

## THE RIGHT TO PROPERTY

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*ABSTRACT:* This paper begins with propositions whose truth is evident, and from them conclusions are derived whose truth has been made evident by deduction. In this paper, the foundations of the right to property are laid out, with implications for the acquisition of unowned property and the ability of a person to transfer that ownership. This includes ownership rights over one's body. The slave is a slave because his body is owned by someone else, and that owner is not the rightful owner. Slavery is theft, and theft is also slavery. Slavery exists wherever theft exists, and socialism is theft writ large. Socialism is therefore slavery writ large, and slavery is indefensible morally. I show further that the right to property is the only right held by a rational animal by showing that what are purported to be two other human rights—the right to privacy and the right to life—are in fact subsumed under the right to property.

### INTRODUCTION

The foundation for everything that follows begins with some propositions whose truth is either evident or whose truth is capable of being made evident by deduction from those propositions whose truth is evident. Those propositions whose truth is evident are preceded by the letter *E*; those whose truth is proved by deduction from the two preceding propositions are preceded by the letter *C*.

*E* (1) Man is a rational animal.<sup>1</sup>

*E* (2) Man, like all animals, has a body.

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<sup>1</sup> The fact that man has a body is not in dispute; the fact that man is rational, e.g., is capable of making assertions, cannot meaningfully be denied.



- E (3) Man's body, like all bodies, is located somewhere and occupies space.
- E (4) Man's body, like all bodies, has extension, and so, therefore, does the space which it occupies.
- E (5) Man's body requires the use of the space which it occupies.
- E (6) Ownership is control of the use of that which has extension.
- C (1) The space occupied by man's body is therefore owned.
- E (7) Property is that which is owned.
- C (2) All property has extension.
- E (8) Because all property has extension, it makes no sense to say that something that lacks extension is owned.
- E (9) Neither one's self nor one's person has extension.
- C (3) It therefore makes no sense to say that man owns himself or his person.
- E (10) Man's ratio, or the intellect that informs man's body, controls its use.<sup>2</sup>
- C (4) The intellect that informs man's body owns that body.

## APPROPRIATION

We saw in the introduction that ownership is control of the use of that which has extension. How does one acquire ownership of something extended? In the case of man's body, the answer is obvious: the intellect that informs man's body is born with it. And in the case of something other than man's body? Something which is owned either had no prior owner or was acquired from the prior owner.

How does one acquire the ownership of something that is unowned? The answer often given is that one acquires ownership of something unowned by mixing one's labor with it, but the correct answer is so simple that it is very easy to miss what takes place: one acquires ownership of something unowned by acting as the owner. Ownership is control of the use of something which has extension. One acts as the owner when one controls the use of something which has extension.

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<sup>2</sup> Any objection would require the use of the body of a rational animal by the intellect that informs it.

Let us consider the case of a man who finds himself on a tract of land that no one else owns. That tract of land contains a cave and a pond. Mr. Crusoe decides to use the cave as his dwelling and to use the pond for drinking and bathing—and proceeds to do so. A term often used for the acquisition of ownership of something unowned is *appropriation*. Although it should be obvious that Mr. Crusoe is the owner of the property he has appropriated, a question that also deserves consideration is, Does Mr. Crusoe—or anyone else for that matter—have the right to appropriate something that previously lacked an owner and so become not merely its owner but also its rightful owner?

### THE RIGHT TO APPROPRIATE UNOWNED LAND

Let us construct an obstreperous chap, Mr. Strawman, who objects on principle to appropriation and therefore rejects Mr. Crusoe's right to appropriate something unowned. We need not concern ourselves with the reasons why Mr. Strawman objects to appropriation; we only need to consider the implication. Mr. Strawman certainly cannot have a right to prevent Mr. Crusoe from appropriating unowned land, because having that right would make Mr. Strawman the owner of the land in question: ownership is control of the use of that which has extension, and it would then be Mr. Strawman who controls its use. Mr. Strawman, in other words, will have appropriated unowned land, yet it is precisely the right to appropriate something unowned which Mr. Strawman disputes. It is time to dispatch Mr. Strawman. Does anyone have a match?

One cannot be rightfully prevented from acting in a manner that infringes no one else's right. This is not a play on words. One can only be rightfully prevented from acting in a particular manner when someone else has the right that one not act in that manner.

No one can have the right that someone else not appropriate something unowned, because the appropriation of something unowned violates no one else's right. We can safely conclude that everyone has the right to appropriate that which is unowned and that those who do so by using it thereby become not merely the *de facto* owners of the property in question, but also its rightful owners.

### THE ACQUISITION OF OWNERSHIP

We saw in the previous section that one can acquire ownership of something by appropriating it. Indeed, the only way to acquire

ownership of something unowned is by appropriation. The acquisition of ownership by something other than appropriation therefore requires that the property being acquired already have an owner. Consider the cave which Mr. Crusoe appropriated. Perhaps Christmas is fast approaching and Mr. Crusoe thinks that his cave would make a suitable present for his favorite niece. One can use something that one owns as a gift, and when so used, the gift transfers ownership to the recipient. Because Mr. Crusoe was the rightful owner of the cave before he made the gift and had the right to use it as he saw fit (provided, of course, that its use did not violate anyone else's right), Mr. Crusoe had the right to give his cave to his niece, which made her the rightful owner once the gift had been given.

Is inheritance another way to acquire the ownership of something that is owned? The only thing that distinguishes a bequest from a gift made during one's lifetime is the timing: one gift occurs before death; the other occurs after death. For that reason we do not need a separate category for inheritance: a gift is a gift regardless of when it is made.

Another way that one can use something that one owns is to sell it in order to acquire ownership of something else. Perhaps Mr. Crusoe has found someone who wants to acquire ownership of the cave by buying it, i.e., by offering to exchange something which he himself owns for Mr. Crusoe's cave. Every voluntary exchange requires two owners, each one of whom transfers something he owns to the other party in return for the ownership of something else. Let us assume that Mr. Crusoe, the rightful owner of the cave, sells it to Mr. Moneybags in exchange for colored beads. Let us also assume that Mr. Moneybags was the rightful owner of those beads. The result of that voluntary exchange makes Mr. Crusoe the rightful owner of some colored beads and Mr. Moneybags the rightful owner of a cave.

It should now be clear that one can acquire ownership of something by appropriation, by gift, and by voluntary exchange. Does that exhaust the possibilities? Unfortunately, there is one other way to acquire property: one can acquire the ownership of something by stealing it from someone else.

## THEFT

Mrs. Matron is the rightful owner of some splendid jewelry, but said splendid jewelry now finds itself, alas, in the possession of a

burglar. Mr. Burglar did not appropriate the jewelry (it already had an owner), he was not given it by the owner, nor did she sell it to him in a voluntary exchange. Mr. Burglar is now the owner of the jewelry, for he, and not Mrs. Matron, controls its use. He is not, however, the rightful owner, for he acquired his ownership by theft, by stealing the jewelry from someone else.

Need stolen property always be in the possession of the thief? Let us return to the case of Mr. Crusoe and his cave. Mr. Crusoe appropriated the cave and in so doing became its rightful owner. That gave him the right to use the cave in any way he saw fit, provided, of course, that in so doing he violated no one else's right (from this point forward I will ignore the qualification). One way that he could use the cave is to acquire the ownership of money by renting the cave to someone else. If Mr. Crusoe is prevented from renting his property to someone else at a price that both parties find acceptable, an act of theft has occurred: Mr. Crusoe may still be able to use the cave as his dwelling (he may, that is to say, retain partial ownership of the cave), but partial ownership of the cave, i.e., partial control of the use of the cave, has been stolen by someone else. Ownership may not be fungible, but it certainly is divisible.

## PARTIAL OWNERSHIP

I live in the country and own twenty acres of land. I am willing to sell half of the land that I own, but I do not want a dwelling erected close to what will become the property line that will divide what I will still own from what I intend to sell. I therefore include a stipulation in the contract that no dwelling may be erected on the land I am selling within two hundred yards of what will soon be the new property line. That stipulation is a *restrictive covenant*, and the covenant means that only partial—and not full—ownership of the land is being transferred to the buyer. Partial ownership—partial control of the use—of some of the land is being retained by the seller. Restrictive covenants are not uncommon.

Let us return to the case of Mr. Crusoe, who plans to spend the winter in Florida and wants to rent his cave to someone else while he is working on his suntan. He lists the cave for rent on Airbnb (fortunately, no one contests his right to sell his property to a willing buyer at a price that both parties find acceptable) and quickly finds a renter, but Mr. Crusoe, too, includes a restrictive covenant: no subletting. The only significant difference between

the sale of land in the previous paragraph and the rental of the cave in this one is that the transfer of partial ownership is permanent (unlimited with respect to duration, at any rate) in the first case and temporary in the second. Restrictive covenants not only are common in rental agreements, they are often extraordinarily detailed and comprehensive.

## TEMPORARY OWNERSHIP

When the duration of ownership is limited by the terms of the contract, ownership of the property in question reverts to the seller after the specified period of time. It is customary to use the term *rent* to refer to the payment one receives in exchange for a temporary, i.e., limited in duration, sale of real estate, but real estate is not the only form of property that can be sold for a limited period of time. Money can be—and often is—rented, but the term routinely used for the “rent” one receives for money is *interest*. One can also sell the use of one’s body to someone else for a limited period of time—that is to say, rent it out—but the terms ordinarily used in connection with the rental of one’s body are *wages* and *salary*.

In case one objects to the idea that one has rented the use of one’s body when one agrees to work as an employee, consider the following: when one agrees to hew wood and draw water for someone else in exchange for payment, said services are performed by using one’s body; and when one agrees to perform brain surgery for someone else in exchange for payment, said services are performed by using one’s body. The factors of production are land, labor (which always requires the use of the body of a rational animal), and capital goods, and the rental of those factors is widespread in a free market.

## OWNERSHIP OF SOMEONE ELSE’S BODY

We saw in the previous section that an employer acquires temporary ownership of the employee’s body—albeit, almost always with an extensive set of restrictive covenants—when the employee agrees to use his body to perform services for the employer. Is not ownership of someone else’s body—even if only temporary, and even if only partial (what with all those restrictive covenants)—precisely what is meant by the term *slavery*? After all, consider a slave who is on the auction block. Surely it is the fact that his body is being bought and sold that makes him a slave?

Not at all. In the first place, buying and selling does not engender ownership; it transfers it: the seller relinquishes ownership and the buyer acquires it, but that can only mean that the thing being sold was owned by the seller before the sale. A slave is still a slave even when he is not on the auction block.

What distinguishes the free man from the slave is that the free man voluntarily transfers temporary ownership of his body; the slave voluntarily transfers nothing. The slave owner's control of the use of the slave's body has its origin in the gun and the whip, not in a voluntary exchange. This makes the slave owner a thief *par excellence*, for his ownership of the slave did not begin with an act of appropriation (the body of the slave was never unowned: it belonged at birth to the intellect that informed it); it did not begin with a gift from the slave; and it did not begin in a voluntary exchange.

The slave is a slave because his body is owned by someone else, and that owner is not the rightful owner. Slavery is theft. Is theft also slavery?

#### OWNERSHIP OF PROPERTY THAT RIGHTFULLY BELONGS TO SOMEONE ELSE

We saw in the previous section that slavery exists when ownership of a body is stolen from the rightful owner, the intellect that informs that body. Is it possible to steal something from the rightful owner other than the body of a rational animal? Of course. Consider the case of Mr. Burglar, who stole jewelry from its rightful owner, Mrs. Matron. Or consider the case of the thief, Mr. Rent Control, who stole partial ownership of Mr. Crusoe's cave from Mr. Crusoe, the rightful owner. Theft is the wrongful acquisition of ownership of something that is the rightful property of someone else, and it clearly is possible to steal something other than the body of a rational animal.

If we all agree that slavery involves the theft of property that rightfully belongs to someone else, *viz.*, the slave's body, why should we restrict the use of the term *slavery* exclusively to the theft of someone else's body? Why indeed: someone whose body is stolen is prevented by the thief from using it as he, the rightful owner, sees fit; someone whose jewelry is stolen is prevented by the thief from using it as she, the rightful owner, sees fit; and someone whose cave is stolen is prevented by the thief from using it as he, the rightful owner, sees fit. The offense in all three cases is

the same—theft—and I see no reason why only one of them should be designated as slavery.

If the theft of one's body makes one someone else's slave, so, too, does the theft of any other form of property. Indeed, one is enslaved to the extent that that which is one's rightful property is stolen, and one is enslaved, because one's right to use that property as one sees fit has been violated, because one's freedom to use that property as one sees fit has been abridged. That makes every thief a slave owner because the victim of the theft has been enslaved.

## SOCIALISM

Socialism ordinarily is defined as ownership of the means of production by the state. The factors of production are land, labor, and capital goods. If the state owns a public park (land), socialism exists. If the state owns the bodies of the people who produce goods and provide services (labor), socialism exists. If the state owns highways or bridges (capital goods), socialism exists. How does the state come to acquire such ownership? Let us start with land.

We saw previously that the acquisition of ownership has its origin in appropriation, gift, purchase, or theft. How does the state acquire the ownership of land? It is not through (rightful) appropriation, for all land owned by the state either had a previous owner or was acquired by denying other people the right to appropriate it. In some cases it may have been acquired by donation from the rightful owner—for example, the land for a public park may have been donated to the state by its rightful owner—but in almost all cases it was acquired either by—to use the technical term—“pulling a William the Conqueror”<sup>3</sup> or by buying it from the previous owner with money acquired through taxation.

How does the state come to acquire the ownership of the bodies of the people who produce goods and provide services? In some cases those people may donate the use of their bodies to the state (consider the case of volunteers who join police in the search for a missing person), but in the vast majority of cases the state either steals the ownership of those bodies (forced labor in the gulag is a good example—indeed, Joseph Stalin may have owned more

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<sup>3</sup> “Pulling a William the Conqueror” ordinarily involves the theft of land from people who already own it as well as the (wrongful) appropriation of unowned land by denying other people the right to appropriate it.

slaves than anyone else in history) or buys them with money that comes from taxation.

The state's acquisition of ownership of capital goods follows the same pattern as in the cases of land and labor. We have already seen that the state can acquire ownership of factors of production by buying them with money acquired through taxation. All property has a genealogy, and that includes property that is acquired through taxation.

When the state imposes a (money) tax on someone, does it appropriate that money? Hardly. That money already had an owner. Was that money donated to the state? Although it is possible, and maybe even common, for a rightful owner to donate money to the state (consider the case of someone who gives money to a public university for a scholarship or a building), money acquired through taxation is not donated. Was it, then, acquired in a voluntary exchange? If paying taxes is voluntary, why can one not say "Thanks anyway, but I think I'll take a pass"? What is left? The only alternative left is theft.

Socialism cannot exist without theft. Almost all of the factors of production owned by the state were acquired by theft or by buying them with money stolen from its rightful owners. And even when the property owned by the state arrives with a clean bill of health, e.g., land donated to it by its rightful owner, disease soon sets in: the state invariably needs to extort money from the peasants in order to maintain its ownership. I think we're justified in concluding that socialism is theft. We saw in the previous section that slavery exists wherever theft exists, and socialism is theft writ large. Socialism is therefore slavery writ large, and slavery is indefensible morally.

## THE RIGHT TO PROPERTY

As we saw in the section of this article entitled "The Right to Appropriate Unowned Land," one has the right to appropriate something that no one else owns. One has that right, because no one else can have the right that one not appropriate it. When one exercises one's right to appropriate property, one becomes the rightful owner of it. One is also the rightful owner of the body that one's intellect informs except when one has voluntarily transferred its ownership to someone else. One has the right to use the property of which one is the rightful owner in any way that one sees fit, and two ways of using it are to give it to someone else or

to sell it to someone else in a voluntary exchange. The recipient of property acquired from the rightful owner either as a gift or in a voluntary exchange then becomes its rightful owner.

I now propose for the sake of brevity to call the right enjoyed by all rational animals to appropriate property and to use the property of which one is the rightful owner in any manner that one sees fit the *right to property*. I also hope to show that the right to property is the only right held by a rational animal by showing that what are purported to be two other human rights are in fact subsumed under the right to property.

### A RIGHT TO PRIVACY?

Far be it from me to be contentious, so I will refrain from pointing out that a supposed right to privacy has been used on more than one occasion as the pretext for an expansion of the power of the federal government of the United States. Instead of raising the question of whether or not a right to privacy is protected by the US Constitution, I will concern myself instead with the question, “What conduct could possibly be prohibited by a right to privacy?”

Does one have the right to eavesdrop on one’s own property? It is a hot summer evening, and the house that I own has no air conditioning. I therefore park myself outdoors under one of the eaves and hope that a breeze will supply some relief from the heat. While there, I overhear a conversation that takes place in my living room: the windows of the living room are open, because the occupants also are hoping for a breeze. Have I violated the right to privacy of the living room’s occupants? It is possible that the occupants did not want me to hear what was being said, but the space underneath the eave where I parked my body belonged to me, and parking myself there violated no one else’s right: I was using property that was rightfully mine in the manner that I saw fit. If the occupants of the living room had not wanted me to hear the conversation, they could have closed the windows (actually, because I owned the windows, the occupants would have needed my permission to open or close them).

Now let us consider the case of the eavesdropper who eavesdrops on someone else’s property. An eavesdropper parks himself without my permission under one of the eaves of my house, and he overhears some of the conversation of the parties inside the house. The fact that he overhears a conversation is beside the point. The

eavesdropper has violated my right to property, because he is using my property without my consent, and that violation would have occurred even had he not overheard the conversation—even if there had been no conversation. What the second eavesdropper is guilty of is not violating someone else's right to privacy; he is guilty of trespass, which itself is a form of theft. A right to privacy either is subsumed under the right to property, or it simply does not exist.

## A RIGHT TO LIFE?

If there is indeed a right to life, what conduct is prohibited by it? Approaching the subject from a different angle, how does one kill someone? One kills someone by doing something to his body. Poison, bullet, knife, baseball bat, strangulation—all are methods that can be used to kill someone, and all of them have no effect without the presence of someone else's body. Does one have the right to use someone else's car for target practice? Does one have the right to use someone else's body for target practice? The intellect that informs a rational animal's body is the rightful owner of that body in the same way that it may be the rightful owner of a car. One cannot use a car that is the rightful property of someone else for target practice without the owner's permission. In how many recorded cases in history did a murderer ask for permission to do something to the body of his victim?

The right to life is subsumed under the right to property, and the conduct that it prohibits is the same conduct that is prohibited by the right to property: one has no right to do anything to that which is the rightful property of someone else without the permission of the rightful owner. The only human right is the right to property, and one might not even have the right to dispute that assertion.<sup>4</sup>

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<sup>4</sup> Hans-Hermann Hoppe (2006, 372–74) writes,

Now, as a necessarily practical affair, any propositional exchange requires a proposition-maker's exclusive control (property) over some scarce means. No one could possibly propose anything, and no one could possibly become convinced of any proposition, if one's right to make exclusive use of one's physical body were not already presupposed. It is one's recognition of another's mutually exclusive control over his body which explains the distinctive characteristic of propositional exchanges: that while one may disagree about what has been said, it is still possible to agree at least on the fact that there is disagreement. It is obvious, too, that such a property right in one's own

## A NOTE ON HOPPE'S ETHICS OF ARGUMENTATION

I think it is safe to say that the conclusions at which Hoppe arrives by means of his ethics of argumentation are substantially the same as the conclusions at which I arrive here. The only difference is the route taken. Hoppe begins with the ethical norms that must be accepted by those who engage in rational argument, then deduces from those norms other norms that comprise (or come close to comprising) what I call "the right to property." I begin with propositions whose truth is evident, and from them I attempt to derive conclusions whose truth has been made evident by deduction.

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body must be said to be justified *a priori*, for anyone who would try to justify any norm whatsoever must already presuppose an exclusive right of control over his body simply to say, 'I propose such and such.' Anyone disputing such a right would become caught up in a practical contradiction, since in arguing so one would already implicitly have accepted the very norm that one was disputing.

Finally, it would be equally impossible to engage in argumentation, if one were not allowed to appropriate in addition to one's body other scarce means through homesteading, i.e., by putting them to use before someone else does, or if such means were not defined in objective, physical terms.

For if no one had the right to control anything at all, except his own body, then we would all cease to exist and the problem of justifying norms—as well as all other human problems—simply would not exist. The fact that one is alive presupposes the validity of property rights to other things. No one who is alive could argue otherwise.

And if a person did not acquire the right of exclusive control over such goods by homesteading, by establishing some objective link between a particular person and a particular physical resource before anyone else had done so, but instead late-comers were assumed to have ownership claims to things, then literally *no one would be allowed to do anything with anything at any time* unless he had the prior consent of all late-comers. Neither we nor our forefathers nor our progeny could survive or will survive if we were to follow this rule. Yet in order for any person—past, present, or future—to argue anything it must evidently be possible to survive. And in order for us to do this, property rights cannot be conceived of as timeless and nonspecific regarding the number of people concerned. Rather, property rights must necessarily originate through action at definite places and times for specific acting individuals. Otherwise, it would be impossible for anyone to say anything at a definite time and place and for someone else to reply. To assert that the first-user-first-owner rule of private property can be ignored or is unjustified implies a contradiction. One's assertion of this proposition presupposes one's existence as a physically independent decision-making unit at a given point in time, and the validity of the homesteading principle as an absolute principle of property acquisition.

For example, for Hoppe “the right of original appropriation through actions is compatible with and implied in the nonaggression principle as the logically necessary presupposition of argumentation” (Hoppe 1989, 136). For me, the right of appropriation can be deduced from two evident propositions: that one must have a right to do that which no one else has a right that one not do, and that no one can have the right that someone else not appropriate something unowned.

As another example, for Hoppe “the norm implied in argumentation is that everybody has the right of exclusive control over his own body.” (Hoppe 1989, 132) For me, the right of ownership of one’s body begins with the far from insignificant fact that one is born with it, i.e., the intellect that informs that body is the original and therefore rightful owner of it until such time as its ownership is transferred to someone else. At no point is that body unowned, i.e., a fit object for appropriation by someone else.

The most important proposition to which we both subscribe is that “reason can claim to yield results in determining moral laws which can be shown to be valid *a priori*.” (Hoppe 1989, 131) An *a priori* truth is a necessary truth, i.e., one which cannot be untrue, and the goal of this article is nothing if not the articulation of some necessary truths in the field of moral law.

## REFERENCES

- Hans-Hermann Hoppe. 1989. *A Theory of Socialism and Capitalism*. Norwell, Mass.: Kluwer.
- . 2006. *The Economics and Ethics of Private Property*. Auburn, Ala.: Mises Institute.