

# Argumentation Ethics and the Question of Self-Ownership\*

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## Abstract

The anarcho-capitalist philosopher, Hans-Hermann Hoppe (1993; 2004), claims that self-ownership is the only ethical solution to the problem of social order. He claims that any denial of self-ownership represents a performative contradiction: that actively arguing against self-ownership presupposes one's self-ownership. I examine Hoppe's ethics and argue that, within that framework, self-ownership is *a* (not *the*) permissible ethic. There are strong empirical and theoretical cases to be made for libertarianism. Catching nonlibertarians in performative contradictions (*gotcha!*) is not one of them.

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## I. Introduction

Do humans have rights? If so, why? Some argue that individual rights are ethically prior to the consequences that follow from them. Ayn Rand and Murray Rothbard provide arguments along these lines. This perspective is also, broadly, that of natural rights theorists such as John Locke. For other libertarians, the ethical proof of the rights-based pudding is in the eating. Economists such as Ludwig von Mises and Friedrich Hayek advocate the *provision* of individual rights because they lead to a more prosperous society. Individual rights—in particular, well-defined and enforced rights to one's person and property—facilitate social cooperation. They are ethically desirable

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from what economist Leland Yeager (2001) has referred to as an indirect utilitarian perspective.

As a libertarian, I admit that arguments for the ethical priority of rights have always been appealing. *Inalienable rights to life, liberty, and property*? As does *The X Files*' Fox Mulder, I want to believe. But questions regarding which rights are or are not *natural* or *inherent* or *ethically necessary* to our existence are fraught with difficulties. Yet, some libertarians have become enamored with various “proofs” of ethical priority that rely on what I will term *gotcha!* tactics. These tactics are designed to involve opponents (real or imagined) in alleged self-contradictions or other absurdities. As an economist, I find these tactics to be unproductive and distracting. There are strong theoretical and empirical cases to be made for the role of individual rights in a prosperous society.

Rothbard (1998) provides an excellent example of what I would characterize as a *gotcha!* tactic with his argument that 100 percent self-ownership is the only permissible ethic. What if people are not 100 percent self-owners? Rothbard sees only two logical alternatives: (1) one group of people are owners of another group and (2) every individual is an equal part owner of every other individual (i.e., what he considers a “communist” ethic). Alternative 1 is rejected because it does not imply a universal ethic—one that applies to and for all individuals. That leaves option 2. According to Rothbard (1998, p. 46), here is the problem with it: “Can we picture a world in which *no* man is free to take *any* action whatsoever without prior approval by *everyone else* in society? Clearly no man would be able to do anything, and the human race would quickly perish” (emphasis in original). You think you favor a communist ethic? *Gotcha!*—everyone’s dead. Happy?

As an economist, I find these sorts of tactics to be unproductive. There are strong theoretical and empirical cases to be made for the critical role that individual rights play in a prosperous society. However, making those cases involves acknowledging that the world is complex; not everything is black and white; not everything is reducible to an *a priori* punch line. Falling victim to a *gotcha!* tactic like Rothbard’s is unlikely to convince anyone not already sympathetic to self-ownership. Among other objections, a critic can point out that Rothbard’s natural rights approach is fuzzy on the distinction

between discovering empirical versus normative truths about the world.<sup>1</sup>

More recently, however, Hans-Hermann Hoppe (1993, 2004) attempts to reach precisely Rothbard's conclusion but via a non-natural rights approach. Hoppe aims to provide a rigorous argument for the ethical necessity of 100 percent self-ownership and properly appropriated private property as a solution to the problem of social order. Many libertarians have warmly embraced Hoppe's approach. My own undergraduate mentor, Walter Block, goes as far as to say this: "One would have thought that all libertarians would have received such doctrines as Hoppe's [1993] with extreme satisfaction. . . . This is a magnificent book" (pp. 164–65).<sup>2</sup> However, I will argue that Hoppe's approach merely offers a different *gotcha!* tactic in place of Rothbard's. In particular, Hoppe claims that to deny one's 100 percent ownership of self involves an internal (or *performative*) contradiction. The claim does not stand up to scrutiny.

This is not to say that Hoppe's methodology and conclusions should not be treated seriously. Many prominent libertarians have perceived the arguments to be forceful (e.g., Block 1996; Kinsella 1996; Eabrasu 2009; van Dun 2009). Also, this type of argumentation-based ethics is associated with the likes of Jürgen Habermas (1990) and has been defended in this context by the philosopher Frank van Dun (2006).<sup>3</sup> Furthermore, the approach in this context is certainly novel and gives rise to many thought-provoking insights. However, in Hoppe's analysis, argumentation-based ethics is employed ultimately to lay an intellectual snare trap for nonlibertarians—one that is not convincing.

I generalize this argumentation-based approach to solving the problem of social order. Based on this generalization, I conclude that 100 percent self-ownership is *not* the only permissible ethic based on its assumptions. It is, rather, only one specific and permissible ethic among a general class of permissible ethics. As such, libertarianism is *a* permissible solution to the problem of social order but not *the* permissible solution. Not surprisingly, argumentation ethics does not provide a libertarian panacea. It is no substitute for rigorous theoretical and empirical demonstrations of the beneficial

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<sup>1</sup> Hoppe acknowledges this (1993, p. 113).

<sup>2</sup> There are also many libertarians, such as Murphy and Callahan (2006), who reject or criticize Hoppe's ethics.

<sup>3</sup> Van Dun's defense is a response to a criticism of Hoppe by Murphy and Callahan (2006).

consequences of well-defined and enforced rights to self and property.

## II. The Argumentation Ethics Argument for 100 Percent Self-Ownership

As van Dun (2009, p. 3) notes, “Argumentation does not take place in a normative void[;] one cannot seriously make the argument *that one ought not to argue*, or that *one ought not to take argumentation seriously*, without destroying the point of making that argument” (emphasis in original). Rather than relying on assumptions about what is inherent or necessary to our nature, then, our argumentation approach carries weight to the extent that we accept ethics as constructs of rational men. How can rational men be expected to arrive at shared recognition of permissible ethics if *not* by argumentation? Let us accept, for the sake of this particular argument, that a solution to the problem of social order must “be decided in the course of argumentation” (Hoppe 2004, p. 4).

Now, consider the question of who holds ownership over oneself—that is, the physical body.<sup>4</sup> Hoppe and Rothbard both claim that there are only three possibilities: (A) each individual has full self-ownership (*libertarianism*); (B) all individuals are equal co-owners in one another (*communism*); and (C) some individuals are self-owners and some individuals are owned by one or more other individuals (*free and slave classes*).

Rothbard (1998, p. 45) notes that C fails a universalization test and therefore must be rejected: “Here, one person or group of persons . . . are entitled to own not only themselves but also the remainder of society. . . . we *cannot* here have a universal or natural law ethic for the human race” (emphasis in original). Those ruled are “subhuman beings who do not have a right to participate as full humans in the rights of self-ownership [which] violates the initial assumption that we are [developing] an ethic for human beings as such” (pp. 45–46). C is inadmissible because it cannot be a *categorical imperative*. Categorical imperatives are ethical rules that can be justified as, in the words of Immanuel Kant (1997, p. 31), “maxim[s] through

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<sup>4</sup> Rothbard and especially Hoppe apply their analyses to not only ownership of an individual but also ownership of “all places and nature-given goods that he occupies and puts to use by means of his body” (Hoppe 2004, p. 3). I focus on ownership of the individual because I feel that it is prior to the ownership of places and goods. In other words, if a defense of self-ownership is undermined, the private ownership of places and goods necessarily falls in turn.

which you can . . . will that [they] become universal law.” According to Hoppe (1993, p. 316) the universalization principle is “implied in argumentation [because] everyone who can understand an argument must in principle be able to be convinced by it simply because of its argumentative force.”<sup>5</sup>

Both scenarios that remain (*A* and *B*) can be categorical imperatives, but Rothbard (1998, p. 46) claims that *B* (communism) is problematic in the following sense: “Can we picture a world in which *no* man is free to take *any* action whatsoever without prior approval by *everyone else* in society? Clearly no man would be able to do anything, and the human race would quickly perish” (emphasis in original). In a hypothetical world of two, three, or even ten men, perhaps this claim might be contestable; in our world of billions, it is undeniable. This is Rothbard’s *gotcha!*, and it is rooted in his natural rights perspective. The pursuit of existence is an end that is inherent to our nature. But this prompts the question of whether the pursuit of this end is an empirical or normative truth about humans.

Alternatively, one notes that someone arguing for *B* has (presumably) not gained prior approval from everyone else to make that argument. Argumentation involves actions that are undertaken by exerting control over one’s self and often other resources as well (e.g., the laptop computer on which I am typing these arguments). As Hoppe writes, “Anyone who claimed any proposition as valid vis-à-vis an opponent would already presuppose his and his opponent’s exclusive control over their respective body and standing room in order to say ‘I claim such and such to be true, and I challenge you to

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<sup>5</sup> The insistence on a universalization principle is an appealing one, but note that there are nontrivial questions regarding who and what to universalize across. Aristotle (2005, p. 6) excludes men “marked out for subjection” from the universalized across set. Alternatively, Korsgaard (2004, pp. 104–05) argues, “It is . . . our animal nature, not just our autonomous nature, that we take to be an end-in-itself.” Perhaps some maxims, then, can be specific to our animal nature and universalized across all animals. Kant sometimes suggests that our duties to ourselves and to other humans imply ethical standards for the treatment of animals. See Broadie and Pybus (1974) and Korsgaard (2004) for overviews of Kant’s thoughts on animals. We could also consider a scenario where God owns everyone. Since God is not a human being, an acceptance of his dominion as just would universalize across people. Perhaps, however, we can ignore this possibility since ownership is interesting in this context only to the extent that it implies control. It would only become relevant if, for example, God revealed Himself and began coercing individuals into certain acts and/or appropriating property. In relation to Hoppe’s arguments, Murphy and Callahan (2006) provide an interesting discussion of God as a *rightful owner having granted temporary control*.

prove me wrong' (2004, p. 5). Of possibilities *A* and *B*, the latter is problematic because arguing for it involves a performative contradiction. If a proponent of *B* willed it to be universal law then he would be violating universal law in arguing for *B*. This is Hoppe's *gotcha!*

What remains, for either Rothbard or Hoppe, is of course *A*: 100 percent self-ownership.

### III. A General Maxim Including 100 Percent Self-Ownership as a Specific Case

The conclusion above necessarily follows only if we accept that *B* (*communism*) and *C* (*free and slave classes*) exhaust the logical alternatives to *A* (*libertarianism*). But do *B* and *C* exhaust the alternatives to *A*? Consider a possibility *D*: *Each man will be partially and equally owned by everyone else, while maintaining a controlling share of self-ownership*. I will define *controlling share* as a share of ownership larger than any other individual's share of ownership. (Alternatively, if the share is smaller than or equal to any other individual's share, then it is a *noncontrolling share*.) *D* is a valid categorical imperative; it also does not rule out action. Importantly, *D* can be argued for without a performative contradiction.<sup>6</sup>

A man's own will to act overrides any other individual's share taken alone; he always has, as it were, first-mover status. A man's own will could only be overridden by a coalition of two or more equal other-owners of noncontrolling shares. Such a contrary coalition is costly in terms of time, effort, and information gathering.

*D* does not necessarily imply a libertarian ethic. If each man owns not only a controlling share of self but also a *majority* share—call this alternative *A'*—then this particular imperative is ethically equivalent to *A* (which, itself, is a specific case of *D* where the individual's share in self is unity and all other individuals' shares are equally zero:  $A \in A' \subset D$ ). Majority ownership implies that no coalition of other

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<sup>6</sup> Exercising my self-ownership share constitutes my ability to argue the point; likewise, I presume that any opponent can exercise their self-ownership share. The analogy to ownership in a corporation should not be lost here because it effectively indicates that exclusive control is not presumed in justifying actions and statements rationally. Moreover, one need not even presume a controlling share of self-ownership, as in *D*. Every shareholder in a corporation typically exercises an argument in the actions of the corporation with weight of  $1/n$ , where  $n$  is the number of equal unit shares in ownership. Presuming the smallest,  $1/n^{\text{th}}$ , weight to a given argument in the outcome of an argument does not in any way belie the fact that it is, indeed, an argument!

shareholders can override the majority shareholder's will; therefore, it implies a libertarian ethic. But if each man owns a controlling, nonmajority share of self, then the imposition of other-ownership upon a man (i.e., coercion) is permissible when a coalition of noncontrolling shareholders trumps the controlling shareholder. Table 1 summarizes various potential categorical imperatives of ownership in terms of whether they permit the possibility of acting man and whether they necessarily imply a libertarian ethic.

**Table 1. Potential Ownership Categorical Imperatives and Implications**

	Description	Action possible?	Libertarian ethic only?
<i>A</i>	100 percent self-ownership	Yes	Yes
<i>A'</i>	majority self-ownership; equal other-ownership of minority	Yes	Yes
<i>D</i>	controlling self-ownership; equal other-ownership of remainder	Yes	No
<i>B</i>	universal and equal other-ownership	No	No
	noncontrolling self-ownership; equal ownership of remainder	No	No
	no self-ownership; equal other-ownership of whole	No	No

#### IV. Does *D* Imply an Absurd Infinite Regress?

An astute commentator on a previous draft observed that universal partial ownership of individuals by other individuals might imply an infinite regress.<sup>7</sup> Consider a society of three individuals:  $\beta$ ,  $\theta$ , and  $\eta$ . Assume that  $\beta$  has a share of ownership in himself equal to  $0 < n < 1$  while  $\eta$  and  $\theta$  each own  $(1-n)/2$  share of  $\beta$ . A situation arises that is unique to the partial ownership of individuals (who are capable of ownership themselves) rather than of things (which are not).  $\beta$  owns  $(1-n)/2$  of both  $\eta$  and  $\theta$ , which ostensibly implies that  $\beta$  has a  $(1-n)/2$  share of each of  $\eta$ 's and  $\theta$ 's  $(1-n)/2$  share of ownership in  $\beta$ . And those shares then imply, for  $\beta$ , a  $(1-n)^2/4$  share of control of each of  $\eta$ 's and  $\theta$ 's  $(1-n)/2$  share of ownership in  $\beta$ . And so forth *ad infinitum*. It is easy to think that such an infinite and circular chain

<sup>7</sup> I thank Stephan Kinsella for this observation and for pointing out the problems it might entail. Later, I also found a similar argument made by Auberon Herbert (1978, p. 372): "Men either own themselves or they do not . . . If they do not, then they cannot possibly own and control each other, so long as they do not first of all own themselves . . . It would be like using a lever, where no point of support existed."

of ownership would be paralyzing if taken seriously and patently absurd.

However, there are quite reasonable ways of interpreting  $D$  without regress into paralysis. Recall that we are interested in  $D$ 's relevance to human action. Consider our three-person society again with  $\beta$ ,  $\eta$ , and  $\theta$ , and assume that  $n = 4/10$ . So  $\beta$  has  $4/10$  share self-ownership and  $\eta$  and  $\theta$  each hold a  $3/10$  share. Now, assume that  $\eta$  and  $\theta$  form a coalition (i.e., exercise their combined  $6/10$  share in  $\beta$ ) to prevent a certain action on the part of  $\beta$ . What is  $\beta$ 's recourse?  $\beta$  can exercise his  $3/10$  share in  $\eta$  to compel him to not exercise, or revoke the exercise of, his  $3/10$  share in  $\beta$ .  $\beta$  can do likewise with  $\theta$ . Assuming that neither  $\eta$  nor  $\theta$  changes their mind concerning the desirability of preventing the action in question, in neither case will  $\beta$  be able to veto  $\eta$ 's or  $\theta$ 's shares in  $\beta$ .

Another way to interpret  $D$  is through a slight modification of the claim. Call the result  $D'$ : each man is partially and equally owned by everyone else, while maintaining a controlling share of ownership in self, *while all ownership, in all cases, is limited to first-order control*. Previously, I have simply limited the concept of ownership to “first-order” exercises of control. An individual can exercise a share of control in himself and he can exercise a share of control in someone else *but* he cannot exercise an additional share of control in himself or someone else through a share of control in someone else. I have simply assumed the circularity away. Contrived as  $D'$  may be, it can be argued for without performative contradiction.<sup>8</sup>

## V. Conclusions

We are left with a continuum of ownership scenarios with elements that (1) are introducible as categorical imperatives, (2) are consistent with the survival of mankind, and (3) can be argued for without entailing a performative contradiction. Furthermore, only a subset of this continuum necessarily implies a libertarian ethic. On the one hand, 100 percent self-ownership is a permissible (and libertarian) ethic. On the other hand, so is an ethic where individuals have a controlling though minority share of ownership in their selves.

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<sup>8</sup> The interpretation of  $D$  in the previous paragraph is more appealing because it relies on plausible progressions of human actions to demonstrate how the circularity need not arise in an actual society where  $D$  is applied. The interpretation/modification in the present paragraph is arbitrary. The point is only to show that a scenario or scenarios exist that, like full self-ownership, can be argued for without a performative contradiction.

Coalition-based coercion is permissible, which potentially opens the ethical door for some sort of representative government.

The point of all this is not to argue against libertarianism, and I am not advocating for coalition-based coercion. The point is also not to argue against the usefulness of political ethics generally, nor against the usefulness of argumentation ethics as a particular approach. Rather, I am arguing against the use of argumentation ethics to set up an intellectual snare trap for nonlibertarians. Hoppe (1993, 2004) does precisely this. When the trap is sprung, the *gotcha!* moment is unlikely to convince. Upon scrutiny, the 100 percent self-ownership, libertarian ethic is not the only permissible ethic. There are other ethics that satisfy the universalization principle and can be argued for without performative contradiction.

The case for individual rights and liberties—for libertarianism—should not rest on intellectual parlor tricks. As clever as Hoppe’s arguments (and those of Rothbard before him) are, they are not ironclad, bulletproof, end-of-the-story libertarian panaceas. There are many strong arguments that evidence the importance of individual rights for human welfare. These arguments are theoretical and empirical, political, economic, and ethical. We can certainly learn from argumentation ethics and from analyses rooted in a natural law tradition. But there is no intellectual magic bullet where—*Gotcha!*—we’re all libertarians now.

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