Hans-Hermann Hoppe's Argumentation Ethic: A Critique

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ONE OF THE MOST prominent theorists of anarcho-capitalism is Hans-Hermann Hoppe. In what is perhaps his most famous result, the argumentation ethic for libertarianism, he purports to establish an *a priori* defense of the justice of a social order based exclusively on private property. Hoppe claims that all participants in a debate must presuppose the libertarian principle that every person owns himself, since the principle underlies the very concept of argumentation. Some libertarians (e.g., Rothbard 1988) have celebrated Hoppe's argument as the final nail in the coffin for collectivism of any type; following Hoppe, they believe that to deny the libertarian ethic is not only wrong, but also internally *contradictory*. On the other hand, a number of other prominent libertarians characterized Hoppe's initial statement of his case as "one muddle after another" (Steele 1988, p. 47) or "a tissue of bald assertions" (Yeager 1988, p. 45).

At the end of the symposium (in *Liberty*) that included both of the above-mentioned comments, Hoppe responded to his critics, contending that they had misunderstood his argument and misidentified what he took it to demonstrate. Hoppe's original paper is still cited, by some libertarians, as having established an irrefutable case for libertarian rights; for example, Kinsella says: "Thus [per Hoppe's argument], opponents of liberty undercut their own position as soon as they begin to state it" (Kinsella 1996, p. 323; Meng 2002). Therefore, we believe that the question of whether Hoppe was able to answer his critics adequately is worth examining.

We contend that Hoppe was not, and that his project is fatally flawed, despite the fact that we are largely sympathetic to the conclusions to which it carries him. We intend to demonstrate that even

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on its own terms, the argument does not prove self-ownership in the way Hoppe wants. More important, we shall then demonstrate a crucial flaw in the argument, which renders it a *non sequitur*.

A SUMMARY OF HOPPE'S ARGUMENT

Inasmuch as Hoppe's reasoning is at times complicated, and our critique occasionally will rely on subtle distinctions between our understanding of these matters and his, we encourage the reader to review Hoppe's own exposition, which is available online. However, let us here sketch (what we take to be) the essentials of Hoppe's argument, as well as placing it in its context in the history of political philosophy.

Hoppe pursues the ancient goal of removing all contingency and uncertainty from reasoned political discourse, making the conclusions reached by that activity logically demonstrable, rather than merely persuasive. Indeed, Hoppe must be counted, with Plato and Rousseau, as one of the few thinkers who has actually recognized what is necessary for an apodictic political theory to work: All conclusions must spring from a single principle. The introduction of "diverse and potentially conflicting axioms" (Oakeshott 1991, p. 84), as in a natural rights attempt to arrive at apodictic political conclusions, is defeated by its own premises, since it is thrust back into the realm of contingency and persuasive discourse whenever it must arbitrate conflicts *between* two or more of the various natural rights it posits.

Hoppe opens his grab for this gold ring by noting that some propositions are self-contradictory. For example, if someone declares "I am not here at present," and intends it to be taken literally, rather than as an indication he is daydreaming, we know he is talking nonsense, since "here" means the place a person presently occupies. Other propositions, while not inherently self-contradictory, can still be circumstantially so. To adapt an example from David Gordon (1988, p. 47), the statement "Bill Clinton is dead" is not in itself self-contradictory, but if Slick Willie himself were to say it (barring the possibility of communication from beyond the grave), it would become so. Philosophers call such a statement a performative contradiction.

Hoppe next invokes the "ethics of argumentation," which was developed by Habermas and Apel (Rothbard 1988, p. 45). They contend that whenever people are engaged in debate, they have implicitly agreed to a certain set of norms, for example, that they will restrict themselves to peaceful means in their efforts to persuade other participants of their contentions. Hoppe claims that, beyond

¹See http://www.hanshoppe.com/publications/Soc&Cap7.pdf.

the norms suggested by Habermas and Apel, argumentation also presupposes that each individual properly has exclusive control over his own body, since he must use it to engage in any discussion. Furthermore, a transcendental analysis of argumentation also reveals, among other presuppositions, universal rights to homestead any ownerless resources and to engage in any voluntary exchange, since control of physical resources is necessary to maintain life, and one must remain alive if one is to argue one's point of view. In short, to argue at all presupposes a libertarian view of the rights of individuals, so that it is a performative contradiction to argue against libertarianism. Furthermore, Hoppe claims that only argument can justify a proposition or belief.

Therefore, he concludes that the libertarian view of property rights is the only one that can possibly be defended by rational argument. Anyone who denied the libertarian doctrine would be unable to rationally *defend* his rival theory; the moment he engaged others in debate, he would implicitly be accepting the entire libertarian platform. The libertarian view of property is not merely correct, it is *irrefutably* correct, and we can claim for it apodictic certainty.

We close this section with a concise summary of Hoppe's argument in his own words:

One cannot deny [the law of contradiction] without presupposing its validity. But there is another such proposition. Propositions are not free-floating entities. They require a proposition maker² who in order to produce any validity-claiming proposition whatsoever must have exclusive control (property) over some scarce means defined in objective terms and appropriated (brought under control) at definite points in time through homesteading action. Thus, any proposition that would dispute the validity of the homesteading principle of property acquisition, or that would assert the validity of a different, incompatible principle, would be falsified by the act of proposition making in the same way as the proposition "the law of contradiction is false" would be contradicted by the very fact of asserting it. (Hoppe 1988, p. 53)

WHY HOPPE'S ARGUMENT FAILS ON ITS OWN TERMS

As we stated above in the introduction, we believe that *even if* one grants the basic validity of Hoppe's approach, his argument still fails

²Of course, whether or not propositions *are* free-floating entities is the subject of a vast philosophical literature in its own right. Is it really the case that the truth of the proposition "2 + 2 = 4" has anything to do with a "proposition maker"?

to make the case for full self-ownership. At best, Hoppe has proven that it would be contradictory to argue that someone does not rightfully own his mouth, ears, eyes, heart, brain, and any other bodily parts essential for engaging in debate. But that clearly would not include, say, a person's legs; after all, it is certainly possible for someone to engage in debate without having any legs at all. (Consider physicist Stephen Hawking, who is quite physically handicapped and yet manages to engage in propositional discourse of the highest caliber.)

To illustrate how the above foils Hoppe's intention, imagine a collectivist arguing,

People should not have full ownership of their bodies, as libertarian theorists believe. For example, if somebody is sick and needs a kidney, then it is moral to use force to compel a healthy person to give up one of his.

Since it is not necessary to have two kidneys in order to argue, Hoppe has not succeeded in demonstrating the contradictory nature of such a collectivist claim.

Therefore, even on its own terms, his argument only establishes ownership over *portions* of one's body. Now we will demonstrate that, at best, it also only establishes self-ownership of those body parts *during the course of the debate*.

For example, suppose a collectivist argues,

Generally speaking, people have the right to use their bodies as they see fit. However, during national emergencies, it is moral to use force to compel certain individuals to act in the public interest. In particular, if the nation is being invaded, the government may draft people into military service. Therefore, the libertarian claim to absolute self-ownership is unfounded.

Has Hoppe shown that someone uttering the above (during a policy debate) is engaging in a performative contradiction? The collectivist is not using force *during the debate*; he is merely arguing that under certain conditions the use of force is appropriate to compel military service, thus denying the libertarian ethic. While we *disagree* with our hypothetical collectivist, we don't see how his claims are self-contradictory.

Before moving on, let us point out one rejoinder that is *not* valid for the defender of Hoppe's argument. In response to considerations like the above, a Hoppeian might be tempted to say,

The fact that such collectivists would not be performing a contradiction *at that moment* is irrelevant. The beliefs of these collectivists necessarily rest on 'might makes right' when force is applied, and at that point, they show that they are not really interested in justifying their aggression. For example,

the Hoppeian might continue,

a person forced into a hospital to have a kidney removed certainly can't argue while he's under, and a person forced to the front lines to repel invaders certainly isn't in a fair position to debate the justice of his condition. Therefore, these collectivists *are* engaging in a contradiction when they try to justify forced kidney transplants or the draft.

Hoppe himself has written:

[I]n the same way as the validity of a mathematical proof is not restricted to the moment of proving it, so, then, is the validity of the libertarian property theory not limited to instances of argumentation. If correct, the argument demonstrates its universal justification, arguing or not. (Hoppe 1988, p. 54)

Again, reasoning such as this is invalid; the defender of Hoppe must come up with a different way to respond to our arguments above. To see why this purported defense fails, consider the following proposition:

Patrons in a movie theater should refrain from talking during the feature presentation (in accordance with their implicit agreement with the owners of the theater) unless there is a genuine emergency such as fire or someone needing medical attention.

Not only do we feel that it is *consistent* to justify this proposition, but we actually believe the quoted proposition is *true*. (Before continuing, we urge the skeptical reader to decide for himself whether this proposition seems true or false, and in particular whether it seems compatible with a Rothbardian view of property rights.) Now, suppose that we are in an anarcho-capitalist society conforming to Hoppe's vision of justice. A certain man pays for his movie ticket, observes the sign on the wall that says, "ALL PATRONS AGREE TO REMAIN SILENT DURING THE FEATURE PRESENTATION EXCEPT FOR EMERGENCIES," buys some popcorn, and sits down in the theater. About ten minutes into the show, this man begins yelling at the screen, furious at the shoddy acting of several of the thespians. The people around him try "shhhhh" for several minutes, to no avail. Eventually two burly men who work for the theater must use force to eject the man out onto the pavement.

Here is the interesting part of the tale: While he is being dragged out of the theater, the man demands that his escorts debate the justice of their actions. But rather than giving a rational exposition of the nature of property and contractual agreements, these brutes continue

to urge him to keep his mouth shut! The man is horrified at this brazen refusal to even *try* to justify their violence against him. As he recounts the episode to his sympathetic friends hours later, the man points out the ultimate irony of the theater's rule: Not only is the prohibition against talking during a movie *wrong*, it is actually *unjustifiable*! For how can someone debate the justice of such a rule if he is forbidden to speak?!

Hopefully we can end our silly tale at this point. But in all seriousness, we must ask the reader: What *specifically* is wrong with our fictitious man's position? Among other flaws, one of his errors is the notion that a rule is indefensible if its application would make debate at that particular moment impossible (or difficult). In our example of the movie theater, we feel most Hoppeians would agree that it is perfectly acceptable to use force to uphold a rule, so long as the justice of the rule could be rationally defended *beforehand*, when force isn't being used to intimidate anyone.

Now is there any important difference *in this respect* between our example of the movie theater, and the earlier collectivist justifications of the military draft or organ transplant? Just because one can't argue on the front lines or in an operating room doesn't by itself prove that these outcomes are unjustified uses of force. It is true, as Hoppe points out, that once a proposition has been proven, the proof does not "expire" the moment the discussion of it ceases. But the conclusion of a valid proof is still only necessarily true when its premises are true. Hoppe has shown that bashing someone on the head is an illogical form of argumentation. He has not shown that the fact that one has ever argued demonstrates that one may never bash anyone on the head, nor has he demonstrated that one may not validly argue that it would be a good thing to bash so-and-so on the head. We cannot convince you of anything by clubbing you, but we may quite logically try to convince you that we should have the right to club you.

Our final point in this section is to note that, even setting aside all of the above difficulties, it's still the case that Hoppe has only proven self-ownership for the individuals in the debate. This is because, even on Hoppe's own grounds, someone denying the libertarian ethic would only be engaging in contradiction if he tried to justify his preferred doctrine to its "victims."

For example, so long as Aristotle only argued *with other Greeks* about the inferiority of barbarians and their natural status as slaves, then he would not be engaging in a performative contradiction. He could quite consistently grant self-ownership to his Greek debating opponent, while denying it to those whom he deems naturally inferior (Aristotle 1905, Book I, sections 4–6).

Once again, let us point out that the defender of Hoppe must exercise caution. It is tempting to respond to the above example by saying, "That's silly. If Aristotle tried to justify his views to a *barbarian* debating opponent, he would necessarily be engaging in contradiction. Therefore, his views are in general unjustifiable."

Why is this response illegitimate? Because, if we accept it, then we must also admit that human "domination" of "lower" animals is also unjustifiable. Human beings never ask polar bears their thoughts on zoos. Horses are never allowed to debate the justice of their position in society. But surely the Hoppeian would not consider the denial of self-ownership to these creatures as an unjustifiable practice. Indeed, there are debates all the time on the issue of animal rights, and humans do try to justify experiments on animals, slaughtering animals for food, etc. But when they do so, it is always in order to convince other human beings. Nobody—not even animal rights activists—ever demands that we justify our practices to the animals themselves.

Of course, the Hoppeian might respond that horses are not as rational as humans, and therefore do not need to be consulted. But Aristotle need only contend the same thing about barbarians: they are not as rational as Greeks. Indeed, that was precisely why he held that they were naturally slaves. And the only way a libertarian could prove him wrong would be to argue that barbarians deserved the same rights as Greeks; i.e., one would have to start from scratch in trying to defend a libertarian concept of rights. Hoppe's argument as such offers nothing to help in this task. To assume from the outset that whatever rights any particular individual enjoys (through argumentation), must therefore extend to all people—including newborn infants, the mentally retarded, as well as senile and comatose individuals, none of whom can successfully debate—is to beg the question.³

This is a crucial point, so let us approach it from a different angle. Suppose an animal rights activist reads Hoppe's argument and is fully convinced of its coherence, and is in fact overjoyed at its ramifications. She immediately announces to the world that she now has irrefutable *proof* that slaughtering chickens is immoral. After all, how

³To simply declare that ownership rights must be "universalizable" is no help, either; after all, communists could cite the same principle to "prove" that everyone should have equal shares to all property. And, of course, the basic dispute between Aristotle, the animal rights activist, and Hoppe is precisely over which group of living beings ownership rights must be "universalizable."

can someone possibly claim that a chicken need not have legal ownership of its body, without engaging in a performative contradiction?

We urge the skeptical reader not to dismiss our suggestion as ridiculous. What is the actual error⁴ of our hypothetical animal rights activist? There are many possible responses a Hoppeian might advance; our point does not depend on the specific reply. But whatever the reply may be, if it is equally applicable to any human being, then Hoppe's argument must *not* make the universal case for libertarian rights, after all.⁵

HOPPE CONFLATES USE WITH OWNERSHIP

In the previous section we argued that, even if one grants the basic validity of Hoppe's approach, he has still not made the case for universal, full self-ownership in the libertarian sense. At best, all Hoppe has proven is that it would be a performative contradiction for someone to deny in an argument that his debating opponent (and perhaps those in the same "class") own the body parts (such as eyes, brain, and lungs) necessary for debate, for the duration of the debate. This is a far cry from showing that it would be a contradiction for someone to deny the case for libertarianism. In particular, a collectivist could argue that people can rightfully be forced to give up a kidney, or go to war, if such actions would help the rest of society.⁶

But now we move on to a more fundamental objection to Hoppe's argument: *One is not necessarily the rightful owner of a piece of property even if control of it is necessary in a debate over its ownership.* Because of this fact, a crucial link in Hoppe's argument fails. Someone can deny the libertarian ethic, and yet concede to his opponents the use of their bodies for debate. There is nothing contradictory about this, as we shall demonstrate with a few examples.

First, imagine a devout theist who believes that God created the entire universe, and is therefore the rightful owner of everything, including the bodies of human beings. The theist might believe that

⁴Assuming that the reader believes she *is* in error!

⁵For example, if the reader excludes chickens on the ground that they cannot engage in rational debate, then Hoppe's argument doesn't apply to infants or comatose people, either.

⁶Again, to avoid confusion, let us reiterate that we (obviously) are not saying that such a collectivist could *successfully* argue his position. But we do claim that he would not be uttering a *contradiction* by making his case. (If someone argues that George Washington is still alive, he is certainly *wrong*, but he's not performing a contradiction.)

God has granted humans *temporary control* over His property, just as a landlord leases an apartment. However, just as the landlord would prohibit certain destructive acts, so too (the theist might think) would God prohibit such things as suicide and prostitution. Because of his worldview, such a theist might argue (against a libertarian atheist, perhaps) that people do not own their bodies, and that it is perfectly legitimate for outsiders to use force to prevent someone from committing suicide.

Now, we grant that the theist would have a difficult time proving his case; indeed, we would disagree with his conclusions if such a theist really existed and advocated this stance. However, we do *not* think he has, by making such a case, in any way engaged in contradiction. Since we have come up with a logical counterexample to his sweeping result, Hoppe's argument as it stands must be incorrect.⁷

Second, imagine that a Georgist were to argue that everyone should own a piece of landed property. The Georgist could go so far as to claim that his position is the only justifiable one. He could correctly observe that anyone debating him would necessarily grant him (the Georgist) some standing room, and then he might deduce from this true observation the conclusion that it would be a performative contradiction to deny that everyone is entitled to a piece of land. We imagine that Hoppe would point out to such a Georgist that using a piece of land during a debate does not entitle one to its full ownership, and Hoppe would be correct. But by the same token, Hoppe's argument for ownership of one's body falls apart; Hoppe has committed the exact same fallacy as our hypothetical Georgist.⁸

 $^{^{7}\}mathrm{I.e.},$ Hoppe didn't begin his proof by saying, "Assume God doesn't own everyone."

⁸We can use this case of the hypothetical Georgist to fend off another possible counterresponse by the Hoppeian. In answer to the claims of our article, the fan of Hoppe's argumentation ethics might suggest that yes, although it is *possible* to engage in a debate even if one, say, is a slave or has had a kidney removed at gunpoint, nonetheless the "deck is stacked" against such a participant. (Imagine if the defense counsel were dependent upon the judge for his daily bread!) Thus, the Hoppeian could conclude, it is still correct to claim that, in the spirit of Habermas, one can only have a fair debate if one's opponent has been granted full libertarian rights. But wait one moment: By the same token, a typical member of the proletariat, who owns no landed property and is utterly dependent on his weekly paycheck for survival, is not in a very strong position to argue with fat cat capitalists. Does this mean that the wage system is exploitative after all? The defender of Hoppe must be very careful when proceeding on this slippery slope; once we move beyond bare survival, it is no longer clear that we can stop at full libertarian rights.

Finally, we point out with some irony that Hoppe and Rothbardian libertarians in general do *not* believe in universal self-ownership. In particular, they believe that *criminals* may be rightfully enslaved to pay off their debts to victims (or their heirs). Now we ask: Would it be contradictory for legal procedures in an anarchist society to allow convicted criminals the right to appeal? Couldn't criminals take the stand and *testify* as to their wrongful conviction? We can imagine a private judge saying to the criminal, "You currently do not possess full self-ownership rights, but we want the community to trust in the equity of our proceedings, so by all means, please explain your objections to your conviction." Would such an utterance by the judge be contradictory?

If not, then it must *not* be true, after all, that one needs to own his body in order to debate. This is obvious; Thomas Paine wrote the first portion of *The Age of Reason* while imprisoned, the famous "Birdman of Alcatraz" submitted scholarly articles to journals while serving time for murder, and the imprisoned Timothy McVeigh certainly tried to justify the bombing to which he had confessed, in correspondence with Gore Vidal. Indeed, Ludwig von Mises, Murray Rothbard, and Hans Hoppe were denied their rights to self-ownership (by the governments claiming authority over them), yet they managed to advance plenty of arguments.

Hoppe's response to this objection, when it was made by David Friedman, Leland Yeager, and others,⁹ was to point out that he was not denying the historical *existence* of slavery, but rather its justification. But Hoppe misunderstood his critics' point. Friedman, for example, wasn't merely saying that because slavery has existed, Hoppe must be wrong. Rather, Friedman argued that, because countless slaves have engaged in successful argumentation, Hoppe must be wrong when he claims that self-ownership is a prerequisite to debate.

In the same symposium, Leland Yeager, David Ramsay Steele, and Mitchell Jones also made this point.

⁹After summarizing a crucial plank of Hoppe's argument as the claim that [i]n order to argue about the truth of propositions we must have absolute self-ownership of scarce means." Friedman goes on to write:

[&]quot;[N]ote that if this is literally true nobody, including Hoppe, has ever argued about the truth of propositions, since there are no completely libertarian societies in which to do so. . . . One can think of an enormous number of non-libertarian ethics and non-libertarian societies consistent with people being able to argue in their defense." (Friedman 1988, p. 44).

This is a crucial point, so we wish to elaborate. Not only did Hoppe believe the particular evidence cited by his critics was harmless to his argument; he thinks *all* empirical facts are irrelevant. Hence, it's not merely that he believes Friedman et al. were mistaken in their criticism, but that they completely misunderstood the type of claim he was making:

My entire argument, then, claims to be an impossibility proof. But not, as the mentioned critics seem to think, a proof that means to show the impossibility of certain empirical events, so that it could be refuted by empirical evidence [such as the existence of non-libertarian societies—RPM and GC]. Instead, it is a proof that it is impossible to justify non-libertarian property principles without falling into contradictions . . . empirical evidence has absolutely no bearing on it. (Hoppe 1988, p. 53)

Misesian economists will no doubt appreciate Hoppe's frustration; he believes he is in the analogous position of someone being asked to deal with ostensible "counterexamples" to the law of diminishing marginal utility. However, as we stated above, it is *Hoppe* who is misunderstanding the type of claim being made. Yes, Hoppe is arguing for a conclusion (namely, that only libertarian ethics are consistently justifiable) that by itself makes no empirical claims, and hence cannot be falsified by observation. However, Hoppe's chain of arguments to *reach* that (empirically neutral) conclusion crucially relies on an empirical assumption, to wit, that a person needs to enjoy self-ownership (and all other libertarian rights) if he is to successfully debate. It is this empirical assumption that his critics attacked, and quite successfully so: It is simply not true that one needs to own his body in order to fairly debate, just as one doesn't need to own standing room in order to fairly debate.

We do not wish to deny that there is a definite sense in which, if there is to be a legitimate give-and-take of ideas, the two parties in question must enjoy a degree of autonomy or "freedom." It would indeed be silly if the puppeteer "debated" his marionette, or if a man trained his dog to engage in a mock argument. Yet this transcendental self-ownership is not what Hoppe is after; even the heretic being burned at the stake ultimately has free will and "owns" his mind. It was ingenious for Hoppe to attempt to equate the conditions necessary for rational discourse with the property rules of radical libertarianism, but it is obvious to us that this attempted mapping fails.

CONCLUSION

We believe that we have demonstrated the inadequacy of Hans Hoppe's argumentation ethic as a proof that libertarianism is the only defensible political stance. In the second section we showed that, even on its own terms, Hoppe's proof at most establishes fleeting and partial ownership of one's body. In the above section, we showed that his proof doesn't even succeed in this, for it confuses temporary control with rightful ownership.

Let us emphasize that we realize Hoppe's observations are *consistent* with the rest of libertarian thought. For example, Hoppe advocates human self-ownership as an initial state of affairs, only to be denied to individuals in special circumstances, such as when they have been convicted of a crime. But the whole point of Hoppe's approach is not to argue that libertarianism is merely reasonable or preferable, but that it is logically undeniable; for his argument to work, he cannot afford to assume any libertarian principles at the outset. So if Hoppe's argument doesn't prove that criminals own themselves, then it can't prove that non-criminals do, either, since there's nothing in the argument itself concerning criminal behavior.

Hoppe's argument is an intriguing one, but it ultimately fails. Although we support Hoppe's goals, we cannot endorse flawed arguments aimed at achieving those goals, as the acceptance of such implies that we do not have better arguments on our side.

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