Action-Based Jurisprudence

By Konrad S Graf

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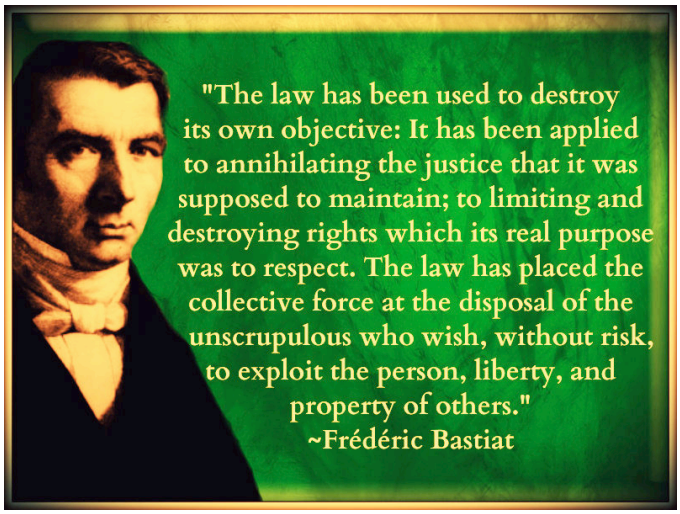
Thank you Michael Conaghan and the other organizers and sponsors for putting on such a principle-centered event, and to all of you who chose to be part of it.

The problem of rights-violating rights protectors

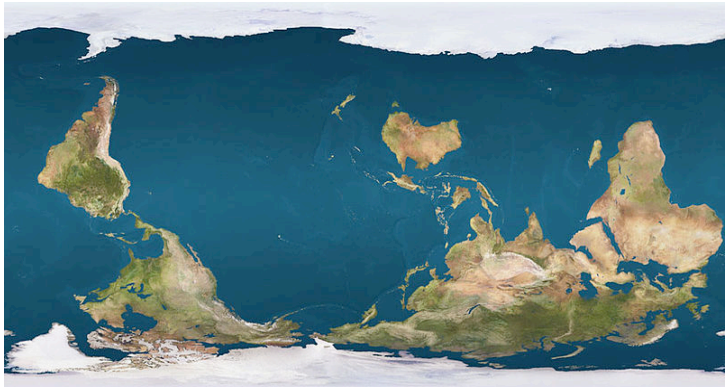


Source: *The Law*. Art arrangement by NFD

Frédéric Bastiat raised this paradox of rights-violating rights protectors in his 1850 work, *The Law*. It captured my attention from the first time I read it. Being stubborn about things I do not quite understand, I am still working on this issue 23 years later. Fortunately, I do have some progress to report.

In the same year I read *The Law*, I also read *Human Action* by Ludwig von Mises and *Man, Economy, and State* by Murray Rothbard for the first time, soon followed by others of their works. These theorists remain central to my thinking, even as I have continued to add insights over the years from other Austrian school theorists, as well as from the fields of history, legal studies, philosophy (both eastern and western), business organization, evolution, comparative religious and cultural studies, developmental psychology, Spacial Dynamics®, integral studies, and ethics. I have also lived in the United States, India, Japan, and now Germany. All of this has helped me develop great respect for the power of taking and combining multiple perspectives to develop new insights.

I'm still adding new perspectives, even this week…



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Mises revolutionized economic theory when he grounded it in the formal concept of action, the conscious choice of ends and means. Guido Hülsmann has argued that Mises backed into his concept of praxeology as he considered *how* sound economic theory was actually produced. Action then became the central organizing principle for sorting the sound from the confused.

Mises also wrote that economic theory was the "thus-far best elaborated part" or branch of praxeology. He seemed to me to envision praxeology becoming the core of a wider action-studies framework for the social sciences.

Others would surely apply this to other fields for which the deterministic methods of the natural sciences were unsuitable, but I have seen virtually no work actually *claiming* to do this.

I suggest that the deductive approach to legal concepts taken by certain theorists well-informed in Misesian economics already forms the groundwork for such another *branch of* praxeology that can stand next to economics as a sister discipline, roughly like this.

Mises Core	Mises Econ	ABJ
Praxeology/ Abstract	Economic theory	Legal theory
Thymology/ Interpretive	Economic history	Legal case interpretation

I include here significant existing contributions from Murray Rothbard, Hans-Hermann Hoppe, Stephan Kinsella, Jörg Guido Hülsmann, and others.

I also argue that action-based jurisprudence, with deductive legal theory as one of its parts, is a distinct new approach to the philosophy of law.

In the simplest terms, there are two main existing approaches. As Ben O'Neill explained at this event last year, **positivistic** approaches basically say that law is whatever is written in a governing state's law books, or whatever judges and police actually do, or whatever people expect them to do, and so on. But these provide no real way to assess the correctness of existing positive laws.

Natural law and natural rights approaches do offer ways to assess and critique positive law, but they have other problems of their own. Although we might pick and choose our favorite natural law interpretations, there are also many different views about what "natural" might imply in human relations, and arguments have been advanced not only for individual rights, but also for group consensus, matriarchy, patriarchy, monarchy, democracy, and anarchy.

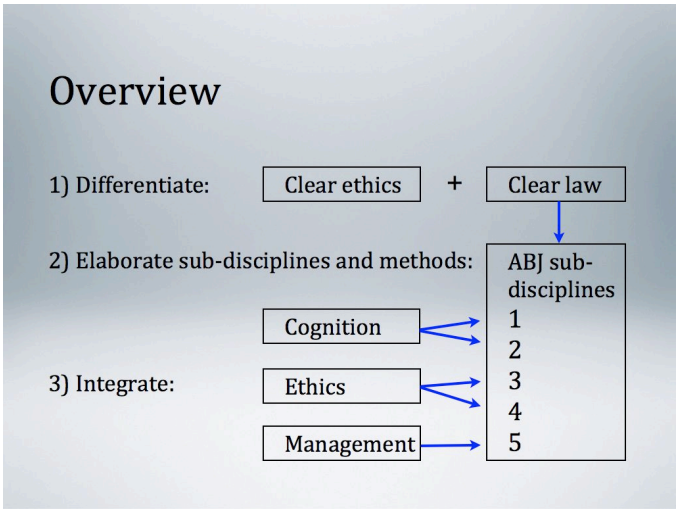
Natural law formulations are also vulnerable to modernist critiques of being pre-modern and metaphysical. It is still too easy for critics to ask: Where are these so-called rights? We can't find them floating around anywhere. Aren't they a little like "natural" tree fairies?

Certain natural law theorists have offered many very valuable insights. What is missing is the kind of specific organizing principle or starting point that anyone could, at least potentially, agree on.

Action-based jurisprudence uses the single organizing principle of action, which does have such a precise definition.

I do not view this approach as a substitute for the treasury of concepts and practices evolved over centuries within traditions such as the Roman Law, the English Common Law, and elements of some customary law traditions. Rather, action provides the core organizing principle for sorting the coherent and consistent from the confused and accidental within this heritage, in a way similar to what Mises and Rothbard did for the field of economics.

I think several barriers have prevented such an approach from being explicitly viewed as another branch of such a wider action-studies program. One of the biggest is confusion between the moral and the legal.



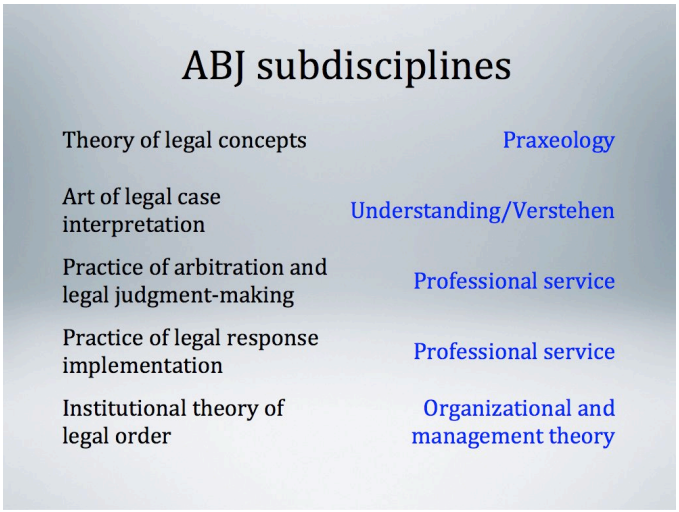
I will describe a model in which ethics and law are discrete fields that can work together, each with its own scope and methods. This is an alternative to the confused-law mixed with confused-ethics now on display in our world, in which misplaced ethical concepts undermine law and misapplied legal concepts poison ethics.

The first step is to differentiate, to define field boundaries. To help do this, I suggest a view of what ethics is *as seen from* action theory.

Another confusion comes from viewing law in the aggregate. To address this, I suggest a further differentiation of law itself into five sub-disciplines.

Next, comes integration, so that the distinct parts can also be used together, now with better job descriptions and a healthier division of labor.

The sub-disciplines are: the theory of legal concepts; the art of legal case interpretation; the practice of arbitration and legal judgment-making; the practice of legal response implementation; and the institutional theory of legal order.



I place the first two under Mises's pairing of praxeology and understanding as cognitive disciplines. Next are two distinct types of professional practice, and finally, a specialty within organizational theory concerning the structure of legal organizations, their combinations or divisions of functions, and their degree of congruence between objectives and methods.

This is a high-level overview of a vast territory of details, so I have prepared a custom list of follow-up readings that will be available right after this presentation [appended at the end of this document]. This list will also help better acknowledge some of the most important of my many sources of inspiration and content. Some of you might just pick out an article or two that seems especially interesting right now, while others might take this up as a recommended program of study. Please feel free to contact me if you are looking for recommended resources on particular questions in this area.

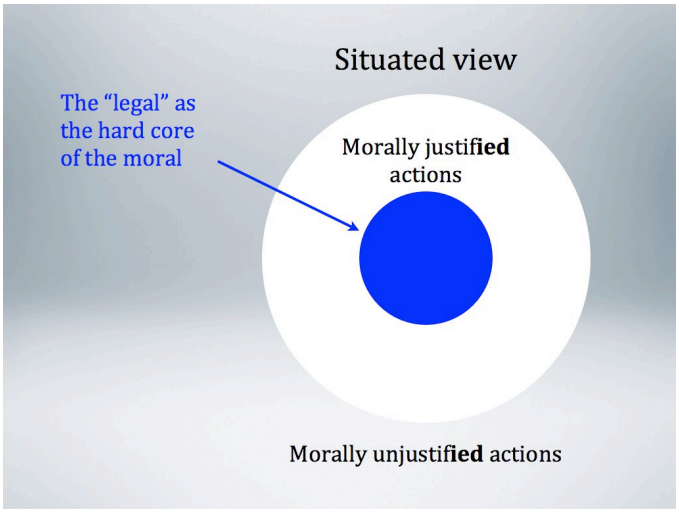
Differentiating law and ethics

The first step is to differentiate law and ethics. What is the role of ethics in action?

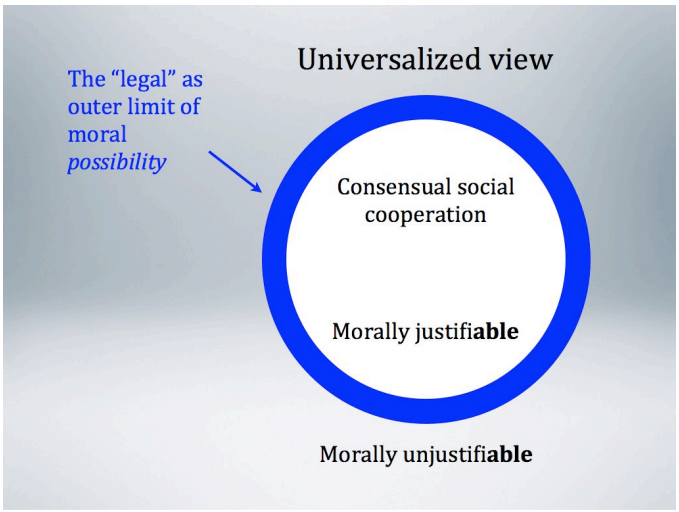
Action aims at the future and the future is uncertain. *Some* choice of ends and means and *some* idea of causal relationships are always implied. This includes *any* causal *claim* actually used, from science to sorcery.

Much like technical claims, ethical systems offer advice on *which* goals and values to pursue and *how*, as well as how to evaluate and respond to what others do. Such questions can be addressed ad hoc or with principles, but they cannot be avoided.

From this angle, law and morality might look something like this:



From the situated view of a given person in a definite time and place, the legal can appear to be the hard core of the moral, the most moral of the moral. Some actions appear justi*fied* and others don't. In the white area, one should, for example, work before surfing, be polite, and tell the truth. But in the blue area, it is even more important that one not steal bicycles, because that is not *only* a moral matter, but *also* a legal one, which is sort of somehow hyper-moral.



But there is a totally different way to look at this relationship. From a universalized view, the legal marks the outer bounds of the justifi*able*.

Moral justification is also a type of action. It can only take place within discourse. In a landmark step, Hoppe explained that respect for the non-aggression principle or "NAP" is among the norms that valid discourse presupposes. He applies descriptive reasoning to the context of moral justification acts, showing practical limits to which acts and norms can possibly be justified without contradiction.

The NAP marks off a sphere of the justifi*able*.

From this viewpoint, a person arguing in favor of violating the NAP looks like an old-time cartoon character who runs off a cliff, looks down, and realizes, too late, that there is no ground left to stand on.

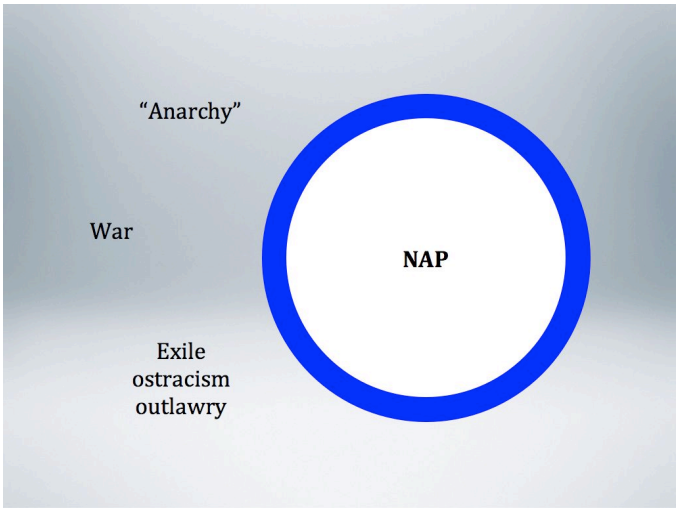
But unlike in other fields with more direct feedback, in social theory, one apparently *can* make self-contradictory claims, look down, and still be floating in the air. And maybe then look around and wonder why other people are falling.

This is not to say that any non-aggressive act is or is not moral according to some ethical system. It only claims that aggression cannot be justified by any possible ethical system without contradiction. People commit aggression, but they cannot also justify it, and rationalization doesn't count.

One can also not argue that aggression really *is not* aggression.

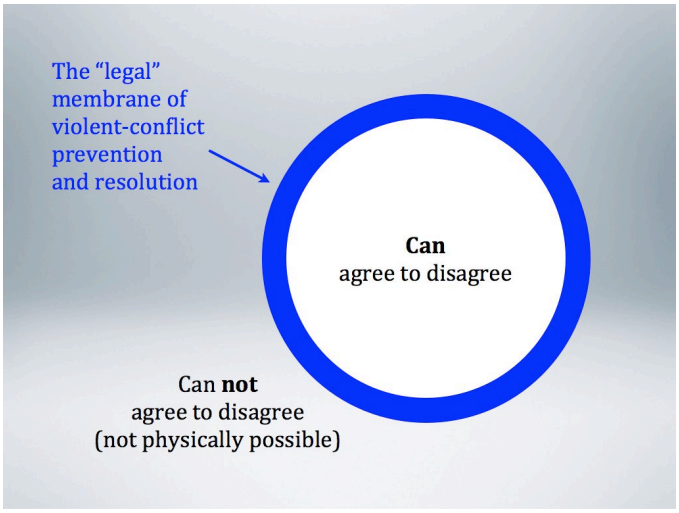
Let us say, someone steals a bicycle, most people can agree that this is a type of act called a "theft." Now, actually deciding whether to steal a bicycle is an entirely different matter, one that applies to a situated view. This decision, or what others think of it, has no bearing on our grasp of what a "theft" is. So in this example, ethics asks: "to steal or not to steal?," while law provides *knowledge* as to whether a given act is theft or not.

Far outside this sphere is Hobbesian anarchy, wars of all against all or some against some, chaos, outlawry, and the absence of legal protections. This is what faces protagonists in fictional worlds such as Mad Max, The Road, and The Walking Dead.



Between these extremes is the "legal" membrane of society.

This concerns conflicts over resources, objects, and locations that are scarce or rivalrous. This means things about which different people can have plans that are physically incompatible. If two people want to use the same resource in different ways, and cannot compromise or agree, at least one of them has to yield, or the only remaining option is violence. They literally could not "agree to disagree," because doing so would be physically impossible. Property rights are the solution to this problem.

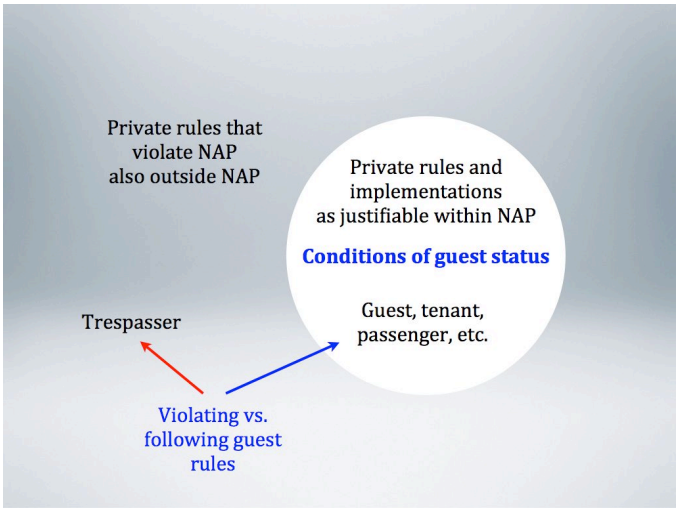


In contrast, intangible knowledge, opinions, methods, and ideas are not rivalrous resources. It is possible to "agree to disagree" about them. When legal concepts are misapplied to these situations, however, it promotes aggression rather than preventing it, as Kinsella has explained.

Critics wonder that the non-aggression principle alone seems far too simple for a complex society. It leaves many questions unanswered.

I think both critics and proponents of the NAP tend to underestimate the potential role for private rules set by owners and operators of land, buildings, vehicles, roads, and other locations that host guests, tenants, or passengers, as well as wider roles for insurance coverage terms and exclusions, and the work of private rating organizations, in areas such as safety, building standards, and accident prevention.

Implicit or explicit private rules set by location owners or insurers cannot be justified if such rules or their implementations contradict the NAP, but can otherwise reflect wide variation by type of place and owner preference, all at the risk of owners themselves with regard to potential impacts of rule choices on their business models.



Conversely, a guest violating private rules becomes a trespasser. This guest/trespasser distinction forms a legal basis for addressing many social-order concerns through private rules and contractual conditions without resorting to institutional aggression.

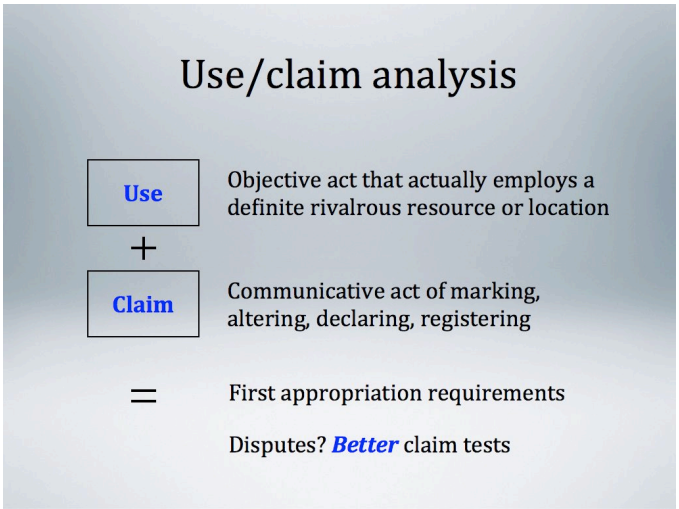
To summarize, several steps help distinguish law and ethics: distinguishing the situated perspective of an actor from the universalized concept of action as such; viewing legal concepts as dividing consensual discourse from non-consensual aggression; and understanding ethical systems as, among many other things, providers of *normative* advice on whether or not to engage in actions that fall under the *descriptive* category: aggression.

Three core legal-theory modules

We next elaborate five legal sub-disciplines.

We begin with the theory of legal concepts. I will present three core theory modules along with some philosophical issues that go with each one.

First, use/claim analysis covers the original appropriation of unowned resources and the grounding of property rights in action.



An original appropriation must meet two requirements: an objective act in the measurable physical world that employs a scarce resource or location; and a communicative act of marking, altering, declaring, or registering (with a title registration service) that show intent to own.

Sometimes a "use" already implies a claim; other times, another step may be needed so that others who wish to respect the claim can. Use is primary, while claim is secondary. Such use-based claims contrast with the "use-less" claims more typical of lords, kings, warlords, and states of all kinds.

In a dispute, only a better claim is required. A first claim is superior to a later one. Unlike first-users, late-comers face explaining why ownership should be *transferred* to them. The first user faced no such burden, having, by definition, performed a first-use act without violating any other claim because there was no other claim to violate. Late-comers, in contrast, cannot even perform a first-use act without already violating the rights of the existing first appropriator.

This says nothing about peaceful negotiations with a first-user. It only says that late-comers and third-parties cannot justify aggression against first-users just because they do not like how negotiations are going.

Notice that both using and claiming are action verbs. This analysis grounds the "right" of ownership in past acts. Only definite previous acts can establish grounds on which the first claimer can make a superior claim.

This is the only possible appropriation norm that can be universalized without running into contradictions, as Hoppe has explained.

This two-part model also reflects the dualistic nature of action itself. Action means a subjective, "I" or "you" using objective "it" resources. Such resources must at least

include the physical neurotransmitters, brain, body, and immediate location associated with the operations of that subjective consciousness.

This graphic borrows the interior/exterior duality of Ken Wilber's integral model and adds Misesian terms. On the left is the interior and subjective and on the right the exterior and objective. We can use this to talk about the dual aspects of action.

Only a subjective consciousness, which is intangible, can do any owning, and only spatially definable locations and objects can properly be owned. With this, we can interpret the notion of "self-ownership" as a first-claim link between an intangible subject and the associated tangible body. Unlike body and brain, a subjective "I" sense as it is experienced is not objectively measurable, and cannot in itself be a legitimate object of ownership at all.

Ownership is a solution to the practical problem of scarcity that arises from the limitations of time, space, and matter, and as such is inappropriate when applied directly to realms such as consciousness and thought. This also suggests that the justification of ownership of one's own body and ownership of external resources and locations might even be accomplished in a single, unified step, rather than the more usual two-step process.

To reflect this inherent duality, action-based legal analysis must consider both a teleological means/ends framework and an objective causal mechanism for any act, as well as how both weave together.

Action must entail both objective and subjective aspects. This may shed light on quarrels among parties who mainly stress either the subjective or the objective. Imagine two men standing on opposite sides of an elephant. One shouts that the elephant only has a left side and the other shouts back that it clearly only has a right side.

Second, title-transfer analysis concerns the conveyance of ownership. If I ask a friend to hold my bag while I do something for a moment, he has the bag, but I still own it. For him to own it, something else would have to happen. That "something else" is an act of communication. Following Evers and Rothbard, we can extend the word "title" to label what such communications transfer. Title is the intangible difference between possession and ownership in human relations. No such distinction appears to exist in the non-human world; for animals, possession stands alone.

Title-transfer analysis

Consent to:	Condition
Abandon	None
Give	Acceptance
Trade	Transfer of title to other good
Hire and compensate	Performance of specified services

This model views a valid contract as having two parts, a condition and a consent to transfer. These take on different names and forms depending on the type.

One can abandon a claim by reversing the actions required for a first appropriation. In some communities, people put out unwanted items with a "free" sign in case someone might use them, as an alternative to sending the items straight to disposal. This shows an objective act, moving the item, and a communicative act, posting the sign.

For a gift, the condition is acceptance. Sometimes people make a gesture of trying not to provide it, saying, "You shouldn't have. I can't accept this." But they might anyway.

For a trade, ownership of $5 transfers to the shopkeeper and ownership of a light bulb transfers to me. Each title transfer is conditional on the other.

For labor or a service, the condition is performance, and the action is payment, which is the

transfer of title to a sum of money customarily called a "wage" or "fee." For the other party's perspective, a job is performed on condition of such payment.

Only with trade do titles transfer both ways. Getting this clear can spare a lot of confusion. There is no title to a gift-acceptance or a labor unit. In all other cases but trade, an ownership title transfers in only one direction.

Complex contracts such as loans, insurance policies, partnerships, and futures can be built within this same model simply by adding conditions. For example, the recording of an average temperature range in a defined agricultural region might trigger a weather derivative.

Structuring detailed contractual terms to meet various purposes and prevent problems is a practical art of its own, with help from conventions evolved over centuries of trial and error business experience with the many things that can possibly go wrong.

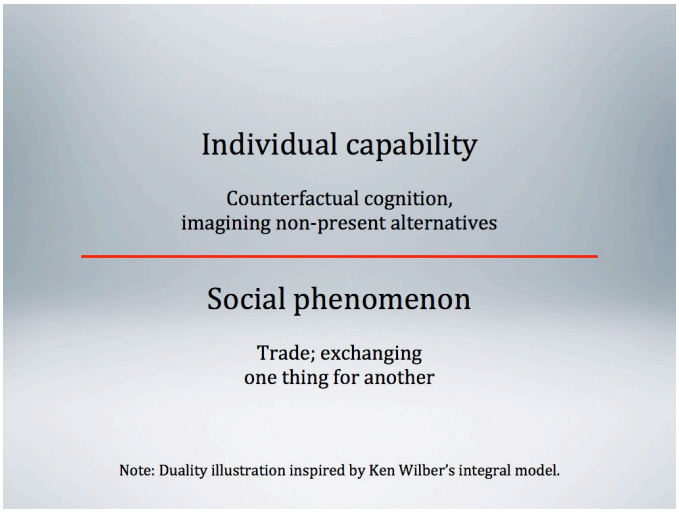
Notice that change of possession is not enough to distinguish an exchange from a theft. To understand ownership rights; we must also refer to consent. Consent is **the defining difference** between theft and trade.

Matt Ridley argues in *The Rational Optimist* that Homo sapiens is the only species now or at any time in the past for which we have evidence of trading. He argues that it is trading that enables specialization and the division of labor, which bring rising productivity and the advance of knowledge, culture, and technology of all kinds.

In considering this, I realized that to be able to trade, an individual must think of not only what is, but also what could be. Agreeing to an exchange implies a choice among at least two possible conditions, only one of which can be realized. Possession can be understood by what is seen alone, but exchanging also requires reference to what is not, that is, to what is possible but not actual.

This counterfactual ability to consider unrealized alternatives may be the key to the unique human phenomenon of trading, already in evidence in human toddlers, but apparently lacking in the most intelligent of other species at any age.

Trade requires an individual capability *and* appears as an emergent social phenomenon.



Borrowing the singular/plural duality of Wilber's integral model helps visualize this. Again, overemphasizing either the individual or social aspect might be like an argument between two men, this time one claiming that an elephant only has a front; the other that it only as a back.

Formally extending Bastiat's seen and not seen method, Hülsmann has argued that identifying counterfactual laws is the real core method of praxeology:

He wrote: "Counterfactual laws...do not concern relationships between the perceptible parts of human action (for example, observed behavior) and other observed events. Rather, they are relationships within human action linking its visible and invisible parts.

"Using these laws to explain observed human behavior, we can relate the state of affairs that we observe as a consequence of this behavior to a counterfactual state of affairs that could have existed instead."[1]

I suggest that there may be much more to this than methodology. Counterfactual *cognition* may also be central to the very choosing and acting ability that praxeology takes as its subject.

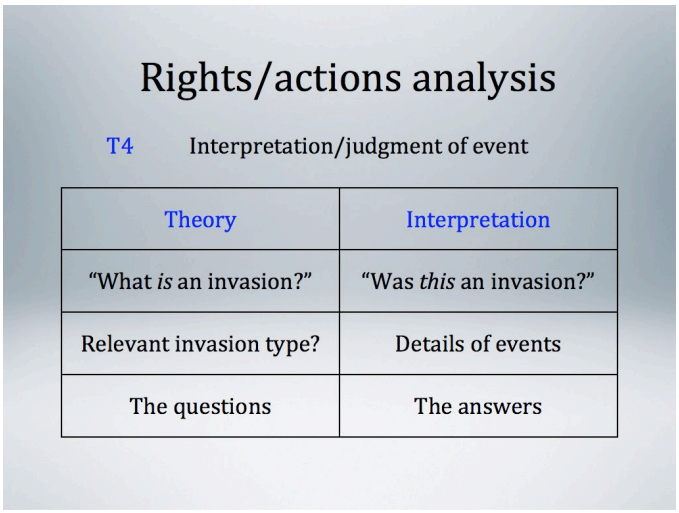
The counterfactual law method can be applied to action-based reasoning whether the concepts are "economic" or "legal." I suggest that legal and economic concepts reveal different **aspects of** the same action phenomena.

Third, rights/actions analysis concerns violations of rights through negligence or intent. It works in chronological order. If a violation is claimed, the first step is to determine who owned what at time T1. Next, one defines the alleged infringing act at T2. At T3, one gathers evidence, and at T4, one makes a judgment, which is an interpretation of a definite sequence of events.

Following Mises's division between theory and history, the role of abstract theory here is to clarify the best questions to ask about what happened in order to separate the important from the incidental. The role of interpretation is to *answer* those questions for a definite case.

To address a challenge to a title held at T1, the model need only shift back a step. Now we have a new claim of an earlier status quo and a new allegation that rights were infringed at an earlier time T2.

This entails research into past crimes, possibly by third parties who may have sold or even "granted" stolen property to the current possessor. This also highlights the practical role of title research and title insurance for higher-value property.



An action-based approach requires specific evidence of definite acts and applies an evidence-based better-claim test to title disputes. It posits no absolutely valid titles, as both critics and proponents too easily assume. It requires no bureaucratic lists of criteria. Rather, it only seeks to identify one actual claim, the evidence for which is relatively superior to any other actual competing claim.

It also has a built-in focus on **judging actions rather than people**.

This helps moderate human tendencies to judge people by using unreliable and shifting categories and general impressions, enabling legal processes to remain as objective and evidence-based as they can be.

To summarize, the different legal theory modules ask abstract questions such as "What *is* an

[1] Jörg Guido Hülsmann, "Facts and Counterfactuals in Economic Law" (2003, 71)

invasion?" while legal interpretation uses these same models to ask *and answer* concrete questions such as "Was *this* an invasion?"

The full range of responses to aggression

The next steps entail a different type of question altogether: What should we do now?

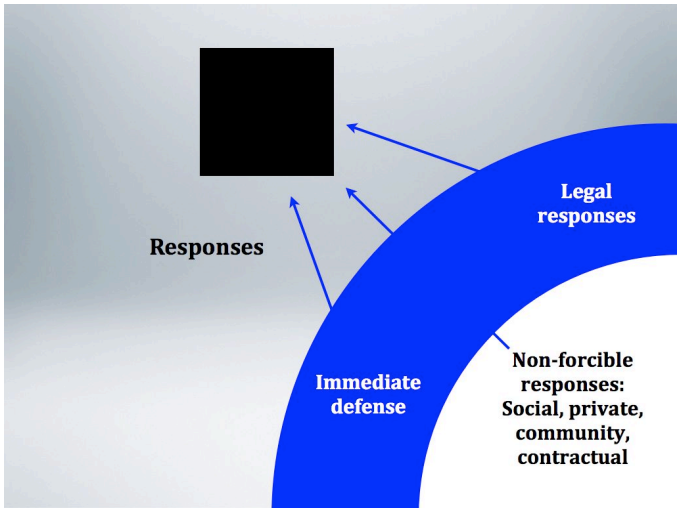
I have argued that this is the concern of ethics. In this view, legal judgments and responses are also new acts, each subject to the same broad legal, cultural, moral, and personal assessment as any other. Each is a new choice, one possibility among others. Legal response acts are not morally equivalent to choiceless, mechanical consequences of nature. In fact, I suggest that the central place of ethics in law should be within the practice sub-disciplines.

Law arises in societies in response to recurring challenges in human relations. The first such problem is aggression, acts that initiate the use of threats or violence.

We can imagine several types of responses to this. Of course, prevention is better than response. Surgery can help an accident victim, but never better than prevention might have. Next, in a violent situation, the logical priority is immediate defense of self and others and either leaving or re-securing the scene to prevent further damage, which might entail direct use of force to stop ongoing attacks.

There are many possible non-forcible responses to NAP violations, especially violations that do not use direct interpersonal violence. Non-forcible responses can include passive ignoring and forgetting, active non-violent practices such as witnessing and forgiving, third-party mediation and settlement, and other social interventions and pressures right up to publication of claims, eviction, firing, and other forms of private ostracism.

Finally, a strictly legal response may also be sought.



To summarize so far: in white are those responses that do not include force; in blue are those that may.

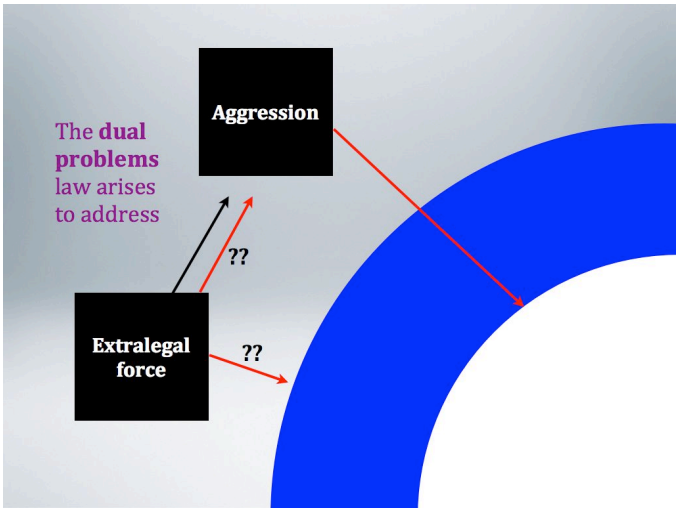
But there is another possibility we have not yet considered: Extralegal force. This is force used "outside the law."

To the extent that aggressors create a violent situation, the benefit of the doubt for self-defense ought to be with victims and defenders, but where this ends, "self-defense" acts can also become new acts of aggression themselves.

Extralegal force may include: disproportionate "self defense," delayed direct action, possibly revenge; and direct second-party individual or small-group attempts to collect or punish.

Extralegal force entails deep and systematic problems. Bystanders and other third parties may not know who is in the right and whether or on whose behalf to intervene. Bystanders are also

at risk whether or not they intervene, particularly if projectile or explosive weapons are employed. Finally, people overestimate their own correctness and the extent of harm in their own cases, especially after feeling wronged, when threatened, or when dealing with someone perceived as hostile.



Legal institutions arise not only to address the primary problem of aggression, but also this secondary problem of extralegal force.

Take a moment to recall here the potential interest of insurers and location owners, as major sources of private and contractual rules, in excluding extralegal force from the allowed options for their guests, tenants, and clients on or in owned or insured locations.

Major, systematic problems with extralegal force contribute to the evolution of legal institutions in human societies. Acts of seeking **independent third-party help** are among the driving origins of legal institutions.

The first step toward a legal response is a plaintiff or agent seeking a legal remedy in a dispute. However, even if a third-party arbitrator or judge hands down a finding that an invasion occurred, along with a judgment of suitable punishment or restitution, the use of legal force is *still* not necessarily required.

The defendant may accept and comply, or appeal. If appeal fails, he might comply then, maybe under additional social pressure. At any stage, the plaintiffs could decide to forgive or strike a deal. Only at the last stage might a costly and risky forcible legal response be undertaken, and this might take the form of collection, restitution, or punishment.

Forcible restitution collection may be justifiable because the defendant possesses property that is validly owned by the plaintiffs; and this ought to be transferred, by force if required. Collection uses violence to *realign* possession with ownership.

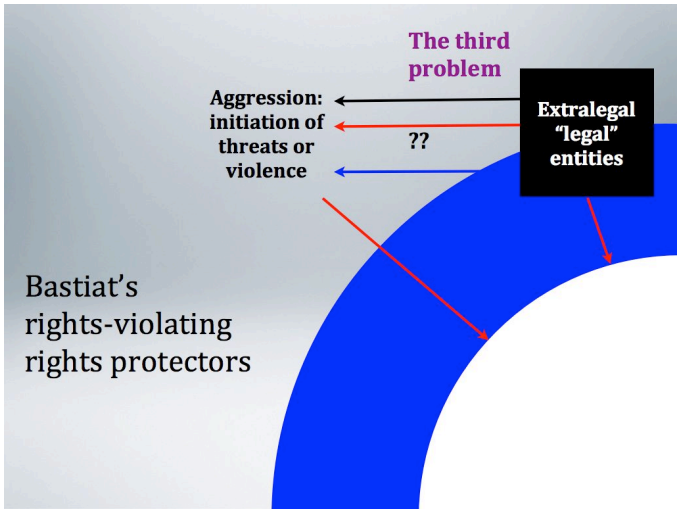
Forcible punishment imposition may be justifiable by estoppel, which is based on the defendant having disregarded the non-aggression principle. He cannot validly object if proportional force is also used against himself, as he has already *demonstrated* that he approves of the use of force as a means in human relations. This could also serve as a different practical basis for restitution negotiation.

When we recognize all forcible legal responses as distinct, new acts in themselves, each is subject to the need for broad justification. Compared with conventional legal practices that purport to provide special protections and exemptions for acts committed by legal officials, a strictly action-based approach greatly discourages resort to forcible legal responses and promotes the full range of non-forcible social responses, leaving legal force as a last resort for rare and extreme circumstances. This approach views aggressive acts as unjustifiable regardless of *who* commits them, with no exceptions. It provides no status-based special rights for enforcers, collectors, or anyone at all.

Action theorists can suggest guidelines and outer parameters for legal responses, but cannot predict or determine their exact shapes. This leaves strong roles at this stage for the full range of complex situational specifics of culture, tradition, ethics, practicalities, reputation, technologies, conventions, and many other factors to be added to the more delimited contributions from the theory of legal concepts and the art of case interpretation.

Consistently rights-protecting legal institutions

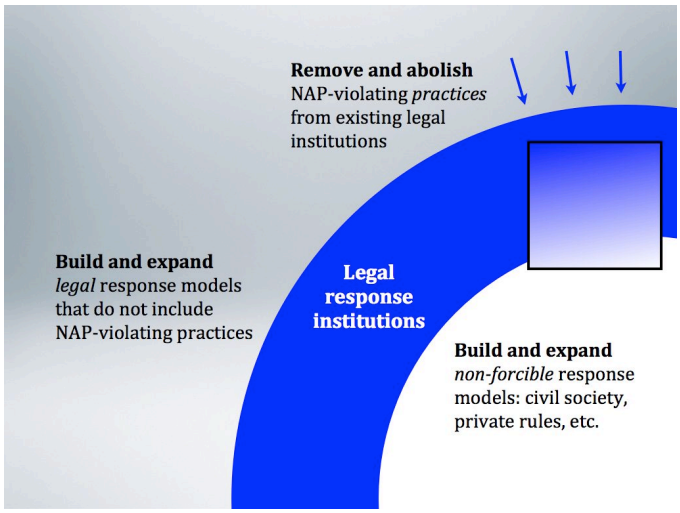
One of the challenges of the institutional theory of legal order is to define how legal institutions and practices can avoid infringing the same rights they are designed to protect. Building on the other sub-disciplines, this is the one that can most directly address the problem of Bastiat's rights-violating rights protectors.



These are "legal" entities that also violate the non-aggression principle, placing themselves in a confused and confusing position. Persons working within such organizations may well help counter the dual problems of aggression and extralegal force to some degree, but they also commit aggression and apply extralegal force as defined in action-based, rather than positivistic terms, leaving deep structural contradictions facing these professions.

Moreover, few people realize how such organizations tend to not actually fill the independent third-party function of law that we discussed. Legislation literally defines offenses as being against "the law" rather than against victims. It is seldom realized that this tends to perversely displace victims from their second-party positions. Victims then function as witnesses to offenses against the legal system. In this upside-down world, victims serve legal processes more than legal processes serve them.

Given the monopolistic positions and coercive funding sources of such organizations, effective constraints against negative drift tend to be weak, as they are for state monopolists in any field, for which costs rise while effectively useful services decline.



From here, I see several general directions for positive change. These include: building and expanding *non-forcible* prevention and response models within the scope of civil society, private rules, and insurance conditions; building and expanding *legal* response models that do not include NAP-violating *practices*; and removing and abolishing NAP-violating *practices* and exemptions from existing legal institutions.

My top book recommendations on imagining the shape of a just legal order are: *The Structure of Liberty* by Randy Barnett and *The Enterprise of Law* by Bruce Benson. Extending further into social structure contexts are *The Art of Community* and other works by Spencer McCallum and *The Voluntary City* by multiple authors.

Taken together, these and other works develop outlines and criteria for improved institutions. Studying and considering several of them makes it possible to borrow the best of each while balancing out weaknesses in the others.

We can also return to the legal reform model and apply it more generally.

This includes building and expanding authentically consensual models such as proprietary communities and membership associations; removing and abolishing NAP-violating *practices* from *all* existing institutions of any kind; and reforming existing community and public management models in NAP-respecting directions.

Who wins and loses from misplaced complexity?

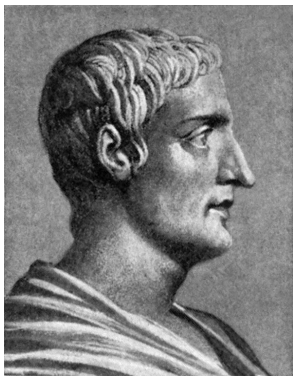
With that, we have differentiated, elaborated, and integrated ethical and legal perspectives using a model with five legal sub-disciplines.

But here is, one more thing.

I sometimes ask myself why all this matters and try to reflect on who wins and who loses from unneeded complexity and contradiction in the law.

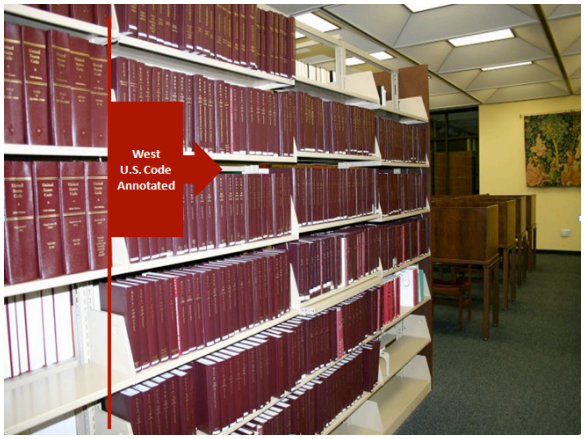
The winners are the manipulators and the rent-seekers, those who want to get away with something. Sound legal formulations are hardest to manipulate. Justice and innocent, honest people are best served by consistency and predictability.

Yet the histories of law and economics are deeply mixed with efforts to twist principles and guide specific outcomes for the gain of some at the expense of others. This may help explain the pervasive confusion in conventional approaches to both law and economics, and the sheer depth of absurdity reached in subjects that rely on both, such as the theory of money and banking.



Nearly 2,000 years ago, [Publius Cornelius] Tacitus observed that, "Laws were most numerous when the commonwealth was most corrupt."

Tacitus, you had no idea…



Source: www.law.sc.edu/library/tour

A well-functioning and just legal order, like any other well-functioning system, ought to go mostly unnoticed. That legal issues and problems are constantly in the headlines, often as so-called "political" issues, shows the exact opposite of the ideal: "it just works."

What is the opposite of the corruption of more and more and more laws? Only the non-aggression principle can possibly function as the one defining foundation for all other sound legal concepts, practices, and conventions. It is the only possible norm that can make it possible for every other norm, opinion, and practice to differ peacefully.

This vision of one world law offers the exact opposite of the nightmare vision of one world government, inescapable, with bureaucracy and poverty for all.

The confusion of law and ethics is destructive and continues to impact every political position. We should work carefully to differentiate law and ethics and promote both, each in its own way.

Because action theory without morality is a tin man lacking a heart and morality without action theory is a scarecrow lacking a brain. The lion's courage may be needed to recover all the missing pieces and use each one correctly. With a complete team working together, the little man behind the curtain of mass injustice can be revealed, and known to be the source of neither heart, nor brain, nor courage.

An internally consistent approach to law can enable societies to function unhindered by complex systems of excuses for the daily practice of institutionalized aggression. This can open the

widest range of freedom for authentic moral action. It can remove the largest manmade factors behind both violent conflict and poverty, factors that real economists have already been explaining for a long time. It can serve as a global common denominator to bridge barriers of place and culture, enabling all willing participants access to the widest possible benefits of those forms of peaceful interaction that are uniquely human.

The future, the trends of the world, and the actions of others are always uncertain and largely beyond our control. However, the time when each of us learns, understands, speaks, and acts is always right now; and right now, our choice of words and actions rests in our own hands.

Follow-up Resources

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+ Lecture audio, slides, and links from Stephan Kinsella's January–March 2011 Mises Academy course, "Libertarian Legal Theory: Property, Conflict, and Society" online at:

http://libertarianstandard.com/2012/01/01/kinsellas-libertarian-legal-theory-course-audio-and-slides/

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