

Anarchy and the Law

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Chapter 1: Introduction

*“Political economy has disapproved equally of monopoly and communism in the various branches of human activity, wherever it has found them. Is it not then strange and unreasonable that it accepts them in the industry of security?”—
Gustave de Molinari (1849)*

Is government necessary? Private-property anarchism—also known as anarchist libertarianism, individualist anarchism, or anarcho-capitalism—is a political philosophy and set of economic arguments that says that just as markets provide bread, so too should markets provide law. If someone argued that because food is so important it must be supplied by government, most would respond that government provision of food would be a disaster. Private-property anarchism applies the same logic to law and argues that because protecting property rights is so important, it is the last thing that should be left to the state. Under private-property anarchy, individual rights and market forces would reign supreme; there would just be no state. Security would be provided privately as it is at colleges, shopping malls, hotels, and casinos, and courts would be provided privately, as they are with arbitration and mediation today.

The current volume brings together a sampling of the major essays explaining, debating, and giving historical examples of stateless orders. Led by economists and political theorists such as Murray Rothbard and David Friedman, the authors in this

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volume emphasize the efficacy of markets and the shortfalls of government. To the libertarian, the state and its enforcement apparatus is not a benign force in society—but where limited government libertarians argue in favor of political constraints, anarchist libertarians argue that the only way to check government against abuse is to eliminate it completely.

Today, more and more scholars and general readers see private-property anarchism as a viable and worthy alternative to the monopolistic and coercively funded state. Individualist anarchism has a long history but most of the early writing was published anonymously or in obscure places. Today, in contrast, private-property anarchism is now discussed in top economics journals such as the *Journal of Political Economy* (Hirshleifer, 1995; Dowd, 1997) and in 2002 George Mason University economist Vernon Smith became the first private-property anarchist to win the Nobel Prize (Smith, 2003, pp. 484-6). In addition to being a potentially important normative position, anarchist research helps explain events and trends of historical and contemporary relevance. Consider, for example, that private security guards now outnumber the public police, and private arbitration—the so-called “rent-a-judge” business—is booming. Private-property anarchism also sheds light on nineteenth-century Britain, where private prosecution agencies tracked down criminals long before the public police existed. Similarly, trade in Medieval Europe, like international trade today, was governed for hundreds of years under competing systems of law.

The works in this volume are influential, yet many were published in relatively obscure publications and are often difficult to track down. This editor knows this first hand, having written a doctoral dissertation, and before that a college senior thesis, on the

topic. In college my professor liked my proposed topic but he doubted whether enough material on the subject had been published. Luckily, another economics professor was well read in private-property anarchism, and he compiled a list of books and articles for me. Only through that guidance, and a number of interlibrary loan requests, was I able to get a representative overview of the subject. Many of these articles are reprinted here. By compiling all of these important articles in one place, these works are now accessible to more than just a handful of experts or fortunate students.

This book reprints articles about anarchism from many libertarian points of view rather than attempt to present a unified vision of anarchy. Although all anarchists agree that the state is unnecessary, many of the specifics are still debated. For example, some authors support anarchy using arguments about consequences, while others support anarchy using arguments about rights. Some authors highlight how markets can function with private law enforcement, while others highlight how markets can function without any formal law at all. The articles in this volume will give the reader a sampling of some of the more important works on the subject.

The book's articles are organized in four categories: Section I presents the major theoretical works that argue in favor of private-property anarchism; Section II contains writings that debate the viability of private-property anarchism, presenting articles and responses from the classical liberal and anarchist perspectives; Section III contains some of the early works in individualist anarchism, as well as modern articles on the history of individualist anarchist thought and the different types of anarchism; Section IV presents case studies and historical examples of societies that functioned without public law enforcement. The chapters need not be read in order so one can skip around depending on

one's interests. For example, if one wants an overview of the differences between libertarian and non-libertarian anarchism, one can skip directly to the chapter by Osterfeld.

I. Theory of Private Property Anarchism

The articles in this first section criticize arguments for government law enforcement and discuss how the private sector can provide law. They critique the very notion that a government monopoly over the use of force is needed. How will a competitive system function? How will the provision of public goods or the problem of free riders be dealt with under anarchy? Not all private-property anarchists agree but many of the chapters in this section offer speculative visions about how various problems might be solved. Reading the articles in this section will give an overview of some of the major anarchist visions.

The first chapter in Section I is Murray Rothbard's important "Police, Law, and the Courts," from *For a New Liberty* (1973). Jerome Tuccille (1971) once wrote a book about libertarianism entitled *It Usually Begins with Ayn Rand* indicating how many libertarians became interested in freedom by reading Ayn Rand. If one were to write a book about anarchist libertarianism one might entitle it *It Usually Begins with Murray Rothbard*. In the late 1940s, Murray Rothbard decided that that private-property anarchism was the logical conclusion of free-market thinking and published his first work on it in 1954. Rothbard was the first to merge modern economic thinking with nineteenth-century anarchists' distaste for the state (Powell and Stringham, forthcoming). Rothbard wrote dozens of articles on anarchy but this, one of his most concise pieces, is reprinted here. Rothbard argues that the way to figure out how much protection there should be is to have a market for law enforcement. This chapter provides a speculative

account of how police and courts could be provided on the market and it offers possible ways that people who subscribe to different protection agencies could settle disputes. Under Rothbard's vision each protection agency would be held accountable to respect individual rights.

Along with Murray Rothbard, David Friedman is one of the founders of anarcho-capitalist thinking. Friedman, too, has written many articles on this subject but his earliest work on the subject appeared in his *The Machinery of Freedom* (1973). This chapter reprints a portion of the second edition (1989) of that book. Not content to believe that convincing people of anarchism requires changing their moral precepts, Friedman argues that even non-libertarians can embrace anarchism out of pure self-interest. Where Rothbard argues for anarchism based on rights, Friedman argues for anarchism based on efficiency. Friedman's vision differs from that of Rothbard because Friedman believes that anarchist laws need not be libertarian. Under a market for law people would be free to choose any rules they wish and the resulting outcome would be determined by net willingness to pay. Friedman describes how multiple police might operate in each area and how they would have incentives to settle disputes through bargaining rather than violence.

Another early work that provides many details on how a competitive system might function was self-published by Morris and Linda Tannehill in 1970 and reprinted by Arno Press in 1972.¹ This book certainly had less circulation than Rothbard (1973) or Friedman (1973) but it clearly had influence on subsequent writers such as Friedman, who refers to a fictional defense agency as Tannehelp, Inc. These authors are concerned

¹ The 1972 volume also reprinted Wollstein's (1969) short monograph *Society Without Coercion*, which advocates anarchism but goes in less depth than the Tannehills.

with any monopoly of the use of force (regardless of whether it is agreed to) and so they offer a system where multiple agencies compete in each geographic area. Some of the Tannehills' discussion may appear as science fiction or less worked out than subsequent writing, but their book deserves a place as being one of the pioneering pieces to ponder how private police might work.

Subsequent writers have been able to expand or refine some of the early anarchist arguments. Boston University Law Professor Randy Barnett has contributed much to the subject (Barnett, 1998) and this volume reprints his 1986 article "Pursuing Justice in a Free Society: Crime Prevention and the Legal Order." Barnett discusses how much of our current crime is caused by the fact that streets are publicly owned and not privately policed. Instead of having government incarcerate people to produce order, Barnett argues that simple exclusion would do much of the job. Once government monopoly is abolished Barnett believes that competing police could pick up any remaining slack. He offers a vision of how multiple law enforcers would operate in each geographic area and how they might deal with unfair renegade enforcers of law.

The next chapter, "Capitalist Production and the Problem of Public Goods," is by Hans-Hermann Hoppe, a colleague of Rothbard who edited of the *Journal of Libertarian Studies* from 1995-2005. Hoppe's subsequent books, such as *Democracy—The God That Failed* (2001), have had a much wider circulation, but this chapter from *A Theory of Socialism and Capitalism* (1989) contains one of Hoppe's original contributions on the subject. Hoppe questions the public goods justifications for government altogether by arguing that that police and courts are excludable, rivalrous, and must be allocated in certain areas. They are not abstract public goods as commonly presented in textbooks.

The government needs to decide whether to hire one judge and one policeman or 100,000 of each, but without a market mechanism the government has little way of figuring out how to allocate resources. Like authors before him, Hoppe describes arrangements that competing protection agencies might use to enforce laws, and Hoppe emphasizes the importance of public ideology towards maintaining liberty.

What about international conflict under anarchy? Jeffrey Rogers Hummel and Don Lavoie address the issue in “National Defense and the Public-Goods Problem.” Hummel and Lavoie have two responses to those who believe that government militaries are necessary. First, they question whether creating a national military actually solves the free-rider problem, and second, they question the extent to which the military is defending the public rather than defending the state. Most supporters of national defense assume that the interests of the public and the government coincide but Hummel and Lavoie question this assumption. In fact, militaries often pose the greatest threats to the public. Hummel and Lavoie believe that the true public good is defending liberty and they argue that this does not depend on the state. The important constraint against government must always be resistance on the part of the public.²

Roderick Long also discusses the problem of national defense in “Defending a Free Nation.” Like Hummel and Lavoie, Long argues that a nationalized military actually provides more of a threat than a defense. Long discusses that decentralized defense could be provided in at least four ways: first, by for-profit firms that act in consortium to defend their clients; second, by private firms that raise money through charitable means; third, by an armed populace who defend themselves without centralization; or fourth, defense

² These arguments are elaborated in greater detail in Hummel (1990) and Hummel (2001).

by civilians who use non-violent resistance. Long discusses the possible benefits and possible shortcomings of each and argues that defending a free society would require some combination of all of the above.

The final chapter in Section I is by John Hasnas, who takes a different approach than anarchist predecessors such as the Tannehills, Rothbard, Friedman, or Barnett. Where earlier theorists attempt to create a blueprint of how the market would handle law, this legal philosopher argues that the law will evolve in ways we cannot predict. He argues that there is no one right way to settle disputes and we should not attempt to centrally plan the law. Attempting to create blueprints of how all problems will be solved might even be counterproductive because the blueprints will necessarily be incomplete. Hasnas argues that we need not have a crystal ball yet we should be confident that market solutions will be discovered.

II. Debate

After presenting some of the arguments in favor of private-property anarchism, the volume gets to the debate. The authors in this section are all libertarians, although some support anarchism while others support limited government. Early critics of anarchism argue that the only system consistent with individual rights is a system with a government monopoly on the use of force (Rand, 1964; Nozick, 1974). Later critics of anarchy often accept anarchy as being morally superior yet they express doubts in the viability of the system (Cowen, 1992; Rutten, 1999; Holcombe, 2004; Cowen and Sutter, 2005). All of these authors argue that special characteristics of law enforcement make a competitive system unlikely or impossible. This section includes some of the major criticisms of anarchy and some anarchist responses.

One of the most famous supporters of minimal government was Ayn Rand. In “The Nature of Government,” originally published in 1964, Rand argues that society requires a respect for individual rights and argues that the government must enforce those rights. She argues that the use of force—even in self-defense—cannot be left to the discretion of individuals. Rand criticizes libertarian anarchy by saying that a system with private police would lack objective laws and will result in conflict. She offers a hypothetical scenario where two neighbors hire different police and then get in a dispute. According to Rand, the only result under anarchy would be for the two parties to resort to arms and the only solution is to have a government monopoly on the use of force.

Not all followers of Rand were convinced. In 1969 Roy Childs wrote “Objectivism and the State: An Open Letter to Ayn Rand.” Childs argued that if one supports liberty one should oppose the state in all forms. Although Rand says she is against the initiation of the use of force, Childs points out that any government necessarily initiates force when it prevents people from defending themselves. Childs takes on Rand’s specific claims maintaining that many of her arguments are not as logical as Rand implies. He argues that just because people in society should abide by objective rules it does not follow that a government monopoly is necessary. Her argument is equivalent to saying that because one must follow objective procedures to produce a ton of steel, government steel production is necessary. Childs points out that Rand simply assumes that competing police will act violently and she assumes that her benevolent government will not. Economists call this the Nirvana fallacy. An upset Rand never wrote a written response and had Child’s subscription to *The Objectivist* cancelled. Child’s letter made its rounds and, according to Jeffrey Rogers Hummel, was one of the

most influential writings in convincing Rand-influenced libertarians to become full-fledged anarchists.

As the 1970s progressed, the number of people writing about anarchism increased exponentially. In 1977 Murray Rothbard founded the *Journal of Libertarian Studies*, which printed many articles on anarchy. One exemplary article from an early issue is “Do We Ever Really Get Out of Anarchy?” by Alfred Cuzan. In this article he questions some of the basic assumptions of government advocates such as Rand. If a third party is required to settle disputes between individuals, who settles a dispute between individuals and the state? Cuzan argues that creating government is simply replacing one form of anarchic relations with another. Unenforceable relations between people or governments will always exist, so Cuzan questions whether creating a government hierarchy is desirable.

Robert Nozick provided one of the most famous critiques of private-property anarchism in *Anarchy, State, and Utopia*, which ended up winning the 1975 National Book Award for Philosophy and Religion. Nozick was a Harvard philosopher who had become a libertarian after meeting one of Rothbard’s colleagues, and later Rothbard, in the early 1960s (Raico, 2002). Still, Nozick was unconvinced of anarchist libertarianism, so he devoted the first third of his treatise arguing against Rothbard’s views on law. Nozick attempts to rebut the anarchist claim that all governments violate rights by positing an invisible hand theory of government. He argues that out of a state anarchy, a dominant protection agency would be justified in protecting their customers from potentially risky firms and this dominant protection agency would be justified in becoming a state. Even though the government would use force to prohibit competition,

Nozick argues that the government would not violate rights provided it compensated those who wished to have an alternative arrangement. The best way of compensating those injured parties, according to Nozick, would be to provide them with free police.

Not all libertarians were convinced. The inaugural issue of the *Journal of Libertarian Studies* was devoted to analyzing Nozick's theory of government; two of the responses are reprinted here. Roy Childs takes on Nozick's defense of government in "The Invisible Hand Strikes Back" (1977). Childs criticizes Nozick for arguing that smaller protection agencies might be risky but the dominant protection agency would not. It might be the case that the government is the riskiest agency of all. Nozick gives no reason for us expect that this government would not become abusive itself. Childs also questions Nozick's proposed compensation for those who do not wish to have government. He writes, "What is he willing to offer us as compensation?... He is generous to a fault. He will give us nothing less than *the State*." Does Nozick really believe that compensating those who dislike police with more police will return them to their original indifference curve?

In "Robert Nozick and the Immaculate Conception of the State," Rothbard argues that even if Nozick were correct in his logical reasoning, he fails to provide a justification for any existing government. Because no government was ever formed according to Nozick's process or acts in a way that Nozick wishes, Rothbard argues that Nozick should join the anarchists in opposing government. At a more fundamental level, Rothbard questions Nozick's logical justification for government. Where Nozick argues that prohibiting risky behavior is just, Rothbard argues that such a position would lead to numerous authoritarian laws. Many people have the potential to engage in dangerous

behavior, but that does not justify prohibiting them from acting or locking them up.

Rothbard deals with many of Nozick's claims, and in the end concludes: "[E]very step of Nozick's invisible hand process is invalid."

Later critics of anarchy do not posit that the state is necessary or that the state is just as in Rand or Nozick. Nevertheless, these critics of anarchy argue that the state might be inevitable. In one of the more sophisticated criticisms of libertarian anarchy, Tyler Cowen argues that a system with competing courts will devolve into coercive government because law enforcement is a network industry where firms must be interdependent on each other. Cowen's article, "Law as a Public Good: The Economics of Anarchy," includes "Public Good" in the title, not because the government is providing a good but because Cowen believes that a legal system must apply to everyone in a geographic area. He argues that if firms are able to cooperate to settle disputes then that same mechanism that same mechanism will enable them to cooperate to collude. Even if multiple firms exist, Cowen argues the result will be a de facto monopoly that can use force to exact taxes just like government.

David Friedman responds to Cowen in "Law as a Private Good." He agrees that firms would have relationships with other firms, but he disagrees that the industry must be a network industry that facilitates a cartel. He argues that a situation with bilateral contracts between firms is quite different from a situation with one industry-wide contract. If the only relationships in the industry are between pairs of firms, these relationships do nothing to enhance their ability to collude. Friedman argues that the situation is akin to the contractual relationships between grocery stores and suppliers. Cowen's "Rejoinder to David Friedman on the Economics of Anarchy" (1994) provides a

brief response arguing that analogies from regular industries do not apply. Cowen argues that competing firms must cooperate to enforce laws and he argues that they will be able to use force against those who do not comply. The number of firms is unimportant because even though the world has many different police forces and local governments they still collude. Cowen believes that often governments do terrible things, but he is pessimistic that libertarian anarchy offers a viable alternative.

Caplan and Stringham, in “Networks, Law and the Paradox of Cooperation” (2004), question Cowen’s argument that network industries facilitate collusion. Although enforcement of law across multiple agencies would require some cooperation, the ability to cooperate does not guarantee they will be able to collude. Law enforcement may require some cooperation but the network need not be all-powerful. They distinguish between self-enforcing and non-self-enforcing agreements and argue that collusive agreements between firms would be harder to enforce. For example, if firms attempt to collude to raise prices, each firm would have an incentive to break the agreement. On the other hand, if firms coordinate to boycott a bad business risk, each firm has an incentive to follow the agreement lest it be cheated itself. Caplan and Stringham give historical examples of network industries, such as banks and credit card companies, that have been able to facilitate coordination but have been unable to facilitate collusion.

Cowen and Sutter reply in “Conflict, Cooperation and Competition in Anarchy” (2005), arguing that Caplan and Stringham’s analysis underestimates the importance of the use of force. Cowen and Sutter argue that the interaction between firms is a coordination game with multiple equilibria, not all of which are libertarian. Although a situation of armed conflict may not occur, firms might end up backing down to a coercive

firm rather than defending their clients' rights. Because membership in a network is valuable, the incumbents may be able to exercise their market power at the expense of others. Such a situation will enable members of an arbitration network to enact non-libertarian rules and then refuse to deal with new entrants who do not agree. This sows the seeds for the creation of government whether we like it or not. Perhaps the Hobbesian dilemma may never be solved.

One economist who accepts many of the Hobbesian arguments yet still supports anarchy is Anthony de Jasay. In one of his many works on the subject, "Conventions: Some Thoughts on the Economics of Ordered Anarchy" (1997), de Jasay addresses the possibility that suboptimal outcomes will result in an anarchist world. First De Jasay criticizes the advocates of limited government who argue that the state has the ability to eliminate these suboptimal outcomes. Just because a problem exists does not mean that government has the ability to solve it. De Jasay argues that under anarchy individuals would have an incentive to internalize some of the negative externalities that would result from conflict. The key is to find market solutions to potential problems. He also addresses the claim that people need government once people want to interact outside small groups. He says that although any given transaction may appear to be a prisoners' dilemma, transactions take place in the complex web of society where repeated transactions and reputation create incentives for cooperation.

Andrew Rutten addresses De Jasay's arguments in "Can Anarchy Save Us from Leviathan?" (1999). Although Rutten accepts most of De Jasay's criticisms of government, he is unconvinced that anarchy, or any other system for that matter, can eliminate the problem of force. Rutten accepts the argument that government will always

abuse its power and that constitutions are of little use; he also accepts the argument prisoners' dilemmas problems are not as ubiquitous in the market as most supporters of government believe. Nevertheless, Rutten argues that anarchists may be too optimistic in their outlook because the incentive to abuse power and expropriate property will still remain. Anarchists, just like governments, will have an incentive to act against the wishes of others. According to this pessimistic anarchist, property rights may never be secure.

Another author who holds a pessimistic view towards anarchism is Randall Holcombe. In "Government: Unnecessary but Inevitable" (2004), Holcombe agrees with libertarian anarchists that government is coercive and unnecessary for public goods, but he maintains that nothing can be done to prevent its existence. Like Rutten, he argues that incentives for opportunistic behavior will always exist and he argues that libertarian anarchy would either internally devolve into government or be overtaken by force. Holcombe points out that the world is ruled by governments, which shows that anarchy is not an option. Instead of advocating government abolition, Holcombe argues that libertarians should seek to find ways to make government as small as possible. Holcombe maintains that the best course of action is preemptively creating a limited government that will still expropriate, but will expropriate less than less limited governments.

Leeson and Stringham question Holcombe's account in "Is Government Inevitable?" (2005), maintaining that Holcombe is too pessimistic about the possibility of stateless orders and too optimistic about the possibility of limited government. They point to many historical examples of anarchist societies, including modern-day Somalia, and argue that the evidence that most nations are currently controlled by states says nothing about the long-term prospects for anarchy. They also question the idea that society can

create a more benign government if all governments are created for the benefit of their creators. If Holcombe's Hobbesian assumptions are correct then nothing stops limited government from becoming unlimited government. Leeson and Stringham argue that limiting government ultimately depends on ideological opposition to the state, and argue that if limited government is possible so too is anarchy.

III. History of Anarchist Thought

The next section contains a sampling of early anarchist works as well as modern commentary on the history of anarchist thought. Two chapters are by eighteenth- and nineteenth-century Europeans, four chapters are by nineteenth-century Americans, and three chapters are by contemporary writers who provide overviews of anarchist thought. Anarchist sentiment has a long history but its explicit formulation only came within the past couple centuries with the vast majority of the work coming in the past three decades. How does private property anarchism relate to other political philosophies and how did anarchists arrive at their views?

David Hart provides an excellent history of how private-property anarchism evolved. This chapter reprints portions of Hart's three-part essay, "Gustave de Molinari and the Anti-statist Liberal Tradition." David Hart sees private-property anarchism as originating from classical liberal philosophy, which focused the importance private property rights and the need to constrain the state. Eighteenth- and nineteenth-century anarchists and quasi-anarchists ended up advancing the view to the logical extreme, concluding that government is not needed at all. Private property was most explicitly spelled out starting in the nineteenth century by authors such as Gustav de Molinari. David Hart discusses the influence of these writers and how their ideas were passed on to the anarchists who exist today.

One of the earliest works that is clearly anarchist is Edmund Burke's "Vindication of Natural Society." Burke, who is often considered the father of new conservatism, published this essay anonymously as a letter by "a late noble writer" in 1757. Burke later had political aspirations, so when people discovered he was the author Burke claimed that the piece was a satire. The issue is debated in Pagano (1982), but Murray Rothbard (1958, p. 114) believed, "Careful reading reveals hardly a trace of irony or satire. In fact, it is a very sober and earnest treatise, written in his characteristic style." Burke's piece is a scathing attack on government. He discusses how governments have killed millions through wars and have enslaved their citizens. It does not matter if governments are despotic, aristocratic, or democratic; they are still tyrannical. Are not government laws created to protect the weak? Burke responds, "surely no Pretence can be so ridiculous." We may never know Burke's true motivation but this piece is an all time anarchist classic.

The first person to explicitly advocate competitive law enforcement was Belgian economist Gustave de Molinari, who wrote "The Production of Security" in 1849. Molinari argues that, because competition better serves the interests of consumers, there should be competition in all areas, including law. He maintains that all monopolies are coercive and argues that the natural consequence of monopoly over security is war. Governments war only because they wish to wrest the monopoly over the use of force; if the monopoly over the use of force could be eliminated so too would the incentives for aggression. Molinari proposes letting individuals be clients of any enforcement agency of their choice and provides a brief description of how such a system might work. He believes that law enforcement would likely be territorially based but he says that

individuals should be able to go to another protection agency in case of abuse. The article was revolutionary in its day and can be considered the first piece to explain how a system with private police might function.

In America, although the colonists were not writing economics treatises on private-property anarchism, Murray Rothbard argues that anarchist sentiment has a long history. In “Individualist Anarchism in the United States: The Origins,” Rothbard describes how many seventeenth-century colonists opposed taxation or any form of government, often on religious grounds. Rothbard discusses such people as Anne Hutchinson, who left Massachusetts and ended up setting up communities that operated without a state. In seventeenth-century Pennsylvania, William Penn did not intend to create an anarchist colony, but it ended up being *de facto* anarchy for some years. Many of the Quakers believed that any participation in government was a violation of Quaker principles, and when Penn tried to impose a tax he was met with strong resistance. Eventually Penn and others created government but the legacy of anarchist sentiment lived on.

Voltaireine de Cleyre lived from 1866–1912 and wrote that the principles of the American Revolution were anarchist. De Cleyre was one of the many nineteenth-century individualist anarchists in America and she wrote “Anarchism and American Traditions” in 1908. In this chapter de Cleyre makes the case that the principles of the American Revolution need to be reawakened. She outlines the commonalities between the revolutionaries and the individualist anarchists in their mistrust of government and their goal to create equal liberty for all. Unfortunately, after the Revolution the government has grown and the public has not done enough to stop it. In the early 1800s Americans

were concerned about having a standing army of 3,000 and in de Cleyre's day she was outraged that the number had grown to 80,000. (In 2005 the U.S. government has a standing army of over 1.4 million people!³) Wishful thinking notwithstanding, the Constitution appears to be ineffective against the growth of government.

Nineteenth-century Boston anarchist Lysander Spooner provides a scathing analysis of the U.S. Constitution in "No Treason: The Constitution of No Authority." This chapter reprints a portion of his 1869 attack on the federal government of the United States. How the times have changed: Whereas in modern times defenders of Constitution are considered defenders of small government, in the nineteenth century defenders of the Constitution were considered defenders of big government! Spooner argues that the Constitution is an illegitimate social contract because neither he nor anyone he knows actually signed the Constitution. Just because thirty-nine men signed the Constitution in 1787 does not mean that it should hold any moral weight on the other 3 million Americans at the time or the 300 million Americans living today. Spooner likens the government to a highway robber but argues that government is worse. After stealing your money the highway robber is too much of a gentleman to follow you around and say he is protecting you!

Lysander Spooner also criticizes the government legal system in his "Trial by Jury" (1852). Spooner, a lawyer by training, wrote volumes defending liberty. He argues that trial by jury was created so laws would be judged by citizens rather than by government. He describes how government courts corrupt this institution by creating the laws of evidence, deciding who will serve on juries, and dictating the laws juries are to

³ From 1800 to 2005 the American population has increased fifty fold whereas the number of people in the U.S. military has increased almost 500 fold.

enforce. The government co-opts this bulwark for liberty and replaces it with a trial by government. Spooner maintains that a government legal system cannot be trusted because it is allowed to determine the legality of its own acts. He argues that juries should be able to judge any law to be illegitimate regardless of what government says.

Another nineteenth-century Boston anarchist was Benjamin Tucker, who published the periodical *Liberty* from 1881–1908 (McElroy, 2003). Tucker wrote many small contributions on anarchy and he also delved into philosophy and economics. Subsequent writers, such as Rothbard (1974/2000), have criticized Tucker for his old-fashioned economic views (and many libertarians will find he also had some odd views on ethics), but Tucker was strong on the question of anarchy. In his “Relation of the State to the Individual”⁴ (1890), Tucker argues that people will be better off by cooperating without government. He says that if one opposes the initiation of the use of force one must oppose the state in all forms. He argues that defense is not an essential of the state but aggression is; defense was just an afterthought. In addition to violating liberty, the state adds insult to injury by making its victims pay. These words ring true today.

The final chapter in this section puts private-property anarchism into perspective by comparing it to other political and economic philosophies. David Osterfeld gives a “Political and Economic Overview,” which is reprinted from his book *Freedom, Society, and State: An Investigation of the Possibility of Society Without Government*. He outlines how on the political spectrum one can be anywhere from an anarchist to a hyperarchist and on the economic spectrum one can be anywhere from a capitalist to a socialist. Osterfeld distinguishes between the various types of anarchism, from socialist to

⁴ This chapter reprints the majority of his article but leaves off the last few pages, most of which is a long quote from Proudhon.

capitalist: anarcho-communism, anarcho-collectivism, anarcho-syndicalism, mutualism, Godwinism, egoism, philosophical anarchism, and individualist anarchism. Many mistakenly lump all anarchists together, which might be one reason why some conservatives and classical liberals get scared if they hear the suggestion to get rid of government police. In addition, Osterfeld distinguishes between the capitalist systems, from statist to anarchist: conservatism, classical liberalism, objectivism, evolutionary individualist anarchism, minarchism, ultraminarchism, and individualist anarchism. Many people mistakenly lump all forms of capitalism together, which might be one reason some critics of crony state capitalism believe they must oppose capitalism altogether. Osterfeld's chapter provides a useful roadmap for thinking about the relationships between different political and economic philosophies.

IV. Historical Case Studies of Non-Government Law Enforcement

The chapters in this section show that the idea that markets can function without government law enforcement is not just science fiction. Theories or speculative accounts about how an anarchist society might function are well and good, but many people remain unconvinced until they see something in practice. As the chapters in this section demonstrate, the world is replete with examples of private law enforcement or markets that function without formal law enforcement at all.⁵ These studies range from historical episodes from hundreds of years ago to often-overlooked situations in modern society. Many of these research articles have appeared in top ranked economics journals and they show that research on private-property anarchism can be more than pure theorizing.

⁵ A lot of research analyzes private police or courts that operate within the context of a government system (Foldvary, 1994; Mahoney, 1997; Romano, 1998; Stringham, 1999, 2002; and 2003), but the examples in this section focus on case studies where government police and courts are largely absent.

Bruce Benson has two books and dozens of articles on private law enforcement; two of his articles are included here. The first, “Are Public Goods Really Common Pools? Considerations of the Evolution of Policing and Highways in England,” appeared in *Economic Inquiry* and documents how private parties in medieval England would solve disputes without relying on government. The system was largely restitution based, so wrongdoers would have to compensate their victims. Even though law enforcement requires coordination between many people, Benson describes how people joined groups of one hundred to police and settle disputes. The Anglo-Saxon kings, however, began centralizing the law once they realized that they could use the legal system to collect revenue. By declaring private torts to be violations of the king’s peace as well, they could require wrongdoers to pay restitution to the king in addition to the actual victim. By the time of the Norman invasion, the king declared that all of the restitution must go directly to the king. Predictably, this eliminated the incentive for private law enforcement and then created the “need” for public law enforcement. The article shows that government law enforcement was not created to deal with market failure and instead was created to enhance revenue for the state!

Another article that shows that government law enforcement is unnecessary is Joseph Peden’s “Property Rights in Celtic Irish Law.” Peden’s article is important because, along with Friedman (1979) and Anderson and Hill (1979), it was one of the first to document how a system of private law enforcement actually functioned. In medieval Ireland disputes were settled by private jurists called brehons and law relied on the use of sureties rather than government coercion. The legal system was based on restitution rather than punishment and people could pledge property or their own personal

labor as a bond. Peden provides many specific details about the property rights system, which shows that our contemporary government law enforcement system is not the only one.

Another historical case study of medieval times is David Friedman's "Private Creation and Enforcement of Law—A Historical Case" (1979), which documents how Iceland had a system of competing law enforcement for over three hundred years. People had of choice of law enforcing bodies and they could join another coalition at will. If someone committed an offense he would pay restitution unless he wanted to be deemed an outlaw. Victims were given the right of compensation or they could transfer that right to another party who was more likely to collect the fine. Because people would have to pay if they committed a wrong, the system created incentives to reduce conflict. Friedman argues that this competitive system created relatively efficient law and it led to a murder rate that was lower than in the current United States.

In addition to providing systems of criminal or tort law, private legal systems provided contract law as well. In the middle ages most disputes between merchants were settled private in courts developed by the merchants themselves. Paul Milgrom, Douglass North, and Barry Weingast document how this system functioned in "The Role of Institutions in the Revival of Trade: The Law Merchant, Private Judges, and the Champagne Fairs."⁶ Milgrom, North, and Weingast represent this situation using game theory, so for those interested in formalizing some of the anarchist theories this paper offers a model. These authors explain how merchants would bring their disputes to private courts, and if a merchant refused listen to the court he would be blacklisted by the

⁶ Between these authors, two have appointments at Stanford and one has a Nobel Prize and the article was published in a highly ranked journal. The article demonstrates that anarchist research may have a place in mainstream outlets.

remaining merchants. These private courts show that laws of commerce can be enforced without resorting to government or the use of force.

Examples of non-government law enforcement occur throughout the globe. Bruce Benson, in “Legal Evolution in Primitive Societies” (1988), documents how many societies use voluntary customary law rather than government imposed law. If a legal rule is beneficial people will have an incentive to adopt it and it need not be imposed by the state. He describes the legal system of the Kapauku Papuans of West New Guinea in the twentieth century who had no formal government yet had a private legal system that evolved to meet ongoing needs. The Kapauku created reciprocal legal arrangements based on kinship and based on the reputation of tonowi (wealthy men) who they trusted to assist in legal matters. The legal system was mostly based on restitution or public reprimand rather than punishment, and the system had a large respect for individual property rights.

Non-government legal systems also have a history in America as Terry Anderson and P. J. Hill document in “American Experiment in Anarcho-Capitalism: The Not So Wild, Wild West” (1979). Governments were unestablished in much of the frontier in nineteenth-century America, yet it turns out that the frontier system was much more peaceful than the depictions in movies. Anderson and Hill describe the enforcement methods in the West: Land clubs enabled people to establish property rights even though the federal government had yet to survey the territory; cattlemen’s associations helped enforce property rights in the open range, which had millions of cattle and lacked government police; mining camps established ways of settling mining claims without the use of lawyers; and wagon trains dealt with enforcement issues once people traveling

West left the jurisdiction of the federal government. Many think of systems of private law enforcement as completely foreign to the American experience; Anderson and Hill show otherwise. Anderson and Hill (1975) developed these ideas further in the *Journal of Law and Economics* and a book published by Stanford in 2004, but this 1979 *Journal of Libertarian Studies* article is a classic.

Another study of the American West is done by Yale University law professor Robert Ellickson. This time, however, the study is about contemporary society. This chapter reprints part of Ellickson's *Order Without Law*, which shows that examples of non-government law enforcement are alive and well today. While many theorists assume that individuals respect property rights only because of the threat of law, Ellickson's case study of farmers and ranchers in rural Shasta County, California shows nothing of the sort. Ellickson studied the official laws to figure out how cattle trespass disputes "should" be settled, and then he went to Shasta County to ask people how the disputes were actually settled. Ellickson found that ranchers and farmers (and even town lawyers!) had little idea what the laws actually said. Instead of relying on legalistic methods of dealing with disputes, the ranchers and farmers relied on notions of what they considered right. Because their norms often differed significantly from the law, their system of property rights and means of settling disputes is clearly not a product of government.

Summary

The state has worked for years attempting to indoctrinate people of the necessity of government law enforcement. The chapters in this volume suggest that this government wisdom is wrong. Just because monopolization of law was a convenient way for government to enhance revenue and exert control does not mean that government law is necessary. The articles in this volume are important from two perspectives. From an

academic perspective they show that anarchism might be a useful lens to help us analyze the world. Do people only cooperate because of the threat of government law? Perhaps the answer is no. By taking a more realistic perspective, the anarchists have the potential to shed light on many situations that others cannot explain. The articles in this book, especially in the case study section, represent the tip of the iceberg of possible articles about anarchy. Like the farmers and ranchers in Shasta County, self-governance is all around us, and this presents a tremendous opportunity for academic research.

From a normative perspective private-property anarchism may be important for promoting liberty in both the short and long run. For those interested in marginal change in the short run, private-property anarchism has practical policy implications today. For example, should individuals be able to opt for arbitration (if all parties agree), or should government regulate and overturn arbitration decisions as it does today? Likewise, should landowners be allowed to create gated communities with private security, or should government make their streets open to the public and patrol them with government police? Private-property anarchism sheds light in on these issues.

Private-property anarchism is also important for the long-run prospects for liberty. Markets have been a blessing wherever they have been implemented and government has been a calamity wherever it has been implemented. Instead of advocating a system that we know does not work, why not advocate a system that might? Limited government appears to be inherently unstable and anarchism might offer the libertarian the only alternative. In the past 250 years the world has successfully thrown off the yoke of monarchism and in the past twenty-five years the world has successfully thrown off the yoke of communism. Why not continue and throw off the bonds of all government?

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