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## THE ANARCHO-CAPITALIST CASE AGAINST THE STATE AS A CHALLENGE TO THE MINARCHIST LIBERTARIANS

### 1. INTRODUCTION

One of the most basic divisions within the libertarian political philosophy is the divide between the anarcho-capitalist critics of the state and the minarchist proponents of the limited government. Although fully-fledged libertarianism is a relatively young political philosophy, the debate between these two branches of the libertarian theory has already been quite extensively covered in the primary and secondary literature of the subject. Both sides of this fundamental political-philosophical quarrel have offered sundry arguments in support of their respective positions. Notwithstanding such an extensive coverage and variety of reasons proposed by each stance, it has not been sufficiently emphasized that the controversy in question has a specific logical structure that influences the soundness and import of the arguments used in the debate. Particularly, it has not been sufficiently accentuated that both philosophical camps share the same fundamental premises concerning individual rights and their infringements. Since the anarcho-capitalist position seems to be nothing more than a consistent application of the consequences following from these premises to the question of social order—regardless of the political counterintuitiveness of such inferences—the

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minarchist stance can be viewed as an attempt to square those consequences with the intuitively more appealing but less coherent in relevant context— institution of limited government. Alternatively, the anarcho-capitalist position can be seen as offering essentially only one argument against the state, namely its inconsistency with the basic premises concerning individual rights and their inviolable borders, whereas minarchism can be construed as an attempt to propose multifarious answers to this basic anarcho-capitalist challenge. From this point of view the result of the debate in question can be assessed in terms of the minarchist success or failure to deal with the fundamental anarcho-capitalist criticism of the state as an institution which necessarily infringes on individual rights.

In the present paper we offer a precise formulation of the ultimate anarcho-capitalist argument against the state and analyze the minarchist answers to it. We claim that the logical space of possible responses to the basic anarcho-capitalist challenge is filled by three—and only three—strategies. We demonstrate that none of these possible rebuttals work for minarchism (although they might work for other political philosophies) and that the anarcho-capitalist theory is therefore superior to the limited state position as far as logical coherence and morality are concerned. The argument developed in the paper unfolds in the following way. In the second section we present the ultimate anarcho-capitalist argument against the state and show that it is actually shared by all principled minarchists. Then we sketch three possible answers to this argument and point to these responses which are available to the proponents of limited government. In the third section we present and analyze the so-called partially principled minarchist rebuttal of the anarcho-capitalist argument. We demonstrate that this response is not viable and it should be rejected. In the fourth section we describe and critically examine the so-called fully principled minarchist rebuttal of the anarcho-capitalist argument and show that this response is not satisfactory either.

## 2. THE ANARCHO-CAPITALIST CASE AGAINST THE STATE

There is only one ultimate anarcho-capitalist argument against the state. It can be called a principled libertarian argument. All other reasons against the state can either derive from it or are answers to the minarchist strategies to rebut it. This principled anarcho-capitalist case against the institution of the state can be formulated in a very clear and straightforward way. Aggres-

sion, or a physical interference with or a threat to one's individual rights is morally wrong, impermissible and unjustified. The state is by its very nature an aggressive institution. First of all, it finances its activities through taxation, that is, involuntary payments handed over to the state by its citizens under the threat of losing their lives, liberty and property; second of all, it prohibits operations of any other organization which within the same territory would like to provide competitive security services to the willing buyers on a purely voluntary basis. Therefore, the state is an unjust and unjustified institution that necessarily violates individual rights.

The claim that aggression is always unjust, impermissible, morally wrong and unjustified is known in the libertarian literature as the nonaggression principle. As Rothbard points out, "the libertarian creed rests upon one central axiom: that no man or group of men may aggress against the person or property of anyone else. This may be called the 'nonaggression axiom.' 'Aggression' is defined as the initiation of the use or threat of physical violence against the person or property of anyone else" (2011, 27). It is crucial to realize that aggression—as it can be seen from Rothbard's writings—is always against *ownership rights* of another, ownership rights in one's person or in one's property. Kinsella states very clearly that aggression basically implies a violation of property rights: "The non-aggression principle is also dependent on property rights, since what aggression is depends on what our (property) rights are. If you hit me, it is aggression *because* I have a property right in my body. If I take from you the apple you possess, this is trespass, aggression, only *because* you own the apple. One cannot identify an act of aggression without implicitly assigning a corresponding property right to the victim" (2009, 180). Similarly, Block defines the nonaggression principle as positing "that no one may initiate force or the threat thereof against an innocent person and private property rights based on homesteading" (2014, 85). On the other hand, "defensive violence, therefore, must be confined to resisting invasive acts against person or property. But such invasion may include two corollaries to actual physical aggression: *intimidation*, or a direct threat of physical violence; and *fraud*, which involves the appropriation of someone else's property without his consent, and is therefore 'implicit theft'" (ROTHBARD 2002, 77). Because the definition of aggression includes fraud—which involves a peaceful acquisition of the possession of another's property and only afterwards (when the condition under which the possession has been conveyed is not fulfilled) holding it against the will of the actual owner—it seems more fortunate to talk about aggression in terms

of physical interference with someone's property rights than in terms of initiation of violence or physical force against these rights.

The premise of the ultimate anarcho-capitalist argument against the state according to which aggression is always impermissible is shared by the principled proponents of the limited state. For example, Rand points out that "whatever may be open to disagreement, there is one act of evil that may not, the act that no man may commit against others and no man may sanction or forgive. So long as men desire to live together, no man may *initiate*—do you hear me? no man may *start*—the use of physical force against others" (1957, 1023). Elsewhere she says: "The basic political principle of the Objectivist ethics is: no man may *initiate* the use of physical force against others. No man—or group or society or government—has the right to assume the role of a criminal and initiate the use of physical compulsion against any man. Men have the right to use physical force *only* in retaliation and *only* against those who initiate its use" (1964, 36). Similarly, Nozick points out that "individuals have rights, and there are things no person or group may do to them (without violating these rights). So strong and far-reaching are these rights that they raise the question of what, if anything, the state and its officials may do" (2014, ix). And further in the same treatise he says:

Political philosophy is concerned only with *certain* ways persons may not use others; primarily, physically aggressing against them. A specific side constraint upon action toward others expresses the fact that others may not be used in the specific ways the side constraint excludes.... Side constraints express the inviolability of other persons.... The moral side constraints upon what we may do, I claim, reflect the fact of our separate existences. They reflect the fact that no moral balancing act can take place among us; there is no moral outweighing of one of our lives by others so as to lead to a greater overall *social* good. This root idea, namely, that there are different individuals with separate lives and so no one may be sacrificed for others, underlies the existence of moral side constraints, but it also, I believe, leads to a libertarian side constraint that prohibits aggression against another (NOZICK, 2014, 33).

Now, the state is an organization that commits aggression in two ways: 1) it finances its activities through payments made by its citizens under the threat to their life, liberty and property; and 2) it prohibits willing persons from voluntarily exchanging services of security (or from withdrawing from any such exchange) that would be competitive with the compulsory protection service delivered by itself. As Hoppe points out,

a State is an agency which possesses the exclusive monopoly of ultimate decision-making and conflict arbitration within a given territory. In particular, a State can insist that all conflicts involving itself be adjudicated by itself or its agents. Implied in the power to exclude all others from acting as ultimate judge, as the second defining element of a State, is its power to tax: to unilaterally determine the price justice seekers must pay to the State for its services as the monopolistic provider of law and order. (HOPPE 2012, 104)

For a security and law providing organization to fulfill its function and yet not to involve those two sorts of aggression, it “would therefore have to be supplied by people or firms who (a) gained their revenue voluntarily rather than by coercion and (b) did not—as the State does—arrogate to themselves a compulsory monopoly of police or judicial protection” (ROTHBARD 2009, 1048). Otherwise, violations of individual rights would be unavoidable.

The proponents of limited government agree that the institution of the State seems to inevitably aggress against life, liberty and property of its citizens. For instance, Rand acknowledges that “since the imposition of taxes does represent an initiation of force, how, it is asked, would the government of a free country raise the money needed to finance its proper services?” (1964, 116). Similarly, trying to formulate the challenge to the minarchist case, Nozick points out that

when the state monopolizes the use of force in a territory and punishes others who violate its monopoly, and when the state provides protection for everyone by forcing some to purchase protection for others, it violates moral side constraints on how individuals may be treated.... Monopolizing the use of force then, on this view, is itself immoral, as is redistribution through the compulsory tax apparatus of the state. (2014, 51–52)

Thus, the ultimate anarcho-capitalist argument against the state starts with the premise fully embraced, at least declaratively, by the minarchists that individuals have rights and any violation thereof is impermissible, unjust and unjustified and from the second premise that the institution of the state commits such infringements in the form of taxation and prohibition of any competition in the security provision. From these two premises the argument concludes that the state is therefore an unjust and unjustified institution and that its operations are morally impermissible.

It is crucial to realize that there are only three possible responses to this argument: 1) to argue that no natural individual rights exist; 2) to argue that

even though the state commits violations of natural rights, this is nonetheless justified for some reason; 3) to argue that the state does not necessarily violate these natural rights.

It should be obvious that one cannot espouse these three views simultaneously without running into a plain contradiction (e.g. one cannot at the same time claim that the state violates individual rights and that it does not violate them; or that there are no individual rights and that the state violates them). One can consistently subscribe only to one of these three answers. The second thing to notice is that since all of the principled minarchists embrace the first premise of the anarcho-capitalist argument according to which individuals have rights—actually, if they see any justification for the limited role of the state, they see it exactly in its ability to protect these individual rights—the first answer to the anarcho-capitalist challenge is, within the framework of the current debate, basically unavailable to the minarchists. In the present context we can therefore dismiss this way of responding to the anarcho-capitalist challenge straightaway because minarchists or other proponents of the minimal state assume the existence of and argue for the natural individual rights. We are therefore left with only two possible responses to the anarcho-capitalist argument. Let us analyze them individually.

### 3. PARTIALLY PRINCIPLED MINARCHIST REBUTTAL

The second minarchist answer to the anarcho-capitalist challenge can be called partially principled because it concedes that the state violates individual rights. Notwithstanding these violations speaking against the state, the partially principled minarchist position argues that the state is justified for some other reason, anyway, which can be easily identified: 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. To put it as clearly as possible: this answer is that violations of individual rights are justified to avoid more serious violations of individual rights. Now, there are two ways in which we can understand this answer. One way—let us call it a deontic way—is to argue that the violations committed by the state are *permissible* since they allow us to avoid bigger violations. Another option—let us call it an epistemic way—is to argue that the violations committed by the state, albeit impermissible, are yet *necessary* to avoid more extensive violations of individual rights that would result from

the anarchy. Very often these two versions of the second answer are not analytically distinguished and they are lumped together for a better rhetoric effect but we should distinguish them and see what they are able to achieve in isolation.

The deontic version says that violations of rights committed by the state are permissible since they allow us to avoid bigger violations. It should be readily visible that the deontic version of the second answer 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<sup>1</sup> 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. What they are capable of having then are either purely nominal rights (which in fact are no rights at all) or at best some non-property, non-overtopping rights. So, it is clearly visible that the deontic version of the second minarchist answer collapses into or comes dangerously close to the view that there are no individual property rights. And this view is unavailable to the minarchists for the above-stated reasons.

What about the epistemic version of the second minarchist response, which says that although the state violates individual rights and although its operations are not permissible even in order to avoid more severe infringements, the state is nonetheless *necessary* to avoid these infringements? It is important to note that there are at least two unfortunate consequences for the minarchists connected with this view. First and foremost, it is immediately noticeable that this version amounts to the minarchist surrender in the *moral* debate. For what it boils down to is a stance according to which all state ac-

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<sup>1</sup> On the excellent exposition of overtopping duties, see e.g. KRAMER (2014).

tivities, regardless of their beneficial effects, are *impermissible*, immoral, wrong, unjust and ethically despicable. The state is justified in a non-moral way or to be more precise, in an immoral way as a necessary evil. Second, it is not even clear, euphemistically speaking, how one could prove that the state is necessary to avoid bigger violations of individual rights? Obviously, there are no data supporting this view in a scientifically rigorous way. Anecdotal evidence, on the other hand, seems to point in the opposite direction. If the total death toll amounts to anything, then it is clear that amongst all social institutions the state claimed the most lives in the entire history of humanity. As estimated by Rummel in his book *Death by Government*, only in the twentieth century the state killed 170 million people (1995). According to Courtois and other authors of *The Black Book of Communism*, the communist regime alone claimed 100 million lives (1997).

If we compare it with the amount of private crimes committed throughout the history, the result is tragically unambiguous.

Yet the main problem with the view that the state, particularly a limited one, is necessary to protect individual rights against violations, does not consist in the shortage of data supporting it but in the fact that no such data can be ever collected in a non-circular, non-arbitrary and methodologically correct way. Suppose for the sake of discussion that a relatively small number of individual rights violations have been reported in a society governed by a limited state. Now, one can ask this: Does a limited state cause the number of individual rights violations to be low or does a small number of violations (and therefore respect for individual rights prevalent in this society) cause this society to opt for limited government? By the same token, if we observed an anarchist society characterized by a comparatively large number of individual rights violations, how could we possibly learn for certain whether these violations are due to anarchy in this society or despite it?

This leads us to another point. The proponents of the minimal state have to come up with some explanation of how limited government would appear in a given society and what would prevent it from degenerating into a bigger, corrupted regime. It must be stated that whatever are the proximate checks and balances that minarchists propose (and what they usually suggest is the old liberal notion of dividing state powers among three branches of government), the ultimate guarantee can be only one: a favorable attitude of the public or its key sector. At the end of the day, as we can learn from Thomas, “the institutions of the free society must be consciously designed. The free society, to use a market metaphor, must have a business plan. Freedom will



not simply evolve. We will have to create it” (THOMAS 2008, 57). And this can be done only through changing public opinion, only through gaining legitimacy for limited government. For as Hume pointed out:

Nothing appears more surprising to those who consider human affairs with a philosophical eye, than the easiness with which the many are governed by the few.... When we inquire by what means this wonder is effected we shall find, that as Force is always on the side of the governed, the governors have nothing to support them but opinion. It is, therefore, on opinion only that government is founded, and this maxim extends to the most despotic and most military governments, as well as to the most free and popular. The sultan of Egypt, or the emperor of Rome, might drive his harmless subjects, like brute beasts, against their sentiment and inclination. But he must, at least, have led his mamalukes or praetorian bands, like men, by their opinion. (1971, 19)

If a particular state of public opinion provides the ultimate protection against a degeneration of the limited government; if vigilant, freedom-loving citizens are necessary to avoid the collapse of the minimal state into a big, corrupted government; if such a state of public opinion is—as it must be—considered possible and even likely, then the question arises: Why is the same possibility and likelihood concerning the emergence of a favorable public opinion not assumed in the case of the stateless society? After all, the anarcho-capitalist society also requires as its necessary condition the same or highly analogous quality of the public opinion, the same devotion to freedom and property rights, the same trust in the efficiency of the free market mechanism. How, then, can the proponents of limited government simultaneously claim that such a state of public opinion is likely to emerge in the case of the minimal state but impossible to develop in the case of a stateless society? This kind of discrepancy either asks for a good reason that has not yet been provided by the minarchists or amounts to a plain incoherence within the minarchist political theory.

#### 4. A FULLY PRINCIPLED MINARCHIST REBUTTAL

Admitting that the state violates individual rights but is nonetheless justified as a necessary evil is, as we have just showed, a minarchist surrender in the moral debate, empirically unsupported speculation, non-commonsensical view of history and instance of the *cum hoc ergo propter hoc* fallacy. Thus,

the last option left for the proponents of the minimal government is to argue that the state does not infringe on individual rights. Indeed, the most celebrated attempts to substantiate the minarchist case have been presented by the authors who opted for this strategy. For instance, Nozick sought to demonstrate that the government could emerge from the state of nature in a way that would not violate individual rights. Rand, on the other hand, argued that there can be ways of financing the state other than taxation. Also, the whole tradition of the social contract theory can be seen as an attempt to deal with the problem of involuntariness of the state. One thing is certain, though. Whatever the strategy, to show that the state does not violate individual rights, minarchists have to prove that there can be a state which is not financed through taxation and which is not a compulsory monopoly in the security provision in a given territory. In this section we will demonstrate why this cannot be done.

Let us start with the first general strategy implemented by the minarchists in order to prove that the state can operate without infringing on individual rights, namely with the social contract theory. The main conceptual device via which this strategy works is the idea of implicit consent. It is clear that there has never been any explicit consent given by all the generations of subjects of the state to abide by its orders and to be governed by it. As far as the explicit consent or, in other words, consent proper is concerned, the state is plainly an involuntary institution and no one really argues otherwise. This is an obvious problem for the moral justification of the state. As Locke pointed out,

the difficulty is, what ought to be looked upon as a tacit consent, and how far it binds, i.e., how far any one shall be looked on to have consented, and thereby submitted to any government, where he has made no expression of it at all. And to this I say, that every man that hath any possession or enjoyment of any part of the dominions of any government doth hereby give his tacit consent, and is as far forth obliged to obedience to the laws of that government. (1937, 78)

The main problem with the implicit consent as a vindication of the state is that this strategy is singularly unpersuasive. It is very seldom the case in philosophy that one can point to an argument which is not only unsound but logically invalid to boot. Yet this is exactly the case with the tacit consent argument since it presupposes the truth of the statement, the truth of which is yet to be proved by this very argument. For one should note that whether it is the case that “every man that hath any possession ... of the dominions of any government doth hereby give his tacit consent, and is as far forth obliged

to obedience to the laws” depends on the question whether the government has a right to be on this territory in the first place. But this is exactly what is to be proved by the implicit consent argument. So, this argument cannot assume that the government has such a right without begging the question.

To see this point more clearly consider the following thought experiment. Suppose that you live within territory A in which racketeer A operates. Racketeer A makes you this offer: pay me one thousand dollars per month and I will protect you against other racketeers and muggers. However, if you do not pay me, I will kill you. You do the math and you see that from your subjective point of view it is a smaller loss to pay racketeer A than to move to territory B where racketeer B operates or to be killed by racketeer A. So, you make a choice to stay in territory A. Obviously, your choice is an involuntary choice that is made under the threat to your life, liberty and property and therefore does not have any juridical effect, particularly it does not extinguish racketeer A’s duty not to threaten you with death and not to kill you. Racketeer A’s offer is a typical case of extortion and your staying in the territory of his operations does not change this legal description for one iota. Neither anything is changed by your decision to move to territory B. Again, it is a matter of course that if you make such a decision, you also make it under racketeer A’s threat to your life, liberty and property and it cannot have any legal effect, particularly it cannot constitute a valid consent to be mugged by racketeer B. Only if we assume that racketeer A is not really a racketeer and that he has a right to make you the offer in question we can conclude that you genuinely consented to anything because only then would your choice be voluntary, your rights would not be at risk, you would not be coerced or illicitly threatened. If you agree, on the other hand, to give away your money when confronted with the highwayman’s alternative “Your money or your life”, the conveyance you make does not amount to a consent or is a valid transfer of the property title. So, the implicit consent argument clearly begs the question and is therefore an invalid attempt to legitimate the state.

What about the idea that the state can be financed in a way other than through taxation? Probably the best known instances of this way of arguing in favor of the state are Rand’s alternative schemes of collecting money by the government: state lotteries and contract enforcement fees. With such schemes, “in a fully free society, taxation—or, to be exact, payment for governmental services—would be *voluntary*” (1964, 116).

The first thing that has to be said about such schemes is that what they can achieve is at most to eliminate one of the two essential ways in which

the state violates individual rights. They are structurally unable to deal with the compulsory monopoly aspect of the state. For instance, even if we assume for the sake of discussion that the government can raise some money from a government-run lottery, what does it change as far as the monopolistic status of the state is concerned? Would private security agencies be allowed by the state to run similar lotteries—or to finance their operation in other voluntary ways—and to compete with the state within a given territory? Of course not, Randians or other minarchists would not allow this. So, even if we eliminate taxation, the state will still infringe on individual rights by prohibiting free exchanges between competitive security agencies and their potential customers.

Besides this, state lotteries are especially problematic because one can be almost sure that they would be outcompeted by the private entrepreneurs running their own lotteries. As pointed out by Thomas, the idea of state lotteries

has been roundly criticized, since absent an enforced monopoly, the government lottery could not expect to earn more than a common market rate of return; the government in that case might as well run a drug store or go into any other line of business to earn a profit. And there is no reason to think that government officials, whose expertise presumably lies close to non-business tasks like law enforcement, diplomacy, and war-making, would be able to succeed in a competitive line of business. (2008, 40–41)

Even if one wanted to argue that such lotteries could outcompete private enterprises because people would be willing to support them as a means to support the desired limited government, one would basically revert to the aforementioned problem of the favorable public opinion. Nothing would be therefore achieved by such an argument.

The idea of a contract enforcement fee, on the other hand, suffers—in addition to the above-mentioned maladies besetting government lotteries—from even more severe philosophical ailment. Rand thought that the government could “protect—i.e. recognize as legally valid and enforceable—only those contracts which had been insured by the payment, to the government, of a premium in the amount of a legally fixed percentage of the sums involved in the contractual transaction” (1964, 116). Now, it is important to note that individuals have natural rights amongst which there is a right to contract out their entitlements and to acquire new ones via voluntary transfer. If the state enforced only contracts accompanied by the enforcement fee, it would also have to enforce the distribution of rights not accompanied by

such a fee that had existed before the contract. The state would therefore have to use force against individuals who exercised their natural rights to engage in free exchange unless they paid the contract enforcement fee. To be as clear as possible, imagine person A contracting out her valid property title to her real estate to person B in exchange for B's property title to a sum of money. This is a perfectly just and voluntary exchange of property titles between willing individuals exercising their natural rights. In effect, B acquires a valid property title to the real estate and A acquires a valid property title to the money. Imagine, however, that they do not pay the enforcement fee from this transaction and that B sues A before the state court for the money. The court, of course, cannot recognize the contract that took place between A and B because there was no enforcement fee paid and has to reverse the exchange and force A to give the money back to B (and supposedly force B to give the real estate back to A). Since A did not initiate physical force against B nor against the state (contract enforcement fees are optional)—she basically exercised her natural right to voluntarily exchange valid entitlements—the use of force by the state against A in order to reverse the contract is nothing else than an initiation of physical force, i.e. an aggression, and therefore amounts to violation of A's individual rights. Hence, contract enforcement fees do not allow minarchists to finance the state in a voluntary or rights-respecting way.

This in turn resembles one of the main problems faced by Nozick in his argument for the minimal state. Individuals have natural rights. Whether a given person has a specific right, particularly a right of self-defense, is a question of fact within the remit of the pertinent principles of justice. You either have a right to the house you live in or you do not have this right. This is an objective state of affairs, an ontological issue within a given theory of justice. Now, the question of how to determine whether you have this right is an epistemological issue; it is a question of knowledge or, even more specifically, of a procedure by which such knowledge can and should be obtained. If, as a matter of fact, within a given set of justice principles you have a right to the house you live in and some security agency denies you recognition of this right because the procedure of proving that that you apply is unreliable, this security agency violates your right to the house. As Barnett pointed out in his rejoinder to Nozick's justification of the state:

The crucial issue is that since rights are ontologically grounded, that is grounded in the objective situation, any subjective mistake we make and enforce is a violation of

the individual's rights whether or not a reliable procedure was employed. The actual rights of the parties, then, are unaffected by the *type* of procedure, whether reliable or unreliable. They are only affected by the *outcome* of the procedure in that enforcement of an incorrect judgment violates the actual rights of the parties however reliable the procedure might be. The point is that you have a right of self-defense if you are innocent but not if you are guilty. Only if a procedure finds an innocent man guilty and someone enforces that finding has anyone's rights been violated. You have the right to defend yourself against *all* procedures if you are innocent, against *no* procedures if you are guilty. The reliability of the procedures is irrelevant. (BARNETT 1977, 17)

## 5. A WORD OF CONCESSION

As pointed out by an anonymous reviewer, the present paper does not engage in any independent argument for the impermissibility of wealth redistribution, the premise shared by anarchists and minarchists alike. To remedy this shortcoming, we should at least concede that what most certainly deserves a mention is the fact that there are many philosophers who do not share the premise that taxation necessarily constitutes theft.

One type of objections against property rights as envisaged by both anarchists and minarchists is the conventionalist view to the effect that there is nothing natural about property rights at all but, instead, they are defined by a given legal system. Some of the most outspoken proponents of this are Murphy and Nagel (2002). Their considerations are based on the premise that the assessment of taxes ultimately depends on which view of property rights we assume. And when coupled with these authors' claim that "there is no pre-institutional conception of what is 'my' property" (44), there emerges at least a possibility of making a case for various tax regimes. Pretty much the same view is subscribed to by Holmes and Sunstein (1999). These authors provocatively argue that it is taxes that circumscribe people's liberty and not the other way round. To the best of our knowledge, the conventionalist approach to property was most recently revisited in BRYAN (2017).

Another very interesting point is made by Sunstein (1989) himself. This philosopher, in turn, casts doubt on a libertarian-spirited presumptive case for voluntary transactions, which allegedly satisfy preferences of the parties thereto. Sunstein powerfully argues that these (first-order) preferences as they stand are also a function of a political regime and some of these preferences are such that their respective holders would not like to have them in

the first place. But if so, the question is open whether we should welcome the unbridled free market which shapes specific preferences (with some of them being undesirable) even though it might be conceded that it is the free market itself that satisfies them most efficiently. And hence it might be argued that at least some governmental interventions (necessarily tax-funded) are not inherently aggressive but rather well-justified.

On the other hand, HUEMER (2017) is a proper response (whether conclusive or not) to some of the above criticisms as he does not simply take the libertarian uncompromising ban on wealth redistribution for granted but instead tries to argue for it. By introducing his thought experiment in which a hermit living outside any government's jurisdiction is dispossessed of the food he happened to have, Huemer prompts the intuition that we can still make perfect sense of theft even in the absence of conventionally settled law. Still, however fascinating and important the rebuttal of the conventionalist position might be, we do not press this issue within the present paper, which is supposed to address the anarchism–minarchism debate only. However, this is not to deny that probing the conventionalist view of property merits a separate paper.

## 6. CONCLUSIONS

We have argued that there is essentially only one ultimate anarcho-capitalist reason against the state—namely that individuals have rights and the state necessarily violates these rights by financing its operations through taxation and arrogating to itself a compulsory monopoly in the security production<sup>2</sup> within a given territory. We showed that there are only three possible answers to this anarcho-capitalist argument: to argue that (1) individuals do not have rights or that (2) although the state violates these rights it is nonetheless justified for some other reason or, finally, that (3) the state does not necessarily violate these rights. Setting aside the first possibility as clearly unavailable to the minarchists, we demonstrated that neither of the latter two answers holds water. The minarchist position seems to be inconsistent and unpersuasive. Although one could argue for the state in a coherent way as evidenced by the history of political theory, one does not seem to be able to argue for the state coherently in a minarchist way. From this point of view minarchism presents itself as a singularly indecisive political doc-

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<sup>2</sup> On the production of security, see the classical essay by De Molinari (1849).

trine, 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. Whether or not the anarcho-capitalist position is a sound, intuitive and workable political doctrine, it can definitely serve as a coherence test for minarchism.

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THE ANARCHO-CAPITALIST CASE AGAINST THE STATE  
AS A CHALLENGE TO THE MINARCHIST LIBERTARIANS

S u m m a r y

The present paper formulates the principled anarcho-capitalist case against the state and investigates the possible minarchist replies thereto. It identifies three and only three logically available (general) ways of undermining the anarcho-capitalist case and argues that none of them works for minarchism (although they might work for other political philosophies) due to the premises from which this theory starts. The sketch of the analysis presented in the paper suggests that minarchist research program falls short of theoretical soundness or even of logical validity (albeit not necessarily of a political appeal).

**Keywords:** anarcho-capitalism; minarchism; libertarianism; property rights.

ANARCHOKAPITALISTYCZNA ARGUMENTACJA PRZECIWKO PAŃSTWU  
JAKO WYZWANIE DLA MINARCHISTYCZNYCH LIBERTARIAN

S t r e s z c z e n i e

Artykuł przedstawia fundamentalny anarchokapitalistyczny argument przeciw państwu i rozważa minarchistyczne odpowiedzi na tak sformułowaną krytykę tej instytucji. Identyfikuje trzy i tylko trzy logicznie możliwe sposoby podważenia anarchokapitalistycznej argumentacji, dowodząc, że w związku z przesłankami, z których wychodzi teoria minarchistyczna, żaden z tych sposobów nie jest jej dostępny (co nie oznacza, że nie jest on dostępny filozofiom politycznym wychodzącym z innych przesłanek). Zarys analizy przedstawiony w artykule sugeruje, iż minarchistyczny program badawczy jest nieprzekonujący teoretycznie, a nawet wątpliwy logicznie (pomimo swej możliwej atrakcyjności politycznej).

**Słowa kluczowe:** anarchokapitalizm; minarchizm; libertarianizm; prawa własności.

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