

A NOTE FROM THE EDITORS
**BLACKMAILING FOR MUTUAL GOOD: A REPLY TO RUSSELL
HARDIN**

Blackmail is a paradox in which a blackmailer commits a crime by requesting money or the performance of some act from a party in return for not disclosing information or performing some action which, by themselves, are perfectly legal.¹ The fact that this crime arises from the combination of two legal actions, the request for money or services and the disclosure of information or performance of a legal act, has been a source of discussion among many legal philosophers, particularly those interested in the moral versus efficiency basis of criminal law.² Most legal philosophers have tried to use various legal or moral philosophies to justify the criminality of blackmail. However, recently a few scholars have argued that the proper application of legal theory would result in blackmail legalization.

Recently this scholarly interest in blackmail culminated in a symposium at the University of Pennsylvania Law School which included the article, *Blackmailing for Mutual Good*, by Russell Hardin.³ Hardin, a utilitarian philosopher, uses "mutual advantage" arguments from law and economics theory to argue that, maybe, some forms of blackmail should be legalized.⁴ Hardin's article is divided into seven sections. In the first section, Facts and Values, Hardin argues that the morality of different forms of blackmail cannot be determined from the facts of specific cases, but must be determined relative to a specific moral system. In the second section, Institutional-Level Analysis, Hardin uses the institutionalist approach to argue that blackmail law should be developed through the determination of what overall result would be better for society. In section three, The Complex Nature of Interaction, Hardin argues that the morality of blackmail, like other complex forms of human interaction, cannot be determined by analyzing the specific components of the interaction, but must be determined through the application of a specific legal theory to the entire complex interaction. In section four, Strategic Structure of Exchange Blackmail, Hardin uses game theory to analysis different types of blackmail while in section five, Blackmail for Mutual Advantage, Hardin provides a more detailed moral analysis of blackmail through the lens of mutual advantage theory. Section six, Blackmail in the Public

¹ See James Lindgren, *Blackmail: An Afterword*, 141 U. PA. L. REV. 1975, 1975 (1993).

² See *id.*

³ See Russell Hardin, *Blackmailing for Mutual Good*, 141 U. PA. L. REV. 1787 (1993).

⁴ See generally *id.*

Interest, discusses whether there is a public interest in legalizing blackmail that is arguably done in the public's interest. Finally in section seven, *Caveats and Other Moralities*, Hardin outlines weaknesses of mutual advantageous arguments as well as applying the property rights theories of Coase to the blackmail issue. Hardin concludes his article by reiterating his main point; the morality of blackmail can only be determined relative to "particular moral theories" and, therefore, blackmail laws should be determined by the results of the laws on the public interest.

The following article, *Blackmailing for Mutual Good: A Reply to Russell Hardin*, by a leading scholar of blackmail, Walter Block, is a section by section critique of Russell Hardin's article. Professor Block uses the libertarian theory of law and private property to argue that since blackmail leads to the mutual advantage of both parties it should be treated as an aspect of private property law and not criminal law.

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