

Legal Foundations of a Free Society

The În Dodii Podcast Series on Stephan Kinsella's Book (Episodes
#306–#321)

English summaries of the Romanian-language video transcripts

[YouTube playlist](#)

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Part I. Overview of the Series

The playlist "Stephan Kinsella – Legal Foundations of a Free Society," from the Romanian libertarian podcast În Dodii ("In Jest" or "Fooling Around"), has 16 episodes (#306–#321), each about 1.5 to 2.5 hours long, about 30 hours in all. Over these episodes the hosts read through and debate Kinsella's *Legal Foundations of a Free Society* (Papinian Press, 2023), from Hoppe's foreword to the two chapters against intellectual property. The show is a recorded round-table, not a lecture. The regular panel is Gabi (Gabriel) Munteanu, who usually moderates and presents the chapter; Valentin "Vali" Berceanu, who reads the sponsor and housekeeping notices and is the most systematic and contrarian theorist on the panel; Costel Stăvărache, a philosophy-minded skeptic who often plays devil's advocate; and Alex Chiriac. A cat named Foster appears now and then. The hosts are committed anarcho-capitalists from the Rothbard–Hoppe tradition associated with the Mises Institute Romania. They treat Kinsella with great respect but argue with him, and with each other, constantly.

The series follows the book's order:

- **Foundations (#306–#311).** The foreword and Kinsella's intellectual biography; what libertarianism is (a particular way of allocating property rights) and anarcho-libertarianism; how we come to own ourselves; punishment and proportionality grounded in estoppel; dialogical arguments for rights; and a defense of Hoppe's argumentation ethics.
- **Causation and contract (#312–#317).** Causation and aggression, including the "Hitler's guilt" problem of masterminds and intermediaries; title-transfer contract theory and voluntary slavery; inalienability and George Smith's challenge; Kinsella's reply to Walter Block ("selling does not imply ownership"); Bitcoin and digital goods; and van Dun's claim that some non-aggressive acts such as blackmail, libel and trademark infringement are "unlawful."
- **Law and IP (#318–#321).** Legislation versus decentralized law-finding, in two parts, followed by "Against Intellectual Property" and its 20-year retrospective.

Several threads run through the whole series and give it its character:

- **The person/body dualism.** Berceanu returns again and again to his argument that libertarian "self-ownership," which splits a person from a body he owns, is an unnecessary simplification. He says it causes most of the theory's puzzles: voluntary slavery, inalienability, children, Hoppe's argumentation ethics. "You don't own your body; you are your body."
- **Restitution versus punishment.** Berceanu defends a strict restitution-only theory: aggression creates a 2x restitution right (1x to the victim and 1x appropriable from "everyone"), which caps proportionality. He sets this against Kinsella's open-ended, victim-centered theory of punishment, which he finds subjective and arbitrary because it weighs intentions, terror and deterrence.
- **Intention.** Berceanu's refrain is "you cannot know what is in a man's soul." Justice should look only at objectively provable actions. He offers formal definitions of physical and moral causation based on repeatable, verifiable changes in the world.
- **Costel's challenges.** Costel keeps pressing Kinsella and his co-hosts with skeptical counterexamples. A performative contradiction does not refute a theory. Exit-free, fully paid "slavery" contracts should bind. Actions and labor are rivalrous. Creating an idea is like homesteading, so IP might be defensible after all. Most of the best exchanges come from these challenges.

- **Romanian politics.** The abstract discussion is constantly tied to Romanian life: the tax authority ANAF, Prime Minister Bolojan's tax increases, emergency ordinances, the Constitutional Court, the 1990 miners' riots and Iliescu, Romanian slavery and Holocaust history, the pandemic, and the Mises Institute Romania's autumn school at Breb. Recurring examples ground the theory: Coca-Cola versus Pepsi, Gabi's glasses, wedding singers, pink umbrellas, Van Goghs, shawarma shops, McDonald's signs.

Across the series the panel broadly agrees with Kinsella's main conclusions: anarcho-libertarianism, estoppel as a justification of punishment, the title-transfer theory of contract, the rejection of enforceable voluntary slavery, the superiority of decentralized law-finding over legislation, and the rejection of intellectual property. They disagree, sometimes sharply, on his reasoning in several places. These include proportionality and the role of the victim's subjective suffering; intention and expanded causal liability, where they mostly take a restrictive view; Rothbard's and Kinsella's reliance on self-ownership; the reading of George Smith and van Dun; and, through Costel, whether ideas and actions really fail the scarcity and rivalry test. The series also documents a small but lively Romanian libertarian scene. Along the way the hosts promote Romanian translations of Doug Casey and John Hunt's novels, a new "HydraFest" modeled on Porcfest, and the Breb autumn school, and they invite listeners to translate Kinsella's freely available book into Romanian.

A note on sources and translation. The summaries in this document were prepared from YouTube's automatically generated Romanian captions for each episode, downloaded from the playlist and translated and condensed into English. Those captions have no speaker labels and contain many speech-recognition errors. Speaker attributions here are therefore inferred from context and self-references, and occasional names and details may be imperfect. The timestamps give the approximate position in each video.

Episode Guide

- **#306** — Introduction: Hoppe's Foreword, the Preface and Chapter 1 (How I Became a Libertarian) (1h 52m)
- **#307** — What Does Libertarianism Mean? (Chapters 2–3) (1h 45m)
- **#308** — Slavery or Self-Ownership? How We Come to Own Ourselves (Chapter 4) (1h 40m)
- **#309** — The Theory of Punishment and Rights (Chapter 5) (2h 30m)
- **#310** — Dialogical Arguments for Rights (end of Chapter 5; Chapter 6) (2h 12m)
- **#311** — In Defense of Argumentation Ethics (Chapter 7) (1h 58m)
- **#312** — Causality and Aggression, Part 1 (Chapter 8) (1h 25m)
- **#313** — Causality and Hitler's Guilt, Causation Part 2 (Chapter 8) (1h 38m)
- **#314** — Contract Theory: Slavery? (Chapter 9) (1h 37m)
- **#315** — George Smith and Randy Barnett: Inalienability and Punishment (Chapter 10) (1h 37m)
- **#316** — Property and Sales Errors: Selling Does Not Imply Ownership (Chapter 11) (1h 19m)
- **#317** — On Bitcoin and Trademark (end of Chapter 11; Chapter 12) (2h 09m)
- **#318** — Legislation or Law Discovery, Part 1 (Chapter 13) (1h 39m)
- **#319** — Legislation or Law Discovery, Part 2 (Chapter 13) (1h 56m)
- **#320** — Against Intellectual Property (Chapter 14) (2h 01m)
- **#321** — Against Intellectual Property, Part 2: Twenty Years Later (Chapter 15) (2h 12m)

Part II. Episode-by-Episode Summaries

Video 1 (#306): Introduction: Hoppe's Foreword, the Preface and Chapter 1 (How I Became a Libertarian)

Original title: #306 / *Bazele legale ale unei societati libere* - Stephan Kinsella - Introducere

Length: 1:51:50

Link: <https://www.youtube.com/watch?v=8Sv42rSUDFc>

Summary

The first episode of În Dodii's series on Stephan Kinsella's Legal Foundations of a Free Society (Romanian title "Bazele legale/juridice ale unei societăți libere") covers Hans-Hermann Hoppe's Foreword, Kinsella's Preface, and Chapter 1, "How I Became a Libertarian." The panel is Valentin (Vali) Berceanu, Costel Stăvărache and Gabi Munteanu. They introduce the book as a collection of essays written over two decades and heavily annotated. Listeners are told it can be downloaded free from the author's website, since Kinsella rejects intellectual property, and are invited to translate it into Romanian.

Most of the episode follows Hoppe's survey of three historical theories of justice: might makes right (with legal positivism counted as a version of it), social contract theory (Rawls and Buchanan) and utilitarianism. Hoppe sets these against natural law, which he grounds in the praxeological fact of human action and in argumentation ethics. The hosts argue at length over whether a voluntary anarcho-capitalist arrangement that interprets the non-aggression principle in a particular way (for example, abandoning land after five years of non-use) amounts to "might makes right." They agree that force is needed to enforce norms but cannot justify them. They also debate whether a thief contradicts himself.

The last part summarizes Kinsella's biography: adoption, discovering Ayn Rand in high school, studying electrical engineering and then law, moving from Objectivism to Rothbardian libertarianism, his 1992 Reason Papers article on estoppel as a justification for rights, meeting Rothbard in 1995, and his friendships with Hülsmann and J. Neil Schulman. The hosts explain estoppel (Romanian "precluziune") at some length and link it to Hoppe's argumentation ethics. Chapter 2 is left for the next episode.

Detailed Summary

Opening and housekeeping (0:00–8:00). Before recording, the hosts chat about the Foreword's categories (might makes right, social contract, utilitarianism) and the book's length, much of which is footnotes and appendices. Berceanu then introduces the new book and asks viewers to like, subscribe and turn on notifications. He points to the Telegram group, the crypto and Patreon links, and a Mises Institute book launch in Iași. He notes that Kinsella offers the book free because he rejects intellectual property, and that anyone is welcome to translate it into Romanian.

Hoppe's Foreword: three rival theories (8:00–14:45). The hosts explain that the book collects essays and articles with many explanatory footnotes recording how Kinsella's views changed. Hoppe opens with the point that questions about justice are older than systematic philosophy. He describes three historical answers:

- **Might makes right:** whoever holds physical power sets the law, whether king or tribal chief. Hoppe argues that once the strong man stops to explain why he is right, instead of simply punching you, he has given up the position. Argument assumes that people can be wrong, can correct themselves, and can reach a correct answer.

- **Legal positivism (e.g. Kelsen):** placed in the same category, because the state declares by fiat what is right through legislation. It then tries to cover the use of force with social contract or utilitarian justifications, which the hosts call cognitive dissonance.

Debate: is a voluntary ancap arrangement "might makes right"? (14:45–42:30). Gabi raises a hard case. Suppose protection agencies in an anarcho-capitalist region agree on a rule that departs from the non-aggression principle (NAP), such as treating land as abandoned after five years of non-use. Is that also the right of the strongest? The discussion covers:

- **Force enforces but does not validate.** Enforcement always needs force, but force does not make a norm just. Costel argues that the NAP differs from fiat law because any breach of it already involves initiating force, so a forceful response is defensive. Whether that response still counts as "imposition, but legitimate" is argued back and forth.
- **Abandonment.** Using his slippers left outside an apartment block, Berceanu argues that property is a relationship among owner, object and other people. Abandonment must be an explicit act, such as throwing something away or making a place your dump. Implicit abandonment by non-use takes you outside libertarianism, toward Georgism or mutualism.
- **Exit from agreements.** Even if everyone initially agreed to a five-year rule, Hoppe's view that sovereignty cannot be given up implies that a contract without exit criteria is unenforceable once someone disagrees. Enforcing it anyway would be aggression.
- **Normative versus practical questions.** The hosts separate the normative question (what rules are just) from the practical question (how rules are enforced). They say many people, including libertarians, confuse the two.
- **A Samuel Johnson epigraph** at the start of the book ("I have found you an argument; I am not obliged to find you an understanding") briefly comes up, as does an example of a libertarian who says "force makes right" yet resents paying taxes. By wanting things to be otherwise, he shows he holds a different normative standard.

Social contract theory (42:30–49:00). Rawls (on the left) and Buchanan (on the right) are cited. The hosts note that Rawls admitted designing the "original position" to reach the conclusions he wanted. They argue that behind a real veil of ignorance the first question would be "will I be the aggressor or the victim?", not "will I be rich or poor?". Asked honestly, that question leads to libertarianism, and economics shows libertarianism also helps the poor most. Hoppe's praxeological point is that acting people must exist before any contract, so social contracts can only be explicit. Imaginary "collective persons" signing a contract that binds real people such as "Gheorghe and Vasile" is called sinister. The hosts also note the conflict between Rawls's two principles: redistribution violates the first principle of equal liberty.

Utilitarianism (49:00–52:45). There is no unit of happiness that can be measured and aggregated. Utilitarianism can therefore justify anything: Romanian politicians (Bolojan, Grindeanu), Putin, Ceaușescu's Danube–Black Sea Canal labor camps, even persecution by a majority. The hosts call it a convenient tool for justifying whatever system one already wants.

Natural law and praxeology (52:45–1:08:00). Hoppe returns to natural law, which can be discovered by studying human nature. Berceanu explains action theory with a glass of Coke rather than Pepsi: ends, means (external goods and one's own body), external conditions, choosing a preferred future state and predicting which actions lead to it. Kinsella's Preface makes the same point through Mises's idea that people act to remove felt uneasiness. Hoppe's argumentation ethics follows: people communicate in order to avoid conflict (asking to borrow Gabi's glasses rather than grabbing them). From this follow self-

ownership, which must be implicit because only the person directly controls his body; original appropriation; and contract and exchange as the only just ways to acquire property. Any other way of acquiring property is ruled out by reason.

Does the thief contradict himself? (1:09:00–1:19:00). The thief both assumes and denies property rights, for example by resenting being robbed himself. Gabi pushes back with a consistent nihilist about property who resents losing things only as a matter of preference, and with a slave owner who talks to his slave without recognizing the slave's rights. Berceanu replies that people can hold many cognitive dissonances, which does not mean they avoid contradiction, and that the full model shows the contradiction. The hosts agree to work through the whole model in a later episode.

Rothbard, Nozick and the purpose of the book (1:19:00–1:28:40). Hoppe calls Rothbard's *The Ethics of Liberty* (1982) the greatest contribution to natural-rights theory of justice. It was ignored in academia, where Nozick's *Anarchy, State, and Utopia* got the attention, but it was very influential among the public. Hoppe hopes Kinsella's book will not be ignored in the same way. The hosts criticize Nozick's "invisible hand" story of how a dominant protection agency arises, calling it more a strong hand. Kinsella's Preface moves the question from ethics to law: why do we need a legal system in order to live in peace and cooperate? Berceanu repeats his recurring point that ethics and law should not be conflated. The book's stated aim is to bring back decentralized, bottom-up law (Roman law, common law) while holding to principle, consistency and inviolable individual rights. Intellectual property is described as Kinsella's most distinctive contribution.

Chapter 1: Kinsella's biography (1:28:40–1:50:00).

- **Early life.** Born in 1965 near Baton Rouge, Louisiana, and adopted. He credits being adopted with making him wary of romanticizing "blood" and other unchosen collective ties.
- **Path to libertarianism.** He was never drawn to the left, and a small, bullied boy's sense of justice drove him. A teacher gave him *The Fountainhead* in high school. He studied electrical engineering first, and law second.
- **Objectivism.** At an Objectivist conference, one Objectivist boasted of burning a disapproved book in his back yard. The hosts find that a weak reason for Kinsella's break with Objectivism, since the man burned his own book. This leads to a tangent on whether Objectivism is an "open" or "closed" system, with reference to Kuhn's paradigms.
- **Reading further.** Reading Mises, Rothbard, Hazlitt's *Economics in One Lesson* and others showed him that Rand went wrong exactly where she defended the state. She called herself a minarchist.
- **Estoppel.** Berceanu explains estoppel (precluziune): a party cannot take a legal position that contradicts its own earlier acts. Examples are an aggressor who complains when the victim fights back, and a bicycle thief suing over a stolen lighter. Gabi objects that this sounds unfair and that courts weigh probabilities. The hosts tie estoppel to Hoppe's performative contradiction. Kinsella's paper "Estoppel: A New Justification for Individual Rights" was rejected by a King's College London journal and published in *Reason Papers* (Fall 1992). Kinsella is unsure whether he read Hoppe first.
- **Mises Institute ties.** He met Rothbard in 1995 and has a signed copy of one of his books. He is a longtime Mises Institute fellow and met Guido Hülsmann on an airport shuttle bus. The hosts briefly ask where he stands in the later Hülsmann–Hoppe falling-out.
- **Wider connections.** He was friends with J. Neil Schulman, the agorist novelist of *Alongside Night*, so he has links across many libertarian factions.

Close. Chapter 2, "What Libertarianism Is" ("property, rights and liberty"), is left for next time. Sign-off:
"Stay as free as you can."

Video 2 (#307): What Does Libertarianism Mean? (Chapters 2–3)

Original title: #307 | *The Legal Foundations of a Free Society* - Stephan Kinsella - What Does Libertarianism Mean?

Length: 1:44:34

Link: <https://www.youtube.com/watch?v=kHQO8CmEraE>

Summary

Episode #307 covers Chapter 2, "What Libertarianism Is," and Chapter 3, "What It Means to Be an Anarcho-Libertarian." The panel is Gabi Munteanu, Valentin Berceanu, Costel Stăvărache and Alex Chiriac. They present Kinsella's central claim: libertarianism is defined not by capitalism, the free market or even the non-aggression principle as such, but by a particular way of allocating property rights. Every legal system, socialist or statist included, allocates property rights. Libertarianism assigns them to individuals through self-ownership of one's body and, for external resources, through first use (original appropriation), voluntary transfer, or restitution for wrongs. Kinsella justifies this by its aims: avoiding conflict, peace, prosperity, cooperation and civilization.

A long, lively section deals with self-ownership. Berceanu suggests libertarians might be stuck in "accidental intellectual trenches." He argues that defining aggression as using someone's property without freely given consent is better than Rothbard's definition based on physical invasion. He also asks whether dropping the person/body dualism, and saying simply that a person *is* his body, would make libertarian theory cleaner and remove problems such as voluntary slavery. The hosts read Romania's Constitution (on national sovereignty, the unitary state and the republican form of government) as quietly denying self-ownership. They also argue about whether a tyrant's double standard ("I may steal, you may not") can count as a norm at all.

On Chapter 3, they stress Kinsella's point that "I am an anarchist" is a normative claim that does not depend on anarchy being achievable. The minarchist utopia is no more realistic. Criminals are at least more honest than socialists, who justify their aggression. The episode ends with Milei and the gap between pragmatic political messaging and principled abolitionism.

Detailed Summary

Pre-show (0:00–6:40). The hosts discuss a Facebook post attacking the philosopher Constantin Noica for having been in the top 0.1%. They compare this to the communist obsession with "healthy social origins" and argue that a system built to minimize envy is itself controlled by envy, whereas natural meritocracy is not. They also complain that Romania bans far-right symbols but not the hammer and sickle, although the communist regime has been officially condemned as criminal.

Intro and Chapter 2's thesis (6:40–9:50). After the usual like, subscribe, Telegram and Patreon notices, they turn to "What is libertarianism?" Costel quotes Augustine on time: "If no one asks me, I know; if I wish to explain it, I do not know." Kinsella reviews various definitions and says libertarianism is not capitalism, the free market, the NAP or "individual rights" as such. It is a legal system based on one particular way of allocating property rights in bodies and external things.

Reddit anecdote and the libertarian position on big corporations (10:00–14:15). A Redditor wanted to "abolish capitalism" by buying from local markets and was told that this *is* capitalism. The hosts say that under libertarianism there would be no need to fight big corporations. They would grow large only by

serving customers, and competition would favor local providers where those are cheaper. Alex adds that a free society must be actively maintained by consumer choices ("like balancing a bicycle"). Libertarians favor neither change nor stability for its own sake, only good rules.

Property rights exist in every system (14:15–18:30). They criticize annual taxes on cars already bought with taxed money. The state also allocates property rights, but to itself or its agents, when it taxes or regulates. Libertarian property rights are distinctive in always belonging to individual persons (legal persons are only extensions of natural persons). There is a brief tangent on whether God owns creation. External things are acquired only by first use, transfer and restitution. Costel says any other system eventually runs into contradictions: "We want flying pigs."

Debate on defining aggression and the person/body split (18:30–39:00). Berceanu argues:

- **Consent, not invasion.** Rothbard defines aggression as "the initiation of the use or threat of physical violence against the person or property of anyone else." This is too narrow. Grabbing Gabi's microphone without permission is aggression even without "violence." Defining aggression as *using another's property without freely given consent* covers threats, incapacity and coercion in one step.
- **Self-ownership creates dualism.** Rothbard says all rights are property rights. That forces a model in which the person and the body are separate. It also creates Rothbard's apparent contradiction that ownership means the right to sell, yet one cannot sell one's body. Perhaps libertarian theory should be rebuilt on "the person *is* the body," with anything separable (cut hair, products) as ordinary property.

Gabi counters that philosophically a person may be his body, but legally it is convenient to treat the body as property, for example for selling hair. Berceanu answers that cut hair on the barbershop floor differs fundamentally from hair on his head, as the remedies for interfering with each would show.

Other points:

- Pleșu and Patapievi on Plato introducing soul–body dualism (it is absent in Homer), and Plato's chariot metaphor.
- Whether "self" in "self-ownership" is neutral. Alex likens ownership to a pair of pliers with two ends.
- Whether the real everyday fight is not metaphysics but resisting people who claim the state partly owns you.

Why ownership of bodies matters (39:00–47:30). Kinsella's goals (justice, peace, prosperity, cooperation, civilization) are compared with Kelsen's *Grundnorm*. Bodies are conflictual: the state tells you that you cannot go out, travel to Vienna without papers, and so on. Gabi reads Romania's Constitution: Romania is "sovereign, independent, unitary and indivisible" (so you cannot secede with your property); its form is a republic (so you cannot choose another); no group or person may exercise sovereignty in its own name (Art. 2(2)); and national sovereignty belongs to the people, exercised through "representative organs" (Art. 2(1)). The hosts joke about the state's "body" and "organs." They note that people did not connect this to self-ownership until the pandemic. People keep familiar evils out of fear of the unknown.

Kinsella's argument for self-ownership (47:30–1:02:30). Each person has "direct and immediate control" over his own body. Anyone else's control is indirect, and he must first control his own body. Gabi objects that this is the naturalistic fallacy: being able to do something does not give a right to do it. Berceanu suggests the argument should be phrased as *natural* direct control, so that future brain-interface technology does not undercut it. Kinsella also says the body in some sense *is* the person, which

pleases Berceanu. Gabi links self-ownership to estoppel: whoever claims control over his own body cannot consistently deny it to others. This prompts a long debate:

- **Is a tyrant's double standard a norm?** Gabi says "I may steal, you may not" can be a coherent norm.
- **Costel's reply.** Any norm needs some universally accepted ground within its community (divine election, birth), or it is just preference and leads to conflict. Examples include Nazi norms for Germans versus Jews and the "chosen people."
- **Berceanu's reply.** Majorities "accept" taxation only because they have no chance against the state, which brings back might makes right.

External resources and first use (1:02:30–1:16:00).

- **The body versus external things.** The body always has an owner, while external things can be unowned in the state of nature. A side question is who owns a corpse.
- **Lockean first use.** The first user owns the resource. Kinsella does not stress labor-mixing or enclosure here. The first user owns because he has no one to ask, so no conflict is possible. Any other rule creates conflict without limit.
- **Georgism.** The hosts discuss a Georgist they met in a café, who complains that someone born in the year 3000 will find all land taken. Their reply is that the alternative, everyone owning everything, means asking the unborn before eating an apple. Any land tax is arbitrary (why 1% rather than 2%? in what currency?) and cannot be grounded in universal principles.
- **Restitution.** A tangent on Rothbard's two-times restitution versus market-set multiples (the "6x" example, payment under threat).

Ownership versus possession; usus, fructus, abusus (1:16:00–1:17:30). A tenant or employee possesses but cannot sell. Ownership includes use, enjoyment of fruits and disposal, all from Roman law. The state cannot truly have *abusus* because the property is not its own.

"Not only libertarians are civilized" and the consequentialist question (1:17:30–1:26:00). They discuss whether Kinsella is a consequentialist who justifies everything by peace and avoiding conflict, or deliberately pragmatic. Gabi frames it as foundationalism versus consequentialism. They note that Chapters 2 and 3 were separate essays and are somewhat in tension. Kinsella cites Mises: civilized people are troubled by conflict and so create property rules. Alex jokes that civilized people would not need rules. Costel's etymology: the opposite of *civil* is military or bellicose, people who settle disputes by force. Kinsella concludes that to be consistently civilized one must be a libertarian and an anarchist.

Notes on property as the right to exclude (1:26:00–1:28:00). In the endnotes, ownership is fundamentally the right to exclude others. This is presupposed by use, fruits and disposal, since you cannot use something if you cannot exclude others from it.

Chapter 3: anarchy (1:28:00–1:40:00).

- **Anarchy as a normative position.** Anarchy means rejecting aggression. Many libertarians reject anarchism as unachievable. Kinsella says "I am an anarchist" is a normative claim regardless of whether it can be realized.
- **Defenders of the state.** They hold either that aggression is sometimes justified or that state action is not aggression (consent, social contract, "voting with your feet"). Kinsella sets aside the second claim quickly, since taxation is aggression. He groups the first claim's defenders with criminals: "there are criminals and socialists among us."

- **Utilitarianism.** Costel calls utilitarianism Machiavellianism ("the end justifies the means"). Socialists' key phrase is "we need" taxation, but we do not.
- **Is anarchy achievable?** Gabi presents a classical liberal who grants the economics of private defense but says adoption is impossible. Alex worries the complexity may exceed some natural limit, and Costel thinks that limit is cultural.
- **Criminals versus socialists.** Criminals are more honest: they rob you for their own benefit without claiming it is for yours, while socialists claim to rob you for everyone's good.
- **Minarchism.** Kinsella says the minarchist dream is just as utopian. Gabi admits he was long a minarchist, even a monarchist-minarchist, until a Michael Malice podcast on "the last step" gave him no reason to stop short. The hosts suggest social pressure and respectability keep people minarchist.
- **The ideal as benchmark.** Even if anarchy never arrives, it is the benchmark ("are we closer to it than communist Romania?"). Pragmatic action and the ideal goal are compatible.

Milei and real politics (1:41:40–1:43:50). Milei campaigned on "the state is the supreme thief" but did not raise topics such as drug legalization. The hosts distinguish pragmatic political messaging from what they do on the show, which is abolitionism. Sign-off: "From the abolitionists, we wish you much liberty."

Video 3 (#308): Slavery or Self-Ownership? How We Come to Own Ourselves (Chapter 4)

Original title: #308 | *The Legal Foundations of a Free Society* - Stephan Kinsella - Slavery or Self-Ownership?

Length: 1:40:03

Link: <https://www.youtube.com/watch?v=vFSlySX7Z0k>

Summary

Episode #308 covers Chapter 4, "How We Come to Own Ourselves." The panel is Gabi Munteanu, Valentin Berceanu and Costel Stăvărache. They begin with Kinsella's claim that state wrongs from drug prohibition to conscription and compulsory vaccination share one root: violations of self-ownership. On this view the state is a partial owner, or slave master, of our bodies. The hosts link this to the pandemic, the case for free speech grounded in self-ownership rather than "the search for truth," taxation as partial slavery, and democracy as slaves "choosing their masters." They also debate whether ideas or weapons come first in sustaining state power.

The core of the episode is Kinsella's problem with self-ownership. If ownership of external things comes from first use, then parents, who "used" the child's body first, might seem to own their children. The hosts reject the idea of a "conditional emancipation" chain of ancestors freeing descendants, finding three logical gaps in it. They discuss parental duties as quasi-positive obligations arising from having caused a helpless person to exist, compared to pushing someone into a lake. Kinsella's solution is that ownership rests on an "objective link" between owner and owned that others can perceive. For bodies this link is direct, unmediated control. For external things it is first use. The hosts like this unification because it also solves the "first man" problem.

They summarize Kinsella's five arguments for direct control: it is intuitive ("who else but me?"); Locke, Rothbard and Hoppe; the prior-versus-later distinction; estoppel against anyone who claims another's body; and the inevitability of conflict if bodies were assigned to indirect controllers. They also discuss Hoppe's view that a child gains the right to consent only on becoming capable of argumentation, and Gabi's "Rothbard's management ownership is not ownership" point. They close with the critique that the Rothbard–Hoppe argument from human extinction proves too much, and with G. A. Cohen's and Locke's concessions.

Detailed Summary

Pre-show (0:00–4:00). Small talk about an Iron Maiden concert. Gabi praises Vali's earlier idea that if the state is illegitimate from its founding act, then donations to a state such as Ukraine's are invalid, like throwing money away.

Self-ownership violations as the root of state evil (4:00–10:00). Kinsella says the world's wrongs come from violations of self-ownership. The state claims partial ownership of our bodies when it bans substances, forces medication, or conscripts. Gabi notes that pandemic-era opponents of mandatory vaccination did not see that the same principle supports drug legalization. He recalls asking Diaconu (Diplan) whether he would order people to stay home under imminent nuclear attack. Berceanu admits he used to accept mandatory childhood vaccination. He saw only later that the "exposure risk" exists because the state forces children into state schools. On free speech, progressives and J. S. Mill justify it by consequences (truth, political discourse). Libertarians justify it by self-ownership: "it's your mouth."

Do socialists accept self-ownership? (10:00–15:00). Classical Marxists allow personal property such as a toothbrush. In practice, social democracy denies self-ownership through taxation, because you work partly for the state involuntarily. Harder communism assigns jobs and punishes "sabotage." Gabi cites Hayek: if the state owns the means of production, personal property and free speech fall with it (it owns the printing presses). A tangent asks whether a passive human body can be a "capital good." The answer is that using someone as an object without his will is enslavement.

The state as slaveholder; democracy as choosing masters (15:00–24:30). Kinsella endorses Rothbard's view that all human rights are property rights. Berceanu warns again that this creates the person/body dichotomy. The hosts describe the state, the Romanian state included, as the greatest slaveholder, taking about 70% of output. School propaganda makes slaves think they are free. Gabi notes that voting mimics voluntary exchange ("I pick a party like an orange"), but you decide only within the system, never whether to be in it (Rothbard). They discuss slaves in the US South who fled from the Union army, feared freedom, or missed the old order, as a parallel to people who fear abolishing the state. They debate whether slaves who were free to leave would still be slaves.

Ideas versus weapons (24:30–34:00). Compliance is not voluntary, as the fact that nobody pays more tax than required shows (the "Huemer argument"). Romanian deficits persisted despite tax hikes under Bolojan. They debate whether ideas or weapons come first. Indoctrination is cheaper than brute force over generations, but the first tax authority was imposed by force. Ideas may justify power after the fact. Gabi distinguishes elaborate ideologies from simple intentions such as "I'll go steal." They make jokes about ANAF (Romania's tax authority) "administering" you.

What makes libertarian allocation unique (34:00–39:30). All systems allocate property. Libertarianism assigns it only to individuals (corporations are contracts among individuals) and seeks universalizable, coherent rules: no two classes of people. Kinsella adds that this makes the rules just. Collective ownership is fine if voluntary, such as a jointly owned yacht, or an anarcho-communist commune that buys property and shares it. What makes something communist is aggression, not common ownership.

First use and the problem of children (39:30–49:00). The Lockean first-use principle seems to imply that parents, who supplied the materials and "used" the child's body first, own their children. Some libertarians accept this, which the hosts say harms the movement. Kinsella considers, without endorsing it, a story in which an ancestor freed his children on condition they free theirs. Berceanu lists three flaws:

- It accepts slavery, so the rule is not universal.
- One cannot contract with a slave, since emancipation is an act on an object and cannot be conditional.
- It is unenforceable once the original owner dies.

Gabi says Rothbard's "trustee/management" ownership of children confuses things. A manager is not an owner. The child is the "shareholder" and the parent a delegate.

Parental duties: positive or negative obligations? (49:00–58:40). Kinsella's analogy is that someone who pushes a person into a lake must pull him out. Parents caused a helpless being to exist, so they must support it until it is self-sufficient. Gabi argues these are not real positive obligations, since they arise from a negative duty not to harm. Starving a child in your care is killing it, not merely "letting it die," which Rothbard got wrong. Gabi refers to his article on this at Mises Romania. Berceanu says libertarians call such duties "positive" because they were not assumed by contract. They distinguish restitution (stealing 1,000 lei and owing 2,000) from positive obligations.

Kinsella's solution: the "objective link" (58:40–1:13:30).

- **The link.** Ownership rests on an objective link between owner and owned that others can perceive and that can be formalized, always serving to minimize conflict.
- **Bodies.** The link is direct, unmediated control: "I say I'll raise my hand, and I raise it." Hypnotists, social engineers, brain interfaces and drugs all act through means, so their control is indirect. A home experiment: if the state orders you to raise three fingers and you don't, the state does not own you.
- **External things.** The link is first use.
- **Postulating rights instead.** Gabi would prefer to postulate rights, as Nozick does, rather than derive them. He thinks direct control risks the naturalistic fallacy, which can be avoided with conditional norms ("if X is human, then respect his rights").
- **The unification.** Berceanu admires the unification. There is one subject, one object and one criterion (objective link), with first use and direct control as instances. It also solves the "first man" problem.
- **Rothbard's runaway test.** It is flawed. A child running away with the parents' things would be theft, and running away alone proves little. They discussed this in their series on *For a New Liberty*.

Kinsella's five arguments for direct control (1:13:30–1:21:00).

- It is evident and intuitive: "who if not me?" (Hoppe, Locke).
- Rothbard's and Hoppe's arguments that the alternatives fail: communist ownership is unsustainable, and ownership by others is not universalizable.
- The distinction between prior and later: any other controller comes later and must act indirectly.
- Estoppel: whoever claims another's body uses his own body to argue, which contradicts his claim. A slaveholder would need a reason accepted by both master and slave.
- Assigning bodies to indirect controllers makes conflict inevitable while the direct controller lives. Only a corpse is a mere object.

Children and consent (1:21:00–1:28:30). Applying direct control to children seems to bring back Rothbard's runaway five-year-old who can sign contracts. Kinsella cites Hoppe's 1989 treatise: children have the right not to be aggressed against, but the right to *consent* arrives only when they can take part in argument about norms. Berceanu finds this elegant but worries that it would exclude many "dumbed-down" adults. Gabi thinks "I don't want to, it's my body" already counts as an argument. Berceanu replies that it is a stated preference, not a normative justification. Kinsella compares children to animals, which have direct control but are not rational agents. Gabi notes that a mere declaration ("this tree is mine") does not establish ownership, since talk is cheap. Even if a community accepted it, the rule must cover all cases.

Endnotes: extinction arguments, Cohen and Locke (1:28:30–1:38:20). Rothbard and Hoppe argue that communal ownership of bodies would cause human extinction, since one would need everyone's consent to drink a Coke. Berceanu thinks this overreaches and invites David Friedman's edge case: aliens threaten extinction unless you steal, and the libertarian says "don't steal." The better, purely ethical argument is that communal ownership permits only inaction, which contradicts the purpose of ethics as guiding action. The same answer applies to "wait for all generations before appropriating land." G. A. Cohen concedes that if people need the community's permission to use any external thing, they do not

own themselves. Locke made a similar point: servants could not even cut the meat they were given without everyone's consent. Kinsella notes that by "self-ownership" he means a person owning his body, the person being conceptually distinct from the body as mind is from brain, while keeping the familiar term.

Close. "The state always stays too close to people's throats." Sign-off by Gabi Munteanu.

Video 4 (#309): The Theory of Punishment and Rights (Chapter 5)

Original title: #309 | Bazele legale ale unei societati libere - S. Kinsella - Teoria pedepselor și a drepturilor

Length: 2:30:12

Link: https://www.youtube.com/watch?v=Q_PqJDzf3pM

Summary

Episode #309 (about 2.5 hours) covers most of Chapter 5, "A Theory of Punishment and Rights" ("Punishment and Proportionality: The Estoppel Approach"). The panel is Gabi Munteanu, Valentin Berceanu, Costel Stăvărache and Alex Chiriac. It opens with a plug for Romanian translations of Doug Casey and John Hunt's libertarian novels (*Speculator*, *Drug Lord*, *Assassin*) from a new publisher, Sense of Self Publishing.

The hosts lay out Kinsella's starting point. Civilized people need a justification before using force to punish. Conventional theories (deterrence, rehabilitation, retribution, restitution) are insufficient. Kinsella grounds punishment in "dialogical estoppel": an aggressor who objects to being punished must claim that the use of force is wrong, but his own act shows he does not hold that principle. He is therefore estopped from objecting. The hosts separate this from American "legal estoppel" (promissory estoppel), illustrated by a 1982 case in which a father promised to pay his daughter's tuition and then stopped. They agree that case has nothing libertarian in it. They then walk through the aggressor's possible defenses: denying that his act was aggression, particularizing or relativizing the norm, or claiming he has since changed his mind. Kinsella also argues that self-defense is "punishment brought forward in time," that victimless crimes cannot be punished, and that theft of external property is punishable as aggression.

Berceanu repeatedly sets out his own alternative. There is no "punishment" at all, only restitutive rights created at the moment of aggression: a 1x right owed to the victim and a second 1x right owed to everyone, giving the 2x cap. He thinks this solves murder, where the victim cannot sue. The longest debate is over Kinsella's proportionality principle. Kinsella lets the victim choose the type and amount of punishment up to a general upper bound and considers the victim's subjective suffering. Berceanu calls this a swamp of subjectivity that a normative theory cannot accept. Gabi and Alex defend some role for market pricing and convention. Hard cases discussed include rape, a painter whose hand is cut off, a gun held to someone's head for hours, a toy gun and threats, horse theft in the Wild West, and fragile victims. Gabi complains that deterrence is mentioned and then dropped. The burden-of-proof section is held over to the next episode.

Detailed Summary

Pre-show (0:00–4:15). Banter about guerrilla war, collateral damage and whether a volunteer militia that draws enemy fire onto civilians bears responsibility. Examples are Ukraine, Iraq and the German reprisals against civilians in Belgium in 1914.

Book plug (4:15–8:40). Gabi presents three Doug Casey and John Hunt novels translated into Romanian by Victor Ionescu (*Speculator*, *Drug Lord*, *Assassin*), with blurbs from Ron Paul, Walter Block, Ross Ulbricht and Lew Rockwell, comparing them to Schulman's *Alongside Night*. They are published by Sense of Self Publishing and offered as fiction for people who find theory hard.

Chapter 5's starting point (8:40–17:15). Civilized people are reluctant to use force and need a justification. Berceanu pushes back: in theories of justice, punishment is a consequence, not a starting point. Restitution is not a justification of punishment. It is something conceptually prior, onto which "punishment" was later grafted. On the theory some of the hosts hold, "punishment" does not exist. There are only restitutive rights that restore a balance. Gabi notes that state criminal law barely recognizes restitution, since victims receive damages only in civil proceedings. They list prevention, rehabilitation, restitution and retribution (revenge). Rape cannot be "restituted," only retributed. Berceanu likes a restitution-only theory because it is free of subjective psychology. Alex counters, citing David Friedman, that even "two apples back" involves subjective valuation: why 2x and not 9x?

Berceanu's 2x theory and murder (17:15–31:00). The first "x" restores the object. The second is a restitutive right against the whole community, since the aggressor breached his non-aggression "contract" with everyone, and the victim appropriates it by filing a complaint. Berceanu argues this is the only consistent way to punish murder. The dead victim cannot sue, and because people are not property, relatives have no property claim. Alex and Gabi find it un-libertarian, since it makes the debt owed to "society" like criminal law, and propose that rights pass on by inheritance or will. Berceanu answers that the right to life is inalienable and cannot be inherited. They also revisit whether the person *is* the body and whether separable parts such as hair are property.

Justifying punishment of those who do not consent (31:00–41:30). Someone who consents is not being "punished," like a loser who accepted the rules of a bet. Berceanu notes the hidden assumptions: every act is either aggressive or non-aggressive, and an aggression must come before any punishment. Estoppel (Latin *venire contra factum proprium*) means you cannot contradict your own acts. Gabi notes Kinsella treats dialogue, discourse and argument as interchangeable and assumes the aim is truth. A digression covers sophisms versus paralogisms (valid form with false premises, or bad intent). The example is the TV non sequitur "you oppose taxation, so you oppose education."

Legal estoppel versus dialogical estoppel (41:30–55:00). In Kinsella's legal-estoppel example from US law, a father promised to pay his daughter's college costs, paid the first year, then stopped, leaving her with about \$6,700 of debt (1982). The court held him liable because she relied on his promise to her detriment. The hosts agree this is not libertarian. Gabi notes a lover's broken promise to take you to the seaside would not count unless you had booked a hotel. This leads to a debate on implicit contracts and exit:

- **Berceanu:** an implicit contract always carries an implicit exit clause, or you get the psychopath who moves in because "we work well together."
- **Gabi:** contracts mean nothing if you can always back out.

They agree that formalized contracts without exit clauses bind. Dialogical estoppel is different. An aggressor who punched someone cannot then claim that force is wrong.

Building the argument (55:00–1:05:00). The layers are: Hoppe's argumentation ethics (a normative discussion aims to avoid conflict); Kant's universalizability (any justifiable ethic must be universalizable); and then the aggressor's performative contradiction, where his words contradict his deeds. In Kinsella's main example, A murders B, C imprisons A, and A cannot object that force is wrong. That also justifies capital punishment for murder. Self-defense is punishment "brought forward to the present." Costel quotes a saying: "the rights you respect are the rights you have."

The aggressor's possible defenses (1:05:00–1:16:40).

- **"It wasn't aggression."** The judge replies "and this isn't punishment." Any description of the act that admits it initiated force brings the same result: "looks, sounds and tastes like a duck."

- **Particularizing ("on Wednesdays," "redheads may hit blondes").** This fails universalizability. A relativist judge could say "judges may aggress anyone." The hosts note postmodern "communities of acceptance": even "I'm a worker, you're bourgeois" or "I was oppressed, so I may take gum" assumes universal acceptance within some community. An argument the bourgeois judge does not share fails.
- **"I've changed my mind."** If you now believe aggression is wrong, you must want criminals punished, including your past self, who is the same person (same personal ID number and DNA). "Into the cell."

Victimless "crimes" (1:16:40–1:24:00). The smoker in a bar can plead that he aggressed no one. The bar owner who allows smoking on his property is aggressed by the state. The state, which aggresses by legislating, is itself estopped from punishing "because aggression is wrong." Consensual slaps are not aggression. Under current law, prosecution can expire on the criminal side while the civil claim survives.

Theft of external property (1:24:00–1:33:30). A thief may claim "I didn't hit him, I took his car." Kinsella argues that because humans need external things to live and act, aggression against property is ultimately aggression against the person. The judge can turn the thief's denial of property against him ("I'll take your sandwich"). Berceanu thinks Kinsella overreaches here. Taking food from someone's hand without touching him is nearly impossible, and you cannot stop him stealing from others without touching him. Gabi mentions activists who filmed surveillance-loving MPs everywhere to make a point. Kinsella then needs a theory of acquisition, which is labor and first use. Thieves "mixing labor" does not count because the goods were not in the state of nature.

Proportionality: the big disagreement (1:33:30–2:14:00).

- **Kinsella's position.** Rothbard favored something like *lex talionis* (1:1, later 2:1). Kinsella says many harms (rape, an heirloom pair of glasses) are hard to quantify. Proportionality should vary within limits, and the victim may go up to the upper limit, because the aggressor created the uncertainty. The aggressor cannot sue for disproportion, or victims would under-punish. The victim may convert the type of punishment into money, labor through a protection agency, and so on. Kinsella's summary is that the aggressor's rights can be disregarded "as long as general bounds of proportionality are considered," including the victim's fear and anxiety.
- **Berceanu.** This is a "swamp of subjectivity." Including feelings means "you cannot know what is in a person's soul." A man who suddenly develops agoraphobia could claim a touch on the tram was worth a rape. In his system the act fixes the maximum (2x, two slaps for one). The victim may *sell* the restitutive right for any price ("the right to slap Donald Trump twice would fetch a fortune"). Any payment above the debt is a gift, which explains the "6x for a stolen bicycle" case.
- **Gabi and Alex.** Every valuation is subjective, including applying the NAP. Objectivity means impartial application. The market or conventional price lists (old Irish law priced harms in cows and sheep) may settle what a slap costs. Gabi says Kinsella is a lawyer defending positions. On a painter whose hand is cut off, Gabi wants \$7 million rather than "two hands." Berceanu says the victim's profession cannot change the nature of the aggression. The painter may negotiate, but his entitlement is capped.
- **Hired champions.** If the right is sold to a champion slapper who causes irreparable damage, Berceanu says the excess is a new aggression by the buyer. Physical harm can be measured statistically ("four slaps across 1,000 people") or with a "horizontal catapult" measured in newtons. Fragile victims (a hidden medical condition) and a strong attacker against a weak victim show the difficulties. Gabi insists "the devil is in the details," and simple answers must not be unjust.

- **Rape.** Kinsella worries that a woman experiences rape differently. Berceanu reduces it to a violation of bodily integrity, which can be transferred proportionally, for example by assigning the restitutive right to a brother or friend.

Deterrence (1:49:45–1:52:00). Gabi says Kinsella mentions deterrence among the purposes and then drops it, although intuition says punishment should deter. Berceanu replies that a 2x right held by anyone, at any time, is already a strong deterrent.

Context, causation and costs (2:14:00–2:19:20).

- **Context.** Horse theft in the Wild West was a capital crime because a stranded man could die, unlike in Britain. Romania has a similar saying about horse thieves.
- **Causation.** Berceanu separates the slap itself from putting someone in mortal danger. If your act puts a person in a position where death follows, you have a positive duty to rescue, and failing it makes you guilty twice.
- **Costs.** Court and evidence costs fall on the proven aggressor, though Alex worries about a victim hiring a "\$7 million lawyer."

Threats, attempts and imminence (2:19:20–2:29:00). Gabi's case: someone holds a gun to your head for two hours making you write "I'm stupid" 1,000 times, then leaves without firing. Berceanu agrees it is aggression, the use of your body without consent through threat. The proportional response is to use the aggressor's body for the same time. Gabi says intuition demands "recreating the hell," for example real Russian roulette. Berceanu says you cannot know or recreate what was in the victim's head.

- **Imminence.** This means a threat at T1 separated from force at T2 only by a subjectively perceptible instant. Shooting someone who drives at you after a warning is justified.
- **Empty or toy guns.** Berceanu says that if the gun was empty or a toy, the person who shot was the aggressor, applying imminence strictly. Gabi cites Rothbard's "credible threat" standard (a police shooting at a protest) and night-time home invasion as aggravating.
- **Poison.** Being handed poison is not imminent force.

Close (2:29:00). The burden-of-proof section and the chapter's conclusion are postponed. Sign-off: "much liberty in this country that tries to oppress us so hard."

Video 5 (#310): Dialogical Arguments for Rights (end of Chapter 5; Chapter 6)

Original title: #310 | Bazele legale ale unei societati libere - S. Kinsella - Argumente dialogice pentru drepturi

Length: 2:11:44

Link: <https://www.youtube.com/watch?v=MIwD41tBGrE>

Summary

Episode #310 finishes Chapter 5 (burden of proof and conclusions) and covers Chapter 6, "Dialogical Arguments for Libertarian Rights." The panel is Gabi Munteanu, Valentin Berceanu and Alex Chiriac. On Chapter 5, the hosts examine Kinsella's rule: once the victim proves aggression, the aggressor bears the burden of showing that the requested punishment is disproportionate. Berceanu argues that a court-centered, open-ended proportionality system would make every serious sentence contested and appealed, especially capital ones. A clear 2x restitution rule would let victims enforce their rights without courts, Rothbard-style. He shows how hard cases can be priced through markets. If a thief has no sheep, he buys two. A restitution right can be sold to the thief's business partners. Unique items such as a burned Van Gogh, a grandmother's ring, a painter's hand or even virginity can be insured beforehand, so a market transaction fixes their value rather than subjective after-the-fact claims. They contrast this with the arbitrary prison terms of today's states and review Kinsella's supporting quotations from Crocker, Hospers, Morris, Hegel and Locke. They especially admire Locke's line that a murderer "may be destroyed as a lion or a tiger."

On Chapter 6, they discuss Hoppe's "path-breaking" argumentation ethics. Hoppe does not derive rights from human nature. He shows that anyone who argues already presupposes self-ownership and non-conflict, so arguing against libertarian rights is a performative contradiction. They compare this with natural-law arguments, which rest on shakier premises about "human nature," and with Rand's survival-based argument. Berceanu again says Hoppe's person/body split is unnecessary, and that the real presupposition of argument is free will. Other topics include Kinsella's estoppel argument and how it differs from Hoppe's, and a long critique of Kinsella's reply to "rights skeptics." Berceanu argues a skeptic can coherently hold that conduct is "a-legitimate" and intervene out of a preference for truth. They also discuss Pilon and Gewirth's "principle of generic consistency," Shearmur's reversal of Habermas's discourse ethics against the welfare state, Crocker's "moral estoppel," and a sealed-room and spaceship thought experiment about involuntary killing. The conclusion is that critics of liberty must either stay silent or become libertarians.

Detailed Summary

Opening (0:00–5:00). After small talk about the singer of the Romanian band Iris, the usual calls to action are made, along with links to Kinsella's free book and to Sense of Self Publishing. The hosts note they no longer publish every Monday.

Burden of proof (5:00–16:30).

- **Kinsella's rule.** The victim must prove the aggression. Then the punished aggressor must prove the punishment is disproportionate or otherwise unjustified.

- **Courts versus self-help.** Gabi notes Kinsella always assumes courts. In Rothbard's view a victim may take back his goat plus one more without an intermediary, and the matter reaches a judge only if the thief retaliates. Any judge both parties accept will do.
- **Endless appeals.** Berceanu argues that an open-ended proportionality standard guarantees challenges. If a rape victim asks for "a bullet in the head" because of her terror, the convicted man will always appeal, since any legal cost is less than death. Every case becomes trial, appeal and further appeal on proportionality.
- **Market justice.** Gabi notes that in a freer market for justice you could choose two of fast, good and cheap. A fixed 2x rule makes self-help easy.

Pricing unique or missing goods (16:30–30:30).

- **Two sheep.** If the thief has none, he must buy them or sell assets. If he refuses court, the victim can sell the claim to the thief's milkman, who uses it as a discount and so forces the dispute to court.
- **A burned Van Gogh.** Its subjective value is unknowable. Objectively it is two oiled canvases, unless it was insured. Then the insurer buys the restitution rights and the thief owes the insured value (say €5 million, times two).
- **Grandmother's ring, painter's hand, athletes' limbs, "insured virginity."** All can be priced in advance by an insurance transaction. This yields an "intersubjective," monetizable value rather than an after-the-fact appraisal. Gabi explains why he distrusts appraisals in general, including state appraisals for tax purposes, using two identical pencils that sell at different prices.
- **The poor.** A 2x rule is kinder to the poor than prison: someone who stole a loaf repays two loaves.

Arbitrary state punishments (30:30–33:30). Sentences for the same crime vary widely (25 years, 40 years, life) across Romania, the US, France and Algeria. No principle produces these numbers.

Chapter 5 conclusions and supporting quotes (33:30–42:30). Decent people need to justify the force they use. Many want to punish beyond restitution, to deter or rehabilitate. Berceanu says that is not the victim's job, and the hosts link it to social engineers such as mask mandates. Kinsella cites:

- **Lawrence Crocker:** a castaway coerced at gunpoint may coerce in return.
- **John Hospers:** aggressors choose a world where force is the arbiter.
- **Herbert Morris:** consent makes force permissible.
- **Hegel:** punishment is the criminal's own will manifested.
- **Charles King.**
- **Locke:** a murderer has "declared war against all mankind" and "may be destroyed as a lion or a tiger, one of those wild savage beasts with whom men can have no society nor security."

More quotations are in "Quotes on the Logic of Liberty" on Kinsella's site.

Chapter 6 introduction (42:30–47:40). First published in 2019 in *The Dialectics of Liberty*. "Dialogical" refers to discourse or argument, as in Hoppe's argumentation ethics. The chapter starts from Nozick's "individuals have rights." Even socialists invoke human rights, as when Timișoara's mayor Dominic Fritz appeals to the European Court of Human Rights. Rights have been defended by natural law, by utilitarianism (prosperity), and by "pure reason" approaches such as Hoppe's argumentation ethics and Kinsella's estoppel.

Hoppe's argumentation ethics (47:40–1:12:00). Hoppe's argument is "path-breaking" because it does not prove where rights come from. It shows that people implicitly recognize rights whenever they argue, including when arguing that there are no rights.

- **Logic versus action.** Gabi says consistency follows from one's own behavior. Berceanu notes that logic binds *argument*, a subclass of action, not all actions.
- **Stronger than natural law.** Natural law rests on shaky premises about "human nature," which statisticians also invoke ("it's natural to form a state," "natural to work at ANAF").
- **The argument.** Whoever argues for taxing the rich uses his own body, a scarce resource, freely. Universalizability requires granting others the same, which contradicts the pro-tax conclusion. Argument also carries an implicit premise of preferring words to force, so justifying force by argument is invalid.
- **Berceanu's critique.** Hoppe's conclusion that each must have exclusive use of his body brings in the unnecessary person/body split, and with it property baggage such as alienability. The fallback argument "we need property to live" slides back into natural law: survival and reproduction, and Rand's "man must produce what he needs to survive, which requires property," since humans uniquely both hunt and gather. Berceanu proposes that the real implication of preferring discourse is *free will*. Gabi thinks free will is partly learned.
- **Why intellectuals ignore Hoppe.** Statist intellectuals and journalists argue rather than simply use force because they recognize free will and want to subvert it. They ignore Hoppe because they cannot answer him. Gabi adds that they all start from arbitrary premises such as "democracy," so public debate is about maintaining the system (election dates, TikTok clips, annulled elections), never questioning it. Kinsella says opponents of liberty undermine themselves by arguing, since they are free to do so.
- **Acquiring external goods.** Hoppe considers declaration, which causes conflict, versus Lockean labor-mixing. Gabi argues that property simply "happens," like a stick becoming an extension of the self.

Why value non-conflict? (1:12:00–1:24:00).

- **Demonstrated preference.** Anyone alive and arguing demonstrates that he values using his own body. Nobody wants a gun to his head. A prime minister who bans Coke while drinking it fails universalizability.
- **Priests.** Gabi's tangent on following a priest's words rather than his behavior.
- **"As if" rights.** Hoppe shows people behave *as if* rights exist. The counter-argument is that people behave as if many nonexistent things exist (the Loch Ness monster). The counter to that is that normative principles exist within the normative system people hold in their minds, like the word "house." This leads to a discussion of emergent social phenomena such as language.

Veatch, Rothbard and Kinsella's estoppel (1:24:00–1:33:50). Hoppe sympathizes with Henry Veatch's critique of duty and pleasure ethics in favor of virtue ethics. Hoppe agreed that any teleological ethic is not universal, and argued that his own ethic does not rest on a telos. Rothbard praised Hoppe's argument. Kinsella's estoppel applies once a conflict has occurred. The pen thief ordered to return two pens cannot claim a right to steal while denying the victim's right to take back. The legal-estoppel example of the father who promised tuition comes back; the hosts maintain it is legal, not libertarian.

Rights skeptics (1:33:50–1:42:30). Kinsella says that if a skeptic objects to B punishing A, he presupposes that force can be illegitimate, which is a right in all but name. Berceanu says Kinsella misses a third position. A skeptic can hold that conduct is neither legitimate nor illegitimate, but "a-legitimate," and

take no side. He can still join the argument from a preference for truth, a "Schelling point" plea (David Friedman) to stop fighting over imaginary rights. That differs from saying "you have no right." Gabi notes that in such debates you end up policing definitions rather than following arguments.

Pilon and Gewirth's principle of generic consistency (1:42:30–2:01:00). Roger Pilon developed Alan Gewirth's view in his 1979 Chicago dissertation ("Ordering Rights Consistently," "A Theory of Rights: Toward Limited Government"). Every action is voluntary (uncoerced) and purposive. An agent therefore values his ends and his freedom from coercion. He cannot consistently claim these as rights without granting them to the "recipients" of his actions. The principle requires no action, since you can comply while asleep.

- **Is action conscious?** Gabi notes that purposive action need not be conscious.
- **The sealed room.** Two people are locked in an airtight room. One outlasts the other's breathing and is rescued with seconds to spare. Did he kill the other? A spaceship variant (from a famous science-fiction story) has a stowaway, and a supernova ray destroys the oxygen tank. Berceanu says no aggression occurred, since he never physically stopped the other from breathing and oxygen became scarce naturally. Responsibility lies with whoever locked them in.
- **Hoppe versus Pilon.** Hoppe's argument comes before any action. Berceanu notes that Pilon's phrase "cannot consistently *maintain*" already makes it an argumentative claim, so it is closer to Hoppe than Kinsella realizes. Kinsella invokes Jefferson's "self-evident" truths.

Shearmur versus Habermas (2:01:00–2:08:30).

- **The argument.** Habermas's ideal discourse (free, equal participants who can all raise topics) supposedly yields social democracy. Jeremy Shearmur reverses it: only private property gives people the resources to take part in discourse free of coercion.
- **Romanian court intrigue.** Gabi rants about current political court intrigue (dossiers, the Constitutional Court, attacks on Ciucu). He describes it as a game played over people's lives that the public permits through the democratic myth: "five wolves voting to eat a sheep."

Crocker's moral estoppel (2:08:30–2:09:50). It works like Kinsella's estoppel but within positive law, so it is consistency with existing rules.

Conclusions (2:09:50–end). Critics of libertarianism must either fall silent or become libertarians. To deny libertarianism one must own one's body. Arguing presupposes a moral agent with free will, which implies property rights. Because so many paths lead from discourse to property rights, the conclusion is nearly certain, "as in fuzzy logic." Sign-off.

Video 6 (#311): In Defense of Argumentation Ethics (Chapter 7)

Original title: #311 | Bazele legale ale unei societati libere - S. Kinsella - În apărarea eticii argumentative

Length: 1:57:46

Link: <https://www.youtube.com/watch?v=Zo0rGQ4DE8E>

Summary

Episode #311 covers Chapter 7, "Defending Argumentation Ethics," Kinsella's reply to criticisms of Hoppe's argumentation ethics. The chapter draws on Kinsella's conversation on Bob Murphy's podcast, which the hosts link. The panel is Gabi Munteanu, Valentin Berceanu, Costel Stăvărache and Alex Chiriac. After recapping the theory, the hosts test the objections one by one, and Costel Stăvărache plays a vigorous skeptic.

The objections are:

- **The temporal objection.** "I recognize you only during the conversation and will aggress against you later."
- **Arguing without the victims present.** Arguing alone or only "among one's own," as Aristotle declined to argue with barbarians, or as Nazis and communists address only their own people.
- **Communism's internal contradictions.** Berceanu argues that the theory of class exploitation depends on property and individual argument.
- **The social democrat's "empty stomach."** One cannot argue freely without state support.
- **The legs objection.** Why does argument presuppose owning the whole body rather than just mouth, lungs and brain?
- **The bound criminal.** Is there a valid argument with someone you have tied up?
- **The slave and his master.**
- **Circularity and is–ought.**

Berceanu holds that argument presupposes a search for truth, generality and non-contradiction. A theory with internal contradictions is not an argument at all. He also argues that Hoppe overreaches when he moves from recognizing one's interlocutor as a moral agent to full self-ownership and to survival-based arguments.

The climax is Costel's objection. A performative contradiction by a speaker, such as a libertarian who steals or a player who handles the ball, says nothing about whether a *theory* is valid, only about the speaker's consistency. Berceanu answers that Hoppe's claim is narrower: no non-libertarian system can be *justified through argument* without contradiction. Since argument is our only means of justification, the alternatives are unjustifiable. Libertarianism is what remains, not something positively proven, and a better non-contradictory system could in principle still be found.

Detailed Summary

Pre-show (0:00–2:28). Chat about UFC (Khabib versus McGregor, grappling as an "art" only experts appreciate).

Intro and recap (2:28–9:00). The usual notices, plus a link to the Bob Murphy podcast episode the chapter is based on.

- **Recap of argumentation ethics.** It justifies libertarian rights without natural rights or consequences. Whoever argues in order to avoid conflict over scarce resources implicitly upholds the NAP and private property.
- **Gabi's framing.** Natural-rights foundations are axiomatic ("self-evident," Jefferson). Consequentialist ones compare outcomes. Hoppe, inspired by Mises's point that denying action is itself an action, says that anyone who argues against libertarianism commits a performative contradiction, because by conversing he recognizes his interlocutor's self-ownership.

Objection 1: "I recognize you only now" (9:00–17:30). Murphy reports a critic who says you respect your interlocutor during the argument but not five minutes later.

- **Berceanu.** Argument seeks a general norm, at least from now on. If it is justified to use force later, why not now? A bare conclusion ("later I may aggress") is not an argument. You must give premises explaining why then and not now.
- **Gabi.** You can theorize communism "for the future."
- **Berceanu's reply.** We live in a continuous present, so the "future" never arrives.

Communism's internal contradictions (17:30–34:00). Berceanu argues that "you steal from my labor" presupposes property and individual rights. Arguments happen between individuals, not classes. Marx was not a worker. Factories and looms are bought before workers exist, so going back in time to a basket-weaving tribe either makes everyone owner of everything or makes the theory empty. Gabi notes Marxists held a stage theory of history (feudalism, capitalism, communism). Costel insists this misses the point: Hoppe's argument concerns the performative contradiction between speech and deed, not internal inconsistency. Berceanu replies that argument presupposes a search for a non-contradictory truth both sides can accept, so a self-contradictory theory places its proponent outside argument. They discuss Aristotle and the barbarians, and arguing alone.

The social democrat's "empty stomach" (34:00–39:50). The claim is "We cannot argue as equals until the state gives me education and a basic income." Gabi says this contradicts itself, since to make me free the state must take my partner's freedom by force. Costel replies that socialists use a different concept of freedom, so they are consistent by their own lights. Berceanu distinguishes the brute-force socialist, who never justifies himself, from intellectual "priests" who write propaganda and thereby contradict themselves. The hosts agree on where the contradiction lies: theorizing aggression while respecting the interlocutor.

Murphy's tied-up thief and the politician (39:50–46:10). Gabi describes Murphy's case: you tie up a thief who burgled your home and try to argue until the police arrive, and he says he cannot argue while restrained. Gabi asks whether he can argue with Bolojan while the state takes 70% of his income. Berceanu and Costel answer that while you talk, Bolojan is not taking your money at that moment, so a discussion is possible and Bolojan contradicts himself when he justifies the taking. A real discussion is impossible only if the police arrive mid-conversation. Costel adds that from a contradiction anything follows (logic of predicates), so you cannot proceed from it.

Arguing "among one's own" (46:10–56:00). Writing for "humanity" includes the victims. Writing only for Maria and Ion, whom you will never harm, is consistent. Berceanu argues the essence of argument is appeal to a shared truth. Communists, who must eliminate the bourgeoisie, and Nazis, who must remove "inferior races," cannot consistently argue with their targets. Fabians clearly argue with the bourgeoisie, and Marx addressed intellectuals. Gabi notes Nazi racial laws and the plan to resettle other peoples in the east imply some recognition of them. Clans may avoid the contradiction, but modern society has largely left clan structures behind.

Is-ought and circularity (56:00–1:09:30). Berceanu says Hoppe goes from one "ought" to a bigger "ought." Peaceful conflict resolution through argument presupposes norms (peacefulness, appeal to a shared truth, the existence of rights). The rights we derive must not contradict those premises. Hoppe does not prove libertarianism. He shows it is the only system that does not contradict argumentation ethics. Gabi asks whether this is circular (libertarianism, then conversation, then libertarianism). Berceanu answers with an analogy: liquid implies wetness and wetness suggests liquid, but perception lets you induce rather than deduce. Similarly, non-violent exchange of ideas implies argument, and argument induces libertarian rights.

Survival and Murphy's "education" objection (1:09:30–1:19:00).

- **Why stop at the body?** Murphy asks why Hoppe stops at the body when argument also needs education and food.
- **Survival.** Hoppe adds that one cannot argue for a norm that would kill everyone, which rules out communal ownership of bodies. Berceanu says this overreaches, given the aliens-demand-theft edge case, and is really a consequentialist test.
- **Do people want conflict?** Gabi says some, such as Putin, profit from conflict. Berceanu replies that the premise is only that people *who argue* do not want violent resolution.
- **Do Nazis and communists argue with their own people?** Costel insists they do in the plain sense: premises and conclusions, even false ones, as on Romanian TV channels (Digi, Antena 3). Berceanu thinks such talk is popularization or appeal to "objective" facts such as race, not argument.

The legs objection (1:19:00–1:24:20). Murphy asks why argument requires owning your *whole* body rather than just mouth, lungs and brain. Your legs could be owned and tied by someone else. Kinsella replies that the subject of the argument is ownership of the body, so you must own all of it. The hosts find the exchange confusing. Costel says it is enough that the interlocutor does not hit you, which already respects your whole body. Gabi briefly wonders whether "do unto others" (Christian and libertarian) would suffice. Berceanu clarifies that estoppel only blocks aggressors from objecting to punishment.

The bound criminal (1:24:20–1:36:10). A man who killed your child, claiming the child was the Antichrist, is tied up and tries to justify himself.

- **Berceanu.** Being tied up does not prevent argument. Listening to him recognizes him as a moral agent, and that is all argument presupposes. Hoppe overreaches in deriving full self-ownership. Kinsella himself told Murphy that argument implies recognizing the other as a moral agent.
- **Gabi.** Breaking his legs to stop his escape is aggression unless it is restitution. Restitution can justify killing a murderer but not a fleeing thief, under proportionality.

Slave and master (1:36:10–1:41:30). A Louisiana slave in 1830 asks for Sundays off. The slave commits no contradiction. The master does, because one does not argue with one's other property. Arguing slavery to other slaveholders, or arguing nothing at all ("because I want to"), avoids the contradiction. But "it's for their own good, they are human" contradicts itself. Kinsella sets aside "God owns us" because law concerns relations among humans.

Costel's central objection (1:41:30–1:57:00).

- **The objection.** A performative contradiction does not invalidate a theory. A libertarian bureaucrat who imposes taxes, or a thief, tells us nothing about libertarianism's validity, only about the person.

- **Football.** Costel's example is a player who handles the ball. Berceanu's version is a man at a table who proposes scoring goals by hand and is asked to leave.
- **Berceanu's answer.** Hoppe's point is narrower. It concerns contradictions *within argumentation*. Since no non-libertarian system can be argued for without contradiction, none can be justified by argument. If argument is our only means of justification, they are unjustifiable.
- **What Hoppe does not show.** Hoppe does not positively prove libertarianism. He eliminates the rivals. A better non-contradictory system could be "written in the sand" somewhere, and what remains is not automatically the best forever.
- **Costel's last word.** In real life people live with contradictions and say "so what?"

Close. Sign-off: "Stay free, my friends."

Video 7 (#312): Causality and Aggression, Part 1 (Chapter 8)

Original title: #312 | *The Legal Foundations of a Free Society* - S. Kinsella - Causality and Aggression

Length: 1:25:17

Link: https://www.youtube.com/watch?v=pjXhnKgDi_Q

Summary

Episode #312 begins Chapter 8, "Causation and Aggression." The panel is Gabi Munteanu, Valentin Berceanu, Costel Stăvărache and Alex Chiriac. The hosts summarize Kinsella's praxeological framework. Human action is conscious, purposive choice of means, as distinct from involuntary behavior such as reflexes, heartbeats, sleepwalking or falling asleep. Causation is "neutral" science that applies across time and is used by both state and libertarian law. Kinsella traces responsibility back along a causal chain until it reaches a free-willed "moral agent." He extends liability beyond the immediate trigger-puller to people who order, conspire with or mastermind aggression, and he gives weight to intention.

The episode is an extended argument over intention. Berceanu insists that "you cannot know what is in a person's soul." Justice should rest only on objectively provable actions, and he offers formal definitions of "physical cause" and "moral cause" based on repeatable, verifiable differences in reality between moments T1 and T2. Using this framework, the hosts test cases: Kinsella's lightning example, a rake versus an anti-personnel mine, a car bomb, a sarin gas release, a boulder diverted by a trampoline, Alec Baldwin's prop-gun shooting, a wife who encourages her rich husband into dangerous sports, a doctor's reflex hammer near fragile china, bank robbers and their lookout, riot inciters versus masterminds, Napoleon's tactics, an informant asked "did he pass this way?", and hitman contracts (with Walter Block's views).

Costel takes the strict "restrictivist" position: only the last free agent, the one who pulled the trigger or set off the bomb, is responsible. Berceanu takes a middle position under which the bomber, not the driver who turns the key, is the moral cause. Gabi sides more with Kinsella's broader view. The hosts agree on the principle that it is better for 1,000 guilty people to go free than for one innocent to be convicted. They hold that the gang owes restitution to the bank jointly and that Kinsella mistakenly wants to punish threats. The discussion is left open for the next episode.

Detailed Summary

Opening (0:00–2:30). The usual notices. Kinsella begins by linking legal science to praxeology.

Action versus behavior (2:30–5:45). Grabbing Alex's hair on purpose differs from blinking or falling on him while asleep. Action is the conscious choice of means (things, tools or other people) to reach ends. Reflexes, such as the doctor's knee hammer, are not action. Kinsella says the theory of causation used to decide whether an act is aggression is found in both today's positive law and the libertarian system.

Physical laws hold regardless of time (5:45–7:50). A gun fired at Alex today kills him, and the same is true tomorrow. Gabi finds the conclusion too strong for so thin a premise. It prepares the ground for cases such as the courier who unknowingly delivers a bomb: the essence of his act is delivering a package.

Sleepwalking, hypnosis and the bridge case (7:50–14:15). If you know you sleepwalk and stay at a friend's house full of valuables, are you responsible? Gabi thinks foreseeable choices made earlier count.

Berceanu recalls their earlier conclusion. If a passing truck's gust makes you push someone off a bridge, you are the *physical* cause of his danger and have a duty to try to rescue him. If you don't, you are responsible.

"You cannot know a person's soul" (14:15–19:30).

- **Berceanu's view.** Intentions exist only in subjective reality and cannot be proven. Actions occur in objective reality and can be. If intentions counted, communists would be the best people on earth.
- **The oranges example.** Alex asks him to buy oranges. Berceanu says intent is irrelevant: the spoken request and the exchange create the obligation.
- **Gabi's view.** Gabi thinks documented intentions sometimes matter. Costel notes that intention is part of the definition of action.

Kinsella's lightning example (19:30–25:50). Gabi sends Vali to a particular tree hoping lightning will kill him. It does, and detectives find Gabi's calculations at home. Kinsella treats this as aggression because the intention was discovered. Berceanu calls it the "greatest stupidity." Unless Gabi seeded the clouds, it is an act of God.

The rake versus the mine.

- **The rake.** You step on a rake you didn't place and cause your own injury.
- **The mine.** Berceanu says an anti-personnel mine differs because it explodes however you step on it, while only a small subset of the ways of stepping on a rake make it hit you.
- **Misleading someone into a minefield.** Is that fraud? Fraud requires taking something through misrepresentation, and lying is otherwise legal.
- **False testimony** that leads to an unjust judgment is fraud, since it causes property to be taken.
- **Evidence in a free society.** The hosts expect courts to rely on documentation rather than eyewitness claims, and police not to stop people without evidence.

The car bomb (25:50–29:10). If someone tells you there is a bomb in your car and you turn the key anyway, is that suicide? Kinsella mocks that conclusion. Costel says the person who turns the key is the last cause. Tracing the chain backward from the autopsy (bullet, gun, who pulled the trigger, who ordered it), some libertarians stop at the first free agent and others go further.

Is intention legally relevant? (29:10–38:40).

- **Costel's view.** Intention marks the difference between action and reflex. Running someone over is intentional *driving*, even if death was not intended. Punishment should not differ between deliberate murder and accident.
- **Berceanu's view.** He accepts intention exists but calls it irrelevant to justice.
- **Hard cases.**
 - The doctor's hammer and fragile china placed by the patient: who broke it?
 - A wife who encourages her rich husband's risky hobbies such as bungee jumping.
 - Alec Baldwin's prop gun: no intent to kill, yet he killed.
 - Gabi's ideas on intent versus the expected result.
 - Kinsella's apparent reliance on "premeditation."

- Attempted murder that only wounds: judge the result, not the intent. Gabi would judge simply "shooting without consent."

Berceanu's definitions (38:40–48:00).

- **Physical cause.** A physical action that repeatably and verifiably produces the totality of differences in reality between T1 (just before) and T2 (just after), excluding those due to entropy. Example: pushing a boulder is the cause only of its starting to move. Gravity does the rest.
- **Moral cause.** A physical action by a moral agent that is a physical cause, or stands at the start of an unbroken chain of physical causes not interrupted by another moral agent's action. A moral agent is a being able to act and to understand that its acts can be causes, which today means humans.
- **Verifiable** means describable exhaustively and comparable with objective standards. **Repeatable** means correlated strongly enough to support induction ("turn the tap, expect water").
- **Applying it to the car bomb.** Turning the key repeatably produces only a started engine. The explosion's moral cause is the person who planted and wired the bomb. Costel insists the driver who turns the key is the cause. Berceanu replies that by Costel's logic someone who steps on a mine is the "fool" responsible. Costel accepts that and says intuitions are culturally and ideologically colored. Gabi jokes about the neighbor who "invites" you onto his mined land. Berceanu says the default must be workable: nobody checks the lift button for mines.

Punches, exercise and gas (48:00–55:40).

- **Exercise.** A punch thrown while exercising that hits someone walking into your space is the walker's problem.
- **Sarin.** Breathing in a cinema does not normally cause death. Releasing sarin does, so the releaser is responsible.
- **Ambiguous cases.** Berceanu would settle them experimentally: run the action many times and induce its result.
- **Symmetry.** Kinsella's "elegant symmetry": the aggressor intended harm, so we intentionally punish. The hosts are amused.

Defective products and the boulder and trampoline (55:40–1:04:00).

- **Defective products.** A factory defect that makes a car explode (the Ford Pinto). A negligent service technician who only ticked boxes is responsible. Is that "murder"? Costel's restrictivist view: not murder, and the person who planted the bomb isn't a murderer either.
- **The trampoline.** If I push a boulder and someone placed a trampoline that redirects it into a second car, who is responsible? Berceanu says both. The trampoline alone causes nothing without the boulder, but it changed the outcome.
- **Berceanu's guiding principle.** Better 1,000 guilty go free than one innocent be convicted. Convicting on unverifiable intentions risks convicting the innocent, a feature of today's system.

Complicity, conspiracy and masterminds (1:04:00–1:20:00).

- **Rothbard.** He wavered between restrictivism (people choose freely) and accepting complicity.
- **Incitement.** An inciter whose crowd does nothing is not guilty. Threats as such are not punishable.

- **Shared liability.** Kinsella holds each conspirator 100% liable rather than splitting the share. Berceanu thinks this misunderstands proportionality. The stolen money belongs to the bank, and the gang jointly owes 2x restitution, to divide as they like.
- **The lookout.** Kinsella also punishes the lookout for the gunman's *threats*. Berceanu says what happened is deprivation of liberty, which entitles each victim to confine each robber for twice as long.
- **Masterminds.** Gabi agrees with Kinsella that the mastermind is guilty. Costel and Berceanu say only if he coerced the others. They argue over whether intention-based reasoning could even help Hitler ("I meant to save humanity").
- **A guard shot during the robbery.** Only the shooter is guilty, by analogy with riots. Berceanu: if a riot is guilty at all, deaths are its implicit consequence.
- **"But-for" and proximity.** Applied to the mastermind, but-for leads to an infinite regress (his teacher, his parents' emigration, Napoleon whose tactics he copied). Berceanu separates the inciter, who speaks in general terms, from the mastermind, who gives concrete instructions that are carried out.
- **The informant.** A lynch mob asks "did he pass this way?" Answering truthfully, rather than telling a "holy lie" like Steinhardt, does not make you responsible for the killing. A lookout who is in a documented agreement with the gang is part of the moral cause.

Hitman contracts and Block (1:20:00–1:24:00).

- **Unpaid hitmen.** If you pay a hitman who doesn't perform, can you sue? Contracts whose object is aggression against third parties are unenforceable.
- **Block.** He holds that responsibility can be transferred by payment, which seems to imply the contract is valid. Kinsella asks him to be consistent.
- **Serial killers.** A "hitman" hunting a serial killer is a vigilante exercising appropriated restitution rights, since the killer has forfeited his life "five times over."
- **Repeated death.** A tangent on punishing with repeated simulated death (or death and resuscitation), "what hell looks like," and a reminder that prevention is best.

Close (1:24:00). Discussion continues next episode. Viewers are invited to share their theory of justice in the comments and on Telegram. Sign-off by Valentin Berceanu.

Video 8 (#313): Causality and Hitler's Guilt, Causation Part 2 (Chapter 8)

Original title: #313 | *Legal Foundations of a Free Society - S. Kinsella - Causality and Hitler's Guilt*

Length: 1:37:50

Link: <https://www.youtube.com/watch?v=HH6duvMFyNU>

Summary

Episode #313 finishes Chapter 8, "Causation and Aggression." The panel is Gabi Munteanu, Valentin Berceanu and Costel Stăvărache. The episode's subtitle, "Causality and Hitler's Guilt," refers to a running test case: does Kinsella's causal theory make Hitler, or Iliescu, or Trump, guilty for crimes committed by others? The hosts start with two real cases. Ion Iliescu's 1990 call for "conscious forces" to defend democracy brought the miners who beat and killed people in Bucharest (the mineriade). Trump's January 6 speech is the second. Even on an expansive theory, both men could be acquitted because their words were ambiguous and no command-and-coercion chain is proven.

They then work through Kinsella's critique of Walter Block and Rothbard. Block extends responsibility beyond the immediate actor only for coercion, payment (in cash), orders and criminal conspiracy. Kinsella asks why only those four, and why only cash. The hosts discuss whether coerced perpetrators (the Pitești prison experiment, soldiers, Nazi railway workers) are responsible. Berceanu analyzes the Holocaust train case with his physical-cause and moral-cause framework: guards who keep people confined in deadly conditions become responsible for the deaths. They also look at an intoxicated or drugged killer, where taking the drug is the moral cause. On drunk driving, they ask whether Kinsella's intention-based theory would wrongly acquit.

Further topics: hitman contracts (invalid, so money must be returned), incitement and free speech ("incitement is not a crime; only imminent threats are"), Hitler's hierarchical command, Nuremberg and war crimes, Iago-style manipulators, perjuring witnesses and judges' liability, the "but-for" and proximate-cause tests, and a coercion case in which a kidnapper forces a father to commit theft. Berceanu proposes that the victim holds a joint 2x restitution right against all co-perpetrators and decides how to allocate it. They also argue over whether parents are always responsible for harm to children in their care. Costel and Gabi conclude that libertarians should err toward the "restrictive" view, which places responsibility on the last moral agent, rather than toward collective or expanded blame.

Detailed Summary

Pre-show (0:00–6:40). Costel questions why one should stop at the first purpose when every end is a means to a higher end ("I wanted to save humanity," as Hitler did). The hosts read Moldovan pro-deregulation proposals (privatize education, list state companies, put a moratorium on inspections) and compare public-sector employment in Romania and Moldova.

Iliescu and Trump (6:40–12:00). Iliescu's televised call to "all conscious and responsible forces" to gather around the government building to stop "extremist groups" brought the miners. Romanian courts went after Iliescu but not the individual miners. Trump's January 6 rally led to deaths and damage, and both participants and Trump were prosecuted. Costel says that even on Kinsella's broad theory, both could be found not guilty for lack of proven intent and ambiguous wording ("order" could mean anything). Berceanu adds that a post-hoc "thank you" to the miners shows nothing, just as children born from wartime rapes do not show the mothers consented.

Block's four channels (12:00–15:15). Block extends responsibility only for threats or coercion, payment (cash), orders, and conspiracy. Kinsella asks why cash only. Costel argues coerced actors remain responsible. In the Pitești prison "re-education" experiment, a prisoner forced to torture is still guilty unless the torturer physically moves his hand. A soldier ordered to storm a redoubt is guilty too. Gabi notes Kinsella's view that even a blogger urging "miners, kill the students" is complicit through intent, while Rothbard would say a new free choice breaks the chain. Hannah Arendt blamed even German railway clerks.

The Holocaust trains (15:15–21:40). Berceanu argues the railway worker is not complicit. Stopping the train would only kill the deportees in his station or get him deported too, and he did not put them on it. The guard who confines them commits deprivation of liberty. If they die from the conditions, he becomes responsible for their deaths, as when someone throws a person overboard and the person drowns ten hours later. Costel stays restrictivist and blames only the "last" actor. Berceanu says common sense supports him on the blog case but supports Costel on the bomb case.

Intentions and chains of ends (24:00–29:20). Kinsella acknowledges that a result can itself be a means to a further end, such as killing to inherit. The hosts discuss why Berceanu rejects intention: it is vague, invites abuse such as UK arrests for Facebook posts, and supports the "crimes against society" framework of criminal law. Gabi still wants a mafia boss who mails a bomb by courier to be caught. Berceanu says hierarchy and coercion would do that.

Drugs and drunkenness (29:20–39:50).

- **The zombie drug.** Someone knowingly takes a drug that suppresses the cortex and then kills. On Kinsella's intention-based view this is not action and so not guilt. On Berceanu's view, taking the drug is the moral cause and everything after is physical consequence, so the person is guilty.
- **Drunk driving.** The same logic applies. Gabi says Kinsella would concede the act came earlier (drinking, deciding to drive home).
- **Weather and inattention.** Accidents in bad weather or through inattention involve breaking a duty to pull over.
- **Manslaughter.** Accidental killing is a gap in Kinsella's chapter.

Block, Rothbard and hitman contracts (39:50–53:40). Rothbard opposed liability for incitement, holding that responsibility ends when others choose to act. Block allows payment and contract. Berceanu says a contract whose object is aggression against a third party is unenforceable, so the hitman must return the money. Costel counters that it is not yet an imminent threat and the contract can be valid: "the hitman isn't at the door yet." They debate whether a contract requires both performances to be possible. Berceanu says a conspirator must be actively involved. A planner paid beforehand is a consultant. One paid from the loot is a conspirator, though he can't be paid with stolen money. What about bank-heist films that viewers imitate? The director's intention ("entertainment") would decide the case, which shows how intention-based law invites endless disputes.

Incitement and free speech (53:40–57:30). Berceanu holds that incitement is not a libertarian crime. You may say anything as long as your sound waves don't violate someone's property, for example by breaking the rules of a library or a church. A threat is defined by imminent aggression, not by the content of words ("I'll kill you" matters only if followed at once by a punch or a raised axe).

Hitler and hierarchy (57:30–1:07:30). Kinsella uses Block's narrow view to show it would acquit Hitler, who threatened no general personally. Berceanu adds that Hitler's official pretext for invading Poland was defending ethnic Germans. Kinsella's blind-poet analogy asks who gets credit for a poem dictated to

a scribe. Gabi notes the irony that Kinsella rejects intellectual property. The hosts agree responsibility runs *up* a coercive chain of command (mafia, state, army). Nuremberg tried war crimes and crimes against humanity, not ordinary acts of war, which they say libertarians would also condemn. Soldiers were spared because no one would be left to keep order, and all armies committed abuses. A soldier ordered to kill two people who kills seven more is guilty of the extra deaths. In practice orders are vague ("secure the objective"). Berceanu claims US soldiers committed the most crimes against civilians from 1945 until the Russia–Ukraine war.

Manipulators and witnesses (1:07:30–1:15:00). Kinsella holds that a manipulator, such as a lover who persuades someone to kill a spouse, is guilty. Gabi and Berceanu say that free will means the person manipulated is the moral cause: "Iago shouldn't be executed." Berceanu sees Kinsella's view as sympathy for blaming others, which he usually associates with conservatives. A lying witness breaches a contract, the oath sworn in court, and can be made liable for wrongful-conviction consequences. Judges can contract out of liability, a kind of private judicial immunity. Berceanu thinks judges should be answerable for their own culpable errors.

But-for and proximate cause (1:15:00–1:17:10). A murderer's mother is a but-for cause but not a proximate one. Free will breaks the chain, and determinists are answered with Hoppe's performative contradiction. A CO₂ and pollution aside. Conclusion: causation of aggression ends at the first moral actor unless he was coerced or the act was co-committed, in which case all are 100% liable.

Shared liability and coercion (1:17:10–1:24:50).

- **Joint restitution.** For co-committed aggression, Berceanu agrees the restitution obligation is jointly owned.
- **The kidnapper case.** A kidnapper forces a father to steal a briefcase or his child dies. Berceanu proposes that the 2x right arises against both, and the *victim* decides how to allocate it, rather than the judge or a formula. Gabi would make the father pay 2x and then claim 4x from the kidnapper.
- **Killing under coercion.** Berceanu says that even under coercion "you do not kill." He grants that intuitions shift when a loved one's life is at stake.
- **Communist informers.** Informers coerced into denouncing others are not aggressors. The guilt lies with whoever applies sanctions.

Coercion through family and parental responsibility (1:24:50–1:32:30). A courier forced to deliver a bomb because his family is held hostage: is that coercion of *him*? Berceanu says yes for his children, who are his responsibility, but not necessarily for his wife. Costel asks why intruders' harm to a child should be the parent's fault. Berceanu says parents are responsible for children until emancipation. Costel distinguishes *letting go of a child's hand on a highway*, where you are a cause, from *a sniper shooting into your house*, where you are not. Gabi says Kinsella wrongly introduces "positive obligations." The duty to rescue someone you hit with your car flows from the negative duty not to kill: "entities should not be multiplied beyond necessity."

Conclusion (1:32:30–end). Costel and Gabi argue libertarians should err toward the restrictive view, last-moral-agent responsibility, because a socialist world drifts toward collective blame ("society made him do it"). Berceanu agrees responsibility rests on the last *moral* agent, which is not necessarily the closest physical cause. They end on Judas and Steinhardt's musings on whether Judas was necessary for salvation. Next episode: contract theory.

Video 9 (#314): Contract Theory: Slavery? (Chapter 9)

Original title: #314 | Bazele legale ale unei societati libere - S. Kinsella - Teoria contractelor (sclavie?)

Length: 1:36:59

Link: <https://www.youtube.com/watch?v=v2DC67RbuZw>

Summary

Episode #314 covers Chapter 9, "A Libertarian Theory of Contract: Title Transfer, Binding Promises, and Inalienability." The panel is Gabi Munteanu, Valentin Berceanu, Costel Stăvărache and Alex Chiriac. The episode is also titled "Contract Theory (slavery?)." It opens with an announcement of "HydraFest," a Porcfest-inspired Romanian libertarian networking event planned for 21–24 August 2026 in Șinca Nouă. The hosts welcome it, together with the Casey and Hunt translations, as signs that the movement is "picking up speed."

They set out Kinsella's framework. A property system needs rules for how ownership is acquired (original appropriation), lost (abandonment, restitution for aggression) and transferred (contract). A contract is a voluntary transfer of title to alienable property, possibly conditional or in the future. A mere promise creates no enforceable obligation. Force may be used only to rectify aggression, so enforcement is legitimate only when a title transfer has occurred and the counterparty then holds property that now belongs to someone else, which amounts to implicit theft or trespass. The hosts work through prepaid wedding singers, penalty clauses (a contractual 7x versus the default 2x), the free shawarma example of implicit contracts, broken engagements, promissory estoppel (which Kinsella rejects here), gifts, campaign promises, and Rothbard and Evers's title-transfer theory. They also cover betting contracts, debts that cannot be paid, fungible versus non-fungible goods, interest, and Kinsella's account of transfer as a targeted form of abandonment.

The last third is a heated debate on inalienability and "voluntary slavery." Rothbard says the will is inalienable and so a person cannot sell himself. Kinsella says the body was never appropriated and so cannot be abandoned or transferred. Costel argues that the impossibility of directly controlling another's will proves too much, since it would also void employment contracts. He thinks a fully paid, exit-free obligation ("I'll do anything you say for a billion dollars") should bind. Berceanu and Gabi argue that a person can always change his mind and owe damages. Berceanu says dropping the person/body dualism ("you *are* your body, so you cannot sell it") dissolves the whole problem.

Detailed Summary

Pre-show and HydraFest (0:00–8:00). Small talk about Berceanu's smart irrigation system. The announcement follows: "HydraFest – the Event of Maximum Liberty," a "special edition no. 0" by the "Extraordinary Commission for Total Liberty." It will be held at a guesthouse in Șinca Nouă on 21–24 August 2026, modeled on New Hampshire's Porcfest, mainly to gather organizers for a full festival the following year. Horia Cristian, an earlier guest, is involved. A QR code and PDF are in the description. The hosts note that the movement is growing alongside the Breb community.

How property is lost and transferred (8:00–14:20). A property system must explain acquisition, loss and transfer. Gabi notes the body can't be transferred, though Kinsella seems to waver. The hosts again tie this to the body-as-property problem. Property is lost by abandonment (a stone thrown away returns to the state of nature) or through restitution after aggression. Alex corrects "lose" to "transfer." Kinsella separates three areas: property theory (acquisition, loss, transfer), tort and punishment theory (how aggression or negligence shifts property rights), and contract theory (transfers by voluntary agreement

and which agreements are enforceable). They look for a Romanian word for "enforce" and settle on "execute or monitor."

What contracts are (14:20–19:30). Contracts can be future, conditional, simple or complex, simultaneous or deferred, unilateral, or agreements to *do* something (sing at a wedding). Current law classifies obligations as to do, not to do, or to give. Even today, courts rarely force a person to perform. They award money, partly because a coerced singer sings badly. Campaign promises are "further from a contract than you can imagine." Gabi suggests that if politics ran on contracts you would hire a manager rather than elect a promiser.

Promise versus contract (19:30–28:10). Kinsella's test is whether something has been transferred. Until then, a written agreement is still only a promise. Enforcement means using force, which is legitimate only in response to aggression. Breach therefore must amount to aggression.

- **The wedding singer.** If I prepay a singer who flees to the Caribbean, the conditional transfer of money failed and he holds my money, so I may recover it, 2x by default.
- **Penalty clauses.** A 7x clause overrides the 2x default because a contract may specify more. It applies only if the initial transfer occurred, and it is 7x, not 2×7x.
- **Abusive terms.** Alex notes Kinsella told the hosts in an interview that judges may void contracts where a party lacked capacity to consent (a gum for one's mother, an olive for a flat).
- **Custom.** Kinsella notes the promise/contract distinction is partly circular and depends on social custom.

Implicit contracts, engagements and estoppel (28:10–35:40).

- **Shawarma.** Paying at the counter and receiving it is an implicit contract with no signature.
- **Broken engagements.** "I love you, we'll marry next week" is not a contract even if the other person booked a hall. Nothing was transferred.
- **Promissory estoppel.** US law enforces reliance-based promises (detrimental reliance). This is the first chapter in which Kinsella treats estoppel as non-libertarian.
- **"Rely on others at your own risk."** Alex worries this makes society lawless. Gabi answers that Kinsella's point is to separate free speech from formalized commitments and to make transfers clear without needing a notary.

Must there be a transfer? (35:40–47:20).

- **Costel's challenge.** Why can't mutual promises bind before either side performs, given that contracts often defer obligations in time?
- **Berceanu's reply.** If neither party has transferred anything, whoever is forced first suffers aggression, since both are equally in default. A judge could only make them exchange simultaneously, which is the same as starting from zero.
- **Gifts.** "I'll give you €50" is unenforceable until handed over. Once handed over, it belongs to the recipient. Otherwise jokes, lies or a remark like "in three days I'll kill you" would create obligations. Gabi notes that a gift must be accepted, or you could "gift" someone your garbage or a bullet.

Rothbard, Evers and title transfer (47:20–1:09:40).

- **Rothbard's view.** A contract is a transfer or exchange of titles to alienable property. Promises are at most evidence.

- **The bet.** I give you \$10 and you will give me \$100 if Steaua beats an Estonian team. When Steaua wins, title to \$100 passes to me, and keeping it is implicit theft.
- **The debtor who has no \$100.** Rothbard says debtor's prison would be slavery and disproportionate, so the wrong is *fraud*: you took my \$10 under false pretenses.
- **Kinsella's variant.** He treats money as fungible: you owe \$100 plus interest whenever you get it. Berceanu agrees for fungible goods. For specific non-fungible objects, Rothbard's fraud analysis applies.
- **Oranges and scurvy.** A debtor who promises a kilo of oranges for a ring must buy the oranges. If oranges no longer exist (force majeure), he must return two rings. Berceanu points out a Rothbardian inconsistency: if you can't transfer title to oranges you never owned, how can you owe a second ring you never had?
- **Specific performance.** A coerced singer sings badly, so money is better. If the victim refuses money, too bad, and future contracts will add a clause. A judge may void an impossible contract (a "square circle").
- **Subsistence.** Gabi dislikes Kinsella's "you pay if you have it" and the idea of leaving a debtor at bare subsistence for a bet.

Transfer as abandonment (1:09:40–1:17:20). Kinsella grounds the right to transfer in the right to abandon. If you may waive exclusion against everyone, you may waive it against everyone except one person, which is a transfer. Gabi defends this with an "energy shield" metaphor in which ownership is switched off for an instant. Berceanu calls it far-fetched. Exclusive use includes the right to burn your coal or give it away, so no detour through abandonment is needed. They mock Kinsella's object thrown "precisely" at the recipient (what if someone catches it mid-air?). Under current law a donation must be accepted.

Inalienability and voluntary slavery (1:17:20–1:36:20).

- **The two arguments.** Kinsella says the body was never appropriated, so it cannot be abandoned or transferred. Rothbard says the will is physically inalienable, so you can't sell yourself.
- **Costel's objection.** Rothbard's physical-impossibility argument would void all employment contracts, since no employer directly controls a worker's will.
- **The reply.** Employment differs. The worker acts first and so creates the obligation to be paid, and no one claims the right to beat him into working.
- **Costel's counter.** Suppose the employer prepays, say \$1 million so the worker can educate his son, and the worker then serves. Isn't that a valid "voluntary slavery" contract? Everyone knows the term doesn't mean literal slavery.
- **Gabi's view.** The individual is his body and can always change his mind and owe damages, like the singer.
- **Berceanu's view.** One cannot contract to be killed, since you can change your mind until the last second. A sadist–masochist contract to be beaten is valid. Rights such as not being killed "spring from you constantly" and cannot be bottled and handed over.
- **Costel's answer.** That is just postulated. An exit-free obligation, once paid for, should bind ("libertarianism means we can contract what we want").
- **Berceanu's resolution.** Drop the dualism: "the body isn't yours, it is *you*, so you can't sell it." That brings "peace and love in the universe."

Close. Viewers are invited to "pick a side and argue forever" in the comments. Costel jokes that Rothbard "specialized" in the body-selling problem.

Video 10 (#315): George Smith and Randy Barnett: Inalienability and Punishment (Chapter 10)

Original title: #315 | *The Legal Foundations of a Free Society* - S. Kinsella - G. Smith & R. Barnett - *Inalienable*

Length: 1:36:32

Link: <https://www.youtube.com/watch?v=ABoT6EjSfZE>

Summary

Episode #315 covers Chapter 10, "Inalienability and Punishment: A Reply to George Smith," and continues the inalienability and "voluntary slavery" debate from the previous episode. The panel is Gabi Munteanu, Valentin Berceanu, Costel Stăvărache and Alex Chiriac. George H. Smith had asked a pointed question: if certain rights (life, liberty) are inalienable so that you cannot sell them, how can you *lose* them through punishment? Taken seriously, inalienability seems to rule out capital punishment, imprisonment and even forced restitution, which ends in pacifism. Smith also explored, with Randy Barnett, Locke's "outside of society" argument and restitution-only alternatives.

Kinsella answers with estoppel: an aggressor cannot invoke rights he violated. He criticizes Smith for merely asserting inalienability, and he recasts the question as whether one can grant *irrevocable consent*. His answer is that consent cannot be made irrevocable by contract but can be by aggression. Berceanu is sharply critical. He says Kinsella misread Smith's conditional argument, confused alienation with destruction, and wrongly grounds punishment in the aggressor's "consent" rather than in restitution rights the aggression itself creates. The hosts also discuss Jefferson's meaning of "unalienable," Barnett's restitution versus retribution, proportionality in self-defense (the Texas diner shooting, toy guns, a dodged punch), and what restitution owed for an attempted but evaded attack.

The longest part is a sharp exchange between Costel and Berceanu. Costel defends the binding force of fully paid, perpetual contracts and accuses Rothbard of inconsistency over the Saudi-engineer example. Berceanu holds that future services rest on continuing consent, so withdrawal is always possible at the price of restitution. He uses a first-date example to argue that consent can be withdrawn at any moment, even after an implied bargain. By the end Berceanu concedes that perpetual contracts are valid except a grant of the right to kill oneself. Withdrawal means breach and repayment, not compelled performance. He says the person/body split behind "self-ownership" has caused most of the inconsistencies they found in the book.

Detailed Summary

Pre-show (0:00–5:00). A healthcare strike in Romania ("blame whoever built the public health system"). AI-generated music on YouTube (Gabi enjoyed AI flamenco). ChatGPT's advice on a desk mirror.

Smith's challenge (5:00–12:45). Gabi first frames it as the risk of executing an innocent person. Berceanu and Costel correct him: that risk applies to any punishment. Smith's real point is that if inalienable rights cannot be sold, they cannot be lost either, so the death penalty is in doubt. Kinsella replies with estoppel: a murderer cannot plead his inalienable right to life, having ignored his victim's. Smith and Barnett considered Locke's view that a murderer puts himself outside society, or the species, like "lions, tigers and bears." They also considered restitution-only punishment to avoid executing innocents. Gabi says Kinsella rejects capping the victim, who "never asked the aggressor how they'd arrange it."

What does inalienable mean? (12:45–15:50). Costel asks whether suicide violates an inalienable right to life. Berceanu says inalienable means you cannot separate the right from yourself or change its owner. Destroying yourself is not alienation, and your property rights end at death. He warns against Kinsella's later confusion of alienation with destruction.

Did Kinsella misread Smith? (15:50–24:30). Kinsella objects that Smith merely asserts inalienability. Berceanu says Smith's argument was conditional: *if* rights are inalienable, as Rothbard holds, then punishment is problematic. Taken seriously, force becomes impermissible, which is pacifism. Smith himself admitted the conclusion and extended it from death to physical punishment to imprisonment for unrecoverable theft. Kinsella offers two options: everyone has inalienable rights and no one can be executed, or some crimes can be punished by death and inalienability must be abandoned. Smith thought the second would be catastrophic, since libertarian justice needs inalienable rights.

- **Costel on Jefferson.** "Unalienable" meant "cannot be taken from you," not "cannot be sold."
- **Berceanu.** He gives Smith credit: without rights that cannot be taken, there is no natural-law foundation, only conventionalism. Kinsella should have supplied that context.

Kinsella's own theory of punishment again (26:30–31:00). Kinsella repeats his proportionality theory and the bargaining it permits ("I'll pay so you don't punish me"). Berceanu calls this utilitarian and beside the point. Barnett focuses on restitution. Gabi notes that force is also used in self-defense, which Smith could hardly forbid. He cites Le Fevre and asks whether hitting back after repelling an attack is aggression.

Threats, dodged punches and toy guns (29:00–40:30).

- **The dodged punch.** Alex asks: an attacker threw three punches and I dodged them all. What restitution can I claim? Berceanu says none. An imminent threat lets you strike first to stop it, but no damage occurred, so no restitution right arises. Alex finds this unfair.
- **Toy guns.** Berceanu repeats that shooting someone holding a toy gun is murder. Rothbard favors the defender too much.
- **The Texas diner.** An armed robber was shot by a customer, then shot twice more on the floor. Berceanu says the extra shots are justified only if he still had access to the weapon. Fleeing doesn't matter while he holds a gun in the room.
- **Practical objections.** Alex says forcing victims to "bet" with their lives is inadmissible, and toy guns are designed to look real. Berceanu replies that subjective perception can see threats everywhere (a wallet taken for a gun, "preventive strikes" by states), and "you take entrepreneurial bets every time you eat sarmale." Gabi jokes about the neighbor's hammer drill.

Barnett: restitution versus punishment (40:30–46:50). Barnett says restitution beats punishment, since punishing the aggressor doesn't restore your rights. Kinsella replies that restitution can't restore everything, for example a neighbor's drill disturbing your peace. Berceanu says Kinsella pushes too far. Restitution starts from the object of the crime. Kinsella's punishment is abstract and victim-centered, potentially unlimited ("you stole 5 lei, I want to blow your brains out unless you pay €700,000"). Gabi separates restitution from *retribution*, which is revenge and tied to intention.

Irrevocable consent (46:50–58:30). Kinsella says the concept of inalienability has been "plagued by confusion." The usual question is whether a non-aggressor can alienate rights by contract or promise, which takes them "back to square one." Kinsella claims most libertarians say no. Costel suspects an argument from authority (Rothbard). Kinsella reframes the issue: can one *irrevocably grant consent*? Block says yes. Most say no. Consent can be given irrevocably through physical means, aggression or

voluntary agreement. Barnett's example is Ana, who agrees to a boxing match: may she leave mid-fight? Kinsella argues that slavery doesn't require physically alienating the will, only the slave's continuing consent. Contracts cannot make consent irrevocable, but aggression can.

Costel versus Berceanu on voluntary slavery (56:30–1:21:00).

- **Costel.** "It's a promise" is easy to refute, since a transfer occurred. A house sale is final once both transfers happen, so why not a paid-for servitude contract? Rothbard is inconsistent. In *For a New Liberty* he lets the engineer who signed up to work in Saudi Arabia quit and refund the money, without declaring such contracts invalid. Applied consistently, his "inalienable will" logic would void that contract too. Either both are valid or neither.
- **Berceanu.** Future services depend on continuing consent. If you withdraw it, you must repay, perhaps double, but you can't be forced to keep performing.
- **Liability.** Gabi asks who is liable if a "slave" damages a neighbor's cellar. The hosts agree it is the slave himself, since he never sold others' rights. So he isn't fully property, which Berceanu says shows the word "slavery" loses its meaning. Costel: drop the word. It's just a label from the literature, like "the quarrel of universals."
- **The first-date case.** A woman says she sleeps with men on the first date. He buys dinner and a film and takes her home. Then she says no. Costel: if she sold her body under an implicit contract, it is valid. Berceanu: it is rape, because consent can always be withdrawn. At most he can sue her, as an unpaid worker can sue, but he cannot have sex with her.
- **Revocation.** Costel: you can cancel the other party's obligation but not your own. "Will is like virginity." Berceanu: a contract that necessarily implies aggression (forcing the person who has revoked) differs from one that merely risks breach. Costel: then employment contracts, which risk lateness, should be invalid too.
- **Berceanu's concession.** Perpetual contracts are fine, like marriage, as long as they don't grant the right to kill you. Withdrawal triggers restitution, not compelled performance. He adds that splitting person from body in "self-ownership" is the source of most of the inconsistencies they found. On the person one has at least the same rights as over property, but the rule of consent governs.

Kinsella's resolution and Berceanu's critique (1:21:00–1:35:00). Kinsella: irrevocable consent can't be granted by contract, but aggression is not a matter of consent. The aggressor's actions irrevocably consent to punishment. Costel: then the serial killer can just say "I no longer consent." Berceanu: exactly, which is why Kinsella is wrong. Punishment rests on restitution rights that the aggression itself immediately transferred to the victim. Like a completed apartment sale, no consent is involved anymore. Costel says the contract seems "finished when convenient." Berceanu restates his model. Services are actions resting on continuing consent, while apartments and money are external alienable goods whose transfer is complete. No self-ownership and no "selling the body" are needed. You may sell your services, even perpetually and even as a punching bag. Withdrawal means paying back, not forced performance.

Close. Sign-off, with a cameo by Foster the cat.

Video 11 (#316): Property and Sales Errors: Selling Does Not Imply Ownership (Chapter 11)

Original title: #316 | *The Legal Foundations of a Free Society* - S. Kinsella - Property and Sales Errors

Length: 1:18:46

Link: <https://www.youtube.com/watch?v=IJ7CP6CK0OM>

Summary

Episode #316 covers Chapter 11, "Selling Does Not Imply Ownership, and Vice-Versa: A Dissection," Kinsella's 2022 Property and Freedom Society (Bodrum) talk replying to Walter Block on voluntary slavery. The panel is Gabi Munteanu, Valentin Berceanu, Costel Stăvărache and Alex Chiriac. The hosts also announce the Mises Institute Romania's fifth autumn school at Breb, where Costel will lecture. Kinsella identifies two errors. First, that owning something means having the right to sell it. Second, that being able to sell something implies owning it. A worker paid to dig a field sells his labor only in an economic sense. Legally, money is conditionally transferred in exchange for his actions. A teacher "sells" ideas without owning them, which is Kinsella's anti-IP point. Ownership is the right to exclude others from a rivalrous resource. The body, acquired involuntarily through direct control rather than by an act of will, cannot be alienated by an act of will.

The hosts discuss why Kinsella keeps "self-ownership" rather than equating the person with the body (it would require reworking "all rights are property rights"). They define property as a relation between people concerning things, with rights as others' obligations. They note that the software industry has moved from selling licenses to renting services, which they read as market reality aligning with property theory. Costel argues that conflicts can also arise over *actions*, so actions might also need owners. Berceanu answers that conflict comes only from rivalrous physical use.

The second half returns to the Block–Kinsella debate, which Block grounds in a parent selling himself to pay for a child's operation. Costel and Berceanu clash again. Costel argues that forbidding a mutually beneficial, exit-free contract violates liberty, and that "future fraud" cannot void a contract in advance. Berceanu holds that any contract to perform future actions rests on continuing consent. Withdrawal is breach and costs restitution (2x by default), and nobody can be forced to perform. Using a loan-and-default example, Berceanu explains how debt-collection markets would recover money short of debtors' prison: the claim is resold to a collector who seizes assets and leaves the debtor enough to live. The panel agree one cannot contract away the right not to be killed. They disagree on whether a promised future action can ever be compelled.

Detailed Summary

Pre-show and announcements (0:00–6:20). Sound checks and a joke about Moldova's "Milei." The chapter is Kinsella's PFS 2022 talk in Bodrum, a reply to Walter Block. Announcements: HydraFest, Sense of Self Publishing, and the fifth Mises Institute autumn school at Breb (two days of lectures on economics, with Costel speaking).

Kinsella's two errors (6:20–10:40).

- **"To own is to be able to sell."** A worker paid \$100 to dig a hectare isn't selling labor as property. He performs an action, and the money transfer is conditional on it.
- **"If I can sell it, I must own it."** Selling one's body would mean selling the totality of its uses or activities (Costel: "the totality of its uses").

- **Kinsella's conclusion.** He separates selling in an economic sense from transferring legal title, so you can never sell yourself, only your labor in the economic sense.
- **Why keep self-ownership?** Berceanu wonders why Kinsella doesn't simply say "man is his body." His guess is that it would require rethinking "all human rights are property rights," the premise that makes assault and rape violations of property. Gabi says libertarian law is "tangled" like a national legal code. Costel suspects Kinsella fears the metaphysics of the will or soul, though the voluntary-slavery debate is entirely about the will.
- **Intention and will.** Berceanu would like to "chase away" will as he does intention. Costel says that in a contract, intention just means stated preferences ("I want his money").

Ownership as the right to exclude (13:50–19:15).

- **The right to exclude.** Property is the right to exclude others. Selling is one attribute among others, and ownership has limits (a gun you own can't be used any way you like).
- **Two kinds of property.** Property acquired by an act of will (appropriation or contract) can be alienated by an act of will. Your body, owned because you are its direct controller, cannot. Berceanu notes the similarity to his own "rights spring from you" idea.
- **Property as a relation.** It is a relation between people concerning an object, a set of exclusions.
- **Rights and obligations.** Gabi thinks of rights as liberties and obligations. Costel: your rights are simply others' obligations (your right to life is their duty not to kill you).

Selling ideas and IP (19:15–25:40). Kinsella argues that selling doesn't imply ownership. Teachers transmit knowledge they don't own ("every math teacher would own Pythagoras's theorem"). What they sell is an action, a lesson. Berceanu says the strongest argument against IP is the software industry's shift from licenses, which were easily copied ("piracy" that wasn't theft because nothing was taken), to subscription services (Adobe, Office). Users now rent access to goods that stay with the maker. Kinsella's term is "rival" goods. Non-rival goods don't need property rules.

Can actions be owned? (25:40–32:00). Costel: actions are scarce. In slavery there is conflict over them ("your work is mine"). A poet whose poem Vali recites might claim payment. If conflict exists, Kinsella would have to allocate property in actions. Berceanu: only *you* can perform your actions, so there's no real conflict. A socialist or slaveowner's belief that your actions are his is simply an error. Rights arise from rivalrous physical use (Hoppe, Kinsella), and non-rival things have no basis for property rights, only conventional extensions without substance.

The Block–Kinsella debate on voluntary slavery (32:00–44:50). A link to their 40-minute debate goes in the description.

- **Block's argument.** It is framed around a father who sells himself to pay for his child's surgery. Costel calls the child an emotional device: the argument works just as well if he wants the money for gambling or drink. The core is that two people want a mutually beneficial deal, and what right does a third party have to forbid it?
- **Berceanu's reply.** While both agree, nobody interferes and no contract is even needed. When a dispute arises and they go to a judge, the judge will rule it isn't a valid contract: "return the money, he changed his mind."
- **Costel's reframing.** The real issue is exit clauses, not bodies versus oranges. Any exchange, even day labor, can lack an exit clause. Do we enforce the obligation after a change of mind? He contrasts Rothbard's argument (an inalienable will lets the seller back out, so he isn't a slave) with the fraud argument (the seller can never deliver, so the *buyer* is defrauded). If it isn't 100%

impossible, for example the buyer kills the seller after three seconds with consent, or the "slave" completes five tasks over a week, it isn't a square circle.

- **The 99% case.** Berceanu: if failure were only 99%, "better a guilty man go free" would favor allowing it, but transfer of exclusive control is 100% impossible, since the seller keeps using his own will. Costel: an employment contract doesn't need control of the will, just compliance. An animal has a will too.
- **A 70-year contract with a five-times penalty.** Berceanu: that isn't an employment contract. In real employment, work comes first and pay follows. Advances can be repaid on quitting. Costel: nothing in contract theory requires the payment direction. Prepaid performers exist, and once the money is paid the obligation is active.

Penalty clauses and debtors' prison (44:50–48:00). A clause saying "if I don't work 70 years, I owe 5x" is enforceable. A clause saying "if I don't pay I'll work for you" (debtors' prison by contract) is invalid, like "if I can't deliver a square circle, I'll deliver two." Costel: natural law overrides contracts, so even with no clause a judge applies 2x. Berceanu: if natural law always overrides, exit clauses become irrelevant. The default applies only where no clause exists.

Fungibility and debt collection (48:00–57:40).

- **Kinsella's position.** You can't transfer title to \$110 you never had.
- **Berceanu on fungible versus specific goods.** For a specific item (this cat, this serial-numbered microphone), you can't transfer what you never owned. For fungible goods it's your problem how you obtain them.
- **The debt-collection market.** Alex fails to repay \$110. Vali sells the claim to Gabi's collection agency at a discount (\$105, or \$90 if Alex is a hard case), or first sues for fraud (2x = \$200) and sells that claim for \$170. The collector seizes Alex's assets, monitors him and takes half of each loaf until the debt is paid, short of letting him die. Alex might then *offer* to work off the debt, which is a voluntary employment contract, not slavery.
- **Costel's scenario.** A loan with a clause "if I can't repay, I'll work in your yard until I do." Berceanu: valid while both agree. If the debtor stops, it's a breach, the original debt revives, and you can't compel the work.

The final standoff (57:40–1:17:00).

- **Costel.** The victim decides the remedy. If he prefers performance to money, why not? Forbidding exit-free contracts violates liberty, "a Minority Report-style pre-crime."
- **Berceanu.** Exit clauses are implicit. When disputing parties come before a judge, he supplies the default (2x). The most recently expressed consent governs. You can't physically force someone who refuses: "pull his nails, cut his toe, he still won't do it."
- **Costel.** Millennia of slavery show it *is* physically possible through force.
- **Berceanu.** A contract that permits cutting off a leg to compel performance normalizes aggression and is invalid. The breach happens the instant he uses his own will after the transfer.
- **Alex.** What can a creditor do to a debtor who won't work? Berceanu: pursue his assets until he dies, at which point the debt dies too, and "better judgment next time." Insurers would price such risky loans accordingly.
- **Organs.** Whether a kidney or hair could be seized is left open.

- **Costel's last question.** Does a promise-only title transfer, without handing over the orange, count?

Close. The rest of the chapter (possession, the Bitcoin and "nemo dat" points) and Chapter 12 are postponed. Costel's parting line: "Don't transfer what you have no right to; that principle is in civil law today."

Video 12 (#317): On Bitcoin and Trademark (end of Chapter 11; Chapter 12)

Original title: #317 | *Bazele legale ale unei societati libere - S. Kinsella - Despre bitcoin și trademark*

Length: 2:09:17

Link: <https://www.youtube.com/watch?v=k1S7bNbIPRw>

Summary

Episode #317 ("On Bitcoin and trademark") finishes Chapter 11 and covers Chapter 12, Kinsella's reply to Frank van Dun on whether non-aggressive acts can be "unlawful." The panel is Gabi Munteanu, Valentin Berceanu and Costel Stăvărache. The episode opens with a short clip of economist Radu Mitescu introducing himself, with a joke about "Austrians" being put on a German-language Erasmus panel, apparently recorded at the Breb autumn school.

The hosts first finish the debate over whether labor or actions can be owned. Berceanu holds that actions are not rivalrous objects and cannot be property. Costel holds that conflicts over actions are real (slavery, taxing income from labor). Berceanu then refines his account of future transfers of fungible goods. If you promise \$110 or a pink umbrella that you never owned, the obligation becomes a restitution right when the deadline passes, or 2x if fraud is proven. They discuss unique goods such as a Van Gogh promised as interest, possession versus title (a painting on loan to a Paris exhibition, rentals), and whether title transfers without physical delivery.

They then analyze Kinsella's view of Bitcoin and digital goods. A JPEG is non-rivalrous information. On their reading, what one "owns" in Bitcoin is a contractual right recognized by the miners, tied to an address and private key. Like gold in an online game, it exists only within that network. They go on to Kinsella's distinction between economic language ("I sell my labor") and legal language (a conditional transfer of money in exchange for actions).

On Chapter 12, they examine van Dun's claim that some acts are "unlawful" without being aggression: defamation (libel), blackmail, insults and trademark infringement. The hosts side with Kinsella. Aggression and non-aggression form a complete dichotomy with no third category. Blackmail is a voluntary exchange. Criminalizing it means jailing people for words. True statements cannot be defamation. Trademark fraud wrongs the misled customer, if anyone, not the trademark owner, as in the "McDonald's" sign on a stall selling *mici*.

Other topics include the EU's seizure of interest on frozen Russian assets, whether proper names can be owned, burden of proof in fraud cases (the accuser must prove), consent to contracts one does not understand, the "bell jar" thought experiment, a revision of Berceanu's earlier position on threatening punches that miss, and whether restitution rights can override another person's property, for example a debtor hiding in a monastery.

Detailed Summary

Opening (0:00–11:25). A clip of Radu Mitescu, an economics professor and "student of the Austrian school," at Breb. He tells how a dean put "Austrians" on the German-language Erasmus panel. He calls the Romanian Austrian school "the only coherent approach in Romania." Then an off-air argument:

- **Costel.** Labor is scarce and conflictible (slavery, income taxes).

- **Berceanu.** Labor is not an object, so it can't be owned. You can't force someone to perform. Coercion works only if, in the end, he chooses to comply ("constrained will"), and constraining a will cannot be made normative.
- **Costel.** He was speaking about *physical* possibility, not justice.
- **Agreement.** Once we say goods need property rights to be used efficiently, we are already in normative territory.

Future transfers of fungible goods (13:30–19:00). Berceanu corrects what he said last episode. If Costel lends \$100 for \$110 next year and Vali never has \$110, title passes when he does have it, and delivery happens at the deadline. If he never has it, at the deadline Costel gets a \$110 restitution right. If the contract was fraudulent ("I never meant to pay"), a judge can double the original \$100 to \$200. The same holds for chairs or a pink umbrella: buy one, or prove none exist. For unique goods, include a backup clause. Otherwise an impossible contract is dissolved, unless the debtor destroyed the item himself, which is fraud.

Title without delivery (19:30–28:20). If a Van Gogh promised as interest is damaged before the transfer date, title had not yet passed. Costel asks whether handing over the deed alone transfers ownership. Berceanu: yes. Once title passes, blocking the owner's exclusive use is aggression, which is the same reasoning he used against voluntary slavery. A painting on loan to a Paris exhibition, or a rented flat, shows that possession and limited use rights can be split from ownership. The tenant is not an owner. Costel thinks transfer-by-title strengthens his position, since the "slave" contract would also be complete at signing.

Bitcoin and digital property (28:20–52:00).

- **JPEGs.** A JPEG is a logical arrangement of 0s and 1s stored on physical media. Many copies can be read at once without conflict, so it isn't property. The storage medium is.
- **Bitcoin.** The blockchain is distributed across thousands of computers. What you hold is a private key. Berceanu frames ownership as a *contractual relation with the miners*: they recognize the coins at "your" address as yours. It is conventional and exists only inside the network, like gold in an MMORPG, FIFA points or cigarettes in prison. If the game shuts down, the gold is gone.
- **Copied keys.** If someone copies your private key, you have no property claim against him within that system. The miners' rule is that whoever signs validly moves the coins. Is that fraud? Not even that, in Berceanu's analysis.
- **Mining.** Miners vote by hash power, as in the 2017 Bitcoin Cash fork. Berceanu also mentions recent disputes over limiting non-financial data in transactions. Costel calls it "might makes right." Berceanu: "hash-power-ocratic," but fair.
- **Kinsella's level of detail.** The hosts think he likely knows these details but kept it simple for a broad audience.
- **Another universe.** A tangent on whether property rights would exist there, and whether there is scarcity in heaven (backgammon boards).

Economic versus legal language (54:00–1:11:00). Kinsella: in economic language "John sold a month of labor for \$5,000." In legal language, "Company X undertakes to transfer title to \$5,000 to John, conditional on John performing actions X, Y, Z." A contract is a legal act, not an economic one, so selling labor doesn't imply owning labor.

- **Costel.** Then whose actions are they? Unless they belong to you, a murderer could deny "his" act.

- **Berceanu.** Actions belong to the person as an *inseparable attribute*, not as titled property. Since they aren't rivalrous, nobody else can perform them, so property rules don't apply.
- **Costel.** Conflict over actions is real: the slaveowner claims your labor. Natural-rights libertarians like Nozick simply assert rights.
- **Berceanu.** The "all rights are property rights" premise made the body into property. That simplification caused the complications they keep hitting. Self-ownership as Hoppe and Kinsella use it means owning your body.

Chapter 12: van Dun's "unlawful" non-aggression (1:11:00–1:21:00).

- **Van Dun's claim.** Some acts don't initiate force but should be illegal, such as insult, libel, blackmail and trademark infringement. He says non-aggression is an implication of libertarian legal philosophy, not its foundation.
- **Kinsella's reply.** Van Dun misuses "unlawful" versus "illegal." Berceanu says they are synonyms. Aggression and non-aggression form a dichotomy with no excluded middle, as van Dun himself concedes elsewhere. The NAP and property are correlative: defining property already defines the NAP. Costel isn't sure the NAP isn't an axiom.
- **Libel.** It is defamation by lying. True statements, such as claims about Dominique Strauss-Kahn's conduct, cannot be libel.
- **Blackmail.** Paying 50 lei so someone doesn't call you racist to the press is a voluntary exchange (Block). Criminalizing it means jailing people for uttering words. Gabi jokes that he'd jail Vexler for both. Berceanu: that's a world he'd rather not live in.

Trademark (1:21:00–1:30:30). Van Dun's case is a stall selling *mici* under a "McDonald's" sign. He says the wrong is fraud against McDonald's (stolen customers). Kinsella says that at most it is fraud against the *customer* who asked for McDonald's fries. The hosts agree the victim is the customer if anyone. Entering a shop is not fraud. If the fries really came from McDonald's via a Glovo courier, there's no fraud. A misleading certificate on the wall would be fraud. Plenty of other cues identify a business, and people with the same name can still be told apart. Specified goods matter (strawberry versus cherry candy; implied freshness).

- **Russia.** McDonald's restaurants were simply renamed after McDonald's left.
- **Frozen Russian assets.** The EU gave the interest on frozen Russian central-bank assets to Ukraine. Berceanu: the theft happened when the assets were frozen. After the contract was broken, the original owner has no claim to the interest, only 2x of the principal.

Proper names (1:35:40–1:37:00). Can someone own the name "Vali"? No. Everyone can say it at once, and it was never in a state of nature.

Burden of proof in fraud (1:37:00–1:46:20). Berceanu first appears to say the accused must clear himself, then they agree: the accuser, the victim or his representatives, must prove the case. A victim who ate the stale candy can't prove fraud, so the seller goes free. Romanian tax-evasion cases reverse the burden, which they say shows how far off course the system is.

- **Snake oil.** "Works in 30% of cases" isn't fraud if it didn't work for you.
- **Contracts one doesn't understand.** Gabi says a contract in a language you don't know means no consent. Berceanu says the signer, if competent, is responsible for understanding what he signs: you can't know what is in a person's soul, only whether he is capable of consent.

The bell jar and personal space (1:46:20–1:58:00). Van Dun's bell jar, placed over someone without touching him:

- **On someone's property.** It is false imprisonment, since entering implies the right to leave.
- **In unowned land.** Berceanu argues there's no aggression as long as you keep him alive. He has no right to leave over your property, and the jar's owner must not let him die. Costel and Gabi are skeptical. Gabi mentions a Telegram claim that liberty overrides property.
- **Revisiting the missed punches.** Berceanu revises his earlier view (after a talk with Alex): punches that miss still invade your *personal space*, so you could be awarded the right to invade the attacker's space for twice as long. Costel: there's no property in that space. It's either an objective threat or nothing.
- **Shots near the ear.** They debate whether deliberate near misses are a threat that justifies shooting back.

Restitution rights versus third parties' property (1:58:00–2:08:30).

- **Collecting.** If the debtor stays home and orders Glovo, or keeps a stolen TV inside, you may enter to collect. Your restitution right beats his property right. Personal-space rights could be sold ("pay me 5,000 lei or I'll stand beside you at your daughter's wedding photo").
- **The monastery.** A *third party*, such as a monastery sheltering the debtor, owes you nothing and may bar entry. A cell rented after your right arose doesn't bar you, though. In practice, insurers and dispute-resolution agencies would pressure people who shelter "outlaws."
- **Why restitution beats property.** Restitution rights arise directly from the aggressor's action, while property comes from appropriation or contract (Kinsella, Chapter 10). Costel leaves this as a "topic for reflection."

Close. Sign-off: "Don't steal."

Video 13 (#318): Legislation or Law Discovery, Part 1 (Chapter 13)

Original title: #318 | *The Legal Foundations of a Free Society* - S. Kinsella - Legislation or Law Discovery pt. 1

Length: 1:39:22

Link: <https://www.youtube.com/watch?v=K8jE1JDs9r4>

Summary

Episode #318 is part one of the hosts' discussion of Chapter 13, "Legislation and the Discovery of Law in a Free Society." The panel is Gabi Munteanu, Valentin Berceanu, Costel Stăvărache and Alex Chiriac. Kinsella's thesis is that law discovered in a decentralized way (customary law, the common law, early Roman law shaped by praetors and jurists) fits libertarian principles. Centralized legislation does not. The objection is to the *method* of lawmaking itself, not only to the content of particular laws. The hosts begin with "Leoni's paradox": free-market economists accept state monopoly lawmaking. They note that Leoni was a classical liberal who wanted judges to discover law case by case, not an anarchist. They trace common law and civil law, and observe that both are now "infected" by legislation.

Much of the episode is about predictability. Kinsella, following Leoni and Hayek, values it alongside individual rights and the NAP. The hosts give Romanian examples: tax rules that change over time and by region, arbitrary tax inspectors, emergency ordinances, asset-declaration loopholes, and officials who vote themselves pay and pensions. Alex proposes freezing the legal regime applicable to each new business for 20–50 years, as a kind of contract with the state. Costel raises Rothbard's objection that a law can be predictable and still unjust. They also debate gradualism versus "pressing the button," comparing Romania's gradualism under Iliescu with Poland's shock therapy under Balcerowicz. A further question is whether a libertarian majority that abolishes state institutions would be "imposing" anything.

Berceanu's "tap" metaphor sums up Kinsella's point: an institution whose job is to make laws will keep making them. The libertarian law code fits in five minutes, after which a legislature will produce non-libertarian laws. The answer is to have no tap and to spread libertarian ideas through education. They discuss how private, decentralized courts and non-binding precedent produce more stability, why legal uncertainty raises time preference (quoting Hoppe on consumption and crime), and Leoni's central-planning analogy for legislation, which Kinsella now partly disowns. Berceanu argues the real problem is democracy and majority rule rather than missing information. Under unanimity every participant keeps the same veto however large the group. They close with Hayek's point that language, law and money should arise spontaneously, and a tangent on why Esperanto failed.

Detailed Summary

Pre-show (0:00–5:25). Chat about Romanian politics (whether Timișoara mayor Dominic Fritz could become president, compared with Iohannis and Băsescu), Elon Musk's handling of hostile journalists, a Christian reading of the Odyssey, Plato and Socrates painted among saints on a church in Târgu Jiu, and Foster the cat.

Intro (5:25–9:30). Chapter 13 is introduced. The usual links, plus a reminder that episodes may skip a week around the Mises autumn school at Breb ("don't bring pistols"). A viewer told Gabi he was a subscriber but hadn't watched lately because he lacked notifications.

Common law versus continental law (9:30–14:55). Gabi's framing is that customary law is more liberal (Kinsella, Rothbard, Leoni, Hayek). Berceanu notes that Kinsella even prefers early Roman law, discovered by praetors and jurists, at least on property, before the Senate began legislating. Hammurabi's code may have compiled existing custom. Gabi notes that its rule making builders responsible for collapses came from intuition. Two institutional models: centralized legislation versus decentralized discovery of law by many judges. Kinsella argues only the latter fits libertarianism, because legislation is a *method* that violates libertarian principles regardless of content.

Leoni's paradox (14:55–18:00). Leoni found it odd that free-market economists accepted state-made law. Berceanu: libertarians make the same argument ("the market works best, except here"). Costel: Leoni was a classical liberal who wanted law decentralized, not the state abolished. Judges *discover* law, legislators *create* it. "Common law" meant law of the commons (House of Commons, commoners).

History and spread (18:00–25:40).

- **Common law** grew over centuries of English case law and spread to the US, Canada, Australia, New Zealand and partly India.
- **Civil law** rests partly on Roman law, built from thousands of decisions, and is used in Europe, Louisiana, Puerto Rico, Quebec, Scotland and Latin America.
- **US federalism** until Lincoln let states legislate and kept federal government as an arbiter.
- **Contradictory rulings.** Decentralized systems can produce them across regions. Gabi notes that Romania's legislation varies over *time*: taxes on part-time work were imposed and then reversed. It also varies by *region* (free economic zones, disadvantaged areas such as Petroșani). The state's aim is to "herd" people, not to be coherent.
- **Infection by legislation.** Pure common law or Roman-style law no longer exists anywhere. People were seduced by the promise of predictable, uniform top-down law.

What libertarian law needs (25:40–31:00). Kinsella notes that civil codes such as those of France and Louisiana claim Enlightenment commitments: democracy, economic liberalism, private property, freedom of contract, individualism, natural law, justice. Libertarian law needs individual rights, which are absolute as long as they do not aggress on others. Rothbard said one could start from common law and prune everything that violates the NAP. Berceanu: in a society that accepts libertarian values, you hardly need to codify law. Judges only apply the principle to cases. Gabi mocks codes that multiply aggravating circumstances (night, weapons, gangs) in the name of "predictability."

Predictability and the contract with the state (31:00–35:20). Law should be the same for all and stable enough to plan by. Alex proposes that each firm's applicable law and tax regime be frozen at registration for 20–50 years, like a contract with the state ("annex the relevant extracts of the Official Gazette, which is otherwise good only as toilet paper"). Legislation would stay general, but each firm would get a frozen regime. Berceanu: courts already judge unique contracts, so this is no harder.

Law in an anarcho-capitalist versus a minarchist society (35:20–41:40).

- **Anarchy.** Without a state, law and enforcement come only from private courts.
- **The minarchist question.** For a "libertarian state," Kinsella asks whether law would come from a legislature or from decentralized courts. He starts from predictability: the rule of law (*stat de drept*), meaning no arbitrary punishment or confiscation and equality before the law.
- **What counts as arbitrary.** Costel asks whether taxing redheads at 50% is "non-arbitrary." Berceanu: arbitrariness concerns discretion in applying the law.

- **Rothbard's objection.** Costel raises it: "In ten years you'll all be slaves" is predictable but unjust. Mutual slavery would be universal but absurd.
- **Arbitrary enforcement.** Each county's tax office may treat the same firm differently, depending on the inspector. A law telling officials to take "enough that he doesn't starve" is vague in practice.

Predictability is not justice (44:00–51:10). Gabi: laws can be bent against enemies of those in power. Berceanu: Kinsella treats predictability as a third value alongside rights and the NAP. Hayek spoke as an economist about reducing chaos for planning. Examples:

- **Asset declarations.** The rule requires spouses but not partners to declare assets, and PSD figures now want to change it after Nicușor Dan benefited from the loophole.
- **Leoni's view.** Judge-made law applies only to the parties and has a long track record, so it is more predictable than "scientific" Enlightenment legislation by parliamentarians who are "neither old, nor wise."

Women's rights and the speed argument (51:10–1:00:44).

- **The pro-legislation argument.** Common law moves too slowly (women's rights, radio spectrum), so legislation must "graft" corrections.
- **Kinsella's reply.** Nobody can show that an evolving system would not get there. Legislation can move fast toward communism too (Berceanu: "twenty or thirty million dead").
- **Gradualism.** In the 19th century liberals and socialists were allies against conservatives, as Rothbard noted. Costel: Rothbard defined himself against the conservative principle of gradual change, though he cheered the 1989 revolution. Berceanu: a "gradualist" isn't truly a conservative. Gabi defends Rothbard: you can't "push the button" without first changing the culture.
- **Majority imposition.** Berceanu: imposing libertarian law by majority would be un-libertarian. Costel disagrees: abolishing the state forces no one to do anything, only to refrain from aggression. Those who want a "state" can form a voluntary association, which then isn't a state.
- **Iliescu versus Balcerowicz.** History seems to have proved both right in some sense. Gabi: post-communist reformers used the same legislative tool the communists used.

The tap (1:00:44–1:06:00). Democrats in the US see law as created, conservatives as discovered. Costel asks whether only content matters. Berceanu: method matters too. "If you have a tap, it will pour laws." The libertarian code fits in five minutes, and then a legislature will produce non-libertarian laws. Costel: then close the tap. Berceanu: whoever comes next will open it. The solution is to have no tap. Gabi: Romania's government passes laws in two days by emergency ordinance, the "conservative" speed objection. Kinsella reviews constitutional checks, sunset clauses and other devices, but concludes they have been tried and failed.

How decentralized courts work (1:06:00–1:14:35).

- **Limits and precedent.** Jurisdiction and scope limit rulings. Precedent is informative, not binding. Judgments bind only the parties, who agreed beforehand to accept the outcome.
- **Courts with legislative power** would amount to state courts and would repeat the same sins.
- **Stability.** A market in courts yields more legal stability, which is counterintuitive. Since Bolojan's government lost the ability to issue emergency ordinances, Romania has had more stability. A 300-member parliament, a USR proposal, would concentrate power more than 432 members.

- **Absent defendants.** Unlike a legislature, a private court acts only when parties come before it. If no one complains about a type of theft for 500 years, the precedent stands. An agency that can't find a known thief can obtain a ruling in absentia, or the owner can simply retrieve his property.

Codes and constitutions (1:14:35–1:17:45). A civil code is closer to a constitution than to legislation, yet the US Constitution has been amended many times and effectively rewritten by Supreme Court rulings. Romania's Constitutional Court effectively legislated, for example by barring candidates. Chile rewrites its constitution often. Private judges who follow precedent are preferred by people who want predictability.

Uncertainty and time preference (1:17:45–1:24:10). Uncertainty raises time preference, which favors consumption over production and raises interest rates on both borrowing and lending. Hoppe's quotation: democratic legislation makes law "flexible and unpredictable." What is right today may change tomorrow, time preference rises, short-termism spreads, respect for law erodes and crime rises, since criminals are the extreme of high time preference. Examples: Romanian tax promises reversed within months, rising crime in Britain linked to immigration, and Romanians abroad who went "to work" versus "to steal." Gabi suggests the causation may run both ways. A Digi24 commentator said Constitutional Court judges "legalized theft" by voting themselves pay and pensions.

Leoni's central-planning argument (1:24:10–1:35:00). Kinsella says in his preface that he no longer fully endorses it. The argument: legislation is like central planning and lacks dispersed knowledge (Mises, Hayek). Berceanu disagrees in part. A single person *can* state what the law should be (Rothbard did). The real problem is that representation and democracy are wrong in principle, not short of information. Under unanimity, each of 100,000 people has the same veto as each of two. Democracy breaks that at three. Gabi: people want a "package" vision of society and fear a veto would block everything. Berceanu: then only what all agree on is done jointly, and the rest separately ("then we won't have sewers or bridges"; "if people want them, they will"). Democracy also brings disproportionate costs of monitoring (David Friedman's *Machinery of Freedom*). Interest groups can cheaply buy legislators. After 250 years of "keeping an eye on them," the US has \$40 trillion of debt.

Spontaneous order and Esperanto (1:35:00–1:38:20). Gabi cites Hayek: language, law and money should arise freely in the market. Imposed pronouns ("they/them") and the Romanian Academy can't dictate how people speak. People accept market prices but find "a market in law" counterintuitive, though what people demand from courts is predictability. Berceanu says Esperanto failed because it ignored Asian languages and because the low-effort answer was for everyone to learn English, which happened anyway.

Close. Part two of the chapter follows. Sign-off: "Get ready, the crisis is coming."

Video 14 (#319): Legislation or Law Discovery, Part 2 (Chapter 13)

Original title: #319 | *The Legal Foundations of a Free Society* - S. Kinsella - Legislation or Law Discovery p2

Length: 1:55:55

Link: <https://www.youtube.com/watch?v=cNud8fBuAkc>

Summary

Episode #319 finishes Chapter 13, "Legislation and the Discovery of Law in a Free Society." The panel is Gabi Munteanu, Valentin Berceanu, Costel Stăvărache and Alex Chiriac. It opens with Gabi's report from the Mises Institute Romania autumn school at Breb, hosted by Marius Cetache: young activists, late-night debates, and Costel's lectures, which will be posted on the channel.

The hosts describe how decentralized law-finding systems work. Parties who want to restore cooperation go voluntarily to a judge. His decision binds only them. Precedent informs but does not bind. Courts provide dispute resolution as a service, and better law emerges as a side effect, as growth emerges from market exchange. Legislation, by contrast, overturns everyone's plans at once (Bolojan's tax hikes) and treats society like a centrally managed garden. A long tangent covers desalination and small nuclear reactors as an example of what regulation prevents.

The main debate is whether decentralized judging really differs from legislation. Costel is skeptical. Judges can be bought, precedent is not decisive in practice, and the method of lawmaking matters less than the content. Berceanu builds a thought experiment of "Nazi judges" versus "Nazi legislation" (Jews have no rights). Even with identical bad norms, decentralized adjudication harms fewer people. Each victim must be dragged individually before a judge, whereas legislation is enforced en masse by everyone and by the police. They connect this to US history: state-level abolition, fugitive slaves, federal centralization and secession.

On "naïve versus critical rationalism," Gabi presents Kinsella's Hayekian point. Law should evolve empirically rather than be designed by one mind (Descartes versus the Scottish Enlightenment). He also notes Hayek's warning against applying family rules to the wider society. Costel objects that this is a form of scientism: moral norms, unlike prices, can be deduced a priori from the NAP, and late Hayek's "blind" evolution of norms goes too far. Berceanu criticizes Kinsella for loading the justice system with deterrence and retribution, which are inherently arbitrary, and then trying to cure the arbitrariness through iteration. Further topics include the explosion of legislation and the resulting loss of respect for law, privately compiled libertarian civil codes, Hanseatic and Saxon guild towns (where uniform law first boosted trade), AI-generated child pornography cases, US jury nullification (including the Lindsay Clancy case), and the "just war" idea of non-aggressive "imposition" of the NAP. In a closing round, Costel says the genesis of law is irrelevant and only content matters. Alex leans toward Costel but accepts that legislation inevitably degenerates. Berceanu sides with Kinsella and Leoni. Next comes intellectual property.

Detailed Summary

Pre-show and Breb report (0:00–8:30). Jokes about a Soros quote and whether his 1990s book publishing in Romania was benign. After the intro, Gabi describes his first Mises autumn school at Breb. Host Marius Cetache provided a setting for discussion from morning to night. He met many young

people eager for libertarian activism, and conversations ran until 1 a.m. ("we act subversively; TV doesn't report it"). Costel's talks from this year and last will appear on the channel.

How decentralized law-finding works (8:30–14:00). The premise: law is natural and can be discovered "in the seeds of human behavior." People want to cooperate. In a dispute they assume someone erred and go together to a judge they both chose ("enlighten us"). Gabi stresses that what the parties agreed beforehand matters most. The verdict binds only them. A later disputant may go to another judge, who must judge afresh. Precedent can be cited by lawyers but isn't obligatory, unlike the US system. In continental law the judge compares the case with an external statute set by fiat. The Constitutional Court is more political than judicial; its longtime president was a "jurist" who had never been a judge, prosecutor or lawyer.

Service versus tap (14:00–21:30). A decentralized system mainly provides conflict resolution and only as a side effect discovers better law, as entrepreneurs seeking profit grow the economy. Legislation "blows up" the order that had formed (Bolojan's tax increases).

- **The garden.** Alex: many people see society as a garden needing irrigation, pruning and harvesting, hence subsidies. Say "jungle" and they stop listening.
- **Water and reactors.** Berceanu's tangent: with cheap energy one could desalinate seawater and pipe it where it's needed, but zoning and construction rules prevent it. Small nuclear plants would be priced by insurers. Fukushima's damage came mostly from the tsunami. The state's answer to drought is an influencer declaring a "water crisis" and calls for solidarity.

Can judges be captured? (21:30–30:00).

- **Costel.** Judges can be bought as legislators are. Tullock observed that bribes in public choice are surprisingly small.
- **Berceanu.** Both parties must choose the judge. A judge who rules oddly loses business, and a company would have to buy an unlimited number of judges rather than 50% of a fixed parliament, like the argument that Gates or Bezos cannot control a whole market. The judicial market must be open, or it isn't a market.
- **Costel.** You're comparing a socialist system with a capitalist one and so assume the answer. Is Kinsella describing existing systems or a libertarian model? Kinsella himself concedes these systems say nothing about the *content* of law.
- **State judges without a parliament.** Kinsella considers this hybrid and finds it worse.

Nazi judges versus Nazi legislation (30:00–44:50).

- **The scenario.** Berceanu supposes all judges apply the rule "people with 25% Jewish blood have no rights." Under legislation, the rule binds everyone immediately: neighbors may seize property or kill, police enforce it, and no court is needed. Under decentralized judging, a victim must be personally brought before a judge, and everyone else is left alone until then. Agression is greater under legislation whatever the content.
- **Costel.** You haven't held conditions equal. Nazism by definition means imprisonment without trial, and continental systems also go through courts.
- **Gabi.** In continental systems people rarely sue the state, because they lose unless the state broke its own laws (expropriation for highways, fines).
- **Berceanu's summary.** "In one system abuse is wholesale, in the other retail. Retail is harder, so fewer are abused."

- **Costel.** Then good reforms are also harder: to undo an unjust rule you must persuade every judge. Berceanu: class actions exist, and people choose judges voluntarily.
- **US history.** Each state legislated for itself (hence Louisiana). Northern states abolished slavery and stopped returning fugitive slaves. Abolitionists then pushed to the federal level, and the South seceded ("divorce").

Naive versus critical rationalism (49:50–58:45).

- **Hayek.** Family rules (Mom redistributing Dad's biggest piece of cake) shouldn't be applied to society, and vice versa.
- **Kinsella's distinction.** Cartesian *naive rationalism* says one mind can deduce the best law, which leads to legal positivism and legislation on a conveyor belt. The Scottish Enlightenment's *critical rationalism* says law in a complex society must evolve empirically, case by case.
- **Gabi's reconciliation.** The NAP and individual-based law are axiomatic. Specific remedies, such as how much to pay for a stolen hen or limitation periods, are refined case by case into good practice.

Berceanu's three objections (58:45–1:01:00).

- Kinsella's justice system pursues deterrence and retribution, not only restitution. These are inherently arbitrary because people differ ("make every curse punishable by death and you'll get a very polite society"). He tries to cure arbitrariness by iteration.
- When do we stop?
- If it's never right, what's the point?

Costel's scientism objection (1:01:00–1:12:00). Hayek criticized scientism, yet "discovering" law imitates natural science. Economic laws are discovered. Norms such as "don't steal" are created. Prices need empirical interaction. Laws can be deduced a priori from the NAP, for example a clone's rights.

- **AI images.** Gabi's case: a US court acquitted a man holding AI-generated child sexual abuse images because there was no real victim. Berceanu: any law against that would likely fall on free-speech grounds. Gatekeepers will instead restrict AI models, but he probably used a local model.
- **Where do principles come from?** Gabi: someone must still establish the founding principle (the NAP), and judges will disagree on its implications. Kinsella seems to favor a hybrid: privately compiled civil codes that synthesize past rulings.
- **Gabi's further point.** Political services respond to demand. People have high time preference and want "experts." Each person is the expert on his own preferences, and Mises's point is that people share ends but differ on means.

Legislative inflation (1:13:00–1:16:40). Each law creates problems, which prompt more laws in an avalanche. People stop seeing law as justice and see it as orders from above. Kinsella says this breeds docility. Alex says it breeds disrespect, especially in Eastern Europe, "where people grab the cudgel."

Problems with decentralized systems (1:16:40–1:24:10).

- **Speed.** Changing practice judge by judge is slower than legislating. Costel: Romania has tens of thousands of judges and only about 400 parliamentarians.
- **Structural limits.** Legislation can be limited structurally (constitutions). A decentralized system can't, so the market must weed out bad judges.

- **Kinsella's hope.** A privately compiled libertarian civil code could steer judges. Berceanu: only if it is voluntarily adopted, never enforced.
- **Legalese.** Gabi: under statutes, judges spend time classifying cases into legal categories ("legalese") rather than doing justice between the parties.
- **Repeat offenders.** Considering prior offenses means caring about more than restitution.
- **IP's origins.** Gabi wonders whether Kinsella will say IP arose through legislation or through judges. They expect lobbying (Disney).

Common law versus civil law (1:24:10–1:30:30). Neither survived legislation. One reason was the commercial demand for predictability. Medieval Transylvanian Saxon guild towns and Hanseatic cities had their own rules (a Braşov smith could sell in Sighişoara and Sibiu but not Târgu Mureş). Imperial uniformity at first boosted trade, "like the EU now," and then fell into the legislative trap. Many centers can multiply unpredictability (the law changes in Sibiu while you travel). Gabi: if all apply the NAP (Magna Carta-style), they become predictable.

Hayek's late thought (1:30:30–1:43:00). Costel thinks late Hayek (*The Fatal Conceit*) goes too far in saying moral norms are blindly selected by evolution and not chosen. Rothbard and Mises say norms can be rationally proposed. Gabi: a judge proposes a norm (Rothbard's 2x), and its spread among judges, which is like a "price," is empirical and unpredictable. Costel: the rate of adoption is irrelevant. We know the truth, and imposing non-aggressive rules is fine (Costel's Breb talk on just war). Berceanu: imposing non-aggression on those massacring redheads is defense, not aggression. Alex worries that imposing confers legitimacy on imposition.

Conclusions (1:43:00–1:55:10). Kinsella: individual liberty can't be delivered by centralized legislation, even if it starts from libertarian premises. At best it should "go bang like the Big Bang" and dissolve. Gabi notes judges can't issue general rulings such as an endangered-species list, only rule on "Gheorghe's owl." Costel again: the difference between systems is unclear, and content matters.

- **Jury nullification.** Berceanu notes Kinsella omits it: US juries can acquit despite proven facts because the law is unjust, effectively nullifying it. He cites Huemer on the Lindsay Clancy case, where one juror's vote may have rejected a statute putting the burden on prosecutors to prove sanity. It could be a strong libertarian tool once ideas spread.
- **Closing round.** Costel: genesis of law is irrelevant, content matters. Alex: leans to Costel but agrees legislation inevitably degenerates, the "mainstream" view of Kinsella, Rothbard and Leoni. Berceanu signs off. Next episode: intellectual property.

Video 15 (#320): Against Intellectual Property (Chapter 14)

Original title: #320 | Bazele legale ale unei societati libere - S. Kinsella - Împotriva proprietății intelectuale

Length: 2:00:39

Link: <https://www.youtube.com/watch?v=LjIwyT7UzF0>

Summary

Episode #320 covers Chapter 14, "Against Intellectual Property," which Gabi calls the book's most important chapter. The panel is Gabi Munteanu, Valentin Berceanu, Costel Stăvărache and Alex Chiriac, with Foster the cat. The chapter opens with a Thomas Paine epigraph ("time makes more converts than reason"), which Kinsella uses to say that people have been conditioned by about 200 years of state propaganda to accept IP. The hosts explain copyright, which covers original works such as books, music, films and software, and patents, which cover inventions and processes such as making aspirin. They describe both as state-granted monopolies that stop people from using their own property as they wish. They discuss Disney's lobbying to extend copyright on Mickey Mouse, market answers such as video-cassette piracy, Napster and torrents, the shift to software-as-a-service, and the origins of IP in royal and church censorship and printing privileges, including Turgot's need for royal approval to publish.

They lay out Kinsella's framework. Property rights exist to avoid conflict over *scarce, rivalrous* resources. Ideas are non-rivalrous: two people can use the Pythagorean theorem at once, and lighting a candle from another's flame takes nothing away. They cover the utilitarian arguments (the US Constitution's clause on "promoting progress," incentives for research) and the deontological ones (the fruits of one's labor, Hegelian "personality" theory). Kinsella's view is that the empirical evidence does not show IP increases innovation.

Most of the episode is a sustained challenge from Costel. He argues that creating a new idea is analogous to homesteading, like taming a wild horse out of words that sit in the commons. Using someone's idea without consent then fits the definition of aggression, "use of another's property without consent," so the IP owner would be the defender. He also argues that conflicts over non-rival things can still occur, because ideas are excludable, for example by encryption. Berceanu and Gabi reply that conflict arises only from mistaken beliefs about rights; that IP requires an infinite regress back to whoever coined each word, which undermines the very purpose of language; that proving someone took your idea, rather than reached it independently, is epistemically impossible; that IP would ban thinking about forbidden ideas (the "pink elephant" problem); and that it would stop people opening a second shawarma shop in the same area. A long digression covers open-source licenses: GPL "copyleft" versus BSD, enforcement cases in Germany and the US, and Oracle Linux. Costel admits he has only a "vision," not a full theory. The discussion of Kinsella's follow-up chapter, a 20-year retrospective, is held for next time.

Detailed Summary

Pre-show (0:00–3:15). A joke about a Moldovan politician's quip on privatizing Chișinău airport. Heavyweight boxing (Lennox Lewis). Paine's epigraph: "time makes more converts than reason." Costel reads this as the tyranny of the status quo.

Introduction (3:15–7:35). Kinsella's book is free online "because he doesn't believe in IP — spoilers." Kinsella says about 200 years of state propaganda have accustomed us to IP, and defenders credit IP with the Industrial Revolution. The hosts skip his recap of property theory: self-ownership; first use of scarce external resources; property as the right to exclude. IP matters because it is legislated and people disagree over it. Where IP law is too harsh or prices too high, the market has responded with garage video-cassette copying, Napster and P2P torrents.

Disney and Mickey Mouse (8:40–10:50). Copyright terms were repeatedly extended through Disney lobbying, to roughly 95–100 years. Only the black-and-white Mickey has entered the public domain. If a company must lobby for its rights, the issue is not settled on principle. Gabi jokes that Mickey should get an official TikTok account.

Copyright versus patents (10:50–15:00). Copyright covers original works: books, songs, films, software. Patents cover ideas, processes and inventions, such as the process for making aspirin. You may not use the patented process even if you arrive at it independently. Alex notes Rothbard's position: he accepted contractual restrictions on copying but held that a contract between two parties cannot bind a third. Costel finds it odd that Rothbard condemned even independent rediscovery of a patented invention, and says he would allow it.

Historical origins (15:00–18:40). Kinsella says monarchs and the church suppressed the free flow of ideas, and the modern state inherited copyright and patents from them. Berceanu thinks the church's aim was to keep interpretation among trained clergy. Gabi cites Morosan's point at Breb that Turgot needed royal approval to publish a book, because printing presses were a state monopoly. Patent law prevents you from using your own property in a way that a state-privileged person dislikes, even in a "sufficiently similar" way. Both copyright and patents are state monopolies, or "abuses." Gabi says IP was "the last brick of the libertarian puzzle" for him.

Utilitarian and deontological arguments (20:00–25:30). The US Constitution tasks Congress "to promote the progress of science and useful arts, by securing for limited times" exclusive rights. The deontological arguments are a right to the fruits of one's intellectual labor, and Hegel's "personality" theory, under which performing Shakespeare "summons" the author's personality, a kind of proto-right of image. The hosts reject any right to one's image. Actors use their own bodies and violate no one's scarce property.

Scarcity and rivalry (25:30–35:20). Kinsella's recap: property rights exist to exclude others from scarce resources. Air in a room isn't scarce, but a coffee is. Ideas may be "rare," but they are non-rival: Vali and Alex can both use Pythagoras's theorem. Costel's first objection is that conflicts can still arise over non-rival goods because ideas are excludable, for example by encryption, so ideas are not public goods. Berceanu and Gabi say the conflict comes from people's *belief* that they have rights they don't have, just as someone who thinks all virgins are his will cause conflict. Berceanu's pink-elephant point: to obey a rule against using an idea, you must think of it. If Gabi says "Pythagorean theorem" at dinner, the formula pops into your head involuntarily. Have you violated it? A license for "seven uses" is a fraud, since you can't stop knowing the theorem.

Costel's homesteading argument (35:20–1:00:00).

- **The argument.** Creating a new idea is like taming a horse. Words are in a state of nature, and you make a new combination that didn't exist. Use without consent is aggression, so the copier is the aggressor and the IP holder the defender, just as a thief can't complain that you interfere with his hands.

- **Berceanu's regress.** Every word was created by someone. Either all words are in the public domain or they belong to their coiners, which leads to an infinite regress. Language exists to be shared, so ownership of words defeats its purpose. For the concepts of rights and aggression to exist and be shared, their first author must have acted *against* the IP system by giving them away.
- **Costel's reply.** Libertarianism lets people give things away. Language is spontaneous, and words are in the commons.
- **Discovery versus creation.** The Pythagorean theorem only records a fact about right triangles, so it was discovered, not created. Costel: the triangle itself is an abstraction (Euclid), and some things, like relativity, really were created by one person.
- **Shawarma shops.** If the first person to open a shawarma shop at Obor "owns the idea," no one could open another nearby. How large an area would count?
- **Proof.** Berceanu: the accuser must prove the accused took the idea from him rather than reaching it independently. Ideas live in heads, which can't be inspected. Costel: sometimes there is evidence, such as a chat log or a PhD thesis on someone's shelf. Authors once mailed manuscripts to themselves for a dated postmark.
- **Theft.** Copying an idea is unlike stealing a hen: "you still have it."

Open-source licenses (1:06:00–1:21:55, 1:43:00–1:45:30). Gabi explains GNU GPL copyleft: modified versions must be distributed under the same license with source code available. BSD code may be closed after modification, which is the basis of Apple's systems. If the first person to coin "aggression" had issued it under copyleft, every idea using it would have to be shared freely. Costel: that's still voluntary giving, which doesn't hurt his view.

- **Enforcement.** Private forks such as Oracle's Linux distribution, the GPLv2/v3 split and Linus Torvalds, and AI agents built on open-source code that can't be audited. US discovery lets plaintiffs demand documents, but emails get deleted (Hillary Clinton). Harald Welte's German suits in the 2000s forced router makers to publish code. The BusyBox suits against Verizon, Samsung, Best Buy and Westinghouse yielded published code, compliance officers and damages.
- **Bill Gates.** He pushed the industry away from shared public-domain code toward closed executables.

Remedies (1:22:00–1:31:00). Gabi asks what an IP owner could claim: lost profits never earned, like farmers paid for "lost harvests"? Costel: the remedy is conventional, perhaps "two ideas of equal quality," which Berceanu mocks ("give me something better than Nichita Stănescu"). Gabi's anecdote is a professor who says "that's my book" and a student who replies "no, it's mine." Kinsella also seems to reject non-disclosure agreements binding third parties, and the hosts disagree on whether he considers the contract between the two parties valid. Pythagoras's secretive school tried to guard its ideas privately.

Economics of IP (1:45:30–1:53:00). Kinsella cites studies showing patents and copyright don't increase prosperity. Costel says Austrians should argue theoretically, not empirically. The standard defense is that property in ideas, like property in oranges, encourages research and development, as with the Covid vaccine. Berceanu: the legal barrier is a distortion, a temporary monopoly granted at discretion. Why temporary? If IP is good it should be permanent, and if bad it shouldn't exist. Perhaps the state wants to limit R&D bubbles like today's AI boom or the dot-com bubble. Mickey Mouse's derivative works were

never made: Bastiat's and Hazlitt's "unseen." Costel: without a monopoly there might have been no Mickey at all.

Close (1:53:00–2:00:15). Gabi: is it enough to see someone running a business and copy him? Costel admits he has only a vision, not a full theory, and insists real novelty, such as relativity, is identifiable, unlike merely raising a hand. A tangent on whether Eminescu anticipated relativity in a poem. The next chapter, Kinsella's revisit of his IP article after 20 years (copying a sculpture, writing the theorem on someone's paper), is postponed. Sign-off "for Foster."

Video 16 (#321): Against Intellectual Property, Part 2: Twenty Years Later (Chapter 15)

Original title: #321 | Bazele legale ale unei societati libere - S.Kinsella - Împotriva proprietății intelectuale 2

Length: 2:11:45

Link: <https://www.youtube.com/watch?v=eIH0svtKPyA>

Summary

Episode #321, the last in the playlist, covers Chapter 15, "Against Intellectual Property After Twenty Years: Looking Back and Looking Forward." The panel is Gabi Munteanu, Valentin Berceanu, Costel Stăvărache and Alex Chiriac. Gabi leads on the chapter's content. Kinsella first criticizes Ayn Rand's defense of patents and copyrights. If ideas are property, why should rights in them expire when ownership of a glass or a house never does? He then surveys the utilitarian case. Gabi and Berceanu explain why the empirical evidence fails to show that IP increases prosperity, using the iPhone and Android, Microsoft tolerating Windows piracy, Malcolm McLean leaving the shipping container unpatented, generic drugs for Africa, and the "unseen" Disney cartoons that were never made. Costel keeps pressing the point that these are ordinary incentive arguments that apply to any property, oranges included.

Gabi recounts Kinsella's own path. He started as an Objectivist patent attorney who searched for ten years for a sound pro-IP argument before concluding there is none. He describes the proposed edits to his original article ("rivalrous" instead of "scarce," "corporeal" instead of "tangible"), the internet's role in exposing IP absurdities (lawsuits against single mothers for shared songs, SOPA and PIPA), and the US pushing IP standards on other countries through treaties. Kinsella describes IP as a *non-consensual negative servitude* on everyone else's property, unlike an easement granted voluntarily. A copyright owner gains a partial veto over the use of everyone's paper, computers and voice. Kinsella calls IP "theft," "statism" and "death," and demands "intellectual liberty instead."

The longest debate, again led by Costel, asks whether actions and services are rivalrous. If actions can be traded, why can't ideas be owned? Berceanu argues that rivalry lies in the *resource* acted on (the apple, Gabi's land), not in the action, which only the actor can perform. Since nobody else can use your hand as you do, the concept of exclusion has nothing to apply to. Costel counters that a worker cannot be in two jobs at once, which makes labor rivalrous. Other topics include whether you can sell a past action, the missile-shield "public good" example, co-ownership as mutual exclusion rather than monopoly, owning a red car versus owning the color red, and Locke's view that IP is not natural law, only parliamentary policy, together with his description of the Stationers' monopoly as an "invasion of trade, liberty and property." The series ends here, with Costel's parting shot: "So his thesis is that they're non-rival — and look, they're rival."

Detailed Summary

Pre-show (0:00–9:30). Costel argues that you can own any apple, even an unremarkable one, so why not any idea? Gabi objects: you did something to the apple (fenced it in), while an absurd Dadaist line of poetry involves nothing. Who decides the novelty threshold? Is the Pythagorean theorem "new"? It depends on the person. Costel: "Nobody claims to have invented the cow." Gabi compares IP to abortion: secret use is undetectable but still a violation. They mention the birthday of Mises Café's owner, music licensing in the café, Rolling Stones, and *High Fidelity*'s "top five" lists.

Rand and term limits (11:40–14:50). Rand, inspired by the US Constitution and the Founders, argued that creators deserve a temporary monopoly reward for their "labor." Kinsella asks why, if this is property, it expires, when you don't own a glass for only five years. The hosts joke about planned obsolescence and old wired phones. Early IP was openly called "monopoly" or "privilege." State propaganda later rebranded it as "intellectual property."

Utilitarian arguments and evidence (15:50–27:40).

- **Gabi.** Utilitarianism can justify anything and can't be measured. Studies comparing countries with and without patents show no clear prosperity gain. The standard argument is that longer monopolies let firms recoup R&D. But wealth spreads when goods become cheap and widespread, as the first expensive iPhones did not, while cheaper Android copies brought smartphones to the masses (Apple sued Google). Microsoft tolerated Windows and Office piracy to build its platform.
- **Berceanu.** Malcolm McLean released the patents for the shipping container, cranes and dock organization to the public domain to grow the industry, and kept only shipbuilding patents. Monopoly makes creators lazy ("live off one idea for 50 years"). It is the protectionist argument with "unseen" costs: the Disney derivatives and copied iPhones that never existed.
- **Costel.** This is the same incentive argument Austrians accept for oranges without counting oranges. If the argument holds for goods, it should hold for ideas.
- **Berceanu's reply.** By that logic redistribution would also "stimulate creativity," since a billionaire robbed of his billion must earn more. Costel: then what is the utilitarian case against socialism or the minimum wage, which also "forces creativity"? Berceanu: the case against socialism is deontological.
- **Two sources of growth.** New products and cheaper copies. Monopolies help the first and hurt the second, which matters more.

Scale and luxury (32:00–40:30). Costel: a monopolist still wants to scale, selling to a billion rather than ten. Berceanu: not necessarily, since luxury goods (Louis Vuitton, diamonds) earn the same from fewer buyers through exclusivity. Gabi's example: drug makers neither cut prices for Africa nor let local producers make generics. A tangent on whether one man could buy all the land. Berceanu: rising marginal prices, diseconomies of scale, and the fact that a free market can't produce "infinite money" make it impossible, except by buying cheap early and holding.

Internet, Kinsella's path and his edits (40:30–50:00).

- **The internet** is a "copying machine." Lawsuits against teenagers and single mothers for shared songs, with damages in the millions, made IP's absurdity visible to the public.
- **Kinsella's career.** He was an oil-and-gas lawyer, then a patent lawyer, who defended clients against predatory patent trolls. As a former Randian, he found Rand's IP argument weak, tried for about ten years to find a better one, and concluded there is none.
- **The Founders.** Jefferson's letters doubted IP, noting countries without it were no less prosperous. The Industrial Revolution happened in Britain, which had patents (Mokyr, North). Gabi will check when the steam pump patent came.
- **Treaties.** The US spread IP through treaties. SOPA and PIPA failed, and the hosts claim Romania's government voted for such measures.

- **Edits to the original article.** Replace "scarcity" with "rivalrousness." Drop the "good ideas are scarce" line. Use "corporeal" and "material" instead of "tangible." The burden of proving IP's utility lies on its defenders, and since the internet the evidence is against them.

IP as a non-consensual negative servitude (50:00–1:04:50). A voluntary easement, like a right of way across your land to a landlocked neighbor, is consensual. IP imposes on everyone, without consent, a restriction on using their own paper, hard drives, computers and mouths. Every dispute is about who controls a scarce resource, and copyright gives its holder partial ownership of the whole world's resources.

- **Gabi.** Libertarians already rely on abstract concepts such as "threat" and "imminence," which are not purely physical. Berceanu: imminence is a fully physical set of circumstances minus the trigger, and a stone already thrown is aggression, not a threat.
- **Where does the material end?** Sound is vibrating air, and electromagnetic waves cross a vacuum through some unknown medium. Gabi: "even Newton knew, then Einstein came."
- **Rhetoric.** "You think you own your body and garden, but no" is rhetorical, like "the state punishes rape." Costel: deontologists would accept IP even if it reduced welfare, if it were just.
- **Schools.** Socialists justify state schooling by giving the poor child a chance, an ethical argument that later turned economic. Berceanu: the state's version isn't universalizable.

Conflict and rivalry (1:04:50–1:16:00). Real property doesn't infringe others' real property, but IP does. Costel: if we grant property in ideas, conflict arises. The copier is like a thief complaining that you touch his hands. His grounds: homesteading, since you create the idea. Berceanu: homesteading needs a pre-existing, separable thing. Gabi's chair inventor: if he claims the concept of "chair," others need its boundaries. May they make four-legged chairs, other wooden objects?

- **Independent invention.** Costel allows it, and the accuser must prove copying. Berceanu: that requires proving what happened in someone's mind, a non-operationalizable standard. Costel: sometimes it's plausible "beyond reasonable doubt" (neighbors, cameras, spies photographing a Siberian factory). Telephone patent disputes illustrate first-to-file versus first-to-invent.
- **Berceanu's addition.** If ideas are property, exposing someone to your idea involuntarily is itself aggression on your part.

Labor, services and selling actions (1:21:50–1:37:00). Kinsella: whoever owns the wood owns the chair. Labor and creation are actions, not titles. Selling labor is economic language. Legally it's a conditional transfer of money for actions. Costel: then you don't own your labor, and an employment contract is a gift? Berceanu: you are responsible for your actions as a moral agent, but not their owner in the legal sense, since property is a relation to physical things. They debate selling a past action: you can sell a used glass but not "the instance of hand movement" you already made. Costel: that's just the goods/services distinction, so what? Berceanu: a performed action vanishes, so exclusion means nothing for it.

Are actions rivalrous? (1:37:00–1:56:55, 2:05:30–2:10:00).

- **Berceanu.** Rivalry means two people can't use the same resource for incompatible ends at the same time. Excludability matters only if someone else *could* use it. Nobody can bite your bite of the apple, only you can. Action links an actor to a resource, and rivalry lies in the resource. "Only you can use your hand," which suggests you *are* your hand.
- **Costel.** I can't be in two places or do five jobs at once. A worker who digs a pit for Gabi can't dig the same pit for another. So labor is rivalrous.

- **Berceanu.** The pit is rivalrous because of Gabi's land, and co-owners would share the same pit.
- **The missile shield.** Costel's example: it protects Romania but not Bulgaria or Mars, so "public goods" always have an excluded public. Berceanu: within the protected area consumption is non-rival.
- **Kinsella's rhetoric.** Scarcity is the world's curse. Inventing artificial scarcity in ideas is "obscene," "stupid and suicidal." If drinks duplicated like ideas, "a țuică for everyone." Gabi: imagine someone banning that abundance to "motivate creators."
- **Expiry.** IP expires, natural property doesn't.

Colors, co-ownership and Locke (1:57:00–2:10:55).

- **Colors.** Owning a red car isn't owning red. Colors exist on a spectrum. You can invent a method of reproducing one, not the color.
- **Locke and the Founders.** They tolerated temporary monopolies but were uneasy. Locke didn't derive IP from natural law but didn't oppose it as policy. An author owns his written copy if pen and paper are his, not the abstract idea. Locke's carving-in-another's-wood example. Costel would keep the theorem as his even if written on another's paper.
- **Is property a monopoly?** Berceanu: no. Co-ownership works by mutual exclusion. Co-owners must agree, or nothing happens (pickled apple versus cannonball).
- **Locke on printing.** He called the Stationers' printing monopoly, the closest thing to copyright in his day, "an invasion of the trade, liberty and property of the subject," and said IP could exist only by act of Parliament.

Close. Sign-off. Costel's last word: "So his thesis is that they're non-rival — and look, they're rival."