Preface

The issue of what property rights we have, or should have, what laws are just and proper, has long confronted mankind, and continues to be the subject of debate today. This book seeks to address these issues, with an approach that keeps in mind the nature and reality of human life—that we are purposeful human actors living in a world of scarcity and facing the possibility of interpersonal conflict—and the purpose of law and property norms: to enable us to live together, in society, peacefully and cooperatively. The goal is to vindicate the private law as developed in the decentralized systems of the Roman and common law, with an emphasis on consistency, principle, and the inviolable rights of the individual. In short, to argue for a private law system informed by libertarian principles.

Thus, in these pages, I try to explain what libertarianism *is*, why individual self-ownership and property rights are justified, how the law ought to deal with criminals and tortfeasors, how property rights should be understood so that errors such as intellectual property (IP), taxes, and the drug war can be exposed, and, finally why a consistent libertarianism implies that a stateless society, sometimes called anarchy, offers the best hope for a free and just social order. I explore the nature of law and legislation, and subject various aspects of positive law, as well as other theories of law, including that of others libertarians, to criticism and appraisal.

These arguments are premised on the thesis that just law is anchored in core principles of self-ownership plus ownership of external scarce resources as governed by principles of original appropriation, contractual title transfer, and rectification. The developed legal system of an advanced, free society is the detailed working out of the implications and applications of these basic principles to various practical and recurring situations in human interactions. This book looks from numerous angles at why these principles are important and how adhering to them consistently can help us achieve a freer society and adjudge the legitimacy of concrete laws and legal systems.

As to how this book came about: I’ve been intensely interested in—some might say obsessed with—libertarian ideas for over forty years, since high school. It has become a life passion and an avocation of sorts. A calling, though not a career.[[1]](#footnote-1) After starting, as so many libertarians of my generation have, with the ideas of Ayn Rand,[[2]](#footnote-2) I soon discovered the work of Austrian economists and anarcho-libertarians, such as Ludwig von Mises, Murray Rothbard, and Hans-Hermann Hoppe, whose ideas are my greatest influence.

I started publishing on matters of libertarian theory in 1992, fresh out of law school.[[3]](#footnote-3) I tried to use my knowledge of the law—both the English common law and the Roman law, as embodied in the civil law of most European countries and my own home state, Louisiana—and Austrian economics and libertarian principles, to advance libertarian theory where I thought I could contribute. I first wrote on rights and punishment theory in the early 1990s (see chapters 5 and 22), and then on related areas like legislation (chapter 13), contract and inalienability theory (chapters 9 and 10), and so on. In 2001, I published “Against Intellectual Property,”[[4]](#footnote-4) which was controversial and influential, so I’ve become known by many libertarians primarily for my IP arguments. As the essays in the current volume illustrate, however, IP is not my sole area of interest. My interest in and passion for libertarian ideas has always been driven by my love of philosophy, truth, justice, logic, consistency, and economics. This book includes several chapters on IP but also covers other aspects of libertarian legal theory, such as rights theory and others noted above.

By 2010 or so, most of the theory-laden articles that became the chapters in this book had been published, so around that time I thought of collecting some of these articles in a single book, since they covered a large and complementary number of interrelated topics, such as rights and punishment theory, contract theory, causation and responsibility, intellectual property, anarchy, legislation, and so on. But I kept putting the project off. I felt I was missing some material that should be in such a book, such as a general overview of libertarianism itself, and an update of the intellectual property material I had initially published in 2001. I eventually wrote these articles (now chapters 2, 14, and 15), so I felt it was time to finally assemble and complete this book.

The twenty-five chapters are based on articles published over an almost thirty-year period, from 1994 to 2022, with one chapter (15) being formally published for the first time here (2023). I decided to omit some articles I had published before, as they are a bit too focused on American-specific issues like the US Constitution, federalism, and so on, and also for space reasons.[[5]](#footnote-5) I also did not include any purely legal publications—those related to my vocation, not my avocation—such as those found at my legal website www.KinsellaLaw.com. I included only writing having to do with libertarian issues.

Most of these articles were published in scholarly journals or in online publications. A few chapters are more conversational in tone, as they were based on interviews or transcripts of speeches (e.g. chapters 17 and 23–25). Even with these, I have added extensive references and cross-references where appropriate.

I divided the book into six sections. Part I—Libertarianism covers my own introduction to libertarianism, an overview of libertarianism, and my take on anarchism. Part II—Rights concerns arguments for self-ownership, property rights, and punishment theory. Part III—Libertarian Legal Theory has chapters building on the theory in previous chapters to apply to various laws and libertarian issues, like causation and responsibility (chapter 8), contract and inalienability theory (chapters 9–11), and a long chapter on the pitfalls of legislation as a way of making law (chapter 13) (I probably should have turned this one into a PhD dissertation…).

Part IV—Intellectual Property contains a chapter presenting the basic case against IP (chapter 14), basically a streamlined and somewhat updated version of *AIP*, followed by chapter 15, which summarizes other IP arguments and issues that I wrote and spoke on after *AIP*. I also include some of my discussion with, and commentary on the views of, my pro-IP libertarian friend, the late J. Neil Schulman, and a piece on the nature of scarce and nonscarce goods, which is relevant to the IP issue.

Part V—Reviews contains four book reviews or review essays providing libertarian commentary on various books on law or political philosophy. Finally, Part VI—Interviews & Speeches is less formal and contains two interviews and a speech assessing the last five or six decades of the libertarian movement.

For those who want to skip the more extraneous material and focus on the core libertarian theory chapters, I recommend chapters **2–12**, **14–15**, and **18**.

I have revised all the material in the book, which was required since many of the original articles used different citation formats and also because some of my thinking and terminology has changed over the years. Several chapters are significantly revised or expanded, which in a few cases led to very long footnotes, since it would have been too disruptive to rewrite the article to integrate the extra commentary into the text; in some cases I moved very long footnotes to an appendix.

Although the chapters were all written separately and at different times over three decades, many of them build on (or anticipated) others. For example, in chapter 10, originally published 1998–99, I outlined a sketch of a view of contracts, inalienability, and so on (note 48), and wrote “Elaboration of these ideas will have to await a subsequent article.” I did so in 2003, in the article which became chapter 9. Thus, I was able to piece together several articles in a fairly systematic form since they either built on or anticipated each other and were written to be consistent with each other and all flowing from the same core principles and reasoning.

I have added extensive cross-references pointing to related discussion in other chapters. There is a bit of redundancy in some of the chapters since they were published independently. However, it is my view that the repetition that does exist in some articles can help reinforce a given argument or idea or show it from a different angle.

In one case I now disagree with something I originally wrote; I retained the original text and added an explanatory note (chapter 13, Part III.C). And in chapter 9 (Part III.C), I note that, regarding my earlier criticism of Rothbard’s argument for inalienability: “I now think it is possible that his approach is more compatible with my own than I originally realized.” But otherwise, I today still stand by most of the original content of those articles, in terms of substance. However, as noted several places in the text, I often now use terminology somewhat differently, e.g., the term *state* instead of *government*; *rivalrous* or *“conflictable”* instead of *scarce*; using the word *property* to refer to the relation between humans with respect to owned resources, instead of referring to the owned resource itself, and so on. I have in some cases updated the text to my current, preferred usage, but not always since it would have been too drastic and tedious.

I have also included a table of contents for some of the chapters where I thought it would be useful. And as noted above, in several chapters I moved very long footnotes to an appendix.

I have tried to conform references to a more or less uniform citation style of my own preference (a modified version of Chicago style), although my main goal was to simply provide sufficient information for the reader to locate the cited work, not to conform to some arbitrary format (and also not to obsess over consistency). In this, I am influenced by the citation policy of the second incarnation of the legal journal *The Greenbag*: “Citations should be accurate, complete, and unobtrusive. Familiar sources need no citation. Authors may use whatever citation form they prefer; we will make changes only to keep footnotes from looking like goulash.”[[6]](#footnote-6)

I have also included hyperlinks for online versions of cited material where possible. If we lived in a copyright-free world, everything would be online and readers could easily find any cited work with a search. Alas. For my own work that I reference, since it is mostly available on my own website, I provide an initial hyperlink in the title but do not type out the URL in the text. Almost all of my work referenced in the text can be found at www.StephanKinsella.com/publications,   
www.StephanKinsella.com/lffs, or www.c4sif.org. I have liberally used permalinks via www.perma.cc in cases where I suspected future possible linkrot or where the original URL is overlong.

I debated various titles for this work. Titles like *Freedom and the Law* and *Liberty and Law* were already taken.[[7]](#footnote-7) I considered at one time calling this work *The Ethics of Action*, as an amalgamation and nod to similar titles by other authors[[8]](#footnote-8) and to evoke a recurring theme in my writing: an exploration of the ethics that guide action and of ethics implied by certain classes of action (see the argumentation ethics and estoppel theory of rights I advance in chapters 5 and 6). But in the end, this seemed too inscrutable and only applicable to a small part of this book’s content, so for years I planned on using the title *Law in a Libertarian World: Legal Foundations of a Free Society*. In the end, some trusted colleagues urged me to drop the main title and use the subtitle instead. I have.

The length of the book turned out to be larger than expected, but I have chosen to publish this book as one volume instead of breaking it into two. I think this will be easier for the reader, given the extensive cross-references between chapters, and should make for a lower cost. My goal was never sales. It was only to help advance libertarian theory by making these thoughts accessible to whoever might be interested now or in the future. Thus, in addition to print (both hard and softcover) and ebook versions for sale on major platforms, I am of course posting   
a free digital version online at www.StephanKinsella.com/lffs, and with a Creative Commons Zero license. Anyone is free to republish this work, or translate it, or make audio versions, without asking my permission.

I have published in the past with various publishing houses, such as the Mises Institute, Oceana Publications, Oxford University Press, and so on, but for this book I have decided to self publish, under my own imprint, Papinian Press (www.PapinianPress.com), for a variety of reasons. First, my own procrastination has delayed this project for over a decade, so I was reluctant to add yet another year to this project by engaging a normal publisher. Second, I saw no benefit to using a mainstream publisher. I do not need their delays or “helpful suggestions,” which would no doubt urge me to water down my arguments or make them more mainstream. No, thank you. And I have no career or academic ambitions to burnish by using a prestigious press. Also, I wanted freedom to release this book totally open source, free of any copyright restrictions, and to post free online versions, which most publishers would balk at. I’m frankly tired of the dinosaur legacy publishing industry. Finally, I may use the Papinian Press imprint for future book projects, so am glad to use this book to kick it off.

The imprint, by the way, is named after the third-century Roman jurist Papinian (Aemilius Papinianus), who also adorned the advertisement for my 2011 Mises Academy course on libertarian legal theory.[[9]](#footnote-9) The reason I admire Papinian, in addition to his being a great jurist:

Papinian is said to have been put to death for refusing to compose a justification of Caracalla’s murder of his brother and co-Emperor, Geta, declaring, so the story goes, that “it is easier to commit murder than to justify it.”[[10]](#footnote-10)

Papinian bravely chose death in the name of justice; and his formulation *“it is easier to commit murder than to justify it”* brilliantly encapsulates the distinction between *committing* an action and normatively *justifying* the action. It emphasizes the importance of justifying interpersonal violence, and the difference between description and prescription, between fact and value, between is and ought—insights which play a crucial role in my own defenses of rights (see chapters 5–7).

Although this book is written in English, many of the articles from which it derives have been translated into other languages, and some have audio versions available. They are online at www.StephanKinsella.com/translations and www.StephanKinsella.com/media.

I refer readers to www.StephanKinsella.com/lffs for errata, links to my own publications referenced in the book, and for supplementary material.

It is my hope that readers and future scholars will benefit from the arguments offered in these pages.

Stephan Kinsella  
Houston, June 2023

1. See comments from Gary North about calling vs. career, mentioned in chapter 24. [↑](#footnote-ref-1)
2. Jerome Tuccille, It Usually Begins with Ayn Rand (Stein and Day, 1971). See also chapters 1 and 25 [↑](#footnote-ref-2)
3. Stephan Kinsella, “Estoppel: A New Justification for Individual Rights,” Reason Papers No. 17 (Fall 1992): 61–74. See chapter 5. [↑](#footnote-ref-3)
4. Kinsella, “Against Intellectual Property,” first published in the Journal of Libertarian Studies 15, no. 2 (Spring 2001): 1–53; later republished as a monograph by the Mises Institute in 2008 and in an edition by Laissez-Faire books in 2012 (AIP). [↑](#footnote-ref-4)
5. For example I considered including, but ultimately decided against, articles such as: Patrick Tinsley, Stephan Kinsella & Walter Block, “In Defense of Evidence and Against the Exclusionary Rule: A Libertarian Approach,” Southern U. L. Rev. 32 no. 1 (2004): 63–80; Kinsella, “A Libertarian Defense of Kelo and Limited Federal Power,” LewRockwell.com (June 27, 2005); idem, “Supreme Confusion, Or, A Libertarian Defense of Affirmative Action,” LewRockwell.com (July 4, 2003); Walter Block, Stephan Kinsella & Hans-Hermann Hoppe, “The Second Paradox of Blackmail,” Bus. Ethics Q. 10, no. 3 (July 2000): 593–622; Walter Block, Roy Whitehead & N. Stephan Kinsella, “The Duty to Defend Advertising Injuries Caused by Junk Faxes: An Analysis of Privacy, Spam, Detection and Blackmail,” Whittier L. Rev. 27, no. 4 (2006): 925–49. [↑](#footnote-ref-5)
6. See Kinsella, “Cool Footnote Policy,” StephanKinsella.com (June 14, 2002). [↑](#footnote-ref-6)
7. Bruno Leoni, Freedom and the Law (Indianapolis: Liberty Fund, expanded 3d. ed. 1991 [1961]; https://oll.libertyfund.org/title/kemp-freedom-and-the-law-lf-ed); Giovanni Sartori, Liberty and Law (Menlo Park, Ca.: Institute for Humane Studies, 1976). [↑](#footnote-ref-7)
8. Such as: Murray N. Rothbard, The Ethics of Liberty (New York: New York University Press, 1998); idem, The Logic of Action (Edward Elgar, 1997); Michael Polanyi, The Logic of Liberty (Chicago: University of Chicago Press, 1980); G.B. Madison, The Logic of Liberty (New York: Greenwood Press, 1986); and others such as James M. Buchanan, The Limits of Liberty: Between Anarchy and Leviathan, vol. 7 in The Collected Works of James M. Buchanan (Indianapolis: Liberty Fund, 2000 [1975]). Interestingly, Jan Narveson’s excellent The Libertarian Idea (Philadelphia: Temple University Press, 1988) is part of the “Ethics and Action” series edited by Tom Regan. I mention this in chapter 8, at n.11. [↑](#footnote-ref-8)
9. See www.PapinianPress.com and Kinsella, “KOL018 | “Libertarian Legal Theory: Property, Conflict, and Society: Lecture 1: Libertarian Basics: Rights and Law” (Mises Academy, 2011),” Kinsella on Liberty Podcast (Feb. 20, 2013). [↑](#footnote-ref-9)
10. Barry Nicholas, An Introduction to Roman Law, rev. ed. (Oxford University Press, 1962), p. 30 n.2; see also chapter 5, n.1. [↑](#footnote-ref-10)