
The Voluntaryist

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On the Ownership of Ideas

By Carl Watner

In my article (THE VOLUNTARYIST, Whole No. 166) on the historical development of copyright, I explored whether or not copyright protection of an author's output was the result of the natural evolution of the common law. I concluded that copyright was not a voluntary phenomenon, but rather one brought about in the English-speaking world by government legislation in early 18th Century England. The point of my investigation was to see if there was any historical basis for claiming that intellectual property might be subject to ownership in a voluntaryist society. What I did find to partly buttress the case for ownership was the fact that authors' moral rights to their intellectual property have existed since antiquity.

As I wrote in the Addendum to my copyright article, there are two opposing 'camps' within the libertarian movement with regard to the question of intellectual property (IP) rights. Lysander Spooner (1808-1887) and Andrew Joseph Galambos (1924-1997) represent those who favor the recognition of intellectual property rights, while Benjamin Tucker (1854-1939) and Stephan Kinsella (b. 1965) represent those who claim such rights would not and should not be respected. Those on the Galambos side of the fence advocate a common law system which would recognize and protect perpetual property rights in intellectual property. They reject state-sanctioned copyrights and patents and would reach their goal by voluntary means rather than by government legislation. Protection of intellectual property rights would come “from social pressure (the community's sense that ideas are property, that it is wrong to steal, and that copying without permission is stealing someone's property) and then from the private judicial system, which would be restitution-based.”

Since Galambos believed “that there must be protection of intellectual property for there to be a durable [and flourishing] voluntary society,” he proposed a dual program to attain full IP protection. “Innovators would disclose their innovations to a private registration company, and the innovations would then be made available for use ... first by a process of negotiated terms and payment amounts, and later by releasing them to wide[r] distribution, with payments for use in amounts set by the users.” As a result, ideas would not “be locked away forever.” [1] The amounts of royalty payments to authors,

inventors, and their heirs would always be limited by competition from independent innovators (and their heirs), from producers of different, but parallel, products or services, and from competition for the users' dollars. Competition would work in establishing the price of ideas, just as it does in the pricing of tangibles and land. [2]

Those on the Kinsella side of the fence argue that ideas cannot and should not be owned. They claim that there is no basis in libertarian homesteading theory for protecting or recognizing IP rights because IP is not a scarce, tangible product, and can be used by many people at the same time without conflict. Kinsella also objects to the fact that “a system of property rights in ‘ideal [i.e. intangible] objects’ necessarily requires violation of other individual property rights, e.g., to use one's own tangible property as one sees fit.” [3]

The catalyst for my original article on copyright was Tom Bell's book, INTELLECTUAL PRIVILEGE: COYRIGHT, COMMON LAW, AND THE COMMON GOOD (2014), which I received as a review copy in June 2014. A few months later, a subscriber and former Galambos student, Richard Boren and I began a long series of email exchanges on the topic of IP. In fact, Richard prepared a lengthy explanation of the property ideas of Andrew J. Galambos, titled “For Intellectual Property” which can be found at The Voluntaryist's website (www.voluntaryist.com), along with other pro-IP and anti-IP essays. Richard had attended a large number of Galambos' courses, including V-201, the one devoted to IP. As a result of my correspondence with Richard, I began to better understand Galambos' point of view on IP. My discussions with Richard also prompted me to re-read Lysander Spooner's work, THE LAW OF INTELLECTUAL PROPERTY (1855), and allowed me to fulfill the promise I made at the conclusion of my Addendum, namely to analyze the arguments for and against the ownership of IP.

After a great deal of thought I came to the conclusion that Spooner and Galambos were correct: people in a truly voluntaryist society would eventually come to recognize property in ideas. How would this come about in the absence of the nation-state? This is difficult to answer since the nation-state has been with us for hundreds of years, but the same insurance companies that we would expect to play a

(continued on page 3)

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Potpourri from the Editor's Desk

No. 1 "The Lofty Standards of Liberty"

I'll list some of the big ones here but this is by no means a complete roster: Respect for the lives, property, choices and contracts of your fellow citizens. A healthy recognition that as much as you think you know, there's a world of knowledge out there that you don't know. Self-improvement should be a life-long commitment. If you want to reform the world, you must reform yourself first and then be a good example that others will seek to emulate. Refrain from the initiation of force, Central planning requires an arrogant, condescending, know-it-all attitude that a person of solid character should shun. Take responsibility for yourself and your loved ones; no one owes you a living just because you breathe. When you see someone who needs and deserves help, remember that the Good Samaritan wasn't good because he told the man in the gutter to call his congressman; he pitched in and got the job done himself at probably half the cost and twice the effectiveness that any politician could. Don't assume that liberty is automatic or guaranteed just because you or your grandparents had it; if good people who believe in it don't work for it, teach it, insist on it and support it, it can be easily lost. Have patience, be courageous, stand on principle, sacrifice if necessary for what you know to be right. Live for the future, not merely for the here-and-now. Be optimistic because pessimism is a self-fulfilling prophecy; you can change yourself if necessary and you can change the world but not if you think either cause is lost before you even get started. Keep your character up because freedom requires it, and you'll never regret it.

- DAILY BELL Interview with Lawrence Reed, August 10, 2014.

No. 2 "Can Water Ever Be Free?"

"The United Nations says there is a humanitarian crisis in Detroit," resulting from the City's bankruptcy. The U.N. "claims the city is violating its citizens' basic and fundamental 'human rights to

water' ... by shutting off water to those who refuse to pay" their past due bills. After wracking up more than \$ 6 billion in debt, the Detroit Water and Sewerage Department cannot borrow more money and is threatened with bankruptcy itself. But as Detroit's current mayor finally concluded, water is not free. Mayor Duggan says he doesn't "know how to filter water and pipe it from the river to somebody's house" without incurring a great deal of expense. Someone ultimately has to pay: either the end-user or some "forgotten man" as William Graham Sumner called him. Water isn't free and those who claim it is should pay for it themselves or find donors who will. [From THE PHILADELPHIA TRUMPET, September 2014, p. 8 and an NPR news program of August 8, 2014.]


No. 3 "To Voters in the U.S. Government"

Each voter in the United States Government votes for the war-making power, and acts as a principal in shedding whatever blood is shed by it. Each voter is *virtually* the jailor and hangman - the war-maker and the commander-in-chief and whatever robbery and murder are committed by Congress and the President - by the army and the navy - are done by him, and he, *individually*, must render an account thereof to the final Judge.

- H. C. Wright, BALLOT BOX AND BATTLE-FIELD (1842), p. 1.

No. 4 "Madmen, Martyrs, and Malingerers"

One can only speculate about how the private sector would deal with madmen, martyrs, and malingerers too dangerous to release [or who have refused or who are unable to work off their debts]. These individuals have violated the rights of others in society, so they would have a legal obligation to pay restitution. Refusal should put them outside the protection of the law. In historical restitution-based legal systems, this generally meant ostracism, expulsion, or even death. In a modern society, expulsion may be possible under limited circumstances, but death for failure to pay a debt is not likely to be ... acceptable. Perhaps such offenders will be offered a choice between a specified prison term in a conventional "nonproductive" prison facility with few amenities or a prison work program accompanied by more amenities. If they decide to work, some portion of the resulting income can be directed to cover room and board, some to restitution, and some to purchase amenities.

- Bruce Benson, "Let's Focus on Victim Justice, Not Criminal Justice," THE INDEPENDENT REVIEW (Fall 2014), p. 233. 

Governments don't create wealth; they consume it.

On the Ownership of Ideas

(Continued from Page 1)

pivotal role in a voluntaryist society would probably offer title insurance for IP (much as they offer title insurance for real estate today). Galambos' proposed method of having competitive registration bureaus and payment of innovation fees might be one possible way of handling IP. However, just as there are numerous nuances in the way we buy, sell, lease, rent, and rent-to-own real property, there undoubtedly would be many different ways of 'owning' intellectual property in a state-free world.

Some thinkers might freely license the use of their ideas or give them away for free; others might be secretive and seek as much monetary profit as possible, but the point is that respect for property would be 100% consistent across the spectrum. Just as you want to pay for things when you go into a store, you would want to pay the inventor of a great idea for the benefits he brings you. It is one way of expressing gratitude to those who are responsible for helping to create progress and civilization. A societal ethos would exist which would respect property in both tangible and intangible things.

And just as I believe that the moral and practical go hand-in-hand, I believe, like Galambos, that such a society would be the most flourishing, productive, and philosophically consistent. As hard as it is for non-libertarians to understand how the roads might be built or how people might be protected from criminals in a libertarian society, it is probably just as difficult to imagine how ideas might be owned, bought, and sold in a voluntaryist one. The answer to the question, "How might ideas be owned and protected?" is not critical at this point. Owners of intellectual property will figure things out, just as owners of the roads will figure out how to get them built. The question before us is, "Should ideas be subject to private ownership?" not, "What non-coercive methods can be envisioned to protect them?"

What Is Intellectual Property?

Intellectual property rights in a state-free society may be defined as claims to intangible things. In our statist world, they are represented by such legal concepts as copyrights, patents, trademarks, and trade secrets. "Intellectual property rights are rights in ideal objects [intangibles], which are distinguished from the material substrata in which they are" actually found. [4] "A patent is a [government-established] property right in" an invention, such that others may not "manufacture, use, or" sell copies of the concrete item which has been "invented." [5] Copyright refers to a creator's right to control the reproduction of concrete objects which embody the ideal object which he or she has created. As copyright owner, an author may rightfully exercise control over those who desire to

copy his work once it has been made public. The rightful owner of paper and a printing press may not "use his own property to create another copy of [the author's] book. Only [the author] has the *right to copy* the book (hence, 'copyright')." [6]

Should Ideas Be Owned?

The first hurdle in outlining a defense of intellectual property rights is to establish that ideas should, in fact, be treated as property. If they are not property, then there is nothing to "own." As Kinsella observes:

The problem with the natural rights defense of IP ... lies in the argument that because an author-inventor "creates" some "thing," he is "thus" entitled to own it. The argument begs the question by assuming that the ideal object is ownable in the first place; [7]

Kinsella argues that it is the scarcity of tangible goods - "the fact that there can be *conflict* over these goods by multiple human actors" - that gives "rise to the need for ethical rules" or property rights to govern [their] use. [8] "The function of property rights is to prevent interpersonal conflict over scarce resources by allocating exclusive ownership of resources to specified individuals (owners)." [9]

[G]iven the origin, justification, and function of property rights, ... they are applicable only to *scarce* resources. Were we in a Garden of Eden where land and other goods were infinitely abundant, there would be no scarcity and, therefore, no need for property rules; property concepts would be meaningless. The idea of conflict, and the idea of rights, would not even arise. For example, your taking my lawnmower would not really deprive me of it if I could conjure up another at the blink of an eye. Lawnmower-taking in these circumstances would not be "theft." Property rights are not applicable to things of infinite abundance, because there cannot be conflict over such things. ... [P]roperty rights can apply only to scarce resources. The problem with IP rights is that the ideal objects protected by IP rights are not scarce; and, further, that such property rights are not, and cannot be, allocated in accordance with the first-occupier homesteading rule, [10]

Contrary to Kinsella, Spooner and Galambos argue that ideas should be owned. Although neither Spooner nor Galambos based their arguments on scarcity, the fact of the matter is: good ideas are scarce. Poor ideas may be abundant, but really great and important ideas are scarce. All ideas are the result of the mental effort and creative thinking by the

individuals who enunciate them. If one takes a Lockean approach to the establishment of property rights, it is the exertion of human energy and labor upon tangible or corporeal objects which connects a human actor to the act of owning something. Similarly, it is the act of creating a new idea that entitles its creator to ownership. Good ideas are valuable to those who originate them and to those who choose to utilize their effects. As Spooner wrote in his *A LETTER TO SCIENTISTS AND INVENTORS*, “[K]nowledge is [the ultimate] wealth.” [11]

Scarcity is a background feature of the human condition. You cannot stand in the spot I am occupying. Nor is it necessary that there be potential conflict between human actors in order to establish “ethical rules” or “property rights” in either real property or intellectual property. There are many types of property, such as movie theaters, concert halls, or cruise ships, which numerous people can use at the same time without interfering with one another, or with the rightful owner. [12] However, they are still respected as private property. Even in the Garden of Eden there would be a need for private property rights. In the Garden of Eden “my” lawnmower is still “my lawnmower.” It may have sentimental value; it may be marked in a certain way; it may cut in a certain way that no other lawnmower can duplicate. Lawnmower-taking in the Garden of Eden would indeed be theft because it would be the taking of property without the consent of the owner, even if that owner could conjure up another in an instant.

Kinsella continues his argument by pointing out that IP rights actually undercut the traditional libertarian homesteading principle. “[A]ccording to Lockean-libertarian homesteading, it is the *first occupier* of a previously unowned scarce resource who homesteads it, i.e., becomes its owner.” [13] To Kinsella, the problem with IP rights is it destroys the homesteading principle because it allows the owner of an idea to control how others use their already justly-owned property. “For example, by inventing a new technique for digging a well, the inventor can prevent *all others* in the world from digging wells in this manner, *even on their own property*,” even with their own well-drilling equipment. Similarly, “the first man to invent a house ... would have a right to prevent others from building houses on their own land, with their own logs, or to charge them a fee if they do” [14]

Spoooner vs. Kinsella

Spoooner and Galambos would argue that Kinsella is wrong. First of all, Kinsella insists that it is not the labor of the homesteader which entitles him to ownership; but rather the homesteader’s first occupation which makes him become the original owner of a piece of property. But what, exactly, is

Kinsella’s point? Doesn’t occupation require labor by the first owner/occupier? Without labor how would a homesteader occupy his or her property?

Kinsella then argues that owning an idea restricts how others may use their property: the person who wants to bore a well - using the technique invented and owned by someone else - may not legitimately do so unless they have the consent of the owner of that technique. Now both Spooner and Galambos allow that the person who wants to drill the well may independently come up with the same idea him or her self. If that is the case then there is no conflict between the two independent owners. Each owns his idea and may charge for it, give it away, or do as they choose with it.

It is said that two men sometimes make the same invention; and that it would therefore be wrong to give the whole invention to one.

The answer to this objection is, that the fact that two men produce the same invention, is a very good reason why the invention should belong to both; but it is no reason at all why both should be deprived of it.

If two men produce the same invention, each has an equal right to it; because each has an equal right to the fruits of his labor. Neither can deny the right of the other, without denying also his own. The consequence is, that they must either use and sell the invention in competition with each other, or unite their rights, and share the invention between them. ... Each holds the whole invention by the same title - that of having produced it by his labor. Neither can say that the title of the other is defective, or in any way imperfect. Neither party has any right, therefore, to object to the other’s using or selling the invention at discretion. And each, therefore, can lawfully and freely use and sell the invention, (and give a good title to the purchaser,) without any liability to answer to the other as an infringer.

- Lysander Spooner, *THE LAW OF INTELLECTUAL PROPERTY* (1855), pp. 68-69.

However, Kinsella objects because “ownership” of that well-drilling technique could prevent others from using that idea. Spooner and Galambos agree. In a voluntarist society people will go out of their way to respect the property rights of others. They will want to pay for the benefit they receive from a clever well-drilling technique. Kinsella’s objection that some people would be prevented from using their own property to duplicate the well-drilling technique is also true, but that same objection could be directed against ownership of real property. There are already many instances where my property rights in tangibles prevent you from using your property as you wish. A

“No Trespass” sign legitimately prevents you from driving “your” car onto “my” driveway. If I refuse to sell you “my” car, you may not use “your” money to buy it. If I will not consent to let you copy “my” book, then you may not use your paper, ink, and photocopier to reproduce it.

Kinsella summarizes his critique of IP rights by noting that IP advocates are trying to treat dissimilar things - “nonscarce, infinitely reproducible patterns of information and physical[ly] scarce objects” - “with the same rules. They take property rules designed precisely to allocate ownership of scarce physical objects in the face of possible conflict and try to apply them to information patterns. In so doing, they end up imposing artificial scarcity on that which was previously nonscarce and infinitely reproducible.” [15]

Spoooner and his LAW OF INTELLECTUAL PROPERTY

In his book, THE LAW OF INTELLECTUAL PROPERTY (1855), Spooner anticipated many of the arguments set forth by Kinsella. Spooner argued that there was no real difference between producing physical wealth by means of physical labor and ideas by mental effort.

All that labor, which we are in the habit of calling *physical* labor, is in reality performed wholly by the mind, will, or spirit, which uses the bones and muscles merely as tools. Bones and muscles perform no labor of themselves; they move, in labor, only as they are moved by the mind, will, or spirit. It is, therefore, as much the mind, will, or spirit, that lifts a stone, or fells a tree, or digs a field, as it is the mind, will, or spirit, that produces an idea. There is, therefore, no such thing as the *physical* labor of men, independently of their intellectual labor. ... A man’s rights ... to the *intellectual* products of his labor, necessarily stand on the same basis with his rights to the *material* products of his labor. [16]

In response to Kinsella’s contention that it is the physical scarcity of tangible goods that necessitates property rights in order to avoid violent confrontations between would-be users of those goods, Spooner argues that “the right of property ... *originates* [not in the fact of potential conflict among men, but rather] in the natural right of every man to the benefit of his own labor.” [17]

If this principle be a sound one, it necessarily follows that every man has a natural right to *all* the productions and acquisitions of his own labor, be they intellectual or material. If the principle be not a sound one, then it follows, necessarily, that

there are no rights of property at all in the productions or acquisitions of human labor. [18]

To argue that an idea can be used by two people at the same time ignores the fact that “the idea has been produced by one man’s labor, and not by the labor of all men;” [19] If an idea which is “the product of one man’s labor, can be made free to all mankind, without his consent, then, by the same rule, every other commodity, the product of individual labor, may be made free to all mankind, without the consent of the producers. And this is equivalent to a denial of all individual property whatsoever, in commodities produced or acquired by human labor.” [20] Spooner then asks if the right of property is destroyed (by not recognizing ideas as property)

what principle ... [is offered], as a substitute, by which to regulate the conduct of men, in their possession and use of all those commodities, which are now subjects of property? It substitutes only this, viz. : *that men must not come in collision with each other, in the actual possession and use of things.* [21]

Now, since this actual possession and use of things, can be exercised, only by men's bringing their bodies in immediate contact with the things to be possessed or used, it follows that the principle laid down, of men's avoiding collision in the possession and use of things, amounts to but this, viz.: that men's *bodies* are sacred, and must not be jostled; but nothing else *is* sacred. In other words, men *own* their bodies; but they *own* nothing else. Every thing else belongs, *of right*, as much to one person as to another. And the only way, in which one man can possess or use any thing, in preference to other men, is by keeping his hands constantly upon it, or otherwise interposing his body between it and other men. These are the only grounds, on which he can *hold* any thing. If he take his hands off a commodity, and also withdraw his body from it, so as to interpose no obstacle to the commodity's being taken possession of by others, they have a right to take possession of it, and hold it against him, by the same process, by which he had before held it against them. This is the legitimate and necessary result of the doctrine [that ideas are not property and may be used at will by anyone and everyone].

On this principle a man has a right to take possession of, and freely use, any thing and every thing he sees and desires, which other men may have produced by their labor -

provided he can do it without coming in collision with, or committing any violence upon, the persons of other men.

This is the *principle*, and the only *principle*, which the objection offers, as a rule for the government of the conduct of mankind towards each other, in the possession and use of material commodities. And it seriously does offer this principle, as a substitute for the right of individual and exclusive property, in the products and acquisitions of individual labor. The principle, thus offered, is really communism, and nothing else.

If this principle be a sound one, in regard to material commodities, it is undoubtedly equally sound in relation to ideas. But if it be preposterous and monstrous, in reference to material commodities, it is equally preposterous and monstrous in relation to ideas for, if applied to ideas, it as effectually denies the right of exclusive property in the products of one's labor, as it would if applied to material commodities. [22]

Spencer then points out that "if it be acknowledged that a man *have* an exclusive right of property in the products of his labor, *because they are the products of his labor*, it clearly makes no difference to this right, whether the commodity he has produced be, *in its nature*, capable of being possessed and used by a thousand persons at once, or only by one at a time. *That* is a wholly immaterial matter, so far as *his* right of property is concerned; because *his* right of property *is derived from his labor in producing the commodity; not from the nature of the commodity when produced.*" [23]

A man's exclusive right of property in - or, in other words, his right of absolute dominion over - any one of these various commodities, depends entirely upon the fact, that such commodity was either a product or acquisition of his own labor, (or of the labor of some one, from whom, either mediately, or immediately, he has derived it, by purchase, gift, or inheritance;) and not at all upon the fact, that such commodity can, or cannot, be possessed and used by more than one person at a time, without collision. [24]

Finally, Spencer concludes that "if it once be conceded that labor and production" establish private ownership, then men have "absolute rights ... as against all other men" in their property, whether they be ideas or tangible commodities.

[T]here is no middle ground between the principle, that labor and production give the

producer *no* rights at all, over other men, in the commodity he produces; and the principle, that they give him absolute rights over all other men, to wit, the right of exclusive property or dominion. There is, therefore, no middle ground between absolute communism, on the one hand, which holds that a man has a right to lay his hands on any thing, which has no other man's hands upon it, no matter who may have been the producer; and the principle of individual property, on the other hand, which says that each man has an absolute dominion, as against all other men, over the products and acquisitions of his own labor, whether he retain them in his actual possession, or not. [25]

Why Respect the Property of Others?

In his 1882 essay, "Natural Law," Spooner elaborated on what he called "the science of justice." Although Spooner's predecessors in the study of natural law had probably never considered the case of intellectual property, those theorists of the 16th and 17th Centuries had addressed another very pertinent question: Does a person, apart from promise or contract, have any obligation to refrain from using that which has already been appropriated by someone else, so long as he may take possession without coming into physical conflict with the first owner/user? [26] This is the great question of what is mine and what is thine: whose property is it?. As F. A. Harper explained in his LIBERTY, A PATH TO ITS RECOVERY, there are three possibilities with respect to ownership:

1. Each person may have whatever he can grab.
2. Some person other than the one who produces the goods and services may decide who shall have the right of possession or use.
3. Each person may be allowed to have whatever he produces. [27]

These dichotomies are as applicable to the ownership of ideas as they are to real and tangible property. Although historically intellectual property has not generally or consistently been respected by governments or members of civil society, there is evidence that property, in all its myriad forms, could and would be respected in the absence of the state. For example, there was no governmental presence (such as army or police) on the overland trail to California during the mid-19th Century, but property rights were still largely respected. Such behavior was a taught, learned, and an accepted custom of the overwhelming majority of the emigrants. Even under the most life-threatening conditions of Death Valley, property in

water was respected. [28] As Rose Wilder Lane put it in THE DISCOVERY OF FREEDOM:

The only safeguards of property seem to have been possession of the property, individual honesty, and public opinion. Well, cabins were never locked on the American frontier where there was no law. The real protection of life and property, always and everywhere, is the general recognition of the brotherhood of man. How much of the time is any American within sight of a policeman? Our lives and property are protected by the way nearly everyone feels about another person's life and property. [29]

Conclusion

Why do we respect other people's property? Why should we respect someone's property that has been left unattended, when there is no chance of being caught if we filch it? Ultimately, each of us has to answer these questions for ourselves. To be consistent and non-hypocritical we should follow the Golden Rule. We never want our property stolen. If we expect others to respect our property then we need to respect their property. The thief is always the hypocrite. He never wants "his" property stolen, but he is always prepared to steal the property of others when he thinks he can get away with it. We want the efforts and results of our labor to be respected. Otherwise, why should we produce more than we can quickly use or store for a short period of time?

If ideas are not property, then what are they? Why else do we (and even its opponents, such as Kinsella) refer to them as intellectual property? It is certainly possible to imagine that respect for the intellectual property of others could become a learned practice and an accepted custom in a state-free society. People in such a society would come to recognize the justice and legitimacy of owning ideas. Non-coercive practices would evolve, just as voluntary and customary ways of treating real estate and tangible property have developed over the centuries.

A world without widespread respect for private property would indeed be nasty, brutish, and one with few amenities. We would be better off in a world with private property in both tangibles and intellectual property, but it would not be a perfect one. Criminals will always be with us. As Richard Boren, put it: Galambos did not believe nor does "any rational person believe[...] that we will have a perfect stateless world. What we are striving for is a world with the fewest imperfections as possible. ... [A] world where real and intellectual property are respected will produce the fewest imperfections." [30] That is why I think that the ownership of ideas is a target towards which we voluntaryists should aim.

End Notes

[1] Richard Boren in personal communications of September 2014 and May 2015. For an elaboration see Richard Boren, "For Intellectual Property: The Property Ideas of Andrew J. Galambos," http://voluntaryist.com/property/boren_ip.html.

[2] See Chapter 13, "Competition and Monopoly," in Robert LeFevre, THE FUNDAMENTALS OF LIBERTY, Santa Ana: Rampart Institute, 1988, pp. 193-199.

[3] N. Stephan Kinsella, "Against Intellectual Property," 15 THE JOURNAL OF LIBERTARIAN STUDIES (2001), pp. 1-53 at p. 44.

[4] *ibid.*, p. 3.

[5] *ibid.*, p. 4.

[6] *ibid.*, p. 8.

[7] *ibid.* p. 28.

[8] *ibid.*, p. 19.

[9] *ibid.*, p. 20.

[10] *ibid.*, pp. 21-22.

[11] Lysander Spooner, A LETTER TO SCIENTISTS AND INVENTORS, ON THE SCIENCE OF JUSTICE, AND THEIR RIGHTS OF PERPETUAL PROPERTY IN THEIR DISCOVERIES AND INVENTIONS, Boston: Cupples, Uphman & Co., 1884, Section II, p. 6, in Charles Shively, editor, Volume 3, THE COLLECTED WORKS OF LYSANDER SPOONER, Weston: M & S Press, 1971.

[12] Lysander Spooner, THE LAW OF INTELLECTUAL PROPERTY OR AN ESSAY ON THE RIGHT OF AUTHORS AND INVENTORS TO A PERPETUAL PROPERTY IN THEIR IDEAS, Boston: Published by Bela Marsh, 1855, p. 94 in Charles Shively, editor, Volume 3, THE COLLECTED WORKS OF LYSANDER SPOONER, Weston: M & S Press, 1971.

[13] Kinsella, *op. cit.* p. 32.

[14] *ibid.*, pp. 32-33.

[15] Stephan Kinsella, "The Death Throes of Pro-IP Li-bertarianism," Mises Daily, July 28, 2010, accessed May 17, 2015 at <http://mises.org/library/death-throes-ip-libertarianism>.

[16] Spooner, *op. cit.*, THE, LAW OF INTELLECTUAL PROPERTY, p. 27.

[17] *ibid.*, p. 77.

[18] *ibid.*

[19] *ibid.*, p. 76.

[20] *ibid.*

[21] *ibid.*, p. 77.

[22] *ibid.*, pp. 77-79.

[23] *ibid.*, p. 79.

[24] *ibid.*, p. 81.


[25] *ibid.*, p. 88.

[26] See Carl Watner, "The Proprietary Theory of Justice in the Libertarian Tradition," 6 THE JOURNAL OF LIBERTARIAN STUDIES (1982), pp. 289-316 at p. 291.

[27] F. A. Harper, LIBERTY A PATH TO ITS RECOVERY, Irvington-on-Hudson, The Foundation for Economic Education, 1949, p. 28.

[28] John Phillip Reid, LAW FOR THE ELEPHANT: PROPERTY AND SOCIAL BEHAVIOR ON THE OVERLAND TRAIL, San Marino: The Huntington Library, 1980, pp. 355 and 362.

[29] Rose Wilder Lane, THE DISCOVERY OF FREEDOM, New York: The John Day Company, 1943. Reprinted by Laissez Fair Books, 1984, pp. 109-110.

[30] Richard Boren, email communication February 6, 2015, 11:49 AM. 

An Open Letter to David Goldhill on Government and Health Care

January 14, 2013

Dear David Goldhill:

You'll probably find this a strange letter, but I hope you read to the end. I'll try to make it short.

I recently heard an interview with you on National Public Radio about your new book, CATASTROPHIC CARE, and then found two of your earlier articles from THE ATLANTIC (September 2009 and October 12, 2012). In "What Health Care Needs," you made the point that consumers are served best when The Cheesecake Factory has to compete against Olive Garden. In your longer and earlier article, "How American Health Care Killed My Father," you made the same observation: "health care will need to become subject to the same forces that have boosted efficiency and value throughout the economy."

Your comments reminded me of an 1849 article written by the French economist, Gustav de Molinari, titled "The Production of Security." Molinari was the first person to ask: "If the free market can and should supply all other goods and services, why not also the services of protection" now provided by monopolistic governments? Molinari wrote that when consumers are not free to buy wherever they please "you forthwith see open up a large profession dedicated to arbitrariness and bad management." Service to the consumer "becomes slow and costly," and the price becomes "abusively inflated and inequitably apportioned." Sounds just like

today's health care industry, as well as a description of governments in the United States.

What your articles on health care describe is an industry, which in your words, is "so distorted" that free-market competition has disappeared. And why has this come about? Simply because the government - backed by the force of guns - has imposed all sorts of rules and regulations on health care providers and the consumers of their services.

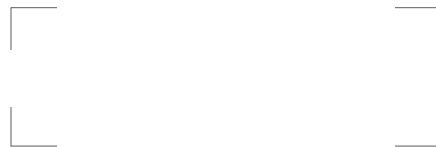
In your article about The Cheesecake Factory you wrote "of course, health care is essentially different from food service, right?" Of course, it is not, which is why you conclude that what it requires "is the competitive need to attract customers - and the feedback loop that customers provide." Molinari's argument, and mine, is that the security industry (the protection services, such as police, courts, and armies, that governments provide) is no different than the food service or health care industries. They are suffering from a lack of competition, which would spark innovation, developments, and technology which we cannot even imagine. As it is, these services have not been subject to competition so they exhibit the "bad management" and "abusively inflated" prices which Molinari foresaw.

You are probably labeling me a hair-brained "free market anarchist" (voluntaryist is the term I use on my website, www.voluntaryist.com). You have probably never before heard this libertarian argument, but I couldn't resist calling it to your attention since its logic rests on the same type of analysis that you apply to health care.

Sincerely, Carl Watner 

The Voluntaryist

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