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Rejoinder to Murphy and Callahan on Hoppe's Argumentation Ethics

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I. Introduction

Although I shall have highly critical things to say about Murphy and Callahan (2006), I am delighted they have written it, and very happy that the refereeing system organized by the editor of *The Journal of Libertarian Studies*, Roderick Long, saw fit to accept it for publication. And this for two reasons.

First, a minor one: there are those who accuse libertarianism of being a cult. A necessary (but not sufficient) condition for such a status is that all members be in thrall to the eminent leader. Well, Murphy and Callahan (hence, MC) are certainly members in good standing of the libertarian community. With the passing of Murray N. Rothbard, Hoppe has as good a claim as anyone, and a much better one than many, to being the new leader of the libertarian movement, at least insofar as being its most eminent and accomplished

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theoretician. And yet, while MC (2006) is of course respectful of Hoppe (1988, 1989), it is a highly critical attack on the libertarian construct for which he is most justifiably famous: argumentation ethics. Yet, MC are still members in good standing in this community. So much for that unwarranted charge.[1]

Second, there is a fierce battle now taking place within the libertarian community[2] over this issue. I do not think we have seen the last word on this matter, including the present attempt; there are simply too many leading libertarian theoreticians on both sides of it for that to be the case.[3] I think that the best way to resolve all such issues is through debate, and, yes, argument. Here, I am sure, all participants on both sides would agree. For this reason I welcome MC to the lists, and am delighted to be playing a small role in this myself at present.

Third, Hoppe's argumentation ethics claims that people who argue against private property commit a performative contradiction, insofar as they are using private property (their own bodies, plus room to stand in, or a chair to sit on) to do so. MC (2006) are using, what else, argument, to attempt to refute the Hoppe thesis. This, alone, of course does not demonstrate that these two authors are themselves committing a performative contradiction. But it does at least furnish further evidence, as if any were needed, of the centrality of argument to the intellectual process. There are many libertarians who have whined and groused about the Hoppe thesis, or who have confined their remarks to unrefereed blogs, and web sites. MC (2006) have not limited themselves to that route. Instead, they have published their reflections in a peer reviewed scholarly journal, and have thus made themselves into far greater targets, as is of course fitting and proper. For this alone they deserve congratulation.

With these introductory remarks I am now ready to consider, and reject, several of the criticisms leveled at Hoppe (1988, 1989) by MC (2006).

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[1] For the charge, correct in my opinion, that Randianism or Objectivism is a cult, see Rothbard (1987).

[2] I love that phrase; when I first became a libertarian in the early1960s, the "libertarian community" consisted of, oh, about a few dozen people in the entire world. Now, there are many more libertarian scholars debating argumentation ethics than that.

[3] This is true, too, of immigration, positive obligations for children, and abortion, in my opinion.

II. HOPPE'S ARGUMENT DOES NOT "FAIL ON ITS OWN TERMS"

1. Ownership of portions of one's body, only

According to MC, Hoppe has, at best, established ownership of only those portions of one's body, that are necessary for speech, but not one's entire body. For example, arms and legs and a second kidney are not required to engage in argument. People without these body parts are capable of argumentation. So, an attack on these "unnecessary" body parts that constitutes a violation of the libertarian non aggression axiom would not be ruled out of court by Hoppe's thesis.

Let us take this argument as literally as its authors offer it, in our attempted refutation of it. The brain, too, is a body part. It, too, along with the lungs, the lips, the tongue, the larynx, etc., are necessary for speech, even if arms and legs, etc., are not. However, if in the course of the argument one's intellectual opponent cuts off one's foot, this would necessarily be an assault on the brain, at least given the nerves, pain receptors, of which the body is composed. It cannot be denied that this would be an indirect assault. The foot, after all, resides quite a few inches away from the seat of reasoning. But still the brain would shut down and the victim would be rendered incapable of continuing the argument. So, Hoppe's argument from argument *would* vitiate against any such ploy, contrary to MC.[4]

2. Temporary ownership, only, during the course of the debate

According to MC, at best the Hoppe perspective can establish a performative contradiction *during* the debate, and thus bodily integrity and private property rights for this time *only*, not afterwards. This seems problematic at first glance, since even these

[4] Consider a related argument, not mentioned by MC (I owe this one to Roderick Long). It states that a poor man may argue that unless the rich man feeds him, he could not continue the dialogue, he would be too weak to do so. Therefore, if the argument is to continue, the rich man must give the poor man a welfare payment. This reductio ad absurdum attempt would appear to justify positive rights, anathema to libertarianism. This attempt fails because the rich man who refuses to feed his poor and weak debating partner is *not* guilty of any performative contradiction. Remember, the performative contradiction consists of an incompatibility between what someone says, and the *act* of him saying it. The rich non contributor to charity need say and do exactly *nothing*, so he *cannot* be guilty in this regard.

authors full well realize that the Pythagorean theorem hold true not only during its actual proof, or demonstration thereof, but for all time. However, they offer their movie scenario as a buttress for this critique of theirs. Here, a patron of a theater is tossed out on his ear for violating his contractual obligation to keep quiet during the showing of the movie. He protests that the "brutes"[5] who are giving him the old heave ho refuse to verbally defend their (justified) act in the process of throwing him out. Even these authors, characterize their argument as "silly," but challenge their readers as follows (MC, 2006, 58):

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

What is wrong with this fictitious man's position is that it has nothing to do with Hoppe's thesis, and thus cannot lay a glove on it. Hoppe is saying that if someone says property rights are invalid, he (performatively) contradicts himself by relying on his property rights in himself to do so. The private police who are removing the loud mouth from the premises, by stipulation, *say* nothing. So, the issue of a performative contradiction does not even arise. Of course, "He has not shown that the fact that one has ever argued demonstrates that one may never bash anyone on the head, nor has he demonstrated that one may not validly argue that it would be a good thing to bash so-and-so on the head" (MC, 2006, 58), in his particular movie scenario. But there is a *lot* that argumentation ethics has not demonstrated: the Pythagorean theorem, that sliced bread is a great innovation, that 2+2=4, that trade is mutually beneficial in the ex ante sense, that this latter statement is praxeologically true, among many other things. Give the man a break. Argumentation ethics cannot deliver the mail or take out the trash either.

[5] They are no such thing. Rather, they are the agents of the movie theater, private police if you will, who are engaged in upholding the private property rights of the theater owner, and his patrons.

3. "Hoppe has only proven self-ownership for the individuals in the debate." *(MC, 2006, 58)*

MC toss the kitchen sink at Hoppe on this one: Aristotle, Greeks, barbarians, horses, chickens, infants, comatose people etc.[6] The point is, rights have always and ever in any libertarian analysis been understood to apply to the entire human race, and only to the entire human race. Rothbard (1998) has been very clear on the issue of supposed animal rights. When and if they petition us for these rights, and promise to respect ours, and live up to that undertaking, then and only then will they be granted. No matter what ethical theory of rights we might consider, ones based on rationality, utilitarianism, babies and comatose people will present special problems. It is a mite unfair to tax Hoppe's ethical theory in this way, when there are *no* others that pass such a stringent test.

But even this is unfair to Hoppe. It is to more broadly interpret him than is justified. The argument from argument only applies to people who *argue*, and chickens, horses, babies and comatose people simply are not in it. As for non Greeks (barbarians) they are certainly capable of arguing. If they do, they would commit a performative contradiction if they initiated violence against a Greek. And vice versa. Let Aristotle or any of his homies lay an aggressive hand on a barbarian, and they do so, only, by committing a performative contradiction if *ever* they open their yaps in argument about it, that is, claim, using their bodies and private property, that invasions are licit. And, as we know, these philosophers did nothing if not argue. Therefore, they are logically estopped (Kinsella, 1992, 1996a, 1996b, 1997, 1998–1999) from so doing.

Let me put this point in other words. If a man has ever argued, in his entire life, that he had rights, or that others did not, if he ever argued *at all*, then he is logically estopped from violating rights. If he engages in an uninvited border crossing, he commits a performative contradiction. But, suppose he is a mute who never wrote, spoke or argued about anything. Then, he may commit all the mayhem he wants to, and he is beyond Hoppe's reach. The "fault" of the argumentation ethics is that it is limited to people who *argue*. The "excuse" I offer in Hoppe's defense is that not every theory can do everything. This libertarian theoretician offered us a *limited* theory, and on its own grounds it is impervious to the criticisms of MC. The fault of these latter two authors is that they misinterpret Hoppe's

[6] They forgot the Iraqis, methinks. I mention them since they have almost as much to do with matters at hand, and certainly more than my favorite on this list, chickens.

thesis; they expand it beyond the scope given to it by Hoppe. Argumentation ethics is *limited* to *arguers*, and thus this non arguing mute is *not* guilty of a performative contradiction no matter how many people's rights he violates.

III. Hoppe Does Not Conflate Use and Ownership

1. Temporary control and the Deity

According to MC (2006, 60): "*One is not necessarily the rightful owner of a piece of property even if control of it is necessary in a debate over its ownership*." There are two difficulties here. First, all that is needed for Hoppe's point to go through is temporary control. Forget about property rights in human beings for the moment. Remember, Hoppe's arguer needs not only a body, but also a place to sit or stand while he engages in discourse. But, and here is the essence of the criticism of MC on this point, it is by no means necessary that the speaker own the land or the house in which he is located, nor the chair on which he is sitting. Mere temporary ownership, or tenancy, rental, etc., will do just fine. For even there the speaker is the legitimate *user*, albeit not *owner*, of the property in question. If such a person then denounces ownership, that is, attacks private property, he is guilty of a performative contradiction. He is undermining the very institution, property rights, that enables him to legitimately speak in the first place. For tenancy, too, is dependant on ownership of property. If the person from whom the speaker rents the land, the house, or the chair is not the legitimate *owner* of it, then his, the arguer's, right to use it as a sounding board, a megaphone, a place to sit or stand and speak, is to that extent illegitimized.

Second, this ploy of utilizing the Deity for the purpose of criticizing argumentation ethics is itself illegitimate. It is well known that libertarianism is a theory that concerns the relationship between man and man, not between man and God. When recourse is made to the latter, all bets are off. MC are meticulous in their practice of warding off all sorts of weird counterexample possibilities. They (2006, 54) even go so far as to rule out "communication from beyond the grave." Well, if they wish to "waste trees" (Gallaway and Vedder, 2006, 67) in this manner, that is their business. But to criticize Hoppe for not engaging in this practice by obviating critiques based on God's ownership of men, seems a bit harsh.

2. Georgeism

MC use their Georgist example to demonstrate that mere use does not guarantee permanent ownership. One could, after all, be a

renter, as in the previous Deity case. But so what. Use of the body, and private property on whatever basis establishes just that sort of performative contradiction. If God is in the picture then man owns his body subject to His will. But, *within* these parameters, it is still a performative contradiction to use a "temporarily" owned body to denigrate the legitimacy of temporarily owned bodies.

Hoppe's theory, I admit, was couched in terms of fully, or permanently owned bodies. He did not explicitly anticipate this objection.[7] But, his theory easily incorporates it: temporarily owned people, too, are guilty of committing a performative contradiction when they denigrate property rights; for, they are doing so with things (their bodies, their standing room) that are permanently owned, just by Other people, in the case of God.

It cannot be denied that there is such a thing as a legitimately owned slave. For example, there are rightfully convicted criminals.[8] They can licitly be forced "to pay off their debts to their victims (or their heirs)" (MC, 2006, 62). Are they capable of arguing? Of course. However, an obedient slave, a duly convicted criminal, *cannot* legitimately (may not) properly argue without his owner's or jailor's permission. If the slave-criminal argues, he is doing so with illegitimately owned property. His body is the licit property of someone else, so he is engaging in a sort of theft. However, on the other hand, if his master agrees that he argue, then he can do so in a manner in keeping with just law. If the slave-prisoner is not granted permission, then MC's point is moot; the slave cannot legitimately speak in the first place. So his "argument" may safely be ignored by any ethical theory, including, specifically, argumentation ethics.

Now take the case of the illegitimately held slave. An innocent person is captured, kidnapped, enslaved. He can speak, but he does (ethically) own his own body. So this criminal-slave example avails MC nothing vis-à-vis Hoppe.

According to MC (2006, 62): "because countless slaves have engaged in successful argumentation, Hoppe must be wrong when he claims that self-ownership is a prerequisite to debate." But not a

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[7] Again, it is a bit much to ask of any theory that it explicitly anticipate all possible objections. All that is needed for a robust theory such as argumentation ethics is that it can incorporate all objections without altering its basic elements. And this, we can see, Hoppe's insight can accomplish. For another case in point, see Block, 2004.

[8] To claim that voluntary slave contracts also create legitimately owned slaves is much more contentious among libertarians. For a defense of this view, see Block, 1999, 2001, 2003, 2005, 2006; Nozick, 1974, pp. 58, 283, 331.

single one of them argued legitimately, unless it was with his (justified) owner's—jailor's permission. If so, then the slave did argue, using legitimately held property, that of his proper master. In any case, Hoppe never argued that self ownership is a prerequisite to debate. He only said, correctly, that a man may not, except on pain of performative contradiction, use private property to argue against private property. But the slave-convict, as we have see, did use private property. His owner's, on temporary loan (permission to speak) from his proper owner. MC (2006, 63) try again: "a person needs to enjoy self-ownership (and all other libertarian rights) if he is to successfully debate." But to repeat, the slave-convict is "enjoying" self ownership, on "loan" to "him," so to speak, while he articulates his points.

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