

FOR INTELLECTUAL PROPERTY

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The Property Ideas of Andrew J. Galambos

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Cover photo of Andrew J. Galambos by
Jay Stuart Snelson, 1968

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INTRODUCTION

ARE IDEAS PROPERTY? Can you own an idea? Should you have the right to exercise absolute control over its use? Can you exert that control without harming any other person, or impeding the growth of civilization? The answer to these questions is “Yes.”

The first purpose of this book is to support that position by introducing the reader to the work of Andrew J. Galambos, who developed a comprehensive set of principles of social organization based on property, defined below to include ideas. Chief among those on the other side of the issue is patent attorney N. Stephan Kinsella, whose 2001 monograph, *Against Intellectual Property*, answers “No” to the above questions.

To Galambos, it was a certainty that ideas are a form of property. As far as I know, he was not challenged on that point; at least I do not know of him mounting a counter argument, which he surely would have done. Therefore, the second purpose of this book is to make such an argument to show that Mr. Kinsella is mistaken, and that our only rational choice is to treat ideas as property. Among other things, that argument is validated by published experimental evidence. The first such evidence demonstrates that there is a need for property rules even in a world of infinite abundance, as denied by Mr. Kinsella, thus falsifying one of his main points. Even more significant, another set of experiments shows that it is human nature to treat ideas as property. With that being the case, any manmade rules that deny this reality, such as those advocated by Mr. Kinsella, will be just as doomed to failure as if they ignored the existence of gravity. To the best of my knowledge this is the first time

that scientific evidence of this type has been introduced into the intellectual property debate.¹

It will be seen that ideas can be treated as property in an ethical manner, without the use of patent or copyright, or of force supplied by the state or by any entity or person, and that doing so will not produce the negative consequences predicted by Mr. Kinsella. Instead, the protection of intellectual property will complement the protection of life and tangible property that is the hallmark of civilization, and will be beneficial to society as a whole. I believe that I have stated Kinsella's opposing views accurately, but readers are advised not to take my word for it, and to read his book. It is available at no cost at the websites of the Ludwig von Mises Institute website under "Books," and of The Voluntaryist under "Property and Ideas." It is also available at modest cost in print and Kindle editions, as is this book. Due to the number of footnotes, I prefer print for both.

My views on the proper treatment of intellectual property are primarily informed by the concepts advanced by Andrew J. Galambos, some of which will be disclosed here. Most of them were first published via his public lectures in the early 1960's. In 1975 I began what was to be a five-year educational interaction with Professor Galambos at his Los Angeles-based Free Enterprise Institute (FEI).² It is fair to say that I am a Galambosian, which means that I believe that he was right about how intellectual property should be treated, and much more.

Had it not been for my exposure to Galambos I might well find myself in agreement with Mr. Kinsella on the issue of intellectual property. After all, Kinsella offers the appealing prospect of getting something for nothing, a desire that Galambos identified as basic to human nature, as

1 The first edition of this book, which should be seen today as a draft, was published in June, 2015 on the website of The Voluntaryist, www.voluntaryist.com. I then learned of the experimental evidence and included it in a second online edition, published in December, 2015. Additional refinements have been made, resulting in this, the third edition, dated August, 2016.

2 See "Andrew J. Galambos and How I Became a Voluntaryist" at <http://voluntaryist.com/howibecame/boren.html#Vlog48aFOHs>

explained below. In this case the “something” is intellectual property. However, as Galambos also pointed out, the laws of physics make it impossible to get something for nothing. As Milton Friedman famously said, “There is no such thing as a free lunch.”

Those readers who have never heard of Galambos or whose only “knowledge” of him has come from references in Kinsella’s writings or from other forms of hearsay will be presented with facts rather than speculation and misinterpretation. It is my experience that the negative comments about Galambos’ ideas always come from people who haven’t taken his courses that deal with intellectual property, and have relied on fragmentary information, thus drawing incorrect conclusions. Mr. Kinsella is generally in this category, although he apparently did hear Galambos’ course on Thomas Paine and recommended it.³ In this work I hope to reveal enough about Galambos’ intellectual property ideas to convince him and others of their merits, and convert them from opponents into allies.

3 One of Galambos’ courses was the nine-hour Course V-76, “The Declaration of Independence, Thomas Paine, and Your Freedom.” Kinsella, to his credit, referred on his website to “the fascinating series of V76 lectures by Andrew Galambos, which focused on the significance of Paine’s thought and his crucial role in the American Revolution (and Galambos’s [sic] contention that Paine was the actual author of the Declaration of Independence, not merely its intellectual inspiration).” Although he probably didn’t realize it, what Kinsella heard had been posted to the Internet without authorization, in direct violation of Galambos’ principles as explained herein. Not seeing it as stolen property, Kinsella provided a link to a site where it could be downloaded. That link is no longer operational, but the course can be purchased from FEI, which is the moral way to hear it. Please see the Bibliography for the link to FEI, and see Kinsella’s remarks here: <http://www.stephankinsella.com/2009/12/tom-paine-statist/>.

ABOUT GALAMBOS

ANDREW J. GALAMBOS was an astrophysicist who observed that the progress that has been made in the physical and biological sciences since what he called the Newtonian Integration has far outstripped that in the social sciences. He believed that the methods of science could be applied to the social domain so as to create true freedom, while dramatically reducing violence and poverty.

Toward that end, Galambos lectured extensively on the scientific method, which I won't go into here. He also taught another thing that is fundamental to science, which he labeled "semantic precision," and it is essential to discuss it. The term refers to the use of a vocabulary wherein the definitions are clear and the words have the same meaning to all participants. In the physical and biological sciences words such as mass, energy, electron, wave, molecule, cell, and neuron come to mind. Progress would clearly be difficult if not impossible without agreement on the meaning of those terms. Galambos believed that one of the major barriers to solving mankind's greatest social problems was that the relevant terminology was still fuzzy at best. For example, the meaning of the words "freedom," "morality," and "justice" varies from person to person and community to community. One of his accomplishments was the creation of precise, unambiguous definitions for these and other words.

In his courses Galambos provided what are called "stipulated definitions." Anyone who has ever taken a course in any field will be familiar

with having the instructor introduce various terms as the course goes on. Students are expected to learn them and to communicate using them. That was the way Galambos taught his courses, defining terms as he went along and never deviating from using them in the same way every time. All in all, the Galambos glossary contains about 100 words and phrases, the majority of them introduced in his basic course, V-50.⁴ This is the language that I think in today, and the concepts form my world view. I'll use some of the most important words and phrases in the rest of this document.

Galambos founded the for-profit FEI in the early 1960's. He built and operated it primarily on tuition revenue, and without donations, a significant achievement in itself. Sadly, in the mid-1980's he was struck by Alzheimer's disease, eventually passing away in 1997. He made good money teaching his ideas to willing students via university-type lectures, often with hundreds in attendance. Classes were held in the evening and on weekends, reflecting the fact that most students were already in the workforce. Tuition was much lower than for courses of comparable length at private colleges. For example, in 1975 when I enrolled in Course V-50, which had 19 sessions totaling almost 60 classroom hours, it was priced at \$150 for an adult and \$75 for each additional family member. What's more, all courses had a money-back guarantee.⁵

Most of what Galambos taught wasn't available anywhere else, either at that time or since. From 1975 to 1980 I listened to his lectures on a wide range of subjects, most pertaining to volition, but also physics, psychology, investments, insurance, and the American Revolution.

4 This is a course catalog number, with "V" standing for "volition," the act of willing or choosing. Galambos called his subject "volitional science," a term coined by his Senior Lecturer, Jay Stuart Snelson, to distinguish it from what many would call "social science."

5 The guarantee was, "If after hearing every session of the course in its entirety, you do not agree that you received both your time's worth and your money's worth, your tuition will be refunded in full."

Galambos was brilliant, capable of delivering fascinating lectures seemingly without notes, and frequently containing unique and important insights. Sometimes it was as though we were hearing a genius think out loud. There were many digressions, but the core principles held it all together, and it was rare to leave a session without having heard something valuable. All of these lectures were recorded, and my desire is that someday they will become readily accessible.

My time at FEI was far and away the most exciting educational experience of my life, and much more valuable than what I learned while getting my college degree ten years earlier (in psychology, with a minor in economics). Most students, and there were thousands over time, seemed to have already had “good” educations, and many had graduate degrees. However, reactions such as mine were common, and enabled FEI to grow by word of mouth without any paid advertising. Contributing greatly to this market success were the live presentations of V-50 skillfully delivered by Jay Snelson. A truly superior lecturer, Snelson engaged his audiences and brought the subject to life. At times he had four different offerings in four different cities at the same time. Galambos himself last gave V-50 in 1968, choosing from then on to spend his time creating new courses and giving live lectures on more advanced topics in volition, or on other subjects. Although students could still enroll for the taped presentation of Galambos’ version of V-50, most subsequent enrollments at FEI were generated by Snelson’s live classes. Those who found value in V-50 might then enroll in courses taught by Galambos, either live or on audio tape.

Galambos planned to write a book and even pre-sold it to his students, who paid for it in advance. I am one of those students. Publication was targeted for 1987 (not coincidentally the 300th anniversary of the publishing of Newton’s *Principia Mathematica*), but his illness precluded him from writing it. As a substitute, in accordance with the book purchase contract, a lightly-edited transcript of his 1968 delivery of V-50, together with a 1976 extension called V-50X, was published in 1999 by his trustees, amid much fanfare, as Volume One of *Sic Itur Ad Astra* (SIAA).

The title means *This Is the Way to the Stars*, reflecting Galambos' desire to engage in commercial space travel.⁶

The trustees have a contractual requirement to publish and deliver the remaining volumes to those who have paid for them. Those volumes are to include Course V-201, the course Galambos called his most important. However, they have refused to honor the contract, saying that it was a "mistake" to have published SIAA, and have withdrawn the only published volume from sale. Galambos' lectures are now only available online, and with severe restrictions. I strongly disagree with these actions. In my opinion, by Galambos' own standards what his trustees have done and continue to do is a crime, as defined by him below.⁷

One of the results of the trustees' refusal to publish is that Galambos remains an obscure figure, subject to attack by ignorant people, whose ignorance does not prevent them from voicing their opinions. As a way of expressing my gratitude to him I am writing this in defense of his entirely rational, positive, well-grounded and appealing set of ideas which, if published, would speak for themselves. Fortunately, in lieu of the unpublished remaining volumes I have the lecture notes that Jay Snelson used when he taught Course V-201 for two academic years. Those notes are reportedly a virtual transcription of the lectures Galambos himself delivered. Finally, I have my own student notes and the recollections of myself and others.

Galambos was concerned that some students might misconstrue, misapply, or incompetently apply his ideas and bring unfair criticism on them. In an effort to control those things as much as possible, he

6 Galambos remarked, "I'm doing this [teaching volition] to make the world safe for astrophysicists—I'm not kidding about this... if I make the world safe for astrophysicists, it's also safe for other kinds of people." (SIAA, p. 415 and p. 656.) Years before, he had submitted a proposal for a commercial space venture to his superiors at Ramo-Wooldridge (Later TRW), but it was not accepted. He left what he called the "boondoggle" and founded FEI. Today, the French company Arianespace, and its younger competitor, the American company SpaceX, are conducting such for-profit spaceflight operations.

7 Various details and documents concerning the trustees' criminal conduct, as well as other FEI historical information, are at www.galambos-fei.com.

required students to sign a non-disclosure agreement. This has been misunderstood and even ridiculed, as when Kinsella says, "...his own theories bizarrely restrict the ability of his supporters to disseminate them."⁸ This is an example of the hazards of commenting on things when one is ignorant of the facts. To clear this up, let's look at the pertinent language of the non-disclosure agreement, which was titled "Proprietary Notice."

The tuition covers the disclosure of these ideas to the enrollee. The tuition does not cover the authorship, publication rights, or utilization of these ideas without credit and primary and secondary acknowledgment. [The terms "primary" and "secondary" have stipulated meanings, explained below.] The moral utilization of these ideas by others requires the prior consent of the innovators or their moral trustee. Of course, utilization is enthusiastically encouraged, subject to mutual contractual recognition of and agreement to such ordinary proprietary considerations as acknowledgment (for primary use) and royalties (for secondary use).

This is an example of the *conditional* ownership of knowledge, a concept endorsed by Murray Rothbard as part of the permanent protection of intellectual property, but rejected by Mr. Kinsella.⁹ Toward that end, Galambos taught that ideas should be disclosed contractually, as will be covered in greater detail later in this book. For now, we recognize that it is common practice to use non-disclosure agreements when knowledge

8 Footnote 31 in *Against Intellectual Property*. In addition, in his effort to discredit Galambos he routinely relates anti-Galambos anecdotes acquired by hearsay and without evidence of truth, or which he interprets in a misleading way. He has reportedly refused offers from Galambos graduates to lend him their copy of SIAA or of Jay Snelson's recorded lectures. All of this is perhaps not surprising, because if Galambos is right, Kinsella is wrong.

9 Murray N. Rothbard, *The Ethics of Liberty*, New York University Press paperback, 2002, p. 123.

is conveyed with restrictions. For example, this may be done to protect trade secrets, or to withhold the existence of a scientific discovery until it is confirmed or can be turned into a product. Given that Galambos' stated purpose was to bring about positive social change based on his ideas, it was clear that with the publication of his book his intent was that they be widely disseminated and used. Unfortunately, the trustees' refusal to publish, coupled with piecemeal, out-of-context disclosures by a few students, has led some people to gross misunderstandings of what Galambos taught and did.

Importantly, Galambos did not require book purchasers to sign a non-disclosure agreement. Therefore, I am free to discuss the content of V-50, V-50X, and V-201 without violating the non-disclosure agreement that I signed when taking the courses, keeping in mind that the pitfalls of out-of-context disclosures still exist. I respect Galambos' intellectual property, and such disclosures as I make will represent my best effort to do no harm. That said, by definition the disclosures are out of the context of Galambos' entire bundle of ideas. There is no substitute for hearing all of them, which together form a system that is both internally consistent and consistent with the laws of nature, including human nature. However, I have presented only those concepts that are both relevant to intellectual property and which can be understood on their own. I hope that I have done this well.

KEY CONCEPTS

GALAMBOS SAW THE American Revolution as a major turning point in the history of man—the realization that we don’t need a ruler, as expressed in Thomas Paine’s *Common Sense*, and in the Declaration of Independence. In 1776, “ruler” meant “king,” but the broader meaning is any ruler at all. However, Galambos (and others, both before and since) saw that the Constitution instituted a new kind of rulership, and set about trying to find ways to “fix” it, to include adding branches whose function would be to restrain the power of the state. (He also pointed out that the Constitution lacked a glossary, with the resulting lack of semantic precision leading to centuries of squabbles over the meaning of words and phrases.) However, within a few years, influenced by various authors, colleagues, and his own students, he concluded that all political systems—even democracy—relying as they do on coercion, are not only morally wrong but are functionally unable to achieve their noble goals. He abandoned political government and came up with a practical, non-political, non-utopian, alternative system.¹⁰

10 Abandoning political government would seem to be the biggest political step anyone can take, and many readers will not yet have taken it. However, Galambos’ ideas on intellectual property can be implemented even under a state. His ideas about government, and those of several other authors in the Bibliography, make *political* government obsolete, with *private* governance taking its place. Unfortunately, these ideas are not yet widely known because students are unlikely to hear them in a state-run school, or any school operated by statists, which means almost all schools. Furthermore, even when heard, it takes time for the importance of new ideas to be realized, and their subsequent implementation takes still more time.

Much of his system was revealed in Course V-50, which consisted of 16 sessions, each of approximately three hours, plus three question-and-answer sessions of similar length, called workshops. In the first session, students were told that the course was about freedom, and how to *build* it (not fight for it, march for it, vote for it, or pray for it). The first step was to define the word “freedom.”

Freedom: *The societal condition wherein every individual has full (100%) control of his property.*

At this point you might say, “That’s impossible,” and stop reading. Perhaps another of Galambos’ stipulated definitions will keep you engaged.

Impossible: *That which would violate a law of nature.*

By definition, laws of nature cannot be violated. Fortunately, *there is no known law of nature that prevents the attainment of freedom.* The fact that something is difficult does not mean that it is impossible. Galambos acknowledged that it will be difficult to build freedom, at least initially, but it is not impossible.¹¹

As a way of illustrating this, Galambos pointed out that manned, heavier-than-air flight was never impossible; we just didn’t know how to do it until the various problems were solved, principally by the Wright brothers. Happily, they paid no attention to critics such as Professor Simon Newcomb, then known as “America’s astronomer,” who deemed flight impossible while never citing a law of nature that would have made it so. Such disbelief persisted in some circles even after the Wrights had

¹¹ The definition of impossible is one of many useful things taught by Galambos, in that it brings clarity to a concept that is frequently misunderstood. With Galambos’ definition, we know that if a violation of a law of nature is observed, then the law wasn’t a law in the first place, and has been falsified. When someone says that something is impossible, we know to ask what law of nature makes it so. Often they will have no answer. When someone blithely says, “Anything’s possible,” we know that to be false.

flown, which reminds me of those who say that ideas can't be property, while ignoring the fact that people successfully treat them as such every day.

You should also know that freedom as Galambos defined it is a *goal*, to be approached asymptotically. We can get close, but because humans are imperfect we'll never quite reach it. Of course there is always a statistical possibility of that happening, meaning that at one particular instant every human will behave himself, but in general there will always be at least a few miscreants interfering with someone else's property. The society that Galambos outlined is based on principles that will tend to minimize such property interferences in the first place, and to rectify them quickly when they occur. His courses revealed those principles and showed how to create a society where, for all practical purposes, freedom would be a fact.

To complete the definition of freedom, Galambos had to define the word "property." He said that he would define it "differently from the way it has been defined before" and that "the entire theory of Volitional Science depends on it. 'Property' in Volitional Science is just as fundamental as 'mass' is in physics."¹²

Property: *A man's life and all non-procreative derivatives thereof.*

This definition excludes children and other people from being property. It also excludes land, because land is not a derivative of life. It is a natural resource. The *use* of land or of any other natural resource is property, but the resource itself is not. This distinction, said Galambos, "completely solves the Henry George problem, for those of you who are familiar with it."¹³

Galambos later changed "man" to "volitional being" so that the definition would apply to other volitional (choice-making) beings in the

¹² SIAA, p. 21.

¹³ Ibid, p. 24.

universe. In recent years I have begun using “person” and “people” interchangeably with “volitional being” and “beings,” and will do so here.

Property is of three types:

Primordial Property: Life

Primary Property: Thoughts, ideas, and actions

Secondary Property: Tangibles

Galambos’ view of property conforms to the principle of Occam’s razor which, loosely stated, is that simpler is usually better. The definition of property as *a person’s life and all its non-procreative derivatives* is simple, with all types of property being treated equally under the law. Kinsella, on the other hand, wants us to treat life and tangibles in one way, and ideas in another way, all the while saying that ideas aren’t property in the first place.

In a state-free society there would be no “lawmakers” and no legislated law. Instead, there would be what is known as “common law,” a set of principles by which behavior would be measured and disputes resolved. If common law was based on Galambos’ principles and definitions, it would acknowledge that you own your life, your thoughts, your ideas, your actions, and the tangible things that people usually mean when they talk about “property” today. You would have a right to full (100%) control over all three types of your property. When it came to choices regarding it, *the decision would always be yours and no one else’s*. You might give some or all of it away, or not pursue property violators, but that decision would be yours.

The ownership of primary property was, in Galambos’ view, essential to achieving freedom, from which lasting peace and prosperity would spring. Galambos held that freedom, once attained, would be *indestructible*. A similar belief was later voiced by Murray Rothbard in *For a New Liberty*, where he points out (I’m paraphrasing here) that if millions of people were dropped into a state-free place they would not give guns to a small subgroup and authorize them to use force to settle disputes,

and to extract as much money as they wanted to pay for their services. Such a proposal would be considered ridiculous, and without such gun-toting masters large scale coercion and loss of liberty could not occur.¹⁴ In addition to Mr. Rothbard, other modern authors such as Michael Huemer, Carl Watner, David Friedman, Hans-Hermann Hoppe, Morris and Linda Tannehill, Stefan Molyneux, and Lew Rockwell have shown how the institutions of a totally voluntary society would function without devolving into a new state.

14 Murray N. Rothbard, *For a New Liberty*, Ludwig von Mises Institute paperback, 2011, pp. 84-85.

GALAMBOS ON PATENTS, COPYRIGHTS, AND RIGHTS IN GENERAL

AT FIRST GLANCE, the spirit of U.S. patent and copyright law might seem to be generally consistent with Galambos' position on primary property, meaning that it should be protected. I have been fortunate to live my life in the USA, where people who create primary property can, and frequently do, achieve fame and/or fortune from it. Although our patent and copyright laws are provided and enforced by the state, they at least attempt to protect primary property, but for the wrong reason.¹⁵

Galambos sought to protect primary property, but he rejected patents and copyrights as the way to do it. In V-50 he said:

The patent is a coercive monopoly, with the state on the side of the one who has the patent and to hell with everybody else! And how about the copyright? That's nothing. The copyright doesn't

15 The reason, as stated in the Constitution, is to "promote the progress of science and the useful arts." This goes beyond the libertarian view that the only legitimate function of government is to protect life and property (to Galambos, simply "property"). In a state-free society this would be done privately on a for-profit basis. The Constitution need have gone no further than property protection. There was no need to promote anything, because humans pursuing their own interests (Adam Smith's "invisible hand") will supply the necessary promotion. Economists Michele Boldrin and David K. Levine offer a great deal of empirical evidence indicating that patents and copyrights have not only failed to achieve the goal set by the Constitution, they have usually done the opposite. Their book is *Against Intellectual Monopoly*, Cambridge University Press, 2008.

have any function whatsoever. Do you know what the copyright protects? How many of you know what the copyright protects? Phraseology. You can take a book and rewrite it in different words; steal the idea and there's nothing that the copyright does to protect you against that. You can reword an essay, a poem, a story; the copyright protects nothing except the phraseology. It's a farce.¹⁶

I suspect that Mr. Kinsella would agree with this. However, when people in his camp criticize innovators such as the Wright brothers for using the power of the state in the form of patent law to protect their ideas, I must point out that they were using the only mechanism available at the time. Over a period of years these men performed innovative science experiments and then built a machine that could fly under power, all with their own limited funds. They also had to learn how to fly it, repeatedly risking their lives in the process, while living in miserable conditions at Kitty Hawk. To protect their investment of time and money, and their prospects for financial success and public recognition, they used the system that was in place, just as anyone would have done, and they did so honestly. Could they have made better decisions about how to proceed? Probably, but that is said with the benefit of hindsight. Their biggest problem was that they did not have the advantage of living under a justice system based on the moral and rational principles set forth by Galambos.¹⁷

Patent and copyright laws did not arise, as one might assume, from the lobbying efforts of individual musicians, writers, inventors and other

16 SIAA, p. 632. The reader is encouraged to keep in mind the fact that this is a transcript of an unscripted lecture, which accounts for the informal phrasing and brevity of the argument.

17 Those who denigrate the Wrights for their patent activity and belittle their aeronautical achievements are directed to the two-volume, 1200 page, *The Papers of Orville and Wilbur Wright* for their firsthand account. In 1978, the 75th anniversary of the Wrights' first flight, Galambos commissioned the printing of a collector's edition of 201 serially-numbered copies.

creative people who wanted to protect their intellectual property for their personal benefit. Rather, they came from relatively more powerful and influential manufacturers and publishers seeking protection of their financial investment, and from the state as a way of censoring writers. Galambos' mechanism for protecting intellectual property benefits all morally-acting people and entities, but the first to applaud it should be the creators of that property.¹⁸

Galambos rejected all attempts to solve problems by political action, which is always coercive, and of which patent and copyright laws are a product. None of his insights, discoveries, hypotheses, or proposals calls for political action of any sort. He believed that all political entities inevitably collapse and that all such current entities are in various stages of collapse now. His advice was to ignore them as much as possible without incurring their wrath and going to jail or worse, and to set about building a free society in parallel, one that would survive the collapse. With the advent of the Internet, which allows communities to exist in cyberspace, and to which has been added the relatively new block chain technology, this is much easier to achieve, and on a larger scale, than it was in Galambos' day.

Although we don't yet have a state-free society, that was Galambos' goal and his frame of reference. As a result, I will not address any of Kinsella's complaints related to the wrongness of state-created patent and copyright laws, the use of violence or the threat thereof to enforce them, their frequent failure to achieve the stated goal, their cost to administer, or any of their other negative attributes and consequences. Galambos would agree with him. Therefore, I will focus only on Galambos' prescription for the treatment of intellectual property in a way that fits human nature.

I will also not address anything having to do with "natural" rights, "unalienable" rights, or rights "endowed by a creator," although readers

18 Some claim that the existence of substantial creative activity long before there were patent and copyright laws proves that intellectual property protection is not needed. However, they ignore the question of whether the innovators of old were treated justly. What do you think Shakespeare would say?

can apply those concepts to this issue as they see fit. To Galambos, the only rights are contractual. He said:

I don't agree that we are endowed with any rights at all. We are endowed with our lives and our brains and the natural resources to which we have access. We are endowed with no rights whatsoever. That's an error right there. We have to earn rights. Rights are man-made....¹⁹

To avoid a possible misunderstanding, saying that rights are manmade and contractual does not imply that every right made by man and incorporated into a contract is acceptable. For example, it is not acceptable for one man to have a right to own another, or to hire someone to steal on his behalf. The only rights that are valid are those that respect the property of others, and they are valid because they conform to human nature as explained below. When rights are granted or denied in a way that does not meet this test, there will be net negative consequences for some individuals and for society in general. That is why all political governments, and Kinsella's treatment of intellectual property, will ultimately fail.

19 Ibid, p. 97.

KINSELLA’S VIEWS

MY FIRST ENCOUNTER with *Against Intellectual Property* was in 2009, when a Google search for “Galambos” led me to a 2006 blog post by Mr. Kinsella on the Mises Institute website under the headline, “Galambos and Other Nuts.” Although one might disagree with Galambos or even prove him wrong, in my view he certainly wasn’t a “nut.” I was annoyed by Kinsella’s ad hominem attack which, like all such attacks, did nothing to enlighten us about anything other than the attacker. Reading further, I found that by his own admission he was almost totally ignorant of what Galambos had taught, a condition which appears to persist to this day. I added a comment, comparing Kinsella’s remarks to those of a critic who attacks a movie without having seen it.

I was surprised to learn that Kinsella—or anyone—had written a paper opposing the view that intellectual property can and should be owned. It hadn’t occurred to me that anyone other than a communist could possibly be against owning it like any other property. As I read Kinsella’s work I found what I thought were fundamental errors and didn’t finish it. (I did so years later, beginning with an authorized free PDF download which, when printed, was ideal for making notes. I have since purchased both the print and Kindle versions.)

I also came across something from Jeffrey Tucker in his review of Boldrin and Levine's *Against Intellectual Monopoly*.²⁰ He said that after six years of thinking about Kinsella's related paper, *Against Intellectual Property*, he had finally come to embrace Kinsella's view.²¹ Tucker had concluded that "intellectual property is a form of exploitation and expropriation that is gravely dangerous for civilization itself." To me, it is that belief that is gravely dangerous. Kinsella and Tucker are popular figures and have some influence in the libertarian community. They are right about a number of things but, as I see it, their influence is in the wrong direction on this matter. As a result I felt compelled to write this in opposition.

20 The book argues, as did Galambos, against the monopolies created by patent and copyright. Were he alive I'm sure he would value the empirical evidence it contains. It is evidence that such monopolies don't spur innovation, but tend to suppress it. Further, it shows that innovators should not blindly attempt to control their primary property, because not all outcomes are good for them. However, to Galambos, the moral right to that control is always theirs. Boldrin and Levine do not recognize that right. Rather, they choose to define intellectual property as a creation of, and synonymous with, patent and copyright, leading them to call on page 264 for the "complete elimination" of this "cancer." By contrast, and as an example of the need for semantic precision, what Galambos called primary property—thoughts, ideas, and actions—is not a creation of the state, but a product of every human. It is not a cancer, nor can it be eliminated. Galambos didn't often use the term "intellectual property," and I've only used it here as a synonym for primary property so as to make things easier for readers who are new to the subject and not yet used to that term. When patent and copyright laws disappear, primary property will remain.

21 Why did it take Tucker six years to agree with Kinsella? I believe that it is probably because, as shown herein, it is counter instinctual to think of ideas as anything other than property. So, for someone who generates intellectual property for a living, as Mr. Tucker does, to agree that it is wrong to want to control the products of his mind must have been particularly difficult. My hope for a change of opinion is highest with Mr. Tucker. His review is at: <https://mises.org/library/book-changes-everything>.

Tucker answered a question posed on the Liberty.me website with the following:

It's hard to square IP [intellectual property] with private ownership. We might be talking about different things. If you have an idea and write software, record a song, or whatever, there is nothing wrong at all with taking steps to retain your market monopoly on that product. People do this every day. The one and only problem is state grants of monopoly. I guess I'm doomed to be frustrated that the ultimate article/treatise on this subject is not written.

I have good news for Mr. Tucker. Although Galambos' teachings may not be the "ultimate" article/treatise, they get us over the hump. Galambos shows how to protect intellectual property without any state intervention, indeed, without any state. If "the one and only problem is state grants of monopoly" then Mr. Tucker's problem is solved. But that still leaves Mr. Kinsella, who says that ideas aren't property, and that attempting to treat them as such requires unethical control of other people's property. This is his view even in the absence of a state and its patent and copyright laws. Since Mr. Tucker seems to embrace Kinsella's analysis wholeheartedly, it would seem that he agrees with these positions. Perhaps what he reads here will change that.

Many of the leading libertarian writers, while offering powerful defenses of life and of physical property, are silent when it comes to intellectual property, as can be seen by looking at the indices of their books under "property," or "intellectual property," or "ideas." You won't find much. The opposite is true for Lysander Spooner's *The Law of Intellectual Property*, which argues magnificently for intellectual property and the perpetual ownership thereof. (See the Bibliography.)

For most authors, it's as though such property doesn't exist, a surprising thing in view of the fact that their work product is ideas. Several of them paint an elaborate picture of how a libertarian society would

function, with everything provided by private means, but never mention how intellectual property would be treated. Others go so far as to say that it's acceptable to protect it by means of secrecy or by putting it under contract. But, absent secrecy and contract, any intellectual property that "gets loose" or is stolen is fair game for all who come to possess it. Mr. Kinsella even says that it's *unethical* to try to stop unauthorized usage. When I encounter these works I think, "If only you knew what Galambos had to say, and understood it."

Kinsella states his views with an air of certainty, as though he has *proven* something or is stating the obvious. He tells us that property *must* be defined in a certain way and *cannot* be defined in any other way, and he tells us what *cannot* be owned. In effect, he tells us that treating ideas as property—and owning them—is *impossible*. With this he seems to be trying to establish himself as the authority on intellectual property, making his opinion "settled philosophy" and ending the discussion. But as we've seen, the only things that are impossible are those that would violate natural law. Like Professor Newcomb, Kinsella cites no such law or laws to support his position.

PROPERTY AND SCARCITY

AS I BEGAN to read Kinsella's essay, I was struck by his statements that only scarce things can be property, and that ideas are not naturally scarce. Therefore, he says, there can be no conflict over ideas, so ideas cannot be property. And, because ideas are "ideal objects," it is impossible to own an idea. Although at first glance many might agree, on close inspection we can see that none of this is true.

To begin, we must acknowledge that all definitions and all rules of society are manmade. This means that they can be anything we want them to be. We create definitions and rules, and then we observe how they work in practice. It is certainly *possible* to define and treat ideas as property, to say that they can be owned, and to set forth what rights attach to that ownership. *We know this because people already do it in everyday life.* The only problem is that they don't yet use Galambos' tools.

But as we all know, mankind has at times created some horrifically bad rules, and some very poor definitions. So we must ask: would the consequences of adopting the Galambosian rules and definitions be good, or would they be bad? As this book will show, good consequences will come from the universal treatment of ideas as property. The bad consequences predicted by Mr. Kinsella simply will not come to pass. In fact, it is his ideas that are problematic.

Kinsella begins the section of his essay called "Property and Scarcity" by saying, "Let us take a step back and look afresh at property rights." He then goes on to make the conventional argument (aided by a number of quoted sources) that it is *scarcity*, and the possibility of *conflict* over

the use of scarce things, that gives rise to property rights as a means of avoiding or resolving that conflict. To this he adds that such rights must be *visible*. They must also be *just*, with the *first-occupier homesteading rule* providing the standard of justice.

Galambos also took a new look at property rights. One result was his definition of property, first published in print (as opposed to orally, which came earlier) in 1963: *Property is a man's life and all non-procreative derivatives thereof*. As he pointed out, this is a new definition.

Also note that there is no mention of scarcity *per se* in Galambos' definition. Rather, a person's life and all non-procreative derivatives of his life are his property, and he owns them *by definition*. Galambos' goal was to create a society in which every individual has full control of his property. As we've seen, he defined the societal condition in which such control existed as "freedom." We can create that society without ever separately pondering the concept of scarcity, if only because we assume with good reason that the derivatives of the lives of different people are themselves different. They are unique, which makes them scarce. The scarcity issue takes care of itself.

EMPIRICAL EVIDENCE SHOWS A NEED FOR PROPERTY RULES EVEN IN INFINITE ABUNDANCE

CARL WATNER DEALS with scarcity in yet another way. In his essay, “On the Ownership of Ideas,” (see Bibliography) he addresses Kinsella’s claim that “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’.”

Watner replies, “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.”

The recently-published results of experiments support Watner’s reasoned position, and are also consistent with Galambos’ definitions of property and theft. It was shown that young children, when participating in three different experiments, each designed to evaluate whether children view like objects as interchangeable as Kinsella implies they should, preferred the equivalent of “their lawnmower” even when an

identical object was available. Despite the objective abundance, “their” property was still perceived as scarce. This points to their behavior being inherent, otherwise known as “human nature.” See the full details in “Identical but not interchangeable: Preschoolers view owned objects as non-fungible,” in the Bibliography.

IDEAS ARE A SCARCE RESOURCE

KINSELLA SAYS THAT ideas aren't scarce, but are so plentiful that they should be free, as air is free. Of course if you use the word "idea" in a generic manner, ideas are indeed plentiful. That's because every human constantly generates ideas. And, as Galambos pointed out, ideas cannot be consumed. The ideas that have been formed since the dawn of man now exist in numbers beyond counting. So, in a quantitative sense, ideas, like snowflakes, are not scarce. But also like snowflakes, no two are exactly alike. They are unique and, seen individually, scarce. But what matters even more is that ideas vary widely when considering *quality* and *importance*.

Kinsella speaks of ideas as though they were a homogenous group, which they are not. Specifically, he does not distinguish between ideas that work to achieve their purpose, and ideas that fail to do so; in other words, good ideas and bad ideas. He also does not distinguish between important ideas and unimportant ideas. Here Galambos provides us with another useful definition.

***Importance:** The measure of the total amount of property affected.*

Ideas that are both good *and* important are very scarce. This is what I call *qualitative* scarcity. The qualitative scarcity of ideas refers to a scale that begins with the enormous number of existing ideas, which vary widely in utility and importance. Of these, a small number are both important and good. Albert Einstein's discovery, expressed as $E = mc^2$ and

first disclosed in 1905, is an important, good idea, among those at the top of the scale. Ideas like this are incredibly scarce. There may be only a few outstanding examples per generation, and we have only reached even that small production since Newton.

Interestingly, the usefulness and commercial potential of Einstein's discovery that mass and energy are equivalent was not quickly or generally recognized. Even Einstein himself didn't think that there was a practical application. Galambos observed that this failure to recognize the importance of a discovery is the typical case because we just cannot see all of the implications and possibilities. In 1934 Einstein said, "There is not the slightest indication that nuclear energy will ever be obtainable. That would mean that the atom would have to be shattered at will."²² Therefore it is probable that in 1905, and for decades thereafter, he would have licensed use of the idea at a very low price in comparison to its ultimate economic value. This is just one of several natural conditions that are constraints on the price at which an innovator can successfully sell the use of his primary property. More of those constraints will be discussed below.

The greatest scarcity possible is something that doesn't exist, in other words, something that is *infinitely* scarce. An idea that has not yet been thought of is infinitely scarce. We are today surrounded by the bounty stemming from ideas that were once infinitely scarce.

An idea that has been thought of, but has not been disclosed by the innovator, exists in a quantity of one. The idea is scarce to everyone who doesn't have access to it. According to Kinsella, scarcity is a necessary characteristic of property. Scarcity is necessary, he says, because it is only scarcity that makes conflict possible. Since it is clear that ideas *can* be scarce, by Kinsella's standard it follows that they qualify as property. The scarcity can be reduced by intentional or accidental disclosure by the owner, by independent innovation, or by theft. In the case of the latter,

22 As quoted in "Atom Energy Hope is Spiked By Einstein / Efforts at Loosing Vast Force is Called Fruitless," *Pittsburgh Post-Gazette* (29 December 1934) https://en.wikiquote.org/wiki/Albert_Einstein

the owner will see himself as being in conflict with the thief and with everyone who is using his idea illicitly.

At the bottom of the scale there are unimportant ideas, both good and bad. These comprise the vast majority of ideas. However, nothing about them disqualifies them from being property. They are simply property of little value, no value, or even negative value. Therefore there is little or no market demand for them and there is little incentive to have conflict. But things change. An idea that is both good and important today may be neither tomorrow, and have no market value. On the other hand, an idea that seems useless today might be valuable next week. We just can't know. The surest way to avoid future conflict is to treat all ideas as someone's property from the start and proceed accordingly.

Galambos proposed a system that reduces the likelihood of conflict even more. All ideas, even the best and most important ones, although always being the property of their innovator, would ultimately be available to everyone on reasonable terms, to include *giving the buyer the power to set the price*, thereby effectively removing any rational reason for conflict. This is described in detail in the Appendix, but is mentioned now so as to begin to put to rest the idea that treating ideas as property will result in giving the owners of those ideas (and perhaps their heirs) a stranglehold on civilization's progress. Such a conclusion could only be reached by someone who doesn't know what Galambos proposed, has let his imagination run wild, and jumped to a pessimistic conclusion. Perhaps it's the result of seeing too many movies where a villain seeks world domination by controlling something crucial to human survival.

In addition to erroneously denying that there is any *natural* scarcity of ideas, which we have seen that there is, Kinsella says that if you decide to treat the supposedly non-scarce ideas as property anyway, you will have created *artificial* scarcity. By this he means scarcity generated by monopoly-creating patent and copyright laws.

Kinsella and Galambos agree that the state should be replaced by a voluntary system, thus putting an end to legislated laws such as patent

and copyright. However, Kinsella also wants to end any effort to protect primary property other than by secrecy or contract.²³ He believes that unless you are bound by a contract you have no obligation to the innovator, and you cannot legitimately be prevented from using his primary property, no matter how it came into your possession. Therefore, Kinsella says, if the innovator's protection mechanisms break down and his ideas are stolen and wind up in your hands, it is ethical for you to do with them as you please, and unethical for their owner to try to stop you.

Anyone who has watched a store being looted during a riot should have been troubled by the spectacle. I'm sure that Mr. Kinsella would be. But it seems that watching intellectual property being looted by downloading from the Internet or distributed by other means without the permission of the innovator would not bother him at all. His position on this issue removes the stigma, if not from the act of looting, then from the gleeful possession and use of the plunder by the looters. It seems that for him, when it comes to ideas there is no such crime as possession of stolen property, or of dealing in it. It is almost unexplainable that a patent attorney could think that way. In his desire to end patents and copyrights he would throw the baby out with the bath water.

Galambos, on the other hand, while also rejecting those mechanisms, would protect intellectual property just as much as tangible

23 Kinsella claims that ideas are not ownable, so you don't own your ideas (or songs, etc.). But if you aren't the owner of your ideas, then what right do you have to make a contract concerning them? Using Kinsella's proposed rules it is difficult to see how such a contract would have any force. Why should anyone accept the restrictions of the Creative Commons license under which his book was published if they neither believe that he's the owner of the contents nor agreed to those restrictions by contract? (I abide by those restrictions because I have the Galambosian view that Kinsella owns his ideas. I ask readers of his book and mine to accept those same restrictions, and will think of them as thieves if they don't.) But whether Kinsella owns his ideas or not, he is certainly acting *as though* he owns his ideas and can exercise moral control over them. To make his de facto position compatible with Galambos would only require accepting that he has that right of control until he voluntarily relinquishes it. That is, after all, the right he has to his life and his tangible property.

property. It is ethical to prevent a car thief from using a stolen car, and an idea thief can ethically be barred from using a stolen idea.

And we must ask Mr. Kinsella: why would anyone object to letting a person who comes up with an idea protect that property just as much as he would protect his tangible property? Rather than object, why shouldn't the rest of us support him? One possibility is that Kinsella doesn't seem to place much value on the achievement we call innovation. His use of the phrases "*merely* innovating," "*merely* authoring an original expression of ideas," and "*merely* thinking of and recording some original *pattern* of information" [the emphasis on *merely* is mine] suggests that he ranks innovation fairly low in the hierarchy of human achievement. Galambos had the opposite view, beginning with his definition of innovation.

***Innovation:** Learning how nature operates is called discovery, harnessing it is called invention; and the two together are called innovation.*

The word "innovation" appears about 100 times in SIAA, always in a positive context. To Galambos, all progress begins with innovation, and innovators occupy the figurative top slot. Protecting the work of innovators (their primary property), as well as their physical well-being, is the starting point for achieving freedom.

INTELLECTUAL PROPERTY CAN BE JUSTLY OWNED AND HAVE VISIBLE BORDERS

KINSELLA'S REMAINING PROPERTY criteria, which are that its ownership must be *just* and its borders must be *visible*, are also satisfied. First, Galambos' definition of property gives us a just way of doing things because it follows the first-occupier homesteading rule. Galambos, like Rothbard, acknowledged that more than one person can independently have the same idea. His definition of property includes that possibility. *Your* ideas, as derivatives of your life, are *your* property. It doesn't matter how many other people had the same idea, or when—the idea belongs to each of you. Although Galambos did not cite the homesteading rule by name as the means of establishing ownership, in effect he was saying that *an idea can be homesteaded by more than one person*. By thinking it, you have homesteaded it.

Second, the innovator registers the idea, thereby documenting his homesteading claim and creating the needed visible borders. This establishes his ownership versus the non-ownership of those who haven't independently had the idea. Even if unregistered, in almost all cases we know which ideas originated with us, and which didn't, the exceptions stemming from the imperfections of human memory or from mental illness or incapacity. Our knowledge of the facts, our sense of morality, and the practice of self-government, create a *de facto* border around ideas that aren't ours. Even if not documented, that border is visible in our mind's eye.

Despite today's primitive conditions (as they will be seen some day), conflicts about the origin of ideas are not especially common, and in a society that has been sensitized to the reality and importance of primary property, our attitudes, policies, and procedures will further reduce those conflicts. However, there will still be disputes over legitimate claims of independency. Other conflicts might come from those who would dishonestly say that they had independently created the same innovation. These situations are addressed below in "Resolving Conflicts over Primary Property."

IT IS ETHICAL TO LIMIT OTHERS' USE OF THEIR PROPERTY IN DEFENSE OF YOURS

NOW LET'S LOOK at what Kinsella asserts would be the proper limits to the amount of control that innovators should have over their primary property. To illustrate, he would approve of Innovator Brown making a contract with User Green wherein Green agrees to Brown's price and conditions of use. However, if without Brown's permission Green then discloses the idea to Black, Black is not bound by any contract and is free to do as he pleases with the idea. Any attempt by Innovator Brown to stop Black from using the idea without Brown's permission would be, in the opinion of Mr. Kinsella, exercising *unethical control* over Black's own property. (I assume that to Mr. Kinsella the word "unethical" is either synonymous with or functionally equivalent to "immoral." Galambos did not use the words "ethical" and "unethical," but rather "moral" and "immoral." I will use the words interchangeably herein.)

Kinsella equates *rightful control* with *ownership*, but Galambos made a clear distinction between control and ownership. In showing you what that is, you'll need to be familiar with two other fundamental concepts, *coercion* and *morality*, as defined by Galambos.

Coercion: *The attempted, intentional, interference with property.*

Coercion can be by force or by fraud.

Morality: *The absence of coercion.*

Moral action: *Any action that does not involve coercion.*

Control: *The ability to make volitional decisions concerning the disposition of property.*

Ownership: *The total, permanent, and moral control of property until voluntarily transferred by the owner, where possible.*

In the definition of ownership, the phrase “where possible” refers to the fact that it is not possible to sell the ownership of an idea, only its use, in the same way that it is not possible for an author to sell his authorship, only the right to read or reprint his work. This is because innovation and authorship are historical facts, which cannot be changed. The result is that the ownership of primary property is in perpetuity—*automatically*.

Permanent moral control is ownership. Temporary control is of two kinds—rental, which is moral (“rightful” to Kinsella), and theft, which is immoral. My control of your property, whether moral or immoral, does not confer ownership.

Mr. Kinsella says that “all libertarians” favor property rights in tangible things and rights in one’s own body. These things can be owned and protected, seemingly without limit. However, in his opinion intellectual property cannot be owned. Its innovator and others can still attempt to protect it, but not to the degree that they can protect their lives and tangible property.

If I understand Mr. Kinsella, I believe that both of us would agree with the following principles: the ethical standard of society is to not intentionally interfere with someone else’s property in the form of their body or their tangibles, and to make a good faith effort not to do so accidentally. Non-interference (non-aggression) is the acceptable default behavior. No one is required to ask others not to interfere with them or their possessions, but they may take the extra step of identifying their property and explicitly asking that it not be interfered with, e.g., “Please don’t touch me,” or “Please don’t sit in my chair.” It is expected that their wishes will be honored, and they need not give a reason for them. Their right to control their life and tangible possessions without interference is absolute.

To continue with our presumed agreement, any interference with life and tangible property, whether intentional or not, is subject to restitution and, possibly, punishment. However, if despite this standard someone still attempts to interfere with another person's life or tangible property, it is moral to stop that interference, even if it means interfering with the aggressor's use of his own property. As examples, an aggressor could be barred from entering a structure by a locked door, physically restrained by human defenders, sued in a proprietary court, or even banished from the community.

But when it comes to intellectual property Mr. Kinsella would not agree with those same principles. Because (according to him) ideas are not property and cannot be owned, there is no ethical prohibition against interfering with someone's intellectual property. If someone else's intellectual property comes into one's possession without the permission of its owner, there are no restrictions on its use and the possessor has no moral or legal obligation to the innovator.

Using Kinsella's rules, an innovator may ask that his intellectual property not be used, e.g., "Please don't use my manufacturing process without licensing it," but there is no ethical requirement to comply. Even if he adds, "Your use will harm me," Kinsella says it is moral for the unauthorized user to ignore him. To Kinsella, the only ethical means of controlling intellectual property is to put it under contract or keep it secret. However, if the contract is violated or the secrecy broken, the innovator has no recourse to those who use it without permission.

Due to human nature people will always have difficulty accepting Kinsella's moral standards, by which it would be ethical for them to control the property of others in defense of their primordial and secondary property, but unethical to do so in defense of their primary property. However, if people are convinced by sincerely-delivered but faulty logic or coerced by fraud to believe that ideas aren't property they might go along with such schemes. This is especially likely when the result is receiving someone else's intellectual property, something they value but aren't willing to pay for, "free."

There are far more people in the position of receiving good ideas than there are people producing them, so leaders in a political government will find broad support for this sort of property interference, which will be sold as virtuous, using such labels as “fairness,” and “social justice.” People may become convinced that innovators have an obligation to share their property, an easy stand to take when it is others who are doing the sharing.²⁴

24 Galambos told a joke to illustrate the inherent problem with all schemes of involuntary property redistribution, which ultimately fail because our natural tendency is to resist having our property taken without our genuine consent. I recall that it went like this.

During the time of Stalin’s collectivization of farms, a Communist Party boss from Moscow tours the countryside and stops to question a farmer.

“Comrade,” he says, “I want to find out how my comrades who work the land are responding to our glorious new system of sharing everything. Tell me, if you had a chicken, would you give it to the collective?”

With a smile, the farmer answers, “Why certainly I would, comrade Commissar, and gladly.”

“Very good,” says the official. “And what if you had a pig?”

“Again, of course I would deliver it immediately for the glory of the workers’ revolution.”

“Excellent! Your answers will make Comrade Stalin very happy. I have just one more question. If you had a cow, would you share it as well?”

The farmer scowls and replies indignantly, “Oh no, absolutely not!”

Stunned, the Commissar asks, “Why?”

The farmer answers, “Because I *have* a cow.”

It is clear that we may value our ideas just as much as our cows, and be just as reluctant to “share” them with the collective as free goods.

Why shouldn't our goal be to have a society where the norm is to leave other people's property alone unless we have permission to use it? Haven't we come to understand and accept that "no means no?" Why should we accept a society where you have to go to great lengths to protect the products of your mind, and where you can't stop unauthorized use if your efforts are defeated? Mr. Kinsella is certainly free to argue for a community where those are the rules, but I wouldn't want to live there. To him, protecting ideas is just an "entrepreneurial problem." It is indeed that, but rather than accepting it as a fundamental condition, Galambos showed us how to solve it.

STEALING INTELLECTUAL PROPERTY ENSLAVES THE OWNER

COMMUNITIES CAN BE formed with members creating and agreeing to follow whatever common laws they desire. Although Galambos did not use the term “common law” to describe the societal rules that would be derived from the principles he taught, that seems to be his meaning. I, for one, want to live where common law recognizes ideas as property and protects them just as it protects life and tangibles, with the following definitions in effect.

***Stealing:** Taking property without the consent of the owner.*

Stealing is a form of coercion and is therefore immoral. However, all of us want to acquire property with as little effort as possible, and stealing is one way to do it. But in most cultures there are powerful social taboos against stealing, and violating them leads to possible punishment and the requirement to make restitution.

***Slavery:** The control of property without the permission of the owner.*

Slavery is also a form of coercion, and immoral. The Western world now accepts that controlling someone else’s primordial property without their permission, or what might be called “traditional” slavery, is wrong. With his definition of slavery, Galambos expanded the concept

to include all three forms of property. To control someone's property—in any form—without permission is to enslave the owner. If your ideas have been stolen, you have been enslaved.

PROTECTING IDEAS IS NOT HARMFUL TO SOCIETY

ANOTHER OF KINSELLA’S justifications for using ideas without permission is that restricting the use of an idea is creating “artificial scarcity,” which is supposedly bad for society. Apparently it would be fine for the owner of an automobile to create artificial scarcity by denying someone else the use of it, but wrong to do the same thing with his *design* for that same automobile. However, artificial scarcity is just another name for something fundamental to a market economy, and near and dear to the heart of every entrepreneur: offering a product desired by consumers where he is the only source of supply, in other words, a natural monopoly. As a professed anarcho-capitalist, Mr. Kinsella must support this sort of free market monopoly. But he condones interfering with it when the product is intellectual property.

There is nothing wrong with a monopoly that arises naturally in a non-coercive, market economy where consumers are not forced to buy the product. There is only a problem when sellers act in a non-market manner and use coercion as, for example, the state does when it forces citizens to pay for its services whether they want them or not. As Hans-Hermann Hoppe points out, “Not only is a process of monopolization highly unlikely to occur, empirically as well as theoretically, but even if it did, from the point of view of consumers it would be harmless.”²⁵

The view that non-coercive monopolies are benign was also held by Galambos. To contemporary entrepreneur Peter Thiel, a monopoly

25 Hans-Hermann Hoppe, *A Theory of Socialism and Capitalism*, Ludwig von Mises Institute, 2010, p. 218.

means “the kind of company that’s so good at what it does that no other firm can offer a close substitute.”²⁶ Whether the product is tangible or, in the case of an idea, intangible, morally-acting consumers will make their subjective comparison of price and value, and if they decide that the price is higher than they wish to pay for the perceived value they will do something else with their money and will leave the seller’s property alone. In a market economy, ordinary consumers have enough sophistication (if it even needs to be called that) to understand that every seller creates some degree of artificial scarcity. That is, the seller doesn’t offer an unlimited supply at a price of zero. As every consumer knows, even though they might grumble about a price, this is how sellers attempt to be rewarded for bringing the product to market in the first place.

But when it comes to ideas, this scenario must seem wrong to Mr. Kinsella. According to him, it is ethical to negate and ignore the market outcome and evade payment or any other terms of use by simply waiting for an opportunity to use ideas without permission, as one might wait for the back door of an armored truck to fly open, sending \$20 bills flying through the air to be scooped up by eager passersby. Those who have been persuaded by him are quite comfortable with waiting for someone to get careless with the information, or violate a contract, or simply steal it. Their advice might be, “Just be patient—you’ll be able to use the intellectual property for free. You won’t have to pay a dime and the innovator won’t be able to do anything about it.”

26 Peter Thiel, *Zero to One*, Crown Business, 2014, p. 24.

STEALING INTELLECTUAL PROPERTY CAUSES HARM

IMAGINE A CATTLE ranch. In a corral are some prize specimens. Someone leaves the gate open, either accidentally or intentionally, and the animals wander into your front yard. Can you morally slaughter and eat them, or sell them and keep the proceeds? Of course not, because they aren't your property. Now imagine a tech company. Someone "leaves the gate open" and proprietary information appears in your email inbox. Can you morally use it, or sell it to others? Of course not, because it isn't your property. Morally-acting finders will recognize that the found property isn't theirs and will not use it. Kinsella clearly disagrees.

If you hang on to the rancher's cow you have deprived him of it. Everyone will agree that he has been harmed. But Kinsella argues that if you take someone's idea he still has it, is not deprived of it, and can use it right along with you. Therefore, he claims, *no harm has been done*. There can't possibly be a conflict! Apparently this is supposed to be obvious. It's a very appealing scenario: intellectual property, used without permission or payment, and no harm done. Something for nothing! People receiving this deceptive pitch may not examine the reasoning too closely—if they examine it at all.

To end the confusion, let's look at it from the innovator's perspective. It is *his* property we're talking about, isn't it? For him, any harm is

a cost. To again quote Hoppe, "...cost is a subjective category and can never be objectively measured by any outside observer."²⁷

This quote from Hoppe is from his discussion of public goods and freeriding, but the principle is the same. Taking someone's intellectual property and making it available to everyone free of charge is no different than when the state takes money from citizens to pay for a public good. Public goods are, of course, not "free," but paid for through transfer payments from frequently unwilling people. Hoppe goes on, "Hence, to say that additional free riders could be admitted at no cost [harm] is totally inadmissible. In fact, if the subjective costs of admitting more consumers at no charge were indeed zero, the private owner-producer of the good in question would do so."²⁸ And there we have our answer: *if the owner of primary property thought that there was no harm in making that property available at no charge, that's what he would do.* And that is in fact what usually happens!

Almost all of the intellectual property that has ever been generated, most of it trivial, has been voluntarily given away without charge, or would be if asked, and with no conditions attached. But when that hasn't happened it has been because the owner has judged there to be a cost that he was not willing to absorb. It is not for anyone else to tell him that there is no harm in taking his property without his consent. How could it ever be considered ethical to override the wishes of a property owner? Isn't the only ethical action to leave him and his property alone?

Let's look at the often-used example of downloading music without permission and without paying for it, which Mr. Kinsella dismisses as just an entrepreneurial problem. Defenders of the practice say, "The musicians are still rich, aren't they? Sure, they can't make money by selling albums anymore, but they just have to adapt to the *new business model*, which is to make their money by touring. They haven't been harmed and the rest of us have the music." But outsiders are in no position to

27 Ibid. Note 188.

28 Ibid.

decide that no harm has been done, because all harm (cost) is subjective. Only the owner of property—any kind of property—has the right to determine what he does with it.²⁹

The reality is that the “new business model” is a rationalization for the change musicians have had to make in an attempt to compensate for the activities of thieves from whom they have little protection. You might as well say that a neighborhood that was overrun by burglars, with the residents virtually defenseless, would simply be a “new residential model.”

It is often easy to take ideas without permission, and this is perceived by some as a negative when it comes to the feasibility or even the wisdom of trying to protect them. They may say, “In the digital age it is so easy to copy things like music, books, movies, data, and other forms of primary property that we should stop trying to prevent it. That sort of defense is obsolete, and is a lost cause.” However, being able to easily steal and maintain control of something doesn’t make the theft moral, any more than the ease of capturing and maintaining control of African natives made slavery moral.

I’m struck by the fact that the advocates of taking and using primary property without permission do not recommend that the thieves pay what they think is “fair,” or make even a token payment, to the person

29 Boldrin and Levine admit that without copyright [or the protection of primary property as proposed by Galambos] J. K Rowling, author of the Harry Potter books, would earn “quite a bit less money...But it seems likely, given her previous occupation as a part-time French teacher that it would still give her adequate incentive to produce her great works of literature.” In other words, she would have no reason to complain. One has to wonder what Ms. Rowling, now reportedly a billionaire, would have to say about reducing her income to what someone else had decided was “adequate.” And one also has to wonder about Boldrin and Levine, as parents, teaching their children that it’s morally acceptable to deny Ms. Rowling control of her “great works” so that they can purchase them at a lower price. Elsewhere in their book they ask, “...how much profit is ‘enough’ profit?” Although I don’t know their political views, this rhetorical question is often asked by leftist statist when they propose taxes or other penalties on successful people. *Against Intellectual Monopoly*, p. 26 and p. 70.

whose primary property has been expropriated. No, it's just straight-out theft—a payment of zero for something that they value. Why is that? Why doesn't the downloader of “free” music, music from which a number of people are trying to earn a living, music that none of them want downloaded without payment, and music that gives the downloader pleasure, say, “I love this song! I'm going to pay for it. I'd feel bad about myself if I didn't.” Why doesn't the seller of counterfeit merchandise or the invention thief do the same? And why does anyone buy their products? Of course the reason for some is that they are simply criminals and know that they are criminals. But others, those who we might otherwise think of as “good people,” have been given superficial, pseudo-intellectual rationalizations for their behavior, and have accepted them because it's what they wanted to hear.

It's the second group that bothers me most. That's because I fear that many good people, having not been taught from an early age that ideas are property, and acting on the natural human desire to get things with as little effort as possible (ideally for nothing), are easy prey for the fallacy that not only is there is no harm in primary property theft, but that protecting it (creating *artificial scarcity*) is a social evil because it blocks the progress of civilization.³⁰

The society that libertarians say they want—one with a minimal state, or no state—is one in which the activities of the individual are restricted only by what is known as the non-aggression principle. I assume that Mr. Kinsella embraces this principle. But what does “non-aggression” mean? It means *not interfering with other people's property*. However, he and some of the other supposed supporters of liberty believe it is perfectly acceptable, and even a good thing, for someone to use someone else's primary property without permission, even when the owner has explicitly asked them not to, and without any financial payment or credit for the idea. They may claim to be for private property rights, but when it comes to ideas—primary property—they have no problem letting them become

30 For more on this see the Bibliography for “Why Do Good People Steal Intellectual Property?”

part of the commons without the owner's permission. With that mindset, the obvious next step is turning a blind eye to the taking of tangible property. The phrases, "He'll never miss it" or "He can afford it" are the functional equivalent of saying, "Using an idea without permission does no harm." *After all, if we can redistribute (steal) ideas, the source of all tangible property, then why not redistribute (steal) that property too?*

In Frederic Bastiat's deservedly famous essay, "That Which is Seen and That Which is Not Seen,"³¹ we learn about the broken window fallacy. We learn to reject the claim that an obviously bad thing, a broken window, is a good thing because of what is seen: the work it provides to the glazier who replaces it. We learn that what is not seen is that if the window had not been broken, its owner could have used his money to buy a new pair of shoes, giving work to the shoemaker, and leaving him with both his original window *and* a new pair of shoes.

A similar fallacy involves another obviously bad thing, the theft of primary property. Kinsella seems to call it a good thing because of what is seen: ideas that are made available "free" to everyone, supposedly leading to a cascade of even more innovation for the benefit of "society." Of course we all want such benefits. But what is not seen is the negative effect on the innovator of taking his property without permission, without payment, and probably without either credit or an expression of gratitude. It would defy reason, to say nothing of empirical evidence, to claim that the effect is zero, but that's what "no harm" means. Yes, we want the benefits of innovation, but not if it means harming the innovator to get them.

In a restitution-based justice system that adequately protects primary property, when there is a conflict that the parties cannot resolve themselves, litigation might ensue. This would be up to the person claiming ownership of the primary property or his insurer. Sometimes an interference with property might be more trouble to pursue than it was worth. This happens frequently in the case of patents and copyrights, and will remain an option when they are gone. But if the matter is pursued, the

31 Available at www.bastiat.org

opponents would turn to a proprietary court where an arbitrator would review the evidence and decide whether the actual or estimated harm warranted restitution, and in what amount.

The criterion for thievery already exists: Anyone who, rather than paying what the seller of property asks, simply takes it and pays zero, is a thief. Once this is part of accepted morality and common law with respect to primary property, most people will be reluctant to accept primary thieves into their community or to engage in economic transactions with them. No force would be required, because to be shut out of society would be very unpleasant, serving as a powerful incentive to make restitution and gain re-admittance.

It is beyond puzzling to see how some of those who endorse the sanctity of private property can at the same time fail to condemn the thief when he takes someone's intellectual property without so much as a "Please," let alone a "Thank you," and then add insult to injury by calling this "sharing" a good thing, saying no harm was done. Isn't that what political states do with the tangible property of their citizens?

And think about that action on a more personal level. When a person says, "Please don't kill me" and you do anyway, what are you? When a person says, "Please don't steal my car," and you do anyway, what are you? When an inventor says, "Please don't manufacture my invention without a license," or a singer says, "Please don't download my song without paying for it," and you do anyway, what are you?

At what point, if any, would it be ethical for you to ignore the expressed wishes of a property owner regarding his property? Is it ethical to do so if in your opinion it would do no harm? Is it ethical if a majority agrees with you, perhaps even by secret ballot?

As Hoppe points out, "Private property means the right to exclude."³² In a libertarian society that right is absolute. And if I exclude you, I have no obligation to justify my action. Even in the decidedly non-libertarian Western world today, we have at least progressed to the point where if a woman says "no" to a man's sexual advances, her right to do so is abso-

32 From the Introduction to Rothbard's *The Ethics of Liberty*, p. xxxix.

lute and she doesn't have to give a reason. Would anyone claim that it was ethical for the man to proceed as long as in his opinion he will do her no harm? What if he drugs her so that she has no recollection of the event? What if she never learns that it happened? Would his actions be ethical, or would they constitute the crime of rape? The obvious answers to these questions bear on intellectual property theft.

If I had an actress friend who was paid as a percentage of ticket sales, would I tell her that instead of buying a ticket I had watched an unauthorized copy of her movie on the Internet and expect her not to care? Would I watch it, but not tell her? Would it matter that she was my friend? What if I didn't know her? Would it then be ethical to watch the movie without paying? What if I was sure that she would never find out? What if most people approved of it? Would it then be ethical for me to do it? Would it be unethical of her to try to stop the unauthorized uploading and downloading? The ethical answers to these questions should also be obvious.

FINALLY, JUSTICE FOR ALL

GALAMBOS GAVE US some additional definitions which, along with those of property and coercion, would be part of what I'll call Galambosian Common Law.

Crime: Any successful act of coercion.

As previously defined, coercion is any attempted, intentional interference with property. Property interference can also occur unintentionally, such as by accident or through incompetence. To deal with all forms of interference, Galambos proposed a justice system that would be privately administered and based on restitution rather than punishment. Refusal to make restitution would itself be a crime. Although most people today aren't aware of it, this is generally how the common law justice system worked, and worked well, before the state gradually took over hundreds of years ago as a means of generating income for the rulers.³³

Injustice: A crime to which there is no recourse to the victim.

Justice: The elimination of injustice.

One of Galambos' goals was to reduce injustice to near zero via a proprietary justice system. Its major, profit-seeking participants would be arbitrators, investigators, security forces, and insurance companies. Various authors (see the Bibliography) have written brilliantly on how a state-free

³³ See Bruce L. Benson, *The Enterprise of Law*, in the Bibliography.

voluntary society would provide every needed product and service, including a justice system. Reading their analyses should firmly establish that a totally private, voluntary society would be both practical and successful. However, that is not a claim of perfection, but of relative success.

As Michael Huemer says, “The question is not whether anarchy is perfect, but whether it is better than government.”³⁴ I believe that Galambos would agree, although he would use his own definitions. What Huemer calls “government,” Galambos calls “state,” and he defines the words in a way that makes government the moral alternative to the immoral state.

State: *Any organized coercion which has general accreditation and respectability by the people; a monopoly of crime.*

Government: *Any person or organization which offers services or products for sale for the purpose of protecting property, to which the owners of property can voluntarily subscribe.*

Huemer defines “anarchy” not as a condition of *disorder*, but as a condition of privately-created *order*. In other words, as the opposite of a government that is coercive rather than voluntary, and which has a monopoly in the services rendered, or what Galambos calls a state. I believe that Huemer and Galambos are in complete accord here. However, Galambos pointed out that the Greek root of “anarchy” means “without leadership.” In that sense, Galambos said, he was not an anarchist. Instead, Galambos proposed that leadership be ideological, not political, and it was clear that he wanted to be a major part of that leadership.

In thinking about a voluntary, state-free society, and what should or shouldn’t be protected by common law, we must take into account the things we call incentives and disincentives. Any attempt to make ideas “free” by allowing them to be used without permission or payment will be perceived as a disincentive by innovators, entrepreneurs,

34 “Michael Huemer Responds to Critics, Part 1”

<http://bleedingheartlibertarians.com/2013/08/michael-huemer-responds-to-critics-part1/>

and investors. In a society that accepts this practice, there will indeed be “free” ideas. Once again, that is what will be seen. But what will not be seen are the innovations that will never happen or, if they do, will not be introduced into that society’s marketplace. Innovators, entrepreneurs, and investors will have an incentive to move to a community where ideas are protected.

But, asks Kinsella, what is the net effect on society of protecting ideas? Is it good or bad? He answers that it’s “not clear” and “debatable.” In other words, he doesn’t know. But just look at the immense cost of doing so, he says. Shouldn’t the proponents of intellectual property have to justify this cost? However, the cost he’s referring to is not a free market cost, but that of the legislatively-created, coercively-enforced monopoly system under the state, with taxpayers coercively forced to foot part of the bill, and patent holders spending fortunes on both moral and immoral patent litigation. Galambos visualized a state-free world where private, profit-seeking companies would compete to provide the protection their customers wanted at the lowest possible cost. This is how all forms of property would be protected, and there is no reason why the cost of protecting intellectual property would be anything other than reasonable.

Kinsella also says that “it has not been shown that IP leads to net gains in wealth [of society].” But he’s ignoring his own premise: “Wealth maximization is not the goal of law; rather the goal is justice—giving each man his due.” Galambos would agree, and so would I, adding that protecting an individual’s property in all its forms satisfies that requirement. It follows that protecting individuals would have a positive net effect on society.

In addition, Kinsella says that if in the course of providing that protection you are going to “advocate the use of force against others’ property you should satisfy a burden of proof.” He’s referring to what he calls the “unethical violation of some individuals’ rights to use their own property as they see fit.” This is what political operatives call “spin.” What he’s referring to are the various actions that one might take in

defense of primary property. He wants us to “prove” that defending our property is ethical.

Further, he assumes that *aggressive* force is required. However, to employ principles that have already been stated, blocking someone’s fist as it races toward my nose, putting a deadbolt on my door, and making my ideas available only with my permission, are non-aggressive, ethical measures to defend my property. If my defensive measures fail and I am harmed, my actions to seek restitution from the aggressor via insurance or by directly obtaining a judgment in a private court are also ethical. So too would be my refusal to transact with the aggressor in the future, and the very real possibility that others would follow suit. To call any of these actions unethical because they might violate the aggressor’s right to use his property would void the moral concept of self-defense.

To achieve justice, all forms of property must be protected. Justice is not about society, but about the individual. Societal well-being will follow. As I heard John Stossel say, “Free people, left alone, will make themselves prosperous.” Being “left alone” means that your property in all its forms is not interfered with. Such was largely the case in roughly the first 125 years of the United States, producing the greatest increase in the well-being of the average citizen in the history of man.

THE FOUNDATION OF THE SCIENCE OF VOLITION

NOW I'LL INTRODUCE what I believe was Galambos' most important idea, the First Postulate of Volition. (There is a Second Postulate, but a discussion of it would go beyond the scope of this book.) All sciences have postulates. They are sometimes called axioms, or first principles. Galambos preferred "postulate" so I'll continue his usage. A postulate is an original premise of a science. It's where you start and what you build upon. Galambos' definitions regarding volition follow from this postulate.

The First Postulate of Volition: All volitional beings live to pursue happiness.

Despite my belief that this was Galambos' most important idea, it's a safe bet that you didn't feel the earth move under your feet as you read it. It is likely that because the phrase "pursuit of happiness" appears in the Declaration of Independence your brain took a shortcut and assumed that the postulate said the same thing. But that's not the case. Rather, as will soon be seen, it is a profound insight into human nature.³⁵

³⁵ Some might see a similarity between this and Ludwig von Mises' statement that human action is "the striving for happiness." This appears in his book, *Human Action*, Henry Regenery Company, 1966, p. 14. Galambos sold that book in the FEI bookstore, and had Mises as a guest lecturer. However, Galambos' formulation is clearer, and is by far the stronger statement about how things *are*, i.e., this is a law of nature.

For the postulate to be complete, it was necessary for Galambos to define “happiness,” and doing that required him to define “good” and “bad.”

***Good:** The subjective valuation of a preference.*

***Bad:** The subjective valuation of a dispreference.*

***Happiness:** The totality of all the ‘goods’ that a person has subjectively experienced throughout his lifetime up to the point he’s making the evaluation, less all the ‘bads’ that he has experienced.*

On first hearing, some people will dispute the proposition that *everyone* is seeking happiness. For example, what about the person who is intent on committing suicide? With a little thought we realize that for him death is seen as the way to end his continuing and possibly increasing state of unhappiness. In his mind death would be subjectively preferable, a “good” thing.

Galambos was a great admirer of the Declaration of Independence and its significance in the march toward freedom, and he brought it up frequently. His insight was that although life and liberty are rights that can be secured contractually, *the pursuit of happiness is not a right, but human nature*. It is observable that all people pursue happiness during every waking moment. We can’t help it, and no one can stop us from doing it. I’m doing it now, and so are you. It’s what we do. This, said Galambos, is a law of nature. I believe that this is his most important idea because it drives everything else, underlying his definitions and proposed rules regarding individuals and society. All of them conform to and accommodate this fundamental truth.

To repeat and reinforce the concept, it is a law of nature, specifically human nature, that every person is pursuing happiness all the time. Therefore, any proposed social organization or law has to take that into account. Since it is impossible to violate a law of nature, attempts to do so will always fail, and there will be a net loss from the effort (although, per Bastiat, what might be *seen* are things like “free”

education). It follows that if we expect to have a society of freedom the rules must not ignore or attempt to violate this law just as we must not ignore or attempt to violate the law of gravity. It is a requirement that we acknowledge this law and work with it, as the Wright brothers did with the law of gravity when they invented the airplane. To Galambos, the first step was to make property—in all its forms—the central component of society.

I know that some people, perhaps most, would say, “Freedom as Galambos defined it might be possible, but it is a bad idea. Giving people 100% control of their property would mean that we couldn’t require them to pay for things that are good for them, as we can now by means of taxes. For example, who will build the roads?” Larken Rose, who is perpetually engaged in discussions of this sort, says that he often responds with another question: “How would *you* do it?” Quite often the skeptic will come up with a free market solution such as, “Well, I guess I would get some investors...” He says that they seem to know what to do, but “it has just never occurred to them that they are already in charge of themselves, their futures, and the future of the world.”³⁶

Many readers of this book will already be well-versed in how a market economy can deliver all of the property protection products and services now supposedly supplied by the state, so I won’t deal with that here. But what about property in ideas? As I understand Mr. Kinsella’s position, no matter how society is organized, whether under a state or without one, ideas should not be protected like other forms of property because to do so would be harmful to civilization. Not only would Galambos dispute that, he would claim that the protection of primary property is absolutely necessary. That’s because of the First Corollary to the First Postulate.

36 Larken Rose, *The Most Dangerous Superstition*, published by the author, 2011, p. 171

A corollary is a restatement of a postulate. Galambos restated the First Postulate, which is, once again, “*all volitional beings live to pursue happiness.*” By restatement, we have this corollary.

The First Corollary to the First Postulate: All volitional beings live to acquire property.

We are all seeking to acquire property all of the time. This is a law of nature and is true without exception. (If you think there are exceptions, please wait for the discussions of philanthropy and altruism below.) If it is human nature to acquire property as Galambos says, then attempts to take property from us without our permission will be resisted and resented, which accounts for the poor results and outright failure of laws that do this.

Galambos’ definition of property to include ideas fits human nature. Just as we naturally say “*my life*” and “*my automobile*,” we say “*my idea*.” As with other natural phenomena, we don’t know *why* this is so, we just know that it is the way we behave. I believe that this behavior is seen in humans everywhere and that its universality explains the very existence of the term, “intellectual *property*.”

The anecdotal evidence in support of the above claim about human nature and ideas is overwhelming. It is essentially self-evident that we treat our ideas as our property. Everyone reading this will have had many ideas in his lifetime. Who hasn’t said, “That was *my idea*?” We have all encountered the expression, “I *gave* him that idea.” We’ve also heard, “He *stole* that idea from me.” We know what these expressions mean: our ideas are our *property*; our *property* was transferred as a gift, or our *property* was stolen.

But anecdotal evidence, no matter how compelling it might seem, can do no more than suggest what the truth might be. However, although Galambos taught that we must have scientific evidence to corroborate our contentions, to the best of my knowledge he never offered any in support of his hypothesis. It appears that it would have been impossible for him to have pointed to such evidence, because the research that

would have provided it had not yet been done. It remained for others to use the scientific method to verify what Galambos called a theory, but which in his own time remained an uncorroborated hypothesis.

In a way, Galambos was like Albert Einstein, who was supremely confident of the correctness of the Theory of General Relativity, but ultimately dependent on the observational corroboration provided by Arthur Eddington's experiment. We must remember that Einstein could have been wrong, and that Eddington and others could have failed to corroborate, or even falsified, his hypothesis. Galambos' hypothesis meets Karl Popper's requirement of falsifiability, but Kinsella has not falsified it. Rather, as you have already seen, published research corroborates Galambos, and you are about to be introduced to research that goes to the heart of the issue.

EMPIRICAL EVIDENCE SUPPORTS TREATING IDEAS AS PROPERTY

RECOMMENDATIONS AND RULES regarding property and property rights have traditionally been made by those in the domains of philosophy, religion, economics, politics, and law. Most of these fields do not involve conducting experiments following scientific method and subject to peer review. To be sure, experiments are occasionally carried out, but most research in the above disciplines involves data gathering and statistical analysis.

Galambos, for all his talk about scientific method and the need for corroboration of hypotheses, did not provide that for his own hypotheses, at least in a rigorous fashion. Even while I was his student, and now with hindsight and more experience, this is one of several things that I think he could have done better, and which would have made him better known, and possibly more influential, today.

The assertion that it is human nature to treat ideas as property is something that can be tested. Galambos could have provided the results of research had they existed when he was lecturing. But, as I now know, they did not, as he would have discovered. Alternatively, he could have sponsored such research and experimental tests, but he did not.

Around the time that I published the first edition of this book I decided to look for relevant research that might have been conducted by psychologists. In the field called experimental psychology, researchers can and do conduct experiments with humans. For example, some readers will be familiar with the Milgram Experiment and the Stanford

Prison Experiment. Through such experiments we may learn how humans behave in certain circumstances. Ideally we might learn how they *always* behave, but there is enough variability among humans, as volitional beings, to not expect such a result. However, through careful study we can learn how humans will *tend* to behave. When that can be established we then have no rational choice but to take it into account when proposing standards for societal organization.

There is one thing about which we are certain: all people *will* pursue happiness, with happiness being the subjective sum of perceived good things less perceived bad things. Putting this another way, all people live to acquire property, with property being a person's life and all non-procreative derivatives thereof, consisting of thoughts, ideas, actions, and tangible goods. Galambos proposed that society be built around this concept of property.

There is almost universal agreement that life and tangible things are property and that people should have rights to them. Societies that have experimented with not recognizing rights in either or both of them have failed, and disastrously so. Galambos argued that not recognizing property in ideas leads to the same result. The weak or non-existent protection of intellectual property, as well as the attempt to protect that property by using the coercive tools of the state, has contributed to mankind's sad historical record of war, poverty, and oppression. To Galambos, a world in which people have full control of their property in all its forms—his definition of freedom—would be a world of peace, prosperity, and liberty. This would not be an impossible Utopia, but it would be as close to it as we imperfect humans can get.

I contacted a prominent professor of psychology, asking whether he knew of any research into how humans naturally view property, and he was kind enough to refer me to several studies. My hope was that they would corroborate Galambos. Those papers led me to other professors, not just psychologists, but sociologists and lawyers, and to other papers. Several of the papers are listed in the Bibliography, and I believe that any serious student of how humans see property will want to read them.

In looking at the results of experiments designed to reveal human nature, the question that must always be asked is: does the observed behavior represent natural behavior or learned behavior? Is it nature or nurture? A common way to deal with this issue is to study the behavior of children at ages old enough to deal with the concepts, but young enough to reduce the possibility that their behavior is the result of nurture. Using this approach, researchers have studied children's attitudes toward property. It is here that we find corroboration of Galambos.

Anyone who has children or who has simply watched them knows that they have a strong sense of property rights in tangible things. Numerous studies show that children understand the concept of property and of who owns it at very early ages, perhaps even before language has been learned. Children's natural understanding of tangible property ownership and, equally important, of non-ownership, is well-established.

Some of the researchers who conducted studies of tangible property ownership suggested that children also have an understanding of intellectual property ownership, but conducted no experiments specifically designed to address that issue. For a while I was concerned that perhaps none had been done and, if not, two possible reasons occurred to me.

One reason would seem to be the apparent difficulty of investigating "ideas" when dealing with children. Does a child know what an "idea" is? It's relatively easy to deal with property in tangible things like teddy bears and toy cars, but can children's attitudes toward property in intangibles be studied at an age young enough to have not yet had them shaped by parents or others?

A second possible reason might be that perhaps few researchers are interested in the answer, or see the answer as so obvious that it needs no study. And yet, the answer will forever be important to the rules of every society, so we'd better not assume anything, and make sure that we've got it right. Galambos maintained that the very survival of our species depended upon it. *If he was right in saying that humans naturally think of their ideas as their property, then he was also right in saying that society must treat them so or suffer the negative consequences.* In his view the historical

failure to do so has led to most of society's problems, to include the phenomenon referred to as "decline and fall."

I've long believed that well-designed studies would show that children see their ideas as their property. After all, it seemed to me, what would be more likely to be thought of as your property than something that was born between your ears and still resides there? However, it remained to be seen whether any such studies had been done. Fortunately they had, and the results were as I expected.

In what may come to be seen as a historic series of experiments, researchers Alex Shaw, Vivian Li and Kristina R. Olson obtained results that are reflected in the title of their 2012 paper, "Children Apply Principles of Physical Ownership to Ideas." According to the Abstract, "Adults apply ownership not only to objects but also to ideas. But do people come to apply principles of ownership to ideas because of being taught about intellectual property and copyrights?" In an attempt to answer that question they sought to "investigate whether children apply rules from physical property ownership to ideas."

The researchers found that children as young as six "determine ownership of both objects and ideas based on who first establishes possession of the object or idea." In addition, "children use another principle of object ownership, control of permission—an ability to restrict others' access to the entity in question—to determine idea ownership." The Abstract concludes, "Taken together, these results suggest that, like adults, children as young as 6 years old apply rules from ownership not only to objects but to ideas as well." (See the Bibliography to download the full paper at no charge.)

So there we have it: empirical evidence that it is human nature to see ideas as property that can be owned, and to naturally apply the first occupier homesteading rule and the right to exclude. Is this study "definitive?" I won't go that far. But, combined with other studies and the apparent absence of evidence to the contrary, Galambos' conjecture seems solidly supported. (In truth, would anyone imagine that another study would show that children *don't* view ideas as property, or that they

outgrow it?) If the results of this research by Shaw, Li, and Olson are replicated by similar experiments, as I'm quite confident they would be, then the issue of whether to treat ideas as property will be as close to settled as anything in science can be, and there will be no other rational way to treat them.

It seems clear that, whether one likes it or not, people naturally treat ideas as property. But for the sake of argument let's say that Kinsella is right when he proclaims that ideas *can't be* property, so that even if it's natural for us to think of them that way, it is simply one of the many defects of our species. Even so, I would argue, if this is the way we humans *are*, the best thing to do would be to "humor us" and adopt moral standards and laws that treat ideas *as though* they are property. Not to do so would cause conflicts such as we see today when ideas don't have good legal protection. And since there is no harm in respecting ideas as property, as is amply demonstrated elsewhere in this book, there is no reason not to do so.

In addition, virtually every society and major religion endorses the principle of what Westerners call the Golden Rule, "Do unto others as you would have them do unto you."³⁷ The behavior that fits this pronouncement is to defer to an innovator's wishes regarding his ideas, just as you would want him to defer to yours. If you aren't willing to agree to his terms and conditions, then *leave his property alone*. It's as easy as that. Surely Mr. Kinsella would not have us violate this fundamental moral precept.

³⁷ Galambos favored what he called "a better interpretation which is the double negative form: 'Do not do unto others as you would not have them do unto you.' That is not subject to meddlesome interpretation." SIAA, p. 92. My own formulation is, "Do unto others as you would have them do unto you, but get their permission first." (If you don't obtain it, you risk interfering with their property in a way that harms them. You can, of course, take that risk.)

ARE WE REALLY TRYING TO ACQUIRE PROPERTY ALL THE TIME?

AS ANTICIPATED ABOVE, someone might say, “Wait a minute, I disagree that everyone is always trying to acquire property. That doesn’t apply to me. I create ideas for the good of mankind, and I give them to anyone who wants them, free of charge. I spend countless hours writing articles and blogging, and I give my work away, all for the good of my fellow man. And what about all the scientists who are working on curing cancer and the like, and who gladly share their research, and the billionaire philanthropists who donate huge sums to worthy causes, and the poor people who still manage to give something to charity? Aren’t such acts the *opposite* of acquiring property? Isn’t giving your property away a selfless act of altruism? Doesn’t that prove that your corollary is false?” The answer is “No.”

To explain, we begin with Galambos’ definitions of profit and plunder.

***Profit:** An increase in happiness acquired by moral means.*

***Plunder:** An increase in happiness acquired by immoral means; property is converted to plunder when coercively transferred.*

We live in a world where profit and plunder are almost always thought of in terms of money or other tangible things. These are *secondary* property, and profits in the form of secondary property are *secondary* profits. People who are “against profit” are thinking of *secondary* profit. It is from this view that the catchy slogan, “people before profits,” was born. However, that phrase loses all meaning when we come to understand the other form of profit, *primary* profit. That concept shows us the truth of the corollary.

PRIMARY PROFIT

GALAMBOS SAW THAT with *primary* property, which is intangible, we can have *primary* profit, which is also intangible.³⁸ This, in my view, is a brilliant insight, and has great utility in understanding human behavior. Primary profit consists of things like the satisfaction one feels when reaching a goal, the increase in self-esteem from having done something moral in the face of temptation to do otherwise, or from helping someone, or the improvement of one's professional or personal reputation. This book is being written mostly for primary profit. Practicing the Golden Rule usually produces primary profit. Some people are motivated almost entirely by the prospect of earning a primary profit.

Framing these human emotions as a form of profit to correspond with monetary profit makes it possible to compare the two and to consider the fact that we make exchanges between them. When I pay to download a movie even though a pirated version is available “free,” I feel good about myself—a primary profit. I could watch the movie without paying and preserve my secondary property (money) but I choose to exchange that money for a primary profit measured in self-esteem. I also know that the “free” movie is not really free; the price I would pay to accept stolen property would be a reduction in my self-esteem—a primary loss. What's more, the stolen property in my possession would not be my property, because theft transfers control but not ownership. I would be

³⁸ It may be the same thing that Ludwig von Mises called “psychic profit.” *Human Action*, p. 289.

holding plunder and, if found out, would suffer a primary loss in the form of damage to my reputation.

The concept of primary profit explains what we call altruism. Galambos pointed out that there are no “selfless” acts, and no such thing as altruism in that sense. He said that Ayn Rand had made this point so well in her book, *The Fountainhead*, that “it would be a waste of time to put that into this course other than to refer to it.”³⁹ All “altruistic” acts represent an attempt to earn a primary profit and increase one’s primary property. Seen in this way, a donation of money to a charity, for example, is an exchange of secondary property for primary property in expectation of receiving a primary profit. The so-called “not-for-profit” organizations actually are *for* profit, but of the primary kind. Primary profit is a beautiful and useful concept.

All of us are pursuing happiness, and seeking to acquire property, all of the time. Both happiness and property come in different forms, and individuals ultimately pursue the kinds of property and profit they prefer. Galambos had an opinion about this that was shared by Mises. He believed that scientists and other producers of primary property are drawn to socialism out of the feeling that it is unfair that they, the ones with all the brains, and the ones doing really important things, make little money, while entrepreneurs engaged in mundane pursuits make millions. To Galambos and Mises this was envy, and Galambos referred his students to Mises’ book, *The Anticapitalistic Mentality*, for more on the subject.

The point is that the relatively low-paid intellectual and the high-paid business executive are pursuing the same thing: *profit*. The difference is in the type of profit they’ve chosen to pursue, and in how their results are measured. If profits and wealth are measured only in terms of secondary property, as they typically are today, the businessman seems rich and the intellectual poor. But when the measurement is made in primary property the opposite may be true.

39 SIAA, p. 276.

When a society teaches children the concepts of primary property, primary profit, and primary wealth, its later adults will have that as part of their world view. One of the positive effects will be a reduction or even elimination of the envy that can be triggered by disparities in secondary property. Rather than despising the very idea of profit as they sometimes do today, and perhaps favoring schemes to forcibly redistribute secondary property, the producers of primary property will embrace profit in its primary form. Having pursued happiness in their own way, they will see that they have accumulated primary wealth. For many of them, perhaps most, the satisfaction of doing this will be enough. Others will explore ways to use their primary wealth to earn secondary profits.

PRIMARY CAPITAL

WHEN PEOPLE SEEK and earn primary profits from their investment of time and money in the process of formal education, or simply earn them from the experiences of their life, they accumulate primary wealth. This wealth can be used as *primary capital*. That capital can be invested to produce additional primary profits and, as noted, it can be used in the pursuit of secondary profits.

The production of secondary profits generally requires an investment of both primary and secondary capital. A person or entity that has accumulated primary capital and wishes to earn a secondary profit by, for example, licensing its use or directly manufacturing a product, will often need to attract secondary capital from licensees or investors. The surest way to attract such capital is to demonstrate that there is a large secondary profit potential and little or no risk of immediate competition. But if the primary capital becomes available to everyone without the permission of its owner via illicit “sharing” and becomes a “free good” subject to unrestricted use with no requirement to pay for it, its potential to produce secondary profits for the original primary and secondary investors will clearly be damaged or destroyed. It is ludicrous to contend that using someone’s primary property without their permission does them no harm because “they still have the idea.” The harm suffered by the primary and secondary investors can be both subjective and objective, and will be the basis for restitution.

OUR CHANGING PROPERTY PREFERENCES

BECAUSE OF GALAMBOS we now know that every human action is an action in the pursuit of happiness. We are all doing it, all the time. We are all seeking to acquire property in its various forms, all the time. We are all trying to come out “ahead” in everything we do, whether it is a primary gain or a secondary one. This can now be considered a *fact*.

What has long been understood (as the concept of diminishing marginal utility) is that as our secondary property needs are met and our secondary wealth increases, further increases tend to motivate us less. When this happens, the appeal of primary property and primary profit becomes relatively greater. We may engage in musical or artistic activities, or pursue learning simply for the fun of it. Some people will seek primary profit by engaging in activities that increase self-esteem. As discussed above, this explains the philanthropic activities of not just the wealthy, but of everyone.

Note: those persons receiving property via philanthropy are not getting it “free.” Property can never be acquired without cost, which can be tangible, intangible, or both. Once again, there is no such thing as a free lunch.

THE PROBLEMS OF PROPERTY OWNERSHIP

ALTHOUGH THERE ARE certain specific difficulties with the ownership of ideas, *all* property has problems associated with its ownership. It is impossible to have property without risk of loss. Let's look at some property ownership problems, category by category.

Primordial Property. Life has the problem that it must be *kept* alive. It's quite an effort to sustain a human life. We perish rather easily in temperatures that are outside a very narrow range, and we have to be sheltered and clothed in most conditions. There are also the problems of ensuring a supply of potable water, enough calories to avoid starvation, and the correct array of nutrients required for health. There are illnesses and injury, and there are animals and other humans who might attack us. We must work to maintain the property we have in our lives. But finally, despite our best efforts, we die and our primordial property falls to zero.

Secondary Property. Our tangible possessions present us with innumerable challenges. Every possession is subject to the possibility of theft or of destruction by accident, natural disaster or malicious action. Most things can be damaged in normal use, and eventually everything wears out or becomes useless through obsolescence. The more secondary property one amasses, the more effort must be put into taking care of it. And if you acquire a lot of material things there are those who would criticize you for your success, and attack you for having "too much," even though you acquired it by moral means.

Despite these problems and more, we are still eager to claim our lives and our tangible possessions as our private property. However, some societies have experimented with not treating them so. Those societies have failed, some spectacularly, with great loss of life and much suffering. Nevertheless, there remains a contingent that hasn't learned this lesson and still argues, if not for the outright abolition of private secondary property, then at least for its substantial redistribution by coercive means. It is well to remember that coercion is not limited to force, but can be by fraud, which may be used to "sell" various redistributionist social and economic policies by attempting to justify them as coming from the moral high ground. Every effort in this direction is an attempt to violate a law of nature and will fail, producing on net balance outcomes that are the opposite of those intended. Sometimes this is obvious, and sometimes we must look to Bastiat's identification of "that which is not seen."

Primary Property. In principle, this is the easiest property to care for. There is no required maintenance, and there are no physical problems. Ideas may lose utility over time, but they don't wear out in the conventional sense, and they can't be consumed. Ideas can be lost, but not destroyed. If lost, someone will inevitably discover them again, so the loss can be seen as a temporary setback at most. This is especially true in what we call modern civilization where the search for useful ideas is relentless.

Compared to other property, primary property seems to have few problems. However, there are three potentially significant ones, but they can be dealt with easily.

The first potential problem of owning primary property is what Galambos called "promiscuous disclosure." This means *non-contractual* disclosure. Promiscuous disclosure is analogous to giving control of one of your tangible possessions to someone without an explicit agreement as to its allowed use and their responsibility for taking care of it, or even proof that it's yours so that you can reclaim it without incident.

Galambos cautioned students against making promiscuous disclosures of ideas from his courses. But sometimes, spurred by their desire to get a friend, relative, or business associate to attend, they answered questions such as, "What's it about?" or "Tell me what you are getting out of it," by disclosing a tidbit from the course that they found particularly interesting. But, by being out of context, this usually made it harder to get the person to attend. It is important to note that despite the fact that Galambos had his students' written agreement not to disclose, he didn't use that as a legal club. He only mentioned the practical aspect of disclosure being counterproductive as a marketing tool.

Innovators themselves are capable of making the blunder of promiscuous disclosure. One can envision a drunken inventor blabbing his secrets in a bar, with a sober competitor listening intently. Although most promiscuous disclosures happen less colorfully than that, when an innovator makes a non-contractual disclosure he has begun to lose control of his primary property. In the worst case, he totally loses control and the idea becomes generally known and without an apparent owner.

From a moral perspective, unless coercion was used to pry the idea loose from its owner, anyone receiving an idea through promiscuous disclosure is free to use it. However the recipient might see it as taking advantage of another person's error and choose not to use it, following the Golden Rule out of consideration for his own self-esteem and reputation, as when one returns a lost wallet to its owner. Realistically, almost all ideas are of such little importance and value that they can be disclosed without any precautions. But for those ideas believed by their innovator to have present or future commercial value, care should be taken to document their development and register them in a way that establishes independency and creates the basis for borders.

The second potential problem has to do with those borders, which, as Mr. Kinsella correctly observes, must be *visible*. As a patent attorney, Mr. Kinsella has experience in the creation of the very documentation that makes them so. The patent process, fatally flawed though it is, at least attempts to make borders visible by articulating the details of an

invention and identifying the person who claims ownership. The same thing would be done in the state-free world envisioned by Galambos, except that unlike patents, the details would be disclosed only with the innovator's permission, such as in the course of selling licenses or proving independency. Mr. Kinsella would find plenty of opportunities to profit from his skill. In Course V-201, whose title is "The Nature and Protection of Primary Property," Galambos went into substantial detail about how innovators would register their ideas with companies that provided registration services on a proprietary basis. In addition, printed notices or markings could make it clear that someone had claimed ownership. Ideas that are well-documented have good borders.

The third potential problem that comes with the ownership of primary property also applies to secondary property. It stems from what is known in physics as the principle of least action, but as applied to volition. This was alluded to above as the desire to pursue happiness with the least effort possible, and in the ideal (but impossible) case getting something for nothing. With humans, the least action may be to use coercion, in the form of force or fraud, to obtain control of tangible property or the use of an idea. Knowing that humans have this underlying motivation, the solution is to make it *unprofitable* to act on it. The restitution-based justice mechanism envisioned by Galambos would make immoral behavior such as stealing far less profitable than moral behavior. He posited that crime of all kinds would be so unprofitable that the number of incidences would approach zero.

RESOLVING CONFLICTS OVER PRIMARY PROPERTY

THE RESOLUTION OF all disputes involving all forms of property begins with asking the question, “Whose property is it?” (Jay Snelson dubbed this question “the universal can opener.”) In general, we will be able to provide the answer via various items of evidence. The property owner’s wishes will then rule. But property borders for ideas may not always be clear, especially for less important and/or poorly documented ideas. If the question of their ownership is unanswered and the idea is minor, there is unlikely to be any conflict.

However, when the idea is a significant one, the border will usually be very clear. That is because from the outset the innovator himself knows that it is *his* idea and if the idea is a “big” one, he is unlikely to forget that he thought of it. If he cares about establishing his ownership he will register and document it. If it is not his idea, then by definition it

is someone else's, and to claim otherwise or to use it without permission would make him a primary property thief.⁴⁰

Moral behavior requires that we determine whose property it is and the terms of use. This will not be hard because databases will contain this information. Nor will it be a frequent task. The duty of establishing ownership and securing the use of ideas will be that of product manufacturers and service providers, not consumers, with the cost built into the selling price.

When there are competing claims about the ownership of an idea and the conflict cannot be resolved by the parties, if the idea is important enough to pursue a resolution then the insurance and arbitration

40 Murray Rothbard believed in intellectual property (IP), as can be seen in his opus, *Man, Economy, and State, The Scholar's Edition*, Ludwig von Mises Institute, 2004, pp. 745-750, under the heading, "Patents and Copyrights." However, problems begin when, on p. 11, he introduces the concept that one of the factors of production is the "technological idea" (clearly IP) that is turned into part of a "plan" (clearly IP) that becomes a "recipe" (clearly IP). He goes on to say that once the recipe is learned it doesn't have to be learned again, and becomes "an *unlimited* factor of production" that "never wears out or needs to be economized by human action." True enough: ideas don't wear out and can be used by an unlimited number of people. But then, perhaps without realizing it, he makes a giant leap. He says, "[The recipe] becomes a general condition of human welfare in the same way as air." However, he neglects to tell us by what means the recipe goes from being someone's property to being a free good. How does the idea make the transition from being protected by contract, which was Rothbard's concept of protection, to becoming free like air? I don't think that Rothbard knew, and quite possibly never focused on it. But surely he wouldn't have approved of theft as a legitimate mechanism. (Rothbard's mentor Mises addressed the issue in the same way in *Human Action*, p. 661. If either of them answered the question elsewhere—or if anyone else has—I would appreciate being told.) Fortunately, Galambos gave us a workable answer, much of which is described here.

mechanisms can be brought to bear. Insurers and arbitrators and their agents will do detective work and employ various tests for independency of discovery or creation. So-called “reverse engineering” would not be an independent creation, but theft.⁴¹

In Galambos’ view, each bona fide independent innovator has the same ownership rights to the innovation as the first innovator. This position was shared by Lysander Spooner⁴² and Murray Rothbard.⁴³ Without a state, no monopoly rights are awarded as they are today with patents. There is no special status accorded to the person who first had the idea other than what we might call “bragging rights.” Although a competitive advantage would probably accrue to whoever was first with a marketable innovation, that advantage would not be protected against competition from a later independent innovator. (Galambos remarked lightheartedly that as a high school student he was quite excited to have discovered a mathematical principle, only to learn that it already had a name—the binomial theorem—and had been discovered by Isaac Newton more than 250 years earlier.)

The fact that all independent innovators have equal standing eliminates one of Kinsella’s biggest concerns. He fears the consequences of an innovator owning an idea in perpetuity and controlling the use and further development of that idea, to be succeeded by generations of heirs who had nothing to do with the innovation. Quoting Kinsella, “No one

41 In Course V-201 Galambos suggested nine tests of independency to determine the legitimacy of claims. And now in today’s Internet world anyone can create a secure historical record of his work by keeping automatic backups via such services as Carbonite. A real innovator will be able to document the lineage of his innovation, whereas a copycat will not. Backups could be designed to be unalterable, with no deletions or backdating possible, thereby preserving every step of an innovator’s journey. This would provide a strong defense against false claims of independency, as dishonest claimants would not be able to produce such a record.

42 Lysander Spooner, *The Law of Intellectual Property*, pp. 68-69. (See Bibliography.)

43 Murray N. Rothbard, *Man, Economy, and State*, Ludwig von Mises Institute, Scholar’s Edition, 2009, p. 748.

would be able to manufacture—or even use—a light bulb without getting permission from Edison’s heirs.”⁴⁴ Galambos’ idea of giving equal status to independent innovators, inherent in his definition of property, makes this a non-problem. In the worst possible case, society simply has to wait for the independent innovation of the same thing or something equivalent or even better. No one has a right to “have it now,” or a right to have it at all, let alone a right to steal it, regardless of the “social benefit.” Arguments to the contrary smack of an entitlement mentality.

If we have to wait, market mechanisms will ensure that it won’t be for long. Ideas are only valuable because they fill some perceived need. The greater the need, the more people will be trying to meet it, and the sooner the solution will occur to another innovator. Perhaps that innovator will have an even better idea, thereby damaging or even destroying the value of its predecessor. As it happened, Thomas Edison’s competitor, Nikola Tesla, not only had a competing light source (fluorescent) but a competing and ultimately victorious system of power delivery—alternating current. This sort of thing has occurred over and over again. Matt Ridley makes a convincing case that it is in fact the norm, noting, as just one of many examples, that at least 23 people invented versions of the incandescent bulb before Edison. Sole possession of an innovation for which there is no substitute is likely to be fleeting.⁴⁵ More will be said about this in the Appendix, to include the role of Edison’s and other innovators’ heirs.

In an environment where technological and scientific development is proceeding at a rapid rate, and where there is no state and therefore no coercively-enforced patents, the feared monopolies charging “outrageous” prices will be short-lived. And when they come into existence the surest way for the enterprise to survive is to maximize profits, which almost always comes from low prices, high volume, and continued innovation.

44 The “use” claim is silly. Few light bulbs would be sold without the right to use them freely, and the impracticality and virtual impossibility of anyone tracking such use is obvious.

45 Matt Ridley, *The Evolution of Everything*, HarperCollins Publishers, 2015, page. 119.

AN UNAPPRECIATED VIRTUE OF PRIMARY PROPERTY

UNLIKE A CAR, a chair, a piece of pie, or any secondary property, *the use of the same primary property can be sold to multiple users who can use it simultaneously.* This is a benefit to both innovators and users. The innovator can spread his development costs over many sales, thereby allowing him to make use of the idea available at an affordable but still profitable market price. His rational goal is to maximize his profit, and that is usually accomplished by selling things in large numbers. It is seldom, if ever, accomplished by selling just a few things at a high price when the demand is for many examples of the item. (Many of us remember the hardwired “car phones” that only the wealthy could afford. Now there are literally billions of handheld and vastly more capable devices that are affordable for almost everyone.)

It is a fallacy that protecting the ownership of primary property by the means described here will choke off production of useful things. Rather, it will lead to increased production because innovators, entrepreneurs, and investors, incentivized by the prospect of earning primary and secondary profits, will know that the market value of their property will not be destroyed by theft. Therefore, they will not be deterred from innovating in the first place, nor will they have to build an estimate of the theft risk into the selling price of their innovation, thus enabling a lower price to the purchaser. Additionally, the knowledge that an independent innovation of the idea, or of a substitute idea, might come into the market tomorrow, gives them an incentive to keep the price low and continue to innovate. In any event, unless we want a society where

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stealing is approved as a way of acquiring property, we have to live with the outcome of accepting the ownership of ideas, and allowing the market to set the price of their use.

CONCLUSION

IDEAS ARE PROPERTY, and should be treated as such. Kinsella's argument to deny this fails because

- It attempts to violate human nature.
- Something need not be scarce to be property.
- Even if scarcity were required, the ideas that matter *are* scarce.
- Ideas can be homesteaded and justly owned by more than one person.
- Ideas can have visible borders.
- Treating ideas differently from other property violates Occam's razor.
- Protecting one's ideas does not unethically control the property of others.
- Using ideas without permission is not always harmless.
- Using ideas against the owner's wishes violates the Golden Rule.
- The ownership of ideas by innovators will not choke off civilization's growth.

Galambos' argument succeeds because

- It is human nature to treat ideas as property.
- Ideas meet Kinsella's own criteria for treatment as property.
- His definition of property conforms to Occam's razor.

- Ideas are automatically owned in perpetuity.
- Protecting ideas is beneficial to both the individual and society.
- Not protecting ideas can harm both the individual and society.
- Respecting property in ideas is consistent with the Golden Rule.
- Keeping track of ideas will not be costly or cumbersome.

Although the first edition of this book was shorter and less robust than what you are reading here, the counter-arguments to Kinsella and the Galambosian principles I have presented are largely the same. Together with the added empirical evidence they represent an existential threat to Kinsella's position, in which he is heavily invested as an author and lecturer.

When the first edition was published on the website of The Voluntarist, Mr. Kinsella quickly posted the first comment: "It staggers the mind that a libertarian site would publish this complete and utter nonsense. Wow." This was a disappointing reaction from a supposed intellectual, appearing to be a preemptive strike in an attempt to dissuade others from reading—let alone re-publishing—something that challenged his opinion.

Rather than providing facts and reasoned argument to show why it was "nonsense"—or why *even one* of its points was wrong—in a series of comments Kinsella simply labeled them "stupid arguments" which he claimed to have "already rebutted" and "debunked." He doesn't tell us where, and in whose opinion, he succeeded in this. In my view, it is his arguments in *Against Intellectual Property* which have been rebutted and debunked. He went on to label me a "well-intentioned half-wit." Here I'll agree in part: I am well-intentioned.

Kinsella dealt with Galambos by saying that his ideas are "as bad as naziism [sic], fascism, taxation, Georgism, the drug war," are "evil stuff," "completely unlibertarian," and "would lead to human genocide." To him, "Galambos had no interesting ideas that I can see. He was a

complete nutcase.” (Apparently he forgot about his praise for Galambos’ Course V-76.)⁴⁶

He ignores or doesn’t understand the fact that any decision to use Galambos’ ideas would be entirely *voluntary*, their operation is inherently *coercion-free*, and people can *stop using or modify them* if they don’t like the results. And surely they would do that if any of Kinsella’s predicted consequences came to pass.

I find Mr. Kinsella’s pronouncements to be baffling, and the ad hominem attacks unworthy of a supposed intellectual leader. The most charitable conclusion I can come to is that he still does not know what Galambos’ ideas are. We cannot be blamed for what we don’t know unless our ignorance is willful. This book should remove all doubt as to what Galambos proposed, but if uncertainty remains I’ll do my best to explain it further on request.

My claim is not that those ideas are perfect (although I think they’re close), but that implementing them would make things better than they are now—significantly better. I don’t know of any proposals that are superior.

Ideas, especially those claimed to be good and important, as Galambos said his were, should be challenged and tested. If after reading this book Mr. Kinsella or anyone still believes that ideas shouldn’t be treated as property and that a society based on Galambosian principles would suffer net negative consequences, I ask them to make explicit, step-by-step predictions of the specific things that would happen—a chain of events—which would result in a bad outcome for society. Real world examples would be even better. It’s not enough to simply assert that Galambos’ ideas will produce disastrous consequences. Intellectual

46 The original version of this book from June, 2015, and all comments, are archived at http://voluntaryist.com/property/boren_ip.html#VlpJPcaFOHs

honesty requires the rigorous application of facts and reason, and adhering to the outcome.⁴⁷

As I review the above I cannot know whether I have said too much or too little. I cannot know whether my explanations are clear and satisfactory, or have further clouded the issues. I could make this book much longer, but then I would be teaching Galambos' courses, and my goal is only to counter the arguments of those who are against intellectual property, and to show you the basics of the Galambosian alternative.

Free people make their own rules. I think you will conclude that rules based on the principles set forth by Galambos would result in a society that was just, peaceful, and prosperous. I believe that it is possible to build a society where moral behavior includes respecting each other's property rights in ideas, meaning specifically not using them without permission. I can see no harm to society in that.

If you have questions, or challenges, or would like to discuss these issues, to include how to put the ideas into action, I would be glad to correspond with you, time permitting. Please email richard@galambos-fei.com.

47 Richard Dawkins gives us this inspirational and memorable tale of intellectual honesty. "I have previously told the story of a respected elder statesman of the Zoology Department at Oxford when I was an undergraduate. For years he had passionately believed, and taught, that the Golgi Apparatus (a microscopic feature of the interior of cells) was not real: an artefact, an illusion. Every Monday afternoon it was the custom for the whole department to listen to a research talk by a visiting lecturer. One Monday, the visitor was an American cell biologist who presented completely convincing evidence that the Golgi Apparatus was real. At the end of the lecture, the old man strode to the front of the hall, shook the American by the hand and said — with passion — 'My dear fellow, I wish to thank you. I have been wrong these fifteen years.' We clapped our hands red. No fundamentalist would ever say that. In practice, not all scientists would. But all scientists pay lip service to it as an ideal — unlike, say, politicians who would probably condemn it as flip-flopping. The memory of the incident I have described still brings a lump to my throat." Richard Dawkins, *The God Delusion*, pp. 283-4

APPENDIX: THE MORAL TREATMENT OF PRIMARY PROPERTY IN THE MARKET

I'D LIKE TO bring into sharper focus the feasibility and beneficial outcomes of using the principles and definitions you've just read. I'll begin by introducing another Galambos concept, a convenient system of notation to be used in discussing property. Influenced by his background in mathematics and the physical sciences, Galambos identified the three types of property—primordial, primary, and secondary—by using the written notations P_0 , P_1 , and P_2 . In lectures, he would verbalize primary property as “P one,” and secondary property as “P two.”

In correspondence with other former Galambos students I've noticed some of them typing P_1 rather than P_1 and P_2 rather than P_2 . What a relief, at least for me, who struggles at the keyboard. I have adopted this new convention. From here on, primary property is P_1 , and secondary property is P_2 .

Let's envision a society operating on the principles identified by Galambos. As part of the basic instruction given to children by parents and teachers, P_1 will be considered to be property just as P_2 is today. Children will learn that it is wrong to steal, and that stealing applies to P_1 as well as P_2 . Children will learn to respect other people's property rights, and those include P_1 as well as P_2 .

Children who are educated and trained in this way will always see ideas as property, in accordance with their natural instinct. They will never look at them any other way. Children will learn that everyone is

seeking happiness, and that it is a perfectly normal pursuit which they can't help doing, so their own pursuit of happiness is nothing to be ashamed of. They will be taught that morality consists of not interfering with anyone else's property, whether it is P0, P1, or P2. (You can, of course, teach these things to your children today.)

The total number of items in the property category of P1 is beyond counting. For example, my decision regarding the placement of a lamp on my desk, or which drawer is best for my toothpaste, is P1. The design of a restaurant menu is someone's P1. The ingredients and manufacturing process of a given kind of plastic is someone's P1. A Facebook post is someone's P1. Everyone's opinions are their P1. We live in a sea of P1, with the vast majority being of no use to anyone other than its owner, not necessarily of very high quality, and not very important, even to that owner.

Out of this enormous quantity of P1, some of it may have a little utility and a little importance to someone other than the owner, but not enough to have what we call "commercial potential," which is to say the possibility of P2 profit from licensing it. Such P1 is generally given away at no charge when the occasion arises. We are far more generous with our P1 than with our P0 or P2. Why? Because in most cases others can use it without any perceived harm to ourselves.

For example, perhaps I have discovered an outstanding new restaurant. This knowledge is my P1, but I'll give it away to my friends without charge in exchange for the P1 profit of the good feeling I get from giving them something of value, which is enhanced if they say, "Thanks for telling me." Perhaps some of my P1 pertains to my job, where creating and using P1 is part of it, and I receive both a P1 profit in the form of the satisfaction of doing the job well, perhaps compliments from others, and a P2 profit when my contribution is rewarded by a bonus or a promotion. Perhaps I'm part of a collaborative effort, where ideas flow back and forth and no one keeps track, but all enjoy the P1 profit of achieving something that couldn't be done on one's own. The fact is that the vast majority of P1 is not kept secret or hoarded, but is intentionally given

away by its innovators via non-contractual disclosure, and is available to everyone.

Now let's talk about P1 that is good enough and important enough to have evoked Mr. Kinsella's fear that allowing the innovator or his heirs to control it in perpetuity would be a disaster for society. I do not share that fear, because it is the protection of the individual and his property that should be our objective. Our access to other people's property is of secondary importance, and must be on terms voluntarily agreed to by them. I have no right to anyone else's property, nor does anyone have a right to mine. When we as individuals have 100% control of our property—in other words, freedom—society will be benefitted, not harmed.

You're about to see that Galambos' ideas serve both the individual and society. What follows is my interpretation of his model, although such was his confidence that I'm sure that he saw it not as a model, but as the way things will be. It was disclosed in great detail in V-201, but is presented here, and only in part, as a conceptual framework. I believe that market forces will no doubt cause deviations from the Galambos model when it meets the real world, so leaving the details out at this point should not matter to your comprehension.

In the Galambosian model, owners of P1 will be able to register it with one of presumably many companies in the P1 registration business. These and other companies may serve simply as "idea vaults" or they may even compete for P1 as "inventory," and seek P2 profits from representing the innovator in the market just as agents represent authors, actors, and athletes today. Such companies will identify potential customers for the P1, acting as the innovator's agent, and isolating him from the fray. Using the principle of the division of labor, each participant will be free to do what he does best. Innovators can specialize in innovating, and the P1 matchmakers can do what they are in business to do: earn a P2 profit for themselves and their innovator clients.

There are an infinite number of contractual terms that can be arranged between the P1 owner and the P1 user. One arrangement might be a one-time payment for unlimited use of the idea; another might be

payment based on gross sales; another might be based on net profits; still another might be a set amount for each unit sold. One of the beauties of free markets is that the terms of contracts can be anything the parties want.

Please keep in mind that P1 itself cannot be sold, only its use. Reflecting that fact, payments to innovators might go on for some time, particularly for important P1. The usual term for this is “royalties.” A system of ongoing royalties fits the fact that P1 ownership is perpetual. Therefore, as long as the innovation is in use, the owner or his designee will receive whatever P2 revenue is produced. And, since it would be immoral to use an innovation without permission, the innovator, and then his heirs or other designated entities, will control the terms of use forever. It is this prospect that seems to concern Mr. Kinsella. However, the possibility of a negative outcome is so unlikely that we can safely ignore it, as will be seen.

Galambos proposed that when an owner chose to sell the use of his P1 rather than give it away it would be made available in one of two ways. The first way would be entirely conventional, with the innovator setting the price and terms of use and offering it to the market. In general, P1 being offered on the market for the first time, especially significant P1, would be licensed in this way.

The second way, although unconventional today, would become quite common. After a period of time as decided by the P1 owner, and presumably after consulting with his P1 marketing agent, the P1 would be made available to anyone who wanted to use it. Users would be allowed to pay whatever they thought it was worth, as long as their payment was greater than zero.

Although the second way would usually be reserved for “old” P1 that might be nearing the end of its market life, nothing would preclude an innovator from offering his P1 to the market in this way from the outset.

No matter how the P1 was made available, Galambos’ vision was that two standard clauses would always be included in the contract. In the first clause the user would be required to agree not to use the P1 for any coercive purpose. It was Galambos’ assessment that, in contrast to the “evil scientists” depicted in fiction, innovators, especially major ones, are not

interested in seeing their innovations used for anything other than good. By treating ideas as property, the innovator would have the power to impose conditions on the use of his PI, and could ethically forbid using it for coercion. Anyone who violated the clause could have their contract voided and might have to pay contractually set penalties and/or be required to make restitution, to say nothing of suffering a reputational loss.⁴⁸

One could argue that the potential for reducing coercion in society by this means is all the justification we need for treating ideas as property. There is a certain parallel here with the “men of the mind” in Ayn Rand’s novel, *Atlas Shrugged*, who went on strike and withdrew their services from all who used them unjustly and for negative purposes. Rand never gave up the idea of political government, but Galambos did. And he created the means—acknowledgment that ideas are property—by which the men of the mind could triumph without having to strike and retreat to Galt’s Gulch, or anywhere.

In the second standard clause, the user would be required to agree to give credit to the innovator for the development of the PI. This would create a historical record, help maintain borders, facilitate expressions of gratitude, and ensure that revenue was paid to the proper persons.

If a prospective user objects to these or any other terms he can attempt to negotiate them away. But, failing that, he must either accept them or not enter into the contract. No matter what, because his decision is voluntary the outcome will be moral, and will in no way constitute an unethical interference with property as claimed by Kinsella.

Galambos believed that these ways of handling PI would become the normal way of doing business. The “pay what you want” feature would be

48 In the present world of patents, courts frequently award monetary damages to holders of patents that others have infringed, even when the patent holder is not using the patent or is not even planning to use it, and has suffered no actual damages. See, for example, the discussion of “submarine patents” in *Against Intellectual Monopoly*, pp. 84-87. In sharp contrast, in a patent-free, restitution-based system, arbitrators will be unlikely to award compensation without actual damages or likely foreseeable damages, and will never award them when independent innovation has not been proven.

just one of many factors working to eliminate the possibility of bringing civilization's progress to a halt due to unaffordable royalties. Although we might pay Edison's heirs, we won't pay them much, as will be seen. However, an obvious question is why would any innovator, other than one who was a naïve idealist, agree to the "pay what you want" plan? Wouldn't he be leaving P2 profits on the table? Those questions are answered by the laws of economics.

A major factor is that although an innovator owns the P1 forever, unlike the present patent system there is no time when he can prevent others from offering the same thing if it was independently innovated. Innovators who come later have the same rights, and are free to contract with interested parties. Therefore, the clock is always running. Someone else may soon create the same P1, or perhaps a comparable or even better alternative. Other things being equal, the market value of the original P1 will shrink once a competitor comes onto the scene. Both licensors and licensees will have this in mind when agreeing to the original price and terms of the license, helping to keep the price down from the beginning.⁴⁹

In a market economy, by definition the price and terms of the license will be a *market* price, agreed to voluntarily. Since innovators cannot force us to buy the use of their P1, those whose asking price is more

49 A case in point is that of the Wright brothers, who were acutely aware of potential competition while they were negotiating license fees. In letters to Octave Chanute, dated October 10 and November 18, 1906, Wilbur Wright said, "... we are convinced that no one will be able to develop a practical flyer within five years. This opinion is based on cold calculation. It takes into consideration practical and scientific difficulties whose existence is unknown to all but ourselves. Even you, Mr. Chanute, have little idea how difficult the flying problem really is... We do not believe there is one chance in a hundred that anyone will have a machine of the least *practical* usefulness within five years. ... It is the complexity of the flying problem that makes it so difficult. It is not to be solved by stumbling upon a secret, but by the patient accumulation of information upon a hundred different points, some of which an investigator would naturally think it unnecessary to go into deeply. This is why we think a quick solution impossible." *The Papers of Wilbur and Orville Wright, Volume Two*, ed. by Marvin W. McFarland, Arno Press, 1978, pp. 729-30, p. 738.

than the highest bid will have no sales. The world will move on without them, and eventually the P1 in question will be made available from an independent source, or there will be a substitute for it, at a price the P1 users are willing to pay. How long will “eventually” be? Not long, if the demand for the P1 is high. In fact, it might happen very quickly. The original innovator may respond by lowering his price rather than “sitting tight” with no sales and taking the risk that the market value of his innovation might go to zero if a competitor appears. Alternatively, the prospective licensee may reevaluate his position and decide to pay the higher price.

Better innovations will be surely developed, making their predecessors obsolete. We know this from observing our world, where obsolescence is expected. I imagine that the patent for the rotary phone dial (“What’s a ‘rotary phone,’ Grandpa?”), even if still in force, would not have much value today. An innovator, realizing this (and once again with the advice of his agent, who does this for a living) will reach a point where it makes economic sense to release the P1 to everyone, essentially adopting a mass marketing approach, hoping that increased sales volume will work to offset his lower P2 profit per unit.

One possible problem with the “pay what you want as long as it’s more than zero” format is that a user of the P1 might pay virtually nothing, thus technically satisfying the “more than zero” requirement while providing no significant P2 benefit to the owner. Galambos acknowledged that this (known in economics as “freeriding”) could happen. However, he believed that anyone who did this would find it difficult to bargain for other P1 in the future. (“Aren’t you the guy who only paid one dollar for the right to manufacture that widget?”) Just as a “big tipper” might get special service at a restaurant, a person that pays generous voluntary royalties will be remembered, perhaps by being given the “first look” at new P1, while the cheapskate might not be given access to it at all. It remains to be seen whether this system will work in the real world exactly as Galambos described it. Remember, it’s a model, but I have confidence that its fundamental premises are sound.

The ultimate fact of economics that will keep innovators from holding the world hostage is that users of P1 cannot pay more in total royalties to providers of P1 than the profitability of the enterprise will support. Left alone, rational business operators will only do things that they believe will be profitable. For example, let us say that a startup business decides that it can afford to pay royalties of no more than 10% of its gross revenue. Suppose that it needs to use three different items of P1, and each innovator asks for a royalty of 10%, amounting to a combined 30% of the new company's gross revenue. As a result, the new business might not move forward at all. But, more often, a compromise will be reached at the negotiating table. I think the reader can see many ways in which this could be resolved. Simply put, the market will settle this, and innovators will be paid a market price, with all the ramifications that implies.

In worrying, as some do, about all the possible ways in which an innovator might impede the progress of civilization by restricting access to his innovation and/or pricing it so high as to be unaffordable, it is easy to overlook the usual case. Innovators, like all humans, are engaged in the pursuit of happiness all the time. The most probable action is for them to make their innovations available at a price that will bring them not only a monetary profit, but the satisfaction of having produced something that others want, and the acknowledgment and praise that comes from having provided it. This is clearly the normal behavior of innovators. I believe that we would be hard-pressed to find many exceptions, and shouldn't worry about them. Nevertheless, I'll address one of Kinsella's ominous predictions.

Let's use the supposed problem of "Edison's heirs" as an example of why we have nothing to fear from heirs in general. Suppose that today a company acquires a license to use a new technology for a light source that uses almost no energy, is cool to the touch, and will last 100 years. In the license they have agreed to pay a 5% royalty on gross sales for the exclusive right to use this new P1. Suppose that this company can afford to pay 10% in total royalties to all P1 licensors combined, leaving them with just 5% available to pay all other royalties. They look into it and

realize that in addition to Edison several more innovators contributed P1 to the light bulb. However, some of the innovations are no longer used, so there is no reason to pay a royalty. They also find that there are three companies whose P1 is essential, two of them with a low price, and one available on a “pay what you want” basis.

Finally, they realize that the only innovation of Edison still in use by anyone is his discovery that heating the bulb as the air is pumped out creates a better vacuum. However, their new light source operates in air and with no filament, so there is no need to evacuate the bulb. In fact, there is no longer a part called “bulb.” Therefore there is no reason to pay Edison’s heirs. His innovation had a good run, but now it looks like it’s over.

This sort of outcome will be typical, with only a few innovations having long term utility. In those cases, royalties will be ongoing, but so many innovations will have been added on top of them that the heirs will collect extremely small amounts, albeit on potentially enormous volume.

The lesson from economics is that no matter what the owners of P1 may want or ask to be paid, no business can pay more in total royalties than its profits will support, and it will only pay for the things it uses. The cost of innovations that come later and that must be implemented in order for the product to remain competitive will have to be paid out of the same total percentage that the business can afford. Therefore, royalty recipients will be under pressure to reduce their royalty fee if they want their innovations to be used. In some cases total revenues will grow, and a small piece of a larger pie will be worth more than a large piece of the old smaller pie. In Course V-201, Galambos proposed a formula for how royalties would be adjusted downward as you worked backward through the chain of innovations that led to the present state of the art. Whatever the formula, royalty calculations would be performed, tracked, and paid by computer at low cost.

Now let’s consider a case where the P1 is so fundamental that it will always be used. Einstein’s equation, $E = mc^2$, is his description of a law of nature, and as far as we know, we’ll use it forever. Einstein does not own nature itself, but he does own his discovery and description of it. Had

Galambos' system been in effect, those businesses that directly use the formula would still be paying Einstein's heirs.

Somehow the idea of paying heirs seems to provoke a sort of indignation in some people. Let's look at that more closely. Paying anything to the heirs means that the owner of the P1 has died. But let's say that life expectancy increased to 1,000 years. Would anyone object to paying a 1,000 year old Albert Einstein? I don't think so. Even modest improvements in life expectancy will bring this into focus. After all, Einstein would only be 137 years old today. Would it bother you to know that the manufacturers of nuclear power plants were paying him a royalty? If we begin to act in accord with the laws of nature and make the protection of primary property part of common law and of everyone's world view, we will set the stage for this eventuality.

But for the time being, when death is still a factor, what about those who say that the heirs of a deceased innovator don't *deserve* to be paid? They don't seem to have the same negative feeling when the heirs inherit a large amount of P2, such as cash, stock in the innovator's company, or a mansion, but royalties are another story. For some reason it bothers them to think that in purchasing a product they are paying people who had nothing to do with its innovation. Perhaps this is envy, which is among the least appealing traits in humans. Whatever the reason, I offer the following.

The P1's owner faces the prospect of competition from the very start. The better and more important the P1 is, the more potential competition there will be. As a result, the P2 royalty stream may be sharply reduced or even ended before the P1 owner's death, thus eliminating the "problem" of paying the heirs. Further, each subsequent innovation that builds on the original P1 dilutes the share of P2 that can flow to the owner of any specific item of P1 in that chain. The heirs might get very little, and perhaps nothing, as we saw in the Edison illustration.

Einstein's heirs would clearly get something, but it would be diluted by the many subsequent P1 developments that were necessary to turn $E = mc^2$ into something, such as nuclear power plants, that can generate a large amount of P2. Because of this economic reality it would be

extremely rare for a given innovator's heirs to be collecting a large amount of P2, and virtually impossible to do so for generations. Although they will control access to the use of the P1 in perpetuity, it is quite another thing for an innovation to have perpetual market value. The more likely case will be for the heirs to be struggling to get any revenue at all.⁵⁰

Because of all of the above, the concern that civilization will routinely be held hostage by a greedy, unreasonable, or even insane innovator or his heirs is unfounded.

Finally, Galambos didn't focus on heirs in the sense of children and other family members who traditionally receive some or all of a person's P2. Although this practice can be expected to occur as long as humans exist, Galambos' interest was in the major P1 innovators. He advocated that they formally organize their property, what he called their "natural estate," into something like what we now call "foundations," although in the absence of a state, these would not be set up for tax or other cost-avoiding purposes. These entities would collect revenue and invest the accumulated wealth in areas designated by the owner. With the protection of primary property, things like the Rockefeller and Ford foundations would be joined by entities bearing the names of Einstein, Planck, and Tesla. But, despite focusing on the major innovators, Galambos observed that every human has a natural estate composed of his P1 and P2, and can make plans for what happens to it upon his death. Rather than worrying about someone else's heirs, and what they might be paid, it might be more profitable to plan for the disposition of one's own natural estate.

50 The example of Einstein, despite the fact that his discovery is one of the most profound and important discoveries of all time, may present even fewer potential problems than Kinsella fears. What was ignored in the example is the fact that other talented physicists and mathematicians were also actively at work. Given that fact, it was inevitable that one or more of them would have independently made the same discovery that Einstein did. Therefore, it is highly unlikely that Einstein, let alone his heirs, would have had exclusive ownership of $E = mc^2$ for long.

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And thanks to everyone who took the time to read this.

BIBLIOGRAPHY

SOURCES THAT DISCUSS THE PHILOSOPHY OF INTELLECTUAL PROPERTY OWNERSHIP, LISTED CHRONOLOGICALLY

The Law of Intellectual Property by Lysander Spooner. This 1855 essay argues persuasively for the ownership of ideas, and in perpetuity. Galambos arrived at the same conclusion independently, but via different reasoning, almost 100 years later. It is believed that Galambos did not know of this work of Spooner. His only references to him in lectures concerned the creation of a private postal service, which was crushed by the state. Most of what Spooner wrote is worth reading and it can be found at www.lysanderspooner.org

Thrust for Freedom: An Introduction to Volitional Science by Andrew J. Galambos. This book contains a collection of single-page essays originally published in 1963 as a series called “Thrust for Freedom.” Among them is Galambos’ definition of property, with an explanatory narrative. The book also includes a number of lengthy passages from *Sic Itur Ad Astra*, and is available at www.amazon.com.

Sic Itur Ad Astra, Volume One by Andrew J. Galambos. This is the transcript of his 1968 delivery of Courses V-50 and V-50X. The book discloses the basics of the Science of Volition but has been removed from sale by Galambos’ trustees. Used copies are sometimes available. Some of Galambos’ recorded lectures, including V-50 and V-201, can be heard online at the FEI website, www.fei-ajg.com, where the trustees have imposed significant restrictions on access. Only one Galambos course, V-76, (recommended by Stephan Kinsella) is available for purchase on CD without restrictions. See more information below.

The V-50 Lectures by Jay Stuart Snelson (1978 audio recording). Snelson put Galambos’ ideas into a beautifully crafted and delivered lecture series, attended by many thousands of people over his 14-year career at FEI. Published by Charles (Chas) Holloway in 2008, the first three

sessions can currently be heard on YouTube with the consent of the owner, The Sustainable Civilization Institute. <https://www.youtube.com/watch?v=Whx4QA3tGCo>

The sessions are labeled 1a, 1b, 2a, 2b, 3a, and 3b. The order is important. Also see www.suscivinst.com for possible availability of the entire course.

Against Intellectual Property by N. Stephan Kinsella

As an example of intellectual honesty, Carl Watner posted this monograph, with which both he and I disagree, on the website of The Voluntaryist.

<http://voluntaryist.com/property/index.html#VmDYHcaFOHs>

It is also available at the Mises Institute website.

<https://mises.org/library/against-intellectual-property-0>

Capitalism, the Liberal Revolution. A website devoted to the work of Galambos and Snelson. The creator is Frederic G. Marks, who was first a Galambos student, and then his attorney for many years. www.capitalismtheliberal-revolution.com. (“Liberal” means “pertaining to freedom” here.)

“On the Ownership of Ideas” by Carl Watner. This essay offers an analysis of Spooner, Galambos, and Kinsella, agreeing with both of the former and disagreeing with the latter.

http://voluntaryist.com/property/watner_ideas.html#VldJRcaFOHs

RESEARCH ON THE PSYCHOLOGY OF PROPERTY OWNERSHIP

These papers, in the order listed, take the reader from the general subject of the possession and ownership of property to the specific subject of the ownership of ideas. The scientific method is clearly applied in several studies, so the reader can see how experiments in psychology are done. Most of the papers are free; some can be read for a nominal charge, or downloaded for somewhat more. Reading the Abstract will be enough for casual students.

“On the Rudiments of Possessions and Property”

Lee Ellis

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Jon L. Pierce, Tatiana Kosovar, Kurt T. Dirks

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Stephanie McEwan, Madison L. Pesoski, Ori Friedman

This study gives us empirical evidence that it is human nature to see specific items as one’s property even though an identical substitute is available, offering support for Carl Watner’s argument in “On the Ownership of Ideas.”

<http://www.sciencedirect.com/science/article/pii/S0010027715300676>

“You can’t always want what you get: Children’s intuitions about ownership and desire”

Nicholas S. Noles, Susan A. Gelman

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“Hey, that’s my idea!” Kristina R. Olson, *Psychology Today*, September 2013

This is a broad overview, with links to some of the articles below.

<https://www.psychologytoday.com/blog/developing-minds/201308/hey-s-my-idea>

“Ideas versus labor: What do children value in artistic creation?”

Vivian Li, Alex Shaw, Kristina R. Olson

<http://www.sciencedirect.com/science/article/pii/S0010027712002521>

“No fair, copycat!': what children's response to plagiarism tells us about their understanding of ideas”

Kristina R. Olson and Alex Shaw

<http://onlinelibrary.wiley.com/doi/10.1111/j.1467-7687.2010.00993.x/abstract>

“Whose idea is it anyway? The importance of reputation in acknowledgement”

Alex Shaw and Kristina Olson

<http://www.ncbi.nlm.nih.gov/pubmed/25227735>

“Children Apply Principles of Physical Ownership to Ideas”

Alex Shaw, Vivian Li, Kristina R. Olson. Dr. Shaw can be reached at ashawl@uchicago.edu

<http://onlinelibrary.wiley.com/doi/10.1111/j.1551-6709.2012.01265.x/abstract>

Note: Please read the following comments before reading this paper.

In my opinion the results of these experiments, constructed and carried out by Shaw, Li, and Olson, and published in 2012, have profound implications. If, as these experiments seem to prove, it is human nature to treat ideas as property, then, as stated at the beginning of this book, we have no rational choice but to treat them as such when creating the rules of society.

To avoid possible confusion or misunderstanding of what the authors concluded, I'd like to clarify something that appears in their General Discussion. The authors write:

“...ownership of ideas differs from ownership of most objects because multiple parties can use an idea at one time. For example, if one of the authors was giving a talk about the ideas contained in this article, the other authors would not be constrained from simultaneously discussing the ideas with a colleague. This explains why *it is perfectly reasonable to use someone’s idea without permission* as long as you cite or acknowledge them (Goodenough and Decker, 2009)” [italics added].

Despite the fact that Shaw, et al, are all owners of the ideas in their paper and so cannot steal the ideas from each other, some readers, especially casual ones, might interpret the last sentence as a blanket endorsement of the practice of using ideas without permission—the opposite of Galambos’ view. However, no such practice is endorsed. The cited authors, Goodenough and Decker, are in fact *opposed* to taking intellectual property without permission, as is clear from the title of their paper, listed below, where they call it “stealing.” The explanation is that what they were referring to was not stealing, but the fact that some authors and inventors seek their reward in the form of “respect, or, even better, adulation or acclaim,” (what Galambos called primary profit) rather than in money. They posit that in cases where the creator of the property *has given his explicit or tacit permission* “file sharing makes perfect sense.” But it is not “perfectly reasonable” to use ideas without permission if the owner objects. In personal correspondence with Dr. Shaw he agreed with this, and said that he had Goodenough and Decker’s view in mind when he described the hypothetical situation regarding him and his colleagues. His intention was not to approve of using an idea without permission, but to describe building on someone’s ideas to make new ideas, and crediting the source.

“Why Do Good People Steal Intellectual Property?”

Oliver R. Goodenough and Gregory Decker

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1518952

In answer to the question posed by the title, this 2008 paper offers three hypotheses. In personal correspondence, the lead author reports that they have not yet been tested. My view is that if children were taught that the theft of ideas was just as wrong as the theft of tangible property, and that if this became the societal norm, the emotional inhibitory responses of the brain discussed by the authors would be invoked, and the rate of IP theft by good people would decline to a rate comparable to that of their theft of tangible property.

SOURCES THAT MAKE A CASE FOR A STATE-FREE SOCIETY, MANY WITH DESCRIPTIONS OF HOW THE SERVICES NOW PROVIDED BY THE STATE CAN BE PROVIDED BY PRIVATE ENTERPRISE

The Voluntaryist. A website and print newsletter published by Carl Watner. Filled with many excellent essays, it is a treasure trove of thought on these matters.

www.voluntaryist.com.

No Treason No. VI, the Constitution of No Authority by Lysander Spooner. Are you bound to obey rules to which you never agreed? This is a critical analysis of America's virtually sacred document.

www.lysanderspooner.org.

Course V-76, *Thomas Paine, the Declaration of Independence, and Your Freedom* by Andrew J. Galambos. This nine-hour audio presentation was labeled "fascinating" by Stephan Kinsella. It shows Galambos as a commanding lecturer with broad historical knowledge and deep insights. We learn about Paine the man and his major accomplishments, to include, according to Galambos, authoring the Declaration of Independence. We learn the ideological breakthrough contained in Paine's *Common Sense*, and in the Declaration, which Galambos points out is an entirely non-political document. Unfortunately, he argues, the freedom we could have had was largely canceled out by the imposition of a state via the Constitution. This line of thought was developed in

his Volitional Science courses, which make politics obsolete. The Free Enterprise Institute currently offers this course on CD, and sells it without prerequisites. It's a good place to start.

<http://www.fei-ajg.com/courses.html>

Our Enemy the State by Albert Jay Nock. This author was cited by Galambos as “the one from whom I first became sensitive to the necessary distinction between government and state” and is listed here for that reason.

<https://www.lewrockwell.com/1970/01/albert-jay-nock/our-enemy-the-state/>

Everyday Anarchy and *Practical Anarchy* by Stefan Molyneux, best read in that order. Although the author uses the provocative word “anarchy” he quickly makes it clear that he doesn't mean chaos or bomb-throwing. Rather, he shows us that a natural and peaceful order already exists in most of the things we do (everyday anarchy), and can be expanded to everything (practical anarchy) without any need for state. Breezily and wittily written. Both books are available as free PDFs, or you can reward the author by buying the inexpensive print editions. <https://freedomainradio.com/free/>

The Problem of Political Authority-An Examination of the Right to Coerce and the Duty to Obey by Michael Huemer. I put more Post-it notes in this wonderful book than any other in my library. It is deeply philosophical but easy to read, and could function as textbook. I wish that Professor Huemer had been my philosophy professor, but that would have required time travel. Also see his TEDx talk, *The Irrationality of Politics*, at <https://www.youtube.com/watch?v=4JYL5VUe5NQ>.

Democracy, The God That Failed, by Hans-Hermann Hoppe. Those of us lucky enough to have lived our lives in the United States have, for the most part, reaped tremendous rewards. And yet, the Founding Fathers, despite their good intentions, made a fatal error. Hoppe shows us what that was, and much more. Other important Hoppe works are his short book, *The Private Production of Defense*, and his sweeping *A Theory of Socialism and Capitalism*.

The Most Dangerous Superstition by Larken Rose. This short book is beautifully written in a direct and engaging style accessible to everyone. It has the potential of being a modern equivalent of Paine's *Common Sense*. It is available at www.amazon.com and at the author's website, www.larkenrose.com.

The Machinery of Freedom by David Friedman. Excellent analysis of the private production of government services. Can be purchased in print but is available for download at no cost. http://daviddfriedman.com/The_Machinery_of_Freedom_.pdf

For a New Liberty, *The Ethics of Liberty*, and *Man, Economy and State*, all by Murray N. Rothbard. Rothbard was a giant, and all of these books are excellent.

The Market for Liberty by Morris and Linda Tannehill. This is an excellent book. It appears to incorporate a major idea of Peter Bos, who disclosed it to Galambos by making a presentation at the 1963 FEI alumni meeting. Galambos made it part of Course V-50, thereby disclosing it to Durk Pearson when he took the course in the late 1960's. It appears that Pearson made a promiscuous disclosure of the idea to the Tannehills, who got the credit. In an effort to clear up this messy handling of primary property I wrote an article, "Insurance Companies as Competing Governments: Whose Idea Was It?" It was published in the 4th Quarter 2015 issue of *The Voluntaryist*. In August, 2016, Bos' recently-discovered 1962 rough draft of his insurance ideas was inserted as an addendum. It serves as an example of the kind of evidence that would be presented should there be a controversy regarding the ownership of an idea, as discussed above under "Resolving conflicts over primary property." See my original article and Bos' draft at: <http://voluntaryist.com/forthcoming/insurance.html#V50>

The Road to Freedom and the Demise of Nation States by Peter B. Bos. This book represents another approach to a state-free society. Although the

author was exposed to the early ideas of Galambos, he rejected some of them and does to this day. He and I have significant disagreements, but this book contains enough solid material that I felt it worthy of inclusion here.

Against the State by Llewellyn H. Rockwell, Jr. Mr. Rockwell operates what is probably the most visited libertarian website, www.lewrockwell.com, and is the founder of the Ludwig von Mises Institute, www.mises.org.

The Enterprise of Law, Justice Without the State by Bruce L. Benson. A powerful examination of how a privatized justice system would work—and how it used to work before the State got involved.

Private Governance by Edward Peter Stringham. Many authors, including most of those above, have provided us with wonderful and satisfying hypothetical examples of how every element of a society can be set up and run by private, for-profit companies. Stringham, an economics professor, goes further by giving us example after example of real-world private solutions to the need for governance, both past and current.

Mapping Freedom and the Fall of the Political Class by Charles (Chas) Holloway. Publication expected August, 2016. The author was a Galambos student, and attempts to build on and possibly make improvements to the line of thought that began there. Among other things, Holloway proposes a significant modification to Galambos' definition of property (although it still includes ideas).

OTHER RESOURCES

Taming the Violence of Faith, Win-Win Solutions for Our World in Crisis by Jay Stuart Snelson. Following his time as Galambos' Senior Lecturer, Snelson lectured extensively on a variety of topics, including a series, Human Action Principles, based on Mises. Listing his primary influences

as Ludwig von Mises, Andrew J. Galambos, and Robert LeFevre, Snelson spent his later years writing this book, which offers his own prescription for achieving peace, prosperity, and freedom, calling it “Win-Win Theory.” More about the author and his work can be found at www.suscivinst.com.

“The Ideological Immune System: Resistance to New Ideas in Science,” by Jay Stuart Snelson. This essay shows that we have a tough time changing our mind, and not just in science, even in the face of overwhelming evidence. <http://www.skeptic.com/eskeptic/11-01-26/#feature>

The Myth of the Rational Voter by Bryan Caplan. Every person knows people who they wish wouldn’t vote (“That guy’s an idiot”). This book presents hard evidence that ignorance abounds, and that “getting out the vote” brings out the least-qualified voters. Caplan, a Professor of Economics at George Mason University, believes in a state-free society, and this book is another nail in the coffin of the state. See also his personal website, www.bcaplan.com, where I found the section called “Fun” especially instructive and enjoyable.

Thinking, Fast and Slow by Daniel Kahneman. This book is a popularized account of the research of Kahneman and his colleague Amos Tversky. Kahneman, a *psychologist*, won the Nobel Prize in *economics* for this work. (Tversky, having died, was not eligible because the prize is not awarded posthumously. In a Galambosian world, the normal practice for such awards would be to present them to the manager of the winner’s natural estate.) Although it is not directly related to the content of this paper, the book is an entertaining and instructive example of the vast and rapidly growing body of knowledge of human behavior. I’ve never seen anything that is inconsistent with what Galambos taught, either in this book or any other source.