
APPENDIX

FOUR CRITICAL REPLIES

I. Demonstrated Preference and Private Property¹

Professor Osterfeld, after generously acknowledging the "pathbreaking" nature of my a priori defense of the ethics of private property, concentrates on four objections to my arguments.

I will comment on all four objections that Professor Osterfeld addresses. However, since they depend on a correct understanding of my central argument and its logical force, I will first restate my case in the briefest possible way.

As Osterfeld correctly notices, I want to give a praxeological proof for the validity of the — essentially Lockean — private property ethic. More precisely, I want to demonstrate that only this ethic can be argumentatively justified, because it is the praxeological presupposition of argumentation, and that any deviating ethical proposal can hence be shown to be in violation of demonstrated preference. Such a proposal can be raised, but its propositional content would contradict the ethic for which one would demonstrate a preference by virtue of one's own act of proposition-making, i.e., by the act of engaging in argumentation. In the same way as one can say "I am, and always shall be, indifferent towards doing things" yet this proposition contradicts the act of proposition-making, which reveals subjective preferences (saying this rather than saying something else or not saying anything at all), deviationist ethical proposals are falsified by the reality of actually proposing them.

To reach this conclusion and properly understand its importance, two insights are essential.

First, the question of what is just or unjust — or, even more general, what is valid or not — only arises insofar as I am, and others are, capable of propositional exchanges, i.e., of argumentation. The question doesn't arise for a stone or fish, because they are incapable of producing validity-claiming propositions. Yet if this is so — and one cannot deny that it is without contradicting oneself, as one cannot argue the case that one cannot argue —

¹Reply to D.Osterfeld, "Comment on Hoppe," *Austrian Economics Newsletter*, Spring/Summer 1988; first published *ibid.*

then any ethical proposal, or any other proposition, must be assumed to claim it is capable of being validated by propositional or argumentative means. In producing any proposition, overtly or as an internal thought, one demonstrates one's preference for the willingness to rely on argumentative means in convincing oneself or others of something; and there is, then, no way of justifying anything, unless it is a justification by means of propositional exchanges and arguments. It must be considered the ultimate defeat for an ethical proposal if one can demonstrate that its content is logically incompatible with the proponent's claim that its validity be ascertainable by argumentative means. To demonstrate such incompatibility would amount to an impossibility proof; and such proof is deadly in the realm of intellectual inquiry.

Second, the means with which a person demonstrates preference by engaging in argumentation are those of private property. Obviously, no one could propose anything or become convinced of any proposition by argumentative means if a person's right to exclusive use of his physical body were not already presupposed. Furthermore, it would be equally impossible to sustain argumentation and rely on the propositional force of one's arguments if one were not allowed to appropriate other scarce goods through homesteading action, i.e., by putting them to use before somebody else does, or if such goods, and the right of exclusive control regarding them, were not defined in objective, physical terms. Because if such a right were not presupposed, or if late-comers were supposed to have legitimate claims to things, or things owned were defined in subjective, evaluative terms, no one could survive as a physically independent decision-making unit, and hence no one could ever raise any validity-claiming proposition.

By being alive and formulating propositions, then, one demonstrates that any ethic except that of private property is invalid.

Osterfeld's fourth objection to my article states that my argument is an instance of ethical naturalism, but that I then seem to fall afoul of the naturalistic fallacy of deriving an "ought" from an "is." I am willing to accept the first part of this proposition but not the second. What I offer is an entirely value-free system of ethics. I remain exclusively in the realm of is-statements and nowhere try to drive an "ought" from an "is." The structure of my argument is this: (a) justification is propositional or argumentative (*a priori* true is-statement); (b) argumentation presupposes the recognition of the private property ethic (*a priori* true is-statement); (c) no deviation from a private property ethic can be justified argumentatively (*a priori* true is-statement). Thus, my refutation of all socialist ethics is a purely cognitive one. And that Rawls or other socialists may still advocate such ethics is completely beside the point. That one plus one equals two does not rule out the possibility that someone says it is three, or that one ought not attempt to

make one plus one equal three the arithmetic law of the land. But all this does not affect the fact that one plus one still *is* two. In strict analogy to this, I "only" claim to prove that whatever Rawls or other socialists say is false, and can be understood as such by all intellectually competent and honest men. It does not change the fact that incompetence or dishonesty and evil still may exist and may even prevail over truth and justice.

The second objection suffers from the same misunderstanding of the value-free nature of my defense of private property. Osterfeld agrees that argumentation presupposes the recognition of private property. But then he wonders about the source of this right. Yet how can he raise such a question? Only because he, too, is capable of argumentation. Without argumentation there would be nothing but silence or meaningless noise. The answer is that the source of human rights is, and must be, argumentation as the manifestation of our rationality. It is impossible to claim anything else to be the starting point for the derivation of an ethical system, because claiming so would once again have to presuppose one's argumentative capability. Could rights not be derived from a contract behind a "veil of ignorance," asks Osterfeld? Yes and no. Of course, there can be rights derived from contracts. But in order for a contract to be possible, there must already be private owners and private property, otherwise there would be no physically independent contractors, and nothing to contractually agree upon. And "no": no rights can be derived "from behind a veil of ignorance," because no one lives behind such a thing, except epistemological zombies, and only a Rawlsian zombie ethic can be derived from behind it. Can rights emerge from tradition à la Hume or Burke? Of course, they always do. But the question of the factual emergence of rights has nothing to do with the question of whether or not what exists can be justified.

In his third objection, Osterfeld claims that I construct an alternative between either individual ownership or world community ownership but that such an alternative is not exhaustive. This is a misrepresentation. Nowhere do I say anything like this. In the section to which Osterfeld refers, I am concerned with explaining the entirely different alternative between property as defined in physical terms and as originating at definite points in time for definite individuals, and, on the other hand, property as defined in value terms and unspecific with respect to its time of origin, and the refutation of the latter as absurd and self-contradictory. I do not at all rule out the possibility of ownership of "intermediate communities." However, to repeat, such ownership presupposes individual, private ownership. Collective ownership requires contracts, and contracts are only possible if there are already prior non-contractually acquired ownership claims: contracts are agreements between physically independent units, which are based on the mutual recognition of each contractor's private ownership claim to things

acquired prior to the agreement, and which concern the transfer of these property titles from a specific prior to a specific later owner or owners.

Regarding Osterfeld's first objection, I did not write that the fundamental goals of political economy and political philosophy are "complementary" ones. What I said is that they are different. No one trying to answer "What is just?" is logically committed to insisting that his answer must also contribute to the greatest possible production of wealth (at least I don't contend anywhere that there is any such logical commitment!). Hence, it is no valid objection to my remarks on the relationship between political philosophy and economy that Hobbes, Rousseau and others suggest that political systems do not increase wealth but rather scarcity. Their claim that such systems are just cannot be made good, and as it turns out, the ethic which alone can be justified indeed helps maximize wealth production. This is a — fortunate — matter of fact. It does not change in the least the fact that political philosophy and political economy are concerned with completely separate issues.

This and only this has been my thesis: While political philosophers as such need not be concerned with the problem of alleviation of scarcity, political philosophy and economy have in common the fact that without scarcity neither discipline would make any sense; there would be no interpersonal conflict over anything, and hence no question as to what norms should be accepted as just in order to avoid such possible clashes! It is no stretching of the point to say that political philosophers have invariably been concerned with the assignment of rights of exclusive control over scarce goods. Such is the case when a Lockean proposes to accept the private property ethic, and no less when a Hobbesian suggests, instead, to make some person the supreme Führer, whose commands everyone else must follow.

II. Utilitarians and Randians vs. Reason²

It is neither possible nor worthwhile to address all of the points brought up in the foregone discussion. I will concentrate on those critics who come out most vehemently against my argument — all of them utilitarians of sorts. I will then comment briefly on the Randian type of reaction.

Amazingly, Friedman, Yeager, Steel, Waters, Virkkala and Jones believe I must have overlooked the fact that all existing societies are less than fully libertarian (that there is slavery, the gulag, or that husbands own

²Reply to "Symposium on Hoppe's Argumentation Ethic," *Liberty*, November 1988; first printed *ibid.*

wives, etc.), and that this somehow invalidates my argument. Yet obviously, I would hardly have written this article if it had been my opinion that libertarianism were already prevalent. Thus, it should have been clear that it was precisely this non-libertarian character of reality which motivated me to show something quite different: why such a state of affairs cannot be *justified*. Citing facts like slavery as a counter-example is roughly on a par with refuting the proof that $1+1=2$ by pointing out that someone has just come up with 3 as an answer — and about as ridiculous.

To restate my claim: Whether or not something is true, false, or undecidable; whether or not it has been justified; what is required in order to justify it; whether I, my opponents, or none of us is right — all of this must be decided in the course of argumentation. This proposition is true *a priori*, because it cannot be denied without affirming it in the act of denying it. One cannot argue that one cannot argue, and one cannot dispute knowing what it means to raise a validity claim without implicitly claiming at least the negation of this proposition to be true.

This has been called "the *a priori* of argumentation" — and it was because of the axiomatic status of this proposition, analogous to the "action axiom" of praxeology, that I invoked Mises in my article. (Virkkala's outrage over this disqualifies itself, because I explicitly stated that Mises thought what I was trying to do was impossible. Moreover, it is his understanding of Mises that is amusing. For while it is true that praxeology talks *about* marginalism, it is obviously not the case that praxeology as a body of propositions is in any way affected by marginal choices. Praxeology contains universally true propositions, and whether or not we choose to accept them does not affect this at all. It is beyond me why that should be any different when it comes to ethical propositions. Virkkala might just as well attack Mises for a "retreat from marginalism" because of his claim that praxeology is *true*.)

With the *a priori* of argumentation established as an axiomatic starting point, it follows that anything that must be presupposed in the act of proposition-making cannot be propositionally disputed again. It would be meaningless to ask for a justification of presuppositions which make the production of meaningful propositions possible in the first place. Instead, they must be regarded as ultimately justified by every proposition maker. And any specific propositional content that disputed their validity could be understood as implying a performative contradiction (in the sense explained by David Gordon), and hence, as ultimately falsified.

The law of contradiction is one such presupposition. One cannot deny this law without presupposing its validity in the act of denying it. But there is another such presupposition. Propositions are not free-floating entities. They require a proposition maker who in order to produce any validity

claiming proposition whatsoever must have exclusive control (property) over some scarce means defined in objective terms and appropriated (brought under control) at definite points in time through homesteading action. Thus, any proposition that would dispute the validity of the homesteading principle of property acquisition, or that would assert the validity of a different, incompatible principle, would be falsified by the act of proposition making in the same way as the proposition "the law of contradiction is false" would be contradicted by the very fact of asserting it. As the praxeological presupposition of proposition making, the validity of the homesteading principle cannot be argumentatively disputed without running into a performative contradiction. Any other principle of property acquisition can then be understood — reflectively — by every proposition maker as ultimately incapable of propositional justification. (Note, in particular, that this includes all proposals which claim it is justified to restrict the range of objects which may be homesteaded. They fail because once the exclusive control over *some* homesteaded means is admitted as justified, it becomes impossible to justify any restriction in the homesteading process — except for a self-imposed one — without thereby running into a contradiction. For if the proponent of such a restriction were consistent, he could have justified control only over some physical means which he would not be allowed to employ for any additional homesteading. Obviously, he could not interfere with another's extended homesteading, simply because of his own lack of physical means to justifiably do anything about it. But if he did interfere, he would thereby inconsistently extend his ownership claims beyond *his* own justly homesteaded means. Moreover, in order to justify this extension he would have to invoke a principle of property acquisition incompatible with the homesteading principle whose validity he would already have admitted.)

My entire argument, then, claims to be an impossibility proof. But not, as the mentioned critics seem to think, a proof that means to show the impossibility of certain empirical events so that it could be refuted by empirical evidence. Instead, it is a proof that it is impossible to propositionally justify non-libertarian property principles without falling into contradictions. For whatever such a thing is worth (and I'll come to this shortly), it should be clear that empirical evidence has absolutely no bearing on it. So what if there is slavery, the gulag, taxation. The proof concerns the issue that claiming that such institutions can be justified involves a performative contradiction. It is purely intellectual in nature, like logical, mathematical, or praxeological proofs. Its validity — as their's — can be established independent of any contingent experiences. Nor is its validity in any way affected, as several critics — most notoriously Waters — seem to think, by whether or not people like, favor, understand or come to a consensus regarding it, or whether or not they are actually engaged in

argumentation.

As considerations such as these are irrelevant in order to judge the validity of a mathematical proof, for instance, so are they beside the point here. And in the same way as the validity of a mathematical proof is not restricted to the moment of proving it, so, then, is the validity of the libertarian property theory not limited to instances of argumentation. If correct, the argument demonstrates its universal justification, arguing or not. (Of all utilitarian critics only Steele takes up the challenge that I had particularly posed for them: that the assignment of property rights cannot be dependent on any later outcome, because in this case no one could ever know before the outcome what he was or was not justified to do; and that in advocating a consequentialist position utilitarianism is strictly speaking no ethic at all when it fails to answer the all-decisive question "what am I justified to do now?" Steele solves this problem in the same way as he proceeds throughout his comment: by misunderstanding what it is. He misconceives my argument as subject to empirical testing; he misrepresents it as claiming to show that "I favor a libertarian ethic" follows from "I am saying something," while in fact it claims that entirely independent of whatever people happen to favor or utter, "the libertarian ethic can be given an ultimate propositional justification" follows from "I claim such and such to be valid, i.e., capable of propositional justification." His response to the consequentialist problem is yet another stroke of genius: No, says Steele, consequentialism must not involve a praxeologically absurd "waiting for the outcome ethic". His example: Certain rules are advocated first, then implemented, and later adjusted depending on outcomes. While this is indeed an example of consequentialism, I fail to see how it should provide an answer to "what are we justified to do now?" and so escape the absurdities of a waiting-for-the-outcome-ethic. The starting point is unjustified [Which rules? Not only the outcome depends on this!]; and the consequentialist procedure is unjustified, too [Why not adopt rules and stick to them regardless of the outcome?]. Steele's answer to the question "what am I justified to do?" is: that depends on whatever rules you start out with, then on the outcome of whatever this leads to, and then on whether or not you care about such an outcome. Whatever this is, it is no ethic.

The reaction from the other — Randian — side, represented by Rasmussen is different. He has fewer difficulties recognizing the nature of my argument, but then asks me in turn "So what?" Why should an a priori proof of the libertarian property theory make any difference? Why not engage in aggression anyway? Why indeed?! But then, why should the proof that $1+1=2$ make any difference? One certainly can still act on the belief that it was $1+1=3$. The obvious answer is "because a propositional justification exists for doing one thing, but not for doing another." But why should we

be reasonable, is the next come-back. Again, the answer is obvious: For one thing, because it would be impossible to argue against it; and further, because the proponent raising this question would already affirm the use of reason in his act of questioning it. This still might not suffice and everyone knows that it does not: for even if the libertarian ethic and argumentative reasoning must be regarded as ultimately justified, this still does not preclude that people will act on the basis of unjustified beliefs either because they don't know, they don't care, or they prefer not to know. I fail to see why this should be surprising or make the proof somehow defective. More than this cannot be done by propositional argument.

Rasmussen seems to think that if I could get an "ought" derived from somewhere (something that Yeager claims I am trying to do, though I explicitly denied this), then things would be improved. But this is simply an illusory hope. For even if Rasmussen had proven the proposition that one *ought* to be reasonable and *ought* to act according to the libertarian property ethic this would still be just another propositional argument. It could no more assure that people will do what they ought to do than my proof can guarantee that they will do what is justified. So where is the difference; and what is all the fuss about? There is and remains a difference between establishing a truth claim and instilling a desire to act upon the truth — with "ought" or without it. It is great, for sure, if a proof can instill this desire. But even if it does not, this can hardly be held against it. And it also does not subtract anything from its merit if in some or even many cases a few raw utilitarian assertions prove more successful in persuading of libertarianism than it can do. A proof is still a proof; and socio-psychology remains socio-psychology.

III. Intimidation by Argument³

Loren Lomasky was intimidated and angered by my book *A Theory of Socialism and Capitalism*. For one, because the book is more ambitious than its title indicates. "It is," he laments, "no less than a manifesto for untrammled anarchism." So be it. But so what? As explained in my book but conveniently left unmentioned by Lomasky, untrammled anarchism is nothing but the name for a social order of untrammled private property rights, i.e., of the absolute right of self-ownership, and the absolute right to homestead unowned resources, of employing them for whatever purpose one sees fit so long as this does not affect the physical integrity of others'

³Reply to L. Lomasky, "The Argument From Mere Argument," *Liberty*, September 1989; first printed *ibid.*, November 1989.

likewise appropriated resources, and of entering into any contractual agreement with other property owners that is deemed mutually beneficial. What is so horrifying about this idea? Empirically speaking, this property theory constitutes the hard core of most people's intuitive sense of justice and so can hardly be called revolutionary. Only someone advocating the trammeling of private property rights would take offense, as does Lomasky, with my attempt to justify a pure private property economy.

Lomasky is not only enraged at my conclusions, however. His anger is further aggravated because I do not merely try to provide empirical evidence for them, but a rigorous proof, Lomasky chides, "validated by pure reason and uncontaminated by any merely empirical likelihoods." It is not surprising that an opponent of untrammled private property rights, such as Lomasky, should find this undertaking doubly offensive. Yet what is wrong with the idea of *a priori*-theorizing in economics and ethics? Lomasky points out that failed attempts to construct *a priori* theories exist. But so what? This only reflects on those particular theories. Moreover, it actually presupposes the existence of *a priori* reasoning in that the refutation of an *a priori* theory must itself be a proof. For Lomasky, however, nothing but intellectual hyperbole can possibly be responsible for "eschewing the low road of empiricism, soaring instead with Kant, and von Mises through the realm of *a priori* necessities." A book on political philosophy or economy, then, should never come up with unambiguous conclusions as to what to do, what rules to follow. Everything should be left vague and at a non-operational stage of conceptual development. And no one should ever try to prove anything, but instead follow the forever open-minded empiricist approach of trial and error, of tentative conjectures, refutations and confirmations. Such, for Lomasky, is the proper path, the low and humble road, along which one is to travel. And sure enough, most contemporary political philosophers seem to have wholeheartedly followed this advice on their way to fame. Taking the high road instead, I present an unambiguous thesis, stated in operational terms, and attempt to prove it by axiomatic-deductive arguments. If this makes my book the ultimate insult in some philosophical circles, so much the better. Apart from other advantages, such that this might actually be the only appropriate method of inquiry, it at least forces one to say something specific, and to open oneself up wide to rigorous logical-praxeological criticism instead of producing, as Lomasky and his fellow low roaders, meaningless, non-operational moonshine talk and distinctions.

Besides finding fault with the arrogance of someone writing a book that presents a praxeologically meaningful and easily understandable thesis concerning the central problems of political philosophy and economy, and that vigorously defends it to the point of excluding all other answers as false, Lomasky also has some specific nits to pick. As might be expected from an

intimidated low roader, they are either unsystematic cheap shots, or they display a complete miscomprehension of the problem.

I am criticized for not paying enough attention to Quine, Nozick, and entire bodies of philosophic thought. May be so — though Nozick, if only in a footnote as Lomasky notes indignantly, is actually systematically refuted. But one would like to know why that should have made a difference for my argument. Mere reading suggestions are all too easy to come up with in these times. I am criticized for misinterpreting Locke by not mentioning his famous "proviso," but I am not engaged in an interpretation of Locke. I construct a positive theory and in so doing employ Lockean ideas; and assuming my theory correct for the sake of argument, there can be no doubt as to my verdict on the proviso. It is false; and it is incompatible with the homesteading principle as the central pillar of Locke's theory. Lomasky does not demonstrate that it is not so. He is annoyed at my dissolution of the public goods problem as a pseudo-problem without so much as mentioning my central contention regarding the matter, i.e., that the notion of objectively distinct classes of private vs. public goods is incompatible with subjectivist economics and so must fall by the wayside along with all distinctions based on it. He finds my arguments in support of the thesis of the ever-optimality of free markets wanting, because they must rely on the assumption of "the universal optimality of voluntary transactions." They must indeed. I never claimed anything else. Yet this assumption happens to be true — in fact, as I argue, indisputably true. So what then? Or is Lomasky willing to take on the task of proving it to be false?! How dare I — in a footnote — criticize Buchanan and Tullock for Orwellian double talk, Lomasky complains. Only he forgets to mention that I give rather specific reasons for this characterization: among others, the use of the notion of "conceptual" agreements and contracts in their attempt to justify a state, when according to ordinary speech such agreements and contracts are non-agreements and non-contracts — non-contracting means contracting! Similarly, for my oh-so-disrespectful remarks regarding Chicago-style property theories I give reasons (their assumption of the measurability of utility, for instance), which Lomasky simply suppresses. The rest, regarding my theory of justice, is either miscomprehension or deliberate misrepresentation. From reading Lomasky's reconstruction of my central argument, which revealingly employs no direct quotes, no one would grasp its main thrust and structure: Without scarcity there can be no interpersonal conflict and hence no ethical questions (what am I justified doing and what not?). Conflicts are the result of incompatible claims regarding scarce resources; and there is but one possible way out of such predicaments then: through the formulation of rules that assign mutually exclusive ownership titles regarding scarce, physical resources, so as to make it possible for different actors to act simultaneously

without thereby generating conflict. (Like most contemporary philosophers, Lomasky gives no indication that he has grasped this elementary, yet fundamental point, i.e., that any political philosophy which is not construed as a theory of property rights fails entirely in its own objective and thus must be discarded from the outset as praxeologically meaningless moonshine.)

Yet scarcity, and the possibility of conflicts, is not sufficient for the emergence of ethical problems. For obviously, one could have conflicts regarding scarce resources with an animal, and yet one would not consider it possible to resolve these conflicts by means of proposing property norms. In such cases, the avoidance of conflicts is merely a technical, not an ethical problem. For it to become an ethical problem, it is also necessary that the conflicting actors be capable, in principle, of argumentation. (Lomasky's mosquito example is thus merely silly: Animals are no moral agents, because they are incapable of argumentation; and my theory of justice explicitly denies its applicability to animals and, in fact, implies that they have no rights!)

Further, that there can be no problem of ethics without argumentation is indisputable. Not only have I been engaged in argumentation all along, but it is impossible, without falling into a contradiction, to deny that whether or not one has any rights and, if any, which ones, must be decided in the course of an argumentation. Thus, there can be no ethical justification of anything, except insofar as it is an argumentative one. This has been called 'the a priori of argumentation'. (Insofar as Lomasky has at all understood this, he most definitely appears to be unaware of the axiomatic status of this proposition, i.e., of the fact that the a priori of argumentation provides an absolute starting point, neither capable of, nor requiring, any further justification!)

Arguing is an activity and requires a person's exclusive control over scarce resources (one's brain, vocal chords, etc.). More specifically, as long as there is argumentation, there is a mutual recognition of each other's exclusive control over such resources. It is this which explains the unique feature of communication: that while one may disagree about what has been said, it is still possible to independently agree at least on the fact that there is disagreement. (Lomasky does not seem to dispute this. He claims, however, that it merely proves the *fact* of mutually exclusive domains of control, not the *right* of self-ownership. He errs: Whatever — such as the law of contradiction, for instance — must be presupposed insofar as one argues, cannot be meaningfully disputed, because it is the very precondition of meaningful doubt, and hence must be regarded as indisputable, or *a priori valid*. In the same vein, the fact of self-ownership is a praxeological precondition of argumentation. Anyone trying to prove or disprove anything must in fact be a self-owner. It is a self-contradictory absurdity then to ask

for any further-reaching justification for this fact. Required, of necessity, by all meaningful argumentation, self-ownership is an absolutely and ultimately *justified* fact.)

Finally, if actors were not entitled to own physical resources other than their bodies, and if they — as moral agents, categorically different from Lomasky's mosquitoes — were to follow this prescription, they would be dead and no problem whatsoever would exist. For ethical problems to exist, then, ownership in other things must be justified. Further, if one were not allowed to appropriate other resources through homesteading action, i.e., by putting them to use before anybody else does, or if the range of objects to be homesteaded were somehow limited, this would only be possible if ownership could be acquired by mere decree instead of by action. However, this does not qualify as a solution to the problem of ethics, i.e., of conflict-avoidance, even on purely technical grounds, for it would not allow one to decide what to do if such declarative claims happened to be incompatible ones. More decisive still, it would be incompatible with the already justified self-ownership. For if one could appropriate resources by decree, this would imply that one could also declare another person's body to be one's own. Thus, anyone denying the validity of the homesteading principle — whose recognition is already implicit, then, in arguing persons' mutual respect for each other's exclusive control over one's body — would contradict the content of his proposition through his very act of proposition making. (For one thing, Lomasky, in a stroke of genius, finds fault with the fact that the first part of this argument provides no justification for unlimited homesteading. True. But then it also does not claim to do any such thing. The second part — the argumentum a contrario — does. And regarding my argument in its entirety Lomasky claims that I have only shown the validity of the non-aggression principle for "the act of argument itself and not beyond...it does not extend to the object of discussion." At best, this objection indicates a total failure to grasp the nature of performative contradictions: If justification of anything is argumentative justification, and if what must be presupposed by any argumentation whatsoever must be considered ultimately justified, then any validity claiming proposition whose content is incompatible with such ultimately justified facts is ultimately falsified as involving a performative contradiction. And that is that.)

Philosophic and economic theorizing is indeed serious work, as Lomasky notes. His reaction to my book demonstrates that he is not up to such a task.

IV. On the Indefensibility of Welfare Rights⁴

David Conway claims that my argument intending to show the unrestricted validity of the homesteading principle, i.e., the first-use-first-own rule regarding unowned, nature-given resources, is flawed, and that he can demonstrate the defensibility of welfare rights. I remain unconvinced and contend that it is his counterargument which is faulty.

While I have no quarrel with his presentation of my argument, I will first briefly restate my proof. Secondly, I will point out the central errors in his reply. And thirdly, I wish to offer an explanation for Conway's rejection of my argument as resulting from a rather common misconception regarding the logic of ethical reasoning.

Whether or not one has any rights, and, if any, which ones, can only be decided in the course of an argumentation. It is impossible to deny the truth of this without falling into a contradiction. Arguing requires a person's exclusive control (ownership) over scarce resources (one's brain, vocal chords, etc.). Trying to deny this would again merely prove the point. And a person must have acquired this ownership simply by virtue of the fact that he began using these resources before anyone else had done so, otherwise he could never say or argue anything to begin with. Thus, anyone denying the validity of the homesteading principle at least with respect to *some* resources would contradict the content of his proposition through his very act of proposition making. So far, it appears, Conway would agree. But he wants to impose limitations on the range of objects that may legitimately be homesteaded. Unfortunately, however, (for Conway's case) once exclusive control over some homesteaded means is admitted as justified, it becomes impossible to justify any restrictions in the homesteading process — except for a self-imposed, voluntary one without thereby running into contradictions. For if the proponent of such a restriction were consistent, he could have justified control only over some, however limited, scarce resources which he would not be allowed to employ for additional homesteading. Yet obviously, he could not then interfere with another's extended homesteading, simply because of his own lack of means to do anything about this. And if he *did* interfere, *he* would thereby inconsistently extend his ownership claims beyond his own justly homesteaded resources. Moreover, in order to justify his interference he would have to invoke a principle of property acquisition *incompatible* with the homesteading principle: He would have to claim inconsistently that a person who extends his homesteading, and who does so

⁴Reply to D. Conway, "A Theory of Socialism and Capitalism," *Austrian Economics Newsletter*, Winter/Spring 1990; first printed *ibid.*

in accordance with a principle that no one can argue to be generally invalid, is, or at least can be, an aggressor (even though in doing so this person could not possibly be said to have taken anything away from anyone, because he would have merely appropriated *previously unowned resources*, i.e., things that no one up to that point had even recognized as scarce, and which anyone else could have appropriated as well if only he had recognized their scarcity earlier, including anyone such as Conway, who was concerned about the fate of late-comers and wanted to preserve these resources for their later benefit). Furthermore, that a person who interferes with such an action, and who does so in accordance with a principle that no one could possibly argue to be generally valid, is, or at least can be, acting legitimately (even though he would always take something away from someone whose appropriations had occurred at no one's expense).

The central error in Conway's rejection of this argument is his refusal to acknowledge the logical incompatibility of his idea of welfare rights on the one hand — the notion that one can have enforceable claims against homesteaders — and of the homesteading principle on the other. Either the first idea is right or the second. Yet the first cannot be said to be right, because in order for anyone to say so, the second one must be presupposed as valid. There can be no such thing as a right to life, then, in Conway's sense of a right to having one's life sustained by others. There can only be each person's right to own his physical body, everything homesteaded with its help, and to engage in mutually beneficial exchanges with others. Suppose, for instance, that I am terminally ill and the only way for me to survive is to have my brain short-circuited with Conway's. Does he have the right to refuse? I think so, and I am sure that he thinks so, too. But he cannot have this right on welfare grounds (assuming that his life would not be threatened by such an operation), but only on the basis of the homesteading principle as the precondition of one's existence as an independently reasoning and arguing physical being. Further, his claim that welfare rights "are every bit as objective" as those implied by mixing one's labor with scarce resources (contrary to my thesis that the former are subjective, arbitrary, verbal, derived out of thin air) is fallacious. Through homesteading an objective link between a *particular person* and a *particular resource* is created. But how in the world can one say that my need can give rise to a claim regarding any specific resource or resource owner X, rather than Y, or Z, if I had not homesteaded or produced either one?! Not only is neediness incapable of objective identification or measurement: Who determines who is or is not needy? Everyone for himself? And what if I happened to disagree with someone's self-assessment? People have died from love-sickness — do they have a right to a lover-conscript? People have survived by eating grass, bark, rats, roaches, or others' garbage — are there

no needy people then so long as there is enough grass or garbage to eat? If not, why not? For how long would the support for the needy have to last? Forever? And what about the rights of the supporters who would thereby become permanently enslaved to the needy? Or what if my support for the needy caused me to become needy myself, or somehow increased my own future needs? Would I still have to continue to support them? And how much work can I expect the destitute to perform in return for my support - given the fact that one is not dealing here with a mutually beneficial employment relation or voluntary charity to begin with? As much as the needy feel is appropriate?

Moreover, even if all these difficulties were overcome, more are lying in the wings because need does not connect the needy with any resource or resource owner in particular, and yet it must invariably be particular resources that provide relief. The needy may be needy without any fault of their own; but the non-needy may be non-needy without any fault of theirs, too. So how can the needy claim support from me, rather than you? Surely that would be utterly unfair toward me in particular! In fact, either the needy can have a claim against no one in particular, which is to say they have no claim whatsoever; or else their claim would have to be directed equally against each one of the world's non-needy.

Yet how can the needy possibly enforce such a claim? After all, they lack resources. For this to be possible, an all-resourceful, world-wide operating agency would be required. The owners of such an agency obviously would have to be classified as among the non-needy, and could hence have no direct claim against anyone. Supposedly, only need creates such claims. In fact, this agency would have to be considered one of the foremost debtors to the needy; and it could only legitimately act against other non-needy then, if it had previously voluntarily paid *its* share of welfare debts *and* the needy had contractually entrusted it with such an enforcement task. And hence the welfare problem would have to wait for a solution until this institution arrived. So far it has not arrived, and there is nothing to indicate that it will arrive in the near future. And even if it did, welfare rights would still be incompatible with the homesteading rule as an indisputably valid, axiomatic principle.

The explanation for Conway's refusal to accept the homesteading ethic lies in a misconception regarding the nature of ethical theory. Instead of recognizing ethics as a logical theory, deductively derived from incontestable axioms (akin to praxeology), Conway implicitly shares a popular, empiricist-intuitionist (or gut-feeling) approach toward ethics. Accordingly, an ethical theory is *tested* against moral experience, such that if the theory yields conclusions at variance with one's moral intuitions it should be regarded as *falsified*. However, this view is entirely mistaken and, much like

in economics, the role of theory and experience in ethics is almost precisely the opposite: It is the very function of ethical theory to provide a rational justification for our moral intuitions, or to show why they have no such basis and make us reconsider and revise our intuitive reactions. This is not to say that intuitions can never play a role in the building of ethical theory. In fact, counterintuitive theoretical conclusions may well *indicate* a theoretical error. But if after one's theoretical reexamination, errors are neither found in one's axioms nor in one's deductions, then it is one's intuitions that must go, not one's theory.

In fact, what strikes Conway as a counterintuitive implication of the homesteading ethic, and then leads him to reject it, can easily be interpreted quite differently. It is true, as Conway says, that this ethic would allow for the possibility of the entire world's being homesteaded. What about newcomers in this situation, who own nothing but their physical bodies? Cannot the homesteaders restrict access to their property for these newcomers and would this not be intolerable? I fail to see why. (Empirically, of course, the problem does not exist: if it were not for governments' restricting access to unowned land, there would still be plenty of empty land around!) These newcomers come into existence somewhere — normally one would think as children born to parents who are owners or renters of land (if they came from Mars, and no one wanted them here, so what?; they assumed a risk in coming, and if they now have to return, tough luck!). If the parents do not provide for the newcomers, they are free to search the world over for employers, sellers, or charitable contributors — and a society ruled by the homesteading ethic would be, as Conway admits, the most prosperous one possible! If they still could not find *anyone* willing to employ, support, or trade with them, why not ask "What's wrong with *them*?" instead of Conway's feeling sorry for them? Apparently *they* must be intolerably unpleasant fellows and had better shape up, or they deserve no other treatment. Such, in fact, would be my own intuitive reaction.