
May We Stop Worrying about Blackmail?

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May we stop worrying about blackmail?

SAUL SMILANSKY

The serious moral condemnation and legal penalization of blackmail has often been considered paradoxical. This practice, after all, often simply combines two fairly innocuous elements: asking for money or other favours, and threatening to do something which one is *allowed* to do (e.g. disclosing a person's infidelity to his or her spouse). Michael Clark has recently argued that previous discussions of this issue were fundamentally mistaken, and that there is no paradox about blackmail.

The threat to do A unless you do B is not merely a combination of a threat and a request or demand: it is a demand backed by a threat, the threat is made *with a view to* facilitating the demand. ([1], p. 55).

The relation between the two elements, Clark argues, brings forth something new, and thus there is nothing paradoxical about the fact that *in themselves* the elements which make up the practice of blackmail are permissible.

Clark has written an important paper, which has helped clarify the issues. But his claim to have disarmed the paradoxicality of blackmail is not convincing. We need to continue to worry about blackmail.

Firstly, I do not think that it is as clear as Clark claims it to be that the 'blackmail paradox' has in fact been understood to result only from the confusion he considers. Not all writers on this topic have focussed on this issue (see e.g. Mack [3], which Clark does not mention). And even when the alleged perplexity Clark attacks (i.e. that two in themselves permissible acts become a wrong) was mentioned, it often was not thought to be the only difficulty concerning blackmail. I think that the sort of argument for the paradoxicality of blackmail that I shall present was at least implicit in earlier discussions.

Secondly, and in any case, the real difficulty with blackmail does not lie with the matter of combining two permissible practices, hence Clark's point does not tackle the central issue. This issue is the apparent similarity between clear cases of blackmail and much in our social and economic life. Blackmail is disturbingly similar to other practices, which are not taken to be very negative by morality, and are not prohibited by law. In other words, our judgements seem paradoxical. I shall present two imaginary stories which exhibit this paradoxicality. Consider:

The Profitable Gossip Company. Max was not a very pleasant man. He liked to find out gossip about other people, and then to spread it about.

Max had a special talent for finding out personal secrets, and he became better at it with practice. He did nothing illegal, such as tapping people's phones, disclosing state secrets, or spreading any false information. He did however create much harm and suffering to the victims of his gossip. By accident he came to be noticed by one of the daily popular newspapers. This newspaper offered to pay Max if he stopped spreading gossip for free, and gave the newspaper exclusivity on it. Max was correctly informed that all of this was perfectly legal. After a few months Max started to feel unease about selling gossip to the newspaper, for he started to hear stories about the harm that the printed gossip was doing. So he thought about an alternative plan: he would sometimes contact the people before giving the information to the newspaper, and ask them to redeem the secret for what he would otherwise get from the paper. All the people he contacted seemed happy to be offered the choice and quickly paid him, Max was compensated for his losses, and everybody seemed better off. But then Max was arrested for blackmail. Consider also:

The Theoretical Supermarket Company. Mindy owned a chain of supermarkets and grocery stores. She started out by finding out small neighbourhood grocery stores which were losing money because of inefficient management, buying them out and turning them profitable. Then she specialized in seeking out areas where a supermarket could be profitable. She would buy property, get the relevant permission, and open the supermarket, in the process ruining the livelihood of all the local grocery stores. Within a few years she turned into a major economic force on the food scene: often it was sufficient for her lawyers to make enquiries for shop-owners to offer to sell her their property at very low prices. Hence she gained control of a new business every week. Mindy was a good citizen and never had any trouble with the law. After a vacation abroad Mindy became conscious of the price that her practices were inflicting on the atmosphere of her city, with local intimate and idiosyncratic stores being replaced by characterless and identical supermarkets. Then she thought of a way of limiting this damage without losing in profits: she set up The Theoretical Food Company. Relevant stores were targeted, and offered to pay up one hundred pounds per month, for what amounts to the possibility of continuing in business. Since the store owners knew that Mindy could easily establish a store in their neighborhood which would run them out of business, all were eager to freely choose to enter Mindy's scheme. Then she was arrested for blackmail.

According to a standard legal definition of blackmail 'A person is guilty of blackmail if, with a view to gain for himself or another or with intent to cause loss to another, he makes any unwarranted demand with menaces' ([2], p. 43). Both Max and Mindy, I am told, should be convicted of black-

mail in many Western courts. And where this is doubtful, the spread of their sort of initiatives would quickly cause the closure of any legal loopholes. But our concern here is primarily ethical and not legal.

The lesson of these two stories, it seems to me, is that there is a real difficulty about blackmail: about deciding what is properly to be considered blackmail, and about what to do with it. Our current moral and legal distinctions are dubious, in that we draw the line between the permissible and that which is considered to be '*outrageous blackmail*' in a place which in itself seems morally impossible to defend. What appears under the standard interpretation to be a turn to crime by Max and Mindy, seems in fact to be a move towards a more humane form of capitalist endeavour. It seems *paradoxical* that Max and Mindy were arrested when they were. Neither is a morally admirable character, to the end. It is nevertheless arguable that their practices became *less* nasty just when they entered the stage of ordinary blackmail. In Mindy's case it even seems that a more vicious but unrecognized form of blackmail was being practiced *before* she entered into recognized ordinary blackmail.

When people threaten to do the in itself impermissible, e.g. with violence, as in extortion, there is no difficulty in understanding the common view. But disallowing threats to do the in itself permissible, as in the instances of blackmail under consideration, is problematic. For then other such threats, prevalent in our social life, become dangerously like blackmail.

Doubts go beyond examples such as those of Max and Mindy. In many labour disputes workers legally threaten with the damage they can inflict in order to gain higher salaries, even when lives are at stake (e.g. doctors threatening to abandon hospitals). Employers similarly threaten to close down operations or hire other workers if their demands are not accepted. In divorce cases the partners can threaten to prolong the proceedings if the settlement does not go their way. Victims may threaten to sue companies under tort law, involving the companies in adverse publicity, unless being given compensation. Politicians indirectly threaten to cut funds to groups who do not support them. And the threat of the use of force or of economic sanctions is the common staple in international relations. Why are these fundamentally different from blackmail, from the moral point of view? Why may ordinary blackmail never be used to combat such seemingly not very different practices? Perhaps satisfactory answers could be provided. There is, however, a problem here.

Moreover, it seems to me that to the extent that we will find a justification for those common practices, which appear not unlike blackmail, we will not find it by some simple method of distinguishing these practices from 'ordinary blackmail'. Part of the explanation for the perplexing atti-

tude of common-sense morality on this issue is probably cynical, e.g. that the thought of being blackmailed in the ordinary ways is frightening to the rich and powerful in society, who may be less concerned with e.g. the threats of employers or politicians. Hence, that ordinary blackmail be taken so seriously is just what one would expect (see also [5]). But the cynical sort of explanation, even if plausible, is of course of no normative value. Less cynical answers could perhaps be found in extrinsic features of ordinary blackmail and other apparently similar practices, features which cause us to tolerate the other practices but not ordinary blackmail. Concerns about freedom of the press might play some role with certain cases. Differences in economic productivity might help us to understand others: there is much incentive to prohibit the sorts of blackmail typically prohibited, and little economic incentive not to prohibit them. But when we look closely it is very difficult to defend the case only against ordinary blackmail (see e.g. [3], [4]).

One who wishes to defend the common attitudes and practices concerning blackmail from my challenge may fall back on the distinction between morality and the law. Our problem, to recall, was that we could not see any intrinsic moral justification for the common treatment of Max and Mindy in the last stage, when they became blackmailers, as compared to their perfectly legal conduct beforehand. But one may concede that I am correct in my analysis of the moral aspects, but nevertheless see the possibility for legal justification of common practice. Hence my case, for the lack of substantial moral differences between ordinary blackmail and other situations which are morally similar (if not worse), would not prove that our present attitudes and practices are paradoxical.

I have a number of replies to this last-ditch defence. Firstly, although the issue of blackmail inherently involves both moral and legal matters, I can limit my case to the moral side. I claim that in cases such as Max and Mindy's, even our strictly moral intuitions are problematic. I think that it would be hard to deny that we hold blackmailers morally despicable, irrespective of any legal sanction. Such a severe attitude is not common towards those who get information for gossip columns in the newspapers (as with Max before he became a blackmailer). And negative attitudes of such a nature are certainly not the typical reaction towards practices such as Mindy's entrepreneurial ventures into buying property cheaply. Even our strictly moral social intuitions seem to tolerate practices which, on closer inspection, seem at best indistinguishable from other practices which are branded as blackmail, one of the most morally odious of practices.

Secondly, I think that arguing against the case I have made by way of a firm distinction between the moral and the legal issues would involve a

high price. If a huge gap between the two were entailed by our difficulties with blackmail, this in itself would be a surprising and interesting result. One could argue that the onus of proof for such a radical claim would be on the one making it. But I doubt if there is any need for such a stark separation between the moral and the legal. Since this is a short reply, a detailed treatment of the general issue of the relationship between the moral and the legal cannot be presented here. I will only make a few general points. I think that the moral and the legal are particularly entwined in the matter of blackmail. It is taken to be so odious in part as a result of the educative or symbolic effect of its criminalization. But the criminalization of ordinary blackmail can hardly be understood completely apart from the independent distaste that such practices create in most people. Admittedly a legal matter, blackmail is an issue on which most people have clear ethical feelings, apart and beyond its illegality. If it were legalized, one could hardly imagine that we would see an outright change of attitude as would follow if the issue was actually only of legal concern.

People can have relative advantages over others, advantages which can be translated into effective threats. One way of formulating our basic moral, legal and political positions is to ask which of these advantages are morally relevant and permissible, e.g. when does a person have a right to benefit from her relative advantage over another? Worrying about blackmail should help us to critically examine this question.¹

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