

**Comment on R.P.Murphy's & Gene Callahan's Critique of
Hans-Hermann Hoppe's Argumentation Ethics**

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In *the Journal of Libertarian Studies* (Spring 2006, XX,2, 53-64) Robert Murphy and Gene Callahan have published a critique of Hans-Hermann Hoppe's use of argumentation ethics to prove the ethical validity of the libertarian stance on human rights. It is only slightly different from the text they had published in September 2002 on Anti-State.com. As pointed out by Stephan Kinsella in an immediate response on the same website, Murphy and Callahan had done very little to place Hoppe's defense of libertarian rights in the context of argumentation, which is crucial to it. It is true that they had referred to a few particular statements Hoppe had made in *A Theory of Socialism and Capitalism* (1989) and his replies to his critics in an early 1988 symposium in the journal *Liberty*, but Murphy and Callahan had made little effort to justify their interpretation of even those statements that they had selected as convenient targets for criticism of the whole theory. Instead, they had made it seem that the core of Hoppe's argument is the simple statement that if one is to be able to argue then one must have ownership of anything one needs to be able to participate in an argumentation. Now that statement, if it is taken literally as an unqualified universal statement, is obviously false, but the question is, where and how does it fit in Hoppe's argument from the apriori of argumentation to the ethics of argumentation and hence to the validation of a libertarian view of human rights. Murphy and Callahan had not bothered to address that question. Instead they had gone on to present a few counterexamples to the statement and then to speculate about what a hypothetical 'Hoppeian' might say in response, as if the last real 'Hoppeian' had died before he had had a chance to reply on the telephone or hit the send-button of his e-mail program. That was not solid criticism, and it was not an exercise in the sort of argumentation that is essential for understanding the ethics of argumentation. Unfortunately and inexplicably they have not even tried to remedy the defects of their original comment in the text submitted (and accepted) for publication in the JLS.

My purpose here is to point to some aspects of the argument from argumentation that Murphy and Callahan fail to mention, although they are essential for understanding the argument for self-ownership. I shall also make a few comments on some methodological presuppositions of scientism and positivism that prevent Murphy and Callahan from seeing why their critique does not and cannot make much of a dent in Hoppe's argument from the apriori of argumentation to the ethics of argumentation and its implications for self-ownership. Neither of them is likely to admit to have much, if any, sympathy for scientism or positivism. But scientism and positivism are still rampant in the literature. Is it possible that Murphy and Callahan, as a result of their reading, inadvertently have adopted a manner of argumentation with the presuppositions of which they do not agree?

My stake in the discussion

Let me state up front that I have a stake in the discussion of the ethics of argumentation. In the mid-seventies I developed a version of such an ethic, which I called "the ethics of dialogue". In the process I became radically committed to the idea of individual freedom. My exposition of the ethics of argumentation and its relevance to moral and political philosophy was published in 1983. Because it was published in Dutch, it understandably got no attention at all outside Flanders (the part of Belgium where Dutch is the natural language) and the Netherlands. Furthermore, a change in my professional circumstances prevented me from preparing or supervising an English translation. In the mid-eighties I wrote an article entitled "Economics and the limits of value-free science" for *Reason Papers*, which at the time had Tibor Machan as its editor, in which I referred to the ethics of argumentation, without going into any detail or trying to justify it. I had presented an early version of that paper in the "philosophical section" of a meeting of the American Society for the History of Economic Thought in Princeton and later in a seminar at George Mason University (at the invitation of the late Don Lavoie), but that was about the full extent of the exposure my work received in the English speaking community. A little later Hoppe independently and forcefully brought the ethics of argumentation to the center of libertarian theorizing. There no longer was any need for me to work on an English translation, especially when it became clear that Murray Rothbard fully appreciated the significance of Hoppe's undertaking.

There were some hostile reactions to Hoppe's argument in the *Liberty* symposium, to which Murphy and Callahan refer, that might as well have been directed at me, to the extent that they took aim at the argument from argumentation itself and not at the peculiarities of Hoppe's presentation of it. However, I did not think that they presented insurmountable counterarguments, although some of them were valuable in pointing to the need for careful qualification and quantification in a presentation of the logic and ethics of dialogue. Natural language remains a tricky vehicle of communication, especially in the case of writing, where the author must constantly weigh the risk of being misunderstood against the cost of producing a text that is overburdened with attempts to forestall all sorts of possible misunderstandings.

Ghosts of scientism and positivism

What struck me most in the hostile reactions to Hoppe's argument was this: even among libertarian authors the conventions of academic writing tend to prevail over the requirements of the ethics of argumentation, even where adherence to those conventions leads to scientific fallacies. The basic convention is the subject-object distinction, which certainly is appropriate where the subject is a human person and the object some non-human form of life or matter, or something that only concerns the physical or chemical aspects of human life. However, that distinction is inappropriate where subjects and objects are both human persons. There is a distinction between theorizing about the human world as if it were a completely different realm of things with which we can have no intellectual, argumentative intercourse whatsoever, and theorizing from within the human world about our human condition. The scientific fallacy results when authors or intellectuals pretend to study the human world

"scientifically", that is to say "from the outside", as if they were no part of it -- as if they were gods or Martians; alternatively, as if they and only they were truly human and the creatures they study no more than a mass of quantifiable material or behavioral units. On the one hand, they recognize that in their academic disputes, where they face one another, they should abide scrupulously by the requirements of the ethics of dialogue, if they want to be accepted as members in good standing of their scientific or intellectual communities. On the other hand, they pretend to see no reason why "ordinary people", who are not recognized or academically certified members of such a community, should be bound by and entitled to treatment according to the ethics of "dialogical" or "dialectic" argumentation. Thus, in the communications and argumentative exchanges within their intellectual community, ill defined as it may be, they fully accept that argumentation is between one person and another, between an 'I' and a 'You', and also that the success or force of the argumentation does not depend on who is the 'I' and who the 'You'. What is a good reason for me is also a good reason for you; if it is not then it cannot be a good reason for me either and the argumentation should continue until we reach the point where we can see the difference between good reasons and bad reasons, regardless of any subjective interests or prejudices on the part of either of us. Even then, the conclusion remains provisional because another member of the community may enter the discussion and point out that our consensus is not sufficient to convince him that it is justified. However, non-members should never be considered even a potential 'I' or 'You'; they are forever assigned the status of 'them'. It is held to be illegitimate to regard them as rational persons of the same sort as we are — we, the scientists, academics or intellectuals, who theorize about them. As far as our relation with them is concerned, the vertical or hierarchical subject-object distinction is appropriate but the horizontal, egalitarian I-You distinction is not.

Within this scientific form of academic discourse, libertarianism must boil down to the mere belief or opinion that ordinary human beings have the same rights relative to each other as academics have in their academic community. However, any justification of that belief must be different in kind from the justification of the ethics of dialogue that defines the academic community itself and binds it to its purpose of discovering objective truths. For within the academic community one cannot deny the apriori of dialectic argumentation and everything that it implies: respect for truth and logic, willingness to produce reasons or justifications for every thing one does or says, and of course a firm commitment to respect others as free and independent persons that one should not even try to manipulate or intimidate with anything other than the force of one's arguments. However, scientism and positivism insist on a radical subject-object dichotomy between "us, scientists" and "them, the objects of research", which precludes that the two sides of the dichotomy are united by any apriori of argumentation. From the them-side no arguments reach the academic community because they must be re-interpreted as instances of mere behavior to qualify as legitimate data. In a similar vein, the ethical notions that define the academic community must be emptied of their primary ethical content before they can be applied to the human objects of research. As Anthony de Jasay memorably put it with respect to justice, unless justice is defined as something else than justice, it has no place

in the contemporary academy's "scientific" research or "philosophical" speculations about the human world. Consequently, an academic's libertarianism must be either a subjective preference that needs no or is incapable of rational justification, or it must be justified in terms, say, of this or that quantifiable maximum or this or that calculable condition of equilibrium in the pool of human matter. It has the same sort of contingent relation to the ethics of argumentation as any opinion or theory of animal rights has. We, academics, scientists, intellectuals, willingly discuss our theories of human and animal rights with one another; they, the animals, be they human or not, are not invited to join us in our argumentations.

In that sort of scientific positivism Murphy and Callahan may well find all the justification they need for believing that they can refute Hoppe by noting that an academic does not contradict either himself or the ethics of the community of academic *ergoteurs* by saying that animals do (or do not) have one or another right. Indeed, according to the scientific positivism that they apparently embrace, an academic does not contradict either himself or academic ethics when he claims that humans outside the "community of science" have or do not have rights; or that a human being's rights (again, outside that hallowed community) depend on the configuration of his and all others' "utility functions", attributed to them by the scientific observers and suitably aggregated according to one or another function of "social efficiency". True as this is, it does not amount to an argumentative justification of any form of scientific positivism.

If the separation of mankind in two distinct species — "we, the arguers who make up the scientific community, and they, the black boxes we define as relevant behavioral units" — is made into an axiom of the scientific study of the human world, the relevance of "our" ethical principles to ordinary mankind must be as contingent, arbitrary or delusional as it unquestionably is to mosquitoes or black holes. Hoppe explicitly refuses to accept that axiom. Given the arguments that they set forth in their critique and that I shall review later in this text, it seems fair to say that Murphy and Callahan at least implicitly subscribe to that axiom. Why do they not attempt to justify it? Because they feel confident that at least the academics among their readers, those who publish in "scientific journals", take it for granted, or would not think of questioning it in a "scientific publication"? If that is the reason, their argument begs the question, for Hoppe most certainly does not appeal to the prevailing consensus in any particular human community, no matter how it labels itself, but to the universal capacity of all human persons — including academics — to recognize one another as persons, if not necessarily when they see one another then at least when they get involved in asking questions and giving answers, and arguing about the reasons for their questions and answers. If Murphy and Callahan have another reason for their stance then they should spell it out, so that we can argue with them about it without having to make up for their silence with mere speculation.

Hoppe's argumentation ethics

For me the ethics of dialogue came first and my libertarianism was its, to me, perfectly natural logical child. In contrast, Hoppe developed his argumentation ethics in the course of a refutation of various sorts of collectivism, which was at the same

time a defense or apology of Rothbardian libertarianism. The apologetic nature of his undertaking explains perhaps why Hoppe went straight from laying out the basic presuppositions of committing oneself to participation in an argumentative discussion to the conclusion that only libertarian rights of individual freedom and property can be justified in the course of an argumentation. There was little or no need for him to dwell on all of the implications of his starting point, his focus being on what it meant for the question of the justifiability of individualistic anarchism versus the justifiability of socialism in any form. It probably would have helped many of his readers if he had been a little more explicit in explaining some of the intermediate steps in moving from the presuppositions of argumentation to his "political" conclusions. After all, concepts such as "the apriori of argumentation" and "the ethics of argumentation" are hardly familiar tools in discussions on politics and economics. Hence, for anyone who uses them, the risks of losing the reader and running into a wall of misunderstandings are great. Perhaps Hoppe should have had more consideration for these risks. However, in the book in which he presented his approach, such an elaboration of the argument would have brought up many points with no direct relevance to its topic or its readers' reasons for reading it. Nevertheless, Hoppe did give a reasonable amount of explanation concerning the context of argumentation. Moreover, he referred explicitly to Habermas and Apel, the best-known contemporary philosophers in the field of "argumentation" and obviously important sources of inspiration for Hoppe's own attempt to justify his radical libertarianism as an implication of the ethics of argumentation. A reader interested in the logic of the argument rather than its relevance in discussions of social, economic and political institutions would have known where to look for more detail and background.

As an aside: my own ethics of dialogue owed nothing to Habermas or the literature that he inspired. I certainly would not have accepted his thesis that an argumentation between a rich and a poor person, an employer and one of his employees, should not be called fair because of differences in wealth or power, and that therefore the ethics of argumentation can come into its own only in an egalitarian or at least classless society. It is undoubtedly true that some people are easily intimidated by others on account of things that have nothing to do with their discussion, but wealth, power and social status are not the only such things, and it is in any case no part of the concept or practice of argumentation that people can or will argue with another only if they are aware of his financial condition or social status. Pursued to its ultimate consequence, Habermasian fairness in argumentation would be realizable only among people who are "equal" in all or nearly all respects. Habermas' observation that intimidation corrupts many disputes is of great sociological and psychological importance, but it amounts to no more than a confirmation of what most of us know from personal experience: accepting the ethics of argumentation, living up to its requirements, is not easy, not for us and not for others. That, of course, is what makes the ethics of argumentation normatively relevant. It provides guidelines -- argumentatively justified guidelines -- for evaluating, dealing with and acting in situations where there is no guarantee that everyone will abide by and only by justifiable rules of conduct.

Dialectical contradictions and dialectical truths

The first and most important conclusion of the ethics of argumentation is that one should have the opportunity to justify one's actions and statements rationally, including one's moves in an argument with others, specifically one's request that another justify his actions, or even one's insistence that in the particular case under consideration one does not have to justify one's actions. Try to argue against that conclusion and it soon can be made clear to you that in making your arguments you are presupposing and appealing to its validity as a normative condition of argumentation, applicable to you as well as the others with whom you are or could be arguing. There is no way in which one can justify in an argumentation the general thesis that it is pointless to argue, to ask for and give reasons for or against a particular act or statement. To attempt a rational, reasoned defense of that thesis is to admit that if one's argument merits acceptance then the defense of the thesis was pointless and that if it was not then the thesis must be false. To pursue such an attempt is the intellectual equivalent of sawing off the branch on which one is sitting. It leads to a so-called performative (or, as I called it, a dialectical) contradiction. Just as there are dialectical contradictions, arguments that cannot be defended in an argumentation with others because they would deny or destroy the argumentative nature of the interaction, if they were taken seriously, just so there are dialectical truths, arguments that cannot be denied, refuted or defeated in an argumentation with others. I do not dialectically contradict myself if I convince myself (or my wife) that our goldfish is not a rational being; but I do dialectically contradict myself, if I set out to convince you (or my goldfish) by rational argument that you are not (or that it is not) a rational being, incapable of following an argumentation or participating in it. I state a dialectical truth if I say that in our discussion logic and facts should be taken seriously or that silencing an opponent by forcibly gagging him or threatening to inflict harm on him is not a permissible move in an argumentation. One cannot consistently argue that argumentatively unjustifiable ways of dealing with others should prevail; therefore there can be no justification for having recourse to such ways of dealing with others. Moreover, I dialectically contradict myself if I hold that an argumentatively justified conclusion is justified only within the context of argumentation itself. If a man proves his innocence with respect to a crime of which he has been accused, a *judge* would be contradicting himself if he were to say "Congratulations but I am going to hang you anyway. After all, it does not follow from the fact that you gave proof of your innocence that anybody should pay attention to it, especially after the trial is over." An agent, officer or magistrate in the service of a government might say such a thing without contradiction, but only if he makes no claim to do justice. An official condemns a man to the gallows, having heard only the arguments and witnesses of the prosecution and having denied the accused the right to defend himself. There is not a whiff of dialectical contradiction there, until you hear him say that he has rendered justice and spoken truly as required by the ethics of argumentation.

Although an act and its justification are two different things, the ethics of argumentation covers both. It defines not only what is permissible in the context of argumentation itself but also what constitutes justification in other contexts. A court of law has to abide by its requirements not only in its own proceedings but also in

questioning and evaluating the justifiability of actions performed outside the courtroom. Indeed, that is its primary function.

Significance for the history and philosophy of law

Perhaps the greatest merit of Western civilization was that, for a remarkably long time, it accepted the normative primacy of reason in human affairs, as the foundational principle of justice. This was the paradigm of natural law, which, in the words of Saint Thomas, amounted to the recognition of "man's rational participation in the eternal law". Few thought of arguing against the principle that conflicts, disputes and disagreements should not be settled otherwise than by means of rationally justified actions. Thus, it was accepted that there is a "court of reason" and that men should have and organize actual courts to help ensure that reason should prevail. The idea of a court of justice as an island of reason, where arguments would be appreciated on their merits, and where attempts at intimidation, trickery and so on, would be checked and weeded out, became central to the ideology of the West. Inside the courts the ethics of dialogue or argumentation should reign supreme, regardless of how it fared in the rough-and-tumble of daily intercourse. Moreover, the findings of such a court, with respect to the justifiability of particular actions, should prevail over the emotional or calculated responses of those who witnessed or heard about them. Only reason can justify — and that reason is not manifested in a monologue of one side's arguments, but in a dialogue, where arguments and counterarguments can be evaluated in an open confrontation.

Thus, it was taken for granted that a court should hear all the parties involved in a dispute and give them an opportunity to justify their actions ("Audi et alteram partem"); that judges should arrive at the truth of the matter (in their verdicts, that is, *vera dicta* or truth-sayings) solely on the basis of "the merits of the case" as they emerge from the arguments presented in court by the parties to the conflict; and that these verdicts should have normative authority as long as they are not shown to be wrong (that is, not *vera dicta* at all). Whatever the degree of social, economic or political inequality in a society, respect for the process of finding justice and a commitment to uphold its findings were held to be the keys to freedom and justice. The courtroom should and was supposed to provide the conditions that make fair argumentation possible ("equality before the law" and, via the practice of permitting the parties to call on advisors and advocates, even a rough equality of intelligence and argumentative skills).

Of course, the powerful, the rulers, often enough eliminated the courts of law or justice and replaced them with boards of officials whose main function was (and is) to see to it that their master's voice is heeded by all. The judges were eliminated and replaced with "magistrates". Nevertheless, even in this day of rampant positivism, the ideals of justice still fashion the way in which those boards and magistrates present themselves to the public at large and to their masters. Unlike bureaucrats and diplomats, the magistrates posing as judges do not claim authority on account of their loyal subservience to their masters, but on account of their "independence" from them. Paying lip service to the ethics of dialogue and argumentation is vitally important for maintaining not only their social and financial position but also their status as

possessors of a science of necessary things. While positivism rules the curriculum in the law schools, telling their students that only "the law" matters and that "the law" is nothing but the legal rules, edicts and decisions excreted by the authorities that the same set of rules designates as "legal", the schools never tire of instilling in their students the sense that the implications of positivism do not apply to the magistrates and the advocates they are being trained to become. Like scientists, they should be made aware that they are supposed to answer to a calling that transcends loyalty to any social or political regime. Like scientists, they should feel entitled to claim immunity from arbitrary interference, admittedly not as a general human right but as a professional privilege. And like scientists, but to a much higher degree, they should not have any qualms about serving and assisting the powers that be as long as the latter keep up the pretence of their "independence" and reward them with power, prestige and money. Albeit in an increasingly emaciated and perverted form the ethics of argumentation still has a hold on the imagination as the bulwark of civilized co-existence, no matter how obscure the distinction between a scientist and a government expert, or between a judge and a magistrate, has become in public discourse. However, its force is sapped when the point of argumentation in a court no longer is to reveal which actions are justifiable and which are not but merely to determine which party complied with some set of arbitrary politically imposed rules. Then argumentation gives way to a contest in which one "legal mind" tries to outwit his opponent in a game that turns primarily on one's skills in combining officially recognized legal classifications of facts, legal rules, other legal data such as precedents, and currently fashionable notions into "a strong case". Similarly, the ethics of argumentation and dialogue loses its grip on the intercourse of scientists if convincing the authorities of the social or political relevance of one's research becomes a priority.

The argument from argumentation is not a mere academic artifact without any practical significance. It underlies the Western tradition of the philosophy of law and justice and its impressive manifestation in principles of substantive and procedural justice that command respect even after more than a century of systematic "debunking" at the hands of scientific positivists and others for whom man's reason counts for nothing and his voice ("vote") for everything. Quite a number of Hoppe's critics like to argue that the ethics of argumentation binds only at the moment of argumentation itself and then only those who take part in it. If they were right, they would not only have "scored" against Hoppe, they would also have deconstructed the entire edifice of reason, law and justice without which the West would never have risen above the level of tribal barbarism. Of course, they are not in the right. An argumentation that conclusively establishes that one is justified in claiming truth for some proposition remains conclusive after the actual exchange of arguments has ceased; it ex post vindicates those who held the proposition to be true even before there was serious argumentation about it. "The Earth circles the sun" is roughly true, not only when someone is actually demonstrating its truth, and not only for those present during the demonstration. Of course, someone who is not familiar with the demonstration may well reserve judgment until he has had a chance to evaluate it himself — but that too is an implication of the ethics of argumentation. However, a blunt refusal to accept the conclusion of an argumentation, unaccompanied by a

statement of reasons that are intended to justify the refusal, cannot commit anyone but the refuser himself and cannot be considered a justification in itself.

While anyone can refuse to be bound by the ethics of dialogue or argumentation, there is no way in which one can hope to justify that position argumentatively. One simply places oneself outside the context where appeals to reason or justice can be made. There is no contradiction in doing that. Indeed, some people succeed remarkably well in placing themselves outside (or "above") the law of reason. Nevertheless, they, their supporters, clients and apologists, cannot ever justify their stance. They may not care about that, as long as they get their way, but that is their choice; it is not an argument with any rational force.

Argumentation and self-ownership

Murphy and Callahan focus on Hoppe's argument from argumentation, not on its libertarian conclusions, with which they express if not agreement then at least "sympathy". It would have been well if they had shown a bit more sympathy for the argument itself, enough to make the effort to understand what it is intended to do. They do not make that effort. On the contrary, they give evidence of a desire to score points where there are no points to be scored. For example, in a totally unnecessary footnote, they comment on Hoppe's statement that propositions are not free-floating entities but require a proposition-maker. They write: "Of 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'?" Disregard the first sentence: 'vast' is not a mark of quality, certainly in an age of publish-or-perish academic philosophy. The second sentence misses its mark entirely: Hoppe did not say that the *truth* of a proposition depends on the fact that someone makes that proposition; he did say that a statement enters into an argumentation only when one of the participants proposes it for consideration. That is what a proposition is: a statement that is proposed to the other participants in a discussion for consideration, criticism and evaluation. Murphy and Callahan criticize Hoppe's literally correct use of the word 'proposition', suggesting that maybe propositions *are* free-floating entities. Are we to conclude that for them argumentations too are free-floating entities, not, as Hoppe insists, a species of interactions among persons?

The heart of their critique is that "even if one grants the basic validity of Hoppe's approach, his argument still fails to make the case for full self-ownership." However, their explanation merely points to the inadequacy of their own interpretation of the argument. "At best," they write, "Hoppe has proven that it would be contradictory to argue that someone does not rightfully own his mouth, ears... and any other bodily parts essential for engaging in debate. But that clearly would not include, say, a person's legs..." To them, that remark makes sense because, as they interpret it, the whole of Hoppe's argument reduces to the thesis "One cannot argue unless one has ownership of the means (especially one's body parts) that one needs in order to engage in argumentation." A person without legs can take part in an argumentative discussion with others. If legs are not necessary for an arguer then the ownership of legs cannot be necessary either. *Ergo*, Hoppe is refuted?

Legless people can argue, but so can a blind person, a person attached to or using a device that replaces his heart or lungs, remedies his severely incapacitated hearing, or makes up for his inability to articulate sounds. However, there is a distinction between asking a person whether he can justify the possession of his natural body or any of its parts or organs, and asking him whether he can justify his possession of an artificial contraption or device. "Where and how did you get that hearing aid?" makes sense in a way "Where and how did you get your stomach?" does not. The reason is not that a stomach cannot be acquired in unlawful, unjustifiable ways — given the state of modern medical technology it probably can be — but that there is a decisive reply that, if true, stops any request for a justification: "I was born with it; it's been a part of me for as long as I have been around." If the questioner then switches to academic discourse mode and presses on with "And why should that entitle you to say that it is yours and yours alone, your exclusive property?" one need only ask him what, according to him, would justify someone's (anyone's?) claim to [have control over] the use of another's stomach. If he has an answer to that question, we can discuss and evaluate it. If not then we can ask him then and there to agree to the proposition that *his* stomach is "res nullius", something that, even as it is, an integral part of his body, belongs to no one and therefore can be appropriated without injustice by others. We can further ask him why he or anybody else should think such an agreement sensible, or whether one would be justified in making or accepting such a proposal.

Of course, once we are in academic discourse mode, there no longer is a meaningful argumentation, since nothing we say entails any commitment to act in one way or another outside the context of the verbal exchange itself. True, within that context one should continue to be reasonably polite, absolutely non-violent, and so on, as required by the conventions of academic exchange, but apart from that one can say anything, regardless of whether one means it or is prepared to accept or test its real-life consequences. The argumentation transmogrifies into a game of wits. How about this: "I need not answer that question because neither the person who asked it nor the person to whom it was put still exists. Things change from one moment to the next and when something changes it becomes something else. At best one could say that some predecessor of you posed the question to some predecessor of mine; but neither of us is his own predecessor, neither of us can be held answerable for what any of our predecessors did or said." Possibly the beginning of an entertaining conversation but a dialectical contradiction nonetheless, if the speaker insists that *he* is making an argument in saying that—by implication, that *he* did not change but remained who and what he was during the whole time it took to utter the quoted sentence.

Contrary to what Murphy and Callahan seem to imply, the fact that blind people can argue does not in any way affect other people's relation to their eyes. "I have no eyes, therefore you cannot claim your eyes as your own" cuts no ice, even when said in the context of an argumentation. Is Hoppe's argument that "This is mine" follows from "I need this to be able to participate in an argumentation" because it would be contradictory to say, "Yes, indeed, you need it, but I deny that it is yours"? Not at all. The argument is that if A and B are engaged in an argumentation, neither of them can consistently deny that he is arguing with *another* person, one who is both a person and

another person — in the words of the time-honored formula, a separate "free and equal person".

Even if — switching to academic discourse mode for a second or so — we assume that an argumentation were an exchange not between real persons but disembodied minds, each of these minds would have to admit that it was confronting another mind of the same sort. They would have to concede that the very point and purpose of the argumentation would be defeated, if any one of them made the claim that the other was not entitled to speak its mind (or whatever would make sense here) without permission, advance clearance or risk of any sanction other than a counterargument — in short, if it claimed that one mind was entitled to control the other in argumentatively unjustified ways (supposing that there are ways, other than by the force of its argument, in which one disembodied mind can control another). Such a mind would fall into a dialectical contradiction if it made that claim, not facetiously, but in earnest, as a statement that it proposed to justify argumentatively.

The issue is self-ownership, which is a presupposition of taking part in an argumentation, and which in the case of argumentation among real persons involves the entire person, not just his mind, not just his mind and his body, but also all of the property that he justifiably owns. "I'll burn down your house, if you dare to disagree with me", is an illegitimate a move in an argumentation, even an academic one, no less so than "I'll cut out your tongue" or "I'll see to it that your children never get a decent job in this town" is out of order. Maybe Hoppe could be blamed for focusing so much on ownership of body parts, probably assuming that they provided the clearest examples in support of his argument. Maybe he thereby merely created an opportunity for some readers to divert their attention from the apriori and the ethics of argumentation to questions of physiology and medical technology. However, if we keep our attention focused on the argument itself, we see that the question of self-ownership does not depend for an answer on statements concerning property rights in an assortment of organs, liters of blood, hearing aids, eyeglasses or pacemakers. True enough, in some argumentations questions regarding property rights in such things may be the central issue, but it is way off the mark to suggest that they, or any particular answers to them, are among the basic presuppositions of the human activity called 'argumentation'

Who's arguing?

In order to see the undeniable justifiability of the self-ownership principle, it suffices to step out of the rarified atmosphere of academic discourse, where self-ownership is just a another word or just another of those free-floating concepts. Let us sit down, you and I, and facing one another argue about who owns whom: I me and you you; I you and you me; I both of us; you both of us; I and you both of us; or none of us either of us. Chances are that you and I are already in the perfect condition for an argumentation of that kind, if there is no prior event that has caused one of us to be indebted or subordinated to the other. In other words we can dispense with the particular and possibly peculiar relations that otherwise might make it difficult to keep that question separate from other questions about certain aspects of our relationship, say as ruler and subject, criminal and victim, creditor and debtor, father and child, or

VIP and VUP. Afterwards, we go our separate ways and have similar discussions with other people, just to check that our conclusion (whatever it was) was not the result of some unnoticed peculiarity of our original exchange of arguments. It will soon become obvious, if it wasn't already obvious in our original discussion, that self-ownership is the only robust principle in the list. It is the only principle that is part and parcel of the factual and ethical presuppositions of argumentation — and arguing with another person is the only common factor in all of our encounters that make up "the evidence" for it. Of course, we could have found that out aprioristically by analyzing the concept of argumentation, but there are many people around who aprioristically refuse to accept any conclusion arrived at by an aprioristic argument. What else can we do except engage them in serious argumentation about who owns whom, perhaps inviting them to agree to a commitment to live with the conclusion?

Again, in an academic exchange one might counter that perhaps we are not individual persons at all but merely contingent aggregates of cells; or that we are merely abstractions ("Me man, you woman"; "Me philosopher, you economist"). Such a supposition certainly would remove self-ownership as an argumentatively defensible position... along with every other possible distribution of ownership. Indeed it would render the concept of argumentation meaningless, and with it also the concept of the ethics of argumentation. Yes, we, individual persons, can argue about even the weirdest propositions. No, aggregates and abstractions cannot engage in any argumentation unless they somehow had acquired the ability to identify themselves as an 'I' and a 'You', that is to say, to act and speak to one another as distinct individual persons. It is easy for scientific positivists to agree amongst themselves that other people are mere aggregates of cells or abstractions, but they cannot without dialectically contradicting themselves pretend that, even as they are discussing one another's arguments, they too are anything other than persons. In the course of the argumentation itself, they cannot disregard the fact that they are arguing. But they can without contradiction, and in fact often do, dismiss the evidence that the objects of their research are arguers like them. All they have to do is posit it as axiomatic that what those others take for their "reason" is merely the slave of their passions, interests, or social position, whereas their own reason is autonomous, dispassionate, disinterested and not tainted by any consideration other than sincere respect for logic, truth, and justice.

Don't chase the drops; follow the stream

It is a sad reflection on Murphy and Callahan, as well as many of the participants in the early *Liberty* symposium, that they appear to confuse the question that is central to Hoppe's undertaking, namely, which principles, including ethical principles, cannot be denied in an argumentation among real persons (without any one of them violating the basic procedural rules that define argumentative interaction), with the utterly different question whether people can argue with one another in a society or other setting where those principles are not heeded in all or most interactions. Hence, whereas Hoppe is anxious to make the point that there is no argumentatively valid alternative to the principle of self-ownership, they keep bringing up examples of slaves arguing with their master, drugged patients in hospitals, or loudmouths being thrown out of theatres. None of these purported counterexamples removes the dialectical

contradiction of any of the logically possible alternatives to the self-ownership principle. As far as Hoppe's argument is concerned they are strictly and totally irrelevant. To the extent that they raise questions and invite answers, they should be argued under the principle of freedom and equality among self-owning persons. Rothbard appreciated this, not surprisingly, because he had made use of the device of listing the logical alternatives to the principle of self-ownership and had found each of them wanting (although not on account of their demonstrable untenability in an argumentation). He had not based his *Ethics of Liberty* (1982) on the sort of silly casuistry with which one can fill volumes of academic journals and never arrive at a compelling conclusion for or against anything. But then he was one of those rare intellectuals who did not consider it bad form to discuss principles as anything other than empirical generalizations.

Either principles count for something or they do not. The evidence that there are cases where it does not hold refutes an empirical generalization; but such evidence does not invalidate a principle, if it can be shown that the alleged contrary cases are justified by the same reasoning as the principle itself, taking into account the peculiarities of those cases. If the defendant or the plaintiff constantly disturbs the proceedings and makes it impossible or nearly impossible for the other participants to have their say, it is quite justified to put him in a box where he can hear but cannot be heard unless the judge switches on the intercom. Consider the example given by Murphy and Callahan: A man disturbs the performance of a play and is forcibly removed from the theatre by the owner. There is nothing wrong with that, they say—and rightly so. However, they suggest that Hoppe cannot account for this: he cannot justify the use of force to keep order in a theatre or a courtroom because that would be contrary to the ethics of argumentation and by implication a violation of someone's libertarian rights. In the same vein they write: "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..." Are they serious? Why should Hoppe or anyone else be concerned with a statement such as "I have once participated in an argumentation, therefore I cannot logically argue that criminals ought to be punished?" or "I have once participated in an argumentation, therefore no one can logically argue that I should be punished for my crimes?" Neither of those statements is part of or follows from Hoppe's theory. If Murphy and Callahan are serious then that is a further indication of their supine acceptance of the positivist methodology and its refusal to admit that principles can be principles without being either empirical generalizations or else mere syntactical or analytical tautologies.

Murphy and Callahan then continue with the amazing statement "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." True, they may try to convince me that they ought to have the right to punish me for my crimes, if I had committed any. There is a chance that they would succeed. But how on earth do they hope to convince me by means of logical arguments that they should have the right to club me, regardless of what I may have done or ever will do? If the (unqualified) statement "We have a right to club you" were justifiable then clubbing a person would be a justifiable action also in an argumentation. They might as well have said "We cannot convince

you of anything by clubbing you, but we're not even going to try arguing with you; we're just going to hit you." That would have forestalled any dialectical contradiction on their part simply by avoiding argumentation itself. Surely, they are not suggesting that they have made a point in an argumentation that hinges on dialectical contradictions when all they have shown is that there is no formal contradiction in the sentence they use to make their argument.

Of mice and men, and slaves

Their next argument is even worse. It shows decisively the extent to which they have misunderstood the argument from argumentation: "[E]ven 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... 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." That is not true: Aristotle would still be engaging in such a contradiction. To repeat, the relevant concept of contradiction here is not formal or syntactical contradiction (such as "A and not-A" or "A ≠ A") but dialectical contradiction. Aristotle's statement that barbarians have enough reason to obey orders and please their Greek masters but not enough to qualify as fully human is not contradictory in the sense of formal logic; but it is not defensible in an argumentation. If Aristotle had tried to justify his views to a moderately articulate barbarian, the contradiction would have been obvious. He could only try to avoid the humiliation of being caught in dialectical contradiction by refusing to justify his views to the so-called barbarians, by refusing to give them a hearing. However, the attempt would have been in vain. For that refusal is as much a contravention of the ethics of dialogue and argumentation as is the insistence that a formal contradiction should not disqualify an argument. It exemplifies not simply an intellectual mistake but a morally vicious stance. Any person, Greek or non-Greek, could have made that clear.

There is no way in which Aristotle — the Philosopher! — could have argued that his refusal to let the "barbarian" others speak for themselves was argumentatively justified. Refusing to argue is not a species of producing an argument. There can be no argumentative justification for Aristotle's refusal to put his statements to the only relevant test: engage a non-Greek in an argumentation. Murphy and Callahan do not see the dialectical contradiction here because they are not really looking for it. Not only that, they positively refuse to see it. After all, Aristotle was not merely stating the obvious, namely that the sentence "Greeks are rational in a way non-Greeks are not" is not a contradiction in terms. Yet, Murphy and Callahan claim (without argument) that Aristotle's refusal to talk to barbarians is as justified or as unjustified as our refusal to try to justify our views on zoos to a polar bear or a horse! "[T]he 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." What sort of argument is that? Do I need only contend that I am the only rational person in the world to justify the claim that my arguments are unassailable?

What Murphy and Callahan so obviously miss is the simple fact that we'd soon discover that polar bears and horses are not creatures with which it is wise or safe or indeed possible to reason. Are they suggesting that that is exactly what Aristotle would have discovered if he had had a face-to-face discussion with a barbarian, any barbarian; and that he therefore was justified in refusing to give them an opportunity to prove him wrong?

To insist, as Murphy and Callahan do, that to refuse another person a hearing is just as rationally justifiable or unjustifiable as not giving animals a forum in which to expound their views on zoos and animal rights, is ridiculous (as ridiculous as they apparently fear it is). It is precisely in the context of argumentation that we cannot overlook the difference between another person and another animal without making complete fools of ourselves. Surely, the difference between arguing about a person (or a horse) and arguing with that person (or that horse) is not so subtle as to make overlooking it an understandable mistake. In defense of Murphy and Callahan one might point out that academics, including economists and most other social scientists, tend to deem scientific only theories about humans beings that treat them not as potential opponents in an argumentation but only as suitable matter for research. I should think that that is a fundamental flaw in contemporary social and economic science. In an enquiry relating to the foundations of ethics it is utterly out of place.

However, Murphy and Callahan cannot get enough. They move on to “a more fundamental objection”: “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.” That is simply true but the question is whether it is a relevant criticism of Hoppe's argument. Suppose I am charged with a crime in China. To comply with some minimal requirements of justice the Chinese court concedes that I should be assisted by a competent translator. I need one to be able to participate in the arguments made in the court. Yet, my need for such a translator does not prove that the one I eventually get is my property. Did Hoppe, for whom argumentation is a practical affair, an interaction between persons and not a disembodied cognitive structure, say anything to suggest otherwise? I cannot find any place where he logically committed himself to such an absurdity and Murphy and Callahan do not direct me to one. What they do offer is another series of supposed counterexamples.

The first of these concerns an argumentation between a theist and an atheist over the question whether or not God owns our bodies or has instead merely granted us temporary control over it. Murphy and Callahan claim that the theist may be wrong in claiming that God owns all of us, but insist that he is not thereby contradicting himself. Therefore, or so they say, the thesis of self-ownership is not without a logically coherent alternative and so cannot be necessarily true. They fail to see once again that a dialectical contradiction is not a *contradictio in terminis*, a contradiction in what is said, but a contradiction between what is said and the saying of it. Moreover, they fail to note the difference between arguing about God and arguing with God. The question of God's ownership would have to be decided in an argumentation with God, not with any self-proclaimed representative of God, who would have a hard time proving his credentials anyway — so much so that it is doubtful that he would ever get to discuss the question of God's ownership itself. The same applies to discussions about

Society or The People having ultimate ownership of our bodies or other things. (In our academic communities, we love to pretend that we are the spokespersons for something grand and glorious, but there is also great mirth whenever we hear about someone out there in the netherworld of research objects who makes similar claims.) In any case, that theistic or socialistic beliefs are not, or need not be, internally inconsistent, does not modify in any way the presuppositions or the ethics of argumentation. What an argumentation between a theist and, say, a socialist can decide is whether the one's beliefs are more, or less, compatible with the presuppositions and ethics of argumentation than the other's beliefs are. However, because there are all sorts of theists and all sorts of socialists, and quite a few theistic socialists, one should not expect the outcome of such a discussion to depend on arguments of the sort that cannot be refuted in any other serious argumentation.

Murphy and Callahan then slide into another glaring dialectical contradiction. They attempt to make Hoppe sound as if he were a Georgist. Of course, the reference to Georgism is not essential. A reference to my adventures in a Chinese courtroom will serve as well to illustrate what they have in mind. The fact that I need standing room in the Chinese court in order to be able to attempt to justify my actions does not make me the owner of a little piece of China. The Chinese are not contradicting themselves in conceding me standing room in the court without granting me ownership rights in Chinese soil. Murphy and Callahan suggest that if the Chinese are not contradicting themselves then also one who "concedes" another the use of his body or some parts of it for the duration of the discussion is not contradicting himself if he denies the other ownership of his body. Do they believe that anybody who enters into a discussion with them should realize that, if it were not for their willingness to "concede" him some temporary use rights over his own body, they might as well treat him as their property? Would they be able to argumentatively justify that belief or their acting on it, should they ever have an opportunity or inclination to do so?

Murphy and Callahan then refer to David Friedman who, as they say, 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. However, Hoppe did not make the empirical and absurd claim that a person, merely because he is legally classified as a slave or subject, cannot argue. His argument was that such classifications and the actions they sanction or legitimize cannot be justified in an argumentation with the slaves or subjects, or indeed in any argumentation that takes all of the presuppositions of argumentation seriously. Obviously, as noted before, there may be cases where the use of force to deprive another of his freedom is justified, for example to make him pay for his crimes, or to stop him from completing the crime he is in the process of committing. A crime is a voluntary act; a criminal, in committing his act and refusing to rectify it or answer for it, places *himself* outside the law of reason. One may be justified in using force against a person who temporarily *is* outside the law of reason, "out of his mind", incapable of acting as a person—say, a drunkard in a delirium, or someone blinded with rage. However, these are not paradigmatic cases of the sort of slavery to which Friedman, Murphy and Callahan refer.

Recall that Aristotle had defended slavery with the argument that it is not primarily a conventional institution but a natural condition: slaves *are not* self-owners, that is

why they cannot be considered suitable discussion partners. His defense had failed, as we have seen, because contrary to the requirements of the ethics of argumentation he had refused to submit his reasoning to the only test that could decisively refute it. The scandal of slavery is not in the fact that slaves are not self-owners but in the fact that they are; that they are held as slaves despite the fact that they did not do anything that would justify another to keep them as slaves. In other words, the scandal of slavery has very little to do with the persons held as slaves and very much with the people holding them as slaves. And this is not a matter of opinion but an argumentatively justifiable conclusion. That is the point any Hoppeian, real or imagined, would make. No Hoppeian (and, let us hope, few others) would follow Friedman, Murphy and Callahan to where their argument leads them: whether or not you *are* a self-owner, whether or not you *are* a slave, has nothing to do with you and everything with what others say about you, how they treat you, and what they can get away with in dealing with you—you are what they say you are. Some notion of self-ownership!

At this point Murphy and Callahan realize that they'd better withdraw from the engagement and save what they can by declaring victory: "We do not wish to deny that there is 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." Indeed, it is not transcendental self-ownership that Hoppe is after, but a real and universal recognition of and respect for the real self-ownership of real persons—respect that is owed to them as long as they do not exercise their self-ownership in unjustifiable ways. A criminal has free will and owns his mind. The argument from argumentation does not deny that; what it denies is that criminal actions can be justified and therefore deserve respect. Depriving a criminal of his freedom of action is justified, not because he is not a self-owner but because he is. There is the difference with the man who is in a delirium: he is for the time being incapable of exercising self-ownership. Depriving him temporarily of his freedom of movement (he is *ex hypothesi* not capable of acting) is not a matter of justice but of prudence and maybe even kindness: one prevents him from doing things the probable consequences of which might burden him for the rest of his life, things that he could not even begin to justify when he'd come back to his senses.

Contrary to what Murphy and Callahan allege, Hoppe's argument does not "crucially" depend 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" The argument does not depend at all on an "empirical assumption", which (since they refer to real self-ownership as transcendental) must refer to the legal or social status of a person—that is to say, whether or not, and the degree to which, others respect him as a free and equal person. It does not depend on the legally imposed distribution of property in any society. If Hoppe said that one needs to be the owner of one's body in order to debate then he certainly should not be understood as saying what Murphy and

Callahan attribute to him, namely that one needs to be the *legally or officially recognized* owner of one's body in order to debate. That statement is absurd. I am legally classified as a Belgian (and recently also as a European) citizen; therefore I cannot act as free person without risking harassment or even severe punishment from the authorities. That legal condition does not prevent from me from participating in many argumentations or, more importantly, from dealing with most other people according the requirements of the ethics argumentation. However, I do not waste my time arguing with bureaucrats, their masters, or other more or less sophisticated or suave bullies, except on those all too rare occasions when they actually try to justify their activities.

But does it justify libertarianism?

Hoppe argued, as I did, that the a priori of argumentation cannot be denied in an argumentation. One can disregard it only by refusing or merely pretending to argue. Hoppe further argued, as I did, that within the context of argumentation only libertarian rights can be justified, because only libertarian rights define a context in which the conditions necessary for argumentation can be respected universally. The argument from argumentation points to the essential presupposition of the act of arguing, namely, that the participants *are and can only be* free persons, regardless of how others choose to treat them. It also points to its argumentatively undeniable ethical implication, namely that it is unjust to not respect the other, and it is unjust to presume to act as if the other were something else, unless by his own actions he has forfeited any claim to such respect. And last but not least, it points to the fact that the only arguers with which we have to deal, no matter how we wish to label ourselves, are other human persons. Consequently, we are bound to respect other human persons as we meet them, that is to say, with their material property as much a part of them as their body and mind. This does not mean that it is unethical to enquire about the validity of one's own or another's claim to have a right to this or that. It does make it unethical to presume that one is justified in taking another's property without argumentative, "dialogical" justification, without bothering to prove in an argumentation with the other that not he but somebody else has a justifiable title to the property. In short, the argument from argumentation implies that arguments for or against claims to contingent property must presuppose the libertarian principles of ownership if argumentation is to be free from dialectical contradictions.

At this point some academic will certainly cry out: Fallacy! Reasoning in a circle! Proves nothing! Indeed, the argument would be fallacious if its paradigmatic case were a typical academic game, where we could suppose that the arguers come to an argument as disembodied minds and at the end of it go away with an assortment of bodily organs and other valuable things — prizes won in the argumentation game. That, emphatically, is not the proper paradigm. Property rights are not *created* in an argumentation, no more than free-floating bodies and free-floating minds only come together to form a real person as a result of an argumentation. The proper paradigm is an argument between two persons who upon meeting one another reject one of the options open to each one of them, namely to physically eliminate or incapacitate the other, and instead sit down in an effort to let reason prevail. There is no circularity in

saying that when we sit down to argue with one another we cannot deny that it is we who are making the arguments — we, as we are, and not some dimensionless points in an abstract “argumentation space”.

The argument from the apriori of argumentation and the ethics it entails do not, and are not intended to, supplant the study of the natural law of the human world (that is to say, the natural conditions that mark the difference between order and disorder in the human world). They complement it by proving how we can be rational and argumentatively justify certain actions or statements if we are conscious of the fact that we, all of us, are *in* that world. The relative novelty of the word ‘libertarianism’ (in the relevant sense) should not blind us to the fact that the complementarity of natural law and reason has been known and appreciated for a long time already. Nor should the radical nature of libertarianism blind us to the fact that it is radical only because it presses the demand for interpersonal justification into corners where the argument from authority, be it God, Society, Science, Utility, or whatever other Convenient Abstraction, used to reign unchallenged.