

2ND MISES SEMINAR

7-8 OCTOBER 2005

A Critique of Rothbard and Hoppe's Arguments

Sustaining the Necessity of Libertarian Axioms of "Self-Ownership" and "Homesteading"

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(working paper)°

| | | |
|-------|---|----|
| 1 | Introduction. | 3 |
| 2 | Are "self-ownership" and "homesteading" necessary?..... | 3 |
| 2.1 | The argument of reductio ad absurdum. | 4 |
| 2.1.1 | The First Alternative..... | 5 |
| 2.1.2 | The Second Alternative..... | 7 |
| 2.2 | The argument by "performative contradiction." | 9 |
| 2.2.1 | The previous critics of the ethical argumentation by "performative contradiction." | 10 |
| 2.2.2 | Why Hoppe's argument by performative contradiction is not a valid argument?..... | 15 |
| 2.3 | The axiom of homesteading. | 17 |
| 3 | What conclusion for libertarianism? | 18 |

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° I wish to express my indebtedness to all members of Austrian Seminar in Paris directed by Guido Hulsmann, who pertinently criticized the earlier drafts of this paper and especially to Nikolay Gertchev and Gabriel Giménez-Roche who have taken great pains to improve the English formulation of my arguments. I am also indebted to my pedagogue Marian Panait, although unknown, a great libertarian thinker.

1 Introduction.

Libertarian ethics owes to the endeavors of Murray N. Rothbard¹ and Hans-Hermann Hoppe² its current status of a deductive system based on two axioms: *self-ownership* and *homesteading*. Certainly, considering only the construction of a deductive ethical system will not suffice to grasp all the merits of Rothbard and Hoppe's theory. While incompatible with libertarianism, since the early times, we can find exposed many other deductive ethical systems. What distinguishes libertarianism in this composite ethical landscape is its meta-ethical position.³ Rothbard and Hoppe argued that *only* the libertarian ethical system can be valid. They provided arguments in favor of the necessity of the libertarian axioms. Were their argumentation correct, we could assert that libertarian ethics is the only one to be true (*monism*), and that it would be true independent of any opinion and will (*absolutism*.) It is precisely this idea that we want to question in this paper. The aim of our paper is to re-examine the Rothbard-Hoppe argumentation. Our conclusion will be that we do not have enough reasons to accept the absolutist and the monist claim of libertarianism.

In order to defend this point, we will analyze each of the two arguments sustaining the necessity of the self-ownership axiom and the argument formulated by Hoppe favoring the necessity of the homesteading axiom. The two arguments supporting the necessity of the self-ownership axiom that we will discuss are Rothbard's argument by *reductio ad absurdum* and Hoppe's argument by performative contradiction. When discussing the latter, we will first show why the previous critics (Hans Albert,⁴ David Friedman,⁵ Gene Callahan and Robert Murphy)⁶ are not providing sufficient reasons to reject it. Second, we will contend that, nonetheless, the arguments advanced by Hoppe can be criticized on purely logical grounds. Finally, we will conclude our analysis by showing the consequences of this criticism for libertarianism.

2 Are "Self-ownership" and "Homesteading" Necessary?

Let us begin by stating first the precise meaning of the axioms. The standard rothbardian formulation, also endorsed by Hoppe⁷, is the subsequent one: for the self-ownership axiom: "Each man should be permitted (i.e. have the right to) the full ownership of his own body."⁸ For homesteading axiom: "Every man has the right to own (...) whatever property he has 'created' or gathered out of the previously unused, unowned state of nature. (...) The pioneer, or homesteader, is the man who first brings the valueless unused natural objects into production and use."⁹ Now in the following we will examine the arguments supporting the necessity of those two axioms.¹⁰ With

¹ Murray N. Rothbard, *The Ethics of Liberty* . (New York : New York University Press. 1998,) *For a New Liberty* (San Francisco: Fox&Wilkes, 1996)

² Hans-Hermann Hoppe, *Democracy the God that Failed* . (New Brunswick: Transaction, 2001,) *The Economy and Ethics of Private Property. Studies in Political Economy and Philosophy*. (Boston: Kluwer, 1993,) *A Theory of Socialism and Capitalism*. (Boston: Kluwer, 1989,) *Rothbardian Ethics*. <http://www.lewrockwell.com/hoppe/hoppe7.html>.

³ One should not confuse the ethical claim with the meta-ethical one. A libertarian ethical claim consists in an ought-statement like "you ought to do 'x'." A libertarian "meta-ethical" claim would be expressed in a statement like "you could not accept an ethical system other than the libertarian one." Therefore, to study the validity of the deduction from axioms to prescriptions is an ethical inquiry. To study the status of the whole ethical system is a meta-ethical inquiry.

⁴ Hans Albert, *Between Social Science, Religion and Politics*. (Amsterdam: Rodopi, 1994.)

⁵ David D. Friedman, *Some Brief Comments on Hoppe's Justification of The Private Property Ethic* . www.daviddfriedman.com/Libertarian/On-Hoppe.html .

⁶ Gene Callahan & Bob Murphy, *Hans-Hermann Hoppe's Argumentation Ethic : A Critique* <http://www.anti-state.com/murphy/murphy19.html> .

⁷ Hans-Hermann Hoppe, *Democracy the God that Failed*. (New Brunswick: Transaction, 2001,) p.200

⁸ Murray N. Rothbard, *The Ethics of Liberty*. (New York : New York University Press. 1998,) p.45

⁹ Murray N. Rothbard, *The Ethics of Liberty*. (New York : New York University Press. 1998,) p.49

¹⁰ As far as we can see, it is not clear whether the norm of homesteading is deduced from the axiom of self-ownership or whether it is another axiom built upon an independent justification. An independent

the view in hand to demonstrate that libertarian axioms of self-ownership and homesteading are not necessary, we will consider two types of arguments exposed by Rothbard and Hoppe: *reductio ad absurdum* and performative contradiction.

2.1 The Argument of *Reductio ad Absurdum*.

The structure of the first argument, that is, by *reductio ad absurdum*, is as follows: first, we presuppose the absurdity of the statement we want to verify; second, we evaluate exhaustively all the other alternatives to the presupposition; finally, we prove the absurdity of all these alternatives; then we logically deduce the truth of the statement we initially supposed absurd. By the same token, this proves the truth of the initial statement for all the other alternatives have been shown to lead to absurdity. There are two and only two criticisms that can be addressed to the conclusion of an argument by *reductio ad absurdum*. One is to show that the enumeration of the alternatives has not been exhaustive. The other one consists in proving that one of the alternatives does not lead to absurdity. Given the exposition of the Rothbard - Hoppe argument, we do not think that the first way to criticize its conclusion could be very productive. Therefore we shall take the second way. Let's first present the details of this argument,¹¹ and then contend that it is reasonless.

"Let us (...) concentrate on the question of a man's ownership rights to his own body. Here are two alternatives: either we may lay down a rule that each man should be permitted (i.e. have the right to) the full ownership of his own body, or we may rule that he may *not* have such complete ownership. If he *does*, then we have the libertarian natural law for a free society as treated above. But if he *does not*, if each man is *not* entitled to full and 100 percent self ownership, then what does that imply? It implies either one of two conditions: (1) the 'communist' one of Universal and Equal Other-ownership, or (2) Partial Ownership of One Group by Another - a system of rule by one class over another. These are the only logical alternatives to a state of 100 percent self ownership for all."¹²

"Hence, no society which does not have full self- ownership for everyone could enjoy a universal ethic. For this reason alone, 100 percent self-ownership for every man is only viable political ethic for mankind."¹³

These passages constitute the first two steps of the *reductio ad absurdum* argument.¹⁴ In the following we will expose the last step of the rothbardian argumentation, i.e. the proof that each alternative lead to absurdity. By analyzing the two alternatives, we will conclude that the first alternative actually leads to absurdity, while it is not the case for the second one.

justification for the necessity of the "homesteading" axiom, proposed by Hoppe, will be considered later in this paper.

¹¹ For this argument, we will use quotations from Rothbard's *Ethics of Liberty*. There are also other places where we could find the same argument stated, but its essence does not change at all. We will also invert the presentation of the alternatives. Instead of beginning the analysis by the second alternative, as Rothbard proceeded, we will begin with the first one. Again, this has no bearing whatever on the essence of the argumentation.

¹² Rothbard N. Murray. *The Ethics of Liberty*, (New York: New York University Press, 2002) p. 45.

¹³ Rothbard N. Murray. *The Ethics of Liberty*, p.46.

¹⁴ In the footnote corresponding to this paragraph, Rothbard explains why the other logically possible alternative - "no one owner of no one" - is not pertinent for the analysis. So, we could agree with Rothbard that there are two and only two genuine alternatives to "self-ownership."

2.1.1 The First Alternative.

Rothbard explains as follows why the first alternative is unacceptable:

"What then of alternative (1)? This view, at least, does have the merit of being a universal rule, applying to every person in the society, but it suffers from numerous other difficulties. In the first place, in practice, if they are more than a very few people in the society, this alternative must break down and reduce to Alternative (2), partial rule by some over others. For it is physically impossible for everyone to keep continual tabs on everyone else, and thereby to exercise his equal share of partial ownership over every other man. In practice, then, this concept of universal and equal other-ownership is Utopian and impossible, and supervision and therefore ownership of others necessarily becomes a specialized activity of a ruling class."¹⁵

What Rothbard sustains is that the alternative - "everybody is the owner of everybody" - is one that is not practicable for a large society. Rothbard considers this alternative to be based on an unanimous consent. His point is that even if the unanimity could be reached in a society with a small number of members, this would be practically impossible in the case of a larger number of members. It should first be acknowledged that it is not obvious whether impracticability entails impossibility. Let us suppose for the sake of the argument that it does. Second, the case here is not one of an absolute impracticability, but rather of a partial one. A patent difficulty will be to find out a criterion that makes clear the threshold beyond which impracticability entails impossibility.

Another difficulty is that even with the help of such a criterion, this would still not be a case of principle. We could not make a statement like: "Well, 'self -ownership' is a necessarily true normative axiom, but only for the societies of at least 'n' members" (where 'n' is the number of individuals beyond which this alternative is an absolute practical impossibility.) Rothbard himself would not be satisfied with such a partial conclusion, because even in this small, less-than-"n"-members-society moral conflicts could still arise and will need a solution. Therefore, we can conclude up to now that this alternative does not lead to absurdity.

To this argument, Rothbard adds another one, which is much more incisive:

"But suppose for the sake of the argument that this Utopia *could* be sustained. What then? In the first place, it is surely absurd to hold that no man is entitled to own himself, and yet to hold that each of these very men is entitled to own a part of all other men! But more than that, would our Utopia be desirable? Can we picture a world in which *no* man is free to take *any* action whatsoever without prior approval by *everyone else* in the society? Clearly no man would be able to do anything, and the human race would quickly perish. But if a world of zero or near zero self-ownership spells death for the human race, then any steps in that direction also contravene the law of what is best for man and his life on earth."¹⁶

The first part of the quotation could not be considered a demonstration but rather a restatement of the conclusion. However, the second one is in some important aspects very different from the previous argument. Let us split it in three parts: i) even if the norm "everyone owns everyone" is practicable, it is not desirable; ii) it is not desirable because it will cause the death of those who have adopted it; iii) it will be so, because in order to perform an action, anyone will need the agreement of everyone else.

We should remark the "consequential" type of justification of the first part of the argument. This would be a justification of the necessity of the axiom only if we were able to argue that this norm is not desirable from the standpoint of any moral person (present, past, and future). Rothbard does not pursue the argumentation in this direction. He directly proceeds to the second part of his argument which merely follows the course of his previous argument based on practicability.

¹⁵ Rothbard N. Murray. *The Ethics of Liberty* p.46

¹⁶ Rothbard N. Murray. *The Ethics of Liberty* p.46 (original emphasis).

However, in order to constitute a decisive argument we will need a justification of principle. This justification arrives in the third part of the rothbardian argument.

The third part of the argument expresses a very important idea: "Can we picture a world, in which *no* man is free to take *any* action whatsoever, without prior approval by *everyone else* in the society?"¹⁷ This could be seen as an argument of principle. More precisely, in a previous argument, Rothbard had interpreted the norm "everyone ought to own everyone else" as implying that every participant ought to have "1/n" ownership of everybody, including himself (where 'n' is the number of moral persons.) For this reason, he has stated that this society would face the difficulty of unanimity. Let us here reformulate the interpretation of "everyone ought to own everyone else" as meaning that every participant ought to have "(1/n) of m" (where the "n" is still the number of participants and "m" is an object of ownership.)

What this means precisely is that were someone to perform an action ("m"), he would need the agreement of all others ("n-1"); but in order to ask for this agreement, he would need a previous agreement from the others ("n-1") and so on. Logically the agreement of all the members does precede any single action, even a single attitude. Unless the agreement is spontaneous or predetermined, one will always need another previous agreement. Moreover, consider "m" not as a random action but as a physical part of one person. Take for example "m" as being "vocal cords;" "1/n" of "m" would mean every one is entitled to "1/n"-part of the vocal cords under consideration. - Now consider "m" as being a "brain;" everyone would be entitled to "1/n" of any brain. And so on. This is not a question of practicability for a society with a certain number of participants. This is rather a question of conceivability of this society. For "m" could represent an infinity of elements of human beings and of human actions, the division of property in "1/n"-parts concerns all possible "m's." This situation is inconceivable or absurd.

Maybe it is for this reason (i.e. the impossibility of collective ownership of bodies) that we do not see any single author arguing in this direction. However this is the correct conclusion of the common collectivist theory had it used but the "principle of identity" and the "principle of non-contradiction" as rules of deduction. Maybe this is also the reason why every single attempt to apply the norms of collectivism led, as Rothbard stated, to the second alternative: "someone ought to own someone else." Although we believe that a more detailed and subtle version of this argument could prove the impossibility of realizing a coherent collectivistic society, we would not develop further this idea. What is here essential is that the rothbardian argument could be shaped in a more accurate restatement.¹⁸ Therefore we have to acknowledge that this first argument is criticism-proof.

Now, if the second alternative to "self-ownership" is also proved absurd, Rothbard's defense of libertarianism through a *reductio ad absurdum* would be correct. Our criticism of Rothbard needs hence to question the consistency of this proof.

¹⁷ Rothbard N. Murray. *The Ethics of Liberty* , p.46

¹⁸ At others places Hoppe expresses this argument in very clear terms: "if it [the alternative of equal co-ownership] were adopted all of mankind would perish immediately, for every action of a person requires the use of scarce means (at least his body and its standing room). However, if all goods were co-owned by everyone, then no one at any time or place would be allowed to do anything unless he had previously secured everyone else's consent to do so. Yet how could anyone grant such consent if he were not the exclusive owner of his own body (including its vocal chords) by means of which this consent would be expressed? Indeed, he would first need others' consent in order to be allowed to express his own, but these others could not give their consent without first having his, etc". Hans-Hermann Hoppe, *Democracy the God that Failed*, (New Brunswick: Transaction, 2001). p. 201 (n.17).

2.1.2 The Second Alternative.

Rothbard explains as follows why the second alternative is unacceptable:

"Let us consider alternative (2); here, one person or group of persons, G, are entitled to own not only themselves but also the remainder of society R. But, apart from many other problems and difficulties with this kind of system, we *cannot* here have a universal or natural-law ethic for the human race. We can only have a partial and arbitrary ethic (...). Indeed, the ethic which states that Class G is entitled to rule over the Class R implies that the latter, R, are subhuman beings who do not have a right to participate as full humans in the rights of self-ownership enjoyed by G- but this of course violates the initial assumption that we are carving out an ethic for human beings as such.

And, as we saw above, any ethic where one group is given full ownership of another violates the most elementary rule for any ethic: that it apply to every man. No partial ethics are any better, though they may seem superficially more plausible, than the theory of all-power-to-the-Hohenzollerns."¹⁹

Let us split again the structure of the argument in its constitutive parts. i) "One ought to own someone else" cannot be accepted as a normative axiom because it is not universal. ii) It is not universal because it is not applicable to every moral person or to every man in the Rothbard's formulation. First, we will shed light on two ambiguous concepts existing in the second part of the argumentation: moral person and universality. Second, we will criticize it.

The second part of the argument contains at least two elements which require clarifications: the moral person definition and the meaning of universality. For a normative statement to have an absolute and unique application, it is important to have an absolute and unique reference also. To put it differently, if a universal norm is a norm applicable to every moral person, we need first to provide a definition of the moral person in order to understand to whom it is applicable. In the absence of a clear-cut definition of moral person, even if we had an absolute and unique norm, we would be confronted with a multitude of possible applications. If this would be the case, the libertarian axioms of homesteading and self-ownership would be applied according to the moral person's definition we endorse. For example the libertarian axioms could be applied to animals, machines, Aryans and so on. Although Rothbard does not provide clear-cut definition of moral person, Hoppe clarifies this point by proposing the ability of engaging in argumentation. Accordingly to Hoppe this is a necessary fact.

Apart the definition of a moral person there is another point which needs to be clarified: the meaning of universality. One could remark that the ethical principle "one ought to own someone else" is universal since applicable to every moral person.²⁰ Indeed if the world is divided, as Rothbard invites us to suppose, in class R and class G, by formulating a rule such as "the class G is entitled to rule over the class R" we formulate in fact an universal rule inasmuch as it concerns the class G as well as the class R. However, we have to remark that from Rothbard's point of view the principle is not universally applicable because it is not *symmetrically* applicable to all members of the two classes. Considering this conception of universality, we have to reformulate again the rothbardian argument in the following manner: "a statement cannot be considered an ethical principle if it is not universally applicable, i.e. in a symmetrical manner."

Now, if we accept these conceptions of moral person and universality, we can turn our attention to the first part of the rothbardian argument in order to examine its validity. The first difficulty we can raise resides in its very formulation. Supposing therefore that the norm "one ought to own someone else" is not universal and that only the norm "everyone ought to own himself" has such a property. However, we could ask why should a statement have to be universally applicable in order to be considered a normative axiom?

¹⁹ Rothbard, N. Murray. *The Ethics of Liberty*, pp. 45-46.

²⁰ It is universally applicable to everyone insomuch as we know what "everyone" means. As already sated, this is a difficult and an important but different question.

In his argumentation, Rothbard presuppose that any normative statement should be universally applicable in order to be eligible to the status of an ethical axiom. But clearly, the universality - be it understood as symmetrical applicable - is not necessarily one of the essential properties of an ethical axiom, at least, it is not an obvious one. An additional argument is required in order to justify universality as a *conditio sine qua non* for an ethical axiom. However, this argument should be an independent one in order to avoid circularity.

Also, it is not because a statement is not universally applicable that it will necessarily be absurd. We have to remember that the aim of Rothbard's argument by *reductio ad absurdum* is to prove the absurdity of the second alternative: "one ought to own someone else." But even if we accept that this statement is not universal and even if we accept that an ethical axiom have to be universal, still this is not a proof of its absurdity.

To put it differently, the aim of Rothbard argumentation is to show that this second alternative is unacceptable because absurd. In turn what Rothbard's argumentation shows is that the norm "one ought to own someone else" is unacceptable because it is applicable in an asymmetrical manner. At its very best, the argument states that "one ought to own someone else" could not be a candidate for an ethical axiom but not also that this statement leads to absurdity. The statement "one ought to own someone else" is still conceivable even if not universally applicable. And as we already explained, in the absence of an additional argumentation, the *petitio principii* could not be avoided.

Moreover, a further analysis of the *petitio principii* implied by rothbardian argumentation will reveal us another inconsistency. Since we suppose that the statement "one ought to own someone else" is not universal and since we therefore suppose that it could not be eligible as an ethical axiom, we can look closer to its presuppositions. The question we can ask is: "What are the conditions for the statement 'one ought to own someone else' be non-universal and therefore absurd?" The answer to this question would make plain the implicit presupposition that "everyone ought to own himself." With the view to be more explicit, we can remark now that "one ought to own someone else" is not a universal statement if and only if the statement "everyone ought to own himself" is true. But this implicit presupposition in Rothbard's argumentation is precisely the normative statement which we want to prove as being absolute and unique.

If the world is divided in "class G" and "class R," the norm "individuals from the class G ought to own the individuals from class R," is not universally applicable to each individual if and only if we presuppose that "every individual -either belonging of the class G or R- ought to own himself." If this norm is not universally applicable, is only because the individuals from the "class R" are not self-owners. The only chance for the statement "individuals from the class G ought to own the individuals from class R," to be considered universal is to presuppose that the Rs are self-owners. But if this would be the case the premise "everyone ought to own himself" would be true. Therefore, whoever claims the partiality of the norm "one ought to own someone else," presupposes that "everyone ought to own himself."

This is precisely the characteristic of a circular argument. By a "circular argument" we mean an argument that presupposes what it purports to demonstrate. In other words, the conclusion is but one of the premises. It should be remembered that one of the rules of a *reductio ad absurdum* is to presuppose the absurdity of the statement we want to prove, and to deduce the absurdity of its alternatives. But here, the argument deduces the possible absurdity (if there is one) from the presupposition that the initial statement is true and not from its absurdity as it should be. In short what Rothbard asserts is that "One ought not to own someone else" because "everyone ought to own himself." But still this would not provide an answer to the question: "Why is it like that?"

Our critique of the rothbardian argumentation sustaining the axiom of self-ownership necessity can be resumed as follows. While Rothbard succeeds to demonstrate the absurdity of the first alternative the situation is different concerning the second one. First, Rothbard's argument implies a sequence of presuppositions incompatible with the aim which is to provide an undeniable argument. Rothbard take as granted that the definition of a moral person is given and that an universally applicable norm is a symmetrically applicable norm. The central difficulty for Rothbard's argumentation is the *petitio principii* that a norm has to be symmetrically applicable in order to be an ethical axiom and that if it is not the case the norm will be absurd. Furthermore, the falsity of

the statement "someone ought to own someone else" is proved by presupposing the veracity of the statement "everyone ought to own himself."

For all these reasons, we can conclude that Rothbard's argumentation is not valid since it fails to prove the absurdity of the normative statement "someone ought to own someone else."

2.2 The argument by "performative contradiction."

Let us now turn to the argument generally known as "performative contradiction." Rothbard does not bolster all the weight of the necessity of normative axioms on this argument. As he formulates it, this argumentative procedure does not concern self-ownership directly but only indirectly. It may also be noted that in Rothbard's thought, the "performative contradiction" procedure plays only a secondary role. Nevertheless, this is a very incisive argument. Were this argument correct, it would be sufficient to claim the necessity of the axiom of self-ownership. Rothbard formulates this idea as follows:

"We may note, that a proposition rises to the status of an axiom when he who denies it may be shown to be using it in the very course of the supposed refutation. Now, any person participating in any sort of discussion, including one on values, is, by virtue of so participating, alive and affirming life. For if he were really opposed to life, he would have no business in such a discussion, indeed he would have no business continuing to be alive. Hence, the supposed opponent of life is really affirming it in the very process of his discussion, and hence the preservation and furtherance of one's life takes on the stature of an incontestable axiom."²¹

Hoppe reformulates this argument more accurately and gives it all the weight needed for proving the necessity of the axiom of self-ownership. Let us base our discussion of this argumentative procedure on Hoppe's formulation:

"I want to demonstrate that only the libertarian private property ethic can be argumentatively justified, because it is praxeological presupposition of argumentation as such.(...) Such a proposal can be made, of course, but its propositional content would contradict the ethic for which one would demonstrate a preference by virtue of one's own act of proposition-making, i.e. by the act of engaging in argumentation as such.(...)"

But then it must be considered the ultimate defeat for an ethical proposal if one can demonstrate that its content is logically incompatible with the proponent's claim that its validity be ascertainable by argumentative means. To demonstrate any such incompatibility would amount to an impossibility proof; and such proof would constitute the most deadly smash possible in the realm of intellectual inquiry.

Such property right in one's own body must be said to be justified a priori. For anyone who would try to justify any norm whatsoever would already have to presuppose an exclusive right to control over his body as a valid norm simply in order to say 'I propose such and such.' And anyone disputing such right, then, would become caught up in a practical contradiction, since arguing so would already implicitly have to accept the very norm which he was disputing."²²

The argument sustains that some statements are never falsifiable. A statement never falsifiable is a necessarily true statement. Rothbard, Hoppe and most of the upholders of the natural law theory, argues that the statement "one ought to be his own owner" is of this type. To be sure, if the argument were correct, it would be sufficient by itself to justify a monistic ethic.

²¹ Murray N. Rothbard, *The Ethics of Liberty*, pp.32-33

²² Hoppe, Hans-Herman. *The economy and ethics of private property*. (Boston: Kluwer, 1993) chap.10.

Why is the statement “everyone ought to be his own owner” not falsifiable? This is so because whoever tries to falsify it would be caught up in a contradiction. The contradiction underlines the absurdity of the claim. This contradiction is a performative one, because it is not a simple contradiction between two statements but between a statement we want to prove and another one which is supposed and actualized by the action initiated for proving it.

We will first expand the logical origins of this argumentative procedure and its shortcomings, before considering the most relevant criticisms against the use of this argument for justifying moral monism. Finally, we will show why, in spite of insufficiencies of its current criticism, the argument by performative contradiction still does not prove the necessity of the self-ownership axiom.

2.2.1 The previous critics of the ethical argumentation by “performative contradiction.”

Albeit the advocates of the argument by performative contradiction are not few, its detractors are even more numerous. Given the important stake fetched by the use of performative contradiction in ethics, the critiques are inflowing from many directions. While, some of the critiques are targeting the ethical application of performative contradiction, others are directed toward Hoppe’s argument for “self-ownership.” For each case we will expose their fallacies.

The argument by performative contradiction is used for the first time by Aristotle in the book of the *Metaphysics* for proving the necessity of “non-contradiction” principle:

“But even this can be demonstrated to be impossible, in the manner of a refutation, if only the disputant says something. If he says nothing, it is ridiculous to look for a statement in response to one who has a statement of nothing, in so far as he has not ; such a person, in so far as he is such, is similar to a vegetable. By ‘demonstrating in the manner of a refutation’ I mean something different from demonstrating, because in demonstrating one might be thought to beg the original [question], but if someone else is cause of such a thing it must be refutation and not demonstration. In response to every case of that kind the original [step] is not to ask him to state something either to be or not to be (for that might well be believed to beg what was originally at issue), but at least to signify something both to himself and to someone else; for that is necessary if he is to say anything. For if he does not, there would be no statement for such a person, either in response to himself or to anyone else. But if he does offer this, there will be demonstration, for there will already be something definite. But the cause is not he who demonstrates but he who submits; for eliminating statement he submits statement. Again, anyone who agrees to this has agreed that something is true independently of demonstration. First, then, it is plain that this at least is itself true, that the name signifies to be or not to be that everything was so-and-so and not so-and-so.”²³

To put it shortly, Aristotle argues that trying to falsify the principle of non-contradiction, would be self contradictory. This is so because any statement we want to communicate presuppose the non-contradiction principle.

This procedure of argumentation by performative contradiction is amidst the debate between Karl-Otto Apel and Jürgen Habermas on the one hand and Hans Albert on the other hand. The stake of this debate is in some respect the same as the one of the monistic ethics. K. O. Apel and Habermas translate in ethical terms the Aristotelian procedure of argumentation by performative contradiction.²⁴ The critique, formulated by Hans Albert ²⁵ against this type of procedure does not

²³ Aristotle, *Metaphysics*, (translated with notes by Cristopher Kirwan, Oxford : Clarendon Press, 1993) 1006a11-1006a28

²⁴ “Ultimate foundation is not possible by deduction but by transcendental reflection on the presuppositions of actual thought that cannot be denied without committing a performative self-contradiction. (...) Such a foundation would require that we could show by transcendental reflection that together with our acts of thinking we also must indisputably presuppose a principle or some fundamental norms of morality”. Karl-Otto Apel, *The Response of Discourse Ethics*, (Luven: Peeters, 2001) p. 45

target its circularity but rather its incapacity to deduce a normative statement from a descriptive one. Henceforth, the argumentative procedure by performative contradiction would not be able to claim the necessity of any ethical axiom.

This problem is well known in David Hume's²⁶ or Henri Poincaré's²⁷ formulation of it as the "naturalistic fallacy." According to these authors, one cannot deduce a normative statement from a descriptive one. Provided this impossibility, how could we justify a normative statement? We will argue that the Rothbard-Hoppe's argument avoids this difficulty: their justification of normative axioms is in conformity with the principles of logic.

Consider a descriptive statement that is necessary. If this statement is necessary, it is because it could not be otherwise, i.e. there would be a sort of physical or mental impossibility to be otherwise. If we substitute (to be sure "substitute" is not meaning "deduce") the descriptive statement with a normative one, the structure of the argument would not change at all. The conclusion alone will change from a descriptive one to a normative one. A normative statement means a prescription. One has to accept this prescription because otherwise would be absurd. Nowhere in this demonstration have we accepted a normative statement as deduced from a descriptive one. Therefore, the argument of Rothbard-Hoppe, which is in favor of the necessity of the axioms of ethics, is not concerned by the previous objection. The argument does not deduce a normative statement from a modal one but rather prefixes a normative statement with a modal concept. Of course all the difficulty is to prove that "it could not be otherwise."

"Karl-Otto Apel proposes the following formulation in regard to the general presuppositions of consensual speech actions: to identify such presuppositions we must, he thinks, (...) call to mind 'what we must necessarily always already presuppose in regard to ourselves and others as normative conditions of the possibility of understanding; and in this sense, what we must necessarily always already have accepted.' Apel uses the aprioristic perfect [*immer schon*: always already] and adds the mode of necessity to express the transcendental constraint to which we, as speakers, are subject as soon as we perform or understand or respond to a speech act. In or after the performance of this act, we can become aware that we have involuntarily made certain assumptions, which Apel calls 'normative conditions of the possibility of understanding'." Jurgen Habermas, *Communication and the Evolution of Society* (Boston: Beacon Press, 1979 translated by Thomas McCarthy) pp.1-2 "The demonstration of performative contradictions in particular cases serves to refute sceptical counterarguments. Apel and I employ this method to discover universal pragmatic presuppositions of argumentation and to analyse their normative content. In this way I attempt to justify a principle of universalization as a moral principle. The initial intention is simply to demonstrate that moral-practical questions can indeed be decided on the basis of reasons". Jurgen Habermas *Justification and Application. Remarks on discourse ethics*, (Massachusetts: MIT Press, 1993 translated by Ciaran P. Cronin) p.163

²⁵ "This is to be applied to the meta-ethics of natural law, which amounts to a ontological identification of *value*, *essence*, and *reality*. Presumably the essentialistic statements characteristic of this manner of thinking have their source in the tendency to fuse the advantages of three kinds of propositions, the sharp distinction of which is fundamental for modern thinking, namely, *normative*, *logical* and *factual* statements. (...) As a meta-ethical conception the natural law doctrine is no longer maintainable." Hans Albert, *Between Social Science, Religion and Politics*, (Amsterdam: Rodopi, 1994) p.71. f.n.13.

²⁶ "I cannot forbear adding to these reasonings an observation, which may, perhaps, be found of some importance. In every system of morality which I have hitherto met with, I have always remarked, that the author proceeds for some time in the ordinary way of reasoning, and establishes the being of a god, or makes observations concerning human affairs, when of a sudden I am surprised to find, that instead of the usual copulations of propositions, *is*, and *is not*, I meet with *no* proposition that is not connected with an *ought*, or *ought not*. This change is imperceptible; but is however, of the last consequence. For as this *ought*, or *ought not*, expresses in some new relation or affirmation, it is necessary that it should be observed and explained; and at the same time that a reason should be given, for what seems altogether inconceivable, how this new relation can be a deduction from others, which are entirely different from it." David Hume, *A Treatise of Human Nature* (London: J. M. Dent & Sons Ltd., 1952) pp. 177-178

²⁷ "The rationale is simple; there is a rationale, how could I put it? purely grammatical. If the premises of a syllogism are both of them statements with the verb in indicative, the conclusion will also be a statement with a verb in indicative. In order to obtain a conclusion with a verb in imperative, it is necessary that at least one of the premises has a verb in imperative." Henri Poincaré, *Dernières Pensées* (Paris: Flammarion, 1913) p.225.

We will now concentrate our attention on the critiques expressly formulated against the Rothbard-Hoppe argument. Except the critiques to which Hoppe himself replied,²⁸ there are at least four others which deserve a much closer attention.²⁹ In the following we will present three critiques formulated by Gene Callahan and Robert Murphy and one critique formulated by David Friedman. The critiques presented by Gene Callahan and Bob Murphy, are targeting, on the one hand, the fact that Hoppe's case in favor of self-ownership was made at best for some parts of the body and/or for those persons who are actually involved in a debate.³⁰ On the other hand, Callahan and Murphy sustain that Hoppe's argument is inconsistent because there are some cases when moral persons could deny the self-ownership without entering in a contradiction. In the following we will try to show how these two types of critiques could be dismissed.

According to Callahan's and Murphy's first type of critique there are some parts of our body, like kidneys, legs and so on which are not necessary in the debate. So, when Hoppe sustains the axiom of self-ownership, this would not imply that such parts of our body which are unnecessary in order to argue are being a constituent of self-ownership. Therefore according to these authors, Hoppe's argument - even if valid - could not be applied to actions such as cutting the legs or taking a kidney of a moral person. This is so precisely because this type of actions would not trespass the self-ownership.

A quick reply to this argument would be that even if we concede that there are parts of our body which are not necessary in the argumentation, and even if these parts of our body are not included in the concept of self-ownership, surely they are still in our property by first appropriation. Of course in this situation, the argument requires first that the necessity of the homesteading axiom is proved. Showing the contingency of the homesteading axiom however would be a very different kind of argument.

An analogous critique formulated by Callahan and Murphy purports to show that the premises of Hoppe's argument are not always actual. Therefore one could sustain for example that in certain conditions it would be appropriate to impose compulsory military service. This critique eludes the essential characteristic of the libertarian axiom proposed by Hoppe. The axiom is "every moral person ought to be his self-owner." Consequently, for any moral person, whenever he states "at least one moral person is not the owner of himself" would be contradicting himself. This is so because the self-ownership is an attribute available for each moral person. It is not necessary that this moral person should be presently involved in an ongoing debate. The argument would still be valid even for persons who are not actually arguing because whenever a moral person would want to deny the self ownership, he will need to argue and by the same action he will be involved in a contradiction with himself as moral person.

The third critique of Callahan and Murphy is the most challenging. The claim is as follows: Hoppe's argument by performative contradiction wants to prove that any moral person is the owner of himself. This is so because in order to argue, he would need to suppose his own self-ownership. Any falsification of this statement would be impossible without committing a performative contradiction. But Callahan and Murphy stress that there are some individuals, like prisoners or slaves, who are not committing a contradiction even when arguing against self-ownership for they are not self-owners. This case is interesting because it can mislead us into the analysis of two

²⁸ Hans-Hermann Hoppe, *The Economics and Ethics of Private Property*, (Boston: Kluwer. 1993,) pp. 237-252

²⁹ Our attention to these present critiques is justified exclusively by the interest in providing an accurate demonstration. Even if the aims of all critiques are the same, not all their arguments are correct. In this section we want to prove that although Hoppe's argument by performative contradiction is not correct it is not so for the reasons indicated by Callahan, Murphy or Friedman. Notwithstanding, if our present replies addressed to some of the Hoppe's major critiques are not correct, this will enforce our more general critique targeting the libertarian axioms as being unique and/or absolute.

³⁰ "All Hoppe has proven is that it would be a performative contradiction for someone to deny in an argument that his debating opponent (and perhaps those in the same "class") own the body parts (such as eyes, brain, and lungs) necessary for debate, for the duration of the debate". Bob Murphy & Gene Callahan. *Hans-Hermann Hoppe's Argumentation Ethic: A Critique*. (<http://www.anti-state.com/murphy/murphy19.html>).

different conceptions of self-ownership.³¹ In order to avoid this ambiguity, it is important to reiterate the critique in a clearer form.

Either the slave is a self-owner or he is not; there is no middle way. If we sustain that according to our conception of self-ownership, the slave is still his own self-owner then, even if we prove the absoluteness of the libertarian axiom of self-ownership, slavery would be a moral action. We estimate that this is not acceptable from a libertarian point of view. But if a slave is not a self-owner, according to Callahan and Murphy, when a slave is arguing: "Not every moral person ought to be the owner of him self," he is not involved into a performative contradiction because he himself is not a moral person. Moreover, only if a slave is arguing: "Any moral person ought to be a self owner," he would be involved in a performative contradiction. Therefore Callahan and Murphy are sustaining that Hoppe's argument is not decisive.

In fact what their critique is pointing out is "that because countless slaves have engaged in successful argumentation, Hoppe must be wrong when he claims that self-ownership is a prerequisite to debate."³² Formulated in this way Callahan and Murphy's critique is, however, not valid.

The critique of Callahan and Murphy is targeting the presupposition of Hoppe's argument but not the argument itself. All the weight of this critique is based on a presupposition which contradicts Hoppe's one. Let us abridge the two statements in the following way: Hoppe sustains that: "because it is impossible to argue without being a self-owner, slavery is unjust." Callahan and Murphy respond that: "because slavery exists, it is possible to argue without being self-owner (and therefore it is not true that slavery is unjust)." Although it is not obvious, this critique takes as granted that the slave is a moral person devoid of self-ownership but still capable to argue. How do Callahan and Murphy propose to demonstrate the veracity of this presupposition? They refer to historical cases such as Epictetus in order to remark that the slavery is not an obstacle for a sound argumentation. Surely, this verification of facts is meant to comfort our sense of observation. Nonetheless we can challenge the veracity of this presupposition.

We defined previously the self-ownership as the capacity to control his own body free from the coercion of other persons. Therefore, when a moral person is coerced, he is not a self-owner anymore, while still having the control of his own body. A slave being by definition a coerced person could not be a self-owner. Even if, in the last resort only he is capable to control his own body, in reality the range of actions being the result of his freewill are limited by the master's will. The more the master controls the slaves actions, less the slave is a self-owner. The number of alternatives for each action of the slave is depending on the master's will. It is precisely the will of the master that determines the slave's degree of liberty. It is only the master that can concede some liberties to his slave like the liberty to choose his hair cut, or two hours of liberty per day between 9 A.M. and 11 A.M., or the liberty to vote for his master, or the liberty of speech.

What is important for our present argumentation is to know if the action of the slave is the result of his own free will or not. If it is not the result of his free will then it is obvious that even if the words of the argumentation are pronounced by the slave, he is not author of the argumentation.³³ But

³¹ These two conceptions of self-ownership could be on the one hand the control of our body free from coercion of other moral persons and on the other hand, the personal and the innate capacity to control our own body. The case of a slave is symptomatic for this problem because if we take the first definition he is not a self-owner but according to the second definition he is still a self-owner. In fact according to the second definition every person is a self owner until death. This problem is exactly the same problem stressed by Walter Block when speaking about the alienability of our self-ownership. According to the first definition the self-ownership is alienable and accordingly to the second definition our self-ownership is never alienable. "if I own something, I can sell it. If I can't sell it, then, and to what extent, I really don't own it? (...) If I really own my own liberty, then I should be free to dispose of it as I please, even if, by so doing, I end up no longer owning it. Clearly, since I cannot own a square circle, I cannot sell it." Walter Block, "Toward a Libertarian Theory of Inalienability: A Critique of Rothbard, Barnett, Smith, Kinsella, Gordon, and Epstein" in *Journal of Libertarian Studies*, volume 17, no. 2 (Spring 2003), p. 44.

³² Bob Murphy & Gene Callahan. *Hans-Hermann Hoppe's Argumentation Ethic : A Critique.* (<http://www.anti-state.com/murphy/murphy19.html>).

³³ The only way to contest this idea is to assimilate voluntary and non voluntary actions.

supposing now that the slave is enjoying now his two free hours per day or that the master has granted him the liberty of speech; supposing also that the slave spends his time by making a very beautiful speech on the rights of self-ownership of slaves. The question is: now that it seems clear that the slave is arguing, is he still a slave? The answer is obviously no. Between 9AM and 11AM there is no master; therefore neither is there any slave. Or if a slave is gifted by his master with the liberty to make free speeches, as long as he makes a speech he is not slave and the master is not a master.³⁴ If a slave articulates an argumentation there are only two possible ways of interpretation: either the slave is forced by his master either he is not. In the first case he is a slave in the second he is not. In the first case, because the slave is not the author of the arguments he pronounced, he is not arguing. In the second case when the slave is arguing, he is no more a slave (of course for the time of his argumentation); he is a self owner because at least for this specific action he has no master. Consequently, the presupposition of Callahan and Murphy is not correct. In fact, self-ownership is a prerequisite to argumentation. Considering our precedent observations about Epictetus, we can say he was probably writing his *Dissertationes* between 9 AM and 11 AM or that he was granted the liberty to write most of the things that he desired.³⁵

To resume the refutation of this challenging critique of Hoppe's argument by "performative contradiction," we can say on the one hand that the critique targets Hoppe's presupposition and not his argument while, on the other hand, the presupposition endorsed by Callahan and Murphy is not correct.

Someone could reply to our present argument that if we reject the capacity of a slave to argue, we are rejecting by the same token his status as a moral person, provided Hoppe's definition of a moral person as a being able to argue. Rejecting the slave's status as moral person, we are rejecting forever his right to become a self-owner, because self-ownership is an exclusive attribute to moral persons. But this is not an insuperable difficulty for our present reply to Callahan's and Murphy's critique. This is so because, we could adjust the definition of a moral person as a person that, being free from coercion, is able to argue. Therefore a slave is still a moral person because if he were not a slave, he would still be able of arguing. It is precisely in this way that we can distinguish between a coerced moral person and a coerced non-moral person.

The last critique we will discuss is formulated by David Friedman³⁶. As far as we are able to understand it, his claim boils down to the statement that a performative contradiction is not a genuine contradiction; what is more, it would not be a contradiction at all. This is so because if it would be self contradictory to criticize the axiom of self-ownership, then everyone would be self contradictory; "if it is literally true nobody, including Hoppe, has ever argued about the truth of propositions since there are no completely libertarian societies in which they could do so. (...) One can think of an enormous number of non-libertarian ethics and non-libertarian societies consistent with people being able to argue in their defense. (...) Counter-examples include all societies that have existed for as long as one generation, since in all such societies people did in fact live long enough to grow up and argue philosophy, and none of them were pure libertarian societies."³⁷

We believe this argument does not hit its target. Firstly, even if everyone were involved in contradictory argumentation, this would be no less a contradictory argumentation. Secondly, the claim of Hoppe is that whenever and wherever a person aims at criticizing the "self-ownership axiom," he would be involved in a contradiction, and hence his criticism would be impossible. Friedman's critique states that the incapacity to defend a statement does not prove its falsity. We agree with him on this point and there is no doubt that Hoppe would agree too. But Hoppe's

³⁴ The fact is that today nowhere in the world is there a State that grants to his citizens an entire liberty of free speech. But in most of the occidental democracies, individuals are permitted to write and to pronounce many combinations of words. For example, the argumentation of the present article is not forbidden (at least I hope) in most of the occidental states. Could I consider me at the moment of writhing these words, a slave? At any rate it would be absurd. No one is forcing or forbidding me to write these arguments.

³⁵ In fact, the truth is a combination of both. H. Schenkl, *Epicteti Dissertationes*, (edition major, Lipsiae: Teubner, 1916)p. III-XV.

³⁶ Friedman D. David. *Some Brief Comments on Hoppe's Justification of The Private Property Ethic*, (Liberty Review, www.davidfriedman.com/Libertarian/On-Hoppe.html).

³⁷ Idem.

argument is a different one. What he actually asserts is that it would be absurd to sustain two contradictory propositions, and this is exactly what happens if one tries to criticize the "axiom of self-ownership." In other words, the only claim of Hoppe is that no one can defend a proposition if it leads to absurdity, and not, as Friedman seems to interpret it, that a proposition is false if nobody is able to defend it.

Notwithstanding this, the argument of Hoppe in favor of the axiom of self-ownership as a unique and absolute moral principle is not free from critique.

2.2.2 Why Hoppe's argument by performative contradiction is not a valid argument.

Up to now, we have argued that Hoppe's argument by "performative contradiction" stands on its grounds in front of the criticisms presented. We will argue now why this argument is however invalid. Three major reasons can be invoked.

The first reason is underlining the incompleteness of Hoppe's argumentation. Hoppe states that we have to be our self-owners in order to argue. However one can ask: "Why should one be the owner of himself in order to be able to argue anything at all?" If this is a presupposition, then the argument does not prove anymore the necessity of the "axiom of self-ownership." If it is a necessary fact, then another argument is required to prove it. Therefore considering this first point of our critique, we can ask for an additional argument able to prove that necessarily one has to be his self-owner in order to argue.

There is a second criticism we can address. Consider the following statement: "I and someone else, (but not all moral subjects,) we ought to be the owners of ourselves." Put this statement in the mouth of anyone you want and you will see that this will never imply a performative contradiction. At least no more nor less than would the statement: "Every moral subject ought to be the owner of him self." To put it differently, if the axiom of self-ownership is a necessary one because it could never be false, then the previous statement would also be a necessary axiom, because it too is a non-falsifiable statement. Moreover, even if one needs indeed to assume self-ownership in order to sustain this statement, he would however not be involved in a performative contradiction.

However this is not a magic or an astonishing argument. Since Aristotle, we know that what is true about a general proposition is also true about a particular one. In the case we are studying "every moral subject ought to be the owner of himself" is the general proposition, while "some moral subjects, my self included, ought to be owners of ourselves" is a corresponding particular proposition. The problem is that if these statements (the particular and the universal) are prescriptive, they may turn out incompatible. If it happens to be the case, then the axiom of self-ownership is not necessary since there is at least one other incompatible axiom that stands the performative contradiction test. In other words, it could be otherwise than "everybody ought to be the owner of himself."

The third critique is more general. We already exposed the performative contradiction's rationale. Now we have to reveal its inconsistency. To be more precise, the performative contradiction not only is not a regular contradiction but if we look closer it turns out not to be a contradiction at all.

Consider any implication " $a \rightarrow b$ " for example "if someone is a libertarian then he has read 'The Ethics of Liberty' ". Such a conditional is true, if any libertarian without exception (" a " is true,) is a libertarian precisely because he has read "The Ethics of Liberty" (" b " is also true). If this is a necessary true conditional i.e. it is true in every possible world, then " a " is sufficient condition for " b " while " b " is a necessary condition for " a ." When we are saying that " b " is a necessary condition for " a " we are meaning that reading "The Ethics of Liberty" is a necessary condition to be libertarian. This is to say that it is logically inconceivable to be a libertarian without having read "The Ethics of Liberty."

Considering this relation as necessarily true would then make the following proposition to be conceivable: "Being a libertarian is incompatible with the reading of 'The Ethics of Liberty' i.e. there are not true in the mean time and in the same respect?" We can easily estimate that anyone would have a difficulty to communicate inter-subjectively a conditional the terms of which are contradicting each other. No one would understand " $a \rightarrow b$ " and " $a \& \neg b$."

The performative contradiction exposed by Hoppe is analogous with our example. By replacing the "a" by "you ought to be your self owner" and "b" by "you ought not to be your own self-owner," we would obtain the same conclusion. To put it shortly, the argument by performative contradiction shows that two propositions are contradictory while one is the necessary condition of the other. But previously we exposed why this is inconceivable. Either "a" is a prerequisite for "b" either it is its contradictory but by no means the two altogether. Therefore, if we take as granted the fact that in order to criticize the self-ownership one have to be his self-owner -for one reason or another- there is no contradiction between them. But if there is no contradiction between them, there is not an argument by performative contradiction anymore.

However, why do we still have the impression that there is a contradiction? Simply, because one proposition is the negation of the other. But the source of our illusion is based on the differences of denotation of two propositions. To be more precise, the self-ownership as a prerequisite and the self-ownership as its negation are not referring to the same object. The former is mentioned while the last one is used.³⁸ There is no contradiction because they are not at the same level of discourse. Therefore, between the performance of an action and its prerequisite there is no contradiction even if we are using the same terms. One should remember that the principle of non-contradiction in Aristotle's formulation mentions that two propositions are contradictory if one denies the other in the same time and on the same respect. The two members of the performative contradiction are not on the same respect. Therefore the performative contradiction does not respect this last condition.³⁹

To sum up our three arguments against Hoppe's proof by performative contradiction of the self-ownership axiom, we can say first that it is not clear what the status of self-ownership as an axiom is. Is it presupposed or rather deduced? Second, there is at least one other axiom although incompatible, that passes the test of the model of performative contradiction. Third, the performative contradiction is not a contradiction.

For all those reasons, the performative contradiction is not useful in the search for a definitive proof that the axiom of self-ownership is unique and/or absolute.

³⁸ In order to better understand this logical distinction between used and mentioned, consider the word "mice" and the two following propositions: "I want to exterminate all the mice in my apartment" and "Yesterday I said: 'I want to exterminate all the mice in my apartment' ." In the first example the word "mice" is used while in the second example it is mentioned. Its reference in the first case is reality, while in the other it is my past discourse.

³⁹ Trying to prove the principle of non-contradiction by a performative contradiction, Aristotle was the first not to respect it.

2.3 The axiom of homesteading.

It is not very clear whether this axiom is a completely independent one or rather if it is immediately deduced from the axiom of self-ownership⁴⁰. If the latter is true, then no further critique is necessary. If it is however a completely independent axiom, to complete our critique we need to argue that this axiom too is contingent. The arguments advanced by Rothbard⁴¹ in defense of its necessity are not different from those he advances to prove the necessity of the self-ownership axiom. It would be redundant to reiterate here the same arguments.

But then we need to scrutinize one additional argument advanced by Hoppe⁴². He states that an item should belong to the first occupant, since any alternative norm would be absurd. But why would it be absurd? Consider for example that an item should belong to the last occupant rather than to the first one. Then no one would ever occupy anything since there will always be another - the last occupant.⁴³

Nevertheless there are some questions one should raise and answer: "What if no one ever acquires anything?" We could agree that there will probably be no more human beings. And this would be an argument of practical impossibility. But consider the following statement: "An item ought to become the property of someone if and only if he is his second user or if he is the first male user or if he is the first black hair male to use it and so on."⁴⁴

Besides the problem of the definition of a "moral-subject," another important difficulty is manifest here. Applying this norm would not postpone *ad infinitum*, the appropriation of a particular item. If for any defined item, we could list all the users in history, one could legitimately ask: "who among them ought to be the right user?" The first one, the second one, the third one? There is no necessity in sustaining the righteousness of the appropriation by the first user, rather than by the second one.

⁴⁰ "If every man owns his own person and *therefore* his own labour, and if *by extension* he owns whatever property he has 'created' or gathered out of the previously unused, unowned, 'state of nature', then what of the last great question: the right to own or control the earth itself? (...) The natural rights justification for the ownership of ground land *is the same* as the justification for the original ownership of all other property" Murray N. Rothbard, (*For a New Liberty*, San Francisco: Fox&Wilkes, 1996) pp. 33-34. Emphasis added.

⁴¹ "We have established each individual's right to self-ownership, to a property right in his own body and person. But people are not floating wraiths; they are not self-subsistent entities; they can only survive and flourish by grappling with the earth around them. (...) Man, in other words, must own not only his own person, but also material objects for his control and use. How, then, should the property titles in these objects be allocated? Let us take, as our first example, a sculptor fashioning a work of art out of clay and other materials; (...) As in the case of the ownership of people's bodies, we again have three logical alternatives: (1) either the transformer, or 'creator', has the property right in his creation; or (2) another man or set of men have the right in that creation, i.e., have the right to appropriate it by force without the sculptor's consent; (3) every individual in the world has an equal, quotal share in the ownership of the sculpture - the 'communal' solution. (...) The homesteader is just as legitimately the owner of the property as the sculptor or the manufacturer, he is just as much 'producer' as the others". Rothbard, "For a New Liberty" pp. 31-34.

⁴² "And if a person were not permitted to acquire property in these goods and spaces by means of an act of original appropriation, i.e., by establishing an objective (intersubjectively ascertainable) link between himself and a particular good and/or space prior to anyone else, but if, instead, property in such goods or spaces were granted to late-comers, then no one would be permitted to ever begin using any good unless he had previously secured such late-comers consent. Yet how can a late-comer consent to the actions of an early-comer? Moreover, every late-comer would in turn need the consent of other still later-comers, and so on. That is, neither we, nor our forefathers or our progeny would have been or will be able to survive if one were to follow this rule. However, in order for any person - past, present, or future - to argue anything it must be obviously possible to survive then and now; and in order to do just this property rights cannot be conceived of as being timeless and unspecific with respect to the number of persons concerned". Hans-Hermann Hoppe, *Rothbardian Ethics*, (<http://www.lewrockwell.com/hoppe/hoppe7.html>).

⁴³ Consider also this argument as very beautiful criticism to some environmentalist claims. When one would say: "We should preserve the physical resources for the future generations," this would mean in fact "We should never use this resources" since there will always be a next generation.

⁴⁴ We are aware that this would be a very curious norm.

Consider, for example, a well defined piece of land and a finite list of users at precise and different moments in time: "A," "B," "C." Assume also that only one of these users could be the right owner. Why should this be "A" rather than "B" or rather than "C?" The answer "because 'A' is the first user" is neither more nor less necessary than the answer "because 'B' is the second user." Applying the norm "for any defined item, its second user should become the owner," although curious, has nothing absurd or inconceivable. In practice, it could appear that this norm would not stimulate the first usage of an item. Maybe such a norm would represent a disincentive for pioneers, but this would be a utilitarian objection based on some psychological assumption rather than on a logical one. This norm is applicable exactly in the same extent as the norm of the first appropriation. But these two norms are mutually incompatible and therefore they could not be applicable simultaneously.

Moreover, the order of appropriation is not the unique manner for granting the right of ownership. For example, the color of eyes, the strength, the poverty, can be possible candidates for allocating ownership. Therefore, the rule of first appropriation, should be tested not only against the rule of second appropriation but also against all the others possible rules. The question one will always have to answer is: "why the owner ought to be the homesteader and not the Aryan, the strongest, or the poorest?" Hence, since we have no other reason to prefer the norm of appropriation by the first comer to the rule of appropriation by the second comer or to any other rule, the character of necessity of the "axiom of homesteading" should be denied.

3 What conclusion for libertarianism?

In conclusion to this paper we will show how libertarianism could be sustained even if we adopt relativism at a meta-ethical level. Letting aside numerous details, we will try to present a short but convincing case in favor of the libertarian principles.

Where are we left to, if none of these arguments is able to prove the necessity of the axioms of "self-ownership" and "homesteading?" If our previous reasoning is correct, and in the absence of any other justification,⁴⁵ we could conclude that there is not necessarily only one, and absolutely correct, solution to a conflict. At least, this solution could not be deduced from the necessity of the axioms of "self-ownership" and "homesteading." Therefore, if we reject absolutism and monism, then logically we should embrace relativism and pluralism. The major consequence of embracing relativism is the acceptance that one *ought* to do something from the very moment one *can* do it. In other words, from a relativist point of view, all "ought" statements are reduced to "can" statements. As a consequence, the distinction between ethics and technology is merely formal. We can still distinguish between a moral subject and a non-moral subject, but there would be no difference between the solutions to a moral conflict and the solutions to a non-moral conflict. Thus, this could mean the end of all ethical inquiries. Could we then say with Ivan Karamazov "anything is permitted?"⁴⁶

Once relativism is admitted at a meta-ethical level, any ethical theory, and *a fortiori* libertarianism, is not absolute but only relative to its acceptance. But why would one want to endorse libertarianism rather than another ethical theory? In order to answer this question without having recourse to psychological presuppositions concerning individuals' motivations for subscribing to a particular ethical theory, we will describe some of the consequences of adopting the libertarian axioms of self-ownership and homesteading.

As already emphasised, for an ethical principle to come into existence, it has above all to be endorsed. Hence, it must be inter-subjectively communicable and exempt from technical

⁴⁵ Our previous reasoning was directed against the libertarian set of axioms as the unique and absolute ethical theory. However, we have not provided a demonstration of impossibility. We have not argued that a monistic or an absolute ethics could never be justified. Therefore, we have not proved the necessity of relativism. So, in order to reveal the meaning of the relativist ethics we need to suppose that no other argument in favour of absolutism is provided.

⁴⁶ This statement was formulated by Dostoyevsky's character, Ivan Karamazov in the novel *The Brothers Karamazov*. (New York : Macmillan, 1912)

difficulties.⁴⁷ The self-ownership and homesteading principles, even if they are not the only axioms we can possibly adopt, do respect these conditions. Furthermore, only by endorsing the libertarian axioms are we able to derive permissions and interdictions that grant each moral person the maximum extent of freedom from coercion. Conversely, by rejecting these axioms, moral persons necessarily embrace various levels of coercion. This conclusion is not relative, but absolute. What is relative is the choice of the axioms, and implicitly the choice of slavery.

Even from a relativist perspective, the coercive content of actions such as theft, murder or slavery is not relative. Therefore, Rothbard is still right when he describes the State as a "large scale criminal organisation." The organised theft performed by the individual leaders of the State apparatus⁴⁸ is a form of coercion, and this too is not a relative fact. Moreover, since we are unable to retrace back in the history any real agreement⁴⁹ that split individuals into State leaders and subjects to the latter's rule, we can barely speak even of voluntary slaves. In the absence of such an agreement, the present-day slavery is not repairing any previous trespassing.

Without the objectivity of the libertarian axioms, the actions performed by the individuals leading the State apparatus could no longer be labelled as immoral. However, we could still remark instances of incoherence in the rules formulated under a Statist political arrangement. Even if the State's immorality is relative, taxation and compulsory subscription to diverse services still contradict, and therefore reject, the individual's liberty of association. "Human rights" such as the right to make strike or the right to work are still in sharp opposition with individuals' rights understood as the right to own property. The concept of property is largely obscured through various interdictions to own, to exchange and to defend some specific items of ownership. Even if ethics is relative, relevant distinctions and contradictions in terms are not.

To put it shortly, the argument is as follows: only the libertarian axioms are able to grant absolute freedom from coercion. Any Statist type of government, be it a democracy and /or a "rule of law," is primarily based on coercion, even if it is only under the form of taxation. Starting from this point, any ethical principle formulated under the State's rule will include coercion at various degrees. If the same political arrangement produces a positive law based on an ethical principle such as freedom from coercion, not only is a second rule introduced, but it is also incompatible with the previous one.

Even supposing that the positive law is non-contradictory, we still have a double standard. What Hayek called "the State of the *rule of law*" is in fact the "rule of contradictory laws." Contrary to the tyrannical political arrangements, which at least have the merit to be explicit, the democratic and so-called rule-of-law political systems obfuscate the slavery status through a complex chain of contradictions. Only, the individuals who are acquainted with this fact and are rejecting it, form a distinct moral sphere.

Therefore, although we were driven to argue in favor of a meta-ethical relativism, the libertarian critique of the State is all the same relevant. Even if the natural law criterion is replaced by the

⁴⁷ By technical difficulties we mean the kind of problems encountered by moral theories like those that are based on utility calculations or are using blurry concepts. Such theories can never be applied as formulated; only degenerated versions thereof can be endorsed.

⁴⁸ One could object that in a political arrangement such as democracy, the leading individuals are not always the same and, furthermore, that under the "rule of law," even leaders are submitted to one and the same rule. This would make the distinction between masters and slaves not very precise. Therefore, accordingly to this objection, our arguments would apply exclusively to a tyrannical regime. This is not a valid objection. Firstly, it is not because we cannot exactly identify the slaves that they are less slaves. Secondly, as a matter of fact the distinction between slaves and masters is very clear, even though some slaves temporarily become masters. Thirdly, it is not because the masters obey to their own rules that they are less masters. Consider as an example that after a hard day you go back home and that somebody, staying at your door with a gun pointed at you, addresses you in the following terms : "Come with me for a walk." This statement is eligible for a "rule of law," since it applies to all concerned. Notice also that this "rule of law," as any other, does not exclude the distinction between masters and slaves, for coercion - which does not vanish when a "rule of law" is applied - remains the essential criterion.

⁴⁹ We already explicate why it is absurd to justify a real moral sphere, on an hypothetical or imaginary agreement.

possibility criterion, we are able to demonstrate the existence of at least two spheres of morality in any political arrangement. Nonetheless, there is a significant difference produced by this shift within the meta-ethical paradigm. In a paradigm where the libertarian axioms are absolute, the existence of a State apparatus is unconditionally immoral. In the paradigm where libertarian axioms are relative, the State as any other criminal organization is immoral only in relation to the individuals that endorse the libertarian axioms. Incontestably, only the libertarians consider any human being as a moral person, and any moral person as a self-owner. All others are but advocates of non-voluntary slavery.

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