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Argumentation Ethics, Self-Ownership, and Hohfeldian Analysis of Rights

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ABSTRACT: This paper applies a Hohfeldian analysis of rights to Hans-Hermann Hoppe's argumentation ethics, particularly to its crucial premise that it is impossible to deny argumentatively one's opponent's self-ownership right without falling thereby into a performative contradiction; for one's act of denying it presupposes this very right as its own condition of possibility. This paper argues that a properly construed Hohfeldian analysis supports the above claim.

The present paper seeks to apply a Hohfeldian analysis of rights to an important premise of Hans-Hermann Hoppe's argumentation ethics; namely, the proposition that it is impossible to deny argumentatively an interlocutor's self-ownership right without thereby falling into a performative contradiction because the act of denying it presupposes this very right as its own condition of possibility. Applying a Hohfeldian analysis of rights to this

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proposition clarifies some reasons why it should be impossible to deny the existence of the right in question while also offering some support for this central step in Hoppe's argument. The bottom line of this paper's inquiry is that the performative contradiction involved in such a denial lies between a Hohfeldian position that sustains the denial's argumentative (that is, conflict-free) character and a Hohfeldian position that is acknowledged in the content of the denial. These positions are, respectively, an interlocutor's claim to noninterference and his nonclaim to noninterference.

Although what this paper offers might be properly called a Hohfeldian defense of Hoppe's argumentation ethics, it is advisable to acknowledge its limited scope straightaway. For one thing, it focuses only on one aspect of Hoppe's famous argument and does not even attempt to confront the extensive literature already devoted to this issue.[1] Nor does it purport to offer the best interpretation of this aspect, for the process of breaking it down into fundamental jural conceptions would require making additional assumptions, squeezing Hoppe's broad argument into an austere framework of Hohfeldian logic that is alien to the original formulation thereof. Nevertheless, it seems that employing this precise and highly influential analytic tool might not only shed some light on a deeper structure of argumentation ethics, but also

[1] We owe much to Stephan Kinsella, who in his *Mises Daily* article "Argumentation Ethics and Liberty: A Concise Guide" (May 27, 2011) and its follow-up containing "Supplemental Resources," which he posted on his website (StephanKinsella.com), provides an extensive and updated list of literature devoted to argumentation ethics. It is difficult to overestimate the value of this work for libertarian scholarship. Hence, for a thorough review of the literature, the reader should consult the above resources. Still, we take the liberty of mentioning some specific positions contributing to the discussion over argumentation ethics. Besides Hoppe's original contributions gathered in his main books (Hoppe 2006, 2010), we would like to mention the symposium texts published in the November 1988 *Liberty* magazine by David Friedman, Murray Rothbard, Leland Yeager, David Gordon, Ethan Waters, David Ramsay Steel, Mitchell Jones, Timothy Virkkala, Douglas Rasmussen, Tibor Machan, and Hans Hoppe himself, as well as papers published by Robert Murphy and Gene Callahan (2006); Walter Block (2011); Marian Eabrasu (2009, 2012); Danny Frederick (2013); Stephan Kinsella (2002); and Frank van Dun (2009). There is also a very good paper by Norbert Slenzok (2022) presenting his research on the historical and philosophical background of Hoppe's argument. Additionally, Slenzok recently defended an exquisite doctoral dissertation about Hoppe's philosophy, "A priori wolności, a priori porządku: Filozofia społeczno-polityczna Hansa-Hermanna Hoppego a spory o podstawy libertarianizmu" (A priori of freedom, a priori of order: The social and political philosophy of Hans-Hermann Hoppe and the debate about foundations of libertarianism, hopefully to be translated into English).

support it against its critics by spelling out the exact jural positions involved in the performative contradiction besetting any attempt to deny an interlocutor's self-ownership right.

The present paper first offers a brief exposition and interpretation of a Hohfeldian analysis of rights. It then applies this analysis to an important premise of Hoppe's argument; namely, the proposition that it is impossible to deny argumentatively an interlocutor's self-ownership right without falling thereby into a performative contradiction; for the very act of denying it presupposes this very right as its own condition of possibility.

HOHFELDIAN ANALYSIS, ARGUMENTATION, AND THE A PRIORI OF SELF-OWNERSHIP

As indicated by Hillel Steiner (1994, 59), as far as rights are concerned, the "beginning of wisdom . . . is widely agreed to be the classification of juridical positions developed by Wesley N. Hohfeld." The present section will apply this wise classification to an important premise of Hoppe's argumentation ethics; namely, the proposition that it is impossible to deny argumentatively an interlocutor's self-ownership right without falling thereby into a performative contradiction.

Although there are many technical points at issue in the contemporary Hohfeldian scholarship (Kramer, Simmonds, and Steiner 2000), Hohfeld's main idea (1913, 1917) is almost universally accepted; namely, that there are four fundamental jural positions that are designated by the word *right*: claims (which Hohfeld deemed rights in the strictest sense), liberties (originally called "privileges"), immunities, and powers. These positions are fundamental in that they are atoms or building blocks of juridical reality. Accordingly, they cannot be broken down into still more basic elements or categories, much the same as necessity and possibility are fundamental notions of modal logic, and obligatoriness and permissibility, of deontic logic.

As far as claims and liberties—that is, the positions most relevant to the present paper—are concerned, Hohfeld posited that claims are simply correlatives (logical equivalences) of other people's duties, whereas people's liberties are negations of their own duties to others, which also means that people's liberties are correlatives of other people's nonclaims against others. Thus, A has a claim against B's doing or abstaining from doing x if and only if B has a duty to A to do or abstain from doing x, respectively. On the other

hand, A has a liberty against B's doing or abstaining from doing x if and only if B has a nonclaim against A's doing or abstaining from doing x, respectively. Since B's nonclaim is at the same time the negation of B's claim to the same content, and since B's claim correlates with A's duty of the same content, then A's liberty is the negation of A's duty toward B; that is, A's liberty against B is A's nonduty to B to abstain from doing x, whereas A's liberty against B is A's nonduty to B to do x.[2]

Applying this austere scheme—with its various ramifications—to Hoppe's argumentation ethics can illuminate some reasons why it should be, as Hoppe contends, impossible to deny self-ownership rights without running thereby into a performative contradiction. In order to do so, it is advisable to use the latest formulation of argumentation ethics, as presented by Hoppe during the 2016 Annual Meeting of the Property and Freedom Society. For it is with this exposition that Hoppe perspicuously emphasized the fact that the self-ownership right which he deems impossible to deny argumentatively is not only a proponent's right, but also that of his interlocutor. This paper will demonstrate what an important step this is in Hoppe's argument, for it provides another reason to believe that self-ownership rights might be justified. At any rate, the latest formulation of the premise in question is contained in the following excerpt from his 2016 speech:

> Any argument to the contrary: that either the proponent or the opponent is *not* entitled to the exclusive ownership of his body . . . cannot be defended without falling into a pragmatic or performative contradiction. For by engaging in argumentation, both proponent and opponent demonstrate that they seek a peaceful, conflict-free resolution to whatever disagreement gave rise to their arguments. Yet to deny one person the right to self-ownership . . . 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.

With this formulation, Hoppe argues very clearly that the proponent is not only precluded from denying his own entitlement

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[2] For an exhaustive but exciting exposition of the Hohfeldian jural relations, one should consult Kramer's (2000) exquisite essay "Rights without Trimmings." The authors' present understanding of the Hohfeldian framework draws considerably (although loosely) on this highly informative essay.

to the exclusive ownership of his own body without falling into a performative contradiction, but also that he is precluded from denying his opponent's entitlement to the exclusive ownership of his own body. After all, if any argument to the contrary would entangle the proponent in a performative contradiction, then also the proponent's argument to the contrary (that is, one by which he attempts to negate his opponent's entitlement to the exclusive ownership of his own body) would enmesh him in a performative contradiction. Now it is exactly this entitlement of the opponent—in contradistinction to the proponent's own entitlement—that this paper will submit to the Hohfeldian analysis. More specifically, most relevant to the present paper is the question of why it should be the case that the proponent cannot deny his opponent's entitlement to the exclusive ownership of his own body without falling thereby into a performative contradiction.

This inquiry will begin by questioning the exact nature of the opponent's entitlement to the exclusive ownership of his own body or, alternatively, to the exclusive control over his own body. This entitlement can perhaps best be interpreted as a Hohfeldian erga omnes claim to noninterference with the claim holder's body. Although it is not entirely uncontroversial a suggestion, it is relatively unproblematic. After all, what lies behind this supposition is the rather straightforward idea that unless a person has a claim against innumerable people that they abstain from interfering with his body, he has no self-ownership right to the exclusive control over his own body; for then other people have a correlative liberty to interfere with his body. Moreover, it also seems plausible to suppose that unless a person were a self-owner, he would not have a claim against innumerable people that they abstain from interfering with his body. As explained by Steiner (1994, 39):

> Most dictionary definitions of "possession" refer to either or both "control" and "exclusion of others." But it's clear that, where the former is used, it is intended to be synonymous with the latter. That is to say, one *controls* (in the sense of *possesses*) a thing inasmuch as what happens to that thing—allowing for the operation of physical laws—is determined by no person other than oneself.

By the same token, one cannot have a right to the exclusive control over one's own body unless he also has a claim against all other people that they abstain from physical interference with his body (that is, unless one has a right to exclude all other people

from interfering with his body). As insightfully put by Anthony Honoré (1993, 371): "The right to possess, *viz*. to have exclusive physical control of a thing . . . is the foundation on which the whole superstructure of ownership rests. . . . It is of the essence of the right to possess that it is in rem in the sense of availing against persons generally."

Now, crucially, it would decidedly not be enough for a person just to have an erga omnes liberty to the exclusive control over his own body in order for this person to have a right to the exclusive control over his own body—that is, a self-ownership right. For such a liberty would not entail any duties of noninterference on the part of other people. The only thing that such a liberty would entail is this very person's lack of negative duties to abstain from having the exclusive control over his own body. However, other people could still have liberties to interfere physically with this person's body without violating thereby any of his rights. That would speak strongly against this person's having a self-ownership right as this right is typically understood (i.e., as a right offering an impenetrable juridical protection to its holder so that any uninvited physical interference with his body amounts to a serious wrong). Therefore, the focus of Hoppe's argument—the opponent's entitlement to the exclusive control over his own body—is best construed as a Hohfeldian erga omnes claim to noninterference.

Having thus established the exact meaning of the opponent's entitlement to the exclusive control over his own body, this paper will now identify the Hohfeldian position that would be ascribed to the opponent by a denial of this entitlement. More precisely, this inquiry is ready to identify the Hohfeldian position that would be entailed by the *content* of such a denial. Since the said entitlement has been reduced to the Hohfeldian claim to noninterference, then it is easy to see that its denial must be reduced to the Hohfeldian nonclaim to noninterference. In other words, by denying an opponent's entitlement to the exclusive control over his own body, one would effectively acknowledge his opponent's Hohfeldian nonclaim to noninterference. Now the opponent's nonclaim against interference with his own body correlates with the proponent's liberty to interfere with his body. Thus, by denying an opponent's entitlement to the exclusive control over his own body, a proponent would also presuppose his own liberty to interfere with the opponent's body. Since such a liberty not only

does not entail the opponent's self-ownership right, but also entails its negation—as shown above, such a liberty entails, for example, that physical interference with the opponent's body would not amount to a wrong—one would not be caught up in any logical contradiction whatsoever by denying an opponent the entitlement to the exclusive control over his own body.

Focusing only on the content of the proponent's argument, it would be perfectly plausible to deny the opponent's self-ownership right without falling thereby into a logical contradiction. However, argumentation ethics is not about a logical contradiction. Instead, it is about a performative contradiction that lies between the content of the argument and the act of producing it. Thus, the suggestion is that there is something in the act of arguing that implies an opponent's claim to noninterference as well as the proponent's own correlative duty not to interfere with his opponent's body. In other words, since the *content* of the proponent's denial is that his opponent has a nonclaim to noninterference, which in turn correlatively entails the proponent's liberty to interfere with his body, then for the performative contradiction to take place, it must be the case that the proponent's *act* of denial testifies to his having no liberty to interfere with his opponent's body. This in turn would correlatively entail the opponent's nonclaim to noninterference.

But why, as David Friedman (1988) asked, should the proponent's act of arguing presuppose anything about jural positions at all? It seems that the answer to this question might have something to do with the conflict-free nature of argumentation. For Hoppe assumes—and it seems to be a plausible assumption[3]—that "every argumentation between a proponent and an opponent is itself a conflict-free—mutually agreed on, peaceful—form of interaction aimed at resolving the initial disagreement" and that, therefore, "by engaging in argumentation, both proponent and opponent demonstrate that they seek a peaceful, conflict-free resolution to whatever disagreement gave rise to their arguments" (2016).

[3] Incidentally, one of the most important treatises on argumentation, Perelman and Olbrechts-Tyteca's *The New Rhetoric*, argues that the "use of argumentation implies that one has renounced resorting to force alone, that value is attached to gaining the adherence of one's interlocutor by means of reasoned persuasion, and that one is not regarding him as object, but appealing to his free judgment. Recourse to argumentation assumes the establishment of a community of minds, which, while it lasts, excludes the use of violence" (2010, 55).

Hence, by contraposition, resorting to conflict, physical force, or violent form of interaction (i.e., an interference with the opponent's body) would preclude resolving the initial disagreement in an argumentative way. In other words, in order to settle an issue by way of argumentation, one ought to abstain from interfering with his opponent's body; otherwise, argumentation will cease.

Thus, Hoppe's point seems to be that if the proponent wants to argue that his opponent is not a self-owner (or, for that matter, that any other proposition is or is not the case), then he ought to abstain from using force against his opponent, or else he will defeat his own purpose of arguing that his opponent is not a self-owner. Furthermore, if the proponent only purports to *claim* or *assert* that his opponent is not a self-owner, then since his claim can be justified or decided upon only in the course of argumentation, he ought to abstain from interfering with his opponent's body, or else he will fail to make a truth claim in the first place. In other words, that the proponent ought to abstain from using violence against his opponent is a necessary presupposition, or *Bedingung der Möglichkeit* ("condition of possibility"), of the proponent's argumentative endeavor and, as this paper will demonstrate, the reason why he cannot gainsay his opponent's self-ownership right without falling thereby into a performative contradiction.

Now it should be fairly obvious that once one accepts Hoppe's otherwise plausible premise that argumentation is a conflict-free way of interaction, then it follows that in order to settle any disagreement whatsoever by way of argumentation, one ought to abstain from conflict-ridden methods of doing so (i.e., using physical force and threats thereof). At this stage, one could therefore be tempted to jump immediately to a conclusion that since the proponent ought to abstain from interfering with his interlocutor's body, then the proponent has a duty not to interfere with his opponent's body. This in turn correlatively entails his opponent's Hohfeldian claim against such interference, a claim which was identified as the opponent's right to exclusive control over his own body. Hence, what argumentation as a conflict-free way of interaction would then ultimately presuppose would be the opponent's right to the exclusive control over his own body, that is, his self-ownership right. This in turn would reinforce the exact reason why it should be impossible for the proponent to gainsay argumentatively this right.

Although this reasoning is essentially correct, it is perhaps too hasty, for not all of its steps are equally obvious. The first issue that should be addressed concerns the nature of "ought" figuring into the premise: that the proponent ought to abstain from any physical interference with his opponent's body. The crucial question is whether this "ought" is a moral "ought." For if it were not, then although one still ought to abstain from interfering with his opponent's body in order to argue with him, it would not follow that one has a duty to refrain from such an interference. Rather, one could be at liberty to engage in this violent behavior while simply deciding not to exercise his Hohfeldian privilege. Likewise was the author of this very paper at liberty to submit this work to another outlet but decided not to exercise that liberty of his. Even though in order to get published in the *Journal of Libertarian Studies* he indeed ought to have submitted this paper through this channel, it would be a mistake to infer that he therefore must have had a duty to make such a submission. Obviously, he did not. Hence, it is only if the "ought" in question is a moral "ought" that the author's duty to do what he otherwise ought to do follows.[4]

As it seems, Hoppe assumes that the "ought" in question is indeed a moral "ought." Otherwise, he would not have claimed that to "deny one person the *right* to self-ownership . . . affirms instead dependency and conflict . . . and is thus contrary to the very purpose of argumentation" (emphasis added). If he believes that it is a nonmoral "ought," he would probably have talked about the *fact* of self-ownership, that is, the opponent's exclusive control over his own body, not a *right* thereto.

Now there is the question of the plausibility of Hoppe's assumption that in order to settle the initial disagreement by way of argumentation, one ought to—morally ought to—abstain from interfering with his opponent's body. It seems that it is plausible. After all, the answer to the question of whether the "ought" at stake is a moral "ought" depends on the grounds on which one ought to do what one ought to do. If the grounds are moral, then "ought" is also moral (Thomson 2005). And the grounds on which

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[4] Some may wish to argue that even though what one ought to do is only what he nonmorally ought to do, it is still plausible to infer that one has a duty to do so. For example, some may wish to argue that even though people only nonmorally ought to pay taxes in order to avoid going to prison, they can still infer that these people have a duty to pay taxes. But that would be merely a legal duty.

one ought to abstain from interfering with his opponent's body in order to settle their disagreement in the course of argumentation are typically considered moral grounds, for they do not involve such things as using physical force against other persons, doing harm, or causing injury, which overwhelm reason with threats and violence and replace autonomy with what Hoppe calls—after Immanuel Kant—heteronomy.

More specifically, one ought to abstain from interfering with his opponent's body because failing to do so would "deny his autonomy and his autonomous standing in a trial of arguments" and affirm "dependency and conflict, i.e., *heteronomy*, rather than conflict-free and autonomously reached agreement," being thereby "contrary to the very purpose of argumentation" (Hoppe 2016). Moreover, such an interference would also involve, ex hypothesi, using physical force (or at least threats thereof) against the opponent, likely causing him harm and injury. Hence, the grounds on which one ought to abstain from such an interference are moral grounds. Accordingly, this "ought" is also a moral "ought," and so, in order to settle their initial disagreement in the course of argumentation, the proponent morally ought to abstain from interfering with his opponent's body. Now, since he morally ought to abstain from interfering with his opponent's body, it seems plausible to conclude that he has a duty not to interfere with his opponent's body. This duty in turn correlates with the opponent's claim to self-ownership.

At this stage, a charge can be made that all of this is a non sequitur anyway, for the fact that performing a certain action (for example, assaulting one's interlocutor) precludes one from achieving his goal raises a moral issue; namely, that, seemingly on moral grounds, it does not follow that argumentation presupposes his opponent's Hohfeldian claim.[5] To see why, it is helpful to revisit the example of submitting the present paper to the *Journal of Libertarian Studies* (*JLS*). Thus, it seems reasonable to say that by submitting his paper to the *JLS*, the author wanted to have it read by the editors and assumed that the editors have, at most, a bilateral liberty to read it. After all, the editors may either read it or refuse to read it, while the author may either proceed with his submission or change his mind and withdraw it. Now, if the

[5] The author would like to thank the referee for drawing his attention to this problem.

author were to assault the editors gravely, then his action would preclude him from getting what he wanted (having his paper read by the editors). In refusing to read the paper, the editors would be acting on moral grounds, raising a moral issue regarding the author's using physical force against them and denying them their autonomous standing. If the above reasoning were correct, then these latter facts should entail that in order to have his paper read by the editors, the author morally ought to abstain from interfering with their reading it. This in turn would entail that by submitting his paper to the *JLS*, he thereby presupposed that he has a duty to abstain from interfering with the editors while they read it, and so the editors have a Hohfeldian claim to read it. Yet these facts do not entail any such thing, for what the author at most presupposed by submitting his paper to the *JLS* was the editors' bilateral liberty to read it. Consequently, he would not run into a performative contradiction if he were to argue that the editors do not have a Hohfeldian claim to read it.

Indeed, this charge is on the right track in pointing out that, by submitting his paper to the *JLS*, the author did not presuppose the editors' Hohfeldian claim against his interference with the editors' reading of it, despite the fact that by assaulting them the author would not only thwart his own goals but also do so on the moral grounds. However, if submitting the paper can be interpreted as engaging in argumentation with the editors, then he did not need to presuppose any such claim for his reasoning to be correct. For the only claim that the author had to presuppose for the above inference to be sound was the editors' claim against the author's interference with their bodies. Surely, if it was reasonable to say that by submitting his paper the author thereby assumed the editors' bilateral liberty to read it, it was equally reasonable to say that the author also assumed their claim against being gravely physically assaulted, even if it was not reasonable to say that the author presupposed their claim to read the paper. But regardless of the reasonability (or lack thereof) of saying this, it is quite clear anyway that the editors' nonclaim to noninterference with the process of reading the paper does not entail the editors' nonclaim to bodily noninterference. After all, even normally journal editors do not enjoy a claim directed specifically against interference with their process of reading, and yet they quite robustly hold a claim against bodily interference. The impression that they might also hold a claim against interference with their process of reading

stems from the fact that their claim against bodily interference provides their process of reading with a relatively impenetrable perimeter of juridical protection.

However, if the author interfered with the editors' process of reading in a way that would not involve violation of their claim to bodily noninterference—for example, by withdrawing the submission—then he would be at a Hohfeldian liberty to do so, which is the exact reason why it seemed reasonable to say that the author, by submitting his paper to the *JLS*, assumed that the editors were at most at a bilateral liberty to read it (Kramer 2000, 11). Now, if the editors' nonclaim to noninterference with the process of reading the paper does not entail the editors' nonclaim to bodily noninterference—as it does not—then the fact that by submitting his paper to the *JLS* the author did not presuppose the editors' claim to read the paper does not entail that the author did not presuppose the editors' claim to bodily noninterference, and so the charge collapses.

Thus, coming back to the main line of reasoning, it seems warranted to contend that in order to deny argumentatively an opponent's right of self-ownership, one morally ought to abstain from physically interfering with his opponent's body. This suggests that the argumentation presupposes the proponent's duty not to interfere with his opponent's body. Now his duty of noninterference is not only a negation of his liberty to interfere with his opponent's body, but it also correlates with his opponent's claim to bodily noninterference. Since it is agreed that it is plausible to identify self-ownership with the Hohfeldian claim against bodily interference, it follows that one's duty not to interfere with his opponent's body correlates with the opponent's self-ownership right. Accordingly, in order to settle their initial disagreement argumentatively (i.e., in a conflict-free way), one must presuppose his opponent's self-ownership right in the very act of argumentation. If he now wanted to deny this right in the content of their argument, he would thereby run into a performative contradiction, for the act of denying it argumentatively would imply it.

In more technical words, viewed from a Hohfeldian point of view, the crucial premise of Hoppe's argument looks as follows:

(1) Expressed in the content of the proponent's denial, the negation of an opponent's claim to noninterference entails the opponent's nonclaim to noninterference as well as the proponent's correlative liberty to interfere with his body.

(2) The act of expressing one's denial in the course of argumentation presupposes his duty not to interfere with his opponent's body.

(3) This presupposed duty of noninterference entails one's nonliberty to interfere with his opponent's body and correlates with that opponent's claim to noninterference.

(4) The opponent's nonclaim to noninterference, entailed by the content of the proponent's denial, and the opponent's claim to noninterference, presupposed by the act of the proponent's denial, are contradictory.

(5) Similarly, the proponent's liberty to interfere with his opponent's body, entailed by the content of his denial, and the proponent's nonliberty to interfere with his opponent's body, presupposed by the act of the proponent's denial, are contradictory.

(6) Therefore, denying the opponent's claim to noninterference in the course of argumentation runs the proponent into a performative contradiction because the act of doing so presupposes Hohfeldian statuses (that is, the opponent's claim to noninterference and the proponent's nonliberty to interfere) that are contradictories of jural positions entailed by the content of the proponent's denial (that is, the opponent's nonclaim to noninterference and the proponent's liberty to interfere).

Although it might now seem appropriate to conclude that for the reasons discussed it is indeed impossible to deny one's interlocutor's right of self-ownership without falling thereby into a performative contradiction, there are still some problems that should be addressed. One such problem is that what might not be clear from the above exposition is whether an opponent is a claim holder or only a beneficiary of a proponent's duty not to interfere with his body. In other words, it might be surmised that what Hoppe's argument proves is only that one has a duty not to interfere with his opponent's body, not that one has this duty toward his opponent.

Correlatively, although the opponent is protected by a Hohfeldian claim to noninterference, this claim is not his own, and so he is not a self-owner. This resembles the famous case put forward by Herbert Hart (1955, 180–82). If A promises B that he will look after B's elderly mother, is B's mother only a beneficiary of A's duty to take care of her (while B is the only claim holder), or is she also a claim holder? There is a theory of rights, the so-called will theory, according to which in order to be a right holder one

has to have Hohfeldian powers of waiver over correlative duties (Kramer, Simmonds, and Steiner 2000). Thus, on the grounds of the will theory, B's elderly mother is not a right holder because she cannot waive or demand enforcement of A's duty to take care of her. After all, A made his promise to B, not to her. Similarly, it might be contended that since Hoppe's argument does not say anything about powers of waiver, it does not prove anything about the proponent or the opponent's self-ownership rights. It only proves that they have duties not to interfere with each other's bodies, but to whom they have those duties is left unknown.

It therefore seems that in order for Hoppe's argument to work, the will theory would have to be assumed away. Fortunately, there is another theory of rights, the so-called interest theory, that not only neatly supports Hoppe's argument but also appears to prevail in the debate against the will theory anyway. According to the interest theory, to be a right holder, it is enough that one's interests are normatively protected by another person's duty. Hence, from this point of view, B's elderly mother is a right holder, for being taken care of is in her interest and this interest is normatively protected by A's duty to look after her. Of course, B, the promisee, is also a right holder, yet not because B has a power over A's duty in that he can absolve A from his promise, but rather because B's interest in having the promise fulfilled is normatively protected by A's duty. Analogously, since an opponent's interests in not being physically interfered with and not having his "autonomous standing in a trial of arguments" (Hoppe 2016) quashed are normatively protected by the proponent's duty, he is a right holder, or so predicts Hoppe's argument when the interest theory is assumed.

Finally, a percipient reader will notice that there is still another crack in this reasoning that precludes the closing of this argument.[6] As demonstrated at the beginning of this section, the opponent's right of self-ownership is best understood as his erga omnes claim to bodily noninterference. However, what this paper's argument at most proved was only the proponent's correlative duty of noninterference, not anyone else's. Thus, even if this paper's argument established the opponent's claim to noninterference, it did not show that it is an erga omnes claim. Consequently, it did not prove the opponent's right of self-ownership.

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[6] The author would like to thank the referee for drawing his attention to this problem.

One way of dealing with this problem would simply be to point out that it is nothing other than a variation of a known objection to argumentation ethics—namely that it is binding only between the parties actually engaged in argumentation—and then to quote the answers thereto already given by commentators and Hoppe himself (2016). However, this strategy, even if successful, would underestimate the relevance of this charge for *this paper's* argument.[7] For it was this paper's hypothesis that the proponent cannot deny his opponent's erga omnes right, and yet what this paper at most proved was that the proponent cannot deny his opponent's right held only vis-à-vis the proponent himself. Thus, it is fitting to offer also some other answer to this challenge. The following attempt seems to be a plausible one.

An erga omnes right can be thought of as a very thick rope. One end of this rope branches out into innumerable threads, each of which is held by a different correlative duty bearer, while the other end, tightly woven, stays in the hands of a single right holder.[8] What this paper's argument showed was that the proponent, who holds his thin thread at the frayed end of the rope, cannot deny this fact without falling into a performative contradiction. But it should be quite clear that this argument works equally well with

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[7] These answers would nevertheless work just fine against other possible charges; namely, that all this paper's argument demonstrates is that one has a duty to respect another's rights but only insofar as one engages in argumentation; that so long as one does not engage in argumentation, one is under no duty to respect anyone's rights; and similarly, that one has no duty to respect the rights of those who do not engage in argumentation. The bottom line of the answers to these charges seems to be that one can surely disrespect another's rights and still not fall into a performative contradiction thereby. But that does not show that one does not have a duty to respect another's rights. Whether one has such a duty or not must be decided—along with other truth claims—in the course of argumentation. Now, since one would not be able to justify argumentatively his lack of a duty to respect another's rights, it would be fitting to conclude that one has this duty after all. In other words, it seems true that argumentation ethics does not directly show that someone who does not engage in argumentation has a duty to respect another's rights (or that he has a self-ownership right himself). But whenever the question of justification of his juridical positions arises, argumentation ethics applies and shows that some juridical positions (that is, his duties or rights) cannot be gainsaid.

[8] Or, as put by Kramer (2000, 10), one view of erga omnes rights is that "a right held 'against the world' is a single entitlement with indefinitely innumerous applications, each of which brings a particular person within the sway of the duty that is correlative to the right . . . a right-in-rem [can be viewed] as an abiding entitlement with continually shifting applications."

each individual thread at the frayed end of the rope—that is, no correlative duty bearer whatsoever can ever deny without falling thereby into a performative contradiction that he holds his thin thread of the rope held at the opposite end by a single right holder.

Now it is true that while this does not prove that an individual duty bearer cannot deny that some other individual duty bearer holds his respective thread of the rope, even if he could deny it, he would thereby at most deny the existence of some individual threads, not the rope itself. Moreover, any time this other duty bearer would actually come within the purview of the right (for example, by physically assaulting the right holder), he would be unable to deny that he is holding his thread of the rope without running thereby into a performative contradiction, which would have far more significant practical consequences than his fellow duty bearer's denial of holding some other thread. At any rate, taken together with Hoppe's original responses, it seems that this answer already covers quite a distance toward establishing the erga omnes character of the opponent's right.[9]

CONCLUSIONS

This paper sought to apply a Hohfeldian analysis of rights to an important premise of Hoppe's argumentation ethics; namely, that it is impossible to deny argumentatively one's opponent's self-ownership right without falling thereby into a performative contradiction; for one's act of denying it presupposes this very right as its own condition of possibility. This inquiry demonstrated that with a few relatively uncontroversial assumptions, a Hohfeldian analysis of rights can support Hoppe's argument.

More specifically, if one assumes (1) that one's opponent's self-ownership right can be reduced to a Hohfeldian claim against bodily interference; (2) that to exercise one's liberty to interfere with his opponent's body—a liberty entailed by the content of one's denial—is a deontic impossibility, that is, one's act of denying his opponent's self-ownership right presupposes one's duty not to

[9] This argument could also work against the aforementioned charge that one has a right only against those who actually engage in argumentation. For one thing, the fact—if that is the fact—that the proponent can deny another proponent's duty to the opponent is not enough to say that this other proponent does not have such a duty because when *he* comes under the sway of the opponent's right, no denial will be possible for him. Or so it seems.

interfere with his opponent's body; and (3) that holding of a right is properly characterized by the interest theory, then a Hohfeldian analysis indicates that one indeed cannot argumentatively deny his opponent's claim to noninterference without running into a performative contradiction. The act of denying it presupposes one's opponent's claim to noninterference as well as one's own nonliberty to interfere with the opponent's body, whereas the content of one's denial entails his opponent's nonclaim to noninterference and one's own liberty to interfere with his opponent's body.

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