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Selling Does Not Imply Ownership,   
and Vice-Versa: A Dissection

I delivered this speech at the Property and Freedom Society’s 16th Annual Meeting, in Bodrum, Turkey, in 2022.\* It takes aim, in part, at some of my friend Walter Block’s views on voluntary slavery and body-alienability, a topic we’ve disagreed about for a long time.† The transcript was lightly edited for clarity and to add some headings, references, and links, but the colloquial and informal tone has largely been preserved. I published it on my old, mostly defunct site The Libertarian Standard, to which Walter responded in due course.†† This chapter is a lightly-edited version of that article.§

\* Kinsella, “KOL395 | Selling Does Not Imply Ownership, and Vice-Versa: A Dissection (PFS 2022),” *Kinsella on Liberty Podcast* (Sept. 17, 2022).

† See Kinsella, “KOL004 | Interview with Walter Block on Voluntary Slavery and Inalienability,” *Kinsella on Liberty Podcast* (Jan. 27, 2013).

†† Kinsella, “Selling Does Not Imply Ownership, and Vice-Versa: A Dissection,” *The Libertarian Standard* (Oct. 25, 2022). Walter’s response: “Rejoinder to Kinsella on Ownership and the Voluntary Slave Contract,” *Management Education Science Technology Journal* (MESTE) 11, no. 1 (Jan. 2023; https://perma.cc/H3AL-WBQJ): 1–8. See also *idem*, “Toward a Libertarian Theory of Inalienability: A Critique of Rothbard, Barnett, Gordon, Smith, Kinsella and Epstein,” *J. Libertarian Stud.* 17, no. 2 (Spring 2003; https://perma.cc/79AC-34BZ): 39–85.

§ Some of this material is also discussed in “*Against Intellectual Property* After Twenty Years: Looking Back and Looking Forward” (ch. 15), Part IV.G.

TWO RELATED FALLACIES

I want to explore two related beliefs, which I think are fallacious, and they stem from confusions about core libertarian principles and confusions introduced by the sloppy use of language and overuse of metaphorical thinking. And, by the way, I did touch on this topic in less detail at the PFS [Property and Freedom Society] here in 2011, when I talked about a bunch of libertarian misconceptions, and also in a “Libertarian Controversies” lecture from Mises Academy about 10 years ago.[[1]](#footnote-1)

So, the first fallacy: *Ownership implies selling*. Walter Block uses this a lot. In fact, I heard him say it explicitly last week again in Nashville at the Libertarian Scholars Conference. So the idea is this: if you own yourself—that is, you own your body—you should be able to sell it. So, a voluntary slavery contract should be enforceable. And if the legal system does not permit voluntary slavery, then it means you really don’t own yourself. So the implicit assumption behind this argument is that one inherent aspect of ownership is the right or ability to sell.[[2]](#footnote-2) In other words, it is assumed that “ownership” necessarily includes the ancillary “right to sell.” It’s taken for granted that “if you own something, you can sell it.” This is a mistaken assumption, as I shall explain presently.

Fallacy two: *Selling implies ownership*. So, some contracts that we’re used to are exchanges of *owned things*. Consider some simple ones: an apple for an orange, 10 chickens for a pig, 1 ounce of gold for a horse, or $3 for a cup of coffee. Now, we also have labor contracts, where it’s considered to be a sale of a service, which implies that you “own your labor” because, after all, you “sold” it. And also there’s the sale of knowledge, information, or know-how—like teachers who get paid to give information, publishers, speakers, contracts for transfer of know-how, and so on. And this argument is also used to argue for intellectual property. People say, “Well, if you can sell your idea, you must have owned it, so intellectual property is a legitimate concept.” Similarly with Bitcoin: people say that Bitcoin can be possessed, and sold, so Bitcoins must be owned and ownable things.[[3]](#footnote-3)

SCARCITY AND PROPERTY RIGHTS

Now, let’s revisit some elementary categories of libertarian thought. So first of all, action is when humans in the world employ means or scarce resources as tools to help achieve their ends or goals. When there’s society—other human actors—there’s a possibility of conflict in the use of these resources. Now, it’s good that we live in society, because we have the division and specialization of labor, trade, and intercourse with other people. But there can also be conflict among human actors in the use of these scarce resources, including our bodies, because of the nature of these resources.

So what this means is the scarce resources, which we employ as human actors in a purely economic sense, are precisely *things over which there can be conflicts*. So sometimes, to avoid confusion, I will refer to these things as rivalrous, or *contestable* or *conflictable* resources.[[4]](#footnote-4) They are the types of things over which there can be conflict. I find   
I sometimes need to emphasize this aspect and avoid the term “scarce resources” because, quite often, an intellectual property proponent will say something like, well, “I don’t know about you, but good ideas is pretty scarce.” They can’t easily say that good ideas are *conflictable* (or rivalrous), though. The point is information is not the type of thing that can be subject to property rights or ownership.[[5]](#footnote-5)

*Property Rights*

Now, in civilized society, property or ownership rights are assigned to reduce this conflict.[[6]](#footnote-6) So what are property rights? All rights are human rights, and all human rights just are property rights,[[7]](#footnote-7) because the very purpose of property rights is to avoid conflict over scarce (rivalrous, conflictable) resources. So ownership means property rights. To own a thing is to have a property right in the thing. So it’s actually better to refer to property as the *relationship between* a person and a thing, although, over time, we sometimes are careless with language, and we will refer to the thing itself as property. Like we’ll say, “That car is my property.” But precise language would be, “I have a property right in that thing, in that car,” or “I own that car.”[[8]](#footnote-8)

All right: so, ownership and property rights. A property right in a thing gives the owner the right to use it. This is what property rights are. Now, to be more precise, which is—this precision is not necessary for today’s discussion, but—owning a thing actually does not literally give you the *right to use it*, but it gives you the *right to prevent others from using it*. It’s an exclusionary right.[[9]](#footnote-9) As a practical matter, that *usually* gives you the *ability* to use the thing. So, for example, if you own a gun, that means you can prevent anyone else from using the gun. But it doesn’t mean you have the unlimited right to use the gun, because other people have property rights, and their property rights proscribe your actions. So I can’t use the gun to shoot someone.

*Property Rights as Limits on Action*

Now, most people make the mistake of saying, well, this shows that property rights are limited. But this is actually incorrect. The reason I can’t shoot the gun at my neighbor is *because* he has a property right in his own body. His property rights are a limitation on what *actions* I can perform. They are *not* a limitation on my property rights in my gun. In fact, if I had a stolen gun, which I didn’t own, I still couldn’t shoot my neighbor. Ownership of the gun—the means employed—has nothing to do with why am prohibited from shooting him. So the ownership of the gun is not limited by property rights. I can’t shoot an innocent person with a gun that I own *or* with a stolen gun. The innocent person’s *property rights in his body* limit what *actions* I can perform, with whatever causally efficacious scarce means, whether it’s a resource I own or not. It’s a limit on my actions, not on property rights. Because the essence of a property right is the right to exclude others, not the right to use.

This mistake is used also to argue for intellectual property because people will say—well, I’ll point out that intellectual property rights restrict other property rights, so they’re actually an infringement of property rights because they’re effectively a nonconsensual negative servitude because, if I have a patent, I can prevent you from using your factory to make iPhones. So that’s a limitation on your use of your property.[[10]](#footnote-10)

And the response will be, “Well, all property rights limit other people’s property rights.” The implicit argument here is that just because patents limit property rights, that’s no problem to patents being genuine property rights, because all property rights limit other property rights.[[11]](#footnote-11) But that’s not true. Property rights limit only actions. And the owner of a factory making iPhones is not committing any action that invades the borders of anyone else’s property. So that’s why that’s another fallacy. It’s a related fallacy but not the one I’m addressing directly today.

So: libertarianism and property rights. The purpose of property rights is to permit conflicts over the use of scarce resources to be avoided. So they assign these exclusive rights so that others can avoid the conflict.

*Property Rights and Objective Link*

So how does this work? The property rights are assigned in accordance with whichever actor has the *best link* or connection to the resource.[[12]](#footnote-12) This is the only way you can have a workable system of property rights, because any system of property rights has to be voluntarily respected, and for it to be voluntarily respected, it has to be seen as objectively fair, which means it can’t be based upon arbitrary differences like “I have the right to rule you, and you don’t have the right to rule me because I’m me, and you’re you.” That’s a *particularistic* rule.[[13]](#footnote-13) Or “I have the right to your land because I’m stronger.”

Those types of arguments and reasons are not justifications. There has to be an objective best link.[[14]](#footnote-14) So how does that work out? In Western private law and in libertarianism, which is a far more consistent working out of this, there are basically two types of links—the type of link applied to your body, which is a unique scarce resource; and the type of link applied to external resources in the world, which were *previously unowned* scarce resources. For the body, the link is a self-ownership link. You own your body, and the reason is because of your direct control over it, which I will get to in a minute.

And then for scarce resources in the world, they’re always owned first by someone first using them from their unowned state. That’s called *homesteading* or *original appropriation*. And then ownership can be *transferred* for two reasons: *contractually*—that’s a voluntary transfer of your ownership title of the resource to someone else, either by sale or by gift; or for purposes of *rectification*, which can be seen as a subset of contract because it’s also a transfer of title from an owner to someone, but it’s because the owner committed a tort against the victim and thus gave him a right to recover some of the aggressor’s property as damages.

So *original appropriation*, *contract*, and *rectification* are basically the only three principles to determine ownership of external resources in case of a dispute. So these four principles—body-ownership due to direct control, with an exception made for forfeiture of this right due to committing aggression,[[15]](#footnote-15) plus the three principles for external resources—are how we determine the best link, and this is the core of all property rights, and of all just law. A developed body of private law, to be just, has to be based on these core principles, and just entails working out the details as the law develops.[[16]](#footnote-16) And every socialist system, and every law not based on these core principles, including IP law, always ends up deviating from these core private property law principles in one way or another.

*Self-Ownership*

Now, so we commonly use the term “self-ownership.” This is another phrase that can be misleading because you can have people object to it and say, well, how can you own yourself, because that’s a religious view because it implies that your “self” is different than your body or something like that, and they’ll criticize it that way.[[17]](#footnote-17)

So to be precise, self-ownership is just a shorthand for body ownership, because your body is a scarce resource. Your “self” is not a scarce resource. The notion of “self” is bound up with the concept of personality and the person that you are, your identity as a person in the world, as an actor, as an agent. So *every person is the presumptive owner of his body*. That’s the basic libertarian rule. We don’t need to get into controversial metaphysics to understand this basic norm or rule.

Now, by the way, I say “presumptive” because it’s not absolute; it’s defeasible. The self-ownership right can be lost by committing aggression, because the victim has the right to defend himself during a crime or to retaliate after.[[18]](#footnote-18) And when they do that, they’re using the body of the aggressor without his consent.[[19]](#footnote-19) So he’s, in a sense, lost ownership of his body to the extent that the victim needs to be able to use force against him to obtain justice.

So the basis here of self-ownership, or body-ownership, is not homesteading, but it’s the direct control over your body. This is the *best* *link* between the given actor and the resource of his human body. And actually, I think the first person who explicitly recognized this was Professor Hoppe in a German publication in 1987.[[20]](#footnote-20) You actually weren’t explicit about this in your later English book, but it’s implicit in there.[[21]](#footnote-21) And if you remember, you told me about that passage, and you translated it for me for my article.

And so Hoppe’s argument is that you own your body because you directly control it. So this gives each person or actor logical-temporal priority or precedence as compared to anyone’s indirect control. What that means is, if you were to enslave someone or claim to own their body, the only way to control that body is by coercion, by directing threats of force to get them to act the way you want them to act. But in that case, they’re the ones still directly controlling it, and that always has precedence, and it’s a better link than the indirect control I can exert over you by coercion. Not to mention that the coercer himself would be in contradiction because he claims ownership of his body for the purpose of being the one who can punish you or threaten you.

So this is what the best link means here. It’s not homesteading, although people think it’s homesteading. It can’t be homesteading because to homestead means you’re an actor in the world, already a self-owner, or body-owner, and you find an unowned resource, and you appropriate it to yourself. But this presupposes there’s already a person with a body, so it’s impossible to imagine that you homestead your body unless you have some religious view where the soul goes down there and grabs it. But that’s not the domain of science as I think Guido [Hülsmann] and Mises would agree.[[22]](#footnote-22) We could make an analogy. We could say that when a child “wakes up” at the moment when he becomes sapient enough to be said to have rights, he homesteads himself. But it’s really a loose analogy. It just means that’s the point in time in which he’s a person with rights. It’s not like his body was unowned, and he just homesteaded it.

*External Resources*

Now, as for external resources, these are things that were *previously* *unowned*. This is a key point, and they’re external to the human body, so they’re not part of people’s bodies. So in this case, as I said earlier, the best link is determined by the three principles. First, we have original appropriation or homesteading. What this means is you *possess* something, which is an *economic* *category*. It means to be able to use or manipulate. Mises—I’ll get to this later, but Mises calls it catallactic or sociological ownership, but what he really means is *possession*, which is—and this is important—an *economic* category. So mere possession, like Crusoe on an island—in a Robinsonade—he can never “own” anything because there’s no society to have norms with respect to. He controls, and he uses things. He *possesses* these things as means, he exercises “factual authority” over these things—but he doesn’t own them.[[23]](#footnote-23)

In society, where there are property rights norms, you can also do the same thing. You can just possess something and not intend to own it—you pick up a stick and throw it away. Or you can possess it with the intent to own, and you take certain steps to transform it or to put a barrier up around it, or to, as Hoppe calls it, emborder it, which basically means to put up a visible public link between you and the thing demonstrating to everyone that this thing is no longer unowned, to say, “I’m claiming ownership of it.”[[24]](#footnote-24)

This requires the merger or the combination of actual possession or transformation or embordering—with then intent to own.[[25]](#footnote-25) So those two things are essential to owning a thing that was previously unowned. And then, once you own a thing, you can contractually transfer it to someone by your intent, your consent, and I’ll get to the mechanics of that in a moment. And then, again, there can also be a transfer as rectification—if you have to transfer something to someone to compensate them for damages you caused them by a tort (an uninvited use of their property).

Okay. Oh, and by the way, this formulation of rights that I just went through, this way of looking at the best link and the breakdown between the body, I’m happy that I was able to help the Mises Caucus   
in the US get this basic formulation put into the Libertarian Party Platform[[26]](#footnote-26) last May at the “Reno Reset,” as we call it. Up until this time, there was no definition of aggression in the Libertarian Party platform. It was just implied.[[27]](#footnote-27)

*Contract, Selling and Ownership: External Scarce Resources*

Getting back to the problem of confusing selling and ownership, of thinking there’s a necessary relationship between them. *How* do we sell an external resource that we own, like the contractual title transfer we talked about early? So: when you own a resource, because the ownership requires the merger of possession and the intent to own, you can lose ownership by losing the intent to own, by making it clear you no longer intend to own the resource. This is abandonment. So if you acquire a thing, you can “unacquire” it, so to speak. And because of this, it gives you the ability to sell because you can basically abandon it “in favor” of someone else.[[28]](#footnote-28)

Imagine you’re in a tree, and you have an apple, and there’s people walking by, below you. You can kind of toss the apple to whoever you want. You can drop it so that whoever you want will catch it. You can direct this—you can direct the re-homesteading, in effect. So if I have an apple and I give it to you to hold temporarily, you’re the possessor, but you’re not the owner. I’m the owner, but I’m not the possessor. So ownership and possession are distinct concepts and statuses. But if you’re holding my apple, and if I then abandon it, now you’re holding an unowned apple, and you can just re-homestead it right away. So that’s the mechanics, the juristic or legal mechanics, of why and how you can sell things.[[29]](#footnote-29) So the way that we come to own unowned resources is *the reason why* they can be sold. So it’s not an incident or aspect of ownership *per se*. It’s an aspect of the way external things come to be owned.

*Fallacy 1: You Can Sell What You Own*

Now, what about selling yourself, your “self,” i.e., your body, like Walter Block thinks we can do? Keep in mind: external things can be sold because they were *previously unowned* and *acquired* by an actor-owner who is *already a self-owner*, and he can abandon it. But your body rights don’t arise by homesteading or by your intent to own yourself. They arise because of the best link based upon your direct control.

So if I try to make a contract, “I promise to sell” or “I promise to be your slave forever,” *those words do not change the fact that I still have the best link to my body*. And because my words are not an act of aggression—which is the only way to come to own someone else’s body, by them forfeiting their rights by committing a crime—then promising to be someone’s slave is simply not enforceable because it doesn’t transfer any title to anything. You still own your body because you still have direct control and thus the better link. You can always change your mind, in other words.

So Rothbard seems to notice this in his kind of convoluted arguments in his contract theory. But it’s implied, perhaps unknowingly, and later clarified by Hoppe. In any case, Rothbard wrote:

It is true that man, being what he is, cannot absolutely guarantee lifelong service to another under a voluntary arrangement. Thus, Jackson, at present, might agree to labor under Crusoe’s direction for life, in return for food, clothing, etc., but he cannot guarantee that he will not change his mind at some point in the future and decide to leave. In this sense, a man’s own person and will is “inalienable,” i.e., cannot be given up to someone else for any future period.[[30]](#footnote-30)

So I think the reason he focuses on the fact that the will is inalienable is that Rothbard senses that that’s *the reason* you own your body, although he never quite says it explicitly, but he gets really close. I mean, what’s the relevance of the fact that your will is inalienable to the legitimacy or enforceability of a voluntary slavery contract? The only relevance could be that your direct control, or your will, is the reason you own your body.[[31]](#footnote-31)

Okay, so again, after you promise to be a slave, you still have direct control, so you’re still the owner, and you have not committed aggression, so you can always *change your mind* (in contrast to an aggressor who, as noted above, has *irrevocably* granted consent, since he cannot undo the historical fact of the aggression).

*Fallacy 2: You Own What You Sell*

Okay, now what about the other fallacy—owning what you sell? In a simple exchange, for two material resources that are both owned by two different people like an apple for an orange or an apple for a silver coin, the sellers do own what they sell. There are two title transfers: The orange changes ownership, and the apple changes ownership.

But in a “sale” of service, labor, or information, the contract *in legal terms*[[32]](#footnote-32) only involves *one title transfer.* This is in legal terms—whatever is “paid” to the person performing the service. So if I give you a chicken to pay you for giving me a haircut, the title to the chicken transfers to you. But you don’t transfer title to any labor to me. It’s not like there’s a bucket of labor, which I’m handing over to you. So these are *actions*, not things that can be owned.[[33]](#footnote-33) So labor or services or actions are what we *do with* things that we own like our bodies or other owned resources. They’re not themselves owned resources. So you don’t really sell labor, in a legal sense. So why do we describe it this way?

*Economic vs. Normative Realms of Analysis:   
Ownership vs. Possession*

Now, here’s what I think is the reason for the confusion. There are different modes of understanding for different realms of phenomena and different conceptual frameworks. So, for example, in the teleological versus causal realms, we have human action and purposive behavior on the one hand versus causal laws of nature on the other. We have praxeology versus the empirical method, the scientific method. We have apodictic or *a priori* versus tentative or contingent knowledge. We also have normative or juristic, legal, types or realms of understanding versus factual. And human laws and norms versus empirical facts.

I’m getting to the point. So, now, Mises was careful to distinguish the juristic or the legal or the *should* from the factual, but he used the word “ownership” in both, which is potentially confusing. So he said: “Regarded as a sociological category”—this was in *Socialism* in 1922, he changed the word to catallactic later, probably because he hadn’t come up with the term catallactics yet. I don’t know. But he calls it the sociological or economic category of ownership, which is the *power to use a good*. Now, that’s possession. That’s what we would call possession or control.[[34]](#footnote-34) The “factual authority” mentioned previously.

And then he says the sociological and juristic (by which he means legal or normative) concepts of ownership are different. “Ownership” (really: possession) from the sociological (economic; descriptive) point of view is the *having* of a good. It’s just what Crusoe could do. So that’s natural or original “ownership,” and it’s a purely physical relationship of man to goods. But the legal is the “should have.” Who should have it? Who has a right to it? This is where property rights and law come in. And later in *Human Action*, he goes on in a similar vein.[[35]](#footnote-35)

So as I said earlier, it’s better to distinguish ownership and possession, to use those words rather than two senses of the word ownership, because it could be potentially confusing because people say they own Bitcoins, but what they really mean is they possess Bitcoins. People say they own their minds, but your mind is just an epiphenomenon of your physical brain—you own your brain; you can change your mind, but you can’t change your brain. They’re different concepts. A dead body has a brain, but it doesn’t have a mind. The brain weights three pounds; the mind doesn’t weigh anything.

There’s a well-known Roman law, civil law scholar who passed away a couple years ago, from Greece, but he was a Louisiana law professor, A.N. Yiannopoulos. And he defines, and the Louisiana Civil Code also defines, possession as actual control or the “factual authority” a person has over a corporeal or a material thing.[[36]](#footnote-36) I like these phraseologies. And again, calling Bitcoin possession “ownership” is one reason for the confused idea that it’s ownable. So if you say I possess a Bitcoin, that’s fine. But it doesn’t imply that you own it. Plus, Bitcoins can be sold, and so people think if you sell something, you must own it, so that’s why they make that mistake. But they are referring to the economic description of the actions—saying I “sold” a bitcoin is a way of describing why the buyer gave me money: to obtain possession of “my” bitcoin—not to the juristic nature of the transaction, which is a one-way title transfer (of the money).[[37]](#footnote-37)

Yiannopoulos also points out something I mentioned earlier—that the accurate use of the word *property* should be the designation of rights people have with respect to things. In other words, property is not the thing itself. It’s the relationship between you and the thing.[[38]](#footnote-38) I have a property right in the thing. I’m the owner of the thing.[[39]](#footnote-39) (And by thing I mean an ownable, conflictable resource.)

So: why do we refer to a sale of labor or information when, as I already pointed out, there’s only a one-way title transfer of the payment made to the labor performer? Why do we call it that? What happens is, just like in the way the word ownership is used in both senses sometimes to mean possession or economic “ownership,” or juristic ownership or real ownership, we use the word sale in that way too. Sometimes we use it as economists to *describe* the structure of a given human action; and sometimes we use it as lawyers to describe the rights that are transferred.[[40]](#footnote-40)

So in (libertarian) law, “sell” refers to transferring title to an owned thing. So you don’t literally sell your labor. You just perform your labor. You perform some action. But in economics, it can be used to describe or characterize an action. So all action from an economic point of view involves an actor using scarce means to pursue some goal or purpose. So when we try to describe what someone does, we try to discern their goals and purposes, and also the means that they’re using.[[41]](#footnote-41) So that’s what history does as well, right, which Guido was mentioning earlier.[[42]](#footnote-42) We try to understand or characterize the actions of people within a means-ends (praxeological) framework.

So when we say as an economist, “*A* sold his labor to *B*,” this is just a concise way of explaining the praxeological nature of that action. We’re explaining *why* *A* performed the action, his labor. Well, he performed it to get money from *B*. So we’re describing his goal. His goal was to get money from *B*. That’s why he engaged in the means of using his body to perform an action, which he knew would satisfy *B*. And why did *B* transfer ownership of his money to *A*—he actually did legally sell his money to *A* because he transfers title to the money to *A*—to induce him to perform an action. So there’s only one title transfer.

So in this case, the economic and the juristic uses of the word “sell” are different because, in legal terms, *B* transfers money to *A* conditional on him performing an action. There’s only one title transfer—the money that was transferred. But in economic terms, *A* sells his labor to *B* “in exchange” for money, and *B* sells his money to *A* “in exchange” for A’s action. So we can use selling (or exchange) in an economic sense, but we should be careful. Otherwise, you might end up justifying intellectual property.[[43]](#footnote-43)

Thank you very much.

1. See Kinsella, “KOL044 | ‘Correcting some Common Libertarian Misconceptions’ (PFS 2011),” Kinsella on Liberty Podcast (May 2, 2013), at slide 7 and idem, “KOL049 | ‘Libertarian Controversies Lecture 5’ (Mises Academy, 2011),” Kinsella on Liberty Podcast (May 4, 2013), at slide 15. See also idem, “KOL092 | Triple-V: Voluntary Virtues Vodcast, with Michael Shanklin: Can You Trade Something You Don’t Own?,” Kinsella on Liberty Podcast (Oct. 30, 2013); idem, “The ‘If you own something, that implies that you can sell it; if you sell something, that implies you must own it first’ Fallacies,” StephanKinsella.com (June 1, 2018); idem, “On the Danger of Metaphors in Scientific Discourse,” StephanKinsella.com (June 12, 2011). [↑](#footnote-ref-1)
2. See Kinsella, “KOL004 | Interview with Walter Block on Voluntary Slavery and Inalienability” and idem, “Thoughts on Walter Block on Voluntary Slavery, Alienability vs. Inalienability, Property and Contract, Rothbard and Evers,” StephanKinsella.com (Jan. 9, 2022). [↑](#footnote-ref-2)
3. See Kinsella, “KOL274 | Nobody Owns Bitcoin (PFS 2019),” Kinsella on Liberty Podcast (Sept. 19, 2019). [↑](#footnote-ref-3)
4. See “Against Intellectual Property After Twenty Years” (ch. 15), Part III. On the term “conflictable,” see Kinsella, “On Conflictability and Conflictable Resources,” StephanKinsella.com (Jan. 31, 2022); see also “How We Come to Own Ourselves” (ch. 4), text at n.10; “A Libertarian Theory of Punishment and Rights” (ch. 5), at n.62 and accompanying text; “Dialogical Arguments for Libertarian Rights” (ch. 6), at n.6 and accompanying text; “Causation and Aggression” (ch. 8), n.19 and accompanying text. [↑](#footnote-ref-4)
5. See Kinsella, Against Intellectual Property (Auburn, Ala.: Mises Institute, 2008); “Against Intellectual Property After Twenty Years” (ch. 15). To avoid any doubt: I think patent and copyright law should be abolished. In about 20 years. Daddy’s got to put food on the table. Just kidding. “Do it now.” I don’t think they are listening to me anyway. [↑](#footnote-ref-5)
6. See Hoppe, “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). [↑](#footnote-ref-6)
7. See Rothbard, “‘Human Rights’ as Property Rights,” in The Ethics of Liberty (New York: New York University Press, 1998, http://mises.org/rothbard/ethics/fifteen.asp); see also Kinsella, “KOL259 | ‘How To Think About Property’, New Hampshire Liberty Forum 2019,” Kinsella on Liberty Podcast (Feb. 9, 2019). [↑](#footnote-ref-7)
8. See “What Libertarianism Is” (ch. 2), n.5; and text accompanying note 39, below. [↑](#footnote-ref-8)
9. See “Against Intellectual Property After Twenty Years” (ch. 15), n.62 and Part IV.H n.74. Ironically (and as noted in “What Libertarianism Is” (ch. 2), n.5), this is how the patent system works (having a patent on an invention doesn’t give you the right to make, use, sell, or practice it, but only to stop others from doing those things), although almost no one except patent specialists really grok this. We patent lawyers like that it’s arcane and no one but us gets it. Keeps us employed. [↑](#footnote-ref-9)
10. See “Against Intellectual Property After Twenty Years” (ch. 15), Part IV.B and note 39, below. [↑](#footnote-ref-10)
11. Imagine a woman being assaulted and complaining that this violates her property rights in her body. “Don’t complain,” the aggressor says, “after all, all property rights are limited by others’ property rights, and I’m asserting an ownership claim in your body.” See also “Against Intellectual Property After Twenty Years” (ch. 15), Part IV.H. [↑](#footnote-ref-11)
12. In this sense, all property rules are relative: the owner is the person who has a better claim than all other possible claimants. See, on this, “What Libertarianism Is” (ch. 2), at notes 33, 36; and “Law and Intellectual Property in a Stateless Society” (ch. 14), at n.41 et pass. This is why “taints” or original sin in the history of land in the distant past do not render current property rights insecure. See also “Libertarianism After Fifty Years: What Have We Learned?” (ch. 25); and “What Libertarianism Is” (ch. 2), at n.36.

    In a recent talk, one legal scholar claims that Rothbard, in Ethics of Liberty, propounded a view of “absolute” property titles, as contrasted with the “relative” property titles of the common law. See Wanjiru Njoya, “Defending Private Property: Principles of Justice” (YouTube, March 27, 2023; https://youtu.be/jzamN\_8l77k). However, I believe the best reading of Rothbard is that the position he supports is basically the relative property title system indicated above. See Kinsella, “Rothbard on the ‘Original Sin’ in Land Titles: 1969 vs. 1974,” StephanKinsella.com (Nov. 5, 2014); idem, “Mises, Rothbard, and Hoppe on the ‘Original Sin’ in the Distribution of Property Rights,” StephanKinsella.com (Oct. 7, 2014). See also Jeff Deist’s breakdown of Rothbard’s approach to such property issues in “A Libertarian Approach to Disputed Land Titles,” Mises Wire (June 3, 2021; https://mises.org/wire/libertarian-approach-disputed-land-titles). [↑](#footnote-ref-12)
13. See, on this, “What Libertarianism Is” (ch. 2), n.23 and accompanying text; “How We Come to Own Ourselves” (ch. 4), n.15; “A Libertarian Theory of Punishment and Rights” (ch. 5), n.45 and accompanying text; and “Dialogical Arguments for Libertarian Rights” (ch. 6), n.43 and accompanying text. [↑](#footnote-ref-13)
14. See “How We Come to Own Ourselves” (ch. 4). [↑](#footnote-ref-14)
15. See “Inalienability and Punishment: A Reply to George Smith” (ch. 10) and note 18, below. See also the Libertarian Party Platform language quoted in note 27, below. [↑](#footnote-ref-15)
16. See “Legislation and the Discovery of Law in a Free Society” (ch. 13), in general, and “Knowledge, Calculation, Conflict, and Law” (ch. 19), the section “Abstract Rights and Legal Precepts.” See also Hoppe’s pithy summary of these basic rules, in “A Realistic Libertarianism,” LewRockwell.com (Sept. 30, 2013; https://www.hanshoppe.com/2014/10/a-realistic-libertarianism/) and in “Of Common, Public, and Private Property and the Rationale for Total Privatization,” at pp. 85–87, and the LP Platform language mentioned in note 27, below. As Hoppe writes in “A Realistic Libertarianism”:

    But who owns what scarce resource as his private property and who does not? First: Each person owns his physical body that only he and no one else controls directly (I can control your body only in-directly, by first directly controlling my body, and vice versa) and that only he directly controls also in particular when discussing and arguing the question at hand.… [A]s for scarce resources that can be controlled only indirectly (that must be appropriated with our own nature-given, i.e., un-appropriated, body): 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. [↑](#footnote-ref-16)
17. See “How We Come to Own Ourselves” (ch. 4), n.1. [↑](#footnote-ref-17)
18. See “Inalienability and Punishment: A Reply to George Smith” (ch. 10), n. 11 et pass. [↑](#footnote-ref-18)
19. Alternatively, it could be said that his prior act of aggression was an irrevocable grant of consent to the victim to retaliate; the aggression is a substitute for manifested consent later. [↑](#footnote-ref-19)
20. See “How We Come to Own Ourselves” (ch. 4). [↑](#footnote-ref-20)
21. Professor Hoppe was in the audience, and I briefly addressed my comments to him, so have left the text unchanged here. [↑](#footnote-ref-21)
22. Here I am referring to the talk given earlier on the day of my talk, Jörg Guido Hülsmann, “The Ultimate Foundation of Economic Science,” YouTube (Sept. 17, 2022; https://youtu.be/C3Oglpv47Fg) which itself discussed the book by Mises of the same title (Ludwig von Mises, The Ultimate Foundation of Economic Science: An Essay on Method (Princeton, N.J.: D. Van Nostrand Company, Inc., 1962; https://mises.org/library/ultimate-foundation-  
    economic-science)), which happens to also be my own favorite book by Mises. [↑](#footnote-ref-22)
23. See note 36 and related text, below. [↑](#footnote-ref-23)
24. See 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. [↑](#footnote-ref-24)
25. For a related notion, see my Book Review of Rosalyn Higgins, Problems and Process: International Law and How We Use It (1994), Reason Papers No. 20 (Fall 1995): 147–53, p. 147: “Law, far from being authority battling against power, is the interlocking of authority with power.” Similarly, ownership stems from the interlocking of possession and intent. See also, on this, “A Libertarian Theory of Contract: Title Transfer, Binding Promises, and Inalienability” (ch. 9), n.40. [↑](#footnote-ref-25)
26. See Libertarian Party Platform, at https://www.lp.org/platform/, and https://perma.cc/GF6J-GPWV. [↑](#footnote-ref-26)
27. See Kinsella, “Aggression and Property Rights Plank in the Libertarian Party Platform,” StephanKinsella.com (May 30, 2022). Modified Plank 2.1 reads, in part:

    2.1 Aggression, Property and Contract

    Aggression is the use, trespass against, or invasion of the borders of another person’s owned resource (property) without the owner’s consent; or the threat thereof. We oppose all acts of aggression as illegitimate and unjust, whether committed by private actors or the state.

    Each person is the presumptive owner of his or her own body (self-ownership), which right may be forfeited only as a consequence of committing an act of aggression. Property rights in external, scarce resources are determined in accordance with the principles of original appropriation or homesteading (whereby a person becomes an owner of an unowned resource by first use and transformation), contract (whereby the owner consensually transfers ownership to another person), and rectification (whereby an owner’s property rights in certain resources are transferred to a victim of the owner’s tort, trespass, or aggression to compensate the victim). [↑](#footnote-ref-27)
28. But see my posts “Inability to Abandon Property in the Civil Law,” StephanKinsella.com (Aug. 3 2009) and “Homesteading, Abandonment, and Unowned Land in the Civil Law,” StephanKinsella.com (Aug. 28, 2021). The positive law ignores the very possibility of unowned or abandoned land. I am not aware of any deep scholarly exploration of this curious feature of modern law, but suspect it stems from a combination of statism and legal positivism, or do I repeat myself. I may explore this issue in further legal scholarship at some point. [↑](#footnote-ref-28)
29. See “A Libertarian Theory of Contract” (ch. 9). [↑](#footnote-ref-29)
30. Murray N. Rothbard, Man, Economy, and State, with Power and Market, Scholars ed., second ed. (Auburn, Ala.: Mises Institute, 2009; https://mises.org/library/man-economy-and-state-power-and-market), p. 82 n.2. As noted previously, this was later expanded on and clarified by Hoppe. See note 2, above. [↑](#footnote-ref-30)
31. For elaboration, see “A Libertarian Theory of Contract” (ch. 9), Part III.C. [↑](#footnote-ref-31)
32. I am referring to libertarian law here, not to modern positive law, which views contracts as enforceable, binding obligations. For more on this see “A Libertarian Theory of Contract” (ch. 9). [↑](#footnote-ref-32)
33. See “A Libertarian Theory of Contract” (ch. 9) and Kinsella, “Cordato and Kirzner on Intellectual Property,” C4SIF Blog (April 21, 2011). As Kirzner writes: “Laboring, Day contends, is an activity, ‘and although activities can be engaged in, performed or done, they cannot be owned.’” See also “Against Intellectual Property After Twenty Years” (ch. 15), Part IV.D. [↑](#footnote-ref-33)
34. For more on this, see “What Libertarianism Is” (ch. 2), notes 28–29 and accompanying text, et pass.; and “Law and Intellectual Property in a Stateless Society” (ch. 14), n.36. Economists often muddle this issue by either reducing ownership to possession or conflating the terms. See, on this, Geoffrey M. Hodgson, “Much of the ‘economics of property rights’ devalues property and legal rights,” J. Inst. Econ. 11, no. 4 (2015; https://perma.cc/9VV3-8DX3): 683–709; and Boudewijn Bouckaert, “From Property Rights to Property Order,” Encyclopedia of Law and Economics (Springer, forthcoming 2023), the section “Reduction to Mere Possession.” [↑](#footnote-ref-34)
35. As Mises observed:

    Regarded as a sociological category ownership appears as the power to use economic goods. An owner is he who disposes of an economic good.

    Thus the sociological and juristic concepts of ownership are different. This, of course, is natural, and one can only be surprised that the fact is still sometimes overlooked. From the sociological and economic point of view, ownership is the having of the goods which the economic aims of men require. This having may be called the natural or original ownership, as it is purely a physical relationship of man to the goods, independent of social relations between men or of a legal order. The significance of the legal concept of property lies just in this—that it differentiates between the physical has and the legal should have. The Law recognizes owners and possessors who lack this natural having, owners who do not have, but ought to have. In the eyes of the Law “he from whom has been stolen” remains owner, while the thief can never acquire ownership. Economically, however, the natural having alone is relevant, and the economic significance of the legal should have lies only in the support it lends to the acquisition, the maintenance, and the regaining of the natural having.

    See also related discussion in “What Libertarianism Is” (ch. 2), n.29 and n.45, and similar distinctions made in Eugen von Böhm-Bawerk, “Whether Legal Rights and Relationships Are Economic Goods,” George D. Huncke, trans., in Eugen von Böhm-Bawerk, Shorter Classics of Eugen von Böhm-Bawerk (South Holland, Ill.: Libertarian Press, 1962 [1881]), p. 57 et pass., discussed in Gael J. Campan, “Does Justice Qualify as an Economic Good?: A Böhm-Bawerkian Perspective,” Q. J. Austrian Econ. 2, no. 1 (Spring 1999; https://perma.cc/G3CK-B8WB): 21–33, p. 24.

    Ludwig von Mises, Socialism: An Economic and Sociological Analysis, J. Kahane, trans. (Indianapolis, Ind: Liberty Fund, 1981; https://oll.libertyfund.org/title/kahane-socialism-an-economic-and-sociological-analysis), chapter 1, §1. See also idem, Ludwig von Mises, Human Action: A Treatise on Economics, Scholar’s ed. (Auburn, Ala.: Mises Institute, 1998; https://mises.org/library/human-action-0), chap. XXIV, § 4:

    Ownership means full control of the services that can be derived from a good. This catallactic notion of ownership and property rights is not to be confused with the legal definition of ownership and property rights as stated in the laws of various countries. It was the idea of legislators and courts to define the legal concept of property in such a way as to give to the proprietor full protection by the governmental apparatus of coercion and compulsion, and to prevent anybody from encroaching upon his rights. As far as this purpose was adequately realized, the legal concept of property rights corresponded to the catallactic concept. [↑](#footnote-ref-35)
36. Possession is “the factual authority that a person exercises over a corporeal thing.” A.N. Yiannopoulos, Louisiana Civil Law Treatise, Property (West Group, 4th ed. 2001), § 301 (emphasis added); see also Louisiana Civil Code (https://www.legis.la.gov/legis/Laws\_Toc.aspx?folder=67&level=Parent), art. 3421 (“Possession is the detention or enjoyment of a corporeal thing, movable or immovable, that one holds or exercises by himself or by another who keeps or exercises it in his name”; emphasis added). For further discussion of these matters, see “What Libertarianism Is” (ch. 2), text at notes 28–29 et pass. [↑](#footnote-ref-36)
37. Using possessives like “my” is just descriptive; it does not imply ownership. Likewise, Robert LeFevre observed:

    It is quite common for one or both spouses in a marriage contract to presume that their opposite number is actually a possession of theirs. Our language gives credence to this supposition for it is usual to hear a man refer to his partner as “my wife.” She is not his in a property sense.

    Robert LeFevre, The Philosophy of Ownership (1966; https://mises.org/library/philosophy-ownership). [↑](#footnote-ref-37)
38. Technically speaking a property right is not a right to control a resource but a right to exclude others from using the resource; and it is not exactly a relationship between owner and thing, but between owner and other people, with respect to the thing owned. But these nuances are not pertinent here. See “What Libertarianism Is” (ch. 2), n.4; “A Libertarian Theory of Contract” (ch. 9), n.1. [↑](#footnote-ref-38)
39. See references and quotes in “What Libertarianism Is” (ch. 2), n.5. As discussed there, the civil law has a broad understanding of the concept of a “thing,” which can be owned or the subject of legal rights; see Louisiana Civil Code, art. 448: “Division of things. Things are divided into common, public, and private; corporeals and incorporeals; and movables and immovables.” Incidentally this exhaustive classification schema implies that intellectual property rights are (private) “incorporeal movables.” See “Against Intellectual Property After Twenty Years” (ch. 15), Part IV.B, and Kinsella, “Are Ideas Movable or Immovable?”, C4SIF Blog (April 8, 2013). [↑](#footnote-ref-39)
40. For example, in Israel M. Kirzner, “Producer, Entrepreneur, and the Right to Property,” Reason Papers No. 1 (Fall 1974; https://reasonpapers.com/archives/): 1–17, p. 6, Kirzner uses the term “own” in the economic sense:

    Day is sharply critical of Locke, denying that one can talk significantly of owning labor (in the sense of “working”). Laboring, Day contends, is an activity, “and although activities can be engaged in, performed or done, they cannot be owned.” However, economists will find Locke’s use of terms quite familiar and acceptable. Economists speak of agents of production (in the sense of stocks), and of the “services” of agents of production (in the flow sense). A man who “owns” an agent of production is considered by economists to own, by that token, also the services flowing from that agent. Again, by hiring the services of a productive agent, a producer is considered by economists to have acquired ownership of the service flow, by purchase from the previous owner of that flow (i.e. the owner of the agent “itself”). In speaking of owning the services of an employee, therefore, the economist does not in fact have in mind the ownership of the activity of working, nor the ownership of that which the activity of working produces, nor even the ownership of the capacity for working. Rather the economist is perceiving the employee as a stock of human capital, capable of generating a flow of services. [citations omitted] [↑](#footnote-ref-40)
41. See, on this, Hans-Hermann Hoppe, “A Note on Preference and Indifference in Economic Analysis” and “Further Notes on Preference and Indifference: Rejoinder to Block,” both in The Great Fiction. [↑](#footnote-ref-41)
42. Hülsmann, “The Ultimate Foundation of Economic Science.” [↑](#footnote-ref-42)
43. In International News Service v. Associated Press, 248 U.S. 215, 246 (1918; https://supreme.justia.com/cases/federal/us/248/215/), the Supreme Court recognized a quasi-property right in the fruits of one’s labor, what is sometimes called the “sweat of the brow” doctrine (a doctrine later rejected in the copyright context in Feist Publications, Inc. v. Rural Tel. Serv. Co., 499 U.S. 340 (1991; https://supreme.justia.com/cases/federal/us/499/340/)). In dissent, Justice Holmes recognized in passing that “Property, a creation of law, does not arise from value, although exchangeable—a matter of fact.” Ibid., p. 246. In other words, just because something can be exchanged, a matter of “fact”—i.e., a matter of description and economics—does not imply that the thing sold is property, or owned. [↑](#footnote-ref-43)