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On Argumentation Ethics, Human Nature, and Law

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I am not sure if I will ever meet Hoppe in person, but I am certain that I have done my best in honoring him throughout these years—studying him, translating him, and writing inspired by him. Now, through his teachings, I have a wonderful opportunity to honor him in a very special way, making my own contribution in this book. I hope he finds this essay worthy of intellectual appreciation, and I thank him for his legacy and all the lessons he taught me in scarcely five enriching years.

In a 2016 conference, at the Annual Meeting of the Property and Freedom Society, Hoppe said that he considers the a priori of argumentation as the ultimate foundation of law, and this as his most important contribution.[[1]](#footnote-1) Here, I will explore these ideas in connection to another fundamental idea: human nature.

**Human Action and Human Life**

First, let’s start here: humans act, and every actor attaches to life as he acts and wants to improve his well-being. In fact, we act beyond an instinctive inclination to preserve life already in place.[[2]](#footnote-2) Though we are able to somehow go against our natural instincts, even then we would have presupposed life and its value for us before any subsequent manifestation in favor of death and the effective killing of ourselves. As Rothbard said, if someone were *really* opposed to life, “he would have no business continuing to be alive. Hence, the *supposed* opponent of life is really affirming it in the very process of his discussion, and hence the preservation and furtherance of one’s life takes on the stature of an incontestable axiom.”[[3]](#footnote-3)

Of course, a human body without life can exist—it is dead body—but a human being (or simply a “human”) *cannot* exist without life, because in order to be a *being* of the human species, the body must be alive, and not only alive, but functioning as rational humans have walked this world since the beginning of humankind. That is, human reason—human mind—is a natural feature of humans inseparable from human action.

As Mises said, humans are not only animals totally subject to the stimuli unavoidably determining the circumstances of their life, they are also *actors*.

In every action, an actor attempts to reach a goal by the use of some valued, scarce means chosen by him in regard to the goal itself. The valuing of the means depends on the valuing of the goals. And as he acts, a perceived environment influences him. Every action takes place in a particular point in time and space, and lasts a particular period of time known and felt subjectively only by the actor. At the same time, every action implies the possibility of a loss, i.e., the actor’s conclusion, based on new knowledge, “that the result actually achieved—contrary to previous expectations—has a lower value than the relinquished alternative would have had.”[[4]](#footnote-4)

In all of this, *understanding*, the remarkable human characteristic of thought, “deals with the mental activities of men that determine their actions. It deals with the mental processes that result in a definite kind of behavior, with the reactions of the mind to the conditions of the individual’s environment. It deals with something invisible and intangible that cannot be perceived by the methods of the natural sciences.”[[5]](#footnote-5) And every actor attaches a definite meaning to the state of his environment, values this state and, motivated by these judgments of value, resorts “to definite means in order to preserve or to attain   
a definite state of affairs different from that which would prevail” if he abstained from any purposeful reaction. Understanding is also “practiced by infants as soon as they outgrow the merely vegetative stage of their first days and weeks. There is no conscious response of man to any stimuli that is not directed by understanding.”[[6]](#footnote-6)

Every new knowledge is always knowledge coming from acting, and sometimes suitable for the goals of more than one actor. Though we are not endowed with the particular knowledge that can be acquired of the constant logical structure of acting and learning, once learned, the knowledge conveyed by praxeology and the one conveyed by propositional logic “can be recognized as necessarily true—a priori valid—knowledge, such that no future learning from experience could possibly falsify it.”[[7]](#footnote-7)

As inseparable as human action is from human mind and life, acting is the human mode for the preservation and improvement of life—the constant goal of diminishing uneasiness. Acting means, in this sense, living in the constant goal of life improvement. What a life improvement means can be something more complicated, but it is, praxeologically, a matter of personal choice and human nature (time preference, disutility of labor, etc.). In any case, the particular improvement can only be felt by the actor.

So far, so good. Every actor is a member of the human species who tries to change or maintain at least one aspect of his environment that he deems not possible without his action—for his own purposes and satisfaction. Because of this, the concept of causality is implied in the human mind. And since we are humans, we are in a position to grasp the meaning that the actor has attached to his action. This comprehension of meaning enables us “to formulate the general principles by means of which we explain the phenomena of action.”[[8]](#footnote-8)

**Property, Property Rights, and Justice**

But then, in order to be possible for actors to act beside his fellows actors and use physical, scarce means so that conflicts[[9]](#footnote-9) over the use of these means cannot possibly arise,[[10]](#footnote-10) the concepts of property and property rights, and the following of certain norms are inevitable. On the one hand, *property* is a normative concept designed “to make a conflict-free interaction possible by stipulating mutually binding rules of conduct (norms) regarding scarce resources.”[[11]](#footnote-11) On the other hand, the legitimate ability to exclude others from using *our* goods and bodies, and to use force or its threat for the observance of others of this ability is what we call *property rights*.[[12]](#footnote-12)

Nonetheless, who owns what scarce resource as his property?

In the light of Hoppe’s teachings: Each person owns his body that only he controls *directly*, as he also does it when discussing and arguing any question at hand (actually, no person can give up this control as long as he is alive). Otherwise, in any property dispute, it would be impossible for two contenders to ever argue and debate on whose claim should prevail, since arguing and debating presupposes that both have exclusive control over their respective bodies so to come to the correct judgment on their own in a conflict-free form of interaction.

And as for scarce resources that can only be controlled *indirectly*—or that must be appropriated:

Exclusive control (property) is acquired by and assigned to that person, who appropriated the resource in question *first* or who acquired it through voluntary (conflict-free) exchange from its *previous* owner. For only the first appropriator of a resource (and all later owners connected to him through a chain of voluntary exchanges) can possibly acquire and gain control over it without conflict, i.e., peacefully. Otherwise, if exclusive control is assigned instead to *latecomers*, conflict is not avoided but contrary to the very purpose of norms made unavoidable and permanent.[[13]](#footnote-13)

In sum, these are the norms of property rights acquisition.

Any acquisition of property not made by following these norms must be recognized contrary to the purpose of norms, i.e., the evasion of conflicts. Obviously, men can tell the difference when property is acquired by following these norms or not. And as men have a natural need to survive, eat, shelter, and be at ease (the constant goal of diminishing uneasiness), when property is increasingly not acquired by these norms, not only the frequency of conflicts increases and society tends to disappear, but the people who *suffer* by the actions of the non-followers of these norms are increasingly presented with disincentives to follow them if the non-followers are increasingly presented with incentives not to. This suffering comes from *aggression*, the action of aggressing others by exercising unwanted control over their goods and bodies.[[14]](#footnote-14)

Accordingly, *justice* is a concept designed to allow men the restoration and/or compensation vis-à-vis a conflicting change of a status of property control. It allows men to act against aggressors for trying to restore control and/or compensate a loss of control suffered, and thus diminishing the uneasiness provoked by aggression. Justice is actually a human need founded in the satisfaction of men in controlling the property aggressed. On this account, there is a *praxeological* justification for justice, i.e., a *natural* justification, because the need for justice comes necessarily from the demonstrated preference and the assignation of value to the things controlled and/or acquired in the first place by the aggressed. At the same time, justice is a necessary requirement for promoting the evasion of conflicts, for it disincentivizes potential aggressors by diminishing the potential benefits of aggressing.

The need for justice is caused by the contrary to it, i.e., *injustice*, and for that reason, the acts against the norms of property rights acquisition are *unjust*, and the acts in accordance with them are *just*. Therefore, as the concept of justice is necessarily dependent on these norms, justice is also a normative concept. [[15]](#footnote-15)

**Argumentation Ethics and Social Life**

Beyond praxeology, things are similar with argumentation: we are not endowed with the particular knowledge that can be acquired of the constant praxeological structure of arguing and (dis)agreeing, but once learned, the knowledge conveyed by the a priori of argumentation and the one conveyed by propositional logic can also be recognized as necessarily true—a priori valid—knowledge, such that no future learning from experience could possibly falsify it.

Argumentation presupposes the ability to speak and think in a common language known to others—and the fact of being able to argue due to the learning of communicative experiences. Indeed, the human capacity to organize knowledge and experience is intimately related to human language. For example, no matter how much someone contradicts reality by saying what he thinks, he cannot help but think in a language that connects him to reality, a language composed of words that refer to it and implies an understanding of it—however imperfect—in order to say what he says.

In argumentation—a purposeful human activity—we assume that others can understand us and that we might change some previous understanding in their minds about the validity of some truth-claim. However, argumentation also presupposes that we argue with ourselves: that we first convince ourselves of the truth-claims to be presented and of the reasons to argue in favor of them. And even when we know that we are making false claims, we pretend they are true, because we have some goal to be reached by lying and presenting a scene of a serious argumentation.

As any reader of Hoppe may know: All truth-claims are raised and justified in the course of an argumentation. To claim the previous proposition as false is only possible by falling into performative contradiction, because the claim itself has to come in the form of an argument, i.e., affirming the very truth of the proposition. Hence, the *a priori* of argumentation.

Argumentation is a conflict-free, and mutually agreed upon, form of interaction that can teach us that there are *praxeological* presuppositions of argumentation that cannot be argumentatively disputed without falling into a performative contradiction. These presuppositions are:

First, each person must be entitled to exclusive control or ownership of his own physical body, the very means that he and only he can control directly at will, so as to be able to act independently of one another and come to a conclusion on his own (that is, *autonomously*).

And second, for the same reason of mutually independent standing and autonomy, both proponent and opponent must be entitled to their respective prior possessions, i.e., the exclusive control of all other external means of action appropriated indirectly by them prior to and independent of one another and prior to the onset of their argumentation.[[16]](#footnote-16)

If a proponent of an argument claims that the truth cannot be arrived at, he actually accepts the possibility of truth on the spot, for he hopes that his opponent will be able to accept his argument as true—as he does it by presenting the argument. Yet the proponent has condemned his argument to falsehood, because by denying the possibility of truth, he cannot refute the idea that his denial is false, since it is not possible for his argument to be true in virtue of the fact that he has argued. Therefore, even if only implicitly, in argumentation, every person accepts that what is true and what is false exist. And he accepts that relativism regarding the norms for peace is an argumentatively unsustainable position, since in every argumentation, all his arguments will rest on the recognition of the real possibility of deliberating disputes without relying on anything more than peaceful methods.

But property rights are not derived from argumentation or from the fact that no immediate fight followed a disagreement. What is more crucial is that argumentation presupposes that humans understand what a peaceful (and a violent) interaction means even before ever arguing. By being able to know that, the “ought”-prescription (the normative for peace) is not derived from argumentation but is implicit  
in the “is”-description (the positive of peace) of it:[[17]](#footnote-17) The facts and norms that make argumentation possible, and the fact that they can be understood and respected in advance and regardless of argumentation have to be recognized as irrefutable truths—because denying this is only possible by denying the fact of having understood and respected property rights even before actually arguing for the first time, which the denier necessarily did.

Happily, social life is possible and mostly peaceful in spite of conflicts occurring, because most people act accordingly to the norms to evade them, that being socially and sufficiently extended on moral grounds or on self-interest-driven deliberation in the benefits that social cooperation and division of labor can serve to every person for his own interests, or on how much of each way, is another question. The truth is that people are normally used to respecting the property of others by not considering as theirs innumerable things around them that are already linked to their actual owners. And if the contrary were true, too many conflicts would ensue, and no society could ever exist or subsist much longer.

We also know that the norms of property rights acquisition are not mere conventions but necessary institutions. As Hoppe reminds us, a convention serves a purpose, and an alternative to a convention exists. Yet there is no alternative to the purpose of conflict avoidance other than the norms of property rights acquisition. Because, without a pre-established harmony of interests among actors, conflicts can only be prevented if all things are always in the exclusive ownership of specific individuals and the answer to who owns what and who does not is always clear. As well, conflicts can only be avoided from the beginning of humankind if property is acquired “by acts of original appropriation (instead of by mere declarations or words of latecomers).” [[18]](#footnote-18)

**Property Rights and Human Nature**

If rights exist in nature, which includes humans living there from the beginning of humankind, then, those natural rights can only be the ones of humans, who have the right to appropriate and use all the unowned nature around. In other words, as property rights are human rights only, and humans have a given nature, i.e., they have specific characteristics (like acting) that make them humans and different from any other animal or entity around; then, property rights are rights of human nature, that is, they are natural rights for humans. In short, property rights are natural rights.

Yet to recognize human nature means to recognize given facts of human nature,[[19]](#footnote-19) and this, with the knowledge of living in a world when scarcity and conflicts can and actually occur, must constraint the validity and practicability of any proposal for a theory of rights. If this were not the case: Why not include cats and dogs as humans? Why bother to save and labor for eating and surviving? Why bother to follow norms and cooperate with others? In addition, the theory of rights proposed must be one practicable *from the beginning of humankind*.

As Rothbard explained, the separation between theory and practice is artificial and fallacious. A correct theory works in practice, and an incorrect one does not. This is true in ethics as well as anything else:

If an ethical ideal is inherently “impractical,” that is, if it *cannot* work in practice, then it is a poor ideal and should be discarded forthwith. To put it more precisely, if an ethical goal violates the nature of man and/or the universe and, therefore, *cannot* work in practice, then it is a bad ideal and should be dismissed as a goal. If the goal itself violates the nature of man, then it is also a poor idea to work in the direction of that goal.[[20]](#footnote-20)

Furthermore, human nature implies not only specific characteristics that differentiate humans from the rest of animals or entities around, but also differentiate each of the two human sexes from the other sex, while maintaining the humanity between the two.[[21]](#footnote-21) And since the most basic and recognizable facts of human nature are as unchangeable, obvious and known as any other truth naturally assumed by humans of all times—for instance, that we *own* our bodies, we *are* our bodies, and we are either males or females. Then, in social theory, this basic knowledge of human nature can and should be considered a priori true, as knowledge that comes from reasoning based on self-evident truths. And it is this kind of recognition of human nature that allows us to state that a proposed theory of rights can be the correct one for any society and for any time, by virtue of the fact that humans do not cease to be humans because they form different societies with different customs that come about in different times and places.

That being said, the facts of human nature can be dealt with by social theory in a correct or incorrect way, and as facts, by definition, they must and can only be deemed correctly as given. We can discuss to some extent which and how all these facts are, but we cannot coherently deny the existence of them and the fact that we live and understand the surrounding things through our human nature—not without presenting the explicit denial in the form of an argument, an *only-human* characteristic.

However, when do property rights start? If property rights cannot be disentangled from the fact of scarcity, the possibility of conflict, and human nature, and if human nature, as all-time human experience reaffirms, has always taught us that a new, *separated* human body has been prepared to be and live in the world outside the mother when birth happens; then, property rights must start at birth, when the truly *human* life of a new human *being* starts; here, a new *individual* is born and appears for the first time in a world where scarcity and conflicts occurs—where property rights have their actual meaning and function.

To reassure this, we can demonstrate some unsolvable problems with any alternative before birth, especially with the only non-arbitrary one. Of course, for a human to be born, there must exist before birth a specific point in time when something unique happened inside the woman, an *original moment* when the natural process of forming what will become a human being started. If property rights started before birth, it would have to be at this original moment, because any other point later is simply a matter of time and process until birth—an arbitrary point. Nevertheless, this original moment is an unknown specific point in time for human knowledge and intersubjectively impossible to be established. To explain further, since property rights “cannot be conceived of as being timeless and unspecific with respect to the number of persons concerned,”[[22]](#footnote-22) to admit property rights at that original moment is not a practicable way for humans to know when (time) and how (space) a human being starts and must, from that moment on, be recognized as a holder of rights. Besides that, before birth, what’s forming inside the woman is still naturally included in the woman’s right to self-ownership. As a matter of fact, the *potential* human being can only be considered, as long as it is a matter of rights, a *natural* property of the woman, as everything inside her is, *prima facie*, hers. Indeed, it would be a conceptual inconsistency to consider the woman and what’s inside her both as individuals (only she is an individual).[[23]](#footnote-23)

Moreover, only at birth, an objective, intersubjectively ascertainable link (unequaled) between the mother and the baby born is established and makes, *temporally*, due to natural circumstances, the relationship between them similar to one of an owner and a live property owned. Not because the baby is not already a self-owner human being (who can only be controlled *indirectly*), but because this is the immediate way the mother can defend her unsurmountable claim to take care of the baby (naturally hers) from now on and exclude any other person from the ability of exercising any unwanted control over him. Either she has this right on him, or anyone (including the father) could *rightfully* snatch him forever because she does not have that right to him. But she does have it. Human nature, i.e., the natural structure of human reproduction, and the fact that her unsurmountable claim and link comes from an unparalleled previous condition of natural ownership implies that it *cannot* exist an equal right to the baby for anybody else, not even for the father. Whatever right the father has to the baby, it comes necessarily after the one of the mother and is dependent on her right.[[24]](#footnote-24)

Finally, property rights cannot start at any other point in time but at birth. It is not an arbitrary point but a necessary one.[[25]](#footnote-25)

**Law, Argumentation, and Human Nature**

Since the existence and prosperity of society cannot dispense of a sufficient following of the ethics of property rights, peace and justice are crucial for protecting the truly *natural* and *common* interests of all the members of society who cooperate day by day. Thus, whenever and wherever injustices occur, people do not need to be the strict victims of them to feel uneasy and worry about being the next, and give rise to the desire for a just society. Put briefly, the need for justice will never disappear in any society.[[26]](#footnote-26)

As we know, men only have to follow the norms of property rights acquisition for maintaining peace. Yet not everyone does so. Accordingly, it becomes necessary to punish and deter their non-compliance, so as to bring justice, promote peace and prevent ever more injustices. As every human endeavor is supposed to satisfy human needs and desires, from structures for living and leisure up to security enterprises, also for peace and justice, men associate and make use of their characteristics as men—as social beings and generators of culture. Wherever there are men, they are different in almost every kind of matter. Several things can influence justice (restitution, retribution,  
penalty, etc.) and peacekeeping structures: families, talents, hierarchies, knowledge, moral integrity, wisdom, customs, wealth, free markets, division of labor, and more. With all this, a *social institution* for the application of justice and the promotion of peace emerges: *law*.

As a social institution, law can only come about peacefully, and as argumentation is a truth-seeking activity presupposing property rights among independent units of decision-making, the epistemological basis for law is the right of every person to his own body and properties. For if a person had no *jurisdiction* over his properties, and no legitimate way to demand respect or the punishing of others (restitution, retribution, penalty, etc.) for being aggressed, on what grounds would he claim that others do not have the right to use his properties against his will?

It is in this way that the a priori of argumentation can be correctly considered as the ultimate foundation of law, because there is no other *rational* way for the establishment of law: for any amount of rules to be discussed, settled and applied, and for any amount of specific ways of procedures to become suitable and traditional in law, a set of facts and basic norms for peaceful cooperation—as in argumentation—in order to allow as much as possible the well-being of all people involved must already exist and be known and practiced. This set of facts and basic norms precedes: first, any case of organizing any other specific body of rules or procedures to be established; and second, any case of improving or changing the details for its upkeep.

And what about the upkeep of a social order based on the ethics of property rights. Ultimately, any social order relies on the ideology of the people, i.e., on the most accepted ideas in society. But ideas have no way of being transmitted and made popular and accepted enough in any society if not by means of convincing others about them, i.e., if not by argumentation. Owing to this, social orders also require a self-enforcement continued process. They are not maintained automatically: “they require conscious effort and purposeful action on the part of the members of society to prevent them from disintegrating.”[[27]](#footnote-27)

Coming back to legal matters, the inevitability of property rights is implied in any legal system, because any legal system attributes rights to physical things, binding to those things the social and general recognition of some actions (including force) as legitimate for the enforcement of those rights. And even when the system allows some systematic infringement of property rights in favor of some people, it cannot abandon completely the framework and function of property rights. At the end of the day, the norms of property rights must be followed at a sufficient level to prevent the injustices from reverting the relative peace and leading to the destruction of society.

And if law were *only* founded in consensus, not solely it would have no unequivocal ground to inspire and assure certainty as a universal and social institution for justice and the maintenance of peace in societies across time, but it would turn into a sort of empty box that could be filled with almost anything as a reason for the use of force as supposedly legitimate, as long as lawmakers agree on it and on the requisites for consensus they see fit for enacting laws. The truth is that one needs to assume the idea of a universal and unequivocal (natural) law for all times to even say that a crime is a particular crime with its particular characteristics that can be legitimately pursued and punished as soon as one day or as late as ten years after its occurrence, and that it would have been considered the same crime too in any time of the past. In fact, only by assuming human nature as a given and a priori true restrictive condition as we do here, it can be possible to correctly affirm that only one true theory of rights and one true (natural) law for all humans of all times exist regardless of the state of technology.

In top of all, if law were *only* founded in consensus, it would amount to: that laws are *created* out of people’s wishes and agreements; that laws are *not* discovered or recognized at all as being laws *beyond* people’s wishes and agreements; that nothing can be said to be true about law *now and forever* beyond people’s wishes and agreements. And as law implies the use of legitimated force, if someone thinks that these ideas about law must prevail, he has accepted then the principle of power legislation as the only legal system for justice and peace—that might makes right. But this is the very foundation for legal corruption and the perversion of law.

Additionally, if this same person says that the principle of power legislation is just (or legitimate), he believes this claim about law to be true. Yet then, to be the legal relativist he is, he is really recognizing, without explicit admission, that there are (objective) truths about law beyond consensus. That being so, objective law cannot be a myth. If it were a myth, no government monopoly on law would ever have the need of convincing the people for obtaining acceptance and legitimacy. In the end, in order for any society to work, law is implicitly and correctly understood as objective, and because of that, it can be explicitly and correctly recognized as objective. It is the myth of the need of government monopoly on law that prevails and allows the perversion of law.

1. Hans-Hermann Hoppe, “PFP163 | Hans-Hermann Hoppe, ‘On The Ethics of Argumentation’ (PFS 2016),” *Property and Freedom Podcast* (June 30, 2022). [↑](#footnote-ref-1)
2. As Mises would explain, there are types of behavior that cannot be thoroughly interpreted with the methods of the natural sciences, but neither be considered as (purposeful) human action. We observe then: “first the inherent tendency of a living organism to respond to a stimulus according to a regular pattern, and second the favorable effects of this kind of behavior for the strengthening or preservation of the organism’s vital forces.” And as we found “no trace of a conscious mind behind this behavior, we suppose that an unknown factor—we call it instinct—was instrumental.” Ludwig von Mises, *Human Action: A Treatise on Economics*, Scholar’s ed. (Auburn, Ala: Mises Institute, 1998; https://mises.org/library/book/human-action), p. 27. [↑](#footnote-ref-2)
3. Murray N. Rothbard, *The Ethics of Liberty* (New York: New York University Press, 1998), pp. 32–33. [↑](#footnote-ref-3)
4. Hoppe, *Economic Science and the Austrian Method* (Auburn, Ala: Mises Institute, 2007; www.hanshoppe.com/esam), p. 24. [↑](#footnote-ref-4)
5. Mises, *The Ultimate Foundation of Economic Science: An Essay on Method* (Princeton, N.J.: D. Van Nostrand Company, Inc., 1962; https://mises.org/library/book/ultimate-  
   foundation-economic-science), p. 43. [↑](#footnote-ref-5)
6. Ibid., p. 44. [↑](#footnote-ref-6)
7. Hoppe, “On Certainty and Uncertainty,” in *The Great Fiction: Property, Economy, Society, and the Politics of Decline* (Second Expanded Edition, Mises Institute, 2021; www.hanshoppe.com/tgf). [↑](#footnote-ref-7)
8. Mises, *Epistemological Problems of Economics*, (Auburn, Ala: Mises Institute, 2003; https://mises.org/library/book/epistemological-problems-economics), pp. 137–38. [↑](#footnote-ref-8)
9. Insofar as goods are superabundant, “no conflict over the use of goods is possible and no action-coordination is needed.” Hoppe, *A Theory of Socialism and Capitalism: Economics, Politics, and Ethics* (Auburn, Ala.: Mises Institute, 2010; www.hanshoppe.com/tsc), p. 158, n. 120. [↑](#footnote-ref-9)
10. A conflict arises whenever two actors try to use one and the same physical means “for the attainment of different goals, i.e., when their interests regarding such means are not harmonious but incompatible or antagonistic. Two actors cannot at the same time use the same physical means for alternative purposes. If they try to do so, they must clash.” Hoppe, “PFP163.” [↑](#footnote-ref-10)
11. Hoppe, *A Theory of Socialism and Capitalism*, p. 18. [↑](#footnote-ref-11)
12. One can say that the concept of property rights (or “rights”) is simply assumed. But does the opponent of the concept have rights on anything at all to be able to oppose it in an argumentation? Or does anyone have the right to shut the mouth of the opponent with a blow at any time to not listen to his argument? Would the opponent then defend his right to exclude anyone from using his body in order to argue? He cannot have both. [↑](#footnote-ref-12)
13. Hoppe, *Getting Libertarianism Right* (Auburn, Ala.: Mises Institute, 2018; www.hanshoppe.com/glr), p. 25. [↑](#footnote-ref-13)
14. Aggression is a human action that implies an *intention* to aggress. So not all invasions of property rights will or have to be always considered as aggressions without reckoning intentions. For a more detailed analysis related to this notion, see Hoppe, “Property, Causality, and Liability,” in *The Great Fiction.* [↑](#footnote-ref-14)
15. This theory about justice does not preclude the deontological discussion about justice. Instead, it proves the existence of a natural, praxeological foundation for justice that necessarily precedes the deontological discussion, regardless of the state of philosophical, moral, or legal knowledge at any time. In addition, and related to our analysis here, if criminal law is a set of *prohibitions* against the aggression on property rights, then, as Rothbard wrote, “the implication of the command, “Thou shall not interfere with A’s property right,” is that A’s property right is just and therefore should not be invaded. Legal prohibitions, therefore, far from being in some sense value-free, actually imply a set of theories about justice, in particular the just allocation of property rights and property titles. “Justice” is nothing if not a normative concept.” Rothbard, “Law, Property Rights, and Air Pollution,” in *Economic Controversies* (Auburn, Ala.: Mises Institute, 2011; https://mises.org/library/book/economic-controversies), p. 369. [↑](#footnote-ref-15)
16. Hoppe, “PFP163.” [↑](#footnote-ref-16)
17. Rather than claiming to having derived an “ought” from an “is,” Hoppe would say that “classifying the rulings of the libertarian theory of property in this way is a purely cognitive matter. It no more follows from the classification of the libertarian ethic as “fair” or “just” that one ought to act according to it, than it follows from the concept of validity or truth that one should always strive for it. To say that it is just also does not preclude the possibility of people proposing or even enforcing rules that are incompatible with this principle.” Hoppe, “From the Economics of Laissez Faire to the Ethics of Libertarianism,” in Walter Block & Llewellyn H. Rockwell, eds., *Man, Economy, and Liberty: Essays in Honor of Murray N. Rothbard* (Auburn, Ala.: Mises Institute, 1988; https://mises.org/library/book/man-economy-and-liberty-essays-honor-murray-n-rothbard).

    By the way, to talk about a “purely cognitive matter” also implies a *human nature* matter. I discuss human nature in the next section. [↑](#footnote-ref-17)
18. Hoppe, “The Ethics and Economics of Private Property,” in *The Great Fiction*, p. 15, n. 4. [↑](#footnote-ref-18)
19. As the knowledge with regard to actions as such are facts about human nature as well. [↑](#footnote-ref-19)
20. Rothbard, *Egalitarianism as a Revolt Against Nature*, (Auburn, Ala: Mises Institute, 2000; https://mises.org/library/book/egalitarianism-revolt-against-nature-and-other-essays), p. 5. [↑](#footnote-ref-20)
21. Male and female are references to two complementary parts (the two sexes) that make possible the reproduction of the human species since the beginning of humankind. Each sex has certain characteristics not found in the other in order to form the natural complementarity. [↑](#footnote-ref-21)
22. Hoppe, “Rothbardian Ethics,” LewRockwell.com (May 20, 2002; www.hanshoppe.com/publications). [↑](#footnote-ref-22)
23. Humans are individuals. By definition, one individual cannot be constituted by two individuals, i.e., each individual has its extension and occupies its own space as an existence independently of any other individual. For that reason, only she is an individual. Obviously, there is something within her with the potential to become an individual at birth. Though she cannot contain another individual, she, eventually, will give birth to a new one. [↑](#footnote-ref-23)
24. A theory of rights that makes no difference in the analysis of reproductive rights is only possible by considering irrelevant the fact that only women can gestate and give birth to a new human being (even though this is not possible without the male contribution for the original moment). But doing this implies considering irrelevant what human nature says about human reproduction. How can that be reasonable for a theory of rights of humans? Here, reproductive rights are no more than property rights within the issue of reproduction. [↑](#footnote-ref-24)
25. Like reality itself, human nature is not arbitrary, it simply is what it is, with its own natural course independent of man’s recognition. It is man who can be arbitrary. [↑](#footnote-ref-25)
26. Although the framework of property rights is inevitable in any society, there will always be risks. If a mother killed her child in her house, and nobody except her knows and can know about the crime; by ending his life, she aggressed and terminated her child’s primary property right, which makes for his existence as a human being—his right to self-ownership. As nobody except her knows about it, this lack of external knowledge makes it impossible for justice to be made. While she took advantage of a previous property rights setup, any unwanted control that could have prevented the murder would have had to come by aggressing the mother’s property right to her house, and no one is guilty of a crime until it is committed. Normally, people value privacy for various reasons, and to protect themselves against potential aggressors, privacy can hide knowledge that could be useful for potential aggressors. Unfortunately, be that as it may, there will always be people that will get away with their crimes now and then. [↑](#footnote-ref-26)
27. Hoppe, *Democracy: The God That Failed* (Transaction, 2001; www.hanshoppe.com/  
    democracy), p. 213. [↑](#footnote-ref-27)