

# THE ROLE OF SUBSCRIPTION-BASED PATROL AND RESTITUTION IN THE FUTURE OF LIBERTY

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## Introduction

SUBSCRIPTION-BASED PATROL AND RESTITUTION (SPR) services of one type or another were suggested by Molinari (1849), Tannehill and Tannehill (1970), Rothbard (1970), and Friedman (1973). Alternative arrangements have been suggested by Barnett (1998)<sup>1</sup> and Murphy (2002).<sup>2</sup> Thorough and serious criticism has most notably come from Nozick (1974).

Our conception of the business model for such a firm is, firstly, subscription services (residential subscribers pay ~\$35/mo). The services rendered are: patrol of premises and environs, first-response for home monitoring systems or other calls, monthly crime reports to the subscriber, crime resolution, and crime indemnification. By *crime resolution* we mean: should a crime occur, the business investigates, attempts to locate the perpetrator, and facilitates engaging the perpetrator in mediation or arbitration to obtain restitution for the victim-subscriber. By *crime indemnification* we mean: should crime resolution fail to make the subscriber

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<sup>1</sup> Barnett suggested the establishment of Rights Maintenance Organizations, which are characterized by legal services, supplemented by patrol services. This arrangement is criticized in Guillory and Sitren (2007).

<sup>2</sup> Murphy suggested tort liability insurance as the main feature of the private provision of defense, not to be confused with tort indemnification, which we suggest here.

whole,<sup>3</sup> the business will pay the subscriber directly to make him chrematistically whole. In the case that the perpetrator is found, but does not submit to either mediation or arbitration, then a *Notice of Refusal to Arbitrate* would be issued to interested parties socially connected to the perpetrator (neighbors, relatives, employer, insurance company, etc.).<sup>4</sup> Legally, the business stands as surety for the civil liability of the direct (special) damages<sup>5</sup> caused by the perpetrator. Secondly, the SPR business will have a number of premium services available that build upon its trustworthiness and patrol activities: special home watch (for those absent from home for extended periods), mail/newspaper retrieval, pet feeding/watering, escorting children, women, or elderly, etc. Many of these services will have a competitive marginal cost since the patrolman is already in the area, compared to other businesses dedicated to these services, where travel time is the majority of labor cost.

We have written three papers in this area, which appear to be the only detailed written treatments of this business model.

In Guillory and Drake (2006), the authors explored the business model's viability by looking at whether each of the elements of the business model (patrol, insurance, first-response, premium services, crime reports, mediation, and arbitration) is essential. This paper explored the questions of whether an SPR company should also adjudicate disputes and whether it should have arrest powers or search powers (contractual or otherwise). It addressed the challenges of potential free riding in a subscription environment, multiple-firm interaction, optimum firm size, and cooperation problems. The paper reported on secondary market research on the home monitoring market and we reported on our primary marketing research pilot.

In Guillory and Sitren (2007), the authors reviewed the laws of Texas as they apply to the business model. They determined the taxes and regulations it would be bound by, the required involvement of state agents, and the legal

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<sup>3</sup> Making the victim whole means that the victim and the perpetrator come to a mutually agreed solution which could include payments of money, performance of services, and/or other arrangements. The key element is that the victim agrees to the arrangement as a suitable remedy for the tort. In the absence of a mediated agreement, making the victim whole is only a loose term, unless qualified.

<sup>4</sup> It is intended for this practice to eventually act as an important threat, incentivizing perpetrators to submit to mediation or arbitration.

<sup>5</sup> That is, it does not stand for surety for general damages. Examples of special damages include: extra costs, repair or replacement of damaged property, lost earnings (both historically and in the future), loss of irreplaceable items, and additional domestic costs. Examples of general damages include physical or emotional pain and suffering, loss of companionship, loss of consortium, disfigurement, loss of reputation, loss or impairment of mental or physical capacity, and loss of enjoyment of life.

duties to report certain crimes to the police. The authors explored the legality of, and possible civil liability due to, the novel practice of issuing *Notices of Refusal to Arbitrate*.

In Guillory, Blakeney, and Alston (2007), the authors calculated the payouts and reserving requirements for the crime perils of murder, rape, assault, robbery, burglary, larceny, and motor vehicle theft by modeling the frequency and severity of each peril, constructing an actuarial model, and performing monte carlo simulations with and without coverage modifications.

The present paper explores the possible historical consequences of the successful establishment of a subscription patrol and restitution business sector. In support of the story we posit, we first address a number of topics to set the tone and clear up misconceptions about what is meant by free market provision of defense and law.

An outline follows:

1. Entrepreneur as Agent of Social Change
2. The Law Enforcement Paradigm and Vertical Integration
3. Search and Arrest
4. Does Free-Market Adjudication Provide Justice?
5. Development of the SPR Model—Social Strength and Derived Demand
6. Crisis and Liberty

## **1. Entrepreneur as Agent of Social Change**

The institutions of education, such as books, articles, lectures, conferences, think tanks, and university professorships, are indispensable in the movement for *laissez faire*. Underappreciated by some is the necessary role of the firm and the entrepreneur. Certainly, nonprofit organizations are important ideological outposts, building beachheads in the overall campaign. But there remain distinct advantages for the firm over and above the nonprofit organization.

In a developed market economy, the entrepreneur sculpts the vast landscape of the institutional structures in which the mass of people live. We live in privately designed housing developments. We shop in grocery stores and malls that are very carefully designed in myriad ways. We go to movie theaters, watch commercial television. The computers we use and the computer programs with which we learn, work, and communicate; the design

of the cars we drive; the structure of services we use, such as fast food preparation and delivery or mobile phone services—all of these institutions are provided to us by entrepreneurs.

In an oft-quoted passage, Mises wrote:

*The direction of all economic affairs is in the market society a task of the entrepreneurs. There is the control of production. They are at the helm and steer the ship. A superficial observer would believe that they are supreme. But they are not. They are bound to obey unconditionally the captain's orders. The captain is the consumer. Neither the entrepreneurs nor the farmers nor the capitalists determine what has to be produced. The consumers do that. If a businessman does not strictly obey the orders of the public as they are conveyed to him by the structure of market prices, he suffers losses, he goes bankrupt, and is thus removed from his eminent position at the helm. Other men who did better in satisfying the demand of the consumers replace him. [Mises, 1949, p. 270; emphasis added]*

Most writers draw attention to the latter part of the paragraph, but we draw attention to the first part. The entrepreneur creates institutions and all their myriad details, then the consumers either accept or reject the package they create. In a deep and broad sense, because of the wide-ranging effects of the choices that entrepreneurs make in the design of their business processes, models, and products and services, their ideology is important. Mises again:

The concept of an ideology is narrower than that of a world view. In speaking of ideology we have in view only human action and social cooperation and disregard the problems of metaphysics, religious dogma, the natural sciences, and the technologies derived from them. Ideology is the totality of our doctrines concerning individual conduct and social relations. Both, world view and ideology, go beyond the limits imposed upon a purely neutral and academic study of things as they are. They are not only scientific theories, but also doctrines about the ought, i.e., about the ultimate ends which man should aim at in his earthly concerns. [Mises, 1949, p. 178]

The entrepreneur, by his actions, tells the consumers that they ought to embrace institutions of his design: that if they embrace these institutions, they will be better off. Consumers ratify some of these institutions, the entrepreneur earns a profit, and society is thereby transformed.<sup>6</sup> Henry Ford

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<sup>6</sup> See also Salerno (1990), especially the section Social Evolution as Ideological Struggle at p. 49; and Nisbet (1975), p. 279–82, where he refers to social inventions of a broader stripe, including “the guild, the trade fair, the marketplace ... the monastery, the university, the studio, the trading company, the mutual aid association,” and many others. Nisbet stresses the intentional invention of these and many other institutions. After

and his motorcar. Fred Smith and overnight letter delivery. J. C. Fargo and travelers' cheques. Akio Morita and the Sony Walkman. Of course, not every entrepreneur changes the world. But some do. And eventually, entrepreneurs whose ideology includes libertarian ethics will found successful businesses that instantiate libertarian ideology.

Some might challenge this line of inquiry, claiming that entrepreneurship is about profitmaking, not designing institutions of a particular ideology, libertarian or not.<sup>7</sup> But research has shown (Collins and Porras, 2004) that companies who succeed in creating major social change while trouncing their competition *and* beating the returns of the general market all share the characteristic of having a core ideology beyond just making money that guides and inspires people throughout an organization and remains relatively fixed for long periods of time, and that their less successful rivals lack this characteristic. As Collins and Porras write:

In a visionary company, the core values need no rational or external justification. Nor do they sway with the trends and fads of the day. Nor even do they shift in response to changing market conditions.

Further, they caution:

Core ideology does not come from mimicking the values of other companies—even highly visionary companies; it does not come from following the dictates of outsiders; it does not come from reading management books; and it does not come from a sterile intellectual exercise of “calculating” what values would be most pragmatic, most popular, or most profitable. When articulating and codifying core ideology, the key step is to capture what is authentically believed, not what other companies set as their values or what the outside world thinks the ideology should be.

When considering the means available to firms, it is clear that their means are generally much greater than that of the nonprofit institutions in society. This is because the incomes of nonprofits<sup>8</sup> are typically donated by

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reviewing eras of both exceptionally fruitful propagation of social inventions and those of relative sterility, he states:

I think the twentieth century has been singularly weak on the whole in social respects ... The atmosphere of nationalism, of creeping bureaucratization of social life by the state, the political clerisy's adoration of those things which are done by the state alone have inevitably had a suffocating effect upon the desire to create in social as well as cultural ways. [Nisbet, 1975]

<sup>7</sup> Here we provide a brief defense of our position on this point. For more, see Guillory (2007).

<sup>8</sup> Here we refer to nonprofits as libertarians understand the term. Tax-funded or rent-seeking nonprofits would not fit all of the characterizations we make.

ideological supporters whereas the incomes of firms are earned from a broad cross-section (ideologically speaking) of society in exchange for providing goods and services. A firm can expand as far as the market demands. On the other hand, there is a much more constraining upper limit to the size of the nonprofit. This limit is determined by the charitable giving of the ideologically-minded supporters.

There is great social power in the fact that a successful firm's modus operandi is to create ideologically-infused institutions that are supported and embraced by people who have no strong, or even no conscious, commitment to the ideology. There are two reasons for this.

Firstly, the majority of people in society are not of a temperament to be ideological radicals.<sup>9</sup> Whereas ideological radicals can be persuaded to monetarily support nonprofit institutions, a firm can cut across temperaments and derive its income from the majority of people who are not ideological radicals. Therefore, the firm gains a reach that the nonprofit has no hope of attaining. Further, those who are employed by nonprofit institutions tend to be ideological radicals; whereas, the temperaments of employees of firms are much more closely associated with the type of work the employee performs.<sup>10</sup>

Secondly, institutions influence ideology. Sometimes called *the tyranny of the status quo*, the mere existence of an institution creates ongoing support for that institution. This is due to a number of psychological factors. People are

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<sup>9</sup> This is commonsensical enough, but there is also evidence to support this position. Psychologist David Keirsey developed a Temperament System that shares some commonalities with the Myers-Briggs Type Indicator system and a number of other temperament systems. For details, see the Wikipedia entries for "David Keirsey" and "Keirsey Temperament Sorter", as well as his website keirsey.com and his books in the bibliography. Keirsey's types and the rough percentage of the US population that exhibit their temperaments are Artisan(38%), Idealist(12%), Rational(12%), and Guardian(38%). Ideological radicals are drawn mainly from the Idealist and Rational ranks. Historians may be interested to review Choiniere and Keirsey (1992), wherein they use historical evidence to classify US Presidents into their temperaments. According to this work, there were no Idealist Presidents, and only 8 Rational Presidents.

<sup>10</sup> For instance, Dollar and Schoeder (2004) showed that applicants for Air Traffic Control School (ATCS) were statistically more likely to be Judging (these were chi-squared tests versus US population norms for MBTI types); those who passed ATCS were more likely to be Judging; those who achieved the rank of Certified Professional Controller (CPC) were more likely to be Judging; and those who achieved the rank of CPC Supervisor or Manager were more likely to be Judging. ISTJ and ESTJ were by far the most represented types among ATCS applicants, and they exceeded the US population norms for those types. The SJ MBTI combination corresponds to the Keirsey Temperament of Guardian. This is only one study in a vast literature documenting the correlation between temperament and occupation.

creatures of habit, and tend to use familiar institutions. People are social referencers, tending to use the institutions that others use. People tend to justify their choices post hoc, rationalizing their habit of supporting an institution—in this case by being either a consumer or an employee. Lastly, people prefer not to abandon known institutions that work in favor of unknown institutions that might work better, but have not been so proven. This last factor usually works against the program of *laissez faire*, which is to abandon tangible government programs in favor of intangible market solutions. In the case of an existing market institution, the opposite tendency exists, in principle. This psychological resistance to abandon an institution, or tendency to defend it could figure favorably in the development of private patrol and restitution.

Our position, in short, is this: ideology and education are *more important* to the movement for *laissez faire* than usually realized, not because of the role of intellectuals as second-hand dealers in information, but because of the amplifying effect that ideology has upon society through the entrepreneurial creation of ideologically-infused social institutions. One conclusion that emerges is this: a strategic goal of effective educational institutions should be to target entrepreneurs in the dissemination of their ideology.

In a hopeful turn of events, the social status of entrepreneurs in North America has grown over the last 50 years. Entrepreneurs now command a higher social status than lawyers or doctors (Williams, 2008). And Richard Florida's work suggests that creative professionals such as entrepreneurs, engineers, and artists are increasingly important to thriving communities (Florida, 2002; Florida, 2005). This is not to say that Postrel (1999) was right to draw the battle lines between dynamists and stasists. But William Whyte's concern<sup>11</sup> was clearly met with vigor, and our culture now reveres entrepreneurship and is much more entrepreneurial today than in 1956.

We close this section with a digression on the term spontaneous order. A *spontaneous order* is often defined, as Adam Ferguson suggested, as a social

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<sup>11</sup> If we may paint with a broad brush, Whyte (1956) argued that his contemporaries followed the rules to a fault, not exercising enough discretion and moral strength in the face of conflict with unjust or improper organizational rules; and that increasingly, social pressures were brought to bear to suppress individualism. For instance, in Chapter 19, titled *Love That System*, Whyte conveys the results of an essay contest on *The Caine Mutiny*, where only 1 in 16 students regarded Lieutenant Maryk's mutiny to have been morally right. Whyte writes, "It is [Maryk's] moral duty to act as he thinks best. Has this become an anachronistic concept? Fifteen students against, to one for, constitute, let me concede, very few straws in the wind."

institution that is the result of human action, but not of human design.<sup>12</sup> In other words, it is a social institution that is a happy accident. And in this connection, the spontaneous order is often thought of as a social analogue to biological evolution. But this analogy, whether held implicitly or explicitly, has many flaws that can lead one astray from clear thinking about social institutions. Firstly, the variations in social institutions are not random, but planned by thinking individuals to have specific arrays of effects. In the evolution of language, words are coined with forethought, carefully chosen from existing words and traditions to denote something new, or to make a distinction, and often chosen to evoke a specific connotation. This is true even of street slang. In the development of markets, we see the various business methods used: letters of credit, double-entry bookkeeping, joint stock companies, insurance, rules of stock exchanges, and on those exchanges institutions such as puts, swaps, futures, etc. Each of these, again, was implemented to address particular concerns and its effects were considered at length by its creators. Each micro-institution (a word, a letter of credit) was designed and was not in any way spontaneous. Spontaneous means occurring without any apparent external cause. Consider the terms spontaneous combustion (of a human), spontaneous emission (of an electron), spontaneous fission (of a nucleus), and spontaneous remission (of a cancer).

Secondly, the decentralized nature of the development of social institutions is often overstated by advocates of *laissez faire*. We sometimes use *spontaneous order* as a codeword for decentralized planning: spontaneous order *versus* central planning. But in the development of languages, there have been but a handful of highly influential writers and speakers compared to the billions who have used them over time.<sup>13</sup> The use of Hindo-Arabic numbers for more efficient calculation on the entire continent of Europe can be traced to a single man.<sup>14</sup> Despite the fact that in a famous essay Leonard Read showed that the highly articulated modern division of labor suggests that not one man on the planet knows how to make a pencil today, a single man, Joseph Hardtmuth, invented the method of mixing low quality graphite with clay as a binder and then established a pencil factory in Vienna which brought low-cost pencils to the masses. The development of key social institutions

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<sup>12</sup> For a review of the scholarly tradition of the concept of spontaneous orders, see Barry (1982) and Horwitz (2001). Horwitz, in particular, has authored a number of papers that extends and defends Hayek's work on spontaneous order. We offer here a brief sketch in defense of a social rationalist approach to institutions, but do not directly engage this literature.

<sup>13</sup> On the surprisingly planned nature of languages, see Yeager (1998) at p. 26.

<sup>14</sup> Leonardo of Pisa, aka Fibonacci, published his *Liber Abaci* in 1202 at the age of 32.



has not been *massively* decentralized, but *merely* decentralized. Institutional histories are usually characterized by three elements: starting out as the brainchild of one or a few men; slowly evolving and developing at the hands of the many; punctuated periods of reassessment and rework by individual minds or small groups, after which follows a reversion to slow evolution.

Thirdly, the notion that a social institution has unintended effects is also sometimes overstated. Taking the case of money, one might imagine a prehistoric man choosing to exchange his collection of berries for a cowrie shell, making this exchange with the intention of later exchanging the cowrie shell for some meat. This man's actions demonstrate and contain the basic insight that exchanging less marketable commodities for more marketable commodities will improve his trading position. And why did he choose to trade for a cowrie shell? It was, perhaps, the most marketable commodity available to him. But who are we to look back at this prehistoric man and think to ourselves that our modern social institution of money was not really his intention? We don't mean to say that our prehistoric man would foresee everything that money has become. But within his ken, if our prehistoric man conceived that benefits would accrue to the use of the most marketable commodity as a medium of exchange, what has been the further innovation and effect in the institution of money *qua money* other than the working out of this idea and the reaping of all its benefits over these many years?

We readily concede that the development of money made possible other social institutions, such as cost accounting, that were not foreseen by our prehistoric man. But this is not an unintended consequence of the institution of money. Instead, it is yet another rationally planned social institution that was built upon other institutions. An institution such as "the English language" is composed of a number of institutions, such as words, rules of grammar, and spelling rules. Just because one institution builds upon another does not make it "spontaneous". It would be silly to claim that the atom bomb was an unintended consequence of the Pythagorean Theorem. In the same way, we challenge the use of the term *spontaneous order*, for it is not so much an explanatory tool that promotes understanding as it is a codeword for the magic of the market.<sup>15</sup>

One final objection that might be raised is that complex institutions should be considered as *spontaneous orders*. Consider an institution such as the internet, which is a conglomeration of institutions: wires and fiber optic cabling, servers, server software, routers, application software and the computer languages in which they are written, monitors and pointing devices,

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<sup>15</sup> Which brings to mind the well-worn joke: How many libertarians does it take to screw in a lightbulb? None, the market will take care of it.

protocols and standards, emails, blogs, websites, etc. Such a wonderful beast of an institution is best understood as a collection of incentive-compatible human institutions, whose incentive compatibility is itself an element of the design. There may be *spontaneity* of the human spirit and will in this collection of creative works, but no *spontaneous order*. The entire enterprise is planned, and is orderly precisely because it is planned to be so.

Further to our purposes here, if market anarchists are keen to build a stateless order, then that is the work ahead. We salute the efforts of all anarchists who have attempted to describe in detail the operation of a modern stateless order, even as we critique them here. It is difficult work, and it cannot be “left to the market”, for we have met the market, and it is us.

## 2. The Law Enforcement Paradigm and Vertical Integration

Two fundamental errors in the libertarian literature on the private production of defense and law are often encountered. We shall call them the *law enforcement paradigm* and the *vertical integration assumption*.

The *law enforcement paradigm* is the belief that violations of law in *laissez faire* would and should be met with institutional force. While incentives to obey the law are important, these incentives have not always taken the form of institutional direct action against the offender. In fact, our knowledge of historical free-market provision of defense and law argue the opposite. The Kapauku Papuans of West New Guinea used ostracism as their main method of ensuring obedience to the law; and the pre-Norman Anglo-Saxon, ancient Icelandic, and ancient Irish systems of law all made those who refused to obey the law into “outlaws” (Benson, 1990, p. 15–26). Outlawry sometimes led to blood feuds and certainly exposed those not obedient to the law to violation of person and property; but, importantly, the taking of person or property for either punishment or restitution was not institutionalized. Instead, *obedience to the law was incentivized*. Leoni further informs us:

The compulsory enforcement of judicial decisions is a comparatively late development of the law-making process...As a matter of fact, the enforcement of a decision reached on a fundamentally theoretical basis (i.e., finding which of the parties is right according to some recognizable standards) was for a long time deemed incompatible with any enforcement of that decision through some kind of coercive intervention against the losing party. This explains why, for instance, in the old Greek judicial procedure, the fulfillment of judicial decisions was left to the parties...and why in the whole classical world kings and other

military chiefs used to put aside the emblems of their power when requested by some parties to decide a case.<sup>16</sup> [Leoni, 1991, p. 185]

With all this historical precedent, we should be careful not to apply modern prejudices about enforcement to an envisioned future *laissez faire* in the production of defense and law. Moreover, market-based incentives to obey the law are improved, *ceteris paribus*, by the intensification of the division of labor, the lessening of the technological problems associated with identification of persons, and the improvement of the technological capabilities of recording and retrieving information—developments which have advanced considerably since the historical quasi-market anarchies mentioned above. Further, pure restitution and incentivizing, but not enforcing, obedience to law must be considered in the context of the entire structure of production of defense and law, considering costs of enforcement, costs of enforcement error, costs of enforcement abuse, and maintenance of the social legitimacy of the entire system. The indispensable reference for this is Barnett (1998). Not to confuse our position with his: Barnett writes in *favor* of using force to collect restitution (*ibid.*, pp. 176–81). We disagree. *Law enforcement* should be a dying institution, appropriate only for emergent or standing threats to life and property (one could argue that this is not properly called law enforcement, but production of defense).

The *vertical integration assumption* is to suppose that in *laissez faire* the production of adjudication and the production of patrol/security should be or would be unified in a single business. This makes little business sense. There would be a fundamental conflict of interest if mediators and arbitrators were employees of the security company. They would be agents of parties in the dispute, and therefore have the color of bias, and the fact of interestedness. Beyond that, the work of mediation and arbitration, on the one hand, and patrol-and-restitution on the other, are completely different types of activity. There is no material reason to combine them into a conglomerated business. Arbitration and mediation arms would be public relations albatrosses to a security company. Furthermore, appeals to decreased costs of adjudication for intra-firm disputes seem to be without substance. If there is a dispute over fact or law, an adjudicator must be hired, his time paid for, and whether the parties to the dispute are subscribers to a common firm is of no real consequence. In modern America, arbitration clauses in contracts cut costs for firms by avoiding socialist courts and embracing free-market courts, not from any special, previously agreed-to intra-firm procedures or codes.

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<sup>16</sup> Perhaps this also explains why the development of the law of plea bargaining is relatively recent. The extreme example of this is the Alford plea in the US, vintage 1970.

It appears that the first author to display one of these errors<sup>17</sup> was David Friedman:

I come home one night and find my television set missing. I immediately call my protection agency, Tannahelp Inc., to report the theft. They send an agent. He checks the automatic camera which Tannahelp, as part of their service, installed in my living room and discovers a picture of one Joe Bock lugging the television set out the door. The Tannahelp agent contacts Joe, informs him that Tannahelp has reason to believe he is in possession of my television set, and suggests he return it, along with an extra ten dollars to pay for Tannahelp's time and trouble in locating Joe. Joe replies that he has never seen my television set in his life and tells the Tannahelp agent to go to hell.

The agent points out that until Tannahelp is convinced there has been a mistake, he must proceed on the assumption that the television set is my property. Six Tannahelp employees, all large and energetic, will be at Joe's door next morning to collect the set. Joe, in response, informs the agent that he also has a protection agency, Dawn Defense, and that his contract with them undoubtedly requires them to protect him if six goons try to break into his house and steal his television set.

The stage seems set for a nice little war... [Friedman, 1973]

For the rest of his consideration of the topic (pp. 116–20), Friedman argues for the vertical integration of adjudication and defense, by appealing to the supposedly high transactions costs that two firms face when a subscriber from one firm is accused of violating the rights of a subscriber from another firm.<sup>18</sup> This argument makes no sense. If A accuses B of a rights violation, a proper arbitration must take place. There is no shortcut. A man must be hired to arbitrate, regardless of whether A and B are subscribed to the same private security company. Indeed, even if we concede that A and B are subscribed to companies that have preestablished agreements regarding a body of law, this reduces the adjudication to an issue of fact. But adjudicating over an issue of fact is the main work of adjudication—that's the heavy

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<sup>17</sup> It could be argued that the law enforcement paradigm is on display in Tannehill and Tannehill (1970), in chapter 10 titled Rectification of Injustice. However, their account is more tentative and speculative than prescriptive and definitive. For instance, they write: "Assuming the aggressor could not make immediate payment of his entire debt, the method used to collect it would depend on the amount involved, the nature of the aggression, the aggressor's past record and present attitude, and any other pertinent variables. Several approaches suggest themselves..." (p. 101).

<sup>18</sup> Friedman also seems to assume that replevin is a preferred remedy over trover, which is odd for something as common and non-essential as a television when, as Friedman claims, a "nice little war" is at stake.

lifting. Friedman's appeal to consider the case of vertically integrated "anti-capital-punishment" and "pro-capital-punishment" agencies is a bizarre and entertaining mental exercise, but in no way relevant or persuasive on this point.

Prior to Friedman, Rothbard assumed vertical integration, but never revisited the assumption:

One common objection to the feasibility of marketable protection (its desirability is not the problem here) runs as follows: Suppose that Jones subscribes to Defense Agency X and Smith subscribes to Defense Agency Y. (We will assume for convenience that the defense agency includes a police force and a court or courts, although in practice these two functions might well be performed by separate firms.) [Rothbard, 1970]

Nozick (1974) makes both errors, laying the groundwork for his immaculate conception of the state. First, he claims that "groups of individuals may form mutual-protection associations: all will answer the call of any member for defense or for the enforcement of his rights." (Nozick, 1974, p. 12) And by enforcement, it is clear that he means the *law enforcement paradigm*.<sup>19</sup> Nozick recognizes there are possible counterarguments to vertical integration, but neither engages the arguments nor addresses the historical social reality that we have mentioned above, stating without argument, "But, for obvious reasons, there will be strong tendencies for the above-mentioned functions to converge in the same agent or agency." (Nozick, 1974, p. 14)

Benson corrects these errors somewhat by eschewing the *law enforcement paradigm*,<sup>20</sup> but still suggests there is more than just assumption in the *vertical integration assumption*:

The contract with a particular protection firm could include an arbitration clause so that disputes between clients of that firm can be settled internally. ... Similar contractual arrangements will probably arise between different communities and their protection agencies. [Benson, 1990, p. 359]

Barnett (1998) clearly overturns the notion of vertically integrating patrol, restitution, and adjudication through a fictional account of a merger between a protective services company and an adjudication company that

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<sup>19</sup> Nozick (1974), p. 13: "turning over to a private protective agency all functions of detection, *apprehension*, judicial determination of guilt, *punishment*, and *exaction of compensation*." [emphasis added]

<sup>20</sup> See Benson (1990), p. 367-374.

turns into a mafia.<sup>21</sup> However, he embraces the *law enforcement paradigm*<sup>22</sup> by making the tendentious leap from *perpetrators owe* to *coerce perpetrators* in the single sentence: “Because victims would have an *enforceable* right to restitution, unlike today, agencies acting on the victim’s behalf would be justified in using force to incarcerate criminals who could not be entrusted to make restitution on their own.” (Barnett, 1998, p. 177) The institutionalization of coercion in lieu of incentivization is glossed over by Barnett—a comparison of the two alternatives and their advantages and disadvantages is not even undertaken, even though such considerations are the bread and butter of his book.

To conclude this section: In our conception of the production of law and defense in *laissez faire*, adjudication is not vertically integrated with defense, defense companies use force only to defend life and property in emergency situations, and there is no coercive institution that enforces restitution payments. Rather, institutions are put in place to incentivize the payment of restitution. Guillory and Sitren (2007) discusses one of these proposed institutions at length: *Notices Of Refusal To Arbitrate*.

Would there be prisons for standing threats to liberty (serial murderers, serial rapists, serial child molesters, etc.)? Yes. But before those are created, it is likely that “safe zones” would expand and multiply. Safe zones are geographic areas with controlled access ranging in size from single buildings to entire neighborhoods or towns.

### 3. Search and Arrest

In the US, the general police powers of warranted searches and arrest upon probable cause are powerful tools for criminal investigations and crime prevention that often figure prominently in both cinema and the minds of police. This status quo unduly influences conceptions of free market protection of life, liberty, and property.

The private patrol company need not have significant arrest powers. The arrest of someone caught in the act of a tort is the only arrest power envisioned. Usually, this arrest would be effected for loss prevention and to identify the perpetrator so that restitution could later be sought. In rare cases, forcible bodily ejection would be necessary in cases of trespass (this is not arrest, but it is the application of force to a person’s body).

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<sup>21</sup> Barnett (1998), Chapter 14, in the section titled The Problem with TopCops and Justice, Inc.: A Worst-Case Scenario.

<sup>22</sup> See Barnett (1998), Chapter 9, in the section titled Using Force to Collect Restitution, p. 176-180.

The private patrol company need not have any power of warranted searches. From a deontological perspective, even a warranted search is a violation of right. The utilitarian question is: what is the difference in cost between having the power of warranted searches and not having them. The practical difference is the effect that a difference in clearance rates<sup>23</sup> of crimes has on restitution collected from perpetrators. We have quantified the pure premia for restitution of property crimes to homeowners in the US: about \$158/year per household.<sup>24</sup> State police clearance rates for property crimes are in the range of 13% to 26%, depending upon the crime category. So, if the lack of warranted searches means that clearance rates are half the current rates (clearance rates drop from about 20% to about 10%), the cost of such a huge change would be on the order of \$16/year per household.<sup>25</sup> To be clear: our utterly unfair and conservative assumption is that state police have twice the clearance rate of private patrol and restitution companies due solely to their power to compel warranted searches, which results in the \$16 difference. Assuming this, the question now becomes this: for \$16/year in cost savings, would you, the consumer of patrol and restitution services, be willing to sign a contract to submit your household to warranted searches? Or more properly, can you imagine a company successfully selling the general public on such a proposition? The question answers itself.

But what about the high-severity, high-clearance crimes of murder and rape? Assuming that a murder is a \$1 million restitution event,<sup>26</sup> and rape is a \$50,000 restitution event,<sup>27</sup> the total restitution owed by perpetrators is equal

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<sup>23</sup> By clearance of a crime, we mean that a suspect is identified and sufficient evidence exists to warrant a credible demand for restitution from the suspect. We borrow this term from the FBI's Uniform Crime Reports, where clearance of a crime means that at least one person is arrested, charged with the commission of the offense, and is turned over to the court for prosecution (whether following arrest, court summons, or police notice).

<sup>24</sup> See Guillory, Blakeney, and Alston (2007). This value does not include any coverage modifications. That is, this is the total amount of restitution owed, regardless of whether it is paid by perpetrators or the SPR company.

<sup>25</sup> That is, \$158 x 90% paid from insurance versus \$158 x 80% paid from insurance, with the respective balances being paid by the perpetrators.

<sup>26</sup> This is the correct order of magnitude, and perhaps a little high. If the murder is of a breadwinner earning \$40,000 annually (the approximate average annual US salary) and due to the murder will lose 35 years of income, the present value of that income stream at an interest rate of 8% is \$466,183. We remind the reader that only direct damages are being considered under this business model.

<sup>27</sup> This number is the proper order of magnitude, or perhaps high by an order of magnitude, since only direct damages are being considered under this business model. Cohen (1988) tabulated average direct monetary losses from rapes from the National Crime Victimization Survey, which includes medical care, days of lost work, and other immediate direct damages, and then calculated average pain and suffering from a survey

to a pure premium of \$61/year per household. Clearance rates by state police are about 65% for murders and 45% for rapes. Again, using our assumption of halved clearance rates, the differential cost to the consumer is an additional \$15/year per household.

These are hardly in the range of sums of money that people would make major commitments, such as consenting to warranted searches, to avoid having to pay. Warranted searches did not come about as crime-fighting measures.

### Historical Review

Warranted searches in the US are conducted within the bounds of the Fourth Amendment to the US Constitution. This amendment, part of the US Bill of Rights, was undoubtedly modeled upon clause 10 of the brilliant Virginia Declaration of Rights of George Mason. The Virginia Declaration of Rights was drafted during the US Revolutionary War, and was drawn from revolutionary documents from English history: Locke's Second Treatise, written during the Exclusion Crisis; the English Bill of Rights, written at the conclusion of the Glorious Revolution and being a document once signed, its signatories were offered the throne of England; and Magna Carta, whose history we summarize below. Clause 10 of the Virginia Declaration was written in response to the Writs of Assistance legalized by the Townshend Acts, which gave tax collectors broad rights to search for smuggled goods.

Arrests in the US are conducted within the bounds of the legal doctrine of probable cause, which is also part of the Fourth Amendment. However, violations of those bounds are checked, in part, by the doctrine of habeas corpus. Article 1, Section 9 of the US Constitution uses the modern understanding of habeas corpus, which came from The Habeas Corpus Act of 1679, which was an attempt to restrict James II's feared exercise of arbitrary power. Of course, habeas corpus has a longer pedigree, back to Magna Carta.<sup>28</sup> Magna Carta itself was foisted upon an unwilling King John,

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of jury awards, adjusting the awards based upon estimates of severity distributions. Cohen's figures were \$4,617 in direct average losses and \$43,561 in pain and suffering. Cohen and Miller (1998) used a mental health care provider survey to estimate mental healthcare costs for rape. This amounted to a median of \$2,579 of lifetime mental healthcare costs per victim.

<sup>28</sup> Article 29 of Magna Carta reads, "No freeman shall be captured or imprisoned or disseised or outlawed or exiled or in any way destroyed, nor will we go against him or send against him, except by the lawful judgment of his peers or by the law of the land." (Brooks, 1993, emphasis added). Because of this wording, writs of habeas corpus in England were written on behalf of the sovereign to the court. This traditional form



and his repudiation of the document after having signed it under duress launched the First Barons' War, during which King John died of dysentery. Henry III, John's son, was quickly crowned and his regents saw to it that Magna Carta was signed and issued by him, but without the most monarch-neutering clauses.

These few historical points underscore the fact that the modern state police tools of warranted searches and arrest are the vestigial remnants of a long struggle against arbitrary state powers, not crime-fighting techniques introduced *ab initio*. Attempts to justify them post hoc are simply that: post-hoc justifications. And, as we have demonstrated, the case for their use, even where contractually allowed, does not seem that strong.

#### 4. Does Free-Market Adjudication Provide Justice?

A puzzle that has been suggested by some libertarians is this:

I have discussed institutions, not results. That is why I have used the term anarcho-capitalist, which describes the institutions, rather than libertarian. Whether these institutions will produce a libertarian society—a society in which each person is free to do as he like with himself and his property as long as he does not use either to initiate force against others—remains to be proven. (Friedman, 1973, p. 127, part of chapter 31, “Is anarcho-capitalism libertarian?”)

Friedman's analysis which follows this passage is confused, since he assumes the vertical integration of adjudication and patrol. We will not critique his argument here. To restate the question more broadly: will free-market adjudication result in just decisions?<sup>29</sup>

Leoni (1961) provides a theoretical framework on which we can build an answer to this question. We offer a sketch of his theory.<sup>30</sup> In a market, economic operators regard prices to be ultimate data upon which they base their calculations and actions, fully realizing that these are flexible to some extent, but quite fixed for a particular transaction. By analogy, Leoni suggests that legal operators regard legal norms to be the ultimate data upon which they base their actions, fully realizing these are flexible to some extent, but fixed for a particular adjudication. Extending the analogy, Leoni notes that

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remains in the US, where writs of habeas corpus are “ex parte” even though the petitioner is usually the prisoner.

<sup>29</sup> Here, we regard justice to mean what libertarians take it to mean, fully recognizing that even libertarians dispute particulars. We follow de Jasay (2002) in noting that justice is simply justice, and not any other social concept.

<sup>30</sup> See Leoni (1961), specifically the chapter “The Law as Individual Claim”, p. 189-203.

the economist does not regard prices to be fixed at all, but subject to immutable rules of distribution acting on contingent facts. Likewise, the proper legal theorist does not regard legal norms to be fixed, but subject to immutable rules of argumentation acting on contingent facts of cases within particular cultural contexts. Indeed, the direction of causation of these social elements is often misapprehended. It is the offers to buy and sell in the market that causes prices (the norms of the market) to settle into relative fixity; they are not fixed before agents enter the market, though it appears that way to most economic agents. Likewise, it is the advancing of legal claims in an adjudicative setting and hearing the arguments on both sides that determines the outcomes of proceedings; and the outcomes of many proceedings thereby establish legal norms. It is not the case that legal norms are fixed before legal agents advance their arguments, although it appears that way to lawyers who learn legal norms in law school and then apply them to cases to guess how judges will rule on cases.

But does this mean that legal norms could be anything at all? No, and a number of libertarian theorists have explained why.

As Hoppe pointed out, by rationally advancing your claim against another, you are implicitly claiming that your claim is rationally defensible to a greater extent than your opponent's: "...any ethical proposal, as well as any other proposition, must be assumed to claim that it is capable of being validated by propositional or argumentative means." (Hoppe 1993, Ch. 10) All who make claims; or who criticize torts, crimes, legislation, laws, and judicial decisions—in short, all who debate legal norms—implicitly hold that there is a standard against which these decisions are to be measured. Narveson agrees, applying the insight in the context of egalitarianism:

Here I need merely remind the reader that we are talking about *arguments* for equality, as distinct from sheer assertions of it. Appeals to intuition—that the commitment to equality is “moral bedrock,” as I have heard it said—must, on the face of it, count in the latter category. As a device for supporting equality, this invites the response that, unfortunately, *my* “moral bedrock” might be something quite incompatible with the proponent's: say, that equality is a snare and a delusion. Strange bedrockfellows! So where would we go from there? If it's anywhere, it's going to have to be either back to arguments, or to non-rational or irrational activity, such as politics—waving flags, Bosnia, etc. [Narveson 2002, p. 51]

But if the continual clash of individual claims results in rational adjudications, to what legal norms are we led? Narveson takes the case of murder:

It is absurd to say that what's wrong with murder is that I don't like it. The obvious response is: "So?" The reason it is the obvious response is that if we are out to regulate the behavior of people in general by suggesting a rule for their deliberate action, then the plausibility of our effort is zero if it turns out that all my proposal has going for it is that I want it or would like it. Who, indeed, cares? Until I can explain why others should care, my proposal will be irrelevant to them. And if it isn't directed to them, we're wasting their time. [Ibid.]

Hoppe and Narveson have much in common in their arguments about arguments. Narveson notes that the appeal to universal norms is necessary from the first. That is, if A and B come together to adjudicate a dispute in a milieu devoid of background legal norms, to what do they address their arguments? Hoppe writes: "Quite commonly it has been observed that argumentation implies that a proposition claims *universal* acceptability, or, should it be a norm proposal, that it is 'universalizable.'" (Hoppe 1989, Ch. 7). Narveson quite simply notes: "No generalization, no morals." (Narveson 1988). But this is not the only rule. Narveson again:

When in general will a proposal [for a norm] be reasonable *for* a certain set of people? The very general answer to this is that it will be so when it serves each person's interest well enough, and at least as well as any other obviously available proposal. That is the general thesis of contractarianism in morals. [Ibid.]

We favor Narveson's approach, so we will outline his contractarian program a bit more.

On the right view of the foundations of morality, there are no moral bedrocks. Everything is arguable, and arguable by reference to considerations that have to be meaningful to those concerned, antecedently to the moral theory put forward—namely, their various values and preferences, whatever they may be, plus a variety of empirically manageable factual claims. [Ibid.]

It is the grounding of morality in fact that makes moral values fundamentally different than mere preferences. But what are these facts?

One of Narveson's favorite facts is Hobbes's disturbing (but true) claim that almost every person, no matter how weak, has enough strength to kill the strongest among us, and also the power to make others' lives quite miserable. He goes on to show that the Prisoner's Dilemma is "the paradigmatic situation to which morals addresses itself". With the relevant facts (including valuing one's life, and one's life "projects") distilled into the Prisoner's Dilemma, he shows that rational actors will choose to cooperate instead of defect, and encourage others to cooperate. This is the

“contractarian case” for morals. Since the very term “contractarian” is a bit confusing to some, a clarification is needed:

The general idea of [contractarianism] is that the principles of morality are (or should be) those principles for directing everyone’s conduct which it is reasonable for everyone to accept. They are the rules that everyone has good reason for wanting everyone to act on, and thus to internalize in himself or herself, and thus to reinforce in the case of everyone.

...

Contractarianism can be made to seem arbitrary and silly: consider, for instance, the suggestion that long, long ago our remote ancestors made this deal, see, and from that day to this everyone has had to go along with it!

...

The problem is that morality is obviously not the result of a literal contract: and, indeed, it cannot be... Clearly, the sense in which morality is founded upon or due to or represents an “agreement” is going to have to be less straightforward than that. [Ibid.]

Narveson explains further:

[Contractarian morals are] the output of a course of deliberation...[chosen to have] the best chance of realizing values actually held by the agent. Those values, of course, need not be and in the first instance cannot be “moral” values. Morality is an output, and what makes it rational is the same as what makes any action or decision rational: it best fills the bill specified by one’s general set of values, whatever they are. [Ibid.]

This subjectivism of values is important to Narveson, and he regards it as a defining element of the liberal tradition:

...the liberal must justify principles, policies, and institutions, to any person affected by them, by showing that person they are for his or her good as seen by that person... Each person is regarded as being the ultimate authority on what is good for himself. [Ibid.]

But where will all of these arguments be advanced? Indeed, where will the complementary arguments of Hoppe (1993), Kinsella (2008), and others (Kinsella 1996) be advanced? We argue that two of the important venues for these arguments, or at least practical applications of them, are mediations and arbitrations.

*Section Conclusion*

Narveson's vision of norms is well-adapted to considering the question of this section. The arbiter of a dispute is led by contractarian logic to choose minimally-constraining norms to apply to disputes. One way to consider contractarianism is as a philosophical theory of how free-market adjudication of norms results in the minimal legal norms of libertarian ethics.

This theory of adjudication is confirmed in history. All of the historical free or nearly free markets in law (Roman law, common law, Law Merchant, etc.) have resulted in libertarian-leaning decisions and legal norms.

**5. Development of the SPR Model—Social Strength and Derived Demand**

In the US, home security is currently provided by a multiplicity of do-it-yourself passive and active deterrents (safes, locks, fences, cameras, dogs, guns, etc.), a complex of governmentally-supplied patrols, and two main business models: monitoring and security guard services.

*Monitoring*

Information on monitoring businesses below comes from IBISWorld Industry Report 56162, Security Systems Services in the US, 6 March 2006, IBISWorld, Inc.

The firms engaged in sales, installation, repair, and monitoring services of burglar and fire alarms and locking systems serve governmental, commercial, and residential sectors. The estimated industry revenue in 2005 was US\$15.281 billion. It has experienced tremendous growth since at least 2000 with real annual growth rates of 6–8%. Expected nominal growth is 4–5% annually through 2010.

Research conducted by the Security Institute of America indicated that in mid-2000, 17.8 percent of residential households had a home security system, 38.8% of households with \$100K+ income had one, and 26.1% of households with \$75–90K income had one. Using residence valuation, the numbers were: 11% for values <\$100K, 21.2% for values \$100–200K, 27.8% for values \$200–300K, and 40.1% for values >\$300K.

Three-quarters of firms in the industry are small businesses, with 9 or fewer employees. This level of concentration is not expected to change over time. However, there are several major players in the industry:

<b>Firm</b>	<b>Market Share</b>	<b>Based in</b>
Tyco (ADT)	22.6%	Boca Raton, FL
Siemens	15.6%	Buffalo Grove, IL
Protection One	2.2%	Topeka, KS
Brinks	1.9%	Richmond, VA

With regard to monitoring companies, it is important to know that the residential market segment comprises only 15% of their business, and that the major drivers in the rest of the business are technology as a replacement for labor in the security of governmental and corporate clients. Indeed, the resumes of the board of directors of Tyco as presented in its 2005 Annual Report show that they have careers from companies such as Motorola, Verizon, Rohm and Haas, du Pont, and MicroWarehouse. The organization is dedicated to technological solutions, so we suggest that employing patrol labor is the farthest thing from their minds, and not part of either their core competency or their business strategy.

### *Security Guard Services*

Information on security guard businesses below comes from BizMiner Reports for category 128-381.0105: US Market Research Report (Dec 2007), Industry Financial Profile, Sales Class \$1–\$499,999 (Jan 2008), Industry Financial Profile, Sales Class \$2.5–\$4.99 million (Jan 2008), Small Business Financial Profile (Jan 2008), and Startup Expense & Cash Flow Profile (Dec 2007). Additional information is from first-hand discussions with security company principals.

Firms engaged in security guard services serve governmental, commercial, and residential sectors. The estimated industry revenue in 2006 was US\$13.340 billion, comparable in size to the monitoring market.

The average firm size is small. About 60% of firms have fewer than 25 employees, and less than 15% of firms have more than 100 employees. About 60% have gross revenue under \$200k, and only about 4% have gross revenue exceeding \$5 million. The work is mostly contract work with businesses and governmental entities, and some contract work with residential homeowners' associations. Most of the large contracts are annual and renewable. Smaller contracts are month-to-month or quarterly. But all of the contracts are "indirect". By that, we mean that the ultimate consumer of patrol/guard services is one or more stages of production away from the security guard

firm. Visitors to a bar are protected by security guards hired by the bar owner. Likewise malls, supermarkets, sporting events, etc.

Contracted residential patrol is almost exclusively purchased by homeowner associations. Because the fate of such a contract rests on the opinions of a few, while the number of residents served by the contract is much larger, the security company's incentives are to manage the perceptions of these few people while the actual provision of security to the many is a secondary concern (a classic agency problem). Further, with a contract that is annually renewable, a large portion of the security company's business rides on a single contract. This pressure, combined with no objective measurement of patrol effectiveness, creates a business environment where price is the chief means of competition among firms.

#### *The Subscription Patrol and Restitution Alternative*

We now consider the implementation of the SPR business model as a replacement for the current state of affairs. This business model removes the agency of the homeowner association while adding objective metrics for subscribers to gauge effectiveness and need for the patrol. The surety element aligns the economic interests of the security company and the subscriber. The monthly reports, all-in-one service, and surety component are internalized benefits of the total service, leaving some externalized benefits of extraordinary patrol. Price discrimination of premium services between subscribers and non-subscribers will provide additional internalization of benefits.

While the subscription model has higher transaction costs, it gives more stability to the revenue of the firm. The SPR business model demands a variety of tasks from the patrol officer (front line sales force, security patrol, investigation, adjusting, and participation in mediation/arbitration). For this reason, the wages of the SPR officer will be the highest in the industry—higher even than most government police. Further, in the SPR business model, there will be a path to business ownership for the SPR officer which is totally lacking in the government sector. This additional prospect should draw an even more ambitious and talented pool into the SPR sector.

If the business model is successful—if it is adopted by a significant percentage of the population in the US—it will become the most significant business in the provision of home security, twice as large as the existing residential market for monitoring and guard services combined. Consider Table 1, which is a prediction of SPR business sector statistics predicated upon the assumptions listed. While it is immediately obvious that the establishment of a successful SPR business sector will create derived demand

for mediators and arbitrators, and they will undoubtedly require trade associations, there is more to the structure of production. Patrolmen will be educated for the SPR business sector, and lawyers will be educated for the sector. We expect special degree programs to develop. Professors of criminal justice and law will be required to turn out new graduates every year.



**Table 1. Prediction of SPR Business Sector Statistics at Full Penetration**

281,421,906	US Population, 2000 (US Census)
105,480,101	Households in US, 2000 (US Census)
2.67	Average household size
21,096,020	Number subscribing to SPR service
\$8,860,328,484	Gross Revenue of Business Sector
42,192	Number of patrol employees
4,791,489	Number of crime events per year
479,149	Number of mediations per year
479,149	Number of arbitrations per year
1843	Number of mediators
1843	Number of arbitrators
3686	Number of mediators + arbitrators
1,688	patrol graduates per year
111	law graduates per year
169	criminal justice professors
11	law professors
<b>Assumptions</b>	
20%	percent subscribing (similar to home
\$35.00	monthly fee per household
500	subscriber to patrolman ratio
8513	Total crime rate per 100,000 people
20%	raw clearance rate (weighted UCR)
50%	percent mediations of torts cleared
260	mediations per year per mediator
260	arbitrations per year per arbitrator
4.0%	patrol graduates per year per patrolman
3.0%	law graduates per year per (mediator or arbitrator)
10	patrol grads per year per criminal justice prof
10	law grads per year per law prof
<b>Data for Comparison / Reference</b>	
648,000	Number of police and sheriff's deputies, 2006
\$14,389,000,000	Estimated Gross Revenue of Security Systems Services in US, 2006 (IBISWorld)
\$2,158,350,000	Residential portion of Gross Revenue of Monitoring Services
\$13,340,000,000	Estimated Gross Revenue of Security Guard Companies in US, 2007 (BizMiner)
\$2,001,000,000	Residential portion of Gross Revenue of Security Guard Services (assume 15%)
\$4,159,350,000	Sum of gross revenues of residential Monitoring and Guard Services

We have stated that the SPR firms will issue monthly reports to subscribers. These monthly newsletters will contain not only statistics and maps, but also articles on security and advertisements. The articles will undoubtedly have an anarchist ideological slant,<sup>31</sup> since we have defended above that ideology is a competitive advantage. The obvious source of advertisements are the mediators and arbitrators, who will advertise not only for victim-offender mediations and arbitrations, but for mediations and arbitrations of all types. Thus does the subscriber pay for the privilege to be constantly reminded that non-state dispute resolution is quick, reliable, convenient, and affordable.

The arbitrators will quickly find that mediation casework is the ideal reference to appeal to community standards of appropriate restitution, as has been the case in historical free-market systems of law. And so, mediators and arbitrators will develop a trade association for the compilation, archiving, and publishing of mediation casework as well as restatements of restitution agreements to inform arbitration. This work should also draw substantial interest from the academic law community. These free market “prices” may even be referenced by government courts, just as the USSR Pricing Boards used to reference prices of goods in Europe and the US.

The SPR firm will have an economic interest in preventing crime. To that end, part of its community policing efforts will be in the discovery of at-risk conditions, such as job loss, alcoholism, drug abuse, family discord or divorce, teen pregnancy, animal cruelty, etc. Of course, the SPR firm will consume academic studies by criminologists and likely participate in criminological studies to understand the relative importance of these, and other, at-risk conditions. The SPR firm will ameliorate these at-risk conditions by contacting local non-profit organizations<sup>32</sup> dedicated to and competent in addressing these at-risk conditions. The special value that the SPR firm has in this regard is to connect the community service organization to those in need.

There are two chief problems for charities. First, raising funds for their cause. Second, finding the people to whom to minister. Both of these are communication problems that the SPR firm is well-positioned to help solve. We have already mentioned the role of finding at-risk conditions in the

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<sup>31</sup> To be clear, we mean that the SPR company will exhort the subscriber to be responsible for the security of his family and possessions, suggesting that the SPR company is only a single means to this end; the SPR company will never advocate statism; and will gladly suggest useful but politically incorrect means of defense to subscribers: purchasing and learning to use guns, statistics on the effectiveness of resisting attackers, etc.

<sup>32</sup> But no tax-funded organizations, of course.

subscription area. The obvious follow-through is for the SPR firm to report upon the discovery of the at-risk condition, to report upon the help the local charity is rendering, and to broaden this report as an article in the monthly newsletter highlighting the totality of the work of the local charity.

The SPR firm, by connecting the community to charitable organizations and playing an indispensable role in coordinating the actions of the community to spot at-risk conditions and treat them, will build a huge capital of social power. For a moment, we will digress into the social thought of Robert Nisbet.

Nisbet is perhaps best known as the author of *The Quest for Community* (Nisbet, 1953). The book was republished in 1962 under the title *Community and Power*.<sup>33</sup> While the strict libertarian might choose to array the market against power,<sup>34</sup> Nisbet prefers to array community and its necessary constitutive elements against power. His 1962 edition contains in the preface a useful “restate[ment of] the essential argument of the book,”<sup>35</sup> which we will review. Nisbet embraces the theme of alienation, by which he means that the individual “does not feel a part of the social order” and “has lost interest in being part of it”. This is accompanied by a state of mind that regards the social order as “remote, incomprehensible, or fraudulent; beyond real hope or desire; inviting apathy, boredom, or even hostility.” What causes such alienation? Nisbet says it is in part alienation from the past, and in part alienation from physical place and nature, but “alienation from place and property turns out to be, at bottom, estrangement from close personal ties”: that the “important link” is the social bond, the community. Here, Nisbet specifically has in mind “the individual’s relation to *social function* and *social authority*.” Authority is not power, but is rooted in the “statuses, functions, and allegiances which are the components of any association.” Authority is “indistinguishable from organization” and “it is based ultimately upon the consent of those under it.” Nisbet says of authority:

Apart from authority, as even the great anarchists have insisted, there can be no freedom, no individuality. What the anarchists said, and this is the splendid essence of anarchism and the link between it and such conservatives as Tocqueville and Acton, is, first, that there must be many authorities in society, and, second, that authority must be closely

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<sup>33</sup> Nisbet states in the preface to the 1962 edition, “...the new title is the one I should have chosen in the first place. It is briefer and, more important, exactly relevant to what the book is about.”

<sup>34</sup> Consider Spencer’s regime of contract versus the regime of authority or Rothbard’s book *Power and Market*.

<sup>35</sup> Quotations by Nisbet are drawn from the Preface to *Community and Power* unless otherwise noted.

united to objectives and functions which command the response and talents of its members. Freedom is to be found in the interstices of authority; it is nourished by competition among authorities.

Nisbet covers the problems of power in ways with which libertarians are familiar. Nisbet says, "Community is the product of people working together on problems, of autonomous and collective fulfillment of internal objectives, and of the experience of living under codes of authority which have been set in large degree by the persons involved." One of the problems of power is that the center of control is taken from the people concerned. "Where power is external or centralized, where it relieves groups of persons of the trouble of making important decisions...it is difficult for a true community to develop." Community, says Nisbet, "thrives on self-help ... and everything that removes a group from the performance of or involvement in its own government can hardly help but weaken the sense of community." So, what is Nisbet's prescription?

First, "we must not be afraid of utopianism."<sup>36</sup> With the complexity of modern life, central planning (but not necessarily government planning) is inevitable. Nisbet says, "Utopianism, after all, is social planning, and planning, as I have stressed...is indispensable in the kind of world that technology, democracy, and high population bring." But this planning should not be planning for "masses of individuals" which is both a "hopeless exercise" and "the substance of tyranny and the path to annihilation of personality." Instead, the planning he calls for is "a new *laissez faire*"<sup>37</sup> that will "hold fast to the ends of autonomy and freedom of choice" while "creat[ing] conditions within which autonomous groups may prosper". He seems to be calling to action those who are called today social entrepreneurs: "What we need at the present time is the knowledge and administrative skill to create a *laissez faire* in which the basic unit will be the social group." Expanding on this theme:

...we are in need of the creation, or re-creation, of intermediate associations, of groups and communities which lie intermediate to individual and state and whose autonomy from either state or the political mentality is some measure of the allegiance they command in their members' lives.

...

But the overriding objective of a new policy of *laissez faire* would be that of stimulating social inventions. [Nisbet 1975, p. 278–79]

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<sup>36</sup> A conservative said that?

<sup>37</sup> *Ibid.*, p. 278

These themes bring to mind the social processes of localizing and empowering communities to become responsible for their security against criminals. And it is these social processes that are set in motion by an SPR firm, and the authority of coordination of these functions will grow naturally from its carrying out of this function.

This is no idle speculation. Indeed, empowering communities with communication and building social relations is exactly the community-based integration program that has been deployed successfully by companies such as Critical Intervention Services for many years. Critical Intervention Services has developed an entire methodology of transforming a high-crime community into a low-crime community through a phased approach using a number of tactics, and proven this methodology with a track record of success. All of the tactics are predicated on empowering residents of the community to play a part in reducing crime and exerting rightful authority to drive out the criminal element.<sup>38</sup>

The vision we offer is this: the SPR business model is launched, it is accepted by Americans, and it grows. With it, grows an entire structure of production of security provision that is laced with ideological anarchism. The best officers are drawn into the SPR business sector. There is both derived demand that is created by the SPR firms, and also demand for other institutions which are a result of the SPR firms' work: increased arbitrations, mediations, and better funded and more effective charities that are connected to the local populations to which they minister. Eventually, even the cinema will dramatize the production of defense and law under the SPR business model, for the production of defense and law is of intense interest to people. Once this essential societal function is returned to the community, a fundamental shift in culture can and will begin.

## 6. Crisis and Liberty

What are the limits of action of the SPR firm? In its initial launch, does it cover thefts? Certainly. Rapes? This is uncertain. Murder? Almost certainly not. Does it have a chance to increase its scope of services over time? Is there a chance that it can outcompete the state in the provision of defense services?

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<sup>38</sup> See Poulin and Nemeth (2005), especially chapters 5-8, covering such topics as integration versus observation; deterring crime; detecting issues; defusing issues; defending the community; reclamation of the community environment; networking; anchoring; notice and purpose; officer demeanor and attitude; avoidance of responsibility; arrogance and interaction; failure to listen; shock tactics; high-shock strategies in high-crime communities; low-intensity shock strategies; and crime and environmental design.

The slow rise of authority for the SPR business sector that is traced above will undoubtedly allow the SPR business sector to increase its socially legitimated role. But what about crises? Are they threats or opportunities to the SPR business sector?

Rothbard optimistically wrote that crises presented opportunities for *laissez faire*:

For radical social change—a change to a different social system—to take place, there must be what is called a “crisis situation.” There must, in short, be a breakdown of the existing system which calls forth a general search for alternative solutions. When such a widespread search for social alternatives takes place, then activists of a dissenting movement must be available to supply that radical alternative, to relate the crisis to the inherent defects of the system itself, and to point out how the alternative system would solve the existing crisis and prevent any similar breakdowns in the future. Hopefully, the dissenters would also have provided a track record of predicting and warning against the crisis that now exists. [Rothbard 1973, p. 392]

Furthermore, one of the characteristics of crisis situations is that even the ruling elites begin to weaken their support for the system. Because of the crisis, even part of the State begins to lose its zest and enthusiasm for rule. In short, a failure of nerve by segments of the State occurs. Thus, in these situations of breakdown, even members of the ruling elite may convert to an alternative system or, at the least, may lose their enthusiasm for the existing one.

Thus the historian Lawrence Stone stresses, as a requirement for radical change, a decay in the will of the ruling elite. “The elite may lose its manipulative skill, or its military superiority, or its self-confidence or its cohesion; it may become estranged from the non-elite, or overwhelmed by a financial crisis; it may be incompetent, or weak or brutal.” (Rothbard 1973, p. 320)

Higgs, on the other hand, wrote that it is almost inevitable that government will expand in scope and power during crises. We will treat his thought at length, because we regard it as an important challenge.

#### RECAPITULATION: WHY THE RATCHET?

To a large extent Big Government has emerged in twentieth-century America during relatively brief episodes of great social crisis, either war or depression. One therefore needs a theory to explain: (1) why government expands the scope of its effective authority over economic decision-making with the onset of a crisis; and (2) why the retrenchment that follows the crisis is incomplete, leaving government permanently Bigger than it would have been had the crisis never occurred. These are

essential elements of a theory that views the growth of government not as a mere trend phenomenon but as a path-dependent historical process.

The expansion phase of the ratchet reflects the decisions of a quasi-autonomous government responding to an insistent but ill-defined public demand that the government “do something” about a crisis. Whatever the policy adopted, however, costs must be borne by people outside the government. The greater are the costs, the less willing is the public to tolerate them. When people are burdened too heavily, their resistance jeopardizes not only the policy but, in a normally operating representative democracy, the government itself. Anticipating such reactions, the government takes steps to conceal the true costs of its policies. Most importantly, it substitutes a (cost-hiding) command-and-control system of resource allocation for the (cost-revealing) market system and its utterly visible measuring rod of money.

The incompleteness of the retrenchment phase of the ratchet is usually explained as the product of the politics of entrenched bureaucrats, their clients, and connected politicians—the so-called “iron triangles.” The explanation is valid but incomplete. It accounts for only a part of Big Government. It can and should be supplemented by a (partial) theory of ideological change.

This theory pertains to only one aspect of the ideological climate, namely, the beliefs of elites (and presumably of the masses whose beliefs attach to some extent as dependent variables) about the appropriate scope of effective governmental authority over economic decision-making. Crises lead to permanent shifts in the tolerable limits of the true size of government. Crises break down ideological resistance to Big Government by (1) providing occasions for the improvement of command-and-control mechanisms, which renders them less obnoxious; (2) discrediting the conservatives’ domino theory, with its implication that all civil and political liberties will be lost in a mixed economy; and (3) creating opportunities for many people both within and without the government to do well for themselves and hence to look more favorably on the new order. In all these respects—strongly reinforced, of course, by ceaseless outpourings of official propaganda—ideological evolution displays a path-dependency of its own, the salient feature of which is the crisis-induced reduction of resistance to Big Government. [Higgs 1987, p. 73]

Even when faced with the specific example of a flourishing SPR business sector, Higgs is skeptical:

I do not think ... that we can expect a substantial effect [from an SPR business sector] on the ratchet effect that I have written about. This effect arises from the trigger of a threat to public security so pervasive and threatening that even successfully functioning patrol and restitution

services would probably not be seen as adequate means of dealing with it.

You write that “[p]eople are not generally ideological, but practical. If an institution can solve problems, or make a good case that it can, then it will be embraced by people, and given more social power.” I believe, on the contrary, that people are profoundly ideological; indeed, their (often unarticulated or even unconscious) ideological predisposition to regard the government as their savior serves as a precondition for the crisis ratchet phenomenon to operate—as demonstrated by the fact that it operated hardly at all in the nineteenth-century United States, when the dominant ideology entailed distrust and even fear of government and a disposition to confine it to a narrow channel. We have had ratchets since World War I because Progressivism took hold prior to that war and has remained more or less dominant since then.

Even if we could somehow get past that obstacle, it seems unlikely that people would look to patrol and restitution services, even in expanded forms, to deal with societal threats such as attacks by a foreign state, potentially wide-scale terrorism, rampant civil disorder, or economic collapse. The rulers will always rush to assure the populace that they are dealing with such threats, and, if need be, they will crush any competing providers of security that might already exist or potentially arise. People under the sway of Progressive ideology will always be taken in by such assurances; fearful, bewildered people are always easy pickings for power-hungry rulers—it’s the trick that works every time.

Conceivably, if many, many voluntary measures—of which your patrol and restitution service might well be one—were to gain places in the social order, then their successful performance might eventually cause a deterioration in the grip of Progressive ideology on the populace as people came to understand that they do not need the state to take care of them and indeed that they can do so better without it. However, so long as the ideological predispositions remain anything like what they are now in this country and nearly all others, there is little hope for avoiding another spurt of government growth whenever any serious societal crisis comes along (or is made to come along).<sup>39</sup>

We first approach Higgs’s argument by citing the concession he makes to the proliferation of voluntary measures, and their collective effect on the ideology of the populace. Although Higgs is pessimistic about SPR’s chances for success, he admits that, in principle, a flourishing private sector—including private defense services—could reverse the ratchet effect and accelerate the decline of the state. It is exactly this flowering of Nisbettian mediating institutions that we foresee as being fomented by the SPR business

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<sup>39</sup> Private communication, Robert Higgs to Gil Guillory, 30 March 2006. Quoted with permission.



sector. The SPR business sector will tend to minimize or even neutralize the ratchet effect by encouraging additional demand for arbitration and mediation services, by forging relationships with SPR customers, and by undermining the belief that only government can provide protection services. As the SPR business sector faces and resolves crises, its power to oppose the ratchet will increase.

One type of crisis to which the SPR business sector will be particularly well-suited is a natural disaster that results in an evacuation of the majority of the population: a hurricane, a flood, a tsunami. The SPR business sector will have in place mutual aid agreements<sup>40</sup> so that SPR officers from a large geographic area will, in time of crisis, deploy to a region of high need for a short period of time. There would be no need for people to “look to” SPR firms to provide order—the SPR firms would simply do it in accordance with their contractual duties. This is not mere speculation. New Orleans Private Patrol proudly proclaims on its website,<sup>41</sup> “NOPP stayed on the job through Katrina and Rita (we actually made the payroll on the Wednesday after the storm), and have since made an aggressive comeback. We are back up to our pre-Katrina service hours, and have 85% of our personnel slots filled—I doubt any other security company can make that claim!” Viewed in the context of their business model, this is indeed praiseworthy. By contrast, the tax-funded New Orleans Police were unable to account for 240 of the 1,450-member force during or after Katrina (AP Wire, 2005). With an SPR business sector fully operating, the number of security personnel deployed in such a crisis will be impressively large and its impact will not go unnoticed.

Of course, Higgs might agree that the private sector has the potential to reverse the ratchet, while still insisting that, under prevailing ideological conditions, the ratchet effect can be expected to operate wherever crises are so pervasive and threatening that the people do not see private enterprise as a viable solution. Indeed, this seems to be the essence of Higgs’s argument. The problem, however, is that this perspective appears to rely on circular reasoning. It is like saying, “Private enterprise cannot counteract the ratchet effect because the ratchet effect is triggered by crises that people believe private enterprise cannot handle.” What cries out for explanation, however, is *why* people believe some crises cannot be resolved by private enterprise. Higgs’s answer to this question is that people have largely absorbed a Progressivist ideology according to which the only appropriate and effective response to certain types of crises is government action. It is certainly true that this ideology is prevalent. Nevertheless, Higgs seems to regard this

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<sup>40</sup> On the contractual networks into which private law enforcement providers can be expected to organize themselves, see Hoppe (1998).

<sup>41</sup> See [www.nopplpp.com](http://www.nopplpp.com) Accessed 18 February 2008.

ideology as virtually insurmountable. There is no reason why it must be so. Indeed, this fatalistic view produces a paradox by suggesting that, while a society under the influence of Progressivism can face any number of crises that trigger an expansion of government control, Progressivism itself can never face a crisis—the faith of its ideological adherents can never be shaken. Against this view, we maintain that the SPR business sector, once established, can precipitate a crisis of confidence within Progressivism; a robust private sector committed to carrying out functions sometimes thought to be the exclusive domain of government will help loosen Progressivism’s grip and thereby help counteract the ratchet effect. If the ratchet is caused by crises that people think cannot be solved by the private sector, then a private sector that demonstrates its ability to handle precisely those crises should help diminish the public’s faith in the necessity for government action. The result could very well be a “reverse ratchet effect” that diminishes the scope of government influence over private decision-making and economic activity.

But the strongest argument we can make against Higgs in this context is that we know what the next crisis in American history will be, and Higgs’s argument does not address it. We argue that the next crisis in American history is on the horizon, and is uncharacteristically predictable. David Walker, former<sup>42</sup> Comptroller General of the United States,<sup>43</sup> has spoken repeatedly about the fiscal irresponsibility of the US Federal Government, and the actuarial time bomb due to explode presently. The population wave of baby boomers started to become eligible for Social Security in January 2008 (age 62 for those born in 1946), and this leading edge of seniors will become eligible for Medicare in January 2011. As Walker explains, “when this happens it will result in a tsunami of spending that unlike most tsunamis will never recede. It’s a permanent change in the economic, social, and demographic picture that, unless we end up changing course, could swamp the ship of state.” (Georgia State University, 2007). The magnitude of this crisis is virtually impossible to overstate. Social Security, Medicare and Medicaid already constitute 40 percent of the federal budget (Bixby 2008). Projections of increasing longevities and health care costs put unfunded government liabilities at about \$8 trillion, which is approximately \$400,000 per household in additional liabilities (over and above the national debt and current levels of taxation) in the US (Walker 2007). This fiscal pressure will

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<sup>42</sup> He has resigned his position effective 12 March 2008 to become CEO of the newly-formed Peter G. Peterson Foundation.

<sup>43</sup> See his biographies at

[http://en.wikipedia.org/wiki/David\\_M.\\_Walker\\_%28U.S.\\_Comptroller\\_General%29](http://en.wikipedia.org/wiki/David_M._Walker_%28U.S._Comptroller_General%29) and [www.gao.gov/cghome/dwbiog.html](http://www.gao.gov/cghome/dwbiog.html)

be mirrored in many states of the union, which also have unfunded pension and healthcare programs.

In this sort of crisis, which will unfold and continually worsen over the next 20 years, we expect federal and state governments to resort to all possible means to close the fiscal gap: increased taxation, inflation, government borrowing, means-testing of benefits, rationing of benefits, reduction of benefits, partial repudiation of debt, and old-fashioned cutting of government programs. Associated with this will be increased incentives to operate in the black market, to avoid taxes, and to lie to obtain previously-promised benefits. The natural result will be crackdowns on tax cheats, underground economies, and welfare frauds; and the use of government corruption exposés as scapegoats for fiscal woes. Indeed, this crisis has already started, with Governor Schwarzenegger proposing to release tens of thousands of prisoners (San Francisco Chronicle, 2008).<sup>44</sup>

In this sort of fiscal crisis, several elements of Higgs's ratchet theory ring hollow. For governments can no longer engage in cost-hiding resource allocation. Criminals will be released from prisons, patrol budgets will be reduced, other tax-funded services will be reduced, and people will be compelled to look to civil society for relief. The fiscal pressure will be too strong for the ideology of the free lunch to countervail. Indeed, it will be as Rothbard describes—a period when even the ruling elites begin to weaken their support for the system. With the worsening fiscal pressures over time, the ideology of those who enter government will change. Consider this as a Sowellian ideological progression. Sowell (1996) describes how the ideology of the first occupants of positions in a government bureau is more idealistic and the later occupants' ideology and demeanor more like the civil service we know from the DMV. For a long time, those who enter government will not be able to enact grand schemes to spend vast quantities of tax money. There will be a rearguard action to preserve government institutions such as Social Security and Medicare.

Over this time, the SPR business sector will grow and flourish while the tax-funded police sector is starved for funds. We can expect tax-funded police to lose their zest and enthusiasm for rule, when a much brighter future awaits them in the market provision of their chosen profession.

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<sup>44</sup> This article reads, in part: "Gov. Arnold Schwarzenegger, acknowledging that California faces tough economic times, proposed an austere budget Thursday for the next fiscal year that would take billions of dollars from public schools, shut down four dozen state parks and release tens of thousands of prisoners to close a projected \$14.5 billion deficit."

Ideology influences history just as well as history influences ideology. Indeed, Raico (2004) says “people tend to derive their political views from what they think they know about history”. Just what ideological impact will this 20-year crisis have on the populace? We suggest that it will show people that there are limits to what the state can do; that the state is not omnipotent, not omni-benevolent. A salutary effect, no doubt. But when combined with the continuing propaganda by anarchists, and especially by an SPR business sector that has the ear of fully 1/5 of households in a monthly newsletter, it is hard to agree that state propaganda will somehow be stronger when voiced by an institution that cannot make good on its many promises.

Indeed, it is very likely that the fiscal crisis of Social Security and Medicare will allow many families to reclaim intergenerational obligations where the state fails to meet needs, and charities will rise to the occasion of meeting needs where family is not strong enough. We don't see a gloomy future for Americans over the next 2 decades. We see a period of increasing civil society.

In sum, we think the future for liberty is bright. The ratchet has met its match in the fiscal crisis. The influence that Subscription Patrol and Restitution will have on ideology and institutions is extremely positive. Subscription Patrol and Restitution has the potential to be a market solution to the social problem of internal security that is so comprehensive and robust, that when combined with extant private solutions, could grow into a role that completely obviates the need for state agents in this field. If this occurs, then other institutional entrepreneurs will learn from these developments and establish heretofore unimagined institutions that build upon such success, and there is hope that market-provided defense and law will be eventually realized.

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