

English summary of doctoral thesis of Jakub Juszcak: *Spółeczeństwo prawa prywatnego - doktryna polityczno-prawna Hansa-Hermann Hoppego (Private Law Society - political and legal doctrine of Hans-Hermann Hoppe)*

The main objective of the dissertation is to describe and critically analyse the political and legal doctrine of private law society of German Libertarian, philosopher and social scientist Hans-Hermann Hoppe (born 1947). The intention of the work, in addition to describing the political and legal thought of the author, is also to determine the possibility of applying the political and economic system as proposed by him. As will be presented, Hans Hermann Hoppe's doctrine of a private law society proposes a model of society organisation based on the spontaneous order, respecting the inviolability of private property and freedom of contract, while proposing the private production of public goods such as police and military protection, the judiciary or other goods, most often offered and administered as of now by the state (e.g. roads, public infrastructure), basing on voluntary action and financing by the market participants and clients. Such model, although not tested in practice, may suggest a stable alternative to the current model, in which the aforementioned goods are produced by the state and financed with the use of taxes.

An important reason that justifies the creation of this dissertation is the state of research. At the moment, the subject of the legal doctrine of Hans-Hermann Hoppe is only superficially researched. As a representative of the so far poorly researched anarchist brand of libertarianism in Poland (represented by Murray Rothbard and his students, including Hoppe) and due to the growing interest (both in the world and in Poland), the research on this issue will contribute to a full description and analysis of Hoppe's doctrine, thus filling the existing gap. There is currently no single, comprehensive monograph describing and examining the legal doctrine of Hans-Hermann Hoppe. While there are articles describing elements of his doctrine (concentrated mostly on the question of political and social views of Hoppe, such as the critique of democratic political system), it is impossible to identify an article or monograph that sufficiently explains these issues from the perspective of legal sciences, with particular emphasis on the legal-doctrinal perspective.

The basis of the source material used in this dissertation are the English and Polish (translated from English) works of Hans-Hermann Hoppe. The works of the German libertarian are mostly collections of translated essays and articles (or parts of it), later

published: *Democracy The God That Failed*, *Economic and Ethic of Private Property*, *Theory of Socialism and Capitalism*, *The Great Fiction*, or *The Short History of Man*. The author of the thesis uses (in a supplementary way) the Hoppe's German-language work *Eigentum, Anarchie und Staat*. As the literature of the subject - the author of the thesis refers to a wide range of literature of libertarian political thinkers. The key role in understanding Hoppe's argumentation is held by the thought of Murray N. Rothbard - one of the most important libertarian political thinkers and Austrian economists, and the mentor of Hoppe. Other libertarian literature that has been utilised in the argumentation are the works and articles of Walter Block, David D. Friedman, Michael Huemer, Linda and Morris Tannehill, or Randy E. Barnett. Because of the important role of the economics in the argumentation of libertarianism, the literature written Austrian School economists, such as Ludwig von Mises, F.A. von Hayek, Eugen von von Böhm-Bawerk or Carl Menger is also cited. The thesis also utilises both Polish (D. Juruś, P. Hankus, M. Machaj, Ł. Dominiak, N. Slenzok, J.B. Wiśniewski, R. Wojtyszyn) and foreign (mainly American, of: E. Stringham, P. Leeson, B. Benson, R. Holcombe) literature of the subject, which provides another point of the commentary and analysis. Beside the strictly Libertarian and Austrian School literature utilised by the author of the dissertation, the argumentation presented refers to the important literature, connected to the Law and Economics, Public Choice, Institutional schools and the elements of the game theory (Robert Axelrod, Ronald H. Coase, Harold Demsetz, James M. Buchanan, Elinor Ostrom). In its description of the influences of the historical political authors, the author of the dissertation refers the works of Etienne de la Boetie Adam Smitha, Jean-Baptiste Say, Lysander Spooner, Benjamin Tucker, and Albert J. Nock.

The author of the dissertation poses research questions to help in the analysis of the doctrine, and they are as follows:

- 1. which ideas and thinkers did influence Hans-Hermann Hoppe's political and legal doctrine development?**
- 2. How is the society of private law postulated by Hoppe supposed to manifest itself if realised?**
- 3. How does Hoppe propose to solve the problem of the production of public goods by the market within a stateless society?**

4. What are the conditions for applying Hoppe's political and legal doctrine in social and political life?

5. What problems, related to the functioning of the state and statutory law, are accentuated by Hoppe's political and legal doctrine, what conclusions from the analysis of the aforementioned problems are presented by Hoppe and how he proposes to solve these problems?

The research methodology used in the dissertation reflects the complexity of the subject of research. Due to the high level of Hoppe's doctrine reliance on the Austrian Economics, the methodology used for research must reflect this feature. In full compliance with the accepted scientific practice and custom, the author of the dissertation uses the historical and legal method, the descriptive method and the comparative method to describe Hoppe's doctrine. The significant importance of economic thought for libertarian considerations directs the author to use economic analysis of legal and social phenomena, based on the claims of economists belonging to the Austrian School of Economics, with which the author of the dissertation sympathizes on the level of methodology, maintaining the principle of separation of the researcher from the object of research (*Werfreiheit*). In the third chapter, the auxiliary use is made of the research methods related to the Law and Economics school, among others, such as the concept of transaction costs, elements of institutional analysis or game theory (what should be emphasized, however, the use of the game theory is made in verbal and descriptive terms, not formal, mathematical way).

The Dissertation is divided into three chapters, with the bibliography and appendix, concerning the use of the self-ownership terminology in Polish literature of subject. The first chapter analyses the biography of Hans-Hermann Hoppe, which can be divided into three parts: studies in Germany, dissertation written under the supervision of Jürgen Habermas and (roughly lasting for 10 years, between 1985 and 1995) of cooperation with Murray Rothbard. The importance of analysis of the biography of Hoppe is stressed by the fact of his change of political and philosophical views in 1980s. The ideological biography is the starting point for describing the most important thinkers and trends in political and economic thought that influenced the development of his doctrine of a private law society:

- Murray Rothbard's libertarianism, based on the proprietarian, Lockean understanding of the Natural Law and the negation of the state, influenced by the American anarchoindividualists;
- Austrian School Of Economics, represented by Rothbard, von Mises and previous economists of this school;
- Minor sources of inspiration will also be described, such as the elements of the argumentative ethics of Habermas and Apel, and some considerations on the meaning of convention of Paul Lorenzen. Specific doctrinal or ideological influences correspond to specific subsections in the chapter.

The second chapter of the dissertation, consisting of 9 subchapters, presents the doctrine of the German Libertarian. It is divided into two parts - the first three subchapters discuss the issue of sources and terminology, describe the theoretical argumentation for the libertarian social order, based on the principles of natural law, the a priori argumentation and argumentation based on the concept of convention as understood by Paul Lorenzen. A critique of the social contract theory is presented (where the social contract doctrines of Hobbes, Locke and Buchanan are analysed and criticized) along with the critique of the concept of public goods, which proves, in Hoppe's opinion, the inefficiency of public production of goods such as security or law. The next six subchapters present Hoppe's doctrine in specific economic and social sectors: security, lawmaking and enforcement, defence from foreign invasion, selected economic aspects crucial from the perspective of a libertarian society (monetary policy, banking, intellectual property law), and the last subchapter presents Hoppe's views on the perspective of the implementation of the said doctrine.

The third, final chapter of the dissertation is critical analysis of the the possibilities of applying Hans-Hermann Hoppe's doctrine of the private law society. The basis of the aforementioned analysis is built on looking at Hoppe's doctrine through the scope of institutions and social or market mechanisms (in the view of the idea of spontaneous order and selected aspects of the game theory and cooperation games) as well as comparing the Hoppe's concept with historical examples of stateless societies or, more broadly speaking, polycentric legal systems (Medieval Iceland, Somalia, Zomia). The construction of the chapter is organized thematically and consists - with the exception of the introductory

subchapter - of four thematic subchapters, describing and analysing to the concept of polycentric law, stateless security, provision of certain public goods based on voluntary and market activities (infrastructural goods, such as roads or streets) and the possibility of defending a private law society against an invasion from the outside. Those areas have been distinguished as of key importance. At the same time, they are subject to criticism both from the point of view of political theory (based on contractualism) and Paul Samuelson's theory of public goods. An additional subchapter is devoted to other aspects, not being crucial from the point of the overall stability of the system as a whole, such as the issue of criminal liability or the functioning of a private law society on the international arena and in accordance with the international law. Due to the adopted methodology, the analysis carried out is focused on theoretical or historical aspects. The verification, whether a postulated society in the described shape can exist must take place in practice, which falls out of the scope of the dissertation.

The analysis of Hans-Hermann Hoppe's private law society doctrine, indicates that this doctrine - if implemented properly - can offer a stable alternative to the state model of the sociopolitical organisation of the society. As a result of the analysis carried out in this work, answer the research questions posed has been stated, detailing the aforementioned conclusion:

1. The political and legal doctrine of a private law society is genetically derived from the Austro-libertarian tradition, combining libertarian-anarchistic analysis of the state (distinctive of American individualist anarchists) and the Lockean proprietarian theory of the Natural Law, with economic research conducted by economists of the school Austrian (especially Ludwig von Mises). This tradition has the greatest influence on Hoppe's doctrine. Due to the specific biography of Hans-Hermann Hoppe, who received his doctorate in Germany under Jurgen Habermas, Hoppe in a very slight way, draws on considerations of the discourse ethics presented by Habermas himself and Karl-Otto Apel. This is particularly visible in the a priori argumentation, referring partially to the principles of discourse postulated by the ethics of discourse of Habermas. The impact of Habermas, however, limited to the aforementioned argument from a priori argumentation - the reason for the significant difference between Habermas and Hoppe in their view of state and capitalism. Hoppe refers briefly to the ideas of Paul Lorenzen,

mathematician and a representative of the Erlangen School, who studied the methodology of mathematics. Hoppe is inspired by Lorenzen's definition of the convention, which is of key importance for his refutation of the argument about the conventional origin and of the private property.

2. The social system proposed by Hoppe is built upon the institution of inviolable, inalienable private property as a natural right, and private law originating from it, being the sum of voluntary agreements and customs resulting from repeated interactions of the people. The foundation of private property emanates from the whole social and economic system. In the place of the rejected state, he postulates a libertarian vision of a polycentric society without a single rule authority, limiting the action and property, and where the only limit of conduct are the property rights of the others. Due to the lack of a state, public infrastructure such as roads, squares, parks and the like will be privatised. The communities within this framework are voluntary (contract-based), and participation results from the consent of the persons interested.
3. Regarding the question of public goods, Hoppe begins with the criticism of Samuelson's theory of public goods (understood as typical competencies of a minimal state, such as the judiciary, defence or security), undermining its usefulness in explaining the provision of services such as security or national defence. This argumentation leads Hoppe to negate Samuelson's theory and thus leads him to postulate the possibility of private production and delivery of these goods. In the field of providing internal security services (against crime), Hoppe predicts the emergence of a polycentric network of enterprises that perform insurance, arbitration and police functions - often with those functions realised within one enterprise. Relations between enterprises in the security industry and the clients themselves will be based on contractual principles - regulating the obligations of the client and the enterprises, but also the mutual cooperation of the firms. Competition between enterprises in terms of offering the best possible services of the highest quality at the lowest price possible plays an important role in this model. Due to the high costs of aggression, related both to the conduct of warfare and the loss of good reputation, Hoppe does not anticipate that competition will take the form of armed struggle - institutional conditions will prevent attempts at armed monopolisation of the market and the return of the state. Referring to defence, he suggests that private security

companies will constitute the basic and most professional "line of defense" of the private law society against an outside invasion. These tasks will not only include the purchase of appropriate weapons, but also intelligence activities or encouraging the exclusion of state representatives from social and economic contacts with the members of the society. In addition, however, he points that two other institutions are important in providing the defense of a private law society, which are guerrilla warfare and civil disobedience to the occupying forces.

4. The political and legal doctrine can be implemented only through a radical break with the state order and the creation of a private law society. The postulated form of this social change is secession - at the level of the individual, by refusing to legitimize the state, but also at the societal level. In order to achieve such mass mobilisation, Hoppe postulates educational activity, but also campaigns and actions aimed at delegitimizing state power and its interventions. These actions should not focus on criticism of specific state actions, but state activity as a whole, showing its absurdity and inadequateness to solve the problems arising mostly as a result of its existence in the first place. The German libertarian also stresses that the best areas to implement the libertarian ideas are areas with low population density, away from the centers of power, enabling the secessionist movement to maintain itself and hold a bridgehead. As a result of secession, the logical step is to return of ownership of the nationalised property to the rightful owners, and if they are unknown, to their users who acquired them by their work. Hoppe treats the development of secessionist movements, even if not directly related to libertarian thought, as a favourable circumstance spearheading the creation of the libertarian future.
5. The critique of the state presented by H-H Hoppe is based on argumentation constructed on a normative basis, using libertarian natural law. From the libertarian perspective, respect for property rights and freedom of contract leads to the recognition of the state as not being legitimised (by its very nature) to regulate social and economic relations. Due to the inherent nature of a social contract, contradicting the idea of a contract as a voluntary obligation between the agreeing parties and limited only to them, Hoppe rejects the possibility of a monopoly on the use of violence in a given territory, established on the aforementioned pseudocontractual basis. In addition to aspects relating to broadly understood political philosophy, Hoppe's criticism is not limited only to doctrinal

arguments, but also includes economic critique, based on the considerations and methodology of the Austrian School. In the field of legislation, the operation of the state monopoly on lawmaking and the related inefficiency is similar to any other monopoly operating on the market and making it impossible to express clients' disapproval of the actions of a given entity by selecting competitors, making price system not able to fulfill an information-carrying function that is crucial for the economic calculation of economic action. This leads into the inherent ineffectiveness of the statist law and subjecting it to political influence, thus making it an element of politics and obtaining additional funds for maintaining power of the ruling class, and not the protection of individual property rights. Such law is therefore a "perversion of law", enacted and applied in an obviously biased way. In the field of specific legislation, it takes the form of victimless crimes, the execution of which may bring some political and economic benefits for the politicians. An important place in Hoppe's considerations is also the problem of forced integration. The state, through the redistribution of property, social programs, the creation of generally available infrastructure and anti-discrimination regulations that prevent exclusion from the use of property, prevents people from self-segregation on the basis of their values. Importantly, some anti-social behaviour, burdensome for the rest of the population, is possible only if it is at least partially subsidized by the state or if the state itself prevents the exclusion of anti-social individuals from the community. In such a system it is not possible to remove a notorious criminal from a (public) street or an aggressive student from school. The consequence of these activities is the generation of further conflicts and the externalization of the costs of crime and anti-social behavior to the victims of these activities. The last major problem generated by the existence of the state that Hoppe stresses is redistribution. The redistributive activity of the state, affecting productive individuals and entities and making non-productive entities the beneficiaries, catalyzes the decivilization process - through taxation, it leads to a reduction in profits from economic activity, which discourages natural entrepreneurial profit-seeking, and thus limits saving and accumulation of capital, discouraging future saving and accumulation of the capital. At the same time, this leads to an increase in the time preference and discourages the postponement of consumption for future gratification, crucial for every entrepreneurial action.



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