Should the Law Prohibit Paying Ransom to Kidnappers?

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ABSTRACT:
While most people might answer the question in the affirmative, such a law ends up punishing the victim instead of the kidnapper. Drawing from libertarian philosophy it is shown that such laws also fail to reduce kidnapping for profit and thus are not only offensive to the nature of justice but cannot achieve the aim for which they were originally enacted.

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The question posed in our title probably would not occur to most people. If it did, we believe that the consensus answer would be a resounding "No." After all, kidnapping is a clear violation of individual rights, and most people would find it perverse if the law prohibited a kidnapping victim, or the victim's family, from purchasing his freedom. One might as well enact legislation forbidding a mugger's victim from responding "life" to the threat of "your money or your life." For most of us, it is the kidnapper (and the mugger) whom the law should punish, not their victims. To punish people for the "crime" of paying ransom to a kidnapper, or forfeiting their wallets to a mugger, is to compound the injustice they have already suffered.

We support this commonsense conclusion. We do so from the perspective of the libertarian[2] philosophy.[3] In this view,[4] there is only one question in all of political

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[2] Libertarianism is sometimes confused with objectivism. This is understandable, since both advocate laissez faire capitalism. However, there are strong differences. The main one is that the former is predicated, solely, on the non aggression axiom, coupled with a system of private property rights based on homesteading, while the latter concurs, but insists that these premises must be predicated on notions of epistemology and metaphysics, contrary to the former. Also, all objectivists are minarchists, while this position describes only some libertarians. For instances of disagreement between the two viewpoints, see the following: Schwartz, Peter (1986). "Libertarianism: The Perversion of Liberty," *The Intellectual Activist*; a condensed version of this work appeared in *Ayn Rand, The Voice of Reason: Essays in Objectivist Theory*, Leonard Peikoff (ed.), N.Y.: New American Library 1988, pp. 311-333; Block, Walter (2003). "Libertarianism vs. Objectivism; A Response to Peter Schwartz," *Reason Papers*, Vol. 26, Summer, pp. 39-62; http://www.reasonpapers.com/pdf/26/rp_26_4.pdf

[3] See on this Bergland, David (1986). *Libertarianism In One Lesson.* Orpheus Publications; Boaz, David (1997). *Libertarianism: A Primer*, New York: Free Press; Friedman, David (1989). *The Machinery of Freedom: Guide to a Radical Capitalism,* 2nd ed., La Salle, IL: Open Court; Hoppe, Hans-Hermann (1993). *The Economics and Ethics of Private Property: Studies in Political Economy and Philosophy*, Boston: Kluwer; Murray, Charles (1997). *What It Means To Be A Libertarian*, New York: Broadway Books; Nozick, Robert (1974). *Anarchy, State and Utopia,* New York: Basic Books; Rothbard, Murray N. (1973). *For a New Liberty*, New York: Macmillan; Rothbard, Murray N. (1982), *The Ethics of Liberty*, Atlantic Highlands, N.J.: Humanities Press; Woolridge, William C. (1970). *Uncle Sam the Monopoly Man*, New Rochelle, N.Y.: Arlington House.

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philosophy, and, only one answer. The question is: under what conditions is the use of violence, force, justified? And the answer: only in response to, or in defense against, or as retaliation in opposition to, a prior use of force or violence. At this level of specificity, there are few indeed who would disagree with libertarianism. Most people, after all, are not pacifists, and it is a veritable school yard aphorism that it is justified to "hit back," but not to "start up." However, the explanation for the unpopularity of this perspective is that advocates are rigorous, *very* rigorous, in deducing an entire political philosophy from these seemingly innocuous premises; they brook *no* exceptions, *none* whatsoever. For example, strict libertarians do not accept democracy, or, indeed, any kind of government,[5] since it necessarily conflicts with the non aggression axiom.[6] The essence of majority rule is of course that the majority rules the minority on a given issue. But, if the majority compels the minority, that is a per se contravention of the axiom to the contrary.[7]

Our support for the commonsense conclusion that it is unjust to punish victims for paying off either muggers or kidnappers is made in the awareness that common sense is, alas, decreasingly common. While it seems safe to assume that most people would not support, or even contemplate, a law prohibiting ransom payments to kidnappers, some people would and do. In 1991, for instance, Italy enacted legislation forbidding kidnap victims and their families from paying ransom to – or even negotiating with – kidnappers.[8] Colombia subsequently passed similar legislation.[9] The intent of these

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[4] This is not a utilitarian or Rawlsian (Rawls, John 1971, *A Theory of Justice*, Oxford: Oxford University Press) concept. Rather, it is based on deontological or Nozickian (Nozick, Robert. 1974. *Anarchy, State and Utopia*, New York: Basic Books) insights.

[5] Only "strict constructionist" libertarians are anarcho capitalists. For example, Rothbard, Hoppe. Minimal state supporters, or monarchist libertarians include Boaz, Murray, Nozick, supra, fn 3.

[6] The non aggression axiom must be buttressed with a theory of property rights, which is required to distinguish between defensive and offensive uses of compulsion. If we see A grabbing B's wallet at gun point, we are *not* entitled to infer theft. This all depends upon B being the rightful owner of the money in question. But, if A is the just owner, and B stole the wallet from A yesterday, and today A is merely seizing it back from B, then this act is certainly a licit one. For the libertarian, property rights are based on homesteading (Hoppe, Hans-Hermann (1993). *The Economics and Ethics of Private Property: Studies in Political Economy and Philosophy*, Boston: Kluwer; Locke, John (1948). "An Essay Concerning the True Origin, Extent and End of Civil Government," in E. Barker, (ed.), *Social Contract*, New York: Oxford University Press, pp. 17-18; Rothbard, Murray N. (1973). *For a New Liberty*, New York: Macmillan; Rozeff, Michael S. (2005). "Original Appropriation and Its Critics." September 1; http://www.lewrockwell.com/rozeff/rozeff18.html), and on what Nozick (1974) characterized as any legitimate title transfer, such as gifts or trade or gambling.

[7] Without the state, how would (so-called) public goods be supplied? Through privatization. All of these services have at one time or another been offered by profit seeking market participants. On defense see Hoppe, Hans-Hermann (1989). "Fallacies of the Public Goods Theory and the Production of Security," *The Journal of Libertarian Studies*, Vol. IX, No. 1, Winter, pp. 27-46; Hummel, Jeffrey (1990). "National Goods vs. Public Goods: Defense, Disarmament and Free Riders," *The Review of Austrian Economics*, Vol. IV, pp. 88-122; police, Tinsley, Patrick (1998-1999). "With Liberty and Justice for All: A Case for Private Police," *Journal of Libertarian Studies*, Vol. 14, No. 1, Winter, pp. 95-100; roads, Block, Walter (1979). "Free Market Transportation: Denationalizing the Roads," *Journal of Libertarian Studies: An Interdisciplinary Review*, Vol. III, No. 2, Summer, pp. 209-238; on a plethora of government services: Rothbard, Murray N. (1973). *For a New Liberty*, New York: Macmillan; Woolridge, William C. (1970). *Uncle Sam the Monopoly Man*, New Rochelle, N.Y.: Arlington House; Osterfeld, David (1989). "Anarchism and the Public Goods Issue: Law, Courts and the Police," *The Journal of Libertarian Studies*, Vol. 9, No. 1, Winter, pp. 47-68.

[8] See Michelle Hyun, "The Kidnapping Threat in Europe," a special report of the Worldwide Advisory Intelligence Service (August 5, 2005), webbed at http://wais.corprisk.com/samples_security.html; see also Jon Elster, "Kidnappings in Civil Wars," unpublished manuscript (2004, 22), webbed at

laws was to discourage kidnappings by eliminating a kidnapper's expectation of financial gain. To that end, the Italian and Colombian anti-ransom laws imposed an automatic freeze on the assets of a kidnapping victim and his family; prohibited the sale of ransom insurance policies; and even proscribed the use of professional mediators and negotiators.[10]

Our purpose is not to examine these laws in detail. Instead, it is to uncover and critically examine their underlying assumptions. Of these, the most fundamental – and fanciful – is the assumption that, by outlawing the payment of ransom, the law can bring an end to kidnapping for profit.[11],[12] The authors of anti-ransom legislation believe that, if no one is allowed to pay ransom, and if all potential kidnappers know this in advance, then no one will bother to kidnap for profit, because there will be no profit to be had. But this assumption is open to at least two objections, both of them fatal.

First, the conclusion does not follow from the premises. Even if we grant, for the sake of argument, that an anti-ransom law will be universally respected, such that no payment of ransom ever occurs, and even if we grant, further, that all potential kidnappers will be aware of the law, still it does not follow that no one will attempt a kidnapping for profit. To reach that conclusion, we must add the further premise that all kidnappers act rationally, which is manifestly untrue. But even if all kidnappers *do* act rationally, that may not be enough to prevent future kidnappings. After all, even if the anti-ransom law has been honored until now, a kidnapper may have good reason to believe that it will not be honored *this time* – i.e., that his victims will ignore the law and pay a ransom, even if other victims have declined to do so.

Second, there is the reductio ad absurdum already mentioned above. If the law is to be consistent, then it should not only prohibit the paying of ransom, but it should also forbid the mugging victim from handing over his wallet. The utilitarian rejoinder to this is that, as a practical matter, the forces of law and order have a far better chance of preventing a pay-off to the kidnapper than to the mugger. The latter usually constitutes relatively small change, the contents of a wallet, whereas the former usually consists of far greater amounts of money, the transfer of which is easier for the authorities to track. At the very least, ransoms typically require the cooperation of banks or other financial institutions; handing over a wallet certainly does not. Muggings, moreover, typically

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http://www.prio.no/cscw/pdf/micro/techniqes/Revised_kidnapping_paper-Elster.pdf.

[9] See Elster (2004, 22). See also Garnick, Darren (2008). "Fruit of Chiquita's Labor: Terror $$." Boston Herald, May 21, p. 22, that describes how the Chiquita banana company has been fined $25 million for paying what amounts to extortion/ransom money to terrorist groups in Colombia. Chiquita's competitors are also "guilty" of writing checks to terrorists; it implies that Chiquita got lenient treatment because the company was fined but no officers sentenced to jail; and it calls Chiquitas payments "unjustifiable" because the money was used to "fund beheadings."

[10] See id. pp. 22-23.

[11] Of course, other motives for kidnapping might still exist. Kidnappers might wish to abduct women for sexual services, seize government officials as political hostages, or use abductions as a means of imposing terror. These "non-pecuniary" kidnappings are not our concern here.

[12] There is also such a thing as "good kidnapping." Here, the kidnapper, typically, rescues young women or children from their "rightful" but abusive guardians. For cites on this "Kindly Kidnapper" literature see Varian, Hal R. (2005). *Intermediate Microeconomics: A Modern Approach*, 7th ed. New York, N.Y.: W. W. Norton & Co Inc; "Amy Carmichael: The Kindly Kidnapper," Christian History Institute, 2004. 10 April 2006 http://chi.gospelcom.net/GLIMPSEF/Glimpses/glmps132.shtml. The present paper is not concerned with this phenomenon.

occur in private, in the back alley. Ransoms are more public: there are phone calls, messages, drop-off points for the money, a pick-up place for the victim, and so forth.

But such utilitarian reasoning is anathema to the rule of law, the purpose of which is to promote *justice*, not some inchoate measure of "social utility." There are many measures that might conceivably maximize social utility but which would be abhorrent to fundamental principles of justice. Anti-ransom laws are but one example.[13] Without conceding that such laws *would* benefit society as a whole, it is clear that they would injure some of the most vulnerable and aggrieved individuals among us: the victims of kidnappings and their families. A law that would countenance that awful and inconsistent result on the basis of a merely utilitarian calculus is not worthy of respect. Moreover, the enforcement of such a law would, paradoxically, require more kidnappings, thereby defeating the entire purpose. After all, the penalty for paying off a kidnapper would presumably be jail. But jailing someone whose only "crime" was a non-violent attempt to liberate a kidnapping victim would amount to… another kidnapping.

Let us not so subtly change the topic, at least slightly. Is it possible to have our cake and eat it too? That is, can we concoct some sort of scheme whereby we take a lot of the wind out of the sails of kidnappers, without violating the rights of victims to pay off those who have aggressed against them in this manner?[14]

Consider the following scenario. A group of rich men, the ones most likely to become future victims of a kidnapping gang, sign a contract with each other, agreeing not to pay ransom if any of their loved ones are kidnapped, and prohibiting their heirs from making any such payoffs if they are themselves kidnapped in the future. They publicize this agreement widely. If would-be kidnappers believed that this agreement would be enforced, that announcement ought to put an end to their evil machinations.

But would this group be believed? After all, it would be easy enough for any of them to renege. Even if they posted large bonds to this effect, large bonds they would have to forfeit if they paid ransom, or allowed ransom to be paid in their behalves, they could at a later date change their minds and be willing to forfeit them, since they have such high regard for their loved ones who might be seized. Why would not a rational kidnap gang at least be willing to test their resolve in this matter?

This problem does not appear insurmountable. Suppose the bond were significantly higher than merely a large amount of money. Suppose that the agreement provided for the death of any signatory violating it.[15] Assuming that all possible victims signed on with this contract, and ignoring the problem of minor children agreeing to any such measure, this would surely put some more teeth into the accord. Indeed, it is difficult to see why anyone would attempt to kidnap a signatory to such an agreement because the penalty for breaching the agreement – death – is as severe as anything that the

[13] Suppose that the sheriff in a southern town in the 1920s is holding a black man in his jail who is (falsely) accused of raping a white woman. The mob wants to lynch him. If the sheriff hands over his prisoner, only this one innocent man dies. If the man with the badge does not, he, along with the prisoner, and half the mob plus dozens of innocent bystanders will perish in the ensuing struggle. Utilitarianism indicates giving in to the lynch mob. Deontological reasoning suggests the alternative. (We stipulate that the entire world gets blown up right afterward, so that no non utilitarian precedents can get established by giving in to the mob.)

[14] Here, we are stipulating, arguendo, that our deontological point, to the effect that those who pay ransom are to some extent guilty of a crime, is mistaken.

[15] There is also the matter that the kidnap victim might secretly pay a ransom. We hereby abstract from such a possibility, arguendo.

kidnappers can inflict. At the very least, such a contractual arrangement[16] would exert as great a deterrence effect as any anti-ransom law. This being the case, accords of this sort could be expected to gain in popularity and put a real spoke in the wheel of kidnappers.

While anti-ransom contracts of this type may seem fanciful, they demonstrate a very practical insight: that the goals of providing for social welfare and respecting individual liberty are compatible, not competitors. We do not need to restrict the liberty of kidnapping victims in order to discourage kidnapping. Indeed, the best way to discourage kidnapping is to strike down laws against "victimless crime," which can only be enforced by violent restraint and involuntary confinement – in other words, by a further act of (legal, that is, governmental) kidnapping. In the absence of victimless crime laws, free and creative contractual arrangements would more than suffice to minimize the number of kidnappings, while allowing for ransom payments to mitigate the harm from whatever kidnappings do occur.

Let us consider an objection[17] to the foregoing. It might well be thought that our argument against the prohibition of a payoff to the kidnapper is based on the unrealistic assumption that such a law can be enforced. This is an incorrect reading, and besides the point. Our point, in contrast, is not so much to argue that we ought to have a law demanding a pound of flesh from would-be payers of ransom. Rather we argue that unless our lives are alienable, the market-oriented proposal we make, as a substitute for this law, cannot be made credible to would-be kidnappers, and, unless it is, they will still have as much of an incentive to ply their vicious trade as before. That is, our entire counter proposal is predicated upon the ability of signatories of this contract to actually abide by it: if they, in contravention of their own agreement, nevertheless give in, and pay off a kidnapper, then the other contracting parties can legally put to death such a

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[16] For the libertarian argument in favor of voluntary slave contracts stipulating the possibility of deaths on the part of signatories, see: Block, Walter (1999). "Market Inalienability Once Again: Reply to Radin," *Thomas Jefferson Law Journal*, Vol. 22, No. 1, Fall, pp. 37-88; Block, Walter (2001). "Alienability, Inalienability, Paternalism and the Law: Reply to Kronman," *American Journal of Criminal Law*, Vol. 28, No. 3, Summer, pp. 351-371; Block, Walter (2002). "A Libertarian Theory of Secession and Slavery." June 10; http://www.lewrockwell.com/block/block15.html; Block, Walter (2003). "Toward a Libertarian Theory of Inalienability: A Critique of Rothbard, Barnett, Gordon, Smith, Kinsella and Epstein," *Journal of Libertarian Studies*, Vol.17, No. 2, Spring, pp. 39-85; http://www.mises.org/journals/jls/17_2/17_2_3.pdf; Block, Walter (2004). "Are Alienability and the Apriori of Argument Logically Incompatible?" *Dialogue*, Vol. 1, No. 1. http://www.uni-svishtov.bg/dialog/2004/256gord6.pdf; Block, Walter (2005). "Ayn Rand and Austrian Economics: Two Peas in a Pod." *The Journal of Ayn Rand Studies.* Vol. 6, No. 2, Spring, pp. 259-269; Block, Walter (2006). "Epstein on Alienation: A Rejoinder" *International Journal of Social Economics;* Vol. 33, Nos. 3-4, pp. 241-260; Nozick, Robert (1974). *Anarchy, State and Utopia*, New York: Basic Books, pp. 58, 283, 331. For the libertarian argument in favor of other types of contracts stipulating deaths on the part of signatories, see Whitehead, Roy and Walter Block (2002). "Sexual Harassment in the Workplace: A Property Rights Perspective," *University of Utah Journal of Law and Family Studies*, Vol. 4, pp.226-263; http://141.164.133.3/faculty/Block/Articles%20for%20web/Sexual%20Harassment%20in%20the%20Workplace.doc; Block, Walter (Forthcoming, 2008). *Privatizing the Unprivatizeable: Highways, Roads and Streets.* Auburn, AL: The Mises Institute; Block, Walter (Forthcoming, 2009). "Alienability: Reply to Kuflik." *Humanomics* Vol. 23, No. 3; Block, Walter (2002). "Radical Privatization and Other Libertarian Conundrums," *The International Journal of Politics and Ethics*, Vol. 2, No. 2, pp. 165-175.

[17] We owe this objection to Zagros Madjd-Sadjadi.

person. That ought to make potential kidnapping gangs sit up and take notice, and, hopefully, renounce and end their evil ways.

How does the philosophy of communitarianism fit into this analysis? A communitarian objection to our thesis would be that we too swiftly argue the case based on the notion of murder as being unjustifiable because we begin with an unstated premise that laws are designed to protect individual liberty. Thus, they deny the concept of a communitarian liberty.

The libertarian opposes laws against suicide. But our punishment agreement, for those who renege on the non payment to kidnappers, is in effect a (quasi) suicide pact. We certainly do agree that if the law denies a person the right to kill himself (indirectly in this case), then *inter alia* there cannot be a law against murder. However, if one believes, as do communitarians, that our lives are *not* our own but are rather the state's, or the community's[18] then laws against suicide and murder are both justified.

Thus, there is indeed a conflict between libertarianism and communitarianism. They are contrary to each other, at least on this one issue,[19] and therefore cannot both be correct. The communitarian ideal is patently offensive to the concept of individual liberty, which gives rise to yet into another contradiction between the two philosophies. After all, if our lives are the state's or God's there can be no such thing as a basis for individual liberty *at all*!

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[18] Or God's, in the case of religious people, or religious communitarians.

[19] For a libertarian criticism of communitarianism, see Anderson, William L. (2003). "Communitarianism and Commodification," February 27; http://mises.org/story/1174; Block, Walter. 2003. "Libertarianism vs Communitarianism," Christensen, Karen and David Levinson (eds). *Encyclopedia of Community: From the Village to the Virtual World*. Thousand Oaks, CA: Sage, pp. 856-861; Gissurarson, Hannes H. (1986). "Community without Coercion," *Reason Papers* No. 11, Spring, 3-16; http://mises.org/reasonpapers/pdf/11/rp_11_1.pdf; Machan, Tibor R. (1999). "Community," June 7; http://mises.org/story/241; Machan, Tibor R. (2000). "The Virtue of Competition." September 13; http://mises.org/story/504 .