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The Libertarian Argumentation Ethics, the Transcendental Pragmatics of Language, and the Conflict-Freedom Principle

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Abstract

The purpose of this paper is to showcase the links between Hans-Hermann Hoppe's libertarian argumentation ethics and Karl-Otto Apel's transcendental pragmatics with a special reference to the consensus theory of truth proposed by the latter thinker. More specifically, we contend that Hoppe's theory is logically contingent on Apel's views on truth in that some crucial gaps in Hoppe's grounding of the so-called *a priori* of communication and argumentation are filled by Apel's original arguments. Additionally, the paper provides a case for interpreting Hoppe's ethics as a theory of rational conflict-freedom, which seems to cohere best with the transcendental-pragmatist approach. Finally, we offer a few comments on how the most common objections against Hoppe's theory can be overcome on the basis of transcendental pragmatics and the conflict-freedom principle.

Introduction

One of the most notable endeavors aimed at justifying the principles of libertarianism, as represented by Murray N. Rothbard and his intellectual successors, is Hans-Hermann Hoppe's argumentation ethics. Formulated first

in his book “Eigentum, Anarchie und Staat” (1987), it aroused considerable interest within the ranks of libertarian theorists after its English-language publication one year later ([1988] 2006, pp. 339–346), dividing commentators into ardent followers¹ and sharp critics of Hoppe’s approach.² In our judgment, however, the existent literature does not exhaust the subject-matter. Above all, during the debate over Hoppe’s argument, both advocates and critics tended to focus on its libertarian implications, paying little attention to epistemological underpinnings of the theory and to the doctrines that inspired Hoppe: the thought of Jürgen Habermas (Hoppe’s Ph.D. advisor), and to an even greater extent, Karl-Otto Apel’s transcendental pragmatics of language.

It is beyond the purview of this article to offer a peremptory defense of Hoppe’s argument. Our aim is far more moderate. From the point of view of intellectual history, we highlight Apel’s influence on Hoppe. To wit, we claim that Hoppe is to be classified as a proponent of the consensus theory of truth as expounded by Apel. More importantly, the Apelian consensus theory of truth is here identified as a presupposition or a background theory of Hoppe’s argumentation ethics. We contend that the latter theory is logically contingent on the former. Thus, the advocates of Hoppe’s argumentation ethics must espouse Apel’s consensus theory if they want to uphold their stance. Opponents, on the other hand, should take it into account in order to avoid formulating misguided objections and, as they deem appropriate, redirect their criticism. In fact, as will be seen, several objections raised by critics stem from the neglect of the transcendental pragmatics and the concomitant misconstrual of the Hoppean ethics as one describing the factual conditions of possibility for argumentation. In reality, against the background of its transcendental-pragmatist presuppositions, Hoppe’s theory ought to be read as a conception that aims to prescribe principled solutions for conflicts over scarce resources.

The questions of the truth theory and epistemology in general have gone unnoticed by the vast majority of commentators. To our knowledge, the only exception is Ilia Schmelzer, who correctly acknowledges the consensus theory of truth of Habermas and Apel as the epistemological

¹ Cf. Rothbard (1988), Kinsella (1994, 1996, 2002), Eabrasu (2009), Block (2011), Van Dun (2009).

² Cf. Friedman (1988), Murphy and Callahan (2006), Frederick (2013), Van Dun (2009), Eabrasu (2012).

underpinning of Hoppe's argumentation ethics (2013, pp. 4–32). He nonetheless puts stress on the sharp criticism of Hoppe from the standpoint of critical rationalism rather than on the exhaustive illumination of the links between Hoppe's ethics and Apel's and Habermas' views on truth. Furthermore, whereas Schmelzer seems to perceive Hoppe's theory as influenced by Apel and Habermas to by and large the same degree, we emphasize Hoppe's connections to Apel. Another author who paid a little attention to Hoppe's theory of knowledge is Douglas Rasmussen (1988, p. 51), yet he did not elaborate on his insights and confined himself to leveling some doubts concerning the validity of Hoppe's central epistemological tenet, the so-called *a priori* of communication and argumentation.

We shall proceed in the following order. Section 2 provides a concise exposition of the Hoppean argumentation ethics with emphasis on the notion of conflict-freedom. In section 3, we pinpoint key gaps in Hoppe's own presentation of the "*a priori* of communication and argumentation". In section 4, in turn, we demonstrate how those gaps are filled by Apel's transcendental pragmatics. We also offer textual evidence that Hoppe indeed adheres to that philosophy, which is to be found in his works as well as in the interview given to ourselves. Additionally, in section 5, a few comments are made on how the most common objections against Hoppe's theory can be dismantled under the transcendental-pragmatist approach and the conception of conflict-freedom. The last section concludes.

Hoppe's argumentation ethics: an exposition

Hoppe's theory (2006, p. 339) purports to offer "the ultimate justification of the ethics of private property." This means precisely that libertarianism is supposed to be not only true but also undeniably true (Kinsella, 1994, pp. 125–126). And conversely, this means that all non-libertarian ethics are not only false; rather, they are necessarily false. Libertarian principles, thus understood, partake of axioms whose denial would lead to a performative contradiction. For in trying to question them, one has already presupposed their validity. On the other hand, nor could they be vindicated by means of deductive reasoning since any such reasoning would have to always presuppose them already (Hoppe, 2007, p. 18). In this respect, Hoppe's view on the axiomatic nature of libertarian ethics resembles Aristotle's grounding of the

non-contradiction principle or – as Hoppe himself declares – Kant’s transcendental deduction (2016a, p. 150, f. 6).³

The Hoppean argument commences with the following rationalist *dictum*:

... Any truth claim – the claim connected with any proposition that it is true, objective or valid (all terms used synonymously here) – is and must be raised and decided upon in the course of an argumentation. And since it cannot be disputed that this is so (one cannot communicate and argue that one cannot communicate and argue), and it must be assumed that everyone knows what it means to claim something to be true (one cannot deny this statement without claiming its negation to be true), this has been aptly called ‘the *a priori* of communication and argumentation’ (2016a, pp. 148–149).

According to Hoppe, the above statement does not pertain to the theory of knowledge only. Quite to the contrary, much has been won for moral theory by virtue of “the *a priori* of argumentation and communication”. In the first place, “arguing never just consists of free-floating propositions claiming to be true. Rather, argumentation is always an activity, too (2016a, p. 149).” Being an activity, argumentation – as Frank Van Dun (2009, p. 3) puts it – “cannot take place in a normative void”; its condition of possibility is the acceptance of specific norms of conduct. As necessary preconditions of truth-seeking, they are presupposed all alone in every act of argumentation (Hoppe, 2016a, pp. 149–150).

Furthermore, the universalization principle articulated, among others, in the Golden Rule of ethics and the Kantian categorical imperative, which state that ethical judgments, by nature, apply to all moral subjects in the same way, can now be reestablished on a proper foundation. Hoppe writes (2016a, p. 151):

Indeed, as argumentation implies that everyone who can understand an argument must in principle be able to be convinced of it simply because of its argumentative force, the universalization principle can now be understood and explained as grounded in the wider *a priori* of communication and argumentation.

³ See also Aristotle, 2005, 106A; Kant, 1929.

Moreover, Hoppe subscribes to a strong version of the universalization principle. Not only must everyone be bound by the same moral law⁴ but they must also have identical individual rights (Hoppe, 2016a, pp. 149–150).

In order to arrive at the concrete norms built into the notion of argumentation, Hoppe (2016a, pp. 149–150) employs the conjunction of three premises:

First, that argumentation is not only a cognitive but also a practical affair. Second, that argumentation, as a form of action, implies the use of the scarce resource of one's body. And third, that argumentation is a conflict-free way of interacting – not in the sense that there is always agreement on the things said, but in the sense that as long as argumentation is in progress it is always possible to agree at least on the fact that there is disagreement about the validity of what has been said.

From these premises, what is supposed to follow is the conclusion:

(...) A mutual recognition of each person's exclusive control over his own body must be assumed to exist as long as there is argumentation.

Whoever tries to reject this principle, does so on pain of performative contradiction, for by engaging in argumentation, he has already presupposed its validity. Thereby, Hoppe claims to have grounded the first of the principles of the libertarian theory of justice – the right to self-ownership, or, stated more precisely, the right to ownership in one's body.

Before we move on to the Hoppean derivation of the next libertarian principle, i.e., the right to ownership in external objects, let us clarify Hoppe's second and third premises. What does it mean that goods or resources, exemplified by the human body, are scarce? And what does the thinker have in mind when speaking of conflict-freedom? An explanation may be found in the following fictional scenario, repeated time and again in a number of Hoppe's writings:

In the Garden of Eden only two scarce goods exist: the physical body of a person and its standing room. Crusoe and Friday each have only one body and can stand only at one place at a time. Hence, even in the Garden of Eden conflicts between Crusoe and Friday can arise:

⁴ Which does not imply any sort of egalitarianism even in the sense of all subjects having identical individual rights. See: Hare, 1981, p. 108.

Crusoe and Friday cannot occupy the same standing room simultaneously without coming thereby into physical conflict with each other. Accordingly, even in the Garden of Eden rules of orderly social conduct must exist—rules regarding the proper location and movement of human bodies. And outside the Garden of Eden, in the realm of scarcity, there must be rules that regulate not only the use of personal bodies but also of everything scarce so that all possible conflicts can be ruled out. This is the problem of social order (2021, pp. 9–10).

Generally speaking, scarce goods are those goods the supply of which does not suffice to satisfy all needs that, technically speaking, could be satisfied with their aid (Robbins, 1932, pp. 12–22). There is also a crucial interpersonal dimension to it, typically referred to as “rivalrousness.” This phenomenon comes into play whenever two or more agents seek to use one resource for conflicting purposes (Kinsella, 2006). Indeed, in Hoppe’s view, interpersonal conflict may arise only in the realm of scarcity. Correspondingly, absent the superabundance of goods and the perfect harmony of human interests, conflict-avoidance consists in the definition of property rights ascribing titles to control over scarce resources to respective individual persons.⁵

⁵ Conversely, absent the superabundance of goods, but under the harmony of interests, conflicts will not arise. Kibbutzism, squats, marriages etc. – all these forms of human cooperation exist on the basis of joint ownership in resources precisely thanks to such harmony. As a matter of pure logic, therefore, it is perfectly conceivable that all mankind would maintain a communist economic order owing to unanimity on all relevant goals. But does this undercut the transcendental status of Hoppe’s theory? Not at all. First off, even if interpersonal clashes never existed, a world marked by conflicts would still be imaginable as a *possible world*. A normative response to its challenges would then still represent an *a priori* inquiry, i.e., a logical *application* of transcendental knowledge. And because it is obviously the assumption of the existence of conflicts that proves much more realistic in the real world than the opposite one, Hoppean ethics stands a chance to be not only valid but also of tremendous practical interest.

As regards the question of transcendentalism, an anonymous referee of this journal holds that in order for an argument to be transcendental, it has to apply to disembodied spirits as well. Yet, although transcendentalism has indeed historically originated as a philosophy of the bodiless self, it is not its definitional feature. A theory of bodily *a priori* has been proposed for instance by Maurice Merleau-Ponty, to name only the best-known example (Ponty, 1981, pp. 67–202). Crucially, although there is no room in this article to elaborate on this in detail, Hoppe embraces the *a priori* of the body too as part of the action-axiom, which he took up from Ludwig von Mises (Hoppe, 2006; Mises, 1998, pp. 11–29). Finally, even without the notion of the bodily *a priori*, the application of the

Hence, both political philosophy and ethics can and must be defined in terms of property rights (Hoppe, 2006, pp. 332–333).⁶

This by no means entails that all existent normative systems are equally good provided that one translates them into the conceptual framework of property rights. Quite to the contrary, there is in fact only one set of norms that satisfies the goal of conflict resolution, namely the libertarian ethics of private property. In order to avoid conflicts, rules regulating the distribution of property titles must enable the assignment of rights to exclusive control over resources to individual owners, “the ultimate decision-makers” with respect to any good in question. Then and only then can the specter of physical clash be averted. Hoppe (2006, p. 67) explains:

Two individuals cannot be the exclusive owner of one and the same thing at the same time.” Furthermore, the distribution of property titles cannot be determined on an arbitrary basis. Property-claims must draw their binding force from intersubjectively verifiable criteria. Thus, the general, uniform principle of ownership in scarce goods, be it one’s body or external objects, holds that property-claims must be supported “by establishing an objective, intersubjectively controllable link between a particular person and a particular scarce resource (Hoppe, 2016a, p. 155; see also Kinsella, 2006).

Insofar as self-ownership is concerned, the postulate of “objective link” is fulfilled by the direct connection between one’s will and his body. What makes X’s nature-given body lawfully his is the fact that it is under his direct control, whereas others can exercise control over it only by making use of their bodies. Ownership in one’s body has therefore logico-temporal precedence to any indirect control (Hoppe, 1987, pp. 74–75).

How in turn do we come to own external objects? Matters of original acquisition, i.e., the appropriation of previously unowned resources, are governed by the “first-use-first-own” rule (Hoppe 2016a, p. 145). Among libertarian scholars, there is an ongoing debate over what should serve as a touchstone for legitimate acquisition (Epstein, 1979, pp. 1221–1242; Rothbard, 1988, pp. 39–40; Dominiak, 2017, pp. 43–53). In most of his works, Hoppe explicitly adheres to the Lockean labor theory – whoever is

argumentation ethics to the world of scarcity would still be its logical extension, just as is the analysis developed under the assumption of interest-disharmony.

⁶ For human rights as property rights, see also Rothbard, 1998, pp. 113–120.

first to mix his labor with a given resource has a rightful claim to ownership thereof (1987, pp. 76–80). In Hoppe’s later articles (2021, pp. 14–15; 2016b), the labor criterion is not mentioned anymore, having been replaced by the competitive concept of first possession (exclusive physical control). In any case, both criteria are meant to constitute objectively ascertainable, visible states of affairs indicating one’s ownership in things. Moreover, had others a right to contest the first user’s claim to ownership of resources they had never used before, then such a right would have to be based on mere verbal declaration: “a decree.” Yet this would clearly run counter to the very purpose of norms, that is, the conflict-avoidance. For if goods were to be appropriated by decree, there would be no chance for the rational resolution of disputes between contrary decrees put forward by interested persons (Hoppe, 2016a, pp. 155–156).

Hoppe and the Consensus Theory of Truth

Tibor Machan (1988, p. 52) entitled his review of the first English-language presentation of the Hoppean argument, “Ethics without philosophy.” David Gordon (1988, p. 47) somewhat echoed this opinion, writing: “Hoppe is a Kantian of sorts (...). But his argument about rights does not depend on any controversial positions in the theory of knowledge. It is quite compatible with any of the standard options in epistemology, including direct realism.” Rothbard himself (1988, p.45), also believed that Hoppe’s argument may well be reconciled with his own natural-law, neo-Aristotelian position. Nothing can be further from the truth. As will be seen, not only does argumentation ethics originate from a distinct philosophical tradition but also its central contentions are logically dependent upon it.

Let us go back to the fundament of Hoppe’s philosophy – the *a priori* of communication and argumentation. Hoppe asserts that it cannot be rejected on pain of performative contradiction. As he puts it,

one cannot communicate and argue that one cannot communicate and argue”, and hence “(...) any truth claim – the claim connected with any proposition that it is true, objective or valid (...) – is and must be raised and decided upon in the course of an argumentation.

Yet for this conclusion to follow, one more premise would have to hold true. Namely, it must first be assumed that each cognitive act aimed at the

rejection of the *a priori* of argumentation and communication constitutes an argumentative-communicative act itself.

But why is this supposed to be the case? It is perhaps customary, albeit by no means self-evident or, at least at first glance, indubitably grounded that to deny an argument one must come up with an argument of his own. Cartesians may not concede, holding that the ultimate starting point of knowledge, *cogito ergo sum*, is so clear and distinct that it takes no argumentation whatsoever to prove it right. Husserl would insist that the foundation of knowledge requires intuitive insight into the essence of species. To both existentialists and critical rationalists of Popper's school, the choice of the way of conduct, including adherence to rationality, is nothing but a leap of faith. Would they all be caught up in performative contradiction in making their point? Not necessarily. First, their arguments refer not to the first premises (which are thought to be a matter of rational intuition or faith), but rather to the method by which they are to be validated or chosen. Thus, they operate on another, higher meta-level. Second, why cannot their argumentation be simply classified as a purely accidental fact? To use a different example, why cannot an opponent of libertarianism respond to its claims with a bare, "No, I do not believe in it"? Obviously, the recourse to mere assertions would be self-disqualifying for a philosopher. But is there a moral duty or a transcendental necessity to philosophize?

Hoppe (2016b) counters objections such as the above in the following manner:

It has been held against the 'argument from argumentation', for instance, that one can always refuse to engage in argumentation. This is certainly true (...). However, this is not an objection to the argument in question. Whenever a person refuses to engage in argumentation, he is also *owed* no argument in return. He simply does not count as a rational person in regard to the question or problem at hand.

Apparently, then, the *a priori* of communication and argumentation consists in some specific concept of knowledge and rationality.

Furthermore, it is not that – as Hoppe's own utterance might suggest – because "one cannot communicate and argue that one cannot communicate and argue", then "... any truth claim ... is and must be raised and decided upon in the course of an argumentation." Indeed, the latter proposition does not follow from the former. One could simply rebut Hoppe's reasoning by

the following reply: “I deny that all truth claims must be raised and decided upon in the course of argumentation. That my own stance is being so raised and defended by no means proves me wrong. In point of fact, there are propositions that need not be so raised and defended. The proposition of mine is just not one of them.” This is nothing but an instance of the essential rule of logic that no universal affirmative statement can ever be drawn from a particular affirmative one.

Happily, there is no need to impute to Hoppe’s theory such a grave fallacy. In our view, the reasoning behind the *a priori* of argumentation should be conceived of as follows: because “any truth claim (...) is and must be raised and decided upon in the course of an argumentation”, or, put differently, one must argue whether he likes it or not inasmuch as he belongs to rational entities, then one cannot contend that one *need not* communicate and argue, or stated more precisely, one cannot even *think* that one *need not* communicate and argue. Hoppe (2006, p. 338) seems to confirm this interpretation by stating that those who reject the libertarian ethics “could not even open their mouths if it were otherwise. The very fact, then, that they do open them proves that what they say is wrong”. Let us note that in Hoppe’s works, argumentation and communication are always adduced together, like two sides of the same coin.

Even more importantly, in the much later and lesser known (2016b) presentation of the argumentation ethics, Hoppe restates his theory in a manner corresponding precisely to the interpretation suggested above. He writes:

That: All truth-claims – all claims that a given proposition is true, false, indeterminate or un-decidable or that an argument is valid and complete or not – are raised, justified and decided upon in the course of an argumentation. That: The truth of this proposition cannot be disputed without falling into contradiction, as any attempt to do so would itself have to come in the form of an argument. Hence, the ‘Apriori’ of argumentation.

This, however, still begs the question: why would any attempt to reject the *a priori* of argumentation have to come in the form of an argument? It seems that in Hoppe’s view, the argumentative situation is by no means contingent. However, it cannot be the case either that knowing subjects do argue irrespective of their own will. It goes without saying that many of them hardly ever argue at all. Rather, there must be some sort of obligation on the part of each and every subject of cognition to ground his

judgments in an argumentative fashion. In other words, when Hoppe says that “any truth claim is and must be decided upon in the course of argumentation”, the “must” he mentions is of a normative rather than descriptive nature.⁷ Accordingly, the performative contradiction involved in the denial of the *a priori* of argumentation consists in the negation of the duty one commits oneself to in the very act of the denial.

Another latent premise underlies Hoppe’s statements that “argumentation is not only a cognitive but also a practical affair”, that “argumentation, as a form of action, implies the use of the scarce resource of one’s body” and that “argumentation is a conflict-free way of interacting.” Again, idealists of Cartesian, Kantian, or Husserlian leanings might object that truth-seeking is, in fact, a solitary endeavor pursued by the *ego-cogito* or transcendental self. The very existence of other minds, with which one may exchange arguments, is from this point of view questionable or subject to “bracketing.” Hoppe, on the other hand, posits that argumentation cannot be just an inner quasi-dialogue reducible to the process of reasoning that proceeds from premises to conclusions. On the contrary, from the Hoppean perspective, argumentation is always and necessarily a social (public) activity.

Whence do the above tenets come? Although nowhere in his English-language writings does Hoppe deal with the problem of truth systematically, he is, following in the footsteps of Habermas and Apel, an adherent of the consensus theory.

In his early German-language treatises, Hoppe, like a number of critics before him, rejects the correspondence theory of truth on the grounds that it suffers from unsurmountable logical difficulties. First of all, it leads to

⁷ In early presentations of his theory, to reject allegations of deriving “ought” from “is”, Hoppe would make the rather odd suggestion that what he proposed represented “an entirely value-free system of ethics” (2006, p. 401) in that it consisted solely of “if”, not “ought” statements (1987, p. 62; 2006, p. 401; 2016a, p. 157). Obviously, the very idea of “value-free ethics” strikes one as plain “wooden iron”, a blatant contradiction in terms. Not surprisingly, it was explicitly rejected even by some advocates for Hoppe’s ethics (cf. Kinsella, 1994, p. 1432), and Hoppe himself would not restate it later. True, Hoppe does not derive norms from facts. Rather, following – as we shall see later – in Apel’s footsteps, he asserts that a certain class of facts – that is, facts regarding cognition – presupposes the validity of a specific set of norms, the one just identified being the commitment to argumentative rationality. As Wolfgang Kuhlmann puts it, the first norm of argumentation ethics states: “Argue rationally!” (1985, p. 185, the quotation from: Sierocka, 2003, p. 135).

a vicious circle in that it construes truth as “consistency between the model and the image” (1976, p. 107).⁸ And yet, as the model can be known only through the image, there is no way they can be compared with each other. Second of all, the correspondence theory provides no criterion allowing one to distinguish between true and false statements. As Hoppe (1987, p. 12) points out, the correspondence theory – when read as an account of the criterion of truth – indeed poses a circular definition. The notion of truth cannot be understood as “‘correspondence between the statement and the reality’ since saying that ‘the statement and the reality correspond to each other’ is but another subjective statement. Persons who believe in flying saucers claim of course that their statements correspond to reality (...). Instead, objectivity should be defined as intersubjectivity; objective statements are intersubjectively verifiable statements.”⁹ Hoppe (1987, p. 12) further specifies his position in a critically important pronouncement that may well serve as a definition of the consensus theory of truth: “Objectively justified statements are therefore such statements that everyone qua autonomous (i.e., not confronted with a threat of violence) subject can agree upon....”¹⁰ In the English-language “A Theory of Socialism and Capitalism”, Hoppe (2016a, p. 158) writes along the same lines: “(...) What is valid or true is to be defined as that upon which everyone according to this principle (the libertarian principle of private property – N.S.) can possibly agree.” Years later (2017), when interviewed by us, he reaffirms his commitment to that theory:

In some elementary sense all theories of truth are consensus theories: argumentation starts with a disagreement concerning the truth-claim of a proposition and aims at agreement.

⁸ In the German original: “Übereinstimmung von Vorbild und Abbild.”

⁹ See also Hoppe 1983, p. 46. It is worth mentioning that Hoppe restated this critique of the correspondence theory of truth thirty years later in a private conversation with us. Hoppe, Private communication, 2017.

¹⁰ In the German original: “Objektiv begründete Aussagen sind demnach solche Aussagen, denen jedermann qua autonomes (d. i. nicht unter Gewaltandrohung stehendes) Subjekt zustimmen kann ...” Strictly speaking, Hoppe mentions three further conditions of the legitimate consensus that must be met by the arguers: competence, truthfulness, and dedication. Ibidem.

Stated more precisely, and pursuant to the objections directed against the correspondence theory, Hoppe (2016b) espouses the consensus theory of truth as an account of the criterion, or better put, the meta-criterion of truth:¹¹

Certainly, that the earth orbits around the sun, that water runs downward or that $1+1=2$ is true, whether we argue about it or not. Argumentation does not make something true. Rather, argumentation is the method for justifying propositions as true or false when brought up for consideration,

he says.

Finally, Hoppe's contention that "any truth-claim (...) is and must be raised and decided upon in the course of an argumentation" and which on its part has normative prerequisites, refers directly to the consensual view on truth as presented by Apel and Habermas. For as aptly pointed out by Schmelzer (2013, pp. 8–9), under a different theory of truth – correspondence, coherence, or semantic – the (collective and public) conduct of truth-seeking (Popper's context of discovery), although technically important, would be secondary to the truth-value of statements and arguments in themselves (context of justification). It is the consensus theory that defines truth as something to be agreed upon.¹²

¹¹ See f. 12. below.

¹² At the same time, Hoppe subscribes to the pragmatic theory of truth, which is why we do not name it above. His pragmatist leanings manifest themselves in at least three dimensions. First, Hoppe endorses instrumental success as the decisive criterion of scientific progress in natural sciences (1976, p. 83; 2006, p. 351). Second, his philosophy combines threads taken up from the philosophy of communication by Apel and Habermas with the praxeology of Ludwig von Mises, his famous action-axiom being in Hoppe's view the second pillar of epistemology alongside the *a priori* of argumentation (Hoppe, 2006, pp. 265–294; Mises, 1998, pp. 11–29). Finally, and most importantly, it is no coincidence that the consensus theory of truth was first proposed by Charles Sanders Peirce, the founding father of pragmatism. In Peirce's (1878) own words, "The opinion which is fated to be ultimately agreed to by all who investigate, is what we mean by the truth, and the object represented in this opinion is the real." Indeed, as Chwedeńczuk (1984, p. 171) explains, this theory is a variant of the pragmatic account of truth. After all, the pragmatic theory associates truth with certain actions and their results, and reaching consensus is itself an action with a specific result. To Apel's mind, it is the consensual approach that reveals the true meaning of pragmatism in that it discovers (by establishing intersubjectivity as the criterion of the criteria of truth) universally binding procedures of truth-seeking undertakings without slipping into relativism, voluntarism,

Hoppe and Apel's transcendental pragmatics

Perhaps due to Hoppe's personal relationship with Habermas as his doctoral advisor, as well as Habermas' prominent position in contemporary philosophy, it is he who is most often taken to be the most significant source of inspiration for Hoppe (cf. Rasmussen, 1998, p. 50). Yet upon closer examination, Hoppe's ethics and theory of knowledge bear more resemblance to Apel's transcendental pragmatics. Most importantly, in contradistinction to Habermas, who refuses to join the camp of transcendental philosophy (1979, pp. 21–25), Apel (cf. 1996b, p. 74), he consistently upholds his commitment to the Kantian idea of *a priori* preconditions of knowledge discovered by critical philosophy, i.e., the approach putting reason before its own tribunal that judges by – as Kant (1929, B25) phrased it – “knowledge which is occupied not so much with objects as with the mode of our knowledge of objects insofar as this mode of knowledge is to be possible *a priori*.” To both Apel and Hoppe, the “*a priori* possible mode of knowledge” is of an ethical nature. Secondly, Hoppe (2016b) himself admits to being influenced by Apel more than by Habermas. Finally, it is Apel, not Habermas, who uses arguments by performative contradiction in order to establish “the ultimate grounding” (*Letzbegründung*). Were it not for the Apelian inspiration, Hoppe's claims to the ultimate justification of libertarianism would be rendered void.

It is unnecessary here to present Apel's theoretical project at length. Instead, we shall focus on three fundamental questions: 1) What are the premises of his consensus theory of truth? 2) Why, according to Apel, does the search for truth have normative prerequisites? 3) How is Hoppe's position rooted in these insights, or in other words, how do they fill the aforementioned gaps in the grounding of the *a priori* of argumentation?

Being not only a creative philosopher but also a historian of ideas, Apel draws on diverse sources of inspiration. The first of these is Kant. Apel's transcendental pragmatics, as the name suggests, is aimed at the transformation of Kantianism in the spirit of the twentieth-century linguistic turn and pragmatism of Charles Sanders Peirce (Apel, 2006, pp. 509–530). From Apel's perspective, amongst the contemporary theorists of language, a key

and utilitarianism that are characteristic of William James or Richard Rorty's takes on pragmatism (Apel, 1991, p. 21; 1994, pp. 175–206).

role is played by the so-called ordinary language philosophers (John L. Austin and John Searle) and the later Wittgenstein. Insofar as the latter thinker is concerned, his “Philosophical Investigations” bring about the famous thesis of the non-existence of private language, which, in Apel’s opinion, leads to the rejection of solipsism (Apel, 1998, pp. 1–38). Hoppe (2016b) invokes Wittgenstein as well by stating: “we can recognize that argumentation is a speech-act, involving the use of a public language as a means to communicate with other speakers (Wittgenstein).”¹³ With the aid of Wittgenstein’s tenet, the initially unsupported view on argumentation as a practical affair occurring between real speakers can supposedly be justified.

Also, Apel acknowledges the importance of Austin’s and Searle’s theory of speech acts, which emphasizes the twofold, performative-propositional nature of language. Together with Habermas, Apel develops their theory, listing four fundamental validity-claims related to speech acts, each of which pertains to another domain of reality, mode of communication, and function of speech: truth, rightness, truthfulness, and comprehensibility (Apel, 1997, p. 85; Habermas 1979, p. 68).

For the purposes of this article, of particular significance are claims for truth and rightness. In short, the point is that whenever one formulates a statement about reality, the propositional aspect – the description of things – does not exhaust the content of a speech act. Since what is true is true not only for one subject but also for everyone regardless of time and place, the performative part embraces a validity-claim addressing all entities capable of understanding it, in Apel’s (1998, p. 262) own words: “all rational beings.” Similarly, claiming an action to be right involves an appeal to all beings able to judge it. By the same token, any claim for truth or rightness must be expressed in language and mediated by argumentation, which turns it into an intersubjectively valid statement. As can be seen in several quotes cited in this paper, Hoppe’s philosophical jargon is heavily influenced by the theory of validity-claims. Speaking of statements, he frequently uses the term “truth-claim” instead of “proposition”, “judgment”, and the like. This resemblance is not merely verbal. The idea of validity-claims explains the meaning of the *a priori* of argumentation in that it necessitates the argumentative resolution of disputes as well as allows for construing the performative contradiction in which one would be entangled in the attempt to reject that

¹³ See also: Hoppe, 2021, pp. 308–309; 1976, p. 42.

necessity as one that occurs between the act of rejection and the truth-claim conveyed by the very same act.

Finally, from Peirce come two vital concepts. The first is pragmatic semiotics, according to which knowledge is always mediated by language that comprises signs, which in turn require interpretation by an acting subject (Apel, 1998, pp. 80–83; Peirce, 1934a, pp. 264–317). This thesis reinforces Apel’s (and Hoppe’s) general view on cognition as unavoidably anchored in language. The second crucial concept is the very idea of consensual truth as a Kantian regulative idea attainable only for an “indefinite community of investigators” (Apel, 1998, p. 87; Peirce, 1934b, pp. 318–357).

Apel goes beyond Peirce by extending his theory to all truth-claims, and thereby all rational entities. As Apel (1998, p. 277) writes:

The *a priori* of argumentation contains the claim to justify not only all the ‘assertions’ of science but also all human claims (...) Anyone who takes part in an argument implicitly acknowledges all the potential claims of all the members of communication community that *can* be justified by rational argument (...). He also commits himself to eventually justifying all his claims upon other people through arguments.

Apel tries to demonstrate the inescapability of argumentation in the polemic with Hans Albert and his Popperian critical rationalism. Following the ancient skeptics and Popper, Albert (1985) sought to refute foundationalism by proposing the famous Münchhausen trilemma. In light of this theorem, one’s attempt to justify any statement ultimately winds up falling into one of the following three traps: a) an infinite regress; b) a logical circle in the deduction; c) a dogmatic cessation of the process at a particular point. At any rate, the proof can never be ultimate; it is at best always tentative and vulnerable to future objections. One can fundamentally doubt everything. In his rejoinder, Apel attributes to Albert’s reasoning the *abstractive fallacy*, i.e., disregarding the pragmatic (agential) dimension of knowledge. He counters Albert’s argument by pointing out another possibility that has been overlooked by his opponent. Namely, Albert unduly posits that sentences can be validated exclusively by other sentences. Meanwhile, reasons Apel, it might also be the case that certain statements are proved or disproved by actions that are to be interpreted in the course of the reflexive procedure, i.e., the procedure reflecting on the subjective preconditions of knowledge. And crucially, argumentation is itself an action. He who questions

the possibility of the ultimate grounding can do so only by raising validity claims in a public language, thus committing himself to argumentation. Yet in so doing, he demonstrates the unavoidability of argumentation and runs into a performative contradiction (Apel, 1996b, p. 81).

It is of paramount importance to note that Apel's "indubitable evidence" of the *a priori* of argumentation should not be conflated with "consciousness-evidence for me" known from the mentalist philosophy of primordial origins from Descartes to Husserl). In fact, the crux of transcendental pragmatics is an attempt to overcome the mentalist paradigm with its unavoidable solipsist consequences. Apel (1996b, p. 84) dissociates himself from that tradition by stressing the subjective-intersubjective distinction. In his view, mentalist philosophers tend to neglect "the mediation-function of language conceived as transcendental condition of the possibility of an *intersubjectively valid word-interpretation*." Even when thinking to oneself, one needs to emulate a language-mediated dialogue with others if he is to distinguish between intersubjectively valid statements and subjective convictions of his own. Says Apel (1998, p. 148): "Knowledge based upon observation at the level of the subject-object relationship always already presupposes knowledge as understanding of meaning at the level of subject-cosubject relationship."

Furthermore, perhaps despite appearances, Apel's epistemology has a considerable realist flavor. Indeed, even though knowledge is always anchored in the linguistic *a priori*, and hence a subject cannot have direct access to objective reality (Kantian *Ding an sich*), the doubt in its existence violates the rules of the "transcendental language-game with the paradigm of the existence of a real world" (Apel, 1998, p. 255). For the very notion of meaningful argumentation presupposes not only the existence of other arguers but also the distinction between what is real and what is unreal. Thus, whoever puts forward Cartesian suspicions that the world might be but a dream or illusion created by some malicious demon, pragmatically contradicts himself as if he was questioning the possibility of argumentation as such (Apel, 1996b, pp. 90–94). Importantly, Hoppe (2021, p. 308) echoes this reasoning as he writes: "...The notion of truth, of objective truth, of truth grounded in some reality outside that of language itself, is indispensable for talk of any sort ... Language presupposes rationality ... It is impossible to rid oneself of the notion of objective truth as long as one is capable of engaging in any language game whatsoever". Hence, says Hoppe (2006, p. 303, f. 7), "there can be no

disputing that it is possible to argue with one another that solipsism cannot be defended, since by wanting to argue in its defense one has already thrown it overboard.” However, outside the context of transcendental pragmatics, it would be obscure why one must argue with one another about solipsism or anything else at all. It is therefore by virtue of the transcendental-pragmatic justification of realism as a sort of cognitive commitment that it finally becomes clear why the existence of the world, presupposed by Hoppe’s ethics, is not just an arbitrary, commonsensical assumption. Likewise, the existence of other minds is here supposed to be established as a transcendental prerequisite of knowledge.

Apel (1996b, p. 92) concludes that for the cognition itself to be possible, one must posit: “1) that there must have been a real communication-community, and 2) that there might be an unlimited ideal communication-community, both capable in principle of conforming to his certain insight.” In accordance with the idea of the linguistic-pragmatic transformation of critical philosophy, Kantian transcendental unity of consciousness is thereby claimed to be superseded by “the intersubjective unity of interpretation” (Apel, 1998, p. 267).

From this formulation of the consensus theory of truth follows the postulate of discourse ethics. Importantly, as correctly noted by Schmelzer (2013, pp. 17–20), if the correspondence theory of truth entails any norms, then they are of a purely technical nature. Needless to say, it is for example favorable to be polite to those who may contribute to our research. Yet, after all, what is true is true regardless of their or anybody else’s opinion. It is specifically Apel’s transcendental account of the consensual truth that not only equates truth with universal acceptability and thus necessitates the recognition of certain norms that make consent possible but also situates the norms on the transcendental level.

It is unnecessary here to deal with the concrete rules prescribed by Apel’s discourse ethics or juxtapose it in detail with Hoppe’s approach.¹⁴ Let

¹⁴ Generally speaking, as has been already mentioned, Apel sees argumentation ethics as prescribing the pursuit of rationality and equality amongst arguers, with equality to be guaranteed by some sort of socialism, possibly of the Marxist pedigree (Apel, 1998, pp. 282–283). Additionally, in the age of globalization, argumentation ethics is being transformed into the universal macro-ethics of co-responsibility manifesting itself in the commitment to the conservation of the environment (cf. Apel, 1996a, pp. 275–292). Hoppe challenges Apel’s views (as well as Habermas’s social-democratic option) by

us go back to Hoppe instead. In private correspondence (2017), he confirms his transcendental-pragmatic affiliations. He admits:

I agree with Apel on four fundamental insights. A) that speaking, communicating, arguing are purposeful actions (subclasses of action exhibiting the same general categories characteristic of all action); B) his transformation of Kantian transcendental philosophy from the ‘solipsistic’ starting point of a lone subject to an intersubjective, if you will ‘public,’ starting point, in recognizing that all philosophizing is, undeniably and inescapably so, done in and with a public language; C) that all contentious truth claims, i.e., claims that some proposition in question or in dispute is true (or not), can be settled only in the course of argumentation and that this cannot be denied on pain of contradiction; and D) that argumentation, demonstrating a commitment to the truth, presupposes and involves the acceptance of an ethic.

He also adds:

But any actual agreement is no guarantee of truth. Both (or all) agreeing disputants may still be wrong. So, and in this I agree with Apel (and Peirce), a truth-claim is indeed made vis-à-vis an indefinite community of arguers and hence any actual agreement always remains open to future challenges.¹⁵

pointing to the fact of scarcity (toward which Apel and Habermas are “blind” as they “suffer ... from complete ignorance of economics” [Hoppe, 2006, 335]). Stated more precisely, whereas Apel maintains that “As potential ‘claims’ that can be communicated interpersonally, all human ‘needs’ are relevant” (1998, 277), Hoppe seems to stress the next statement following the cited one: “They [the needs] must be acknowledged if they can be justified interpersonally through arguments” (ibidem). To Hoppe, the existence of various human needs can only be the starting point of ethical inquiry, never the point of arrival. All human needs, however real and urgent (and in this sense justifiable) they may be, cannot be simultaneously acknowledged simply because their fulfillment potentially involves the use of the same scarce resources. Meanwhile, rationally acceptable norms cannot prescribe the use of scarce goods for conflicting purposes as the norms would thereby become conflict-generating instead of conflict-resolving. Thus, they would fall short of the very purpose of argumentation about norms, which is conflict-avoidance (Hoppe, 2016b; more on this in section 5).

¹⁵ Indeed, Hoppe adopted the view on the objective reality as accessible only to an infinite community of investigators as early as in 1976, in his doctoral thesis titled “Handeln und Erkennen” (1976, p. 109, f. 193).

As we have seen, Hoppe's epistemological beliefs that underlie his ethical project become understandable only in light of Apel's transcendental pragmatics. Let us summarize for the sake of clarity. In section 2, we identified the following gaps in Hoppe's own exposition of the *a priori* of argumentation. First, Hoppe does not show why argumentation is not a merely contingent situation, but rather an inescapable framework of cognition. Stated more precisely, he provides no convincing argument for there being a *duty* to argue. Second, in his writings, there is little justification for the understanding of argumentation as a necessarily social (public) activity that occurs in the real outer world between several distinct, self-conscious persons.¹⁶ Although the latter premise is undoubtedly quite commonsensical, it is equally clear that it can be challenged from various philosophical positions. Therefore, inasmuch as it rests upon unsupported premises, Hoppe's ethics would fall short of its goal of providing the ultimate justification for the libertarian principles. As it turns out, though, what Hoppe proposes in his books as the *a priori* of argumentation is in fact just a sketch of the argument which is to be found in full in the works of Apel. Beata Sierocka (2003, p. 86) accurately enumerates four essential elements of the Apelian linguistic *a priori*, each of which is necessary to grasp the meaning of Hoppe's *a priori* of communication and argumentation: "1) linguistic constitution of knowledge; 2) communicative character of linguistic action; 3) twofold, performative-propositional structure of a speech act; 4) indefeasibly argumentative nature of knowledge." Additionally, from Apel comes the idea of the ultimate foundation of knowledge in general and ethics in particular, upon which Hoppe's own project of the ultimate justification of libertarianism heavily relies.

Unwarranted objections and the conflict-freedom principle

The consequences of disregarding the epistemological background of Hoppe's ethics are even more far-reaching. Without it, it is also either impossible or very hard to grasp further crucial steps of his reasoning. Although there is no room in this paper to elaborate on an in-depth critique of misguided objections directed against the libertarian argumentation ethics, let

¹⁶ True enough, as has been shown in this section, remarks on that are interspersed throughout his books and articles. Those are rather hints than a systematic theory, though.

us at least indicate how conclusions of this paper may help put the ongoing debate on the right track.

First and foremost, beyond the context of the Apelian consensus theory of truth, the principle of universalization, recognizing all potential arguers as subjects of rights, appears to be a mere assumption. As a result, it has been raised against Hoppe that his approach at best justifies granting rights to participants of the argument (Murphy, Callahan, 2006, pp. 58–60). This objection, however, overlooks the status of all beings capable of arguing as the members of the indefinite communication community. In other words, every truth-claim, as a performative-propositional speech act, is made not only against the actual interlocutor (if there is any) but rather against all rational creatures, “vis-à-vis an indefinite community of arguers.” This is exactly what Hoppe has in mind, asserting that the universalization principle “can now be understood and explained as grounded in the wider ‘*a priori* of communication and argumentation’.” Also, it is precisely the status of a member of that community that bestows upon each arguer identical individual rights.

The same rebuttal applies to another misrepresentation of Hoppe’s theory, according to which for the argument to take place it is sufficient to establish rights solely for its duration (Murphy, Callahan, 2006, pp. 56–58). Yet, the notion of consensual truth as the Kantian regulative idea entails that argumentation is ultimately endless. As long as there are knowing subjects, there will be argumentation.

Finally, a number of Hoppe’s opponents tend to conceive of argumentation ethics as describing the physical conditions of argumentation and then try to disprove his argument by adducing empirical examples of exchanges of arguments that take place successfully despite blatant violations of property rights all around. After all, even slaves could argue with their masters (c.f. Friedman, 1988, p. 44; Jones, 1988, p. 49; Yeager, 1988, pp. 45–46). In the same vein, Robert Murphy and Gene Callahan (2006, pp. 55–56) hold that Hoppe’s argument falters because in order to argue, one does not need to own one’s entire body. In reality, they claim, ownership in one’s brain would suffice, other body parts such as legs or kidneys being unnecessary for participation in an argument. Likewise, it has been suggested that Hoppe confuses ownership (unnecessary for arguing) with use or possession. According to some critics (Frederick, 2013, pp. 94–101; Murphy, Callahan, 2006, pp. 60–63), argumentation can successfully take

place whenever participants enjoy actual control over their bodies with the question of rightfulness being irrelevant.

Hoppe's case, however, successful or not, is a transcendental one. As such, it is aimed at showcasing the necessary normative preconditions of observational knowledge and cannot be falsified by experience (Hoppe, 2006, p. 404). True enough, one can possibly manage to argue under virtually all conceivable circumstances. It has nothing to do with the problem in dispute, though.¹⁷ The grave error to which Hoppe's critics fall prey consists in misreading his theory as one maintaining that in order to be capable of arguing, the arguer needs to enjoy full control over his entire body (or even a fully functional body with all parts and organs that are characteristic of a healthy human being). Since this is obviously not the case, and since even if it were, it still would not entail ownership rights in the arguer's body, Hoppe's argument – conclude the critics – fails. None of these, however, is what argumentation ethics says. Rather, its desideratum should be construed in a somewhat reversed fashion. To wit, as has been shown in the presentation of Apel's discourse theory, argumentation is supposed to impose certain moral obligations on the arguing person *vis-à-vis his opponent*. For argumentation is, after all, an interpersonal affair. Thus, what the argumentation ethics really says is that because argumentation represents a peaceful form of interaction, the arguer assumes, at least tacitly, the duty to treat *his counterpart* in a peaceful manner. To illustrate this point, let us go back to the “legs and kidneys” counterexample. Of course, successful argumentation does not require that both parties to the argument have two legs and working kidneys. If it nevertheless so happens that they do have them, an assault on these or any other body parts of the interlocutors will put a halt to the peaceable exchange of thought. Though the discourse may somehow still be continued, it will no longer represent *good* argumentation. i.e., one consonant with the normative model of argumentation, which – to use Habermas's (1987, 25) well-known phrase – “excludes all force ... except the force of the better argument.”¹⁸

¹⁷ Unfortunately, aside from the papers by Kinsella (2002, 2009), rejoinders to the critics also tend to concentrate on the empirical soundness of Hoppe's case. Cf. Block's treatment of the “legs and kidneys” argument (2011, p. 633).

¹⁸ *Per analogiam*, consider the institution of marriage. Although many couples make it survive despite mutual infidelity, abuse, or violence, one cannot help but agree that

Likewise, slaves may well argue with their masters, and the argumentation between them, although imperfect due to the inequality in status, may prove conclusive. This, however, will be true only to an extent that the slave owner tries to mimic the ideal argumentative situation by refraining from exercising his property right in the slave, that is, so long as, at a minimum, he does not kill, flog, intimidate, or otherwise abuse his “property”. Yet in so doing, he willy-nilly admits that his alleged ownership title has been derived out of thin air. He indeed abstains from using violence against his slave-interlocutor not at whim, but out of the duty to abide by the rules of peaceful interaction for the argument’s sake. Now, what does this duty imply? In light of the classical matrix of jural concepts proposed by Wesley N. Hohfeld, duties are logical correlates of rights, meaning that A has a right to X if and only if others are duty-bound to respect that right (and, of course, conversely: B has a duty to do X if and only if there is some A in the universe who has the right to have B do X [Hohfeld, 1919; Kramer, 1998]). The slave’s body must then be shielded from his ostensible owner’s interference by someone’s title in that body. Finally, the titleholder could be no one else but the slave himself, because otherwise the purported owner would be yet another slaver, and the exact same line of refutation would be applicable to his claim as well. It turns out, therefore, that the slaver’s duty not to use violence against the slave stems from the latter’s right to his own body, which in turn precludes the slave owner having a property title in the very same body. The commitment to the coercion-free trial of arguments and the norms of peaceful interaction is thereby implicitly present even in the argumentative actions of the slaver. Should he then refuse to set his slave free when called to do so, he will fall in a performative contradiction in the very act of saying “no”.

Accordingly, as stressed by Kinsella as well as in our brief summary included in section 2, one should interpret Hoppe’s ethics as a theory of conflict-freedom, an argumentatively undeniable goal to which every arguer – i.e., every subject of knowledge – is committed.¹⁹ We believe that this special status of conflict-avoidance can be explained in a twofold manner. On the one hand, argumentation regarding norms is aimed precisely at

the relationship’s survival does not by any means speak against the common belief in fidelity, respect, and care as the foundations of a good marriage.

¹⁹ Kinsella (2002).

conflict-resolution. If we want irrationality and struggle instead of rationality and peace, then why argue at all? One cannot propose conflict-generating norms without getting entangled in a performative contradiction since by the very act of arguing he has already demonstrated that what he sought was peace (Hoppe, 2016b; 2018, p. 59). On the other hand, argumentation itself is supposed to be a conflict-free form of interaction between autonomous subjects. But in the absence of conflict-resolving norms, peace can at best be provisional, depending on individuals' goodwill or the harmony of their goals. For as soon as they turn against each other, the stronger party prevails and might is right (Hoppe, 1987, p. 42). Says Hoppe (2016b): "Yet to deny one person the right to self-ownership and prior possessions is to deny his autonomy and his autonomous standing in a trial of arguments. It affirms instead dependency and conflict, i.e., *heteronomy*, rather than conflict-free and autonomously reached agreement and is thus contrary to the very purpose of argumentation."

Yet to fully grasp the meaning of conflict-avoidance as the kernel of Hoppe's theory, we again need Apel and his transcendental pragmatics.²⁰ For not only is understanding of the latter theory necessary to see why the endorsement of conflict-avoidance is pragmatically unavoidable as part of the implicit moral commitment present in each and every cognitive act. On top of that, recourse to transcendental pragmatics can help rid oneself of the misconception of argumentation ethics as an explanation of aposterioristic preconditions of arguing in yet another way. Let us note that in sharp contrast to such empirical speculations, conflict-freedom does qualify as a matter of transcendental argument in that it partly boils down to the principle of non-contradiction as the necessary condition for conflict-freedom. For as has been clearly explained by Steiner (1994, pp. 90–93) and Dominiak (2017, p. 53), since assertions of rights are deontic propositions, and rights themselves are enforceable claims, i.e., a right is a logical correlate of a corresponding duty on the rest of the agents' part (Hohfeld, 1919;

²⁰ This is despite the fact that conflict-avoidance as the true purpose of ethics was proclaimed not by Apel, but by another proponent of argumentation ethics often quoted by Hoppe: Paul Lorenzen (1969, pp. 73–89). Nonetheless, it is only Apel's theory that contains all three elements that are crucial for Hoppe (see above): a) the ultimate grounding; b) transcendentalism; c) the strong interpretation of the universalization principle. On the other hand, what Hoppe took up from Lorenzen is just the basic idea, which was then filled with libertarian content.

Kramer, 1998), conflict-generating norms are perforce self-contradictory norms (and *vice versa*). With respect to the use of scarce goods, they proclaim individual rights the exercise of which would be mutually exclusive as it would require harnessing goods for conflicting purposes. Assume for instance that A and B have a right to free health care. Now, they both get sick and need a ventilator. Only one ventilator is available, though. A's and B's alleged right to access to a ventilator generates a contradiction, then: everyone, A included, is under obligation to provide B with the only ventilator available, and *vice versa* – everyone, B included, is under obligation to provide A with the same ventilator. Needless to say, the result of this contradiction is inevitable conflict between A and B over the ventilator.

It is also worth emphasizing that Hoppe's ethics is not an empirical theory of conflict-resolution either. It does not hold, for example, that relying on libertarian principles will always foster the reduction of social tensions (even though libertarians generally tend to think it will). What it maintains is that once people embrace libertarianism, it will always provide them with a rational, principled resolution in every case of dispute over scarce resources. Thus, as long as people stick to libertarian solutions, conflicts will be avoided. By contrast, alternative theories of distributive justice will, claims Hoppe, bring about conflict even when strictly adhered to.

However, it is by virtue of the notion of the infinite community of arguers that conflicts are to be rationally resolved amongst all arguers, with every one of them enjoying identical rights. If not for the concept of such a community, the mere appeal to the non-contradiction principle would not do in this respect since several sets of discriminatory but logically consistent rights would easily pass the test. To put it bluntly, there is no logical contradiction in slavery or Hans-Hermann Hoppe owning the entirety of mankind.

To sum up, the transcendental goal of conflict-freedom, always already anticipated in every communicative-argumentative act, can – claims Hoppe – be fulfilled solely by the libertarian theory of property rights.²¹ By contrast,

²¹ Alas, we cannot elaborate on this further due to limitations of space. We nevertheless hope that the above remarks, along with our presentation of the epistemological background of Hoppe's theory, will help draw commentators' attention to what argumentation ethics is really about. With regard to the principle of conflict-avoidance, the research should consist in, above all, logical studies in the tradition of analytic jurisprudence. Such inquiries have already been undertaken by Dominiak (e.g., 2017, 2019).

neither assuring the right to own one's mouth and brain while letting others attack one's legs and kidneys (which does not resolve any conflicts except for those over brains and mouths), nor possession, i.e., a merely empirical fact of exercising control over one's body (which is not even a normative proposal), let alone the institution of slavery (clearly not universalizable in Hoppe's sense), could ever contribute to the realization of that goal.

Conclusion

The libertarian argumentation ethics presented by Hoppe hinges upon Apel's transcendental pragmatics of language in general and the consensus theory of truth in particular. This conclusion brings about two consequences for both advocates and critics of Hoppe's approach. For one thing, in order to avoid misconceptions and unwarranted charges, both groups should pay more attention to the epistemological underpinnings of the ethical theory they try to either defend or debunk. For another, scholars who argue for Hoppe's ethics must be aware that in so doing, they also subscribe to a set of very specific philosophical positions. This is certainly not to say that libertarians should eschew argumentation ethics. Rather, our contention is that an awareness of the background theories of an argument can only be a strength of its followers. The reading of Hoppe's conception as a transcendental-pragmatist conflict-avoidance theory, though bereft of the appeal that might stem from the illusory philosophical neutrality, is not only more self-conscious but also invulnerable to the hitherto formulated objections. This makes it a promising way to go for Hoppe's supporters.

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