



**Episode 370 – It Is Impossible to Argue Against
Libertarianism without Contradiction
Guest: Stephan Kinsella
March 31, 2015**

WOODS: Other than Hans Hoppe himself, who generally does not do audio interviews, so for everybody saying, why don't you get Hans on the show, let me take care of that one right now. Back when I was hosting the Peter Schiff Show from time to time, I asked him to be a guest, and he politely declined not because we're not friends or anything, but he just doesn't want to do audio interviews, and he says, plus sometimes I say things, and I get into trouble, and whatever. I would rather just write out my answers. So that's another matter, but there's really nobody else I'd like to talk to on this more than you, and you've written an awful lot about the subject that we're talking about today, which is argumentation ethics. Now, it is highly fashionable in libertarian circles, well, let's say, it's fashionable in fashionable libertarian circles to discount this altogether and to make fun of Hans and to make fun of people who believe in it, but the arguments for it, if I may say so, are actually very intriguing, and to my mind, quite strong. The claim that Hans is making is an incredibly bold one. It took Murray Rothbard's breath away it was so bold. In effect, he is saying that is impossible to argue against basic libertarian principles—the first-user principle, homesteading principle, private property. It's basically impossible to argue against these things without engaging in a contradiction without contradicting yourself because there are principles that are pre-argumentation that are taken for granted that are presupposed by the very fact of arguing, the very fact of engaging in argumentation, the very action of doing that that can't be denied without engaging in contradiction. It's a strong claim, and yet, to my mind, it really works. So is that—have I correctly described Hans's aim?

KINSELLA: I think you have, and yeah, I think you could—I would proudly call myself Hoppe's libertarian consigliere, if you want, like a libertarian lawyer advocate for a lot of Hoppe's view because I have learned and you have learned a lot from Hans. I view Hans Hoppe as the greatest living libertarian theorist and Austrian economist in the world, so there's a lot to learn from him, and one of the first things that he burst onto the scene with in, if I have the timeline right, I think he came to the U.S. around 19—

WOODS: '86.

KINSELLA: '85, '86, and he was with Rothbard for about a decade until Rothbard died, and around '86, '87, he started promoting this argumentation ethics idea, which is just one of his many breakthroughs in Austrian and libertarian thought, and it was very provocative and controversial when it came onto the scene around—I think the first time it was really noticed by a lot of people was in this *Liberty* magazine symposium in 1988, and he introduced his argumentation ethics, which was kind of a new defense of libertarian rights, which Rothbard loved and went crazy about, so yeah, that's how it came about, and that was the origin of it.

WOODS: You are a libertarian legal theorist in your own right, so why don't you just explain very simply what are these libertarian principles that we're eventually going to arrive at just so that we can see the goal that this is all taking us toward?

KINSELLA: Well, an actually, this argument helps us to see what the libertarian principles should be, and that's a dispute in itself or a debatable topic, but libertarian principles—you could call it voluntarism. You could call it peace. You could call it prosperity. I think if you distill it down to its core, what libertarian principles are is that we are trying to come with a set of rules that people can live together among each other in a world of scarcity and where there's a possibility of conflict, and these rules are what are called property rights, and the property rights are usually assigned or delegated in a certain traditional way. The first person who gets the thing gets to own it. If you sell it to someone by contract, then they are the new owner. These basically simple rules are the core of the Western legal tradition and of all human society. The project for libertarians is to be more consistent about it and to enumerate what the justification could be, and up until I'd say Hoppe's time, there have two or three main ways of trying to justify the legal system that we see.

WOODS: And these have been the typical means that we're familiar with. For example, you're talking about the natural rights tradition?

KINSELLA: Yeah, I would say so. The two main ways would be the natural rights, or what some people call deontological or principled approach, and there's many variations of that, and then the consequentialist or utilitarian approach. You could say there are others like intuitionists, religionists, and there is a libertarian anarchist named Jan Lester, J.C. Lester, who thinks there's a third version, which he calls this Karl Popper-based critical rationalism, which is that you come up with conjectures, and you try to rebut them. Rothbard is mostly in the natural law, natural rights tradition. What Hoppe argued was that there are problems with the two main approaches to justifying norms or rules or ethics or laws or rights, and that is that the one approach, utilitarianism, of course, is completely incompatible with what we understand about economics given Mises's understanding of the fact that values are subjective, and values can't be quantified. We can't compare values, so we could never come up with a rule that would allow us to maximize some kind of value parameter in society. So this kind of strict utilitarian idea is economically unworkable, and it's also unethical, because even if you could take money from, let's say Bill Gates, and give it to some poor person, and make them better off, that doesn't automatically show that the theft is justified.

So utilitarianism is criticized. And natural law theory, natural rights theory, is heavily bound up with the Catholic Church and religious views, and there are two principle criticisms that are set forth against the natural rights view. Number one, it's the Humean idea that you can't derive and ought from an is. That is, you can't make a factual statement and then derive from that what should be the case or what law should be the case. You can't just say, here's what human nature is, and therefore, this is what the rules should be, because you have to introduce a normative statement, and you have to have some kind of independent justification for that normative statement. So that's one problem. The other problem that people like Hans and others have identified with the natural law argument is that human nature is a very vague and diffuse and very general. So even if you agree that human nature gives rise to a set of prescriptions and laws, they would be very general and vague. They wouldn't be specific at all. So what Hoppe did was—Hans was a leftist, initially, a German leftist, and he studied under one of the most brilliant philosophers of the modern time in Europe, Jurgen Habermas, who is a leftist. But Habermas and his colleague Karl Otto Apel, these two German philosophers, had come up with this thing called discourse ethics, and the idea is that if you want to find out what ethics, what normative rules in society could be justified, you have to look back to the source of any kind of method of proving these things in the first place, which is always a discussion between two intelligent beings like you and I are having right now.

WOODS: Okay, that's good. I was going to ask you why argumentation is central to the whole thing. This is why.

KINSELLA: Yeah, and so what Hans says, and this is hard to recognize until you think about it, but what he says is that human action itself is not the source of these things, but human communication is. And the reason is that when you have humans come together in a community in a society, and they have an interaction like a discourse, the discourse has certain presuppositions; what he calls moral or normative presuppositions. In other words, you could not have a discourse about what rules are good or bad unless everyone agreed to put their swords down in the first place and sit down together and treat each other with respect and dignity and treat each other like each one is the owner of themselves. Otherwise, you couldn't have a communication with someone. So what he points out and what Habermas and what Apel pointed out is that there are normative presuppositions of argumentation, and the fact that the only way you could ever come to a decision about what rules are good or bad is through argumentation means that whatever these normative presuppositions of argument are, they matter. They just matter to what you could argue for in the argument itself. So, as a simple example, you could never say, hey, Tom, let's you and I get together and let's debate whether we should ever have human society. Let's debate whether we should ever be able to talk to each other. By having a conversation, we're both agreeing that having a conversation is a good thing; having interaction or social intercourse is a good thing. So there are certain things you could argue you could say that would be incompatible with the presuppositions of the very endeavor that it has to be there to justify any norm ever at all. So that's sort of the general background framework.

WOODS: And then there are other features—now we should unpack what other presuppositions exist in this whole package of argumentation, and of course, in effect when you're engaged in rational argument, if I may give the punchline away a little bit, you are being a libertarian, whether you realize it or not. When you engage in argument, what are you doing? You are inviting someone to consider your arguments on the basis of a standard that is common to you both, namely reason, and if you engage in argument, and you're advancing your claims, you are implicitly saying that you prefer—you've got potentially a dispute with another person as you try to justify your position, but you prefer a peaceful resolution. That's why you're engaging in argument, so the very fact of embarking on argumentation already presupposes a preference for non-violent resolutions of conflict, so that's also very important, and then also, since arguments are not just floating in the air, but they are made by human beings, they are also presuppositions that come out of that—the fact that I have to stand somewhere to make the argument and so on and on. So spin these out for us, if you would.

KINSELLA: Right, so yeah, so what Hoppe is pointing out—and actually Hans characterizes his argument as sort of a hybrid between a consequentialist and a sort of natural law view. It's natural in that it relies upon human nature—the nature of humans as being as communicative language bearing being that has—that we have to communicate with each other, and we have to discourse with each other to establish truth. Okay? So it's natural in that sense, but it's much more narrow than the traditional natural law approach. So the particulars of this argument is that Hans argues, and I agree with this, and he basically abstracted away all the social democratic gloss that Habermas and Apel put on to their version of it because they have this bizarre philosophy where's there's world one, world two, and world three, and to get truth, you have to have social democracy, and there's welfare rights introduced. I think Hans's view is that basically Habermas and probably had Apel a crucial insight, okay? But they perverted it towards their socialist European ends, okay? He took the crucial insight, stripped them away of all the clutter, and combined it with what Mises saw, right? Which is the idea that we have to live in a world of scarce means. We live among each other. Rationality means something, right? So basically what he said is when you have a discussion about what norms could be justified, I mean, look, this is the basic bottom line of the argumentation ethics approach. The bottom line is that it's like a filter. It's like any ethic that you could ever propose would have to be discussable and arguable in discourse among humans, and if it contradicts the normative presuppositions of the debate that everyone has, it has to be rejected, so libertarianism emerges because of a filtering mechanism. That is, every unlibertarian ethic is rejected and every libertarian ethic can survive the filter.

So it's not like a positive argument. It's an argument by a filtering mechanism, and the argument is twofold. It's that, as you said, when two or more people are engaged in a discourse, they are engaged in cooperation in a peaceful activity, but the second recognition, which he did get from Habermas, is that argumentation is also a practical activity. This is an activity engaged in by living human beings with physical bodies in the physical world of physical scarcity, and they had to get there somehow. They had to survive somehow to be able to argue.

They have to survive during the argument, which means there's a recognition of the significance of the ability to control and use scarce resources in the world. You have to use water, food, land, resources. You had to get there somehow, which means no one in a real argumentation could deny the value of the ability of someone to pluck an unknown resource out of a wilderness and start using it. Otherwise, the human race never would have survived, and we never could have this conversation in the first place.

So when you combine all these things together, what you get is sort of a transcendental—some people call it a transcendental approach to what is really common sense. The common sense approach to libertarianism is sort of the Mises consequentialist approach, which is that if you value life, if you value human society, if you value your neighbors and yourself, and if you have a degree of modesty and honest and economic literacy, then you would have to support a free market system because you know that's what's going to get you what everyone really wants, right? The consequentialist case for libertarianism according to Mises I think is perfectly sensible, but it depends upon this hypothetical if, if, if thing—if you value life, but the fact is, most people do, and everyone does pretty much, and the people that don't, we have to regard them as enemies and dangers and just regard them as part of the external world. So what Hoppe is trying to do is to show that not only is this approach practical, not only is it reasonable and intuitive, but that there is no way to argue against it. What he's trying to show is that if you argue for any kind of crime or socialism, you could never sustain that argument in a real way because you would have to do it in a setting in which you are respecting other people's rights, in which you are being a libertarian, as you say.

WOODS: All right, I want to go through a couple of principles that the filter either weeds out or causes us to realize we need in any ethic that is going to pass muster. So the first would have to be, if we come up with some norm for establishing property rights, it has to be one that's conflict avoiding, because we've already indicated our preference for conflict avoidance in the very act of argumentation. So when we look at different possible systems—let's suppose we had a system where verbal declaration was sufficient to claim ownership of property. That's obviously not conflict-avoiding because I could shout that I have ownership of something, and you could shout that you have ownership of it, and then we would fight over it. So that couldn't possibly work.

Eventually you get to the modified idea of Locke, modified by Hans that the only possible system would be the first-user type of system—the first person who uses a previously unowned good is the owner of that good. If we had a system where the 12th user were the owner of the good, then what would the first 11 users do? Stand around and starve to death because only the owner is allowed to exercise control over the thing?

But also, the one I want you to talk about is universalizability—that any norm that we might propose has to be universalizable. What does universalizable mean? And why does argumentation require that these norms be universalizable?

KINSELLA: Right, and these are—look, to be honest, everyone knows me as Mr. IP, and you and I both know this is not my favorite topic in the world. It's just one narrow topic that's gotten interest. But I love this kind of stuff. This lit my brain on fire in 1988 or whatever in law school, and I still think this whole approach to rights is electrifying, and it's amazing. Let's take universalizability. The idea is that when you give a reason, you're giving a reason. In other words, we really have a distinction between violent conflict and people trying to solve problems together. When you try to solve a problem, and you try to have a discussion with people, let's work out a solution to the problem. And there's already a problem because we wouldn't be having the discussion otherwise, and the nature of the problem usually helps to define the scope of the property rights at issue. In other words, what people disagree about defines the boundaries of the property right itself, okay? Universalizability is the idea—the Kantian idea—which is why a lot of the Randian types I think reject this idea, and I don't know if we have time to get to this, but we could talk about why Popper's idea, which is still around and still popular, but it was rejected by a lot of the prominent libertarians at the time.

WOODS: Yeah, I would like to talk about that. Let's do this first.

KINSELLA: So the universalizability thing—to my mind, universalizability—let me just kind of define it without being too philosophical. It's the idea that if you propose a rule or a norm in a conversation that should be the rule governing in a given context—that that rule could be universalized—that it could be applied to everyone, and so it's like another filter test. If you propose a rule that could not be universalized like—here's my rule: All redheads should be killed. Well, that rule is actually universalizable, but it's arbitrary, so you have different filters to reject these rules. I think the ultimate reason for the universalizability rule, which is that if you propose a norm, you need to give a rule that is grounded in the nature of things instead of being a mere arbitrary or verbal decree as you mentioned earlier because otherwise, it could not serve the purpose that it's destined for, which is to solve conflicts. If you have a conflict, that means there are at least two people that both seek to use a given scarce means in human action. Unless they want to physically fight with each other, then they would prefer to have a system which allocates an owner of that resource, and then we need to determine, well, then what's the rule that determines who the owner is.

So if we had a rule like whoever says loudest, I can own this resource, that would not serve to reduce conflict because anyone could say, I own the entire continent of the U.S. I planted a flag on this state and whatever. So the traditional rule, the Lockean rule, was always you have to physically transform the resource. Now, I think there are some problems with Locke's original approach. He is too religious, and he also mixes in this labor idea too much—which led to intellectual property, by the way. But he was responding to Filmer, and he was trying to come up with a way to justify a natural system. I think a more sophisticated, modern version of the Lockean approach, the Hans Hoppean, neo-Lockean approach, would be recognizing that the importance is on embordering. Hans calls this embordering, that is, setting up a system of borders, or public boundaries, that people can recognize. In a sense, I think the term private

property is a little bit perverse because property is really public in the sense that the purpose of property rights is to set up a border that other people can observe so they can know this person has a claim to that resource. I can respect their property by avoiding the invasion of that boundary. So property has to be public, but for this to work, these links—there has to be a visible, publicly accessible connection between a person and the resource. And that cannot be a verbal claim because anyone could make the verbal claim, and then you could have a million people claiming to own this resource.

That's why it can't be a mere verbal decree. That's why Hoppe emphasizes the importance, and so does Locke intuitively, of having a physical connection to a thing, a historical connection. You're the first person who used it, and in a sense, this has gotten less appreciation than I think it should have, but I think one of Hoppe's greatest insights was the extreme importance of what he calls the prior-later distinction, which is that someone who comes first has by default a better connection, a better claim to the resource, than someone who comes later. If you didn't have that assumption, you would not have property rights, and you wouldn't have the ability to homestead property in the first place. No one could ever do anything with anything. If you see an unowned resource in the wilderness, you don't have the right to go use it. The human race could not have prospered and survived. So there has to be a right to be the first person to take the thing, and then if you don't have the right to keep it, that means there's no property rights. So this all feeds together, and it implies that anyone engaging in any civilized, societal activity—any discussion with each other—we all recognize the importance of the prior-later distinction, the importance of being the first one to use the thing, the importance of being a contractual owner of a thing if someone else gave it to you, and all of these things, if you combine them together, result in the libertarian tradition which we have, which is that we should have a voluntary society where people basically live and let live, cooperate, and respect each other's things.

WOODS: Let me say one word about universalizability, and then I want to raise a couple of common objections. I think another way universalizability plays a role in argumentation ethics is that every proposition that I advance in argument has to be at least conceivably acceptable to the people that I am talking to. Otherwise, it would defeat the whole purpose of an argument. There has to be at least the plausible chance that what I am saying could then be accepted by my listeners. If I say, for example, I can hit you, but you can't hit me, there is no conceivable way this norm would ever be accepted in argument. Now, that's not to say, by the way, that I couldn't have a rule: "authorized personnel only in this room." That seems like it's not universalizable, but it is. If you happen to be authorized personnel, you can go in there, but this is for your safety. We don't want you to get blown up by the equipment that's back there. But at least there we can see what the reason is for the restriction. But if I simply say as a socialist would, I can hit you, but you can't hit me, there is no chance that that could ever be universally accepted in discourse, and so therefore it's ruled out. Am I also on the right track there?

KINSELLA: I think 100% you're on the right track. I think the entire point—and I got off track earlier on the universalizability—is that you have to give a reason, and the reason you have to give a reason is that we are talking together, and we're trying to persuade each other as Hoppe says, on the force of reason alone. Instead of saying, I want you to agree with me that *Star Wars* is the best movie ever, and if you don't, I am going to shoot you, right? Then that's not a real discourse or argument. In a real discourse where we're trying to find the true nature of things. We're trying to find a legitimate rule that we should all agree to that we have to appeal to things that are objective, and this is the thing. That's why he says you have to be grounded in the nature of things. So if you can point to a reason to distinguish, you can. The ultimate logic of libertarianism and of human freedom and of Hoppe's argumentation ethics is that you and I are talking to each other, and we know we're similar in most respects, and I am claiming rights to my own body and my life because I don't want you to kill me, and there's just no rational reason to say that you don't have the same rights because for whatever reason I have these rights, whether it's religious, whether it's intuitive, whether it's consequentialist, whatever—whatever reasons I have the rights to my life, I cannot deny that you don't have similar rights to your life because you are similarly situated to me.

Now, if I can show that you just shot my wife or you shot my dad or you just did something horrible to me, now I have a reason I can point to to treat you differently than the normal case. But in the normal case, there's just no good reason to treat people differently, and when people claim rights for themselves [alone], they have to admit that other people who are similarly situated have different rights. This is why the Greeks and why the early Americans maybe made racist arguments, right? Like certain people are barbarians. They are not the same. So they were trying to appeal to a natural reason to say, some people don't have full rights. They are not like the Greeks or white people or whatever, right? The argument is wrong. We know that now, but you understand, they were at least trying to find the distinction to justify treating people differently.

WOODS: All right, I want to shift gears and raise a couple of objections that I have seen raised. Here we are talking about argumentation as a filter. We're talking about principles that are presupposed in argumentation. So we've talked about conflict avoidance, universalizability. There's also respect, as we've said, for the other person's bodily integrity, because if you don't have that respect, you're not engaging in argument. We're not even doing what you're supposed to be doing in argument. So we have respect for bodily integrity. To have a body at all, I need to nourish myself. I need standing room. So there are a whole bunch of things that are presupposed here. But let me see if you can answer these two things. First, couldn't it be the case that you would need this respect for your bodily integrity only during the process of argumentation, but once the argument is over, then I can tax you at the level of a social democracy and do whatever I want, but while you're arguing, I have to stand there and treat you nicely? And then secondly, you could say, as you have, that we need food and nourishment to keep us going for any argument to be possible, but couldn't you have just enough to argue, and then I could take some of it and give it to the poor? How would you answer those?

KINSELLA: Yeah, actually I think those are the two strongest arguments against it, but the strange thing is, especially in the first case, they are made by libertarians usually. So let's think about this. Here we have libertarians, and the bases of libertarian thinking are varied. Some of them have really no argument for libertarianism. They are just libertarians for some reason. They just prefer the liberty values that underpin our view. Some say they are consequentialists or utilitarians. Some think they are natural law types. But the point is: Among our fellow libertarians, they agree with us. They agree that there's a good reason to have a rule that prohibits aggression, let's say. Now, whatever their reason is, they think that an argument that permits socialism, basically, which is the invasion of other people's property borders, they think that's bad. And the people that oppose the argumentation ethics approach are saying that the argumentation ethics approach is wrong when it says that you can't have an argument for socialism even though they agree with it themselves. So I am always befuddled. I am not as befuddled by socialists and outsiders, but my fellow libertarians that oppose the argumentation ethics approach: I am never quite clear what their objection is. Do they really think that it's possible to make a consistent argument in favor of socialism? I don't think so. So if they don't think it's possible to make a consistent argument for socialism, they are leaning in the direction of the argumentation ethics approach in the first place.

WOODS: All right, so how about the "couldn't we give you just enough food to be able to argue, and then after you've done that, then we can tax you all we want"?

KINSELLA: The way I think about it is this. You have to have a context of how we're having this argument in the first place. What is the dispute about? And as I said to you earlier, most people that disagree with this are libertarians, and they actually don't believe that the food should be taken away from you. They don't believe in mere subsistence rights, or whatever, so their objection is odd. I think it's probably a combination of they don't like holes being poked into their natural law theories or their utilitarianism by a newcomer like Hoppe. He's not a newcomer anymore, but whatever. As for the subsistence idea about the food, so Hoppe starts with this. He says, let's talk about the human body. We are identified as individual people with a body. He's not taking a religious stance about whether you—as C.S. Lewis said, whether you're a soul that has a body or whether you're a body that has a soul or rights. It doesn't really matter for libertarian theory that there is a definite identity between an individual and their body. And there's a definite direct control between a person and his body, and that is the fundamental reason Hoppe argues in one of his articles, one of his arguments, that people have the primary right to control their bodies because they have the direct link to their bodies. They have the best control, the best demonstration of the link to their bodies. Okay? And then he argues by analogy that let's take the human body as a prototypical example of a scarce resource. Whatever rules we agree upon for the human body, naturally, we would assume they would apply to other types of things that are similar, which are other scarce resources in the world.

So the argument Hoppe would advance, and which I agree with, is the same reason that you have the right to control your body extends to scarce resources in the world, and so you couldn't just artificially limit the argument and say it only applies to the narrow set of conditions needed to sustain the argument. That's just an example of exactly what people have to agree to for those cases. However, any dispute in human nature over any resource—let's take a resource that's not necessary for survival and for the argument to happen—some resource out there. Still, that resource could be the subject of dispute, and the only time we could ever determine who is going to have the rightful control of that resource would be when we engage in actual argumentation. So in other words, even the dispute over these luxury resources, you might call them, would have to occur during argumentation, and during the argumentation, the people have to advance universalizable reason.

They have to give a reason. They are trying to say, I have the right to control this thing instead of you. They are not just hitting each other over the head with bats. They are not being cavemen. They actually have entered into the realm of discourse to find a reasonable solution to this problem, and when you do that, you say we all agree we would be better off if we agreed to a rule that assigns an owner to any disputable resource, even the luxury resources, and when you agree to that, then you have to agree that we have to advance reasons for these rules, which is why universalizability enters into the picture, and that reason has to be analogous to the original prototypical examples, which is the body and the resources needed for basic survival. There's no reason to treat them differently. There's no reason that you say if there's a dispute over a diamond, which is just a luxury object, that someone should get it because of verbal decree instead of this person who actually mines it out of the ground or contractually purchased it from someone else. There's just no argument that you can come up with that would give it to someone else that would support a socialist connotation of the world order that could survive scrutiny under a reasonable dialogical process.

WOODS: Let me read a short passage from an article I will link to on the show notes page. We're going to link to a lot of stuff on this: tomwoods.com/370. We're going to link to a lot of stuff on this material because it's great, interesting, very important. This is an article that you published over at *Libertarian Papers* by Frank Van Dun, and he's referring to an argument by David Friedman, who's been on this show a couple of times. He says, "David Friedman argued that Hoppe must be wrong when he claims that self-ownership is a prerequisite to debate because countless slaves have engaged in successful argumentation. However, Hoppe did not make the empirical and absurd claim that a person is incapable of arguing merely because the powers that be legally classify him as a slave or that being the legally recognized 'owner' of one's body is a necessary condition for being capable of engaging in argumentation. His argument was that such legal classifications and the actions they sanction or legitimize cannot be justified in an argumentation with the slaves or indeed in any argumentation that takes the presuppositions of argumentation seriously." And of course, there's no argument being made here that argument is an amulet or there's some species of magic. It's, well, this can't be. This person argued, and he's still enslaved or whatever. The point is that you can't make the types

of arguments that are ruled out by argumentation ethics without engaging self-contradiction, and presumably, people want to avoid engaging in self-contradiction if they have respect for reason. He notes in a footnote, by the way, to this point that David Friedman tried to make that countless slaves have engaged in successful argumentation. He says, “Note the ambiguity of the word ‘successful’ here. How many slaves have successfully argued their way to freedom?”

KINSELLA: Well, okay, so here’s my thought on that. First of all, I really admire Friedman. I have learned a lot from David Friedman.

WOODS: Me too.

KINSELLA: But he is an inheritor of his father’s positivism and his monism. And, look, Hoppe in my view is a pioneer, and I do believe—I wrote an article in a law review in 1994 about Hoppe’s book, and I mentioned that he was a little bit unclear, conflating positive power with rights, and he could have cleared that up—

WOODS: I just want to make clear for everybody: the book is *The Theory of Socialism and Capitalism*?

KINSELLA: No, it was the second book.

WOODS: Oh, *The Economics and Ethics of Private Property*. I’ll link to that.

KINSELLA: That’s the one I reviewed. I thought it was an amazing book. I think it’s an amazing book. Hans is a pioneer in this area. He was basically reaching new territory, and I think he could have clarified his terminology in a couple of areas, but where his critics seized upon him and said this means his whole thing can be rejected, I think you could easily correct it and clarify it. It’s not really a big problem. The slave example, for example, first of all, here we have David Friedman, who is an anarchist, who presumably opposes slavery, just like I and you and Hans and every good person does. So what’s the disagreement really? Hans’s argument, if you formulate it as I try to do in my many attempts to explicate it and defend it, it’s rooted in this universalizability principle, which is that you cannot treat someone differently without a good reason. But what that means is that two people trying to get together to solve a problem or a community trying to solve a problem, we all presume that we are similarly situated. We all have rationality. We all are humans. We are all dealings with the world’s scarce resources. We all want to live together in society—then we have to formulate rules that take this into account. This does not mean that you can’t take into account the fact that sometimes things are different. So, for example, if I wanted to enslave you, I couldn’t have a good reason for that because I am claiming freedom for myself, but I am saying that you don’t deserve freedom, even though we’re similarly situated. The only difference would be what the opposite of universalizability is called particularizability, like, everyone says it’s just me. Like, I can hit you, but you can’t hit me, and everyone knows that would never be an argument that could work that could help achieve any kind of consensus that could help us all live together. However, if

you have a reason to treat someone differently that's grounded in the nature of things, then you could appeal to that. That's objective. That's what the Kantians call intersubjectively—

WOODS: Ascertainable?

KINSELLA: Ascertainable, right. Okay, so if someone has actually committed an act of aggression against me—let's say some guy attacks your farm and he is going on a rampage shooting your animals, shooting your people, you might imprison the guy for a little while to just keep him under control. So he might be in a jail cell in your house until you call the local legal system. I don't know, and you might have a conversation with the guy, and he might say, how can you justify keeping me imprisoned when you're free? And the answer would be because you just attacked my family. In other words, there's a reason. And so the point is that the fact that slaves can factually argue with people, and even sometimes in a just situation, doesn't imply that Hoppe is wrong. He might have overstated when he said that you can't argue unless you're free. It's possible for a slave owner, a master, to own a slave and to have an argument with him. It is true. It is true. But he could not justify the enslavement of the slave unless he had a good reason. If they are equally situated, he could not come up with a reason that he is—he is keeping the guy enslaved. That's the main argument.

WOODS: Well, and then he goes on to say, Van Dun, "Consider on the one hand a master who enjoys debating the justifiability of slavery with his slaves after dinner and then sends them back to their cage no matter what the outcome of the discussion may be. Consider, on the other, a master who frees his slaves after being exposed to the argument that slavery is not justifiable. Which of the two takes argumentation seriously? Which of the two acts as a rational being?" So anyway, this paper really needs to be read, too. He says, "No one should take this type of argumentation seriously because it's not a genuine argumentation," but anyway, we've gone on quite some time, and I want to let people digest some of this, and I want anybody who is intrigued by this who thinks, okay, I think there is something here. There's a core of something here that I want to know more about. I want to refer them to tomwoods.com/370 because there you'll see quite a number of links to what Stephan has done on this subject. We'll also take you to the original writings by Hans himself and some other material. So this will be your one stop shop for learning more about this subject. Do you have any parting words for us, Stephan, as people go out and venture to learn more about this?

KINSELLA: No, the only parting word I would say is that the essence of libertarianism is to be honest, to be for liberty, to be in favor of your fellow man's wellbeing, to be consistent, to have a little bit of economic literacy, and all of those things are the—really the basis of any consistent libertarian person's view of the world, and that's completely compatible with and complementary to Hoppe's approach to argumentation ethics, so I would suggest people just consider a little bit philosophical approach to undergirding their basic intuitions about liberty.

WOODS: Well, Stephan, I appreciate your time helping us to understand this. When I first read Hans on this as a, I don't know, a college student, I confess, I didn't understand it at all, and

then I read your explanations of it such that when I went to go give a talk on this in Philadelphia, I gave a talk on various rights theories, ten minutes before I went on stage, I was on my cell phone desperately calling you saying, all right, wait, wait, have I got it now? Have I really got it? You were the guy I went to.

KINSELLA: I remember. Thank you.

WOODS: I think that was 2009. You can dig that up. I think it's a series of videos on where do rights come from, and then I talk about argumentation ethics in one of the lessons over at RonPaulHomeschool.com in my course on government. So I have you to thank for helping me to understand this and for spending time with us today. Thanks again.