are ownable or not ownable with the difference being whether they're constructed out of molecules or pixels is to create a new kind of apartheid, in which some kinds of property are just [n-words].”
  - If IP isn't legitimate, then it's okay to steal other people's babies.
  - Without IP you can't have money

See Kinsella, “[Absurd Arguments for IP](#),” *Mises Economics Blog* (Dec. 10, 2010); see also *idem*, “[There are No Good Arguments for Intellectual Property](#),” *Mises Economics Blog* (Feb. 24, 2009); *idem*, “[There are No Good Arguments for Intellectual Property: Redux](#),” *StephanKinsella.com* (Sep. 27, 2010).

<sup>38</sup> See references in “*Against Intellectual Property After Twenty Years*” (ch. 15), n.23.

<sup>39</sup> Tom G. Palmer, “[Intellectual Property: A Non-Posnerian Law and Economics Approach](#),” *Hamline L. Rev.* 12, no. 2 (Spring 1989; <https://perma.cc/DH7K-ZCRV>): 261–304, p. 264 (footnote omitted).

<sup>40</sup> See, e.g., references re Aaron Swartz in note 36, above; Kinsella, “[Six Year Federal Prison Sentence for Copyright Infringement](#),” *CASIF Blog* (March 3, 2012); *idem*, “[Man sentenced to federal prison for uploading “Wolverine” movie](#),” *CASIF Blog* (Dec. 21, 2011); *idem*, “[British student Richard O'Dwyer can be extradited to US for having website with links to pirated movies](#),” *CASIF Blog* (Jan. 13, 2012).

<sup>41</sup> Kinsella, “[Google's Schmidt on the Patent-Caused Smartphone Oligopoly](#),” *CASIF Blog* (Dec. 5, 2012).

**Stephan Kinsella:** The roots of copyright lie in censorship. It was easy for state and church to control thought by controlling the scribes, but then the printing press came along and the authorities worried that they couldn't control official thought as easily. So Queen Mary created the Stationer's Company in 1557, with the exclusive franchise over book publishing, to control the press and what information the people could access. When the charter of the Stationer's Company expired, the publishers lobbied for an extension, but in the Statute of Anne (1710) Parliament gave copyright to authors instead. Authors liked this because it freed their works from state control. Nowadays they use copyright much as the state originally did: to censor and ban books—or their publishers do, who have gained a quasi-oligopolistic gatekeeper function, courtesy copyright law.<sup>42</sup> And now we see copyright being used, along with regulation of gambling, child pornography and terrorism, as an excuse for the state to radically infringe Internet freedom and civil liberties.<sup>43</sup>

Patents originated in mercantilism and protectionism; the crown would grant monopolies to favored court cronies, such as monopolies on playing cards, leather, iron, soap, coal, books and wine. The Statute of Monopolies (1623) eliminated much of this but retained the idea of a monopoly grant to an inventor of some useful machine or process.<sup>44</sup>

**Daily Bell:** Didn't Germany do better *without* strict copyright than Britain did *with* it? Isn't this the reason that Germany progressed so much in literature, philosophy, mathematics, etc. during the 17th and 18th centuries?

**Stephan Kinsella:** It probably had something to do with it. One study, by economic historian Eckhard Höffner, indicates that Germany's lack of copyright in the 19th century led to an unprecedented explosion of publishing, knowledge, etc., unlike in neighboring countries England and France where copyright law enriched publishers but stultified the spread of knowledge and limited publishing to a mass audience.<sup>45</sup> Höffner's study claims that this is the main reason that Germany's production and industry had caught up with everyone else by 1900. This seems believable to me.

**Daily Bell:** Shouldn't the enforcement of copyright law be strictly civil? When did it become a criminal offence?

**Stephan Kinsella:** I am not sure exactly when the criminal penalties were added but as I noted above, there are potentially severe civil and criminal penalties for copyright infringement, including prison, extradition, being banned from the Internet and so on.<sup>46</sup> Patent law can also be enforced

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<sup>42</sup> See references in note 16, above; also Kinsella, "[History of Copyright, part 1: Black Death](#)," *CASIF Blog* (Feb. 2, 2012); *idem*, "[How Intellectual Property Hampers the Free Market](#)," *The Freeman* (May 25, 2011).

<sup>43</sup> See references in "*Against Intellectual Property After Twenty Years*" (ch. 15), n.20.

<sup>44</sup> See "[KOL108 | 'Why Intellectual Property' is not Genuine Property](#)," *Adam Smith Forum, Moscow (2011)*," *Kinsella on Liberty Podcast* (Dec. 11, 2013); also Kinsella, "How Intellectual Property Hampers the Free Market."

<sup>45</sup> See Frank Thadeusz, "[No Copyright Law: The Real Reason for Germany's Industrial Expansion?](#)," *Spiegel International* (Aug. 18, 2010; <https://perma.cc/R3H7-6KG8>). As indicated by Thadeusz, a new study by economic historian Eckhard Hoffner argues that the main reason that Germany's production and industry had caught up with everyone else by 1900 is the absence of copyright law. This seems plausible to me. See also Jeffrey A. Tucker, "[Germany and Its Industrial Rise: Due to No Copyright](#)," *Mises Economics Blog* (Aug. 18, 2010).

<sup>46</sup> As noted in note 36, above, there are serious criminal consequences for copyright violation, which led to Aaron Swartz's suicide, for example.

not only by a damages award but also by a court injunction ordering a competitor to stop making a given product, on pain of contempt of court. And patent law literally kills people.<sup>47</sup>

**Daily Bell:** Why is Kim Dotcom in prison in New Zealand?

**Stephan Kinsella:** I've discussed this case in a number of posts on C4SIF.<sup>48</sup> Basically, he offered a service that permitted people to share files (information) with each other. This crackdown threatens any number of "legitimate" sites and services such as YouTube, Yousendit, Dropbox and so on.<sup>49</sup>

**Daily Bell:** We've postulated a simpler solution than what you present. We've pressed the argument for private justice—clan and tribal justice as practiced for thousands of years. In this formulation no "authority" is present but those agreed upon by the two parties to the quarrel/crime. Thus, copyright issues would become incumbent on the *copyright holder* to enforce. In other words, the copyright holder not the state would have the expense of enforcement. What's your take on this?

**Stephan Kinsella:** I suppose this could be an improvement but I think it's still misguided. Any attempt to use force against people using information would be aggression. The only exception would be if someone has contractually agreed to pay a fine if they use information in an unapproved way. But who would sign such a ridiculous contract?

In the end, I believe there is nothing wrong with using information. If you reveal information to the public by telling people or selling some product that embodies or otherwise makes evident some idea, you have to expect people to learn from this, compete with you, maybe emulate or copy it or even build on and improve on it. As Wendy McElroy has explained, quoting Benjamin Tucker:

[I]f a man publicized an idea without the protection of a contract, then he was presumed to be abandoning his exclusive claim to that idea.

"If a man scatters money in the street, he does not thereby formally relinquish title to it ... but those who pick it up are thereafter considered the rightful owners .... Similarly a man who reproduces his writings by thousands and spreads them everywhere voluntarily abandons his right of privacy and those who read them ... no more put themselves by the act under any obligation in regard to the author than those who pick up scattered money put themselves under obligations to the scatterer."

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<sup>47</sup> Kinsella, "[Patents Kill Update: Volunteers 3D-Print Unobtainable \\$11,000 Valve For \\$1 To Keep Covid-19 Patients Alive; Original Manufacturer Threatens To Sue](#)," *C4SIF Blog* (March 18, 2020); *idem*, "[Patents Kill: Millions Die in Africa After Big Pharma Blocks Imports of Generic AIDS Drugs](#)," *C4SIF Blog* (Jan. 31, 2013); *idem*, "[Patents Kill: Compulsory Licenses and Genzyme's Life Saving Drug](#)," *C4SIF Blog* (Dec. 8, 2010); *idem*, "[Killing people with patents](#)," *C4SIF Blog* (June 1, 2015). Not to mention that IP is *death*. See the final lines of Kinsella, "[The Death Throes of Pro-IP Libertarianism](#)," *Mises Daily* (July 28, 2010), quoted in "*Against Intellectual Property After Twenty Years*" (ch. 15), text at n.60.

<sup>48</sup> See, e.g., Kinsella, "[Two lessons from the Megaupload seizure](#)," *C4SIF Blog* (Jan. 24, 2012).

<sup>49</sup> A recent copyright threat is to the Internet Archive. See Mike Glycer, "[Judge Decides Against Internet Archive](#)," *File 770* (March 24, 2023; <https://perma.cc/K5UH-VCWT>); Mike Masnick, "Publishers Get One Step Closer To Killing Libraries," *TechDirt* (March 27, 2023; <https://perma.cc/BYG5-6MXL>).

Perhaps the essence of Tucker’s approach to intellectual property was best expressed when he exclaimed, “You want your invention to yourself? Then keep it to yourself.”<sup>50</sup>

**Daily Bell:** Why should the state enforce copyright on behalf of the individual?

**Stephan Kinsella:** It shouldn’t. In fact, the only thing the state should do is commit suicide. Staticide. Whatever the word would be.

**Daily Bell:** Why should disinterested third parties pay for copyright enforcement?

**Stephan Kinsella:** They shouldn’t and wouldn’t. The whole idea is preposterous and flies in the face of human action. The market provides abundance in the face of physical scarcity. It’s a good thing when we are more productive. Likewise more information and knowledge is good. To try to restrict the spread and use of knowledge is insane.

**Daily Bell:** If people want to claim copyright and third party contracts, shouldn’t it be up to them to enforce those contracts?

**Stephan Kinsella:** Sure. But you can’t get IP from contracts. IP is an *in rem* or *erga omnes* right—something good against the world. Contractual rights are good only as between the parties—*in personam*—and can never result in *in rem* IP rights. I’ve explained this over and over.<sup>51</sup>

**Daily Bell:** Is the US legal system—which is a state-run, “public” judicial system—competent and fair in your estimation?

**Stephan Kinsella:** No. It is thoroughly unjust and illegitimate. It is just the facade of a criminal organization with a pretense to legitimacy.

**Daily Bell:** Why does the US have so many millions of prisoners, half the world’s population?

**Stephan Kinsella:** Someone has to be first. But seriously—it’s partly due to our insane war on drugs and also due to the devastation various state (mostly federal) policies have imposed on the black population: minimum wage, welfare, inflation, unemployment, war, Jim Crow and other vestiges of slavery.

And the US regularly uses IP as an excuse to engage in imperialistic bullying of other nations, to benefit US industries such as Hollywood, the music and software industries, big Pharma and the like.<sup>52</sup>

**Daily Bell:** Is there a power elite intent on moving toward one-world government and are they behind copyright and patent laws?

**Stephan Kinsella:** I used to be fearful of a one-world state but my current view is that the big powers, primarily the US, are the biggest threat. But yes, the western powers are using copyright and patent to crack down on dissent and to influence other countries’ policies at the behest of the MPAA, RIAA and so on.

**Daily Bell:** What would be the best approach to socio-politics in your view?

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<sup>50</sup> McElroy, “Intellectual Property,” in *The Debates of Liberty: An Overview of Individualist Anarchism, 1881-1908* (Lexington Books, 2002), pp. 97–98.

<sup>51</sup> See “Law and Intellectual Property in a Stateless Society” (ch. 14), Part III.C.

<sup>52</sup> See references in “*Against Intellectual Property After Twenty Years*” (ch. 15), n.19.

**Stephan Kinsella:** As I explain in chapters 2 and 3, I am definitely an anarchist—have been since 1988 or so. I prefer the term “anarcho-libertarian” nowadays, in part because of confusion spread by some left-libertarians about the connotations of “capitalism.” But I am in favor of a free market and capitalism rightly understood. I am basically a Rothbardian-Hoppean in terms of politics.

**Daily Bell:** Do you think the Internet itself, via what we call the Internet Reformation, is having a big impact on the powers-that-be and their ability to control society and information?

**Stephan Kinsella:** As some earlier answers have indicated—yes. The Internet is one of the most significant developments in our lifetime, perhaps in the history of humanity.<sup>53</sup> The state is trying to control the Internet but I believe and hope that by the time the state is fully roused to the danger the Internet poses to it, it will be too late for it to stop it. As a *Salon* writer said about former congressman/now copyright lobbyist Chris Dodd after the Internet uprising that helped defeat the Stop Online Piracy Act (SOPA): “No wonder Chris Dodd is so angry. The Internet is treating him like damage, and routing around it.”<sup>54</sup> My hope is that the Internet will find ways to treat the state like the cancerous damage that it is, and route around it and leave it in the dust.

**Daily Bell:** Where does the IP movement go now? What are the next moves? Are you content with theorizing about it? Is it having a real-world impact? What would that be?

**Stephan Kinsella:** Ultimately we have to try to highlight the illogic and injustices of the system so that people realize IP is illegitimate. This is an uphill battle, of course. Most people are unprincipled and utilitarian, influenced by state propaganda and economically illiterate. I have pondered trying to set up some kind of patent defense league but have not yet figured out how viable this is.<sup>55</sup> I would also like to urge some group like EFF or Creative Commons to come up with a simple, reliable, inexpensive way for people to abandon their copyrights. At present there is no easy way to do this.<sup>56</sup> And though it is not prudent to advocate that people flout the law, the widespread disregard for copyright and resort to piracy, torrents and encryption will put some limits on how effective copyright enforcement can be.

**Daily Bell:** Any other points you want to make?

**Stephan Kinsella:** Let me close with a quote from Lew Rockwell:

Let me state this as plainly as possible. The enemy is the state. There are other enemies too, but none so fearsome, destructive, dangerous, or culturally and economically debilitating. No matter what other proximate enemy you can name—big business, unions, victim lobbies, foreign lobbies, medical cartels, religious groups, classes, city dwellers, farmers, left-wing professors, right-wing blue-collar workers, or even bankers and arms merchants—none are as horrible as the hydra known as the leviathan state.

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<sup>53</sup> Though as of late (2023), the *Omni Magazine* types and space cadets seem to be overly obsessed with AI and ChatGPT. See Kinsella, “[Rothbard on Libertarian ‘Space Cadets.’](#)” *StephanKinsella.com* (Sep. 23, 2009).

<sup>54</sup> See Kinsella, “[Kevin Carson: So What if SOPA Passes?](#),” *StephanKinsella.com* (Jan. 23, 2012). For more on SOPA, see “Law and Intellectual Property in a Stateless Society” (ch. 14), n.56 and “*Against Intellectual Property After Twenty Years*” (ch. 15), at n.20.

<sup>55</sup> See Kinsella, “[The Patent Defense League and Defensive Patent Pooling.](#)” *CASIF Blog* (Aug. 18, 2011).

<sup>56</sup> See note 34, above.

If you understand this point—and only this point—you can understand the core of libertarian strategy.<sup>57</sup>

**Daily Bell:** Any references, web sites, etc. you want to point to?

**Stephan Kinsella:** As mentioned, I may someday write *Copy This Book* and I also have another book in the works, *Law in a Libertarian World: Legal Foundations of a Free Society*, an edited selection of my rights and law-related articles. Also, I blog regularly at *The Libertarian Standard* [now defunct] and *C4SIF*. Finally, the slides and audio/video for the four Mises Academy lectures I delivered in 2011: Rethinking Intellectual Property, Libertarian Legal Theory, The Social Theory of Hoppe, and Libertarian Controversies, are also available.<sup>58</sup>

**Daily Bell:** Thanks for your time.

**Stephan Kinsella:** You're welcome. Thanks for your interest.

### After Thoughts

by Anthony Wile

We thank Stephan Kinsella for this interview and for the work he has done generally on this issue of copyright. Ideas have ramifications far beyond their apparent initial non-acceptance. What seems impractical now may be common sense tomorrow.

Human history seems to go in cycles. Right now we are seemingly at the top of the totalitarian arc. Cold comfort to most, but there has probably never been a time in human history when there was so much hidden totalitarianism and when a cabal of individuals controlling Money Power were likely making final moves to try to control the world

It is very hard to peer through the confusion purposefully laid by the dynastic families that apparently control central banking (and thus money) around the world. Monetary apologists are out in force these days, claiming that various forms of government money are an antidote to the abuse of mercantilism.

Of course, it is via mercantilism, the abuse of government laws and regulations by private parties, that Money Power retains its clout. Only by controlling the “democratic process” does a tiny group of people retain their hold on the levers of government. Behind the scenes these levers are pulled for their benefit. And *they* do the pulling.

It is mercantilism, the use of public law to reinforce private privilege, that bides at the base of Money Power. And those who are behind Money Power, the assorted apologists and enablers, will use *any* tool to buttress their privilege. Lately, in our view, they've been behind the resurgence of

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<sup>57</sup> Kinsella, “[Rothbard and Rockwell on Conservatives and the State](#),” *The Libertarian Standard* (Jan. 26, 2012).

<sup>58</sup> See these *Kinsella on Liberty Podcast* episodes: “[KOL172 | ‘Rethinking Intellectual Property: History, Theory, and Economics: Lecture 1: History and Law’ \(Mises Academy, 2011\)](#)” (Feb. 14, 2015); “[KOL018 | ‘Libertarian Legal Theory: Property, Conflict, and Society, Lecture 1: Libertarian Basics: Rights and Law’ \(Mises Academy, 2011\)](#)” (Feb. 20, 2013); “[KOL153 | ‘The Social Theory of Hoppe: Lecture 1: Property Foundations’ \(Mises Academy, 2011\)](#)” (Oct. 16, 2014); and “[KOL045 | ‘Libertarian Controversies Lecture 1’ \(Mises Academy, 2011\)](#)” (May 2, 2013).

Georgism, Greenbackerism, Social Credit and a number of other “movements” that claim “the people” need to take back government.

Of course, it is improbable, these days anyway, that people can “take back” their government. What is more likely is that the powers-that-be are encouraging these movements because they provide a fertile methodology for the continuance of mercantilism. Mercantilism is impossible to apply in the absence of government.

But so long as public nostrums are being peddled, it is fairly easy for Money Power to gain a foothold once again. This is why we are proponents of laissez faire and libertarianism. The solution to the problem of government is not to have more of it “properly controlled,” but to have as *little* of it as possible. The less government there is, the less feasible it is to abuse it.

People like Stephan Kinsella do us a great favor when it comes to establishing this sort of argument. Any perspective that shows us how laws and regulations provide artificial benefits to some at the expense of others is of a larger benefit as well because it delegitimizes force.

Force, in fact, is at the heart of government, any government. A handful of people pass the laws that bind us to the state, and generations to come as well. But Rothbardian libertarianism (and Misesian libertarianism generally) has been all about providing an alternative narrative to the force of the state.

Logically, Rothbard, Mises and other Austrian economists have shown us that force is the common currency of government and that voluntary, free-market societies have existed in the past and are likely the better alternative.

By opening up our minds to an alternative view of copyright, Kinsella continues this process. You don’t have to agree with him, of course, and we ourselves have proposed a simpler solution: If people want to enforce copyright (or any other legal nostrum for that matter) let them do so out of their own pocket. That would put an end to the regulatory state in short order.

Beyond that, government doesn’t work on a logical level. Every law and regulation, enforced by the threat of incarceration or even death, fixes prices by transferring wealth from those who earn to those who haven’t. The more price-fixing you have, the more unfair, disorderly and inefficient society becomes. Eventually, society falls apart entirely.

Of course, in the West, one could argue we’re at that stage now. Humans badly need new solutions. People need to understand that they need to think for themselves and exercise their own “human action” in order to help themselves and their families to survive as the world continues its slow-motion spiral into depression and military destruction.

People like Stephan Kinsella are indispensable to this process. Austrian economics, generally, and the larger ambit of free-market thinking it encourages are necessary in providing us with alternatives showing us that the current environment is not the “only alternative.”

Whether you agree with Kinsella or not, we’re happy he’s around and has presented such thought-provoking ideas. It’s people like Kinsella with exciting new ways of looking at sociopolitical and economic issues who provide us with a vision for the future. He is, in fact, part of the so-called “great conversation.”

You can join it, too. Just study the great thinkers and come up with your own ideas. If the ideas are interesting enough, people will start to discuss them and write about them and respond to them. That's how the Austrian school succeeded and why its ideas are now part of the larger economic dialogue.

We know it's a real discipline because it builds on thousands of years of economic history. Don't let the sophists and the wily ones distract you from the truth. As free-market thinking succeeds, they are coming out in force. But the bottom line, unfortunately, is that government is force, no matter the "law" it is enforcing.

Of course, there is no absolute freedom and human beings are innately tribal. But within this context, we choose to advocate for freedom above all. One travels toward minarchism via rigorous anarchic logic, not by advocating *more* government. We're glad that people like Kinsella give us additional intellectual tools to make persuasive arguments for a less coercive society.