

ARE ALIENABILITY AND THE APRIORI OF ARGUMENT LOGICALLY INCOMPATIBLE?

by
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Are Alienability and the Apriori of Argument Logically Incompatible?

Let us consider the contention that it is logically impossible to favor both the doctrine of Alienability, and the Apriori of Argument, at the same time. Since I am on record as so maintaining both views, and continue to do so, it is incumbent upon me to either successfully refute his charge, or retract in one or both of these cases.

In this paper I shall first review Alienability (section I) and the Apriori of Argument (section II). I shall then consider the view that they are incompatible with one another (section III), and offer reasons for rejecting his perspective.

I. Alienability

Alienability, or commodifiability, is the postulate that while people may start out as free self-owners of themselves, they have a right to sell themselves into slavery. That is, if they truly own themselves, they can sell themselves. If they cannot sell themselves into slavery, they are then to that extent less than fully free. If I own my shirt, I can sell it to you. If I cannot sell it to you, then and to that extent my ownership rights are attenuated. In effect, people are “just” commodities, as our friends on the other side of the aisle are wont to charge.

Why would anyone consent to sell himself into slavery?

Suppose my child were ill with a dread disease. The cure costs \$1 million. Unfortunately, I do not have anything like that amount to my name. Fortunately, you

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have long desired to have me as a slave, to boss around and order about, to chastise and even kill me if I in any way displease you, or even on a whim. You value the prospect of my enslavement to you as worth far more than the \$1 million it will cost you. I, for my part, value my child's life more than my own freedom, or even my own life, should it come to that. Thus, as in the case of all voluntary contracts, we both benefit, at least in the ex ante sense, from this commercial interaction.

A voluntary slave contract has nothing to do with the sale of the "will."² Just as in the case of being unable to not think about a pink elephant when one is mentioned, it would be all but impossible for me to quell my desires for freedom, once enslaved. Slaves can still want to be free. Very much to the contrary, voluntary slavery pertains only to the law of physical invasion: if a policeman sees you whipping me, he might with alacrity rush to my defense. The operational definition of a slave contract is that upon being told that I have sold myself into slavery to you, the policemen will cease in his efforts to stop you from beating me. If anything, he will hold me down, as he would a horse you were attempting to harness, so as to aid in your right to treat your property (e.g., me) in any way you see fit.

It is my contention that voluntary slavery is not only consistent with the libertarian vision of the free society, it is part and parcel of it.³

II. the Apriori of Argument

In my humble opinion, Hoppe's the Apriori of Argument is to philosophy what Mozart's "The Queen of the Night" (my favorite piece in all of music) is to art.

² Rothbard, Murray N., The Ethics of Liberty, Humanities Press, Atlantic Highlands, N.J., 1982, pp. 40-41, 135-136, objects to alienability or voluntary slavery, on this ground.

³ For a more thorough going explication of these claims, see Block, Walter. 2003. "Toward a Libertarian Theory of Inalienability: A Critique of Rothbard, Barnett, Gordon, Smith, Kinsella and Epstein," Journal of Libertarian Studies, Vol. 17, No. 2, Spring, pp. 39-85; http://www.mises.org/journals/jls/17_2/17_2_3.pdf; Block, Walter. 2001. "Alienability, Inalienability, Paternalism and the Law: Reply to Kronman," American Journal of Criminal Law, Vol. 28, No. 3,

It is simply the best short statement of libertarian political theory ever penned.⁴ In these few paragraphs, which deserve to be cited in full wherever possible, Hoppe provides a base for property rights in persons and things which is, in turn, the very axiom of libertarianism.

Hoppe explains:

"First, it must be noted that the question of what is just or unjust - or, for that matter, the even more general one of what is a valid proposition and what is not - only arises insofar as I am, and others are, capable of propositional exchanges, i.e., of argumentation. The question does not arise vis-a-vis a stone or fish, because they are incapable of engaging in such exchanges and of producing validity claiming propositions. Yet if this is so - and one cannot deny that it is without contradicting oneself, as one cannot argue the case that one cannot argue - then any ethical proposal, as well as any other proposition, must be assumed to claim that it is capable of being validated by propositional or argumentative means... In fact, in producing any proposition, overtly or as an internal thought, one demonstrates one's preference for the willingness to rely on argumentative means in convincing oneself or others of something; and there is then, trivially enough, no way of justifying anything, unless it is a justification by means of propositional exchanges and arguments. But then it must be considered the ultimate defeat for an ethical proposal if one can demonstrate that its content is logically incompatible with the proponent's claim that its validity be ascertainable by argumentative means. To demonstrate any such incompatibility would amount to an impossibility proof; and such proof would constitute the most deadly smash possible in the realm of intellectual inquiry.

"Secondly, it must be noted that argumentation does not consist of free-floating propositions, but is a form of action requiring the employment of scarce means; and furthermore that the means, then, which a person demonstrates as preferring by engaging in propositional exchanges are those of private property. For one thing, obviously, no one could possibly propose anything, and no one could become convinced of any proposition by argumentative means, if a person's right to make exclusive use of his physical body were not already presupposed. It is this recognition of each other's mutually exclusive control over one's own body which explains the distinctive character of propositional exchanges that, while one may disagree about what has been said, it is still possible to agree at least on the fact that there is disagreement. And obvious, too: Such property right in one's own body must be said to be justified a priori. For anyone who would try to justify any norm whatsoever would already have to presuppose an exclusive right to control over his body as a valid norm simply in order to say 'I propose such and such.' And anyone disputing such right, then, would become caught up in a practical contradiction, since arguing so would already implicitly have to accept the very norm which he was

Summer, pp. 351-371; Block, Walter. 1999. "Market Inalienability Once Again: Reply to Radin," Thomas Jefferson Law Journal, Vol. 22, No. 1, Fall, pp. 37-88.

⁴ In Block, Walter, "Ethics, Efficiency, Coasean Property Rights and Psychic Income: A Reply to Demsetz," Review of Austrian Economics, Vol. 8, No. 2, 1995, pp. 80-82, I thought highly enough of this passage to quote it in full. I still do.

disputing.

“Furthermore, it would be equally impossible to sustain argumentation for any length of time and rely on the propositional force of one's arguments, if one were not allowed to appropriate next to one's body other scarce means through homesteading action, i.e., by putting them to use before somebody else does, and if such means, and the rights of exclusive control regarding them, were not defined in objective physical terms. For if no one had the right to control anything at all except his own body, then we would all cease to exist and the problem of justifying norms - as well as all other human problems - simply would not exist. Thus by virtue of the fact of being alive, then, property rights to other things must be presupposed to be valid, too. No one who is alive could argue otherwise.

“And if a person did not acquire the right of exclusive control over such goods by homesteading action, i.e., by establishing some objective link between a particular person and a particular scarce resource before anybody else had done so, but if, instead, late-comers were assumed to have ownership claims to things, then literally no one would be allowed to do anything with anything as one would have to have all of the late-comers' consent prior to ever doing what one wanted to do. Neither we, our forefathers, nor our progeny could, do or will survive if one were to follow this rule. Yet in order for any person -past, present or future - to argue anything it must evidently be possible to survive then and now. And in order to do just this property rights cannot be conceived of as being 'timeless' and non-specific regarding the number of people concerned. Rather, they must necessarily be thought of as originating through acting at definite points in time for specific acting individuals. Otherwise, it would be impossible for anyone to first say anything at a definite point in time and for someone else to be able to reply. Simply saying, then, that the first-user-first-owner rule of libertarianism can be ignored or is unjustified, implies a contradiction, as one's being able to say so must presuppose one's existence as an independent decision-making unit at a given point in time.

"And lastly, acting and proposition-making would also be impossible, if the things acquired through homesteading were not defined in objective, physical terms (and if, correspondingly, aggression were not defined as an invasion of the physical integrity of another person's property), but, instead, in terms of subjective values and evaluations...

"By being alive and formulating any proposition, then, one demonstrates that any ethic except the libertarian private property ethic is invalid. Because if this were not so and late-comers were supposed to have legitimate claims to things or things owned were defined in subjective terms, no one could possibly survive as a physically independent decision-making unit at any given point in time, and hence no one could ever raise any validity claiming proposition whatsoever...

"As regards the utilitarian position, the proof contains its ultimate refutation. It demonstrates that simply in order to propose the utilitarian position, exclusive rights of control over one's body and one's homesteaded goods already must be presupposed as valid. And, more specifically, as regards the consequentialist aspect of libertarianism, the proof shows its praxeological impossibility: the assignment of rights of exclusive control cannot be dependent on the - 'beneficial' or whatever else - outcome of certain things; one could never act and propose anything, unless private property rights existed already prior to any later outcome. A consequentialist ethic is a praxeological absurdity. Any ethic must, instead, be 'a prioristic' or 'instantaneous,' in order to make it possible that one can act here and now proposing this or that, rather than having to suspend acting and wait until later. Nobody advocating a wait-

for-the-outcome ethic could be around anymore to say anything if he were to take his own advice seriously. And to the extent that utilitarian proponents are still around, then, they demonstrate through their actions that their consequentialist doctrine is, and must be, regarded as false. Acting and proposition-making requires private property rights now, and cannot wait for them to be assigned only later."⁵

III. Incompatibility

Let us now consider the claim that one cannot at the same time logically adhere to both Alienability and the Apriori of Argument⁶. Note, I do not call into question either the Apriori of Argument nor Alienability. I am now entirely silent on whether or not either one or both of these doctrines is correct. Rather, I limit myself to the contention that it is logically possible to maintain both of them. Rather than defending either or both of these tenets, I shall confine myself to refuting the claim that they are incompatible.

One argument is that a slave is akin to Hoppe's "fish"⁷: you cannot argue with it, so the issue of freedom does not arise. Why can you not argue with a denizen of the deep? Because, not only is such a creature incapable of speech, it simply has no rights. Now of course a slave is certainly able to engage in argument. But he has no right to do so⁸, at least not without his master's permission.⁹

⁵ Hoppe, Hans-Hermann, The Economics and Ethics of Private Property: Studies in Political Economy and Philosophy, Boston: Kluwer, 1993, pp. 204-207.

⁶ Or the Argument from Argument

⁷ In his lectures on this subject, Hoppe sometimes illustrates his point by use of "an elephant" or "a gorilla," stating that he can only have a "technical" problem with one of these beasts, since they are incapable of argument.

⁸ Remember, those who take the opposite point of view on my thesis have no quarrel with voluntary slavery, at least not in the missive quoted above. They content themselves, merely, with pointing out that voluntary slavery and the Apriori of Argument are logically incompatible. Given this stance, they have no warrant to reject my claim that (voluntary) slaves are precluded from arguing, without their masters' permission.

⁹ Suppose, however, that there were a particularly intelligent gorilla, who was not only capable of mere speech, he could actually articulate an argument. Would he qualify as a self owner, such that humans would be obliged to respect his rights? Only if he satisfied a second condition called for by Rothbard (), who has not one but two criteria for self ownership: first, an ability to argue, and second,

We must now add a qualification to the foregoing. The issue of the voluntary slave's rights does arise even if his owner forbids him to speak, even if he is a deaf mute and cannot speak. For rights in the libertarian system are not limited to what any individual person can and cannot do. Rather, they apply to the entire species¹⁰. There are surely many other human beings who cannot speak. Were rights not species specific, then Hoppe could be interpreted as denying rights not only to deaf mutes and slaves without their master's permission to speak, but also to babies, the senile, those in a coma, and, indeed, to all people since they sometimes sleep. As long as even one member of the species can engage in argumentation, and not only promise to but actually respect human rights at least to the extent that we do so for each other, the rights of all members of the species can be justified in this manner.¹¹

A second argument is that the denial of my claim is based on a mistaken interpretation of Hoppe's work. Consider the following scenario. A prison warden is walking down the hall of an execution chamber with a confessed murderer who is on his way to being put to death. The latter states: "I am a self-owner. I am using my own vocal chords, lungs, and other bodily parts necessary to engage in a speech act. According to Hoppe (1993), therefore, I should be set free."¹²

But the warden has a blistering reply at his disposal: "Yes, you were once free and thus a self owner. However, you violated the rights of others, by murdering them,

willingness to promise not to initiate violence against humans, and to actually adhere to this stipulation, at least roughly to the degree that this is attained by human beings.

¹⁰ Hoppe, 1993, p. 204, would appear to agree with this since he states: "The question does not arise vis-a-vis a stone or fish, because they are incapable of engaging in such exchanges and of producing validity claiming propositions" (emphasis added). The point is, Hoppe is not referring to any one specific fish, but rather to all of them, e.g., the entire species.

¹¹ When confronted with this position, Matthew Block's reaction was, "You'd better hope they never find an intelligent and articulate fly."

¹² This is a very philosophically acute murderer, au courant with the latest twists and turns of libertarian theory.

and you lose your own rights to the extent that you violate those of others.”¹³

This sounds eminently reasonable. After all, to interpret Hoppe (1993) as opposing the death penalty on grounds that murderers are self owners since they can speak would be rather perverse. But if so, then precisely the same response is open to a slave who might be interpreted as demanding his own freedom¹⁴ on the ground that he can speak. The slave owner could reply: “Yes, you were once free and a thus self owner. However, you sold yourself into slavery, and you lose your rights to the extent that you have sold them. That is the very essence of a sale.”

Nor need we resort to punishing murderers in order to make this point. Imposing bodily discipline on any criminal will suffice. For all convicts can talk. If we interpret Hoppe (1993) as supporting the doctrine that all speakers without exception are self-owners, and thus it is wrong to invade their bodily territory, then incarceration is per se invalid under libertarian law. It would be the rash analyst, however, who would interpret Hoppe (1993) in so restrictive a manner. But if we cannot interpret the Apriori of Argument so as to rule out all punishment, even self-defense, then we cannot maintain that mere speech guarantees self-ownership rights. And if we cannot infer self-ownership from speech and/or ability to argue rationally, then there is no reason to cast aspersions on the validity of voluntary slave contracts on this ground. And if not, then my opponent in this debate has not successfully shown a logical incompatibility between Hoppe’s Apriori of Argument and the doctrine of alienability, or voluntary slavery.

¹³ See Rothbard, Murray N., *The Ethics of Liberty*, Humanities Press, Atlantic Highlands, N.J., 1982, p. 85. See also Barnett, Randy, and Hagel, John, eds., *Assessing the Criminal*, Cambridge MA: Ballinger, 1977; King, J. Charles, A Rationale for Punishment, 4 *J. Libertarian Stud.* 151, 154 (1980); Kinsella, Stephan N., "A Libertarian Theory of Punishment and Rights," (volume) 30 *Loy. L.A. L. Rev.* 607-45 (1997).

¹⁴ Or at the very least claiming that any slave owner who subscribes to Hoppe (1993) must set free his slaves.

Let us now consider a possible counter argument to my thesis. Although Hoppe may wish to safeguard his Argument from Argument against the charge that it is incompatible with the existence of punishment, he has not succeeded in doing so, for the following reason: Hoppe makes no explicit attempt to reconcile his perspective with the justification of punishment. As far as his Apriori of Argument is concerned, those found guilty of murder or theft can still speak. They can engage in discourse. Therefore, imprisoning them is a violation of their rights¹⁵.

One, of course, could go even further in a critique of Hoppe. For he never explicitly justifies self defense. A attacks B. B, a Hoppean, starts to defend himself. A, a critic of mine, demands that B stop defending himself against his, A's attack, on the ground that A can Argue, and thus has rights that B cannot disparage, even in self-defense.

My claim is that although this critique succeeds if you put the blinders on and construe Hoppe narrowly enough, it is a perverse way of interpreting him. There is, after all, such a thing as specialization and the division of labor that applies to intellectual pursuits as it does to all other things. No one person, to say nothing of any particular passage, can do everything. Hoppe's Apriori of Argument establishes, as far as I am concerned, that people have rights. That he does not also in this passage defend against the proposition that they cannot lose rights seems eminently justified on division of labor grounds alone.

Let me try to make this point by analogy. Rothbard¹⁶, following in the

¹⁵ For a brilliant defense of punishment along the libertarian lines established by Hoppe, see Kinsella, Stephan N., "A Libertarian Theory of Punishment and Rights," (volume) 30 Loy. L.A. L. Rev. 607-45 (1997); Kinsella, Stephan N., "New Rationalist Directions in Libertarian Rights Theory," 12:2 J. Libertarian Studies 313-26 (Fall 1996); Kinsella, Stephan N., "Punishment and Proportionality: The Estoppel Approach," 12:1 J. Libertarian Studies 51 (Spring 1996); Kinsella, Stephan N., "Estoppel: A New Justification for Individual Rights," Reason Papers No. 17 (Fall 1992), p. 61.

¹⁶ Rothbard, Murray N., For a New Liberty, Macmillan, New York, 1973, p. 32; Rothbard,

tradition of Locke¹⁷, has established, at least to my satisfaction, that homesteading land, e.g., mixing one's labor with virgin territory, establishes ownership over it. Let us suppose that C duly mixed his labor with some un-owned land, and properly became the owner of it. Whereupon he went out and set fire to a residential building. The judge then rules that C must give up his land, duly acquired though it was, to the owners of the house he torched. Would this constitute a proper critique of Rothbard and Locke on homesteading property? After all, the judicial finding maintains that even though C mixed his labor with the land, he still is not now the proper owner of it, as it must pass from his domain into that of the victimized homeowner. The judge's decision would be a legitimate dismissal of Locke-Rothbard, but only if we were to employ the methodology utilized by my created critic in his attack on Hoppe.

More reasonably, however, we could maintain that although C was once the proper owner of the land in question, he is no longer, since he must give it up in order to pay the debt he incurred by setting fire to someone else's house. That is, rights are not permanent. They can be lost, even in the just society.

The point is, this argument conflates the establishment of a property right, whether in persons or in territory, with the question of how it can be taken away from its once licit owner. The implication is that the creation of a right must of necessity be permanent. There, seemingly, is no room in this universe for the proper establishment of a property right, and then for its legitimate forfeiture. The argument proceeds as if once property is established, it can never be properly seized. Very much to the contrary, one justification for forfeiture is punishment. That Hoppe does not explicitly mention this is no flaw in his intellectual edifice.

Murray N., The Ethics of Liberty, Humanities Press, Atlantic Highlands, N.J., 1982.

¹⁷ Locke, John, An Essay Concerning the True Origin, Extent and End of Civil Government, in E. Barker, ed., Social Contract, New York: Oxford University Press, 1948, pp. 17-18.

Another justification for loss of property is voluntary sale. If C sells his land to D, then C is no longer the owner, even though C homesteaded it, and D did not. In like manner, Hoppe's Argument from Argument establishes self-ownership in persons. But this is by no means permanent. It can be lost as part of a punishment. E.g., slavery can be imposed in lieu of the death penalty, at least in the libertarian society. And, similarly, freedom in one's own person can also be alienated through voluntary sale.