PART II

RIGHTS

4

How We Come to Own Ourselves

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The primary social evil of our time is lack of respect for self-ownership rights. It is what underlies both private crime and institutionalized crime perpetrated by the state. State laws, regulations, and actions are objectionable *just because* the state is claiming the legal right to control how someone’s body is to be used.[[1]](#footnote-1)

When the state drafts a man or threatens him with imprisonment if he violates its narcotics laws, for example, it is assuming partial control of his body, contrary to his self-ownership rights. Moreover, laws such as tax laws or fines for failure to comply with arbitrary state decrees (e.g., economic regulations, anti-discrimination rules) also violate self-ownership rights, to the extent they threaten to imprison or harm the body of the person, and in any case violate the person’s derivative property rights in the expropriated resources.

After all, although self-ownership is more fundamental than rights in external resources—one must own oneself, one’s body, in order to own other things—self-ownership is rendered meaningless if the right to own private property in external resources is not also respected.[[2]](#footnote-2) This is why Murray Rothbard insisted that all “human rights” are property rights: that is, ownership rights in scarce resources, whether self-ownership rights in one’s body, or property rights in external objects.[[3]](#footnote-3)

Now as the examples above show, all political theories advocate some form of property rights, since they specify certain owners of various types of resources.[[4]](#footnote-4) State policies that tax, conscript, or imprison or fine individuals for failure to comply with various regulations in effect assign partial ownership in the subjects’ bodies or other owned resources to the state. The state claims a partial ownership right in these resources.[[5]](#footnote-5)

All political systems assign owners to resources according to some assignment rule. What sets libertarianism apart is its own unique property-assignment rule: the rule that specifies that individuals, not the state, are owners of their own bodies and other external scarce resources.

FIRST USE AND HOMESTEADING   
OF UNOWNED RESOURCES

It is, therefore, crucial that libertarian theory have a sound basis for property rights and for its unique property assignment rules.

Relying on some version of the Lockean notion of *homesteading* or *original* *appropriation*—an individual *appropriating* something *unowned* from the state of nature, thereby becoming the owner—libertarianism rightly focuses on the concept of *first use* of a *previously* *unowned scarce resource* as the key test for determining ownership of it.[[6]](#footnote-6)

One’s initial impression might be that first use is the bedrock principle of libertarian property assignment, that is, that it decides questions of ownership of *all* scarce resources, both human bodies and external things. The owner of a plot of land is its first user (or his descendent in title), just as the first user of a body is its owner. This would mean that self-ownership rests on the first use principle, or homesteading.

PARENTS AS FIRST OWNERS

And what is wrong with relying on first use as the basis for self-ownership? To be sure, with respect to most claimants to one’s body—a robber or state trying to conscript, say—one is indeed the “first user,” or a prior user, and thus has a better claim to the body than the outsider. [[7]](#footnote-7) But what about one’s parents? Is one really the *first user* of one’s body? Was one’s body simply lying around unowned, in state of nature, waiting for some occupant to swoop down and appropriate it?

No, obviously not. One’s body was in the care of—and in a sense produced by—one’s parents, in particular one’s mother. So if we maintain that “first use” always determines the answer to the question “who owns this resource?,” for any resource at all, then it would seem that parents *do* own their children. The mother owns the physical matter and bits of food and nourishment that assemble into the zygote, embryo, fetus, and then baby, just as the owner of an apple tree owns the apples that fall and the owner of a cow owns the calves it produces.

So, when does the child become a self-owner? Or does he? The libertarian seems to be faced with a dilemma.

POSSIBLE SOLUTIONS TO THE DILEMMA

Several possible arguments might be put forward to avoid the uncomfortable specter of children in bondage, slaves owned by their parents. First, it could be noted that the main political issue in society concerns third parties who want to dominate and control others. Slaveowning parents do not seem to pose the most pressing danger. For the typical case of conflict, the first-use principle suffices to prove self-ownership of one’s body vis-à-vis the third party claimant. Still, this leaves open the possibility of parents owning their children.

Second, it could be argued that even if the parent does own the child, in *most* cases a decent parent would voluntarily manumit the child at a suitable age. This is probably true, but the possibility of a brutal parent selling his son or daughter into slavery is still unsettling.

Third, it is not difficult to envision a scenario in which most lines of descent, at some point, become permanently “liberated” or “manumitted” by the benevolent actions of a key ancestor. Great-great-great-Grand-dad manumits his child on the condition that he free his issue, and so on. In this way, eventually all or most lines of descent become freed by some distant act in the past of a benevolent ancestor. But still, this leaves open the possibility that some might not; and, in any event, it admits that at some points in time, child-slavery exists and is permissible.

Finally, and to me most decisive: it could be argued that the parent has various *positive obligations* to his or her children, such as the obligation to feed, shelter, educate, etc. The idea here is that libertarianism does not oppose “positive rights”; it simply insists that they be *voluntarily incurred*. One way to do this is by contract, or so some would argue;[[8]](#footnote-8) another is by trespassing against someone’s property. Now, if you pass by a drowning man in a lake you have no enforceable (legal) obligation to try to rescue him; but if you push someone in a lake you have a positive obligation to try to rescue him, to mitigate the harm resulting from your tort. If you don’t attempt the rescue, you could be liable for homicide.

Likewise, if your voluntary actions bring into being an infant with natural needs for shelter, food, care, and with human rights, it is akin to throwing someone into a lake. In both cases you create a situation where another human is in dire need of help and without which he will perish. By creating this situation of need you incur an obligation to provide for those needs. And surely this set of positive obligations to one’s child would encompass the obligation to manumit the child at a certain point. This last argument is, to my mind, the most attractive, but it is also probably the least likely to be accepted by most libertarians, who generally seem opposed to positive obligations, even if they are incurred as the result of one’s actions. Rothbard, for example, puts forward several objections to such an approach.[[9]](#footnote-9)

OBJECTIVE LINK: THE REAL TOUCHSTONE

All this said, it turns out that these Herculean efforts are unnecessary. The dilemma arises only if it is assumed that “first use” determines ownership not only for homesteaded resources, but also for bodies.

However, the “first use” rule is merely the result of the application of the more general principle of *objective link* to the case of objects that may be homesteaded from an unowned state. Recall that the purpose of property rights is to permit conflicts over scarce (rivalrous, conflictable) resources to be avoided.[[10]](#footnote-10) To fulfill this purpose, property titles to particular resources are assigned to particular owners. The assignment must not, however, be random, arbitrary, or biased, if it is to actually be a property norm and possibly help conflict to be avoided. What this means is that title has to be assigned to one of the competing claimants based on “the existence of an objective, intersubjectively ascertainable link between owner and the” resource claimed.[[11]](#footnote-11)

Thus, it is the concept of *objective link* between claimants and a claimed resource that determines property ownership. First use is merely what constitutes the objective link in the case of previously unowned resources. In this case, the only objective link to the thing is that between the first user—the appropriator—and the thing. Any other supposed link is not objective, and is merely based on verbal decree, or on some type of formulation that violates the prior-later distinction. But the prior-later distinction is crucial if property rights are to actually establish rights and make conflict avoidable. Moreover, ownership claims cannot be based on mere verbal decree, as this also would not help to reduce conflict, since any number of people could simply decree their ownership of the thing.[[12]](#footnote-12)

So for homesteaded things—previously unowned resources—the objective link *is* first use. It has to be, by the nature of the situation.

*Human Bodies*

But for human bodies, matters are somewhat different. As noted above, one is not really the “first user” of one’s body in the same sense as one is the first user of a previously unowned thing that one appropriates. It’s not as if the body was just lying, unoccupied and unused, in the wild, waiting for an occupant to homestead it. And moreover, as noted above, the occupant is not exactly the first user of his body, with respect to his parents.

Additionally, to homestead an *unowned* resource *presupposes one already has a body*, which one uses to *act* in the world and to homestead such unowned things. But this is not the case for “homesteading” one’s body. One has no body before one gains rights to it.[[13]](#footnote-13)

*Direct Control*

If “first use” is not the ultimate test for the “objective link” in the case of body ownership, what is? It is the unique relationship between a person and “his” body—his *direct and immediate control* over the body, and the fact that, at least in some sense, a body *is* a given person and vice-versa (as it is impossible to imagine a person that does not have a body, without accepting groundless religious conceptions). This is what constitutes the objective link sufficient to give that person better title to his body than any third party claimant, even his parents.[[14]](#footnote-14) (This link is only a presumption, it is defeasible, as noted below, since it may be severed or forfeited by a person committing an act of aggression that gives the victim rights over the aggressor’s body, for purposes of self-defense, restitution, or retribution.)

Moreover, any outsider who claims another’s body cannot deny this objective link and its special status, since the outsider also necessarily presupposes this in his own case. This is so because in seeking dominion over the other, in asserting ownership over the other’s body, he has to presuppose his own ownership of his body, which demonstrates he does place a certain significance on this link, at the same time that he disregards the significance of the other’s link to his own body. (Notice that if a victim seeks dominion over the body of his aggressor for purposes of self-defense or proportional punishment, his claim of ownership over the aggressor’s body is not incompatible with a claim of self-ownership, since the cases are different. It is not inconsistent to claim that the special link between an innocent person and his body gives him the best claim over that body, and to also claim that this no longer holds for an aggressor because he has committed aggression. This distinction is neither arbitrary nor particularizable; it is grounded in the nature of things.)[[15]](#footnote-15)

The basic point about the primacy of the “direct” link over an “indirect” link (*ceteris paribus*—see the point above about punishment of criminals) was first suggested to me by Hoppe. As might be apparent to those familiar with Hoppe’s argumentation ethics,[[16]](#footnote-16) the Hoppean theory implies the logical priority of direct versus indirect control over one’s body. In fact, the argument made above (that any outsider who claims another’s body cannot deny the objective link between person and body) is merely an application of Hoppe’s argumentation ethics approach. It turns out Hoppe made a similar argument in a German publication in 1987:

The answer to the question what makes my body “mine” lies in the obvious fact that this is not merely an assertion but that, for everyone to see, this *is* indeed the case. Why do we say “This is my body”? For this, a twofold requirement exists. On the one hand it must be the case that the body called “mine” must indeed (in an intersubjectively ascertainable way) express or “objectify” my will. Proof of this, as far as my body is concerned, is easy enough to demonstrate: When I announce that I will now lift my arm, turn my head, relax in my chair (or whatever else) and these announcements then become true (are fulfilled), then this shows that the body which does this has been indeed appropriated by my will. If, to the contrary, my announcements showed no systematic relation to my body’s actual behavior, then the proposition “this is my body” would have to be considered as an empty, objectively unfounded assertion; and likewise this proposition would be rejected as incorrect if following my announcement not my arm would rise but always that of Müller, Meier, or Schulze (in which case one would more likely be inclined to consider Müller’s, Meier’s, or Schulze’s body “mine”). On the other hand, apart from demonstrating that my will has been “objectified” in the body called “mine,” it must be demonstrated that my appropriation has *priority* as compared to the possible appropriation of the same body by another person.

As far as bodies are concerned, it is also easy to prove this. We demonstrate it by showing that it is under my *direct* control, while every other person can objectify (express) itself in my body only *indirectly*, i.e., by means of their own bodies, and direct control must obviously have logical-temporal priority (precedence) as compared to any indirect control. The latter simply follows from the fact that any indirect control of a good by a person presupposes the direct control of this person regarding his own body; thus, in order for a scarce good to become justifiably appropriated, the appropriation of one’s directly controlled “own” body must already be *presupposed* as justified. It thus follows: If the justice of an appropriation by means of direct control must be presupposed by any further-reaching indirect appropriation, and if only I have direct control of my body, then no one except me can ever justifiably own my body (or, put differently, then property in/of my body cannot be transferred onto another person), and every attempt of an indirect control of my body by another person must, unless I have explicitly agreed to it, be regarded as unjust(ified).[[17]](#footnote-17)

And as Hoppe adds in the Foreword, “if body-ownership were assigned to some indirect body-controller, *conflict would become unavoidable* as the direct body-controller cannot give up the direct control over his body as long as he is alive” (emphasis added). In other words, direct control has logical-temporal priority as compared to any indirect   
control, since otherwise conflict is unavoidable, contrary to the very purpose of property norms.

*Summary*

Perhaps it is time to summarize the (interrelated) reasons why direct control is the relevant link for determining ownership of human bodies, and why self-ownership is thus justified:

1.   
First, it is intuitively obvious; it’s the “natural” position. Who better to own my body than me? (See Hoppe’s discussion of this in *A Theory of Socialism and Capitalism*, at p. 21 *et seq.*) As Locke wrote, “every man has a property in his own person: this no body has any right to but himself.”[[18]](#footnote-18)

2.   
The arguments made by both Rothard and Hoppe, in the Appendix, below, rejecting the only two possible alternatives to self-ownership: the “communist” alternative of Universal and Equal Other-ownership, which is unworkable and would lead to the death of the human race; and other-ownership (slavery, domination), which is not universalizable.

3.   
The prior-later distinction, noted above (see notes 6, 7): It is difficult to deny that a person has a claim to self-ownership based on his direct control of his body. This is the objective link *par excellence*. As Hoppe writes, “While I can cite in favor of my property claim regarding my body the objective fact that I was the body’s first occupant—its first user—anyone else who claims to have the right to control this body can cite nothing of the sort.” (note 7, above) Anyone claiming a right to enslave this person via indirect control always comes along later. Indirect control of a person is impossible unless he is a person. When he becomes a person, his direct control makes him the first owner of his body. The would-be enslaver is thus a latecomer, in violation of the prior-later distinction. Thus, a property norm assigning property rights in a latecoming-  
indirect controller cannot be justifiable since it would, like any property norm violating the prior-later distinction, generate rather than reduce conflict.

4.   
Related to the universalizability points made in point 2 above: human actors who seek to own external resources presuppose they already own their own bodies. This right did not come from homesteading, but is based on some other reason (e.g., direct control). Thus, when the slaver attempts to dominate and own another person, he must claim self-ownership rights in himself—on *some* basis. Whatever the basis for the would-be enslaver’s claim to self-ownership, he cannot deny that similarly situated other persons do not have this same right.

5.   
Perhaps most decisively, as Hoppe argues in previous work (quote at note 17, above), and as he emphasizes in a related comment in the Foreword: “if body-ownership were assigned to some indirect body-controller, *conflict would become unavoidable* as the direct body-controller cannot give up the direct control over his body as long as he is alive.” As I discuss also in chapter 7 (note 35, text following note 36), what Hoppe is pointing out here is that assigning ownership over a person (the direct body-controller) to an enslaver (the indirect body-controller), *necessarily generates conflict* because the enslaved person maintains his direct control over his body—as Rothbard points out, his will remains “inalienable” (see chapter 9, Part III.C). In other words, direct control has priority as compared to any indirect control, since otherwise conflict is unavoidable, contrary to the *very purpose* of property norms. A norm that generates conflict cannot be considered a property norm aimed at reducing conflict, and thus cannot be justified. For this reason, direct control has logical-temporal precedence over indirect control, and the only justified property norm is self-ownership.[[19]](#footnote-19)

*Returning to the Child*

So, who owns a child’s body? We may say that initially, before the child has rights (say, as a very early stage fetus), the mother owns the growing fetus that is part of her body and that was produced by her body.[[20]](#footnote-20) Once the child is recognized as having rights, the child owns his own body because of his direct control over it, but the parents serve as presumptive guardians who can make decisions on the child’s behalf. (The presumption can be overcome if the parents are abusive, meaning some other adults would be selected as the guardians/parents.) When the child reaches a sufficient level of maturity, he or she becomes an adult, so to speak, and the parents’ guardianship ends. [[21]](#footnote-21)

Hoppe recognized this basic conclusion in his 1989 treatise, where he wrote:

It is worth mentioning that *the ownership right stemming from production finds its natural limitation only when, as in the case of children, the thing produced is itself another actor-producer. According to the natural theory of property, a child, once born, is just as much the owner of his own body as anyone else.* Hence, not only can a child expect not to be physically aggressed against but as the owner of his body a child has the right, in particular, to abandon his parents once he is physically able to run away from them and say “no” to their possible attempts to recapture him. Parents only have special rights regarding their child—stemming from their unique status as the child’s producers—insofar as they (and no one else) can rightfully claim to be the child’s trustee as long as the child is physically unable to run away and say “no.”[[22]](#footnote-22)

Here Hoppe adopts the Rothbardian approach, which uses the child’s capacity to run away and say “no” as a sort of rule of thumb for indicating when a child fully appropriates his body.[[23]](#footnote-23) But a more general conception of body-appropriation may be developed by considering the following. First, as Hoppe emphasizes, to appropriate means to *bring under control*.[[24]](#footnote-24)

Hoppe also argues that rights are held by *rational agents*—those who are “capable of communicating, discussing, arguing, and in particular, [who are] *able to engage in an argumentation of normative problems*.”[[25]](#footnote-25) This implies that a person reaches adulthood, or “appropriates” his body and gains full ownership rights to it, when he reaches the point where he is a rational agent in this sense. (The act of gaining full self-ownership rights may be regarded as a type of homesteading or appropriation of one’s body—reaching adulthood, so to speak—so long as it is kept in mind that it is a special type of homesteading: not homesteading *by* a body-owner *of* an *unowned* (non-agent) resource, but the establishment of an objective link constituted by direct and immediate control of the body by a rational agent. The child becomes a full self-owner or body-owner, when he reaches sufficient rational agency to be rights-bearing and independent, *because* he has direct control over his body. It is the union of these two characteristics that gives him a proprietary right over his body: rational agency + direct control. Animals also have direct control over their bodies but can be owned because they have no rational agency, that is, no rights. Both characteristics are needed for the young human to become a self-owning adult, so to speak.)

Obviously, there are other issues that could be explored here: when and exactly how does a child homestead himself, or reach adulthood; and exceptions to the *prima facie* case, such as where a person commits a crime which in some sense severs his objective link or transfers it to his victim (creating a “superior” link on behalf of the victim), so that the victim has the right to retaliate. But it should be clear that what distinguishes libertarianism from all competing political theories is its scrupulous adherence—informed by sound, i.e., Austrian, economics—to the idea that property rights in scarce resources must be assigned to the person with the best objective link to the resource in question; and that, in the case of bodies, the link is the natural connection to and relationship between the occupant and the body, while for all other resources, the objective link is first use and contractual transfer.

**APPENDIX**  
DIRECT CONTROL AND OBJECTIVE LINKS

As noted above, the material here was originally intended to appear in footnote 14, above. Due to its length, I include this material in this appendix.

In the text above, I noted that “first use” is not the ultimate test for the “objective link” in the case of body ownership, but that rather it is a person’s *direct and immediate control* over his body. See also, on this, Rothbard, who argues in favor of self-ownership because the only logical alternatives are “(1) the ‘communist’ one of Universal and Equal Other-ownership, or (2) Partial Ownership of One Group by Another—a system of rule by one class over another.”[[26]](#footnote-26) However, Alternative (2) cannot be universal, as it is partial and arbitrary; and Alternative (1) either breaks down in practice and reduces to Alternative (2), or, if actually implemented, would result in the death of the human race. As Rothbard writes:

Can we picture a world in which *no* man is free to take *any* action whatsoever without prior approval by *everyone else* in society? Clearly no man would be able to do anything, and the human race would quickly perish. But if a world of zero or near-zero self-ownership spells death for the human race, then any steps in that direction also contravene the law of what is best for man and his life on earth.[[27]](#footnote-27)

Hoppe also writes on this:

If a person A were *not* the owner of his own body and the places and goods originally appropriated and/or produced with this body as well as of the goods voluntarily (contractually) acquired from another previous owner, then only two alternatives exist. Either *another* person B must be recognized as the owner of A’s body as well as the places and goods appropriated, produced or acquired by A, or else *all* persons, A and B, must be considered equal co-owners of all bodies, places and goods.

In the first case, A would be reduced to the rank of B’s slave and object of exploitation.… such a ruling must be discarded as a human ethic equally applicable to everyone qua human being (rational animal). From the very outset, any such ruling can be recognized as not universally acceptable and thus cannot claim to represent law. For a rule to aspire to the rank of a law—a *just* rule—it is necessary that such a rule apply equally and universally to everyone.

Alternatively, in the second case of universal and equal co-ownership, the requirement of equal law for everyone is fulfilled. However, this alternative suffers from another even more severe deficiency, for if it were applied, all of mankind would instantly perish. (And since every human ethic must permit the survival of mankind, this alternative must be rejected.)

… This insight into the praxeological impossibility of “universal communism,” as Rothbard referred to this proposal, brings us immediately to an alternative way of demonstrating the idea of original appropriation and private property as the only correct solution to the problem of social order.[[28]](#footnote-28)

And in another work, Hoppe adds:

What is wrong with this idea of dropping the prior-later distinction as morally irrelevant? First, if the late-comers, i.e., those who did not in fact do something with some scarce goods, had indeed as much of a right to them as the first-comers, i.e., those who did do something with the scarce goods, then literally no one would be allowed to do anything with anything, as one would have to have all of the late-comers’ consent prior to doing whatever one wanted to do. Indeed, as posterity would include one’s children’s children—people, that is, who come so late that one could never possibly ask them—advocating a legal system that does not make use of the prior-later distinction as part of its underlying property theory is simply absurd in that it implies *advocating death* but must presuppose life to advocate anything. Neither we, our forefathers, nor our progeny could, do, or will survive and say or argue anything if one were to follow this rule. In order for any person—past, present, or future—to argue anything it *must be possible to survive now*. Nobody can wait and suspend acting until everyone of an indeterminate class of late-comers happens to appear and agree to what one wants to do. Rather, insofar as a person finds himself alone, he must be able to act, to use, produce, consume goods straightaway, prior to any agreement with people who are simply not around yet (and perhaps never will be).[[29]](#footnote-29)

Marxist philosopher G.A. Cohen acknowledges:

people can do (virtually) nothing without using parts of the external world. If, then, they require the leave of the community to use it, then, effectively…, they do not own themselves, since they can do nothing without communal authorization.[[30]](#footnote-30)

Regarding this remark by Cohen, libertarian philosopher Jan Narveson comments: “It is testimony to the strength of our position that even someone so ideologically opposed gives it clear recognition as an argument that must be confronted.”[[31]](#footnote-31)

John Locke also rejected the idea that people can only use unowned resources by getting the consent of everyone else as absurd:

By making an explicit consent of every commoner, necessary to any one’s appropriating to himself any part of what is given in common, children or servants could not cut the meat, which their father or master had provided for them in common, without assigning to every one his peculiar part.[[32]](#footnote-32)

For a point related to those mentioned above, see Hoppe, in the Foreword:

[It is] clear what a human ethic or a theory of justice worth its salt must accomplish. It must give an answer to the question of what am I and what is every other person permitted (or not permitted) to do, right now and right here, wherever a person may find himself and whatever his external surroundings of men and materials may be.

1. As will become clear, by “self-ownership,” I am referring to a person’s ownership of his body, where the person (or actor or agent) is conceptually distinct from his body, just as one’s mind is conceptually distinct from one’s brain, even if a mind is not possible without a brain and a person cannot exist without a body. Other terms such as “self-body-ownership” might be used instead, but they are unwieldy. Some libertarians object to the concept of self-ownership or body-ownership, maintaining that it implies some mystical belief where the “person,” or perhaps his soul, is some spirit that owns and “inhabits” or “occupies” the body. For an example of a silly objection along these lines, Leland Yeager claims my advocacy of self-ownership involves some kind of mind-body dichotomy mistake. See Stephan Kinsella “Yeager and Other Letters Re Liberty article ‘Intellectual Property and Libertarianism,’” StephanKinsella.com (Jan. 23, 2010); idem, “Intellectual Property and Libertarianism,” Mises Daily (Nov. 17, 2009). This is nonsense. Self-ownership simply specifies that each person has the right to control his body; it is the opposite of other-ownership, or domination and slavery. Nothing could be more libertarian. See “What Libertarianism Is” (ch. 2), text at notes 12 and 13; see also Stephan Kinsella, “‘Libertarians’ Who Object to ‘Self-Ownership,’” StephanKinsella.com (July 19, 2022); Roderick T. Long, “Getting Self-Ownership in View” (Paper presented to the PPE conference, March 2019, New Orleans; https://perma.cc/U4AU-F996); idem, “This Self Is Mine,” Austro-Athenian Empire Blog (July 8, 2014; https://perma.cc/VKP7-9F4D). See also Hans-Hermann Hoppe, “The Idea of a Private Law Society,” Mises Daily (July 28, 2006; https://mises.org/library/idea-private-law-society) (“Outside of the Garden of Eden, in the realm of all-around scarcity, the solution [to the problem of social order] is provided by four interrelated rules.… First, every person is the proper owner of his own physical body. Who else, if not Crusoe, should be the owner of Crusoe’s body? Otherwise, would it not constitute a case of slavery, and is slavery not unjust as well as uneconomical?”); and idem, The Great Fiction: Property, Economy, Society, and the Politics of Decline (Second Expanded Edition, Mises Institute, 2021; www.hanshoppe.com/tgf), chap. 11, Part II. [↑](#footnote-ref-1)
2. As Professor Hoppe explains, a person’s body is “the very prototype of a scarce good.” 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), p. 335; see also idem, A Theory of Socialism and Capitalism: Economics, Politics, and Ethics (Auburn, Ala.: Mises Institute, 2010 [1989]; www.hanshoppe.com/tsc), pp. 19 & 21 et pass., pp. 158–60. Once property rights are established in one’s body (self-ownership), the argument can then be extended to other, external, previously-unowned scarce resources. See generally Hoppe, The Economics and Ethics of Private Property, pp. 335–36, et pass. and idem, A Theory of Socialism and Capitalism, pp. 19 & 21 et pass., pp. 158–60 (re body rights) and p. 160 et seq. for property rights in external resources. The self-ownership or body-ownership rule can be formulated as “Nobody has the right to uninvitedly aggress against the body of any other person and thus delimit or restrict anyone’s control over his own body.” Hoppe, A Theory of Socialism and Capitalism, p. 159. But “conflicts over bodies, for whose possible avoidance the nonaggression principle formulates a universally justifiable solution, make up only a small portion of all possible conflicts.” Ibid., at 159–60. For conflicts related to the use of other resources:

   norms are needed, too, as it could come to conflicting evaluations regarding their use. But in fact, any other norm must be logically compatible with the nonaggression principle in order to be justified itself, and, mutatis mutandis, every norm that could be shown to be incompatible with this principle would have to be considered invalid. In addition, as the things with respect to which norms have to be formulated are scarce goods—just as a person’s body is a scarce good—and as it is only necessary to formulate norms at all because goods are scarce and not because they are particular kinds of scarce goods, the specifications of the nonaggression principle, conceived of as a special property norm referring to a specific kind of good, must in fact already contain those of a general theory of property.

   Ibid., at 160. See also “A Libertarian Theory of Punishment and Rights” (ch. 5), Part III.F, “Property Rights” (extending the body- or self-ownership rights established by the preceding estoppel analysis to external scarce resources).

   For my attempt at a concise formulation of the libertarian view on self-ownership and external property rights, see Stephan Kinsella, “Aggression and Property Rights Plank in the Libertarian Party Platform,” StephanKinsella.com (May 30, 2022). [↑](#footnote-ref-2)
3. Murray N. 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, “Aggression and Property Rights Plank in the Libertarian Party Platform.” [↑](#footnote-ref-3)
4. See “What Libertarianism Is” (ch. 2) for more on this. [↑](#footnote-ref-4)
5. This is ultimately also the core injustice of intellectual property laws: they are non-consensual negative easements granted by the state. See “Against Intellectual Property After Twenty Years: Looking Back and Looking Forward” (ch. 15), Part IV.B. [↑](#footnote-ref-5)
6. For more on the importance of and reasons for first use being the touchstone of property ownership, see “Defending Argumentation Ethics” (ch. 7), especially the section “Objective Links: First Use, Verbal Claims, and the Prior-Later Distinction,” and the references in “A Libertarian Theory of Contract: Title Transfer, Binding Promises, Inalienability” (ch. 9) to various writings by Hans-Hermann Hoppe on this issue; also Stephan Kinsella, “The Essence of Libertarianism? ‘Finders Keepers,’ ‘Better Title,’ and Other Possibilities,” StephanKinsella.com (Aug. 31, 2005); idem, “Thoughts on Intellectual Property, Scarcity, Labor-Ownership, Metaphors, and Lockean Homesteading,” Mises Economic Blog (May 26, 2006); “Selling Does Not Imply Ownership, and Vice-Versa: A Dissection” (ch. 11); idem, “KOL259 | ‘How To Think About Property,’ New Hampshire Liberty Forum 2019,” Kinsella on Liberty Podcast (Feb. 9, 2019). Two subsidiary rules are contractual title transfer and transfer as a result of rectification for a tort. For more on this, see “What Libertarianism Is” (ch. 2), n.11 and accompanying text et pass. [↑](#footnote-ref-6)
7. Writes Hoppe: “While I can cite in favor of my property claim regarding my body the objective fact that I was the body’s first occupant—its first user—anyone else who claims to have the right to control this body can cite nothing of the sort.” A Theory of Socialism and Capitalism, p. 23. See also Kinsella, “Intellectual Property and Libertarianism”:

   the libertarian property-assignment rule for bodies is that each person owns his own body. Implicit in the idea of self-ownership is the belief that each person has a better claim to the body that he or she directly controls and inhabits than do others. I have a better claim to the right to control my body than you do, because it is my body; I have a unique link and connection to my body that others do not, and that is prior to the claim of any other person.

   Anyone other than the original occupant of a body is a latecomer with respect to the original occupant. Your claim to my body is inferior in part because I had it first. The person claiming your body can hardly object to the significance of what Hoppe calls the “prior-later” distinction, since he adopts this very rule with respect to his own body—he has to presuppose ownership of his own body in order to claim ownership of yours.

   As for this latter point, Auberon Herbert writes: “If the entities do not belong to themselves, then we are reduced to the most absurd conclusion. A or B cannot own himself; but he can own, or part own, C or D.” Auberon Herbert, “Part XI,” in Auberon Herbert & J. H. Levy, Taxation and Anarchism: A Discussion between the Hon. Auberon Herbert and J.H. Levy (London: The Personal Rights Association, 1912; https://perma.cc/LX8H-MZFH), p. 37, quoted in Murray N. Rothbard, 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, § 13, p. 185.

   See also “Law and Intellectual Property in a Stateless Society” (ch. 14), Part II.C. For more on the prior-later distinction, see references in note 6, above. [↑](#footnote-ref-7)
8. But see “A Libertarian Theory of Contract” (ch. 9), arguing that contracts do not give rise to binding obligations but only result in transfers of title to owned (alienable) resources. In which case a mere promise or “contract” could not, in and of itself, give rise to any positive obligations or corresponding positive rights. [↑](#footnote-ref-8)
9. See Murray N. Rothbard, “Children and Rights,” in The Ethics of Liberty (New York: New York University Press, 1998; http://mises.org/rothbard/ethics/fourteen.asp). See also Kinsella, “Objectivists on Positive Parental Obligations and Abortion,” The Libertarian Standard (Jan. 14, 2011). [↑](#footnote-ref-9)
10. On the term “conflictable,” see Kinsella, “On Conflictability and Conflictable Resources,” StephanKinsella.com (Jan. 31, 2022); also “Against Intellectual Property After Twenty Years: Looking Back and Looking Forward” (ch. 15), at n.29; “What Libertarianism Is” (ch. 2), Appendix I. [↑](#footnote-ref-10)
11. Hoppe, A Theory of Socialism and Capitalism, p. 23. [↑](#footnote-ref-11)
12. Hoppe elaborates on these themes in chaps. 1, 2, and 7 of A Theory of Socialism and Capitalism. [↑](#footnote-ref-12)
13. For further discussion of the difference between bodies and previously unowned things, see “A Libertarian Theory of Contract” (ch. 9), Part III.B et pass. As Hoppe points out, “any indirect control of a good by a person presupposes the direct control of this person regarding his own body; thus, in order for a scarce good to become justifiably appropriated, the appropriation of one’s directly controlled ‘own’ body must already be presupposed as justified.” Quoted in text at note 17, below. [↑](#footnote-ref-13)
14. In revising this chapter, this footnote grew to unmanageable length. I have placed the relevant commentary in the Appendix, below. [↑](#footnote-ref-14)
15. For more on this, see especially the text following n.37 in chapter 7; also “A Libertarian Theory of Punishment and Rights” (ch. 5), Parts III.C “Punishing Aggressive Behavior” and III.D “Potential Defenses by the Aggressor”; Hoppe, A Theory of Socialism and Capitalism, pp. 157–65; “What Libertarianism Is” (ch. 2), the section “Self-ownership and Conflict Avoidance”; “Dialogical Arguments for Libertarian Rights” (ch. 6), n.43 and accompanying text; and Stephan Kinsella, “The problem of particularistic ethics or, why everyone really has to admit the validity of the universalizability principle,” StephanKinsella.com (Nov. 10, 2011). Although Hoppe has not directly addressed this issue, I believe this is compatible with his argumentation ethics. Note that in the quote in note 17 below, he states: “every attempt of an indirect control of my body by another person must, unless I have explicitly agreed to it, be regarded as unjust(ified)” (emphasis added). I believe the forfeiture of rights that results from voluntarily committing aggression can be subsumed under the “explicitly agreed to” provision; indeed, I have been reluctant to separate out rectification as a third principle of property rights allocation, in addition to original appropriation and contractual transfer, since rectification can be thought of as a special case of contractual transfer since aggression is a voluntary action that results in changes of ownership, just as normal contracts do. However, due to its special characteristics, it is worth calling it out as a third principle, if its relationship to the first two principles (homesteading and contract) is kept in mind. See, e.g., my formulation in Kinsella, “Aggression and Property Rights Plank in the Libertarian Party Platform.” [↑](#footnote-ref-15)
16. For more on argumentation ethics, see “Dialogical Arguments for Libertarian Rights” (ch. 6); “Defending Argumentation Ethics” (ch. 7); “The Undeniable Morality of Capitalism” (ch. 22); Hoppe, “The Ethical Justification of Capitalism and Why Socialism Is Morally Indefensible,” chap. 7 in A Theory of Socialism and Capitalism; idem, “From the Economics of Laissez Faire to the Ethics of Libertarianism,” “The Justice of Economic Efficiency,” and “On the Ultimate Justification of the Ethics of Private Property,” chaps. 11–13 in The Economics and Ethics of Private Property; idem, “Of Common, Public, and Private Property and the Rationale for Total Privatization,” in The Great Fiction; idem, “PFP163 | Hans Hermann Hoppe, ‘On The Ethics of Argumentation’ (PFS 2016),” The Property and Freedom Podcast, ep. 163 (June 30, 2022); Stephan Kinsella, “Argumentation Ethics and Liberty: A Concise Guide,” StephanKinsella.com (May 27, 2011); idem, “Hoppe’s Argumentation Ethics and Its Critics,” StephanKinsella.com (Aug. 11, 2015); Frank van Dun, “Argumentation Ethics and the Philosophy of Freedom,” Libertarian Papers 1, art. no. 19 (2009; www.libertarianpapers.org); Marian Eabrasu, “A Reply to the Current Critiques Formulated Against Hoppe’s Argumentation Ethics,” Libertarian Papers 1, art. no. 20 (2009; www.libertarianpapers.org); Norbert Slenzok, “The Libertarian Argumentation Ethics, the Transcendental Pragmatics of Language, and the Conflict-Freedom Principle,” Analiza i Egzystencja 58 (2022), 35–64. [↑](#footnote-ref-16)
17. Informal translation (by Hans-Hermann Hoppe) from, Eigentum, Anarchie und Staat (Manuscriptum Verlag, 2005; originally published in 1987; www.hanshoppe.com/eigentum), pp. 98–100. See also the similar, but later, quote in “Defending Argumentation Ethics” (ch. 7), at n.35; and idem, Economy, Society, and History (Auburn, Ala.: Mises Institute, 2021; https://www.hanshoppe.com/esh/), pp. 7–8 (discussing each human’s unique connection to his own body). See also Emanuele Martinelli, “On Whether We Own What We Think” (draft, 2019; https://www.academia.edu/93535130/On\_Whether\_We\_Own\_What\_We\_Think), p. 3: regarding Locke’s notion of self-ownership, “the basic intuition is that no one could metaphysically control another one’s body and mind.” See also Locke, Second Treatise on Civil Government, chap. 5, “Of Property”; and Richard A. Epstein, “Possession as the Root of Title,” Georgia L. Rev. 13 (1979; https://chicagounbound.uchicago.edu/journal\_  
    articles/1236/) 1221–43, p. 1227 (citation omitted; emphasis added):

    Why does labor itself create any rights in a thing? The labor theory rests at least upon the belief that each person owns himself. Yet that claim, unless it be accepted as bedrock and unquestioningly, must be justified in some way…. The obvious line for justification is that each person is in possession of himself, if not by choice or conscious act, then by a kind of natural necessity. [↑](#footnote-ref-17)
18. Locke, Second Treatise on Civil Government, §25. [↑](#footnote-ref-18)
19. I discuss this also in Kinsella, “On the Obligation to Negotiate, Compromise, and Arbitrate,” StephanKinsella.com (April 6, 2023). See also related discussion in “Defending Argumentation Ethics” (ch. 7), text following n.36; “Law and Intellectual Property in a Stateless Society” (ch. 14), Part II.C. [↑](#footnote-ref-19)
20. For those who believe human rights start from conception, the mother would never be seen as the owner of the fetus. But I do not believe this can be argued from purely rational principles. [↑](#footnote-ref-20)
21. To be clear, humans do not literally homestead or appropriate their bodies as they homestead or appropriate unowned external resources. In the original article upon which this chapter is based, I referred to the child at some point appropriating or “homesteading” his body, but this was meant only as an analogy. Before the child has rights, the body is owned by the mother as it is part of her. After the child is recognized as having rights, but before he or she has full capacity, the parents are the presumptive agents for and guardians of the child. For more on the distinction between self- or body-ownership and ownership of external resources, see “A Libertarian Theory of Contract” (ch. 9); “Selling Does Not Imply Ownership, and Vice-Versa: A Dissection” (ch. 11); idem, “Aggression and Property Rights Plank in the Libertarian Party Platform”; idem, “KOL259 | ‘How To Think About Property.’” [↑](#footnote-ref-21)
22. Hoppe, A Theory of Socialism and Capitalism, pp. 24–25, n.12 (emphasis added). [↑](#footnote-ref-22)
23. Rothbard, “Children and Rights.” Again, this “appropriation” is not the same as a body-owning actor homesteading or appropriating an unowned, external resource. See note 21, above. [↑](#footnote-ref-23)
24. Hans-Hermann Hoppe, “Four Critical Replies,” in The Economics and Ethics of Private Property, p. 405. [↑](#footnote-ref-24)
25. Hoppe, A Theory of Socialism and Capitalism, pp. 18–19, n.5. [↑](#footnote-ref-25)
26. Murray N. Rothbard, “Interpersonal Relations: Ownership and Aggression,” in The Ethics of Liberty (https://mises.org/library/crusoe-social-philosophy), p. 45. [↑](#footnote-ref-26)
27. Ibid., p. 46. [↑](#footnote-ref-27)
28. Hans-Hermann Hoppe, “Rothbardian Ethics,” in The Economics and Ethics of Private Property, pp. 383–84. See also similar comments in David Boaz, The Libertarian Mind: A Manifesto for Freedom (New York: Simon & Schuster, 2015), p. 140. See also related discussion in “Law and Intellectual Property in a Stateless Society” (ch. 14), n.27 and “Defending Argumentation Ethics” (ch. 7), at n.31. See also R.W. Bradford’s inane criticism of this reasoning in R.W. Bradford, “A Contrast of Visions,” Liberty 10, no.4 (March 1997; https://perma.cc/7FDT-G7FD): 57–63, at 57–58. [↑](#footnote-ref-28)
29. Hoppe, A Theory of Socialism and Capitalism, pp. 169–70 (emphasis added). See also idem, “The Ethics and Economics of Private Property,” in The Great Fiction, p. 17. [↑](#footnote-ref-29)
30. G.A. Cohen, “Self-Ownership, World-Ownership, and Equality,” in Frank Lucash, ed., Justice and Equality, Here and Now (Ithaca, N.Y.: Cornell University Press, 1986), pp. 113–14; also in G.A. Cohen, Self-ownership, Freedom, and Equality (Cambridge University Press, 1995), pp. 93–94. [↑](#footnote-ref-30)
31. Jan Narveson, The Libertarian Idea, reissue ed. (Broadview Press, 2001), p. 74. [↑](#footnote-ref-31)
32. John Locke, Second Treatise on Civil Government (1690; https://www.johnlocke.net/2022/07/two-treatises-of-government.html), §29. [↑](#footnote-ref-32)