

# Dealing with Crime in a Free Society



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The great Russian novelist Fyodor Dostoyevski noted that much could be learned about the nature of a particular society by looking into its prisons. An extensive look into the American penal system reveals much accuracy in the prediction of Huey Long, the legendary populist politician of Louisiana in the pre-World War Two era, that fascism would come to America under the banner of Americanism rather than the fasces or the swastika. George Orwell's useful insight that the perfect totalitarian state would be a formal democracy where at least thirty percent of the population was economically dependent on the state describes modern welfare-warfare states almost perfectly.

The United States is currently the most powerful state not only in the contemporary world but in all of history. The U.S. maintains history's largest military machine, approximately thirty-seven percent of the world's military production. The British conservative John Gray notes that contemporary America also maintains the most centralized state and most expansive bureaucracy of any advanced nation. Not coincidentally, the U.S. also maintains the largest prison population as well. Over two million people are now incarcerated in American penal institutions including federal and state prisons, local jails, juvenile facilities, psychiatric prisons, "boot camps" (pseudo-military concentration camps), pseudo-scientific "drug abuse treatment" programs, work camps, halfway houses and the like. In addition, another four million are under the direct supervision of the state by means of the probation and parole system. Altogether, nearly one in thirty Americans is in the clutches of the state's apparatus of repression and control commonly referred to as the "criminal justice system". The very term itself is reminiscent of Orwellian Newspeak. "Criminal Justice" largely consists of a system whereby the state uses the cover of legal formalities to commit crimes against individuals such as the persecution of persons who engage in cultural practices disfavored by the state, the excessive punishment and brutalization of persons who have done minor or modest harms to others and the suppression of the economic livelihoods of

persons lacking political power for the benefit of their more powerful competitors.

Political thinkers as diverse as Karl Marx and Murray Rothbard or C.S. Lewis and Michele Foucault have recognized that states maintain an ideological superstructure, that is, a set of official ideas welded together for the purpose of legitimizing the objectives of the state, depicting those objectives as benevolent and benign and indoctrinating the population with official ideology for the purpose of maintaining popular support for the state. This has been true of all states but the process has become particularly sophisticated since the advent of modern systems of mass indoctrination via the public schools, state-subsidized and controlled universities, the rise of a politically powerful intellectual class (what Noam Chomsky calls the “New Mandarins”) and the mass media, particularly television. The United States has the oldest, largest and most sophisticated mass media and the largest state-run educational system so it should not be a surprise when Chomsky notes:

“The United States is unusual among the industrial democracies in the rigidity of the system of ideological control-’indoctrination’, we might say-exercised through the mass media.”

This process of indoctrination serves to inculcate among the general population a certain set of beliefs concerning a wide variety of matters ranging from foreign policy to the environment to economic policy to crime. With regards to the question of crime, the public is taught by the government, the media and the educational system that one of the primary reasons for the existence of the state is to protect citizens from predatory crime, that public officials are motivated by a desire to see that this is done and that persons captured, imprisoned or executed by the state’s enforcement apparatus are deserving of their fate. But these are only half-truths. Certainly any state wishes to maintain at least a minimal amount of public order. Order is necessary for control. There is no point to ruling over a population that cannot be controlled and rallied behind the aims of the state when popular compliance is necessary for the achievement of state objectives.

forces, courts and prisons. Victims would be able to legally defend themselves and have some means for collecting compensation from the criminal. Those criminals who desired to do so would have the means of making amends for their actions. Prisoners would no longer be subject to brutal and degrading conditions. The families of criminals could enjoy greater contact with them if they desired. Individuals would have a much wider variety of choices available to them concerning the matter of how to protect themselves from crime. Criminals would generally be more productive as a labor force thereby strengthening overall economic conditions. Civil liberties and individual freedom would be more expansive and less easily undermined. Crime control agents would be more respected and of a higher moral caliber than is currently the case. Judicial proceedings would be swifter and more honest and efficient.

Implementation of a non-governmental crime control system should rightfully be brought about by a diverse coalition of businesses, neighborhood groups, enlightened criminologists, victims rights groups, prisoners rights and civil liberties groups, private protection services, local communities, insurance companies, gun rights groups, economists, academics, prisoners’ families, churches and religious organizations, humanitarian groups and others demanding such sweeping changes at the local and regional level for the sake of making everyone safer from both ordinary criminals as well the greatest criminal organization of all, the state.

what might be called the “East German” solution. The former nation of East Germany was, internally, an ordinary country (albeit subject to severe Communist repression) with houses, factories, automobiles, hospitals, schools, etc. However, citizens were not permitted to leave the country and those attempting to scale the border walls were sometimes machine gunned on sight. Similar borders could be erected around penal areas as well. However, this would be costly and require additional manpower that would have to be paid for from funds gathered from the garnishment of residents’ wages. Consequently, payments to victims would be slower and the restitution process would take longer thereby creating more frustration for the victims. Alternately, the owners and operators of such areas could be held legally liable for further crimes committed by residents who left the penal area. Such civil damage suits could be financially ruinous to the proprietors of penal areas. Therefore, operators and owners would take their own precautions to prevent “escapes” or simply refuse admittance to prospective “inmates” likely to be the most serious risks. Lastly, banished persons leaving the penal area illegally might be declared “outlaws” by the courts. Such persons would be beyond the protection of the law upon re-entering society and victims would be allowed to obtain compensation or enact retribution by whatever means they chose. If a rapist left the penal community and his victim or her father or brother or husband or lover subsequently killed him, the protection services and legal systems would simply ignore such an act. Such a system would be far more humane and respectful of human liberty, dignity and responsibility than the monstrous prison-industrial complex and its slavocracy currently in place. Exiled persons would be allowed to choose the place to which they would be banished (provided the owners would have them) and they would be able to move from one penal area to another if they wished (paying the cost of their own transportation and security, of course).

Conversion from a state-run to a non-governmental crime control system would be a winning situation for virtually all parties involved. The average person would be considerably safer from predatory crime than at present. Taxpayers would no longer have to finance wasteful, unproductive and abusive government police

Also, the maintenance of the illusion that the public is somehow being protected by the state is a useful means of retaining popular allegiance. Most people seem to fear nothing quite so much as insecurity and chaos. A state that was perceived by large sectors of society as failing to provide elementary levels of protection against even common criminals would have considerable difficulty retaining public sympathy and, in the long run, retaining power. Public officials ranging from politicians to police chiefs to district attorneys to judges recognize that they and their respective institutions and agencies must be able to maintain at least the illusion of efficiency, competence, honesty and benevolence among large sectors of society, particularly the influential, in order to preserve popular support for themselves. And it is certainly true that the ranks of those who fall into the clutches of the state do include some persons who have behaved in a way that is genuinely destructive of the lives and liberties of others.

But these concerns are not the primary purpose of the state’s enforcement apparatus. If the true purpose of “criminal justice” was to simply protect citizens from crime and assist victims, then a certain set of behaviors would naturally be expected from those controlling criminal justice and law enforcement policy. It would be natural to expect that enforcement resources would, as a priority, be directed towards the most serious crimes first and towards those geographical areas where crimes were most likely to be committed. It would also be expected that criminals would be dealt with in a way that was least likely to inflict greater damage upon victims and with the aim of restoring the victims as much as possible. It would be expected that criminal justice would be structured in such a way as to maximize the cost effectiveness of the adjudication of criminal cases so as to inflict the least possible harm on the taxpayer who, after all, is the one financing the whole system.

When contemporary state-run justice systems are observed, the features mentioned above are noticeably absent. It would be expected that the bulk of police resources would be allocated for the prevention of murder, rape and other crimes of severe violence against persons as the first order of business. Protection of the

property of citizens against thieves and burglars would be second. Petty theft and minor assaults would be next with victimless activities such as drug use and prostitution receiving the least amount of attention or perhaps no attention at all. Often, however, the exact opposite is true. The prostitutes' rights activist Priscilla Alexander notes that, in some metropolitan areas, prostitution enforcement is the single largest item in the police budget. Many police departments devote a full fifty percent of their resources to drug enforcement. Simultaneously, large numbers of homicides go uninvestigated in some major cities. Many police departments do not even gather fingerprints at the scene of ordinary burglaries, if they show up at all when summoned.

Similarly, the largest number of patrol policemen are often stationed in areas of cities with the least amount of crime. Areas with the highest crime rates are frequently areas where a policeman is rather difficult to find. Victims of crime are often treated rudely and with indifference by law enforcement personnel. Courts often treat victims as though they are doing them a favor by prosecuting those who have harmed them. Efforts by victims to collect compensation from those who have wronged them are often unsuccessful. Indeed, victims are regarded by the "criminal justice" system as mere witnesses to the crime with the state being the actual victim. And victims are treated as if it is their civic duty to help the state win its case regardless of whatever interests or concerns the victim may have. In Chesterfield County, Virginia battered women are prosecuted for obstruction of justice if they refuse to testify against their attackers in court.

The evidence shows that simple protection of the ordinary citizen from predatory crime is, at best, a tertiary concern of the criminal justice system. The system's primary purposes involve numerous other concerns which receive priority. The first of these is, of course, the protection of the power and authority of the state itself. This is true under all forms of state systems. For example, the police forces in China and Iran function in part to apprehend murderers, rapists and thieves who are then punished rather severely indeed. Yet no American believes that the Chinese or Iranian police exist primarily to assist innocent victims of common

kidnappers, habitual thieves, violent predators and others of their ilk are not entitled to live in a free society as sovereign members of the community. There simply is no grounds on which to grant freedom to those do not respect it and have not earned it. The rest of the community is entitled to say to such persons: "You do not respect us and our liberty and we will not associate with you." Such persons may be expelled from the free society by force if necessary.

Ideally, such exiled persons would be banished to separate, segregated communities from which they would not be allowed exit. Inside such communities, they would be allowed to engage in labor or trade for the purpose of self-maintenance and compensating victims. Life inside such communities could be potentially completely normalized with residents working regular jobs in factories, on farms or in workshops. They could wear regular clothes and live in regular housing (trailers, rented rooms, bunkhouses, even private homes in some cases). They could produce their own entertainment. Others willing to risk such an adventure could choose to voluntarily live in such a community if they wished. Such communities might even engage in considerable trade with the outside world. Where would such communities be located? Sections of cities, ghost towns, unpopulated rural areas, mountainous regions, coastal areas, islands, deserts, former military bases, the grounds of former prison facilities or lands formerly owned by government are all possibilities. Who would own or operate such areas? Individual communities or groups of communities might set aside specific areas for such purposes. Private businesses and investors might operate such areas and then employ the residents to work in local industrial facilities. Churches might operate some penal areas as a means of "saving souls". Humanitarian organizations or organizations of criminals' families might operate some penal areas. Criminal organizations might even operate penal areas of their own. For example, the mafia or the Crypts or the Hell's Angels might maintain havens for exiled members of their own organizations.

How would residents of penal communities be prevented from re-entering "ordinary" society? Several possibilities exist. The first is

What about criminals who are simply unwilling to compensate victims? These criminals might be dealt with the same way other debtors are handled in the current system. Wages could be garnished, bank accounts frozen, assets seized, property forfeited, negative credit ratings issued, etc. The names of such criminals could go into data banks and formalized economic boycotts and social ostracism against such persons could commence. Landlords could refuse to rent to such persons, employers could refuse to hire them, worker or tenant cooperatives could expel them, collective communities might eject them, their pictures might be placed in newspapers or on television channels established for the purpose of dealing with such matters. Legal or business contracts entered into by such persons might not be recognized by the private or common law courts. Restaurants could refuse them service. Universities could fail to admit them. Non-governmental professional certification boards could revoke their certification status. Utility companies could cancel their service. Possible sanctions such as these seem limitless.

The question remains as to what might be done to criminals who continue to refuse to compensate victims even after having reasonable opportunity to do so and after having comprehensive economic and social sanctions enacted against them? Also, there is the question of persons who commit crimes of such a serious nature that their mere presence in society makes them a clear and present danger to others? The central issue involved at this point is the matter of what a free society may do to those persons who refuse to recognize or respect the liberty of others and who refuse to take responsibility for their own harms inflicted on others. In a free society, individuals are sovereign. Only individuals have “rights”. Society, and certainly the state, are not entitled to “rights” as abstract entities. What “rights” are individual crime victims entitled to? Victims are entitled to own and carry weapons and to use them to defend themselves against criminal aggressors by any means necessary. Victims are entitled to the fullest compensation possible at the expense of the criminal. Lastly, victims are entitled to have persons who are a demonstrable, proven (i.e. criminally convicted) threat to themselves removed from the community if defense needs warrant it. Murderers, rapists, serial killers,

crimes in their respective countries. It is correctly recognized that the first purpose of the Chinese police is to protect the position of authority of the Chinese Communist Party. Likewise, it is acknowledged that the Iranian police exist first and foremost to maintain the power of the mullahs who rule that particular nation. Both the Chinese and Iranian police mix genuine protection of citizens with a good deal of political, religious and cultural persecution of those who have done nothing to others. A similar situation exists in the contemporary United States. American police do indeed protect some citizens from some crimes at certain times. However, protective activity of this sort is intermixed with and often overshadowed by the use of police power to advance various political and economic agendas and to engage in various forms of political, cultural and economic repression.

Law enforcement and criminal justice resources are allocated primarily on the basis of political influence and patronage. The journalist James Bovard notes that “democratic” states typically function as oligopolies of “special interest” groups. Officials determine policy on the basis of demands made by influential constituent groups, considerations involving media and public relations, personal career interests and the objectives of various conflicting and overlapping bureaucratic organizations of which the state is primarily composed. The goal becomes not to control or reduce serious crimes but to contain such criminal activity within those geographical areas populated by persons lacking wealth, influence or political power, particularly ethnic minorities and the poor. It is common to see five or more times as many patrol policemen in wealthier, more influential sections of cities than in poor ones. Response time to emergency calls is typically much shorter in well-to-do neighborhoods than in impoverished ones. The principle motivating factors for criminal justice officials are budgets, careers, political pressures and media relations. This explains why, as noted earlier, prostitution enforcement is sometimes the largest expenditure in the budgets of metropolitan police forces. Prostitution is a consensual activity, a misdemeanor in most jurisdictions and a means of support for many poor and drug addicted women. Yet prostitutes are a source of easy arrests and easy but exciting police work. Prostitution arrests are used to

inflate overall arrest statistics, thereby providing justification for a larger police budget. Vice squads are a source of relatively safe employment for police and a means of career advancement. Opposition to prostitutes, particularly street prostitutes who are the ones most likely to be persecuted by the police, comes primarily from well-to-do and politically connected business and civic interests who view the presence of prostitutes on urban streets as a threat to their own status interests, class position, property values and aesthetic and lifestyle interests and, in some cases, moral or religious views. Therefore, driving prostitutes out of middle class areas becomes a more important law enforcement objective than preventing homicides and armed robberies in poor areas. Furthermore, campaigns against street prostitution frequently receive a fair amount of media attention and consequently serve the public relations interests of law enforcement and criminal justice agencies.

Drug enforcement plays a similar role in criminal justice policy. A wide assortment of political, economic and cultural interest groups exist that benefit substantially from organized state persecution of those who use and sell certain psychoactive substances. Much law enforcement activity is simply a cover for the pursuit of the agendas of private economic interests operating in collusion with government. The enforcement of zoning and licensing laws, land use regulations, building codes, property maintenance requirements, prohibitions against vending and peddling or drinking or sleeping in public serves primarily to advance the interests of larger businesses by stifling competition from smaller ones and artificially inflating the value of the property of the relatively well-to-do by suppressing the activities of small property holders, small entrepreneurs and the destitute. The result is a decrease in affordable housing, business opportunities and employment, cultural and recreational activities, available for the disadvantaged. In the Richmond, Virginia area a widely publicized government and law enforcement program known as "Blitz to Bloom" has been put into place whereby large numbers of police and other government agents (such as building and zoning inspectors) are sent into targeted, low-income areas, typically those populated by minorities, for the purpose of evicting poor tenants

they have endured? Criminals would be liable for the amount of actual harm inflicted on the victim. In the case of monetary or property crimes, they would be required to pay the full cost of restoring the victim. In addition, they would be responsible for the cost of investigating and prosecuting the crime, additional losses or aggravation incurred by the victim during the course of adjudicating the case (time lost from work, travel expenses, medical problems resulting from stress, etc.). Some have argued that under a system of simple restitution for most crimes that criminals would essentially "get away" with their misdeeds if they only faced the possibility of simply having to return the stolen goods to the rightful owner if caught. As can be seen, however, this is hardly the case under a system of simple restitution. Criminals would incur considerably high debts, way beyond that of the profits from the crime itself. Many criminals might find themselves indebted to victims or their representatives for many, many years to come.

How would such legal judgments against criminals be enforced? The current system is hardly effective in many ways. Simply imprisoning criminals is counterproductive if victims are to be adequately compensated. Such a practice makes no more sense than the custom in some earlier cultures of incarcerating debtors in "debtors' prisons" so as to insure that creditors are yet again unable to collect payment. If a criminal was willing to comply with the mandates of a court judgment against him, he might simply pay a certain amount to the victim on a weekly or monthly basis similar to the way individuals pay rent or utility bills today. If the criminal was willing to compensate the victim but unable to find satisfactory employment for that purpose, agencies might arise that would buy responsibility for the criminal's debt in return for long-term labor service obligations on the part of the criminal or, alternately, the criminal might repay the victim through labor rather than money. The criminal's family would have the option of paying his debt for him. Do-gooder groups sympathetic to criminals might even pay the debts of indigent criminals as an act of charity. The possibilities seem endless indeed.

impoundment. Smith and Greene would be given notice that a hearing would be held on a particular day in order to commence the resolution of the case. A private professional court possessing a contract with the firm employing Greene's neighborhood security guards agrees to hear the case. The accused, Mike Smith, and his family are concerned that he might be railroaded by the private court due to his inferior economic status and potential bias towards victims/clients. Smith and his family go to their neighborhood's common law court and express their concerns. The common law court contacts the private court hearing the case and insists that residents of Smith's community be among those from whom a jury is selected and that common law court officers be allowed to observe and, when necessary, raise objections during the procedure. Private and common law courts would have many reasons for creating safeguards against injustices against innocent defendants. In addition to the question of liability, there would also be the risk of retaliation. Unjust courts and security services would be inviting vengeful retribution from the families and associates of those whom they have wronged with the assistance of their own private or community defense forces. The result of such a situation would be endless blood feuds and mini-wars. Businesses offering protection and court services would naturally want to avoid this as would neighborhood and community associations. An efficient court system should provide incentives for guilty defendants to admit their guilt. The initial emphasis of such a proceeding would be to attempt to work out a resolution of the dispute through negotiation and mediation. If a defendant persisted in denying guilt or if a resolution could not be reached that was satisfactory to both sides, then arbitration before a judge, jury or community council would be the next step. A number of questions would have to be addressed such as the innocence or guilt of the accused, the legality of the methods of investigation used by the protection service agents, conformity of the evidence submitted by both sides to standard rules of evidence and, if the defendant is guilty, the penalty to be imposed or, if the defendant is innocent, the amount of compensation necessary.

How would crimes be penalized in such a system or, more accurately, how would victims be compensated for the harm that

from "substandard" housing, shutting down home businesses, arresting persons for victimless crimes such as drug use and prostitution, driving away street level entrepreneurs and effectively destroying the cultural and economic life of the community. Subsequently, government financed efforts to tear down old residential buildings and replace them with newer, higher rent facilities and establish commercial operations on real estate confiscated from the previous owners via eminent domain and sold at below market value cost to politically connected commercial interests are put into place.

Nothing illustrates the true nature of statist "criminal justice" more than the treatment inflicted by the system on persons attempting to defend themselves against serious crimes. Gun Owners of America has documented numerous cases of persons prosecuted for the violation of frivolous weapons laws who were attempting to ward off burglars, armed robbers and rapists. The highly publicized case of Bernhard Goetz, a New York City subway passenger who used a handgun to defend himself against a group of young hooligans attempting to rob him through the use of sharp tools as weapons and who was subsequently sentenced to two years in prison on firearms charges and sued by one of his attackers for millions of dollars, is an obvious example of this. A Michigan store owner was prosecuted for manslaughter after shooting an intruder who had invaded his business after hours and after dark, broken a window and entered the premises illegally and physically attacked the shop keeper. A Virginia man whose home had been repeatedly invaded and looted by burglars rigged an armed booby trap over a window that had been a prior entry point for the crooks. When another home invader was killed as a result the homeowner was prosecuted for first degree murder and sentenced to twenty five years imprisonment. Clearly, self-defenders are not persecuted by the state as a result of overly enthusiastic concern on the part of criminal justice officials for public peace and the sanctity of human life. Murderous SWAT thugs, narcotics agents and other law enforcement officers who kill and maim innocent people in reckless and frivolous drug and other raids are rarely even removed from their jobs, much less brought up on criminal charges. Clearly,

those in control want honest citizens to be defenseless against criminals so that they will be defenseless against the state as well.

One of the most amazing and amusing hypocrisies demonstrated by law enforcement is the frequent dereliction of duty displayed when their own self-interest is genuinely threatened. On one hand, agents of the law who go out of their way to enforce the pettiest of regulations and laws creating consensual crimes often justify their actions with excuses like “I’m only doing my job”, “I don’t make the laws, I just enforce them”, “I’m sworn to uphold the law whether it is just or not” and other Nuremberg-type rationalizations. On the other hand, this allegedly solemn commitment to the rule of law and professional duty disappears during moments of real danger. During the Los Angeles riots of 1992, the police fled as the property of small storeowners was being destroyed. Korean merchants subject to racist attacks who defended their own property were sometimes arrested later on for gun law violations. During the Columbine massacre of 1999, members of police SWAT teams, normally so bold in their attacks on the homes of drug suspects, hid for hours behind ambulances while innocent students were being slaughtered. During the racial unrest in Cincinnati in the spring of 2001, the first felony charges were brought against a white motorist, charged under “hate crimes” statutes, who defended himself against black attackers. The district attorney was afraid that a perceived anti-black bias on the part of his office would generate further unrest and neglected to bring charges against numerous blacks committing felonious assault and other serious crimes during the chaos.

What kinds of conditions has this sorry state of American criminal justice brought about? Crime is a severe social problem. American crime rates are among the highest of any comparable nation. Violent street crime is an immediate and ever present threat to the inhabitants of nearly all major urban centers. Corporate and “white-collar” level crime is perhaps even worse. Such crime is under investigated and under prosecuted largely due to class bias in criminal justice and law enforcement as well as its more difficult detectability. Yet this kind of crime is fifty times more costly to the economy on an annual basis than street crime. Meanwhile, the

judges known for their bias towards the prosecution. Hence, fair minded judges would be rewarded and would flourish professionally while unfair or incompetent judges would be filtered out of the judicial process.

A common objection offered to a system of decentralized, private or common law courts is that such courts would operate as “kangaroo” courts operating on a basis of bribery and cronyism and imposing draconian penalties on petty offenders or railroading unpopular persons. However, powerful incentives would exist to avoid such situations. As an example, let’s say that a young man, Mike Smith, from an economically struggling urban neighborhood, is accused of burglarizing the home of Tom Greene, a middle-aged computer programmer living in a economically stable and reasonably prosperous “middle class” neighborhood. Private security guards employed by the homeowner’s association of which Tom Greene is a member discover Mike Smith running across a nearby playground carrying a duffle bag. Smith is stopped and a search of the duffle bag produces antique coins, a semi-automatic handgun and a wristwatch that Greene has reported missing from his home. What is to be done at this point? The security guards summon Greene to the scene where Smith has been detained. Greene makes a positive identification that, yes indeed, the items in question are the same as the ones missing from his home. At this point Greene would have the option of simply reclaiming the items and letting the issue go at that. However, let’s suppose that Smith also broke a window and did some minor damage to the interior of Greene’s home while searching for loot. Greene naturally wants to be compensated for the expense of making the necessary repairs and for the aggravation of having to deal with the situation in the first place. Alternately, let’s say that Smith denies burglarizing Greene’s home and insists that the items in question are his personal property and that their similarity to the items stolen from Greene is only coincidental. Clearly, a tribunal would have to be called in order to formally determine Smith’s innocence or guilt. The security guards might take the items in question to a professional “impounding” service that specialized in safeguarding disputed property until a settlement could be reached after which the losing party would be responsible for the cost of

as vitally necessary for defensive purposes. Only persons judged to be a clear and present danger to the community at large (serial killers, rapists, child abductors) would be subject to such detention while most other offenders (shoplifters, petty vandals, barroom brawlers, check forgers, car thieves) would not. Would accused persons be required to appear in court for the hearing of the charges against them? Of course not. If an accused criminal did not wish to show up to defend himself, that would be his prerogative. However, “no-shows” of this type could be tried in absentia and found guilty so it would very much be in the interest of the accused to put in an appearance.

How would courts be organized in such a system and what sort of court officers would there be? Professional court services might be available on the market. A private protection firm might obtain a contract to use that particular court’s services for its own cases. Such courts might provide their own courtrooms, prosecutors and defense attorneys (if parties to a dispute requested these), judges, professional jurors, bailiffs, clerks, etc. Alternately, individual neighborhoods or communities might establish their own “common law” courts where influential or respected persons in the community were selected to preside over public tribunals. Judges might operate in private practice and sell their services for a fee. Numerous other possibilities exist. What about the procedural rights of victims and accused persons? Crimes would be regarded as offenses against the victim rather than against the state as is the case in the current system. Therefore, the victim would be responsible for directing the prosecution as much as possible or, if the victim was deceased, the responsibility would fall to their closest surviving heir. Victims could represent themselves or hire professional attorneys. Defendants would have this same right as well. Both victims and the accused should be allowed a certain number of peremptory challenges to potential judges and jurors alike. Such a process could go a long way in improving the quality of judges. Currently, judges are either elected politicians or bureaucrats appointed on the basis of political patronage. If peremptory challenges to judges were allowed, victims would naturally exclude those judges known for their sympathy for defendants while accused persons would naturally exclude those

United States has a much larger prison population than any of the other nearly two hundred nations in the world. The U.S. has five hundred thousand more prisoners than China even though it has only twenty percent the population. Twenty five percent of the world’s prisoners are in the U.S. There are more non-violent prisoners in American penal institutions than there are prisoners of any kind in India ( a nation with four times the population) and the entire European Union which has one hundred million more residents. The American prison population outnumbers that of some of the individual states. The number of prisoners in the U.S. has increased ten times in the last thirty years.

Who are these prisoners and what sort of conditions are they subjected to? Sixty percent of federal prisoners are incarcerated for drug law violations not involving violence, larceny or fraud. Another fifteen percent of federal prisoners are either gun law or tax law violators. In other words, three quarters of federal prisoners are incarcerated for victimless activities. Drug “offenders” account for twenty percent of state prisoners. Over four million Americans are arrested annually for consensual activities. Often the majority of prisoners in local jails, where conditions are often the worst, are held for violations of statutes creating victimless crimes such as the use or sale of drugs, prostitution, public intoxication, traffic violations, non-payment of fines or traffic tickets, non-payment of child support, gambling, sodomy, pornography, liquor law violations, gun law violations, possessing untaxed tobacco products, vending without a license, zoning and land use law violations, hunting or fishing without a permit and countless other activities. Although some people believe that American prisons are nothing but hotels with fences around them, conditions in U.S. penal institutions are often quite brutal with inmates being at the mercy of sadistic guards and inmates alike. Rapes and sexual assaults are common in prisons. The columnist Stephen Chapman has pointed out that if a car thief or check forger or petty drug dealer was sentenced by a judge to be gang raped by prison inmates, beaten by prison guards and housed with other inmates carrying hepatitis or tuberculosis it would be considered cruel and unusual punishment. Yet this is the fate that awaits many of the people who enter the prison system, the majority of whom are

incarcerated for victimless cultural or statutory crimes or relatively modest, non-violent property or economic offenses. In the past twenty five years, nearly one hundred people have been released from death row after having been found to have been wrongfully convicted. Who knows how many innocents have actually been executed. The number of innocent people wrongfully convicted and imprisoned is potentially quite high. The supply side economist Paul Craig Roberts points out that although most persons convicted of a crime are done so on the basis of eyewitness testimony, numerous studies indicate that eyewitness testimony is unreliable as much as fifty percent of the time.

The journalist Joel Dyer has written extensively on the massive “prison-industrial complex” that has emerged in the United States over the past twenty years. Mass incarceration of Americans has become an enormously profitable multibillion dollar industry, a type of domestic policy version of the “military-industrial complex” that emerged during the Cold War era. To fully understand the magnitude and historical significance of this problem, it needs to be recognized that virtually no other state in world history has imprisoned so many of its subjects at one time or for such frivolous reasons. Neither the ancient Roman Empire nor the Spanish Inquisition nor the British monarchy rejected by the American founders imprisoned so many people for victimless activities as does the present day United States. Consequently, this situation ranks the contemporary U.S. as one of the most tyrannical regimes in history, perhaps surpassed only by the anomalous genocide states of the twentieth century. Defenders of this deplorable state of affairs point to slight reductions in crime rates in the U.S. in recent years and use this as a justification for the enormous police and prison state that has emerged in recent times. Yet, as Joel Dyer points out, Canada has experienced similar reductions in its own crime rates while its prison population has remained relatively static. Meanwhile, the U.S. prison population has exploded. Also, it should be noted that crime rates still remain quite high. George Will comments that U.S. crime rates are currently where they were in the early to mid 1970’s, after having reached an all-time high in the late 1980’s. Will observes, however, that crime rates in the mid 1970’s were considered to be

continue to take place but with less frequency than under the current system. Once a crime has been committed and the perpetrator has been identified what procedure would be followed for bringing the criminal “to justice”? The focus of crime control services would be on preventing harm to victims rather than on punishing the criminal. In some cases the criminal might not be formally prosecuted. If a shoplifter was caught red-handed, then the stolen items might be retrieved and the offender expelled from the establishment where the act occurred and barred from further re-entry. If a burglar or car thief were discovered, the stolen property might be returned to the victim who might then decline to pursue the case any further so as to avoid any potential further expense or inconvenience. Sometimes, however, such immediate victim compensation would of course be impossible. It is at this point that some sort of formalized legal system with standardized rules of procedure would be necessary. Wherever possible, crimes should be treated in the same manner as torts are in the current system. The perpetrator would be fully liable for all harm done to the victim. Of course, in a free society all non-victim crimes would be abolished. The only remaining crimes would be those involving direct physical harm to another person or their possessions such as non-defensive homicide, rape and sexual assault, intentional infliction of bodily harm, theft, robbery, embezzlement, arson, pollution, trespassing, fraud, forgery, harm resulting from gross negligence or reckless endangerment, etc. Persons accused of such crimes would be given notice that a tribunal will be called at a certain date to hear the charges. Disputed articles of property might be impounded under the care of a neutral third party until the case is adjudicated. Pre-trial detention of accused persons should be avoided for several reasons. First, pre-trial detention makes a mockery of the very concept of innocent until proven guilty. Secondly, in a free society persons wrongfully accused of a crime would be entitled to compensation at the expense of their accusers. Victims and protection services alike would wish to avoid the increased risk of liability on their part if they were to accuse an innocent person. Also, pre-trial detention would be costly to the operators of penal facilities who would be uncertain of the eventual outcome of the case in question. In a non-state crime control system pre-trial detention would likely be used only when regarded

would be able to easily migrate to other areas and perhaps even enlist the assistance of competing protection services. Firms operating on the market would naturally want to maintain a large customer base and would therefore be more diligent in not hiring persons of questionable character than government police forces. Also, it must be remembered that under the current system, everyone is preyed upon by the universal protection racket of the state. It is doubtful that a private protection racket would be as successful in regularly extorting thirty to fifty percent of its victims' income in the way that the coercive monopoly of the state is able to do.

Another argument is that decentralized protection services could devolve into warring vigilante factions perpetrating all sorts of religious, ethnic or cultural conflict. The scenario presented is one of armed urban mobs looting middle class neighborhoods, private mercenary forces employed by the wealthy running the poor out of their homes, racist gangs attacking minorities, zealous crimefighters lynching suspects without due process, impassioned crusaders assaulting drug users, homosexuals, unusual religious groups and unpopular political groups and other assorted acts of chaos and random violence. However, such unrest is always a potential danger in any society particularly when the beneficiaries of such destructiveness are able to pass the costs on to others via taxation and the acquisition of the acquiescence of government. This is particularly true in a heterogeneous, highly centralized state such as the United States which maintains power by playing off different social groups against one another by arbitrarily bestowing favors on some at the expense of others according to unpredictable criteria that is forever changing according to the dictates of political expediency. In a decentralized system, it is likely that populations with special defense needs would form their own protection services with an example of this being the patrols organized by homosexual communities suffering from a wave of "hate" crimes or parishioners who organized to defend their churches during an outbreak of attacks on churches by arsonists in some southern states during the mid-1990's.

Although prevention and defense would be the central focus of a non-state crime control system, some crimes would certainly

at all-time high during that era, following the skyrocketing crime rates of the late 1960's and early 70's. William F. Buckley notes that opinion polls show more people consider crime to be a serious threat to themselves today that they did at the height of the crime wave of thirty years ago. This in spite of the relative reduction in crime rates that has occurred in recent years.

Although modern liberals and progressives are fond of portraying the 1950's as an era of fascist, McCarthyite terror which has since been fortunately corrected due to their own increased political influence, the truth is that the average American enjoyed considerably greater amounts of personal freedom and safety from crime in those days. The prison population in 1960 was less than one tenth of what it is today. Crime rates were at an all-time low. Forty percent of all federal laws creating federal crimes have been enacted since 1970. Gun laws have expanded exponentially during that time, beginning with the Gun Control Act of 1968 (modeled after Nazi gun laws, as Jews for the Preservation of Firearms Ownership has discovered). Contemporary statisticians like to point to successes of the minority civil rights movements of the 1960's as evidence that society has moved in a positive direction since that time. While it is no doubt true that racial minorities, women, homosexuals and other traditionally excluded groups have gained certain rights and opportunities in recent decades that were previously denied to them, these groups have also been among the most victimized by the rapidly expanding statism of recent decades. Women are the fastest growing prison population group. One in three black males will do hard time in prison at some point in their life. Forty percent of black youth are in prison, on probation or on parole. What is the indignity of segregated schools, lunch counters and bus lines to black people compared to the mass imprisonment of their children?

Given that state-run "criminal justice" systems fail miserably at protecting both the civil liberties and personal safety of citizens, what might some alternatives be? How would a society with very limited government, or perhaps no government at all, deal with the problem of predatory crime? The first consideration involved in any rational approach to crime control must be the prevention of

the occurrence of criminal acts in the first place. Dialing “911” after a serious crime has taken place is usually of little value to the person who has been raped, beaten or killed. Therefore, prevention of crime combined with effective methods of defense when it does occur must be the primary focus of any viable crime control system. On this issue as with many others, there can be no serious substitute for individual responsibility, initiative and self-reliance. The late great science fiction writer Robert Heinlein once remarked that an armed society is a polite society. It appears Heinlein was a far more perceptive criminologist than any of the quack liberal social engineers or crackpot conservative police statisticians whose thinking influences most of the current crop of official, state-approved “experts” on “criminal justice” policy. The sociologist John Lott has noted that those jurisdictions within the United States where firearms are the most readily available to ordinary citizens are also those with the lowest rates of violent crime. Relaxation of laws preventing citizens from obtaining or using weapons for defensive purposes is typically followed by a decrease in crime rates. On the other hand, the nation of Australia experienced a sharp increase in violent crimes following the enactment of repressive gun control legislation. The historian Roger McGrath observes that in the settlements of the early American West organized police and court systems were often rather sparse, and sometimes absent altogether, yet crime rates in those communities were much lower than in contemporary American cities. Rapes and serious sexual assaults against women were virtually unheard of. Robberies involving homicides were rare. Even property crimes were rather infrequent by contemporary standards. The most important variable contributing to these low crime rates in the Old West appears to be the widespread possession of firearms on the part of the settlers and their willingness to use them for their own protection.

Crime control techniques in a free society should utilize the simple concept of individual self-defense as a starting point. This would, of course, require a radical alteration of current cultural patterns in the United States. Demagogic politicians bent on a disarmed population have worked relentlessly to demonize firearms and firearms owners, faithfully aided and abetted by the media along

to originate from the “labor economy” rather than the “market/profit” economy. These protection services would involve the use of labor rather than currency as a means of “payment”. Individuals and groups desiring protection would offer their labor to voluntarily organized crime control services towards the goal of reducing crime in their community. Lighter versions of this might involve the creation or expansion of conventional “neighborhood watch” programs. Heavier versions might involve the establishment of armed, civilian militia organizations for the purpose of community self-defense. Past examples of this in recent American history include the Black Panther Party for Self-Defense, the Young Lords, the Brown Berets, the New Black Panther Party, the Nation of Islam and the Guardian Angels. Less exotic examples might include the volunteer fire and emergency medical services found in many rural areas and smaller towns. While most active “militia” members in these sorts of organizations would be relatively young males in good physical condition, others could contribute their labor in other ways such as assistance in bookkeeping, communications, the creation and maintenance of uniforms and the care of weapons, etc. At some point, the “charity economy” might also come into play. Crime control services might be donated or paid for by philanthropies or other non-profit, public service institutions. Churches are often a central component of the cultural life in minority communities and in some white communities as well. Subsequently, organization or funding of public protection services might be an extension of conventional ministries involving the dispensation of food, shelter, medical care, clothing, etc. Small towns and sparsely populated rural areas might elect a sheriff or constable who would be backed up by a local posse of armed civilians. Urban communities might similarly elect a “neighborhood constable” to head the community militia.

Opponents of decentralized crime control systems typically offer several different arguments. The first of these is that voluntary protection services might instead degenerate into protection rackets that extort money and bribes from local residents. However, individual protection services are not likely to be organized over a wide geographical area. Persons preyed upon by such agencies

crimes and observing such persons closely when they enter areas protection agencies are contracted to monitor and other efforts to prevent crime before it occurs.

The above comments deal with the issue of crime control in communities of somewhat significant economic means. Protection services among the poor and “economically challenged” might assume a rather different character. The role of the state-organized police in communities on the lower end of the socio-economic ladder usually takes on one of two distinct forms. On one hand, public police sometimes serve as a defacto occupational army in such areas, particularly those populated by ethnic minorities. Radical leftists and black nationalists have been pointing this out for decades. In such situations, members of these communities, criminals and non-criminals alike, are often subject to severe harassment, brutality and oppression by government police as a means of maintaining a barrier between these sectors and the politically and economically powerful. Enforcement of victimless crime laws, attacks on the right to bear arms, arrests for petty infractions such as spitting on the sidewalk and other forms of repression are used as a means of control and subjugation among these populations. This is particularly true when the cultural and economic life of such communities is targeted for destruction by elite interests using the power of the state as a means of expanding into these areas. On the other hand, sometimes government police simply ignore virtually all crime in such areas and leave the weaker members of the community at the mercy of the ruthless and predatory while simultaneously denying the right of residents to effectively defend themselves. For example, residents of crime-ridden “public housing” projects (the urban equivalent of Indian reservations) are legally prohibited from owning firearms for the purpose of self-defense even though police protection in such facilities is often completely absent. Most arrests on “illegal” firearms charges involve the urban poor, usually minorities, who have no other means of personal protection.

Clearly, economically disadvantaged communities are not likely to possess the resources necessary for the employment of private crime control firms. Consequently, protection services would have

the way. Many Americans have come to view the firearm as the moral equivalent of the apple offered to Eve by the serpent. These foolish Americans regard the existence of privately owned firearms as the only real obstacle preventing re-entry into the mythical crime-free utopia of Eden. But if the right of self-defense against criminals and tyrannical government alike is not a basic human right, then what would be? A genuinely free society would necessarily cultivate a common social ethic emphasizing both the justice and expediency of privately owned weapons. Children should be instructed in the proper use of and proper respect for firearms and other weapons as a part of their very basic education in the same way as elementary literacy, mathematical and health and nutritional skills. Voluntary associations should form for the purpose of training ordinary people in the use of weapons for defensive purposes. Most of all, a free society’s legal code should recognize the individual right of self-defense as the foremost principle of law and justice.

While increased private firearms ownership and the widespread cultivation of self-defense skills would likely reduce predatory crime significantly, obviously such crime would not disappear entirely. Beyond self-defense, prevention would be the issue next in order of importance. Crime control services oriented towards prevention could not feasibly be organized by the state or funded by confiscatory taxation. State-run “crime fighting” systems are oriented towards the advancement of political agendas and bureaucratic interests that require a certain level of neglect when it comes to actually fighting crime. For example, police departments typically measure their level of success according to the number of arrests made rather than the scarcity of the reporting of criminal acts. However, an increase in the number of arrests usually coincides with an increase in the number of crimes committed. In recent years, incidents have occurred where police bureaucrats have destroyed records of crimes being reported by citizens so as to give the impression of lower crime rates. State-run police forces operating on such a basis ultimately insure that resources for the control of crime are allocated inefficiently and ineffectively.

The alternative to state-run crime control services operating as a politicized, compulsory monopoly would be decentralized crime control systems organized, operated and funded by communities, individuals, families, voluntary associations and private organizations. Conceptually, this is nothing particularly new or unique. Such systems were the norm in many societies throughout most of history. Indeed, modern police forces did not become commonplace until the nineteenth century and were initially created by the British Empire and the proto-military states of Napoleon Bonaparte and Otto von Bismarck. In early America, the local sheriff retained responsibility for the enforcement of state business such as the collection of taxes, the operation of penal facilities and the serving of summons while actual protection and defense against crime was considered the prerogative of the community at large exercising their rights of assembly and to keep and bear arms. A return to this libertarian heritage is necessary if Americans are to deal with contemporary crime problems effectively and simultaneously restore their civil liberties.

How would decentralized crime control systems work? A myriad of possibilities exist. Different communities and individuals would naturally consider a variety of issues regarding such matters including actual crime rates in their vicinities, the types of crimes being committed and the various types of resources available for expenditures on crime control. Protection services might be purchased on the market by some. For example, companies offering professional crime control services might establish contracts with neighborhood associations, homeowners organizations, businesses or industrial parks to provide protection for a fee. Individual members of these organizations might pay a monthly bill for their protection services or groups might collectively pay a crime control agency from funds raised from membership dues or other sources. Economically well-off communities would be the ones most likely to hire outside protection services on a contractual or fee-for-service basis. To some degree, this is being done at the present time. Private security guards, bodyguards, “gated communities”, private investigators, security consulting firms and other entities of this type are frequently employed by firms or community groups not wishing to

depend entirely on state-provided protection services. To a large degree, the public police serve as a de facto private police force for elite socio-economic interests and those with political power. Former police chief Anthony Bouza notes that the primary role of the public police is to serve as a buffer between the well-to-do and the respectable middle class on one end and various disfavored, disadvantaged or detested social, economic or cultural groups on the other. The key economic factor involved here is the shifting of the costs of public sector law enforcement from its primary beneficiaries to the broader body of taxpayers including those victimized by public law enforcement. Under a decentralized system, the economically privileged and politically powerful would subsidize their own protection services directly. Consequently, greater emphasis is likely to be placed on the repression of serious predatory crimes with actions against those involved in petty or victimless activities falling by the wayside. Such interest groups would likely become more “tolerant” of drug users and dealers, prostitutes, gay cruisers, the homeless and other frequent targets of the public police if they had to finance narcotics, vice, SWAT, firearm and gang enforcement units out of their own pockets. The head of a California private police agency once noted that even though his officers had the power of arrest they would not apprehend anyone for a victimless crime unless violence was involved because enforcement and prosecution costs were simply too high and clients were not willing to pay higher fees for such services. Similarly, a private security guard employed by a Virginia firm remarked that while working at a luxury hotel he was instructed to detect and apprehend thieves and retrieve the stolen loot, but not to officially arrest and file formal charges against the thief on the grounds that it was too expensive to do so. Prevention rather than arrests and prosecutions are likely to be the central focus of any cost-effective crime control agency. Prevention would involve improving the lighting on darkened streets, establishing a visible presence of crime control officers in problematic areas so as to deter potential perpetrators, advising clients concerning the purchase of useful safety devices (alarms, dogs, mace, handguns, window bars, locks, etc.), attempting to catch thieves at the scene so that stolen goods might be more easily retrieved, maintaining records on persons known to commit serious