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Anarchy: The Lesser of Two Evils

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Anarchy: The Lesser of Two Evils
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Abstract: Is the existence of the nation-state responsible for freer societies and a decrease in violence? By looking at Somalia pre-anarchy and Somalia post-anarchy allows one to do a compare and contrast to see if things improved in the state’s absence. Failures of exporting democracy and imposing law from above reveals how culture and social norms are a greater influence on people’s behavior and the type of society one lives under than government legislation. The law in the West, often considered a paragon of justice and freedom was not a creation of the state, but arose spontaneously. Commercial, merchant, and the common law arouse privately. The rule of law is not a state creation, but a result of spontaneous order that arose in order for people to engage in reciprocity and live well with each other.
I. Introduction

For many, law and government are synonyms and that you can’t have one without the other. To argue against the existence of government is often presumed to argue against the existence of law. Lon Fuller defines law as, “a direction of purposive human effort, consists in the enterprise of subjecting human conduct to the governance of rules” (Fuller 1964, 30). Max Weber defines a government or state as an institution that holds a legitimized monopolization of force within a given territorial area (Weber 1968, 54). Anarchy is the absence of a state. Based on such definitions, law and government are separate. Laws are the rules of the game, and government is an institution that can enforce them. Just like food and supermarkets are not synonyms, neither are laws and governments. Therefore, government is the monopolization of law, and anarchy is the polycentric development of law. A society without a state is not necessarily a society without laws, but a society without a monopoly rulemaking enforcer.

There are many reasons to oppose the government and instead prefer a polycentric legal system. One is that competition is preferable to uniformity. Another reason is that since the government gets guaranteed revenue by a compulsory levy known as taxation, as well as being able to forcibly prevent competition the government is not bound by satisfying the needs of the people. If a person does not have to compete and gets a guaranteed income there is less of an incentive to do well than if one had to persuade people to buy their services. The reason that the market is superior to the state is because the market has competition where firms have to persuade people to hand over their money, whereas the government can forcibly expropriate it. If the government can force people to hand over their money irrespective of job performance the government has less of an incentive to provide a good job then if getting money from people was not a guarantee, but based on providing a more valuable service than the money one chooses to
fork over. The type of social organization I am advocating for is referred to as anarcho-capitalism, where courts, police, and money is determined by market forces, not politics. I want to privatize everything. Just like schools, food, healthcare, and automobiles increase in quality when they are supplied by the market, so too does protection services. I advocate a polycentric legal system, where the market determines law, not legislative bodies.

The purpose of this paper is to defend my case for why a stateless society is superior to one with a government. Before going over the empirical evidence to show how law has existed in the absence of a state originally and in certain areas still does, it is first necessary to go over the methodology on how to answer: Is the existence of the nation-state responsible for a free society?

In order to be able to answer the question of whether the state is both superior and necessary to a society without one, it is first necessary to address the issue in how freedom is maximized. Freedom (or liberty) refers to doing what one wants with one’s person and property as long as one does not violate the person and/or property of others. Liberty is not messing with other people’s stuff. Daniel Klein rejects the axiom view of liberty which says that direct liberty should never be violated, and instead takes the maxim view of liberty, which is that by and large direct liberty should never be violated. Usually there is not a tension between direct liberty and overall liberty, but there may be cases where there are. When there is a tension between direct and overall liberty, Daniel Klein says that the liberty principle should advocate for whichever is more liberty augmenting. According to Daniel Klein, “The liberty principle says: In a choice between a pair of policy reforms (one of which may be no reform at all), the reform that ranks higher in liberty is more desirable” (Klein 2012, 245). Daniel Klein says that what constitutes such an outlook is the liberty maxim, which is that by and large the liberty principle holds.
Instead of taking a 100% rule of coercion is never justified, Daniel Klein advocates for a presumption of liberty. According to Klein, “that presumption places the burden of proof on those who would favor the less-liberty choice” (Klein 2012, 246). Klein stresses that just because a principle does not work 100% of the time does not mean it should be rejected for a principle that vainly tries to be applicable in all cases. By and large is sufficient.

Daniel Klein’s presumption of liberty is a good rule of thumb. Don’t commit coercion unless there is a common sense reason for doing so. If there is a way to solve an issue without a violation of direct liberty, the peaceful alternative should be chosen instead. I accept Daniel Klein’s view of liberty. The disagreement lies in that the maxim view of liberty is somehow a justification for the government. Daniel Klein supports a nightwatchman state, yet the presumption of liberty does not only not require a limited government, but ought to presume anarchy. Daniel Klein mentions Randy Barnett and David Friedman as people who share his presumption of liberty view. Both Randy Barnett and David Friedman are anarchists.

Anarchist philosopher Michael Huemer agrees with Klein’s presumption of liberty and that in certain cases coercion may be justified. An example Huemer gives is a lifeboat situation where the only way to get people to remove water from the lifeboat is pointing a gun at them (he also mentions stealing a car in order to drive someone who is about to die to the hospital). Huemer says, “Your entitlement to coerce is highly specific and content-dependent: it depends upon your having a correct (or at least well-justified) plan for saving the boat, and you may coerce others only to induce cooperation with that plan. More precisely, you must at least be justified in believing that the expected benefits of coercively imposing your plan on the others are very large and much larger than the expected harms. You may not coerce others to induce harmful or useless behaviors or behaviors designed to serve ulterior purposes unrelated to the
emergency. For instance, if you display your firearm and order everyone to start scooping water into the boat, you are acting wrongly - and similarly if you use the weapon to force the others to pray to Poseidon, lash themselves with belt, or hand over $50 to your friend Sally… If, therefore, we rely upon cases like this to account for the state's right to coerce or violate the property rights of its citizens, the proper conclusion is that the state's legitimate powers must be highly specific and content-dependent” (Huemer 2013, 94-95). Huemer also mentions that such a scenario fails to justify political authority since a government, as stated above, is a monopolization of the use of force. If there are certain situations were “sometimes coercion is our friend” (Klein & Clark 2012, 134), then why does it matter who does the coercion? If there are certain situations where coercion is justified in order to increase overall liberty it is based on the situation, not on who does it. Klein (at least on his paper on overall vs. direct liberty) has not justified the nightwatchman state. Klein has done an excellent job arguing for why coercion may be justified in certain cases, but not why it is licit for the state to use force in areas where it would be illicit to for others to do so. If there are certain situations where it may be justified to steal bread why is it justified for government to steal the bread, but not someone else? What is the reason it is okay for A to coerce B, but no one else to coerce B? The situation ought to determine when coercion is justified, not who is doing the coercing. If there are certain situations where coercion is justified, it is justified for anyone, not just the government. Therefore, the presumption of liberty far from justifying the existence of monopoly enforcement over polycentric law has only justified certain cases where coercion is justified.

Perhaps the reply will be that the reason the government should be able to use force where it would be illegal for anyone else to do so is that the liberty principle would increase if
only government is given this unique power. It is this question that my paper will explore. Now onto the methodology.

II. Methodology

One of the most comprehensive studies for why violence has decreased was done by Steven Pinker in his mammoth tome, *The Better Angels of Our Nature*. Steven Pinker does not attribute the decline of violence solely to the existence of the nation-state. Rather, the nation-state is one reason among others that accounts for the decline of homicide per capita. An increase in commerce and an increase on the use of reason are also contributing factors. Pinker discusses the “the Flynn effect,” which is where people today are given the same IQ test as in generations past. James Flynn studied IQ scores throughout different regions of the world and the results were the same everywhere: IQ has increased throughout the 20th century everywhere. According to Pinker, “An average teenager today, if he or she could time-travel back to 1910, would have had an IQ of 130, and [a] typical person of 1910, if time-transported forward to the present, would have a mean IQ of 70” (Pinker 2011, 310). According to Aschwin de Wolf one possible biological explanation for why violence has declined, which Pinker neglects to mention, is that biological evolution takes those who are more prone to violence out of the gene pool. As commerce increases and society adopts conventions that reward cooperation over force, those most prone to violence have fewer reproductive advantages and are disproportionately taken out of the gene pool. Even in the case of a military draft, biological evolution may be a factor for the those more prone to violence being removed from the gene pool since conscription selects men who value honor and are more likely to engage in risky behavior (Wolf 2012, 131).

One major problem with looking at the decline of violence throughout history and showing that current societies with a nation-state have a lower homicide per capita than primitive
nongovernmental societies centuries ago is that such data confuses causation for correlation. Is the decline in violence because of the existence of the nation-state or is violence declining for other reasons and would have declined even more if not for the nation-state? To use an example: Suppose someone argues for government regulation and uses the existence of government regulation over automobiles to justify regulation over other industries. The person argues as follows: Cars today have more regulation than the first Model-T Ford car. Regulation over the automobile industry has increased and so has car safety. The cars today are safer and of better quality than the earlier unregulated cars, therefore automobile regulation increases car safety and quality. What is one possible flaw in such an argument? One possible flaw is that the argument ignores the fact that there is a tendency for things to improve over time. One possible reason that automobiles today are safer and better than the first automobiles is because the automobile manufacturers of today are able to stand on the shoulder of giants. They are able to see what previous automobile makers have created, saw any errors, and corrected them. Today’s generation of car makers learned from previous generations and improved on them, using information today than was not available then. There are many possibilities for why cars are safer today other than due to government regulation. Is government regulation the cause of the increase in car safety and quality? Or has car safety and quality increased along with increased government regulation and would have increased even more in its absence? In other words, are today’s cars better because of government regulation or in spite of government regulation? So too, is the decline of violence because of the existence of the nation-state or in spite of the existence of the nation-state? Simply saying there is less violence now than then is not sufficient to answer such a question.
As the above graph shows, out of the five countries, England has the lowest homicide rate. There has been a major decline in violence in England starting in the mid-1500s and has been declining since. What is interesting about the above graph is that from the 1500s until the mid-1800s, policing has been mostly a responsibility of private individuals. It wasn’t until 1737 where taxes were used to pay for public police when King George II used taxpayer money to hire watchman (Benson 1990, 74). However public, government control of policemen was not introduced in London until 1829 when Robert Peel introduced the Metropolitan Police Act, a bill which Parliament passed in 1829, establishing the first modern police force in England (Benson 1990, 74). Yet parts of London still had a private police force. The nationalization, nationwide police force in London was created in 1856 (Koyama 2012, 15). Even though public policing did not occur until 1856, as Max Roser’s graph above shows, the crime in England fell way before
the arrival of public police. Therefore, it is not sufficient to determine that homicide rates decreased as a result of the nation-state.

Another flawed methodology is to compare any current day anarchist society with a current day society with a nation-state. If one for example, compares present day “anarchist” Somalia with current day United States and concludes that the United States is superior this does not show the superiority of a nation-state. One must compare apples to apples. Just like it would be disingenuous to use North Korea as an example for why there shouldn’t be a government, so too would it be disingenuous to use current day Somalia as an example in order to prove the superiority of government. Not all societies are the same. There is no reason to presume that all anarchist societies would be similar, anymore than there is to conclude that all societies with a nation-state would be similar.

The annual *Fragile States Index* (http://fsi.fundforpeace.org/rankings-2015) ranks 178 countries based on social, economic, and political indicators to see how capable states are in terms of solving their own problems and how many states are on the verge of collapse. Of the 178 states ranked in 2015, 38 have an “alert” status, 87 are in “warning” mode, 12 are “less stable,” 26 are “stable,” and only 15 states are considered as being “sustainable” (with Finland being the only state which is considered “very sustainable”). Therefore, if one takes the nonpartisan *Fragile States Index* as a guide, the majority of nation states are failing to provide peace, stability, protection, and liberty to their citizenry. An effective, protective, liberty augmenting government is the exception, not the rule.

Daniel Hannan credits the nation-state for the existence of freedom. He states, “It is extremely rare to find justice, freedom, or representative government flourishing in any context other than a nation-state” (Hannan 2013, 66). Yet even Hannan admits that the majority of
nation-states are not successful and that freedom primarily resides among the 11% residing in the
Anglosphere and the closely related and largely Protestant states of Nordic and Germanic origin.
(Hannan 2013, 313-314). Thus while Hannan may credit the existence of liberty and justice to
the creation of nation-states, it is only a certain kind of nation-state. The vast majority of nation-
states do not in fact protect liberty and justice, therefore the success of these countries must be
due to something other than simply the creation of the nation-state.

A better methodology than simply comparing any current nation state with any current
anarchist society, or comparing primitive societies with modern day societies is instead to
compare apples to apples. Instead of comparing a modern Industrialized country to a backward
third world country, it would be better to compare the same country within around the same time
span. For example, instead of comparing present day New Zealand to present day Somalia, it
would be better to compare Somalia from when they had a government—from the years 1969-
1991—and when Somalia was without a government—from the years 1991-2005. Such a
comparison allows one to compare the same area with roughly the same people, with roughly the
same time period. Comparing the same area from one decade or two to the next, one gets a
clearer sense of compare and contrast than comparing over a much wider net. Comparing the
same region, with roughly the same people, same history, and same background allows one to
see how the same region fares under anarchy compared to the existence of a government.

My claim is a rather modest and weak one. I am not claiming than any area without a
nation-state is superior to an area with one. Rather I am claiming that the existence of a
government does not improve things and that removing the government, people will be better
off. For example, I am not claiming that people in anarchy Somalia or anarchist Zomia are better
off than the people in New Zealand or the United States, but rather the people in Somalia without
a state are better off than those Somalis with one. Such a comparison focuses on the existence of government within an area and seeing if its removal made people better off or worse off. As I will show later, liberty is augmented when people under a government (like the Somalis) have their government removed, people are better off under a smaller government than a bigger one, and the places where government is newest are better off than in countries where the government has been around longer. In other words, liberty is augmented when the government is either nonexistent, smaller, or has been around less than people living under a government which is bigger and been around longer. If government is a positive force that augments overall liberty then why would the same people’s living standards increase when government decreases? If the existence of the state is necessary in order to have liberty and freedom then why are the states that emerged first and are older more backwards than the more recent states?

III. The Creation of The Common Law, Commercial Law and Societies without a Government

It is not the existence of government (or to use a modern euphemism, “the law”) which is responsible for relatively free societies, but cultural norms and institutions are the main driving forces that determine the relative freedom people enjoy. It is not the imposition of government creation and enforcement of laws that generate freedom, but cultural norms where the majority of people respect property and individual rights. It is not the government that creates cultural and societal norms, but rather the laws that people respect and follow are a reflection of the societal norms that are already in existence. There are areas with polycentric legal systems that protected people and property with relatively little violence and there have been anarchist societies with a lot of violence and property rights failed to be protected. Likewise, there are nation-states where property rights are relatively protected and nation-states where the very concept of individual
rights is non-existent (Brooks 2003, 2308). The rule of law (aka a monopolistic legal system) is not responsible for a reduction in violence, but cultural norms where individual rights take precedence over the fictional rights of society. Individual rights can be prevalent in both anarchist and non-anarchist societies, though since government is more powerful than decentralization, the violation of individual rights is likely to be more severe under a nation-state than under an anarchist society.

To determine whether social norms are exogenous to the government, one needs to see if societal norms and institutions exist in the absence of a state. If so, this would imply that the state is not a necessary condition for the emergence of cultural and societal norms. Three examples where legal order arose prior to the existence of nation-states are medieval Iceland, the California Gold Rush, and medieval merchant society. The existence of these three cases shows that “it is problematic to identify law with centralized coercion” (Hadfield & Weingast 2012, 3).

From the 10th to 13th centuries, Iceland’s legal system was totally privatized, and developed without any central authority. The laws were made by a “parliament,” in which the seats of the legislature were held by the owners of the boroughs, or by men chosen by them (Friedman 1979, 401). Such chieftains were known as gooros, and they presided over groups of men that agreed to follow them, and be members of that congregation. Every man was part of a congregation and could name his chief, and could change congregations at any time. This ability to become elected to legislature by leading a congregation became “a marketable property” that could be “given away, sold, held by a partnership, inherited, or whatever” (Friedman 1979, 405).

During this time, many of the inhabitants of Iceland came from Norway, after deciding to leave King Harald Fairhair’s rule. The laws and “political” system that developed were based on Norwegian traditions and the Anglo-Saxton common law. There were no crimes against society,
only crimes against individuals. There was no executive body and no prosecuting attorney by the state. Prosecution was the responsibility of the individuals harmed or their heirs. When a conflict arose there were private courts where half of the members of the court were chosen by the plaintiff and half by the defendant (Friedman 1979, 404). If the verdict ruled against the defendant, it was up to him to pay the assigned punishment, which was almost always a fine. If he did not pay the fine he was considered an outlaw. People declared to be an outlaw were unable to be sheltered and those who did shelter an outlaw could be prosecuted for doing so.

A possible objection to private law enforcement is that it would favor the wealthy, and poor people who could not afford protection would be left defenseless. The Icelandic system of law enforcement had a way to solve this problem by having transferable tort claims. If one did not want to seek out damages himself he could sell his tort claim to someone else and that person would be able to seek out damages on his behalf (Friedman 1979, 406). Such a system allows those who are too weak or too poor to sell their torts to those who are more willing and able to seek justice on their behalf. Suppose a victim had no heirs, would he then be stuck and a murderer would get away scot-free? No, instead a person was able to homestead the tort claim and seek justice on behalf of the murdered victim. Transferable tort claims allow those who lack friends and heirs to get justice done by strangers who if lacking empathy, have now a financial incentive to seek damages against others and punish violators.

One reason medieval Iceland avoided perpetual civil wars and open fighting is because people knew in advance who protected whom. People were also free to join associations that defended and collected tort claims on their behalf (Friedman 1979, 403). It was in the self-interest of the members of the associations to defend people who were in their coalitions since
both their reputation and their safety was dependent on making sure their members were protected.

During the three hundred years that Iceland lived in a state of anarchy crime was relatively low. Rape and torture were uncommon; the killing of women almost unheard of. Friedman suggests that even during the worst fifty years of civil war that almost brought an end to the Icelandic system the number of people killed on a per capita basis then was roughly equal to the current rate of murder in the United States (Friedman 1979, 410). Thus, it is possible to have a system of law without a central coercive body without degenerating into the Hobbesian jungle. People use their customs and norms and codify them into law, and enforce them without perpetual open violence and without a nation-state. Medieval Iceland is not the only example where institutions developed protecting property and persons in the absence of a nation-state.

The commercial law that exists today was not created by government, but arose privately. Commercial law arose in defiance of government. Merchants who wanted to trade internationally had to abide by countless government laws, making trading more difficult. There were also contradictory laws, making it difficult to conduct business outside of their own government. Merchant law arose in order to have more uniform laws governing international trade. The market can provide diversity when it is necessary, like in the numerous types of deodorant Bernie Sanders complains about, and uniformity when it is demanded, like in the case of videocassette players all adopting to VHS over Betamax. In the case of international trade, what were needed were uniform laws, which governments were unable to provide. The market filled the void that government both caused and was unable to fix.

During the 11th and 12th centuries there was a rapid expansion in agricultural activity. Because of the increased expansion in productivity, less labor was needed to go into farming in
order to feed people, which resulted in an increased demand for labor in other areas. The increased productivity of farming led to increased trade and a merchant class to better facilitate trade. Different languages, laws, customs, and geographic distances frequently prevented direct communication, making the trust necessary to engage in trade difficult. What was needed to engage in trust and trade was a market and law that acted as a “language of interaction” (Benson 1989, 646). Such commercial, private law that arose was not based on arbitrary rules, but largely based on Roman commercial law. However, much of the Roman law that was passed down through generations was not sufficient to meet the new problems that arose during the commercial revolution (Benson 1989, 647). This meant that the merchants themselves created the law that the merchants needed to better engage in commercial transactions.

Merchants developed their own court system for several reasons. Government courts would not honor any contract that involved paying interest since the royal courts considered interest a form of usury. Government courts in one country would often not uphold contracts made under the laws of another country, making international trade difficult. As Benson points out, “common-law courts would not consider books of accounts as evidence, despite the fact that merchants held such records in high regard” (Benson 1989, 650). Another reason for merchant courts is that the judges on state courts lacked the technical knowledge relevant to international trade. Since such judges and lawyers lacked the knowledge of how trading works, they would often enact highly complex and punitive laws which were more a hindrance than a help.

In order to make sure that the merchants from different regions would respect each other’s decisions, the merchant law that was developed was made to increase trust and reciprocity. Credit instruments were developed during this time in order to make trade easier. In order to ensure trust, fraud was forbidden. Part of reciprocity involves not favoring one side
more than another. A contract that is heavily one sided, like the mystical social contact, is not considered a valid contract since no person would voluntarily agree to a contract that imposed all the obligations on him and all the benefit onto another person. Merchant’s notions of fairness and fraud were based on customs. Different merchants from different regions brought their customs and norms with them and through a process of trial, error and competition, those customs that were shown to be the most efficient were adopted and those customs which were not beneficial to both parties were weeded out (Benson 1990, 32).

Rules of evidence and procedures were simplified, appeals were forbidden to avoid unnecessary delays, lengthy testimony under oath was avoided; debts were freely transferable through informal ‘written obligatory,’ a process developed by merchants to simplify the transfer of debts; actions by agents in transactions were considered valid without formal authority; and ownership transfers were recognized without physical delivery (Benson 1990, 34). All of these legal innovations were adopted by merchant courts to better facilitate trade and ensure trust.

To ensure that the merchant court decisions were fulfilled, boycotts and ostracism were used against merchants that refused to agree to the courts’ verdict. Since merchant law required reciprocal arrangements, to get voluntary agreement and to increase trust, the laws that developed were based on individual rights (Benson 1990, 36). The merchant laws form the basis of many of the laws of international exchange in use today.

Other examples of private law where government was either absent or unhelpful to protect property and individual rights include Celtic Irish law, which existed from around the 8th until the 17th century (Peden 1973), the so-called Wild Wild, West. Present day Zomia has remained stateless for over a thousand years, among others.

IV. Decentralized, Self-Governance Among Heterogeneous Groups That Hate Each Other
Both medieval Iceland and the private creation of commercial law contradict the idea that law must be a creation of the state, or that a state is needed to enforce the law. Gossip, sanctions, being declared an outlaw are just some of the ways used to get people to abide by verdicts that are not in their favor. One objection to a case such as medieval Iceland or merchant law is that such people are a homogenous group. While the merchants might have had different customs and spoke different languages, they were in the same profession and had the same goal in mind when the law was created. Medieval Iceland was populated by people with similar customs and backgrounds. So perhaps the law can emerge without a monopolistic legal system among homogenous groups, but how about heterogeneous groups? How about groups which do not share similar values and who are mortal enemies of each other? Isn’t a nation-state needed among them in order to make both groups get along? Peter Leeson has addressed this issue by looking at the decentralized system of criminal law among bitter enemies. By looking at how heterogeneous social groups who have antisocial feelings towards each other can nevertheless set up signals, incentives, and institutions to help reduce interpersonal violence provides some evidence how there can be relative peace and freedom without the existence of a nation-state.

During the 13th to 16th centuries there were violent hostilities on opposite sides of the Anglo-Scottish border. Until the 17th century, the borderlands between England and Scotland were divided into six territories—called marches—three on each side. Neither England nor Scotland controlled the borderland since the laws of both Scotland and England applied to the territories, but not the border to cross them. Since neither government controlled the border, the border to cross either Scotland or England was anarchic (Leeson & Coyne 2012, 22). There was no state authority to create or enforce laws on the border or that dealt with cross-border crime (Leeson & Coyne 2012, 23). The lack of a government enforcing cross-border rules was
especially problematic since both Scotland and England were mortal enemies of each other. They would engage in violence and individuals from each side would raid inhabitants on the opposite side of the border. This raiding involved murder, theft, arson and whatever other violent means were necessary to destroy the inhabitants and their property. According to Leeson, “frequent war left both border areas decimated, and inhabitants had little incentive to establish productive enterprises that would only be destroyed in the next violent outburst between their nations” (Leeson 2009, 477). It would seem that both sides engaging in constant war shows Hobbes prediction of anarchy being right and that the medicine was a nation-state to correct this.

Fortunately, to prevent totally bloody war and chaos, the border inhabitants’ interactions led to a decentralized system that gave rise to customary rules known as “leges marchiarum” or the law of the marches (Leeson 2009, 481). These rules developed based on cross-border interactions in order to deal with the problems of murder, plunder, and arson, and to figure out how to reduce them. Since the border inhabitants from opposite sides of the border hated each other, it wasn’t realistic to create a cease-fire, but only to try to create rules to reduce the violence as much as possible. If a person was convicted of murdering another border inhabitant, the murderer was required to offer financial compensation or himself to the victim’s family. The victim’s heirs could either execute the murderer or ransom him to the murderer’s family.

In order to enforce the law of the marches, the borders developed a court to settle cross-border disputes and punish violators (Leeson & Coyne 2012, 24). The court was composed of a jury of twelve men, six English side and six Scotmen. There was no nation-state to enforce the jury’s verdict in order to ensure that the verdicts would be enforced. One way to get people accused of a crime to cooperate was to post bonds. The guilty party’s family members were held as hostages in order to get them to comply with the verdict. If they didn’t comply their family
members would be killed. (Leeson 2009, 491). While not the most civilized way to get people to appear in court and accept a verdict it was superior to the open war that broke out previously in its absence.

Theft was considered a violation of the law of the marches and the punishment for theft was double the amount of damages. The “two teeth for a tooth” as Walter Block often refers to it, was a part of common law and the law code of medieval Iceland as well.

While the law of the marches did not totally reduce violence, the decentralized Leges Marchiarum worked in reducing the hostilities that existed before such rules developed. The mere presence of such rules reduced mistrust between the opposing borderers by specifying which acts were considered legitimate and which were considered illegitimate and punishable. The day of truce also reduced the expected benefit of engaging in violence—by having to pay compensation—and reduced the cost of being victimized (Leeson 2009, 494). Even the nation-state fails to completely eliminate violence. Reduction of violence is sufficient. Neither anarchic nor state societies are able to totally eliminate violence and bring peace.

V. Somalia Pre-Anarchy and Somalia Post-Government

A man walks up to an economist and asks him how is wife is doing. Compared to what, the economist replies. Utopia is not an option. The question is not which system is 100%, but rather holding the maxim view, which system is more liberty-augmenting than the alternative. I have showed above different examples of how legal institutions emerged without the existence of government; how social norms developed and how private institutions dealt with such norms; how law has existed in the absence of the state; how people were able to protect their property through restitution, and people ensured compliance through boycotts, developing good reputations, bonding; and in the case of violent feuds, holding people hostage in order to make a
person accept his verdict. It is now necessary to compare and contrast anarchy with government. The mere demonstration that law has existed and could be enforced without being created by the state does not address the argument that a nation-state improves the protection of property rights, only that anarchist law is capable of existing.

One way to show that the liberty is augmented without a government is to compare the same society with a government and that society without one. Somalia from 1991-2005, when Somalia’s nation-state dissolved is a good case study to show that life under anarchy is preferable to life under a nation-state. Somalia’s government collapsed in 1991. Rival groups immediately tried to plunge the country into a civil war in order to take over the reigns of power and install a new government. The rival fractions were unsuccessful in installing a new government after Siad Barre’s dictatorship fell. In 2006, the Transitional Federal Government (TFG), which had been created in exile two years earlier entered southern Somalia and tried to take over. Opposition to the TFG increased support for the Islamic Courts Union (ICU), which ended up installing itself as a government in some part of Somalia. Later in the year, Ethiopia invaded Somalia, overthrew the ICU and installed the TFG in the nation’s capital (Powell, Ford, & Nowrasteh 2008, 657). Therefore, since Somalia ceased to lack a national government, starting in the end of 2006, Somalia could no longer be considered anarchist. Therefore, the years to judge Somalia is from when they had a state—from 1969-1991 and when Somalia’s government collapsed, from 1991-2005.

Most of the residents of Somalia during the time of Barre’s rule were small farmers. The farmers had little influence in shaping the policies of the Somalia government and were constantly mistreated. Beginning in the 1970s, the state laws nationalized the land and water. Under the Somalian government, the only way to own land was to get permission from the state.
In the 1980s the land ceased to be nationalized and was “privatized” by being given to those with political clout. Most of the government’s budget went to the military, while less than 1% went to social services (Powell, Ford, & Nowrasteh 2008, 659). Since the public sector failed to provide goods and services to the people, black markets arose to fill in the void. The black markets were able to provide healthcare, education, and investment credit to people.

After the Somalia government collapsed, there were improvements in overall living standards in many ways. Livestock trading increased enormously. The value of cattle sales increased 600% and the number of sales quadrupled from 1989-1998 (Powell, Ford, & Nowrasteh 2008, 660). The number of trading in goats and sheep in Somaliland and Puntland was greater in 1999 than when under the national government (Powell, Ford, & Nowrasteh 2008, 660). Besides for the pastoral sector, the commercial sector also increased under anarchist Somalia. Companies such as General Motors and Coca-Cola conduct business in Somalia and hire Somalians. Many international companies avoided doing business in a number of Africa’s nation-states, so the fact that they decide to put up companies and invest in Somalia is a good sign that property rights are more secure there (Powell, Ford, & Nowrasteh 2008, 661).

Comparing the last five years Somalia had a state (1985-1990) to the last five years Somalia had anarchy (2000-2005) demonstrates that out of 18 development indicators, Somalia improved on 13 of them, while only two—adult illiteracy and school enrollment declined (Powell, Ford, & Nowrasteh 2008, 662). In areas such as life expectancy, infant mortality rate, extreme poverty, number of doctors, and percentage with access to food, water, sanitation, and healthcare, Somalia improved under anarchy than when they had a state (Leeson 2007, 697).

Powell, Ford, and Nowrasteh (hereafter PFN) use the World Development Indicators to compare Somalia’s performance under anarchy with 41 other sub-Saharan African countries
(Powell, Ford, & Nowrasteh 2008, 662). This allows a comparison of anarchist Somalia with other countries with a government on 13 variables, such as the death rate, infant mortality, and life expectancy. While Somalia is low compared to Western standards, they rank in the top 50% of African nations in 5 of the 13 variables and near in the bottom only in infant mortality, immunization rates, and access to improved water sources, whereas Somalia as a nation-state ranked in the bottom 50% of all the seven variables available during the years 1985-1990 (Powell, Ford, & Nowrasteh 2008, 662). Life expectancy fell by two years from 1985-1990, but has increased five years since becoming stateless. Only 3 of the 42 countries improved that much since 1990. Sans state, Somalia’s death rate has improved, ranking from 37th to 17th since 1990.

Since going stateless Somalia has institutions that provide currency, defense, dispute-resolution agencies, and laws that protect persons and property. In Somalia a clan leader enforces law based on customs. The clan leader is not a government since all adults are free to choose a clan leader whose verdicts they agree to abide by. Individuals are free to either start a new dispute resolution insurance group themselves or join an already existing insurance group (Powell, Ford, & Nowrasteh 2008, 667). The Somali law is decentralized and is based on custom. The Somali customary law has existed since pre-colonial times and continued to operate under colonial rule and under anarchy. The Somalia nation-state tried to replace the customary law with government legislation and enforcement. As PFN point out, “in rural areas and border regions where the Somali government lacked firm control, people continued to apply the common law. When the Somali government collapsed, much of the population returned to their traditional legal system” (Powell, Ford, & Nowrasteh 2008, 666). While the nation-state tried to enforce its edicts, since the law did not arise organically, but by legislative fiat, the government
law failed to be enforced. Government legislation was considered inferior to decentralized, customary law, as it often is.

The Somalia legal system outlaws the usual: homicide, torture, rape, theft, extortion, and other violations of property and person. The legal system focuses more on restitution and making the victim whole than the inferior criminal law. The criminal law is more concerned with punishing the aggressor. Civil or customary law is more concerned with restitution. Much like the case of the law of the marches mentioned earlier, according to Somalia law an animal thief must return two animals for every one he stole (Powell, Ford, & Nowrasteh 2008, 667).

Somalia is far from a civilized, industrialized country and compared to Western governments it is lacking in freedom, but the purpose of showing how Somalia has improved under statelessness is not to paint a rosy picture of Somalia, but rather to see if removing the state will improve things or make things worse. I am not advocating Somalia as a shining beacon of freedom, but rather as an example to show that life without a government does not result in worse violence and bloodshed than life under a state. People are not suicidal creatures for the most part and if having a state is not an option, people will adapt to their environment and find alternative arrangements in how to protect themselves, how to increase their living standards and improve their lives and the lives of the people around them.

VI. Why Do Most Nations Fail and Why Has Exporting Democracy Abroad Failed?

The great economist Thomas Sowell once asked, not why are so many people poor, but why are so few able to become rich? For most people in the world, freedom is not the norm. The vast majority of the population does not have access to many of the things Western societies take for granted. If the nation-state is truly what leads to an increase in freedom, then why don’t most nation-states exhibit these characteristics? As explained earlier, most nation-states are on the
brink of collapse or in dire straits. Most nation-states have failed to provide the liberty and security they promise. Therefore, the question should not be that since some nation-states do not result in failure the solution is a nation-state, but why are some nation-states successful, while most are not? What determines how successful a nation-state will be?

While I am not so presumptuous as to have an answer on how to create a successful society, I do hope to provide some theories as to possibly explain why exporting democracy has worked in some areas and not in others. Chris Coyne, Peter Leeson and Boettke (hereafter CLB) have tried to explain what determines how successful the rule of law is and why the rule of law is respected and enforced in some areas and not in others. Borrowing a phrase from Ludwig von Mises, they have argued that the regression theorem determines the stickiness of institutions. What institutions will stick and be successful depends on the institutions, norms, and culture of the previous time period. Or in their words, “The regression theorem maintains that the stickiness, and therefore likely success, of any proposed institutional change is a function of that institution’s status in relationship to indigenous agents in the previous time period” (Boettke, Coyne, & Leeson 2008, 331). They argue that there are three different types of institutions: those imposed by a domestic government; those imposed by a foreign government; and those that emerge spontaneously as a result of individuals’ actions, but are not formally designed (Boettke, Coyne, & Leeson 2008, 335). The institutions that are the stickiest emerge spontaneously. If a foreign or domestic government enforces rules that already subscribe to the endogenous institutions they are successful and those that try to impose their legislation from top-down are not. CLB mention that the reason that reconstruction in Japan and West Germany succeeded was because both German and Japanese culture had a positive view of trade, market exchange, and democracy. The reconstruction in Bosnia failed because the political climate and the climate of
private individuals were not aligned. In Bosnia there were numerous conflicting political interests and when democracy was trying to be exported from above there was no effort to try to get people’s interests to coincide. Different political institutions within the nation-state had different, and often conflicting, constitutions. The timing of the elections was rushed before there was grassroots support. (Boettke, Coyne, & Leeson 2008, 349).

The reason why Poland had a successful transition from a communist dictatorship into a more capitalistic government than Russia is because before the collapse of communism in Poland, the Poland government passed the “1988 Law on Economic Activity, which granted every Polish citizen the right to engage in private business” (Boettke, Coyne, & Leeson 2008, 351). In Russia, the reformers decided to immediately privatize 70% of state enterprises before allowing a gradual transition, where the cultural climate was not in sync and capable of transitioning to a more capitalistic society. It isn’t enough to privatize industries for capitalism to work. If the masses and the culture are not ready to adopt, one can’t force freedom on those not yet ready for it. Even when Poland was under communist rule the Poland government allowed some private businesses to operate, where none were allowed during the Soviet Union. People in Poland has some experience with seeing private enterprise operate and were more open to it, allowing for a successful transition.

Lansing studied the Balinese water temples. The water temples across Bali also were considered places of worship for the various gods the people of Bali worshipped. In the 1970s, the International Rice Research Institute decided to usher in the “Green Revolution” for the citizens of Bali, which would get rid of the backwards practices of rice production and replace it with rice that required fertilizer and pesticides. The government instituted this new policy by encouraging farmers to plant rice without taking account of the traditional irrigation schedule.
dictated by the gods. At first there was a boom in rice production but after a water shortage, there was an outbreak of rice pests and diseases (Boettke, Coyne, & Leeson 2008, 340). But the real problem was that the Balinese government failed to understand the implications of replacing having gods determine water irrigation with modern technology. Farmers did not understand the new system and could not adapt to new innovations and institutions. Imposed governance often fails to be reciprocal since legislation is based on authoritarian edicts, whereas spontaneous law is a result of “mutual benefit through exchange agreements” (Benson 1991, 53).

The above discussion highlights the importance in ideology in determining a successful society and not the rule of law. In a superstitious society where private property is considered an enemy of the gods, private property rights are unlikely to be respected no matter what law is passed. Many nation-states fail because government interests are at variance with the interests of the citizenry. Hayek distinguished between laws and legislations. Laws arise spontaneously and are not deliberately designed, whereas legislation is. Government legislation that goes against what people are used to is unlikely to be adaptable and succeed. For the supporter of the nation-state this means that government’s role is simply to enforce the law and not create it. If the role of government is simply to enforce preexisting laws which conform to cultural norms and expectations then the government’s role is not to determine the rules of the game, but enforce the rules which already exist. If a successful government’s job is not to create rules, but enforce them, this can also be done by private institutions. Citizens could pick their own defense agency and arbitrator instead of having one foisted on them. Furthermore, without a price mechanism there is no way for those in government to determine if they are doing a good job or not. It is also not clear how those in government ascertain that they are satisfying the people without the
people demonstrating this by showing them that their actions which are successful generate a profit and those which are not generate a loss.

VII. The Roving Bandit vs. The Stationary Bandit: A Justification for the Existence of a Nation-State

Ludwig von Mises explains that the problem with socialism is a lack of economic calculation. Without a pricing system there is no way to determine who should produce what, how much of it should be produced, and what is the most successful way to produce it. If one says that government should be limited to police, military, and courts, who determines how many policemen and courts there are, and how big the military should be? Who decides how much taxes are necessary to supply necessaries and what incentive is there for government to eliminate waste or even be aware of it if it is not possible for them to be put out of business by a competitor who is less wasteful?

Holcombe argues that the government is not designed to provide goods and services but to redistribute wealth. The government is described as a stationary bandit that extracts income from people and in exchange removes the roving bandits who would be even more predatory (Holcombe 2004, 329). According to the stationary bandit model, law and order is a public good. Primitive societies where goods were held in common were able to protect themselves, but in agrarian, individualized societies where property was not held in common there was little incentive to produce public goods, such as law and order. In a society of 1,000 people, a person only gets 1/1,000th of the protection from producing law and order, so it would not be worth it to produce the public good himself (Klitgaard & Tinggard 2003, 256). Since there would be no property protection, people were at the mercy of others who would rob and plunder them. A roving bandit, such as the Vikings from the 8th to the 11th century, would come along and rob a
bunch of people in a village and then wander off. Since all of the gains would go to whoever was the strongest, it was worth it to engage in predation. In order to prevent such roving bandits from continually blundering people, the people would be willing to tolerate a stationary bandit instead. The stationary bandit would tax people, often heavily, and enforce and protect property rights. A roving bandit has a high time preference since he does not care that his stealing reduces the incentives of the people he robs from to produce. On the other hand, a stationary bandit does not want to disincentivize the looted since he will also gain a share in the future produce the looted produces. A stationary bandit has an incentive to take property from someone, but not enough to discourage him from no longer producing. A stationary bandit also views roving bandits as competition and so has an incentive to prohibit roving bandits from pillaging his citizenry since that is his job. A government is set up to act as a stationary bandit, which is less predatory than the roving bandit. A government prevents roving bandits from continually looting people and hence the people are better off under the stationary bandit than being under constant roving bandits that would take the whole produce instead of just a portion. According to Kintgaard and Tinngard, the state of medieval China has its origins as becoming a stationary bandit, which they say the people preferred (Klitgaard & Tinggard 2003, 256).

While Holcombe does not make the assumption that law and order is a public good the market won’t provide, he does make the claim that in the absence of the state the other alternative is to be at the mercy of an even worse predatory gang. The real choice is not between market or government provision of public goods but between a roving gang or a stationary gang. In the absence of a nation-state there would be a roving bandit who would be more predatory since he steals resources and moves along, without concern that doing so will cause his victims to produce less in the future. The government is like a shepherd who wants his animals to be nice
and fat since they will sell more on the market that way. Having free-range humans allows humans to be more productive than they would be under constant expropriation and slavery.

The stationary bandit theory has an overly pessimistic view of anarchy and an overly optimistic view of government. The theory assumes it is in the self-interest of the bandit to loot people and that other people would be at his mercy. As Benson, Friedman, and others have pointed out, under societies that lacked a nation-state people would often join coalitions to come to their aid. Instead of one person defending himself against another, the coalition would come to help those who joined their group. The origins of Anglo-Saxon law had such a system. Anglo-Saxon law can be traced back to Germanic customary law (Curott & Stringham 2010, 10).

The Anglo-Saxons came from Germanic tribes who invaded England during the 5th century and brought their Germanic customs with them. The Germanic customs has a legal code where people were part of tribes. Unlike a caste system, being in the tribes were voluntary. Each tribe consisted of a hundred men, called pagi (later to be known as “the hundred” in the 10th century), which was further divided into groups called vici who were responsible for policing (Curott & Stringham 2010, 10). The men who joined the tribes agreed to protect each other. While such tribes came about through custom and kinship, such tribal arrangements were later adopted by the English common law system during the 10th century. The hundreds were also divided into other groups, sometimes as small as ten men in a system known as borh (Curott & Stringham 2010, 11). Since there was no standing army or nationalized police force, groups such as the hundred acted as a decentralized police force. People who decided to join the groups took what was known as a frankpledge, which was an oath where each group swore to both abide by the rules of the group and to protect the other members of the group when in need. In such a group, each member was responsible and looked out for the other members of the group.
stole or committed other acts of aggression and failed to abide by the verdict he was declared an outlaw. In order to ensure cooperation and trust, many members of the tribes refused to engage in trade and exchange unless a person was a part of the surety system. If a person was unable to prove that he was a member of a coalition that could pledge on his behalf that conveyed a signal to people that such a person was untrustworthy and so had trouble joining another group for protection and engaging in trade and exchange (Liggio 1977, 273).

The Anglo-Saxon private legal system signaled trust to people by trading with them, intermarrying into other groups, giving gifts, and having people vouch on their behalf. One solution out of the Hobbesian jungle is not to have to fight a roving gang on one’s own but to join defense groups that would come to your aid, like what occurred in Anglo-Saxon England.

Ayn Rand has opined that having different policing groups enforce different laws within the same geographical area would lead to violent conflict when the different policing groups would interact with each other and disagree on who the guilty party is and what the law should be (Rand 1964, 117). Under the law of the marches and medieval Iceland peaceful resolutions were possible without government courts. There are today disputes between countries and disputes between people from different states. The solution to solve conflicts is not always an outbreak of violence, since such behavior is expensive and self-destructive.

VIII. A Theory on Why Private Agencies of Force Are Likely to Protect Property More Than Violate Property

David Friedman asks the question: If both parties are unable to verbally communicate with each other what determines how they interact with each other? For example, suppose two people are supposed to meet somewhere in NYC, but they haven’t discussed where. Thomas Schelling says that people typically end up meeting at noon at Grand Central Station. The people
pick a time and place that everyone knows and is obvious. This allows coordination without communication.

David Friedman’s main point is to try to understand why property rights are respected. Friedman says that property rights are determined (and respected) based on people’s strategic behavior. Friedman says that people’s behavior is based on Schelling points, which are finding solutions to the problem of coordination without communication, either because communication is not possible or the people involved have no reason to believe the other people. For example, suppose a dollar can be divided between 2 people, on the condition that both sides agree on how the dollar will be divided. Such a scenario creates a holdout problem (or bilateral monopoly) where each person has an incentive to want a larger share of the dollar. It is unlikely that a person will only accept 10 cents and allow the other person to keep 90 cents, and it’s unlikely that a person wanting 90 cents of the dollar will believe the other person will agree to this. The likely result is that the dollar will be split in half since each person has an incentive to agree with how the dollar will be divided (in order to get it) and to maximize the amount he gets; a fifty-fifty split is the most likely scenario to make both parties as well off as possible.

Friedman talks about how peaceful resolution is more likely to occur when people agree. For example, peaceful resolutions about property rights are more likely to occur among people who have the same theory of property rights. Friedman’s main point is that strategic behavior determines how property rights are respected or not and that using strategic behavior when it comes to interacting with each other is what makes civil society possible and not the existence of top-down legal systems. For example, what makes peaceful coexistence possible is the use of strategic behavior to try to understand people’s behavior. A person is unlikely to give into a person’s threats because if he does this shows that threats work and is more likely to be bullied.
again in the future. Likewise a person is more likely to follow through on exchanges (or threats) that were agreed to after one party follows through and the other does not, partially because he wants a reputation of being able to deliver on his promises.

An example Friedman gives is a person willing to chop down a tree that is blocking someone else’s orchard in exchange for an apple. Why is it that a person wouldn’t just steal the apple, but if the after the agreement is reached the person who chopped down the tree would use force to get the apple if the apple owner failed to abide by his end of the deal? The reason is because people typically act based on other people’s expectations. A person who just stole apples would be considered a thief and unjustified in taking that which doesn’t belong to him. He would not only cause friction between him and the apple grower, but also any of the apple grower’s friends or others who view theft as wrong. On the other hand, a person wants a reputation as not being a push-over and since there are more people who consider it justified to take that which was promised you after you have fulfilled your end of the bargain, a person is more likely to conform to such expectations. A person who took the apple by force only after not getting reimbursed can say that he held up his end of the deal and he is not stealing the apple since it is now rightly his. He is able to find more people sympathetic to his situation now, which makes it more likely why the lumberjack would only take the apple by force after the apple orchard failed to act out his part of the deal. As Friedman mentions, while the lumberjack was just as capable of stealing the apple in either scenario, he has more of a reason to carry it out when the apple grower cheated him, and the apple grower has less of a reason to resist. Such actions create a focal point that influences people’s behavior in the future. The reason I will keep up my share of the bargain is to not only develop a reputation for honesty, but because I will get more backlash for failing to do so and have less people defend me when I commit fraud and don’t keep my
promises.

Friedman mentions that if someone gets extorted for money, “It is in my long-run interest not to back down because if I do I can expect further demands: ‘if once you have paid him the danegeld/ You never get rid of the Dane.’” (Friedman 1994, 8). If the roving bandit and the people in the village are around equally as strong the people in the village are less apt to give to the bullying since that tells the roving bandit that his bullying is successful and has a greater incentive to extort more in the future.

David Friedman’s main point is that the rules which are just and efficient are also the rules and laws enforced by the government which he lives under. In other words, the rules that are enforced exist because they are both just and efficient. According to justice, each person owns himself. Having each person a right to his body is not only just but is the most efficient. It is easier for me to control the use of my body than someone else. Likewise, according to Friedman, “our actual civil order is the result of extended bargaining, based ultimately on natural property. It was my control over my body that made the initial steps out of the state of nature possible. So natural property is relevant to what is—to the existing pattern of laws and norms.” (Friedman 1994, 12). Friedman says that in a world without transaction costs, any initial allocation of property rights is efficient, but in the real world with transaction costs, the most efficient allocation of property is where I own me and you own you since it is easier to enforce such rules than a society where I own other people or everyone owns a portion of everyone else. In short, Friedman is claiming that rules tend to move in the direction that is at least locally efficient and that the rules that are most efficient (where people own themselves and what they homestead) and just are also the rules which tend to be exist in society. So rather than having a tension between what should be and what is, justice, efficiency, and the legal rules which exists
complement each other.

The above explains how property rights, norms, customs, and laws emerge. The most successful laws are laws based on previous focal points. Customs and norms are not static or arbitrary but based on continuous interaction with people. The most successful interactions and behaviors are the ones that cause the norms to stick and get codified in law, as in the case of the common law. The common law was based on a case-by-case basis where whenever a conflict arose, the most efficient way to settle a dispute was the one which was written down for how to solve the dispute in the future. Through a process of trial and error, the norms that won out were those that were the most efficient at settling disputes by conforming to people’s expectations. According to legal scholar Hasnas, the common law was not legislative law, but case-by-case law. The law was about finding a result that both opposing parties found acceptable in order to resolve a dispute without violence having to be a solution (Hasnas 2008, 114).

When the basis of law is contractual law, where the goal is mutual benefit and reciprocity, the rules that emerge are rules conforming to people’s norms and expectations with each other. As shown above, these occur as a result of repeated interactions with others, not based on government edits. The law was not created by government and can exist in its absence.

Suppose that instead of a nation-state, the market provided law. It is likely to be the case that the law would be as Friedman predicts and has shown in the case of Medieval Iceland. The laws would be laws against murder, theft, and violence. People would contract out to a defense agency of their choice. If a dispute arose between a person contracted with Defense Agency A and Defense Agency B, it is unlikely that the court would be run by either agency but would find an impartial agency neither party contracted with in order to get an impartial verdict. Both parties would agree to abide by the verdict and if one party did not, it is likely that he would be declared
an outlaw, like during Medieval Iceland, and during the Law of the Marches, and during the Law Merchant (and during the 1,000 years of anarchy in Ireland). From the 8th century (possibly before) until the 17th century, Ireland was in a state of anarchy since there was no legislature, no bailiffs or police, and “no trace of State administered Justice” (Peden 1977, 83). Instead, in Ireland there was contractual law where people hired people representatives to enforce contracts for them and joined in sureties for protection (Peden 1977, 86-87).

If the United States decided to go anarchy by having the state eliminating its taxing power and allowing competition, it is reasonable to assume that such private defense agencies would protect property and to a greater degree than the government does. One major difference between the state and the market is that firms in the market are concerned with making a profit and successful firms would engage in behavior that would generate a profit. Would firms make more money by stealing and robbing from people and acting like a stationary bandit, or would they make a higher profit by protecting people and their property?

The libertarian theory of property rights is homesteading, which is first come, first serve. The first person to be in contact with the property is the one who gets to claim ownership over it. The idea of homesteading is not an arbitrary theory of property, but a natural one.

Related to homesteading is the endowment effect. The endowment effect is that people value the good they possess more highly than a good they do not possess. The endowment effect creates a feeling of loss aversion where people are willing to spend more resources devoted to protecting their property than others would to seize theirs. Loss aversion is when a person is more sensitive to losses than gains (Gintis 2006, 2). Thaler explains an experiment showing the endowment effect in action. In the experiment, people were randomly assigned the role of seller, buyer, or chooser. The sellers were given a mug (that originally sold for $6 at the school store)
and were asked whether they would be willing to sell the mug at prices ranging from $0.25 to $9.25. Choosers were asked to choose for each price between receiving the mug or that amount of money. The experiment revealed that the average buyer was willing to buy the mug for $2.87 and the average seller was willing to sell the mug for $7.12. Choosers acted similarly to buyers by being on average indifferent to getting the mug or receiving $3.12. What the experiment revealed is that the owners of the mug valued the mug at more than twice the amount as nonowners (Gintis 2006, 4). The experiment shows that once a person is currently in possession of a product he is willing to spend more money to keep it than someone who is not currently in possession of the product.

The endowment effect is not just an economic theory done in experiments, but a natural tendency among humans and animals. In one study, observers looked at a group of 11 toddlers and 13 preschools to see how often a toddler or preschooler possessed an object and how often they took the object from others. The results found that success was strongly and equally related to both how strong the person was and prior possession. The observers also found that toddlers recognize possession as a basis for asserting control rights, but do not respect the same rights in others. The preschools, more than twice the age of the toddlers, use physical proximity both to justify their own claims and to respect the claims of others (Gintis 2006, 7). The endowment effect demonstrates that even very young children are willing to spend more energy defending what they own than they are taking others.

Stevens studied horses competing for water. The water was located in pools that would result after severe rains. What Stevens reported was that out of the 233 horses observed, 178 (80%) of the horses who were by the pool first were able to successfully ward off the horses that tried to take their spot away from them (Gintis 2006, 8). A similar experiment showed butterflies
successful warding off intruders who were in their space. Thus, even animals recognize the homesteading theory of property.

Using our knowledge of the endowment effect it would not be unreasonable to conclude that people would be willing to spend more money to defend their property and their life than spend resources to steal and hurt other people. Since market defense agencies are in the business of making a profit, it seems likely that they would make a higher profit defending people’s property and life than being hired as goons to steal from others. People are willing to spend more money to defend their rights than they are to violate others. Therefore the market would tend to reward the most profit-maximizing firms, which would be those who defended persons and property.

Similar to Friedman’s example with the apple grower and the lumberjack, a focal point is more likely to occur that reflects people’s expectations with each other. Even in primitive societies, the taking of an object currently in possession of another individual is rare (Gintis 2006, 8). Since most cultures and norms already have laws against theft, defense agencies that were able to fulfill people’s expectations of punishing theft would be met with a good reputation, whereas agencies that looted from people would be viewed with condemnation, just like how the mafia is viewed today. Successful businesses depend on good reputations, and being fair promotes a better reputation than an agency that is going to rob and extort people.

During the Anglo-Saxon era, people were part of a surety system where they were responsible for the other members. There is no reason to believe that such a similar system would not come again. Under a polycentric legal system people joined voluntary associations that would come to their aid. In a market, there would likely be insurance agencies where people would contract out and pay for crime insurance, the same way people pay for life and health
insurance. Insurance agencies suffer from an adverse selection problem. People willing to spend the most on health insurance are likely to be people who are already sick or going to be shortly, which is why insurance companies have measures to reward people for being healthy and giving lower rates to people who voluntarily take precautions. So too, people wanting to spend the most amount of money on crime insurance tells the insurance company such people are those most likely to commit crimes since why would a person unlikely to commit crimes want to spend a lot on crime insurance. Therefore in order to prevent this adverse selection problem, crime insurance companies would give lower rates for those who prove they are peaceful, have a good reputation, and signal to the insurance company that they aren’t going to be committing a lot of crimes.

IX. People Living in Older States are Worse Off Than People Living in Newer States

Oana Borcan, Ola Olsson, and Louis Putterman (hereafter OBP) looked at how state development and economic development interact with each other. They look at the different states, starting at 3500 BC, when the first state came into being until the present day. What they conclude is that “very old states have the least developed economies whereas the richest countries have intermediate state history scores…Our inquiry is supported by the empirical observation that old states like Iraq, Turkey, and China are poorer today than younger states like Britain, Denmark, and Japan” (Borcan, Olsson & Putterman 2015, 2 & 3). OBP also says that, “The more peripheral regions, which were slower to develop state institutions, were furthermore less exposed by raids by roaming armies and to incursions by migrating people” (Olsson 2015, 8). According to OBP the reason for this “reversal of fortune” (Borcan, Olsson & Putterman 2015, 8) is because older states have access to more and higher tax rates and so because of this they tend to become more exploitative and corrupt. According to OBP, older states are worse in terms of per capita income than intermediate states (Borcan, Olsson & Putterman 2015, 28).
OBP’s study is important because it reveals that the older the state, the worse the economy is. If government is necessary then why are younger states better off than older states? Why are living standards higher in places when state rule is younger than places with older state rule? If a nation-state is necessary for a free-society and augments overall liberty then it would seem that people living in older states should be at least faring equally well to people living in younger states, whereas the opposite seems to be the case. If that is correct then I would argue that the existence of the nation-state is liberty reducing since those that are worst off are those who have been living under a nation-state the longest.

X. Conclusion

Western conceptions of government tend to be considered paragons of justice and freedom. However the enhanced justice and freedom in the West was not brought about by the creation of the state, but rather, arose spontaneously as a reflection of social values, conventions and customs, practiced by individuals who demonstrated mutual respect for divergent practices.

While there have been periods of history with violence and bloodshed, the reduction has to do more with an increase in commerce and respecting property rights, which Pinker does mention are factors, then simply the existence of a nation-state. A nation-state is composed of human beings. If the nation-state is a democracy there is no reason to believe that people who would steal from people if given the chance would not vote for people to do that for them. If people want to dominate others, it seems like a haven that puts certain people on a pedestal and does not subscribe to them the same standards of morality than the rest of us is more liable to be a recipe for disaster. The potential for misuse of power likely explains why the vast majority of nation-states are not paragons of freedom. Freedom exists when the people you live with respect your rights. Commerce tends to enhance good relationships, which is probably one of the reasons
the Nazis did not attack Switzerland. Much of the Western legal system derives from the common law, which was itself a privatized law system. There have been areas without a state where property has been defended and the concept of individual rights have existed. Even in the worst fifty years of war in Medieval Iceland, the homicide rate per capita was no more than the current homicide rate in the United States. During the Industrial Revolution people couldn’t rely on public policing, but instead had to use private policing. Private law enforcement during the seventeenth and early eighteen century functioned adequately when it came to reducing crime (Koyama 2012, 5-6). When either a domestic or foreign nation-state imposes rules that are not consistent with the norms, culture, and expectations of the people, the citizenry is made worse off. There are areas with a lot of crime lacking a nation-state, and there are areas with a nation-state with high homicide rates per capita. What may matter more than the existence of a nation-state, is the ideology of the masses of the population. If the masses of the population do not respect individual rights or appreciate how private property is essential to a free society, a nation-state imposing a law without a change in ideology is not going to be sufficient. Focal points that provide coordination and the right incentives are what improve freedom and social relationships, not politicians and bureaucrats.
References:


10) Foreign Policy and the Fund for Peace. 2015, “Fragile States Index.” Available at: http://fsi.fundforpeace.org/rankings-2015


