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REPLY TO "AGAINST LIBERTARIAN LEGALISM" BY FRANK VAN DUN

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Frank van Dun, in his article "Against Libertarian Legalism," criticizes prior articles by N. Stephan Kinsella and me.[1] Although his article constitutes, in part, a radical if not blistering attack on my prior article, at least it has the merit of fully understanding that which it criticizes. All too often, negative appraisals of libertarianism address themselves to straw men.[2] Say what you will about Van Dun's article —and I will have many critical things to say about it—it cannot be fairly asserted that he does not comprehend his target. I thank him for

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[1]Frank van Dun, "Against Libertarian Legalism: A Comment on Kinsella and Block," *Journal of Libertarian Studies* 17, no. 3 (Summer 2003). Van Dun spends about half of its length on a critical examination of N. Stephan Kinsella, "Against Intellectual Property," *Journal of Libertarian Studies* 15, no. 2 (Spring 2001). He spends the rest of it on Walter Block, "Toward a Libertarian Theory of Blackmail," *Journal of Libertarian Studies* 15, no. 2 (Spring 2001). I shall confine my comments on Van Dun's article to those sections that deal with my article, and leave it to Kinsella to reply to the other sections.

[2]See, e.g., Jonah Goldberg, "Libertarians Under My Skin: Grow Up Already," *www.nationalreview.com/Goldberg/goldberg030201.shtml* (March 2, 2001); Peter Schwartz, "Libertarianism: The Perversion of Liberty," *The Intellectual Activist* (1986); and Russell Kirk, "A Dispassionate Assessment of Libertarians," The Heritage Lectures #158 (speech presented at The Heritage Foundation, 1988). For replies to these three, respectively, see Walter Block, "Jonah Goldberg and the Libertarian Axiom on Non-Aggression," *www.LewRockwell.com* (June 28, 2001); Walter Block, "Libertarianism vs. Objectivism: A Response to Peter Schwartz," *Reason Papers* 26 (Summer 2003); and Tibor Machan, "A Passionate Defense of Libertarianism," The Heritage Lectures #165 (speech presented at The Heritage Foundation, 1988).

writing his critique, in that it offers me this opportunity to respond and thereby to clarify my own views in light of his remarks.

Van Dun starts by throwing down the gauntlet: he objects to me and to Kinsella using "the so-called Rothbardian non-aggression rule as the foundation or axiom for libertarian jurisprudence."[3] I should not wish to deny this patently obvious fact: not only is my article based on this insight, but so is the entire corpus of my work in legal and political philosophy. Since I plead guilty to this charge, my only recourse is to defend it against Van Dun's criticism. Moreover, as Van Dun insightfully points out, it is not just that I use the non-aggression axiom as the very basis of my theorizing about libertarian law, it is indeed the case that I use *only* this principle for this purpose.[4]

In sharp contrast, in Van Dun's view:

> There is no inconsistency in holding that force may be used lawfully in defense against unlawful actions that are not physical invasions of person or property. Yet Block and Kinsella proceed with their arguments on the supposition that the latter type of actions are not unlawful *because* they are not aggressions. Accordingly, they also suppose that the use of force in retaliation against such actions must itself be an aggression. It must therefore be unlawful. In

[3]Van Dun, "Against Libertarian Legalism," p. 63. It is unclear why he uses the qualifier "so-called" in describing this axiom. On p. 1 n. 2, Van Dun correctly cites Murray N. Rothbard, *For a New Liberty: The Libertarian Manifesto* (New York: Macmillan, 1978), p. 23, as the source of this axiom. Rothbard has not been called "Mr. Libertarian" for nothing, and surely this book comes as near to being the blueprint for the libertarian philosophy as anything else. Its main competitors for this honor would be Murray N. Rothbard, *The Ethics of Liberty* (Atlantic Highlands, N.J.: Humanities Press, 1982); Hans-Hermann Hoppe, *A Theory of Socialism and Capitalism: Economics, Politics, and Ethics* (Boston: Kluwer Academic Publishers, 1989); and Hans-Hermann Hoppe, *The Economics and Ethics of Private Property: Studies in Political Economy and Philosophy* (Boston: Kluwer Academic Publishers, 1993). But all of these are equally predicated upon a system of law with the non-aggression axiom at its core.

[4]Van Dun, "Against Libertarian Legalism," p. 65. Perhaps I speak too quickly here. As far as I am concerned, the basic building block of libertarianism is, indeed, the non-aggression axiom, but this is predicated upon self-ownership of persons, and of ownership of non-human resources through homesteading. So which is more basic: non-aggression or private property? They are opposite sides of the same coin; neither is possible without the other.

> their system of thought, the dichotomy of [physical] aggression on the one hand and non-aggression on the other coincides with the logical opposition between unlawful and lawful acts.[5]

The essence of Van Dun's criticism of my article is that while all physically invasive acts[6] must be characterized as unjustified aggression and prohibited by law, there is a second type of aggression, call it for want of a better term "mental aggression," which should also, in addition to physical aggression, be considered legally illicit. Examples of this, as we shall analyze below, include libel, lying, making false accusations to the police, blackmail, "hate" speech, and negative "social causation" such as incitement to riot, gang leaders or dictators ordering their henchmen to commit crimes (of physical invasion), etc.[7]

A COMPARISON

Before considering the specifics, we might do well to characterize Van Dun's perspective in comparison with other views on the propriety of prohibiting physical or mental aggression by law. The chart below depicts the views of four different political philosophies, comparing and

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[5]Van Dun, "Against Libertarian Legalism," pp. 65–66, emphasis in original.

[6]Van Dun, "Against Libertarian Legalism," p. 66 n. 5, raises the issue of the limits of physical invasion by asking if smoking a cigar outdoors is invasive. He upbraids me for failing to cite in this regard Murray N. Rothbard, "Law Property Rights, and Air Pollution," *Cato Journal* 2, no. 1 (Spring 1982). But this is rather harsh. First, I join with Van Dun in acknowledging that Rothbard "wisely" dealt with the issue. Further, I raise Van Dun by claiming that this is the preeminent article in all of free market environmentalism. In fact, I thought so highly of this essay that I included it in my compilation on this subject. See Walter Block, ed., *Economics and the Environment: A Reconciliation* (Vancouver, B.C.: Fraser Institute, 1990).

However, an author cannot cite every important article every time he writes. In my view, Rothbard on environmentalism was far enough removed from blackmail legalization—the topic of my article which Van Dun was criticizing—so as not to merit a citation there. However, lest Van Dun think I am slighting Rothbard, I cited him in that article no fewer than a dozen times—regarding his writings on blackmail, not environmentalism.

[7]Van Dun, "Against Libertarian Legalism," p. 64 n. 3. Further instances of "mental aggression" might include shunning, boycotting, cutting "dead," refusing to deal with, buy from, sell to, etc. It is difficult to see how any libertarian could favor the outlawry of such behavior, but this would seem to be the implication of Van Dun's theory.

contrasting them based on whether they consistently favor the legal prohibition of physical and mental invasion.

What should be illegal?	Physical invasion	Mental invasion
Libertarians	yes	no
Leftists	no	yes
Civil Libertarians	no	no
Van Dun	yes	yes

The libertarian, it is clear, advocates prohibiting by law all physical invasion of person and justly-owned property.[8] Just as obviously, these are the *only* acts, in this view, which should be declared illegal. Instances of mental invasion, here, are but the exercise of free speech. Some may indeed be immoral, but that is not the concern of the libertarian. Libertarianism is a philosophy limited to uncovering and describing the legitimate uses of force. In a nutshell, violence may only be employed in defense or in retaliation against a prior use, but never initiated.

There are many brands and varieties of leftism, so it is possible that a facile characterization of all of their views will prove erroneous, but I think it is fair to claim that they do not, without exception, favor the prohibition of physical violence. Certainly, for example, leftists do not object to the prospect of rent control, which violates the private property rights of landlords, or to the so-called Environmental Protection Act, which similarly assaults those of land-owners. Most leftists, of course, would oppose by law ordinary rape, theft, murder, assault and battery, etc., but there are exceptions even here. For example, if a member of a "protected" minority group is the perpetrator of such a crime, and the victim is an "exploiter" (e.g., a black female robs a white male), then leftists would likely welcome a finding of innocence no matter what the facts, whether explicitly or implicitly through jury nullification (e.g., the O.J. Simpson case).

What of mental aggression? There is no doubt that on these issues, leftists, by and large, subscribe to the present-day political consensus. Yelling fire in a crowded theater, incitement, libel, slander, blackmail, engaging in hate speech, and Nazis peacefully marching in

[8]Justly-owned property is based on homesteading, and on any licit or market activity, such as trade, gifts, barter, gambling, etc.

Skokie, Illinois (a predominantly Jewish area) would all be considered out of legal bounds.[9]

As far as civil libertarians are concerned, they predominantly tend to be leftist on economic issues.[10] They generally favor regulations, price controls, profit limitations, anti-trust, central planning, and pretty much any and all other such invasive acts aimed against commerce. As regards mental aggression, I am, perhaps, too kind to most civil libertarians in maintaining that they oppose the legal prohibition of it. Certainly, they do not consistently favor legalization of all acts of free speech.

However, there are at least some mental aggression issues on which civil libertarians and plain old libertarians agree. For example, members of the civil libertarian community have been out in front on the Nazi march in Skokie, and in opposing "hate" speech prohibitions.[11]

How does Van Dun fit into this matrix? As can be seen, he is *sui generis*. His views are idiosyncratic in that he takes the libertarian stance on physical aggression, but the leftist perspective on mental aggression. This is not a criticism, only a caution, since uniqueness does not imply error. It might well be that Van Dun is the only one marching correctly, and everyone else—libertarians, leftists, civil libertarians—is out of step. In the next section of this article, however, I shall try to show that this is not the case.

Let us clear up one other matter before moving to a consideration of Van Dun's criticism leveled at my "libertarian legalism." I refer to the distinction between illicit physical violence or its threat, on the one hand, and free speech on the other. I am not an "absolutist" on speech acts. There are some I agree should be legally constrained. For example, the statement, "Give me your money or I'll shoot you," uttered while pointing a gun at the victim. Or, "Here is a pound of potatoes, that will be $1.00, thank you," but you hand over only a pound of rocks. These are instances of threats of physical aggression, or theft or fraud. In the first case, while you do not gun down your victim, you obtain

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[9]Many of these issues are covered in Walter Block, *Defending the Undefendable* (New York: Fox and Wilkes, 1991).

[10]On this, see, e.g., William A. Donohue, *A Twilight of Liberty: The Legacy of the ACLU* (New Brunswick, N.J.: Transaction Publishers, 1993).

[11]On the former, see *www.aclu.org*; for the latter, see John Dixon, "The Keegstra Case: Freedom of Speech and the Prosecution of Hateful Ideas," in *Liberties*, ed. John Russell (Vancouver, B.C.: New Star Books, 1980).

his money, a physical invasion, by threat. In the second case, fraud, you in essence steal the amount of money you falsely charged. Theft is a physical invasion even when accomplished by a "mere" speech act.[12]

Speech, moreover, if it is to be protected by libertarian law, cannot be done with other people's property against their will. For example, you have a right to publish a book, but you cannot use my printing press without my permission. You have the right to sing rap music, but not in my bedroom at 3:00 a.m. unless I invite you to do so.

THE SPECIFICS

Inconsistency

Van Dun starts off the "Legal Libel?" section of his article by accusing me of an inconsistency. On the one hand, I maintain that only physical force or its threat can be illegal; mere lying speech, no matter how condemnable, cannot be illegal. On the other hand, I favor the outlawry of falsely threatening kidnapping (your son is unreachable on a trip and I tell you I'll kill him unless you pay me off not to do so). My claim is that this is an illicit border crossing. States Van Dun:

> What border crossing? Do I not have a property right to *say* that I hold your son in my power, even if I know that to be false, and to print and sell that statement? I have not invaded —in fact, I do not even intend to invade—anybody's property. If you foolishly believe otherwise, isn't that your responsibility?[13]

Van Dun is interpreting me as taking the position that you can, in the libertarian law code, *say* anything you wish, bar nothing. This is not exactly true, as I have tried to make clear above. Rather, my view is that you can say anything at all you wish *provided* only that it does not constitute invasive violence, theft, stealing, fraud, etc. As kidnapping clearly falls into the latter category, I fail to see any inconsistency in my analysis.

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[12]Writing bad checks and counterfeiting legitimate money are also uses of one's own property in a non-physically-invasive manner, and yet both are properly considered illegal in the libertarian code because they both amount to theft. Nor must "physical invasion" be assumed to require great force. The pickpocket, for example, exults in the delicacy of his operation, yet it is physical invasion nonetheless because it results in the alienation of physical property without the permission of the owner.

[13]Van Dun, "Against Libertarian Legalism," p. 73 n. 20, emphasis in original.

Libel

Libel is falsely besmirching another person's reputation. Should lies concerning people's acts or characteristics be prohibited by law?[14] I argue in the negative, on the ground that, however regrettable, they do not constitute an uninvited border crossing; thus, they are not equivalent to theft. This is because reputations about person X consist of everyone else's thoughts about him. Since X cannot own other people's thoughts, he cannot own his own reputation. If it is ruined by someone else's lies about him, nothing has been stolen from X. Logically, X *cannot* be the victim of a theft.

Van Dun questions not the truth but the relevance of my claim that the reputation of any one person is owned by everyone else. He states:

> Is the relevant question really whether saying something about a person is a physical invasion of that person or his property? Or is the relevant question whether it is lawful to accuse a person of some crime, knowing that the accusation is false? Only by asserting that the non-aggression proposition is the axiom of any libertarian legal code can we dismiss the second question on no other basis than that we have an answer to the first.[15]

Unfortunately, this writer vouchsafes us no independent criterion of *why* libel should (continue to) be declared illegal. Seemingly, he resorts to the view that anything not "nice" should be prohibited by law. But once we give credence to any such notion, a Pandora's box of crime will be opened. For example, failure to reply to a neighbor's "good morning" might conceivably land one in the pokey.

Selling Reputation

Next, Van Dun objects to the libertarian defense of legalized libel on the ground that:

> While it is true that one cannot own one's reputation (that is, other people's opinions about oneself), it is also true that one can sell one's reputation. . . . How can one sell what one does not own?[16]

I am not unsympathetic to the phrase "sell one's reputation." This occurs every day when the sale price of an enterprise exceeds the value

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[14]Many jokes are either wild exaggerations or outright lies about people. A consistent application of the Van Dun program would prohibit such humor.

[15]Van Dun, "Against Libertarian Legalism," pp. 73–74.

[16]Van Dun, "Against Libertarian Legalism," p. 74.

of the physical capital by an amount that we commonly call "good will." However, this will not bear the philosophical weight that Van Dun wishes to place upon it, since it is only a metaphor, strictly speaking. Literally, good will does not consist of other people's thoughts about a person or a business. Rather, it lies in the reasonable prediction that other customers are likely to continue to purchase his or its wares at a rate that makes the firm more valuable than might be extrapolated merely from the available amount of physical plant, inventory, etc. Thus, there really is no mystery in the fact that one can "sell one's reputation" (metaphorically) and still not be the owner of it. How could one own one's reputation, when it consists of the thoughts of other people, and one cannot own their thoughts?[17] But one can indeed cash in on the likelihood that the purchaser of a firm is likely to reap the bonanza in the form of good will.[18]

False Accusation of Crime

Van Dun seems particularly exercised about my claim that making a false accusation of criminality to the police should not be proscribed by law. I based this determination on the fact that we are each responsible for our actions, and that if the *police* or courts err, *they* must pay the penalty for so doing, and not the false accuser who is guilty only of using his free speech rights. His criticisms concern the following: this can do great harm to the falsely accused, and the conmen can be experts in their craft, fooling even wise cops and judges.

Surprisingly, given these strenuous objections, Van Dun supplies his own refutation of them:

> Since Block rightly holds that the police and the courts should be unprivileged private institutions, he should—and, of course, does—know that providers of such valuable services would hedge against the risks involved in their profession. They certainly would insist on a clause in their contract to exonerate them for any mishaps that might occur despite their best competent efforts to serve justice. I am willing to bet that they would announce severe retailation against anyone trying to use them under

[17]As to whether a person can own another person, see Walter Block, "Toward a Libertarian Theory of Inalienability: A Critique of Rothbard, Barnett, Gordon, Smith, Kinsella, and Epstein," *Journal of Libertarian Studies* 17, no. 2 (Spring 2003).

[18]Van Dun admits as much, but then gets involved in a discussion of trademarks, a topic which I will leave to Kinsella.

> false pretences or for unlawful purposes. For that reason, surely, false accusations rarely will be made to well-established police or court-services.[19]

However, I do not find this refutation of his own criticism fully convincing. "Hedge?" Yes, by all means. But with whom? It would appear that Van Dun is talking about a contract between the misled police-court firm and the falsely accused person it unjustly punishes, based on the misleading information it is given. There can be no such contract. The two bear the relationship with each other of victimizer and victim, not contractual partners. There can no more be a "contract" between them than can there be between rapist and rape victim. Rather, as "unprivileged private institutions," these protection firms will have to make compensation to their victim to the full extent of the law.[20]

Nor can the private defense agency, under proper libertarian law, engage in "severe retaliation" against lying accusers, for, as we have seen, these people are guilty of no more than exercising their rights of free speech. Any retaliation against them would constitute a violation of their person or property *de novo*.

The hedging, instead, would be in the form of dealing very gingerly with those who accuse others of a crime. Before believing accusers, for example, private courts might ask them to post a bond, which need not be limited to money. For example, if A accuses B of murder, the defense agency might pay A for his services, but contractually tie up A in such a way that if B is later determined to be innocent, then A himself agrees to accept the penalty for this very crime, as the price of being paid by the defense agency as a witness.

But Van Dun's quiver is not empty of arrows on this topic. His next sally is that:

> Under the Block Code, it is apparently perfectly legal to attempt to ruin their reputation by making false accusations "in the court of public opinion" (which does not operate under mutually agreed to contracts). Once such smear campaigns get under way, anything can happen. For example, there could be an opening for new entries into the market for judicial services. The newcomers presumably would want to establish credibility quickly by announcing their affinity to the current swings of public opinion. The established courts might feel that they could only survive

[19]Van Dun, "Against Libertarian Legalism," p. 75.

[20]On libertarian punishment theory, see the Bibliography for articles by Barnett and Hagel, Benson, Bidinotto, Evers, King, Kinsella, and Rothbard.

> by doing the same. Rather than courts with a reputation for judicial probity, we might see courts with a reputation for being in tune with "what people think and want." Is devolution into populism part of the libertarian deal?[21]

This will not do at all. What Van Dun is now relying upon is the inefficacy of private courts. They will deteriorate due to false accusations; they are inherently unstable. But on the very same page, in a previous paragraph, this author contends: "Block *rightly* holds that the police and the courts should be unprivileged private institutions."[22] If this means anything, it is that private courts are *efficacious*.[23] If so, and I do not intend to argue this point since my antagonist says he agrees with me on it, then presumably they would be able to deal with this problem in an appropriate manner. This author cannot be allowed to have it both ways.

Dismissal

Van Dun expresses the reservation about the "Block Code" that, under it, the innocence of the falsely-accused person—even when acquitted[24]—would remain "shrouded in doubt." He writes that:

> Under the Block Code, the victim of a false accusation is not even permitted to defend himself against it in a regular way. The code does not permit him to challenge the authors of the false accusation to prove in a regularly conducted trial that they have enough incriminating evidence to make the accusation stick.[25]

Correct, under the "Block Code" there could be no criminal trial for the libeler, since libel would not be a crime in the libertarian society. However, there are other ways to deflect false allegations than trials. For example, full page newspaper advertisements, challenges to a public debate, etc. These are *also* ways to give, as Van Dun writes,

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[21]Van Dun, "Against Libertarian Legalism," pp. 75–76.

[22]Van Dun, "Against Libertarian Legalism," p. 75, emphasis added.

[23]For the general case in favor of private courts and police vis-à-vis their statist counterparts, see the Bibliography for articles by Benson, Bernstein, Friedman, Hadfield, Hoppe, Hummel, Kinsella, Macey and O'Hara, Milgrom et al., Rothbard, Stringham, Tannehill and Tannehill, and Woolridge.

[24]Van Dun thinks that the criterion for conviction "requires proof beyond the shadow of doubt." At least in American jurisprudence, with which libertarianism is in accord, this would be "beyond a *reasonable* doubt."

[25]Van Dun, "Against Libertarian Legalism," p. 76.

> a strong signal to public opinion: I am not afraid of those guys; I am willing to give them a forum in which *I* have to prove beyond a shadow of a doubt that they are frauds.[26]

Thus, it is simply not true that the falsely accused has no possibility of redeeming himself.

Van Dun concludes that "sometimes under such circumstances, an acquittal is a worse fate than a conviction."[27] This sounds like something of an exaggeration, a statement to which no one who has actually been convicted of a crime would likely acquiesce. But even if it were true, the falsely-accused person has not been violated by any physical aggression, and thus should have no remedy under a just law code. There are many nasty things that happen in life—slurs, rejections, failures to have one's good qualities recognized, being underrated—but it is a chimera to expect a legal solution for all of them.

In any case, there is a *practical* solution to this problem. As I previously wrote:

> Paradoxical though it may be, reputations would probably be more secure without the laws which prohibit libelous speech! With the present laws prohibiting libelous falsehoods, there is a natural tendency to *believe* any publicized slur on someone's character. "It would not be printed if it were not true," reasons the gullible public. If libel and slander were allowed, however, the public would not be so easily deceived. Attacks would come so thick and fast that they would have to be *substantiated* before they could have any impact. Agencies similar to Consumers Union or the Better Business Bureau might be organized to meet the public's demand for accurate scurrilous information.
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> The public would soon learn to digest and evaluate the statements of libelers and slanderers—if the latter were allowed free rein. No longer would a libeler or slanderer have the automatic power to ruin a person's reputation.[28]

Curiously, Van Dun is fully aware of this benefit:

> With everybody calling everybody a liar, people will soon become so distrustful that they will not believe any accusation, true or false. Assuredly, Block is right to suggest that that is effective protection against libel and the loss of reputation—but only because nobody can lose a good

[26]Van Dun, "Against Libertarian Legalism," p. 76, emphasis in original.

[27]Van Dun, "Against Libertarian Legalism," p. 76.

[28]Block, *Defending the Undefendable*, pp. 60–61.

> reputation in a situation where nobody has one (because nobody is trusted to have one).[29]

If Van Dun is aware of this "swamping" effect—with so much "noise" out there, it will be difficult for libelers to ruin anyone's reputation—why does he complain so bitterly about loss of reputation under the libertarian legal code? He is mistaken, however, in surmising that, in the free society, no one could have or maintain a good reputation. All that this swamping effect proves is that more than a mere allegation is needed to establish a bad (or good) reputation; evidence, proof, solid criticism, etc., will be required.

False Imprisonment

Suppose that A falsely accuses B of a crime. C (the police), D (the judge), E (the jury), and F (the jailor) form a "chain" which together imprisons B for 10 years. At that time, new DNA evidence comes to the fore, definitively proving that B could not possibly have been guilty of the crime in question. What does libertarian justice require in such a situation?

It is a basic element of libertarianism that the state's minions do not operate under a special aura; they are not gods.[30] Government employees, such as policemen, juries, judges, jailors, etc., are "merely" individuals. If, together or singly, they convict an innocent man, and this can later be proven, then they are guilty of the crime of kidnapping (for incarceration) or murder (for execution).[31] The announcement of this policy will presumably cool their ardor for finding innocent people guilty of crimes. Compare and contrast this to present practice where the rights of the innocent can be run over roughshod without any compensation to the victim (or his heirs) from those members of the criminal gang calling themselves "government" when they are

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[29]Van Dun, "Against Libertarian Legalism," p. 77.

[30]See, e.g., Walter Block, "Decentralization, Subsidiarity, Rodney King, and State Deification," *European Journal of Law and Economics* 16, no. 2 (November 2003).

[31]There are other "minor" participants in this tragedy who, willy-nilly, are also part of this chain: the court reporter, the janitor, etc. Presumably, they would be assigned only a small responsibility for the crime of false imprisonment, and punished relatively lightly. For more on this, see Walter Block, "Radical Libertarianism: Applying Libertarian Principles to Dealing with Unjust Government, Part I," *Reason Papers* 27 (forthcoming); and Walter Block, "Radical Libertarianism: Applying Libertarian Principles to Dealing with Unjust Government, Part II," *Reason Papers* 28 (forthcoming).

responsible for such injustice.[32] If this is the implication of the Van Dun code, I want no part of it.

What about the false accuser? That is, what of the perjurer? In a libertarian society, would perjury even be a crime? Not as such, since the right to say what you wish, truth or falsehood, is absolute, barring an accompanying threat of force, theft, or fraud.[33] The perjurer is not, properly speaking, a part of this guilty chain of people, responsible for the legalized kidnapping. Rather, he plays a role akin to that of the riot inciter, on which more below.

The only exception to this general rule, as we have seen above,[34] is if the perjurer is somehow brought into the actual guilty chain, through contract. That is, if the false (or indeed, any) accuser becomes a voluntary employee of the system, then he takes on at least as much guilt as any of the other participants, such as the judge, jury, jailor, etc.

Yet another difficulty is that, in all of these objections, Van Dun relies entirely upon utilitarian considerations.[35] If "Libertarian Legalism" were really as incompatible with the philosophy of libertarianism as Van Dun maintains it is, one would think he could offer at least some non-utilitarian objections.

Incitement to Riot

We now arrive at a topic that lies at the very core of the disagreement between Van Dun and me. Van Dun vehemently rejects Rothbard's statement that "Incitement to riot is a pure exercise of a man's right to speak without being thereby implicated in a crime."[36] Van Dun harshly dismisses this view as "an obnoxious inability to recognise crucial real differences in real situations."[37]

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[32]For the definitive statement of government as criminal gang, see Lysander Spooner, *No Treason: The Constitution of No Authority* (Larkspur, Colo.: Ralph Myles, 1966).

[33]See footnote 12 above for the discussion on writing bad checks and counterfeiting legitimate money. See also the discussion of implied threats and fraud on pp. 5–6.

[34]See the discussion above about private courts and police.

[35]For a devastating critique of utilitarianism, see Rothbard, *The Ethics of Liberty*, pp. 201–15.

[36]Rothbard, *The Ethics of Liberty*, p. 126. I offered warm support for this position in Block, "Toward a Libertarian Theory of Blackmail," p. 63.

[37]Van Dun, "Against Libertarian Legalism," p. 78.

But Van Dun's dismissal must be rejected because, although Van Dun seems to distance himself from the "fashionable anti-racism laws that are the paragons of political correctness in Europe today,"[38] in reality he does not. For he concedes that while reading "a phrase in a book filled with hate-speech," or even writing it, would properly be legal, speaking it, or rather shouting it in front of a group of impressionable people, should not be. However, if the "politically correct" are known for anything, it is opposition to "hate speech" in *any* of its manifestations. Van Dun is, thus, at least a partial proponent of political correctness in that he opposes, if not the writing and silent reading and even perhaps conversational usage of such talk, then at least the "shout[ing of it] at the top of one's voice in front of an excited crowd." Yet he somehow interprets matters in such a way that "Block and Rothbard," not himself, "are making the same mistake" as are the politically correct.[39]

Not so. Rather, both Rothbard and I on the one hand, and the politically correct on the other, are at least consistent in our very different views. Much as it pains me to enlist myself (and perforce Rothbard) on the same side of any issue as those who make a fetish of political correctness, in this one case it applies: they are logically consistent in that they would prohibit by law *all* manifestations of "hate" speech. If they had their druthers, they would likely outlaw even *thinking* such thoughts. Rothbard and I are also logically consistent in that we adopt for the legal code that old childhood chant, "sticks and stones may break my bones but names can never harm me (or violate my rights)." That is, Rothbard and I would prohibit by law *no* instances of so-called "hate" speech. It is only Van Dun who has some fancy philosophical explaining to do in this regard, as he would proscribe some examples of "hate" speech, i.e., the ones he claims to be incitement, but not others.

The distinction that Van Dun seems to draw is the utilitarian one that some instances may be harmful (e.g., as when the enraged crowd goes on to violate real physical rights) and others not (e.g., the quiet contemplation of "hate" speech). But there are many other things that "enrage" people: the sight of members of a despised race, alcohol, acts which cause jealousy (e.g., a girl who I had my eye on dates another man), when your kid comes home with an "F" on his report card. Are we, by law, to ban the very existence of minority groups, bring back

[38]Unfortunately, such laws are hardly limited to Europe.

[39]Van Dun, "Against Libertarian Legalism," p. 78.

prohibition of alcohol, bar any woman agreeing to a date of which I disapprove, and disallow poor report cards? Not on libertarian grounds. Yet, this seems to be the implication of Van Dun's analysis.

Our author is by no means through in his attack on the licitness of riot incitement. First, he mobilizes the likenesses of Hitler, Stalin, Roosevelt, and Churchill as dictators. None of them, indeed, may personally have been guilty of even a single act of violence against person or property. According to Van Dun's interpretation of my viewpoint, they would therefore be "guilty" of no more than exercising their free speech rights, and should be considered innocent of all wrongdoing.[40]

However, Van Dun reckons in the absence of threats. To reiterate, the libertarian legal code proscribes not only invasive acts, but also intimidation. Hitler, Stalin, et al. were not merely engaging in their free speech rights. Rather, they were issuing orders to their subordinates to maim and kill innocent people. Implicit in these commands was the threat that if they were not obeyed, those who failed to carry out these orders would be summarily dealt with.

The proper analogy is not between the riot exploiter, who in no way, manner, shape, or form threatens his listeners to commit mayhem, and the dictator. Rather, the proper analogy is between the riot exploiter and, say, the announcer at a soccer match who mentions the score, whereupon the fans erupt in an orgy of violence. The point is that while both the riot inciter and the dictator are indeed causally related to later illicit violence committed either by the crowd or the army, only the latter violates libertarian strictures against threats. If merely occupying a causal relationship with an unjustified border crossing was sufficient for a finding of guilt, then farmers could be held liable for both the crowd's and the army's rampage, since neither could occur were no food available.

Similar reasoning obviates two further attempts by Van Dun to call into question the libertarian analysis of riot incitement. One is the difference between proximate and ultimate cause. As he says, rightly:

> Few are likely to believe a progressive lawyer who argues that, while his client admittedly did aim his gun at the victim and pulled the trigger, it was the bullet that killed the victim.[41]

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[40]Van Dun, "Against Libertarian Legalism," p. 78.

[41]Van Dun, "Against Libertarian Legalism," p. 78.

The bullet, and, for that matter, the bullet seller, are only causally related to the homicide.[42] But this, we have seen, is insufficient for guilt.

Analogies

Van Dun tries to make an analogy between the triggerman and the bullet, on the one hand, and the inciter and the rioter, on the other. He argues that the gunman is really responsible for the murder, not the bullet that actually kills, because the former came first in the causal chain, and so was responsible for the effect of the latter. This conclusion is true enough. But then he maintains that precisely the same relationship obtains between the inciter and the rioter who murders. To do so, however, he would have to say that, after all, the inciter, too, is responsible for the murder, not the rioter who actually kills, because the former came first in the causal chain, and was thus responsible for the effect of the latter.

When put in this way, the problems with the analogy are apparent. First, no one in his right mind would hold the bullet guilty of anything. It is an inanimate object, for all of its destructive power. Yet, it would be the rare analyst, even one as intent upon incarcerating the *inciter* as is Van Dun, who would allow the *rioter* off scot-free, as he would the bullet. That is, no one would even think to "punish" the bullet for its evil deed.

Second, and not unrelated, the rioter is a human being, presumably with free will;[43] no one could say the same of a piece of lead. Third, there are many cases in which an inciter incites until his lungs give out, and no subsequent riot takes place, further attesting to the distinction between free will and inanimate objects that mars Van Dun's analogy. But, apart from a misfire, bullets always discharge when fired. According to Van Dun, the inciter "fires off" the rioter in much the same way as the shooter does to the bullet. This is not at all the case. To be logically consistent, Van Dun would have to hold the inciter guilty of a crime even when no subsequent riot ensued.

Van Dun's second attempt to question the libertarian analysis of riot incitement relies on an analogy that has to do with causal chains that lead to good results, not bad ones. He states:

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[42]Assuming that the seller was not part of a criminal conspiracy.

[43]For an interesting discussion on whether all human beings partake equally in this characteristic, see Michael Levin, *Why Race Matters: Race Differences and What They Mean* (New York: Praeger, 1997).

> If the man that performed the last part of a complex action by his act alone really exonerated all those who performed an earlier part, then he should also be the only one to receive credit for the completed action. Especially from libertarian legal theorists who also are eminent Austrian economists, we should not expect a theory that implies that only the worker who puts the finishing touch on a car before it is ready for sale to the final consumer is responsible for the whole machine. Of course, Block would say that this analogy is misplaced because the worker is under contract, whereas the rioters presumably were not under contract to the agitator. However, is it really only the fact that the worker is under contract that stands in the way of his claiming title to whatever the market is prepared to pay for the car?[44]

This is problematic for several reasons. First of all, I do not regard the incitement and the subsequent riotous murder as parts of the same "complex action." Rather, they are two separate acts, undertaken by two separate people, each of whom boasts of free will. The inciter could have incited with no riot whatsoever, and the riot could have occurred absent the inciter. In contrast, in a single complex act, by definition, no part could have taken place without the other. The act of shooting, for example—a complex act of the sort that Van Dun erroneously thinks applies to these other cases—could not have taken place without both a finger pulling on the trigger and a bullet being discharged.

Secondly, as Van Dun himself sees, although he deprecates the importance of this disanalogy with his irrelevant follow-up interrogative, the inciter has not paid off the rioter, while "the worker is [indeed] under contract." It is as if Van Dun is attributing to me the view that he who *hires* a killer to murder an innocent person should not be found guilty; after all, the initiator of murder-for-hire did not himself pull the trigger. But in subsidizing evil, one becomes a part of it. *Paying* for a murder-by-hire is not merely an act of free speech; it is part and parcel of gangster-like activity.[45] It is similar to the role undertaken by the dictators mentioned above, who not only threaten their underlings to commit crimes, but pay them to do so as well.

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[44]Van Dun, "Against Libertarian Legalism," p. 79.

[45]This also indicates that not all voluntary contracts are legitimate in libertarian law. For another example of this phenomenon, see Hans-Hermann Hoppe, "Against Fiduciary Media," with Guido Hülsmann and Walter Block, *Quarterly Journal of Austrian Economics* 1, no. 1 (1998).

Third, even apart from the contractual divergence, which is, after all, only a legal matter, there is the fact that the entire analogy is misdirected. Van Dun argues that inciter is to rioter as everyone else in the auto assembly line is to the person who puts the finishing touches on the car. In mathematical format, we have the following equation:

Analogy 1; incorrect

Inciter		All others on auto assembly line
———	=	———————————
Rioter		Final man on assembly line

The equal sign, indicating a valid analogy, does not hold. The first element of these two pairs simply does not have the same relationship to the second of them. The inciter incites the rioter. It is not at all the case that the last man on the assembly line is *incited* by all the others to complete the group's work. Rather, the relationship is that the first element in the right hand side of the equation *starts* the job and the second *completes* it. In order to see this more clearly, I have put together not one but two related analogies where the first element of each pair *does* bear the same relationship to the second.

Analogy 2; correct

Inciter		Person who intends to purchase the car
———	=	———————————————————
Rioter		All of the people who work to create the car

Here, with just a bit of poetic license, we can interpret the potential buyer of the automobile as, in effect, the "inciter," and all of the workers as "incitees." Of course, this is not a perfect analogy in that the potential customer plays far more of a passive role than does the riot inciter. But for all of that, at least the members of the automobile firm are putting together the vehicle in an attempt to please the consumer, in much the same way as the rioters act so as to gratify the inciter.

Analogy 3; also correct

X		All others on auto assembly line
———	=	———————————
Y		Final person on auto assembly line

X: Those rioters who carry on their shoulders other rioters so that the latter can jump over a fence to attack victims.

Y: Those rioters who are carried on the shoulders of other rioters so that they can jump over a fence to attack victims.

Again the analogy is a reasonably precise but not perfect one, although certainly more so than Van Dun's. Here, the relationship between both of the first elements and both of the second elements is that between starting a job and finishing it.

And what of the relationship between the inciter and the rioter on the one hand and the "blind poet" and his girlfriend-typist on the other hand? States Van Dun: "If the blind poet really is the author of the poem, why should the rabble-rousing demagogue not be the author of the riots he incites?"[46] The answer is obvious. One can author a poem, but by the very nature of reality, including the fact that there are separate individuals all of whom enjoy free will, no one can "author" anyone else's acts, except, perhaps, by extension, if there is duress involved, which does not at all apply in the case of riot incitement.[47]

A *reductio ad absurdum* of Van Dun's hypothesis can be created by extending it to other realms. That is, if incitement to riot is *per se* impermissible, what about other versions of persuasion? This must apply to them as well, if we take his thesis to its logical conclusion. There are influencing, arguing, and urging. Lawyers and advertisers do virtually nothing *other* than "inciting" people to do what they advocate, and a large part of being a doctor, teacher, psychiatrist, etc., would appear to be to convince people to act in ways they urge. All of these professions would have to be outlawed under Van Dun's jurisprudence.

Strangely, Van Dun himself alludes to these other phenomena, seemingly in support for his argument, but does not appear to realize that they instead undercut it. He mentions as agents "of 'social causation' . . . advertisers, educators, politicians, and agitators."[48] The implication would appear to be that practicing these professions should be banned by law, since people who practice them are all inciters of one variety or another. Van Dun goes on a jeremiad against "the manipulator," but fails to draw the logical conclusion that if the riot inciter should be outlawed, then so should these others.[49]

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[46]Van Dun, "Against Libertarian Legalism," p. 79.

[47]If the Hulk throws me, bodily, into the person of Murray N. Rothbard, then it might fairly be said that this action was "authored" by the Hulk, and was not really my act. It was done against my will. I am merely the Hulk's projectile in this case. According to Van Dun, the Hulk and the inciter play identical roles. This is hard to accept. (I owe this example to Stephan Kinsella.)

[48]Van Dun, "Against Libertarian Legalism," p. 79.

[49]Many husbands complain that their wives are "manipulators." If true, this behavior might justly be "punished" with a divorce action. But if we take Van

Van Dun waxes eloquent about "reality," "facts," and "the real world," but this cannot save his thesis. He is arguing that people should be considered criminals if they "manipulate" or are "skilled agitators," or if they "cause innocent persons much harm and suffering."[50] But our existence is sometimes painful. There are rejections, rebuffs, and heartaches of all types and varieties out there. To criminalize all such cases is surely a vast overreach for the criminal law. Although Van Dun's credentials as a libertarian are, in many ways, beyond reproach,[51] in this section of his paper he appears to be making common cause with ordinary politically-correct leftists, do-gooders, and paternalists.

Labor Contracts

Contracts concerning labor relationships might be meant by some "to facilitate human intercourse,"[52] but as far as libertarianism is concerned, all legitimate capitalist acts between consenting adults[53] should be allowed, whether or not they "facilitate human intercourse," whatever that means. For example, if a man wants to hire a woman to sleep with him as well as type and take dictation—a sort of combination job consisting of part prostitute and part secretary—*and she agrees*, then this should be considered as valid a labor contract as any other.[54]

Dun seriously, the implication is that they should serve jail time, surely an injustice.

[50]Van Dun, "Against Libertarian Legalism," pp. 79–80.

[51]See Frank van Dun, "A Formal Theory of Rights" (Vakgroep Metajuridica, Faculty of Law, University of Limburg, Maastricht, 1986, working paper); Frank van Dun, "Economics and the Limits of Value-Free Science," *Reason Papers* 11 (1986); Frank van Dun, "Philosophical Statism and the Illusions of Citizenship: Reflections on the Neutral State," in *Hayek Revisited*, ed. B. Bouckaert and A. Godart-Van der Kroon (Cheltenham, U.K.: John Locke Institute–Edward Elgar, 2000); an earlier and shorter version appeared as Frank van Dun, "Philosophical Statism and the Illusions of Citizenship: Reflections on the Neutral State," *Philosophica* 56 (1995); and Frank van Dun, "Natural Law, Liberalism, and Christianity," *Journal of Libertarian Studies* 15, no. 2 (Summer 2001).

[52]Van Dun, "Against Libertarian Legalism," p. 80.

[53]Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974), p. 163.

[54]See on this Roy Whitehead and Walter Block, "Should the Government be Allowed to Engage in Racial, Sexual, or Other Acts of Discrimination?" *Northern Illinois University Law Review* 22, no. 1 (Fall 2001); Roy Whitehead and Walter Block, "Sexual Harassment in the Workplace: A Property Rights Perspective," *University of Utah Journal of Law and Family Studies* 4 (2002);

If the employee later changes her mind, she should be able to quit the job, of course. But any question of her being paid damages, or worse, jailing the employer for entering into such contract, must and should be anathema, at least to the libertarian who, by definition, is not and cannot be a paternalist on matters of this sort.

Van Dun disagrees. What are his reasons? He does not focus on whether an employer and an employee have a right to make such a contract, but on whether a boss has a right to fire a worker already in the firm who refuses to add prostitution services to her already agreed-upon role as a secretary. This, of course, is to focus attention on a peripheral concern instead of upon the main issue. The real debate involves the question of whether such contracts are valid. If they are, then the issue of damages, let alone incarceration, never even arises. Only if they are invalid does this then come to the fore.

But given that Van Dun somewhat derails the discussion into the proprieties of firing at will, let us follow him there.

Free to Fire?

Surprisingly, for a libertarian, Van Dun maintains that employers cannot fire (disengage themselves from employees) at will, or at least with no penalty. Rather, if they exercise this option, they must pay "damages" to the aggrieved worker.[55] But this, at the very least, violates the law of free association, which is one of the most basic building blocks of the entire libertarian philosophy. If people are not free to associate with whomever they wish, in the *complete* absence of legally-mandated penalties for doing so, then to that extent they are not fully free; rather, they are at least partially enslaved. The seriousness of this cannot possibly be underestimated, for the main problem with the "curious institution" is that the slave was not free to quit whenever he wished. Had he been, the entire onerousness of the system would have disappeared in one fell swoop.

This naturally leads to the question of why an eminent libertarian like Van Dun would not acquiesce in the right of free association in the labor market? And here the story gets curiouser and curiouser, for he gives no reason for such a peculiar position. Rather, he enmeshes

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and Roy Whitehead, Walter Block, and Lu Hardin, "Gender Equity in Athletics: Should We Adopt a Non-Discriminatory Model?" *University of Toledo Law Review* 30, no. 2 (Winter 1999).

[55]Van Dun, "Against Libertarian Legalism," p. 80.

himself in a discussion of whether contracts can anticipate all eventualities. He makes a strong case that they cannot. I entirely agree with him on this.

The reason for this misdirection appears to stem from the fact that in my article "Toward a Libertarian Theory of Blackmail," which Van Dun criticized, I was, in turn, criticizing an article by George Fletcher. Fletcher couched such sexually "exploitative" contracts not in terms of their initial legitimacy, but rather on the basis of switching an existing ordinary labor relationship to such an exploitative contract.[56] He offered ten cases for evaluation regarding blackmail, the fifth of which was "5. Lascivious employer: D, V's employer, threatens to fire V unless he sleeps with her."

Perhaps it is the case that had the employee been clearly appraised of the dual nature of the proposed work (e.g., part-time secretary and part-time prostitute), then Van Dun would have no principled legal objection to it, the howls of outrage from the politically correct notwithstanding. It might be that his only objection to such an arrangement is that it is done after the initial hiring, and thus constitutes a change in the employment relationship. Conceivably, there might be fraud involved in the case where a woman is hired purely as a secretary, and undergoes moving and other relocation expenses to take the job, only to be told soon after she starts what the employer had intended all along: that she add sexual services to her secretarial ones.[57]

This might be the reconciliation between Van Dun and myself on such a matter. But even here it is a stretch, because employment-at-will, absent a contract, is employment-at-will. The right to free association means, among other things, that an employer can fire an employee for *any* reason or for no reason at all. I fully agree with Van Dun when he says, in effect, that under ordinary circumstances: "The employer who tells his secretary that she should consider herself fired unless she agrees to sleep with him, is trying to get her to do something she did not contract for."[58] But Van Dun misconstrues the situation. The employer in this case is *not* relying on a contract he thinks the woman has agreed to. She has, by stipulation, agreed to no such thing. Rather,

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[56]George P. Fletcher, "Blackmail: The Paradigmatic Case," *University of Pennsylvania Law Review* 141, no. 5 (May 1993).

[57]Although under Rothbard's analysis, promise-breaking is not equivalent to theft. See Rothbard, *The Ethics of Liberty*, p. 134.

[58]Van Dun, "Against Libertarian Legalism," p. 81.

the boss is serving notice on the worker that the *previous* contract, whatever it was, is now null and void; he is exercising his right of free association to end it. As well, he is offering her a *new* contract that calls upon her to sleep with him, in addition to her other duties. She is, of course, free to accept or reject this new offer. But by merely ending the old contract and proposing this new one, he is not offending any legitimate libertarian law, contrary to Van Dun.

Apropos of Van Dun's example where the boss asks the worker to lift fifty pound crates instead of twenty pound ones, presumably for the same pay, this author says:

> If that is an offer to renegotiate the labour contract or else terminate it, no objection can be made. But it does not look like such an offer. It looks like an attempt to unilaterally change the explicit terms of the contract. If that is the case, a judge—especially, I should say, a libertarian one—will not just consider that an employer is free to hire and fire at will. That rule is not the issue here. The issue is, whether the labour contract implies that the employer can unilaterally change its terms without violating the contract he has with the worker.[59]

One may well ask how Van Dun gets his privileged insight as to the intentions of the boss? The owner of the firm, after all, is the one making the offer. Surely he would know better than an outside commentator like Van Dun what he is offering.

Let us invert matters. If Van Dun wishes to argue that the undoubted fact that all contingencies cannot ever be fully anticipated somehow implies the employer cannot without penalty fire the employee for any or no reason, why does this situation not preclude the worker from quitting without any by-your-leave? What is sauce for the goose is surely sauce for the gander. The employee and employer are in a symmetrical legal relationship with one another.[60] If our inability to fully anticipate the future disallows the employer from declaring independence from the employee, the reverse holds as well. Since Van Dun would scarcely use this argument to compel labor from an unwilling employee, he is logically "estopped" from maintaining his position vis-à-vis the owner of the firm firing a worker.[61]

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[59]Van Dun, "Against Libertarian Legalism," pp. 81–82.

[60]To deny this is to revert to simplistic Marxism, something of which I would not accuse Van Dun.

[61]On the relationship between estoppel and libertarian theory, see N. Stephan Kinsella, "Estoppel: A New Justification for Individual Rights," *Reason Papers*

In Van Dun's view, a libertarian legal code of the sort I advocate would be "a Lawyers' Guaranteed Employment Act." Not at all, at least compared to the situation that now prevails. Summary firings (or quits!) with no advanced notice required, if upheld by the courts, would be a simple matter compared to present practice, with its lawsuits over "good faith," "termination for cause," and a plethora of rules attendant to unionization. All of this would vanish in the free society, and with it the need for hiring a gang of lawyers to sort out enactments and bureaucratic findings that should not exist in the first place.

Back to Basics

Van Dun delivers himself of the opinion that:

> Those who bend over backwards are just as likely to end up looking at the sky, which is not the place where most injustices occur. That, I think, is the problem with Block's discussion of blackmail.[62]

This is less than fully edifying, to say the least. Van Dun attacks me (and also Kinsella) for not providing "a sound philosophy of law." But there is such a thing as specialization and the division of labor, and it applies to intellectual pursuits as to all others. No one article can do all things, and my article "Toward a Libertarian Theory of Blackmail" was confined solely to an analysis of blackmail. Further, it did not even try to acquit itself fully of that particular task; rather, it was limited to refuting Fletcher's views on that topic. Van Dun launches an attack on legal positivism, with which I am in complete accord, and then into a summary of his views on natural law, which I find almost incomprehensible, since he fails to illustrate his principles with any examples.

At this point in his article, Van Dun considers more substantive issues. In particular, he casts legal aspersions on showing "disrespect" and "sow[ing] confusion."[63] Now, I am all in favor of exhibiting respect (at least for those who deserve it) and always attempt in my teaching and writing to sow the very opposite of confusion. But we are herein debating matters of the criminal law. The implication to be drawn, presumably, is that these acts would be outlawed. If true,

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17 (Fall 1992); and N. Stephan Kinsella, "Punishment and Proportionality: The Estoppel Approach," *Journal of Libertarian Studies* 12, no. 1 (Spring 1996).

[62]Van Dun, "Against Libertarian Legalism," p. 83.

[63]Van Dun, "Against Libertarian Legalism," pp. 85ff.

this seems rather over-inclusive compared to what I argue is just law, which limits its baleful glare to force or the threat of force against a person or his legitimately owned property. If all "disrespect" were to be banned, we would have to forbid negative reviews of books, movies, art, dances, and plays, for not one of them shows any deference. Indeed, this very debate between Van Dun and myself would have to be declared out of legal bounds, since each of us is busily lobbing intellectual grenades at the position of the other. If prohibition against "sowing confusion" were ever enacted, doctrines such as Marxism, feminism, sociology, deconstructionism, relativism, and all other such versions of obscurantism would be not only the nonsense they are, but also illegal, surely a *reductio*.[64]

Van Dun also castigates me for not adhering to his view that using against a blackmailee "damaging information that has been acquired unlawfully" should be proscribed by law.[65] But here, Van Dun and I are in complete agreement. Indeed, I make this very point in all of my articles on blackmail.[66]

Van Dun next targeted the "telling of lies about a person [because doing so] *is* a violation of a person's identity and integrity—a failure to respect him as who and what he is."[67] But if telling lies about people landed one in the pokey, then pretty much all gossipers (does exaggeration count as a lie?) would end up in jail. Do "white lies" count? If so, then "Yes, dear, that dress looks great" can send a husband or lover to the county lockup. Would holocaust revisionism be a "lie about a person"? Let us stipulate that exactly 6 million Jews died in Hitler's concentration camp. If someone knows this truth, and says regardless, "No, only 5,999,999 perished there," or "It was really 6,000,001," strictly speaking, these are lies. Prison? And why only lies about persons? Why not all lies? If so, then to utter "2+2=5" is to earn a prison sentence. Weathermen, too, lie, about half the time, and economists who predict the future course of the stock market do so, if anything, to an even greater degree. Must they all be locked up?

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[64]Hmm, maybe this is not an entirely bad idea. After all, I am not one of the "extremists" who "rigidly" adheres to the non-aggression axiom. I'm willing to at least contemplate the sort of philosophical "cleansing" implied by Van Dun's doctrine. (Okay, I'm just kidding!)

[65]Van Dun, "Against Libertarian Legalism," p. 87.

[66]See, e.g., those cited in Block, "Toward a Libertarian Theory of Blackmail."

[67]Van Dun, "Against Libertarian Legalism," pp. 87–88, emphasis in original.

It would appear that it is Van Dun's view of natural law that, under its aegis, people can be imprisoned for violating "personal identity and integrity [since these] are the presuppositions of any personal rights."[68] All of the lies mentioned above seem to fit this bill. If so, Van Dun has, in effect, hijacked the ancient and honorable philosophy of natural law on behalf of what I can only characterize as a very idiosyncratic personal political economic perspective.

Yes, as Van Dun writes, "libertarianism [is] . . . about justice and freedom for real human beings."[69] But justice and freedom will not be attained by attempting to protect people against hurt feelings. There is no such thing as a "right" to feel good. On the contrary, the best and only means toward this end are a strict adherence to the basic axiom of libertarianism, the non-aggression principle. Nothing more and nothing less.

CONCLUSION

Van Dun's article is very interesting. It is written by a libertarian author, yet it attacks the most basic premise of libertarianism, the non-aggression axiom. That alone is sufficient to give it a special place in the annals of this philosophy. In addition, it is extremely well-written, well-argued, and appealing. Yet, for all of its undoubted merits, I cannot conclude that this article has succeeded in demonstrating that more than this axiom is necessary to establish a more coherent libertarianism.

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[68]Van Dun, "Against Libertarian Legalism," p. 88.

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