
The Voluntaryist

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"If one takes care of the means, the end will take care of itself."

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"Call the COPS - But Not the Police:" Voluntaryism and Protective Agencies in Historical Perspective

By Carl Watner

"[T]he question arose of how to handle aggressors within the community. ... [W]hat about robbers, rapists, or murderers ... ? ... To deal with violent aggression within the city, associations sprang up in each place. Ours is named the Committee for Peace and Safety, but everyone calls it by its initials, COPS. ...

"COPS is careful to use force only against those who have initiated the use of force. A murderer initiates the use of force. So does a robber, or a rapist. [Our] philosophy ... allows for the use of force against aggressors, in reaction to their initiation of force. COPS never initiate the use of force ... against people who haven't themselves used force. ..."

—Jim Payne, *PRINCESS NAVINA VISITS VOLUNTARIA* (2002), pp. 63 - 64.

Introduction: Government Police or Private Protective Agencies

To voluntaryists, the history of government institutions is only important as they shed light on how private organizations might evolve if no government coercion were present. The historical record with respect to "private" police is very spotty (and only cursory mention of it will be made here), since government monopolization has been the norm throughout the ages. Understanding the history of modern government policing is doubly important because it not only sheds light on how a voluntary society might rely on private agencies, but also illustrates the degree to which governments depend on legitimacy, rather than force, as the main prop to their existence.

Paraphrasing a definition from the *ENCYCLOPEDIA BRITANNICA*, the term "police" denotes a body of people organized to maintain civil order and public safety, and to investigate and rectify breaches of the peace. [1] Nevertheless, the word "police" was unknown to the English language until two hundred and fifty years ago. A Frenchman arriving in London in the early part of the 18th Century observed a great deal of dirt and disorder in the streets. Asking about the police, but finding that none understood the term, he cried out, "Good Lord! how can one expect Order among these people, who have not such a word as *Police* in their language?" [2]

John Hasnas in his seminal article on "The Myth of the Rule of Law" has noted that for hundreds of years "most people have been [taught] to identify law with the state." To them, it seems like there must be a single, monopolistic government, and that the police are the coercive functionaries of the state. The idea of a free-market approach to peacekeeping is simply impossible for them to imagine. Thus, despite the "remarkable historical, geographical, and organizational diversity in the activities of persons who are, or have been, counted as police" the common thread that links them together across time and space is the fact that they have been or are agents of the state "endowed with the exclusive monopoly of using force." [3]

The ideas that a) protective agencies should not be tax-supported; b) customers contractually pay for the level of service that they desire; c) competition among agencies providing protective services will enhance the quality and tend to lower the price of the services they offer; d) employees of competing protective agencies or insurance companies derive their right to use force from the their customers' right of self-defense and self-protection; and e) might act as agents of individuals to settle disputes or repair breaches of the peace is simply unthinkable to most people. Hence the distinction in my title: whenever you call the police, you are calling upon an agent of the state to assist you - a distinctly involuntaryist action. The COPS, on the other hand, as the fictional account in *Voluntaria* describes them, are strictly volunteers who help maintain the social peace.

The purpose of this article is to present a brief overview of the history and evolution of policing, and to show that the only legitimate police function (keeping the peace) is made impossible when the police are agents of the coercive state.

Just because I am opposed to a particular state activity (provision of the social order by the police) does not imply that I am against the activity 'per se'. There are other, non-state ways to "police" society that are more moral and more practical than governmental methods. In addition, I do not wish to imply that free market protection agencies would operate without problems, or that there would be no crime in a voluntaryist society. However, I believe there would be fewer of these kinds of issues because free market protection agencies are a) entirely consistent with our commonly held moral practices that inculcate respect for private property; and b) would be more efficient and less likely to turn venal—because they must compete for the customer's patronage. Using the police to "police" society introduces a whole host of unsolvable problems: a) who "polices" the police (to see that they do not themselves violate the rights of individuals); b) what happens to the pacifists who do not want their tax monies used to fund the police; c) who protects us when the police turn criminal themselves; d) how do you protect innocent people and opponents of the state from persecution by the police?

Customary Law and Policing

Some of the earliest forms of police discovered by historians date back to the time of Babylon and involve religious, political, or military personnel wielding force to keep the public order and enforce the mandates of those in power. Emperor Augustus in 6 A.D. created ten cohorts of 1000 freedmen each to provide fire and police protection for the city of Rome. "These cohorts could, in turn, call upon the emperor's own bodyguard (the Praetorian Guard) for assistance." [4] The Roman form of police became the model for many countries of the world, where the police evolved out of military or semi-military forces. Once the government of a country was relatively free from the threat of outside invasion, it was able to use its military forces to further pacify, control, and police its internal population. As we shall see, the police became like a domestic garrison force designed to restrain, not only forceful activities detrimental to the wider society, but also those threatening the government's own existence.

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Historians have observed that in countries where there was not a strong centralized military force "citizens banded together for mutual protection" from criminals. [5] This is a natural reaction, for wherever the government cannot or will not provide a service that people desire, the people themselves will organize voluntarily to provide it. This is best evidenced by reviewing the history of customary law and protection in early England, where "kinship was the basis for reciprocal recognition and enforcement of law." [6] As Bruce Benson notes:

The Anglo-Saxons carried their customary legal system to Britain beginning in about 450 A.D. By the tenth century, there was a clearly recognized Anglo-Saxon legal institution called the *hundred* [based on kinship groups of one hundred men or households]. The primary purposes of the hundreds were rounding up stray cattle and dispensing justice, ... When a theft occurred, the men of the several tithings [groups of ten men or households] that made up a hundred were informed and they had a reciprocal duty to pursue the thief. A tithing apparently consisted of a group of neighbors, many of whom were probably kin. These voluntary groups provided "the police system of the country", but their role went well beyond policing: they also "made everyone accountable for all his neighbors." Indeed, social relations were generally maintained only with people who shared surety protection through association with a tithing and a hundred. [7]

The Norman Conquest of 1066 resulted in many structural changes to the provision of traditional Anglo-Saxon protection. Under William of Normandy, a feudal system was established and the Norman institution of frankpledge was imposed. Frankpledge was much like the customarily-evolved Anglo-Saxon system of hundreds in that it obligated the local populace to pursue and capture criminals. The difference was that "[f]rankpledge was a police system invented by the conquering Norman monarchy as an instrument of central government control." [8] The Norman kings used the law enforcement system of the frankpledge "to generate revenues needed to finance their military operations, to enhance their own wealth, and to buy support of powerful groups." [9] Fines or restitution collected from criminals no longer went to the victim or local tithing but rather into the king's treasury. Reeves were appointed by the king to supervise the shires, or counties, the area occupied by a hundred (hence the term shire-reeve, from which the word 'sheriff' was derived). Tithing members who violated their obligations were no longer brought before local manorial courts but rather before "central courts whose justices were the king's appointees." [10] Every effort was made to expand the king's jurisdiction. Vio-

lations of the king's peace became known as crimes (in contrast to civil wrongs, known as torts), and these criminal offenses "generated revenues for the king or the sheriffs rather than payment to a victim," as had been customary under earlier Anglo-Saxon tribal law. [11]

Over the next five hundred years, the monarchy continued to broaden its law enforcement activities to the detriment of custom-based law enforcement. The concept of felony was brought to England, "making it a feudal crime for a vassal to betray" his lord. Eventually any crime deemed a felony meant that a convicted felon's possessions escheated to the king. [12] Royal laws eventually "declared that the victim [became] a criminal if he obtained restitution prior to bringing the offender before a king's justice where the king could get his profits." The crime of theftbote was created "making it a misdemeanor for a victim to accept the return of stolen property or to make other arrangements with a felon in exchange for an agreement not to prosecute" in the king's courts. [13] The earliest justices of the peace were appointed in 1326, and their role in keeping the peace and generating both personal and monarchical revenues was expanded over many centuries. As Bruce Benson concludes, "The evolution of England's criminal law system was altered by a long history of direct commands to serve the self-interested goals of kings, their bureaucrats, and politically powerful individuals and groups. These changes substantially weakened private citizens' incentives to participate in voluntary law enforcement arrangements," ultimately giving the government both reasons and excuses for providing "bureaucratic alternatives. The fact that the state has taken such a prominent role in criminal law is not a reflection of the superior efficiency of state institutions, but [rather the] result of the state's undermining the incentives for private participation in criminal law." [14]

He who strikes the first blow confesses he has run out of ideas.

This brief review of English criminal law does not do justice to the sweeping changes it underwent over hundreds of years. However, its roots in traditional kinship and neighborly reciprocity mirror the two basic principles of all customary law. These operative principles are that a) there is no paid (standing) police force, and b) judges do not enjoy a monopoly over judicial activities. Under Anglo-Saxon, Norman, and English customary law until the 19th Century "1) it was everyone's duty to maintain the king's peace, and any citizen could arrest an offender; 2) the unpaid, part-time constable had a special duty to do so, and in towns he would be assisted by his inferior officer, the watchman; 3) if the offender was not caught red-handed, a hue and cry must be raised; [and] 4) everyone was obliged to keep arms and to follow the cry, when required;" [15]

The Evolution of the Modern Police

Beginning in the 18th Century, as England evolved into a modern nation-state, criminal law took on a new form. Increasing urbanization, industrialization, and politicalization resulted in the decline of the constabulary system. A stipendiary police system evolved under which it was necessary to pay the justices of the peace, the constables, and their night watchmen fees for the services they rendered. Other laws were passed which allowed persons to hire replacements to serve their terms as constables. In 1735, "two Westminster parishes obtained parliamentary sanction for the substitution of a new system financed by money collected by means of a" tax on the inhabitants. [16] The system was soon embraced by King George in 1737, who "initiated action to allow city councils to levy taxes to pay nightwatchmen." This

was the first instance in the English-speaking world that *"tax money was used to pay police salaries."* [17] The system soon spread to the rest of London, where a mixed system of policing evolved. There existed, side by side, watchmen who were paid with public monies, but supervised by constables receiving no public salaries (although some constables were privately paid by those who engaged them as substitutes).

Leon Radinowicz, author of *A HISTORY OF THE ENGLISH CRIMINAL LAW AND ITS ADMINISTRATION FROM 1750*, noted that the word "police" was "suggestive of terror and oppression" to all common law loving people. [18] As we have seen, the traditional English policing until the 18th Century was provided by individuals who were not in the pay of the government. The idea of "tax-paid police officers" was "a dangerous innovation in principle." It was believed that those who were "unpaid and unsalaried" had no particular interest "in perverting the law to oppression. To appoint a set of Justices with salaries from the Government, and consequently to a certain degree under the influence of the government, was [not only] to change the long-established practice, [but] to introduce a new principle, which might be indefinitely extended under various pretexts, ... the effects of which no man could foresee." A [tax]-paid police would be "as so many mercenaries in the hands, and at the complete disposal of, the Government." [19]

One of the first attempts at creating a "new" police force for London took place in 1785 when Prime Minister William Pitt, the Younger, introduced the first Police Bill in the House of Commons. The central idea of this legislation was "to create a single police force for the metropolis." [20] Although the bill was withdrawn because it was considered "an unconstitutional imposition on the magistracy and the people," it set a precedent for what was to follow. The next year, 1786, a bill with similar provisions was imposed on the city of Dublin, by the English statesmen ruling Ireland. They saw a centralized police force paid for by the municipality as an efficient means of dealing with "rural disorder amounting to near-insurrection, ... mob justice against soldiers, and the threat of popular armed force in Dublin itself." [21] Under the Peace Preservation Act of 1787, the Irish Parliament dismissed the idea of a rural police for all of Ireland, but did legislate police units for the four most disturbed counties. [22] "The 1786 Act, repealed after strong opposition on the grounds of costs and constitutionality, was quickly replaced after the rebellion of 1798 by a highly centralizing statute of 1799." [23]

Peel and the "New" Police

Further reforms of the English and Irish police took place during the next four decades of civil unrest. The most conspicuous politician to take a part in these changes was Robert Peel, who as chief secretary to the lord lieutenant of Ireland, implemented the Peace Preservation Police in 1814. Peel had little regard for the Irish, stating that his bill establishing this new police force "was not meant to meet any temporary emergency, but was rendered necessary by the past state of Ireland for the last fifty years and by the probable state of it for the next five hundred." [24] Peel's police were a "paramilitary force ... despatched to the most disturbed parts of the country." [25] Peel envisioned "a permanent, country-wide police wholly controlled from Dublin Castle: 'a body of gendarmerie to be called by some less startling name.'" By 1822, Peel's riot police had become entrenched in half the counties of Ireland, but continuing agrarian violence prompted Parliament to legislate a new Insurrection Act and to suspend habeas corpus for all of Ireland. Under the Act, a new national rural police, or 'constabulary' of about 4500 men was created. These new police were compulsory for every county in Ireland, and were partly paid for out of central government funds (rather than being totally paid for by the

local county). These police were clearly intended to become the first line of defense against disorder, and were viewed as a supplement to the military establishment of 20,000 troops which the British kept in Ireland. [26]

Stretching the truth won't make it last any longer.

The English experiences in Ireland were based on "highly centralized coercive measures," and police "organized as a civil force on military lines." However, neither of these policies were totally adaptable to England. [27] Nevertheless, English society did become more receptive to such ideas, so that by 1829, Peel - now Home Secretary for England - was able to persuade "Parliament to accept his proposal [for] a single government-controlled police for London; the new Metropolitan Police, a gendarmerie without [...] arms, represent[ing] a tamer, anglicized version of the police he had established earlier in Ireland." [28] In Peel's view, and in the eyes of other British reformers, such as Colquhoun and Chadwick, the new police were to be a professional, uniformed, yet unarmed, force devoted mainly to the prevention of local crime, riot, and public disorder. Such a police force was to be paid by and remain under the control of the central government. Nonetheless, Peel and his supporters recognized that without "the consent and cooperation of the citizenry" the "new" police could never be a success. [29] The English experience in Ireland had already "proved that police officers were helpless if local citizens did not give them aid and information." [30]

The new police institution had many supporters in government, but opposition was to be found in the wider society. The fundamental principles behind the force were seen as an anathema to Whig political principles, which emphasized "liberty over authority, the rights of the people against the prerogatives of the Crown, local accountability in place of centralization, and governance by the 'natural' rulers of society instead of salaried, government-appointed bureaucrats." [31] Some farmers and middle-class people objected to paying for police they didn't need. [32] Working-class radicals and Chartists believed that the new police would be used to interfere in trade strikes or to "spy upon working-class political movements." Members of the lower-classes pointed out that the "government had saddled the country with [a bunch of] well-paid idlers, 'blue locusts' who devoured tax money and produced nothing of use in return." [33]

On March 18, 1833, William Cobbett delivered a speech in Parliament in which he pointed out that, "Tyranny always comes by slow degrees; and nothing could tend to illustrate that fact [more] than the history of police in this country."

Englishmen were shocked at the idea [of establishing a government police force]. The name was completely new among us. ... We continued for some time with a police office in Bow Street, a couple of police Magistrates, and a few police officers ... but at length the right [H]on. Baronet [Peel] came forward and said that "owing to the improvement of the age, we want something a little more regular in the form of our police" ... behold! We had now [in London] a police with numbered collars and embroidered cuffs - a body of men as regular as in the King's service, as fit for domestic war as the red-coats were for foreign war. ... The system was spreading. Formerly it was confined to London, but the ministers had been smuggling it into the great towns; before long there would be a regular police force established in every village. ... [Cobbett] warned ... the people of England against the scourge which ... [the] Government was prepar-

ing for them. ... [Cobbett] believed the Government had the project in contemplation to govern England, as Ireland had been long governed [with police]. [34]

Cobbett's prediction was correct: by 1856, the County and Borough Police Act of that year required the creation of a full-time police force in every town and county of England. "The central government was empowered to inspect each force, and, if found up to the mark, to support them with a grant amounting to one-fourth of their total cost." [35] Cobbett was also right in referring to the Irish precedent: "[T]he experience of organizing and recruiting the Irish police undoubtedly informed a central English political elite of the feasibility of police, their usefulness in times of disorder, the advantages of disciplined professionalism, and the desirability (in the midst of religious conflicts of Ireland) of an appearance of strict neutrality if they [the police] were not to be destroyed by the hostilities of the community." [36]

The "New" Police in the United States

Even though many Americans shared the common law's traditional antipathy toward "state-directed police," [37] Peel's Metropolitan Police force for greater London "was to become the model for the United States' police system." [38] The absence of political centralization predisposed early Americans to carry the English attitudes towards the police "to the extreme," and has resulted in the extensive decentralization of American police forces today (estimates range from 20,000 to 36,000 public police agencies in the US). [39] One of the dominant themes in the history of police in the United States has been the struggle over which political faction would control the police. [40] Under the U.S. Constitution, police power was not a federal responsibility, but rather an obligation of either the state, county, or local governments. Since control over the police was a local responsibility, it had to vacillate "between city or state elective authorities. Thus, nowhere was the embrace of police and politics tighter than in the United States." [41]

Legal immunity does not confer moral immunity.

Originally the municipal policing in the United States was based on the customary English system. The amount of manpower devoted to protective services in early America was extremely small. "For two centuries Boston's policing was conducted by a handful of amateur, part-time constables and watchmen; as late as 1832 the city of 65,000 got by with about fifty of these early patrolman." When the Boston Police Department was officially begun in 1855 it was staffed by 200 police. Until 1820, New York, a city of 125,000, was patrolled by a night watch of 100 men. The Great Fire of 1835, caused the city authorities to increase the nightwatch patrol to 250 men. Ten years later, the official New York City Police Department had some 800 men, headed by a chief of police. [42] The historian providing these numbers points out that New York City must "have been relatively free of crime and disorder" for so few police to have been successful in their jobs. [43]

The first paid, professional police forces were formed in the larger American cities, sometimes in reaction to the demands of each city's elite to control the poor and the immigrants, and sometimes simply in reaction to the desire of city bureaucrats to better "control and manage" their cities. [44] New York City created its first police department, modeled after the Peelian force of London, in 1844. [45] Other cities soon followed suit: "New Orleans and Cincinnati in 1852; Boston, Philadelphia, and Chicago in 1855; Baltimore and Newark in 1857; and Providence in 1864." [46]

Statewide police, paid by state governments, rather than

individual cities, followed somewhat later. Apart from the Texas Rangers, which began operations as a frontier border patrol in 1835, the first true state-wide and state-paid police force was established in Massachusetts in 1865. A rural force of 130 men, the Massachusetts State Police was mainly "[c]harged with enforcing liquor prohibition laws," and was so controversial that it was "reorganized into a small state detective squad" ten years later. [47] No further state police forces were organized until the 20th Century. Pennsylvania created a state constabulary in 1905; followed by New York and California in 1917, and 1929, respectively. These forces were established to deal with industrial unrest, crime, and the problems generated by the growth of automobile traffic. "The men's uniforms reflected the public's significant change in attitude toward police: The state troopers with their guns, military belts, tailored (and oft-striped) trousers, and 'battledress style of jacket,' would have shocked early-nineteenth-century Americans." [48]

A Domestic Army:

Police Penetration of Civil Society

Although it has been argued that the prevalence of crime in modern cities required the creation of modern police forces, some historians have pointed out that there is no relationship between increasing urban populations, the amount of crime, and the creation of municipal police. Roger Lane, author of *POLICING THE CITY: BOSTON, 1822-1855*, concluded that "the existing historical evidence suggest[s] ... that over [the] long-term urbanization has had a settling, literally a civilizing, effect on the population involved." [49] David Bayley, in his article on "The Police and Political Development in Europe," observed that there is "no threshold of population size which seems to compel development of a police system." [50] Paris had a population of 540,000 in the mid-17th Century when the Lieutenant-General was established. London had nearly 1,500,000 people in 1829 when the New Police were founded. "A comparison of events in London and Paris strongly suggests that insecurity is not sufficient to create a police force. ... In short, development of police cannot be understood in terms of crime." [51]

If the development of modern police, either in America, Britain, or other parts of Europe cannot be fully explained as a response to the amount of crime present in any given society, then we must look elsewhere for explanations. Although many historians and political theorists disagree, it appears - to this author at least - that the new, modern police established on the London model of 1829 were purely a political development brought on by the evolution of the nation-state during the 19th Century. Modern nation-building and the police forces have gone hand-in-hand, until today, the police have become the most visible representatives of the modern state. [52] The police are the state's "prime instrument of power" and the most "obvious physical manifestation" of political governance and law-enforcement activities. [53] The problem of rulership has always been to create the most amount of governance at the least amount of cost, and the creation of the "new" police was envisioned as at least a partial solution to this perennial problem.

British statesmen in their approach to controlling civil unrest and dissent in Ireland realized that more than a standing army was needed to subdue the native population. They realized the ineffectiveness of a continual harsh military presence, and saw the need for a softer means of social control. [54] The police, as we know it today, grew out of their experiences in Ireland. The central feature of this new order was "a garrison force, present at all times," personnel knowledgeable of and living in close proximity to those to be ruled, a force which could efficiently arrest criminals, "and a force capable of graduated responses to rioting, able to anticipate

violence and break it up before it grew to serious proportions, and able to respond in measured proportions to the size and character of the danger, rather than unleashing a military charge. [55] Such a police force achieved legitimacy because it was able to impose "law and order" and was, at least sometimes, helpful to those being forced to pay for its services.

Alan Silver has pointed out that modern police personnel serve as "the agent[s] of legitimate coercion and as a personification of the values of the" political government that they serve. [56]

The police were designed to penetrate civil society in a way impossible for military formations and by so doing to prevent crime and violence and to detect and apprehend criminals. ... The police penetration of civil society, however, lay not only in its narrow application to crime and violence. In a broader sense, it represented the penetration and continual presence of political authority throughout daily life. [57] ... Police forces clame to be seen as they were in the time of their creation - as a sophisticated and convenient form of garrison force against an internal enemy. [58]

The "modern preventative police established in London and New York represented an unprecedented, highly visible increase of the state's power over the lives of ordinary citizens." [59] No wonder that many Englishmen at first considered the Peelian police as "a government army." [60]

Legitimacy and the Role of Police

Silver and other historians of the police have repeatedly pointed out that in order for the police to be effective in "keeping order" there must be a general agreement among the populace at large "that the power they exercise is legitimate." [61]

The replacement of intermitt[e]nt military intervention in a largely unpoliced society by continuous professional bureaucratic policing meant that the benefits of police organization—continual, pervasive, moral display and lower long-term costs of official coercion for the state and propertied classes - absolutely required the cooperation of civil society. Thus, the extension of moral consensus and of the police as an instrument of legitimate coercion go hand in hand. Along with other ramifying bureaucratic agencies of the center, the police link daily life to central authority. The police, however, rely not only on ... coercion but also on a new and unprecedentedly extensive form of moral consensus. The center is able to supervise daily life more closely and continuously than ever before; but police organization also requires pervasive moral assent if it is to achieve the goals peculiar to its technique. ... Without at least a minimal level of such assent, coercive functions become costly in exactly the ways that those who created the policed society in England sought to avoid. [62]

The "new" police contributed to 19th Century state-building by giving the citizenry at least some reasons to voluntarily comply with the demands of political authority. The police sometimes did successfully provide essential services and therefore earned the thanks of the population. However, the modern police were also part of the national "extraction-coercion" and "extraction-persuasion" cycles. The constitutional and legal obligation to pay taxes involved the police, not only as recipients of tax funds (the source of their salaries being taxes), but also in their enforcement role, as the armed personnel that exercised the threat or actual use of force against those who refused to pay or were recalcitrant in paying. [63]

The "new" modern police were designed to do more than

just "chase" criminals. From helping to collect taxes, to taking lost children home, to directing traffic at funerals, the police perform a myriad of services. In fact, it has been estimated that the percentage of police effort actually devoted to traditional criminal matters "does not exceed 10%." [64] Is it any wonder, then, that there is a demand on the free market for private police and private detectives to supplement the public police?

"The foundation power of every government is its military power."

— Rick Maybury, EARLY WARNING REPORT, July 2000, p. 8.

Historically, there has been an ever-present demand for police services over and above those provided by the State. In England, during the late 18th and 19th Centuries, over 400 neighborhood associations for protection against felons and recovery of stolen property existed. These were private subscription organizations whose personnel specialized in protection and restitution. In the United States, during the late 19th and early 20th Century many railroads employed their own private police to protect travelers and their rolling stock and freight from thieves. [65] The Burns International Security Services, and Pinkerton's Inc., with historical roots back to the mid-19th and early 20th Centuries, rival or exceeded in size some public law enforcement agencies today. Even as early as 1901, it was asserted that "The Pinkerton Detective Agency ... could protect Chicago for less than two-thirds of what the municipal police department now costs the taxpayers, and the protection would be real and thorough"! [66] As late as 1978, the General Motors Corporation had a force of 4200 plant guards, "a body larger than the municipal police forces of all but five American cities." [67]

Throughout much of the 1980s, funding for private security in the United States exceeded the combined total of Federal, State, and local law enforcement expenditures. The private security workforce outnumbered public law enforcement personnel by a ratio of nearly 2:1. In 1982 there were more than a million people employed in the United States by the private security industry, while publicly paid police employees numbered just over 500,000 people. [68]

Free Market Protection Agencies

So the voluntaryist idea that protective agencies could completely replace the public police is not such a far-fetched idea. As Murray Rothbard has written, there is nothing divinely ordained about having only one police agency in a given geographic area. [69] The two earliest advocates of a free market in police protection were Gustave de Molinari, a 19th Century French economist, and Lysander Spooner, an American lawyer. In his 1849 article, "The Production of Security," Molinari noted that "the production of security, like everything else [in the free market] should be subject to the law of free competition."

This option the consumer retains of being able to buy security wherever he [the consumer] pleases brings about a constant emulation among all the producers, each producer striving to maintain or augment his clientele with the attraction of cheapness or of faster, more complete, and better justice. If, on the contrary, the consumer is not free to buy security wherever he pleases, you forthwith see open up a large profession dedicated to arbitrariness and bad management. Justice becomes slow and costly, the police vexatious, individual liberty is no longer respected, the price of security is abusively inflated and inequitably apportioned ... [70]

Three years later, in 1852, Lysander Spooner, an American constitutional lawyer, argued that protection ought to be private and be provided by insurance organizations.

All legitimate government is a mutual insurance company, voluntarily agreed upon by the parties to it, for the protection of their rights against wrongdoers. In its voluntary character it is precisely similar to an association for mutual protection against fire or shipwreck. Before a man will join an association for these latter purposes, and pay the premium for being insured, he will, if he be a man of sense, look at the articles of the association; see what the company promises to do; what it is likely to do; and what are the rates of insurance. If he is satisfied on all these points, he will become a member, pay his premium for a year, and then hold the company to its contract. If the conduct of the company prove unsatisfactory, he will let his policy expire at the end of the year for which he has paid; will decline to pay any further premiums, and either seek insurance elsewhere, or take his own risk without any insurance. And as men act in the insurance of their ships and dwellings, they would act in the insurance of their properties, liberties and lives, ... [71]

Molinari and Spooner were individualist-anarchists, the forerunners of thinkers like Murray Rothbard, David Friedman, George H. Smith, Randy Barnett, and Morris and Linda Tannehill, all of whom advocated free market defense agencies during the later half of the 20th Century.

"You shall know the truth, and it will make you mad."

—Jerry Brosilow

Probably the most frequent criticism of the concept of free market defense agencies has been: What would prevent the various private protective companies from going to war with one another? In other words, if there were more than one defense agency in the same geographic area, wouldn't they fight one another? The Tannehills indirectly answer this question (in their extended discussion of private agencies and insurance companies) by pointing out that private agencies depend on the patronage of their customers. Inter-agency warring would antagonize customers, be costly, and there would be no guarantee that one agency (even if successful) could automatically assume control over another agency's customers:

In a laissez-faire society, there would be no governmental police forces, but this does not mean people would be left without protection ... [P]rivate enterprise defense agencies would arise, perhaps some of them out of the larger private detective agencies of today. ...

The function of a private defense service company is to protect and defend the persons and property of its customers from initiated force or any substitute for initiated force. This is the service people are looking for when they patronize [such an agency], and, if the defense agency can't provide this service as well or better than its competitors, it will lose its customers and go out of business. A private defense service company, competing in an open market, couldn't use force to hold onto its customers - if it tried to compel people to deal with it, it would [induce] them to buy protection from its competitors and drive itself out of business. ...

The superiority of a private enterprise defense service company springs from the fact that its function

- its *only* function - is to protect its customers from coercion and that it must perform this function with excellence or go out of business. ... [T]heir primary focus would be [to protect customers and prevent] aggression. [72]

Warring Defense Agencies: Public or Private?

While there can be no guarantees that there will not be warring defense agencies in a free market, the important point to remember is that "police protection is a service so basic and important it should not be left in the hands of any one group [because] [i]nvariably such power will tempt the group to use it for their own benefit." [73] The question of whether or not the police should have a monopoly was known to the ancient Romans who asked: "Quis custodiet ipsos custodes?" [Who guards the guardians?] "The correct answer is of course: other agents of competing protective agencies. When police are denied a monopoly there will be other independent, competitive police. When there is competition between policemen and their employers, no policeman will dare misuse his weapons, for if he did so, his company would lose both customers and money. It would lose customers to other police forces, and money to its victims who would find courts of law willing and able to condemn such misuse and award them compensation and fines accordingly." [74]

The significant and historical fact is that there have been "warring" police agencies in the United States, but they have not been private, but rather public institutions battling for political control. Ten years after the first city police force had been established in New York City, the city's Democratic mayor, Fernando Wood, was charged "with lax enforcement of licensing and sabbatarian laws and with filling the police with Irish Catholics." [75] In 1857, a law was passed transferring control of the New York City police to the Republican (Protestant) governor in Albany. It was hoped that the Democratic influence within the city would be weakened, since the police would no longer be able to help assure Democratic election victories. Mayor Wood refused to recognize the legality of the new "Metropolitan Police," and "for three months in 1857 the city suffered the dubious distinction of having two rival police forces." "An armed battle took place between the two departments when the Metropolitan Police tried to arrest the mayor at city hall." [76] There were other fights between the two groups: each would try to capture the other's prisoners. "In one riot, 500 municipal police, assisted by what one observer described as a "miscellaneous assortment of suckers, soaplocks, Irishmen and plug uglies officiating in a guerrilla capacity" were thrashing a smaller band of Metropolitans until the arrival of state militiamen turned the battle in favor of the [Albany] controlled police." The stalemate ended in July 1857, when Mayor Wood acknowledged a court ruling that upheld the 1857 legislation turning over control of the city police to the state's governor. [77] A similar fight for political control over city forces took place in Denver, CO. In the City Hall War of 1894, the Republican Board of Commissioners refused to resign in favor of state-appointed police officials. "As the battle shaped up, the state militia supported the governor, while the police, sheriff's deputies, and strong arm representatives of Denver's vice businesses barricaded themselves in the city hall - armed with dynamite and whiskey. ... For a short period after this, Denver had two police boards and three chiefs, but ultimately, as in New York, the incumbents yielded to a court order and the populist police took office." [78]

"Governments are like tarantulas: put two of them together in a box, and only one of them will emerge alive."

—Dr. Lewis Coleman

Conclusion

Are the police as we know them today an essential part of modern society? At least a few non-voluntaryist thinkers have observed that society would not go to pieces even if there were no police. [79] Pearl Buck, the famous novelist, noted in her 1953 book, *THE MAN WHO CHANGED CHINA*, that the Chinese "were [a] civilized people and they had through the centuries learned that if people live decently and work hard and respect each other, then it is quite possible to live for a while without a government and even without police. Policeman, after all, are needed only to protect people from each other, and if there is mutual respect and good behavior people can manage themselves. The Chinese had long ago learned this lesson." [80] So despite the complexity and seeming sophistication of our 21st century society, it is quite possible to imagine society without police, or society with only the COPS.

"[I]n Voluntaria ... we go to great lengths to avoid using force, in order to establish the idea that using force is wrong. Over the years, our people have gradually absorbed this message, and it has now become a basic part of our cultural heritage,

"But didn't you just say that your COPS uses force to apprehend wrongdoers?

"Well, we will use force if we must ... but we strive to do so only as a last resort - even if it means risking our lives. We are all volunteers, by the way. No one is paid anything for service to COPS, so that it may never be said that anyone receives any benefit from using force. Furthermore, we go unarmed. ... COPS members ... [try] to follow ... the example of avoiding force in trying to quell violent situations, even at risk to ourselves." [81]

So if you need help in a voluntaryist society: Don't call the police. Try to handle the situation wisely yourself, or call the COPS. Maybe they or some private protective agency will assist you. ▢

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"If anarchy is bad nationally, it is bad internationally; if it is good internationally, it must be good nationally."

— Bertrand Russell in Ruth Anshen (ed.), *FREEDOM: ITS MEANING, 1940*, p. 249.

The Myth of Law and Order

Most people have been raised to identify law with the state. They cannot even conceive of the idea of legal services [or police] apart from the government. The very notion of a free market in [police] services conjures up the image of anarchic gang warfare or rule by organized crime. ...

The primary reason for this is that the public has been politically indoctrinated to fail to recognize the distinction between order and law. Order is what people need if they are to live together in peace and security. Law, on the other hand, is a particular method of producing order. As it is presently constituted, law is the production of order by requiring all members of society to live under the same set of state-generated rules; it is order produced by centralized planning. ... [F]rom childhood, citizens are taught to invariably link the words 'law' and order.' Political discourse conditions them to hear and use the terms as though they were synonymous and to express the desire for a safer, more peaceful society as a desire for 'law and order.'

The state nurtures this confusion because it is the public's inability to distinguish order from law that generates its fundamental support for the state. As long as the public identifies order with law, it will believe that an orderly society is impossible without the law the state provides. And as long as the public believes this, it will continue to support the state almost without regard to how oppressive it may become.

The public's identification of order with law makes it impos-

sible for the public to ask for the one without asking for the other. There is clearly a public demand for an orderly society. One of human beings' most fundamental desires is for a peaceful existence secure from violence. But because the public has been conditioned to express its desire for order as one for law, all calls for a more orderly society are interpreted as calls for more law. And since under our current political system, all law is supplied by the state, all such calls are interpreted as calls for a more active and powerful state. The identification of order with law eliminates from public consciousness the very concept of decentralized provision of order. With regard to legal services, it renders the classical liberal idea of a market-generated, spontaneous order incomprehensible.

... [What I have described is] the most effective contemporary example we have of Orwellian [doublethink and] 'newspeak,' the process by which words are redefined to render certain thoughts unthinkable. Were the distinction between order and law well-understood, the question of whether a state monopoly of law [and police] is the best way to ensure an orderly society could be intelligently discussed. But this is precisely the question the state does not wish to see raised. By collapsing the concept of order into that of law, the state ... [has] effectively eliminated the idea of a non-state generated order from the public mind.

—John Hasnas, "The Myth of the Rule of Law," 1995
WISCONSIN LAW REVIEW pp. 199-233 at Section
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