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Libertarianism After Fifty Years:   
What Have We Learned?

This chapter is an edited transcript of my speech “Libertarianism After Fifty Years: What Have We Learned?”, delivered at the NYC LibertyFest in Brooklyn in 2014. I was allotted only a short speaking time, so the speech was somewhat condensed. I expanded on the issues touched upon in a transcript posted on my site, which is the basis for this chapter.\*

\* My talk was originally billed as “Libertarianism After Fifty Years: A Reassessment and Reappraisal,” NYC LibertyFest, Brooklyn, NY (October 11, 2014), but I changed the subtitle before speaking. The speech is available at “KOL152 | NYC LibertyFest: ‘Libertarianism After Fifty Years: What Have We Learned?’”, Kinsella on Liberty Podcast (Oct. 12, 2014); the transcript was posted as “Libertarianism After Fifty Years: What Have We Learned? (transcript),” StephanKinsella.com (Oct. 12, 2014). I have updated and reworked it for this chapter.

INTRODUCTION

Hello. I’m glad to be here. Thank you to Ian and Mike for the invitation. I do have my eleven-year-old son with me. It’s the second or third time he’s seen me speak. He’s been to Auburn with me. I went to the New York Comic Con with him on Thursday. So turnabout’s fair play although it was fun. Comic Con was great.

I have fifteen minutes. My topic is “Libertarianism After Fifty Years—What Have We Learned”? If I get cut off, I will continue this in a private podcast. You can find more information, if I run out of time, because this is a big topic for fifteen minutes.

This is my own view of libertarianism. It might not be shared by everyone here. But what I would like to talk about is—what is the libertarian movement? How old is it? Where did we come from? What have we learned, and what’s to come?

THE MODERN LIBERTARIAN MOVEMENT[[1]](#footnote-1)

In my view, the modern libertarian movement is only about five or six decades old. The ideas that have influenced our greatest thinkers can be traced back decades and centuries to previous movements and thinkers[[2]](#footnote-2)—to the Enlightenment, to classical liberal thinkers, to thinkers from the Old Right, to luminaries such as Hugo Grotius, John Locke, Thomas Paine, Herbert Spencer, David Hume, and John Stuart Mill, and to more recent and largely even more radical thinkers, such as Gustave de Molinari, Benjamin Tucker, Lysander Spooner, Bertrand de Jouvenel, Franz Oppenheimer, and Albert Jay Nock.[[3]](#footnote-3)

The beginnings of the modern movement can be detected in the works of the “three furies of libertarianism,” as Brian Doherty calls them: Rose Wilder Lane, Ayn Rand, and Isabel Patterson, whose respective books, *The Discovery of Freedom*, *The Fountainhead*, and *The God of the Machine,* were all published, rather remarkably, in the same year: 1943.[[4]](#footnote-4) But in its more modern form, libertarianism originated in the 1960s and 1970s from thinkers based primarily in the United States, notably Ayn Rand and Murray Rothbard. There’s a reason Jerome Tuccille’s hilarious satirical memoir is entitled *It Usually Begins with Ayn Rand*.[[5]](#footnote-5) Other significant influences on the nascent libertarian movement include Ludwig von Mises, author of *Liberalism* (1927) and *Human Action* (1949, with a predecessor version published in German in 1940); Nobel laureate F.A. von Hayek, author of *The Road to Serfdom* (1944); Leonard Read, head of the Foundation for Economic Education (founded 1946); and Nobel laureate Milton Friedman, author of the influential *Capitalism and Freedom* (1962).

The most prominent and influential of modern libertarian figures, however, were novelist-philosopher Ayn Rand, the founder of “Objectivism”—the political wing of which, dubbed “capitalism” by her, is more or less co-extensive with libertarian minarchism—and a “radical for capitalism”; and Murray Rothbard, the Mises-influenced libertarian anarcho-capitalist economist and political theorist. Rothbard’s seminal role is widely recognized, even by non-Rothbardians. Objectivist John McCaskey, for example, has observed, that out of the debates in the mid-1900s about what rights citizens ought to have:

… grew the main sort of libertarianism of the last fifty years. It was based on a principle articulated by Murray Rothbard in the 1970s this way: No one may initiate the use or threat of physical violence against the person or property of anyone else. The idea had roots in John Locke, America’s founders, and more immediately Ayn Rand, but it was Rothbard’s formulation that became standard. It became known as the *non-aggression* principle or—since Rothbard took it as the starting point of political theory and not the conclusion of philosophical justification—the *non-aggression axiom*. In the late twentieth century, anyone who accepted this principle could call himself, or could find himself called, a libertarian, even if he disagreed with Rothbard’s own insistence that rights are best protected when there is no government at all.[[6]](#footnote-6)

We can date the dawn of today’s libertarianism to the works of Rand and Rothbard: to Rand’s *Atlas Shrugged* (1957), and to Rothbard’s *Man, Economy, and State* (1962), *Power and Market* (1970), and *For a New Liberty* (1973), plus his journal *The Libertarian Forum* (1969–1984). *For a New Liberty* stands today as a brilliant, and early, bold statement of the radical libertarian vision. By the mid-60s, the modern libertarian movement was coalescing, primarily behind the non-initiation of force principle and the “radical capitalism” of Ayn Rand and Rothbard’s systematic libertarian corpus based upon the non-aggression principle, or axiom. It is no surprise that the Libertarian Party was founded in 1971, as these ideas, and the liberty movement, were gaining steam.

In the ensuing decades, many other influential works appeared expounding on the libertarian idea.[[7]](#footnote-7)

So the movement is about fifty or sixty years old. It’s a relatively young movement as far as ideologies and political philosophies go. We still have our disagreements over certain controversies like abortion and other issues. But a lot of progress has been made in the last fifty years. We’ve had a lot of development, partly because of incessant libertarian internal debate, criticism by outsiders, criticism by minarchists, criticism by insiders. But at the fifty year stage, I do think it is a good time to step back and reflect and think what have we learned over the last fifty years. How we could use this going forward to further *refine* and *develop* our ideas.

WHAT HAS BECOME CLEARER

So let’s talk first about what has become clearer in the last fifty years. And, again, not everyone is going to agree with this—but this is my take. My take is from the position of an Austrian and anarchist influenced libertarian; from someone influenced greatly by Rothbard, Mises, Ayn Rand—and Hans-Hermann Hoppe, whom I regard as the greatest living libertarian theorist and Austrian economist.

This first insight may not be the most popular with everyone here, but I think the one thing we’ve learned is that political activism as a primary means of progress is limited at best.[[8]](#footnote-8) I don’t want to discourage people from doing it, but not everyone agrees with voting or that electoral politics is the way to go.[[9]](#footnote-9) And the sort of sorry history and state of the Libertarian Party since 1971—incompetence, corruption, and inefficacy—shows that electoral politics has not succeeded very much so far.[[10]](#footnote-10)

I would also say that we’ve learned that a *principled* libertarian position is preferred over an *ad hoc* or single purpose one like NORML or marijuana legalization or a utilitarian approach. Those have their purpose. They have their role. But a principled approach is superior and necessary. You really need to have a love for liberty, a love for libertarianism. You have to believe that aggression is really wrong, not just impractical.[[11]](#footnote-11)

It has become clear that libertarianism has to be 100% anti-war, not merely against “unjust” wars—as even Rothbard said, in the history of America, there have only been two “just” wars: the Revolutionary War and the war to prevent the independence of the South. We need to condemn both of those wars, the Revolutionary War and the Civil War, on both the South’s and the North’s side. These are both wars waged by the state.

In the case of the Revolutionary War, it was a war that involved conscription, shooting deserters, tons of war crimes, taxation, inflation.[[12]](#footnote-12) And it resulted in the current state that we have now. The American Revolution was a failure as well.[[13]](#footnote-13)

Libertarianism is *anti-state,* or at least it is increasingly becoming so.[[14]](#footnote-14) There’s an increasing number of libertarians and an increasing number of those that get drawn to anarchy. What’s the old joke? “What’s the difference between a minarchist and an anarchist? About six months.” To be against aggression, you have to be against *all* aggression: private aggression, that is, crime, and public aggression, or institutional aggression, which is what the state always does.

Libertarianism is *radical*. It’s not incremental. There is nothing wrong with being incremental, but libertarianism is really a *radical* doctrine. And it’s also *unique* and radical and different from, and superior to, the Left and the Right. We have to recognize that. We’re not “of the Left.” We’re not “of the Right.”

Also, libertarianism is now increasingly, overwhelmingly, anti-intellectual property.[[15]](#footnote-15) Intellectual property, patent and copyright law, and related laws like trademark and trade secret used to be the boring province of specialists and policy wonks, but with the advent of the internet and the increase of global trade and high tech, the so-called “abuses” of patent and copyright law have become evident to all of us.

We have to realize that *intellectual property* is one of the top five or six horrible things the state does to society. After war, public education, the drug war, central banking, taxation—intellectual property is up there.[[16]](#footnote-16) It’s one of the worst things that helps support the police state and suppress individual liberties and reduce innovation and impose hundreds of billions of dollars of cost on the globe every year.[[17]](#footnote-17) This kind of view upsets a lot of the old guard libertarians, Objectivists and minarchists and utilitarians and “Constitutionalists,” who still attempt to defend IP … but modern libertarians, left libertarians, tech libertarians, young people, people who actually “use the Internet”—they all know that there’s something wrong with a law that prevents you from *learning* and sharing in what we call, in the free market, “competition.” There’s nothing wrong with competition!

Another thing we’ve learned in the last fifty years, due to the work of writers like Bruno Leoni, Hayek, others: legislation is not the way to make law. Law has to arise from custom, from contract, from agreement, from decentralized processes like the common law or arbitration.[[18]](#footnote-18)

Also, I think we’ve learned, due to the work primarily of Hans-Herman Hoppe and others … we’ve had to recognize that democracy was not a step on the road to progress towards a libertarian society. Moving from monarchies in the ancient regimes to democracy might have been better in some ways, but it wasn’t unambiguously better, and it’s definitely not a simulation of a libertarian or a liberal society.[[19]](#footnote-19)

And along those lines I think we also have to recognize that we need to quit thinking of America as some kind of proto-libertarian paradise back in the day of the Founders. The Constitution is not libertarian. It was a centralizing document. It was a power grab. It failed… or rather, it *succeeded* in what it was really meant to do, which is to centralize power in the hands of the federal government.[[20]](#footnote-20) So we need to wipe these illusions from our eyes about the American Founders being proto-libertarians. They were not. The Constitution is not libertarian. America was not a libertarian country early on. There’s any number of victim classes you could ask, and they would probably agree with this.

Another thing that has become clear, just in recent years, has been the libertarian approach to peace and cooperation as informing the issueof children. That is, there has been a reexamination of how we rear our children, how we discipline children and how we educate children. Thus we have the rise of the anti-spanking and the “peaceful parenting” movement. And we have an increasing resort to homeschooling and even so-called unschooling. So these are all things that we are starting to learn.[[21]](#footnote-21)

The two most important things I think that have become clear—and some of these were known to earlier thinkers before—number one is the importance of a solid understanding of economics to inform your case. And I think that means Austrian Economics.[[22]](#footnote-22) You have to be economically literate. And the rise in the popularity of Austrian Economics has been stunning to see.[[23]](#footnote-23) There is a reason for that. You don’t see the Chicago school or the Coasean school being passionately argued for by most libertarians now.

Finally, the most important point, it has become clear, and we need to return to this and emphasize this, libertarianism is essentially *about property rights*. That’s really what it’s all about.[[24]](#footnote-24) Liberty is a consequence of property rights. It’s what you can do when your property rights are respected.

ISSUES THAT DIVIDE OR CONFUSE

Now there are still some issues that divide or confuse us. There is this left vs. right debate.[[25]](#footnote-25) Are we of the left? Or are we of the right? There is the thick vs. thin debate. Should we be thick libertarians or thin libertarians?

There’s the debate whether we should be activists or whether we should be theorists or whether we should just mind our own business and not work for the state.[[26]](#footnote-26)

There are esoteric issues like voluntary slavery. Should I be able to sign a contract and sell my kidneys, or myself? This is the alienability issue.[[27]](#footnote-27)

There is sometimes debate about whether you should be responsible for the actions of others. I have had people tell me that Adolf Hitler really never pulled the trigger, so he really didn’t commit murder.[[28]](#footnote-28) Only the henchmen are guilty. Truman didn’t really drop the bomb on Japan. A mafia boss doesn’t actually pull the trigger. His hit man does. So you have this kind of confusion, I would say.

And on the topic of intellectual property, even though libertarians are largely moving in our direction on this—there is still widespread confusion among people about this issue.

And there is also still confusion about the basis and the nature of property rights; about utilitarianism or consequentialism vs. deontological or natural rights thinking vs. intuitionism vs. Popperian conjecturalism.[[29]](#footnote-29)

DANGER OF UNCLEAR LANGUAGE AND METAPHORS

Now one reason for this confusion is the lack of careful attention to speaking clearly, thinking clearly, and being aware of the danger of the use of metaphors.[[30]](#footnote-30) When libertarianism arose in the middle of the last century, it was so much superior to the prevailing thought that we could speak in sloppy terms. It was still better, even with imprecise language. After all, our competitors also employed, and still employ, vague and nonrigorous terms. But even though the libertarian approach seems obviously superior to statist alternatives, even in its early days, as it gets applied to more and more issues, harder issues arise and the older ways of thinking and reasoning don’t always suffice. We need to revisit our foundations and we need to think more carefully about this.

Let me give some examples of metaphors or uncareful use of terms, things that can lead to equivocation by our opponents, things that can lead to confusion when we try to analyze difficult issues.

So one is, for example, most libertarians have always been against what we call “public schools.” And in recent years, maybe in the last decade or two, I’ve heard libertarians say, they’ve used the term “government schools,” because they want to make clear, “I’m against government schools.” They’re trying to call to the attention of the proponents of “public” schools that they’re really in favor of the *government* being in charge of educating people.

Well, even the word “government,” in my view, is a dangerous word to use. I use it from time to time but I increasingly try to use the word “state” to make it clear that I’m against *the state* because the state has a definition. It’s a monopoly in a geographic area over the provision of law, justice, and force.[[31]](#footnote-31) The word government has ambiguous meanings. And your opponent—either a minarchist, which we can call a mini-statist, or a regular statist—by the word government, they mean the governing institutions in society. And they also use it as an equivalent to the state because they believe the state is necessary for these governing institutions. So they are smuggling in their presuppositions, a type of question-begging.

So if you say, as an anarchist, I’m against the government (meaning: against the state), they will take you to mean you’re against law and order. So if they ask you, “Well, do you believe in law?”

You say, “Yes.”

Then they say, “Well, then you believe in government.”

And I say, “Well, I believe in government as law and order.”

And then they say, “Well, then you must believe in the state.”

You see there’s that trick there. So we have to stay focused on being opposed to the state, defined in a certain way.

Here’s another one. It’s the use of the word aggression in sloppy ways. Some libertarians, or some of our opponents, will use it just to mean force. So they’ll say, “Well even you guys aren’t against aggression. You believe in force to defend yourself.”

Well, aggression is the *initiation* of force. And then you see other sloppy terminology, like I’m against “the initiation of aggression.” Well, that’s saying I’m against the initiation of the initiation of force. It’s just not clear terminology.

Another one, it’s just a little issue, is the word “coercion.” Coercion technically means the use of the threat of force to compel someone to do something. Now just like force or violence, which is sometimes justified if it’s used defensively, coercion can be justified sometimes too. If I coerce a guy trying to rob me, there’s nothing wrong with that. So we should quit using the word coercion as a synonym for aggression.[[32]](#footnote-32) And we should never refer to defensive force as aggression.

There is also the labor theory of property and its close cousin, the labor theory of value.[[33]](#footnote-33) This is what I think the fundamental mistake in a lot of libertarian thinking is, which is what led to intellectual property, and it also led to communism and the deaths of tens of millions of people in the 20th century.[[34]](#footnote-34) It all started with John Locke who was responding to Filmer and understandably used this labor metaphor. But we have to stop thinking of labor as a special thing (it’s just a type of action), and we have to get rid of this confused idea that we own our labor. You don’t own your labor. Labor is what you do with something you own: your body. (You don’t own your “self” by the way. That’s another vague term. You own your body.)[[35]](#footnote-35)

Property rights are rights to control scarce, or conflictable, resources in the world. These are the only *things that can be conflicted over*. Your body is an example, and other things in the world are examples. Property rules *always* specify the owner of that thing. Owning your body is *sufficient* to allow you to act as you please, but it doesn’t mean you “own your actions.” It doesn’t mean you “own your labor.” If you start thinking this way, you’re going to get to intellectual property. This is what results. I own my labor. I own what I mix it with. I own my labor. I own whatever it creates that “has” “value.” But there are no property rights in value, as Hans-Herman Hoppe has pointed out. I could elaborate, but I would run out of time.[[36]](#footnote-36)

Another issue is the word “contract.” Libertarians are confused by contract. Rothbard and Bill Evers have written revolutionary work on this topic, viewing contract as the exercise of property rights in resources that are owned. It is not an “enforceable promise.” That way of thinking leads also to confused conclusions like debtor’s prison which leads to the idea of voluntary slavery, etc.[[37]](#footnote-37)

Another one is the word “fraud.”[[38]](#footnote-38) Libertarians throw this word, fraud, around a lot, especially advocates of intellectual property; also the word plagiarism. They totally confuse fraud, contract, plagiarism, property rights, labor theory of value, and patent and copyright law.[[39]](#footnote-39) They mix them together into a big gumbo of confusion. And, you know, they’ll imply that if you’re against patent law then you’re in favor of fraud or you’re in favor of dishonesty or you’re not in favor of giving someone attribution for their ideas. These are all confused, and they’re all disingenuous usually, or they’re said in total ignorance of what these terms mean and how the law really works and what property rights really are.

There’s another confusion, which is the common paired set of expressions which everyone takes for granted. There are two paired notions. “If you own something, well, you can sell it”—which is wrong actually. “And if you sell something, that must mean you had to own it to sell it.” That’s also wrong.[[40]](#footnote-40) Those ideas lead to the idea of voluntary slavery on the one hand[[41]](#footnote-41) and the idea of intellectual property on the other. And I’ve taken those apart in other contexts as well. I can revisit them at some point when I have more time.

Now another source of confusion is the idea about where property rights come from and the idea that just because we believe that the first user of an unowned resource, like Locke’s idea of original appropriation or homesteading—just because we believe he is the proper owner of that resource, that because there’s been this “original sin” or this “taint” of property titles throughout human history, because we can rarely trace our title to a resource back to the original owner, back to Adam, let’s say, then that means our entire theory of property rights is flawed. And then what’s the next step? Then we’re going to say, well, we are going to have to have redistribution someday. The current allocation of resources, the property rights that the rich have, really came from conquests 700 years ago. So no one is really entitled to their wealth. “You didn’t build that,” as Obama might say. And that when we have a libertarian revolution, a left-libertarian revolution, we need to redistribute these titles and everyone is going to be equal. Egalitarianism is driving these people.[[42]](#footnote-42)

So whenever I hear someone say that there’s something wrong with your theory of property, I hold on to my wallet, because I know they’re coming after it. The people that condemn materialism and rich people and money always want your money. So you have to be very wary of these people.[[43]](#footnote-43)

Now there’s another related problem which afflicts a lot of quasi-left libertarians, and that is this idea that if you are in favor of property rights, you’re really in favor of “aggression.” Now, how do they come up with this idea? Basically, they don’t believe in *ownership*. They believe that if you are using a resource that you have the right to use it in an undisturbed fashion, but as soon as you set it down and walk away, it’s up for grabs. And if you maintain the right to use force to retrieve your resource, or to get damages from them for damaging or using your property, you’re committing aggression.[[44]](#footnote-44) This is obviously confused and unlibertarian.

MOVING FORWARD

So this is the fundamental problem that we need to focus on here. We need to understand that aggression is not the fundamental concept of libertarianism. Aggression is a shorthand description of our view of property rights. Every political philosophy, every person on the planet, has an implicit or explicit view of property rights. Because property rights arise only because we live in a world of scarcity, a world of scarce resources, which means a world where *conflict is possible*.[[45]](#footnote-45) If you understand Mises’s praxeology and his analysis of human action and how human action is the purposeful employment of scarce means—things that are *causally efficacious* in the world to achieve your end, *guided* by your knowledge (which is why there are no property rights in ideas)[[46]](#footnote-46)—then you’ll understand that property rights are *always* the right to control a given resource. It’s about that.[[47]](#footnote-47)

Aggression is just a *shorthand* for our particular view of how property should be assigned.[[48]](#footnote-48) Communists, socialists, liberals, environmentalists all believe in a certain allocation of property rights. They believe the state should own the property or maybe the poor people should own the property. So the question is what makes libertarianism unique? It is our *particular property allocation scheme*.[[49]](#footnote-49)

And I will conclude by just summarizing the way I think we need to view the libertarian paradigm and how, if you think about it consistently, it will answer all the questions I just went through that are confusing to people. That is this: the rule of libertarianism is very simple. It is that when two or more people—because if you only have only one person, then there’s no dispute, there’s no problem to be solved; there is no social problem—when two or more people both want to use a given resource, when there is a possible dispute or conflict, the question is simply, for the resource in question: which of those two or more people has the better claim to the resource?

We answer that question by resorting to some very simple and common sense and almost undeniably true rules.[[50]](#footnote-50) In the case of a person’s body, which is a resource over which there can be dispute, the rule is self-ownership, or self-body-ownership: each person is the presumptive owner of his own body. We oppose slavery, which is “other-ownership” and instead favor self-ownership. Controversial, I know.

And as for previously-unowned, external resources, the types of things that can serve as scarce means of action, there are three simple rules. The first one is: who had it first? Or as between those two, who had it first as far as we know? You don’t have to trace back to Adam. You can trace it back to a common ancestor as the law has it.[[51]](#footnote-51) This is original appropriation, or homesteading. This has to be the basic property allocation rule, because for people to survive, they must use resources, and there must be a first user. His use has to be rightful if we are to have ownership and property rights as a concept distinct from mere possession.

Second: was there a consensual transfer from an owner to someone else? That’s contract, or contractual title transfer.

And third: did one person harm the other, commit a tort or a crime, so that he owes compensation or rectification or restitution to the other guy, leading to a transfer of money or some resource from one guy to the other.

So if you look at those three principles, that will tell you who owns the resource in question. If I had it first, I am the owner—*unless* I gave it to someone else, and then they own it. They have a better claim than me. Every other philosophy, other than libertarianism, violates one of those three rules. They ultimately believe that someone has the right to a resource even though they didn’t obtain it by contract, even though they weren’t harmed by the previous owner, and even though they may have never found the resource or started using it and put it to productive use.

Basically every philosophy, other than libertarianism, believes either in a lawless world, a world of might makes right—or in some form of slavery: owning the products of other people’s efforts or owning their bodies.[[52]](#footnote-52) That is why libertarianism is superior. And if we focus on property rights and this foundational view of looking at things, it helps us to move forward and improve the libertarian project. Thank you.

1. This section did not appear in my original talk for lack of time. It is an expanded version of my introductory remarks, and was included in a long footnote in the transcript posted on my site. I have adapted this section from Kinsella, “Foreword,” in Chase Rachels, A Spontaneous Order: The Capitalist Case For A Stateless Society (2015; https://archive.org/details/ASpontaneousOrder0). For another interesting retrospective, see Mark Thornton, “Libertarianism: A Fifty-Year Personal Retrospective,” J. Libertarian Stud. 24, no. 2 (2020; https://mises.org/library/libertarianism-fifty-year-personal-retrospective): 445–60. [↑](#footnote-ref-1)
2. See Brian Doherty, Radicals for Capitalism: A Freewheeling History of the Modern American Libertarian Movement (New York: PublicAffairs, 2008); and David Boaz, ed., The Libertarian Reader: Classic & Contemporary Writings from Lao Tzu to Milton Friedman (Simon & Schuster, 2015). [↑](#footnote-ref-2)
3. See Boaz, The Libertarian Reader. [↑](#footnote-ref-3)
4. See Doherty, Radicals for Capitalism, chap. 3. [↑](#footnote-ref-4)
5. Jerome Tuccille, It Usually Begins with Ayn Rand (New York: Stein and Day, 1971). [↑](#footnote-ref-5)
6. John P. McCaskey, “New Libertarians: New Promoters of a Welfare State,” JohnMcCaskey.com (April 14, 2014; https://perma.cc/259E-K2AB). See also Wendy McElroy, “Murray N. Rothbard: Mr. Libertarian,” LewRockwell.com (July 6, 2000; https://perma.cc/H7P2-P2YD). Writes Hoppe in the Foreword to this book, “through his work Rothbard became the founder of the modern libertarian movement.” [↑](#footnote-ref-6)
7. See various works listed in Kinsella, “The Greatest Libertarian Books,” StephanKinsella.com (Aug. 7, 2006) and in Kinsella, “Foreword,” including works by the Tannehills, Hospers, David Friedman, Henri Lepage, and many others.

   Regarding the proliferation of books presenting or re-stating libertarian thought in the last couple decades, recall this comment by scholar A.H.J. Greenidge, in his “Historical Introduction” to Gaius’s Institutes of Roman Law: “The Institutes of Gaius are a product of this activity; for it is necessary that a great deal of detailed and special work shall be done in a science before a good handbook on the subject can be written for the use of students.” A.H.J. Greenidge, “Historical Introduction,” in Gaius, Institutes of Roman Law, with a translation and commentary by Edward Poste, 4th ed., revised and enlarged by E.A. Whittuck (Oxford: 1904; https://oll.libertyfund.org/title/gaius-institutes-of-roman-law), p. li (§ 20; emphasis added). This important work by Gaius was mostly lost until found in nearlycomplete form in a palimpsest in Verona in 1816. (See Wikipedia entry, “Institutes (Gaius),” https://en.wikipedia.org/wiki/Institutes\_(Gaius)). The “activity” referred to by Greenidge above is described in the preceding section thusly:

   The literary activity in the domain of law, during the period which intervened between the accession of Augustus and the time of Gaius, was of the most varied character. Religious law (Jus Pontificlum) attracted the attention of Capito. Labeo wrote on the Twelve Tables. The Praetor’s Edict was the subject of studies by Labeo, Masurius Sabinus, Pedius and Pomponius. The Edict of the Curule Aediles was commented on by Caelius Sabinus. Salvius Julianus, besides his redaction of the Edicts, produced a work known as Digesta, which perhaps assumed the form of detailed explanations of points of law systematically arranged. Comprehensive works on the Civil Law were furnished by Masurius Sabinus and Caius Cassius Longinus. Other jurists produced monographs on special branches of law, as the younger Nerva on Usucapion, Pedms on Stipulations, Pomponius on Fideicommissa. Some lawyers wrote commentaries on the works of their predecessors. It was thus that Aristo dealt with Labeo, and Pomponins with Sabinus. Other works took the form of Epistolae, which furnished opinions on special cases which had been submitted to their author, and collections of Problems (Quaestiones). Nor was history neglected. There must have been much of it in Labeo’s commentary on the Twelve Tables; and Pomponius wrote a Handbook (Enehiridion), which contained a sketch of the legal history of Rome from the earliest times.

   Greenidge, “Historical Introduction,” § 19, pp. l–li.

   On the issue of the preservation and transmission of bodies of knowledge, such as legal systems, see also Alan Watson: “The Importance of ‘Nutshells,’” Am. J. Comp. L. 42, no. 1 (Winter 1994; https://digitalcommons.law.uga.edu/fac\_artchop/668): 1–23. [↑](#footnote-ref-7)
8. Kinsella, “The Trouble with Libertarian Activism,” LewRockwell.com (Jan. 26, 2006; https://archive.lewrockwell.com/kinsella/kinsella19.html). [↑](#footnote-ref-8)
9. For a libertarian argument against voting, see Wendy McElroy, “Why I Would Not Vote Against Hitler,” Liberty 9, no. 5 (May 1996; https://perma.cc/5NE3-BWES): 46–47. [↑](#footnote-ref-9)
10. That said, since this speech, I have joined the LP. See Kinsella, “Aggression and Property Rights Plank in the Libertarian Party Platform,” StephanKinsella.com (May 30, 2022). [↑](#footnote-ref-10)
11. Kinsella, “Why I’m a Libertarian–or, Why Libertarianism is Beautiful,” Mises Economics Blog (Dec. 12, 2006). [↑](#footnote-ref-11)
12. Kinsella, “The Murdering, Thieving, Enslaving, Unlibertarian Continental Army,” LewRockwell.com (July 3, 2009). [↑](#footnote-ref-12)
13. See Kinsella, “When Did the Trouble Start?”, LewRockwell.com (Sep. 5, 2003); idem, “Happy We-Should-Restore-the-Monarchy-and-Rejoin-Britain Day!”, Mises Economics Blog (July 2, 2009). [↑](#footnote-ref-13)
14. Kinsella, “The Nature of the State and Why Libertarians Hate It,” StephanKinsella.com (May 3, 2010). [↑](#footnote-ref-14)
15. See “Law and Intellectual Property in a Stateless Society” (ch. 14), at n.5; “Against Intellectual Property After Twenty Years: Looking Back and Looking Forward” (ch. 15), at n.21. [↑](#footnote-ref-15)
16. Kinsella, “Where does IP Rank Among the Worst State Laws?”, C4SIF Blog (Jan. 20, 2012). [↑](#footnote-ref-16)
17. Kinsella, “Copyright and Free Trade; Patents and Censorship,” C4SIF Blog (Feb. 29, 2012); Kinsella, “Death by Copyright-IP Fascist Police State Acronym,” C4SIF Blog (Jan. 30, 2012); “SOPA is the Symptom, Copyright is the Disease: The SOPA Wakeup Call to Abolish Copyright,” The Libertarian Standard (Jan 24, 2012); idem, “Masnick on the Horrible PROTECT IP Act: The Coming IPolice State,” C4SIF Blog (June 2, 2012); idem, “Copyright and the End of Internet Freedom,” C4SIF Blog (May 10, 2011); idem, “Copyright Censorship versus Free Speech and Human Rights; Excessive Fines and the Eighth Amendment,” C4SIF Blog (Sep. 6, 2011); idem, “The Overwhelming Empirical Case Against Patent and Copyright,” C4SIF Blog (Oct. 23, 2012); idem, “Yet Another Study Finds Patents Do Not Encourage Innovation,” Mises Economics Blog (July 2, 2009); idem, “Costs of the Patent System Revisited,” Mises Economics Blog (Sep. 29, 2010). [↑](#footnote-ref-17)
18. See “Legislation and the Discovery of Law in a Free Society” (ch. 13). [↑](#footnote-ref-18)
19. See Hans-Hermann Hoppe, Democracy: The God That Failed (New Brunswick: Transaction, 2001; www.hanshoppe.com/democracy). As Hoppe notes in the Introduction: “although aware of the economic and ethical deficiencies of democracy, both Mises and Rothbard had a soft spot for democracy and tended to view the transition from monarchy to democracy as progress.” [↑](#footnote-ref-19)
20. Kinsella, “On Constitutional Sentimentalism,” StephanKinsella.com (Jan. 16, 2011); idem, “Black Armbands for ‘Constitution Day,’” The Libertarian Standard (Sept. 17, 2010); idem, “The Bad Bill of Rights,” LewRockwell.com (Dec. 17, 2004; www.lewrockwell.com/lrc-blog/the-bad-bill-of-rights); idem, “Goodbye 1776, 1789, Tom,” StephanKinsella.com(June 29, 2009); idem, “Rockwell on Hoppe on the Constitution as Expansion of Government Power,” StephanKinsella.com (Aug. 3, 2009); idem, “Richman on the 4th of July and American Independence,” StephanKinsella.com (July 2, 2009); idem, “The Murdering, Thieving, Enslaving, Unlibertarian Continental Army”; idem, “Napolitano on Health-Care Reform and the Constitution: Is the Commerce Clause Really Limited?”, StephanKinsella.com (Sep. 17, 2009); idem, “Was the American Revolution Really about Taxes?”, The Libertarian Standard (April 14, 2010); idem, “Bill Marina (R.I.P.) on American Imperialism from the Beginning,” StephanKinsella.com (July 8, 2009); idem, “Happy We-Should-Restore-the-Monarchy-and-Rejoin-Britain Day!”; idem, “Revising the American Revolution,” StephanKinsella.com (July 6, 2009); idem, “The Declaration and Conscription,” StephanKinsella.com (July 6, 2009); idem, “Untold Truths about the American Revolution,” StephanKinsella.com (July 7, 2009); idem, “Jeff Hummel’s ‘The Constitution as a Counter-Revolution,’” StephanKinsella.com (July 1, 2009). [↑](#footnote-ref-20)
21. See Kinsella, “Montessori, Peace, and Libertarianism,” LewRockwell.com (April 28, 2011); idem, “KOL059 | Libertarian Parenting—Freedomain Radio with Stefan Molyneux (2010),” Kinsella on Liberty Podcast (May 22, 2013); idem, “Stefan Molyneux’s ‘Libertarian Parenting’ Series,” The Libertarian Standard (July 21, 2010); idem, “Montessori and ‘Unschooling,’” StephanKinsella.com (Oct. 16, 2010). [↑](#footnote-ref-21)
22. Kinsella, “Afterword,” in Hans-Hermann Hoppe, in The Great Fiction: Property, Economy, Society, and the Politics of Decline, Second Expanded Edition (Auburn, Ala.: Mises Institute, 2021; www.hanshoppe.com/tgf); Kinsella, “Foreword,” in Hans-Hermann Hoppe, A Theory of Socialism and Capitalism: Economics, Politics, and Ethics (Auburn, Ala.: Mises Institute, 2010 [1989]; www.hanshoppe.com/tsc). [↑](#footnote-ref-22)
23. For a recent example, the LP’s Mises Caucus (https://lpmisescaucus.com) completely took over the US Libertarian Party at the 2022 convention. See Brian Doherty, “Mises Caucus Takes Control of Libertarian Party,” Reason.com (May 29, 2022; https://perma.cc/US78-Y24C); Zach Weissmueller, Nick Gillespie & Danielle Thompson, “Inside the Mises Caucus Takeover of the Libertarian Party,” Reason.com (June 15, 2022; https://perma.cc/QCK5-3HND). See also Kinsella, “Aggression and Property Rights Plank in the Libertarian Party Platform,” StephanKinsella.com (May 30, 2022). [↑](#footnote-ref-23)
24. Murray N. Rothbard, “‘Human Rights’ as Property Rights,” in The Ethics of Liberty (New York: New York University Press, 1998; http://mises.org/rothbard/ethics/fifteen.asp); Hoppe, A Theory of Socialism and Capitalism, chaps. 1–2 et pass. [↑](#footnote-ref-24)
25. Kinsella, “The Limits of Libertarianism?: A Dissenting View,” StephanKinsella.com (April 20, 2014) [↑](#footnote-ref-25)
26. Kinsella, “The Trouble with Libertarian Activism.” [↑](#footnote-ref-26)
27. See “A Libertarian Theory of Contract: Title Transfer, Binding Promises, and Inalienability” (ch. 9); “Selling Does Not Imply Ownership, and Vice-Versa: A Dissection” (ch. 11); and Kinsella, “KOL004 | Interview with Walter Block on Voluntary Slavery and Inalienability,” Kinsella on Liberty Podcast (Jan. 27, 2013). [↑](#footnote-ref-27)
28. See “Causation and Aggression” (ch. 8), at n.31 et pass; also Kinsella, “KOL149 | IP And Beyond With Stephan Kinsella—Non-Aggression Podcast,” Kinsella on Liberty Podcast (Aug. 30, 2014). [↑](#footnote-ref-28)
29. Hoppe’s approach is not a standard natural rights argument, but he grants that it could be interpreted “as falling in a ‘rightly conceived’ natural rights tradition….” See Hoppe, A Theory of Socialism and Capitalism, pp. 156–57, n.118, quoted in “Dialogical Arguments for Libertarian Rights” (ch. 6), n.14. For Randy Barnett’s argument distinguishing consequentialism from utilitarianism, and on Jan Lester’s Popperian “conjecturalism,” see references in “Dialogical Arguments for Libertarian Rights” (ch. 6), n.3. [↑](#footnote-ref-29)
30. See discussion and references at “Selling Does Not Imply Ownership, and Vice-Versa: A Dissection” (ch. 11), notes 1 and 33; “Against Intellectual Property After Twenty Years” (ch. 15), Part IV.D and n.83; “On Libertarian Legal Theory, Self-Ownership and Drug Laws” (ch. 23), n.29 et pass. See also Kinsella, “On the Danger of Metaphors in Scientific Discourse,” StephanKinsella.com (June 12, 2011); idem, “Objectivist Law Prof Mossoff on Copyright; or, the Misuse of Labor, Value, and Creation Metaphors,” Mises Economics Blog (Jan. 3, 2008); idem, “KOL044 | ‘Correcting some Common Libertarian Misconceptions’ (PFS 2011),” Kinsella on Liberty Podcast (May 2, 2013); idem, “KOL045 | ‘Libertarian Controversies Lecture 1’ (Mises Academy, 2011),” Kinsella on Liberty Podcast (May 2, 2013); idem, “KOL118 | Tom Woods Show: Against Fuzzy Thinking,” Kinsella on Liberty Podcast (March 31, 2014). [↑](#footnote-ref-30)
31. Writes Hoppe:

    Let me begin with the definition of a state. What must an agent be able to do to qualify as a state? This agent must be able to insist that all conflicts among the inhabitants of a given territory be brought to him for ultimate decision-making or be subject to his final review. In particular, this agent must be able to insist that all conflicts involving himself be adjudicated by him or his agent. And implied in the power to exclude all others from acting as ultimate judge, as the second defining characteristic of a state, is the agent’s power to tax: to unilaterally determine the price that justice seekers must pay for his services.

    Based on this definition of a state, it is easy to understand why a desire to control a state might exist. For whoever is a monopolist of final arbitration within a given territory can make laws. And he who can legislate can also tax. Surely, this is an enviable position.

    Hans-Hermann Hoppe, “Reflections on the Origin and the Stability of the State,” LewRockwell.com (June 23, 2008; https://archive.lewrockwell.com/hoppe/hoppe18.html), quoted in in Kinsella, “The Nature of the State and Why Libertarians Hate It,” StephanKinsella.com (May 3, 2010). Hoppe’s article was based on his 2008 speech, available at Hoppe, “PFP020 | Hans-Hermann Hoppe, Reflections on the Origin of the State (PFS 2008),” Property and Freedom Podcast (Dec. 24, 2021; https://propertyandfreedom.org/pfp). [↑](#footnote-ref-31)
32. See Kinsella, “The Problem with ‘Coercion,’” StephanKinsella.com (Aug. 7, 2009); also “Legislation and the Discovery of Law in a Free Society” (ch. 13), n.2. [↑](#footnote-ref-32)
33. See “Against Intellectual Property After Twenty Years” (ch. 15), Part IV.D. [↑](#footnote-ref-33)
34. Kinsella, “KOL037 | Locke’s Big Mistake: How the Labor Theory of Property Ruined Political Theory,” Kinsella on Liberty Podcast (March 28, 2013); “Against Intellectual Property After Twenty Years” (ch. 15), Part IV.C, and other references in notes 51 & 57 et pass. [↑](#footnote-ref-34)
35. See “What Libertarianism Is” (ch. 2) and “How We Come to Own Ourselves” (ch. 4). But admittedly, it is difficult to avoid using these terms, as I have indicated elsewhere in this book. Though it might be better to refer to the state instead of government; to an owned resource in which someone has a property right, rather than to calling the resource “property”; to aggression instead of coercion, it is sometimes more convenient to use more conventional or colloquial terms to avoid tedium. I don’t even like referring to patent, copyright, trademark, trade secret as “intellectual property” rights, but if one is to communicate with normies, sometimes one has to accept conventional terminology, even if it is loaded or ambiguous. [↑](#footnote-ref-35)
36. Kinsella, “Hoppe on Property Rights in Physical Integrity vs Value,” StephanKinsella.com (June 12, 2011); “On Libertarian Legal Theory, Self-Ownership and Drug Laws” (ch. 23), n.7 et pass. As Justice Holmes recognized in passing in a dissent in a case establishing a quasi-property right in the product of the sweat of the brow, or the fruits of one’s labor: “Property, a creation of law, does not arise from value, although exchangeable—a matter of fact.” International News Service v. Associated Press, 248 U.S. 215, 246 (1918; https://supreme.justia.com/cases/federal/us/248/215/). [↑](#footnote-ref-36)
37. “A Libertarian Theory of Contract” (ch. 9). [↑](#footnote-ref-37)
38. See “A Libertarian Theory of Contract” (ch. 9), Part III.E. [↑](#footnote-ref-38)
39. See Kinsella, “KOL207 | Patent, Copyright, and Trademark Are Not About Plagiarism, Theft, Fraud, or Contract,” Kinsella on Liberty Podcast (Feb. 21, 2016); idem, “If you oppose IP you support plagiarism; copying others is fraud or contract breach,” in “Hello! You’ve Been Referred Here Because You’re Wrong About Intellectual Property” C4SIF (2023); Kinsella, “Common Misconceptions about Plagiarism and Patents: A Call for an Independent Inventor Defense,” Mises Economics Blog (Nov. 21, 2009). [↑](#footnote-ref-39)
40. See “Selling Does Not Imply Ownership, and Vice-Versa: A Dissection” (ch. 11). [↑](#footnote-ref-40)
41. See “Inalienability and Punishment: A Reply to George Smith” (ch. 10) and “A Libertarian Theory of Contract” (ch. 9). [↑](#footnote-ref-41)
42. See related discussion in “What Libertarianism Is” (ch. 2), at n.36 and “Selling Does Not Imply Ownership, and Vice-Versa: A Dissection” (ch. 11), at n.12; also Hans-Hermann Hoppe, “A Realistic Libertarianism,” LewRockwell.com (Sept. 30, 2013; www.hanshoppe.com/2014/10/a-realistic-libertarianism), discussed in “On Libertarian Legal Theory, Self-Ownership and Drug Laws” (ch. 23), n.15. [↑](#footnote-ref-42)
43. See “On Libertarian Legal Theory, Self-Ownership and Drug Laws” (ch. 23), at n.14. [↑](#footnote-ref-43)
44. This is also similar to the views of some mutualists, who in effect basically conflate possession with ownership, since “absentee” owners lose title to squatters, tenants, employees, and so on. See “What Libertarianism Is” (ch. 2), n.31; also “Law and Intellectual Property in a Stateless Society” (ch. 14), n.38. [↑](#footnote-ref-44)
45. See “What Libertarianism Is” (ch. 2), the section “Libertarian Property Rights”; “Selling Does Not Imply Ownership, and Vice-Versa: A Dissection” (ch. 11), at n.6 et pass.; “On Libertarian Legal Theory, Self-Ownership and Drug Laws” (ch. 23), at n.16 et pass. See also Hans-Hermann Hoppe, “Of Common, Public, and Private Property and the Rationale for Total Privatization,” in Hoppe, The Great Fiction; Hoppe, “A Realistic Libertarianism.” [↑](#footnote-ref-45)
46. See “Law and Intellectual Property in a Stateless Society” (ch. 14), Part III.D; and “Against Intellectual Property After Twenty Years” (ch. 15), Part IV.E. [↑](#footnote-ref-46)
47. “What Libertarianism Is” (ch. 2); also “On Libertarian Legal Theory, Self-Ownership and Drug Laws” (ch. 23), text at notes 6–7 and 18–23 et pass. [↑](#footnote-ref-47)
48. See “What Libertarianism Is” (ch. 2), n.4. [↑](#footnote-ref-48)
49. See ibid. [↑](#footnote-ref-49)
50. See ibid., the section “Libertarian Property Rights.” See also “How We Come to Own Ourselves” (ch. 4) and “Goods, Scarce and Nonscarce” (ch. 18); as well as Hoppe’s summary of these basic rules in “A Realistic Libertarianism” and in idem, “Of Common, Public, and Private Property and the Rationale for Total Privatization,” pp. 85–87. See also Kinsella, “How To Think About Property (2019),” StephanKinsella.com (April 25, 2021). [↑](#footnote-ref-50)
51. See the discussion of the civil law’s solution of tracing title back to a “common author” (meaning ancestor in title) at “What Libertarianism Is” (ch. 2), at n.33 and “Law and Intellectual Property in a Stateless Society” (ch. 14), at n.41. [↑](#footnote-ref-51)
52. See “What Libertarianism Is” (ch. 2). [↑](#footnote-ref-52)