

Defamation Lawsuits are State-Sponsored Aggression

The question was asked at r/AskLibertarians, “Are there any Libertarian arguments against Defamation/Libel lawsuits?” to which I responded, and the following conversation ensued, about 5 months ago. Enjoy!

Skylar: Yes:

<https://mises.org/library/libel-slander-and-reputation-according-rothbards-theory-libertarian-law>

And me: <https://everything-voluntary.com/defamation-is-not-aggression-ergo-not-a-crime>

GoldAndBlackRule: Block and Rothbard can be real kooks sometimes.

Aggression is action with intent to do harm. This why libertarians include things like fraud, which does not involve physical force, as a kind of theft and property rights violation.

Skylar: Define “harm” and then explain why physical force against person or property is a justified response to said harm.

I’ll wait.

And fraud is aggression for the same reasons theft, kidnapping, battery, and rape are aggression, *physical force without consent*. See me:

<https://everything-voluntary.com/consent-under-deceit-or-why-fraud-is-aggression>

GoldAndBlackRule:

Define “harm” and then explain why physical force against person or property is a justified response to said harm.

Who said anything about physical force against person or property? Quote me on that.

You seem to be under the impression that I advocate for a state-enforced criminal justice system with armed thugs enforcing judgments. Or just as whacky, Walter Block, Friedman or Hoppean notion of private hire enforcement teams that amount to micro-dictatorships. This is a bad assumption and I challenge you to find me advocating this here, or anywhere in my post/comment history. You are

shadowboxing.

I'll wait

Me too.

I read your own take, which is on point. Not sure why you take issue with anything I said.

Skyler:

*Who said anything about physical force against person or property?
Quote me on that.*

It's the entire contention behind calling defamation a crime. If defamation does not violate person or property, which is only one type of "harm", then it's not a crime (aggression) and it may not be responded to with force.

If you agree with that, then great. If you don't then you must explain why a person or their defense agency, or whatever, may respond to defamation with *force*.

GoldAndBlackRule: Let's use your car sales analogy. You want to sell me a car. In this case, you actually are *not* ripping me off, but someone quite publicly and falsely accuses you of selling lemons. They do it specifically to hurt your sales (there are many reasons one may want to do this). They take out advertising and gossip and hire "news" sources for the express purpose of preventing you selling your cars.

This is the *same* deception with an intent to defraud *you*. It uses lies and disinformation. It causes demonstrable loss. It is grossly innaccurate and done with an intent to cause harm.

You can prove the statements are false. You can demonstrate harm was done.

At common law, and by principles of property rights and even by way of the same logic used in 2-party fraud, you have clearly been harmed through deception. That it is not *direct* deception is the only zinger here, but no less a deception depriving you of an otherwise consensual and voluntary transaction to mutual benefit.

There are a lot of other very *technical* doctrines of jurisprudence here at play, but for simplicity, let's go with this scenario.

Now, is that aggression, much like you also describe fraud and other non-violent scenarios you touch upon? I believe so, and so do a number of professional jurists at common law (discovered, not dictated by the state).

I have at no point suggested any *violent* remedies, nor would I advocate for one. I merely point out that a reasonable, professional jurist will recognize both *actus reus* and *mens rea* in this situation: you have been harmed by property loss through deceit and with malicious intent (i.e. *aggression*).

If you are truly voluntaryist, then you and I *likely* agree on remedies that rely on *voluntary* compliance, even if the *accused* is not volunteering to make their victim whole. There are already a number of non-violent, free-market methods employed to achieve restitution, so armed agents kidnapping and caging someone is a waste of time and resources that in no way help the victim (you).

Skyler: This is all totally pointless. The purpose of courts is to seek a judgment that gives one party the right to use force against another party, either for imprisonment or to take their property as restitution for damages. Hence the need to justify the claim that *defamation* is an act of aggression in which it may be responded to with force.

If your response is not force, then do whatever you damn well please against the defamer. Nobody said defamation doesn't exist, and can be an annoyance and cause a loss of business, or whatever. But you don't own "potential business" or "reputation". You only own your scarce resources, your *property*. Only when your property is violated by force (aggression) may you respond in kind. And if you aren't advocating for a physically forceful response to defamation, then what is the point in using a court to get a judgment? There isn't one. Just respond however you would respond, non-violently, which you are already at liberty to do against anyone for anyone reason, from defamation to stealing your girlfriend to lowering your property value to simply annoying you. You don't need a court order to do that, so just do it.

GoldAndBlackRule:

The purpose of courts is to seek a judgment that gives one party the right to use force against another party

No. And you have a *lot* to learn about it if you think this is what jurisprudence is. A jurist can only merely render a decision. That is in no way directly tied to a particular *application* of a decision, and *most* decisions are not backed by a sanction of direct use of violence.

If AIG is offering a surety on a contract between two other parties for one *specific example of many*, it is often not even in a particular *jurisdiction* by design, because often these parties operate over multiple, *conflicting* jurisdictions where fiat legislative or dictated statutes are in direct contradiction. So a surety is secured and is escrowed as built-in enforcement.

The method to resolve the release of the bond is arbitration that AIG agrees to before-hand. Someone breaking the contract does not even need to participate in the process if they are OK with losing that surety.

No state agents involved. No force involved.

You are thinking like a statist stuck in broken Western culture and not even aware that these other, non-violent, free-market systems not only exist, but are the majority in conflict resolution.

Skyler: Again, totally pointless argumentation if you're going to do what you are already at liberty to do, like fulfilling contracts. Nobody's denying free market systems don't exist, but if you aren't already in contract with someone and you are defamed by them and lose business, that may not be responded to with force. That your bringing up contracts as some sort of sleight of hand to the issue in contention is disingenuous.

GoldAndBlackRule: As I said, on example of many. Please, do read the rest, or pick up my relevant comments here. A contract with the aggressor is irrelevant.

Many, many non-violent remedies are available. Your assertion otherwise is a very state-oriented, authoritarian view of how people can co-exist with one another without violent aggression.

If your contention is that people cannot peacefully resolve disputes in a complex society (of more than two people), you will have some difficulties applying your sense of voluntarism to a libertarian society of more than two people.

Skyler:

Many, many non-violent remedies are available.

Then there's no argument from me. Those, the normies, who claim that defamation is a crime are necessarily saying that force may be used in response to it. There's no justification for that, so *only* "non-violent remedies" may be used, but they could already be used. No "charges" or lawsuit required.

GoldAndBlackRule: Well, perhaps I too broadly accepted the word “crime” in a “criminal justice” context. I mean it in an “against settled law” context. If we want to get pedantic and into even more murky areas, sure. But I took the OP question in good faith: are there consequences for doing harm via defamation? The answer is a resounding yes. There are, however, no violent consequences for *any* “crime” after the fact that are consistent with libertarian principles. Force to *stop* aggression must be both *necessary* and *proportional*.

Skyler:

There are, however, no violent consequences for any “crime” after the fact that are consistent with libertarian principles.

Against property, sure there is. Forced restitution is consistent with libertarian principles. Capital punishment for capital murder may also be consistent, but not efficient as it concerns making victims whole.

GoldAndBlackRule:

Against property, sure there is. Forced restitution is consistent with libertarian principles. Capital punishment for capital murder may also be consistent,

Well, now you get to justify your violent intervention as a “voluntaryist”.

What kind of “forced” restitution could you provide as an example? Take care not to wander into actual forced enslavement, unless as a “voluntaryist”, you are OK with it (hard to square *that* circle, but OK).

Skyler:

Well, now you get to justify your violent intervention as a “voluntaryist”.

They take my property, or damage my property, and I may take theirs to make myself as whole as possible. They are “estopped” from objecting. See Kinsella: <https://mises.org/library/punishment-and-proportionality-estoppel-approach-0>. I probably don’t go as far as other libertarians, but this is a good place to start. I’ll let free society

based common law develop to answer this more concretely. There are a lot of libertarian based ideas on this topic that can be explored.

You are already at liberty to respond to defamation without force any way you please. That was totally beside the point of the original question, which was asked in a statist context (I believe). Defamation lawsuits under the state are themselves acts of aggression when the judgments are used to take the defamers property. It doesn't seem like we really disagreed on that, although it also seems like he was moving the goal posts on me.