

# THE CONCEPT OF “HUMAN RIGHTS” IN AUSTRIAN ECONOMICS

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## Abstrakt v rodném jazyce

Autor tohoto článku představuje čtenáři přístup předního teoretika rakouské školy ekonomického myšlení, Murraye Rothbarda, k problematice základních lidských práv, především pak ke svobodě projevu. Autor poukazuje na Rothbardovo varování, že koncept lidských práv je mlhavý, pokud není striktně vázán na práva majetková. Dále autor ve svém článku načrtává i Jellinekovu „Statuslehre“, přičemž poukazuje na její smysl z pohledu rakouské ekonomické školy a v neposlední řadě načrtává i ekonomické aspekty lidských práv.

## Klíčová slova v rodném jazyce

Rakouská ekonomická škola, Murray Rothbard, lidská práva, svoboda projevu, negativní práva, pozitivní práva, majetková práva, „Statuslehre“.

## Abstract

Firstly, the author of this article provides the reader with professor Rothbard's (the principal theorist of Austrian Economics) approach to human rights, especially to “freedom of speech”. Secondly, the author emphasizes the Rothbard's assertion that the concept of “human rights” is ambiguous unless understood in terms of property rights. Further, the author pinpoints the Jellinek's “Statuslehre” and shows its importance from point of view of the Austrian Economics. Last but not least, he outlines the economic aspects or “human rights”.

## Key words

Austrian Economics, Murray Rothbard, human rights, freedom of speech, negative rights, positive rights, property rights, “Statuslehre”.

## 1. HUMAN RIGHTS – RIGHTS OF ALL PEOPLE

If we talk about “human rights” we usually have in mind the basic rights and freedoms whereto all human beings are entitled. All these hardly definable rights arise from the fact that „human beings **were born** as human beings“. There is no additional need of acceptance of these rights by their holders, or any other act or process that would be necessary to “bring these rights into operation”. **But what should we imagine under the concept of “human rights” itself if we do not want to get on the field of “vagueness and contradictoriness”?**<sup>1</sup> The purpose of this article is to look at the human rights from the view of Austrian economic theory, especially from professor Rothbard's personal point of view and pinpoint the economic aspects of “human rights”.

## 2. MULTIPLE MEANINGS OF HUMAN RIGHTS

One can easily understand that “these rights derive from the inherent dignity of the human person” as the UN Covenant on Civil and Political Rights states in its preamble. Even the language of the Universal Declaration of Human Rights declares, that: “everyone is entitled to

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<sup>1</sup> Rothbard, M. The Ethics of Liberty, New York : New York University Press, 1998, pg 152.

all the rights and freedoms set forth in this Declaration...” By virtue of these statements, one can easily link these rights to each and every individual. But we should take a closer look at content of some of these rights.

If we open The Universal Declaration of Human Rights, or the Covenant on Civil and Political Rights, or even the American Bill of Rights, we find a long list of human basic rights and fundamental freedoms. Just briefly: “right to dignity and privacy; right to the protection of the law against such interference or attacks; right to freedom of movement and right to leave any country; right to own property; right to freedom of thought, conscience and religion; right to freedom of opinion and expression; freedom of speech; right to freedom of peaceful assembly and association; or right to keep and bear arms”. I will not be trying to find all the bedrocks of all these rights, but I am going to provide reader with professor Rothbard’s approach to the concept of human rights understood as property rights.

### 3. ROTHBARD’S APPROACH TO “HUMAN RIGHTS”

#### 3.1 “THERE ARE NO RIGHTS BUT PROPERTY RIGHTS”

Professor Rothbard, an American Scholar, Ludwig von Mises’ student and follower, one of the head-representatives of Austrian Economics, who is known by originating new “synthesis that combined themes from nineteenth-century American individualists with Austrian economics”,<sup>2</sup> contributed to worldwide discussions on many issues of legal theory, political philosophy, history and many other fields of social science. In respect to human rights, professor Rothbard came up with an approach whose aim is to show the concept of human rights as comprehensible and perspicuous, instead of ambiguous and vague. Rothbard’s idea is based upon the belief, that **“the only human rights, in short, are property rights.”**<sup>3</sup> This idea might seem very strange on the surface but let’s try to listen and ponder over the following Rothbard’s reasoning.

Let’s start by explaining that property rights belong between human rights. First of all, Rothbard warns against the liberal dichotomy between human rights and property rights because the two are “inextricably intertwined; they stand or fall together”.<sup>4</sup> In other Rothbard’s work, we can find this explanation: (1) the human rights and property rights are not only “fasten” together but all the property rights are also human rights; and (2) “in the most profound sense **are no rights but property rights**”.<sup>5</sup> What does that all mean? Let’s take a look at Rothbard’s concept of property rights.

#### 3.2 CONNOTATION OF PROPERTY RIGHTS

Generally, property right might be described as an authority to determine how a resource shall be used. A question: how an economic good becomes someone’s property or how it accrues to

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<sup>2</sup> Gordon, D. Who is Murray Rothbard, Web: Ludwig von Mises Institute [cited on 15th of October 2008]. Available at: [mises.org/pdf/whois/rothbard.pdf](http://mises.org/pdf/whois/rothbard.pdf).

<sup>3</sup> Rothbard, M. Men, Economy, and State; Power Market. AL, Auburn : Ludwig von Mises Institute, 3<sup>rd</sup> edition, 2004, pg. 1337.

<sup>4</sup> Rothbard, M. For a New Liberty. Libertarian Manifesto. NY, New York : Macmillan publishing, Inc., 1978, pg. 42.

<sup>5</sup> Rothbard, M. Men, Economy, and State; Power Market. AL, Auburn : Ludwig von Mises Institute, 3<sup>rd</sup> edition, 2004, pg 1337.

an individual (next to receiving a gift), could be answered by looking at John Locke's ideas "*... every man has a property in his own person. This nobody has any right to but himself. The labour of his body and the work of his hands, we may say, are properly his. Whatsoever, then, he removes out of the state that nature hath provided and left it in, he hath mixed his labour with it, and joined it to something that is his own, and thereby makes it his property. It being by him removed from the common state nature placed it in, it hath by this labour something annexed to it that excludes the common right of other men. For this labour being the unquestionable property of the labourer, no man but he can have a right to what that is once joined to...*"<sup>6</sup>

On the basis of these statements, Rothbard explained that human beings not only own their bodies but also own all fruits of their work. Further, he gave an example showing, that if a sculptor creates his "work of art", only he is entitled to own the product deriving from the ideas and from the effort he had given into it. In connection with this, Rothbard explains that there are three logical positions of determining the quality of ownership and these positions might be defined as it follows:<sup>7</sup>

**1) sculptor, the creator of the work of art has all rights to his creations;**

**2) another man or group of men possess the above mentioned rights, i.e. the right has been expropriated by force without the sculptor's consent;**

**3) every person in the world owns and equal share in the product of sculptor's effort (communist approach).**

Of course the first option is understood as the only acceptable one and professor Rothbard pinpoints two basic and crucial facts answering the question whether the artificer shall own all the outcomes of his or her work, or not:<sup>8</sup>

**a) property rights accrue only to humans;**

**b) human right to life requires the right to keep what one has produced to sustain and advance life.**

As we can see, the humans' skill and effort to create goods, or any other products (including services) is just an attribute whereto "human nature" itself tends. Trying to divide human beings from output of their work, or to be more precise, to deprive them of the ownership of their energy transformed into a product, would deny the "human nature". Rothbard himself supported this assertion in the following words: "*each individual, as a natural fact, is the owner of himself, the ruler of his own person. The "human" rights of the person that are defended in the purely free-market society are, in effect, each man's property right in his own being, and from this property right stems his right to the material goods that he has*

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<sup>6</sup> Lock, J. An Essay Concerning the True Original Extent and End of Civil Government. In Baker, E. Social Contract. New York : Oxford University Press, 1948, pg. 17-18. In Rothbard, M For a New Liberty. Libertarian Manifesto. NY, New York : Macmillan publishing, Inc., 1978, pg. 31.

<sup>7</sup> Rothbard, M. The Ethics of Liberty. New York : New York University Press, 1998, pg 48.

<sup>8</sup> Rothbard, M. Men, Economy, and State; Power Market. AL, Auburn : Ludwig von Mises Institute, 3<sup>rd</sup> edition, 2004, pg. 1337.

*produced.*"<sup>9</sup> Rothbard's conclusions are supported also by professor Weede: "*The concept of self-ownership clarifies the intimate connection between liberty and property. Ownership of the fruits of one's labor is derived from self-ownership.*"<sup>10</sup>

As shown above, in Rothbard's approach the connotation of property rights is very wide and is not limited to tangible things or intangible assets but is understood on a large scale as rights to own bodies and products of own endeavor. These rights are to be read as absolute, and as a matter of principle, shall not be restricted. Property rights are an inseparable component of human rights.

#### 4. "HUMAN RIGHTS" AS PROPERTY RIGHTS

##### 4.1 JELLINEK'S "STATUSLEHRE"

But let's take a closer look at Rothbard's ideas. Not only that property rights shall be understood as human rights but, as it has been already mentioned above, "the only human rights are property rights". Therefore, according to Rothbard, all the rights that are entitled as "human" or "basic human" rights, have to be connected, somehow, to the property rights so the meaning of these rights does not get on field of "vagueness and contradictoriness".<sup>11</sup>

Let's take as an example the "basic human right to freedom of speech" but before we do so, we should clear up the meaning of the concepts "right" or "freedom". In general terms, the meaning of the word "freedom" can be understood contradictorily but I believe that the most compelling explanation wells up from professor Jellinek's theory - "Die Statuslehre". **Jellinek classified relationships between governments (in a broad sense) and individuals in four basic segments:**<sup>12</sup>

**1) STATUS PASSIVUS** – Jellinek understand this status as the cardinal one. Status passivus does not give an individual any rights but only duties, e.g. duty to go to army.

**2) STATUS NEGATIVUS** – might be defined as sphere of individual's freedom where the government is restricted to intervene, i.e. the only duty of government is not to infringe with individuals rights (freedom of belief and religion).

**3) STATUS POSITIVUS** – defines rights that can only be exercised with a support of government and the government has to ensure an undisturbed enjoyment of the rights for the individual who is entitled to it, e.g. right to legal aid.

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<sup>9</sup> Ibid.

<sup>10</sup> Weede, E. Human Rights, Limited Government, and Capitalism. Cato Journal, 2008, Volume 28, Nr1, pg 38-39. Available at: <http://www.cato.org/pubs/journal/cj28n1/cj28n1-3.pdf>.

<sup>11</sup> Rothbard, M. The Ethics of Liberty, New York : New York University Press, 1998, pg 152.

<sup>12</sup> Jellinek, G. System der subjektiven öffentlichen Rechte, 1919. In Heintzen, M. Freie Universität Berlin web: Vorlesung Staats- und Verfassungstheorie [cited on 28<sup>th</sup> October, 2008]. Available at: [http://www.jura.fu-berlin.de/einrichtungen/we3/professoren/ls\\_heintzen/veranstaltungen/0203ws/Staatstheorie\\_Heintzen/221202ST AAT\\_Der\\_Staat\\_als\\_juristische\\_Person.pdf](http://www.jura.fu-berlin.de/einrichtungen/we3/professoren/ls_heintzen/veranstaltungen/0203ws/Staatstheorie_Heintzen/221202ST AAT_Der_Staat_als_juristische_Person.pdf).

**4) STATUS ACTIVUS** – could be described as a status that provides an entitlement to every individual to participate in public matters, i.e. civil rights such as right to vote or run for a public office.<sup>13</sup>

Anglo-American scholars usually reduce the abovementioned summarization into two groups: **(1) negative rights** (protective); and **(2) positive rights** (entitlements).<sup>14</sup> However, this brief summarization cannot be perfect: *“Admittedly this classification is not exhaustive. Some very important political rights cannot easily be classified as either negative or positive. The prime example is the right to vote. By and large, it is a positive right and it might contribute to the expansion of other positive rights. But the right to vote may also be used to protect negative rights and to throw socialists out of office.”*<sup>15</sup>

**After reading Jellinek’s summarization we should ask ourselves whether we understand “freedom of speech” as a subject to (1) status negativus (freedom), or to (2) status positivus (right – entitlement), or (3) just as a hybrid sitting somewhere between those two poles.**

#### **4.2 AMBIGUOUSNESS SOLVED BY ASKING WHERE**

According to Rothbard’s approach if we “boil down the human rights to property rights”<sup>16</sup> the former lose their ambiguousness, and lack of clarity, as we can see it on the example of “freedom of speech”. The concept “freedom of speech” is understood very widely and contradictorily within foreign countries and sometimes even within courts of one particular country. Different point of view at the actual meaning “freedom of speech”, have policemen and judges on one side and accused persons on the other; or teachers and students; or employers and employees; or even lessors and lessees; and other members of human society. We evaluate the “breadth and depth” of “freedom of speech” either (1) by the interest we have; or (2) whether or not some kind of a so called “public interest” is involved. This fact raises a question: **How to avoid the polyvalence of the concept of “freedom of speech”?**

Professor Rothbard points out the importance of an enquiry: **WHERE?** Where can one exercise their “freedom of speech”? Where does a man have this right? **The questioning for a place or location is crucial.** Simply, we could say that one is entitled to exercise this right at a property he or she owns, leases, or is entitled to use. It is hard to imagine that one could “free speech” themselves in a place they occupy illegally. There is only a man’s property right: the right to do as he wills with his own or to make voluntary agreements with other property owners.<sup>17</sup>

**The opposite approach would create problem of conflict of interests.** In respect to “public interest” or “public good”, Rothbard gives us an example. In general terms, by looking at “freedom of assembly”, we have to ask whether or not, the meeting could infringe with

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<sup>13</sup> Ibid (all paragraph).

<sup>14</sup> See: Filip, J., Svaton, J., Zimek, J. Zaklady statovedy. Brno : Masaryk University, 4th edition, 2006, pg 140.

<sup>15</sup> Weede, E. Human Rights, Limited Government, and Capitalism. Cato Journal, 2008, Volume 28, Nr.1, pg 36. Available at: <http://www.cato.org/pubs/journal/cj28n1/cj28n1-3.pdf>.

<sup>16</sup> Rothbard, M. Men, Economy, and State; Power Market. AL, Auburn : Ludwig von Mises Institute, 3<sup>rd</sup> edition, 2004, pg. 1338.

<sup>17</sup> Ibid.

“public interest”, e.g. obstruct traffic. There have been a lot of theories trying to solve the problem of “conflict of fundamental rights”, or „conflict between individual’s rights and public interest“, a lot of limitation doctrines, etc, but let’s just try, for the purpose of this article, to ponder over Rothbard’s reasoning for a while. However, it might seem unorthodox.

If we tie the “freedom of speech” or “freedom of assembly” to property rights, or to be more precise, if we subsume these rights under the general property rights, the “conflict of interests” disappears. One would be allowed to express themselves on a property they own. This is not limited only to a land but shall be read as bought space in newspapers, or in TV. One could assemble with others on the land they own, rented, or were given. Rothbard sums his approach in the following words: *“In short, a person does not have a "right to freedom of speech"; what he does have is the right to hire a hall and address the people who enter the premises. He does not have a "right to freedom of the press"; what he does have is the right to write or publish a pamphlet, and to sell that pamphlet to those who are willing to buy it (or to give it away to those who are willing to accept it). Thus, what he has in each of these cases is property rights, including the right of free contract and transfer which form a part of such rights of ownership. There is no extra "right of free speech" or free press beyond the property rights that a person may have in any given case.”*<sup>18</sup>

## 5. CONCLUSION

Rothbard was primarily an economist and therefore his approach to human rights is very economical. As I have mentioned above, the Rothbard’s approach is also very unorthodox. In general terms, the today’s understanding of “human rights” derives from historical events, philosophic theories, religions, and many other preconditions. There is a set of human rights that are universally accepted and we all know that are of significant importance for human society. Despite not agreeing with some of Rothbard’s ideas, I have written this article because I believe that **some of his views might be helpful while solving “conflicts of interests” between fundamental human rights and while trying to understand the actual meaning of “freedom of speech”**.

Last but not least, I would like to pinpoint the economic nature of human rights. Let’s take as an example “freedom of speech” or “freedom of assembly”. Both, the newspaper space or time before a microphone at the podium or lands useable for meetings are **“scarce resources”** and Rothbard points out the “unseen” consequences of the scarcity: *“But since the use of the resource is free (costless), the demand for obtaining this time or space is bound greatly to exceed the supply, and hence a perceived "shortage" of the resource is bound to develop. As in all cases of shortages and of queuing up caused by low or nonexistent prices, the unsatisfied demanders are left with a feeling of frustration and resentment at not obtaining the use of the resource they believe they deserve.”*<sup>19</sup>

By virtue of these statements, Rothbard concludes that the appropriate and fair allocation of “human rights” can be done by using a price system. Because if we look closely at someone who would like to publish an article at newspapers, he or she **does not have a right** to have their article published. One can only request for newspaper space that might be “granted or denied” by the newspapers’ owner, or one can request to use microphone to “free speech”

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<sup>18</sup> Rothbard, M. The Ethics of Liberty, New York : New York University Press, 1998, pg 113-114.

<sup>19</sup> Ibid. Pg. 116.

themselves but not require it due to their “right to free speech”.<sup>20</sup> The “free speech” clauses in constitutional documents shall be understood as a negative right, or under the meaning of Jellinek’s “status negativus” rather than being assigned to a group of “active rights” (entitlements). Simply, **“only when the right to free speech” is treated as a subdivision of property rights does it become valid, workable, and absolute.**”<sup>21</sup>

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<sup>20</sup> Ibid.

<sup>21</sup> Ibid.