

# THE FREEMAN

IDEAS ON LIBERTY

## Published by

The Foundation for Economic Education  
Irvington-on-Hudson, NY 10533  
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[www.fee.org](http://www.fee.org)

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*The Freeman* is published monthly, except for combined January–February and July–August issues. To receive a sample copy, or to have *The Freeman* come regularly to your door, call 800-960-4333, or e-mail [bhoffman@fee.org](mailto:bhoffman@fee.org).

*The Freeman* is available on microfilm from University Microfilm International, 300 North Zeeb Road, Ann Arbor, MI 48106.

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Cover photo: Steven Greenhut

## Perspective

# Patently Unnecessary?

The idea that government should issue patents for inventions is odd on its face. How can someone claim an exclusive right in a “practical application” of nature’s principles? Of course, an inventor can have a right to an object. But a right to bar others from using the application embodied in that object? That’s hard to accept. Property rights arise out of the finitude of objects. Two people cannot use the same thing at the same time and in the same respect. It is otherwise with ideas. As Thomas Jefferson wrote,

He who receives an idea from me, receives instruction himself without lessening mine; as he who lights his taper at mine, receives light without darkening me. That ideas should freely spread from one to another over the globe, for the moral and mutual instruction of man, and improvement of his condition, seems to have been peculiarly and benevolently designed by nature, when she made them, like fire, expansible over all space, without lessening their density in any point, and like the air in which we breathe, move, and have our physical being, incapable of confinement or exclusive appropriation. Inventions then cannot, in nature, be a subject of property.

Jefferson then added, “Society may give an exclusive right to the profits arising from them, as an encouragement to men to pursue ideas which may produce utility, but this may or may not be done, according to the will and convenience of the society, without claim or complaint from anybody.” Here Jefferson assumes what most people assume: that patents may be necessary for innovation. Who would invest capital to create a new product if anyone may copy it? But we may ask how innovation will come from a system that protects patent holders from competition by barring others from building on previous innovations or that permits legal extortion (see the BlackBerry case)?

Leaving aside whether utilitarian considerations trump natural rights, we can address these questions in light of a transnational study of the pharmaceutical industry contained in the not-yet-published book *Against Intellectual Monopoly*, by Michele Boldrin, profes-

sor of economics at the University of Minnesota, and David K. Levine, Armen Alchian Professor of Economics at UCLA and coeditor of *Econometrica* (online at [www.dklevine.com/general/intellectual/against.htm](http://www.dklevine.com/general/intellectual/against.htm)). The strongest case for patents is said to be in the pharmaceutical industry because the extraordinary R&D costs could not otherwise be recouped. If the utilitarian case cannot be sustained there, it would be a deadly blow to the case in general.

“In fact,” Boldrin and Levine write, “we shall see that the case for patents in pharmaceuticals is weak—and so, apparently, even under the most favorable circumstances patents are not good for society, for consumers, or in this case, for sick people. Patents are good for monopolists, but that much we knew already.”

Given the vastly different patent regimes from country to country and historically, with several countries having none at all, we might expect a pattern: “In particular, at least between 1850 and 1980, most drugs and medical products should have been invented and produced in the United States and the United Kingdom, and very little if anything in continental Europe. Further, countries such as Italy, Switzerland and, to a lesser extent, Germany, should have been the poor sick laggards of the pharmaceutical industry until the other day. Instead . . . the big time opposite is and has been true.”

Their most striking illustration is Italy, which had no pharmaceutical patents until 1978. Yet, “[d]espite this complete lack of any patent protection, Italy had developed a strong pharmaceutical industry: by the end of the 1970s it was the fifth world producer of pharmaceuticals and the seventh exporter. . . . [T]he forty largest Italian firms did not simply imitate but developed their own products and innovated extensively.” After patents were introduced, the industry became more concentrated and its share of world drug development fell slightly.

As W.S. Gilbert might have put it, with patents “things are seldom what they seem.”

★ ★ ★

Is New Urbanism a philosophy of architectural design consistent with freedom and property rights? Or just another form of local central planning? Steven Greenhut is on the case.

When a television series popular with libertarians goes off the air, there’s only one thing to do: wait for the movie. Raymond Keating reviews *Serenity*.

Politicians can do bad things to the economy that nevertheless get them credit or good things (namely, getting out of the way) that gets them no credit. Which do you think they will choose? Dwight Lee has the answer.

Much of the push for taxpayer-financed mass transit is based on safety claims. But there’s a problem: mass transit is not unambiguously safer, as John Semmens shows.

Over 150 years ago Antonio Rosmini died. Virtually unknown in America, he was a Catholic priest and a much-published Italian champion of individual liberty and private property. Alberto Mingardi tells Rosmini’s remarkable story.

In New Hampshire, as in most places, giving manicures without a license can get you into trouble. Gardner Goldsmith has the account of a man who asked for it.

No organization has done more to promote free markets in Great Britain than the Institute of Economic Affairs, and no one was more responsible for making the institute what it is than Arthur Seldon, who died last year. Norman Barry has written an appreciation of this author-activist.

After falling, gasoline prices are on the rise again, meaning politicians will be calling for some kind of price controls or windfall-profits tax. Arthur Foulkes heads them off at the pump.

Are the ideas in John Stuart Mill’s *On Liberty* dated? In our FEE Timely Classic from 1956, Frank Chodorov defends Mill against a distinguished conservative critic.

Here’s what our columnists have been working on: Richard Ebeling describes the Great Austrian Inflation. Donald Boudreaux pays tribute to books he’s found important. Burton Folsom traces the origins of farm subsidies. Walter Williams continues his Economics for the Citizen series. And Roy Cordato, hearing a claim that a higher gasoline tax will “solve everything,” protests, “It Just Ain’t So!”

Books about unplanned order, global markets, tax-financed political campaigns, and free speech on campus have caught the eyes of this month’s reviewers.

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