**Protect or Neglect: A Refined Definition of Property and Property Rights**

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## Introduction

It is my understanding that good economics is a study of human action, where action indicates exchanging some circumstances for others. Thus it has been to my curiosity that Austrian economists have grounded the theory of property and property rights in libertarian political philosophy, an ethical doctrine related to but not interrelated with economics. I don't write to undermine or discredit good libertarian political philosophy, but I write in attempt to refine the definition of property and property rights and sure up the foundation of good economics, even if in some minimal and peripheral way.

I draw on the definitions provided by Alchian (2008) and Barzel (1997) to build a new workable definition of property and property rights, then address some basic implications and applications. I then turn to calculation, working in the tradition of Mises (1949), Piano and Rouanet (2018), and Truitt (2020). Using the new definition along with the calculation analysis, I attempt to get at some of the most fundamental aspects of property. Finally, I show that my analysis is consistent to the claims made in libertarian political philosophy.

## Property and Property Rights Defined

Property is a word we throw around colloquially in various ways, making it not uncommon to see imprecise definitions squirming into the discipline of economics. When three-year-old Johnny fights for his toy whining "mine, mine, mine"—even if Johnny can't spell out his concept of property, he certainly has one. Fundamentally, though, there is an issue in defining *property* because it necessarily depends on a definition of *property rights;* married to "what is property" is "whose is it." Johnny believes that since the toy is his, he has the right to play with it.

Alchian (2008) provides a workable definition of property rights: "a property right is a socially enforced right to select uses of an economic good."[1] Of course this is only helpful if the term "socially enforced" is understood as well. For now it is enough to say that enforcement means there is *some cost* for the person trying to prevent a right to be realized by its proper holder. Notice, also, that economic goods are not the object in question. Since "select uses" of them are, we needn't overanalyze goods here. Barzel (1997), working in an Alchianian framework, says that "[property rights] is essentially the ability to enjoy a piece of property."[2] Again, here we see that rights are specifically attributed to enjoyment of pieces, similar to "select uses." This is a much more robust idea than the average colloquial definition.

And this is just my main point here. *Property*, as such, is hard to define, but by using a definition of *property rights*, we can gain a better foothold. When Wendy owns something, her rights to select uses of it are protected by some enforcement. So what then is actually hers in the most fundamental way? The select uses are. Perhaps Wendy is only part owner, renter, or borrower of the good—she still has the right to select uses. Thus we could define *property* in a way that is more concordant with the logicians: *features* of a good. Characteristics. Attributes. If the property right is the right to the select uses of a good, then the property is the select uses of a good.

[1] p. 1 of the dictionary entry.
[2] Barzel (1997), p. 3.

A brief and informal etymological study of the word property hints that we use property today in the legal and economic sense because of its meaning in the descriptive sense. For example, a demonstration of the descriptive sense is "a property of a chair is that it can be sat on," while a demonstration of the legal and economic sense is "property of Adam is that chair." In my analysis, I am extending this in hopes of a more precise definition: a property of Jerome is the ability to sit on the chair. In other words, Adam's property (what he owns) is the property of the chair (its characteristic).

An important distinction must be made. The property right becomes a *legal* property right when the "social enforcement," the cost of invasion on the right, is ordered by the state. Most often this is what we mean when we refer loosely to rights or property rights, and for good reason—jail and fines are obvious costs of invasion on rights. Hereinafter I will explicitly say legal property rights when referring to rights which are granted by the state, as it is an instantiated rendition of property rights.[3]

Then, to be extra straightforward in my terminology, my definition of property rights is this: the ability to use select features of an economic good, assured by the costliness to prevent the use.[4]

In hopes of clarification and solidification of the proposed definition, here is an example. Say Burt owns a bookstore, Burt's Books. His legal property rights are the promise of the state to presumably fine or jail anyone who steals his books, breaks into the store, holds-up the counterman, vandalizes the building, solicitates, etc. Countless torts could happen in the store and provoke Burt to, what we would say, exercise his legal property right and bring the tort to the attention of the police and the courts. Burt has some other property rights too. He has the right to ask his customers to wear clothes (or to specifically not wear clothes if that's his cup of tea). This is a property right because a select use of the building is inviting certain people inside. There is a cost of invasion on the right; for the person who comes in naked, it could be a denial of the desired book sale, shaming the naked person (by Burt or even other customers), or ostracizing the naked person.[5]

I take the opportunity here to recognize the hierarchical nature of property rights, which will become quite important in the succeeding discussions. Just like properties (features) of goods can contain implicit other properties, so can property rights. If the chair has the property of redness, it implicitly has the property of color. If Burt has the property right of running a store in the building, he necessarily has the right to run a bookstore, bagstore, boozestore, or bolognastore. This to say some rights supersede others. Burt's right to run a *bookstore* in the building doesn't necessarily mean he has the right to run any store.[6]

## Private Property and the Public Domain

[3] Borrowed directly form Barzel(1997), but Mises (2010) makes a similar distinction.

[4] These are very closely related to Barzel's definitions (1997). He uses "legal property rights" in the same way as I do, and "economic property rights" in a very similar way as I use "property rights." I chose to drop the descriptor "economic" for as I stated above, legal property rights is a subset of property rights, not a disjoint idea. Allen (1991) also adopts a similar definition.

[5] Ellickson (1991) shows substantial and interesting evidence for non-legal "social enforcement" of property rights.

[6] Another example: the property right to sleep securely in your house is a set that includes the right to sleep securely on the couch, in the bed, or in the bathtub—but possessing a right to sleep in a hotel bed (or bathtub) doesn't work upwards and outwards applying to the whole building.

I now want to inspect some other important elements of Barzel's (1997) property rights analysis. As you may have noticed, I have failed thus far to mention a lovely word almost certainly united with property rights: private. A property right is deemed private if an individual indeed has the ability to use select features of a certain economic good to a certain extent, assured by the costliness to prevent such use. If the property right can be realized by multiple people without hindering specifically the extent to which others have the same ability, then we say the property right is in the public domain. I previously ignore "private" when attending to definitions partly because upon close inspection the rights that people care about most, the ones they consciously act on, lobby to get legally delineated, etc., are all private. Barzel explains that even though we can think of many examples of organizations or partnerships legally owning commodities or property rights to certain features of them, if we are willing to forget the L-word momentarily, we will find that it is the individual's property right and his only, and that the partner's or other organization members' property rights are different in some way.

Again, perhaps an example will help. Suppose Jerome is the owner of 100 cattle. He presumably has the property rights to sell them, milk them, feed them, shelter them, corral them, or whatever he can think to do with his animals. But as all economic goods are scarce, so too are his property rights. Perhaps he suspects there is a local cattle theft. For simplicity, let's say that it is profitable for him to buy alarm collars for 90 of cattle leaving 10 without, protecting some and neglecting others. In essence, he is leaving certain property rights of those 10 cattle in the public domain that he is retaining in the other 90. From, say Jim, the cattle thief's perspective, it is prohibitively costly to steal any protected head, preventing him from realizing the property rights. But he could, however, capture the rights of those 10 neglected head for a much lower cost, one that might be worth it to him. Jim still incurs some cost when stealing the neglected 10 because he still lost sleep, fed his horses and dogs to herd them, or whatever other means he used.

The alert reader notices that there could be an instance of an extra sneaky or highly organized thief that finds the alarm collars presenting too little of a cost and steals the whole heard anyway. Yes, in this case certain rights are also left in the public domain, and the cost analysis is everything. At what cost do right-holders take to assure their rights of use, and at what cost do people take to capture rights in the public domain? An individual's property rights are only his to the extent he protects them, or someone else protects them in his interest.

Now consider Barzel's discussion of transaction costs. He defines transaction costs as any cost "associated with the transfer, capture, and protection of rights."[7] The cost of alarm collars that Jerome incurs is a transaction cost of protection. The opportunity cost of wages forgone of the band of highly organized thieves to steal the herd is a transaction cost of capturing. Examples of a transaction cost of transfer would be the costs of going to market, discovering a market price, negotiating, transferring logistics, and whatever else Jerome and the potential buyer undertake to exchange the cattle. The important point here is that the size of the transaction costs determines who has property rights, and it is absolutely the only thing that decides.

This brings us to an important point of allocation. If we assume people act to satisfy preferences in the least costly manner, individuals will always seek to protect their property

[7] Barzel (1997), p. 4.

rights to the optimal degree. Jerome finds it profitable to equip 90 cattle with alarm collars but not 100. Thus, he found it optimal to protect his property rights so far as retaining 90 cattle against a Jim-like thief. Now Jerome can still realize some property rights of the other 10 cattle, for he does not relinquish *all* the features of the good to the public domain, just some select ones. It may even be true that in all of the uses he has for cattle, he cannot distinguish between one of the 90 and one of the 10; remember property rights are the *ability* to use, not the using of, select features of a good.

Property-rights allocation might seem more interesting in the case of a transfer, since this kind of theft is abstracted from our common experience. Take Burt, our bookstore owner, and his employee Travis. Burt tells Travis that for every 10 sales that he helps facilitate, he'll receive some percent commission of the profit. In redefining the contract of Travis's job, Burt is reassigning property rights in a way that he thinks will make the business more profitable. Travis is now the owner of his wage payment (assured by the cost of doing his everyday job), but also the owner of the commission payment assured by whatever cost he's willing to pay for it (i.e. how hard he's willing to work to sell books). We can imagine this as a property rights issue more clearly by thinking through different sized commissions. Travis would put more effort into selling books if his commission payment were 80% relative to 5%, ceterus paribus. Burt, the entrepreneur, might say that he is giving Travis some stake in his work—making it his—making it worth working harder for.[8] This is exactly the idea of property-rights allocation: individuals will sell, relinquish, or reassign rights to the perceived optimum degree. Additionally, and more fundamentally, those who can obtain and maintain property rights at a lower cost (i.e. more efficiently) are those who end up with the rights.

**Legal Property Rights**

A quick word must be said about legal property rights. Legal property rights, remember, are the rights to select uses of a good that are assured by the state. The state providing the protection for certain rights in no way implies that it is costless for the right-holder, however. What is the cost of having a state? Taxes, obviously, to run the courts, legislative offices, and enforcement mechanism. So are taxes and state run protection better than individual protection?

If you lock your car and house or keep track of your wallet, you are taking protection into your own hands—even when theft is punishable by law. This shows simply that we don't leave all protection up to the state. Why? Legal property rights are what the state explicitly delineates and assigns, and in many cases the transaction costs are prohibitively high for the individual to lobby, sue, or defend a suit that ensures that property rights are legal property rights.[9] Additionally, as Ellickson (1991) observes, just learning the law can sometimes prove too costly. Would my neighbor's excessively bright porch lights at night, shining right through my bedroom window be a punishable offence? I don't know, so I buy a blind, not take it to court. Likewise, it is much easier for us to lock our car doors than to spend the time and money prosecuting a car thief.

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[8] When working landscaping with a wage and commission contract, my boss and company owner did indeed use the words "making it yours" and "giving you stake."

[9] This is precisely why monetary case settlements exist.

## Risk and Uncertainty

The property rights perspective on economic problems has an opportunity to shine when considering risk and uncertainty. Put simply, *risk* is the precise chance that an action taken to achieve an end will in fact achieve that end. *Uncertainty* is a fact of life that each particular action involves a myriad of factors, only some of which are known or can be known.[10] As Mises (1949) says, uncertainty has nothing in common with risk "but the incompleteness of our knowledge."[11] All action is subject to both risk and uncertainty. Although risk can be calculated, it needn't be, and its calculation doesn't change its value. The gambler has precisely a one-in-fifty-two chance of drawing the queen of hearts from a full deck even if he can't count to fifty-two. Uncertainty deals with judgements based on knowledge, but not provable by it.

Since it is possible to calculate particular risks of actions, risk is necessarily a feature of economic goods. How could this be if risk is a description of an outcome of an action? Ownership of goods (thus rights to features of goods) necessarily takes place in time, and thus takes continual reassessing of costs involved to either protect or neglect. So long as a property right is held, there is some risk of it being captured along with a superseding property right that is left in the public domain.

Remember Jerome and his cattle. He holds numerous property rights pertaining to them including corralling them, killing them, brushing them, etc. Remember though that he left some rights in the public domain, and, while it is hard to name the particular ones, we know that the highly organized thieves could capture them. Those property rights (the ones left in the public domain) supersede the lower-level property rights such as the ones just listed. They must be realizable before the lower-level rights can be realizable.[12] Jerome, in holding all the rights to the cattle which he does hold, also holds the property right to the risk of losing his realized rights upon the capture of a right superseding them all.

If Jerome is what we would call risk-adverse, he may want to transfer the property right of some risk of cattle ownership by buying insurance. It might even be better for Jerome to buy more insurance, transferring, say, the risk of Jim-like thefts to a more accepting hand, and forgoing the alarm collars. Notice that the cost of protecting the other property rights is still covered, just in a different way, i.e. in the case of theft, he is compensated a value he deems worth it.

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[10] Mises's (1949) class and case probability distinction is exceedingly helpful. Also see Knight's (1964) groundbreaking book.

[11] Mises (1949), p. 110.

[12] They must be available, but they needn't be protected; obviously Jerome was realizing his other rights without protecting them. This means after capture, the highly organized thieves needn't protect against other highly organized thieves (and we wouldn't expect them to). I'm lenient to put names on such an idea, but maybe the property right here is something like the right of initiation. The cost of gaining initiation through capture or transfer varies as a result of how well the good is protected. You could imagine it being more costly for the organized thieves to capture the right of initiation to Jerome's cattle with alarm collars than it is to capture a neighboring rancher's collarless cattle.

Maybe Jerome buys fire-insurance for his barn, flood insurance for his pasture, and all else that would satisfy his risk-averseness and protect the cattle to the optimum degree. Although it is quite unlikely insurers would provide coverage for all possible risks present in owning cattle, and more unlikely Jerome finds it worth it to buy all such coverage, it is theoretically possible.[13] Just as Burt allocates property rights to Travis to the perceived optimal degree, Jerome buys insurance, allocating the property rights of risk to the optimal degree also.

**On Calculation**

We have seen that it is the interest of individuals to assign, transfer, and delineate property rights only to the optimum degree. Whether it be buying insurance, redefining a labor contract, or stealing cattle, these actions are all examples of action possible only because it was worth it to the receiving party to capture and not worth it for the relinquishing party to continue to protect.

This way of phrasing is directly applicable to economic calculation in the market. Certainly if a butcher, say, Jack, valued 10 cattle more than Jerome, he could express that with the language of money and offer a price to Jerome. Upon a successful transaction, both Jack and Jerome relinquish some rights and receive some rights. Such is the case for production in general. Perhaps Jack's business is experiencing large success and he is offering a high price to Jerome. Jerome, being an apt entrepreneur himself, finds it worth it to buy or breed more cattle anticipating more transactions with Jack. He might even buy more collars, fire insurance, healthier feed, or whatever else promotes his dealings with Jack. Economic calculation, that is, using prices to determine production capacity to seek profit and avoid loss, is what guides his production decisions. Anticipating a sale of 100 cattle to Jack twice a year, according to economic calculation, Jerome won't buy 1 million alarm collars.[14]

This simple test is what decides what kinds of goods are produced and who produces them in the market. No entrepreneur can continually afford to take losses and continue production. Besides, it doesn't make sense to produce a good that people aren't willing to pay for. From this, basic microeconomic analysis can emerge.

But here, I am interested in calculation. So, I turn now to what Piano and Rouanet (2018) call "secondary calculation": the use of calculation within a firm, accounting for market prices *and* non-market transaction costs. Piano and Rouanet notice importantly that whether or not an entrepreneur remains, leaves, or enters a market is not merely the push and pull of the almighty power of market prices and profit and loss. More specifically, secondary calculation determines which parts of a product's production are vertically integrated into a firm.

Suppose Jack has a famous secret sauce that he uses in his burgers. We can say that in the production process of burgers, Jack, through economic (or primary) calculation decides to buy his beef from Jerome, but through secondary calculation, he decides to make the secret sauce himself. Notice the key traits of secondary calculation: the combination of market forces (the prices of the spices in the secret sauce) and non-market forces (prohibitively high transaction costs of outsourcing, if not mere the impossibility of sharing the knowledge the secret sauce).

Piano and Rouanet claim, "As long as they do not live in a simple autarkic economy, however, entrepreneurs will never engage in projects where they can neither use primary nor

[13] Perhaps there is some set of risks that together are higher-order property rights to all other rights, breaking the hierarchy and making it theoretically impossible to transfer all of the risk away and retain rights.
[14] Drawn from Mises (1949), but he developed *economic calculation* elsewhere.

secondary calculation. In other words, it will remain true that 'every single step of entrepreneurial activities is subject to scrutiny by monetary calculation.'"[15] Truitt challenges this claim by proposing "tertiary calculation," a calculation that is purely extra-market.[16] He aptly categorizes the three types of calculable entrepreneurial tools by the type of feedback provided: primary calculation gives feedback of monetary specific *quantities* determining profit and loss, secondary calculation gives strictly bottom line *quantitative* feedback of profit and loss with *qualitative* implications, and tertiary calculation gives only *qualitative* information. An autarkic producer *could* engage in tertiary calculation, then, simply by recognizing non-monetary transaction costs in his production processes and developing ways to minimize them. As Truitt points out, this is applicable today only very small economies like the family. The analysis of such a small economy wasn't his goal in developing tertiary calculation, but to this point, alongside with our refinement of a property rights definition, is my interest.

## Property Rights and Tertiary Calculation

Now it is my goal to combine the analytical approaches of calculation and property rights in hopes to discover the essence of property rights in a fundamentally non-ethical way.

The first type of calculation can certainly be imagined as tools to determine property right assignment, for, as shown above, any market exchange could be rephrased in property rights assignment shifts. Jerome thinks something that could be translated as "I will give up my rights to every pound of beef of 10 cattle if I receive the rights to 2 dollars per pound."

The second type of calculation is a little more strenuous. Jack could do the quantitative primary calculation of his secret sauce and find that it yields him less than sufficient income to cover the spices in a given time and thus conclude to cease production, acting only on monetary profit and loss. But, he could also do the primary calculation, notice he will incur a loss, and decide that he *shouldn't* cease, dipping into other funds to continue production, anticipating that a reputation of the failed secret sauce producer negatively affect his overall business. He certainly can't do this forever—that is what Mises means by saying that all entrepreneurship is affected by profit and loss—but it could turn out that Jack was right to continue production, foreseeing a future increase in demand for the secret sauce burgers. In fact, all new lines of production, are just that: secondary calculation finding something that primary calculation does not. The property rights in this case are the select uses of his company in whole, and the trade-off comes slyly: monetary loss (loss of rights to a number of dollars) in the secret sauce line of the account for a non-monetary gain of rights which could impact the future monetary gain on the bottom line.

The third type of calculation is actually somewhat easier. It comes naturally, in fact. Suppose Robinson Crusoe, on his dessert island, could pick coconuts from a tree farther away or a tree closer to the hut he builds. Almost entirely instinctively, he chooses the closer one (unless he has another end such as exploring the other side of the island, which then we would say he put two variables into his mental equation to calculate). This isn't an entrepreneur in a market, but that's just the point: tertiary calculation is extra-market. It is calculation nonetheless because it is "economizing" calculation, even if the resource being economized is his time, physical energy, or anything else besides money or things denominated in money.

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[15] Piano and Rouanet (2018) p. 15. Internal quotation is from Mises (1949), p. 230.
[16] Truitt (2020) p 15.

The question, then, is what is his property? It seems obvious that he needn't make distinctions about what is property or not, for no one else is there to quarrel with him over goods or select uses of them. But under close inspection, Crusoe would find it beneficial to claim and protect select uses of goods as his property, either for convenience, anticipation of future non-human conflict, or anticipation of future human conflict. Even if we consider someone like Adam in the Garden of Eden who might not have ever considered quarrelling with someone in the future, it seems to be the case that he has incentive to recognize the patterns of nature and store food in an economizing way. Again, this is quite instinctive.

I pose that property rights, from an economic perspective, are innate and instinctive like economizing calculation itself.

Humans are born into a single finite body, surrounded by a finite world. Whether God owns the body, the parents have some legal ownership of the body, or the body is born a slave, with our refined definition of property rights, it is only select uses of the body that we have a right to anyway. Whatever condition someone is in, if they are alive, they have some select uses of their body, and some select uses of goods in the environment. Thus, people are inherently property owners and are subject with the responsibility of protecting their given property. No one must tell us that; part of being a property owner is understanding (again, innately) that it must be protected or neglected. The act of protection or neglection, is simply acting (again, innately) according to preferences.

Now I must say that when people with property are subject with the responsibility of protecting it, I am not saying that people have some moral duty to maintenance, but simply that if they neglect it, the property could be lost. This is not a feature of interpersonal infringement either. Acts of neglecting one's body leads to depletion by natural process. Complete neglection of any property surely leads to complete loss of rights, and the same can be said about one's body. The moment when someone has completely failed to secure protection of property is the moment when he exists no longer as a living person.

Additionally, when I say innate and instinctive, I am not saying that humans have no choice but to consciously protect property and do mental accounting. I am saying that these ways to categorize and describe human action are just that: when people act, they economize as a necessary feature of action. When people act, they are protecting and neglecting certain properties—as a necessary feature of action.

**Property Rights Distribution**

As stated above, Seth acquires a property right happens if and only if Seth incurs the costs of captures a superseding property right from the public domain. On the surface, this theory may seem to suggest that the bullies, the most highly organized band of thieves, the mischievous wrong-doers of society are the ones who end up with all the property. But a quick look outside at the world shows simply that this is not the case. We can't be content to just write this off as the police doing their jobs well, though.

As it is the case that transaction costs prohibit the price-mechanism to regulate all possible distribution,[17] so too would certain costs prohibit the appropriation of rights via

[17] For instance, as in Alchian and Allen (2018): "In the interests of predictable prices, sellers often voluntarily keep price constant and voluntarily tolerate shortages or surpluses, rather than clear the market at every moment. The full

violence. Umbeck (1981) explains that while violence underlies all allocative systems, it certainly doesn't prevail, even under "outlaw" conditions like the California gold rush of 1948. He says, "If some individual, relatively proficient in the use of force, received less of the wealth through the race (or the beauty contest of the auction) than he could have gained through the use of forceful persuasion, he will disregard the outcome and take his share from the other victors. In other words, all of these allocative systems require agreement; all except force."[18] Umbeck makes the obvious observation that force isn't always used, and he claims this is the case because the amount of wealth received by a non-forceful contract exceeds the amount of wealth that would have been received by using force *and* the additional transaction costs of using force. Put simply, there are downsides to obtaining property with violence that deter, not just legal enforcement.

To build on Umbeck, let us introduce the further claim about calculation into the analysis. It isn't true that everyone everywhere and always are out to maximize only their wealth, as we've seen with the other economizing techniques in the levels of calculation. Thus, when we think about conditions for the peaceful transfer of property, we must recognize a brutally important fact: the transaction costs of using force are subjective.

In the moment before an armed or violent burglary, there is mental calculation that weighs not only the property that comes with the act over the property that could come peacefully, but also future reproductions. A single act of violence could, for example, deter others from allowing peaceful transfer of property in the future. It could result in counter-violence not anticipated, social ostracization, a revoked birthday-party invitation for their kids, or the psychological and spiritual burden of sin like Raskolnikov. All these things are extra-market, tertiary calculable costs. The point is, though, just like an entrepreneur earning losses in a production process, the "violence market" loses and gains participants depending on how effective it is. As for the majority of civilized people, those costs simply defeat the potential benefits of violence, and we never enter the market.

Remember, in terms of legal property rights, the state does promise protective responsibilities to some property rights. Theft and violence still persist, however, because it is impossible to protect all levels of property rights simultaneously in a finite world. We can only say then that the people who avoid punishment for their violence have good entrepreneurial foresight, while those who do pay a punishment (even if it is just a psychic loss) have poor entrepreneurial foresight.

A lovely instance of priced markets and "violence-markets" working together cohesively and effectively was in Umbeck's object lesson: the California gold rush. As Shinn (1948) notes,

> [The western gold-miner] in reality, was a plain American citizen cut loose from authority, freed from the restraints and protections of law, and forced to make the defense and organization of society a part of his daily business. In its best estate the mining camp of California was a manifestation of the inherent capacities of the race for self-government…. Here, in a new land, under new conditions, subjected to tremendous pressure and strain, but successfully resisting them, were associated bodies of freemen bound together for a time by common interests, ruled by equal laws, and owing allegiance to no higher authority than their own sense of right and wrong. They held meetings, chose officers, decided disputes, meted out stern and swift punishment to offenders, and managed their own local affairs with entire success . . . and the growth of their

costs of exchanges are thus reduced, and the extent of exchange is increased, even when it may appear that the market-pricing process is failing.

[18] Umbeck (1981), pp. 38-39.

> communities was proceeding at such a rate that days and weeks were often sufficient for vital changes which in more staid communities would have required months or even years.[19]

In other words, in the absence of legal property rights, legal property rights are only delineated rarely, as free trade and the "violence markets" sorted out who got what.

## Importance and Conclusion

Mises reminds us in *Human Action* what economics is and isn't:

> Ethical doctrines are intent upon establishing scales of value according to which man should act but does not necessarily always act. They claim for themselves the vocation of telling right from wrong and of advising man concerning what he should aim at as the supreme good. They are normative disciplines aiming at the cognition of what ought to be. They are not neutral with regard to facts; they judge them from the point of view of freely adopted standards.
>
> This is not the attitude of praxeology and economics. They are fully aware of the fact that the ultimate ends of human action are not open to examination from any absolute standard. Ultimate ends are ultimately given, they are purely subjective, they differ with various people and with the same people at various moments in their lives.[20]

What I have set out to do, then, is to appeal in no way to ethical doctrines while refining the definitions of property and property rights and its tight connection with economizing action.

The most important caveat I have is this: this project is not by any means a negation of building definitions for property and property rights that *are* based on an ethical doctrine. This project is a response to a call of duty to the economics profession to base all analysis in fundamental laws of human action, and not in an ethical doctrine, and it seems that hasn't quite been explicit with property and property rights.

Murray Rothbard offered a profound and systematic theory of property and property rights in *The Ethics of Liberty*, his treatise of libertarian political philosophy. This work, though, is in fact based in ethical doctrine, as its name suggests. The book, as he says in the preface, "does not try to prove or establish ethics or ontology of natural law, which provide the groundwork of the political theory set forth in this book. Natural law has been ably expounded and defended elsewhere by ethical philosophers."[21]

I argue that my attempted strictly economic analysis is consistent with the libertarian political philosophy understanding of property, and perhaps even helpful for making sense of it. Property, to the libertarians, is rooted in self-ownership. That is, Adam in the Garden introspectively notices that he can control over his body and thus can enjoy all the rights of using it. From self-ownership, Adam owns the fruit of his labor: whatever things he "mixes his labor" with becomes his own. This is called homesteading. In the case of a property rights dispute, the property always belongs to the person who homesteaded it first. Violence is only appropriate in response to violence, defending person or property. This is called the non-aggression principle. On these foundations rest all the anti-state doctrines of libertarianism.

There are some obvious similarities between my definitions and Rothbard's. On the idea of self-ownership, we both agree that being born into a body grants the property rights of it to *the*

[19] Shinn (1947).
[20] Mises (1949), p. 95.
[21] Rothbard (1982), p. xlvii.

person. In the economic analysis, though, this can be refined to just select uses. No person or institution denies me the right to dunk a basketball with my body, I simply have not incurred the cost to acquire that right. Rothbard doesn't make this kind of distinction.

On the idea of homesteading, we both agree that an act with nature outside of ourselves is necessary for securing the rights to anything in nature. Rothbard sees this as an act of cultivation of a kind, but in my analysis, I see this as simply incurring the costs of acquisition and protection, which of course *are* acts with nature outside of ourselves.

On the idea of property protection with violence, here Rothbard makes perfectly clear that violent defense is only applicable upon a violent invasion. My analysis is that violent acts capturing property rights is merely another instance of neglection by the owner. Successful violent defense against a violent invader is an instance of protection by the invader. The pacifist who declines violence in protection of his property is proof that our economizing brains weigh more than profit and loss in monetary terms. So, the big difference is the *prescriptive* implications of libertarian political philosophy as opposed to the *descriptive* attempt I've made at economics.

There does seem to be a very fine line here. Economics as a discipline, as Mises describes it, is looking at human action and describing it. Humans and their actions occur in nature, and like all natural-law philosophy, they derive facts and theories from observations witnessed in nature. So is economics a branch of an ethical discipline after all? No. At least no more than physics is. Economics is the color commentator of the ethicists: a pacificist says don't be violent, a warmonger says do be violent, a libertarian says don't be violent first, and an economist says violence is an option on a list of subjectively valued choices.

Hopefully this distinction can prove to be useful and helpful. I guess that depends on the market for its protection.

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