

of regulations puts pressure on those remaining." That should be posted on the wall of every ministry of finance and central bank.

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The Enterprise of Law

Bruce L. Benson

San Francisco: Pacific Research Institute, 1990,
397 pp.

In the *Enterprise of Law*, Bruce Benson provides us with the most comprehensive treatise on private sector alternatives to government law enforcement available today. Benson systematically addresses all the issues, arguments, and objections surrounding the growing role of market institutions in the legal system. But his book is more than a mere defense of current privatization trends in protective services, corrections, and dispute resolution. The *Enterprise of Law* questions the seemingly axiomatic proposition that law and order are "necessary functions of government." Benson is fully aware that neither the policymaking community nor the general public is prepared to debate the *complete* privatization of all legal institutions. But the time is right, he argues, "to question the *presumption* that law and order must be governmentally provided." To Benson's credit, many readers will begin questioning that presumption even before completing the book.

The book begins with an examination of historical precedents of private, customary legal systems. Benson points out that many legal systems have developed "from below" as custom—as opposed to being imposed "from above," such as by a king or a legislature. This brief historical review, while sometimes tedious, is nevertheless a good starting point because the reader is forced to think about the basic premises of the American legal order.

Benson argues that customary legal systems are likely to include "an emphasis on individual rights because [in such a system] recognition of legal duty requires [the] voluntary cooperation of individuals through reciprocal arrangements." This is a persuasive argument, but the key word is "likely." One of Benson's own examples amply illustrates the exception.

Under the customary law of the Kapauku Papuans of West New Guinea, adulterous women were routinely executed by their husbands.

Benson seems to play down this and countless other practices antithetical to individual rights that are commonly found in customary legal systems.

This is not to say that pernicious practices have not existed under governmental regimes. Benson's argument, however, suggests that customary law can do a better job of protecting individual rights than governmental institutions, including, presumably, limited constitutional institutions such as the tripartite form of government in the United States. That contention is less convincingly demonstrated than Benson's much stronger argument that the enterprise of law would be operated more *efficiently* by purely private institutions.

Indeed, the best part of the book is Benson's public choice analysis of the police and the courts. He shows how both institutions currently operate under perverse incentives that significantly reduce their overall effectiveness in providing quality service to customers. For example, public police forces often respond to criticism by touting statistics about an "increased number of arrests." Because such statistics are accepted as a measure of effectiveness in combating crime, police departments have the incentive to inflate the numbers by concentrating their resources on easy arrests and easily solvable crimes like prostitution and drug dealing. Violent crimes consequently receive less attention even though they are of the utmost concern to the taxpaying public.

Benson has many more insights along these lines, and some might make good reform-minded proposals. For example, why not hold individual citizens financially responsible for false alarms? Benson shows that false alarms are extremely costly as valuable police resources could be responding to important calls elsewhere.

Public choice analysis is also used to defend privatization efforts currently under way. Benson addresses all of the issues and standard objections with straightforward and persuasive arguments. Indeed, if the issue is whether privatization trends should continue in legal services, Benson makes a compelling case that they should.

Benson's more controversial thesis—that a private system of law and order can protect individual rights even better than a fundamentally reformed system of law here in the United States—is less compelling. He minimizes the enforcement problems associated with private legal systems. In fact, he sees little difference between public and private law enforcement. According to Benson, "government enforcement of property rights is based on the threat of violence in the same way that a customary property rights system is. . . . If someone refuses to comply with the government's rules, he is declared an outlaw." That may be true, but it is a rare situation when the lawbreaker is caught "red-handed." Investigations are often necessary to determine the *identity* of the offender. This is where the problem begins. How can an effective investigation proceed under a private process if the investigators have to rely on the voluntary cooperation of every witness and suspect? Benson notes that customary law is recognized "because each individual recognizes

the benefits of behaving in accordance with other individuals' expectations" — "not because it is backed by the power of some strong institution." He suggests, without much discussion, that the incentives of reciprocity can protect individual rights better than any governmental system. This line of argument should have been developed in more detail, for as it stands, Benson's conclusion is hardly compelling.

Under the U.S. Constitution, the government may conduct a "reasonable search" if an independent magistrate agrees that the police have "probable cause" to believe that a particular citizen has committed a particular crime. U.S. citizens cannot stop or delay a search by challenging the government's finding of probable cause. A private police investigation, by contrast, could be thwarted by lack of consent, giving guilty persons the opportunity to destroy evidence of the crime and their participation in it. A woman, for example, could truthfully report that she had been raped during a party at a millionaire's compound. Under customary law, her private investigators might be met at the perimeter of the compound by the millionaire's own police, who explain that they have no intention of allowing a search of the premises while the festivities are still going on, but that they might allow a search the next evening. The point here is that there may be unacceptable costs (that is, solvable crimes going unsolved) associated with private police investigations.

While Benson concedes that private systems of law would suffer imperfections, he argues that in terms of "relative performance," there is simply no contest. It is unlikely that the *Enterprise of Law* will lead many readers to share Benson's conviction on this point because certain problems are not addressed adequately. But it is very likely that this book will leave many readers with the belief that the contest between public and private systems of law is much closer than they had originally thought.

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Who Prospers?

How Cultural Values Shape Economic and Political Success

Lawrence J. Harrison

New York: Basic Books, 1992, 247 pp.

We live in an era of cultural egalitarianism; supposedly all cultures are equal, and cultural values do not matter. Ironically perhaps, our time is also marked by demands for special racial and ethnic rights, which threaten to balkanize America. Thus it is refreshing that Lawrence E. Harrison's new book risks political incorrectness and declares that culture does matter. Who can seriously deny that a society's prevailing attitudes toward self-responsibility, learning, work, entrepreneurship, achievement, the future, and trust of strangers heavily influence its economic success? The finest work on economic development—fron. such