

The Encyclopedia of Public Choice

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Kluwer Academic Publishers

DORDRECHT / BOSTON / LONDON

chambers. This suggests that increased bicameralism may increase spending in some areas of the state budget but not others. As legislators become less able to seek transfers, they may devote more spending to efficient public goods where they agree. Results for the American States indicate that bicameralism is positively related to education expenditures, highway expenditures, and total expenditures, in other words programs that might be considered public goods. In contrast, bicameralism is negatively related to expenditures on welfare and other redistributive programs.

Internationally, Bradbury and Crain (2001) examine the discrete difference between bicameral and unicameral systems in different countries. Specifically, this study examines the effect of the bicameral institution on redistributive spending due to the "Law of $1/n$," which is pork-barrel spending fueled by an increase in elected representatives. The study finds that countries with bicameral legislatures experience less $1/n$ spending than unicameral countries, which is consistent with the hypothesis that adding a second legislative chamber limits redistributive spending.

In summary, modern analysis and empirical evidence indicate that bicameral chambers serve the intended purpose of the Founding Fathers to limit government to the protection of the "general welfare." This has particularly strong policy implications for new and developing countries that seek to design constitutions that restrict the government from engaging in harmful redistributive activities.

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BLACKMAIL

The term blackmail first entered the English language in the 1500s. It referred to tribute exacted by families or clans along the Scottish — English border in return for immunity from raids by Scottish or English bands. One way to make a living during that era was to steal sheep and horses from the English or Scots and others not paying protection money. This process of midnight "acquisitions" became known as *reiving*, from which we get the name bereavement. Blackmail was a term used as well to refer to this activity. (www.mercyseat.com) Scottish — English border tribute continued until the 18th century.

Today blackmail is legally defined as the criminal offense of attempting to extort money or property by threats of exposure of a crime or disreputable conduct. Blackmail is distinguished from extortion in its broadest sense, which is the use of any means of illegal compulsion or oppressive exaction. As a rule defense to the charge of blackmail cannot include the claim that the person threatened with exposure of criminal or shameful conduct is in

fact guilty of the offenses charged or that the attempt at extortion was not successful (Microsoft: 2000).

Blackmail prosecutions are not common, for a simple reason: the person being blackmailed is not likely to report it and thereby publicly to expose a shameful or criminal act. A widely publicized case was prosecuted in the New York Federal District Court. On January 20, 1997, Autumn Jackson, a woman claiming to be comedian Bill Cosby's illegitimate daughter, was arrested and charged with attempting to extort \$40 million in exchange for her not going to a tabloid with the story. On December 12, 1997, Autumn Jackson was found guilty of threatening to injure another person's reputation with the intent to extort money in violation of 18 U.S.C. §875(d) and 2 (1994), traveling across state lines to promote extortion in violation of the Travel Act, 18 U.S.C. §1952(a)(3) and 2 (1994) and conspiring to commit extortion, in violation of 18 U.S.C. §371 (1994). A New York judge sentenced her to 26 months in prison. Granting her leniency, U.S. District Judge Barbara Jones gave Miss Jackson the option of reducing her sentence by completing a six-month rehabilitation program of physical wellness, education and counseling. Afterward, Jackson could become eligible for home confinement and community service.

The term extortion is frequently used in connection with blackmail. However, extortion is variously defined as "declaration of intent to injure another by doing an unlawful act, with a view to restraining his freedom of action" or "the offense of obtaining from a person money or property not legally owed, through the use of fear, force or authority of office."

More specifically, the Hobbs Act (18 U.S.C. 1951(b)(2)) defines extortion as "the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right."

Whether blackmail is deemed to be a criminal act or not, the question can be raised: is blackmail an exchange not dissimilar to other exchanges not deemed criminal? I think we can preliminarily at least answer that question in the affirmative.

Let us return to the Bill Cosby/Jackson case and examine several possible scenarios. Let us begin by assuming that Autumn Jackson's paternity allegations are true and that Bill Cosby is in fact her father. For Bill Cosby, it would appear that the preferable state of affairs is for Miss Jackson not to release that information to a tabloid and thereby to harm his reputation and suffer whatever economic consequences or marital problems that might ensue.

Constitutional guarantees of free speech protect Miss Jackson's right to tell her story to a tabloid, other news

sources, and the world. Let us pose the welfare economics question, Bill Cosby would be better off under which scenario — being able to pay for her silence regarding her paternity or not being able to pay her (make blackmail payments) and have her publicize her story? Because of the inherent subjectivity of the expected costs and evaluation of personal preferences, a third party cannot answer that question. We can say that people are more likely to achieve preferred levels of satisfaction the wider the choice set they confront. Were we to observe Cosby voluntarily making a blackmail payment, the most we are qualified to say is that Cosby deemed himself better off as a result of making the payment than his next alternative, that could also be freely chosen, that of not making a blackmail payment.

Thus, a blackmail offer fits the description of the standard win — win exchange i.e., "I will do something good for you if you do something good for me." A typical example of a win — win exchange is when one offers a grocer \$3 for a gallon of milk. The essence of the transaction is: "I hold the property rights to this \$3 and you, the grocer, hold the property rights to the gallon of milk. I will transfer my title to the \$3 to you if you transfer your title to the gallon of milk." If the offer is accepted, it is a positive — sum game where both parties better off in their own estimations.

The blackmailer's offer is identical. He owns information about the observed immoral personal conduct. He has a right recognized and protected by law to divulge that information to whomever he pleases. He violates no law publicizing the information. When he propositions the miscreant that he will give up his clear right to publicize his information in exchange for money, he does not do anything that differs from any other kind of peaceable, voluntary exchange.

There is another way to think about whether blackmail should be a criminal act. It is clearly unlawful for a person to murder or rob another. Therefore, it is clearly unlawful for a person to threaten another that unless he is paid money he will rob or murder him. On the other hand, it is not unlawful for a person to publicly expose the moral indiscretions of another. Therefore, why should it be unlawful for a person to offer not to expose those indiscretions in exchange for money? Generally, if to do act A is lawful then the threat not to do act A in exchange for money should also be lawful.

There is also the question: are there benefits of blackmail? Examination of some of the possible effects of blackmail might help us with the normative question of whether blackmail should be criminal. The blackmailer and the person being blackmailed (blackmailee) are seldom the only parties involved. There is a third party. That party might be the blackmailee's wife or fiancée, friend, business partner

or some other associate. This recognition suggests that blackmail has some of the characteristics of social sanctions that promote socially acceptable behavior. If blackmail were legal, there would be a monetary inducement for people to spy on others in an effort to detect, say in the case of marriage, adultery. If a person knew that his adulterous affairs were more likely to be detected, and he would have to pay a price for concealment, it is reasonable to suggest there would be a reduced likelihood of persons engaging in adultery. In other words, blackmail acts as a tax on behavior that the blackmail victim does not want exposed. (Palgrave: 107) If blackmail were to produce that result, then a clear beneficiary would be spouses and other associates. In this case the blackmailer might be seen as a private enforcer of moral conduct and marital oaths of fidelity. Criminalization of blackmail eliminates the tax and reduces the incentive for people to search for discrediting information about others.

Blackmailers are often held in violation of 18 U.S.C. §875(d): "Whoever, with intent to extort from any person, firm, association, or corporation, any money or other thing of value, transmits in interstate or foreign commerce any communication containing any threat to injure the property or reputation of the addressee or of another or the reputation of a deceased person or any threat to accuse the addressee or any other person of a crime, shall be fined under this title or imprisoned not more than two years, or both."

In the Cosby case, the threat was to injure the "reputation of the addressee." The question might be asked: is one's reputation his property? Reputation is defined as: "estimation in which a person or thing is commonly held, whether favorable or not; character in the view of the public, the community, etc." (Webster's: 1998) In other words, one's reputation is what others think of him. While reputation is an asset created by investments in honesty and other forms of socially accepted behavior, it is difficult to make an argument that the thoughts of others are in fact his property.

To the extent that the information the blackmailer threatens to reveal is true, the blackmailer threatens to perform a socially valuable function of informing others that the blackmailee is undeserving of the esteem placed upon him. By accepting money in return for his silence, the blackmailer converts this social value to private gain for himself and continued misrepresentation by the blackmailee.

Before the 19th century, blackmail was a crime only if it involved extortion such as threatening to do bodily or property injury if payment were not made. It was not a crime to threaten to expose a person's criminal or immoral behavior in exchange for a payment. Posner says that this was a period in the nation's history when there was more private enforcement of laws, including criminal laws.

It was with the rise of public enforcement of laws that blackmail became criminal (Posner: 1983, pp. 284–285).

What constitutes a crime can be divided into two classes *mala in se* and *mala prohibita*. Homicide and robbery are wrong in themselves (*mala in se*). They involve the initiation of force against another. By contrast blackmail, drug abuse, and gambling re *mala prohibita* offenses, and considered criminal, not because they violate the property or person of another, but because society seeks to regulate such behavior. *Mala prohibita* offenses such as alcohol consumption drift in and out of criminal codes according to changes in public opinion, tastes, customs or religious standards.

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BLACK'S SINGLE-PEAKEDNESS CONDITION

Like Kekulé's vision about the ring structure of the carbon molecule, the notion of single-peaked preferences came to Duncan Black as a sudden flash of insight. In the 1940s, Black had independently rediscovered the concept of cyclical preferences and was looking for a way to avoid majority rule cycles (Black, 1958). In single-peakedness he found one.

While single-peaked preferences can be defined in more than one way, Black's definition has a simple elegance: a *single-peaked curve* is one that changes its direction at most once, from up to down. A set of preference orderings is said to be *single-peaked* with respect to some continuum (sequencing of the alternatives) if every voter's utility function over the set of alternatives can be graphed as a single-peaked curve with respect to that continuum. Black's *median voter theorem* states that, when preferences are single-peaked, majority rule preferences are transitive and the feasible alternative which lies highest on the preferences of