

THE ORIGIN OF PROPERTY RIGHTS: A CRITIQUE OF ROTHBARD AND HOPPE ON NATURAL RIGHTS

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The natural right to self-ownership, and the right to homestead that with which one mixes his labor, are the twin axioms upon which all libertarian social thought rests, according to Murray Rothbard and Hans-Hermann Hoppe. This paper contends that while Austrian economists have made unique and valuable contributions to economics in many areas, the ethical defense of property rights espoused by some Austrians is flawed.¹

In contrast to the utilitarian approaches of mainstream economists, Rothbard and some other Austrians propose a normative approach based on two “self-evident” axioms.² The first of these is the right of self-ownership: “the absolute property right of each individual in his own person.”³ The second axiom, which is alleged to follow from the first, is the homesteading right: “the absolute right in material property of the person who first finds an unused material resource and then in some way occupies or transforms that resource by the use of his personal energy.”⁴ In Rothbard’s own words,

the basic axiom of libertarian political theory holds that every man is a self-owner, having absolute jurisdiction over his own body. In effect, this means that no one else may justly invade, or aggress against,

another’s person. It follows then that each person justly owns whatever previously unowned resources he appropriates or “mixes his labor with.” From these twin axioms—self-ownership and “homesteading”—stem the justification for the entire system of property rights titles in a free market society.⁵

There is much that is commendable in the immense body of work from Rothbard and Hoppe on the necessity of private property.⁶ Yet for all its strengths, there remain some flaws in the foundations of libertarian property rights theory. Ultimately, this paper argues, the natural rights approach to property rights is based on a set of unsupported assumptions—which some might call “faith.” Rothbard, Hoppe, and their followers are right to seek fundamental ethical norms to support private property rights, but key parts of their arguments depend on faith: a faith their readers may not share. Faith is certainly not incompatible with economics, but the statement of faith should at least be made clear rather than maintaining the pretense that there are universally accepted external standards by which an argument may be tested. Presuppositions are necessary to any argument, but presuppositions vary. Christians, for instance, presuppose the truth of Biblical revelation. A revelation-based approach is neither more faith-dependent than, nor inferior to, the natural rights approach employed by Rothbard and Hoppe. For the Christian, the ethics of property ownership originate not with natural rights but with Biblical truth. This in no way undermines the imperative of private property, but rather places it in its proper context.

The first section of this paper critiques the self-ownership axiom by asserting the property rights of the Creator. Section two discusses the homesteading axiom. Section three makes applications to the difficult ethical issues surrounding animal rights, abortion, and children’s rights. Section four concludes the paper.

Is Every Man a Self-Owner?

Hans-Hermann Hoppe defends the self-ownership axiom by contending that the process of argumentation necessarily presupposes the existence of self-ownership and private property:

... [A]rgumentation ... is a form of action requiring the employment of scarce means; and furthermore that the means, then, which a person demonstrates as preferring by engaging in propositional exchanges are those of private property. For one thing, obviously, no one could possibly propose anything, and no one could become convinced of any proposition by argumentative means, if a person's right to make exclusive use of his physical body were not already presupposed.⁷

That is, to verbally oppose private property is self-contradictory. Because one must assert private property rights in one's own body in order to make any argument

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whatsoever, one cannot make any consistent argument against private property. Also, anyone who argues must presuppose the right of the other person to accept or reject the argument, for if this right were not recognized, brute force would supplant free discussion. Thus, Hoppe argues, any participant in discourse must implicitly recognize certain basic property rights of the listener.⁸ Many in the Austrian school of thought have found Hoppe's reasoning appealing, and have adopted it as their ultimate defense of private property and, ultimately, of the system of anarcho-capitalism.⁹

Hoppe, as a Kantian, rests his defense of the self-ownership axiom upon self-evident "synthetic *a priori* propositions." These propositions are established not through observation or formal logic, but through "inner, reflectively produced experience."¹⁰ Why, then, are these self-evident? Drawing from Kant, Hoppe answers,

[I]t is not because they are evident in a psychological sense, in which case we would be immediately aware of them. On the contrary, Kant insists, it is usually much more painstaking to discover such axioms than it is to discover some empirical truth such as that the leaves of trees are green. They are self-evident because one cannot deny their truth without self-contradiction; that is, in attempting to deny them one would actually, implicitly, admit their truth.

How do we find such axioms? Kant answers, by reflecting upon ourselves, by understanding ourselves as knowing subjects. And this fact—that the truth of *a priori* synthetic propositions derives

ultimately from inner, reflectively produced experience—also explains why such propositions can possibly have the status of being understood as necessarily true.¹¹

This is essentially an admission that *faith* is necessary to establish these axioms. Rothbard and Hoppe depend upon the rule of ethics that an ethical system must apply equally to all people.¹² They do not present a reason why this rule of ethics must hold true. If this rule did not hold true, a special entity or class of entities could own one or more people. It is no defense to place the burden of proving the existence of owned people on the opposition, for neither Hoppe nor Rothbard presents any compelling reason to believe that this universality rule should hold over any other ethical rule. No justification is offered other than the "self-evident" nature of these principles. To argue the universality rule based on a majoritarian argument seems to ignore grave epistemological difficulties.

Because the libertarian theory of property rights is essentially faith-based, it is no more "objective" than any other faith-based property rights theory. The Christian may assert that God is the creator, and therefore the owner, of all men.¹³ The Christian ethical system applies equally to all people in principle, not because God is *constrained* by an external rule of ethics but only because God has *chosen* to act in this way with his creation. Though it appeals to our sense of fairness to say that an ethical rule should apply to all people equally, the universality rule cannot stand apart from an ethical system that supports and applies it. The burden of proof might just as well be placed upon Hoppe to show that the universality rule is superior.

However, let us concede Hoppe's point for the sake of argument; *i.e.* if I attempt to justify slavery to another individual, then that effort in and of itself shows that I view the listener as one who enjoys self-ownership. So what? This rules out only a small (and historically unimportant) class of tyranny. For it would still allow one Nazi to say to another, "We are masters of all Jews." This would involve no contradiction. Hoppe's argument even allows the would-be tyrant to say *to himself*: "I alone am the supreme being, ruling over all others."

It cannot be countered that to implement these plans for conquest, verbal commands would need to be issued at some point to the alleged slaves. For we frequently give verbal commands to beasts of burden, pets, computers with speech recognition programs, etc., and clearly there is no implication that these items enjoy self-ownership. Therefore, even if Hoppe is correct, all our tyrants need to do is be careful to avoid ever trying to justify the slavery of the masses *to the masses themselves*. So long as they do this, even accepting Hoppe's argument, they are not being inconsistent.

Libertarian rhetoric vociferously opposes slavery, of course, but Rothbard and Hoppe fall short of a consistent repudiation of slavery. Rothbard (1998) addresses the possibility that one class of humans might own (or partially own) another class, basing his argument on the unsupported universality rule:

. . . [H]ere, one person or group of persons, G, are entitled to own not only themselves but also the remainder of society, R. But, apart from many other problems and difficulties with this kind of system, we cannot here have a universal or natural-law ethic for the human race. We can only have a partial and arbitrary ethic, similar to the view that Hohenzollerns are by nature entitled to rule over non-Hohenzollerns. Indeed, the ethic which states that Class G is entitled to rule over Class R implies that the latter, R, are subhuman beings who do not have a right to participate as full humans in the rights of self-ownership enjoyed by G—but this of course violates the initial assumption that we are carving out an ethic for human beings as such.¹⁴

The “initial assumption” here is inappropriate, in a critical aspect. As Christians, we are not carving out an ethic for ourselves, but following the ethical system imposed on all humanity by God. That ethical system, contained in the Bible, asserts our humanity and provides certain protections against unjust enslavement, theft, murder, etc. Yet the Bible makes very clear that there is a distinction between the Creator and the creation. Following Rothbard’s pattern in the quotation above, Christians would argue that we are not subhuman, but we *are* sub-God. God is in fact the only being to enjoy true self-ownership and the authority to homestead the work of his hands.

The self-ownership axiom is not intuitively obvious. It is a statement that is essentially arbitrary and must be accepted by faith.¹⁵ Questions of faith certainly bear on economics, but without an internally consistent, trustworthy revelatory document, these questions cannot be answered definitively. Neither Rothbard nor Hoppe present or even argue the existence of such a document. It is also no defense to defend the self-ownership axiom with the homesteading axiom,¹⁶ for the homesteading axiom has difficulties of its own. The entire system derived from the faith-based assertion is therefore on shaky ground. Those who do not share Rothbard’s or Hoppe’s faith will not necessarily accept this first axiom.

Property and the Homesteading Principle

Murray Rothbard, following John Locke, argues that each human is entitled to appropriate all those unowned substances outside his own body with which he mixes his labor because each human must make use of substances

outside his own body to survive. There is some ambiguity here as to the extent of “mixing” necessary to produce a property right in an unclaimed resource. One cannot simply affix a flagpole in a beach and lay claim to all unowned land for a thousand miles in every direction, Rothbard says.¹⁷ Yet exactly how much transforming of the land must take place before a title to the land is held by the settler? Is the claim limited to the area of the settler’s footprints and the grains of sand displaced by the flagpole? With no appeal to common law or a legitimate state to adjudicate these issues, there is no unambiguous solution. Suppose I fence off forty acres of previously unclaimed land, on which I construct a house and outbuildings whose foundations cover half an acre, keep half an acre for a corral, and I plow 29 acres. Because I like to view some land in its natural state, I leave 10 acres uncleared and unplowed. Is this section of land then not truly mine? Rothbard would seem to say it is not:

Suppose, for example, that Mr. Green legally owns a certain acreage of land, of which the northwest portion has never been transformed from its natural state by Green or anyone else. Libertarian theory will morally validate his claim for the rest of the land—provided, as the theory requires, that there is no identifiable victim (or that Green had not himself stolen the land). But libertarian theory must invalidate his claim to ownership of the northwest portion. No, so long as no “settler” appears who will initially transform the northwest portion, there is no real difficulty; Brown’s claim may be invalid but it is also mere meaningless verbiage. But should *another* man appear who does transform the land, and should Green oust him by force from the property (or employ others to do so), then Green becomes at that point a criminal aggressor against land justly owned by another.¹⁸

It remains unclear how Rothbard would resolve this ambiguity without appeal to his own personal preference.

Explaining the core of the homesteading argument, Hoppe writes,

it would be . . . impossible to sustain argumentation for any length of time and rely on the propositional force of one’s arguments, if one were not allowed to appropriate next to one’s body other scarce means through homesteading action, i.e., by putting them to use before somebody else does, and if such means, and the rights of exclusive control regarding them, were not defined in objective, physical terms. For if no one had the right to control anything at all except his own body, then we would all cease to exist and the problem of justifying norms—as well as all other human problems—simply would not exist. Thus, by virtue of the fact of being alive then, property rights to other things must be presupposed to be valid, too. No one who is alive could argue otherwise.¹⁹

This is a *non sequitur*. It does not follow that because I must use certain substances outside my body, that I must therefore appropriate them as my own property. Not only is it possible to not own our own bodies, it is possible to use things that we do not own—even things essential to our survival. Again, if we can imagine the existence of an entity or class of entities that owns a person or group of persons, we can easily imagine that that entity also owns all substances necessary for that person’s survival. For some reason, that entity may permit the use of the human body and substances surrounding that body. Of course, this is the Christian view. The Bible makes very clear that God owns the world, and all that is in it.²⁰ Our bodies, and all we possess, may be thought of as being provisionally lent to us for our temporary use, enjoyment, and service of God.

God is in fact the only being to enjoy true self-ownership and the authority to homestead the work of his hands.

Ironically, Rothbard’s own arguments for homesteading parallel Scripture’s contention for God’s sovereignty over all his creation:

Surely, it is a rare person who, with the case put thus, would say that the sculptor does not have the property right in his own product. For if every man has the right to own his own body, and if he must grapple with the material objects of the world in order to survive, then the sculptor has the right to own his own product which he has made, by his energy and effort, a veritable extension of his own personality. He has placed the stamp of his person upon the raw material, by “mixing his labor” with the clay.²¹

When God made Adam and Eve in his image, he acquired property rights in all mankind. As Rothbard himself says, “By what right do they appropriate to themselves the product of the creator’s mind and energy?”²² As Isaiah said, “Surely you have things turned around! Shall the potter be esteemed as the clay; For shall the thing made say of him who made it, ‘He did not make me’? Or shall the thing formed say of him who formed it, ‘He has no understanding?’”²³

The implications of God’s ownership of and sovereignty over his creation are found throughout the Bible. R.J. Rushdoony explains the outworkings of the Christian view:

The implications of this are spelled out in the law. Sovereignty means taxing power: hence the tithe. Sovereignty means absolute jurisdiction: thus man can use the earth and his own being only subject to God’s law. Sovereignty means property rights: the Bible thus affirms the absolute ownership of the earth by God, and its possession as a steward by man under God. The private possession of property is

God’s purpose, but it is at all times subject to God’s law and taxation.²⁴

The beginning of a Biblical doctrine of property is to see God’s absolute property rights over us, and over our income, vocation, family, and total life. *What belongs to God cannot be surrendered to another.* Our sin begins with a claim that we are our own property, and it ends with our enslavement by a tyrant state.²⁵

The contrast here between Rushdoony and libertarian thinkers is striking. Rushdoony views the claim to self-ownership as the initial step toward statism, while Hoppe believes that self-ownership is a guard against statism. The different views stem from different faith-based assumptions about human nature. Rushdoony believes that the man who claims self-ownership will see himself as free to surrender his life and property to the state, and because of his fallen condition, he will tend to do so. Only the acknowledgment of God’s ultimate ownership provides a rationale for limiting the power of the state. Hoppe must assume that man has the moral fortitude to resist an unjust transfer of individual rights to the state—self-enslavement. Why is the assertion of biblical truth any less valid than Hoppe’s assertion of ideas without any appeal to revelation?

Applications to Animal Rights, Abortion and Children’s Rights

To see another problem with the *non sequitur* in the homesteading axiom, consider the life of a newborn baby. Newborns cannot appropriate to themselves any substance that is not given to them.²⁶ Though we typically do not declare that a newborn is *owned* by his parents,²⁷ it is clear that the newborn depends for his very life upon substances owned by his parents. For their own reasons, parents permit and even encourage the use of these substances by the child. Christians believe that God acts in a similar way with his creation.

It is unnecessary for a property owner to continually reassert rights to the property to retain rights to the property. The owner’s quiescence does not deprive him of the right to his property. If a person is owned by another entity, he may never even know of the entity’s existence.²⁸ Yet we see in the first chapter of Romans that God has not been silent—that the case for God’s property right over all humanity is obvious in nature—and any denial of that property right is rebellion against the Creator.²⁹ Atheists certainly do not admit to God’s existence, much less Biblical revelation or his ownership of the world. Yet their belief has no impact on the fact of God’s existence and sovereignty over his creation.

Hoppe says that to argue presupposes private property rights. He does not show that *failure to argue* implies a lack

of property rights. It is not clear, then, under Hoppe's argumentation ethic, why animals do not have property rights in their own bodies. Hoppe vociferously contests the validity of this criticism,³⁰ but his objections appear to be raw assertions: "Animals are not moral agents, because they are incapable of argumentation; and my theory of justice explicitly denies its applicability to animals and, in fact, implies that they have no rights!" Animals may not argue, but they do contest territory. Why isn't this the same thing? Even so, the Christian argues for or against certain animal rights based on biblical truth, not the presence or absence of the ability to argue.³¹ It would also appear that the killing of human fetuses, infants, the senile, mentally retarded, and comatose would be acceptable under Hoppe's ethical system, because they cannot argue.

Rothbard (1998) contends that man's rights are grounded in the nature of man; they are *natural rights*. Because man is uniquely distinguished from all other creatures by his capacity for rational thought, the "rights-ethic for mankind is precisely that: for all men, regardless of race, creed, color or sex, but for the species man alone. . . . Natural law is necessarily species-bound."³² The Christian might well agree, but the Christian would base that belief on the fact that biblical law explicitly recognizes the unique place of mankind in the world. Rothbard, in contrast, bases his argument on the sympathies of the reader. Statements beginning with "It would surely be absurd to say . . ." beg the question. Rothbard hopes to prove that "the concept of a species ethic is part of the nature of the world . . . by contemplating the activities of other species in nature." The "proof" lies in the contention that the wolf, in devouring other species, "is simply following the natural law of his own survival." In other words, ethics are species-specific because other species act as though ethics are species-specific. Apparently, the commonality of the practice implies its moral rightness—a "natural right." The principle here carries consequences at which Rothbard would likely have balked. Contemplating the activities of other species in nature might lead us to infer a natural right to infanticide. Lions, alligators, guppies, and other species often devour their young—may we then infer a natural right to do the same?

A human fetus within the body of its mother cannot argue, and what it consumes is provided entirely by the mother, perhaps without her consent. This leads many libertarians to defend the legality of abortion at any time prior to birth.³⁴ In *The Ethics of Liberty*, Rothbard lays out clearly the libertarian position on abortion:³⁵

The proper groundwork for analysis of abortion is in every man's absolute right of self-ownership. This implies immediately that every woman has the absolute right to her own body, that she has absolute

dominion over her body and everything within it. This includes the fetus. Most fetuses are in the mother's womb because the mother consents to this situation, but the fetus is there by the mother's freely-granted consent. But should the mother decide that she does not want the fetus there any longer, then the fetus becomes a parasitic "invader" of her person, and the mother has the perfect right to expel this invader from her domain. Abortion should be looked upon, not as "murder" of a living person, but as the expulsion of an unwanted invader from the mother's body. Any laws restricting or prohibiting abortion are therefore invasions of the rights of mothers.³⁶

Rothbard notes that he is not trying to establish "the *moral-ity* of abortion (which may or may not be moral on other grounds), but its *legality*, i.e., the absolute right of the mother to have an abortion." He is concerned, he writes, with "people's rights to do or not do various things, not whether they should or should not *exercise* such rights." It is certainly true that not all sins should be crimes. Yet the Bible provides not only definitions of sin, but definitions of crime (*e.g.*, Exodus 21, 22, see also cf. Matthew 5:17–19). What is rightfully legal and illegal is determined by God, not by rationalistic appeals to man's self-asserted right over his own body and right to that which he homesteads.³⁷ Whether or not we deem it proper that an unborn child should be legally protected from harm,³⁸ or that a woman should be required by law to care for her child before and after birth, these are God's requirements.

Failing to appeal to God's law concerning children forces Rothbard into a difficult situation. After defending the ownership of children by their parents, Rothbard recognizes that certain limitations would have to be placed on that ownership.

But surely the mother or parents may not receive the ownership of the child in absolute fee simple, because that would imply the bizarre state of affairs that a fifty-year old adult would be subject to the absolute and unquestioned jurisdiction of his seventy-year-old parent. So the parental property right must be limited *in time*. But it also must be limited *in kind*, for it surely would be grotesque for a libertarian who believes in the right of self-ownership to advocate the right of a parent to murder or torture his or her children.

We must therefore state that, even from birth, the parental ownership is not absolute but of a "trustee" or guardianship kind. In short, every baby, as soon as it is born and is therefore no longer contained within his mother's body, possesses the right of self-ownership by virtue of being a separate entity and a potential adult. It must therefore be illegal and a violation of the child's rights for a

parent to aggress against his person by mutilating, torturing, murdering him, etc.³⁹

At two points here Rothbard finds that his reasoning leads to conclusions he finds objectionable. For a resolution he relies partially on the reader's sympathies. First, the ownership of an older adult child by an aging parent is "bizarre," Rothbard claims, so the reader is expected to agree to the limitation of ownership in time. If an appeal to strangeness were sufficient to dismiss a position, then many libertarian positions could be rejected out of hand.⁴⁰ Why must we agree with Rothbard's notion of bizarreness?

Rothbard's concept of parents as trustees or guardians is entirely appropriate, but is defensible only from a Christian perspective.

Second, the murder or torture of children by the parents is called "grotesque." It is relieving that Rothbard agrees with Christians and others on this point, but again, our mutual agreement does not suffice as an argument against child abuse.⁴¹ To call something bizarre, grotesque, or strange implies a standard. What is Rothbard's standard?

Rothbard's concept of parents as trustees or guardians is entirely appropriate, but is defensible only from a Christian perspective. Rothbard's defense is arbitrary. A child *ex utero* has the right of self-ownership, he writes, because the child is a separate entity (no longer requiring the specific services of the mother) and a potential adult. A child has the right not to be harmed,⁴² but does not possess the right to any property or services of another. Therefore parents may legally allow a healthy child to starve to death, in Rothbard's system (though he probably would not have attached moral legitimacy to such an action).⁴³ Again, why we must accept this assertion of rights is unclear.

Yet again, this position results from a refusal to acknowledge God's ultimate ownership of all humanity. God as creator sets the rules by which all men must live, and among these is the requirement that parents provide for their children.⁴⁴ To the Christian who understands God's ownership of all things, we are only trustees of all we possess.

One less-than-adequate argument made against Rothbard's position asserts that the parents, because they have created their children, have an obligation to support and protect their children. Depending heavily on the libertarian scholar Williamson Evers, Rothbard points out the weaknesses of the creation argument: How long is this obligation to last? To what extent must the parents or guardians drain their personal resources in the support of a needy child?

The parents are still the creators of the child, why aren't they obliged to support the child forever? It is true that the child is no longer helpless; but

helplessness . . . is not in and of itself a cause of binding obligation. If the condition of being the creator of another is the source of the obligation, and this condition persists, why doesn't the obligation?⁴⁵

The most powerful argument against the creation thesis may simply be to attack the blatant assumption lying at its root: Why should creation imply any obligation toward the created thing?

Rothbard's criticism of the creation thesis is on target, as far as it goes. God, as creator, has no obligation to support any of his creation. However, he has done so, and he has established rules governing the behavior of his created beings. If Rothbard believed in the God of the Bible, he would agree to this principle. Rothbard applies this principle in his discussion of the authority of parents over children:

as long as the child lives at home, it must necessarily come under the jurisdiction of its parents, since it is living on property owned by those parents. Certainly the parents have the right to set down rules for the use of their home and property for all persons (whether children or not) living in that home.⁴⁶

Conclusion

According to Rothbard, Hoppe, and their followers, the self-ownership and homesteading axioms form the foundation of all libertarian social thought. This paper has not contended that all libertarian or Austrian thought is unsound. Austrians do have powerful criticisms of socialist schemes, and there is much to appreciate in the vast body of work that Rothbard, Hoppe, and many others have produced. What is needed now is a better, *i.e.*, a more biblical way of defending a social system based on private property rights. At present, it seems that the foundation of libertarian social thought rests upon unstable, sandy ground. All that underlies libertarian property rights theory are assertions of "self-evident" axioms.

Christians must begin to recognize, explicitly and without apology, God's ownership of creation. For the self-ownership and homesteading axioms Christians should substitute two axioms derived from the Bible: 1) God owns the creation, and 2) God provides a system of ethics that must govern our use of the creation. There is often substantial agreement between libertarian scholars and Christians on the necessity and salutary consequences of private property and a free market. However, Christians who import the natural rights approach into their own ethic of property rights may be doing so at the cost of internal consistency. Ultimately, Christians who wish to make consistent contributions to the ethics of property rights and produce constructive contributions to economics must rely on biblical truth. Such a revelation-based approach is

neither inferior to, nor less objective than, the natural rights approach.

Christians will, of course, differ on the implications of God's property right in his creation, and on the derivation and application of biblical ethical principles. It is beyond the scope of this paper to delve deeply into those issues. However, we can at least establish the necessity of private property rights in any Christian economic system, by reference to the eighth and tenth commandments and other parts of Scripture.⁴⁷ The solutions to economic problems should rest on biblically derived property rights. Once this is recognized, some of the Austrian approaches to economics can be quite useful. The Austrian emphasis on the deductive method,⁴⁸ entrepreneurship, subjective value, ordinality in preference rankings, and time, the importance of wealth effects, and certain other Austrian distinctives are valid and contribute to a better understanding of economic problems.

In fact, we can find numerous situations in which the libertarian/Austrian view and the Christian view will generate similar conclusions.⁴⁹ The existing differences appear in sharpest contrast where libertarians fail to acknowledge God's ultimate ownership and our *provisional* ownership of our persons and possessions.

Endnotes

- 1 Of course, many Austrians view Austrian economics as a body of analytical thought, not an ethical system, and believe that there is no "Austrian" ethical position. Austrians are deeply divided on their ethical views, and in many cases it is difficult to see any ethical views in their work. However, the prominent Austrian Murray Rothbard and certain of his followers (notably Hans-Hermann Hoppe) have espoused a particular ethical view in their attempts to defend private property rights. It is this view that is the focus of this paper.
- 2 See David Gordon (1993), pp. 28–30.
- 3 Rothbard (1997a), p. 279.
- 4 Rothbard (1997a), p. 279.
- 5 Rothbard (1997b), p. 127. See also Rothbard (1997a), pp. 279–288. Note the similarity between Rothbard's statement and the position of John Locke:

[E]very man has a property in his own person. This nobody has any right to but himself. The labour of his body and the work of his hands, we may say, are properly his. Whatsoever then he removes out of the state that nature hath provided, and left it in, he hath mixed his labour with, and joined to it something that is his own, and thereby makes it his property. It being by him removed from the common state nature placed it in, it hath by this labour something annexed to it that excludes the common right of other men. For

this labour being the unquestionable property of the labourer, no man but he can have a right to what that is once joined to . . . [John Locke, *An Essay Concerning the True Origin, Extent, and End of Civil Government*, V, pp. 27–28, in Laslett (1960), pp. 305–307; in Rothbard (1998), pp. 21, 22.]

- 6 See Terrell (1999), pp. 197–202.
- 7 Hoppe (1993), p. 205.
- 8 See Kinsella (1996), p. 315.
- 9 Even so, many Austrians (*e.g.* the Kirznerians, the Hayekians, and even some Rothbardians) do not agree with Hoppe's argument (see footnote 1, above), and not all Austrians would consider themselves anarcho-capitalists. Mises himself clearly believed that civil government had legitimate functions. See, *e.g.*, Mises (1995), pp. 37–40.
- 10 Hoppe (1995), p. 19. Rothbard [(1997a), pp. 64, 65] seems to allow a greater role for observation: "My view is that the fundamental axiom ["man acts"] and subsidiary axioms are derived from the experience of reality and are therefore in the broadest sense empirical. I would agree with the Aristotelian realist view that its doctrine is radically empirical, far more so than the post-Humean empiricism which is dominant in modern philosophy." Yet Rothbard qualifies this by adding that these axioms "are so broadly based in common human experience that once enunciated they become self-evident and hence do not meet the fashionable criterion of 'falsifiability'; they rest, particularly the action axiom, on universal inner experience, as well on external experience, that is, the evidence is reflective rather than purely physical; and they are therefore *a priori* to the complex historical events to which modern empiricism confines the concept of "experience."
 - 11 Hoppe (1995), pp. 18, 19.
 - 12 Rothbard writes, "if we are trying to set up an ethic for man . . . , then to be a valid ethic the theory must hold true for all men, whatever their location in time or place. This is one of the notable attributes of natural law—its applicability to all men, regardless of time or place" (Rothbard [1998], p. 42). This universality of ethical norms is, according to Hoppe, "the idea, as formulated in the Golden Rule of ethics or in the Kantian Categorical Imperative, that only those norms can be justified that can be formulated as general principles which without exception are true for everyone" (Hoppe [1993], p. 182). This definitional statement cannot suffice for a defense of the universalization test of ethical rules.
 - 13 It might be contended here that man cannot voluntarily enter into slavery. As Rothbard put it, ". . . a man can naturally expend his labor currently for someone else's benefit, but he cannot transfer himself, even if he wished, into another man's permanent capital good. For he

- cannot rid himself of his own will, which may change in future years and repudiate the current arrangement” (Rothbard [1998], pp. 40, 41). It might seem then that a resolution would require either rejecting the idea that man has an independent will, or giving up the thesis that God is owner of all men. This is a false opposition, however. God as Creator owns all men, whether or not they will it to be so. The ownership is not voluntarily entered into, neither are we slaves. We have a free will, in that we all have the freedom to do what we please, given our choices. Our choices are in turn determined by our desires, which are naturally evil in Reformed thought. St. Augustine essentially argued that we have the freedom to choose, but the ability to choose only what we want.
- 14 Rothbard (1998), pp. 45, 46. The line of argument Rothbard attempts to refute here has in fact been employed to defend human slavery. Before 1861, some defended slavery in the U.S. by asserting that blacks were subhuman—that they were not descended from Adam, but were descended in Darwinian fashion from apes. The prominent southern Presbyterian theologians Robert Louis Dabney and James Henley Thornwell argued for the “unity of the races” against this view.
- 15 Rothbard defines an axiom as a statement that cannot be refuted without contradicting oneself in the refutation. See also Rothbard (1998), pp. 32, 33. Yet this “axiom” can be refuted, as this paper attempts to do in part.
- 16 Such a defense might run as follows: Because each human was the first to make physical use of his own body, each human has effectively homesteaded his own body and is therefore entitled to property rights in it.
- 17 Rothbard (1998), p. 64.
- 18 Rothbard (1998), pp. 63, 64.
- 19 Hoppe (1993), pp. 205, 206.
- 20 Psalm 24:1, 2 states, “The earth is the Lord’s and all its fullness, The world and those who dwell therein. For He has founded it upon the seas, And established it upon the waters.” See also Psalm 47:2, 7–8; Psalm 50:10–12; Jeremiah 27:5.
- 21 Rothbard (1997a), p. 282.
- 22 Rothbard (1997a), p. 283.
- 23 Isaiah 29:16. See also Isaiah 45:9, 10, 12.
- 24 Rushdoony (1982), p. 534.
- 25 Rushdoony (1982), p. 538. See also pp. 307–310, and pp. 690–692, which says in part, “God’s law-word is binding upon man because man is God’s property We are God’s property by virtue of creation, and, because of redemption, we are doubly His, ‘bought with a price.’ Hence ‘we are not (our) own’ (I Cor. 6:19–20). We are the Lord’s, and His right to use us and to govern us is total.”
- 26 We will allow that the child can appropriate air to himself, though in many cases children are born in such a state that without outside intervention, even breathing is impossible.
- 27 This, however, is the case Hoppe and Rothbard would make. The parents cooperated in “laboring” to produce the child, who did not exist before conception. If the parents have property rights over their own bodies and substances with which they mix their labor, it follows in the libertarian system that the child is owned by the parents. See also Rothbard (1998), p. 99–112. The Christian can counter with the argument that God, as owner of all living things, retains property rights over the offspring of his creation, and lays down parental limitations and requirements. Parents may indeed own their children, in a sense, but that ownership is temporary and conditional. See below, p. 13.
- 28 Certainly the unborn child is unaware of the existence of his mother—yet a Rothbardian would defend the ownership of the child by the mother.
- 29 Romans 1:18–21.
- 30 Hoppe, (1993), pp. 205, 247.
- 31 See, *e.g.*, Deut. 25:4, John 21:9–13.
- 32 Rothbard (1998), p. 155, 156.
- 33 Rothbard (1998), p. 156.
- 34 A possible exception would be when the mother is under contract as a surrogate for another woman.
- 35 Some prominent libertarians do, of course, take exception with this position. Ron Paul is a notable example.
- 36 Rothbard (1998), p. 98.
- 37 See Rushdoony (1973, 1982, 1999).
- 38 See, *e.g.*, Exodus 21:22, 23.
- 39 Rothbard (1998), p. 100.
- 40 Including, perhaps, Rothbard’s defense of markets in children. Rothbard (1998), p. 103.
- 41 A similar case in which Rothbard “borrows” conclusions from Christian principles without acknowledging their proper source (or providing a non-arbitrary alternative means of deriving the same conclusions) is found in his chapter on punishment and proportionality in *The Ethics of Liberty* (1998). Rothbard argues that the punishment should fit the crime—“the criminal loses his rights to the extent that he deprives another of his rights.” We might all deem this principle (the *lex talionis*) just, but our mutual agreement does not make it so. See also Exodus 21:22–25. Incidentally, Rothbard’s favored principle of multiple restitution for theft also has precedent in Hebraic law—*e.g.* Exodus 22:1, 4, 7, 9. See generally North (1990). For another example, in Rothbard’s chapter “Law, Property Rights, and Air Pollution” in *Logic of Action One* (1997b), Rothbard apparently borrows again. Rothbard finds the presumption of the defendant’s

innocence in a tort case attractive (pp. 157, 158), without clearly specifying the reasons. Deuteronomy 19:15–20 shows that this presumption is indeed biblical.

42 Thus Rothbard's implied opposition to corporal punishment by the parents. See Rothbard (1998), p. 105.

43 The source(s) of Rothbard's moral pronouncements is not clear. Is it divine revelation, human custom, or Rothbard's own preferences? If divine revelation is the source, it is puzzling why Rothbard would accept divine pronouncements of the immorality of abortion or infanticide but not divine pronouncements on the legitimacy of the state to legally prohibit a subset of immoral activity.

44 See, e.g., I Timothy 5:8.

45 Rothbard (1998), p. 102, citing Evers. See also Evers (1978a, 1978b).

46 Rothbard (1998), p. 103.

47 See, e.g., Deuteronomy 19:14, Matthew 20:15, Acts 5:4. See also Beisner (1988), pp. 154–156.

48 When I was an undergraduate, the self-conscious epistemology of Austrian economics was one of the initial attractions to me. How many economists in other schools of thought can express the presuppositions of their work? Though in my view the foundational assumptions are flawed, at least Austrian methodology derives all conclusions from stated fundamental propositions.

49 See, e.g., Wohlgenant (1998).

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