PART VI

Interviews & Speeches

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On Libertarian Legal Theory,   
Self-Ownership, and Drug Laws

This was an interview by Anthony Wile at The Daily Bell: “Stephan   
Kinsella on Libertarian Legal Theory, Self-Ownership and Drug Laws,” The Daily Bell (July 20, 2014).

**The Daily Bell:** It’s been a while since we interviewed you. Let’s focus on some areas that you’ve been exploring lately. You’ve been thinking a lot about the essential basis of the libertarian idea lately, and the relationship between the non-aggression principle, property rights and related matters. Can you give us insight into your thinking? What specifically remains confused? What is the difficulty that people struggle with regarding the non-aggression principle and property rights?

**Stephan Kinsella:** The core insight of the founding generation of modern libertarian thinkers like Ayn Rand and Murray Rothbard is that *initiating* violence against others is wrong, unjustified, and should be prohibited by law—whether that is state law (in Rand’s case) or private law (for anarchist libertarians like Rothbard and Hoppe).

Rand, in Galt’s speech, sets out a “non-initiation of force” principle:

So long as men desire to live together, no man may *initiate*—do you hear me? No man may *start*—the use of physical force against others.[[1]](#footnote-1)

Rothbard formulated a similar idea but called it an “axiom”:

The libertarian creed rests upon one central axiom: that no man or group of men may aggress against the person or property of anyone else. This may be called the “nonaggression axiom.” “Aggression” is defined as the initiation of the use or threat of physical violence against the person or property of anyone else. Aggression is therefore synonymous with invasion.[[2]](#footnote-2)

Rothbard goes on, in *The Ethics of Liberty*:

The fundamental axiom of libertarian theory is that each person must be a self-owner, and that no one has the right to interfere with such self-ownership.… What … aggressive violence means is that one man invades the property of another without the victim’s consent. The invasion may be against a man’s property in his person (as in the case of bodily assault), or against his property in tangible goods (as in robbery or trespass).[[3]](#footnote-3)

(I provide elaboration on some of these issues in other articles and posts.[[4]](#footnote-4))

Rand’s non-initiation of force principle, and Rothbard’s so-called “non-aggression axiom,” are usually today referred to as the non-aggression principle, or NAP, by libertarians (some call it the zero-aggression principle, or ZAP). My impression is that “axiom” changed to “principle” over the last few decades for a couple reasons. First, “axiom” was a term heavily used by Objectivists, e.g., in their epistemological reasoning and terminology, and a growing number of libertarians are not Objectivists, and so shun that usage.

Second, calling the principle an “axiom” implies that it is either the primary or only principle, or self-contained or complete; or perhaps that it is simply an arbitrary postulate as in mathematical axioms; or even that it is an undeniable, logically deduced starting point. Because libertarians are diverse in their views on the nature of rights and how they are justified, it seems better to refer to the non-aggression principle—a better way to define what views we all share in common, regardless of how they are arrived at. Randians, for instance, think that the individual rights implied by the non-initiation of force principle (i.e., the NAP) are validated by more fundamental philosophical insights about the nature of man, so they would not want to view non-aggression as some arbitrary or postulated math-type axiom. Utilitarian and empiricist type libertarians, intuitionists, religionists who ultimately base their political ethics on some divine or moral law or commands, etc., might not want to view non-aggression as some self-contained or logically deduced starting point. And so on. So the term “axiom” has become less common. Nonetheless, definitions and categories are necessary—there is something that makes us all libertarian, after all. And the idea of the “non-aggression principle” seems to best capture that, at least as a generally descriptive if shorthand term.[[5]](#footnote-5)

However, one problem that has arisen is that aggression, as commonly thought of, has to do with interpersonal violence: invading another person’s *body*: physical fighting or clashing. If you say you are opposed to aggression, this implies you favor self-ownership or, more precisely, body ownership. But it does not obviously, immediately imply property rights in *other* resources, such as land or movable objects. One would not think of stealing the owned resources of others as “aggression,” as the term is used in everyday talk. Squatting on someone’s land or using their hut while they are away might be trespass, but it does not seem like interpersonal violence that the term “aggression” seems to be aimed at.

Thus, libertarians tend to elaborate or define the NAP in a somewhat counterintuitive or idiosyncratic way, so that “aggression,” as they mean it, covers both interpersonal bodily violence and theft or trespass against other owned resources. In their elaborations they say that we oppose aggression against the bodies *or property* of other people—and *also*, that this means *fraud* is also prohibited … as is *contract breach*. This is a lot to pack into the notion of aggression, into the NAP, which on its face only prohibits attacking others’ bodies without provocation. They take the idea that it is wrong to physically attack others’ bodies and then pack into it related libertarian notions such as: homesteading (how property rights arise), trespass (use of someone’s owned resource without permission), contract and abandonment (the capacity to transfer or alienate property rights in owned resources), and even fraud theory. This cluster of related ideas or principles is crucial to the libertarian political philosophy, but it is a lot to put under the rubric of “aggression.” Both libertarians and our opponents have noticed this, and the former have sought to clarify our principles, and our terminology.

And, thus, the more sophisticated libertarians have recognized that property rights are more fundamental than the non-aggression principle. This is part of what Rothbard was getting at in his insistence that *all rights are essentially property rights*.[[6]](#footnote-6) It is what Hoppe is getting at in his Misesian-Austrian influenced theory that property rights arise because of the fundamental fact of scarcity: the possibility of *conflict*.[[7]](#footnote-7)

Why are property rights and how they are allocated more fundamental than the non-aggression principle? Well, in the case of bodies, the NAP is virtually *synonymous* with body-ownership; to say you oppose aggression is to *say that* you endorse self-ownership; and vice-versa. These are basically equivalent normative statements. We do not need a theory of property allocation for bodies, since opposing aggression automatically implies that each person is the owner of his body (libertarians differ on the rationale, but all consistent libertarians favor self-ownership and oppose interpersonal aggression, for whatever reason).

But this is not so in the case of *external* resources—that is to say, scarce means or goods *that were once unowned*, unused, unclaimed, but that now are *regarded as means of action* by some human actors.[[8]](#footnote-8)

For such resources, we need a theory of property *allocation* to determine the owner of the resource *before* we can judge a given use of the resource as “aggression”—i.e., trespass, theft—or not. If *A* enters into a hut that *B* claims, it is trespass, or “aggression,” only if *B* is the owner of the hut. If A is the owner of the hut, then it is not trespass to use it, even if *B* objects. Contrast this with *A* using *B*’s body without *B*’s consent (hitting it, say); simply by being opposed to aggression, we take *B*’s side over *A*’s, because to oppose interpersonal, bodily aggression *means* that each person (at least presumptively) owns his own body.[[9]](#footnote-9) But opposing “aggression” (trespass) for non-human resources requires us to identify who the owner of a given resource is. In the case of human bodies, it is obvious who the (presumptive) owner of the body is. Not so for external, previously-unowned, resources.

To be sure, there is definitely a *connection* between self-ownership and property rights in other resources. One’s body is a *means of action*, as are other scarce means (resources, goods) in the world. There can be clashes or conflict over both, and because of the fundamental, unavoidable and undeniable fact of scarcity, only one person, one actor, can have the right, or ability, to use a body or other resource for a given purpose at a given time.

The libertarian principle, then, is based on recognizing this fundamental condition of human life, and it says that we ought to have property rights assigned in all scarce resources—any means over which there could be conflict—so that humans can peacefully, cooperatively, and productively employ scarce means to pursue their goals; and that property rights have to be determined in accordance with some objective criteria—some objective *link* between the claimant and the resource in question. It has to be a link that is objective so that various contestants who claim the resource can recognize it and come to an agreement about who has the better claim to the resource.

In the case of one’s body, the obvious answer is: each person himself presumptively has the best link to his body, because of his direct control of it. It is only presumptive, since some actions, like violent attacks on others, can justify the victim using self-defense; but it is the default presumption.

And in the case of other resources, external resources, things that were once unowned, then obviously the first user of the resource has a better claim than a latecomer, since without what Hoppe calls the “prior-later” distinction, there can be no property rights at all, only a war of all against all and might-makes-right. This latter rule is supplemented by principles of contractual transfer and rectification. That is, the earlier user has a better claim to the resource than some latecomer—*unless* he did something to change this, such as contractually transfer (or abandon) the thing, or commit some offense (tort) against someone else, which obligates him to transfer some of his property to the victim to make restitution.[[10]](#footnote-10)

I have no problem with using the concept of aggression, or the NAP formulation, as a shorthand summary of the basic libertarian idea, but it must be kept in mind that it is only shorthand, and its meaning can only be fully grasped by appreciating the nature and purpose of property rights and how they are allocated.[[11]](#footnote-11) We cannot forget the fundamental fact of scarcity is what gives rise to the possibility of conflict and thus for the need for property rights to enable social cooperation.

In recent years some libertarians have objected to the NAP. I think there are a variety of reasons for this. One is that the relationship between property and scarcity and rights and aggression as sketched above has not been fully comprehended by everyone in our relatively young freedom philosophy (which basically started in the 1960s with Rand and Rothbard, in my view).[[12]](#footnote-12) And, the movement has been growing in recent decades, with a lot of the newcomers coming in through Ron Paul and political activism rather than through more intellectual Randian or Rothbardian approaches. This has resulted in a large number of people with a fairly surface level understanding of the connections between liberty, property rights, aggression, and so on. And they sense that the NAP does not capture everything about the libertarian principles. So they reject it and seek some deeper connections or better formulations.

Another reason is that there are many minarchist or even classical liberal-type libertarians who do not oppose the state itself on principle, they do not oppose taxation, they accept the idea of public goods, market failure, and the need for state provision of law and justice and infrastructure and so on. In other words, they recognize that if we oppose all aggression, on principle, they have to oppose the state, and they do not want to do that. So they essentially do what conservatives and liberals do, which is to count the NAP as just one of many important moral or societal “values” that “matter.” So they are against aggression, they will say—but they are also for or against other things too, and all these competing values must be “balanced” against each other. We can’t be dogmatic or extreme or doctrinaire, you see. Yes, yes, we want to reduce aggression, but we want to defend the country, we want to fund the state and the police and the roads, we want to prevent people from racially discriminating against minorities and so on—so you have to compromise or bend the NAP. You have to permit the state to commit aggression—to tax, to put people in jail for reading the wrong books or using the wrong drugs or for refusing to fight for the country in a war—for the greater good. In other words, if you are going to make an omelet, you have to be willing to break a few eggs.

Some of these statist-“libertarians” are honest and admit they are in favor of aggression. They think it is unfortunate that we have to permit some aggression, but it’s necessary to prevent some anarchist chaos. I can almost respect this type of “rights-utilitarianism,” though I disagree with it. But others are more disingenuous about this. For example, they will engage in equivocation—equating aggression to all forms of force, including self-defense, and saying that the anarcho-libertarian himself supports aggression (because he recognizes that self-defense is legitimate), so he makes an “exception” too, just like the minarchist-statist does. This is blatantly stupid, or dishonest, in my view, but I’ve seen it many times.

Then we have the emergence of the soi-disant “bleeding heart” libertarians, the “privilege” checkers and the “thickers,” and so on, many of whom are in favor of the state and the promotion of values other than individual (property) rights. They don’t want a rigid—i.e., principled—adherence to the NAP to get in the way of using the state or law to pursue their a-libertarian, or even unlibertarian, goals.

Now, as a human being, I, like every other libertarian, have values other than liberty. We are not just libertarians, ever. However, we do value liberty, and we oppose aggression. For us it is a “side-constraint,” to use Nozick’s phrase: we believe aggression is simply wrong, or unjustifiable. As Nozick wrote, “Individuals have rights, and there are things no person or group may do to them (without violating their rights).”[[13]](#footnote-13) When the conservative, or liberal, or minarchist, or “bleeding heart” libertarian starts wagging their finger and tut-tutting that they oppose aggression but that unlike the “simpleminded” libertarian it is not their “only value,” you can be sure they are setting the stage to propose or endorse or condone some kind of invasion of liberty—some act of aggression. That is, when I hear people, even some libertarians, condescendingly denounce our focus on aggression as the primary social evil, …. I want to hold onto my wallet, because they are coming after it. Or as Ayn Rand says in “Francisco’s Money Speech,” “Run for your life from any man who tells you that money is evil. That sentence is the leper’s bell of an approaching looter.”[[14]](#footnote-14) Likewise, when someone says aggression is not the only thing that matters, they are about to advocate aggression. Keep an eye on these people.

To be clear here, among some of these “leftish” type libertarians, I would distinguish two prominent groups very differently: the “bleeding heart” libertarians seem by and large to be mushy-headed, non-rigorous and pro-state while the anarchist left-libertarians are largely solid—they are against the state, they are mostly solid on economics and Austrianism (except perhaps for some of the mutualists), they are against war, they are against intellectual property, etc.In my view, the bleeding heart types are by and large barely libertarian and promote horrible and statist ideas, such as a basic guaranteed income,an insane proposal that most libertarians for the last fifty years could have instantly recognized as a socialistic and unjustified positive right. By contrast, the anarchist left-libertarians are by and large great. That said, I personally think the best and most consistent approach to libertarianism is Misesian-Rothbardian-Hoppean anarcho-libertarianism, sometimes called anarcho-capitalism. Incidentally, that latter term is one I use less now than I used to, partly because of the damage done to the term “capitalism” by the left-libertarians’ relentless campaign against it, and partly because it is somewhat misdescriptive: capitalism refers to only one aspect of the economy of an advanced free market society; and the economy itself is only one part of a libertarian society. Just as the NAP can be used as a convenient shorthand for the libertarian vision of a cooperative, property-rights respecting society, “capitalism” can also be used as a shorthand term to describe the libertarian society, though it’s increasingly difficult to do this and the term is fraught with the potentialfor confusion. Anyway, this is somewhat of a tangent, now, but what I primarily disagree with the anarchist left-libertarians on is their “thickism,” some of their cultural preferences and predictions about what a free society would look like, and their endorsement of the left-right  
spectrum or dichotomy in their use of the left prefix itself. I reject the left-right spectrum. I think the right or conservatism is virtually incoherent (why would there be an alliance of neocons, religious right, and free market chamber of commerce types), and the left is soft-socialism, and ultimately the right is some variant of socialism too.[[15]](#footnote-15)

The Daily Bell: Murray Rothbard insisted that all “human rights” are property rights—why?

Stephan Kinsella: He talked about this in his chapter “‘Human Rights’ As Property Rights,” from his great work *The Ethics of Liberty*. Rothbard understood that all disputes—all real disputes—are ultimately about control of scarce means of action, i.e., physical resources. The right to freedom of speech or the press makes sense only if understood as a theory of property rights: the right of a publisher or person to use his own paper and ink and body as he sees fit. Rothbard was influenced not only by Rand, but by Mises (Hoppe was in turn influenced heavily by Rothbard and Mises).

Mises’s praxeology provides an incredibly lucid and useful analysis of the nature of human action. When humans act, they employ scarce means (including their bodies) to attempt to causally interfere with the universe, so as to bring about a different future outcome than they predict or forecast would otherwise transpire without their acting intervention—a prospect that gives rise to uneasiness (Mises’s term) that they seek to quell. In a magical world or the Garden of Eden or the Land of Cockaigne (Hoppe sometimes calls it Schlaraffenland)[[16]](#footnote-16) there is no conflict possible, but human action is also virtually inconceivable. (Just as human action is virtually inconceivable in the unrealistic and hypothetical construct of the “evenly rotating economy” employed by Mises and Rothbard.)[[17]](#footnote-17)

In our world, the real world, there is always scarcity, always the possibility of conflict between actors, always the need to employ scarce means to pursue ends or goals. Property rights are simply conflict-avoidance or conflict-reduction norms that civilized people adopt, respect, and abide by because of their basic values: pro-peace, pro-society, pro-prosperity, pro-cooperation and so on (I have referred to these basic values as “grundnorms,” drawing on legal philosopher Hans Kelsen’s terminology).[[18]](#footnote-18) That is why every right, every human right, every individual right, is ultimately a property right. All property rights are ultimately enforceable by physical control of the possessor/user/claimant, and defendable by physical force (e.g., self defense) or the literal use of force implied by a *law* that protects such right.

All law, after all, ultimately is enforced by the use of force against the body or other possessions of the transgressor. (This is recognized in the so-called “bad man” theory of law espoused by Supreme Court Justice Oliver Wendell Holmes.)[[19]](#footnote-19) Every conflict, every dispute, is always, ultimately, about who gets to control a given disputed resource. That is why every law, every right, is ultimately about property rights: deciding who the owner is, or should be. There is no way around this. This is why it is frustrating when mainstream thinkers and even some libertarians talk vaguely about “human rights”; it opens the door to legal invasions of property rights. People confusingly say that people fight over religion; they do not. They fight over others’ bodies and the physical things, the scarce means (land and so on) that the others have or want to use. If I threaten to kill you if you do not convert to Islam, I am really asserting  
a property right in your body: I am asserting the right to decide whether to stick a sword into your belly. The libertarian says: you have the right to control what gets stuck into your body. Religion is just an excuse for the property invasion; it is the motivation or reason for the invasion. But it is impossible to own religion and it is literally impossible to “fight over religion.” It is always, always, always about property rights.[[20]](#footnote-20)

The same goes for other false and positive rights, such as intellectual property (e.g., patent and copyright). The IP advocate says they support property rights in general but “also” in useful, valuable, “created” patterns and ideas. But what they really support is legal theft: using IP as an excuse to take others’ money or to seize a “negative servitude” over others’ already-owned scarce resources.[[21]](#footnote-21)

Ultimately, every political philosophy, every legal system, is about property rights. They specify a set of rules that determines who the owner of any given scarce resource is, in the case of a dispute or contest to control that resource. The libertarian view simply has a unique way of allocating such property rights, different than other systems.[[22]](#footnote-22) All other systems advocate some form of slavery or theft, since they endorse aggression against others, which is a form of slavery, or taking of owned resources from the owner when he does not contractually consent to this.[[23]](#footnote-23)

The Daily Bell: Why is it crucial that libertarian theory have a sound basis for property rights and for its unique property assignment rules?

Stephan Kinsella: Property rights make sense only in a world where there is potential conflict over some identifiable scarce means (meaning: the real world). For humans to live in society, they need to acknowledge each other’s existence and respect others’ right to live. Every human society that has persisted has figured out a way for people to get along—to agree to certain rules that specify who has the recognized right to use or control a given resource. Humans need to use scarce means to achieve results. For those people who recognize that we exist in society, they recognize benefits of being social (trade, intercourse, division and specialization of labor) and drawbacks (you have to curtail certain appetites). The obvious result is the libertarian property assignment or allocation rule: the owner of a resource is determined by inquiring into its origin: original appropriation or contract.[[24]](#footnote-24)

The Daily Bell: Libertarianism rightly focuses on the concept of first use of a previously unowned scarce resource as the key test for determining ownership of it. But some say that land, for instance, can never be owned, only the improvements on the land. Any truth to this?

Stephan Kinsella: “Land” is just a referent to a particular scarce resource.It is surface area on the Earth. Land is just one type of scarce resource, so is not special in any fundamental sense (although the law classifies it as realty or immovable property, which has some different rules for transfer and alienation than does personalty or movable property, due to its different nature; but in principle it is just another ownable scarce resource). This is one problem I have with Georgists, who obsess about land as some special good.[[25]](#footnote-25)

One argument against ownership of land is that the bulk of the value of the land is due to natural features that the user/homesteader did not cause, so he does not “deserve” the full value of the land, but only that which he himself worked on—the improvement. There are many problems with this argument. First, in a sense, the homesteader of a good is its creator—because of the subjective nature of values, the type of “good” a thing is and whether it is really even a “good,” depends on how it is regarded by its user.[[26]](#footnote-26)

Second, the argument is anchored in the flawed labor theory of property and value. It assumes that values are what property rights protect; that value can be owned. It cannot. Property rights have to do with the physical integrity of scarce resources, since all conflicts are ultimately about incompatible uses of such resources. There is no property right in the value of resources one owns. Value cannot be owned.[[27]](#footnote-27) Nor can labor.[[28]](#footnote-28) Lockeans are wrong to say that the reason there is property rights in things like land is because a person owns his “self” and therefore he owns his “labor” and therefore he owns what unowned things he “mixes” his labor with.

Almost every part of this version of Locke is wrong. First, we do not own our “selves”; this is metaphorical nonsense. We own our bodies. Second, you do not own your labor any more than you own your actions. Owning your body gives you the *ability* and perhaps the *right* to use it as you see fit. Just as owning a home gives you the right to contemplate the stars at midnight, but we would not say there is some independent “right to contemplate the stars”; this ability is rather a *consequence* of having property rights respected in one’s body, land, and other resources. And even if you owned your labor, mixing it with some resource—well, “mixing” is itself an ambiguous metaphor—but it might well simply result in the loss of ownership of the labor, rather than the acquisition of ownership of the thing the labor mixed with. If you spit in the ocean, you lose your spit, you do not homestead the ocean. That said, I think Locke’s basic insight was right; it is just that it is too complicated and adorned by imprecise metaphors and unnecessary steps. Hume recognized this.[[29]](#footnote-29) The reason you have a right to own a resource like land is not that you created its value, but that you staked out a claim before anyone else did. Hoppe calls this embordering.[[30]](#footnote-30)

For someone to object to my ownership of a plot of land is for them to assert a property right in the land. For only an owner of the resource has a ground for objecting to my use of it. But if they claim to own it, they have to have a basis. Yet *per assumption*, I was the first owner or user, not them. So I have a better claim to the land. This is the essential flaw in the state ownership of national forests and other undeveloped resources: state agents have not used or appropriated the resource, they have not done anything to establish a legitimate claim to the land (and I would argue no state ever can, since by its nature it is criminal, so that any property rights it ever acquires, either by contract, expropriation, or even homesteading, are owed as restitution to the state’s victims), yet they prevent others from homesteading the resource. They are *acting as the owner* even though they are not a legitimate owner. Something similar is the case in the way the states of the world have coordinated via treaties to claim ownership of the seabeds, the moon, outer space, Antarctica and the like.

So the anti-land-ownership “libertarians,” if we can call them that, are taking a line similar to that of statists and tyrants. In denying someone the ownership of a resource, they are themselves acting as owners. Only an owner of a resource can exclude someone else from using it.[[31]](#footnote-31) Yet they have no basis for this ownership claim; it is just arbitrary verbal decree, the type of claim that cannot serve the function of property rights since it cannot prevent conflict.[[32]](#footnote-32)

But there is another argument against land ownership that is more consistent with libertarian principles. This is the objection to the enclosure movement, e.g., in England. The argument is that when the state grants ownership rights in plots of land, they take away existing rights of people to use the land in certain ways, e.g., for passage. Or they assign the rights to their cronies. Or they take the land away from previous owners (e.g., Native Americans in the US). Hoppe sketches a theory that partial property rights can be homesteaded by use.[[33]](#footnote-33) For example, in a town a common path is used, establishing a collectively owned easement, a right of passage or right of way (a servitude or easement). Someone who builds a road later has to recognize the pre-existing passage rights, owned by residents of the town or their heirs. I believe I read not too long about some legally recognized right in Italy of the people to cross over privately owned property for purposes of hunting. One could argue this type of law is justified by the “partial homesteading” approach Hoppe outlines.

In this sense one could argue that the state recognition and enforcement of property rights in land sometimes amounts to a taking of pre-existing easements that had been privately homesteaded by others. But this only highlights the fact that the state, and its legislation-based legal system, inevitably violates rights and mucks things up. It does not mean that land is special or that property rights in land are not legitimate. It only means that sometimes there are partial usage-rights homesteaded by earlier users of the resource, which property rights must be respected by later comers. In other words, the only coherent objection to property rights in land rests on a recognition of the legitimacy of property rights in land (and on at least an implicit recognition that the state messes things up).[[34]](#footnote-34)

The Daily Bell: Is ownership always defined by first use?

Stephan Kinsella: As indicated above, ownership in one’s body is not based on first use, but on one’s intimate connection to, and direct control over, one’s body. That is, the objective link in the case of the body that connects a person-claimant-owner to “his” body is that it is *his* body; it houses his identity, and he directly controls it.

For other things—that is, scarce resources, scarce means, economic goods—“conflictable” things[[35]](#footnote-35)—things that were previously unowned, unclaimed and unused—the objective link between a given claimant and the disputed resource in question is based upon three factors or principles: original appropriation (first use, or labor-mixing), contract, and rectification. In other words, being the original appropriator is not enough to show ownership, because the original owner might have abandoned the resource; or contractually transferred it to someone else, by gift or sale; or might have a debt to them due to some offense (rectification). So all three considerations play a role. But as between any two or more claimants to a given resource, we can in principle decide which one has the better claim by asking: who had it first; was any contractual transfer or abandonment done; is there a debt between the claimants that can or has to be satisfied by a property title transfer. So if *A* can show he was using the property before *B*, he has a presumptively better claim (note: *A* does not need to show that he was the first user of the property, only that he was using it before *B*).[[36]](#footnote-36) But if *B* can show that *A* contractually transferred the property to *B*, then *B* has a better claim than *A*. Or if *A* harmed *B* and owes *A* restitution. Or, if *A* abandoned the property and then *B* re-homesteaded it.

The Daily Bell: What constitutes first use?

Stephan Kinsella: Some questions cannot be answered from the armchair.[[37]](#footnote-37) There are more or less general or abstract legal precepts, and then more or less refined, developed and applied concrete rules that develop over time due to custom and the legal system of an advanced society. That said, we have had over two thousand years of such processes in the Roman law and English common law, so we are not totally in the dark. I would say that the essential principle here is what Hoppe identifies in chaps. 1-2 of *A Theory of Socialism and Capitalism*: the idea of *embordering*. If a resource is not yet claimed or used, then the person who somehow starts to use it in a way that is publicly visible has a better claim than others. There needs to be publicly visible borders or boundaries (one reason I sometimes think the term “private” property is somewhat inappropriate; all property rights are in some sense “public,”as in publicly visible),[[38]](#footnote-38) to serve the conflict-avoidance function of property rights. The purpose of property rights is to permit resources to be used without conflict, and the only way they can serve this function is if the boundaries or borders of the resource, or of the usage-right or property rights in the resource, are publicly visible—that is, objectively visible, or as some Kantian-inspired theorists like Hoppe might say, “intersubjectively ascertainable.”

And then, also, we have to recognize that if the purpose of property rights is to permit conflict-free use of resources, and if there would be no need for property rights in a conflict-free world, then the only time a question about the scope and nature of particular property rights could ever arise, in the real world, is in an actual, real, dispute between two or more persons over a given scarce resource. And in that dispute, the very nature of the resource in question will be defined: it is whatever is being disputed or sought by the competing claimants. The very dispute itself helps define what is the resource in question. This, in turn, helps determine what type of usage “counts” for homesteading in the first place.[[39]](#footnote-39)

The Daily Bell: When does a child become “first owner”?

Stephan Kinsella: I do not pretend to have a solid answer to this difficult issue. My view is that rights are bound up with human rationality and the capacity to understand, agree with and respect others’ rights. Hoppe implies as much in the opening chapters of *A Theory of Socialism and Capitalism*. Rothbard and others imply that it is when the child has enough capacity to say “no” and try to run away.[[40]](#footnote-40) My view is roughly along these lines, but different in some ways. My thinking is this. First, it seems obvious to me that a one-day old zygote has no rights yet, even though it is a potential human person, and biologically a “human life.” It also seems obvious to me that infants have rights, so that infanticide is murder. And that there is little difference between late-term abortion and infanticide (even the pro-choice Ayn Rand recognized this: she wrote “A piece of protoplasm has no rights—and no life in the human sense of the term. One may argue about the later stages of a pregnancy, but the essential issue concerns only the first three months.”).[[41]](#footnote-41)

It seems to me that it is usually immoral or wrong to abort, even early on, but at a certain point it becomes tantamount to infanticide. However, I still think the state or even private law should not intervene, for a variety of reasons. Basically, the *jurisdiction* should remain with the mother or the family until birth. But I think that at least for a born human, it should be recognized as having full human rights. The parents can care for and make decisions on behalf of the child as its natural agent or guardian. So I think a child is a self-owner from at least the moment of birth, but it is helpless, and thus we presume the child implicitly consents to care by its guardians, presumptively its parents.[[42]](#footnote-42) As for when the child reaches the capacity to be responsible for acts of aggression, or to run away and manumit himself, my feeling is roughly along the lines endorsed by common sense and the common law—at certain ages or stages of development in mid-childhood.

The Daily Bell: How does a child homestead himself, or reach adulthood?

Stephan Kinsella: This is interesting because the Montessori educational approach sees adulthood being reached after four six-year planes of development, or about age 24. Which seems about right to me, psychologically, but legally, I think the standard cultural norms on this get it about right. Eighteen years of age seems to be a good rule of thumb, though in my view, children younger than this ultimately have the right to declare independence, if they want to, so long as they have sufficient mental capacity and maturity so that it is clear the choice is a considered and real one.

The Daily Bell: Henry George believed that no land can be owned; only improvements on land. Can you comment? Was Henry George correct in any of his thinking in this area?

Stephan Kinsella: Well, as indicated above in the comments about land, I think this is complete nonsense and a deep confusion. First, land is not special; it is just one type of scarce resource. Second, the idea that you have a right to own resources only insofar as you improve them is based on the labor theory of property, which is itself deeply flawed and which is related to the Marxian labor theory of value.[[43]](#footnote-43) Property rights allocate the legal right to control a resource when there is a conflict or potential conflict over the resource. The only question, then, is which of the two or more contestants or claimants has the better claim. The first user of a tract of land has a better connection than a latecomer, regardless of whether the first user can be said to have “created” or even “deserved” the land or not. His first use is better than that of latecomers, because without this principle there is no right to ever first use land; it would lie fallow forever.[[44]](#footnote-44) Indeed, it would not exist, in a sense, because goods are things that are subjectively regarded as such as demonstrated in action, and if use of the thing is not possible, it in some sense does not “exist” as a good.[[45]](#footnote-45) Notice that any institution or agency or person that tells you that you cannot homestead or use a piece of land is himself or itself asserting ownership rights in it. But based on what? Not even on first use. But on some arbitrary verbal decree. And property rights cannot be allocated based on verbal decree, because such a rule would permit any number of simultaneous claims of ownership with no objective way to distinguish therebetween, and thus would not serve the very purpose of property rights, which is to reduce conflict, to permit conflict-free and cooperative use of scarce resources.

The Daily Bell: You’ve called the following a fallacy: “If you own something, that implies that you can sell it; and if you sell something, that implies you must own it first. The former idea, which is based on a flawed idea about the origin and nature of property rights and contract theory, is used to justify voluntary slavery; the second, which is based on a flawed understanding of contract theory, is used to justify intellectual property.” Can you elaborate please?

Stephan Kinsella: I discuss this in more detail elsewhere.[[46]](#footnote-46) This is hard to elaborate in a quick interview. But here is a summary answer.

Ownership means the right to control (technically: the right to *exclude* others).[[47]](#footnote-47) It is not automatically clear why this would imply the power or ability or right to *stop* having the right to control it. My view is that we own our bodies not because of homesteading but because each person has a unique link to his body: his ability to directly control it. Hoppe recognized this decades ago, as I point out in “How We Come to Own Ourselves” (ch. 4). I had to find an old German text of his and have it translated to find out his early insight on this, from 1987. This has implications for the idea of the voluntary slavery contract and the so-called inalienability debate. (See chapters 9 and 10.) In fact, the idea of homesteading one’s body is obvious nonsense. A homesteader is an actor; an actor already has a body. It is inconceivable to imagine an actor homesteading his body. Homesteading, or original appropriation, has to do with the acquisition of property rights, by *already body-owning actors*, in external scarce resources in the world that were *previously unowned*. For these resources, they are *acquired* by intentional action and thus can be abandoned—or, thus, sold or given to others. So ownership of external resource *does* imply the capacity to contract, or sell, but self- or body-ownership does *not*, because they have different bases. The point is that ownership as a legal concept does not imply the right to sell. Too many libertarians just assume that it does. They are used to the right to sell in the case of ownership of external resources and thus assume that right to sell is some inherent right of ownership; it is not.

The converse mistake is the assertion that if you sell something you must have owned it. Otherwise you could not have sold it. So pro-IP advocates observe that people are paid to teach or to provide information or to invent. So they reason that the person being paid must have sold something. And to sell it, you must have owned it. You can only sell things that you own, right? Well what was sold? It was the information that you were paid to come up with or transmit. Therefore, information is an object of a sale contract and must be an ownable thing. Of course, the argument is rarely put this explicitly, mostly because people making such arguments are legal naïfs, but if it was, it would be easier to show how ridiculous and flawed it is. Contracts are simply ways owners of resources grant, or deny, permission to others, to use the resource, whether the grant of control is temporary or permanent (as with a lease versus a sale) or whether it is partial or complete, or whether it is conditional or unconditional. Often this involves an exchange where two owners of two resources exchange title to these things: my apple for your pear. My coin for your milk. And so on. But some title transfers—contracts—are only one-way: a gift, or donation, say. Or if I agree to perform some action within my capability *on the condition* that you give me a monetary payment, this is a one-way title transfer: only the money is being transferred.

People confuse this because they analogize it to a normal bilateral exchange and wonder what is being exchanged in the service contract, and they assume the thing being sold is labor and that it must be ownable. This is just wrong. A careful study of Rothbard’s truly revolutionary and path-breaking title-transfer theory of contract is a good idea for people who want to argue this way. (See chapters 9 and 11.) But the point is that you cannot use this confused legal reasoning to shore up the arguments for ownership of labor, or for ownership of the “fruits of one’s labor,” of or IP. Just because I can persuade someone to give me money on the condition that I invent something for them or teach or divulge to them some information does not mean that an invention or information is an ownable object.

The Daily Bell: Another major question for libertarians involves when and why agreements are legally enforceable or in other words, how rights are voluntarily transferred. Can you offer some insight?

Stephan Kinsella: As indicated above, I think the theory of Rothbard and Evers on this is the place to start. Contracts are just transfers of title, or ownership, to a scarce resource by the owner, by some sufficient communication of his consent (see chapter 9). Outside of this, actions that are crimes or torts—invasions of the borders of others’ owned resources—can also be considered to be transfers of rights, via “rectification” or retaliation. For example if *A* attacks *B*, now *B* has a right to punch *A*. *A* has in a sense given up his right to object to this force. The right has been transferred, or forfeited. Or if *A* negligently harms *B*, now *B* is entitled to claim some of *A*’s money as damages; that too results in a transfer. But notice that intentional aggression, sometimes called “crime,” and torts, are all *intentional* actions—as are contracts. These are all basically actions human actors can take that result in some kind of change in the rights landscape. This is one reason I am not hostile to the idea of positive rights—so long as they are the result of one’s action. If you push someone in a lake, you now have an obligation to rescue them even though a stranger does not. If you create a dependent child by copulation, then you have certain parental obligations to care for this child. It’s a positive obligation but one that you created by your free action. Libertarians, in my view, are not against positive obligations—we are just against *unchosen* positive obligations.[[48]](#footnote-48)

The Daily Bell: Why does making a promise or agreeing or “committing” to do something result in a transfer of rights from the promisor to the promisee? To many—even to many libertarians—it seems elementary and obvious: If you promise to do something, you may be forced to do it.

Stephan Kinsella: We are used to thinking this way because the state’s legal system has characterized it this way for some time. The idea now is that promises should be binding, if they are made with the right formalities. One theory that is used to back this up is that people rely on your promises and would be harmed, would suffer damage, if you were to be free to renege. But this reasoning is circular, of course—if the law did not enforce promises it would be unreasonable for promisees to “rely” on that promise.[[49]](#footnote-49) So as Rothbard recognizes, the “binding promise” theory of contract is not coherent. Contract really simply means a transaction or arrangement whereby the owner of a resource exercises his ownership power to grant permission or even to transfer ownership of the resource to someone else. That is all that contracts are: title-transfers, with various conditions (triggers) attached to the transfers.

The Daily Bell: By recognizing the legitimacy of defensive force, the non-aggression principle recognizes that you normally own your body but you can partially or completely forfeit this right by committing aggression. True? False?

Stephan Kinsella: In my view, this is correct. Each person owns his body—*presumptively*. But if he aggresses against others, they acquire the right to use force against him—in self-defense, first and foremost, but also, arguably, to obtain restitution or even for purposes of retribution. We must, however keep proportionality considerations in mind, so that aggressors are not “over-punished.” I go into such matters in some detail in chapter 5.

The Daily Bell: Can we postulate that only by committing aggression can you lose rights in your body?

Stephan Kinsella: That is my view. It is a direct implication of the non-aggression principle. Force is justified in response to initiated force only. That is the reciprocity or symmetry of the libertarian ethos. You can do to someone what they do to you, meaning: you can only use force against someone if they have used force against you. Making a promise is not a use of force. So voluntary slavery contracts are not enforceable, as I point out in chapters 9 and 10.

The Daily Bell: Some argue that there are two ways you can forfeit or alienate your rights: aggression and saying certain words. Does this follow?

Stephan Kinsella: Well, I believe in general that speech is not a use of force and thus cannot be considered aggression. Which means force in response to such speech cannot be justified and would have to be characterized as aggression. But speech-acts can sometimes be aggression. Imagine a mafia captain saying to an underling, “Kill Mr. Jones.” Or President Truman ordering a nuclear bomb to be dropped on civilian populations in Japan. And so on. (See chapter 8.)

The Daily Bell: To change the subject a bit … we’ve been writing a lot about marijuana legalization here at *The Daily Bell*. High Alert, in fact, is involved in a marijuana venture. If marijuana is generally legalized, does the state owe compensation to those who were previously incarcerated?

Stephan Kinsella: Well, the state claims ownership of certain scarce resources, to which everyone who is a state victim has a legitimate claim for restitution—taxpayers, victims of regulation, prisoners incarcerated for victimless crimes, and so on. There can never, in principle, be enough resources in the state’s hands to make full restitution, since the state always destroys wealth and wealth creation. So if the state dissolved, it could only pay one cent on the dollar to its victims, if that. But if a given person has the ability to get a higher restitution award, I believe they are justified in doing so.

The Daily Bell: Was there any justifiable reason to incarcerate them in the first place?

Stephan Kinsella: Well, finally, an easy one! Of course not. Drug laws are completely evil. I believe some day we will look back on this like we look back on the days of chattel slavery now.

The Daily Bell: As a matter of reality, will they receive compensation?

Stephan Kinsella: Of course not.

The Daily Bell: Any other points you want to make?

Stephan Kinsella: I would just encourage people to think consistently, use coherent and consistent terminology, and think about the liberty of your neighbors as well as your own.

The Daily Bell: Thanks again for your time.

After Thoughts

*by Anthony Wile*

Stephan Kinsella makes many good and interesting points in this interview. He is an eloquent proponent for logical libertarianism and has offered significant theories on issues of property rights, copyrights, and ownership in general.

He’s been attacked in the past for empyrean proposals—ones that are not entirely realistic. But to oppose his vision based on what is currently real and practical is to miss the point.

Kinsella is building an argument brick by brick for freedom and for how freedom works. There are others that concentrate on less hypothetical perspectives. We’re partial to Stephan’s vision because it’s an uncompromising one.

There are plenty of people that can provide information on how government interacts with a “free” society but few who follow Ayn Rand’s hyper-rigorous logic. Of course, Ayn Rand is controversial, especially in this day and age, but she’s certainly inspired several generations of libertarian thinkers.

In statements such as “drug laws are completely evil,” we can see clearly Kinsella’s impatience with what he considers moral relativism. Again, he can be attacked by enemies for presenting a black and white vision. But in an era where so many are eager to proclaim shades of gray, we’re happy to observe (and present) his arguments.

He is a steadfast and creative intellect at a time where it takes considerable courage to be either. One very obviously worth paying attention to whether you agree with him or not.

1. Ayn Rand, “Galt’s Speech,” in For the New Intellectual, quoted in the “Physical Force” entry, Harry Binswanger, ed., The Ayn Rand Lexicon: Objectivism from A to Z (New York: New American Library, 1986; https://perma.cc/L4YA-96CC). See discussion in “What Libertarianism Is” (ch. 2), n.13 et pass. [↑](#footnote-ref-1)
2. Murray N. Rothbard, For A New Liberty 2d ed. (Auburn, Ala.: Mises Institute, 2006; https://mises.org/library/new-liberty-libertarian-manifesto), p. 23. [↑](#footnote-ref-2)
3. Murray N. Rothbard, “Property and Criminality,” p. 60, and “Interpersonal Relations: Ownership and Aggression,” p. 45, both in The Ethics of Liberty (New York: New York University Press, 1998; https://mises.org/library/crusoe-social-philosophy). [↑](#footnote-ref-3)
4. E.g., “What Libertarianism Is” (ch. 2), “How We Come to Own Ourselves” (ch. 4),and posts such as Kinsella, “The Relation between the Non-aggression Principle and Property Rights: a response to Division by Zer0,” Mises Economics Blog (Oct. 4, 2011). [↑](#footnote-ref-4)
5. See, on this, “What Libertarianism Is” (ch. 2), n.4. [↑](#footnote-ref-5)
6. See Rothbard, “‘Human Rights’ as Property Rights,” in The Ethics of Liberty (http://mises.org/rothbard/ethics/fifteen.asp). [↑](#footnote-ref-6)
7. See, e.g., Hans-Hermann Hoppe, A Theory of Socialism and Capitalism: Economics, Politics, and Ethics (Auburn, Ala.: Mises Institute, 2010 [1989]; www.hanshoppe.com/tsc), chaps. 1, 2, and 7; idem, “Of Common, Public, and Private Property and the Rationale for Total Privatization,” in The Great Fiction: Property, Economy, Society, and the Politics of Decline, Second Expanded Edition (Auburn, Ala.: Mises Institute, 2021; www.hanshoppe.com/tgf); “What Libertarianism Is” (ch. 2), n.9 et pass. [↑](#footnote-ref-7)
8. For further discussion of the difference between bodies and previously unowned things, see “A Libertarian Theory of Contract” (ch. 9), Part III.B. [↑](#footnote-ref-8)
9. See “What Libertarianism Is” (ch. 2), n.4 et pass. [↑](#footnote-ref-9)
10. These issues are discussed in other chapters, such as “What Libertarianism Is” (ch. 2), “How We Come to Own Ourselves” (ch. 4), and “A Libertarian Theory of Contract” (ch. 9). [↑](#footnote-ref-10)
11. Again, see “What Libertarianism Is” (ch. 2), n.4 et pass. [↑](#footnote-ref-11)
12. See “Libertarianism After Fifty Years: What Have We Learned?” (ch. 25); Kinsella, “Foreword,” in Chase Rachels, A Spontaneous Order: The Capitalist Case For A Stateless Society (2015; https://archive.org/details/ASpontaneousOrder0). [↑](#footnote-ref-12)
13. See Robert Nozick, Anarchy, State, and Utopia (New York: Basic Books, 1974), p. ix. [↑](#footnote-ref-13)
14. See Ayn Rand, “Francisco’s Money Speech,” Capitalism Magazine (Aug. 30, 2002; https://perma.cc/J2G2-TU2U). See also Llewellyn H. Rockwell, Jr., “The Tax-Reform Racket,” Mises Daily (Jan. 17, 2005; https://mises.org/library/tax-reform-racket):

    Is there a need to reform taxes? Most certainly. Always and everywhere. You can always make a strong case against all forms of taxation and all tax codes and all mechanisms by which a privileged elite attempts to extract wealth from the population. And this is always the first step in any tax reform: get the public seething about the tax code, and do it by way of preparation for step two, which is the proposed replacement system. Of course, this is the stage at which you need to hold onto your wallet. [↑](#footnote-ref-14)
15. See, e.g., Hans-Hermann Hoppe, “The Socialism of Conservatism,” in A Theory of Socialism and Capitalism. But see Hoppe’s article “A Realistic Libertarianism,” LewRockwell.com (Sept. 30, 2013; https://www.hanshoppe.com/2014/10/a-realistic-libertarianism), arguing that “libertarian theory [is] compatible with the world-view of the Right,” because the right is essentially “realistic”—it recognizes “the existence of individual human differences and diversities and accepts them as natural”—while the left is egalitarian and thus destructive and contrary to human nature since it “denies the existence of such differences and diversities or tries to explain them away and in any case regards them as something unnatural that must be rectified to establish a natural state of human equality.” [↑](#footnote-ref-15)
16. See, e.g., Hoppe, “Of Common, Public, and Private Property and the Rationale for Total Privatization,” p. 86 (using “Schlaraffenland”); Hoppe, A Theory of Socialism and Capitalism, p. 219 (quoting Mises using the term “land of Cockaigne”). See also the Wikipedia entry for “Cockaigne” (https://en.wikipedia.org/wiki/Cockaigne). [↑](#footnote-ref-16)
17. See the criticism of the ERE in Jörg Guido Hülsmann, “A Realist Approach to Equilibrium Analysis,” Q. J. Austrian Econ. 3, no. 4 (Winter 2000; https://mises.org/library/realist-approach-equilibrium-analysis): 3–51. [↑](#footnote-ref-17)
18. See “What Libertarianism Is” (ch. 2), at n.22. [↑](#footnote-ref-18)
19. See the Wikipedia entry for “Prediction theory of law” (https://en.wikipedia.org/wiki/Prediction\_theory\_of\_law). [↑](#footnote-ref-19)
20. See also “Against Intellectual Property After Twenty Years: Looking Back and Looking Forward” (ch. 15), at n.43 et pass. [↑](#footnote-ref-20)
21. See “Against Intellectual Property After Twenty Years” (ch. 15), Part IV.B. [↑](#footnote-ref-21)
22. See the first two sections of “What Libertarianism Is” (ch. 2). [↑](#footnote-ref-22)
23. See “What Libertarianism Is” (ch. 2) at notes 19 & 21 et pass. [↑](#footnote-ref-23)
24. See Hoppe’s pithy summary in “A Realistic Libertarianism”; and in “Of Common, Public, and Private Property and the Rationale for Total Privatization,” at pp. 85–87; “What Libertarianism Is” (ch. 2), at n.37. [↑](#footnote-ref-24)
25. See, e.g., Murray N. Rothbard, “The Single Tax: Economic and Moral Implications,” in Economic Controversies (Auburn, Ala.: Mises Institute, 2011; https://mises.org/library/economic-controversies). [↑](#footnote-ref-25)
26. See Hoppe’s discussion of the public/private nature of goods based on subjective evaluations of users, in “Goods, Scarce and Nonscarce” (ch. 18), at n.35. This applies also to the classification of goods as consumer or capital goods, or even as goods vs. “bads,” as well as the classification of a physical resource as a good at all, depending on whether it is valued by any given actor. On goods vs. “bads,” see “Against Intellectual Property After Twenty Years” (ch. 15), at n.58 and “Goods, Scarce and Nonscarce” (ch. 18), n.21. [↑](#footnote-ref-26)
27. See Hoppe, A Theory of Socialism and Capitalism, p. 23 n.11 & 165–68; also Hans-Hermann & Walter Block, “Property and Exploitation,” Int’l J. Value-Based Mgt 15, no. 3 (2002; https://perma.cc/UQ8U-UM35): 225–36; Rothbard, “Law, Property Rights, and Air Pollution,” in Economic Controversies, p. 375; idem, Man, Economy, and State, with Power and Market, Scholar’s ed., second ed. (Auburn, Ala: Mises Institute, 2009; https://mises.org/library/man-economy-and-state-power-and-market), chap. 2, § 12, p. 183; Kinsella, “Hoppe on Property Rights in Physical Integrity vs Value,” StephanKinsella.com (June 12, 2011). [↑](#footnote-ref-27)
28. See “Selling Does Not Imply Ownership, and Vice-Versa: A Dissection” (ch. 11), at n.33 et pass. [↑](#footnote-ref-28)
29. See “Against Intellectual Property After Twenty Years” (ch. 15), n.56. [↑](#footnote-ref-29)
30. Hoppe, A Theory of Socialism and Capitalism, chaps. 1, 2. [↑](#footnote-ref-30)
31. See “What Libertarianism Is” (ch. 2), Appendix I; “A Libertarian Theory of Contract: Title Transfer, Binding Promises, and Inalienability” (ch. 9), n.1. [↑](#footnote-ref-31)
32. See “How We Come to Own Ourselves” (ch. 4), text at n.12; “Defending Argumentation Ethics” (ch. 7), the section “Objective Links: First Use, Verbal Claims, and the Prior-Later Distinction.” See also Hans-Hermann Hoppe, The Economics and Ethics   
    of Private Property: Studies in Political Economy and Philosophy (Auburn, Ala.: Mises Institute, 2006 [1993]; www.hanshoppe.com/eepp), pp. 320–21 (re the insufficiency of verbal decree). [↑](#footnote-ref-32)
33. See Hoppe, “Of Common, Public, and Private Property and the Rationale for Total Privatization.” [↑](#footnote-ref-33)
34. Likewise, arguments for IP based on the contention that IP limits on property are legitimate since “all property rights are limited by other property rights” fail because of a fundamental confusion. It is not property rights that property rights limit; it is actions that property rights limit. See “Against Intellectual Property After Twenty Years” (ch. 15), Part IV.H. [↑](#footnote-ref-34)
35. See “What Libertarianism Is” (ch. 2), Appendix I. [↑](#footnote-ref-35)
36. Ibid., n.36. [↑](#footnote-ref-36)
37. See “Legislation and the Discovery of Law in a Free Society” (ch. 13), n.147. [↑](#footnote-ref-37)
38. See “What Libertarianism Is” (ch. 2), n.1. [↑](#footnote-ref-38)
39. See “What Libertarianism Is” (ch. 2), n.34 et pass. and "Law and Intellectual Property in a Stateless Society" (ch. 14), at n.42; see also Rothbard’s discussion of the “relevant technological unit” in “Law, Property Rights, and Air Pollution.” [↑](#footnote-ref-39)
40. Rothbard, “Children and Rights,” in The Ethics of Liberty (https://mises.org/library/children-and-rights), p. 103. [↑](#footnote-ref-40)
41. See “Abortion” entry, The Ayn Rand Lexicon (https://perma.cc/CN8B-RGZ8). [↑](#footnote-ref-41)
42. See “How We Come to Own Ourselves” (ch. 4) and Kinsella, “Objectivists on Positive Parental Obligations and Abortion,” The Libertarian Standard (Jan. 14, 2011). [↑](#footnote-ref-42)
43. See “Against Intellectual Property After Twenty Years” (ch. 15), Part IV.D. [↑](#footnote-ref-43)
44. On Rothbard’s critique of the “communist” approach to property rights assignment, see “How We Come to Own Ourselves” (ch. 4), at n.14 and “Law and Intellectual Property in a Stateless Society” (ch. 14), at n.27; also “Defending Argumentation Ethics” (ch. 7), n.31. [↑](#footnote-ref-44)
45. See note 26, above. [↑](#footnote-ref-45)
46. See “Selling Does Not Imply Ownership, and Vice-Versa: A Dissection” (ch. 11). [↑](#footnote-ref-46)
47. See note 31, above. [↑](#footnote-ref-47)
48. See “How We Come to Own Ourselves” (ch. 4) and Kinsella, “Objectivists on Positive Parental Obligations and Abortion.” On forfeiting or waiving rights by acts of aggression, see “Knowledge, Calculation, Conflict, and Law” (ch. 19), n.81 and “A Libertarian Theory of Punishment and Rights” (ch. 5), n.88. [↑](#footnote-ref-48)
49. See “A Libertarian Theory of Contract” (ch. 9), Part I.E. [↑](#footnote-ref-49)