

Mises Wire

The Problem with "Fraud": Fraud, Threat, and Contract Breach as Types of Aggression

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Recently I pointed out something that has irked me for years: the [misuse by libertarians](#) of the term "coercion" as a synonym for aggression. Coercion is not necessarily aggression; and aggression does not necessarily employ coercion.

I have also noticed several times over the past few years that libertarians often use the term "fraud" imprecisely, with no definition—as if it's some kind of obvious concept that needs no definition; and as if it's obvious that is a type of coercion. Er, I mean, aggression. [Rand](#), e.g., wrote: "The only proper purpose of a government is to protect man's rights, which means: to protect him from physical violence... The only proper functions of a government are: the police, to protect you from criminals; the army, to protect you from foreign invaders; and the courts, to protect your property and contracts from breach or fraud by others, and to settle disputes by rational rules, according to objective law."

So you have this linking of aggression, fraud, and breach of contract as the exhaustive ways that crime can be committed, with sort of the assumption that the latter two are variants of aggression. It is also assumed that the *threat* of aggression is a type of aggression. Sadowsky, e.g., [defines rights this way](#): "When we say that one has the right to do certain things we mean this and only this, that it would be immoral for another, alone or in combination, to stop him from doing this by the use of physical force or the threat thereof."

Breach of Contract

Now it was never *immediately* obvious to me why fraud, or threat, or contract breach, are species of, or imply, aggression. To my simple mind, perhaps, I needed to look further into each of these, to see just why. So let's look at each in turn. First, in my view, a coherent understanding of contract shows how it basically transfers title to property; and crime occurs when property rights—including those allocated by contracts—are violated (see my [A Theory of Contracts: Binding Promises, Title Transfer, and Inalienability](#)). (A promise-based theory of contract would be harder to square with the standard theory of aggression, which is why, I believe, Rothbard views contract only as title transfer, not as enforceable promises.)

Threats

And I tried to show, in [Punishment and Proportionality: The Estoppel Approach](#) (pp. 68-69), why threats can be a form of aggression (see also [this version](#) of the Punishment article, p. 639, section "Why Assault and Threats Are Aggression").

Fraud

The case of fraud is tricky too. I believe the failure to carefully define what fraud is, and to specify exactly when and why it is a type of aggression, leads to confusion. For example, some of my esteemed Austrian colleagues seem to think fractional reserve banking is "inherently fraudulent," and therefore, not merely uneconomic, but also one that should be legally prohibited (I believe Hülsmann, Hoppe, Block hold this view: see, e.g. Hoppe, Hülsmann, and Block, [Against Fiduciary Media](#); see also Rothbard, [What Has Government Done To Our Money?](#); and George Reisman, [Capitalism](#), pp. 514-, and 594-), as does Reisman—I don't have the links at hand, if someone can post them I can update this). In my view, fractional reserve banking is economic nonsense, but not necessarily fraudulent. Likewise, it is sometimes said that [plagiarism](#) (2, 3), or even just reprinting someone else's writing, is a "type of fraud," so that [copyright law](#) is justified. Others claim that establishing a [corporation](#) is "a fraud" and therefore corporations are not justified. Frank Van Dun, in [Against Libertarian Legalism](#), criticized my "legalistic" theory of trademark (see my [Against Intellectual Property](#), p. 43-44), arguing that my attempt to base trademark on a type of fraud or contract-breach theory fails because, under my contract/IP theory, one cannot say that the consumer has a fraud or breach of contract claim. (I replied to this as noted below.) Libertarain critics use it against us too: See James W. Child, "[Can Libertarianism Sustain a Fraud Standard?](#)", 104 *Ethics* 722 (1994).

The problem is in most people's minds "fraud" basically means misrepresenting the truth—i.e., lying. But clearly merely lying is not a rights violation. I think imprecise use of "fraud" permits it to be used to arrive at unlibertarian conclusions. It is imperative to understand it properly and to integrate it into libertarian theory in a way that is compatible with our notions of property and rights and aggression.

I tried to to explain what fraud is, if it is to be considered a species of aggression (and to briefly debunk Child), in [A Theory of Contracts](#) (p. 34). As I wrote there,

The theory of contract espoused here demonstrates that fraud is properly viewed as a type of theft. Suppose Karen buys a bucket of apples from Ethan for \$20. Ethan represents the things in the bucket as being *apples*, in fact, as apples of a certain nature, that is, as being fit for their normal purpose of being eaten. Karen conditions the transfer of title to her \$20 on Ethan's not knowingly engaging in 'fraudulent' activities, like pawning off rotten apples. If the apples are indeed rotten and Ethan knows this, then he knows that he does not receive ownership of or permission to use the \$20, because the condition 'no fraud' is *not* satisfied. He is knowingly in possession of Karen's \$20 without her consent, and is, therefore, a thief.

In other words, for the libertarian, fraud is a type of aggression (namely, theft), just because it is a means by which one party receives or uses or takes the property of someone else without their

consent—and there is failure of consent because the first party's misrepresentation meant that one of the conditions to transfer of title was not satisfied. (I have elaborated on this in various articles and posts: see, e.g.: [Reply to Van Dun: Non-Aggression and Title Transfer](#), pp. 60-61, where I tried to explain how a coherent theory of contract and fraud does, in fact, support a type of fraud claim compatible with the non-aggression principle; my exchange with David Heinrich in [Comments: debt and the trade against risk](#); my comments in [Objectivists on IP](#); my exchange with Heinrich regarding "limited liability" and corporations in [this thread \(2\)](#); my exchange, again, w/ Heinrich, regarding fractional reserve banking, in the comments section of [Randians go from Mises to supply-side economics](#))

Looking at fraud this way, it is clear that for there to be fraud—at least of the type that counts as aggression—there must be some victim who did not give genuine consent for the defrauder to use or take his property. There must be a victim of the fraud, and the victimization must be of a type in which there is an ostensible title transfer but which fails because of lack of true consent.

Now in informal language you could use "fraud" more broadly and loosely to refer to any case where someone deceives someone else, but if it is merely sneaky, or shady, or untruthful, there is no fraud. If I put up a website claiming I wrote *The Da Vinci* code, this is a lie, but who is defrauded? You can call me "a fraud" but there is really no fraud committed. If I place a singles ad saying, "handsome and looks 10 years younger than he is", to try to get some single women to give me a chance, is this really fraud?

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