

Articles

Hoppe's Derivation of Self-Ownership from Argumentation: Analysis and Critique

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1. Introduction

It is a common thought in philosophy that a person is a creature, whether human, Martian, or something else, who essentially has rights, liberties, and duties. It is another common thought in philosophy that a person is a creature who essentially has the capacity for rationality. Since rationality seems intimately connected with argumentation, a person is then seen as essentially having the capacity to argue. It seems natural, then, to look for a connection between these two essential aspects of personhood, namely, rights, liberties, and duties, on the one hand, and the capacity to argue, on the other. Advocates of “discourse ethics,” such as Karl-Otto Apel¹ and Jurgen Habermas,² propose ways in which we might try to forge this link, which lead them to conclusions favorable to social-democratic welfare states. Hans-Hermann Hoppe adapts their approach to libertarian ends.³ His “argumentation ethics” is an argument from the features of argumentative activity to the conclusion that each person has the moral rights to self-ownership, to acquire property in unowned resources by mixing her labor with them, and to exchange property with others by agreement. Hoppe claims to derive the second and third rights from the first, so the kernel of his argument is the part that leads to the conclusion that each person has the moral right to

¹ Karl-Otto Apel, *Towards a Transformation of Philosophy*, trans. Glyn Adey and David Frisby (London: Routledge and Kegan Paul, 1980).

² Jurgen Habermas, *Justification and Application*, trans. Ciaran Cronin (Cambridge, MA: MIT Press, 1993); Jurgen Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*, trans. William Rehg (Cambridge, MA: MIT Press, 1996).

³ Hans-Hermann Hoppe, *A Theory of Socialism and Capitalism* (Auburn, AL: Ludwig von Mises Institute, 2010), p. 115, n. 116.

self-ownership, which he interprets as the right to the exclusive control over one's own body. It is this kernel of Hoppe's argument that I discuss.

Hoppe's argument has been criticized by a number of theorists, but the criticisms have been somewhat patchy, sometimes mistaken, and often doubtful. Hoppe's argument has been defended by others, but the defenses seem to add little, if anything, to what Hoppe has said himself. The critics and defenders seem to be talking past each other and the debate is mystifying. My aim is to rectify this by commenting on this debate only in passing, and offering a logical analysis and systematic critique of Hoppe's argument. I argue that Hoppe's argument fails comprehensively, and my analysis of the ways in which his argument fails should be helpful to the perennial philosophical project of understanding the connection between moral status and rational capacities.

Hoppe's aim is to prove that each person has the moral right to exclusive control over her own body. He seeks to achieve this by means of a pragmatic contradiction argument. Such an argument involves an analysis of a specific type of activity, *A*, which shows that, for some proposition, *p*, if an instance of *A* occurs, then *p* is true; that is, the truth of *p* is a necessary condition for the occurrence of an instance of *A*. The occurrence of an activity of type *A* guarantees the truth of *p*, whether or not this is known to anyone who engages in an activity of type *A*. In consequence, if a person, as part of performing an activity of type *A*, affirms a proposition inconsistent with *p*, then she commits a pragmatic contradiction. She need not *affirm* anything contradictory; the totality of her statements may be self-consistent. However, she says something which is false because it contradicts a proposition the truth of which is a necessary condition of what she is doing. Thus, the falsehood she utters may contingently be false (if it is a contingent fact that an instance of an activity of type *A* occurs).

Hoppe offers an analysis of argumentation according to which a necessary condition for argumentation to occur is that a specific moral proposition, *q*, is true. This analysis is provided by what I call "the mutual recognition argument," which provides the basis for Hoppe's pragmatic contradiction argument, according to which anyone who argues that *q* is not true commits a pragmatic contradiction because the fact of her arguing shows that *q* is true. From this Hoppe infers that *q* is rationally indisputable and is therefore true. Thus, the point of the mutual recognition argument is to show that *q* holds for argumentation; and the point of the pragmatic contradiction argument is to show that *q* holds universally, whether or not people are arguing. Hoppe identifies *q* as the principle that each person has the moral right to exclusive control over her own body. Thus is the universal right of self-ownership derived from an *a priori* analysis of argumentation.⁴

⁴ There is a question as to whether the right to exclusive control over one's own body includes the right to sell or dispose of one's body parts. We need not consider that question here, but for a positive answer see my "A Competitive Market in Human Organs," *Libertarian Papers* 2, no. 27 (2010), pp. 1-21.

In Section 2, I set out Hoppe's mutual recognition argument and I show, by means of three counter-examples, that it is invalid. In Section 3, I set out Hoppe's pragmatic contradiction argument and I show that it is invalid, that one of its premises is false, and that it fails to link up in the intended way with the mutual recognition argument. I offer concluding remarks in Section 4.

2. Mutual Recognition

It is important for the following discussion to make rudimentary distinctions between rights, liberties, authorities (or "powers," in Hohfeld's terminology⁵), and liabilities. If a person has a right to do something, then other people have a duty to let him do it or, failing that, to compensate him if they interfere with his right. Liberties, however, do not entail corresponding duties on others. If someone has a liberty to do something, he simply lacks a duty not to do that thing. This entails that others have no right that he not do it (for then he would have a duty not to do it), which means that he does not need others' permission to do it. However, others may still have a liberty, or an authority, which they may exercise to prevent him from doing it, in ways that do not violate his rights. For example, I have the *right* to my own books, so I can exclude other people from using them, and other people have a duty not to use them without my permission. But when I join a library with free membership, I acquire the *liberty* to use any of the books in that library. I do not acquire the right to use any of those books, since I am not permitted to exclude other library members from using them. Other library members have the same liberty as I do, so if one of them is reading a particular library book just when I want to read it, then my liberty to use that book is frustrated, though no right of mine has been violated and I am not due compensation from the person who is reading the book, even though his action is disadvantageous to me. My liberty to use the books in the library is granted to me by the library. But the library has the *authority* to annul this liberty. For example, if the library decides that it wants a more select class of members, it may terminate my membership and thereby my liberty to use its books. In contrast, if I had had a right to use the library's books, the library would have had a duty to let me use them, so it could not have terminated my membership. Thus, even while I have the liberty to use the library's books, I have also the *liability* to lose that liberty, at the library's discretion.⁶

Hoppe contends that the activity of argument is impossible unless its participants recognize that each has the right to exclusive control over his own body:

⁵ Wesley Newcomb Hohfeld, *Fundamental Legal Conceptions*, ed. Walter Wheeler Cook (New Haven, CT: Yale University Press, 1919).

⁶ For more careful and detailed discussion of these distinctions, see *ibid.*

In order to recognize . . . [the norms implied in argumentation], it is only necessary to call three interrelated facts to attention. First, that argumentation is not only a cognitive but also a practical affair. Second, that argumentation, as a form of action, implies the use of the scarce resource of one's body. And third, that argumentation is a conflict-free way of interacting. Not in the sense that there is always agreement on the things said, but in the sense that as long as argumentation is in progress it is always possible to agree at least on the fact that there is disagreement about the validity of what has been said. And this is to say nothing else than that a mutual recognition of each person's [right to] exclusive control over his own body must be presupposed as long as there is argumentation.

Hence . . . the norm implied in argumentation is that everybody has the right of exclusive control over his own body as his instrument of action and cognition . . . Only as long as this right is recognized is it possible for someone to agree to what has been said in an argument and hence can what has been said be validated, or is it possible to say "no" and to agree only on the fact that there is disagreement.⁷

Hoppe's three premises, suitably interpreted, appear to be true. First, arguing is cognitive and is an activity (and is in that sense practical). Second, someone who argues with others is engaged in various actions, including those necessary to give expression to thoughts, such as talking or signing (or even singing). Even someone who argues with himself, purely mentally, is making use of his brain and is therefore utilizing his own body. The third premise is that argumentation is conflict-free in the sense that the participants can agree, even if all they can agree about is that there is disagreement. This premise is not true as it stands, since it is quite common for people to disagree about whether they disagree. It is not even true that arguers can agree about whether they are arguing, since they might be having an argument about that. Arguing *essentially* involves disagreement, but it is also essentially cooperative; there could be no arguing if the participants were not cooperating in arguing. Even if they disagree about whether they are cooperating in arguing, the fact that they are arguing shows that they are cooperating in arguing. This is, presumably, what Hoppe is getting at when he says that argument is conflict-free. So we have the following three true premises:

- (i) Arguing is both cognitive and practical;
- (ii) one who argues makes use of his own body;

⁷ Hoppe, *Theory of Socialism and Capitalism*, pp. 158-59.

- (iii) argumentation is conflict-free *in the sense* that the participants cooperate in arguing.

From these three premises Hoppe draws the following conclusion:

- (iv) When people are engaged in argumentation, each *ipso facto* recognizes that each has the moral right to exclusive control over his own body.

This is not so much an argument as a sketch of one, or a gesture at one, because Hoppe says little to explain the supposed link between the premises and the conclusion. The thought seems to be that if people use their bodies in cooperative activity, they must recognize each other's moral right to exclusive control over his own body. The reason Hoppe focuses on cooperation *in argumentation*, rather than cooperative activity in general, is that the pragmatic contradiction argument applies specifically to argumentation.⁸ Hoppe does nothing, though, to show why his thought linking cooperation and rights must be true. Since the validity of his mutual recognition argument depends upon this thought, it seems legitimate to complain that Hoppe has not made his case. However, we can do better than that. For we can see that Hoppe's thought is false, and thus that his mutual recognition argument is invalid, by constructing possible counter-examples in which (i)-(iii) are true while (iv) is false. Before we proceed with that, though, it will help to clarify Hoppe's argument if we consider two common objections which fail to identify counter-examples to it.

It has been objected that, as a matter of fact, people do engage in debate when they do not have the right to exclusive control over their own bodies, slaves being the most prominent example.⁹ This objection misunderstands the argument, as Hoppe correctly points out.¹⁰ The conclusion of the mutual recognition argument is that each person engaged in debate recognizes that each of the interlocutors has the *moral* right to exclusive control over his own body. This is not contradicted by the fact that people can

⁸ Ibid., pp. 155-56, n. 117.

⁹ David Friedman, "The Trouble with Hoppe," *Liberty* 2, no. 2 (November 1988), p. 44; Robert Murphy and Gene Callahan, "Hans-Hermann Hoppe's Argumentation Ethic: A Critique," *Journal of Libertarian Studies* 20, no. 2 (2006), pp. 62-63 and n. 9; Douglas B. Rasmussen, "Arguing and Y-ing," *Liberty* 2, no. 2 (November 1988), pp. 51-52; David Ramsay Steele, "One Muddle After Another," *Liberty* 2, no. 2 (November 1988), p. 48; Ethan O. Waters, "Beyond Is and Nought," *Liberty* 2, no. 2 (November 1988), p. 47; Leland Yeager, "Raw Assertions," *Liberty* 2, no. 2 (November 1988), p. 46.

¹⁰ Hans-Hermann Hoppe, *The Economics and Ethics of Private Property*, 2nd ed. (Auburn, AL: Ludwig von Mises Institute, 2006), pp. 404 and 406.

engage in argument even when their moral rights are not reflected in legal rights. The parties to a debate may recognize that each has a particular moral right even while they recognize that one or other of them has that moral right violated.

It has also been objected that people who subscribe to non-libertarian ethics can argue with each other despite the fact that they *deny* that they, or their interlocutors, have the moral right to exclusive control over their own bodies.¹¹ However, as Hoppe also points out,¹² this is consistent with the conclusion of his argument. For his argument entails that these people contradict themselves: they are denying something which they recognize as true in denying it. It is a commonplace that people sometimes contradict themselves.

A counter-example to Hoppe's argument must show that people can argue without recognizing each other's moral right to exclusive control over his own body. I show this in the following three counter-examples. Although I will henceforward usually drop the qualification "moral," my talk of rights or liberties should always be understood to be about *moral* rights or liberties.

First, imagine a society in which there is a noble and serfs. Each person in this society believes that the noble has the right to exclusive control over his own body; that no serf has the right to exclusive control over his own body; and that the noble has, and exercises, extensive rights to control the use of the bodies of the serfs. For example, everyone agrees that the noble has the right to make each of his serfs work for a specified part of each week for the noble's benefit, during part of which time the serf is under the managerial control of the noble who tells him what to do and how to do it. It is also believed by everyone that each member of the society has the right to convene an open debate, to take place on the next Friday morning, in which anything may be put on the agenda, from metaphysics to politics to sexual practices. In this debate, any opinion may be ventured, endorsed, criticized, or denied by anyone. Thus, there is no bar on discussing whether the division into noble and serfs is natural or beneficial or right; indeed, the proposition that each person should be entitled to run his own life has sometimes come up for discussion, but, although some entertaining arguments for the proposition have been elaborated (sometimes by the noble), no one takes the proposition seriously because it seems, to both noble and serfs, to be plainly absurd. Furthermore, it is believed by all that everyone at the meeting has the right (not just the liberty) to speak at the meeting; someone who has been unable to get a word in edgewise has the right to prevent the meeting from finishing until he has had a chance to speak. During these debates, each person recognizes that he, as well as all of the other participants, has the right to use

¹¹ Friedman, "The Trouble with Hoppe"; Murphy and Callahan, "Hans-Hermann Hoppe's Argumentation Ethic: A Critique," pp. 60-61; Yeager, "Raw Assertions."

¹² Hoppe, *The Economics and Ethics of Private Property*, pp. 400-402 and 405.

his body in a way needed to make a contribution to the discussion. None of them, however, recognizes any serf as having the right to exclusive control over his own body; they all believe that the noble has extensive rights to control the use of his serfs' bodies. In short, the right to participate in the debate falls far short of a right to exclusive control over one's own body, and the participants in a debate may recognize that each participant has the former right without recognizing that each has the latter.¹³

Second, imagine a society similar to the one just discussed except that all of its members believe that the serfs have no right to speak in the noble's presence. The noble periodically convenes a debate which all of his serfs are instructed to attend, but everyone present believes that no serf has the liberty to speak in the debate until the noble grants him that liberty. Let us suppose that the noble begins the meeting by saying, "Until I adjourn this meeting, I grant each of you the liberty of expressing your views, whatever they may be." For the space of the debate, everyone present recognizes that everyone present has the *liberty* to use his body in a way necessary to speak in the debate. However, during the debate, no one recognizes any *right* of any serf to use his body in this way, since each knows that in a lively debate he might not be able to get a word in (other serfs exercising their liberty may prevent him from exercising his), and each believes that the noble can withdraw a serf's liberty to speak at any time. Everyone believes that the serfs are granted a temporary liberty to speak along with the liability that this liberty may be withdrawn at the noble's whim. For example, everyone present accepts that, if one of the serfs keeps straying off the topic being discussed or starts insulting some of the participants, the noble may take away from that serf the liberty of participating in the debate. In short, a liberty to participate in argument falls short of a right to do so, and the participants in a debate may recognize that each participant has the liberty without recognizing that each has the right.

From these two counter-examples it may seem that we have to pare back Hoppe's argument to the following. The three premises of his argument entail that people engaged in debate recognize that each person engaged in the debate has the liberty to control his body in the ways needed to participate in the debate, at least so long as he is participating in the debate. It might seem that this argument is valid because its conclusion is so weak that it is trivially true. However, the conclusion is not trivially true. It is false, as the third counter-example will show.

Suppose that, in the society envisioned in the second counter-example, one of the serfs present at the debate has had his liberty to speak rescinded. However, as the debate proceeds and touches on a matter of practical concern, the serf realizes that he has a suggestion to make that would

¹³ This point is made in an abstract way by Daniel Shapiro, "Review of *A Theory of Socialism and Capitalism* by Hans-Hermann Hoppe," *Reason Papers* 15 (Summer 1990), pp. 154-55.

be very much to the noble's advantage. Although he believes that he does not have the liberty to speak, he speaks anyway (people often do things they are not entitled to do). The noble is initially outraged but permits the serf to continue and listens to what he says because the noble can see that it might be important. This serf is participating in the debate even though no one who is participating in that debate (including the serf himself) recognizes his liberty to control his body in a way needed for that purpose. They are merely treating him *as if* he had the liberty to speak, because he has something interesting to say. With regard to the moral principle that accords that serf the liberty to speak, they *behave as if* it is true, but they do not *recognize it as true*. In fact, they hold it to be false.

Therefore, the fact that people are engaged in argumentation with each other does not imply that each of them recognizes that each of them has the right to exclusive control over his own body; it does not imply that each recognizes that each of them has the right to engage in debate; and it does not imply that each of them recognizes that each has the liberty to engage in debate. It does imply, however, that, for the space of the debate, each *behaves as if* each of the participants has the liberty to control his body in a way necessary for him to engage in debate. Similarly, the fact that a person engages in argument by himself implies that he *behaves as if* he had the liberty to control his body in the ways needed to do so; it does not imply that he recognizes that he has either the right or the liberty to do so. Given that Hoppe's conclusion—that participants in argument *ipso facto* recognize each other's right to exclusive control over his own body—is false, and that his premises, (i)-(iii), are true, his argument is invalid.

It might be objected that these counter-examples each involve a *stipulation* about what rights or liberties are recognized by the participants in debate. If Hoppe's argument is valid, then what is stipulated in these counter-examples is impossible because, if Hoppe is right, debate cannot occur unless the participants recognize each other's right to self-ownership. This objection does make a good point in that it draws attention to the fact that, in order to show an argument to be invalid, an intended counter-example to it must describe a *possible* situation. We can add that a situation that seems to us to be possible might not really be so, since its description may involve a latent contradiction. However, my three counter-examples do appear to be self-consistent, given the meaning of the terms employed. If they involve a latent contradiction, that needs to be shown. Hoppe's argument does not show it. It would be arbitrary and dogmatic to insist that the three counter-examples must involve a latent contradiction simply because they invalidate Hoppe's argument.

We noted above that Hoppe focuses on argumentation, rather than cooperative activity in general, because the next step of his argument, concerning pragmatic contradiction, applies to argumentation. Before we consider that step in Section 3, we can illustrate the generality of the conclusion at which we have arrived. Thus, consider the following argument:

- (v) Participating in a boxing match is both cognitive and practical (practical in that it aims at some end, for example, knocking out the opponent, and cognitive in that one must have some idea of what to do in order to achieve one's end).
- (vi) One who boxes makes use of his own body.
- (vii) Boxing is conflict-free *in the sense* that the participants cooperate in beating up each other within the confines of the Marquis of Queensberry rules.
- (viii) Therefore, the participants *behave as if* each has the liberty to engage in a boxing match, but they might not recognize that each has that liberty.

For example, one or both may know that one of them has escaped from prison and so is duty-bound to be somewhere else, and thus does not have the liberty to be boxing here. Consider, too, another argument:

- (ix) Participating in a boss-underling relationship is both cognitive and practical (practical in that it aims at some end—for the boss, getting a job done, for the underling, getting paid—and cognitive in that one participant gives directions and the other implements those directions).
- (x) Bosses and underlings make use of their own bodies in performing their roles.
- (xi) Employment is conflict-free *in the sense* that the participants cooperate in bossing and being bossed, paying and being paid.
- (xii) Therefore, the participants *behave as if* each has the liberty to perform his respective role, but they might not recognize that each has that liberty.

For example, the employee might be a doctor who has been banned from practicing his profession because of incompetence, and the employee, and perhaps the employer too, knows this.

The same can be said about any activity in which people voluntarily engage with each other; by engaging in that activity with others, each participant behaves as if each participant has the liberty to engage in that activity. The restriction to voluntary activities is essential (that is the significance of Hoppe's third premise). For example, someone who has been kidnapped might not behave as if his kidnappers have the liberty to kidnap him, even if the kidnappers behave as if they do have that liberty. However,

even in the case of kidnap, the victim may, for the sake of remaining intact, cooperate with the kidnappers until he can see a way to get free. In that case, although he was kidnapped against his will, once he is captive he *chooses* to cooperate with his kidnappers for the duration of the kidnap, and *to that extent* he *behaves as if* the kidnappers had the liberty to kidnap him. Thus, the insight in Hoppe's mutual recognition argument is only this: where people engage in an activity voluntarily, either by themselves or with others, they thereby behave as if all of the acknowledged participants in the activity have the liberty to engage in that activity, at least for as long as the activity lasts. But this is surely the height (or depth) of banality.

3. Pragmatic Contradiction

In this section I show that Hoppe's pragmatic contradiction argument fails, in part because it is invalid, in part because it has a false premise derived from Hoppe's mutual recognition argument, and in part because the two arguments fail to link up properly.

The (false) conclusion of Hoppe's (invalid) mutual recognition argument is that, when people are engaged in argumentation, each *ipso facto* recognizes that each has the moral right to exclusive control over her own body. Hoppe's intended means of getting from that conclusion to the conclusion that every person has the moral right to exclusive control over her own body is his argument from pragmatic contradiction, which he calls "practical contradiction,"¹⁴ or "performative contradiction"¹⁵:

[A]ny truth claim . . . must be raised and decided upon in the course of an argumentation. And since it cannot be disputed that this is so (one cannot communicate and argue that one cannot communicate and argue), and it must be assumed that everyone knows what it means to claim something to be true (one cannot deny this statement without claiming its negation to be true), this has been aptly called "the a priori of communication and argumentation." . . .

[A]rgumentation is always an activity . . . [So], it follows that intersubjectively meaningful norms must exist—precisely those which make some action an argumentation—which have special cognitive status in that they are the practical preconditions of objectivity and truth.

Hence . . . norms must indeed be assumed to be justifiable as valid. It is simply impossible to argue otherwise, because the ability to argue so would in fact presuppose the validity of those norms which underlie any argumentation whatsoever . . . [Thus],

¹⁴ Hoppe, *Theory of Socialism and Capitalism*, p. 162.

¹⁵ Hoppe, *The Economics and Ethics of Private Property*, pp. 405-6 and 413.

reason can claim to yield results in determining moral laws which can be shown to be valid a priori. . . .

[T]he ethics implied in argumentation . . . [is such that its] validity cannot be disputed, as disputing it would implicitly have to presuppose it.¹⁶

The steps of the argument appear to be as follows, where “*q*” stands in for the designation of a specific norm:

- (a) A necessary condition of argumentation is that *q* is true.
- (b) In order to decide a truth claim, one must argue.
- (c) Therefore, one can dispute the truth of *q*, only if *q* is true.
- (d) Therefore, anyone who disputes the truth of *q* is mistaken.
- (e) Therefore, *q* is true.

This argument is invalid. The first two inferences are valid: (c) follows from the conjunction of (a) and (b), and (d) follows from (c). Up until that point, the argument exemplifies a standard pragmatic contradiction argument. However, the inference from (d) to (e) is fallacious. All that the premises (a) and (b) tell us about *q* is that if someone argues, then *q* is true. This is consistent with its being the case that, if no one argues, *q* is false. In order to obtain (e) validly we need to add a premise, for example, that someone argues. Alternatively, we can leave the premises as they are and infer validly, “If someone argues, then *q* is true.” This would bring the argument back into the form of a valid pragmatic contradiction argument. Thus, whatever norm “*q*” represents, Hoppe’s pragmatic contradiction argument could show validly only that the norm holds when someone is arguing: the truth of the norm would be *conditional on argumentation taking place*. Of course, people are always arguing, so argumentation will be taking place so long as there are people; perhaps, then, this is not a fatal weakness in Hoppe’s case.

Hoppe’s argument is unsound also because one of its premises is false. Premise (b) has been challenged by the claim that we might know some things immediately, without argument, such as perceptual judgments or self-evident truths.¹⁷ However, something cannot count as rational knowledge (as opposed to the sort of knowledge that we may ascribe to animals or plants or machines, or even humans in unreflective mode) unless it has been subject to

¹⁶ Hoppe, *Theory of Socialism and Capitalism*, pp. 154-57.

¹⁷ Rasmussen, “Arguing and Y-ing,” p. 51.

critical evaluation, and such evaluation involves argument. Since (b) is about deciding truth claims, it is about rational knowledge. So, I take (b) to be true. Premise (a), however, is false. We saw in Section 2 that to argue with someone is to *treat her as if* she had the liberty to argue. What is the norm here? Is it that arguers have the liberty to argue? If so, (a) is false, because participants in argument need not recognize the truth of that norm: they need only *behave as if it is true*. Is the norm that arguers ought to treat each other as if they had the liberty to argue? A participant in argument need not recognize the truth even of that norm. For example, an error theorist about morality thinks that all moral propositions are false (and thus that the supposed norm is false) because moral propositions ascribe moral properties to things and, as it happens, things do not have moral properties, though, due to peculiarities of our cognitive equipment, things *appear* to us to have moral properties.¹⁸ The error theorist nevertheless often *behaves as if* specific moral principles are true, perhaps because doing so helps her to achieve her ends. In particular, when arguing, she will *behave as if it is true* that she ought to treat her interlocutors as if they had the liberty to argue, but she will *not recognize this norm as true*—she may regard it simply as a useful fiction. It seems that, whatever we take the norm of argumentation to be, (a) is false. As a consequence, the supposed pragmatic contradiction never materializes.

Furthermore, Hoppe's pragmatic contradiction argument would not have achieved his purpose even if both it and the mutual recognition argument had been sound. Suppose that the conclusion (e) of the pragmatic contradiction argument is true. What does (e) say? It depends on what "q" stands in for. The answer to that is given by the conclusion of Hoppe's mutual recognition argument, (iv), which we can rephrase as:

- (xiii) A norm that is recognized by the participants in argumentation is that each participant in argument has the moral right to exclusive control over her own body.

So, the norm identified by "q" is:

- (xiv) Each participant in argument has the moral right to exclusive control over her own body.

However, this falls short of Hoppe's intended conclusion, which is:

- (xv) Every person (whether engaged in argument or not) has the moral right to exclusive control over her own body.

¹⁸ For example, J. L. Mackie, *Ethics: Inventing Right and Wrong* (Harmondsworth: Penguin, 1977), chap. 1; Richard Joyce, *The Myth of Morality* (Cambridge, UK: Cambridge University Press, 2001).

The failure here is due to the fact that, according to Hoppe's mutual recognition argument, the norm implied in argumentation has a *restriction within its content*: it assigns a right not to all people, but to those people, if any, who are participants in argument. However, the norm that Hoppe wants to derive is a different norm because it lacks that restriction within its content: it assigns a right to all people *simpliciter*.

Can this gap be bridged? One might try to get from (xiv) to (xv) by means of the following sub-argument:

People have a particular right in virtue of being participants in argument;

every person has the capacity to participate in argument;

so, every person has that particular right.

However, this sub-argument is invalid, for participants in argument might have the right in question *only because, and while, they are participating in argument*, in which case people who are only potentially participants in argument might not have that right.¹⁹ This would be similar to the way in which a tenant has the right to use a property only because, and while, she pays the rent. Hoppe responds to this objection with the following retort: "In the same way as the validity of a mathematical proof is not restricted to the moment of proving it, so is the validity of the libertarian property theory not limited to instances of argumentation."²⁰ But this retort is ineffective. It is true that, if a mathematical theorem is proven at a particular time, it is proven *simpliciter*; it is not proven to hold only at that time. It is also true that, if Hoppe had proved (xiv), he would have proved (xiv) *simpliciter*, whether anyone is arguing or not. But he would not thereby have proven (xv), because saying that (xiv) is true whether anyone is arguing or not, is not the same as saying that (xv) is true.

In short, Hoppe's pragmatic contradiction argument is invalid, because his premises entail that the norms of argumentation hold not absolutely, but only conditionally on the existence of argumentation. It is unsound also because it relies on the falsehood, implied by the conclusion of the mutual recognition argument, that arguers must recognize the truth of some norms. It was doomed anyway because any norms specific to argumentation assign moral status to people as participants in argument rather than to people as such.

¹⁹ Murphy and Callahan, "Hans-Hermann Hoppe's Argumentation Ethic," pp. 56 and 58-59; Shapiro, "Review of *A Theory of Socialism and Capitalism*," p. 155; Waters, "Beyond Is and Nought," p. 47.

²⁰ Hoppe, *The Economics and Ethics of Private Property*, p. 406.

4. Conclusion

There can be few theorists who would deny that the moral status of persons, *qua* persons, is grounded in the capacities that make a creature a person; and there can be few theorists who would deny that one of these capacities is the capacity for argument. It has, however, proven difficult to show why or how a person's moral status depends upon the capacity to argue. Hoppe's attempt to derive a universal right to self-ownership from uncontroversial features of argumentation is not successful.

The mutual recognition argument is intended to show that debate implies mutual recognition of the right to exclusive control of one's own body. However, the argument is invalid. The most that is shown by the fact that people are engaged in debate is that, for as long as they are engaged in debate, the participants treat each other as if they had the liberty to engage in debate. That seems a banality.

The argument from pragmatic contradiction is intended to show that any norms essential to argument are binding on all people at all times. The argument is invalid because the premises concern norms that hold in debates, but the conclusion concerns norms that hold in all circumstances. The argument is unsound also because it presupposes that arguers must recognize the truth of norms, but, in fact, an arguer need only behave as if the relevant norms are true. Furthermore, the argument is parasitic on the mutual recognition argument, but fails to link up with that argument, because the norm that is the concern of the mutual recognition argument assigns moral status to people *qua* participants in argument, whereas the norm that is the concern of the pragmatic contradiction argument assigns moral status to people *qua* people.

The failure of Hoppe's arguments to achieve his aims seems comprehensive. We should, however, be able to learn lessons from the ways in which he fails. The first is that pragmatic contradiction arguments need to be treated cautiously. A pragmatic contradiction argument, recall, involves an analysis of a specific type of activity, *A*, which shows that the truth of some proposition, *p*, is a necessary condition of the occurrence of any instance of *A*. It also requires a premise to the effect that someone performs an activity of type *A* in which he asserts a proposition inconsistent with *p*. The person concerned is then guilty of a pragmatic contradiction, which shows that the proposition he asserted is false. As we noted in Section 3, a limitation of such arguments is that the truth of the proposition, *p*, is conditional upon the occurrence of an instance of the type of activity, *A*. One mistake that can be made is to overlook this limitation and assert *p* unconditionally. This is what Hoppe does when he assumes that the norms of argumentation would apply to other activities. The second kind of mistake is to proffer a faulty analysis of the type of activity, *A*. Hoppe makes this mistake as well. He claims that argumentation implies the mutual recognition by its participants of each other's right to exclusive control over his body, which we saw in Section 2 to be false. He also claims that argumentation implies that its participants

recognize the truth of some norms, which we saw in Section 3 to be false. The third kind of mistake is to affirm that someone is engaging in the type of activity, *A*, when he is not. This is a less common mistake, and one which we have not needed to discuss here.

The second lesson is that, although the *capacity* to argue may be central to moral status, *argumentation* seems too specialized an activity to be a ground for a universal moral status. The idea of cooperative activity in general might offer better prospects, since it seems that a creature can be a person only if he has, or had, or at least is capable of, interpersonal relations with other persons. The idea of mutual recognition of personhood seems to have some role to play here. However, the third lesson is that arguments invoking mutual recognition seem unlikely by themselves to yield conclusions about the truth of moral principles because, it seems, whatever can be explained by an agent's recognition of another's moral status can equally well be explained by the agent's *pretending* that the other has that moral status in order to interact with him in a way that serves the agent's purpose.

