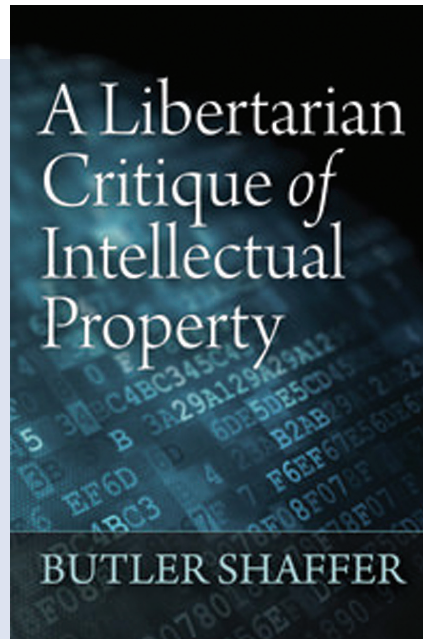
THE FREE MARKET

THE MONTHLY PUBLICATION OF THE MISES INSTITUTE

BOOK Review

Scarcity, Monopoly, and Intellectual Property



A Libertarian Critique of Intellectual Property
by Butler Shaffer
Mises Institute, 2013, 62 pp.

REVIEWED BY DAVID GORDON

Few topics in recent years have aroused as much interest among libertarians as intellectual property. What place, if any, would IP—patents, copyrights, trademarks and the like—have in a libertarian society? Ayn Rand and her Objectivist followers view IP as the most basic of all property rights. Diametrically opposed are those who say, "You cannot own an idea": ideas are not in the economic sense scarce goods and thus property rights in them are at odds with the purpose of property rights, avoiding conflict over the use of such goods. Still others shift the argument from rights to the benefits and costs of IP. Does IP promote valuable inventions and creativity, or does it impede them?

Faced with a welter of arguments in conflict, what is the perplexed libertarian to do? Butler Shaffer's superb new monograph offers an easy way to unravel the IP puzzles. He starts from a fundamental principle basic to libertarianism and explains how the implications of this principle shed light on IP issues.

What is this principle? It is that rights stem from "the informal processes by which men and women accord to each other a respect for the inviolability of their lives—along with claims to external resources (e.g., land, food, water, etc.) necessary to sustain their lives." (p. 18) The

IN THIS ISSUE

VOL. 32, NO. 3 / MARCH 2014

THE FREE MARKET
THE MONTHLY PUBLICATION OF THE MISES INSTITUTE

Mises Institute
518 West Magnolia Avenue
Auburn, Ala. 36832-4501
Phone: 334.321.2100
Fax: 334.321.2119
Email: contact@mises.org
Web: mises.org

The Mises Institute is a nonprofit organization. Contributions are tax-deductible to the full extent of the law.

"informal processes" that Shaffer mentions proceed without coercion. In particular, law and rights do not depend on the dictates of the state, an organization that claims a monopoly over the legitimate use of force in a territory.

In adopting this stance, Shaffer puts himself at odds with much that passes in our day for wisdom among professors of law. "In a world grounded in institutional structuring, it is often difficult to find people willing to consider the possibility that property interests could derive from any source other than an acknowledged legal authority. There is an apparent acceptance of Jeremy Bentham's dictum that 'property is entirely the creature of law.'" (pp. 18–19)

What follows for IP if one accepts Shaffer's libertarian starting point? Then, we must ask the further question, would people who respect each other's life and property recognize IP rights? To ask this question, though, raises a further issue. How are we to find out what people in this imagined situation would do? We live, after all, in "a world grounded in institutional structuring." In our world, IP exists: how do we know what would exist in a stateless world?

Shaffer solves this difficulty by moving to a question that we can answer: How in fact has IP arisen? Was it recognized by the common law or has it been imposed by the state? Shaffer has no doubt about the answer: "The common law system got it right: because the essence of ownership is found in the capacity to control some resource in furtherance of one's purposes, such a claim [of common law copyright] is lost once a product is released to the public. The situation is similar to that of a person owning oxygen that is contained in a tank, but loses a claim to any quantity that might be released—by a leaky valve—into the air." (pp. 25–26)

IP today goes far beyond the limited protection afforded by common law copyright. In the modern IP system, the state grants monopoly privileges, and this is inconsistent with libertarian principles: "If copyrights, patents, or trademark protections are not recognized among free people—unless specifically contracted for between two parties—by what reasoning can the state create and enforce such interests upon persons who have not agreed to be so bound? . . . Among men and women of libertarian sentiments, one would expect to find a presumption of opposition to the idea that a monopolist of legal violence could create property interests that others would be bound in principle to respect." (p. 22)

One might raise an objection to Shaffer's argument. Even if people have not in fact voluntarily agreed to laws protecting IP, does this suffice to show that they could not do so? Shaffer allows contracts in which two people agree to limits on the right to reproduce an item that is purchased, but can one not imagine such contracts extended further? Could one not devise a complicated contract in which everyone agrees to IP protection? A contract of this sort would resemble agreements that some have proposed to supply public goods in an anarchist society.

I do not know how Shaffer would respond, but the imagined contract creates little trouble for the thesis he wishes to defend. He need not deny the bare possibility of a contract of this sort. He has only to insist once more that this contract would bind only those who had agreed to it, and it in that way does not resemble our present IP arrangements.

If Shaffer is right that a libertarian society would not recognize IP, we must now ask another question. Is this an unfortunate feature of a libertarian society as Shaffer conceives of it? Some have thought so, fearing that IP protection is

CONTINUED ON PAGE 6

Entrepreneurship:

The Driving Force of the Economy

An Interview with

Peter G. Klein

Author of The Capitalist and the Entrepreneur*, Peter Klein has published numerous books and articles on entrepreneurship from an Austrian perspective. Dr. Klein, who is executive director and Carl Menger Research fellow at the Mises Institute, was interviewed in late 2013 by eTalk's Niaz Uddin on the topic of entrepreneurship:*

Niaz Uddin: Tell us about entrepreneurship. What are the different contexts of entrepreneurship?

Peter Klein: The terms "entrepreneur," "entrepreneurship," and "entrepreneurial" are used in many ways, not always consistently! On the one hand, entrepreneurship is often used to mean self-employment: an entrepreneur is a person who starts or operates a small business. On the other hand, we also use the term "entrepreneurial" to refer to something broader, a mindset or way of thinking that emphasizes novelty, creativity, and initiative. Obviously one can be entrepreneurial in this sense without being a small-business owner.

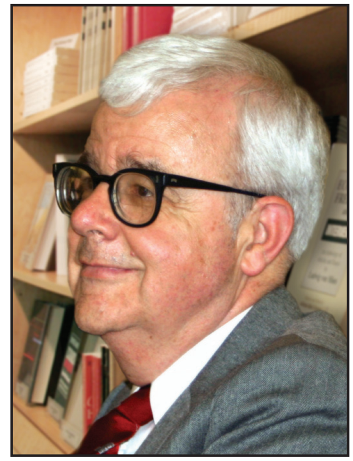
In the academic literature, things get even more confusing. Originally the word entrepreneur was identified with decision-making, risk-bearing, and responsibility: entrepreneurs were the business people who organized production, transforming resources into valuable products and services for consumers. That usage goes back to the eighteenth century. More recently, scholars have identified entrepreneurship with narrower activities or functions such as alertness to profit opportunities or the introduction of new goods and services or new ways to make existing products. In my academic writing I adopt the concept developed by the American economist Frank Knight and the Austrian economist Ludwig von Mises which emphasizes judgmental decision-making under uncertainty.

NU: Why do you think entrepreneurship is fundamental to an understanding of economics?

PK: Unfortunately, most people see economics as a dry, technical subject that involves poring over charts and graphs and writing equations to describe the "equilibrium" behavior of hypothetical actors. But economics is a logical, deductive, human science about real people acting in the real world, with all the dynamism, unpredictability, and creativity that entails. Markets aren't static, lifeless mathematical constructs but lively, vigorous spaces where people interact and coordinate. Firms, markets, and industries don't just come into existence by themselves, they have to be created and operated by real people with real responsibility. These people are entrepreneurs, what Mises called the "driving force" of the market economy. That's one reason I'm attracted to the "Austrian" approach to economics, which has always placed the entrepreneur at the front and center of production and exchange—not an incidental actor who steps in to introduce novelty then fades into the background as the "normal" market process resumes. Entrepreneurship, as decisive action under uncertain conditions, is at the very heart of a market economy.

CONTINUED ON PAGE 5

News from Auburn



Gary North Donates 10,000 Books to Mises Institute

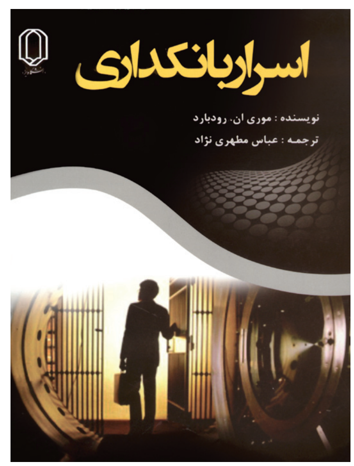
Gary North, historian, economist, and recipient of the Murray N. Rothbard Medal of Freedom, has donated his personal library to the Institute! His incredible collection contains over 10,000 books, assembled over a period of 50 years.

Dr. North said that he decided to donate the library to the Institute as a way to assist the Institute's Fellows and faculty. "The Mises Institute has very bright summer interns: Ph.D. candidates working on their dissertations, with the assistance of scholars."

The library "is heavily oriented towards history and social science," North explained, recalling that "not many economists are gifted historians the way Murray Rothbard was. He would have loved [the library]."

Dr. Karen Palasek, Director of the E.A. Morris Fellowship for Emerging Leaders was a visiting researcher at the Mises Institute throughout the month of February. Her current research compares the theory behind and performance of the Suffolk System of New England as compared to the New York Free Banking system, circa 1811–53.

Murray Rothbard's book *The Mystery of Banking* was recently translated into Farsi (Persian) by A. Motaharinejad, who donated a copy of the translation to the Mises Institute.



COMING EVENTS

Register online at mises.org or by phone at 800.636.4737.

March 20–22, 2014	AUSTRIAN ECONOMICS RESEARCH CONFERENCE • Mises Institute
April 11, 2014	HIGH SCHOOL AND COLLEGE SEMINAR • Mises Institute
June 8–13, 2014	ROTHBARD GRADUATE SEMINAR • Mises Institute
July 20–26, 2014	MISES UNIVERSITY • Mises Institute

ENTREPRENEURSHIP
CONTINUED FROM PAGE 3

NU: Now, how do you connect these three dots: entrepreneurship, economic growth, and development of a country?

PK: If we think of entrepreneurship in the broad sense of judgment under uncertainty, then economic development and growth can not exist without entrepreneurship! It is the entrepreneurs who invest the capital necessary for productivity growth, who organize production into firms and industries, who compete and cooperate to create and distribute goods and services to consumers in the most efficient and profitable manner. If we think of entrepreneurship more narrowly, as small business or startups or venture funding, then the story is more complex. To be sure, smaller and newer firms are often disproportionately responsible for employment growth and, in some contexts, the introduction of new products and new technologies. At the same time, large enterprises can also be innovative, and capital accumulation is often critical to achieving economies of scale and scope, even in today's "knowledge economy." And not every individual wants to be responsible for owning and operating a small business. Unfortunately, large firms are typically more adept at securing for themselves special political privileges and protection against competitors, though small firms play this game as well. Ultimately, I am agnostic about what mix of small and large, new and mature, and high-tech and low-tech firms is best for economic growth; I prefer to let competition in free markets sort it out.

NU: What drives entrepreneurs to build great organizations? And what are the roles of culture and entrepreneurial environments in that endeavor?

PK: Clearly culture and environment are critical for the success of entrepreneurs, however defined. Unfortunately, there is little consensus in the research literature about the precise mechanisms by which culture, including social norms and beliefs, affects economic behavior. We have a general sense that cultures in which experimentation and creativity are rewarded, and failure is tolerated, are more conducive to the kind of risk-taking that entrepreneurship requires. At the same time, there are plenty of counterexamples—the Nordic countries, for example, are relatively egalitarian and homogeneous, while still being highly entrepreneurial.

When it comes to the legal and political environment, the evidence is clearer. Countries with strong property-rights protection, a well-functioning monetary system, and minimal government intervention in the economy provide the best environment for entrepreneurship and economic growth. There is a strong temptation among many government planners to try to micro-manage entrepreneurial activity through targeted subsidies, infrastructure spending, tax and regulatory codes that favor one type of firm or location over another, and other attempts to create geographic or industrial clusters of innovation. Everyone wants the next Silicon Valley in his country or region. But entrepreneurial clusters like Silicon Valley emerge, endogenously, from the bottom up; they cannot be established from the top down. To be sure, strong "anchor" entities like research universities and established companies are important for kick-starting local entrepreneurial activity. But most attempts by government planners to target particular areas or activities for an entrepreneurial boost have fallen flat. The policy environment should also allow the "freedom to fail"—no bailouts and subsidies for unsuccessful ventures! Monetary and fiscal policies designed to "stimulate" the economy are also harmful, as they tend to generate asset bubbles and other forms of price inflation that make it more difficult for entrepreneurs to plan and invest.

NU: What aspects of economics and globalization should entrepreneurs master?

PK: I think everyone should understand basic economics—say, by reading Henry Hazlitt's classic *Economics in One Lesson*. Most economic principles are common sense: there's no such thing as a free lunch, benefits and costs should be compared at the margin, voluntary exchange is mutually beneficial, actions often have unintended consequences, and so on. Basic knowledge about globalization—the radical drop in communication and transportation costs, the often-surprising differences in legal, political, and social rules and customs around the world—is important too. But I don't think a deep theoretical knowledge of economics or international trade is a prerequisite to successful entrepreneurship. Intuition and experience are typically more valuable here than "book learning." (And I say that as a university professor!)

NU: Last but not least, if you could send a message about the benefits of entrepreneurship, what would it be?

PK: As educators, I think it's critical to remind people who are not entrepreneurs—I'm looking at you, politicians and journalists—that entrepreneurship is the driving force of a market economy, and that entrepreneurs need property rights, the rule of law, sound money, and free and open competition to be successful. ▮

SCARCITY, MONOPOLY, AND INTELLECTUAL PROPERTY
CONTINUED FROM PAGE 2

needed to stimulate inventions and to promote creativity in the arts.

Shaffer finds no reason to accept this contention. After mentioning a large number of tools and inventions from prehistoric times, he says, "All of these early inventions and creations were accomplished, as far as is known, without a violence-backed monopoly to prevent others from copying them." (pp. 35–36)

In his discussion of innovation, Shaffer avoids a bad argument that, I regret to say, has beguiled several opponents of IP. It is correctly pointed out that ideas are not scarce, in one meaning of that term. Any number of people can make use of an idea at the same time. By contrast, economic goods are scarce: one's use of economic goods excludes others from using them. In brief, ideas are non-rivalrous. From this, it is wrongly concluded that the creation of new and valuable ideas poses no problem: If ideas are not scarce, then they are abundant. Obviously, then, IP protection for them is absurd. It makes no more sense than property rights in air, a good which in normal circumstances anyone can have as much as he wants.

A parallel argument will serve to expose the fallacy. A common criticism of the free market is that it cannot supply public goods, such as national defense, in the economically optimal quantity. A public good is non-rivalrous: my consumption of defense, e.g., does not impede your consumption of it. It is alleged that this leads to undersupply of the good.

It would be a very poor answer to this complaint against the market to say, "This is not a problem! Just as the opponent of the free market has said, defense is a public, non-rivalrous good. If so, it is abundant—we need not then worry about its supply." The error here is apparent: the fact that an indefinite number of people can consume a good at the same time does not show that there is as much of the good as people want. The application of this to the IP argument canvassed above is, I hope, sufficiently obvious.

Shaffer's monograph contains much else of great value. He points out that "the patenting process, as with government regulation generally, is an expensive and time-consuming undertaking that tends to increase industrial concentration." (p. 42) This, he holds, is a development much to be deplored. In his fear of the malign effects of undue organizational size, Shaffer has been influenced by Leopold Kohr, an original but neglected thinker.

Shaffer aptly concludes his monograph in this way: "Can one, consistent with a libertarian philosophy, respect any 'property' interest that is both created and enforced by the state, a system defined by its monopoly on the use of violence? I regard the proposition as indefensible as would be the question of a libertarian defense of war." (p. 54)

David Gordon is a Senior Fellow at the Mises Institute. He earned his Ph.D. in intellectual history from UCLA, and is the author of *An Introduction to Economic Reasoning; Resurrecting Marx: The Analytical Marxists on Exploitation, Freedom and Justice; The Philosophical Origins of Austrian Economics;* and *Critics of Marx.* Email: dgordon@mises.org

In Memoriam

We mourn the passing, but celebrate the lives and achievements, of these champions of liberty. Their far-sighted concern for the future of freedom will always inspire us:

Mr. Roy S. Davies, friend and supporter of the Mises Institute, passed away on July 15, 2013. Mr. Davies, of Delmar, New York, served in the US Army, 1st Cavalry Division in Vietnam and worked in the insurance industry for 37 years.

Ms. Barby Hendricks of Colorado, a generous Mises Institute Member since 2003, passed away on February 5, 2014.

Mises Scholar and Alumni Notes

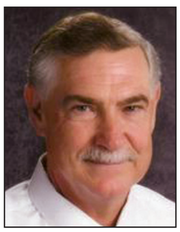

LEW


PETER KLEIN

MISES INSTITUTE CHAIRMAN LEW ROCKWELL was featured on *Russia Today* (RT-TV) on February 14 discussing government corruption.

EXECUTIVE DIRECTOR AND CARL MENGER RESEARCH FELLOW PETER KLEIN was featured in January at the Oklahoma Council of Public Affairs discussing entrepreneurship and agriculture. Dr. Klein joined Senior Fellow Tom Woods on February 13 on *The Tom Woods Show* to discuss the many flaws of Karl Marx's economics.


GUIDO HÜLSMANN


PAUL PRENTICE

SENIOR FELLOW JÖRG GUIDO HÜLSMANN spoke on Financial Markets and the Production of Law: Variations on a Leonian Theme at a Bruno Leoni colloquium at the University of Calabria in Italy on October 31, 2013; On January 16, he spoke on Böhm-Bawerk's economic theory of legal rights at the University Rey Juan Carlos in Madrid, Spain; On January 17–19 he conducted a 3-day seminar on advanced monetary economics for the Instituto Juan de Mariana in Spain; on January 22–31 he visited Grove City College to teach segments of Prof. Jeffrey Herbener's class on financial economics; on February 14–15 he presented a paper on "Fiat Money and the Distribution of Incomes and Wealth" at the Leontief Readings conference in Saint Petersburg, Russia.


FRANK DAUMANN


ANTONY MUELLER

ASSOCIATED SCHOLAR PAUL PRENTICE published "Concept of government control of marketplace is basically flawed" as a guest columnist in the February 17 issue of the *Colorado Springs Gazette*. Dr. Prentice's column was a response to February's *Washington Post* attack on Austrian economics.

ASSOCIATED SCHOLAR FRANK DAUMANN, who specializes in sports economics, has an article on the International Olympic Committee forthcoming in the journal *Applied Economics Quarterly*. Dr. Daumann also recently co-authored two chapters in the new book *International Sports Marketing —Principles and Perspectives.* Dr. Daumann was interviewed on December 12 for the German publication *transkript* about doping in sports, and on January 8 in the German publication *Sport–Job* on the job market in sports-related industries.


MATT McCAFFREY

ASSOCIATED SCHOLAR ANTONY MUELLER published "Beyond Keynes and the Classics. Outline of the Goods Side/Money Side Model of the Business Cycle and Macroeconomic Configurations" in the academic publication *Social Science Research Network* on January 20.

FORMER MISES FELLOW MATT MCCAFFREY published "Conflicting Views of the Entrepreneur in Turn-of-the-Century Vienna" in the Summer 2013 issue of *History of Economics Review*.


CHRISTINE FARD

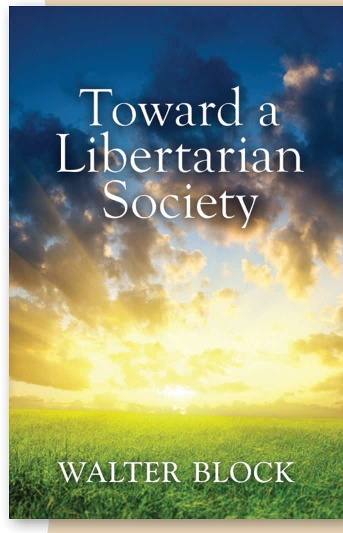
MISES UNIVERSITY ALUMNUS CHRISTINE FARD was interviewed by investment and economics website *The Daily Bell* about her experiences at Mises University. Ms. Fard, now an attorney in private practice, noted that when it comes to which school of thought in economics is "the most accurate" in explaining economic action, "the Austrian School wins any day."

Faculty, Alumni, Members and Donors: Send us your news at updates@mises.org.

THE FREE MARKET
THE MONTHLY PUBLICATION OF THE MISES INSTITUTE

Ludwig von Mises Institute
518 West Magnolia Avenue
Auburn, Alabama 36832-4501

ADDRESS SERVICE REQUESTED



Please help publish Walter Block's magnificent introduction to libertarianism. Patrons ($1,000 or greater) of this project will be gratefully acknowledged in the book.

Donate online at: mises.org/2014Block

Consider Including the Mises Institute in Your Estate Planning

Please consider including the Mises Institute in your will or trust. Your bequest will help assure a bright long-term future for the Institute and its important mission. Bequests are free from estate tax, and can substantially reduce the amount of your assets seized by the Leviathan State.

We recommend that you consult with your estate planning or tax advisor.

Please call or write Kristy Holmes (800.636.4737; kristy@mises.org) for more details.