

Igor Wysocki


Nicolaus Copernicus University in Toruń

**BLACKMAIL, UNPRODUCTIVE EXCHANGES, FRAUD, AND
THE LIBERTARIAN THEORY OF VOLUNTARINESS** <https://doi.org/10.2478/ppsr-2024-0005>

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Author

Igor Wysocki is a doctoral student at the Interdisciplinary Doctoral School of Social Sciences (Academia Rerum Socialium), Nicolaus Copernicus University in Toruń. His main academic interests revolve around the philosophy of economics, political libertarianism, and Austrian economics.

 <https://orcid.org/0000-0002-4926-4010> igorwysocki82@wp.pl, wysocki@doktorant.umk.pl**Abstract**

The main purpose of this paper is to rationally reconstruct Nozick's account of unproductivity, especially *vis-à-vis* his characteristically libertarian, and hence uncompromising, ban on fraud. We posit that, when Nozick's theory is interpreted charitably, it does not yield to contradictory prescriptions concerning permissibility. That is, there does not have to be any inconsistency in the Nozickian ban on certain exchanges, with the ban tracking two properties of the said exchanges; that is, either (1) their unproductivity or (2) their fraudulence. When analyzing economic exchanges, our interest is focused on both productive and unproductive *blackmail* exchanges. However, we suggest that Nozick's banning exchanges along the lines of their unproductivity tallies poorly with his avowed libertarianism since his position predicts prohibiting unproductive and yet non-fraudulent exchanges. Hence, and we suggest resolving the said tension in a principled libertarian (deontological) manner; that is, by banning *fraudulent exchanges* and allowing *non-fraudulent* ones, *ceteris paribus*, while submitting that the properties of exchanges such that *being productive* or *being unproductive* are morally inert.

Keywords

blackmail, fraud, Nozick, unproductive exchanges

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Introduction

Nozick's (1974: 84–87) theory of (un)productive exchanges is quite naturally of interest to the way we should handle blackmail proposals. For example, Gorr (1977: 187) speculates that the alleged unproductivity of blackmail exchanges might account for our intuition to the effect that this sort of exchanges should be banned. Indeed, Nozick (1974: 84–87) himself took the property of unproductivity of an exchange to be a sufficient reason for pro-

hibiting it.¹ Indeed, it is plausible to maintain that there is at least a *prima facie* reason to ban unproductive exchanges.² After all, roughly speaking, if *A* pays *B* unproductively, the exchange seems to constitute a mere money transfer. In a sense which is going to be elaborated on shortly, *A* then pays *B* for no service whatsoever, for *A* would be – among other things – better off if *B* had nothing to do with him in the first place. Such facts do indeed count in favour of prohibiting unproductive exchanges. Hence, there seems to be a good *economic* reason to disallow unproductive activities. Since they resemble or are identical with mere money transfers, there is a good reason to think that unproductive exchanges

¹ To prove that unproductivity of exchanges was taken by Nozick to be a *sufficient* rather than only a necessary condition for prohibiting them, let us quote no less than Mack (1981: 186–187): “Yet, we have noted that the unproductivity justification for prohibitions is distinct and separate from the rights violation justification for prohibitions.” It seems crystal clear that Nozick takes unproductivity as sufficing for banning exchanges exhibiting this feature. Elsewhere, says Mack (1981: 176): “Thus it is a startling and insufficiently noticed feature of Nozick’s position that there are two quite separate strands of justifications for prohibition. One, of course, ties the prohibition of an act to its right violating character. The other ties the prohibition of an act to the unproductivity of abstention from that act.” Then again, it seems that unproductivity is considered a sufficient condition for banning an exchange, even granting that such an exchange does not violate rights. Mack (1981: 176) actually submits that the Nozickian ban on blackmail tracks precisely its unproductivity itself. Given all this, we seem to be warranted in taking the Nozickian unproductivity as a sufficient reason — according to this author — for banning such exchanges.

² At this point, an incisive anonymous referee charges that he “would agree that it is a *prima facie* reason only under the utilitarian framework in ethics. It is hard to see why it should be the case in deontology as well since deontological reasoning is rather silence about productivity.” Indeed, why should deontologists bother? A modest response at this point might be that productivity of exchanges might still matter to deontologists as long as rights are respected. To wit, deontologists might as well find an outcome with productive rather than unproductive exchanges more desirable, *ceteris paribus*. What they would not accept is only compromising rights in the pursuit of utility. Still, this is a far cry from saying that social welfare is morally irrelevant to deontologists, for rights can simply be lexically prior to considerations related to social utility, the very point standing behind Nozick’s side constraints. A more daring response we can venture is that unproductive exchanges might be a decent proxy for *involuntary* ones. After all, were the buyer to know that he is “served unproductively”, he would not buy a commodity or a service. So, it is only in the *ex ante* sense that the buyer benefits from the said exchange. It is only her false belief (*i.e.*, that she is indeed served productively) that makes her conclude an exchange which only *ex post* proves to be unproductive. Hence, we submit that it is *ignorance* that leads economic actors to strike what turns out to be ultimately an unproductive exchange. And, why shouldn’t this ignorance render the said exchange *involuntary* and precisely *via* the fact that the exchange was made in ignorance of some material facts? And further, since such exchanges would be made *involuntarily*, principled deontology would have no objection to banning them. It is worth noting, however, that unproductivity of exchanges seems to imply involuntariness thereof but not the other way round and hence the relation of equivalence does not hold between the two. The reason is that there is another defeater of voluntariness and that is compulsion or coercion, if you will. In other words, it is *either* compulsion *or* mistake that renders an exchange involuntary. Hence, the actor’s mistake implies that her action was involuntary. And yet, the actor’s involuntary action does not entail that she acted mistakenly, as she might have acted under coercion. Finally, it is worth noting that mistake defeats a voluntary character of the actor’s choice via the so-called *material facts*, with material facts being such that if they had been known, the actor would have made a different choice instead. (see *e.g.*, Child (1994); Ferguson (2018)) To illustrate the point, if a person is deceived into believing that the car she wants to buy is a reliable used car, whereas it is in fact a lemon, the person would strike a deal *involuntarily*. That is to say, were the person to know the car is a lemon, she would not strike a deal in the first place or would strike it on different conditions.

decrease social utility.³ After all, mere money transfers, something that apparently leaves the social utility intact, come at a cost, even if it is an opportunity cost.⁴

Leaving the Nozickian theory of (un)productivity aside, we cannot but note that at the same time Nozick subscribes to banning fraud. Indeed, prohibiting fraudulent exchanges is what Nozick claims his minimal state should be committed to. Says our author: “Our main conclusions about the state are that a minimal state, limited to the narrow functions of protection against force, theft, fraud, enforcement of contracts, and so on, is justified.” (Nozick, 1974: ix). Hence, we are most warranted in interpreting Nozick as regarding a fraudulent character of an exchange as a sufficient reason to prohibit it. However, as we are about to demonstrate, this two-pronged standard for banning certain exchanges does not necessarily enmesh Nozick in any deontic contradiction. For, given the fact that both fraud and unproductivity individually constitute a sufficient reason to prohibit certain exchanges, it does not follow that productivity and non-fraudulence individually imply permissibility of the exchanges exhibiting either property. And yet, we submit that there is indeed something wanting in the Nozickian ban on unproductive exchanges, given his avowed uncompromising deontological libertarianism. For, there is something suspicious about prohibiting unproductive and yet non-fraudulent exchanges by libertarian lights.

The agenda of the present paper is the following. In section 2, upon presenting the Nozickian theory of (un)productivity, we try to solidify it, while answering some objections levelled at it. In section 3, in turn, we venture a foray into the territory of frauds. We distinguish between *actus reus* and *mens rea* of fraud and, most critically, establish that it is the blackmailer’s intention *at the time* of making the blackmail proposal that makes a difference to its character; that is, whether it counts as fraudulent or non-fraudulent. In section 4, we demonstrate that the categories of (un)productive and (non-)fraudulent exchanges are logically distinct, which completes our point of showing that Nozick’s account of unproductivity is morally inert and should thus give way to considerations of whether a given exchange is fraudulent or not. Section 5 presents the ramifications of our findings to the libertarian theory of voluntariness. Section 6 concludes.⁵

³ At that point, it would be advisable to note that from the fact that certain reasons are *economic* in nature, it does not automatically follow that economics is normative *per se*. For example, there is nothing prescriptive to *the fact* that a certain exchange frustrates one party’s preferences. However, this *fact* might constitute a reason to ban such an exchange. Similarly, the statement that a certain runner is the fastest is purely descriptive and still the fact referred to by the statement might have *normative importance*. To wit, this fact might serve as a basis for, say, commending, rewarding, or praising the runner. By the same token, it clearly takes a utilitarian ethic to recognize preference satisfaction, pleasure, or productivity of exchanges, or what have you, as morally (and thus normatively) important. Or more generally, as an anonymous referee correctly observed, it is no less than a *normative theory* that can serve to classify some natural facts as morally important and others as morally indifferent.

⁴ Illuminatingly, Becker (1968) points out that theft *does not merely* redistribute resources, as criminals, after all, spend money on weapons as well as use their (scarce) time to plan how to carry out their crimes. Thus, theft is on a par with what is now trendily called “rent-seeking”. For the elaboration on the concept of rent-seeking, see: *e.g.*, Friedman (1990).

⁵ As an aside, it would be worth noting at this point what the paper contributes and what is the current state of research on both fraud and unproductivity. The problems of deriving the characteristically libertarian ban on fraud from libertarian first principles were illuminated by *e.g.*, Child (1994), Ferguson (2008). Steiner (2019), on the other hand, suggests a solution and also ventures some economic analysis of fraud. Nozick’s account of unproductivity was, in turn, tackled by Gorr (1977), and Mack (1981). However, to the best of our knowledge, unproductivity has not yet been studied *vis-à-vis* frauds and this essay aspires to fill this gap.

Nozick's account of unproductivity

As already mentioned, Nozick takes the unproductivity of an exchange to be a morally relevant feature thereof. After all, it is on the unproductivity of an exchange that its being banned depends.⁶ But what is it for an exchange to be unproductive or productive for that matter? Nozick (1974: 84–87) captures the idea of unproductivity in terms of two conditions either of which is *necessary* and neither of which is *sufficient* by itself. However, the said two conditions are *jointly sufficient* to render a given exchange unproductive. Nozick (1974: 84) introduces his first condition of unproductivity in the following words:

If I buy a good or service from you, I benefit from your activity; I am better off due to it, better off than if your activity wasn't done or you didn't exist at all... [I]f I pay you for not harming me, I gain nothing from you that I wouldn't possess if either you didn't exist at all or existed without having anything to do with me...[T]his provides a necessary condition for an unproductive activity, but not a sufficient condition.⁷

Now, the question arises whether all (or only some) blackmail proposals satisfy the drop-dead condition. After all, what we are after in the present essay is to rationally reconstruct the Nozickian account of unproductivity *vis-à-vis* his unconditional ban on fraud. Hence, it is crucial to establish which blackmail exchanges (or proposals) count as productive and which do not. And to do so, we need to first see which blackmail proposals satisfy the drop-dead condition. But then again, to satisfactorily answer the above question, we need to be crystal-clear on which two worlds we are supposed to compare. Most naturally, we suggest that the relevant comparison is between the actual world (W) wherein the blackmailer's proposal takes place and a merely possible world (W*) in which the blackmailer drops dead, drops out of the scene, or simply has nothing to do with the blackmailee at all, *ceteris paribus*. Consider a paradigm case of informational blackmail. A comes to B and says:

Blackmail

- (1) If you pay me \$10.000, I will keep my mouth shut.
- (2) If you do not pay me \$10.000, I will reveal your embarrassing secret to your friends.

The blackmailer's proposal encompassing the two conditionals stated above depicts the situation in the actual world (W). In a merely possible world (W*), the blackmailer drops dead or has nothing to do with the blackmailee, *everything else being equal*. Since by assumption everything else is equal in W* as compared to W but for the blackmailer's existence in W, the blackmailee is clearly better off (or at least no worse off)⁸ in W*

⁶ As we shall explain later, given that the exchange is already non-fraudulent, it is unproductivity that does all the subsequent moral work. That is to say, once the exchange is non-fraudulent, its being at the same time unproductive suffices, according to Nozick, for prohibiting it.

⁷ Incidentally, this (*i.e.*, first) Nozickian condition of unproductivity was picturesquely dubbed the *drop-dead* condition by Rothbard ([1982] 2002: 245). Henceforth, we are going to refer to the said Nozickian condition as the "drop-dead condition", thus following Rothbard's preferred (and quite catchy) wording.

⁸ This is our first slight modification of Nozick's theory. We posit that being *no worse off* due to a certain activity (*i.e.*, a productive one) is a better criterion of productivity than Nozick's being "better off due to it". After all, plain market offers are often such that we are basically indifferent to them; that is, in cases wherein we do not act on them (*i.e.*, we decide not to buy what we are offered). If so, we are no better off due to such offers but merely *no worse off*. Certainly, such an adjusted criterion correctly captures

than in W . For, in W^* , the blackmailee does not face the dilemma at all. After all, quite trivially, no blackmailer, no blackmail proposal. Hence, the blackmailee preserves both money *and* his reputation.⁹ Moreover, it seems to us that literally any blackmail proposal is such that its being issued renders its recipient worse off than he would otherwise (*i.e.*, in the absence of the blackmailer and then, trivially, in the absence of the proposal) be. In other words, any blackmail proposal is such that its recipient may preserve the *status quo* only at some cost, whereas in the absence of the blackmail proposal, the *status quo* is preserved for free, everything else being equal. Consider yet one more example. A (a competitive businessman) comes to B saying: “if you do not pay me \$1000, I am going to take over all your customers”, a clear example of blackmail. Now, the only way for B to retain all his customers is by paying A . Hence, if A dropped dead (together with his proposal), B would enjoy his customer base with no additional cost incurred. Therefore, it appears as though *all* blackmail exchanges (and proposals) satisfy the Nozickian drop-dead condition. Or, to put it in more precise terms, the blackmailee would *always* be no worse off (if not better off) if the blackmailer had nothing to do with him or dropped out of the scene entirely, *everything else being equal*. Still, as we remember, the drop-dead condition is only the first necessary condition of unproductivity. For an exchange to count as unproductive another condition must be met too. Let’s label Nozick’s second condition of unproductivity the *delegalization condition*.

According to Nozick (1974: 85), the *delegalization condition* of unproductivity is met when the exchange has such a property that “it merely gives you relief from something that would not threaten if not for the possibility of an exchange to get relief from it.” This very condition was, in turn, captured by Gorr (1977: 188) in the following manner: “Y’s

a pre-theoretical intuition to the effect that *all* market offers or proposals (including the ones nudging us insufficiently to buy the products advertised) are productive. For the sake of discussion, we will also disregard a possibility that exchanges (proposals) are not exhaustively divided into productive and unproductive ones and that, thus, there is a third category capturing “offers” not acted upon, with such offers being neither productive nor unproductive.

⁹ At this point, the inquisitive critic might ask why the relevant comparison should be made against a merely possible world (W^*) which differs from the actual world *only* in the absence of the proposer. To this we can venture the following response. Remember, we are trying here not only to present Nozick’s account of productivity but also to improve upon it. An improved version will be clearly such that solves some additional problem, while inheriting the virtues of the former version. We submit that our comparison to W^* (the world sharing everything with the actual world but the existence of the proposer) solves a problem Nozick himself hinted at. That is, Nozick (1974: 85) entertains a thought experiment with which the drop-dead condition apparently cannot deal. Our author invites us to imagine a situation in which instead of the original actual blackmailer (without whose presence the victim “would be as well off if the blackmailer did not exist at all”) there would be another one who might “have stumbled on the unique piece of information and asked a higher price for silence”. Nozick then seems to conclude that the blackmailee is better off “because his actual blackmailer exists”. This, in turn, would predict that an exchange with the actual blackmailer is productive since the drop-condition is not met. After all, since the drop-dead condition is a *necessary* condition of unproductivity, then its non-satisfaction constitutes a *sufficient* condition for productivity. However, quite intuitively, the exchange with the actual blackmailer makes the blackmailee worse off and if so, the relevant baseline cannot contain a more demanding blackmailer. Rather, and quite non-arbitrarily, the comparison should be made to the world in which the actual blackmailer drops dead, *everything else being equal*. Or, in other words, the only difference between W and W^* is that in W^* the blackmailer drops out of the scene with nothing filling in the space thus left. But then again, we must concede that the problem of *the* relevant baseline is one of the perennial problems in philosophy of economics as well as in moral philosophy. On different baselines for analyzing threats and offers, see: *e.g.*, Feinberg (1989); Steiner (1994); Altman (1996).

part of the exchange would consist entirely in abstaining from some deed, a deed he has no desire to perform; he threatens to perform it, however, solely in order to sell X his abstention.” Now, the reason we decided to label this condition of unproductivity *delegalization condition* becomes apparent when we consult Nozick (1975: 85) yet again. Says our author:

That such exchanges are not productive ones, and do not benefit each party, is shown by the fact that if they were impossibly or forceably prohibited so that everybody knew they couldn't be done, one of the parties to the potential exchange would be no worse off. A strange kind of productive exchange it would be whose forbidding leaves one party no worse off!

So now, we are invited to compare two worlds: one actual (W) and the other merely possible (W^*). The former contains the proposal, whereas in the latter this sort of proposal is *delegalized*¹⁰, everything else being equal. If it turns out that the proposee is no worse off in W^* than he is in W , the proposal in question meets the delegalization condition.

Let us apply those general considerations to the blackmail proposal cited above. Remember, the blackmail proposal consisted of the following two conditionals.

- (1) If you pay me \$10.000, I will keep my mouth shut.
- (2) If you do not pay me \$10.000, I will reveal your embarrassing secret to your friends.

The crucial question is when would the above proposal meet the delegalization condition. The answer seems straightforward. If the conditional (2) is a mere bluff; viz. the blackmailer is not intent upon revealing the blackmailee's embarrassing secret to his friends in case of the latter's non-compliance, then the blackmailee, once he has paid, “will be “served” unproductively.” (Nozick, 1974: 85). After all, by assumption, the blackmailer has no desire to reveal the blackmailee's secret to the latter's friends. Or, more or less in Gorr's words, the blackmailer threatens to reveal the blackmailee's secret “solely in order to sell [him] his abstention.” Our conclusion might also be appreciated better once we put our point in terms of possible worlds. Consider the actual world (W) wherein the blackmailer issues his proposal (two conditionals above) but he does not intend to reveal the secret or he intends *not to* reveal the secret if the blackmailee (B) fails to comply. In a merely possible world (W^*), the blackmailer (A) is legally prevented from making the above proposal. However, since W and W^* share all the states of affairs but the proposal (with the proposal being present in W and absent in W^*), A in W^* does not intend to reveal the secret or intends not to reveal it. But if so, B in W^* does not face any threat forthcoming from A . By contrast, if B faces A 's bluffing blackmail proposal in W , B might well decide to pay. Clearly then, under the circumstances envisaged, B is no worse off in W^* , which is precisely why the proposal (exchange) in question would count as unproductive, given the fact that *all* blackmail proposals meet the drop-dead condition.

Now, it is worth noting that it is the satisfaction of the Nozickian delegalization condition that makes all the difference to unproductivity of blackmail proposals. After all, as already settled, *all* blackmail proposals satisfy the drop-dead condition. That is to say, they are all *prima facie* unproductive. It is then the *delegalization condition* that decides whether a given blackmail proposal (or exchange) is *overall* productive or not. Specifically,

¹⁰ Note that here the proposer does not drop dead. Rather, he exists but is only legally unable to make a proposal.

if a blackmail proposal (or exchange) meets the delegalization condition, it is unproductive, whereas if it does not, it is productive.

There is one loose end to tie up at this point. That is, in contrast to the above-considered unproductive blackmail proposal (exchange), which subset of blackmail proposals would prove to be *overall* productive? In other words, the question is: which blackmail proposals would fail to satisfy the delegalization condition? Consider our above-stated blackmail proposal yet again. But now, let the blackmailer's intention vary in the conditional (2). Remember, (2) was just a bluff. Turn (2) into a sincere promise, or a *genuine* threat if you will, and we end up with

- (2') If you do not pay me \$10,000, I will reveal your embarrassing secret to your friends

Now, since (2') is by assumption a genuine threat, this *iso facto* means that the blackmailer does intend to reveal the blackmailee's secret to his friends in case the latter does not succumb to the former's threat. But then, if blackmail proposals were to be delegalized in W^* , the blackmailee would be denied an option of buying the blackmailer off. And since the blackmailer is assumed to intend to reveal the said secret if not paid, he might simply reveal it in W^* .¹¹ If so, then the blackmailee might well be worse off in W^* than in the actual world (W) wherein he receives the blackmail proposal. Or to put it another way, the blackmailee could be worse off if, under the circumstances considered, the blackmail proposals were to be banned, everything else being equal. And this is precisely a situation in which the delegalization condition seems not to be satisfied. Therefore, if, upon receiving the blackmail proposal in W , the blackmailee pays the blackmailer under consideration, the former does so *productively*, for otherwise his secret might as well be revealed.

Concluding, all blackmail proposals satisfy the Nozickian drop-dead condition. However, this by itself does not render all blackmail proposals unproductive. It is the satisfaction or non-satisfaction of the delegalization condition that determines whether a given blackmail proposal (exchange) is overall unproductive or productive, respectively. Having thus presented Nozick's theory of unproductivity, it is time to elucidate what makes exchanges fraudulent or non-fraudulent.

What makes an exchange fraudulent

In this section, we are going to elucidate what it is exactly that makes a difference to whether an exchange counts as fraudulent or not. In particular, we are going to focus on the question of what makes a *blackmail* exchange fraudulent. However, before we delve

¹¹ As the anonymous referee brilliantly notes, there is a problem of calling this person in W^* a blackmailer in the first place as "blackmail is out of the picture in W^* ". Generally, the reviewer is rightly concerned about whether one can legitimately vary the "blackmailer's" intention across these two worlds, holding everything else as equal. We, however, believe that the problem might well be slightly overstated, as apparently there is nothing incoherent about the very person (call it blackmailer or whatever) issuing a genuine threat in W , the threat he is keen on executing if not paid, and not issuing it in W^* and thus simply intending to reveal the secret, period. Our point is simply that the blackmailee (or whatever one may decide to call it) is clearly worse off in W^* than in W since it is only in the latter that the blackmailee is given the option of buying the blackmailer's silence. Indeed, in W^* the blackmailee is not even given a blackmail proposal as the blackmail is by assumption delegalized in this world. Or, as the reviewer correctly observes, if anything, it would be the blackmailee that would have to come to the blackmailer "to offer the money for keeping mouth shut."

into the character (fraudulent or not) of blackmail proposals, we would be well-advised to consider what constitutes *frauds* as such.

The Model Penal Code (Official Draft, 1962) defines theft by deception (which is, basically, a fraud) in the following terms:

A person is guilty of theft if he purposely obtains property of another by deception. A person deceives if he purposely:

- (1) creates or reinforces a false impression, including false impressions as to law, value, intention, or other state of mind; but deception as to a person's intention to perform a promise shall not be inferred from the fact alone that he did not subsequently perform the promise; or
- (2) prevents another from acquiring information which would affect his judgement of a transaction; or
- (3) fails to correct a false impression which the deceiver previously created or reinforced, or which the deceiver knows to be influencing another to whom he stands in a fiduciary or confidential relationship; or
- (4) fails to disclose a known lien, adverse claim, or other legal impediment to the enjoyment of property which he transfers or encumbers in consideration for the property obtained, whether such impediment is or is not valid, or is or is not a matter of official record. (Kadish, Schulhofer, Steiker 2007: 1124)

For our purposes, though, it is enough to focus on the deceiver's false representations as to his *intentions*, something captured under (1) in the above-quoted excerpt from the Model Penal Code.¹² After all, as we are about to see, it is the blackmailer's *intention* to

¹² At this point, an anonymous referee delivers an insightful charge in the form of *reductio ad absurdum*. The referee submits "that mere misrepresentation of one's intentions cannot be sufficient to render an exchange fraudulent." His or her argument runs as follows: on our account fraudulent blackmail exchanges should be banned as they involve the fraudster's misrepresenting his or her intentions. However, ordinary market exchanges resulting from free bargaining also involve misrepresentation of the two parties' intentions (more specifically, misrepresentation of the parties' value scales or preferences for that matter). Hence, my position predicts that such market exchanges (involving free bargaining) should also be banned. But this is absurd. And apparently so is my theory, which concludes this piece of *modus tollens* reasoning. Therefore, the referee rightly requires me to point to a relevant difference between fraudulent blackmail exchanges and plain market transactions. What I can offer are two responses. First, free negotiations always presuppose some *consumer surplus*. Suppose person *A* tries to sell *B* a vinyl. Suppose further that *A* would sell it for no less than \$20 and *B* would buy for no more than \$30, which yields the following zone of possible agreement: <20–30> in dollars. That is, consumer surplus (in utility) is a function of \$10. Now, it is worth noting that the said consumer surplus might be distributed differently between *A* and *B*. The point is that how the consumer surplus is distributed crucially depends on how good at deception each party to a transaction is. So, the crux of my rejoinder is that, if anything, all market transactions involve the distribution of a consumer surplus and how the surplus is distributed is a function of how skilful at deception each party is, deception in free negotiations *does not contrast with anything*, quite unlike in blackmail exchanges. After all, there are blackmail exchanges involving no deception whatsoever. And we posit that this is where a relevant difference between blackmail and free negotiations lies. However, this rejoinder, as spotted by the referee, might still be thought of as merely restating the original problem. After all, it might be argued that since *all* market transactions involve *some* misrepresentation of the intentions of the parties thereto, all such transactions are fraudulent. However, and this probably where such allegedly innocuous market transactions relevantly differ from blackmail exchanges involving deceit. Deception on the part of one freely negotiating party is always assumed by the other and vice versa. This deception hardly makes any difference at all. The parties are willing to exchange *regardless* of the way the consumer surplus is going to be distributed due to their respective skills in deceiving. To conclude this thread, what might of help at this point is a certain legal case involving one party's misrepresenting their intentions and still obtaining a valid consent. The case in question is *Desnick v. American Broadcasting Companies, Inc.*, wherein the Defendant dispatched their people equipped with hidden cameras to the Plaintiff (Dr. Desnick, being the owner of Desnick Eye Center). As it happened, the people with hidden cameras posed as regular customers, whereas their true intention was to prepare tape of Desnick's medical practice in order to subsequently air them on the television programme. Being under a false impression,

execute or not to execute his threat that accounts for its non-fraudulent or fraudulent character, respectively.

Let us recall *Blackmail* and the critical conditional (2), the threat element of the entire proposal.

- (2) If you do not pay me \$10.000, I will reveal your embarrassing secret to your friends.

As it stands, (2) as a mere locutionary act *underdetermines* whether it is a bluff or a sincere threat. If (2) is read as a genuine threat, this *ipso facto* means that the blackmailer is *committed* to executing it in case the blackmailee does not succumb thereto. Or, to put it differently, the blackmailer *intends* to carry out his threat in case of the blackmailee's non-compliance.

Now, following the notation employed above, let us label a genuine threat as (2'). Remember, (2') is a sincere threat constituted by the following conditional: "If you do not pay me \$10.000, I will reveal your embarrassing secret to your friends." In turn, let us label the corresponding bluff (2''). That is to say, if the conditional "If you do not pay me \$10.000, I will reveal your embarrassing secret to your friends" is asserted insincerely, we are going to label this disingenuous locution (2''). Now the question arises: how does the difference between (2') and (2'') translate into the difference between a non-fraudulent and fraudulent exchange, everything else being equal? Recall that a "theft by deception" (which is essentially a fraud) obtains when "a person purposely obtains property of another by deception" with deception "including false representations as to...intention or other state of mind."

Consider (2''), a bluff. If the blackmailer indeed misrepresents his intention (*i.e.*, either he says he intends to reveal the secret, whereas he intends *not to do so* or he simply *does not intend to do so*) and thus causes the blackmailee to part with the money, this satisfies *actus reus* of fraud. Moreover, if this impermissible act is accompanied with contemporaneous *mens rea*, a complete crime of fraud obtains. In the case under analysis, *mens rea* of fraud, in turn, would consist in the blackmailer's *knowingly* engaging in the impermissible act that might cause the blackmailee to part with the money demanded.¹³ Or in plain

Desnick allowed them to enter and thus subsequently argued that his consent was obtained *via* the Defendant's people misrepresenting their respective intentions. After all, what they wanted was to tape the doctor rather than to have their eyes examined. Hence, Desnick claimed that trespass took place. However, the court's reasoning was that not all misrepresentations of intentions constitute frauds and so Desnick's consent was valid and therefore no trespass had occurred. Or, in other words, undercover videos did not amount to the interference with Desnick's ownership of his premises, as Desnick's centre was, after all, open to literally anybody wanting his services. Hence, perhaps, the same logic applies to freely bargaining parties. They are also willing to bargain with literally everybody, while trying to maximize their respective surplus. Therefore, it seems that the deceit concerning the negotiating parties' intentions (*i.e.*, value scales or preferences) would not vitiate the resulting consent once the transactions are concluded. The second response I can think of is to allude to the fact that *actus reus* of fraud involves causation as well. In the words of the above-cited Model Penal Code, a fraudster must — to meet the description of *actus reus* of fraud — "create or reinforce a false impression". Given this, again, quite unlike in blackmail, the deception involved in free negotiations seems to be too little of a cause. Yet, as noted above, note that the two parties to a transaction want to strike a deal anyway, sometimes even irrespective of how the surplus is distributed. It is not the case that a transacting party deceptively lures the other party to negotiate. After all, both parties do negotiate *freely*. But if so, then deception does little causal work — and again, quite unlike in blackmail, in which case the blackmailee would never decide to succumb to the blackmailer's threat were the former to know that the latter is merely bluffing. For an illuminating analysis of causation, esp. *vis-à-vis* moral responsibility, see *e.g.*, Moore (2009).

¹³ For both *actus reus* and means of fraud, see *Regina v. Thérroux*, [1993] 2 S.C.R. 5

English, if the blackmailer bluffs that he is going to tarnish the blackmailee's reputation in case of the latter's non-compliance and *believes* that this very prohibited act will cause the blackmailee to part with his money and if the blackmailee takes the bait and pays, then a crime of fraud obtains, with the exchange concluded as therefore being *fraudulent*.

Now, consider (2'), a genuine threat. In contradistinction to (2''), (2') is not a speech act involving any deception. When pronouncing (2') the blackmailer does contemporaneously intend to carry out his threat if the blackmailee decides not to meet his demand. And since (2') involves, critically, no deception pertaining to the blackmailer's intention, (2') cannot, trivially, deceitfully cause the blackmailee to part with his money. Hence, if the blackmailee pays upon hearing (2'), the exchange is thus non-fraudulent. Consequently, everything else being equal, the blackmailee under (2') would successfully waive his title to the money demanded.

Just to reiterate then, what makes an exchange fraudulent is the fact that the blackmailer *knowingly* engages in a prohibited act of deception which causes the recipient of the proposal to part with his money. Moreover, the intention to deprive another person of his property or the belief that the deceiver's act may lead to the said deprivation must be contemporaneous with the act of making the blackmail proposal. To put it another way, required *mens rea* must coincide in time with *actus reus*, the point which is going to turn out to be crucial in our forthcoming demonstration that fraudulent exchanges are not equivalent with unproductive ones. On the other hand, non-fraudulent blackmail exchanges would involve the blackmailer sincerely threatening to destroy the blackmailee's reputation. Absent deception, the proposal cannot, rather trivially, *deceitfully* cause the recipient to part with the title to his money. Hence, *actus reus* of fraud cannot logically obtain. Having demonstrated which blackmail proposals translate into frauds and which do not, it is time to investigate the relation between productive exchanges and non-fraudulent ones as well as between unproductive exchanges and fraudulent ones in order to show that there is nothing contradictory in the Nozickian two-pronged standard for banning exchanges; that is, along the lines of both (1) their unproductivity and (2) their fraudulent character.¹⁴

How (non-)fraudulent exchanges relate to (un)productive ones

The present section is to dispel the worry that the Nozickian two-pronged account of prohibiting exchanges may in the end prove inconsistent. To wit, the worry might be related to the possibility of the said account generating conflicting deontic verdicts. Still more specifically, it appears as though there is a genuine possibility of Nozick banning certain exchanges on the basis of their unproductivity alone, while allowing them on the basis of their non-fraudulence. And analogously, if fraudulent and yet productive exchanges are thinkable, perhaps these two facts generate two conflicting moral verdicts as well. That is, wouldn't Nozick prohibit the latter sort of exchanges due to their fraudulence, while at the same time permitting them due to their productivity? If so, then his two-pronged account would be caught in an insuperable logical predicament. However, we submit that Nozick's two-pronged account, when read charitably, suffers from no logical flaws whatsoever. To

¹⁴ However, it should be borne in mind that Nozick's insistence on prohibiting certain exchanges due to their unproductivity alone cannot be squared with his firm adherence to deontological (*i.e.*, side-constraints-styled) libertarianism, the point to which we are going to repair in the next section.

show this, we shall demonstrate the presumed logical distinctness of two properties of exchanges; that is (1) their productivity and (2) their fraudulence. To this effect, let us first demonstrate that (un)productivity of exchanges is indeed logically independent of their (non-)fraudulent nature and subsequently show that this very fact poses no problem for the Nozickian framework determining which exchanges are to be permitted and which prohibited.

Now, since we believe that productivity of an exchange is logically distinct from its fraudulent character, we end up with the following taxonomy:

- (1) Unproductive and simultaneously fraudulent exchanges
- (2) Productive and simultaneously non-fraudulent exchanges
- (3) Unproductive and simultaneously non-fraudulent exchanges
- (4) Productive and simultaneously fraudulent exchanges¹⁵

Now, the only categories that appear to threaten the coherence of Nozick's two-pronged account are (3) and (4). Hence, let us try to demonstrate that each of these categories is indeed non-empty. To this effect, we are going to construct two coherent scenarios exemplifying each of them, respectively. Hence, the first question arises: how are unproductive but simultaneously non-fraudulent exchanges possible? First, let us settle what would satisfy the non-fraudulence prong of an envisaged exchange. To illustrate this sort of exchange, let us repair to our *Blackmail*. As settled above, if the blackmailer at the moment of making a blackmail proposal did indeed intend to carry out his threat in case of the blackmailee's non-compliance, this sort of a proposal would clearly fall short of being fraudulent. That is to say, the blackmailee parting with his money would not be caused by the false representation of the blackmailer's intention to execute his threat. Quite the contrary, in the scenario under consideration, the blackmailee decides to part with his money as he *correctly* believes that the blackmailer *intends* to destroy his reputation once he fails to pay. Hence, it is the blackmailer's *genuine threat* (correctly recognized by his victim) that is *causally responsible* for the blackmailee's handing in the money. Therefore, in this situation, no *actus reus* of fraud obtains, for there is – by assumption – no hint of deception involved in the analyzed exchange. But how can such an exchange turn out to be unproductive? On the face of it, it seems that since the blackmailer, while making his proposal, *did intend* to execute his threat if the blackmailee were not to meet the demand, the concluded payment should count as productive. After all, it appears that if the blackmail proposals were to be delegalized, then the imagined blackmailer would gossip, everything else being equal.

However, it is when we recognize that there is a chasm between having an intention and acting on it that relevant counterexamples start coming to mind. To take the most mundane group of scenarios, suppose that the blackmailer is going to be unable (for what-

¹⁵ Interestingly, it should be noted that the distinction *ex ante/ex post* does not apply to unproductive exchanges. For, rather trivially, no exchange is unproductive in the *ex ante* sense. If it were, the economic agent would have no reason to make it. Or in other words, we can conclude whether a given exchange is unproductive from whether two Nozickian conditions are met *in fact* for no rational agents can believe that these conditions are met and still go for the exchange. To give but one example, no blackmailee would pay a bluffing blackmailer if the former knew that the latter is indeed a bluffer. That is why unproductive exchanges are impossible *ex ante*, while all exchanges are productive *ex ante*. It is for that reason that *ex ante* analysis, when applied to productivity and unproductivity, is uninteresting. It is only when we consider the *ex post* sense that we can arrive at our typology (with four distinct possibilities) since productivity combines with the logically independent feature of fraudulence.

ever reason) to execute his threat despite the cherished intention. For instance, the blackmailee's friends might be completely beyond the blackmailer's reach, with the latter being powerless to acquire information on the former's whereabouts. Even more prosaically, the blackmailer might experience a change of heart. To wit, when the time is ripe the blackmailer in the face of a sudden conflicting desire resolves the conflict in such a way that he starts intending *not* to reveal the secret to the said friends. He might, have felt, say, a sudden and overriding urge for benevolent conduct and thus have dropped his previous intention to gossip. If this is the possible world that would be actualized were the blackmailee not to pay, then the blackmailee's payment *in the actual world* would prove to be unproductive. Or, to put it in Nozickian terms, the blackmailee would be no worse off (or indeed better off) were he to decide not to pay the blackmailer. To generalize our point, even though the blackmailer at t1 may indeed intend to carry out his threat, there are all sorts of *contingencies* (such as the blackmailer's lack of relevant knowledge to act on or his possible change of heart or whatever else) that would prevent the blackmailer from executing his threat at t2. But with the said counterfactuals being presumably true, if the blackmailee does actually pay the blackmailer at t1, he is "served unproductively", for the former would be no worse off (if not better off) were he not to pay in the first place – and precisely in the light of the counterfactuals whose truth is assumed. On the other hand, because we assume that at t1, that is, at the moment of making a proposal, the blackmailer cherishes the intention to carry out his threat and it is the blackmailee's correct belief as to the blackmailer's intent that makes him ultimately part with the money, this exchange cannot be regarded as fraudulent. But if so, we seem to come up with an instantiation of (3); *viz.*, unproductive but non-fraudulent exchanges

Now, what is left is to also show how productive but simultaneously fraudulent exchanges are possible. Let us now proceed in the same fashion as we did, while trying to instantiate (3). A fraudulent blackmail proposal is made when the blackmailer intends *not* to carry out his threat or does *not intend* to do so. In turn, if the blackmailee is caused by the blackmailer's deceptive speech act to pay him for his abstention, an *actus reus* of fraud is satisfied and we are already warranted in saying that in this situation a fraudulent exchange takes place. Moreover, if the blackmailer has requisite *mens rea*; that is, he engages in what he *knows* to be a prohibited act, a complete *crime* of fraud obtains.

Now, how can paying the bluffing blackmailer turn out to be productive? At this point, we should consider what might possibly happen if the blackmailee at t1; that is, at the moment of the proposal being made, refused to pay the blackmailer. We submit that the bluffing blackmailer (as of t1) might well turn into a gossip at t2. For, isn't it (psychologically) possible that an unsuccessful bluffer, however grudgingly, forms an intention (say, at t2) to indeed execute his threat? After all, once the blackmailer's bluff has been called, he could quite naturally acquire an instrumental *desire* to reveal the blackmailee's secret to secure his reputation as force to be reckoned with. But then, given this newly acquired desire, the blackmailer might – upon resolving any conflicting desires – as well start intending to reveal the secret at t2, which might in the end prompt the revelation. Therefore, it appears possible to be served productively even if the blackmailee pays the bluffing blackmailer. For, as illustrated above, it is no stretch to imagine a bluffer (at t1) who, when his bluff is called, turns into a genuine threatener at t2. But if this transformation on the part of the blackmailer is possible, then the blackmailee would in the end be worse off were he not to pay the bluffer at t1, for that would trigger the loss of his reputation at t2. We can

express the same point in terms of the delegalization condition. If blackmail proposals get delegalized at t_1 , precisely at the time when a blackmailer would make his bluffing blackmail proposal, the blackmailer might, out of frustration, turn into a gossip at t_2 and promptly destroy his victim's reputation. If so, the victim would be worse off due to the delegalization of blackmail. And if so, the delegalization condition would not be satisfied. But remember, the delegalization condition was a necessary condition of unproductivity. And if a necessary condition of unproductivity is not met, then this constitutes a sufficient condition of *productivity*. Hence, it seems that we managed to exemplify productive but simultaneously fraudulent exchanges.

Now, why should the non-empty categories (3) and (4) present a problem for the Nozickian two-pronged theory designed for the sake of judging which exchanges to ban and which to allow?¹⁶ Whether the Nozickian two-pronged theory is enmeshed in a logical contradiction hinges on whether Nozick takes productivity and non-fraudulence of an exchange as individually sufficient conditions for classifying the exchange as permissible. For, if either productivity or non-fraudulence of the exchange immediately implies its being permissible, then Nozick's framework would indeed generate contradictory deontic verdicts. To clearly appreciate the problem, let us first analyze our category (3); that is, unproductive and simultaneously non-fraudulent exchanges. Now, since the exchange under consideration is by assumption unproductive, this very fact alone suffices for deeming it *impermissible*. However, this exchange is at the same time non-fraudulent and if non-fraudulence constitutes a sufficient condition for permitting exchanges, this very exchange would be also deemed *permissible*, nothing short of a contradiction. The same applies to the exchanges under (4); that is productive and simultaneously fraudulent exchanges. We know otherwise that Nozick takes fraudulence of exchanges as a sufficient condition for banning them. However, if he also takes productivity of exchanges as sufficing for judging them permissible, we end up with a deontic conflict yet again. For, such exchanges would be then found impermissible due to their fraudulence and at the same time permissible due to the assumed productivity, nothing short of a contradiction. And yet, there is a way of interpreting Nozick so that any hint of inconsistency evaporates.

We posit that instead of interpreting Nozick as taking either productivity or non-fraudulence as an individually sufficient condition for rendering exchanges permissible, we should conceive of either of the two properties as merely individually necessary for permitting the exchanges in question. In other words, if an exchange is to be permissible it must be *both* productive *and* non-fraudulent, as each of the two properties are individually necessary for permissibility of exchanges. By contraposition, if an exchange happens to be unproductive, this fact alone suffices for deeming it impermissible. By the same token, if an exchange happens to be fraudulent, this fact alone is sufficient for rendering the exchange impermissible.¹⁷ Hence, the Nozickian two-pronged standard for banning exchanges involves banning exchange on the basis of two conditions: their fraudulence and

¹⁶ What follows is almost exclusively inspired by the comments of one of the anonymous referees of the paper. His or her comment made me substantially rethink my original argument, for which I remain very grateful to the said referee.

¹⁷ The logical rule at work here is the following. If property p is necessary for q , then non- p is sufficient for non- q . To illustrate the reasoning, let us resort to a mathematical example. Being a rectangle is a necessary condition for being a square. Therefore, if something fails to be a rectangle, this constitutes a sufficient condition for the object to fail to be a square.

their unproductivity, with each condition being sufficient for prohibiting the exchanges in question. On the other hand, for an exchange to be deemed permissible it must meet two criteria at the same time: it must be (1) productive and simultaneously (2) non-fraudulent. This construal of Nozick's framework frees him from any logical incoherence.

However, at this point a certain objection might arise. For, the inquisitive reader may start wondering why should productivity or unproductivity matter at all for the libertarian. Or in other words, why should the process of prohibiting exchanges *track* their unproductivity? Reverting to our category (3), we wonder why non-fraudulence alone should not suffice for permitting the exchange exhibiting this feature. That is, we claim that for side-constraints-oriented deontological libertarians (Nozick included) the very fact that the exchange is non-fraudulent, everything else being equal, should be recognized as sufficient for permitting it even if the exchange happens to be unproductive. But given this remark, it seems that even if we managed to solidify the Nozickian two-pronged account, it, even when improved upon, still clashes with thus author's avowed unyielding deontological libertarianism. So, in a sense, our solution to a clear tension in Nozick's overall agenda (*viz.*, his utilitarian-styled account of unproductivity and his avowed deontological libertarianism) is party doctrinal, as we appeal to Nozick *qua* most of all libertarian. For it is his libertarianism that prompts banning exchanges along the lines of fraud rather than unproductivity. Similarly, exchanges would be permitted based on their non-fraudulence alone, everything else being equal. To wit, by libertarian lights, being non-fraudulent (everything else being equal) should suffice to render an exchange permissible without also requiring that the exchange be productive at the same time. And if so, we might as well, from a libertarian standpoint, regard both productivity and unproductivity as *morally inert*.

Or still in other words, we submit that it is simply *on moral grounds* that fraudulent exchanges should be banned even though they might in the end turn out to be productive. Similarly, non-fraudulent exchanges should pass muster even though they might ultimately prove to be unproductive. After all, it should be borne in mind that the libertarian argument for the free market is *primarily moral*. It would be *only* the most welcome happenstance if the free market transpired to be the most efficient. We cannot conclude this section better than by quoting Rothbard to this effect:

It so happens that the free-market economy, and the specialization and division of labor it implies, is by far the most productive form of economy known to man, and has been responsible for industrialization and for the modern economy on which civilization has been built. This is a fortunate utilitarian result of the free market, but it is not, to the libertarian, the prime reason for his support of this system. That prime reason is moral and is rooted in the natural-rights defense of private property we have developed above. Even if a society of despotism and systematic invasion of rights could be shown to be more productive than what Adam Smith called 'the system of natural liberty', the libertarian would support this system. Fortunately, as in so many other areas, the utilitarian and the moral, natural rights and general prosperity, go hand in hand. (Rothbard, [1973] 2006: 48–49)¹⁸

¹⁸ There is a joke circulating among some libertarians pertaining to the anaphoric "this" in "this system" presumably advocated by the libertarian. As the quote stands, it is ambiguous between two readings: (1) that the libertarian would support "what Adam Smith called 'the system of natural liberty'" and (2) that the libertarian would support "systematic invasion of rights". The joke is that it is a part of esoteric knowledge that what Rothbard really meant is (2). Needless to say, the remaining part of Rothbardian corpus clearly prompts the interpretation (1), which simultaneously defeats the interpretation (2), which the joke plays on.

Ramifications for the libertarian theory of voluntariness

In this section, we are going to study what bearing our findings have on the libertarian theory of voluntariness. Specifically, we are about to press the point that libertarians themselves, with their unyielding ban on fraud, have a reason to revise their cherished *moralized* conception of voluntariness. However, we should first remind the reader that the libertarian conception of voluntary action is parasitic on a prior distribution of rights. At this point, an extensive quote from Nozick (1974: 262) would come in handy:

Whether a person's actions are voluntary depends on what it is that limits his alternatives. If facts of nature do so, the actions are voluntary. (I may voluntarily walk to someplace I would prefer to fly to unaided.) Other peoples' actions place limits on one's available opportunities. Whether this makes one's resulting actions non-voluntary depends upon whether these others had the right to act as they did.

Hence, the libertarian idea of voluntariness is *moralized* in this sense that whether *A*'s (re)action is voluntary depends on whether *B* constrained *A*'s opportunity set *rightfully* or not. In other words, when *B* acts within his rights and thus limits *A*'s options, *B* (re)acts voluntarily. If, on the other hand, *B* were to act in violation of *A*'s prior rights, *A* would (re)act involuntarily. Let us briefly illustrate which exchanges would count as voluntary and which as involuntary by libertarian lights.

A paradigm case of an involuntary action is a coerced exchange with a gunman. Suppose *B* (a gunman) approaches *A* (his victim) and utters "Money or your life." Since *B* has no right (absent any prior contracts to the contrary) to take *A*'s life, *B*'s action of paying the gunman would be automatically rendered involuntary. In more Nozickian terms, since *B* would be under these circumstances constraining *A*'s options *illegitimately*, *A*'s resulting action would be involuntary.¹⁹ By way of contrast, suppose *C* (an entrepreneur) threatens to set up some competitive business unless bought off by *D* (a so-far monopolist in the area). Since *C* is threatens to do what he has a right to do, if *D* decides to buy *C* off, the latter would do so *voluntarily*.

Now, what does this theory of voluntariness predict in case of blackmail proposals? Remember, in the eyes of libertarians, voluntariness of an action on the part of the recipient of a proposal is a sole function of whether the proposal-maker constraints the former's options *legitimately* or not. However, what the blackmailer threatens to do is something that he has an *independent* right to do.²⁰ This would render, quite indiscriminately, *all* blackmail proposals permissible. And this, in turn, would make the blackmailee's result-

¹⁹ It is worth noting in passing that for libertarians a proposal which makes its recipient give up one of his rights is already illegitimate or coercive. It is for that reason that the gunman is not acting within his rights, while making his proposal. For an elaboration of the illegitimacy of proposals previewing a right violation, see *e.g.*, Epstein (1975: 296).

²⁰ Incidentally, the fact that what the blackmailer threatens to do is rightful is precisely what distinguishes blackmail from extortion. The logic is the following. The blackmailer (by definition) threatens to do what would be independently *permissible* to do, which makes, according to libertarians, the overall blackmail proposal permissible. Since the proposal would be constraining the blackmailee's opportunity set legitimately, the blackmailee's resulting action would be voluntary. By contrast, what the extortionist (by definition) threatens to do is independently *impermissible*. Now, since the extortionist would be making an impermissible threat, the resulting action of the threatened party would be *involuntary*. For a further elaboration of the distinction between blackmail and extortion, see *e.g.*, Block, Gordon (1985); Block, Anderson (2000).

ing action *voluntary*. However, we already know that at least *some* blackmail proposals are attempted frauds, and therefore at least *some* blackmail exchanges are fraudulent. But libertarians are keen on prohibiting fraudulent exchanges as involuntary.²¹ Therefore, they may not – on the pains of logic – consider *all* blackmail exchanges voluntary. And finally, concluding our *modus tollens* reasoning, there is something wanting to the libertarian standard of voluntariness. Or from a slightly different angle, libertarian rights-based conception of voluntariness predicts that *all* blackmail exchanges are voluntary. This implies that the blackmailee successfully waives his right to the money paid to the blackmailer. However, as discovered, *some* blackmail exchanges are clearly fraudulent. This would *ipso facto* mean that the defrauded party has *not* waived his right to the money transferred. But the libertarian standard of voluntariness predicts that in *all* blackmail exchanges there is a valid waiver of the blackmailee's right to his money. Hence, the libertarian standard of voluntariness is wanting. For the sake of clarity, let us represent our reasoning more systematically.

- (1) Libertarian moralized (rights-based) idea of voluntariness entails that *all* blackmail exchanges are voluntary
- (2) The fact that *all* blackmail exchanges are voluntary entails that the blackmailee always waives his right to the money transferred
- (3) Still, *some* blackmail exchanges are fraudulent
- (4) A fraud implies no waiver
- (5) In *some* blackmail exchanges, the blackmailee does not waive his right to the money transferred [from (3) and (4) via *modus ponens*]
- (6) Therefore, not *all* blackmail exchanges are voluntary [from (5) and (2) via *modus tollens*]
- (7) Hence, the libertarian moralized (rights-based) idea of voluntariness is false [from (6) and (1) via *modus tollens*].

In conclusion, it appears as though our finding to the effect that *some* blackmail proposals constitute attempted frauds and that therefore *some* blackmail exchanges are plainly fraudulent count as a reason to jettison the libertarian moralized (rights-based) theory of voluntariness with its peculiar blindness to the blackmailee's being deceived or plainly ignorant. Moreover, we submit that this criticism is internal to libertarianism. To wit, since libertarians themselves stick firmly to banning fraud, what it takes them to revise their theory of voluntariness is the realization that *some* blackmail exchanges are indeed fraudulent.

Conclusion

In this paper we demonstrated that unproductive exchanges are not equivalent to fraudulent ones. Similarly, it turned out that productive exchanges do not fully overlap with non-fraudulent ones. Yet, we showed that this does not necessarily threaten the legitimacy of Nozick's two-pronged standard for prohibiting and permitting economic exchanges, as

²¹ After all, Rothbard (1998: 77): viewed *fraud* as something “which involves the appropriation of someone else's property without his consent, and is therefore ‘implicit theft.’” Moreover, for an excellent elaboration on the problem of fraud, mistake, and ignorance in the libertarian theory of voluntariness, see: e.g., Dominiak (2022, 2023). And for further elucidation on the libertarian theory of contracts, see: e.g., Dominiak, Fegley (2022).

Nozick might simply conceive of productivity and non-fraudulence as only individually *necessary conditions* for judging exchanges permissible. And yet, it seems that there is a tension between the said two-pronged account and Nozick's deontological libertarianism. We suggest that the principled libertarian solution to the said tension is to ban and allow exchanges tracking their fraudulent and non-fraudulent nature, respectively, while treating their unproductive and productive character as morally inert.

Finally, we tried to show that our demonstration that there are indeed some fraudulent blackmail exchanges has an important bearing on the libertarian theory of voluntariness. As the libertarian moralized (rights-based) conception of voluntariness predicts that *all* blackmail exchanges are voluntary and thus that all blackmailees validly waive their respective right to the money they transfer to blackmailer, our discovery as to the fraudulent character of at least some blackmail exchanges casts doubt on, if not refutes, the libertarian idea of voluntary exchanges. We also submitted that since libertarians are keen on banning fraud, they do have a reason to revise their conception of voluntariness accordingly.

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