

*Goodheart
to my theory*

OUTLINE-- First try
TRUTH AND CONSEQUENCES: THE FORCE OF BLACKMAIL

- I. Introduction
 - A. Existence of apparently great dispute in lit
 - B. This paper: To show what we agree on by explication of the deontologic justification for blackmail prohibitions. In the process; to make the deontologic nature of bmail clearer; to show how the deont & consequentialist approaches agree on the central case; to defend the criminaliz of the central case in liberal (non-libertarian) terms; to provide some tentative observations on the non-central cases
- II. We talk about a "paradox of bmail" [B-PAR] but we virtually all agree there is no paradox of blackmail but rather a surprising conjunction
 - A. Define paradox
 - B. Define the paradox of blackmail
 - C. What are the logical propositions on which bmail depends
 - D. Test the propositions: no paradox
 - E. Reasons for lack of paradox
 - 1. Greater does not always include the lesser (e.g., doctrine of unconst conditions)
 - 2. This isn't even greater/lesser. Sale is diff from freely-motivated transaction [Hohfeld] [inalienability literature; cite Susan R-A; Peggy R]
 - 3. parties may differ
 - 4. long-term effects may differ
 - 5. justifiability may differ
 - 6. motives [of doing vs threatening] may differ
- III. The literature [B-PARLIT] can be organized around the various ways one can demonstrate there is no paradox
 - A. Give examples: Lindgren on parties; Katz on unconst conditions; Coase Ginsb D-G & Eps on long-term effects; Goodhart on justifiability; myself on motives.
 - B. Admit one exception to the consensus: Feinberg seems to accept the paradox strictly. Maybe the libertarians do too.
- IV. Virtually all liberals agree on the central case despite apparent disagreement
 - A. B-CENTR Define the central case
 - B. Cite literature where it appears
 - C. What is agreed: that evaluated by one's moral system (eco or deont) the thing done in the

- central case should not be done. [note: this is not yet an argument for criminalization]
- D. **B-C-ECO** Explain how the central case can be defended from an economic or utilitarian perspective; use Coase et al. here
 - E. **B-C-Deon** It can be defended from a deontologic perspective because the lawfulness of the threat is in important sense irrel to the actor.
 - 1. Deont. descrip stated by Nozick. But why should "productivity" matter, many have asked.
 - 2. Next section explains more fully.
 - F. Central case also fits 1st am analysis. (Nature of threat irrel; communic used as a weapon). See Fletcher
 - V. The deontologic case: basic
 - A. Kantian- shouldn't use people as means whose goals they can't share (Quinn)
 - B. Why might we disregard bmail's possible positive effects¹-- and, more importantly, why might we disregard the lawfulness of the threatened act? DDE helps explain (a useful analogy; not the SOURCE for the arg.)
 - C. Define DDE
 - D. The "tests" for DDE
 - E. Apply the tests to our case. Result: arguably good ends (lawfulness etc) irrel to the analysis
 - F. Rationales for DDE
 - 1. Source for DDE is Kant. Apply Kantian arg here.
 - 2. Equality / impersonality
 - G. **B-DOM** Domination: use Gordon, Fletcher to show the problem
 - VI. **B-COMMER** Distinctions: does the deontologic case disapprove ordinary commercial transactions
 - A. Motive is probably diff. Becker.
 - B. What if motive of commercial transactor is bad? Deont approach suggests utility can't "save" a deontologically wrong act. So might we inquire into motive for commercial transactions & disable them in whole or part? (E.g., refuse to enforce a portion of Murphy's baseball price.) One response: need bad act [harm] along with bad motive. No harm in commercial transaction (usually). Second

¹Perhaps permitting blackmail has some good utilit effects (deterrence; disclosure). Probably outweighed by negative effects (coase et al), but without empir testing cannot be sure.

- response: consent.
 - C. Consent validates commercial transaction.
(cite Nagel).
 - 1. Consent is conceptually linked to the underlying rationale of DDE, deontol. approaches.
 - 2. Consent can be validly given here (compare coercion)-- it's a benefit
 - D. Explain why the bmail victim doesn't "consent" (using Wertheimer, Gordon, etc.)
 - E. Conclusion: the deontologic approach doesn't disapprove comm transactions, does disapprove this
- VII. Other objections to my deontologic approach
- A. **B-PROP** There's no "property" or "right" being violated
 - 1. Murphy arg; Mack arg; others.
 - 2. Reply: entitlements do exist that can't be sold and which aren't exclusive. If by "prop" and "right" one means these secondary characteristics, then there is no prop or right in nondisclosure. But there is a diff kind of moral right against unjustified harm (and by law a right against such threats)
 - 3. Model penal code crim coercion stat: interest in liberty. cited by Fletcher
 - B. **B-HARM** The "harm/benefit" distinction is flawed [q: why does Feinberg think bmail not harmful?]
 - 1. Murphy etc attack on the distinction
 - 2. The distinction works here (use entitlement specific.-- any diminution of interest)
 - C. Also CONSENT: V doesn't consent to the whole arrangement. Diminution in choices.
- VIII. **B-CRIM** Criminalization
- IX. Conclusion