



# **For Intellectual Property**

**The Property Ideas of  
Andrew J. Galambos**

**by Richard Boren**

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

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# For Intellectual Property

## The Property Ideas of Andrew J. Galambos

Originally published 6/1/2015; revised version published 12/16/2015

Richard Boren

### INTRODUCTION

Who should read this paper? Anyone who is interested in the answer to the question of whether the rules of society should treat ideas as property, with their innovators having rights of ownership and control equal to those of their lives and tangible property.

I am in favor of treating ideas as property, and the purpose of this paper is to support that position, primarily by using the principles developed by Andrew J. Galambos. In so doing I will address the specific arguments made by N. Stephan Kinsella in his monograph, *Against Intellectual Property*. I will demonstrate that we have no rational choice but to treat ideas as property. Among other things, that conclusion will be supported by published empirical evidence that indicates a need for property rules even in a world of infinite abundance, as denied by Mr. Kinsella. Even more significant, there is empirical evidence that humans naturally treat ideas as property, just as Galambos claimed, but which Kinsella says would be wrong to do. 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, and my learning of it is the primary reason why this paper was revised.

It will be seen that ideas can be treated as property in an entirely ethical manner, without the necessity to use aggressive force supplied by the state or by any entity or person, and that doing so will not produce negative consequences as Mr. Kinsella claims. Instead it will complement the protection of life and tangible property that is already the hallmark of civilization and will be beneficial to society as a whole. I have attempted to represent Kinsella's opposing views accurately, but for those interested in reading his paper (and I think you should), it is available at no cost at the Mises Institute website under "Books," and at the Voluntarist website under "Property and Ideas." (See Bibliography for links.)

As noted, my views 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 public lectures in the early 1960's. I am neither a lawyer, as is Mr. Kinsella, nor a philosopher or other brand of academic, as are most of the people upon whom Kinsella relies. Other than a bachelor's degree in psychology, I have no generally-recognized academic credentials. However, I did have a multi-year educational interaction with Professor Galambos, and it stuck.<sup>1</sup> Since then I have given these matters much additional thought. It is fair to say that I am a Galambosian, which

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<sup>1</sup> See "Andrew J. Galambos and How I Became a Voluntarist" at <http://voluntarist.com/howibecame/boren.html#.Vlog48aFOHs>

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 explained below. In this case the “something” is intellectual property. Unfortunately, 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 whose only knowledge of Galambos may have come from the references to him in Kinsella’s paper and elsewhere will be presented with facts rather than speculation and misinterpretation. It is my experience that the negative comments about Galambos and his ideas always come from people who never took his courses or read his book, relying instead on hearsay and fragmentary information, and drawing incorrect conclusions as a result. Mr. Kinsella is in this category. In this work I hope to reveal enough about Galambos’ ideas to convince him and others of their merits.

### **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 dramatically increase individual 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 something else that is fundamental to science, which he labeled “semantic precision,” and discussing it is essential. The term refers to the use of a vocabulary wherein the words have the same meaning to all participants. Words such as mass, energy, electron, wave, molecule, cell, neuron, and so forth come to mind in the physical and biological sciences. Clearly, progress would be difficult if not impossible without agreement on the meaning of these terms. Galambos noted 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 words such as “freedom,” “moral,” and “justice” varies from person to person and community to community. One of his goals was to correct that.

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.<sup>2</sup> This is the language that I think in today, and the concepts form my world view. I’ll use some of the words and phrases in the rest of this document, doing my best to use them as Galambos intended.

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<sup>2</sup> This is a course catalog number, with “V” standing for “volition,” the act of willing or choosing.

Galambos founded the for-profit Free Enterprise Institute (FEI) in the early 1960's and operated it successfully until the mid-1980's when he was struck by Alzheimer's disease, eventually passing away in 1997. He made good money teaching his ideas to willing students in a university-type lecture setting, but at a lower price than college courses of comparable length, and with a money-back guarantee to boot. Most of what he taught wasn't available anywhere else, either at that time or since. I attended FEI classes from 1975 to 1979, and accumulated about 1,000 hours of lecture time. It was far and away the most exciting and valuable educational experience of my life.

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 300<sup>th</sup> 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 Course V-50, together with a 1976 extension called V-50X, was published by his trustees in 1999 as *Sic Itur Ad Astra, Volume One* (SIAA). The title means *This Is the Way to the Stars*, reflecting Galambos' desire to engage in commercial space travel.

The trustees have a contractual requirement to publish and deliver the remaining volumes to those of us who have paid for them. Those volumes are to include Course V-201, the course Galambos called his most important. However, the trustees have refused to honor the contract, saying that it was a "mistake" to have published anything, and have withdrawn Volume One from sale without further explanation. I strongly disagree with these actions. In my opinion, by Galambos' standards what his trustees have done and continue to do is a crime, as defined below.

One of the results of their 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, and I find myself having to write 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 access and can refer to the lecture notes that Jay Stuart Snelson used when he taught Course V-201. These notes are reportedly a virtual transcription of the lectures Galambos himself delivered. Finally, I have my own student notes and recollections.

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 required students to sign a non-disclosure agreement. This has been misunderstood and even ridiculed by some, as when Kinsella says, "...his own theories bizarrely restrict the ability of his supporters to disseminate them." This is an example of the hazards of commenting on things when one is ignorant of the facts. To clear this up, let's begin with the pertinent language of the 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 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). [The terms “primary” and “secondary” have stipulated meanings, explained below.]

This as 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.<sup>3</sup> Toward that end, Galambos taught that ideas should be disclosed contractually, as will be covered in greater detail later in this paper. For now, we recognize that it is a common practice to use non-disclosure agreements when knowledge 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 some 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 both V-50 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’ property. Therefore, such disclosures as I make herein 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 combine to constitute a complete 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. 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 noted 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

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<sup>3</sup> Murray N. Rothbard, *The Ethics of Liberty*, New York University Press paperback, 2002, page 123.

unable to achieve their noble goals. He abandoned political government and came up with a practical, non-political, non-utopian, total system for achieving peace, prosperity, and freedom.<sup>4</sup>

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.” His teachings came to be known as “Volitional Science,” a term coined by Jay Snelson and put into use to distinguish the concepts from what most of the world calls “social science.”

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 “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.* 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 the naysayers such as Professor Simon Newcomb, then known as “America’s astronomer,” who deemed flight impossible while never citing a law of nature that would make it so.<sup>5</sup>

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. Your reading of this paper is a step in the right direction.

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

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<sup>4</sup> Abandoning politics would seem to be the biggest political step anyone can take, and many readers will not yet have taken it. Old habits and old beliefs die hard, and new ones take time to sink in, even among those most willing to entertain the idea of change. For readings on the subject, please see the Bibliography. Fortunately, Galambos’ ideas are both right and useful whether the state exists or not.

<sup>5</sup> I consider the definition of impossible to be one of the most valuable things taught by Galambos. With that concept understood, 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 claims 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.



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 is a fact.

To complete the definition of freedom, Galambos had to define property, and he did so in Session One. 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.”<sup>6</sup>

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

This definition excludes children as 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.”<sup>7</sup>

Galambos later changed “man” to “volitional being” so that the definition would apply to other volitional (choice-making) beings in the 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, says that simpler is usually better. His definition of property, *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 intellectual property in another way, all the while saying that intellectual property isn’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. In that society you would have a right to full (100%) control over all three types of your property. When it came to choices regarding the disposition of your property, *the decision would always be yours and no one else’s*. You might give some or all of it away, but that decision would be yours.

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<sup>6</sup> SIAA page 21

<sup>7</sup> Ibid. page 24

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.<sup>8</sup> 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.

### **GALAMBOS ON PATENTS AND COPYRIGHTS**

At first glance, the spirit of U.S. patent and copyright law might seem to be generally consistent with Galambos' views 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 system of patent and copyright laws are provided and coercively enforced by the state, they at least have the nominal goal of protecting primary property. The ordinary citizen knows that if he has primary property that he thinks is valuable there are steps he can take to protect his interest in it.

Although Galambos sought to protect primary property, he rejected the patent and copyright system in use today. 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 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.<sup>9</sup>

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 to protect their ideas, I must remind them that they were using the only tools and knowledge that were available at the time. They did not have the advantage of living in a state-free society operating under common law based on the moral and rational principles advanced by Galambos.

Present day patent and copyright laws did not arise, as many might assume, from the lobbying efforts of individual artists, writers, inventors and other 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

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<sup>8</sup> Murray N. Rothbard, *For a New Liberty*, Ludwig von Mises Institute paperback, 2011, pp. 84-85.

<sup>9</sup> SIAA, page 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.

investment. 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.

As noted, 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, unfortunately including the United States, are collapsing 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, "inalienable" rights, or rights "endowed by a creator." 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....<sup>10</sup>

To avoid 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 that do not meet this test, negative consequences for some individuals and for society in general will result. This is why all political governments ultimately fail.

### **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." Since I was certain that Galambos wasn't a "nut," I was disturbed to see that Kinsella had applied that label while admitting that he was almost totally ignorant of what Galambos had said (a condition which appears to persist to this day). I added a

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<sup>10</sup> Ibid. page 97

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 attacking the view that intellectual property can and should be owned. It hadn't occurred to me that anyone in a non-communist country could possibly be against owning it like any other property. I began to read Kinsella's paper, but soon found what I thought were fundamental errors and didn't finish it. I also came across something written by Jeffrey Tucker. He said that after six years of thinking about Kinsella's paper, he finally came to embrace Kinsella's view and had concluded that "intellectual property is a form of exploitation and expropriation that is gravely dangerous for civilization itself."<sup>11</sup> To me, it is that belief and others like it 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, in my view, their influence is in the wrong direction on this matter. As a result I felt compelled to write this paper.

Recently, on the Liberty.me website, Tucker answered a subscriber's question 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. Unfortunately, that still leaves Mr. Kinsella, who claims that ideas aren't property, and that attempts to treat them as such would require unethical control of other people's property. This is his view even in the absence of a state. Since Mr. Tucker has embraced Kinsella's paper wholeheartedly, it would seem that he agrees with these positions.

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 Bibliography.)

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<sup>11</sup>From Tucker's review of Michele Boldrin and David K. Levine's *Against Intellectual Monopoly*, Cambridge University Press, 2008, which is primarily an argument against state-granted monopolies. <https://mises.org/print/4959><https://mises.org/print/4959>

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 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."

### PROPERTY AND SCARCITY

When 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 said, ideas cannot be property and cannot be owned. Although at first glance many might agree, on close inspection we can see problems with both of his premises and with his conclusion. But before getting to those things, let's look at something even more fundamental.

Kinsella states the above 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—owning them—is *impossible*. With this he seems to be taking the first steps toward getting us to accept his paper as the definitive authority on intellectual property, making his view "settled philosophy" and ending the discussion.

But as we've seen, the only things that are impossible are those that would violate natural law. Kinsella cites no such law or laws to support his position. Instead he offers us pronouncements much like those of the so-called "experts" who proclaimed that it was impossible for man to fly. As noted, they were wrong because their opinions were not supported by any law of nature and were based on nothing more than opinion.

The reality is that all definitions and all rules of society are manmade. This means that they can be anything we want them to be. We can create definitions and rules and then see how they work in practice. It is certainly *possible* to define and treat ideas as property. *We know this because Andrew J. Galambos has already shown us how to do it.*

The test is whether the consequences of doing this are good or bad. As this paper will show, good consequences come from treating ideas as property, and bad consequences are avoided. The bad consequences of treating ideas as property predicted by Kinsella simply will not come to pass.

Now I'll address the specifics of Kinsella's argument. He begins the section of his paper 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. The result was his afore-mentioned 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 because we assume with good reason that no two people or the derivatives of their lives are ever identical. They are unique, which makes them scarce. The scarcity issue takes care of itself.

### **EMPIRICAL EVIDENCE SUPPORTS 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."

As this paper was being finalized, Watner and I learned of newly-published research whose results support Watner's reasoned position, and which are consistent with Galambos' definitions of property and theft. It was shown that children, when presented with situations strikingly similar to the lawnmower example, wanted the equivalent of "their lawnmower" even when an identical object was available. See "Identical but not interchangeable: Preschoolers view owned objects as non-fungible," in the Bibliography.

### **INTELLECTUAL PROPERTY CAN BE JUSTLY OWNED AND HAVE VISIBLE BORDERS**

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 could independently have the same idea. His definition of property includes that possibility. *Your* ideas are *your* property. It doesn't matter how many other people had the same idea, or when—it belongs to each of you. Although Galambos did not cite the homesteading rule 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. Then, by registering the idea, you have documented your homesteading claim, thus creating the needed visible borders and establishing your ownership versus the non-ownership of those who haven't

independently had the idea. With this system in place, conflicts can arise but they will only be about determining independency.

### **TREATING IDEAS AS PROPERTY WON'T CAUSE DISASTERS**

To Mr. Kinsella's credit, he at least acknowledges (I would say grudgingly, in Footnote 89) that people could choose alternative systems to his:

Of course, in anarcho-capitalism, it is difficult to predict what extensive contractual regimes, networks, and institutions will arise. Various enclaves or communities may well require their customers, patrons, or "citizens" to abide by certain IP-like rules.

My strong disagreement with Kinsella's ideas made it difficult for me to pay attention and to read them carefully, and resulted in my careless misreading of this. Therefore, in the first version of this paper I openly wondered about what rules could be "IP-like." After all, "rules" are someone's articulated ideas, and are themselves an example of intellectual property. Rules *are* IP, not "IP-like."

After re-reading Kinsella I now believe that I was mistaken and that what he meant was that a community could adopt rules that treated ideas *as though* they were property, even though he claims that they are not, and cannot be. He seems to mean that if, despite what he claims is an impossibility, society treated them thusly anyway as advocated by Galambos, it would be a great mistake and the people would find themselves in dire straits as a result. He has been quite clear about this. For example, in a response to someone who commented on the original version of this paper, he offered the opinion that Galambos' ideas are "...as bad as naziism [sic], fascism, taxation, Georgism, the drug war," are "evil stuff," "completely unlibertarian," and "would lead to human genocide," despite the fact that people's decision to use them would be *voluntary*, their operation is *coercion-free*, and they could stop at any time.<sup>12</sup>

One of the goals of this paper is to show that adopting Galambos' ideas would lead to no such outcomes. Kinsella is just not well-versed in Galambos. As one of the steps in correcting that, I referenced Galambos' answer to "the Henry George problem" above. So far as Nazism and all the rest goes, I'll leave it to the reader to decide whether any of these charges hold up.

Galambos created a set of basic rules for intellectual property in a voluntary, state-free society, and you are reading them here. The logical consequences of following them have none of the negative effects claimed by Kinsella. See the Appendix for a detailed illustration of how the rules would work in practice.

Mr. Kinsella is free to advocate a society in which ideas aren't fully recognized as property but as a lesser class of thing. As suggested by his footnote, he might do just that and start an anarcho-capitalist enclave or community where the rules explicitly deny that intellectual "property" is property at all. Indeed, that's what he seems to want. However, his pronouncements could not keep the community next door from using Galambos' definition and giving ideas the same property status as human life and tangibles, with specific rules and

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<sup>12</sup> Original version and comments are at [http://voluntaryist.com/property/boren\\_ip.html#.VlpJPcaFOHs](http://voluntaryist.com/property/boren_ip.html#.VlpJPcaFOHs)

protections fitting the unique requirements of each. If the concept failed in practice, then that would be that.

I believe that not only is it possible for a community to successfully treat ideas as property, but that it will work for society in general, not just enclaves. I encourage creative readers to begin thinking about the advantages of living in a world where common law would treat your ideas as your property, to do with as you please without interference.

### **IDEAS ARE A SCARCE RESOURCE**

There is a problem with Kinsella's premise that ideas aren't naturally scarce. In fact, he says that ideas are so plentiful that they should be free, as air is free. If you use the word "idea" in a generic manner, he is correct. 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 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 useful 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 a 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. For example, the formula,  $E = mc^2$ , 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 ideas 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 saw little practical application. How could you turn the formula into money? Galambos observed that this failure to recognize the importance of a discovery is the typical case. We just cannot see all of the implications and possibilities. As late as 1932 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." Therefore it is likely that in 1905, and for decades thereafter, he would have licensed 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. An idea that has been disclosed to one other person who has agreed not to disclose it exists in a quantity of two, and so forth. 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 eliminated by intentional or accidental disclosure by the owner, or by theft. In the case of the latter, the owner will see himself as being in conflict with the thief and with everyone who has illicitly gained possession of his idea.

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. It only makes them 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 further reduces the likelihood of conflict. All ideas, even the best and most important ones, although always being the property of their innovator, would ultimately be available to everyone on the most reasonable terms imaginable, to include *giving the buyer the power to set the price*, 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 the owners of those ideas (and perhaps their heirs) having 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 has 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. 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. So, if the innovator's protection mechanisms break down and his ideas are stolen

and wind up in your hands, Kinsella says that 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 at the same it seems that watching intellectual property being looted (downloaded) 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. It seems that for him, when it comes to ideas there is no such crime as possession of stolen property. It is almost unexplainable that a patent attorney could think that way. In his desire to end our flawed intellectual property protection mechanisms he has thrown the baby out with the bath water.

Galambos, on the other hand, would protect intellectual property just as much as tangible property. A car thief can legitimately be prevented from using the stolen car, and an idea thief can be barred from using the stolen idea.

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? And why shouldn't the rest of us support him? One possibility is that Mr. 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 puts innovation pretty low in the hierarchy of human achievement.

Galambos had the opposite view. In Session One of V-50 he defined innovation.

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

All told, 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.

### **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. For example, 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 view of Mr. Kinsella, exercising *unethical control* over Black's own property. (I assume that to Mr. Kinsella the word "unethical" is either synonymous 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.*

The phrase “where possible” in the definition of ownership 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 view 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.

I believe that Mr. Kinsella would agree with the following: 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. Any interference, whether intentional or not, is subject to restitution or some form of 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. For example, the aggressor could be barred from entering a structure, physically restrained by property protection forces, sued in a proprietary court, or even banished from the private community. Defense of property is always moral.

But when it comes to intellectual property Mr. Kinsella has a different view. Since (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. An innovator may explicitly identify his intellectual property and ask that it not be used, e.g., "Please don't download my music without paying for it," or "Please don't use my manufacturing process without licensing it," but there is no ethical requirement to comply. Even if the innovator adds, "I make my living from this property and your use of it without payment hurts me," 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.

I believe that humans have difficulty accepting a moral standard by which it would be ethical to control the property of others in defense of one's primordial and secondary property, but unethical to do the same thing in defense of one's primary property. However, if they are taught that ideas aren't property they might suppress their natural feelings. This is especially likely when the result is getting other people's ideas "free."<sup>13</sup> But when someone tries to take *their* property, their natural instinct is to resist.<sup>14</sup>

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<sup>13</sup> For more on this see the Bibliography for "Why Do Good People Steal Intellectual Property?"

<sup>14</sup> To illustrate this point, Galambos told the following joke, which I can't resist retelling here.

During the time of Stalin's collectivization of farms in the Soviet Union, 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 replies indignantly, "Oh no, absolutely not!"

Stunned, the Commissar can only ask, "Why?"

The farmer answers, "Because I *have* a cow."

To the point made by the joke, I will add that people can value their ideas just as much as their cows.

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 as our goal 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, and where protecting ideas is just an "entrepreneurial problem" (as he has called it elsewhere), but I wouldn't want to live there.

### **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 definition 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 get things with as little effort as possible, and stealing is one way to do it. But 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 to control someone else's primordial property without their permission, or what might be called "traditional" slavery, is immoral. 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 an owner to create "artificial scarcity" and deny someone else the use of his tangible property without his permission, but wrong to do the same thing with his intellectual property. 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 interference 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.”<sup>15</sup> The view that non-coercive monopolies are benign was also held by Galambos. For a contemporary entrepreneur’s defense of monopoly, see Peter Thiel’s recent book, *Zero to One*.

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 leave the seller’s property alone. In a market economy, ordinary consumers will 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.”

### **STEALING INTELLECTUAL PROPERTY CAUSES HARM**

Imagine a cattle ranch. In a corral are some prize cows. Someone leaves the gate open, either accidentally or intentionally, and the cows 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, so he has been harmed. But if you appropriate someone’s idea he still has it, and is not deprived of it, and can use it right along with you. Therefore, the argument goes, *no harm has been done*. The innovator can still use his idea, can’t he? There can’t possibly be a conflict! Apparently this is supposed to be obvious. It’s a very appealing scenario: intellectual property, taken 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.

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<sup>15</sup> Hans-Hermann Hoppe, *A Theory of Socialism and Capitalism*, Ludwig von Mises Institute, 2010, page 218.

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? To 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."<sup>16</sup>

This quote from Hoppe was taken 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 to say, "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."<sup>17</sup> 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 be likely to do.* And that is in fact what usually happens.

It is observable that almost all of the intellectual property that is generated is willingly given away without charge and with no conditions attached. But when that doesn't happen, it is because the owner has judged there to be a cost that he is 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?

Let's look at the often-used example of downloading music without permission and without paying for it, which Mr. Kinsella dismisses as 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 decide that no harm has been done, because all harm (cost) is subjective. If the owner of property—any kind of property—*believes* that he has been harmed then he *has* been harmed, and he doesn't have to prove it.

The reality is that the "new business model" is a rationalization for the change musicians have had to make to try to compensate for the activities of thieves from whom they have little protection. You might as well say that a neighborhood that becomes overrun by burglars would be a "new residential model" for homeowners.

Generally speaking, it is 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.

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<sup>16</sup> Ibid. Note 188.

<sup>17</sup> Ibid.

I'm struck by the fact that the advocates of taking and using primary property without permission or payment do not make even the slightest suggestion that the thieves should at least make some payment that they deemed to be "fair," or even a token payment, to the person 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 a royalty. 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? Of course the reason for some of them is that they are simply criminals and know that they are criminals. But others, those who we otherwise think of as "decent people," have been given superficial, pseudo-intellectual rationalizations for their behavior, and have bought into 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 that ideas are just as much property as tangible things, and being driven in part by 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, and blocks the progress of civilization.

The society that many libertarians claim to want—one without a 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 subscribes to this view. And what does "non-aggression" mean? *It means not interfering with other people's property.* But he and some of the other supposed champions of liberty believe it is perfectly acceptable for someone to take primary property from its owner and use it any way they wish, even when the owner explicitly asks them not to do so, and without any financial payment or credit for the idea. These same staunch libertarian folks say they are all for private property rights, but when it comes to ideas—primary property—they have no problem letting them become 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,"<sup>18</sup> 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 which 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."

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<sup>18</sup> Available at [www.bastiat.org](http://www.bastiat.org)



What is not seen are the negative effects on the innovator of taking his property without permission, without payment, and quite likely without credit or gratitude. It would defy reason to claim that those bad effects are zero, but that's what "no harm" means. And yet that seems to be the position of the opponents of intellectual property.

In a justice system that protects primary property, when there is a conflict that the parties cannot resolve themselves, litigation could ensue. The opponents or their insurers would turn to neutral parties, such as professional appraisers or potential paying customers, who would offer opinions that an arbitrator could use as a basis for an award of restitution. An arbitrator would not use the opinion of a person who advocates intellectual property theft, or is himself the thief, or is one who benefitted from the theft.

The criterion for thievery already exists: Anyone who, rather than pay 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 engage in economic transactions with them. To be shut out in this way will likely be very unpleasant.

It is beyond puzzling to see how some of those who advocate 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 the worst political states do? 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 that it would do no harm?

As Hoppe points out, "Private property means the right to exclude."<sup>19</sup> 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 absolute 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 physical harm? What if he drugs her so that she has no recollection of the event? Is that ethical, or would it be the crime of rape? This bears on intellectual property theft.

If I had an actress friend who was paid as a percentage of ticket sales, would I tell her that I had downloaded her movie without paying for it and expect her not to care? Would I download it, but not tell her? Would I download it at all? Would it matter that she was my friend? What if I didn't

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<sup>19</sup> From the Introduction to Rothbard's *The Ethics of Liberty*, page xxxix.

know her at all? Would it then be ethical to download the movie? What if I was sure that she would never find out? Would it be ethical for me to do it, or would it be the crime of theft? Would it be unethical of her to try to stop me? An oft-repeated Galambos pronouncement applies: “There is no such thing as a small interference with property.” With that in mind, the answers to these questions are obvious.

### **FINALLY, JUSTICE FOR ALL**

Here I'll introduce some Galambos 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 noted, any attempted, intentional interference with property is coercion. Property interference can also occur unintentionally, by accident. 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. This is generally how the common law justice system worked before the state forced its way in hundreds of years ago.<sup>20</sup>

***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, detectives, forensic analysts, security forces, and insurance companies. Various authors have written brilliantly on how a state-free 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 hugely 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.”<sup>21</sup> I believe that Galambos would agree, although he would use his own definitions. What Huemer calls “government,” Galambos calls “state,” defining the terms in a way that positions government as a moral competitor 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” by contrasting it with a government that is coercive rather than voluntary, and which has a monopoly in the services rendered. I believe that he and Galambos

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<sup>20</sup>See Bruce L. Benson, *The Enterprise of Law*, in the Bibliography.

<sup>21</sup> “Michael Huemer Responds to Critics, Part 1”

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

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.

In thinking about a 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, and investors. In a society that accepts this practice, there will indeed be “free” ideas. As we know from Bastiat, 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. The desirability of protecting primary property, even by using the defective system now in place in the United States, is confirmed by the number of creative people who move here to take advantage of it.

But, asks Kinsella, what is the net effect on society of protecting ideas? Is it good or bad? He says 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 the bill. When did the state ever do anything efficiently and at low cost? 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, 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 in some way “control” the aggressor’s property would void the concept of self-defense.

To achieve justice, all forms of property must be defended. Justice is not about society, but about the individual. Societal wealth 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.

### **THE FOUNDATION OF THE SCIENCE OF VOLITION**

Now I’ll introduce to you what I believe was Galambos’ most important idea. He called it the First Postulate of Volition. (There is a Second Postulate, but a discussion of it would go beyond the scope of this paper.) 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.

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

Despite my claim 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.<sup>22</sup>

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 claim 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 that person, death is seen as the way to end his continuing and possibly increasing state of unhappiness. To him, 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 lectured on it at length. 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.

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<sup>22</sup> Some might see a relationship between this and Ludwig von Mises’ action axiom as stated in *Human Action*. Galambos read that book, sold it in the FEI bookstore, and had Mises as a guest lecturer. Although Galambos was possibly influenced by Mises on this point, I believe that his formulation is clearer, and is by far the stronger statement about how things *are*, i.e., this is a law of nature.

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.

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. It follows that if we expect to have a society of freedom the rules must not ignore or attempt to violate this law just like 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, just as the Wright brothers did with gravity when they invented the airplane. To Galambos, the first step is 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 unrealistic and 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 answers with another question: "How would *you* do it?" Quite often the skeptic will respond with a free market solution. 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."<sup>23</sup>

Many readers of this document 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 doing so is harmful to civilization. Not only would Galambos dispute that, he would claim that the protection of primary property is necessary. That's because of the First Corollary to the First Postulate.

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 and protect 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, then attempts to take property from us without our permission will be resisted and resented. It is observable that this happens in general proportion to the perceived harm done by the unapproved taking.

Galambos' definition of property to include ideas fits this perfectly. Just as we say *my* life and *my* automobile, we say *my* idea. As with other natural phenomena, we don't know *why* this is so, we

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<sup>23</sup> Larken Rose, *The Most Dangerous Superstition*, published by the author, 2011, page 171

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. Every reader of this essay 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. 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 done so in this case, because research that would provide the needed evidence 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 theory. 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 “scientific” activity 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 at the time, and now with hindsight, this is one of several things that I think he could have done better, and which would have made him more well-known, and possibly more influential, today.

The claim 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 know now, 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 finished the first version of this paper 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, many

readers of this paper will be familiar with the Milgram Experiment and the Stanford Prison Experiment. Through such experiments we may learn how humans behave under 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 almost always behave. When that can be firmly established we will have no rational choice but to take it into account when proposing standards for societal organization.

As seen above, Galambos' hypothesis was that all people live to 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-procreational derivatives thereof, consisting of thoughts, ideas, actions, and tangible goods. Galambos proposed that society be built around the concept of property, with property defined in this way.

There is almost universal agreement that life and tangible things are property and that people 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 also recognizing property in ideas leads to the same result, and that the weak or non-existent protection of intellectual property, as well as the attempts to protect that property by using the coercive tools of the state, has contributed to mankind's sad historical record of war, poverty, and servitude. 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 as close to it as we imperfect humans can get.

I contacted a prominent professor of psychology, asking about how humans naturally view property, and he was kind enough to refer me to several research 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 these 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 for answers in 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 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 two possible reasons occurred to me.

One reason would seem to be the apparent difficulty of investigating “ideas” when dealing with children. 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 intangible ideas be studied at an age young enough to have not yet learned a response to the investigator’s questions?

Perhaps an even larger hurdle is that probably very few researchers are interested in the answer, or see it 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 any society that does not treat ideas as property will fail.*

I’ve always believed that well-designed studies would confirm that children see their ideas as their property. After all, what would be more likely to be seen as belonging to you than something that was born between your ears and still resides there? Fortunately I came upon a study that unequivocally makes that finding.

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.” To quote from 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 that they would be, then the issue of whether to treat



ideas as property will be settled. As stated in the first paragraph of this paper, there would 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 (as wrong as I think he is) let's say that Kinsella is right when he says that ideas can't be property, and that even if it's natural for us to think of them that way, it is simply a defect 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 at every turn, such as we see today when in fact ideas don't have full legal protection. There is no harm in respecting ideas as property, as is amply demonstrated elsewhere in this paper, so there is no reason not to.

In addition, the logical behavior that results from following the Golden Rule, "*Do unto others as you would have them do unto you*,"<sup>24</sup> is to defer to the owner's wishes regarding his ideas. If you aren't willing to agree to his terms and conditions, then leave his property alone. It's as simple and easy as that. Surely Mr. Kinsella would not have us violate this moral precept.

### **ARE WE REALLY TRYING TO ACQUIRE PROPERTY ALL THE TIME?**

As anticipated above, someone might say, "Wait a minute, even if ideas *are* property I disagree that everyone is always trying to acquire them. Personally, I don't care anything about acquisition. 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 giving 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 what about the billionaire philanthropists who donate huge sums to worthy causes? Aren't such personal sacrifices the *opposite* of acquiring property? These are all examples of giving property away in selfless acts of altruism. Doesn't that prove that your corollary is false?" Not surprisingly, the answer is "No."

We begin with Galambos' definitions of profit and of 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. As we've seen, these are *secondary* property. Profits that come in the form of secondary property are called *secondary* profits. Those who say they oppose profit are thinking of *secondary* profit. It is from this view that slogans such as "people before profits" are born.

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<sup>24</sup> 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, page 92.

## PRIMARY PROFIT

This is where I will introduce you to Galambos' concept of *primary profit*.<sup>25</sup> Perhaps you already see where we're going just by reading that term. If not, you soon will, and you will find it useful in understanding human behavior, beginning with your own.

Galambos saw that with *primary* property, which is intangible, we can have *primary* profit, which is also intangible. This, in my view, is a brilliant insight. 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, the receipt of gratitude from someone you have helped, or the improvement of your professional or personal reputation. Practicing the Golden Rule, a feature of every major religion, produces primary profit. Some people are motivated almost entirely by 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 holding plunder.

The concept of primary profit fully explains what we call "altruism." Galambos pointed out that there are no "selfless" acts, and no such thing as altruism. 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."<sup>26</sup> 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 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 all 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 this was envy, and he 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,

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<sup>25</sup> It may be the same thing that Ludwig von Mises called *psychic profit*. *Human Action*, page 289.

<sup>26</sup> SIAA, page 276.

and in how their results are measured. When 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.

When a society teaches the concepts of primary property, primary profit, and primary wealth in childhood, its 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 denigrating or despising the very idea of profit as they sometimes do today, and perhaps favoring schemes to 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**

People who seek and earn primary profits from their investment of time and money in the process of being educated or doing research accumulate primary wealth. This wealth can be used as *primary capital*. That capital can be invested to produce more primary profits and, as noted, it can be used in the pursuit of secondary profits.

The production of secondary profits 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, must somehow be able 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 profits for the primary and secondary investors will clearly be damaged or destroyed. It is ludicrous to claim 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 will be both subjective and objective, with the latter able to be estimated in monetary terms as a 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 increase our happiness by coming out “ahead” on 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. Even when you receive a gift, you pay for it with expressed gratitude. If you don’t do that, you pay for it with a loss of self-esteem and quite likely a loss of reputation in the eyes of the gift-giver. 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 or without problems. Let’s look at those property ownership problems, category by category.

*Primordial Property.* Life has the problem that it must be *kept* alive. It’s quite an effort to keep a human alive. We perish rather easily in temperatures that are not much different than optimum, and we have to be sheltered and clothed in some 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. 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 or natural disaster. Most things can be damaged in normal use, and eventually everything wears out or becomes useless through obsolescence. The more secondary property one has, 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 through moral means.

Despite these problems and more, we are still eager to claim and defend our lives and our tangible possessions as our private property. However, some societies have experimented with not treating them so. Those societies 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 includes fraud, which may be used to “sell” various redistributionist social and economic policies.) Every effort in this direction is an attempt to violate a law of nature and will fail, and what is worse, produce outcomes that are the opposite of those intended.

*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.

The ownership of primary property seems to have few problems. 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 excitement and their desire to get a friend or relative or business associate to attend, they disclosed some of the course’s content out of context. Predictably, this 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.

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, in all cases the innovator has begun to lose control of his primary property when he makes a non-contractual disclosure. 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, 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 the 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 has claimed ownership. Ideas that are well-documented have good borders. This is a *market* solution to the border problem.

The third potential problem with owning primary property affects secondary property as well. It stems from what Galambos called the Principle of Least Action, suggested by a principle of the same name in physics. 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 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 answering the question, “Whose property is it?” In general, we will know via various items of evidence. But property borders for ideas may not always be clear, especially for less important and/or poorly documented ideas. If the question of ownership is unanswered, or perhaps unanswerable, and the idea is minor, there is unlikely to be any conflict over it.

However, when the idea is a significant one, the border is likely to be very clear. That is because from the outset the innovator himself knows that it is *his* idea. If an 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.

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 use of ideas will be that of product manufacturers and service providers, not consumers, with the cost built into the 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 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.<sup>27</sup>

In Galambos’ view, each bona fide independent innovator has the same ownership rights to the innovation as the first innovator. This view was shared by Lysander Spooner<sup>28</sup> and Murray Rothbard.<sup>29</sup> 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 quite likely accrue to whoever was first with a marketable innovation, that advantage would not be protected against

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<sup>27</sup> In Course V-201 Galambos suggested nine tests for independency to weed out false claims.

<sup>28</sup> Lysander Spooner, *The Law of Intellectual Property*, pp 68-69. (See Bibliography.)

<sup>29</sup> Murray N. Rothbard, *Man, Economy, and State*, Ludwig von Mises Institute, Scholar’s Edition, 2009, page 748.

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 totally eliminates one of Kinsella's biggest concerns. He fears the possibility of a greedy 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 would be able to manufacture—or even use—a light bulb without getting permission from Edison's heirs."

Galambos' idea of giving equal status to independent innovators 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 better. No one in society has a right to "have it now," or a right to steal it for any reason.

Ideas are only valuable because they fill some perceived need. The greater the need the more people will be trying to fill 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.<sup>30</sup> More will be said in the Appendix about 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.

### **AN UNAPPRECIATED VIRTUE OF PRIMARY PROPERTY**

Unlike a car, or a chair, or a piece of pie, *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 lowering his cost per unit and 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. (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 will choke off production of useful things. Rather, it will lead to increased production, because the innovators, entrepreneurs, and

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<sup>30</sup> Matt Ridley, *The Evolution of Everything*, HarperCollins Publishers, 2015, page 119.

investors 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 that risk into the selling price of their innovation, thereby enabling a lower price to the user. Finally, the innovator's knowledge that an independent innovation of his idea, or a competing idea, might come into the market tomorrow, will give him an incentive to keep the price low. In any event, unless we want a society where stealing is approved as a way of acquiring property, we have to live with the outcome of accepting the ownership of ideas.

In the industrialized world, the price of tangible goods, all of which are the fruit of ideas, has come down steadily. Is this because ideas have been stolen, or because they have been given at least some protection by both our laws and our sense of morality? I believe that it is the latter, and that both common law and the moral standards of individuals will be improved as Galambos' ideas move into the mainstream.

## **CONCLUSION**

I believe that I have argued successfully in favor of intellectual property by showing that

- Something need not be scarce to be property (supported by empirical evidence).
- It is human nature to treat ideas as property (supported by empirical evidence).
- Respecting property in ideas is consistent with the Golden Rule
- Ideas in general are plentiful, but the ideas that matter are scarce.
- Intellectual property can be homesteaded and justly owned by more than one person.
- Intellectual property can have visible borders.
- Protecting one's ideas does not unethically control the property of others.
- Using intellectual property without permission is not harmless.
- Protecting ideas is beneficial to both the individual and society.
- Not protecting ideas harms both the individual and society.
- The ownership of ideas by innovators and heirs will not choke off civilization's growth.
- Galambos' definition of property conforms to Occam's razor.
- Ideas are automatically owned in perpetuity.
- Keeping track of intellectual property will not be costly or cumbersome.

I make no claim that Galambos' ideas are perfect, and attempts to improve upon his work or even falsify it are welcome. I hope that Galambos isn't falsified, at least in a major way, but I'm prepared to hear all attempts. As I hope is apparent here, I believe that Kinsella is simply wrong, but I will listen to reasoned disagreement with an open mind.

Ideas, especially those claiming to be profound ideas, should be challenged. So, if after reading this paper 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 invite them to make an explicit, step-by-step prediction of the specific things that would happen—a chain of events—which would result in net negative outcomes for society. It's not enough to



opine that things would go to Hell. Specificity is required. I believe that unless the opponents of intellectual property wish to drop their opposition, it is incumbent on them to follow through on this.<sup>31</sup>

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 paper much longer, but then I would be teaching the course, and my only goal here is to counter the arguments of those who are against intellectual property. I cannot know whether you found value here, but I hope you have. And, as I mentioned earlier, I hope you begin to contemplate a society structured using the principles innovated by Galambos. I think you will conclude that it would be just, peaceful, prosperous, and worth building.

*A new scientific truth does not triumph by convincing its opponents and making them see the light, but rather because its opponents eventually die, and a new generation grows up that is familiar with it.* Max Planck<sup>32</sup>

#### **APPENDIX: THE MORAL TREATMENT OF PRIMARY PROPERTY IN THE MARKET**

I'd like to take you through some steps to bring into focus the practicality and feasibility of using the abstract 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 used the written notation,  $P_0$ ,  $P_1$ , and  $P_2$  to identify the three types of property. In lectures, he would verbalize primary property as "P one," and secondary property as "P two." Thus in general conversation one might say, "In this business I expect to use this P one to generate a P two profit."

In recent correspondence with other former Galambos students I've noticed some of them typing P1 rather than  $P_1$  and P2 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 P1, and secondary property is P2.

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<sup>31</sup> Richard Dawkins tells an 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

<sup>32</sup> Max Planck, "Scientific Autobiography," 1950, pp. 33-34  
<http://www.scribd.com/doc/41698869/Max-Planck-Planck-Scientific-Autobiography#scribd>

Let's envision a voluntary society where the principles identified by Galambos are the basis of common law (and I'll include law merchant for those who know the term). There being no state, all property protection products and services are provided by private entities, known collectively as government per Galambos' definition. (And it's not "the" government, because competition prevails. Numerous companies would offer government services).

As part of the basic instruction given to children by parents and teachers, P1 will be considered to be property just as P2 is today. Children will learn that it is wrong to steal, and that stealing includes P1 as well as P2. Children will learn to respect other people's property rights, and those include P1 as well as P2.

Children educated and trained in this way will have the world view that ideas are property. Similarly, children will be taught 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 teach these things today.)

To continue with how P1 will be treated, I'll again mention that the total number of items that are in the category of P1 is beyond counting. 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. The vast majority is of no use to anyone other than its owner, is not necessarily of very high quality, and is 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 found a really great restaurant. This knowledge is my P1, but I'll give it away to my friends without charge in exchange for the P1 profit that consists of the good feeling I get when 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 satisfaction for a job well done, and a P2 profit as 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 excitement of achieving something that couldn't be done on one's own. The fact is that the vast majority of P1 is given away 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 owner or his heirs to control it in perpetuity would be a disaster for society. I've tried to make it clear that it is the protection of the individual and his property, and not of society, that should motivate us. That's because if the individual is protected, society is protected. Once again, a major Galambos tenet was, "There is no such thing as a small

interference with property.” The principle is clear: interference with property is always wrong, and if you accept a small interference, you open the door for larger interferences and, ultimately, tyranny.

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 their P1 with one of presumably many companies in the P1 registration business. These and other companies will 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 customers.

There are an infinite number of contractual terms that can be arranged between the P1 owner and the P1 user. One arrangement might be payment for permanent use of the idea; another might be payment based on gross sales; another might be on the 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 them to be.

Remember 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 for as long as the innovation is used. In principle, this could mean for the duration of the Universe. 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 below.

Galambos proposed that P1 whose use the owner chose to sell rather than give away 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 would be highly unconventional. After a period of time as decided by the P1 owner, presumably after consultation 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 agree not to use the P1 for any coercive purpose. It was Galambos’ view 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 P1, and could ethically forbid using it for coercion. Anyone who violated the clause would have their contract voided and might be ordered by a court to pay restitution, to say nothing of suffering a reputational loss.

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 agree to give credit to the innovator for the development of the P1. This would create a historical record, help set boundaries, facilitate expressions of gratitude, and ensure that revenue was paid to the proper persons.

In Galambos’ view, this way of handling P1 would become the normal way of doing business. The “pay what you want” feature would eliminate the possibility of bringing civilization’s progress to a halt due to unaffordable royalties. We might pay Edison’s heirs, but not much, as will be seen. However, an obvious question is why would an 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.

We must remember 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.

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 their P1, those who demand more 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?”), 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. As noted, there might well be times when it would make economic sense to employ this tactic from the beginning. That would be up to the P1 owner.

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 the next time he comes in, 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. That said, 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. 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 likely, 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 most likely case. Innovators, like all humans, are engaged in the pursuit of happiness all the time. The most likely case 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 usual behavior of innovators. I

believe that we would be hard-pressed to find many exceptions, and shouldn't worry about them.

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. Let's say that this company can afford to pay 10% in total royalties to all P1 licensors combined, so that leaves them with just 5% available to pay all other royalties. They look into it and realize that after Edison several more innovators contributed P1 to the light bulb. However, a couple of the innovations are no longer used, and there is no reason to pay a royalty. They find that there are three companies whose P1 is essential, and is available on a "pay what you want" basis.

Finally, they realize that the only one of Edison's innovations still in use by anyone is the discovery that the air has to be evacuated from the bulb so that the filament won't instantly burn. 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 outcome will be typical, with only a few innovations having perpetual 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 is that no matter what the owners of P1 may ask to be paid, no business can pay more in total royalties than its profits will support, and it will only pay for 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 adjust their royalty fee downward if they want their innovations to be used. With luck, 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. Galambos suggested 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 a law of nature. Einstein does not own nature itself, but he does own his discovery of it and the law described by that equation. 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. Galambos believed, without elaborating, that physical death is not necessarily inevitable. Other scientists say the same thing, and the prospect of perhaps digitizing our "selves" may provide another way to be immortal. Let's say that life expectancy increased to 1,000 years. Would anyone object to paying a 1,000 year old Einstein? I don't think so. Even modest

improvements in life expectancy will bring this into focus. After all, Einstein would only be 136 years old today. Would it bother you to know that nuclear power plant operators 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 we still haven't addressed the "problem" of heirs that troubles some people. They believe 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 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 an 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.

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 totally 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 will likely occur as long as humans exist, Galambos' interest was in the major P1 innovators. He advocated that they formally organize their property 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. He used the term "natural estate" to describe these entities. They 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 accumulates P1 and P2, and has the ability to make similar plans for 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 P1 and P2.

## ACKNOWLEDGEMENTS

I would like to thank Carl Watner, Alvin Lowi, Jr., Frederic G. Marks, Brian Gladish, Greg Boren, and my wife Pauline Boren. Their encouragement and suggestions made this a much better paper than if I had done it all on my own.

I would also like to thank the several professors who quickly answered my questions and steered me in the right direction for further answers, even though they didn't know who I was, or what I was going to write, and won't until this paper is published: Mark Leary, Jon L. Pierce, Susan A. Gelman, Oliver R. Goodenough, and Alex Shaw. In no way do I claim that any of the views expressed herein, other than their own, are endorsed by them.

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

## BIBLIOGRAPHY

### **Sources that discuss the philosophy of property ownership, listed by publication date**

*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, and via different reasoning, almost 100 years later. It is believed that Galambos did not know of this work of Spooner, and his only reference to him concerned his creation of a private postal service, which was crushed by the state. Most of what Spooner wrote is worth reading. Available at [www.lysanderspooner.org](http://www.lysanderspooner.org)

*Thrust for Freedom: An Introduction to Volitional Science* by Andrew J. Galambos. This small book contains a collection of short essays originally published under that name in 1963. 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*. Available at [www.amazon.com](http://www.amazon.com).

*Sic Itur Ad Astra, Volume One*, by Andrew J. Galambos. This is the transcript of his 1968 delivery of Course V-50. The book discloses the basics of the Science of Volition. Used copies are sometimes available. Some of Galambos' recorded lectures can be heard online at [www.fei-ajg.com](http://www.fei-ajg.com), subject to significant restrictions. Access to them is controlled by the same people who refuse to publish the book.

*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. Go to <https://www.youtube.com/watch?v=Whx4QA3tGCo> to hear Session 1a. Also see [www.suscivinst.com](http://www.suscivinst.com) for possible availability of the entire set of 16 lectures.



*Against Intellectual Property* by N. Stephan Kinsella

As an example of intellectual honesty, Carl Watner posted Kinsella's essay, with which both he and I disagree, on his website.

<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.

Created by Frederic G. Marks, first a Galambos student, and then his attorney for many years.

[www.capitalismtheliberalrevolution.com](http://www.capitalismtheliberalrevolution.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](http://voluntaryist.com/property/watner_ideas.html#.VldJRcaFOHs)

### **Published research on property ownership**

These papers, in the order listed, take the reader from the general subject of the possession and ownership of tangible property in humans 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 may be enough for casual students.

"On the Rudiments of Possessions and Property"

Lee Ellis

<http://ssi.sagepub.com/content/24/1/113.extract>

"The State of Psychological Ownership: Integrating and Extending a Century of Research"

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

<http://apps.olin.wustl.edu/faculty/dirks/Psychological%20Ownership%20-%20RGP.pdf>

"The Nonobvious Basis of Ownership: Preschool Children Trace the History and Value of Owned Objects"

Susan A. Gelman, Erika M. Manczak, and Nicholaus S. Noles,

<http://www.ncbi.nlm.nih.gov/pubmed/22716967>

"Identical but not interchangeable: Preschoolers view owned objects as non-fungible"

Stephanie McEwan, Madison L. Pesowski, 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"

Nicholaus S. Noles, Susan A. Gelman

<http://www.sciencedirect.com/science/article/pii/S0885201414000276>

“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 [ashaw1@uchicago.edu](mailto:ashaw1@uchicago.edu)  
<http://onlinelibrary.wiley.com/doi/10.1111/j.1551-6709.2012.01265.x/abstract>  
(Please read my clarifying notes below before reading this paper.)

In my opinion, the results of these experiments, 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 in the first paragraph of my paper, we have no rational choice but to treat them so when creating the rules of society. Further discussion will be limited to what those rules will be.

To avoid possible confusion or misunderstanding of what the authors themselves concluded, I’d like to clarify something that appears in the 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).”

Some readers, especially casual ones, might interpret this as a blanket endorsement of the practice of using ideas without permission, but that is not the case. Goodenough and Decker are *opposed* to taking intellectual property without permission, as is clear from the title of their paper, listed below, where they call it “stealing.” However, they note 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 that case “file sharing makes perfect sense,” and it does when the creator of the property *has given his explicit or tacit permission*. But it does not mean that it is “perfectly reasonable” to use ideas without permission if the owner objects. In personal correspondence with Dr. Shaw he acknowledged that it was this part of Goodenough and Decker’s paper to which he was referring, and that the hypothetical situation regarding him and his colleagues was in the sense of 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](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 idea theft 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.

**Sources that make the case for a state-free society. Several describe how all of the services now provided by the state will be successfully provided on a proprietary basis. Unless otherwise noted, all are available through booksellers.**

*The Voluntarist*. 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](http://www.voluntaryist.com).

*No Treason No. VI, the Constitution of No Authority* by Lysander Spooner. Are you bound to obey political laws that you did not agree to?  
[www.lysanderspooner.org](http://www.lysanderspooner.org).

*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 dismisses the idea that he means the bomb-throwing kind. Breezily and wittily written. Both books are available as free PDFs, or you can support the author by buying the inexpensive print editions.  
<https://freedomainradio.com/free/><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 book than any other in my library. It is a textbook on the subject. I wish that Dr. Huemer had been my philosophy professor, but that would have required time travel. Also see his TED 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 made a fatal error. Hoppe shows us what that was, and much more.

*The Most Dangerous Superstition* by Larken Rose. Beautifully written in an engaging style accessible to everyone. For some, this will be the “red pill” that changes their thinking forever.

*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://davidfriedman.com/The\\_Machinery\\_of\\_Freedom\\_.pdf](http://davidfriedman.com/The_Machinery_of_Freedom_.pdf)

*For a New Liberty, The Ethics of Liberty, and Man, Economy and State, all* by Murray N. Rothbard. Excellent, but like most falls short on the protection of intellectual property.

*The Market for Liberty* by Morris and Linda Tannehill. An excellent book, which appears to have been influenced by the promiscuous disclosure of a former Galambos student. See my article, *Insurance Companies as Competing Governments*, in the 4<sup>th</sup> Quarter 2015 issue of *The Voluntaryist*. <http://voluntaryist.com/backissues/167.pdf>

*Against the State* by Llewellyn H. Rockwell, Jr. Lew Rockwell is the founder of the Ludwig von Mises Institute and operates what is probably the leading libertarian website, [www.lewrockwell.com](http://www.lewrockwell.com).

*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.

## Other resources

*Taming the Violence of Faith* by Jay Stuart Snelson. After parting ways with Galambos in 1978, Snelson lectured extensively on a variety of topics, including a lecture series, *Human Action Principles*, based on Mises. Listing his primary influences as Ludwig von Mises, Andrew Galambos, and Robert LeFevre, Snelson spent his later years writing this book, which offers his own prescription for achieving peace, prosperity, and freedom. More about Snelson and his work can be found at [www.jaysnelson.com](http://www.jaysnelson.com) and [www.suscivinst.com](http://www.suscivinst.com).

*The Ideological Immune System: Resistance to New Ideas in Science* by Jay Stuart Snelson. This essay shows why 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>

*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*. (Tversky, having died, was not eligible. 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 entertaining and instructive, and an example of the vast and rapidly growing body of knowledge of human behavior.