

PRIVATE POLICE: A NOTE

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A state which dwarfs its men, in order that they may be more docile in its hands even for beneficial purposes—will find that with small men no great thing can really be accomplished; and that the perfection of the machinery to which it has sacrificed everything will in the end avail it nothing, for want of the vital power which, in order that the machine might work more smoothly, it has preferred to banish.

– John Stuart Mill

There are those to whom the question of whether to privatize the nation's police forces is mere academic whimsy—a question of consequence only to the eggheads and cranks of the Academy, not to those who so solidly inhabit the “real world.” Most of these believe the enforcement of law to be the exclusive province of the state. Such a belief is rooted in an obvious falsehood: the notion that there is a unique and singular commodity called “enforcement of law.” There is, in fact, no such singular commodity.¹

Enforcement of law is a phenomenon that admits of infinite degrees and permutations. Take the case of a jewelry store. The theft of its wares is a crime under the law. But the jewelry store does not rely exclusively—or even primarily—on the majesty of the state's enforcement of that law for its own security. The jewelry store engages the services of manifold private protection outfits: it takes out an insurance policy on its gems, which are kept under a locked glass display case, which can only be opened by an employee, who is under the ever-vigilant eye of video monitoring equipment, and who watches the customers with the aid of convex mirrors, and keeps the store's cash in a locked vault, which is in a back room, which is in turn locked at closing time, and the store's alarm activated as the employees leave and the armed night watchmen arrive. All of these are provided by private companies in the business of providing “security,” and all of which should give pause to those who consider the enforcement of law uniquely the franchise of the government.

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¹See Murray N. Rothbard, *For A New Liberty* (New York: Macmillan, 1973), pp. 219–20.

None of this is to deny that the enterprise of law enforcement in America is largely the self-incurred responsibility of the state. But with responsibility comes reckoning. The government maintains police forces which collectively discharge a duty to serve and protect the law-abiding citizenry. Have the government's police forces fulfilled this duty?

The evidence suggests unambiguously that they have not. Crime rates per 100,000 people—whether measured by total crime or violent crime or property crime—increased by not less than 100% in the decade of the 1960s.² Such evidence does little to commend the service and protection afforded us by our public police. That there has issued forth, against such unfriendly evidence, an argument that calls upon us to blame for the surge not the police, but rather the increasing tendency on the part of the public to *report* crime, is testimony to the inexhaustible malleability of the arguments of the American left.

Factual agreement, it seems, attaches to only the most incontrovertible of data: the murder rates. It is generally conceded that swollen murder rates reflect something other than a growing tendency to report the deed—what with corpses presenting a rather conspicuous presence and murdered persons a conspicuous absence.³ And the murder rates in large American cities between the years of 1963 and 1971—a period of less than a decade—escalated at a show-stopping 100%. This leads an urbanite to the clear conclusion that he is more likely to be murdered than was an American soldier likely to be killed in World War II combat—a datum in which the safety afforded to American citizens by the public police fails to compare favorably with that afforded American soldiers by the Nazis.⁴

Such a dismal failure on the part of the public police lends a terrible immediacy to the call for privatization. The following will attempt to sketch out the workings of private protection agencies while meeting the most significant objections.⁵

²U.S. Bureau of the Census, *Historical Statistics of the United States, Colonial Times to 1970* (Washington, D.C.: U.S. Government Printing Office, 1974), p. 413.

³See Thomas Sowell, *Knowledge and Decisions* (New York: Basic Books, 1980), p. 274.

⁴James Q. Wilson, *Thinking About Crime* (New York: Basic Books, 1975), p. 17. See also Sowell, *Knowledge and Decisions*, p. 274.

⁵A common objections is that while the government may be too large, libertarians who agitate to privatize the public police would throw out the baby with the bathwater. The classic rejoinder to this claim was made in a speech by Harry Browne at the 1996 Libertarian Party National Convention: "We libertarians are throwing out the baby with the bathwater—Rosemary's baby!"

PRIVATIZATION AND THE POOR

It will be roundly objected that private policing is undesirable insofar as only the wealthy could afford to implement it, leaving the poor without mechanism of legal protection. There are several solutions to this contingency consistent with the operation of a free market in law enforcement. First, however, it must be made clear that a perfect system of law enforcement is not, this side of paradise, an option. Therefore, in order to overcome the argument for privatization, it does not suffice merely to expose therein a flaw or potential flaw, e.g. that the poor could not (sufficiently) afford police protection. It must be concurrently demonstrated that the public enforcement of law is more effective in these regards vis-à-vis the private. Given that America's poorest areas are among its most crime-ridden—so much that *ad hoc* citizen-volunteer patrols are currently mobilized to augment the disintegrating capacities of public police—one should expect no such demonstration to materialize.

Now, onward to the issue of how the poor shall obtain protection via the free market. The poor tend not to own their own homes—the poor, it is safe to generalize, are a tenant lot. They inhabit temporarily and voluntarily the property of a landlord and they do so because he has offered housing and related amenities that justify incurring the cost at which they are offered. In order to attract tenants, then, a landlord will need to provide police protection for his property and its inhabitants, or else he will be quickly out of his property and even quicker out of his tenants. The Bates Motel was never much of a hot spot.

And when the poor are not on their (rented) property, they are, as a matter of definition, on someone else's. There, as participants in the so-called free rider problem, the poor shall be the beneficiaries of “free” police protection.⁶ Toward clarification, here is an analogy. There are products for which the bother of charging money outweighs the prospects for profit; these products are thus offered free of charge to the individual user, more or less in affiliation with the sale of coadunate goods. Examples of this phenomenon abound: book matches are given away with and without the sale of tobacco products; bathrooms, whether in restaurants or department stores or gas stations, are often open to customers and the general public alike.⁷ Police protection could operate likewise.

⁶See Walter Block, “Public Goods and Externalities: The Case of Roads,” *Journal of Libertarian Studies* 7, no. 1 (Spring 1983): 1–34.

⁷See David Friedman, *The Machinery of Freedom* (New Rochelle, N.Y.: Arlington House, 1973), pp. 137–38.

Private property owners using their property for commercial purposes would employ a protection agency to ensure that it is commercial, and not criminal, activity that reigns.⁸ Those of the poor—and the not-poor—would thereby enjoy police protection while on private, commercial property. This arrangement is, to a large extent, operative at present. One fears not that one's purchases will be swiped in a shopping mall—there are mall security guards to prevent that; and one frets not at all, in a bank, that one's cash will be lifted—there are armed security guards to discourage such things. It is when one is on public property, such as Central Park, protected by a public police that halts the criminal elements much as a sieve halts water, that one counts one's self lucky to escape with life, limb, and maidenhead preserved. To illuminate the difference between the public and the private enforcement of law, simply imagine the rate of criminal activity at Central Park as prevailing at, say, Macy's.

There is yet another manner in which the free market could confer security services upon the poor. Victims of a crime—poor or otherwise—could be awarded by the (private) courts a claim for damages in an amount which corresponds to the gravity of the crime. Such a claim would be transferable property.⁹ Victims, then, would have the option of selling a claim for damages to a collection agency, which would proceed to apprehend the responsible party and exact the fee. (Just as many poor plaintiffs command the services of a lawyer by agreeing to split any damages forthcoming.) This action may be combined with a contractual agreement between the victim and the agency to again collaborate should a further crime be perpetrated against the former party. Such a pact would cement the initial relationship between the victim and the collection agency, with the agency's commitment to exact future incurred damages engendering the protection of the victim via the power of *deterrence*. That is to say, the collection agency that contracted to so serve a given individual would not provide that individual with active law enforcement, e.g., cops on foot, or bicycle, or steed, or in cruisers; rather, the contract itself would provide the individual with

⁸It is good to bear in mind that this author advocates the privatization of the nation's streets. Streets and sidewalks would be, under privatization, commercial property. For more on how roads could be paved, preserved, and protected on the free market, see Murray N. Rothbard, *For A New Liberty* (New York: Macmillan, 1973), pp. 202–18. Particularly noteworthy is the anecdote Rothbard therein relates, to the effect that the level of crime in New York's Times Square, during a public police strike, was not a whit higher than the level of crime that prevailed when they were supposedly *on the job*.

⁹See Friedman, *The Machinery of Freedom*.

passive law enforcement, would ward off the bad guys. This deterrence effect could be amplified by arranging for the contract to be public knowledge, much as the owner of a car places prominently notice of an effective car alarm.

PRIVATIZATION AND CORRUPTION

It is widely held that private firms, organized for the enforcement of law within the parameters implied by profit-making, would be susceptible to bribery and corruption. The argument is roughly as follows: private protection agencies are motivated by the lure of profits; it would pay them, therefore, to engage in thuggery, or to protect others who do so.

There is manifest in this argument a fundamental failure to comprehend the workings of a free market. For one thing, private protection agencies, as compared to the state, would be unable to exercise coercion in the pursuit of clientele. A private protection agency must convince potential clients that it is possessed of both the wherewithal and the resolve to provide effective enforcement of the law. Providing a guarantee to the customer is one manner of doing so. Therefore, it is likely, or in any case possible, that the protection agencies would woo clients by offering to *insure* their lives and property. Manifestly, the protection agency that underwrites its clients has a strong incentive to protect them vigorously—and a strong disincentive to countenance bribery and corruption. Crimes perpetrated against its clients then become crimes paid for by the agency, and only an agency bent on masochism would allow for its officers to indulge criminal conduct.

In fact, it is the public police force that stands to profit from look-the-other-way law enforcement. After all, arriving at its funding, as it does, from (coerced) tax revenues, the public police will not endure economic hardship if and when it fails to arrest the onslaught of crime. Therefore, it pays for its officers to accept bribes from the perpetrators of crime, offering in exchange clemency. This fact was given neon prominence in the *Knapp Commission Report on Police Corruption*, published in 1972, which found virtually every office in the entire NYPD to be corrupt.¹⁰ Moreov-

¹⁰See *The Knapp Commission Report on Police Corruption* (New York: George Braziller, 1972), p. 3:

Of course, not all policemen are corrupt. If we are to exclude such petty infractions as free meals, an appreciable number do not engage in any corrupt activities. Yet, with extremely rare exceptions, even those who themselves engage in no corrupt activities are involved in corruption in the sense that they take no steps to prevent what they know or suspect to be going on around them.

er, if indeed criminal activity grows while the public is being “protected” by an unconcerned public police, it is very likely that the police budget will increase as well. Crime, after all, can pay. Which is not so much *why* the government runs the police as *because* the government runs the police.

THE HUBRIS OF CENTRAL CONTROL

The officials of the state, possessed of but fragmented knowledge, nevertheless presume to determine by fiat the necessary degree of police protection for the entire citizenry. It is axiomatic that such charlatanry will lead to the inefficient use of scarce resources. The state cannot succeed because it squelches that vital power—human freedom—but for want of which the machinery of society might work more justly.