

LIMITED SELF-OWNERSHIP: THE FAILURE OF ARGUMENTATION ETHICS

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ABSTRACT: Hans-Hermann Hoppe's argumentation ethics has long been a locus of controversy within the libertarian community. Hoppe and his defenders claim to have demonstrated the necessity of affirming absolute self-ownership rights, and thus a strong form of libertarian political theory. Many have rejected Hoppe's argument as unsound, however. This article aspires to resolve the debate by showing not only that even the most generous reading of Hoppe's argument fails, but why it does so. Although previous treatments have provided numerous counterexamples to argumentation ethics, none has clearly systematized these counterexamples, explaining the principled flaws in Hoppe's argument that lie behind them. Two such flaws are particularly important: argumentation ethics is based on a faulty methodology, falsely assuming that it can never be morally licit to participate in another's use of stolen goods. It also depends upon an arbitrary and simplistic conception of property rights. I conclude that less directly principled defenses of libertarianism are likely to prove a more fruitful outlet for the intellectual energies of those concerned to limit the reach of state power.

Hans-Hermann Hoppe's argumentation ethics made something of a splash when it was debuted thirty-odd years ago. And well it might. Whereas some libertarian apologists, such as Ludwig von Mises, made a case for libertarianism that was purely utilitarian, even intentionally amoral (1963, e.g., 19, 72, 95; cf. Share 2012, 122; Hoppe 2006, 340), Hoppe claimed to have made an airtight ethical case. If argumentation ethics succeeds, it demonstrates that every

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proponent of every political theory save libertarianism contradicts herself the moment she begins to make her case—for the very fact of making that case, Hoppe holds, presumes self-ownership in both the speaker and the listener, and libertarianism follows from this concession of self-ownership. Needless to say, the stakes of such an argument are enormous, and some judged that Hoppe had in fact provided the definitive statement on the subject. Murray N. Rothbard (1988, 44–45) called argumentation ethics “a dazzling breakthrough for political philosophy” and asserted that Hoppe “has deduced an anarcho-Lockean rights ethic from self-evident axioms,” thus apparently ending the possibility of rational dissent from libertarian political philosophy.

Many other scholars—both libertarians and nonlibertarians—have concluded that Rothbard was far too easily impressed, however. *Liberty* magazine sponsored an early forum on Hoppe’s argument in which the responses were largely negative. Leland Yeager (1988, 45–46) called Hoppe’s presentation “a jumble of assertions that does not ascend to the level of argument at all.” Timothy Virkkala (1988, 49) dismissed argumentation ethics with the biting comment that “certain types of minds enjoy such things, and many libertarians have produced similarly pointless arguments.” More recently, Andrew Young (2015, 80–81) has argued that argumentation ethics constitutes an unhelpful gotcha tactic that fails to recognize the complexity of the real world. “There are strong theoretical and empirical cases to be made for the critical role that individual rights play in a prosperous society. However, making those cases involves acknowledging that the world is complex; not everything is black and white; not everything is reducible to an *a priori* punch line.”

The storm of criticism has done little to cool the ardor of either Hoppe or his defenders, however. And some of the criticisms of argumentation ethics are certainly unfair. Virkkala (1988, 50), for example, dismisses outright the idea that value judgments could be either true or false and asserts that “[f]acts can be proven, but values cannot.” And although he does not directly say as much, Young (2015) sometimes appears to discount not just problematic *a priori* arguments, but *a priori* argumentation in general. A variety of scholars have continued to defend Hoppe’s argument (Hoppe 1988; Kinsella 2002; Eabrasu 2009; Van Dun 2009; Block 2011), and it remains influential in popular libertarian circles.

What can yet another article add to this debate? This article seeks to accomplish four things. First, and most important, this article explains two of the most fundamental flaws of Hoppe's argument and articulates them as general principles: argumentation ethics depends upon a faulty methodology—assuming that certain actions imply ownership of a thing when they do not. It also depends upon an arbitrarily absolute and simplistic notion of rights—as if the only options were total ownership or total lack of ownership of a thing—and fails even to recognize the possibility of circumstantially defined and limited property rights, such as those implied by teleological ethical theories. Other scholars have provided numerous counterexamples illustrating each of these points, but no one seems to have done more than hint at the general principles that each set of counterexamples embodies and certainly no one has articulated them systematically. This systemization therefore makes clear at a theoretical level not only *that* argumentation ethics fails, which has been shown multiple times, but precisely *why* it does so. Second, in the course of the above, some of the most important areas of contention regarding Hoppe's argument are noted and the misunderstandings that have generated them are highlighted. Defenders of Hoppe have systematically misunderstood some of the primary criticisms of argumentation ethics and have consequently mistaken devastating critiques for irrelevant hairsplitting. For example, critics of Hoppe have pointed out that, at best, his argument establishes self-ownership at the time that the discussion takes place. Defenders of Hoppe have misread this as if critics were making only a *temporary concession* about self-ownership, rather than a concession about *temporary self-ownership*. Third, this article attempts to get at the root of these disagreements in order to explain why these points have remained controversial. The explanation seems to be that Hoppe's implicit and apparently unconscious assumptions about moral categories—specifically, about the impossibility of limited property rights—though arbitrary, simplistic, and generally rejected, are not uncommon within a portion of the libertarian community, with that part of the community that shares Hoppe's assumptions particularly susceptible of believing that argumentation ethics constitutes a persuasive argument. Finally, in accomplishing these three tasks, this article aspires to channel the intellectual energy of those who care about limiting state action away from unconvincing and, frankly, fatuous arguments for absolute conceptions of self-ownership rights and into more fruitful channels.

This argument will proceed in four steps. First, it will briefly define some key ideas. Second, it will lay out Hoppe's case for self-ownership as charitably as possible, offering some potential mild reinterpretation to make it as strong as it can be made. Third, it explains a central problem with argumentation ethics' methodology, and finally, it will explain the most fundamental problem with Hoppe's argument—its arbitrary and implausible understanding of property rights.

DEFINITIONS

A few quick words about scope and definitions will be helpful. First, this article examines only that portion of Hoppe's argument that deals with *self-ownership*.¹ Hoppe extends his argument to include a justification of additional property rights, and the implications of the criticisms articulated here for that additional case will be briefly noted in conclusion. For the most part, however, this will be outside the present article's area of concern. Second, as discussed below, it would indeed be problematic to deny that humans possess *any* form or degree of self-ownership whatsoever. The criticisms here will be directed entirely against Hoppe's argument for self-ownership and against the claim that that *self-ownership is absolute*. As hinted above, and as detailed in section four, argumentation ethics depends upon the assumption that one thing (e.g., one body) necessarily has one and only one owner who possesses all property rights over it. This assumption is untenable, however, and this fact ultimately unravels Hoppe's entire argument. Finally, this article defines having property in a thing as having the right to control that thing.² To whatever degree

¹ The anonymous reviewer notes that technically what is at issue is "body-ownership." This is fair. Given that the term "self-ownership" is employed throughout the literature on argumentation ethics, however, that is the term that will be employed here.

² The anonymous reviewer raises the questions whether this is a legal or moral right and whether the right to control a thing should be distinguished from the right to exclude others from using it. By "property," in this paper I mean the moral or ethical right to control a thing. While the word has both an ethical and a legal sense, legal property rights simply are, by definition, whatever the law says they are. Hoppe's argument, then, by its nature, can only be about the ethical sense of the word "property" that should underlie legal definitions, so that is the sense under discussion. With respect to the second question, the right to exclude others from using a thing just is a species of rightful control over that thing. For present purposes, it will be unnecessary to distinguish between property rights

and in whatever ways a person has a right to control a thing, he owns it. When a person possesses most of the rights to control a thing in ordinary circumstances, we say in ordinary language that it is his property, simpliciter, but this should be recognized as a simplification—he still possesses property rights in that thing only insofar as he has the right to control it (see below for more on absolute versus circumstantially defined property rights).

I believe this definition of property is uncontroversial. Certainly a number of participants in this debate have articulated similar understandings. Frank Van Dun (2009, 6–7), for example, defines people's property as “everything they … *justifiably possess or control*.” Walter Block (2011, 636) writes that an owner must allow a thing to be used or its use is “illegitimized.” And Stephan Kinsella (2002) defines an owner of property as the “person who has the right to control a given scarce resource” (he specifies “exclusive control” shortly thereafter). Most relevantly, Hoppe himself (2006, 400–01; cf. 1989, 160) speaks of “the right of exclusive control,” in defining property, and though the adjective will be an issue below, the rest of the definition accords with that used here. Occasional denials of this principle appear to be based on misunderstandings. Thus, David Steele (1988, 49) argues that people may be “given” the right to control things they do not own. But this is an instance of the owner (possessed of the ultimate rights to control the thing) transferring some of those rights to another person (who thereby becomes possessed of more limited, derivative rights to control it). Similarly, Marian Eabrasu (2009, 18) asserts that “it is inconceivable that a person does not own herself. By definition, self-ownership can be withdrawn only by canceling the agent's intentionality (free-will and conscience), i.e., by transforming her into a zombie or robot.” This suggests that self-ownership is an unalterable metaphysical fact rather than a moral question. If this is so, then there is no need to debate the moral justification of self-ownership, as no one is capable of violating it. Since this statement comes in the middle of a lengthy defense of Hoppe's argument, however, it seems more likely that Eabrasu is himself subconsciously smuggling in an assumption that self-ownership includes right rather than merely power to control one's own actions. And indeed on the next page, he introduces “the right to

that involve the positive right to control a thing and the negative right to prevent others from doing so.

self-ownership,” defined as “the right to be free from coercion.”³ At any rate, for clarity, “the right to control” is what “property” shall mean in this article.⁴ If self-ownership is taken to be a question of sheer metaphysical control, then its relevance to politics vanishes and it becomes an empirical fact of no prescriptive interest.

THE ARGUMENT

The core of argumentation ethics is a fairly straightforward argument from performative contradiction.⁵ Hoppe begins with the assumption that propositions are not simply free-floating truths, but must be embodied in an actual argument. “[A]ny truth claim ... is and must be raised and decided upon in the course of an argumentation.” His justification for the assumption is that “it cannot be disputed that this is so (one cannot communicate and argue that one cannot communicate and argue)” (Hoppe 1989, 154). Now, argumentation itself assumes certain moral norms, says Hoppe. Thus, given that propositions must always be justified in an argument, every case for any proposition assumes the truth of those prerequisite norms of argumentation. Because of the argumentative nature of justification, “it follows that intersubjectively meaningful norms must exist—precisely those which make some action an argumentation.” The reason this is important is that every proposition for which a person argues must therefore be compatible with the assumed prerequisite norms of argumentation. If it is not, the person defending them finds herself embracing a contradiction. Her argument presupposes

³ Perhaps similarly, Share (2012, 130–31) argues that “it is impossible to use a body and not be its owner at the same time” because “one ‘cannot’ not use one’s body and one ‘cannot’ not be the sole arbiter of one’s body’s actualized will.” The same problems apply here as to Eabrasu.

⁴ As Kinsella (2002) notes, this means that everyone assigns property rights to everything—though it does not imply that such rights are exclusive, as Kinsella maintains. Block (1994, 124) uses similar language, though he tries to draw an unorthodox distinction between “moral” and “legal” rights: “if the prostitute is a self-owner... she has a right to use her body in any non-invasive manner she sees fit,” to which he appends a note saying “A *legal* right, but not a *moral* right.” Since prostitution is not in fact a legal right, Block presumably means that it morally should be a legal right even though it is not morally a right.

⁵ An argument from performative contradiction attempts to show that the belief it targets—in this case, any belief denying self-ownership—cannot be articulated without contradicting it. For a discussion of this mode of argumentation, see Eabrasu (2009, 1–13). For a reprint of Hoppe’s initial and less detailed formulation of his argument, see Hoppe (2006, 339–45).

a prerequisite norm, and her conclusion holds to a norm that cannot be true if the prerequisite norm is true. The prerequisite norm cannot be rejected, because it is presupposed in the very act of justifying any proposition, so the conclusion must be rejected. “Hence, one reaches the conclusion that norms must indeed be assumed to be justifiable as valid. It is simply impossible to argue otherwise, because the ability to argue so would in fact presuppose the validity of those norms which underlie any argumentation whatsoever” (Hoppe 1989, 155).⁶ The argument is thus designed to catch Hoppe’s intellectual opponents in performative contradiction—arguing for a position of which they demonstrate their own ultimate and *necessary* rejection by the very act of arguing for it. It is important to stress this, because some defenses of argumentation ethics have overlooked the nature of its claim. Specifically, Hoppe’s argument holds that one *must* embrace absolute self-ownership because it is *impossible* to justify any incompatible norm—the attempt necessarily leads to performative contradiction. If it is possible to do so, then, argumentation ethics fails.⁷

Substantively, Hoppe argues that two particularly relevant moral norms underlie the process of argumentation itself. The first is the principle that moral propositions must be universalizable—they must apply to everyone capable of understanding the argument. “[A]rgumentation implies that a proposition claims universal acceptability … only those norms can be justified that can be formulated as general principles which are valid for everyone without exception.” This raises an obvious problem,

⁶ Frederick (2013, 93) phrases Hoppe’s point as being that “the truth of *p* [the prerequisite norm] is a necessary condition for the occurrence of an instance of *A* [the activity in question].”

⁷ Cf. Hoppe (2006, 342), where he concludes that argumentation ethics provides “an impossibility proof… the most deadly defeat possible” for any ethical position that denies self-ownership. A defense of Hoppe that fails to come to grips with this aspect of argumentation ethics is Van Dun’s (2015) response to Young’s (2015) devastating critique of argumentation ethics. As discussed below, Young demonstrates that exclusive self-ownership is not the only logically possible ethic underlying argumentation by proposing a collective ownership counterexample. Van Dun apparently takes Young to be actually suggesting the truth of his (Young’s) counterexample and so goes to some lengths to point out that Young “offers no argument at all for his claim” (95). But the whole point of Young’s argument is that both Hoppe’s self-ownership claim and his counterexample each constitute “*a* permissible solution to the problem of social order but not *the* permissible solution” (81). Logical possibility is enough to disprove an alleged impossibility proof such as argumentation ethics. No further argument is necessary.

since virtually every moral rule makes distinctions between different classes of people, who may act in different ways based on the same moral principle: property rights divide people into owners and nonowners. Incest taboos divide people into close kin and not. Even the nonaggression axiom depends upon the concept of aggression to distinguish people into classes. A person who has been aggressed against may act in ways that someone who has not been aggressed against may not. Hoppe answers this, however, by arguing that such distinctions must be ones that all could accept as grounded in nature. Thus, universalizability means that “all propositions for valid norms which would specify different rules for different classes of people could be shown to have no legitimate claim of being universally acceptable as fair norms, unless the distinction between different classes of people were such that it implied no discrimination, but could instead be accepted as founded in the nature of things again by everyone” (Hoppe 1989, 157).⁸

The second relevant moral norm that Hoppe defends as a prerequisite of argumentation is ownership of one’s own body. This

⁸ Hoppe’s rejection of discrimination is incoherent if taken literally, of course. To make distinctions between people or groups of people is what discrimination means. Presumably he intends discrimination that could not be “accepted as founded in the nature of things again by everyone.” But the appeal to universal agreement is again problematic. If Hoppe intends to rely on actual agreement, the criterion of truth is arbitrary and unjustifiable. What matters is whether a distinction is actually morally relevant, not whether people are reasonable enough to acknowledge this. If Hoppe by contrast simply means that it could hypothetically be so accepted, then he is actually appealing to true moral relevance, in which case, he guts universalizability of almost all its significance, since almost any rule can be specified in a formally universal way. For the most relevant working out of this hole in Hoppe’s argument, see the discussion of teleological ethics below. A variety of scholars (e.g., Young 2015, 83n5; Terrell 2000, 2; Rasmussen 1988, 51) have noted that the question of universalizability is problematic in other ways, too. Murphy and Callahan (2006, 59) point out that Hoppe’s argument only works as applied to individuals participating in the argument. “To assume from the outset that whatever rights any particular individual enjoys (though argumentation), must therefore extend to all people—including newborn infants, the mentally retarded, as well as senile and comatose individuals, none of whom can successfully debate—is to beg the question.” One response to this point is to reinterpret Hoppe’s argument as suggested at the end of this section. Another, exemplified by Block (2011, 635–36) is to limit the rights argumentation ethics establishes (if any) to persons capable of argumentation. This would leave open, but not imply, that “the killing of human fetuses, infants, the senile, mentally retarded, and comatose would be acceptable under Hoppe’s ethical system” (Terrell 2000, 5).

follows, he says, because argumentation is an embodied process and consequently depends upon the use of the body. “[A]rgumentation, as a form of action, implies the use of the scarce resource of one’s body.” Hoppe believes this entails “a mutual recognition of each person’s exclusive control over his own body” at least so long as the argument continues. At this point Hoppe conducts an unexplained shift from speaking about control of one’s body to speaking about the right to control one’s body. “Hence, one would have to conclude that the norm implied in argumentation is that everybody has the right of exclusive control over his own body as his instrument of action and cognition.” He maintains that the right of control over one’s body is necessary to argumentation. “Only if there is at least an implicit recognition of each individual’s property right in his own body can argumentation take place.” Hoppe makes two distinct arguments for this position, one grounded in the arguer’s assumptions about the person to whom she makes an argument and one grounded in her assumptions about herself. The former, to which I shall refer as Hoppe’s first argument for self-ownership, holds that the arguer must assume the self-ownership of the person to whom an argument is made, for otherwise, that person could not use his body to process the argument and agree or disagree. “Only as long as this right is recognized is it possible for someone to agree to what has been said in an argument … or is it possible to say ‘no.’” The latter, to which I shall refer as Hoppe’s second argument for self-ownership, holds that the arguer must assume that she rightfully possesses her own body in order to use it to make the argument in the first place. “Indeed, anyone who would try to justify any norm would already have to presuppose the property right in his body as a valid norm, simply in order to say, ‘This is what I claim to be true and objective.’” A person arguing against self-ownership is thus caught in performative contradiction. She must assume self-ownership as one of her premises in order to make the argument, yet that very premise contradicts her conclusion (Hoppe 1989, 158–59). Hoppe thus concludes that absolute self-ownership is established with logical certainty.⁹

⁹ To make an obvious but frequently overlooked point, Hoppe’s argument is about *moral* rights of self-ownership. The frequent objection that people have been *legally* enslaved (e.g., Waters 1988, 47; cf. critique by Van Dun 2009, 26) is thus irrelevant.

Argument Ethics Reinterpreted

Thus far, I have striven to present Hoppe's argument as he himself does, but an even stronger version can be formulated. There are two logical gaps in Hoppe's presentation of argumentation ethics that can be filled by mild reinterpretation. First, his opening assumption that truth claims must be raised in the course of argumentation is highly problematic. Though it has been called the "vital core of Hoppe's case" (Gordon 1988, 47), it might be more accurately denominated its Achilles' heel. Not to rehash a familiar and painfully extensive debate, theorists at least as far back as Plato (1968) have held, to the contrary, that propositions *are* in fact free-floating abstract objects that are perceived by the mind but are independent of it. This position is still strongly defended today (e.g., Yandell 2014; cf. Rasmussen 1988, 51). Hoppe's language is vague, so it is unclear if he really means to contest this, but the premise is unnecessary, in any case. One need make no controversial assumptions about the metaphysical nature of abstract objects to deploy Hoppe's argument. One may have to reinterpret the argument slightly and limit its applicability to those people actually engaged in argumentation rather than making it a precondition "of objectivity and truth" itself (Hoppe 1989), but such a reinterpretation would do little damage to the argument's effectiveness.¹⁰ If it is sound, it remains a devastating reply to anyone who tries to dispute self-ownership. In fact, if it works, then Hoppe's argument applies not only to argumentation but to *all* intersubjective communication. Even assertions or bare commands would depend upon a right of self-ownership to use one's body to hear and process the proposition (first argument) or to state the proposition or give the command (second argument), making any communicative attempt to argue or work against that position self-contradictory.¹¹ The first piece of the interpretive strengthening of Hoppe's argument, then, is to take it as a rebuttal to an actual individual arguing against Hoppean totalistic self-ownership.

¹⁰ Something like this appears to be what Meng (2002, 8) has in mind when he refers to Hoppe's argument as self-refuting rather than self-defeating. Cf. Share (2012, 135).

¹¹ Apropos of this, Terrell (2000, 2) notes a further problem for Hoppe: "[W]e frequently give verbal commands to beasts of burden ... and clearly there is no implication that these items enjoy self-ownership." Hoppe (2006, 411) is of course committed to the viewpoint that animals "have no rights," yet if it were sound, his argument would apply to animals as well as humans.

Second, as noted above, Hoppe shifts without justification from speaking about *control* of one's body to *the right* to control one's body.¹² This could be a basic oversight, and Hoppe has been rightly criticized by many scholars on this point (Murphy and Callahan 2006, 60; Terrell 2000, 4; Steele 1988, 48; Jones 1988, 49; Rasmussen 1988, 52). Oddly, Hoppe (cf. 1988, 53) continually makes the same mistake even in the process of responding to critics who pointed it out.¹³ One can initially patch the argument, however, in a second reinterpreting twist, by assuming the person making an argument against self-ownership to be fundamentally a moral person—both believing in and seeking to adhere to moral law. She would therefore not assume complicity in the listener's use of his body to hear her argument if she believed it wrong for him to do so—therefore she must assume that he does have the right to so use it (Hoppe's first argument). She would also, as a moral person, not use her own body to communicate her argument if she did not believe she had the right to do so—which again means she must assume that she does have the right to control her body to communicate her argument (Hoppe's second argument). Thus, the strongest version of Hoppe's argument claims that 1) if an actual person is arguing against self-ownership and 2) is already committed to the existence and obligatory nature of moral law, such a person apparently assumes that both she and her interlocuter have the right to control their bodies to engage in the argument (i.e., self-ownership) and consequently contradicts her own conclusion. This reinterpretation of Hoppe's argument lacks the grand metaphysical conclusions Hoppe sought but is also much stronger than the version of the argument that Hoppe originally put forward.

FAULTY METHODOLOGY

With Hoppe's argument thus presented in as strong a manner as possible, it is time to move on to its ultimate failure. This article

¹² Similarly, Van Dun (2009, 6–7) attempts to argue for a “law of reason” including the assertion that “one ought to respect the physical integrity of one's opponents in an argumentation,” but his ground for this claim jumps from the fact that persons have the power to engage in argumentation to the claim that they have the right to do so.

¹³ Hoppe clearly does wish to talk about the right to control, not control itself (see Hoppe 2006, 412), but his argument makes a logical leap from the necessity of the latter for argumentation to the existence of the former.

will examine in depth two of the most fundamental problems with Hoppe's argument, both in its original and reinterpreted forms. The first problem is the more immediately damning, though in the end it is also the more ameliorable. The difficulty is this: as just hinted, Hoppe's original formulation of argumentation ethics in fact proves quite literally nothing, morally speaking, at all—for it is predicated upon the use of a faulty methodology. Hoppe's argument depends entirely upon the idea that the process of argumentation implies affirmation of certain ethical precepts. But the process of argumentation does not assume *any* ethical precepts, much less those that Hoppe claims for it. Hoppe assumes that one cannot make an argument to another person without assuming both one's right to control one's own body and the other person's right to control his own body. But this is nonsense. A person arguing may be a nihilist, and not believe in any moral law at all. It is perfectly coherent for such a person to try to persuade others of any number of things by argumentation if she believes this to be in her best interest. Similarly, a person may be an immoralist, accepting the existence of moral law but disinclined to pay it any regard. Once again, it is perfectly coherent for such a person to use argumentation as useful without implying anything at all about any moral values whatsoever. The fact that such a person decides to argue implies only that she finds it useful to argue, full stop. As long as an interlocutor denying self-ownership does not assume the relevance of morality to her argument, argumentation ethics has no purchase.¹⁴

¹⁴ One interesting attempt at rebuttal to this argument is made by Stephan Kinsella (1996, 319–20; cf. Long 2006, 90). Kinsella defines rights as claims that it is morally permissible to enforce: “what it *means* to have a right is to be able to legitimately enforce it.” Therefore, “[f]or a rights-skeptic meaningfully to challenge A's asserted right, the skeptic must challenge the enforceability of the right,” which Kinsella equates with “assum[ing] that enforcement—i.e., the use of force—requires justification.” The skeptic is thus left in a contradiction, making a moral claim against moral claims, and thus, “the skeptic has no grounds to complain” when people claim rights. Unfortunately, this argument is confused on multiple levels. Taking enforceability as an essential characteristic of rights is an arbitrary move that is unjustifiable by Hoppe's argument. (It is also contrary to a long tradition of recognizing a distinction between perfect and imperfect rights, precisely on the basis of enforceability or lack thereof. See Witherspoon 1990, 181–82.) Kinsella attempts no justification beyond that presented here, which fatally conflates logical and moral objections on the part of the skeptic. The question is not whether a nihilist has a *moral* right to complain about anything. He concedes he has not. The question is whether Hoppe has given the nihilist any *logical* reason to believe in the existence of a distinctly moral justification for an

This problem with Hoppe's argument has been noted many times in the literature. Probably the best critique is that of Frederick (2013, 98–99), who sketches a number of counterexamples to Hoppe's alleged principle. One involves individuals who have the moral *liberty* to argue—that is, they have neither any *right* to do so nor any *duty* to refrain from doing so. This roughly corresponds to the possibility of nihilism mentioned above. Another involves individuals arguing *as if* having a right to do so despite not having that right. This roughly corresponds to the possibility of immoralism discussed above. As Frederick concludes, “[T]he fact that people are engaged in argumentation with each other ... does not imply that each recognizes that each of them has the right to engage in debate; and it does not imply that each of them recognizes that each has the liberty to engage in debate. It does imply, however, that, for the space of the debate, each behaves as if each of the participants has the liberty to control his body.” At one degree of perspicuity or another, a number of scholars have echoed this concern that Hoppe's argument fails to provide the a priori proof it seeks that self-ownership is the only logically possible intellectual option (Friedman 1988, 44; Steele 1988, 48; Machan 1988, 52).

The problem goes even deeper than the literature has noted, however. As articulated so far, this objection holds only outside the moral sphere. As initially stated, argumentation ethics claims that it is impossible to argue without assuming the right to do so. This is clearly false. But the reinterpretation of Hoppe's argument offered above survives this assault by applying argumentation ethics only as a rebuttal to actual, moral persons advocating other moral systems. It thus excludes nihilists and immoralists. As such, the reinterpretation of Hoppe's argument is much more resilient to this kind of critique. It must be acknowledged, however, that even this reinterpreted version of Hoppe's argument partially fails to cope with a deeper version of the methodological rebuttal. Specifically, Hoppe's second argument (that an arguer assumes her own self-ownership) survives this critique when reinterpreted as here, but even this treatment cannot save Hoppe's first argument (that an arguer assumes the self-ownership of her listener) from failure.

individual's control over his own body. He has not. Rights, in normal usage, are a positive moral claim to a thing. They are not the *absence* of moral objection to the use of force, as Kinsella defines them.

The problem with Hoppe's reinterpreted argument from a methodological perspective, then, is this: Hoppe's first argument presupposes that a moral person may not participate in argumentation with an individual who does not have the right to control his body. This is the necessary prerequisite for his conclusion that engaging in argumentation demonstrates an assumption of the self-ownership of the person to whom an argument is made. To generalize, the unarticulated principle Hoppe seems to be assuming is that a moral person may not participate in another person's use (i.e., theft) of resources to which that person does not have a right. Hoppe apparently presumes this would constitute complicity in the unauthorized use of resources, which would be immoral. Arguing with a person is meaningful only if that person continues to use his body to consider the argument. Thus, Hoppe apparently concludes, this may not be done unless the person has the right to use his body. But there are times when participation in another person's use of stolen goods is not only morally acceptable but even morally requisite.

For a relevant example, one may communicate to a person on a medium the use of which that person is stealing and be justified in doing so. Consider, to begin with, a hypothetical situation, somewhat though not terribly contrived for the sake of clarity. Suppose an eccentric millionaire owns a private landline telephone system consisting only of three telephone sets. The sets are interconnected so that a person on any of the sets can overhear conversations taking place on the other two. (Perhaps he feels this is the most secure way to discuss business secrets between different buildings in his plant or estate.) Suppose that the eccentric millionaire authorizes certain persons, and no one else, to use the system. And finally, suppose that he is in the middle of a conversation one day when an unauthorized third party audibly picks up the last set and attempts to listen in. Is the owner within his rights to tell the intruder to hang up the phone? The answer is intuitively obvious. Of course he is! But note that Hoppe's first argument assumes the contrary. By speaking to the intruder via the telephone system—which the intruder is unauthorized to use—the millionaire is participating in the intruder's unauthorized use of the system. He is therefore assuming complicity in it.

One might object that as owner of the network, the millionaire of course has the right to grant the intruder momentary access to the system in order to hear the command to hang up. The lesser difficulty

is that the millionaire almost certainly would not understand himself to be granting any such right. He is commanding that the intruder hang up, precisely because no such right has been granted. The more substantial problem is that the obvious answer remains unchanged even if one adjusts the scenario to account for this objection. Suppose the person making a phone call and hearing the intruder is not the owner but instead a security guard who is not authorized to allow anyone else to use the system. Does the guard have the right to order the intruder off the line? The obvious answer is that he has not only the right but the duty to do so. Again, accepting Hoppe's principle would lead to answers that are clearly false. There are situations in which one may participate in another person's use of stolen goods with moral impunity—in fact, doing so may be a moral imperative.¹⁵

The question, then, is whether it is possible that making an argument to a person who does not possess the right to self-ownership—in order to convince him that he does not own himself—might constitute just such an instance. (In other words, the guard is the person arguing for an ethic other than self-ownership, and the intruder listening in is an advocate of Hoppean self-ownership.) If this is not possible, then Hoppe's first argument stands. Any attempt to espouse an ethic other than self-ownership would be self-defeating. But if it is possible that participating in a person's use of his body—even when he does not possess the right to control his body—constitutes such an instance of morally licit participation in the use of stolen goods, then Hoppe's argument fails. And the answer is that it is eminently logically possible that such a thing could be the case. Not only is it possible; it is highly plausible that this is so. As will be discussed in more detail at the end of the next section, any teleological ethic passes this test. And since Hoppe's argument is intended to be an impossibility proof, the mere possibility, let alone plausibility, of ethical alternatives, means that the Hoppe's first argument fails.

A SIMPLISTIC DEFINITION OF RIGHTS

One might think that the last section actually proves something of a triumph for Hoppe, at least as reinterpreted. One of his two

¹⁵ One might also object that the guard in this scenario would merely be pursuing his higher duty to protect the owner's property. This is precisely to grant the point made below about teleological ethics proving to be the ultimate downfall of Hoppe's ethics.

arguments fails, certainly, but if the other holds, then argumentation ethics is ultimately triumphant. It does not matter *which* argument demonstrates totalistic self-ownership to be an *a priori* truth so long as one of them does so. Unfortunately, a second critique that has been partially developed in the literature is far more fundamental than the first, going to the root of *both* of Hoppe's arguments and emptying them of all significance. This second critique is that argumentation ethics wildly overstates what it can prove, and when one more rigorously applies Hoppe's own form of reasoning, all that is left is a moral truth that is compatible with every major ethical system and that no one of any significance (and quite possibly no one at all) ever thought to dispute. Even if Hoppe's methodological assumptions were wholly unproblematic, his argument would not establish the sort of *absolute* self-ownership that he desires. As noted above, the conclusion of Hoppe's argument is supposed to be the "right of *exclusive* control over his own body," not a limited and hence uncontroversial understanding of self-ownership (Hoppe 1989, 158, emphasis added). Let us grant for the sake of argument that one may never licitly participate in another's use of stolen goods, so as to avoid the problems for argumentation ethics associated with the methodological critique. Let us also grant the reinterpretation of Hoppe's argument that sees it as a response to an actual, moral person arguing against self-ownership, thus preventing it from the failures it faces in its original metaphysical form. Still, the argument establishes a concept of self-ownership so limited as to be entirely uninteresting.

The limited nature of the self-ownership rights that argumentation ethics establishes has been noted in some depth in the literature. The critiques tend to fall into two categories. Some scholars have pointed out the possibility of rights limited by time. Hoppe unjustifiably assumes that his argument establishes that a person has *permanent* ownership of his body. But there is nothing *a priori* impossible about an ethic that grants persons the right to control their bodies for certain periods of time, but leaves them subject to the rightful control of others during other periods (Frederick 2013, 97, 105; Murphy and Callahan 2006, 56–58; Friedman 1988, 44; Yeager 1988, 46). It is an observation along these lines that leads Ethan Waters (1988, 47) to observe: "[T]o live one must eat. Therefore all living people eat. Does this mean that all living people are constantly eating?" Scholars have also pointed out the possibility of rights limited in space. Hoppe unjustifiably

assumes that his argument establishes control of the *entire* body, whereas only certain parts are necessary to engage in argument. The classic statement of this objection is found in Murphy and Callahan (2006, 56; cf. Rasmussen 1988, 51; perhaps Frederick 2013, 99): “At best, Hoppe has proven that it would be contradictory to argue that someone does not rightfully own his mouth, ears, eyes, heart, brain, and any other bodily parts essential for engaging in debate … his argument only establishes ownership over portions of one’s body.” Young (2015, 84) offers an intriguing variant on this argument that does not fit well into either of the categories just articulated: each individual might possess a share of ownership in his own person that is subject to being overridden only if enough other people combine their shares against him. It is important to remember that Hoppe’s claim is that his argument demonstrates the logical impossibility of any ethic apart from absolute self-ownership. But the strict *a priori* logic of the argument, to the degree that it holds at all, holds only for those parts of the body that are necessary to the argument, it holds only during the process of argumentation, and it holds only for a controlling share in one’s ownership, not total ownership.

In response to the parts-of-the-body version of this objection, Eabrasu (2009, 14–15) offers the odd defense that Hoppe says self-ownership involves the whole body, and there ends the matter. Eabrasu first notes the critique articulated by Callahan and Murphy that not every part of the body is necessary for a person to argue. He replies: “However, it is not necessary for self-ownership to be defined according to the body parts used while arguing.” And given that multiple definitions of the self-owned unit are available, he believes that one must stick to Hoppe’s. “As it can clearly be observed, Hoppe’s definition of self-ownership refers to the body as a whole without excluding specific parties [*sic*] of the body. Any leaving [*sic*] being capable of argumentation is treated as a single unit.” The problem with this reply is that, given the nature of his argument, Hoppe does not have the luxury of defining his terms arbitrarily. Argumentation ethics is supposed to constitute an impossibility proof—logically demonstrating that it is impossible for anyone to coherently reject its conclusions. It is only capable, therefore, of establishing conclusions based on what one *must* assume (use of body parts employed in argumentation is presupposed by argumentation), not based on how one may arbitrarily choose to extend those

assumptions (conclusions derived from the argument are to be extended to the body taken as a whole).¹⁶

More coherently, a number of scholars have attempted to respond to the temporal version of this critique, but the responses uniformly misunderstand it. Thus, Van Dun (2009, 8, cf. 19) asserts: "An argumentation that conclusively establishes that one is justified in claiming truth for a particular proposition, or validity for a normative principle, remains conclusive after the actual exchange of arguments has ceased." And Block (2011, 634) replies wryly that "the Pythagorean theorem holds true not only during its actual proof, or demonstration thereof, but for all time" (cf. Eabrasu 2009, 15–17). This appears to be Hoppe's own (2006, 413) take on the partial ownership critique of his argument, though his attempt to reply to the critique fails to clearly articulate a definite response. In any case, even this more coherent attempt at rebuttal fails to come to grips with the critique that is being made. The point is *not* that, at most, a person arguing has *temporarily conceded* that humans own themselves. The point is that, at most, a person arguing has conceded that humans *temporarily own themselves*. Of course any principle that is established in argument remains true after the argument is completed. But the question is *what* principle has been established in the first place. And the point of the critique is that Hoppe's argument only establishes, at best, that a person owns (certain parts of) himself at certain times. Once again, the nature of Hoppe's argument is definitive here. It is an impossibility proof. By its nature it can establish no more than what an interlocutor *must* necessarily concede. And the interlocutor can engage in argumentation with perfect coherence on the assumption that a person *does* have the right to control himself to the extent necessary to listen right now, but *does not* have that right later on.

The fundamental problem with Hoppe's argument seems to be that his thought is trapped in an arbitrary set of moral categories.

¹⁶ Block (2011, 633) argues: "The brain, too, is a body part. It, too... are [sic] necessary for speech ... 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." This argument may reveal a crack in Block's libertarianism, since no physical invasion of the brain is involved in what he refers to as an "assault." Extending that principle would reveal a failing of the nonaggression axiom. Regardless, Block's argument is irrelevant. Obviously the position that one does not have absolute and entire moral rights to control one's foot and the position that another person possesses the right to cut it off at will are distinct.

Specifically, he is mentally trapped in a paradigm of property rights narrowly conceived as the moral power to determine *every* aspect of how a thing (one's body, one's other property) shall be used: one thing has one owner, and that owner may determine every question about its use in all circumstances, both with respect to the means and ends (including ultimate ends) for which it shall be used. So simplistic a conception of property rights is by no means evident *a priori*. There is no particular reason why it could not be the case that one person has a right to control a thing some of the time, in some ways, or in particular situations, and another person the right to control it in other times, ways, and situations. Indeed, this is more or less the standard understanding of the nature of property. Property, as understood in law, is not an absolute concept. Rather, there are a variety of rights governing control of a particular piece of property, and that bundle of rights may be distributed in any number of ways. "Lay people tend to think of property as a relatively uncomplicated relationship between a person (the owner) and a thing (the owned property) ... lawyers have a tendency to think of property ... as the collection of the individual rights people have as against one another with respect to owned resources" (Alexander and Peñalver 2012, 2). Or as Harold Demsetz (1967, 347) noted more than half a century ago, property rights are complicated sets of rights that define permissible actions with respect to a thing owned, such that "[a]n owner expects the community to prevent others from interfering with his actions provided that these actions are not prohibited in the specifications of his rights."¹⁷ Further, Hoppe's absolutizing of property rights is historically atypical even within the liberal rights tradition. John Tomasi (2012) differentiates such an absolutist position both from high liberalism, with its devaluation of economic liberty, *and* from classical liberalism, with its thick but consequentialist, and hence limited, conception of property rights.

The fundamental problem is that Hoppe and his defenders have failed to come to grips with the radically situational nature of moral reasoning, including rights talk. Hoppeans have likely dismissed previous articulations of this objection to Hoppe's argument, because it seems implausible that the simple passage of time could vary one's rights, or that the body should not be taken

¹⁷ Cf. also Steele (1988, 48): "[A] property right doesn't necessarily or usually mean exclusive control."

as a whole in morally relevant ways. Indeed, reaction against that implausibility is the best explanation for the repeated misapprehension of the temporal version of this objection. But time, *per se*, is not the issue. Situation is. Many possible ethics (all plausible ones, one might say) are situational. This is *not* to say that they are relativistic, but that the moral character of an action is defined by its significance for other persons, not by its physical nature *per se*. The pursuit of unchanging higher-level ends or duties (e.g., love thy neighbor, seek the greatest good of the greatest number, etc.) implies many different, seemingly contradictory means or applications in varying circumstances. One's individual rights and duties thus depend upon context, which is just another way of saying that there may be many rights with respect to the control of a thing distributed in a variety of ways. The point of this objection to Hoppe's argument is not that, e.g., an arbitrary unit of time passes and the principle of self-ownership no longer applies. Rather, the point is that Hoppe's argument, at best, establishes only that the person arguing must assume that she and her interlocutor have the right to control (some parts of) their bodies *in the particular context* in which the argument takes place. It is perfectly coherent that she should hold that *in other situations*, they would not have that right.

Any teleological ethic—that is, any ethic that requires persons to pursue a given end, whether it be to advance the kingdom of God, the dictatorship of the proletariat, the common good, or anything else one might care to substitute—could thus justify the sort of argumentation that Hoppe thinks entails strict self-ownership. Under any such ethic, one does not have (full) self-ownership. One is required to use the scarce resources of one's body and goods to fulfill the end in question. One may not choose to use them for some other ultimate purpose. But if making an argument for the truth of this ethic is likely to persuade someone who believes in self-ownership, who will then also be able to work effectively for the fulfillment of the ethic in question, then the ethic *commands* that one make the argument, precisely *because* neither of the persons in question possess the sort of right to self-ownership that Hoppe believes the process of argumentation entails.

A few previous critics have hinted in the direction of this fuller development of the limited-rights critique. Murphy and Callahan (2006, 60–61) note the possibility that all human beings are owned by God, who has granted us temporary control over what is

ultimately his property—much like a landlord—but only subject to various constraints.¹⁸ Similarly, Terrell (2000, 4–7, esp. 7) notes the problems that result “when libertarians fail to acknowledge ... our *provisional* ownership of our persons and possessions.” These are acknowledgements that persons may have rights of self-ownership that may be limited in certain ways. No one, however, seems previously to have generalized the principle that the fundamental flaw in Hoppe’s argument is its arbitrarily constricted moral categories or noted that the entire family of teleological theories provides a counterexample to argumentation ethics.

Recognition of these facts makes clear how an alternative to Hoppean absolute self-ownership is not only possible, but very plausible. It is eminently possible (indeed, I think it is true) that the rights humans possess are limited moral powers to choose means to a morally given end. Should that end be abstract enough (consider the Christian mandate to love God, self, and others articulated in Matthew 22), such an ethic could even entail a very great deal of freedom with respect to the means one might choose to employ in pursuit of that end. Hoppe’s arbitrary adherence to his own conceptualization of the moral sphere leaves him apparently oblivious to alternate moral paradigms that emphasize duties or moral teleology, and consequently endorsing as an a priori proof of his belief that humans have an absolute right to control their bodies in all ways at all times an argument that actually proves nothing of significance whatsoever.

This explanation makes more clear why it is that the first critique of argumentation ethics succeeds against Hoppe’s first

¹⁸ To this, Kinsella (2002) responds that “you can’t just *posit* that God owns everyone and ‘therefore’ we are not self-owners.” This attempt at rebuttal exhibits confusion as to the nature of Hoppe’s argument. Argumentation ethics, again, claims to be an impossibility proof—a watertight demonstration that (the attempt to prove) any theory other than absolute self-ownership is self-contradictory. All anyone need do to show that the argument fails, therefore, is suggest another possible theory does not contradict itself. So ultimately, yes—actually one *can* just posit that God owns everyone and conclude that Hoppe’s argument fails. Block (2011, 636) attempts to respond to this possibility by noting that “libertarianism is a theory that concerns the relationship between man and man, not man and God.” Block has misunderstood what is at issue, however. Murphy and Callahan’s critique has nothing to do with extending libertarian ideals beyond the political sphere to include the deity. Their point is that if it is possible that God exists and ultimately owns each of us, then it is possible that God has granted each of us only limited self-ownership. Unless Block intends to convey that libertarianism is dogmatically committed to presupposing the truth of atheism, then this possibility holds and Hoppe’s argument fails.

argument—why, that is, one might be justified in speaking to a thief over a stolen medium (including his body). Once again, the fundamental problem seems to be that Hoppe and his defenders are unconsciously locked into an arbitrarily selected moral paradigm. Consequently, the implications of that paradigm are taken as truths established with absolute logical certainty—rather than the hypothetical conclusions that would result if argumentation ethics' unjustified foundational assumptions about moral categories happened to be true. As above, the problem has to do with Hoppe's assumed definition of property rights. Hoppe's first argument, after all, does indeed work—but only if one arbitrarily assumes that an owner must possess absolute and totalistic rights over his property. Argumentation ethics depends, in short, upon the assumption that to own a thing means to have the right to control it both *in every way* and *all the time*, and having the moral power to absolutely determine the ends for which one will use a thing as well as the means that one will use in doing so. As soon as one realizes that this is an arbitrary choice of (implausible) moral categories, it becomes clear that argumentation ethics is a complete and total failure.

CONCLUSION

The ultimate irony of Hoppe's argument is that even Hoppe and his defenders do not consistently believe his crucial presupposition about the nature of rights. They are ready and willing to admit that criminals forfeit at least some of their right to self-ownership. The nonaggression axiom does not prohibit violence against others, but only violence against those who have not themselves aggressed. In aggressing, a person forfeits at least some of his rights of self-ownership—despite retaining the capacity to argue (Hoppe 2006, 408–09; Van Dun 2009, 16–17; cf. Murphy and Callahan 2006, 62). The most vivid example of this is Block's (2003, e.g., 45) full-throated defense of slavery, which explicitly recognizes the possibility of ownership (of a person, in this case) that is not complete (cf. Kinsella 2002). But what this means is that self-ownership, to whatever extent it actually exists, is not the sort of absolute, exclusive right that argumentation ethics requires. It is subject to situational limitations. And once Hoppe has conceded that self-ownership is not absolute and exclusive—that situational limitations on self-ownership are possible—it becomes a question whether the nonaggression axiom articulates the only such limit, or whether others exist, as well.

The implications of the critiques leveled in this article extend far beyond their primary target, for a significant number of related arguments appear to rest upon the same simplistic approach to moral categories that forms the ultimate foundation of Hoppe's approach to self-ownership. The second half of Hoppe's own argument is a prime example. Hoppe (1989, 160–62), of course, tries to extend his argument to prove that people own not only their bodies, but also the goods they homestead. Without doubt, the homesteading principle does appear to be a primary way in which humans acquire property, but Hoppe's argument depends upon it being the only possible way (other than voluntary transfer). Hoppe has various rationales for this presumption (cf. Hoppe 2006, 415–17), but all are easily answered by a teleological ethic because all ultimately depend upon the same arbitrarily absolute concept of property that Hoppe presumes without justification.

Recognizing the crucial intellectual flaw in argumentation ethics also undermines Meng's (2002, 8–9) attempt to supplement Hoppe's argument by blending it with Thomism. Meng's argument seeks to show that "if I truly affirm that life is a good and ought to be preserved, I cannot coherently approve of whatever that makes life impossible" and that the inability to acquire property through homesteading would make life impossible. Whatever else one might say about this argument, it too is fundamentally grounded on the simplistic assumption that acquiring *any* right to control a thing entails acquiring *every* right to control it.

Similarly, Rothbard's (2002, 45–46) attempt to provide intellectual underpinnings for the self-ownership principle is predicated upon the identical simplistic rights paradigm that is the ultimate failure of Hoppe's argument. Rothbard claims that there are only two possible alternatives to the "rule that each man should be permitted (i.e., have the right to) the full ownership of his body." Those alternatives are that each person owns a bit of every other or that some people own others, each of which Rothbard disposes of for various reasons. Of less interest here than the problematic nature of Rothbard's rebuttals is the fact that his argument constitutes a false trichotomy. These are certainly not the only three possibilities. Once again, they seem so to Rothbard only because he is intellectually trapped in a simplistic conception of rights that defines the right to control something in some way as necessarily including the right to control it in every way. But this

is an undefended and arbitrary premise, and as such, constitutes a fatal flaw in Rothbard's argument. Not only is it possible, but it is eminently plausible, that property rights are real but limited to the right to control a thing in certain ways, within certain bounds, for certain ends, etc., perhaps as part of a teleological ethic defining the ultimate end for which property must be used.

Argumentation ethics is not the only line of defense for what I have elsewhere (Ashbach 2020) referred to as "principled libertarianism"—i.e., a political theory constituted by a distinctively libertarian set of end values. Ayn Rand (e.g., 1957) and Robert Nozick (1974) present very different defenses from those of Hoppe and Rothbard. Those set on finding a reason to oppose state action in principle could explore those positions in search of a more tenable argument.

It would be my hope, however, that Hoppean or Rothbardian libertarians who come to understand the radically flawed nature of the arguments for principled libertarianism put forward by these thinkers might be led to consider a different approach to politics altogether. It is entirely possible to critique state overreach without falling into the all too human trap of radicalizing all positions into *direct* questions of moral principle. Much more persuasive, in fact, are the warnings of "nonprincipled libertarians," whose arguments center on prudential means rather than moral ends. The (admittedly overstated) critique of Mises (1963) has already been mentioned. Nikolai Wenzel (2017) has also recently penned an excellent overview of the nonprincipled libertarian case on the basis of the knowledge problem and public choice economics: the state is not omniscient, nor are its operations superhuman in their purity. Any reasonable political program must therefore be prudentially self-limited. It must be cautious not to provoke unintended consequences worse than the problems it sets out to solve. And it must not give a government authority that is likely to do more harm through its abuse than its proper use does good. Defining the scope of these problems, providing them with further robust theoretical and empirical support, and engaging other political thought on the basis of them would be a much more productive approach to limiting state power than participation in unpersuasive mind games like argumentation ethics.

America, and indeed the world, is in great need of hearing the cautionary tale that power wielded by the state goes oft awry.

But principled libertarian arguments, like that of Hoppe (and by implication Rothbard) examined here, have proven highly unpersuasive—and, indeed, frequently fail to rise to the level of serious argumentation at all. Those heretofore under the sway of such arguments should be invited to take seriously the full implications of the possibility of complexity and nuance in the bundle of rights we all possess in what is commonly called “our” property. Acknowledgement of this complexity, perhaps in the form of a teleological approach to ethics, in addition to a less directly principled but ultimately more persuasive critique of state power, is liable to prove far more fruitful than the irrational gotcha tactics by which some libertarians have thus far unfortunately been seduced.

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