

Author: Jeremy Frank Shearmur <Jeremy.Shearmur@anu.edu.au> at INTERNET
Date: 6/11/96 3:58 PM
Priority: Normal
TO: Stephan Kinsella at SHSL-PH2
Subject: Re: Shearmur 1994-present Libertarian Papers
----- Message Contents -----

Stephan: thanks for your mailings. I've been under pressure of work but hope to sort things soon. In the meantime, I've come across the short response to Hoppe's work that I wrote a few years ago, and which I promised you when we spoke in January. It follows, below. All good wishes, Jeremy

Hoppe on the Justification of the Private Property Ethic

Jeremy Shearmur*

I am sympathetic to the idea that one can develop an argument for liberty by appeal to what is required for discussion that aims at truth, or at the discovery of the validity of ethical claims.[1] But I am not so sure that the argument is as knock-down, or can work with as little consequentialist support, as Hoppe seems to suggest. Hoppe has offered us, in his article, an informal account of what must, in fact, be a rather detailed and complex argument. I will here suggest a few points which might pose problems for his fuller argument.

II

Hoppe offers what would seem to be a transcendental argument: property rights are to be grounded in the conditions necessary for argumentation. But there are a few problems here. First, the fact that someone enters into a particular activity does not mean that they are more than instrumentally committed to its presuppositions. I may play chess because I wish to inflict a humiliating defeat upon the current chess champion. To be sure, I will be bound by the rules of chess while I am engaged in this activity; but I will not be committed, by virtue of the fact that I am playing, to the idea that chess is something that is worth playing for its own sake, or involved in any commitment to the rules or ideals of chess that extends beyond the immediate context in which I am playing. If Hoppe's argument works, it is not clear that it will help us outside of the immediate context of discussion, either. (To this I will return.)

Second, an argument like Hoppe's derives a lot of its clout from what are taken to be conditions necessary for the pursuit of truth through argumentation. It is worth noting that the lessons that Hoppe wishes us to draw may depend upon the adoption of a particular theory of knowledge - one in which great weight is placed upon a universal, reasoned consensus. But while such epistemological ideas are endorsed by such figures as J. S. Mill in *On Liberty*; C. S. Peirce, Karl Popper and Juergen Habermas, they are by no means uncontentious, and other views - say, those which see truth as accessible only to an elite - will not support such an argument.[2] Now, rights based on argument need not be respected by those who are not interested in argument. (Compare Nozick's comment that Thrasymachus's response to Socrates should have been to hit him over the head, not to argue with him![3]) What is more, the rights of every individual may not have to be respected even by all those who themselves wish to argue, and to claim argument-derived rights for themselves. For if they do not hold a universalist epistemology, they

may well take the view that I, say, am not fit to enter into discussion with them - and that, rather, I should be looking after their material needs, so that they and their fellow intellectual aristocrats, whose discussions can reach truth, can be free to get on with this important task.

We must also examine carefully to what it is that Hoppe's argument is appealing. It is one thing to argue that striking moral and political lessons are implicit within the ideal conditions for dialogue. It is quite another to argue that they are implicit within the conditions under which actual dialogue takes place. From the former one might be able to argue to some notion of individual rights (though hardly right through to a fully free-market system on this basis alone); but one must be willing to face a lot of argument about the characterization of the ideal conditions for dialogue. From common or garden discussion, however, much less can be extracted. Such discussion takes place under all kinds of unfree conditions - so that its preconditions may be satisfied even by that limited degree of self-ownership and of private property rights that exist, say in the United States. After all, our exchange about ethics implicit within discussion is itself taking place (and, as far as I can tell, is not being adversely affected by the fact that it takes place) under political conditions which are far removed from those that a libertarian would favour.

Third, most of us are not able to spend all our time engaged in argument, or even to become involved in argument whenever it might seem attractive to us. We have livings to earn, which may commit us to other tasks which may, to a greater or lesser extent, be incompatible with our engaging in discussion. But is it clear that, in this situation, we are - from the point of view of Hoppe's argument - in a worse position than a slave whose master allows him plenty of free time for engaging in argument on whatever issues might interest him? (It is also worth bearing in mind that, in the classical world, some intellectuals were slaves.) [4]

III

If there is an argument from argumentative justification to private property and self ownership, how far - and where - does it take us? First, if one argues from a concern for truth via the conditions for argument to individual self-ownership, in the hope that this will lead to libertarian conclusions, one must be careful that the argument does not backfire. For, someone might say, what about the person who is severely disabled? Is their possible input to argument not of value, and to be valued upon just the same basis as the individual claims his own right to self-ownership? And do such people not have a legitimate call upon the resources of other individuals, over and above what those individuals need to participate in dialogue, in order that they might be enabled to make their contribution, too? (There is a parallel here with the "positive" right of the indigent to subsistence upon the surplus of others that Locke acknowledges in his First Treatise of Government. [5]) I think that this conclusion can - and should - be resisted. But I am not sure that this can be done without our being involved in consequentialist argument. [6]

Second, there is a problem about self ownership, too; one which goes back to my chess example. For suppose that we have been involved in a long and exhausting discussion, and now wish to take a break - to go for a swim, to watch a film, or whatever. At that point, a would-be exploiter could come along and say: I now wish to make use of your labour power. If Hoppe's argument works, we may be able to resist him; but only by resuming our discussion. And even the most persistent libertarian must get fed up with talking at some point. Of course, we might be able to

argue that we need our relaxation, in order to argue the better the next day. But this line of defence might seem to tie individual freedom somewhat restrictively to what is linkable to discussion. And we might even find that some would-be authority comes along and argues that they should be able to prevent us from doing some things that we would like to do - say, having a drink - on the grounds our behaving in this way will, in fact, adversely affect our ability to argue, and that freedom and self-ownership is accorded us only for that purpose!

IV

Hoppe's argument was presented only very briefly in his paper, and I am not sure that, even if there is anything to the above critical suggestions, they would hit the particular version of the argument that he wishes to espouse. I would, however, be most interested in any response that he might have.

Notes

* Jeremy Shearmur is a Senior Research Fellow at the Institute for Humane Studies, George Mason University. This brief paper dates from some time in 1989.

[1] Compare, in this connection, John Stuart Mill's *On Liberty*, Frank van Dunn's "Economics and the Limits of Value-Free Science" *Reason Papers*, 11, Spring 1986, pp. 17-32; Tristram Engelhardt, *The Foundations of Bioethics*, and also my "Habermas: A Critical Approach", *Critical Review*, volume 2, No., 1.

[2] Compare Lecture III of Hilary Putnam's *The Many Faces of Realism*, Open Court, La Salle, 1987.

[3] Compare Robert Nozick, *Philosophical Explanations*, p. 434. [Added 1993: to this point, it might be objected: but is not the claim itself something that must be understood as discursively redeemable. To this, it seems to me, the appropriate response is: but it all depends on whether it is to be understood as a cognitive claim, or merely a matter of taste. Thrasymachus can, most simply, move from making a cognitive claim about justice, to saying simply: I like it when the strong triumph over the weak.]

[4] As my colleague Emilio Pacheco has suggested to me, it is not made clear just what freedom to do what is claimed by Hoppe to be established by his argument.

[5] Compare John Locke, *First Treatise of Civil Government*, para 42.

[6] I attempt some argument to this effect in my University of London Ph.D. dissertation on *The Political Thought of F. A. von Hayek*.