

REVIEW OF BRUCE BENSON
TO SERVE AND PROTECT: PRIVATIZATION
AND COMMUNITY IN CRIMINAL JUSTICE
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by Mark Thornton*

This is the most important book on public policy to be published in a long time. Benson takes on the most pervasive government activity, the criminal justice system, and addresses the critical issue of our high crime rate. There are no clear “academic” solutions to this problem, but Benson presents a clear and sensible solution derived from the insights of Austrian economics—the privatization of the criminal justice system.

Small-government conservatives and law-and-order libertarians beware: this book will challenge your basic beliefs and ultimately change your mind about the role of government in the criminal justice system. Big-government civil libertarians and liberals face an even more difficult challenge because for them this book does not challenge their *exception*, but their *rule* that government should control the important institutions in society.

Benson is an Austrian economist at heart. However, his training and expertise go beyond to include public choice theory, property rights economics, neoclassical economics, law and economics, location theory, economic history, and econometrics. His opponents will find his work thorough and difficult to refute. In addition, Benson has already published two books on the subject, *The Enterprise of the Law*¹ and *The Economic Anatomy of a Drug War*:

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¹Bruce Benson, *The Enterprise of Law* (San Francisco: Pacific Research Institute for Public Policy, 1990).

Criminal Justice in the Commons,² plus a career's worth of academic journal articles on the subject of criminal justice.

The first section of the book addresses current trends in crime and privatization of criminal justice. He shows that the contracting out of certain aspects of criminal justice produces better services at a lower cost and that the "pitfalls" of privatization are the fault of the contractee (the government), not the contractors.

Benson also introduces his major themes. First, privatization of criminal justice is already a huge and successful set of industries that respond effectively to government failure. Second, to be effective, the philosophy of criminal justice should be based on restitution and the rights of victims. Third, the entire criminal justice system can and should be privatized. The combination of basic economics and detailed evidence is compelling.

Time and again, the private sector is shown to excel at its tasks in the criminal justice system while government bureaucracy is more expensive and less effective. For example, private bail bondsmen bring 99 percent of criminals to "justice" while the public alternative performs much worse at a higher cost. Private security firms, private police force companies, private streets, private prisons, and private courts all perform far better at a lower cost than do their counterparts in the public sector. And of course, the private sector also includes burglar alarms, self-protection and anti-theft devices, volunteer watch groups, and the gun supply industry—all of which have a record of excellence in fighting crime.

One might object that a criminal justice controlled by private interests would have problems like neglect of the poor, low quality, abuse of power, and monopolization. Austrian theory would argue the contrary, and Benson supplies the evidence that illustrates why these concerns are unfounded. He shows how the public police and justice system fail the poor and how the private sector helps the poor. Examples such as private streets in St. Louis, private guards in low-income apartment complexes, and private police forces for low-income neighborhoods in New York City put to rest concerns for the poor in a private system.

²Bruce Benson and David W. Rasmussen, *The Economic Anatomy of a Drug War: Criminal Justice in the Commons* (Lanham, Maryland: Rowman and Littlefield, 1994).

Abuse of power is likewise not a problem of the private but of the public sector. Public police shoot and kill far more *innocent citizens* than private police and security guards shoot in total—*criminals plus innocents*—despite the fact that there are two and a half times more private cops and that private cops spend a far higher percentage of their time “on the beat.” Benson also relates the case of three female roommates who were robbed and physically and sexually assaulted for hours despite the fact that they had repeatedly called police for help. The public police who failed to protect the girls were found not guilty, in line with previous decisions of government courts. You can well imagine a different result had it been a private security firm responsible for the girls’ safety.

Another powerful aspect of the book is the historical examples of effective and completely private justice systems. Our Anglo-Saxon forerunners had a private system of justice that worked extremely well until government intervention—designed to increase government revenues—degraded the system, moved it away from restitution to government fines, and created numerous “unintended consequences” that we must live with today. Likewise, Colonial and early America had a largely private justice system that worked extremely well, and Benson reports on research that shows that the Wild West was not nearly as wild as fiction writers would have us believe. Wagon trains, land clubs, mining camp associations, vigilante justice, and near-universal gun ownership created a generally peaceful and low-crime society until the Federal Marshall and government soldiers appeared.

In England and America, government police forces were long opposed because of the fear that a monopoly police force would result in a police state, as it had in other countries. The early record of public police in America shows that these fears were well justified and that, even today, public police engage in everything from large-scale drug corruption to outright highway robbery.

Restitution is the key to a privatized criminal justice system. Victims can receive restitution for crimes committed against them so they have incentives to pursue criminals, reward witnesses, and hire professionals to track down the criminal. Reporting of serious crimes has now fallen to less than 50 percent, but nearly 100 percent of automobile thefts are reported because victims expect to get restitution from their insurance companies. A restitution-based

system is simply more effective than rehabilitation (liberal view) and punishment (conservative view) because it is more effective at both punishment and rehabilitation, and thus in reducing crime. However, Benson also carefully explains his personal view that such matters should be decided on the basis of liberty and justice, not primarily on efficiency.

Benson shows that restitution is the basis of the Japanese's highly touted criminal justice system. Further, restitution is successful in a wide variety of applications. In addition, he shows that current restitution and victim's rights laws in the United States are phony, and when used at all are "only for the benefit of the state."

This is just a sampling of the highlights of a great book. The author addresses the potential pitfalls of private justice and its critics in a thorough and dispassionate manner. Obviously, this book is highly recommended. Buy several copies, read one carefully, and give the rest to promising students, libraries, your statist friends, and favorite politicians.

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