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LIBERTARIANISM, INDIVIDUAL RIGHTS,  
AND THE PARADOX OF DEONTOLOGY:  
REJOINDER TO DOMINIAK AND WYSOCKI ON MINARCHISM

INTRODUCTION

In a recent paper published in *Roczniki Filozoficzne*, Dominiak and Wysocki (2022) criticise the minarchist position. They point out that minarchists (libertarian advocates of the minimal state) start from the same moral premises as anarcho-capitalists, both groups sharing a belief in the existence of natural individual rights: the right of self-ownership and the right to exercise full control over justly acquired property. What distinguishes anarcho-capitalists from minarchists is their attitude towards the state. While the former believe that the existence of a state (including a minimal state) is incompatible with the belief in libertarian rights, the latter believe that it is possible to reconcile the two. The authors side with the anarcho-capitalists, pointing out that this is the only reasonable and coherent position that someone who shares a belief in libertarian individual rights can adopt. Since every state, including the minimal state, violates by its very nature the rights of individuals, minarchism is, according to the authors, a contradictory position that attempts to reconcile two irreconcilable elements: allegiance to libertarian individual rights and support for the existence of the state. The authors reconstruct

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the libertarian argument against the existence of the state (they call it a principled libertarian argument) as follows:

(a) Individuals have the right to freely govern their bodies and their justly acquired property.

(b) The state by its very nature infringes on the rights of individuals, as it sustains itself through taxation and prohibits competing organisations within the territory it controls to ensure the safety of individuals.

(c) The state is an unjust institution because its existence is incompatible with the existence of libertarian individual rights.

As the authors point out, one can try to refute this argument in three ways: “(1) by arguing that no natural individual rights exist; (2) by arguing that even though the state violates natural rights, this is nonetheless justified for some reason; (3) by arguing that the state does not necessarily violate these natural rights” (DOMINIAK and WYSOCKI 2022, 57–58). In their view, minarchists are unable to make effective use of any of these three modes of argument, so their position collapses.

The first line of argument is inaccessible to minarchists because they share with anarcho-capitalists the conviction that we have natural individual rights that guarantee our exclusive control over our bodies and our justly acquired property. The second line of argument also fails because it is impossible to argue both that people have rights and that it is permissible to violate them. The third line of argument does not work either. On the one hand, traditional theories showing that the state does not violate the rights of individuals—such as the theory of the social contract—are flawed (it is impossible to show that existing states were created as a result of such contracts). On the other hand, minarchist projects of states that do not violate the rights of individuals are unsatisfactory. As the authors point out, even if it were possible to create a state that did not support itself through taxation (the feasibility of such a state is doubtful, as it would not be economically stable), this would only solve one of the two fundamental problems that make the state unjust in the eyes of libertarians. Such a voluntarily funded state would still violate the rights of individuals by monopolising the use of violence in a given territory. Since the first method of arguing against the principled libertarian argument is not available to minarchists (it would be available to non-libertarians), and the other two are not effective, the minarchist position breaks down. In the end, the authors describe minarchism as “a singularly indecisive political doctrine, stopping midway on the track to the full appreciation of private property rights, trying in vain to bridge the apparently unbridgeable gap between two

incompatible principles: the state and the individual” (DOMINIAK and WY-SOCKI 2022, 67–68). In this paper I would like to criticise Dominiak and Wysocki’s argument. Although they correctly identify the underlying tension embodied in the minarchist position, and their analyses are correct, in my view their reconstruction of the dispute between minarchists and anarcho-capitalists is unsatisfactory because it discusses too superficially the crucial problem to which minarchism seems to be the answer. I will argue that the minarchist position is best conceptualised as a libertarian version of the paradox of deontology. The paradox of deontology was recognised by Nozick (1974, 30), who asked: “If nonviolation of C is so important, shouldn’t that be the goal? How can a concern for the nonviolation of C lead to the refusal to violate C even when this would prevent other more extensive violations of C? What is the rationale for placing the nonviolation of rights as a side constraint upon action instead of including it solely as a goal of one’s actions?” Interestingly, Nozick himself—although he was the first to formulate this problem—did not find it powerful enough to threaten the idea of (libertarian) individual rights. The interest in the paradox of deontology as an argument against absolute rights was a consequence of Scheffler’s (1985, 1994) development of the argument. The libertarian version of this paradox would ask: Is it reasonable to respect libertarian individual rights even in situations where respecting them leads to a greater number of violations of those same rights? Or: Is it reasonable, in the name of respecting individual rights, to demand the abolition of the minimal state in order to introduce an anarcho-capitalist order, if we would expect its introduction to increase the extent of violations of those rights? Seen from this point of view, the minarchist position does not seem to be based on a trivial error, as Dominiak and Wysocki seem to suggest; on the contrary, it stems from the recognition of a fundamental problem related to the deontic ethics of absolutist libertarianism.

The rest of the text will proceed as follows. In what follows I will argue that we should conceptualise the minarchist position in terms of a paradox of deontology, and then I will argue that the “solution” to this paradox is conditional consent to the existence of a minimal state.

## 1. LIBERTARIANISM AND THE PARADOX OF DEONTOLOGY

In this section I will attempt to show why the minarchist position is best conceptualised as a form of deontological paradox. I am not arguing that

Dominiak and Wysocki are wrong to point out that some minarchists fail to see the contradiction between individual rights and the existence of the state. This is certainly the case—many have tried, and some are still trying, to argue that it is possible to reconcile the idea of the state and individual rights. However, my contention is that the persistence of the dispute between minarchists and anarcho-capitalists lies in the fact that there are good reasons to think that the most radical anarcho-capitalist position—that we should adhere to absolute individual rights, even if adherence to those rights would lead to more violations of them—is problematic.

As mentioned earlier, according to Dominiak and Wysocki, there are three ways of arguing for the state. In their view, minarchists cannot use any of them. I agree that minarchists cannot use the first method, which posits there are no natural individual rights. The third method, which shows that the state does not violate individual rights, is also unconvincing. However, in the case of the second type of argument, which suggests that even if the state does violate natural rights, it is justified for some reason, the issue does not seem so clear-cut. How might minarchists attempt to argue using this second strategy? Dominiak and Wysocki (2022, 58) correctly identify the form of the argument when they point out that, in the minarchist view, “the state is justified in order to avoid more severe infringements of these entitlements, which would occur in a stateless, anarchist society sketched by the anarcho-capitalists [...] violations of individual rights are justified to avoid more serious violations of individual rights.” They argue such reasoning is “philosophically deeply confused”.

To have a genuine right (particularly, a genuine property right with which libertarianism is concerned) basically means that its violation is impermissible. For instance, when we say that A has a right not to be assaulted by B, we mean that it is impermissible for B to assault A, that B has a duty-moral or legal-not to assault A. To say that A has a right not to be assaulted by B and yet to say that it is permissible for B to assault A is to misuse the words or, what comes to the same thing, to fall into plain contradiction. And yet this is exactly what the deontic version of the minarchist answer does. Minarchists at the same time say that individuals have natural rights to life, liberty and property and that it is permissible for the state to violate these rights in order to avoid bigger violations. That cannot be done, one and the same action cannot be permissible and impermissible at the same time. Specifically, one cannot have conflicting duties correlative with property rights which are always overtopping duties as far as libertarianism is concerned. To say that it is permissible for the state to violate individual property rights to avoid some

greater evil is to say that individuals do not have these rights. (DOMINIAK and WYSOCKI 2022, 58)

Thus, according to Dominiak and Wysocki, minarchists commit a simple error. On the one hand, they advocate the existence of certain rights; on the other hand, they claim that it is permissible for the state to exist. Since the claim that it is permissible for the state to exist implies that it is permissible for rights to be violated, and since it is impossible to simultaneously claim that it is both impermissible and permissible to violate rights, the minarchist position must be rejected as contradictory.

While it is true that the minarchist position involves the existence of a tension between the desire to protect rights and support for a rights-violating state, it seems that Dominiak and Wysocki's way of presenting the issue trivialises the essence of the problem. The central philosophical problem, the problem that is the reason for the persistence of the dispute between the two camps, is not "whether there is a contradiction between the existence of the state and the existence of libertarian individual rights", but "whether it is rational/moral to respect libertarian individual rights even if such respect leads to an increase in violations of such rights." The strongest version of minarchism insists on the necessity of the state, not because it fails to see that the state violates libertarian rights, but because it is convinced that without a minimal state these rights would be violated to a much greater extent. Thus, the minarchist view should be understood as a view that—since there are good reasons to believe that anarcho-capitalism would lead to an increase in violations of the non-aggression principle—it is rational/moral for those for whom it is of significant value that rights should not be violated to conditionally (conditional on the existence of this evidence) support a minimal state in which there would be fewer such violations. Therefore, this is a libertarian form of the paradox of deontology, which suggests that

it cannot be rational to claim, as defenders of deontological restrictions do, that certain acts are so objectionable that it will never be at least permissible to commit one such act so as to minimise the overall number of its occurrences. For this would put us under an obligation to act (or to abstain from acting) in certain ways even when violating this obligation would in fact achieve a better outcome in terms of the very restriction we are supposed to heed. (MARDELLAT 2020, 2)

To better outline the minarchist position, consider the following thought experiment.

## THE LEADER OF A LIBERTARIAN PARTY

A libertarian party comes to power in Ruritania. Through bold reforms, it succeeds in transforming the existing regulatory-redistributive state into a minimal state, whose sole purpose is to protect the property and liberty of its citizens, and which subsists on minimal taxes. The leader of the libertarian party then considers the project of abolishing the state and introducing anarcho-capitalism. However, this would not be the first attempt to introduce anarcho-capitalism in history. Anarcho-capitalism has been introduced 100 times in different areas: 42 times it resulted in military conquest by neighbouring states (and the introduction of a predatory non-minimal state), 27 times it ended in a bloody struggle between private defence agencies and the transformation into a state (in non-minimal form), 19 times it resulted in the cartelisation of private defence agencies and the reconstitution of the state (in non-minimal form), in 12 cases anarchy survived for a longer time, but the level of murder, theft and other crimes was many times higher than in neighbouring minimal states. Should the leader of the libertarian party sign a decree introducing anarcho-capitalism, and if not, is he acting in a non-libertarian manner?

We can imagine that Dominiak and Wysocki would reply that, from a libertarian point of view, the matter is clear: the party leader should either dissolve the state (and bite the bullet—possibly literally—associated with the radical increase in violence), or he should resign from politics, for if he continues to run the minimal state, he will violate the principle of non-aggression by collecting taxes and monopolising the use of force. However, this does not seem at all obvious. After all, under the assumptions of the experiment above, continuing to run the minimal state would lead to a minimisation of the number of violations of the non-aggression principle—a consequence that should be welcomed by anyone who cares about individual rights (and what those rights protect). In a society living in a minimal state, the rights of individuals to freely manage their property and exercise their liberty would be better protected than if an anarcho-capitalist order were introduced as a result of the decision to abolish the state. Thus it seems that the leader of the libertarian party has a choice between two worlds: (1) world M, in which he and his partisans violate the rights of individuals, but the sum of the violations of those rights is small, and (2) world A, in which he and his partisans violate no one's rights, but the sum of the violations of those rights is much larger. Minarchists can reasonably believe that if the party leader really cares (he considers this to be the greatest political value) that people should be able to freely manage their bodies and their property, he should choose world M and not abolish the minimal state. So the argument can go like this:

- (a) X wishes (it is a value for him, he considers it just) that the rights of individuals are not violated.
- (b) In world A, the rights of individuals would be violated to a greater extent than in world M.
- (c) X has a moral/rational reason to prefer world M to world A.
- (d) Given a choice between world M and world A, X should choose world M (the leader of the libertarian party should not introduce anarcho-capitalism).
- (e) Those who value that individual rights should not be violated (libertarians) should support a minimal state (if they have good reason to believe that anarcho-capitalism would increase violations of individual rights).

It would seem, then, that there is a fairly straightforward moral argument in favour of the thesis that a leader of a libertarian party should maintain the existence of a minimal state in order to minimise infringements of individual rights, that this would be both moral and in the spirit of libertarianism, the essence of which is—ultimately—a desire to protect individual liberty. I do not claim that this argument is conclusive. Many thinkers have argued that the paradox of deontology does not really pose a problem for deontologists (see, e.g., FOOT 1985; KORSGAARD 1993) and that it fails to reveal the problematic nature of absolute individual rights. Nevertheless, it seems that a proper reconstruction of the dispute between minarchists and anarcho-capitalists should emphasise not only the weakness of the minarchist position (namely, that there is a contradiction between individual rights and the existence of the state), but also the weakness of the anarchist position, namely, that insisting on absolute individual rights, even if this leads to more violations of individual rights, is problematic.

Dominiak and Wysocki might reply that the above argument misses the point. Even if it were true that it would be rational/moral to pre-emptively violate property rights in order to minimise the number of violations of those rights (McMahon calls such infringements “preventative violations”; MCMAHON 1991, 350), this view would simply not be a libertarian view, since libertarianism is based on absolute property rights. Disarming the fundamental contradiction inherent in minarchism forces us to propose some sort of modification of libertarian principles, but this would take us outside the realm of libertarianism. What might such a modification look like? One plausible possibility might be something like this: no one has the right to initiate violence against another person or their justly acquired property, unless doing so prevents further violations of property rights. A more political version of this—

which would delegate the right to engage in such preventive violations to trusted institutions—might say: no one has the right to initiate violence against another person or their justly acquired property, but trusted and controllable public institutions may do so if doing so will prevent further violations of property rights. In such a view, individuals would be governed in their relations with each other by the Non-Aggression Principle, NAP, while the state would be governed by the Minimisation of Aggression Principle,<sup>1</sup> MAP (note that this principle would oblige the state to dissolve itself if it is reasonable to believe that an anarcho-capitalist order would produce libertarian outcomes).<sup>2</sup> And indeed, some minarchists conceptualise the minarchist position in precisely this way. For example, Adam Reed writes that “the proper task of the political system is to *minimise the aggregate incidence of aggression*—whether initiated by criminals or by the political system itself—against innocent people” (REED 2008, 27). It should be stressed that in such a case, support for the minimal state is always conditional and depends on whether it actually minimises the level of violations—the minarchist position never says “the state has a right to exist” but always “the state has a right to exist if  $x, y, z$  is true” (assuming that  $x, y, z$  can change).

Dominiak and Wysocki might point out that while such a correction of libertarian principles removes the contradiction between individual rights and the minimal state, it does so at the cost of departing from the essence of libertarianism. It is true that one can support the existence of a minimal state without falling into contradiction, but one cannot support it without contradiction from within libertarianism. In this view, the minarchist has two options: either to remain libertarian, which forces him to support anarcho-capitalism, or to remain a supporter of the minimal state, which forces him to abandon libertarianism. It may be rational and moral for the leader of a libertarian party not to adopt anarcho-capitalism, but if he does, he should also change the name of his party, because it will no longer be a libertarian party.

It seems, however, that such an argument should be rejected, as it would be an “argument from definition”. Instead of addressing the important question of whether it is rational/moral for libertarians to adhere to a libertarian principle if doing so leads to more violations of that principle, it suggests that the answer to that question is uninteresting because libertarianism is defined

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<sup>1</sup> The term comes from J. C. Lester (2013), although he uses it in a slightly different sense.

<sup>2</sup> The correction presented here is, of course, only sketchy. A fuller version would have to set out the full distribution of rights, specifying, among other things, the duties of individuals that correlate with the fact that the state has the right to minimise the number of infringements.



by the imperative to adhere to a libertarian principle. But such a position does not solve any important philosophical problem beyond the naming problem.

Answering the question of what libertarians should think about their conception of rights in the light of the deontological paradox is a much more important problem than what to call people who have given different answers to that question. It seems that if we have good reasons to think that it is irrational/immoral to adhere to the non-aggression principle, even if it would lead to more violations of that rule, then it would be reasonable to regard this answer as a libertarian one, and to propose a modification of libertarian principles. The fact that some important libertarians (to mention only Rothbard, Block, and Hoppe) have always conceived of libertarianism as based on absolute rights is irrelevant because, first, we can also name many libertarians who have rejected the idea of absolute rights (to mention only Huemer, Friedman, Brennan, or Zwolinski); second, this kind of modification of fundamental libertarian principles would be done from within the field of libertarian theory and in the context of its guiding objectives—in a word, it would be a form of self-correction.

Thus it seems that, contrary to what Dominiak and Wysocki claim, the dispute between minarchists and anarchists is far from being settled. In order to show that the anarcho-capitalists have won this dispute, Dominiak and Wysocki would have to provide good arguments for why it is rational to avoid violating the non-aggression principle, even if the consequence of this violation will be a reduction in the scope of freedom and property.

## 2. HOW TO RESOLVE THE LIBERTARIAN PARADOX OF DEONTOLOGY?

There is much debate about the problem of the paradox of deontology. The main questions are whether we are dealing with a paradox at all, and whether the anti-deontological argument does not derive its strength from a number of assumptions alien to deontology that are introduced into it by consequentialists (MARDELLAT 2020, 2). Timothy Chappell, for example, argues:

The premises that it is the role of agency to produce goodness, and that it is good to respect constraints, together lead to a contradiction; this contradiction is best averted not by rejecting constraints, but by recalling an obvious fact—the diversity of other roles that agency can have besides the production of goodness. This argument is very simple. For instance it does not, in and of itself, involve us in the intriguing thickets of the long-running literature on agent-relativity, which is per-

haps where consequentialists and deontologists most often seek a decision in the debate about the “paradox” of deontology. Still the argument is, so far as I can see, decisive. Once we see that no one is obliged to assess the rationality of agency always and only by the criterion of productiveness of good, it is simply impossible to go on thinking of the “paradox” of deontology as a trap from which the deontologist has no obvious way out. (2011, 275–76)

On the other hand, critics of deontology may point out that while there is no formal contradiction between a deontological rule and the fact that adherence to it may lead to a greater number of violations of that rule (note the obvious fact that the one causing these other violations is not the one adhering to the norm), deontologists will not find it easy to demonstrate that what the norm is based on (for example, respect for human dignity) could not be more fully realised by a rule requiring the minimisation of violations of that norm. As David McNaughton and Piers Rawling observe,

it is said (in a Kantian vein) that persons deserve respect in view of their unique importance as rational moral agents. But why does such respect forbid you to harm others rather than requiring you to minimise harm? It may be said that, just as we owe particular duties to others in view of our special relationships with them, so we owe to everyone else a duty not to harm them because of our general relationship with them. But what is that relationship? Perhaps that of being fellow humans, or fellow persons. Whatever the answer, the problem remains: Why does our standing in that relationship to all ground a constraint against harming them, as opposed to a duty to minimise harm? Similarly, natural law theorists move from the claim that there are certain basic values, including life, to the claim that we should never act directly against a basic value, even in seeking to protect that value elsewhere. But how is that move to be justified? (2006, 450)

This text will not attempt to enter into these discussions. These usually assume that there is a general problem—the paradox of deontology—which has a single solution: either the existence of this paradox undermines the overall reasonableness of belief in absolute deontological rules, or it does not. Instead, I will present an argument suggesting that the *libertarian paradox of deontology* has a specific form that can evoke in us moral intuitions different from those elicited by typical examples of deontological paradoxes, and thus suggesting that libertarians should accept the existence of a specific institution that would engage in preventive violations, such as the minimal state. This means that I do not assume that there is a single solution to the paradox of

deontology, but allow for the possibility that it has multiple solutions (depending on the areas in which the paradox manifests itself). Nor will I present here a definitive argument for the thesis that violating the rights of individuals is justifiable in certain situations, but only a sketch of an argument that appeals to our moral intuitions (following in the footsteps of Michael Huemer and his intuitionist strategy for justifying libertarianism; HUEMER 2013, 2016).<sup>3</sup>

A typical example given in discussions of the deontological paradox is that of a single person (or small group of people) violating the rights of others in a particular situation in order to prevent the larger number of such violations from occurring immediately. For example, Bruns presents the following situations:

INHERITANCE PARADOX

You could murder your rich uncle and use the inheritance money to save many others from starvation. If you don't do it, it is certain that James will murder his two slightly less wealthy uncles to obtain the same amount of money to save the same amount of people from starvation.

TRANSPLANT PARADOX

You could harvest a healthy patient's organs and use them to save other five dying patients. If you don't do it, your colleague will harvest the organs of two other slightly less healthy patients to obtain the organs needed and use them to save the five. (2021, 22)

Examples of this kind evoke strong moral intuitions suggesting that such an action would be unjust (although it should be added at the outset that they also evoke other intuitions suggesting that such an action is not wholly irrational because it saves more lives; in other words, we are dealing here with a different reaction from, say, the reaction to a situation in which doctors kill a healthy person just for fun). However, there seem to be a number of disanalogies between examples of this kind and the vision of a minimal state engaging

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<sup>3</sup> My intuitionist framework takes the following form:

- (a) Appealing to intuitions is an appropriate method of justifying libertarianism.
- (b) I acknowledge that we have deontological libertarian intuitions.
- (c) In simple, interpersonal situations, libertarian intuitions are insensitive to the paradox of deontology.
- (d) When we consider the example of the state as a minimiser of violations, these intuitions are weakened, while intuitions indicating that in some specific cases it is permissible to violate libertarian norms in order to reduce violations of those norms are strengthened.
- (e) Under some conditions, the state may be justified in violating libertarian norms in order to minimise the number of violations of those norms.

in preventive violations. Each of these disanalogies weakens the intuition that such an action would be unacceptable and supports the opposite intuition.

First, in the typical examples we are dealing with condoning an outright murder in order to prevent a greater number of murders. However, maintaining a minimal state in order to minimise the number of rights violations in a (post)anarchic order would not necessarily take such a form (we violate rights in way A in order to avoid violating rights in way A several times). Critics of anarcho-capitalism point out that the introduction of anarchy would be associated with high levels of crime (including bloody power struggles and murders), but a minimal state would not need to kill anyone to achieve the goal of reducing the sum of rights violations. So the minimal state would violate rights in way B in order to avoid violating rights five times in way A, assuming that way A is much more serious than way B.<sup>4</sup> According to deontological libertarians, the good associated with avoiding the murder of two people cannot outweigh the evil associated with the murder of one. But a minimal state would not only minimise aggression in a quantitative sense, but also in a qualitative sense: in order to reduce the number of murders, it would violate the rights of individuals by levying taxes on them and forbidding them to seek justice on their own, but it would not murder its citizens in order to avoid more murders.

Obviously, since violating the non-aggression principle in ways A and B simultaneously falls into the broader category of violating the non-aggression principle, such action will always take the form of violating X in order to avoid violating X repeatedly. Nevertheless, a situation in which the state collects taxes and monopolises the use of force in order to radically reduce the murder rate seems morally different from a situation in which the state murders innocent people in order to reduce the murder rate.<sup>5</sup>

Let us move on to the second point. Typical examples of the paradox of deontology evoke a specific situation in which we sacrifice a particular person for other people. It seems that one of the reasons why this raises our intuitive objection is that such an action would upset the interests of a particular person (including his fundamental interest in being alive). In order to justify such an action, we would have to show that the lives of the two people saved are worth

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<sup>4</sup> Bruns (2021, 34) points out that, in such a case, deontic constraints would take the character of a *cross-type constraints*, which stipulate that “it is impermissible to  $\phi$  even to prevent more further  $\psi$ -ings’, on the assumption that  $\psi$ -ing is of a much more serious nature than  $\phi$ -ing.”

<sup>5</sup> Interestingly, in discussing the problem of the deontological paradox NOZICK (1974, 28–29) gives an example where it is unclear whether the violation of an innocent person’s rights is “symmetrical” or “asymmetrical”.

more than the life of the person who would have to be sacrificed, which, according to Nozick, cannot be done:

Side constraints express the inviolability of other persons. But why may not one violate persons for the greater social good? Individually, we each sometimes choose to undergo some pain or sacrifice for a greater benefit or to avoid a greater harm: we go to the dentist to avoid worse suffering later; we do some unpleasant work for its results; some persons diet to improve their health or looks; some save money to support themselves when they are older. In each case, some cost is borne for the sake of the greater overall good. Why not, similarly, hold that some persons have to bear some costs that benefit other persons more, for the sake of the overall social good? But there is no social entity with a good that undergoes some sacrifice for its own good. There are only individual people, different individual people, with their own individual lives. Using one of these people for the benefit of others, uses him and benefits the others. Nothing more. What happens is that something is done to him for the sake of others. Talk of an overall social good covers this up. (Intentionally?) (1974, 32–33)

A utilitarian would have no problem justifying the sacrifice of one person to save two, but it seems that libertarians, who believe in strong individual rights and the separateness of persons, are unable to provide such a justification. However, if we consider the example of the leader of a libertarian party who decides not to introduce anarchy and to maintain a minimal state (which is supposed to have the effect of minimising the number of infringements), it is not easy to point to specific individuals whose interests will be compromised in this way in order to promote the interests of others. If the minarchists' diagnosis of a radical increase in violations as a result of the introduction of an anarcho-capitalist order is correct, we can assume that the expected gain (understood here in a specific way: as being free from rights violations) from sticking to the minimal state will be greater for each individual than the expected gain from the introduction of anarcho-capitalism. In typical examples of the paradox of deontology, one person loses and two, three or more gain; in the example with the leader of the libertarian party, everyone sees the expected gain. If a person who wanted their rights not to be violated were to decide, behind a veil of ignorance, which system they would choose, they would (being in possession of knowledge of the immanent problems of anarchy) choose a minimal state, because it would offer a much better chance of both their rights and those of others being protected. Let us try to illustrate this point with the following example.

## POISONER PHARMACIST

You are one of two quality controllers in a pharmaceutical factory. Due to the difficult manufacturing process, some tablets that the factory produces have the wrong proportions of ingredients and are therefore poisonous. Passing them through will result in the death of the patient who ingests them. The second inspector tells you that he deliberately passes three poisoned tablets per million out of sheer hatred of humanity. Since he very much dislikes the fact that, unlike him, you are a highly moral person, he wants to corrupt you. He offers you a deal whereby he will stop his practice of passing three poisoned tablets per million if you pass one poisoned tablet per million. Would it be immoral for you to accept such a deal?

The difference between Bruns's Transplant Paradox and the Poisoner Pharmacist is that in the former case we are sacrificing one particular person to save three other people, and in the latter case we are sacrificing one randomly selected person to save three randomly selected people. The difference is that in making the choice, we are not deciding to violate someone's rights in order to protect the rights of others; we are simply choosing between more or fewer randomly selected violations of rights. Note also that it might happen that your single tablet goes to the person who could get one of the other controller's three poisoned tablets, which would reinforce the intuition that you should agree to such an arrangement: in that case you would be choosing between a world in which A is murdered and a world in which A, B and C are murdered. It is difficult to find any reason why a world in which A, B and C are murdered should be better in any way than a world in which only A is murdered. Similarly, in this example, all rational people would give hypothetical consent for you to agree to such an arrangement, because the expected moral gain (and a utilitarian gain, for that matter) from doing so would be greater than the expected moral gain from not accepting the arrangement.

Another reason why the typical example of a deontological paradox (think of Nozick's example of a rampaging mob and policemen) evokes strong negative intuitions that may deem it disanalogous to the minimal state is that in his example the action of the policemen takes place outside the law. One reason why we might be reluctant to allow people to violate the deontic principle in order to reduce the number of violations of this principle is the fear that adopting such an extended principle might lead to abuses. In a typical example of a paradox of deontology, we have people who, in the absence of any social control, decide to take an action that involves killing one person in order to avoid killing other people. It seems that at least part of our intuitive aversion

to such actions has to do with our fear that preventative violations might somehow get out of hand. Let us call this problem the problem of the unpredictable costs of preventive violations. This is the same reason why we would be reluctant to see individuals making decisions guided by the utilitarian principle, but would be much more sympathetic if such a principle were guided by the rule of law. Thus, if the procedure of violating a norm in order to reduce the number of norms violated were implemented within the rule of law, our initial intuition that such actions are unacceptable would be much weaker. An important feature of modern states is that they are public, transparent, democratic and subject to social control. This is one reason why we may be more inclined to outsource such projects to the state than to individuals. Of course, the mere fact that an action is carried out by a public, transparent, democratic and socially controlled institution is not a conclusive argument, but it is an important point to take into account when analysing this type of case.

Another, much less compelling argument for why libertarians who are convinced that anarcho-capitalism would produce less libertarian outcomes than a minimal state should accept the existence of a minimal state points out that aggression in a minimal state would be of a different kind than anarchic aggression, namely it would be of a much more predictable and thus controllable nature. As Hayek pointed out, the fact that coercion is predictable allows individuals to factor it into their plans, resulting in a much lower cost to them compared to a situation in which coercion occurs randomly (HAYEK 2011, 71–72). This argument just seems to develop the previous argument about expected gain: not only will there be less coercion in the minimal state than in an anarchist order, but it will also be much more predictable, thus increasing the expected gain of submitting to the rule of the minimal state. Of course, libertarians are primarily interested in the mere existence of aggression,<sup>6</sup> or possibly its quantity, but whether the aggression is orderly or chaotic is also a relevant factor.

Lastly, as is well known, all deontological intuitions seem to be sensitive to the quantitative criterion. Virtually any rule that seems “unbreakable” to us ceases to seem this way when we associate the refusal to break it with suitably catastrophic consequences (even Nozick is unsure whether it would be permissible to violate side constraints in order to avoid moral horror; NOZICK 1974, 30). In the case of the paradox of deontology, these consequences would not have to be as catastrophic to justify the right to violate a norm as in the

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<sup>6</sup> For an excellent critique of Hayek on this point see ROTHBARD (1982).

case of the utilitarian argument (can we kill one person to save the lives of more people?), because in the paradox of deontology, in addition to the negative consequences, we also have an increase in the number of violations of the rights we want to protect. In other words, if we kill one person to save five, we have a single homicide on one side and five deaths on the other, whereas in the case of the paradox of deontology, we have one homicide on one side and five homicides on the other. If we believe that homicide is morally worse than non-criminal deaths, we must recognize that, *ceteris paribus*, it is easier to justify violations that aim to minimize the number of violations than violations that aim to maximize utility. Thus, the more catastrophic the consequences of adhering to a deontic norm that we consider appropriate, the weaker our intuition that this norm should be adhered to without exception. However, this argument would only work if the number of violations in an anarcho-capitalist order were many times greater than in a minimal state.

#### CONCLUSION

Dominiak and Wysocki criticise the minarchist position as being based on the simple fallacy of trying to combine irreconcilable positions: that the violation of rights is impermissible and that the existence of the state (which by nature violates rights) is permissible. In this text, however, I have argued that the minarchist position should be conceptualised in terms of a deontological paradox, which makes it far from trivial. In order to win the argument against the minarchists, anarcho-capitalists need to answer a challenging question: Does it make sense to adhere to the non-aggression principle even in situations where adherence to the principle leads to more violations of the principle? Dominiak and Wysocki offered no such explanation. I then outlined an argument suggesting that in a particular version of the deontological paradox, where the choice is between a minimal state that produces fewer violations and anarcho-capitalism that produces more violations, libertarians might be inclined to think that it is permissible to violate the non-aggression principle. The argument was based on the point that a libertarian deontological paradox would differ from a typical example of the paradox in five significant ways: (1) the minimal state would not only produce fewer violations but also more benign violations, (2) the minimal state would distribute violations in such a way that each individual could expect to benefit from its existence (in the form of a lower number of violations), (3) the reduction of violations would be



carried out by a public, transparent, socially controllable institution, (4) the aggression of the minimal state would be predictable rather than random, and (5) there would be a significant difference between the amount of state aggression and the amount of anarchic aggression.

In conclusion, it is my contention that there is no obstacle to considering minarchism as a full-fledged part of libertarianism, although this depends on theoretical-empirical arguments showing that anarcho-capitalism would produce more violations of individual rights than a minimal state.

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LIBERTARIANISM, INDIVIDUAL RIGHTS, AND THE PARADOX OF DEONTOLOGY.  
REJOINDER TO DOMINIAK AND WYSOCKI ON MINARCHISM

Summary

Dominiak and Wysocki criticise the minarchist position as being based on the simple fallacy of trying to combine irreconcilable positions: that the violation of rights is impermissible and that the existence of the state (which by its very nature violates rights) is permissible. In this text I argue that the minarchist position should be conceptualised in terms of a deontological paradox, which makes it far from trivial. I then outline an argument suggesting that in a particular version of the deontological paradox, where the choice is between a minimal state that produces fewer violations and anarcho-capitalism that produces more violations, libertarians might be inclined to think that it is permissible to violate the non-aggression principle. In conclusion, I argue that there is no obstacle to considering minarchism as a full-fledged part of libertarianism, although this depends on theoretical-empirical arguments showing that anarcho-capitalism would produce more violations of individual rights than a minimal state.

**Keywords:** libertarianism; paradox of deontology; minarchism; anarcho-capitalism; rights

LIBERTARIANIZM, PRAWA JEDNOSTKI I PARADOKS DEONTOLOGII.  
ODPOWIEDŹ DOMINIAKOWI I WYSOCKIEMU W KWESTII MINARCHIZMU

Streszczenie

Dominiak i Wysocki krytykują stanowisko minarchistyczne jako oparte na prostym błędzie polegającym na próbie połączenia niedających się pogodzić stanowisk: jedno z nich wskazuje, że naruszanie praw jest niedopuszczalne, drugie zaś, że dopuszczalne jest istnienie państwa (które ze swej natury narusza prawa). W niniejszym tekście argumentuję, że stanowisko minarchistyczne lepiej konceptualizować w kategoriach paradoksu deontologicznego, co czyni je dalekim od trywialnego. Następnie przedstawiam argument na rzecz tezy, że w szczególnej wersji paradoksu deontologicznego – gdy wybór jest między produkującym mniej naruszeń państwem minimalnym a produkującym więcej naruszeń anarchokapitalizmem – libertarianie powinni dopuścić możliwość naruszania zasady nieagresji, którego celem byłoby zminimalizowanie ogólnej liczby naruszeń. Ostatecznie argumentuję, że nie ma przeszkód, by uznać minarchizm za pełnoprawną część libertarianizmu, choć zależy to od teoretyczno-empirycznych argumentów pokazujących, że anarchokapitalizm prowadziłyby do większej liczby naruszeń praw jednostki niż państwo minimalne.

**Słowa kluczowe:** libertarianizm; paradoks deontologii; minarchizm; anarchokapitalizm; prawa