Man, Economy, and Liberty

Essays in Honor of Murray N. Rothbard

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From the Economics of Laissez Faire to The Ethics of Libertarianism

Hans-Hermann Hoppe

I

Ludwig von Mises, without a doubt one of the most rigorous defenders in the history of economic thought of a social system of laissez faire unhampered by any governmental intervention, admits to two and only two deficiencies of a pure market system. While according to Mises it is generally true that a market economy produces the highest possible standard of living, this will not happen if any firm succeeds in securing monopoly prices for its goods. And the market cannot itself produce the goods of law and order. Law and order, or the protection of the legal framework underlying the market order, are rather considered by Mises, in current terminology, as "public goods," whose production must be undertaken by the state, which is not itself subject to the discipline of the market, but instead relies on coercion, in particular on compulsory taxation.

When Murray N. Rothbard entered the scene in 1962 with his *Man, Economy, and State* he not only immediately became the foremost student of his revered teacher Ludwig von Mises, but also, standing on the shoulders of this giant, established himself at the age of 36 as an intellectual giant in his own right, going, in truly Misesian spirit, beyond Mises himself. He recognized Mises's position regarding the exceptional character of monopoly prices and public goods as incompatible with the very edifice of subjectivist economic theory as laid down in *Human Action*, and presented, for the first time, a complete and fully consistent economic defense for a pure market system.

Regarding the problem of monopoly prices, Rothbard demonstrated that on the free market no price whatever can be identified as monopolistic or competitive, either by the "monopolist" himself or by

any "neutral" outside observer. Economic orthodoxy, which includes Misesian Austrian economics, teaches that monopolistic prices are higher prices attained by restricting production, at which prices sales then bring higher returns than those to be gained by selling an unrestricted output at lower, competitive prices. And, so the story continues, since such restrictive measures which the profit motive impels the monopolist to use would imply that the consumers would have to pay more for less, then existence of monopoly prices provides for the possibility of market failures.[1] As Rothbard points out, there are two related fallacies involved in this reasoning.[2]

First, it must be noted that every restrictive action must, by definition, have a complementary expansionary aspect. The factors of production which the monopolist releases from employment in some production line *A* do not simply disappear. Rather, they must be used otherwise: either for the production of other exchange goods or for an expansion in the production of the good of leisure for some owner of a labor factor. Now suppose the monopolist restricts production in line *A* at time t_2 as compared with t_1 and prices and returns indeed go up. Following orthodoxy this would make the higher price at t_2 a monopoly price and the consumers worse off. But is this really the case? Can this situation be distinguished from a situation in which the demand for the product in question changed from t_1 to t_2 (the demand curve shifted to the right)? The answer, of course, is no, since demand curves are never simply "given" for any good. Because of the change in demand for the good in question the competitive price at t_1 has become subcompetitive at t_2, and the higher price at t_2 is simply a move from this subcompetitive to the new competitive price. And the restrictive move of the monopolist also does not imply a worsening of the situation of the consumers, since, by necessity, it must be coupled with a complementary expansionary move in other production lines. The monopolist's restrictive action could not be distinguished from any "normal" change in the production structure that was caused by relative changes in the consumer demand for various goods, including leisure. "There is no way whatever" writes Rothbard, "to distinguish such a 'restriction' and corollary expansion from the alleged 'monopoly price' situation."[3] "But if a concept has no possible grounding in reality, then it is an empty and illusory, and not a meaningful, concept. On the free market there is no way of distinguishing a 'monopoly price' from a 'competitive price' or a 'subcompetitive price,' or of establishing any changes as movements from one to the other. No criteria can be found for making such distinctions. The concept is therefore untenable. We can speak only of the free market price."[4]

Regarding the second alleged imperfection of markets, the problem of public goods, and in particular of the good of law and order, Rothbard demonstrates that the advocates of this position do not succeed in establishing their claim that there are two categorically different types of goods—public and private—for which categorically different types of economic analysis would have to apply; nor, even if this distinction were assumed to hold water, can they furnish any economic reason why such public goods have to be supplied by the state.[5] Orthodoxy holds that certain goods and services, of which law and order are usually considered to be the prototypes, have the special characteristic that their enjoyment cannot be restricted to those persons who actually finance their provision. Such goods are called public goods. And as they cannot, because of this "free rider" problem connected with them, be provided by markets, at least not in sufficient quantity or quality, but are nonetheless without a doubt valued goods, so the argument goes, the state has to jump in to secure their production.[6] In his refutation of this reasoning Rothbard first makes us aware of the following: for something to be an economic good at all it must be scarce and must be realized as scarce by someone. Something is not a good-as-such, that is to say, but goods are goods only in the eyes of some beholder. But then, when goods are never goods-as-such, when no physico-chemical analysis can establish something as an economic good—then there is also no fixed, objective criterion for classifying goods as public or private. They can never be private or public goods as such, but their private or public character depends on how few or how many people consider them goods (or for that matter, bads) with the degree to which they are private or public changing as these evaluations change, and ranging from 1 to infinity. Even seemingly completely private things like the interior of my apartment or the color of my underwear thus can become public goods as soon as somebody starts caring about them. And seemingly public goods like the exterior of my house or the color of my overalls can become extremely private goods as soon as other people stop caring about them. Moreover, every good can change its characteristics again and again; it can even turn from a public or private good to a public or private bad and vice versa, depending solely on the changes in this caring and uncaring. However, if this is so, no decision whatever can be based on the classification of goods as private or public: in fact, if this were done, it would not only become necessary to ask virtually each individual person, with respect to every single good, whether or not one happened to care about it, and if so, to what extent, in order to find out who might profit from

what and should hence participate in its financing. It would also become necessary to monitor all changes in such evaluation continually, with the result that no definite decision could ever be made regarding the production of anything, and all of us would be long dead as a consequence of such a nonsensical theory.

Secondly, even if all these difficulties were set aside, the conclusion reached by the public goods theorists is a glaring non sequitur, as Rothbard shows. For one thing, to come to the conclusion that the state has to provide public goods that otherwise would not be produced, one must smuggle a norm into one's chain of reasoning. Otherwise, from the statement that because of some special characteristics certain goods would not be produced, one could never reach the conclusion that these goods *should* be produced. But with a norm being required to justify their conclusion, the public goods theorists clearly have left the bounds of economics as a positive science and transgressed into the field of ethics. None of them, however, offers anything faintly resembling a clear system of ethics. Moreover, even the utilitarian reasoning employed by them is blatantly wrong. It might well be that it would be better to have these public goods than not to have them, though it should not be ignored that there is no *a priori* reason that even this must be so, as it is clearly possible, and indeed known to be a fact, that an anarchist exists who abhors any state action and would rather prefer not having the so-called public goods at all if the alternative is having them provided by the state. But even if the argument thus far is conceded, the conclusion drawn is still invalid. Since in order to finance the supposedly desirable goods resources must be withdrawn from possible alternative uses, the only relevant question is whether or not these alternative uses to which the resources could have been put are more valuable than the value that is attached to the public goods. And the answer to this question is perfectly clear: in terms of consumer evaluations the value of the public goods is relatively lower than that of the competing private goods, because if one leaves the choice to the consumers, they evidently will prefer different ways of spending their money (otherwise no coercion would have been necessary in the first place). This proves that the resources used up for the provision of public goods are wasted in providing consumers with goods and services which are at best only of secondary importance. In short, even if one assumes that public goods exist, they will stand in competition to private ones. To find out if they are more urgently desired or not, and to what extent, there is only one method: analyzing the profit and loss accounts of freely competing private enterprises.

Hence, regarding the provision of law and order, the conclusion is reached that, even if it *is* a public good, the only way to make sure that its production does not take place at the expense of more highly valued private goods and that the kind of law and order that is supplied is indeed the most highly valued one, law and order, like any other good, must be provided by a market of freely competing firms.[7] Rothbard sums it up as follows: the "view (that free-market action must be brought back into optimality by corrective State action) completely misconceives the way in which economic science asserts that free-market action is *ever* optimal. It is optimal, not from the standpoint of the personal ethical views of an economist, but from the standpoint of the free, voluntary actions of all participants and in satisfying the freely expressed needs of the consumers. Government interference, therefore, will necessarily and always move *away* from such an optimum."[8]

II

Yet Rothbard is not content with having developed a full-fledged *economic* defense of a pure market system. He proceeds—culminating in 1982 with his second magnum opus, *The Ethics of Liberty*—to provide us with a comprehensive system of ethics to complement and complete the task of justifying laissez faire.

Mises, along with most social scientists, accepts the Humean verdict that reason is and can be no more than the slave of the passions. That is to say, reason, or science can do no more than inform us whether or not certain means are appropriate for bringing about certain results or ends. It is beyond the powers of reason, though, to teach us what ends we should choose or what ends can or cannot be justified. Ultimately, what ends are chosen is arbitrary from a scientific point of view; a matter of emotional whim. To be sure, Mises then, like most other economists, is in fact committed to some sort of utilitarianism. He favors life over death, health over sickness, abundance over poverty. And insofar as such ends, in particular the goal of achieving the highest possible standard of living for everyone, are indeed shared by other people, as he assumes they generally are, as an economic scientist he then recommends that the correct course of action to choose is a policy of laissez faire.[9] And doubtlessly, insofar as economics can say this much, its case for laissez faire is a highly important one. However, what if people do *not* consider prosperity to be their ultimate goal? As Rothbard points out, economic analysis only establishes that laissez faire will lead to higher standards of living in the long run. In

the long run, however, one might be dead. Why then would it not be quite reasonable for a person to argue that while one perfectly agreed with everything economics had to say, one was still more concerned about one's welfare in the short run and there, clearly for no economist to deny, a privilege or a subsidy given to a person would be the nicest thing? Moreover, why should social welfare in the long run be one's first concern at all? Couldn't people advocate poverty, either as an ultimate value in itself or as a means of bringing about some other ultimate value such as equality? The answer, of course, is that things like that could and indeed do happen all the time. But whenever they happen, not only has economics nothing to say, but according to Mises and other utilitarians there is nothing more to be said at all, since there exists no reasonable, scientific way of choosing between conflicting values, as ultimately they are all arbitrary.[10]

Against this position Rothbard takes sides with the philosophical tradition of rational ethics claiming that reason *is* capable of yielding cognitive value statements regarding man's proper ends.[11] More specifically, he aligns himself with the natural law or natural rights tradition of philosophic thought, which holds that universally valid norms can be discerned by means of reason as grounded in the very nature of man.[12] *The Ethics of Liberty* presents the full case for the libertarian property norms being precisely such rules.

Agreeing with Rothbard on the possibility of a rational ethic and, more specifically, on the fact that only a libertarian ethic can indeed be morally justified, I want to propose here a different, non-natural-rights approach to establishing these two related claims. It has been a common quarrel with the natural rights position, even on the part of sympathetic readers, that the concept of human nature is far "too diffuse and varied to provide a determinate set of contents of natural law."[13] Furthermore, its description of rationality is equally ambiguous in that it does not seem to distinguish between the role of reason in establishing empirical laws of nature on the one hand and normative laws of human conduct on the other.[14] Avoiding such difficulties from the outset, I claim the following approach to be at once more straightforward and more rigorous as regards its starting point as well as its methods of deriving its conclusions. Moreover, as I will indicate later, my approach also seems to be more in line with what Rothbard actually does when it comes to justifying the specific norms of libertarianism than the rather vague methodological prescriptions of the natural rights theorists.[15]

Let me start with the question: what is wrong with the position taken by Mises and so many others that the choice between values is

ultimately arbitrary? First, it should be noted that such a position assumes that at least the question of whether or not value judgments or normative statements can be justified is itself a cognitive problem. If this were not assumed, Mises could not even say what he evidently says and claims to be the case. His position simply could not exist as an arguable intellectual position.

At first glance this does not seem to take one very far. It still seems to be a far cry from this insight to the actual proof that normative statements can be justified and, moreover that it is only the libertarian ethic which can be defended. This impression is wrong, however, and there is already much more won here than might be suspected. The argument shows us that any truth claim, the claim connected with any proposition that it is true, objective or valid (all terms used synonymously here), is and must be raised and decided upon in the course of an argumentation. And since it cannot be disputed that this is so (one cannot communicate and argue that one cannot communicate and argue), and it must be assumed that everyone knows what it means to claim something to be true (one cannot deny this statement without claiming its negation to be true), this very fact has been aptly called "the a priori of communication and argumentation."[16]

Now arguing never consists of just free-floating propositions claiming to be true. Rather, argumentation is always an activity, too. But then, given that truth claims are raised and decided upon in argumentation and that argumentation, aside from whatever it is that is said in its course, is a practical affair, then it follows that intersubjectively meaningful norms must exist—precisely those which make some action an argumentation—which have a special cognitive status in that they are the practical preconditions of objectivity and truth.

Hence, one reaches the conclusion that norms must indeed be assumed to be justifiable as valid. It is simply impossible to argue otherwise, because the ability to argue so would in fact already presuppose the validity of those norms which underlie any argumentation whatever. In contradistinction to the natural rights theorists, though, one sees that the answer to the question of which ends can or cannot be justified is not to be read off from the wider concept of human nature but from the narrower one of argumentation.[17] And with this, then, the peculiar role of reason in determining the contents of ethics can be given a precise description; in clear contrast to the role of reason in establishing empirical laws of nature, in determining moral laws reason can claim to yield results which can be shown to be valid *a priori*. It only makes explicit what is already implied in the concept of argumen-

tation itself; and in analyzing any actual norm proposal its task is merely confined to analyzing whether or not it is logically consistent with the very ethics which the proponent must presuppose as valid insofar as he is able to make his proposal at all.[18]

But what is the ethics implied in argumentation whose validity cannot be disputed, as disputing it would implicitly have to presuppose it? Quite normally it has been observed that argumentation implies that a proposition claims universal acceptability or, should it be a norm proposal, that it be "universalizable." Applied to norm proposals, this is the idea, as formulated in the Golden Rule of ethics or in the Kantian Categorical Imperative, that only those norms can be justified that can be formulated as general principles which without exception are valid for everyone.[19] Indeed, as it is implied in argumentation that everyone who can understand an argument must in principle be able to be convinced by it simply because of its argumentative force, the universalization principle of ethics can now be understood and explained as implied in the wider *a priori* of communication and argumentation.[20] Yet the universalization principle only provides one with a purely formal criterion for morality. To be sure, checked against this criterion all proposals for valid norms which would specify different rules for different classes of people could be shown to have no legitimate claim of being universally acceptable as fair norms, unless the distinction between different classes of people were such that it implied no discrimination but could rather be accepted as founded in the nature of things again by everybody. But while some norms might not pass the test of universalization, if enough attention were paid to their formulation the most ridiculous norms, and what is more relevant, even openly incompatible norms could easily and equally well pass it. For example, "everybody must get drunk on Sundays or else he will be fined" or "anyone who drinks any alcohol will be punished" are both rules that do not allow discrimination among groups of people and thus could both claim to satisfy the condition of universalization.

Clearly then, the universalization principle alone would not provide one with any positive set of norms that could be demonstrated to be justified. However, there are other positive norms implied in argumentation apart from the universalization principle. In order to recognize them, it is only necessary to call to attention three interrelated facts. First, that argumentation is not only a cognitive but also a practical affair. Second, that argumentation, as a form of action, implies the use of the scarce resource of one's body. And third, that argumentation is a conflict-free way of interacting. Not in the sense that there is

always agreement on the things said, but rather in the sense that as long as argumentation is in progress it is always possible to agree at least on the fact that there is disagreement about the validity of what has been said. And this is to say nothing else than that a mutual recognition of each person's exclusive control over his own body must be assumed to exist as long as there is argumentation (note again, that it is impossible to deny this and claim this denial to be true without implicitly having to admit its truth).

Hence, one would have to conclude that the norm implied in argumentation is that everybody has the right to exclusively control his own body as his instrument of action and cognition. It is only as long as there is at least an implicit recognition of each individual's property right in his or her own body that argumentation can take place.[21] Only as long as this right is recognized is it possible for someone to agree to what has been said in an argument and hence what has been said can be validated, or is it possible to say "no" and to agree only on the fact that there is disagreement. Indeed, anyone who would try to justify any norm would already have to presuppose the property right in one's body as a valid norm, simply in order to say "this is what I claim to be true and objective." Any person who would try to dispute the property right in one's own body would become caught up in a contradiction.

Thus it can be stated that whenever a person claims that some statement can be justified, he at least implicitly assumes the following norm to be justified: "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." This rule is implied in the concept of argumentative justification. Justifying means justifying without having to rely on coercion. In fact, if one would formulate the opposite of this rule, i.e., everybody has the right to uninvitedly aggress against other people (a rule, by the way, that would formally pass the universalization test!), then it is easy to see that this rule is not, and never could be defended in argumentation. To do so would in fact have to presuppose the validity of precisely its opposite, i.e., the aforementioned principle of non-aggression.

It may seem that with this justification of a property norm regarding a person's body not much is won, as conflicts over bodies, for whose possible avoidance the non-aggression principle formulates a universally justifiable solution, make up only a small portion of all possible conflicts. However, this impression is not correct. To be sure, people do not live on air and love alone. They need a smaller or greater

number of other things as well simply to survive—and only he who survives can sustain an argumentation—let alone lead a comfortable life. With respect to all of these other things norms are needed too, as it could come to conflicting evaluations regarding their use. But in fact, any other norm now must be logically compatible with the non-aggression 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 for 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 non-aggression principle, conceived of as a special property norm referring to a specific kind of good, must already contain those of a general theory of property.

I will first state this general theory of property as a set of rulings applicable to all goods, with the purpose of helping to avoid all possible conflicts by means of uniform principles, and will then demonstrate how this general theory is implied in the non-aggression principle. As according to the non-aggression principle a person can do with his body whatever he wants as long as he does not thereby aggress against another person's body, that person could also make use of other scarce means, just as one makes use of one's own body, provided these other things have not already been appropriated by someone else but are still in a natural unowned state. As soon as scarce resources are visibly appropriated—as soon as somebody "mixes his labor," as John Locke phrased it,[22] with them and there are objective traces of this—then property, i.e., the right of exclusive control, can only be acquired by a contractual transfer of property titles from a previous to a later owner, and any attempt to unilaterally delimit this exclusive control of previous owners or any unsolicited transformation of the physical characteristics of the scarce means in question is, in strict analogy with aggressions against other people's bodies, an unjustifiable action.[23]

The compatibility of this principle with that of non-aggression can be demonstrated by means of an *argumentum a contrario*. First, it should be noted that if no one had the right to acquire and control anything except his own body (a rule that would pass the formal universalization test), then we would all cease to exist and the problem of the justification or normative statements simply would not exist. The existence of this problem is only possible because we are alive, and our existence is due to the fact that we do not, indeed cannot accept a norm outlawing property in other scarce goods next to and in addition

to that of one's physical body. Hence, the right to acquire such goods must be assumed to exist. Now if this were so, and if one did *not* have the right to acquire such rights of exclusive control over unused, nature-given things through one's own work, i.e., by doing something with things with which no one else had ever done anything before, and if other people *had* the right to disregard one's ownership claim to things which they did not work on or put to some particular use before, then this would only be possible if one could acquire property titles not through labor, i.e., by establishing some objective, intersubjectively controllable link between a particular person and a particular scarce resource, but simply by verbal declaration, by decree.[24] However, the position of property titles being acquired through declaration is incompatible with the above justified non-aggression principle regarding bodies. For one thing, if one could indeed appropriate property by decree, then this would imply that it also would be possible for one to simply declare another person's body to be one's own. Yet this, clearly enough, would conflict with the ruling of the non-aggression principle which makes a sharp distinction between one's own body and the body of another person. And this distinction can only be made in such a clear-cut and unambiguous way because for bodies, as for anything else, the separation between "mine" and "yours" is not based on verbal declarations, but on action. The observation is based on some particular scarce resource that had in fact—for everyone to see and verify, as objective indicators for this existed—been made an expression or materialization of one's own will or, as the case may be, of somebody else's will. Moreover, and more importantly, to say that property is acquired not through action but through a declaration involves an open practical contradiction, because nobody could say and declare so unless his right of exclusive control over his body as his own instrument of saying anything was in fact already presupposed, in spite of what was actually said.

And as I intimated earlier, this defense of private property is essentially also Rothbard's. In spite of his formal allegiance to the natural rights tradition Rothbard, in what I consider his most crucial argument in defense of a private property ethic, not only chooses essentially the same starting point—argumentation—but also gives a justification by means of *a priori* reasoning almost identical to the one just developed. To prove the point I can do no better than simply quote: "Now, *any* person participating in any sort of discussion, including one on values, is, by virtue of so participating, alive and affirming life. For if he were *really* opposed to life he would have no business continuing to be

alive. Hence, the *supposed* opponent of life is really affirming it in the very process of discussion, and hence the preservation and furtherance of one's life takes on the stature of an incontestable axiom."[25]

III

So far it has been demonstrated that the right of original appropriation through actions is compatible with and implied in the non-aggression principle as the logically necessary presupposition of argumentation. Indirectly, of course, it has also been demonstrated that any rule specifying different rights cannot be justified. Before entering a more detailed analysis, though, of *why* it is that any alternative ethic is indefensible, a discussion which should throw some additional light on the importance of some of the stipulations of the libertarian theory of property, a few remarks about what is and what is not implied by classifying these latter norms as justified seems to be in order.

In making this argument, one would not have to claim to have derived an "ought" from an "is." In fact, one can readily subscribe to the almost generally accepted view that the gulf between "ought" and "is" is logically unbridgeable.[26] Rather, classifying the rulings of the libertarian theory of property in this way is a purely cognitive matter. It no more follows from the classification of the libertarian ethic as "fair," "just," etc., that one ought to act according to it, than it follows from the concept of validity, truth, etc., that one should always strive for it. To say that it is just also does not preclude the possibility of people proposing or even enforcing rules that are incompatible with this principle. As a matter of fact, the situation with respect to norms is very similar to that in other disciplines of scientific inquiry. The fact, for instance, that certain empirical statements are justified or justifiable and others are not does not imply that everybody only defends objective, valid statements. Rather, people can be wrong, even intentionally. But the distinction between objective and subjective, between true and false, does not lose any of its significance because of this. Rather, people who do so would have to be classified as either uninformed or intentionally lying. The case is similar with respect to norms. Of course there are people, lots of them, who do not propagate or enforce norms which can be classified as valid according to the meaning of justification which I have given above. But the distinction between justifiable and nonjustifiable norms does not dissolve because of this, just as that between objective and subjective statement does not crumble because of the existence of uninformed or lying people. Rather, and accordingly,

those people who would propagate and enforce such different, invalid norms would again have to be classified as uninformed or dishonest, insofar as one had made it clear to them that their alternative norm proposals or enforcements cannot and never will be justifiable in argumentation. And there would be even more justification for doing so in the moral case than in the empirical, since the validity of the non-aggression principle, and that of the principle of original appropriation through action as its logically necessary corollary, must be considered to be even more basic than any kind of valid or true statements. For what is valid or true has to be defined as that upon which everyone—acting according to this principle—can possibly agree. As I have just shown, at least the implicit acceptance of these rules is the necessary prerequisite to being able to be alive and argue at all.

Why is it then, precisely, that other non-libertarian property theories fail to be justifiable? First, it should be noted, as will become clear shortly, that all of the actually *practiced* alternatives to libertarianism and most of the theoretically proposed non-libertarian ethics would not even pass the first formal universalization test, and would fail for this fact alone! All these versions contain norms within their framework of legal rules which have the form "some people do, and some people do not." However, such rules, which specify different rights or obligations for different classes of people have no chance of being accepted as fair by every potential participant in an argument for simply formal reasons. Unless the distinction made between different classes of people happens to be such that it is acceptable to both sides as grounded in the nature of things, such rules would not be acceptable because they would imply that one group is awarded legal privileges at the expense of complementary discriminations against another group. Some people, either those who are allowed to do something or those who are not, therefore could not agree that these were fair rules.[27] Since most alternative ethical proposals, as practiced or preached, have to rely on the enforcement of rules such as "some people have the obligation to pay taxes, and others have the right to consume them," or "some people know what is good for you and are allowed to help you get these alleged blessings even if you do not want them, but you are not allowed to know what is good for them and help them accordingly," or "some people have the right to determine who has too much of something and who too little, and others have the obligation to follow suit," or even more plainly, "the computer industry must pay to subsidize the farmers," "the employed for the unemployed," "the ones without kids for those with kids," etc., or vice versa. They all can be

discarded easily as serious contenders to the claim of being a valid theory of norms *qua* property norms, because they all indicate by their very formulation that they are not universalizable.

But what is wrong with a non-libertarian ethic if this is taken care of and there is indeed a theory formulated that contains exclusively universalizable norms of the type "nobody is allowed to" or "everybody can?" Even then such proposals could never hope to prove their validity—no longer on formal grounds, but rather because of their material specifications. Indeed, while the alternatives that can be refuted easily as regards their claim to moral validity on simple formal grounds can at least be practiced, the application of those more sophisticated versions that would pass the universalization test would prove for material reasons to be fatal: even if one would try, they simply could never be put into effect.

There are two related specifications in the libertarian property theory with at least one of which any alternative theory comes into conflict. According to the libertarian ethic, the first such specification is that aggression is defined as an invasion of the *physical* integrity of other people's property.[28] There are popular attempts, instead, to define it as an invasion of the *value* or *psychic integrity* of other people's property. Conservatism, for instance, aims at preserving a given distribution of wealth and values, and attempts to bring those forces which could change the status quo under control by means of price controls, regulations, and behavioral controls. Clearly, in order to do so property rights to the value of things must be assumed to be justifiable, and an invasion of values, *mutatis mutandis*, would have to be classified as unjustifiable aggression. Not only conservatism uses this idea of property and aggression; redistributive socialism does, too. Property rights to values must be assumed to be legitimate when redistributive socialism allows me, for instance, to demand compensation from people whose chances or opportunities negatively affect mine. And the same is true when compensation for committing psychological, or what has become a particularly dear term in the leftist political science literature, "structural violence" is requested.[29] In order to be able to ask for such compensation, what one must have done—affecting my opportunities, my psychic integrity, my feeling of what is owed to me—would have to be classified as an aggressive act.

Why is this idea of protecting the value of property unjustifiable? First, while every person, at least in principle, can have full control over whether or not his actions cause the *physical* characteristics of something to change, and hence also can have full control over

whether or not those actions are justifiable, control over whether or not one's actions affect the *value* of somebody else's property does not rest with the acting person, but rather with other people and their subjective evaluations. Thus no one could determine *ex ante* if his actions would be qualified as justifiable or unjustifiable. One would first have to interrogate the whole population to make sure that one's planned actions would not change another person's evaluations regarding his own property. And even then nobody could act until universal agreement was reached on who is supposed to do what with what, and at which point in time. Clearly, for all the practical problems involved one would be long dead and nobody could argue anything any longer, long before this were ever accomplished.[30] But more decisively still, this position regarding property and aggression could not even be effectively *argued*, because arguing in favor of any norm implies that there is conflict over the use of some scarce resources, otherwise there would simply be no need for discussion. However, in order to argue that there is a way out of such conflicts it must be presupposed that actions must be allowed *prior* to any actual agreement or disagreement, because if they were not, one could not even argue so. Yet if one can do this, and insofar as it exists as an argued intellectual position the position under scrutiny must assume that one can, then this is only possible because of the existence of *objective* borders of property—borders which anyone can recognize as such on his own without having to agree first with anyone else with respect to his system of values and evaluations. Such a value-protecting ethic, too, then, in spite of what it says, must in fact presuppose the existence of objective property borders, rather than of borders determined by subjective evaluations, if only in order to have any surviving persons who can make its moral proposals.

The idea of protecting value instead of physical integrity also fails for a second, related reason. Evidently, one's value, for example on the labor or marriage market, can be and indeed is affected by other people's physical integrity or degree of physical integrity. Thus, if one wanted property values to be protected, one would have to allow physical aggression against people. However, it is only because of the very fact that a person's borders—that is the borders of a person's property in his own body as his domain of exclusive control that another person is not allowed to cross unless he wishes to become an aggressor—are *physical* borders (intersubjectively ascertainable, and not just subjectively fancied borders) that everyone can agree on anything independently (and, of course, agreement means agreement among independent decision-

making units!). Only because the protected borders of property are objective then, i.e., fixed and recognizable as fixed prior to any conventional agreement, can there at all be argumentation and possibly agreement of and between independent decision-making units. Nobody could argue in favor of a property system defining borders of property in subjective, evaluative terms, because simply to be able to say so presupposes that, contrary to what theory says, one must *in fact* be a physically independent unit saying it.

The situation is no less dire for alternative ethical proposals when one turns to the second essential specification of the rulings of the libertarian theory of property. The basic norms of libertarianism were characterized not only by the fact that property and aggression were defined in physical terms; it was of no less importance that property was defined as private, individualized property and that the meaning of original appropriation, which evidently implies making a distinction between prior and later, had been specified. It is with this additional specification as well that alternative, non-libertarian ethics come into conflict. Instead of recognizing the vital importance of the prior-later distinction in deciding between conflicting property claims, they propose norms which in effect state that priority is irrelevant for making such a decision and that late-comers have as much of a right to ownership as first-comers. Clearly, this idea is involved when redistributive socialism, for instance, makes the natural owners of wealth and/or their heirs pay a tax in order for the unfortunate late-comers to be able to participate in its consumption. And it is also involved, for instance, when the owner of a natural resource is forced to reduce (or increase) its present exploitation in the interest of posterity. Both times it only makes sense to do what one does when it is assumed that the person accumulating wealth first, or using the natural resource first, has thereby committed an aggression against some late-comers. If they had done nothing wrong, then the late-comers could have no such claim against them.[31]

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, who *did* do something with the scarce goods, then literally nobody would be allowed to do anything with anything, as one would have to have all of the late-comers' consent prior to doing what one wants to do. Indeed, as posterity would include one's childrens' children—people, that is, who come so late that one could not possibly ask them—to advocate 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 come around and agree to doing what one wants to do. Rather, insofar as a person finds himself alone, he must be able to act, to use, produce, and consume goods straightaway, prior to any agreement with people who are simply not around yet (and perhaps never will be). And insofar as a person finds himself in the company of others and there is conflict over how to use a given scarce resource, he must be able to resolve the problem at a definite point in time with a definite number of people instead of having to wait unspecified periods of time for unspecified numbers of people. Simply in order to survive, then, which is a prerequisite to arguing in favor or against anything, property rights can not be conceived of as being timeless and nonspecific regarding the number of people concerned. Rather, they must necessarily be thought of as originating through acting at definite points in time for definite acting individuals.[32]

Furthermore, the idea of abandoning the prior-later distinction would simply be incompatible with the non-aggression principle as the practical foundation of argumentation. To argue and possibly agree with someone (if only on the fact that there is disagreement) means to recognize the prior right of exclusive control over one's own body. Otherwise, it would be impossible for anybody to first say anything at a definite point in time and for someone else to then be able to reply, or vice versa, as neither the first nor the second speaker would be a physically independent decision-making unit anymore, at any time. Eliminating the prior-later distinction, then, is tantamount to eliminating the possibility of arguing and reaching agreement. However, as one can not argue that there is no possibility for discussion without the prior control of every person over his own body being recognized and accepted as fair, a late-comer ethic that does not wish to make this difference could never be agreed upon by anyone. Simply *saying* that it could be, would imply a contradiction, as one's being able to say so would presuppose one's existence as an independent decision-making unit at a definite point in time.

Hence, one is forced to conclude that the libertarian ethic not only can be justified, and justified by means of *a priori* reasoning, but that no alternative ethic can be defended argumentatively.

Notes

1. See Ludwig von Mises, *Human Action*, 3rd rev. ed. (Chicago: Contemporary Books, 1966), p. 357ff.; idem, "Profit and Loss," in *Planning for Freedom* (South Holland, IL: Libertarian Press, 1974), esp. p. 116. In this essay Mises takes a somewhat different, one might say, a proto-Rothbardian position.
2. See Murray N. Rothbard, *Man, Economy, and State* (Los Angeles: Nash Publishing, 1972), chap. 10, esp. pp. 604-14.
3. Ibid., p. 607.
4. Ibid., p. 614. See also Walter Block, "Austrian Monopoly Theory: A Critique," *Journal of Libertarian Studies* 1 (Fall 1977): 271-81; Hans-Hermann Hoppe, *Eigentum, Anarchie und Staat* (Opladen: Westdeutscher Verlag, 1987), chap. 5; idem, *Theory of Socialism and Capitalism* (Boston: Kluwer, 1988), chap. 9.
5. See Rothbard, *Man, Economy, and State*, pp. 883-90; idem, "The Myth of Neutral Taxation," *Cato Journal* (Fall 1981): 519-65.
6. Mises, of course, is by no means a completely orthodox public goods theorist. He does not share their and the public choice theorists' commonly held naive view of the government being some sort of voluntary organization. Rather, and unmistakably so he says "the essential feature of government is the enforcement of its decrees by beating, killing, and imprisoning. Those who are asking for more government interference are asking ultimately for more compulsion and less freedom," (*Human Action*, p. 719). On this see also the refreshingly realistic assessment by Joseph Schumpeter, (*Capitalism, Socialism and Democracy* (New York: Harper and Bros., 1942), p. 198), that "the theory which construes taxes on the analogy of club dues or the purchase of a service of, say, a doctor only proves how far removed this part of the social sciences is from scientific habits of minds." Nor does Mises overlook, as they almost invariably do, the multitude of fallacies involved in today's fashionable economic literature on "externalities," (*Human Action*, pp. 654-661). When nonetheless Mises's position is classified as orthodox here, this is due to the fact that he, in this respect not differing from the rest of the public goods theorists, dogmatically assumes that certain goods (law and order, in his case) cannot be provided by freely competing industries; and that he, too, with respect to law and order at least, "proves" the necessity of a government by a *non sequitur*. Thus, in his "refutation" of anarchism he writes: "Society cannot exist if the majority is not ready to hinder, by the application or threat of violent action, minorities from destroying the social order. This power is vested in the state or government," (ibid, p. 149). But clearly, from the first statement the second one does not follow. Why cannot private protection agencies do the job?! And why would the government be able to do the job better than such agencies?! Here the reader looks in vain for answers.
7. On the specific problem of a free market provision of law and order see Murray N. Rothbard, *For A New Liberty*, rev. ed. (New York: Collier, 1978), chap. 12; idem, *Power and Market* (Kansas City: Sheed Andrews and McMeel, 1977), chap. 1; also G. de Molinari *The Production of Security*, Occasional Paper No. 2 (1849; reprint, New York: Center for Libertarian Studies, 1977).
8. Rothbard, *Man, Economy, and State*, p. 887; see on the above also Walter Block, "Public Goods and Externalities: The Case of Roads," *Journal of Libertarian Studies* 7 (Spring 1983): 1-34; Hans-Hermann Hoppe, *Eigentum, Anarchie und Staat*, chap. 1; idem, *Theory of Socialism and Capitalism*, chap. 10.
9. On this see Mises, *Human Action*, pp. 153-55.
10. For Rothbard's Mises-critique see Murray N. Rothbard, *The Ethics of Liberty* (Atlantic Highlands, N.J.: Humanities Press, 1982), pp. 205-12.

11. For various "cognitivist" approaches towards ethics see, Kurt Baier, *The Moral Point of View: A Rational Basis of Ethics* (Ithaca, N.Y.: Cornell University Press, 1958); M. Singer, *Generalization in Ethics* (New York: A. Knopf, 1961); P. Lorenzen, *Normative Logic and Ethics* (Mannheim: Bibliographisches Institut, 1969); S. Toulmin, *The Place of Reason in Ethics* (Cambridge: Cambridge University Press, 1970); F. Kambartel, ed., *Praktische Philosophie und konstruktive Wissenschaftstheorie* (Frankfurt/M.: Athenaeum, 1974); Alan Gewirth, *Reason and Morality* (Chicago: University of Chicago Press, 1978).
12. On the natural rights tradition see, J. Wild, *Plato's Modern Enemies and the Theory of Natural Law* (Chicago: University of Chicago Press, 1953); Henry Veatch, *Rational Man: A Modern Interpretation of Aristotelian Ethics* (Bloomington, Ind.: Indiana University Press, 1962); idem, *For An Ontology of Morals: A Critique of Contemporary Ethical Theory* (Evanston, Ill.: Northwestern University Press, 1971); idem, *Human Rights: Fact or Fancy?* (Baton Rouge, La.: Louisiana State University Press, 1985).
13. Alan Gewirth, "Law, Action, and Morality," in Rocco Porreco, ed., *Georgetown Symposium on Ethics: Essays in Honor of Henry Babcock Veatch* (New York: University Press of America, 1984), p. 73.
14. See the discussion in Veatch, *Human Rights*, pp. 62-67.
15. To disassociate myself from the natural rights tradition is not to say that I could not agree with its critical assessment of most of contemporary ethical theory—indeed I do agree with Veatch's complementary refutation of all desire—(teleological, utilitarian) ethics as well as all duty—(deontological) ethics, ibid., chap. 1. Nor, then, do I claim that it is impossible to interpret my approach as falling in a "rightly conceived" natural rights tradition after all (see also footnote 17 below). What is claimed, though, is that the following approach is clearly out of line with what the natural rights approach has actually come to be, and that it owes nothing to this tradition as it stands.
16. See K. O. Apel, "Das Apriori der Kommunikationsgemeinschaft und die Grundlagen der Ethik," vol. 2, *Transformation der Philosophie* (Frankfurt/M.: Suhrkamp, 1973); also Jürgen Habermas, "Wahrheitstheorien," in H. Fahrenbach, ed., *Wirklichkeit und Reflexion* (Pfullingen: Neske, 1974; idem, *Theorie des kommunikativen Handelns*, vol. 1 (Frankfurt/M.: Suhrkamp, 1981), pp. 44ff; idem, *Moralbewusstsein und kommunikatives Handeln* (Frankfurt/M.: Suhrkamp, 1983).
17. Of course, then, since the capability of argumentation is an essential part of human nature—one could not even say anything about the latter without the former—it could also be argued that norms which cannot be defended effectively in the course of argumentation are also incompatible with human nature.
18. Methodologically, this approach exhibits a close resemblance to what Gewirth has described as the "dialectically necessary method," (*Reason and Morality*, pp. 42-47)—a method of *a priori* reasoning modelled after the Kantian idea of transcendental deductions. Unfortunately though, in his important study Gewirth chooses the wrong starting point for his analyses. He attempts to derive an ethical system not from the concept of argumentation but from that of action. However, surely this cannot work, because from the correctly stated fact that in action an agent must, by necessity, presuppose the existence of certain values or goods, it does not follow that such goods then are universalizable and hence should be respected by others as the agent's goods by right. (Gewirth might have noticed the ethical "neutrality" of action had he not been painfully unaware of the existence of the well-established "pure science of action" or "praxeology" as espoused by Mises. And incidentally, an awareness of praxeology also might have spared him many mistakes that derive from his faulty distinction between "basic," "additive" and "non-subtractive" goods (ibid, pp. 53-58).) Rather, the idea of truth, or of universalizable rights or goods only emerges with argumentation as a special subclass of actions,

but not with action as such, as is clearly revealed by the fact that Gewirth, too, is not engaged simply in action, but more specifically in argumentation when he wants to convince us of the necessary truth of his ethical system. However, with argumentation being recognized as the one and only appropriate starting point for the dialectically necessary method, a libertarian (i.e. non-Gewirthian) ethic follows, as will be seen.

On the faultiness of Gewirth's attempt to derive universalizable rights from the notion of action see also the perceptive remarks by Alasdair MacIntyre, *After Virtue: A Study in Moral Theory* (London: Duckworth, 1981), pp. 64-5; Habermas, *Moralbewusstsein und kommunikatives Handeln*, pp. 110-11; and Veatch, *Human Rights*, pp. 159-60.

19. See the works cited in footnotes 11 and 12 above.
20. See the works cited in footnote 16 above.
21. It might be noted here that only because scarcity exists is there even a problem of formulating moral laws; insofar as goods are superabundant ("free" goods) no conflict over the use of goods is possible and no action-coordination is needed. Hence, it follows that *any* ethic, correctly conceived, must be formulated as a theory of property, i.e., a theory of the assignment of rights of exclusive control over scarce means. Because only then does it become possible to avoid otherwise inescapable and unresolvable conflicts. Unfortunately, moral philosophers in their widespread ignorance of economics have hardly ever seen this clearly enough. Rather, like Veatch (*Human Rights*, p. 170), for instance, they seem to think that they can do without a precise definition of property and property rights only to then necessarily wind up in a sea of vagueness and ad-hoceries.

    On human rights as property rights see also Rothbard, *The Ethics of Liberty*, chap. 15.
22. John Locke, *Two Treatises on Government*, edited by Peter Laslett (Cambridge: Cambridge University Press, 1970), esp. vols. II, V.
23. On the non-aggression principle and the principle of original appropriation see also Rothbard, *For a New Liberty*, chap. 2; idem, *The Ethics of Liberty*, chaps. 6-8.
24. This, for instance, is the position taken by Jean-Jacques Rousseau, when he asks us to resist attempts to privately appropriate nature-given resources by, for example, fencing them in. He says in his famous dictum " 'Beware of listening to this impostor; you are undone if you once forget that the fruits of the earth belong to us all, and the earth itself to nobody.' " "Discourse upon the Origin and Foundation of Inequality Among Mankind," Jean-Jacques Rousseau (*The Social Contract and Discourses*, edited by G. Cole [New York: 1950], p. 235). However, to argue so is only possible if it is assumed that property claims can be justified by decree. Because how else could "all" (i.e., even those, who never did anything with the resources in question) or "nobody" (i.e., even those not, who actually made use of it) own something—unless property claims were founded by mere decree?!
25. Rothbard, *The Ethics of Liberty*, p. 32; on the method of *a priori* reasoning employed in the above argument see also, idem, *Individualism and the Philosophy of the Social Sciences*, (San Francisco: Cato Institute, 1979); Hoppe, *Kritik der kausalwissenschaftlichen Sozialforschung. Untersuchungen zur Grundlegung von Soziologie und Okonomie* (Opladen: Westdeutscher Verlag 1983); idem "Is Research Based on Causal Scientific Principles Possible in the Social Sciences?" *Ratio* 1 (1983); idem, *Theory of Socialism and Capitalism*, chap. 6.
26. On the problem of deriving "ought" from "is" see W. D. Hudson, ed., *The Is-Ought Question*, (London: Macmillan, 1969).
27. See Rothbard, *The Ethics of Liberty*, p. 45.
28. On the importance of the definition of aggression as *physical* aggression see also Rothbard, ibid., chaps. 8-9; idem, "Law, Property Rights and Air Pollution" *Cato Journal* (Spring 1982): 60-3.

29. On the idea of structural violence as distinct from physical violence see D. Senghaas, ed., *Imperialismus und strukturelle Gewalt* (Frankfurt/M.: Suhrkamp, 1972).

    The idea of defining aggression as an invasion of property *values* also underlies both the theories of justice of John Rawls and Robert Nozick, however different these two authors may have appeared to be to many commentators. For how could Rawls think of his so-called difference-principle ("Social and economic inequalities are to be arranged so that they are . . . reasonably expected to be to everyone's—including the least advantaged one's—advantage or benefit," (from John Rawls, *A Theory of Justice* (Cambridge, Mass.: Belknap Press 1971), pp. 60-83); ibid., p. 75ff, as justified, unless he believes that simply by increasing his relative wealth a more fortunate person commits an aggression, and a less fortunate one then has a valid claim against the more fortunate person only because the former's relative position in terms of value has deteriorated?! And how could Nozick claim it to be justified for a "dominant protection agency" to outlaw competitors, regardless of what their actions would have been like? (Robert Nozick, *Anarchy, State and Utopia* (New York: Basic Books, 1974), pp. 55f.) Or how could he believe it to be morally correct to outlaw so-called non-productive exchanges, i.e., exchanges where one party would be better off if the other one did not exist at all, or at least had nothing to do with it (as, for instance, in the case of a blackmailee and a blackmailer), regardless of whether or not such an exchange involved physical invasion of any kind (ibid., pp. 83-6), unless he thought that the right to have the integrity of one's property *values* (rather than its physical integrity) preserved existed?! For a devastating critique of Nozick's theory in particular see Rothbard, *The Ethics of Liberty*, chap 29; on the fallacious use of the indifference curve analysis, employed both by Rawls and Nozick, idem, *Toward a Reconstruction of Utility and Welfare Economics*," Occasional Paper No. 3 (New York: Center for Libertarian Studies, 1977).
30. See also Rothbard, *The Ethics of Liberty*, p. 46.
31. For an awkward philosophical attempt to justify a late-comer ethic see James P. Sterba, *The Demands of Justice* (Notre Dame: Notre Dame University Press, 1980), esp. pp. 58ff, 137ff; on the absurdity of such an ethic see Rothbard, *Man, Economy, and State*, p. 427.
32. It should be noted here, too, that only if property rights are conceptualized as private property rights originating in time, does it then become possible to make contracts. Clearly enough, contracts are agreements between enumerable physically independent units which are based on the mutual recognition of each contractor's private ownership claims to things acquired prior in time to the agreement, and which then concern the transfer of property titles to definite things from a definite prior to a definite later owner. No such thing as contracts could conceivably exist in the framework of a late-comer ethic!