

ARTICLES

## Metaethics: Reconstructing Hoppean Argumentation Ethics

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The purpose of this article is to reconstruct Hoppean argumentation ethics by making explicit its fundamental elements and presenting a more refined and cogent formulation of it—particularly through the introduction of the concepts of *monstration* and *decision*—and to show how it proves property rights without committing the naturalistic fallacy or assuming value judgments. The article consists of three parts. In the first, we present the key concepts of the thesis and the sense in which they must be understood. In the second part, we show that there are norms inherent to every discursive act and show the existence of one of these norms in particular—the self-ownership axiom. In the third part, we demonstrate property rights based on the self-ownership axiom in conjunction with the concept of action.

Not all proof is by demonstration. To “de-monstrate” a proposition is to show it, to make it evident, based on a previous proposition that is already evident. Therefore, the concept of demonstration presupposes the concept of *monstration*, of *showing*.

According to Mário Ferreira Dos Santos (1961, 32), “One proves by monstrating, not just by demonstrating. The concept of *demonstration* (demonstrare) implies the concept of monstrating something to make another proposition evident when compared with the first proposition. The first certainty must naturally be monstrated, since *demonstration* implies something already taken as absolutely certain.” And “what is monstrated is done immediately without a middle term; what is demonstrated is done mediately with a middle term” (24). Thus, as it should be, “*monstration* follows an intuitive path” (32).

Furthermore, not every monstration is of a self-evident proposition, such as “something exists.” A monstration can also be of a proposition that, although not immediately evident, is presumed in every discursive act. Thus, such a



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proposition cannot, strictly speaking, be demonstrated, since it has to start from itself, which entails a *petitio principii*, nor can it be denied without self-contradiction. Such a proposition can then only be *monstrated*:

The insight that certain evidence cannot be deductively grounded without presupposing itself (for example, the paradigmatic evidence of a minimal logic in the framework of an as yet unclarified transcendental language game) is no longer a proof of the impossibility in principle of philosophical foundations but rather a reflective, transcendental-pragmatic insight into the uncriticizable foundation of argumentation itself. If, on the one hand, a presupposition cannot be challenged in argumentation without actual performative self-contradiction, and if, on the other hand, it cannot be deductively grounded without formal-logical *petitio principii*, then it belongs to those transcendental-pragmatic presuppositions of argumentation that one must always (already) have accepted, if the language game of argumentation is to be meaningful. (Apel 1987)

Making explicit the judgments that are implicit in the concepts of action and of argumentation is a monstration. That action is *purposeful behavior* and that argumentation is *a linguistic and dialectical exposition of a reasoning intended to justify a thesis* are judgments about the essence of these objects, arising from direct intuitive knowledge of what such things are. Thus, the method of argumentation ethics is not to demonstrate a norm from a fact (which would entail the naturalistic fallacy), but rather to monstrate a normative judgment intrinsic to the act of argumentation.

This normative judgment is fundamentally an ought—and a right only by reflection or logical equivalence—since the concept of ought is the fundamental, irreducible concept in the realm of law and ethics. In other words, every right is but a reflection (Kelsen 2009, 140–45) or a correlative (Dominiak 2023) of a duty. Therefore, this reconstruction will focus on the concept of ought.

A norm cannot be true or false, but only valid or invalid. “Regarding descriptive propositions, one can say that they are true or false; regarding prescriptive propositions, one cannot do so. Prescriptive propositions are neither true nor false, in the sense that they are not subject to the evaluation of truth and falsity. There is sense in asking whether the assertion ‘Ulan Bator is the capital of Mongolia’ is true or false; there is no sense in asking whether the precept ‘One is asked to clean one’s shoes before entering’ is true or false” (Bobbio 2014a, 82–83). A prescriptive judgment refers to an *ought*; a descriptive judgment refers to what *is*. A norm is valid insofar as it derives from another norm that is itself valid. Thus, every ethical theory and

every legal system logically presuppose a fundamental norm (*Grundnorm*), from which the subordinate norms are derived and in which they find their presupposed foundation.

We call a “fundamental norm” a norm whose validity cannot be derived from a higher norm. All norms whose validity can be traced back to the same fundamental norm form a system of norms, an order. This basic norm, in its condition of common origin, constitutes the link between all the different norms that constitute an order. One can test whether a norm belongs to a certain system of norms, to a certain normative order, only by verifying whether it derives its validity from the fundamental norm that constitutes the order. While a statement of “is” is true because it conforms to the reality of sensory experience, a statement of “ought” is a valid norm only if it belongs to such a valid system of norms, if it can be derived from a fundamental norm presupposed as valid. The ground of truth of a statement of “is” is its conformity to the reality of our experience; the ground of validity of a norm is a presupposition, a norm presupposed as being definitively valid, that is, a fundamental norm. (Kelsen 1998, 163)

If the fundamental norm of a legal system is a proposition that is not itself cogent, such as “The Constitution must be obeyed,” it follows that this legal system is ultimately without foundation. Its foundation of validity is arbitrary, and therefore can also be arbitrarily rejected. The only way for a legal system to have a cogent foundation (i.e., one that a rational being must inescapably acknowledge) is for the system to have an axiom as its fundamental norm.

An axiom is a proposition not deduced from any other, yet a necessarily valid or true proposition. An axiom exists when a proposition cannot be denied without being presupposed in the very act of its denial (Hoppe 2007, 18; Rothbard 1998, 32). Therefore, a legal system is rationally justified when the validity of its *Grundnorm* cannot be rejected without involving a self-contradiction. A norm of this type can be called a normative axiom or a transcendental norm.

The existence of a transcendental norm is proven by monstrating a normative judgment whose validity is presupposed in every act of argumentation, this judgment being the condition of possibility for the justification of norms. Consequently, a legal system that has a normative axiom as its fundamental norm possesses a foundation of validity that cannot be coherently denied. The aim of argumentation ethics is to monstrate that the right of self-ownership constitutes such a normative axiom.

## Monstration of the Transcendental Norm of Self-Ownership

Every action expresses a decision, and every decision is a normative judgment (Reale 2002, 522–32). If a decision is a normative judgment, and only propositions can imply other propositions, then every decision logically presupposes two other judgments: a major premise and a minor premise. The major premise is a normative judgment that corresponds to the agent’s value or preference, and whose formula is “X ought to be.” The minor premise is a descriptive judgment that corresponds to the means of the action, whose formula is “The condition for X to be is for Y to be.” The deliberation over means is nothing more than a consideration of factual judgments. Finally, the conclusion is another normative judgment, called the decision: “Therefore, Y ought to be.”<sup>1</sup>

Decision is the normative aspect of action. To decide is to believe in an ought. The concept of decision as the norm of action is important not only for understanding an agent’s values (demonstrated preferences) and factual beliefs, but—and most importantly now—for monstrating the normative and descriptive propositions that underlie every act or discursive act (the transcendental-pragmatic propositions).

Every proof or justification takes place through a discursive act called argumentation (Hoppe 2006, 314; 2010, 154). Argumentation involves presenting logically connected propositions to one or more addressees in order to justify a thesis. All argumentation, by being an action, and therefore a decision, presupposes normative as well as descriptive propositions.

One normative proposition is “I ought to use language,” another, “I ought to use reasoning,” since without language or reasoning no act qualifies as argumentation. A further one is “The addressee must consider the presented argument for himself,” because argumentation is an essentially dialectical (bilateral) activity (Van Dun 2009; Kinsella 2023; Eabrasu 2009; Slenzok 2022). Now, to consider an argument in order to agree or disagree with it is an action, and therefore a decision. Since every decision is exclusive, for the agent is the ultimate decision-maker over himself, it follows that every argumentation presupposes both the proponent’s and the addressee’s autonomy as the only decision-makers over themselves. Thus, the act of argumentation necessarily presupposes the bilateral rule that each individual ought to decide for himself.

The act of justification presupposes the following propositions:

- a. I ought to justify X (normative judgment, end of the

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<sup>1</sup> The structural similarity between this framework and Miguel Reale’s three-dimensional theory of law is not an accident. In fact, it constitutes the proof of that theory based on the principle of methodological individualism.

action).

- b. Justifying X requires argumentation (descriptive judgment, means of the action).
- c. Therefore, I ought to argue (normative judgment, decision).

The act of arguing, in turn, presupposes the following propositions:

- a. I ought to argue.
- b. Argumentation requires that each individual decides for himself.
- c. Therefore, I ought to accept that each individual decides for himself.

It is important to emphasize that the syllogisms above are not the deductive process by which the rule “I ought to accept that each individual decides for himself” is justified. Rather, they constitute the explicit articulation, through logical analysis, of propositions necessarily presupposed in any act of justification.

Consequently, every act of justification presupposes the normative proposition that each individual must decide for himself. If every justification presupposes such a rule, it is a normative axiom or a transcendental norm—a norm that constitutes the condition of possibility for the justification of norms.

### **Proof of Property Rights**

Positive law—that is, the law that “effectively manifests itself in historical-social reality” (Bobbio 2006, 136)—is a system of norms (Bobbio 2014b, 77). Every such system presupposes a fundamental norm; yet every act of justification presupposes transcendental norms. Transcendental norms are, therefore, prior to—and more basic than—any positive fundamental norm. So the validity of a legal system is rationally justifiable only if its fundamental norm is coherent with the transcendental norms—one of which says that each individual must decide for himself. On the other hand, if the system is not rationally justifiable, it can only be arbitrary, based upon a fundamental norm that is a dogma or a value judgment. In conclusion, since the right of self-ownership is the logical correlative of the normative axiom that each individual ought to decide for himself, every legal order must be grounded upon this right and its corollaries in order to be rationally justified.

It is true that this right and its corollaries may or may not be effective—that is, they may or may not be recognized by a positive legal order. However, the question of a norm’s validity must not be confused with that of its effectiveness (Bobbio 2014a, 47–53). Norms not founded upon the axiom of

self-ownership may indeed be effective (i.e., they may be fulfilled) but they are invalid. And they are said to be invalid not on the basis of a subjective judgment or a matter of preference, but according to a universally valid proposition, one that even the proponents of such norms would have to assume and accept in order to defend the validity of the norms. Such norms may be valid insofar as they conform to the fundamental norm of their own legal system, but this fundamental norm itself would be invalid for contradicting the self-ownership axiom, and so rendering all its subordinate norms invalid as well.

Now, from the rule that each individual must decide for himself (the self-ownership axiom), one can deduce that each individual must also decide over external resources beyond his own body (the right of property). Let us see how this can be drawn.

The rule that property titles ought to be assigned to external resources (property rights) derives from the self-ownership axiom combined with the concept of action (understood as purposeful behavior with a physical body in space and time, and hence never separable from external means). The existence of this norm is monstrated through the following syllogism:

- a. I ought to accept that each individual decides for himself.
- b. Deciding for oneself necessarily involves deciding over external resources, since the body, being matter, only behaves in relation to matter.
- c. Therefore, I ought to accept that each individual decides over external resources.

Accepting that each individual decides with respect to external means implies accepting a criterion for ascribing property titles, since without such a criterion there could be multiple incompatible decisions by different individuals regarding the same resource, with no rule to determine which decision is ultimately valid. In the absence of an ultimately valid decision, all decisions would be valid and none of them in particular would be, meaning that no decision would, in fact, have been made—which contradicts the transcendental norm that decisions ought to be made regarding external resources. The only rule for assigning property titles compatible with the axiom of self-ownership is the principle of original appropriation, according to which the valid decision is that of the first individual who used the resource as a means of action.<sup>2</sup>

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<sup>2</sup> This rule, of course, implies the validity of the contractual transfer of that property title to a new ultimate decision-maker.

The alternatives to the principle of original appropriation are appropriation by verbal declaration and appropriation not by the first user, but by the second, or the third, or the fourth, and so on. Appropriation cannot be by verbal declaration, because such a rule would contradict the self-ownership axiom, since it would imply that an individual could acquire a property title over another individual by mere verbal declaration (Hoppe 2010, 162). And it cannot be by the second (or the third, or the fourth, etc.) user of the resource either, because this would imply that the first user's decision contradicts a nonexistent decision, which is absurd. Therefore, only the principle of original appropriation is consistent with the self-ownership axiom.

Finally, such a criterion only applies to rival goods, since nonrival goods could not be considered property without contradiction (Hoppe, in Kinsella 2015). According to Konrad Graf (2015, 62), "A rival good is one that different parties could not use simultaneously for different, incompatible purposes without coming into physical conflict." Assigning a property title to a nonrival good (such as a recipe) would entail making a decision regarding resources (such as the ingredients of that recipe) that are either unowned or already appropriated—which is absurd in the former case and contradictory in the latter.

## Conclusion

By using the concepts of monstration, action, decision, and argumentation, along with other complementary concepts, we were able to prove that there are norms that constitute the condition for the justification of norms and that these norms can be called normative axioms or transcendental norms. We have also showed that one of these normative axioms is the self-ownership axiom, according to which each individual ought to decide for himself. Finally, based on this proposition we have proved that every legal system must prescribe an assignment of property titles on the grounds of the principle of original appropriation of rival goods—that is, it must enshrine private property rights as formulated in the Austro-libertarian tradition.

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