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Cover and artwork (p. 5) by James Garrison

Free Market

Police, Courts, and Law

MURRAY N ROTHBARD

Because the market and private enterprise exist, most people can readily envision a free market in most goods and services. Probably the most difficult single area to grasp, however, is the abolition of government operation in the service of protection: police, the courts, etc.—the area encompassing defense of persons and property against attack or invasion. How could private enterprise and the free market possibly provide *such* service? How could police, legal systems, judicial services, law enforcement, prisons—how could these be provided in a free market? Elsewhere, it has been demonstrated how a great deal of police protection, at the least, could be supplied by the various owners of streets and land areas.[1] But we now need to examine the entire area systematically.

In the first place, there is a common fallacy, held even by most advocates of *laissez-faire,* that the government must supply "police protection," as if police protection were a single, absolute entity, a fixed quantity of something which the government supplies to all. But in actual fact, there is no absolute commodity called "police protection" any more than there is an absolute single commodity called "food" or "shelter." It is true that everyone pays taxes for a seemingly "fixed quantity" of protection, but this is simply a myth. In actual fact, there are almost infinite degrees of all sorts of protection. For any given person or business, the police can provide everything from a policeman on the beat who patrols once a night, to two policemen patrolling constantly on each block, to cruising patrol cars, to one or even several round-the-clock personal bodyguards. Furthermore, there are many other decisions that the police must make, the complexity of which become evident as soon as we look beneath the veil of the myth of absolute "protection." How shall the police allocate their funds which are, of course, always limited as are the funds of all other individuals, organizations, and agencies? How much shall the police invest in electronic equipment? fingerprinting equipment? detectives as against uniformed police? patrol cars as against foot police, etc.?

HOW MUCH PROTECTION?

The point is that the government has no rational way whatsoever to make these allocations. The government only knows that it has a limited budget. Its allocations of funds are then subject to the full play of politics, boondoggling, and bureaucratic inefficiency, with no indication at all as to whether the police department is serving the consumers in a way responsive to their desires or whether it is doing so efficiently. The situation would be different if police services were supplied on a free, competitive market. In that case, consumers would pay for whatever degree of protection they wish to purchase. The consumers who just want to see a policeman once in a while would pay less than those who want continuous patrolling, and far less than those who demand twenty-four-hour bodyguard service. On the free market, protection would be supplied in proportion and in whatever way that the consumers wish to pay for it. A drive for efficiency would be insured, as it always is on the market, by the compulsion to make profits and avoid losses, and thereby to keep costs low and to serve the highest demands of the consumers. Any police firm that suffers from gross inefficiency would soon go bankrupt and disappear.

Murray Rothbard is Professor of Economics at the Polytechnic Institute of Brooklyn. He received his Ph. D. in Economics from Columbia University and is the author of many books and articles, including a two-volume treatise, MAN, ECONOMY AND STATE. *He and historian Leonard Liggio were the subjects of an exclusive* REASON *interview in last month's issue, entitled "The New Isolationism."*

One big problem that a government police force must always face is: what laws *really* to enforce? Police departments are theoretically faced with the absolute injunction, "enforce all laws," but in practice a limited budget forces them to allocate their personnel and equipment to the most urgent crimes. But their absolute dictum pursues them and works against a rational allocation of resources. On the free market, what would be enforced is whatever the customers are willing to pay for. Suppose, for example, that Mr. Jones has a precious gem which he believes might soon be stolen. He can ask, and pay for, round-the-clock police protection at whatever strength he may wish to work out with the police company. He might, on the other hand, also have a private road on his estate which he doesn't want many people to travel on—but he might not *care* very much about trespassers on that road. In that case, he won't devote any police resources to protecting the road. As on the market in general, it is up to the consumer—and since all of us are consumers this means each person individually decides how much and what kind of protection he wants and is willing to buy.

All that we have said elsewhere[2] about landowners' police applies to private police in general. Free-market police would not only be efficient, they would have a strong incentive to be courteous and to refrain from brutality against either their clients or their clients' friends or customers. A private Central Park would be guarded efficiently in order to maximize park revenue, rather than have a prohibitive curfew imposed on innocent—and paying—customers. A free market in police would reward efficient and courteous police protection to customers and penalize any falling off from this standard. No longer would there be the current disjunction between service and payment inherent in all government operations, a disjunction which means that police, like all other government agencies, acquire their revenue, not voluntarily and competitively from consumers, but from the taxpayers coercively.

DEMAND FOR PRIVATE PROTECTION

In fact, as government police have become increasingly inefficient, consumers have been turning more and more to private forms of protection. We have elsewhere mentioned block or neighborhood protection.[3] There are also private guards, insurance companies, private detectives, and such increasingly sophisticated equipment as safes, locks, and closed circuit TV and burglar alarms. The President's Commission on Law Enforcement and the Administration of Justice estimated in 1969 that government police

"Every reader of detective fiction knows that private insurance detectives are far more efficient than the police in recovering stolen property."

cost the American public $2.8 billion a year, while it spends $1.35 billion on private protection service and another $200 million on equipment, so that *private protection expenses amounted to over half the outlay on government police.* These figures should give pause to those credulous folk who believe that police protection is somehow, by some mystic right or power, necessarily and forevermore an attribute of State sovereignty.[4]

Every reader of detective fiction knows that private insurance detectives are far more efficient than the police in recovering stolen property. Not only is the insurance company impelled by economics to serve the consumer—and thereby try to avoid paying benefits—but the major focus of the insurance company is very different from that of the police. The police, standing as they do for a mythical "society," are primarily interested in catching and punishing the criminal; restoring the stolen loot to the victim is strictly secondary. To the insurance company and its detectives, on the other hand, the prime concern is recovery of the loot, and apprehension and punishment of the criminal is secondary to the prime purpose of aiding the victim of crime. Here we see again the difference between a private firm impelled to serve the customer-victim of crime and the public police, which is under no such economic compulsion.

We cannot blueprint a market that still exists only as an hypothesis; but it is reasonable to believe that *police service in the libertarian society would be supplied by the landowners or by insurance companies.* Since insurance companies would be paying benefits to victims of crime, it is highly likely that they would supply police service as a means of keeping down crime and hence their payment of benefits. It is certainly likely in any case that police service would be paid for in regular monthly premiums, with the police agency—whether insurance company or not—called on whenever needed.

This supplies what should be the first simple answer to a typical nightmare question of people who first hear about the idea of a totally private police: "Why, that means that if you're attacked or robbed you have to rush over to a policeman and start dickering on how much it will cost to defend you." A moment's reflection should show that no service is supplied in this way on the free market. Obviously, the person who wants to be protected by Agency A or Insurance Company B will pay regular premiums rather than wait to be attacked before buying protection. "But suppose an emergency occurs and a Company A policeman sees someone being mugged; will he stop to ask if the victim has bought insurance from Company A?" In the first place, this sort of street crime will be taken care of, as we show in our discussion of street protection in *FOR A NEW LIBERTY,* by the police hired by whoever owns the street in question. But what of the unlikely case that a neighborhood does not have street police, and a policeman of Company A happens to see someone being attacked? Will he rush to the victim's defense? That, of course, would be up to Company A, but it is scarcely conceivable that private police companies would not cultivate goodwill by making it a policy to give free aid to victims in emergency situations and perhaps ask the rescued victim for a voluntary donation afterward. In the case of a homeowner being robbed or attacked, then of course he will call on whichever police company he has been using. He will call Police Company A rather than "the police" which he calls upon now.

COMPETING POLICE PROTECTION COMPANIES?

Competition insures efficiency, low price, and high quality, and there is no reason to assume *a priori,* as many people do, that there is something divinely ordained about having only *one* police agency in a given geographical area. Economists have often claimed that the production of certain goods or services is a "natural monopoly," so that more than one private agency could not long survive in a given area. Perhaps, although only a totally free market could decide the matter once and for all. Only the market can decide what and how many firms, and of what size and quality, can survive in active competition. But there is no reason to suppose in advance that police protection is a "natural monopoly." After all, insurance companies are not; and if we can have Metropolitan, Equitable, Prudential, etc., insurance companies coexisting side by side, why not Metropolitan, Equitable, and Prudential police protection companies? Gustave de Molinari, the nineteenth-century French free-market economist, was the first person in history to contemplate and advocate a free market for police protection. Molinari estimated that there would eventually turn out to be several private police agencies side by side in the cities, and one private agency in each rural area. Perhaps—but we must realize that modern technology makes much more feasible branch offices of large urban firms in even the most remote rural areas. A person living in a small village in Wyoming, therefore, could employ the services of a local protection company, *or* he might use a nearby branch office of the Metropolitan Protection Company.

WHO PROTECTS THE POOR?

"But how could a poor person afford private protection that he would have to pay for instead of getting free protection, as he does now?" There are several important answers to this question, one of the most common criticisms of the idea of totally private police protection. One is: that this problem of course applies to *any* commodity or service in the libertarian society, not just the police. But is protection necessary? Perhaps, but then so is food of many different kinds, clothing, shelter, etc. Surely these are at least as vital if not more so than police protection, and yet almost nobody says that *therefore* the government must nationalize food, clothing, shelter, etc. and supply these free as a compulsory monopoly. Very poor people would be supplied, in general, by private charity, as seen in our chapter on welfare in *FOR A NEW LIBERTY.* Furthermore, in the specific case of police there would undoubtedly be ways of voluntarily supplying free police protection to the indigent—either by the police companies themselves for goodwill (as hospitals and doctors do now) or by special "police aid" societies that would do work similar to "legal aid" societies today. (Legal aid societies voluntarily supply free legal counsel to the indigent in trouble with the authorities.)

There are important supplementary considerations. First of all, police service is *not* "free"; it is paid for by the taxpayer, and the taxpayer is very often the poor person himself. He may very well be paying more in taxes for police now than he would in fees to private, and far more efficient, police companies. Furthermore, the police companies would be tapping a mass market; with the economies of such a large-scale market, police protection would undoubtedly be much cheaper. No police company would wish to price itself out of a large chunk of its market, and the cost of protection would be no more prohibitively expensive than, say, the cost of insurance today. (In fact, it would tend to be much cheaper than current insurance, because the insurance industry today is heavily regulated by government to keep out low-cost competition.)

CLASHES BETWEEN RIVAL AGENCIES

There is a final nightmare which most people who have contemplated private protection agencies consider to be decisive in rejecting such a concept. Wouldn't they always be clashing? Wouldn't "anarchy" break out, with perpetual conflicts between police forces as one person calls in "his" police while a rival calls in "his"?

There are several levels of answers to this crucial question. In the first place, since there would be no overall State, no central or even single local government, we would *at least* be spared the horror of inter-State wars, with their plethora of massive, superdestructive, and now nuclear, weapons. As we look back through history, isn't it painfully clear that the number of people killed in isolated neighborhood "rumbles" or conflicts is as nothing to the total mass devastation of inter-State wars? There are good reasons for this. To avoid emotionalism, let us take two hypothetical countries: "Ruritania" and "Walldavia." If both Ruritania and Walldavia were dissolved into a libertarian society, with no government and innumerable private individuals, firms, and police agencies, the only clashes that *could* break out would be local, and the weaponry would necessarily be strictly limited in scope and devastation. Suppose that in a Ruritanian city two police agencies clash and start shooting it out. At worst, they could *not* use mass bombing or nuclear destruction or germ warfare, since they themselves would be blown up in the holocaust. It is the slicing off of territorial areas into single, governmental monopolies that leads to mass destruction—for *then* if the single monopoly government of Walldavia confronts its ancient rival, the government of Ruritania, each can wield weapons of mass destruction and even nuclear warfare because it will be the "other guy" and the "other country" that they will hurt. Furthermore, now that every person is a subject of a monopoly government, in the eyes of every other government he becomes irretrievably *identified* with "his" government. The citizen of France is identified with "his" government, and therefore if another government attacks France, it will attack the citizenry as well as the government of France. But if Company A battles with Company B, the *most* that can happen is that the respective customers of each company may be dragged into the battle—but *no one else.* It should be evident, then, that *even* if the worst happened, and a libertarian world would indeed become a world of "anarchy," we would *still* be much better off than we are now, at the mercy of rampant, "anarchic" nation-states, each possessing a fearsome monopoly of weapons of mass destruction. We must never forget that we are all living, and always have lived, in a world of "international anarchy," in a world of coercive nation-states unchecked by any overall world government, and there is no prospect of this situation changing.

A libertarian world, then, even if anarchic, would *still* not suffer the brutal wars, the mass devastation, that our State-ridden world has suffered for centuries. Even if local police clash continually, there would be no more Dresdens, no more Hiroshimas.

CHAOTIC "ANARCHY" BAD FOR BUSINESS

But there is far more to be said. We should never concede that this local "anarchy" would be likely to occur. Let us separate the problem of police clashes into two distinct and different parts: honest disagree-

ments, and the attempt of one or more police forces to become "outlaws" and to extract funds or impose their rule by coercion. Let us assume for a moment that the police forces will be honest, and that they are only riven by honest clashes of opinion; we will set aside for a while the problem of outlaw police. Surely one of the very important aspects of protection service that the police can offer their respective customers is quiet protection. Every consumer, every buyer of police protection, would wish above all for protection that is efficient and quiet, with no conflicts or disturbances. Every police agency would be fully aware of this vital fact. To assume that police would continually clash and battle with each other is absurd, for it ignores the devastating effect that this chaotic "anarchy" would have on the business of all of the police companies. To put it bluntly, such wars and conflicts would be bad—very bad—for business. Therefore, on the free market, the police agencies would all see to it that there would be no clashes between them, and that all conflicts of opinion would be ironed out in private courts, decided by private judges or arbitrators.

To get more specific: in the first place, as we have said, clashes would be minimal because the street owner would have his guards, the storekeeper his, the landlord his, and the home owner his own police company. Realistically, in the everyday world, there would be little room for direct clashes between police agencies. But suppose, as will sometimes occur, two neighboring home owners get into a fight, each accuses the other of initiating assault or violence, and each calls on his own police company, should they happen to subscribe to different companies. What then? Again, it would be pointless and economically as well as physically self-destructive for the two police companies to start shooting it out. Instead, every police company, to remain in business at all, would announce as a *vital part* of its service, the use of *private courts or arbitrators* to decide who is in the wrong.

PROVIDING JUDICIAL SERVICE

Suppose, then, that the judge or arbitrator decides that Smith was in the wrong in a dispute, and that he aggressed against Jones. If Smith accepts the verdict, then whatever damages or punishment are levied, there is no problem for the theory of libertarian protection. But what if he does *not* accept it? Or suppose another example: Jones is robbed. He sets his police company to do detective work in trying to track down the criminal. The company decides that a certain Brown is the criminal. Then what? If Brown acknowledges his guilt, then again there is no problem and judicial punishment proceeds, centering on forcing the criminal to make restitution to the victim. But, again, what if Brown denies his guilt?

These cases take us out of the realm of police protection and into another vital area of protection: *judicial* service, i.e., the provision, in accordance with generally accepted procedures, of a method of trying as best as one can to determine *who* is the criminal, or *who* is the breaker of contracts, in any sort of crime or dispute. Many people, even those who acknowledge that there could be privately competitive police service supplied on a free market, balk at the idea of totally private courts. How in the world could *courts* be private? How would courts employ force in a world without government? Wouldn't eternal conflicts and "anarchy" *then* ensue?

In the first place, the monopoly courts of government are subject to the same grievous problems, inefficiencies, and contempt for the consumer as any other government operation. We all know that judges, for example, are *not* selected according to their wisdom, or probity, or efficiency in serving the consumer, but are political hacks chosen by the political process. Furthermore, the courts are monopolies: if, for example, the courts in some town or city should become corrupt, venal, oppressive, or inefficient the citizen at present has no recourse. The aggrieved citizen of Deep Falls, Wyoming, must be governed by the local Wyoming court or not at all. In a libertarian society, there would be many courts, many judges to whom he could turn. Again, there is no reason to assume a "natural monopoly" of judicial wisdom. The Deep Falls citizen could, for example, call upon the local branch of the Prudential Judicial Company.

How would courts be financed in a free society? There are many possibilities. Possibly, each individual would subscribe to a court service, paying a monthly premium, and then calling upon the court if he is in need. Or, since courts will probably be needed much less frequently than policemen, he may pay a fee whenever he chooses to use the court, with the criminal or contract-breaker eventually recompensing the victim or plaintiff. Or, in still a third possibility, the courts may be hired by the police agencies to settle disputes, *or* there may even be "vertically integrated" firms supplying *both* police and judicial service: the Prudential Insurance Company might have a police and a judicial division. Only the market will be able to decide which of these methods will be most appropriate.

GROWTH OF PRIVATE ARBITRATION

We should all be more familiar with the increasing use of private arbitration, even in our present society. The government courts have become so clogged, so inefficient, and wasteful that more and more parties to disputes are turning to private arbitrators as a cheaper and far less time-consuming way of settling their disputes. In recent years, private arbitration has become a growing and highly successful profession. Being voluntary, furthermore, the rules of arbitration can be decided rapidly by the parties themselves, without the need for a ponderous, complex legal framework applicable to all citizens. Arbitration therefore permits judgments to be made by people expert in the trade or occupation concerned. Currently, the American Arbitration Association, whose motto is "The Handclasp is Mightier than the Fist," has 25 regional offices throughout the country, with 23,000 arbitrators. In 1969, the Association conducted over 22,000 arbitrations. In addition, the insurance companies adjust over 50,000 claims a year through voluntary arbitration. There is also a growing and successful use of private arbitrators in automobile accident claim cases.

It might be protested that, while performing an ever greater proportion of judicial functions, the private arbitrators' decisions are still enforced by the courts, so that once the disputing parties agree on an arbitrator, his decision becomes legally binding. This is true, but it was *not* the case before 1920, and the arbitration profession grew at as rapid a rate from 1900 to 1920 as it has since. In fact, the modern arbitration movement began in full force in England during the time of the American Civil War, with merchants increasingly using the "private courts" provided by voluntary arbitrators, even though the decisions were not legally binding. By 1900, voluntary arbitration began to take hold in the United States. In fact, in medieval England, the entire structure of merchant law, which was handled clumsily and inefficiently by the government's courts, grew up in private merchants' courts. The merchants' courts were purely voluntary arbitrators, and the decisions were not legally binding. How, then, were they successful?

The answer is that the merchants, in the Middle Ages and down to 1920, relied solely on ostracism and boycott by the other merchants in the area. In other words, should a merchant refuse to submit to arbitration or ignore a decision, the other merchants would publish this fact in the trade, and would refuse to deal with the recalcitrant merchant, bringing him quickly to heel. Woolridge mentions one medieval example:

> Merchants made their courts work simply by agreeing to abide by the results. The merchant who broke the understanding would not be sent to jail, to be sure, but neither would he long continue to be a merchant, for the compliance exacted by his fellows, and their power over his goods, proved if anything more effective than physical coercion. Take John of Horning, who made his living marketing wholesale quantities of fish. When John sold a lot of herring on the representation that it conformed to a three-barrel sample, but which, his fellow merchants found, was actually mixed with "sticklebacks and putrid herring," he made good the deficiency on pain of economic ostracism. [5]

In modern times, ostracism became even more effective, and it included the knowledge that anyone who ignored an arbitrator's award could never again avail himself of an arbitrator's services. Industrialist Owen D. Young, head of General Electric, indeed concluded that the moral censure of other businessmen was a far more effective sanction than legal enforcement. Nowadays, modern technology, computers, and credit ratings would make such nationwide ostracism even more effective than it has ever been in the past.

DEALING WITH CRIME

Even if purely voluntary arbitration is sufficient for commercial disputes, however, what of frankly criminal activities: the mugger, the rapist, the bank robber? In these cases, it must be admitted that ostracism would probably not be sufficient—even though it would also include, we must remember, refusal of private street owners to allow such criminals in their areas. For the criminal cases, then, courts and legal enforcement become necessary.

How, then, would the courts operate in the libertarian society? In particular, how could they *enforce* their decisions? In all their operations, furthermore, they must observe the critical libertarian rule that no physical force may be used against anyone who has not been convicted as a criminal—otherwise, the users of such force, whether police or courts, would be themselves liable to be convicted as aggressors if it turned out that the person they had used force against was innocent of crime. In contrast to statist systems, no policeman or judge could be granted special immunity to use coercion beyond what anyone else in society could use.

Let us now take the case we mentioned before. Mr. Jones is robbed, his hired detective agency decides that one Brown committed the crime, and Brown refuses to concede his guilt. What then? In the first place, we must recognize that there is at present no overall world court or world government enforcing its decrees? Yet while we live in a state of "international anarchy" there is little or no problem in disputes between private citizens of two countries. Suppose that right now, for example, a citizen of Uruguay

"We must recognise that there is at present no overall world court or world government enforcing its decrees, so that we live in a state of 'international anarchy.'"

claims that he has been swindled by a citizen of Argentina. Which court does he go to? He goes to his own, i.e., the victim's or the plaintiff's court. The case proceeds in the Uruguayan court, and its decision is honored by the Argentinian court. The same is true if an American feels he has been swindled by a Canadian, and so on. In Europe after the Roman Empire, when German tribes lived side by side and in the same areas, if a Visigoth felt that he had been injured by a Frank, he took the case to his own court, and the decision was generally accepted by the Franks. Going to the plaintiff's court is the rational libertarian procedure as well, since the victim or plaintiff is the one who is aggrieved, and who naturally takes the case to his own court. So, in our case, Jones would go say, to the Prudential Court Company to charge Brown with theft.

USE OF VOLUNTARY SUBPOENA

It is possible, of course, that Brown is also a client of the Prudential Court, in which case there is no problem. The Prudential's decision covers both parties, and becomes binding. But one important stipulation is that no coercive subpoena power can be used against Brown, because he must be considered innocent until he is convicted. But Brown would be served with a voluntary subpoena, a notice that he is being tried on such and such a charge and inviting him or his legal representative to appear. If he does not appear, then he will be tried *in absentia,* and this will obviously be less favorable for Brown since his side of the case will not be pleaded in court. If Brown is declared guilty, then the court and its marshals will employ force to seize Brown and exact whatever punishment is decided upon—a punishment which obviously will focus first on restitution of his loss to the victim.

What, however, if Brown does not recognize the Prudential Court? What if he is a client of the Metropolitan Court Company? Here the case becomes more difficult. What will happen then? First, victim Jones pleads his case in the Prudential Court. If Brown is found innocent, this ends the controversy. Suppose, however, that defendant Brown is found guilty. If he does nothing, the court's judgment proceeds against him. Suppose, however, that Brown then takes the case to the Metropolitan Court Company, pleading inefficiency or venality by Prudential. The case will then be heard by Metropolitan. If Metropolitan also finds Brown guilty, then this too ends the controversy and Prudential will proceed against Brown with dispatch. Suppose, however, that Metropolitan finds Brown innocent of the charge. Then what? Will the two courts and their arms-wielding marshals shoot it out in the streets?

PROCEDURE FOR APPEALS

Once again, this would clearly be irrational and self-destructive behavior on the part of the courts. An essential part of their judicial service to their clients is the provision of just, objective, and peacefully functioning decisions—the best and most objective way of arriving at the truth of who committed the crime. Arriving at a decision and then allowing chaotic gunplay would scarcely be considered valuable judicial service by their customers. Thus an essential part of any court's service to its clients would be an appeals procedure. In short, every court would agree to abide by an appeals trial, as decided by a voluntary arbitrator to whom Metropolitan and Prudential would now turn. The appeals judge would make his decision and the result of this third trial would be treated as binding on the guilty. The Prudential court would then proceed to enforcement.

An appeals court! But isn't this setting up a compulsory monopoly government once again? No, because there is nothing in the system that requires any one person or court to be the court of appeal. In short, in the United States at present the Supreme Court is established as *the* court of final appeal, and so the Supreme Court judges become the final arbiters regardless of the wishes of plaintiff or defendant alike. In contrast, in the libertarian society the various competing private courts could go to *any* appeals judge whom they think fair, expert, and objective. No single appeals judge or set of judges would be foisted upon society by coercion.

How would the appeals judges be financed? There are many possible ways, but the most likely way is that they will be paid for by the various original courts who would charge for appeals services in their premiums or fees.

But suppose Brown insists on another appeals judge, and yet another? Couldn't he escape judgment by appealing ad infinitum? Obviously, in *any* society legal proceedings cannot continue indefinitely; there must be *some* cutoff point. In the present statist society, where government monopolizes the judicial function, the Supreme Court is arbitrarily designated as the cutoff point. In the libertarian society, there would also have to be an agreed-upon cutoff point, and since there are only two parties to any crime or dispute—the plaintiff and the defendant—it seems most sensible for the legal code to declare that *a*

decision arrived at by any two courts shall be binding. This will cover the situation when both the plaintiff's and the defendant's courts come to the same decision, as well as the situation when an appeals court decides on a disagreement between the two original courts.

NECESSITY OF LEGAL CODE

It is now clear that there will have to be a legal code in the libertarian society. How? How can there be a legal code, a system of law *without* a government to promulgate it, an appointed system of judges, or a legislature to vote on statutes? To begin with, is a legal code consistent with libertarian principles?

To answer the last question first, it should be clear that a legal code is necessary to lay down precise guidelines for the private courts. If, for example, Court A decides that all redheads are inherently evil and must be punished, it is clear that such decisions are the reverse of libertarian, that such a law would constitute an invasion of the rights of redheads. Hence, any such decision would be *illegal* in terms of libertarian principle, and could not be upheld by the rest of society. It then becomes necessary to have a legal code which would be generally accepted, and which the courts would pledge themselves to follow. *The legal code, simply, would insist on the libertarian principle of no aggression against person or property, define property rights in accordance with libertarian principle, set up rules of evidence (such as currently apply) in deciding who are the wrongdoers in any dispute, and set up a code of maximum punishment for any particular crime.* Within the framework of such a code, the particular courts would compete on the most efficient procedures, and the market would then decide whether judges, juries, etc., are the most efficient methods of providing judicial services.

Are such stable and consistent law codes possible, with only competing judges to develop and apply them, and without government or legislature? Not only are they *possible,* but over the years the best and most successful parts of our legal system were developed precisely in this manner. Legislatures, as well as kings, have been capricious, invasive, and inconsistent. They have only introduced anomalies and despotism into the legal system. In fact, the government is no more qualified to develop and apply law than it is to provide any other service; and just as religion has been separated from the state, and the economy can be separated from the State, so can every other State function, including police, courts, *and* the law itself!

As indicated above, for example, the entire merchant law was developed, not by the State or in State courts, but by private merchant courts. It was only much later that government took over mercantile law from its development in merchants' courts. The same occurred with admiralty law, the entire structure of the law of the sea, shipping, salvages, etc. Here again, the State was not interested, and its jurisdiction did not apply to the high seas; so the shippers themselves took on the task of not only applying, but working out the whole structure of admiralty law in their own private courts. Again, it was only later that the government appropriated admiralty law into its own courts.

DEVELOPMENT OF THE COMMON LAW

Finally, the major body of Anglo-Saxon law, the justly celebrated *common law,* was developed over the centuries by competing judges applying time-honored principles rather than the shifting decrees of the State. These principles were not decided upon arbitrarily by any king or legislature; they grew up over centuries by applying rational—and very often libertarian—principles to the cases before them. The idea of following precedent was developed, *not* as a blind service to the past, but because all the judges of the past had made their decisions in applying the generally accepted common law principles to specific cases and problems. For it was universally held that the judge did not *make* law (as he often does today); the judge's task, his expertise, was in *finding* the law in accepted common law principles, and then applying that law to specific cases or to new technological or institutional conditions. The glory of the centuries-long development of the common law is testimony to their success.

The common law judges, furthermore, functioned very much like private arbitrators, as experts in the law to whom private parties went with their disputes. There was no arbitrarily imposed "supreme court" whose decision would be binding, nor was precedent, though honored, considered as *automatically* binding either. Thus, the libertarian Italian jurist Bruno Leoni has written:

> [C]ourts of judicature could not easily enact arbitrary rules of their own in England, as they were never in a position to do so directly, that is to say, in the usual, sudden, widely ranging and imperious manner of legislators. Moreover, there were so many courts of justice in England and they were so jealous of one another that even the famous principle of the binding precedent was not openly recognized as valid by them until comparatively recent times. Besides, they could never decide anything that had not been previously brought before them by private persons. Finally, comparatively few people used to go before the courts to ask from them the rules deciding their cases.[6]

"The entire merchant law and admiralty law were developed—not by the State or in State courts—but by private courts."

And on the absence of "supreme courts":

> [I] t cannot be denied that the lawyers' law or the judiciary law may tend to acquire the characteristics of legislation, including its undesirable ones, whenever jurists or judges are entitled to decide ultimately on a case . . . In our time the mechanism of the judiciary in certain countries where "supreme courts" are established results in the imposition of the personal views of the members of these courts, or of a majority of them, on all the other people concerned whenever there is a great deal of disagreement between the opinion of the former and the convictions of the latter. But . . . this possibility, far from being necessarily implied in the nature of lawyers' law or of judiciary law, is rather a deviation from it . . . .[7]

Apart from such aberrations, the imposed personal views of the judges were kept to a minimum: (a) by the fact that judges could only make decisions when private citizens brought cases to them; (b) each judge's decisions applied only to the particular case; and (c) because the decisions of the common law judges and lawyers always considered the precedents of the centuries. Furthermore, as Leoni points out, in contrast to legislatures or the executive, where dominant majorities or pressure groups ride roughshod over minorities, judges, by their very position, are constrained to hear and weigh the arguments of the two contending parties in each dispute. "Parties are *equal* as regards the judge, in the sense that they are free to produce arguments and evidence. They do not constitute a group in which dissenting minorities give way to triumphant majorities . . . ." And Leoni points out the analogy between this process and the free market economy: "Of course, arguments may be stronger or weaker, but the fact that every party can produce them is comparable to the fact that everybody can individually compete with everybody else in the market in order to buy and sell."[8]

Professor Leoni found that, in the *private law* area, the ancient Roman judges operated in the same way as the English common law courts:

> The Roman jurist was a sort of scientist; the objects of his research were the solutions to cases that citizens submitted to him for study, just as industrialists might today submit to a physicist or to an engineer a technical problem concerning their plants or their production. Hence, private Roman law was something to be described or to be discovered, not something to be enacted—a world of things that were there, forming part of the common heritage of all Roman citizens. Nobody enacted that law; nobody could change it by any exercise of his personal will . . . . This is the long-run concept or, if you prefer, the Roman concept, of the certainty of the law.[9]

Finally, Professor Leoni was able to use his knowledge of the operations of ancient and common law to answer the vital question: In a libertarian society, "who will appoint the judges . . . to let them perform the task of defining the law?" His answer is: the *people* themselves, people who would go to the judges with the greatest reputation of expertise and wisdom in knowing and applying the basic common legal principles of the society:

> In fact, it is rather immaterial to establish in advance who will appoint the judges, for, in a sense, everybody could do so, as happens to a certain extent when people resort to private arbiters to settle their own quarrels . . . . For the appointment of judges is not such a special problem as would be, for example, that of "appointing" physicists or doctors or other kinds of learned and experienced people. The emergence of good professional people in any society is only apparently due to official appointments, if any. It is, in fact, based on a widespread consent on the part of clients, colleagues, and the public at large—a consent without which no appointment is really effective. Of course, people can be wrong about the true value chosen as being worthy, but these difficulties in their choice are inescapable in any kind of choice.[10]

Of course, in the future libertarian society, the basic legal code would not rely on blind custom, much of which could well be antilibertarian. The code would have to be established on the basis of acknowledged libertarian principle, of nonaggression against the person or property of others; in short, on the basis of reason rather than on mere tradition, however sound its general outlines. Since we have a body of common law principles to draw on, however, the task of reason in correcting and amending the common law would be far easier than trying to construct a body of systematic legal principles *de novo* out of the thin air.

LIBERTARIAN LAW IN PRECONQUEST IRELAND

The most remarkable historical example of a society of libertarian law and courts, however, has been neglected by historians until very recently. And this was also a society where not only the courts and the

law were largely libertarian, but where they operated within a purely *state-less* and libertarian society—in short, a society of virtual "free-market anarchism." This was ancient Ireland—an Ireland which persisted in this libertarian path for roughly a thousand years until its brutal conquest by England in the seventeenth century. And, in contrast to many similarly functioning primitive tribes (such as the Ibos in West Africa, and many European tribes), preconquest Ireland was not in any sense a "primitive" society: it was a highly complex society that was, for centuries, the most advanced, most scholarly, and most civilized in all of Western Europe.

For a thousand years, then, ancient Celtic Ireland had no State or anything like it. As the leading authority on ancient Irish law has written: "There was no legislature, no bailiffs, no police, no public enforcement of justice . . . There was no trace of State-administered justice."[11]

How then was justice secured? The basic political unit of ancient Ireland was the *tuath.* All "freemen" who owned land, all professionals, and all craftsmen, were entitled to become members of a *tuath.* Each *tuath's* members formed an annual assembly which decided all common policies, declared war or peace on other *tuatha,* and elected or deposed their "kings." An important point is that, in contrast to primitive tribes, no one was stuck or bound to a given *tuath,* either because of kinship or of geographical location. Individual members were free to, and often did, secede from a *tuath* and join a competing *tuath.* Often, two or more *tuatha* decided to merge into a single, more efficient unit. As Professor Peden states, "the *tuath* is thus a body of persons voluntarily united for socially beneficial purposes and the sum total of the landed properties of its members constituted its territorial dimension."[12] In short, they did not have the modern State with its claim to sovereignty over a given (usually expanding) territorial area, divorced from the landed property rights of its subjects; on the contrary, *tuatha* were voluntary associations which only comprised the landed properties of its voluntary members. Historically, about 80 to 100 *tuatha* coexisted at any time throughout Ireland.

But what of the elected "king"? Did *he* constitute a form of State ruler? Chiefly, the king functioned as a religious high priest, presiding over the worship rites of the *tuath,* which functioned as a voluntary religious, as well as a social and political organization. As in pagan, pre-Christian, priesthoods, the kingly function was hereditary, this practice carrying over to Christian times. The king was elected by the *tuath* from within a royal kin-group (the *derbfine*), which carried the hereditary priestly function. *Politically,* however, the king had strictly limited functions: he was the military leader of the *tuath,* and he presided over the *tuath* assemblies. But he could only conduct war or peace negotiations as agent of the assemblies; and he was in no sense Sovereign and had no rights of administering justice over *tuath* members. He could not legislate, and when he himself was party to a lawsuit, he had to submit his case to an independent judicial arbiter.

NONGOVERNMENTAL PROFESSIONAL JURISTS

Again, how, then, was law developed and justice maintained? In the first place, the law itself was based on a body of ancient and immemorial custom, passed down as oral and then written tradition through a class of professional jurists called the *filid.* The *filid* were in no sense public, or governmental, officials; they were simply selected by parties to disputes on the basis of their reputations for wisdom, knowledge of the customary law, and for the integrity of their decisions. As Professor Peden states:

> [T]he professional jurists were consulted by parties to disputes for advice as to what the law was in particular cases, and these same men often acted as arbitrators between suitors. They remained at all times private persons, not public officials; their functioning depended upon their knowledge of the law and the integrity of their judicial reputations.[13]

Furthermore, the *filid* jurists had *no connection whatsoever* with the individual *tuatha* or with their kings. They were completely private, national in scope, and were used by disputants throughout Ireland. Moreover, and this is a vital point, in contrast to the system of private Roman lawyers, the *filid* was all there was; there were no other judges, no "public" judges of any kind, in ancient Ireland.

It was the *filid* who were schooled in the law, and who added glosses and applications to the law to fit changing conditions. Furthermore, there was no monopoly, in any sense, of the *filid* jurists; instead, several competing schools of jurisprudence existed and competed for the custom of the Irish people.

How were the decisions of the *filid* enforced? Through an elaborate, voluntarily developed system of "insurance," or sureties. Men were linked together by a variety of surety relationships by which they guaranteed one another for the righting of wrongs, and for the enforcement of justice and the decisions of the *filid.* In short, the *filid* themselves were not involved in the enforcement of decisions, which rested again with private individuals linked through sureties. There were various types of surety. For example, the surety would guarantee with his own property the payment of a debt, and then join the plaintiff in enforcing a debt judgment if the debtor refused to pay. In that case, the debtor would have to

pay double damages: one to the original creditor, and another as compensation to his surety. And this system applied to all offences, aggressions, and assaults as well as to commercial contracts; in short, it applied to all cases of what we would call "civil" and "criminal" law. All criminals were considered to be "debtors" who owed restitution and compensation to their victims, who thus became their "creditors." The victim would gather his sureties around him and proceed to apprehend the criminal or to proclaim his suit publicly and demand that the defendant submit to adjudication of their dispute with the *filid.* The criminal might then send his own sureties to negotiate a settlement or agree to submit the dispute to a *filid.* If he did not do so, he was considered an "outlaw" by the entire community; he could no longer enforce any claim of his own in the courts, and he was treated to the opprobrium of the entire community.[14]

There were occasional "wars," to be sure, in the thousand years of Celtic Ireland, but they were minor brawls, negligible compared to the devastating wars that racked the rest of Europe. As Professor Peden points out, "without the coercive apparatus of the State which can through taxation and conscription mobilize large amounts of arms and manpower, the Irish were unable to sustain any large scale military force in the field for any length of time. Irish wars . . . were pitiful brawls and cattle raids by European standards."[15]

OUTLAW PROTECTORS

We have saved for the last this problem: What if police or judges and courts should be venal and biased—what if they should bias their decisions, for example, in favor of particularly wealthy clients? We have shown how a libertarian legal and judicial system could work on the purely free market, assuming honest differences of opinion—but what if one or more police or courts should become, in effect, outlaws? What then?

In the first place, libertarians do not flinch from such a question. In contrast to such utopians as Marxists or left-wing anarchists (anarcho-communists or anarcho-syndicalists), libertarians do *not* assume that the ushering in of the purely free society of their dreams will also bring with it a new, magically transformed Libertarian Man. We do not assume that the lion will lie down with the lamb, or that no one will have criminal or fraudulent designs upon his neighbor. The "better" that people will be, of course, the better *any* social system will work, in particular the less work *any* police or courts will have to do. But no such assumption is made by libertarians. What we assert is that, given any particular degree of "goodness" or "badness" among men, the purely libertarian society will be at once the most moral and the most efficient, the least criminal and the most secure of person or property.

Let us first consider the problem of the venal or crooked judge or court. What of the court which favors its own wealthy client in trouble? In the first place, any such favoritism will be highly unlikely, given the rewards and sanctions of the free market economy. The very life of the court, the very livelihood of a judge, will depend on his reputation for integrity, fairmindedness, objectivity, and the quest for truth in every case. This is his "brand name." Should word of any venality leak out, he will immediately lose clients and the courts will no longer have customers; for even those clients who may be criminally inclined will scarcely sponsor a court whose decisions are no longer taken seriously by the rest of society, or who themselves may well be in jail for dishonest and fraudulent dealings. If, for example, Joe Zilch is accused of a crime or breach of contract, and he goes to a "court" headed by his brother-in-law, no one, least of all other, honest courts will take this "court's" decision seriously. It will no longer be considered a "court" in the eyes of anyone but Joe Zilch and his family.

Contrast this built-in corrective mechanism to the present-day government courts. Judges are appointed or elected for long terms, up to life, and they are accorded a monopoly of decision-making in their particular area. It is almost impossible, except in cases of gross corruption, to do anything about venal

decisions of judges. Their power to make and to enforce their decisions continues unchecked year after year. Their salaries continue to be paid, furnished under coercion by the hapless taxpayer. But in the totally free society, any suspicion of a judge or court will cause their customers to melt away and their "decisions" to be ignored. This is a far more efficient system of keeping judges honest than the mechanism of government.

Furthermore, the temptation for venality and bias would be far less for another reason: business firms in the free market earn their keep, *not* from wealthy customers, but from a mass market by consumers. Macy's earns its income from the mass of the population, not from a few wealthy customers. The same is true of Metropolitan Life Insurance today, and the same would be true of any "Metropolitan" court system tomorrow. It would be folly indeed for the courts to risk the loss of favor by the bulk of its customers for the favors of a few wealthy clients. But contrast the present system, where judges, like all other politicians, may be beholden to wealthy contributors who finance the campaigns of their political parties.

CHECKS AND BALANCES—FRAUD OR REAL?

There is a myth that the "American System" provides a superb set of "checks and balances," with the executive, the legislature, and the courts all balancing and checking one against the other, so that power cannot unduly accumulate in one set of hands. But the American "checks and balances" system is largely a fraud. For each one of these institutions are coercive monopolies in their areas, and all of them are part of one government, headed by one political party at any given time. Furthermore, at best there are only two parties, each one close to the other in ideology and personnel, often colluding, and the actual day-to-day business of government headed by a civil service bureaucracy that *cannot* be displaced by the voters. Contrast to these mythical checks and balances the *real* checks and balances provided by the free market economy! What keeps A&P honest is the competition, actual and potential, of Safeway, Pioneer and countless other grocery stores. What keeps them honest is the ability of the consumers to cut off their patronage. What would keep the free-market judges and courts honest is the lively possibility of heading down the block or down the road to *another* judge or court if suspicion should descend on any particular one. What would keep them honest is the lively possibility of their customers cutting off their business. These are the *real,* active checks and balances of the free market economy and the free society.

The same analysis applies to the possibility of a private police force becoming outlaw, of using their coercive powers to exact tribute, set up a "protection racket" to shake down their victims, etc. Of course, such a thing *could* happen. But, in contrast to the present-day society, there would be immediate checks and balances available; there would be *other* police forces who could use their weapons to band together to put down the aggressors against their clientele. If the Metropolitan Police Force should become gangsters and exact tribute, then the rest of society could flock to the Prudential, Equitable, etc., police forces who could band together to put them down. And this contrasts vividly with the State. If a group of gangsters should capture the State apparatus, with its monopoly of coercive weapons, there is nothing at present that can stop them—short of the immensely difficult process of revolution. In a libertarian society there would be no need for a massive revolution to stop the depredation of gangster-States; there would be a swift turning to the honest police forces to check and put down the force that had turned bandit.

And, indeed, what is the State anyway but organized banditry? What is taxation but theft on a gigantic, and unchecked, scale? What is war but mass murder on a scale impossible by private police forces? What is conscription but mass enslavement? Can anyone envision a private police force getting away with a tiny fraction of what States get away with, and do habitually, year after year, century after century?

SENSE OF LEGITIMACY

There is another vital consideration that would make it almost impossible for an outlaw police force to commit anything like the banditry that modern governments practice. One of the crucial factors that permits governments to do the monstrous things they habitually do is the sense of *legitimacy* on the part of the stupefied public. The average citizen may not like—may even strongly object—to the policies and exactions of his government. But he has been imbued with the idea—carefully indoctrinated by centuries of governmental propaganda—that the government is his legitimate sovereign, and that it would be wicked or mad to refuse to obey its dictates. It is this sense of legitimacy that the State's intellectuals have fostered over the ages, aided and abetted by all the trappings of legitimacy; flags, rituals, ceremonies, awards, constitutions, etc. A bandit gang—*even if all* the police forces conspired together into one vast gang—could never command such legitimacy. The public would consider them purely bandits; their extortions and tributes would never be considered legitimate though onerous "taxes," to be paid automatically. The public would quickly resist these illegitimate demands and the bandits would be resisted and overthrown. Once the public had tasted the joys, prosperity, freedom, and efficiency of a libertarian, State-less society, it would be almost impossible for a State to fasten itself upon them once again. Once freedom has been fully

enjoyed, it is no easy task to force people to give it up.

But *suppose*—just suppose—that despite all these handicaps and obstacles, despite the love for their new-found freedom, despite the inherent checks and balances of the free market, suppose *anyway* that the State manages to reestablish itself. What then? Well, then, all that would have happened is that we would have a State once again. We would be no worse off than we are now, with our current State. *And,* as one libertarian philosopher has put it, "at least the world will have had a glorious holiday." Karl Marx's ringing promise applies far more to a libertarian society than to communism: In trying freedom, in abolishing the State, we have nothing to lose and everything to gain.

BUT WHAT ABOUT THE RUSSIANS?

We come now to what is usually the final argument against the libertarian position. Every libertarian has heard a sympathetic but critical listener say: "All right. I see how this system could be applied successfully to local police and courts. but how could a libertarian society defend us against the Russians?"

There are, of course, several dubious assumptions implied in such a question. There is the assumption that the Russians are bent upon military invasion of the United States, a doubtful assumption at best. There is the assumption that any such desire would still remain after the United States had become a purely libertarian, "free-market anarchist" society. This notion overlooks the lesson of history that wars result from conflicts between nation-states, each armed to the teeth, each direly suspicious of attack by the other. But a libertarian United States would clearly not be a threat to anyone, not because it had no arms but because it would be dedicated to no aggression against anyone, or against any country. Being no longer a nation-state, which is inherently threatening, there would be little chance of any country attacking us. One of the great evils of the nation-state is that each State is able to identify all of its subjects with itself; hence in any inter-State war, the innocent civilians, the subjects of each country, are subject to aggression from the enemy State. But in a libertarian society there would be no such identification, and hence very little chance of such a devastating war. Suppose, for example, that our outlaw Metropolitan Police Force has initiated aggression not only against Americans but also against Mexicans. If Mexico had a government, then clearly the Mexican government would know full well that Americans in general were not implicated in the Metropolitan's crimes, and had no symbiotic relationship with it. If the Mexican police engaged in a punitive expedition to punish the Metropolitan force, they would not be at war with Americans in general—as they would be now. In fact, it is highly likely that other American forces would join the Mexicans in putting down the aggressor. Hence, the idea of inter-State war against a libertarian country or geographical area would most likely disappear.

There is, furthermore, a grave philosophical error in the very posing of this sort of question about the Russians. When we contemplate *any* sort of new system, whatever it may be, we must *first* decide on whether we want to see it brought about. In order to decide whether we *want* libertarianism or communism, or left-wing anarchism, or theocracy, or any other system, we must first assume that it has been established, and *then* consider whether the system could work, whether it could remain in existence, and how efficient or just such a system would be. We have shown, I believe, that a libertarian system, once instituted, could work, be viable, and be at once far more efficient, prosperous, moral, and free than any other social system. But we have said nothing about how to *get* from the present system to the ideal; for these are two totally separate questions. The question of what *is* our ideal goal, and of the strategy and tactics of how to get from the present system *to* that goal. The Russian question mixes these two levels of discourse. It assumes, *not* that libertarianism has been established everywhere throughout the globe, but that for some reason it has been established *only* in the United States and nowhere else. But why assume this? Why not first assume that it has been established *everywhere* and see whether we like it? After all, the libertarian philosophy is an eternal one, not bound to time or place. We advocate liberty for everyone, everywhere, not just in the United States. If someone agrees that a world libertarian society, once established, is the best that he can conceive, that it would be workable, efficient, and moral, then let him *become* a libertarian, let him join us in accepting liberty as our ideal goal, and *then* join us further in the separate—and obviously difficult—task of figuring out how to bring this ideal about.

If we do move on to strategy, it is obvious that the larger an area in which liberty is first established the *better* its chances for survival, and the better its chance to resist any violent overthrow that may be attempted. If liberty is established instantaneously throughout the world, then there will of course be *no* problem of "national defense." *All* problems will be local police problems. If, however, only Deep Falls,

Wyoming, becomes libertarian while the rest of the United States and the world remain statist, its chances for survival will be very slim. If Deep Falls, Wyoming, declares its secession from the United States government and establishes a free society, the chances are very great that the United States—given its historical ferocity toward secessionists—would quickly invade and crush the new free society, and there is little that *any* Deep Falls police force could do about it. Between these two polar cases, there is an infinite continuum of degrees, and obviously, the larger the area of freedom, the better it could withstand any outside threat. The "Russian question" is therefore a matter of strategy rather than a matter of deciding on basic principles and on the goal toward which we wish to direct our efforts.

VOLUNTARY "NATIONAL" DEFENSE

But after all this is said and done, let us take up the Russian question anyway. Let us assume that the Soviet Union would really be hell-bent on attacking a libertarian population within the present boundaries of the United States (clearly, there would no longer be a United States government to form a single nation-state). In the first place, the form and quantity of defense expenditures would be decided upon by the American consumers themselves. Those Americans who favor Polaris submarines, and fear a Soviet threat, would subscribe toward the financing of such vessels. Those who prefer an ABM system would invest in such defensive missiles. Those who laugh at such a threat or those who are committed pacifists would not contribute to any "national" defense service at all. Different defense theories would be applied in proportion to those who agree with, and support, the various theories being offered. Given the enormous waste in all wars and defense preparations in all countries throughout history, it is certainly not beyond the bounds of reason to propose that private, voluntary defense efforts would be far more efficient than government boondoggles. Certainly these efforts would be infinitely more moral.

But let us assume the worst: Let us assume that the Soviet Union at last invades and conquers the territory of America. What then? We have to realize that the Soviet Union's difficulties will have only just begun. The main reason that any conquering country can rule a defeated country is that the latter has an existing State apparatus to transmit and enforce the victor's orders onto a subject population. Britain, though far smaller in area and population, was able to rule India for centuries because it could transmit British orders to the ruling Indian princes, who in turn could enforce them on the subject population. But in those cases in history where the conquered *had* no government, the conquerors found rule over the conquered extremely difficult. When the British conquered West Africa, for example, they found it extremely difficult to govern the Ibo tribe (later to form Biafra) because that tribe was essentially anarchistic, and had no ruling government of tribal chiefs to transmit orders to the natives. And perhaps the major reason that it took the English centuries to conquer ancient Ireland is that the Irish had no State, and that there was therefore no ruling governmental structure to keep treaties, transmit orders, etc. It is for this reason that the English kept denouncing the "wild" and "uncivilized" Irish as "faithless," because they would not keep treaties with the English conquerors. The English could never understand that, lacking any sort of State, the Irish warriors who concluded treaties with the English could *only* speak for themselves; they could never commit any other group of the Irish population.[16]

Furthermore, the occupying Russians' lives would be made even more difficult by the inevitable eruption of guerrilla warfare by the American population. It is surely a lesson of the twentieth century—a lesson first driven home by the successful American revolutionaries against the might British Empire—that no occupying force can long keep down a native population determined to resist. If the giant United States, armed with a far greater productivity and firepower, could not succeed against a tiny and relatively unarmed Vietnamese population, how in the world could the Soviet Union succeed in keeping down the American people? No Russian occupation soldier's life would be safe from the wrath of a resisting American populace. Guerrilla warfare has proved to be an irresistible force precisely because it stems, not from a dictatorial central government, but from the people themselves, fighting for their liberty and independence against a foreign State. And surely the anticipation of this sea of troubles, of the enormous costs and losses that would inevitably follow, would stop well in advance even a hypothetical Soviet government bent on military conquest.

LESSON OF THEORY AND HISTORY

Thus, we have indicated that it is perfectly possible, in theory and historically, to have efficient and courteous police, competent and learned judges, and a body of systematic and socially accepted law—and none of these things being furnished by a coercive government. Government—claiming a compulsory monopoly of protection over a geographical area, and extracting its revenues by force—can be separated from the entire field of protection. Government is no more necessary for providing vital protection service than it is necessary for providing anything else. And we have not stressed a crucial fact about government: that its compulsory monopoly over the weapons of coercion have led it, over the centuries, to infinitely more butcheries, infinitely greater tyranny and oppression than any decentralized, private

agencies could possibly have done. If we look at the black record of mass murder, exploitation, and tyranny levied on society by governments over the ages, we need not be loath to abandon the Leviathan State and . . . try freedom. ◻

NOTES AND REFERENCES

[1] In Chapter 10 of *FOR A NEW LIBERTY.*

[2] This subject is discussed in Chapter 10 of *FOR A NEW LIBERTY.* Abolition of the public sector means, of course, that *all* pieces of land, all land areas, including streets and roads, would be owned privately, by individuals, corporations, cooperatives or any other voluntary groupings of individuals and capital. The fact that all streets and land areas would be private would by itself solve many of the seemingly insoluble problems of private operation. What we need to do is to reorient our thinking to consider a world in which all land areas are privately owned.

[3] In Chapter 10 of *FOR A NEW LIBERTY.* To ask *why* landlords should provide safe streets in the libertarian, fully private society is just as silly as asking *now* why they should provide their tenants with heat or hot water. The force of competition and of consumer demand would make them supply such services.

[4] See William G. Woolridge, *UNCLE SAM, THE MONOPOLY MAN* (New Rochelle, N.Y.: Arlington House, 1970), pp. 111ff.

[5] *Ibid.*, p. 96. Also see *ibid.*, pp. 94-110.

[6] Bruno Leoni, *FREEDOM AND THE LAW* (Los Angeles: Nash Publishing Co., 1972), p. 87.

[7] *Ibid.*, pp. 23-24.

[8] *Ibid.*, p. 188.

[9] *Ibid.*, pp. 84-85.

[10] *Ibid.*, p. 183.

[11] Quoted in the best introduction to ancient, anarchistic Irish institutions, Joseph R. Peden, "Stateless Societies: Ancient Ireland," *THE LIBERTARIAN FORUM* (April 1971), pp. 3ff. Also see Daniel A. Binchy, *ANGLO-SAXON AND IRISH KINGSHIP* (London, 1970); Myles Dillon, *THE CELTIC REALMS* (London 1967), and *id. EARLY IRISH SOCIETY* (Dublin 1954).

[12] Peden, *supra* note 11, p. 4.

[13] Peden, *supra* note 11, p. 4.

[14] Professor Charles Donahue of Fordham University has maintained that the secular part of ancient Irish law was not simply haphazard tradition; that it was consciously rooted in the Stoic conception of *natural law,* discoverable by man's reason. Charles Donahue, "Early Celtic Laws," (unpublished paper, delivered at the Columbia University Seminar in the History of Legal and Political Thought, Autumn, 1964), pp. 13ff.

[15] Peden, *supra* note 11, p. 3.

[16] Peden, *supra* note 11, p. 3; also see Kathleen Hughes, introduction to A. Jocelyn Otway-Ruthven, *A HISTORY OF MEDIEVAL IRELAND* (London, 1968).