

# Fallacies of the Public Goods Theory and the Production of Security

by Hans-Hermann Hoppe

*Department of Economics, University of Nevada, Las Vegas*

In 1849, at a time when classical liberalism was still the dominant ideological force and “economist” and “socialist” were generally—and rightly so—considered antonyms, Gustave de Molinari, a renowned Belgian economist, wrote, “If there is one well-established truth in political economy, it is this: That in all cases, for all commodities that serve to provide for the tangible or intangible need of the consumer, it is in the consumer’s best interest that labor and trade remain free, because the freedom of labor and trade have as their necessary and permanent result the maximum reduction of price. And this: That the interests of the consumer of any commodity whatsoever should always prevail over the interests of the producer. Now, in pursuing these principles, one arrives at this rigorous conclusion: That the production of security should in the interest of consumers of this intangible commodity, remain subject to the law of free competition. Whence it follows: That no government should have the right to prevent another government from going into competition with it, or require consumers of security to come exclusively to it for this commodity.”<sup>1</sup> And he comments on this whole argument by saying, “Either this is logical and true, or else the principles on which economic science is based are invalid.”<sup>2</sup>

There is apparently only one way out of this unpleasant (for all socialists, that is) conclusion: to argue that there are particular goods to which for some special reasons the above economic reasoning does not apply. It is this that the so-called public goods theorists are determined to prove.<sup>3</sup> However, I will demonstrate that in fact no such special goods or special reasons exist, and that the production of security in particular does not pose a problem any different from that of the production of any other good or service, be it houses, cheese, or insurance. In spite of its many followers, the whole public goods theory is faulty, flashy reasoning, ridden with internal inconsistencies, nonsequiturs, appealing to and playing on popular prejudices and assumed beliefs, but with no scientific merit whatsoever.<sup>4</sup>

What, then, does the escape route that socialist economists have found in order to avoid drawing Molinari's conclusion look like? Since Molinari's time it has become more common to answer yes to the question of whether there are goods to which different sorts of economic analyses apply. As a matter of fact, it is almost impossible to find a single contemporary economics textbook that does not make and stress the vital importance of the distinction between private goods, for which the truth of the economic superiority of a capitalist order of production is generally admitted, and public goods, for which it is generally denied.<sup>5</sup> Certain goods or services—among them, security—are said to have the special characteristic that their enjoyment cannot be restricted to those who have actually financed their production. Rather, people who do not participate in their financing can also draw benefits from them. Such goods are called public goods or services (as opposed to private goods or services, which exclusively benefit those people who actually paid for them). And it is because of this special feature of public goods, it is then argued, that markets cannot produce them, or at least not in sufficient quantity or quality, and hence compensatory state action is required.<sup>6</sup>

The examples given by different authors of alleged public goods vary widely. Authors often classify the same good or service differently, leaving almost no classification of a particular good undisputed, which clearly foreshadows the illusory character of the whole distinction.<sup>7</sup> Nonetheless, some examples that enjoy particularly popular status as public goods are the fire brigade that stops a neighbor's house from catching fire, thereby letting him profit from my fire brigade, even though he did not contribute anything to financing it; or the police that, by walking around my property scare away potential burglars from my neighbor's property as well, even if he did not help finance the patrols; or the lighthouse, an example particularly dear to economists,<sup>8</sup> that helps a ship find her way even though the ship's owner did not contribute a penny to its construction or upkeep.

Before continuing with the presentation and critical examination of the theory of public goods, let me investigate how useful the distinction between private and public goods is in helping decide what should be produced privately and what by the state or with state help. Even the most superficial analysis could not fail to point out that using the alleged criterion of inexcludability, rather than presenting a sensible solution, would get one into deep trouble. While at least at first glance it seems that some of the state-provided goods and services might indeed qualify as public goods, it certainly is not obvious how many of the goods and services that are actually produced by states could come under the heading of public goods. Railroads, postal services, telephone, streets, and the like seem to be goods whose usage can be restricted to the persons who actually finance them, and hence appear to be private goods. And the same seems to be the case regarding many aspects of the multidimensional "good security": everything for which insurance could be taken out would have to qualify as a private good. Yet this does not suffice. Just as a lot of state-provided goods appear to be private goods, so many privately

produced goods seem to fit in the category of a public good. Clearly my neighbors would profit from my well-kept rose garden—they could enjoy the sight of it without ever helping me garden. The same is true of all kinds of improvements that I could make on my property that would enhance the value of neighboring property as well. Even those people who do not throw money in his hat can profit from a street musician's performance. Those fellow passengers on the bus who did not help me buy it profit from my deodorant. And everyone who ever meets me would profit from my efforts, undertaken without their financial support, to turn myself into a most lovable person. Now, do all these goods—rose gardens, property improvements, street music, deodorants, personal improvements—since they clearly seem to possess the characteristics of public goods, then have to be provided by the state or with state assistance?

As these examples of privately produced public goods indicate, there is something seriously wrong with the thesis of public goods theorists that public goods cannot be produced privately, but instead require state intervention. Clearly they *can* be provided by markets. Furthermore, historical evidence shows us that all of the so-called public goods that states now provide have at some time in the past actually been provided by private entrepreneurs or even today are so provided in one country or another. For example, the postal service was once private almost everywhere; streets were privately financed and still are sometimes; even the beloved lighthouses were originally the result of private enterprise;<sup>9</sup> private police forces, detectives, and arbitrators exist; and help for the sick, the poor, the elderly, orphans, and widows has been a traditional concern of private charity organizations. To say, then, that such things cannot be produced by a pure market system is falsified by experience a hundredfold.

Apart from this, other difficulties arise when the public-private goods distinction is used to decide what and what not to leave to the market. For instance, what if the production of so-called public goods did not have positive but negative consequences for other people, or if the consequences were positive for some and negative for others? What if the neighbor whose house was saved from burning by my fire brigade had wished (perhaps because he was overinsured) that it had burned down; or my neighbors hate roses, or my fellow passengers find the scent of my deodorant disgusting? In addition, changes in the technology can change the character of a given good. For example, with the development of cable TV a good that was formerly (seemingly) public has become private. And changes in the laws of property—of the appropriation of property—can have the very same effect of changing the public-private character of a good. The lighthouse, for instance, is a public good only insofar as the sea is publicly (not privately) owned. But if it were permitted to acquire pieces of the ocean as private property, as it would be in a purely capitalist social order, then as the lighthouse shines over only a limited territory, it would clearly become possible to exclude nonpayers from the enjoyment of its services.

Leaving this somewhat sketchy level of discussion and looking into the distinction between private and public goods more thoroughly, we discover that the distinction turns out to be completely illusory. A clear-cut dichotomy between private and public goods does not exist, and this is essentially why there can be so many disagreements on how to classify a given good. All goods are more or less private or public and can—and constantly do—change with respect to their degree of privateness/publicness as people's values and evaluations change, and as changes occur in the composition of the population. In order to recognize that they never fall, once and for all, into either one or the other category, one must only recall what makes something a good. For something to be a good it must be recognized and treated as scarce by someone. Something is not a good as such, that is to say; goods are goods only in the eyes of the beholder. Nothing is a good unless at least one person subjectively evaluates it as such. But then, when goods are never goods-as-such—when no physicochemical analysis can identify something as an economic good—there is clearly no fixed, objective criterion for classifying goods as either private or public. They can never be private or public goods as such. Their private or public character depends on how few or how many people consider them to be goods, with the degree to which they are private or public changing as these evaluations change and ranging from one to infinity. Even seemingly completely private things like the interior of my apartment or the color of my underwear can thus become public goods as soon as somebody else starts caring about them.<sup>10</sup> And seemingly public goods, like the exterior of my house or the color of my overalls, can become extremely private goods as soon as other people stop caring about them. Moreover, every good can change its characteristics again and again; it can even turn from a public or private good to a public or private bad or evil and vice versa, depending solely on the changes in this caring or uncaring. If this is so, then no decision whatsoever can be based on the classification of goods as private or public.<sup>11</sup> In fact, to do so it would become necessary to ask virtually every individual person with respect to every single good whether or not he happened to care about it—positively or negatively and perhaps to what extent—in order to determine who might profit from what and who should therefore participate in the good's financing. (And how could one know if they were telling the truth?) It would also become necessary to monitor all changes in such evaluations continuously, with the result that no definite decision could ever be made regarding the production of anything, and as a consequence of a nonsensical theory all of us would be long dead.<sup>12</sup>

But even if one were to ignore all these difficulties, and were willing to admit for the sake of argument that the private-public good distinction does hold water, even then the argument would not prove what it is supposed to. It neither provides conclusive reasons why public goods—assuming that they exist as a separate category of goods—should be produced at all, nor why the state rather than private enterprises should produce them. This is what the theory of public goods essen-

tially says, having introduced the aforementioned conceptual distinction: The positive effects of public goods for people who do not contribute anything to their production or financing proves that these goods are desirable. But evidently they would not be produced, or at least not in sufficient quantity and quality, in a free, competitive market, since not all of those who would profit from their production would also contribute financially to make the production possible. So in order to produce these goods (which are evidently desirable, but would not be produced otherwise), the state must jump in and assist in their production. This sort of reasoning, which can be found in almost every textbook on economics (Nobel laureates not excluded<sup>13</sup>) is completely fallacious and fallacious on two counts.

For one thing, to come to the conclusion that the state has to provide public goods that otherwise would not be produced, one must smuggle a norm into one's chain of reasoning. Otherwise, from the statement that because of some special characteristics they have, certain goods would not be produced, one could never reach the conclusion that these goods *should* be produced. But with a norm required to justify their conclusion, the public goods theorists clearly have left the bounds of economics as a positive, *wertfrei* science. Instead they have moved into the realm of morals or ethics, and hence one would expect to be offered a theory of ethics as a cognitive discipline in order for them to do legitimately what they are doing and to justifiably derive their conclusion. But it can hardly be stressed enough that nowhere in the public goods theory literature can there be found anything that even faintly resembles such a cognitive theory of ethics.<sup>14</sup> Thus it must be stated at the outset, that the public goods theorists are misusing whatever prestige they might have as positive economists for pronouncements on matters on which, as their own writings indicate, they have no authority whatsoever. Perhaps, though, they have stumbled on something correct by accident, without having supported it with an elaborate moral theory? It becomes apparent that nothing could be further from the truth as soon as one explicitly formulates the norm that would be needed to arrive at the conclusion that the state has to assist in the provision of public goods. The norm required to reach the above conclusion is this: Whenever one can somehow prove that the production of a particular good or service has a positive effect on someone else but would not be produced at all or would not be produced in a definite quantity or quality unless certain people participated in its financing, then the use of aggressive violence against these persons is allowed, either directly or indirectly with the help of the state, and these persons may be forced to share in the necessary financial burden. It does not need much comment to show that chaos would result from implementing this rule, as it amounts to saying that anyone can attack anyone else whenever he feels like it. Moreover, as I have demonstrated in detail elsewhere<sup>15</sup> this norm could never be justified as a fair norm. To argue so, in fact to argue at all, in favor of or against anything, be it a moral, nonmoral, empirical, or logico-analytical position, it must be presupposed that contrary to what the norm actually

says, each individual's integrity as a physically independent decision-making unit is assured. For only if everyone is free from physical aggression by everyone else could anything first be said and then agreement or disagreement on anything possibly reached. The principle of nonaggression is thus the necessary precondition for argumentation and possible agreement and hence can be argumentatively defended as a just norm by means of a priori reasoning.

But the public goods theory breaks down not only because of the faulty moral reasoning implied in it. Even the utilitarian, economic reasoning contained in the above argument is blatantly wrong. As the public goods theory states, it might well be that it would be better to have the public goods than not to have them, though it should not be forgotten that no a priori reason exists that this must be so of necessity (which would then end the public goods theorists' reasoning right here). For it is clearly possible, and indeed known to be a fact, that anarchists exist who so greatly abhor state action that they would prefer not having the so-called public goods at all to having them provided by the state.<sup>16</sup> In any case, even if the argument is conceded so far, to leap from the statement that the public goods are desirable to the statement that they should therefore be provided by the state is anything but conclusive, as this is by no means the choice with which one is confronted. Since money or other resources must be withdrawn from possible alternative uses to finance the supposedly desirable public goods, the only relevant and appropriate question is whether or not these alternative uses to which the money could be put (that is, the private goods which could have been acquired but now cannot be bought because the money is being spent on public goods instead) are more valuable—more urgent—than the public goods. And the answer to this question is perfectly clear. In terms of consumer evaluations, however high its absolute level might be, the value of the public goods is relatively lower than that of the competing private goods because if one had left the choice to the consumers (and had not forced one alternative upon them), they evidently would have preferred spending their money differently (otherwise no force would have been necessary). This proves beyond any doubt that the resources used for the provision of public goods are wasted because they provide consumers with goods or services that at best are only of secondary importance. In short, even if one assumed that public goods that can be distinguished clearly from private goods existed, and even if it were granted that a given public good might be useful, public goods would still compete with private goods. And there is only one method for finding out whether or not they are more urgently desired and to what extent, or *mutatis mutandis*, if, and to what extent, their production would take place at the expense of the nonproduction or reduced production of more urgently needed private goods: by having *everything* provided by freely competing private enterprises. Hence, contrary to the conclusion arrived at by the public goods theorists, logic forces one to accept the result that only a pure market system can safeguard the rationality, from the point of view of the con-



sumers, of a decision to produce a public good. And only under a pure capitalist order could it be ensured that the decision about how much of a public good to produce (provided it should be produced at all) would be rational as well.<sup>17</sup> No less than a semantic revolution of truly Orwellian dimensions would be required to come up with a different result. Only if one were willing to interpret someone's "no" as really meaning "yes," the "non-buying of something" as meaning that it is really "preferred over that which the nonbuying person does instead of non-buying," of "force" really meaning "freedom," of "noncontracting" really meaning "making a contract" and so on, could the public goods theorists' point be "proven."<sup>18</sup> But then, how could we be sure that they really mean what they seem to mean when they say what they say, and do not rather mean the exact opposite, or don't mean anything with a definite content at all, but are simply babbling? We could not! M. N. Rothbard is thus completely right when he comments on the endeavors of the public goods ideologues to prove the existence of so-called market failures due to the nonproduction or a quantitatively or qualitatively "deficient" production of public goods. He writes, "such a view completely misconceives the way in which economic science asserts that free-market action is *ever* optimal. It is optimal, not from the standpoint of the personal ethical views of an economist, but from the standpoint of free, voluntary actions of all participants and in satisfying the freely expressed needs of the consumers. Government interference, therefore, will necessarily and always move away from such an optimum."<sup>19</sup>

Indeed, the arguments supposedly proving market failures are nothing short of patently absurd. Stripped of their disguise of technical jargon all they prove is this: A market is not perfect, as it is characterized by the nonaggression principle imposed on conditions marked by scarcity, and so certain goods or services that could only be produced and provided if aggression were allowed will not be produced. True enough. But no market theorist would ever dare deny this. Yet, and this is decisive, this "imperfection" of the market can be defended, morally as well as economically, whereas the supposed "perfections" of markets propagated by the public goods theorists cannot.<sup>20</sup> It is true enough, too, that a termination of the state's current practice of providing public goods would imply some change in the existing social structure and the distribution of wealth. And such a reshuffling would certainly imply hardship for some people. As a matter of fact, this is precisely why there is widespread public resistance to a policy of privatizing state functions, even though in the long run overall social wealth would be enhanced by this very policy. Surely, however, this fact cannot be accepted as a valid argument demonstrating the failure of markets. If a man has been allowed to hit other people on the head and is now not permitted to continue with this practice, he is certainly hurt. But one would hardly accept *that* as a valid excuse for upholding the old (hitting) rules. He is harmed, but harming him means substituting a social order in which every consumer has an equal right

to determine what and how much of anything is produced, for a system in which some consumers have the right to determine in what respect other consumers are not allowed to buy voluntarily what they want with the means justly acquired by them and at their disposal. And certainly, such a substitution would be preferable from the point of view of all consumers as voluntary consumers.

By force of logical reasoning, then, one must accept Molinari's conclusion that for the sake of consumers, all goods and services be provided by markets.<sup>21</sup> It is not only false that clearly distinguishable categories of goods exist, which would render special amendments to the general thesis of capitalism's economic superiority necessary; even if they did exist, no special reason could be found why these supposedly special public goods should not also be produced by private enterprises, since they invariably stand in competition with private goods. In fact, in spite of all the propaganda from the public goods theorists, the greater efficiency of markets as compared with the state is increasingly realized with respect to more and more of the alleged public goods. Confronted daily with experience, hardly anyone seriously studying these matters could deny that nowadays markets could produce postal services, railroads, electricity, telephone, education, money, roads and so on more effectively than the state, i.e., more to the liking of consumers. Yet people generally shy away from accepting in one particular sector what logic forces upon them: in the production of security. Hence, for the rest of this article I will turn my attention to explaining the superior functioning of a capitalist economy in this particular area—a superiority whose logical case has already been made by now, but which shall be rendered more persuasive once some empirical material is added to the analysis and it is studied as a problem in its own right.<sup>22</sup>

How would a system of non-monopolistic, competing producers of security work? It should be clear from the outset that in answering this question one is leaving the realm of purely logical analysis and hence the answers must of necessity lack the certainty, the apodictic character of pronouncements on the validity of the public goods theory. The problem faced is precisely analogous to that of asking how a market would solve the problem of hamburger production, especially if up to this point hamburgers had been produced exclusively by the state and hence no one could draw on past experience. Only tentative answers could be formulated. No one could possibly know the exact structure of the hamburger industry—how many competing companies would come into existence, what importance this industry might have compared to others, what the hamburgers would look like, how many different sorts of hamburgers would appear on the market and perhaps disappear again because of a lack of demand, and so on. No one could know all of the circumstances and the changes that would influence the very structure of the hamburger industry—changes in the demands of various consumer groups, changes in technology, changes in the prices of various goods that affect the industry directly or indirectly, and so on. It must be stressed that although similar issues arise concerning the private production of security, this by no means implies



that nothing definitive can be said. Assuming certain general conditions of demand for security services (conditions that more or less realistically reflect the world as it presently is) what can and will be said is how different social orders of security production, characterized by different structural constraints under which they have to operate, will respond differently.<sup>23</sup> Let me first analyze the specifics of monopolistic, state-run security production, as at least in this case one can draw on ample evidence regarding the validity of the conclusions reached, and then compare this system with what could be expected if it were replaced by a non-monopolistic one.

Even if security is considered to be a public good, in the allocation of scarce resources it must compete with other goods. What is spent on security can no longer be spent on other goods that also might increase consumer satisfaction. Moreover, security is not a single, homogeneous good, but rather consists of numerous components and aspects. There is not only prevention of crime, detection of criminals, and enforcement of the law, but there is also security from robbers, rapists, polluters, natural disasters, and so on. Moreover, security is not produced in a "lump," but can be supplied in marginal units. In addition, different people attach different importance to security as a whole, and also to different aspects of the whole thing, depending on their personal characteristics, their past experiences with various factors of insecurity, and the time and place in which they happen to live.<sup>24</sup> Now, and here I address the fundamental economic problem of allocating scarce resources to competing uses, how can the state—an organization not financed exclusively by voluntary contributions and the sales of its products but rather partially or even wholly by taxes—decide how much security to produce, how much of each of its countless aspects, to whom and where to provide how much of what? The answer is that it has no rational way to decide this question. From the point of view of the consumers, its response to their security demands must thus be considered arbitrary. Do we need one policeman and one judge, or 100,000 of each? Should they be paid \$100 a month or \$10,000? Should the policemen, however many we might have, spend more time patrolling the streets, chasing robbers, and recovering stolen loot, or spying on participants in victimless crimes such as prostitution, drug use, or smuggling? And should the judges spend more time and energy hearing divorce cases, traffic violations, cases of shoplifting, and murder, or antitrust cases? Clearly, all of these questions must be answered somehow because as long as there is scarcity and we do not live in the Garden of Eden, the time and money spent on one thing cannot be spent on another. The state must answer these questions, too, but whatever it does, it does it *without* being subject to the profit-and-loss criterion. Hence, its action is arbitrary and necessarily involves countless wasteful misallocations from the consumer's viewpoint.<sup>25</sup> Independent to a large degree of consumer wants, the state-employed security producers instead do, as everyone knows, what *they* like. They hang around instead of doing anything, and if they do work

they prefer doing what is easiest or work where they can wield power rather than serving consumers. Police officers drive around a lot in cars, hassle petty traffic violators, and spend huge amounts of money investigating victimless crimes that many people (i.e., nonparticipants) do not like but that few would be willing to spend their money on to fight, as they are not immediately affected by them. Yet with respect to what consumers want most urgently—the prevention of hard-core crime (i.e., crimes *with* victims), the apprehension and effective punishment of hard-core criminals, the recovery of loot, and the securing of compensation of victims of crimes from the aggressors—the police are notoriously inefficient, in spite of ever higher budget allocations.

Further, whatever state-employed police or judges happen to do (arbitrary as it must be), they will tend to do poorly because their income is more or less independent of the consumers' evaluations of their services. Thus one observes police arbitrariness and brutality and the slowness in the judicial process. Moreover, it is remarkable that neither the police nor the judicial system offers consumers anything even faintly resembling a service contract in which it is laid down in unambiguous terms what procedure the consumer can expect to be set in motion in a specific situation. Rather, both operate in a contractual void that over time allows them to change their rules of procedure arbitrarily and that explains the truly ridiculous fact that the settlement of disputes between police and judges on the one hand and private citizens on the other is not assigned to an independent third party, but to another policeman or judge who shares employers with one party—the government—in the dispute.

Third, anyone who has seen state-run police stations and courts, not to mention prisons, knows how true it is that the factors of production used to provide us with such security are overused, badly maintained, and filthy. Since no one using these factors of production actually owns them (no one can sell them and privately appropriate the receipts from sale) and losses (and gains) in the value embodied in the capital used are thus socialized, everybody will tend to increase his private income resulting from the use of the factors *at the expense* of losses in capital value. Hence, marginal cost will increasingly tend to exceed the value of marginal product, and an overutilization of capital will result. And if, in an exceptional case, this happens not to be so and an overutilization should not be apparent, then this has only been possible at costs that are comparatively much higher than those of any similar private business.<sup>26</sup>

Without a doubt, all of these problems inherent in a system of monopolistic security production would be solved relatively quickly once a given demand for security services was met by a competitive market with its entirely different incentive structure for producers. This is not to say that a "perfect" solution to the problem of security would be found. There would still be robberies and murders; and not all loot would be recovered nor all murderers caught. But in terms of consumer evaluations the situation would improve to the extent that the

nature of man would allow it to improve. First, as long as there is a competitive system, i.e., as long as the producers of security services depend on voluntary purchases, most of which probably take the form of service and insurance contracts agreed to in advance of any actual "occurrence" of insecurity or aggression, no producer could increase its income without improving services or quality of product as perceived by the consumers. Furthermore, all security producers taken together could not bolster the importance of their particular industry unless, for whatever reason, consumers indeed started evaluating security more highly than other goods, thus ensuring that the production of security would never and nowhere take place at the expense of the non- or reduced production of, let us say, cheese, as a competing private good. In addition, the producers of security services would have to diversify their offerings to a considerable degree because a highly diversified demand for security products among millions and millions of consumers exists. Directly dependent on voluntary consumer support, they would immediately be hurt financially if they did not appropriately respond to the consumers' various wants or change in wants. Thus every consumer would have a direct influence, albeit small, on the output of goods appearing on or disappearing from the security market. Instead of offering a uniform "security packet" to everyone, a characteristic of state production policy, a multitude of service packages would appear on the market. They would be tailored to the different security needs of different people, taking account of different occupations, different risk-taking behavior, different needs for protection and insurance, and different geographical locations and time constraints.

But that is far from all. Besides diversification, the content and quality of the products would improve, too. Not only would the treatment of consumers by the employees of security enterprises improve immediately, the "I-could-care-less" attitude, the arbitrariness and even brutality, the negligence and tardiness of the present police and judicial systems would ultimately disappear. Since policemen and judges would be dependent on voluntary consumer support, any instances of maltreatment of consumers, of impoliteness or ineptness could cost them their job. Further, the peculiarity that the settlement of disputes between a client and his business partner is invariably entrusted to the latter's judgment, would almost certainly disappear from the books, and conflict arbitration by independent parties would become the standard offered by producers of security. Most importantly, in order to attract and retain customers the producers of such services would have to offer *contracts* that would allow the consumer to know what he was buying and enable him to raise a valid, intersubjectively ascertainable complaint if the actual performance of the security producer did not live up to the contract. And more specifically, insofar as they are not individualized service contracts where payment is made by a customer for covering his own risks exclusively, but rather insurance contracts proper that require pooling one's own risks with those of other people, contrary to the present statist practice, these contracts most certainly would

no longer contain any deliberately built-in redistributive scheme favoring one group of people at the expense of another. Otherwise, if anyone had the feeling that the contract offered to him required his paying for other people's peculiar needs and risks—factors of possible insecurity, that is, that he did not perceive as applicable to his own case—he would simply reject signing it or discontinue his payments.

Yet when all this is said, the question will inevitably surface, “Wouldn't a competitive system of security production necessarily result in permanent social conflict, in chaos and anarchy?” Several responses can be made to this question. First, it should be noted that such an impression would by no means be in accordance with historical, empirical evidence. Systems of competing courts have existed at various places (e.g., in ancient Ireland or at the time of the Hanseatic League) before the arrival of the modern nation state, and as far as we know they worked well.<sup>27</sup> Judged by the then existent crime rate (crime per capita), the private police in the so-called Wild West (which incidentally was not as wild as some movies imply) were relatively more successful than today's state-supported police.<sup>28</sup> And turning to contemporary experience and examples, millions and millions of international contacts exist even now—contacts of trade and travel—and it certainly seems to be an exaggeration to say, for instance, that there is more fraud, more crime, more breach of contract there than in domestic relations. And this, it should be noted, without there being one big monopolistic security producer and lawmaker. Finally it is not to be forgotten that even now in a great number of countries there are various private security producers alongside the state: private investigators, insurance detectives, and private arbitrators. Their work seems to confirm the thesis that they are more, not less, successful in resolving social conflicts than their public counterparts.

However, this historical evidence is very much subject to dispute, in particular regarding whether any general information can be derived from it. Yet there are systematic reasons, too, why the fear expressed by the question is not well-founded. Paradoxical as it may seem establishing a competitive system of security producers implies erecting an institutionalized incentive structure to produce an order of law and law-enforcement that embodies the highest possible degree of consensus regarding the question of conflict resolution. Such a structure will tend to generate *less* rather than more social unrest and conflict than would occur under monopolistic auspices.<sup>29</sup> In order to understand this paradox, it is necessary to take a closer look at the only typical situation that concerns the skeptic and that allows him to believe in the superior virtue of a monopolistically organized order of security production: when a conflict arises between A and B, both are insured by different companies and the companies cannot come to an immediate agreement regarding the validity of the conflicting claims brought forward by their respective clients. (No problem would exist if such an agreement were reached or if both clients were insured by one and the same company—at least the problem

then would not be different in any way from that emerging under a statist monopoly.) Wouldn't such a situation always result in a shoot-out? This is highly unlikely. First, any violent battle between companies would be costly and risky, in particular if these companies had reached a respectable size (which would be important for them to have in order to appear as effective guarantors of security to their prospective clients in the first place). More importantly, under a competitive system with each company dependent on the continuation of voluntary consumer payments, any battle would have to be deliberately supported by each and every client of both companies. If there were only one person who withdrew his payments because he was not convinced a battle was necessary in the particular conflict at hand, there would be immediate economic pressure on the company to look for a peaceful solution to the conflict.<sup>30</sup> Hence any competitive producer of security would be extremely cautious about engaging in violent measures in order to resolve conflicts. Rather, to the extent that it is peaceful conflict resolution that consumers want, each and every security producer would go to great lengths to provide it to its clients and to establish in advance, for everyone to know, to what arbitration process it would be willing to submit itself and its clients in case of a disagreement over the evaluation of conflicting claims. And as such a scheme could appear to the clients of different firms to be working only if there were agreement among them regarding such arbitrational measures, a system of law governing relations between companies that would be universally acceptable to the clients of all of the competing security producers would naturally evolve. Moreover, the economic pressure to generate rules representing a consensus on how conflicts should be handled is even more far-reaching. Under a competitive system, the independent arbitrators who would be entrusted with the task of finding peaceful solutions to conflicts would be dependent on the continued support of the two disputing companies insofar as the companies could and would select different judges if either one of them were sufficiently dissatisfied with the outcome of the arbitration work. Thus, these judges would be under pressure to find solutions to the problems handed over to them that, this time not with respect to the procedural aspects of law but its content, would be acceptable to all of the clients of the firms involved.<sup>31</sup> Otherwise one or all of the companies might lose customers, thus inducing those firms to turn to different arbitrators the next time they were in need of one.<sup>32</sup>

But wouldn't it be possible under a competitive system for a security producing firm to become an outlaw company—a firm, that is, which, supported by its own clients, started aggressing against others? There is certainly no way to deny that this might be possible, though again it must be emphasized that here one is in the realm of empirical social science and no one could know such a thing with certainty. And yet the tacit implication that the possibility that a security firm could become an outlaw company somehow indicates a severe deficiency in the philosophy and economics of a pure capitalist social order is fallacious.<sup>33</sup>

First, it should be recalled that any social system, a statist-socialist order no less than a pure market economy, is dependent for its continued existence on public opinion and that a given state of public opinion at all times delimits what can or cannot occur as well as what is more or less likely to occur. The current state of public opinion in West Germany, for instance, makes it highly unlikely or even impossible that a statist-socialist system of the current Soviet type could be imposed on the West German public. The lack of public support for such a system would doom it to failure and make it collapse. And it is even more unlikely that any attempt to impose a Soviet-type order could ever hope to succeed among Americans, given American public opinion. Hence, in order for us to see the problem of outlaw companies correctly, the above question should be phrased as follows: How likely is it that any such event would occur in a given society with its specific state of public opinion? Formulated in this way, it is clear that the answer would have to be different for different societies. For some, characterized by socialist ideas deeply entrenched in the public, there would be a greater likelihood of the reemergence of aggressor companies, and for other societies there would be a much smaller chance of this happening. But then, would the prospect of a competitive system of security production in any given case be better or worse than that of the continuation of a statist system? Let us look, for instance, at the present-day United States. Assume that by a legislative act the state had abolished its right to provide security with tax funds and a competitive system of security production was introduced. Given the state of public opinion, how likely would it then be that outlaw producers would spring up, and what if they did? Evidently, the answer would depend on the reactions of the public to this changed situation. Thus, the first reply to those challenging the idea of a private market for security would have to be: What about you? What would your reaction be? Does your fear of outlaw companies mean that you would then go out and engage in trade with a security producer that aggressed against other people and their property, and would you continue supporting it if it did? Certainly the critic would be much muted by this counterattack. But more important than this is the systematic challenge implied in this personal counterattack. Evidently, the described change in the situation would imply a change in the cost-benefit structure that everyone would face once he had to make his decisions. Before the introduction of a competitive system of security production, it had been legal to participate in and support (state) aggression. Now such an activity would be an illegal activity. Hence, given one's conscience, which makes each of one's own decisions appear more or less costly, i.e., more or less in harmony with one's own principles of correct behavior, support for a firm engaging in the exploitation of people unwilling to deliberately support its actions would be more costly now than before. Given this fact, it must be assumed that the number of people, among them even those who otherwise would have readily lent their support to the state, who would now spend their money to support a firm committed to honest



business would rise and would rise everywhere this social experiment was tried. In contrast, the number of people still committed to a policy of exploitation, of gaining at the expense of others, would fall. How drastic this effect would be would of course depend on the state of public opinion. In the example at hand—the United States, where the natural theory of property is extremely widespread and accepted as a private ethic, the libertarian philosophy being essentially the ideology on which the country was founded and that led it to the height it reached<sup>34</sup>—the effect would naturally be particularly pronounced. Accordingly, security producing firms committed to the philosophy of protecting and enforcing libertarian law would attract the greatest bulk of public support and financial assistance. And while it may be true that some people, and among them especially those who had profited from the old order, might continue their support of a policy of aggression, it is very unlikely that they would be sufficient in number and financial strength to succeed in doing so. Rather, the likely outcome would be that the honest companies would develop the strength needed—alone or in a combined effort and supported in this effort by their own voluntary customers—to check any such emergence of outlaw producers and destroy them wherever and whenever they came into existence.<sup>35</sup>

## NOTES

1. Gustave de Molinari, *The Production of Security*, trans. J. Huston McCulloch (New York: The Center for Libertarian Studies, 1977), p. 3.
2. *Ibid.*, p. 4.
3. For various approaches of public goods theorists, see J. Buchanan and G. Tullock, *The Calculus of Consent*, (Ann Arbor, 1961); J. Buchanan, *The Public Finances* (Homewood, 1970); the same, *The Limits of Liberty* (Chicago, 1975); G. Tullock, *Private Wants, Public Means* (New York, 1970); M. Olson, *The Logic of Collective Action* (New York, 1965); W. Baumol, *Welfare Economics and the Theory of the State* (Cambridge, 1952).
4. See on the following, M. N. Rothbard, *Man, Economy and State* (Los Angeles, 1970), pp. 883ff.; the same, "The Myth of Neutral Taxation," *Cato Journal* (1981); W. Block, "Free Market Transportation: Denationalizing the Roads," *Journal of Libertarian Studies* (1979); the same, "Public Goods and Externalities: The Case of Roads," *Journal of Libertarian Studies* (1983).
5. Cf. for instance, W. Baumol and A. Blinder, *Economics, Principles and Policy* (New York, 1979), chap. 31.
6. Another frequently used criterion for public goods is that of "nonrivalrous consumption." Generally, both criteria seem to coincide: When free riders cannot be excluded, nonrivalrous consumption is possible; and when they can be excluded, consumption becomes rivalrous, or so it seems. However, as public goods theorists argue, this coincidence is not perfect. It is, they say, conceivable that while the exclusion of free riders might be possible, their inclusion might not be connected with any additional cost (the marginal cost of admitting free riders is zero, that is), and that the consumption of the good in question by the additionally admitted free rider will not necessarily lead to a subtraction in the consumption of the good available to others. Such a good would be a public good, too. And since exclusion would be practiced on the free market and the good would not become available for nonrivalrous consumption to everyone it otherwise could—even though this would require no additional costs—this, according to statist-socialist logic, would prove a market failure, i.e., a suboptimal level of consumption. Hence the state would have to take over the provision of such goods. (A movie theater, for instance, might be

only half full, so it might be "costless" to admit additional viewers free of charge, and their watching the movie also might not affect the paying viewers; hence the movie would qualify as a public good. Since, however, the owner of the theater would be engaging in exclusion, instead of letting free riders enjoy a "costless" performance, movie theaters would be ripe for nationalization.) On the numerous fallacies involved in defining public goods in terms of nonrivalrous consumption see notes 12 and 17 below.

7. On this subject W. Block, "Public Goods and Externalities," *Journal of Libertarian Studies* (1983).
8. See for instance J. Buchanan, *The Public Finances* (Homewood, 1970), p. 23; P. Samuelson, *Economics* (New York, 1976), p. 160.
9. See R. Coase, "The Lighthouse in Economics," *Journal of Law and Economics* (1974).
10. See, for instance, the ironic case that W. Block makes for socks being public goods in "Public Goods and Externalities," *Journal of Libertarian Studies* (1983).
11. To avoid any misunderstanding here, every single producer and every association of producers making joint decisions can, at any time, decide whether or not to produce a good based on an evaluation of the privateness or publicness of the good. In fact, decisions on whether or not to produce public goods privately are constantly made within the framework of a market economy. What is impossible is to decide whether or not to ignore the outcome of the operation of a free market based on the assessment of the degree of privateness or publicness of a good.
12. In fact, then, the introduction of the distinction between private and public goods is a relapse into the presubjectivist era of economics. From the point of view of subjectivist economics, no good exists that can be categorized objectively as private or public. This is essentially why the second proposed criterion for public goods—permitting nonrivalrous consumption (see note 6 above)—breaks down too. For how could any outside observer determine whether or not the admittance of an additional free rider at no charge would not indeed lead to a subtraction in the consumption of a good to others? Clearly there is no way that he could objectively do so. In fact, it might well be that one's enjoyment of a movie or of driving on a road would be considerably reduced if more people were allowed in the theater or on the road. Again, to find out whether or not this is the case one would have to ask every individual—and not everyone might agree (what then?). Furthermore, since even a good that allows nonrivalrous consumption is not a free good, as a consequence of admitting additional free riders "crowding" would eventually occur, and hence everyone would have to be asked about the appropriate "margin." In addition, my consumption may or may not be affected depending on *who* it is that is admitted free of charge, so I would have to be asked about this, too. And finally, everyone might change his opinion on all of these questions over time. It is thus in the same way impossible to decide whether or not a good is a candidate for state (rather than private) production based on the criterion of nonrivalrous consumption as on that on non-excludability (see also note 17 below).
13. See P. Samuelson, "The Pure Theory of Public Expenditure," *Review of Economics and Statistics* (1954); the same, *Economics* (New York, 1976), chap. 8; M. Friedman, *Capitalism and Freedom* (Chicago, 1962), chap. 2; F. A. Hayek, *Law, Legislation and Liberty*, vol. 3, (Chicago, 1979), chap. 14.
14. Economists in recent years, particularly the Chicago school, have been increasingly concerned with the analysis of property rights (H. Demsetz, "The Exchange and Enforcement of Property Rights," *Journal of Law and Economics* (1964); the same, "Toward a Theory of Property Rights," *American Economic Review*, (1967); R. Coase, "The Problem of Social Cost," *Journal of Law and Economics* (1960); A. Alchian, *Economics Forces at Work* (Indianapolis, 1977), part 2; R. Posner, *Economic Analysis of Law* (Boston, 1977)). Such analyses, however, have nothing to do with ethics. On the contrary, they represent attempts to substitute economic efficiency considerations for the establishment of justifiable ethical principles (on the critique of such endeavors see M. N. Rothbard, *The Ethics of Liberty*, (Atlantic Highlands, 1982), chap. 26; W. Block, "Coase and Demsetz on Private Property Rights," *Journal of Libertarian Studies* (1977); R. Dworkin, "Is Wealth a Value," *Journal of Legal Studies* (1980); M. N. Rothbard, "The Myth of Efficiency," M. Rizzo, ed., *Time, Uncertainty, and Disequilibrium* (Lexington, 1979)). Ultimately, all efficiency arguments are irrelevant because there simply exists no nonarbitrary way of measuring, weighing, and aggregating individual utilities or disutilities that result from some given allocation of property rights. Hence any attempt to recommend some particular system of assigning property rights in terms of its alleged maximization of "social welfare" is pseudo-

scientific humbug (see in particular, M. N. Rothbard, "Toward a Reconstruction of Utility and Welfare Economics," (New York: Center for Libertarian Studies, 1977); also, L. Robbins, "Economics and Political Economy," *American Economic Review*, (1981)).

The "Unanimity Principle" which J. Buchanan and G. Tullock, following K. Wicksell (*Finanztheoretische Untersuchungen*, Jena, 1896), have repeatedly proposed as a guide for economic policy is also not to be confused with an ethical principle proper. According to this principle only such policy changes should be enacted which can find unanimous consent—and that surely sounds attractive; but then, *mutatis mutandis*, it also determines that the status quo be preserved if there is less than unanimous agreement on any proposal of change—and that sounds far less attractive, because it implies that any given, present state of affairs regarding the allocation of property rights must be legitimate either as a point of departure or as a to-be-continued-state. However, the public choice theorists offer no justification in terms of a normative theory of property rights for this daring claim as would be required. Hence, the unanimity principle is ultimately without ethical foundation. In fact, because it would legitimize any conceivable status quo, the Buchanites most favored principle is no less than outrightly absurd as a moral criterion (cf. on this also M. N. Rothbard, *The Ethics of Liberty* (Atlantic Highlands, 1982), ch. 26; the same, "The Myth of Neutral Taxation: in *Cato Journal* (1981), p. 549f).

Whatever might still be left for the unanimity principle, Buchanan and Tullock, following the lead of Wicksell again, then give away by reducing it in effect to one of "relative" or "quasi" unanimity.

15. H.-H. Hoppe, "From the Economics of Laissez Faire to the Ethics of Libertarianism," in W. Block and L. Rockwell, eds., *Man, Economy and Liberty: Essays in Honor of Murray N. Rothbard* (Auburn, Ala., 1988), pp. 56–76.
16. See on this argument M. N. Rothbard, "The Myth of Neutral Taxation" *Cato Journal* (1981): 533. Incidentally, the existence of one single anarchist also invalidates all references to Pareto optimality as a criterion for economically legitimate state action.
17. Essentially the same reasoning that leads one to reject the socialist-statist theory built on the allegedly unique character of public goods as defined by the criterion of nonexcludability, also applies when, instead, such goods are defined by means of the criterion of nonrivalrous consumption (see notes 6 and 12 above). For one thing, in order to derive the normative statement that they *should* be so offered from the statement of fact that goods that allow nonrivalrous consumption would *not* be offered on the free market to as many consumers as could be, this theory would face exactly the same problem of requiring a justifiable ethics. Moreover, the utilitarian reasoning is blatantly wrong, too. To reason, as the public goods theorists do, that the free-market practice of excluding free riders from the enjoyment of goods that would permit nonrivalrous consumption at zero marginal costs would indicate a suboptimal level of social welfare and hence would require compensatory state action is faulty on two related counts. First, cost is a subjective category and can never be objectively measured by any outside observer. Hence, to say that additional free riders could be admitted at no cost is totally inadmissible. In fact, if the subjective costs of admitting more consumers at no charge were indeed zero, the private owner-producer of the good in question would do so. If he does not do so, this reveals that the costs for him are *not* zero. The reason may be his belief that to do so would reduce the satisfaction available to the other consumers and so would tend to depress the price for his product; or it may simply be his dislike for uninvited free riders as, for instance, when I object to the proposal that I turn over my less-than-capacity-filled living room to various self-inviting guests for nonrivalrous consumption. In any case, since for whatever reason the cost cannot be assumed to be zero, it is then fallacious to speak of a market failure when certain goods are not handed out free of charge. On the other hand, welfare losses would indeed become unavoidable if one accepted the public goods theorists' recommendation of letting goods that allegedly allow for nonrivalrous consumption to be provided free of charge by the state. Besides the insurmountable task of determining what fulfills this criterion, the state, independent of voluntary consumer purchases as it is, would first off face the equally insoluble problem of rationally determining *how much* of the public good to provide. Clearly, since even public goods are not free goods but are subject to "crowding" at some level of use, there is no stopping point for the state, because at any level of supply there would still be users who would have to be excluded and who, with a larger supply, could enjoy a free ride. But even if this problem could be solved miraculously,

in any case the (necessarily inflated) cost of production and operation of the public goods distributed free of charge for nonrivalrous consumption would have to be paid for by taxes. And this then, i.e., the fact that consumers would have been coerced into enjoying their free rides, again proves beyond any doubt that these public goods, too, are of inferior value from the point of view of consumers to the competing private goods that they now no longer can acquire.

18. The most prominent modern champions of Orwellian double talk are J. Buchanan and G. Tullock (see their works cited in note 3 above). They claim that government is founded by a "constitutional contract" in which everyone "conceptually agrees" to submit to the coercive powers of government with the understanding that everyone else is subject to it too. Hence government is only *seemingly* coercive but *really* voluntary. There are several evident objections to this curious argument. First, there is no empirical evidence whatsoever for the contention that any constitution has ever been voluntarily accepted by everyone concerned. Worse, the very idea of all people voluntarily coercing themselves is simply inconceivable, much in the same way as it is inconceivable to deny the law of contradiction. For if the voluntarily accepted coercion is *voluntary*, then it would have to be possible to revoke one's subjection to the constitution, and the state would be no more than a voluntarily joined club. If, however, one does not have the "right to ignore the state"—and that one does not have this right is, of course, the characteristic mark of a state as compared to a club—then it would be logically inadmissible to claim that one's acceptance of state coercion is voluntary. Furthermore, even if all this were possible, the constitutional contract could still not claim to bind anyone except the original signers of the constitution.

How can Buchanan and Tullock come up with such absurd ideas? By a semantic trick. What was "inconceivable" and "no agreement" in pre-Orwellian talk is for them "conceptually possible" and a "conceptual agreement." For a most instructive short exercise in this sort of reasoning in leaps and bounds, see J. Buchanan, "A Contractarian Perspective on Anarchy," in the same, *Freedom in Constitutional Contract* (College Station, 1977). Here we learn (p. 17) that even the acceptance of the 55 mph speed limit is possibly voluntary (Buchanan is not quite sure) since it ultimately rests on all of us conceptually agreeing on the constitution, and that Buchanan is not really a statist, but in truth an anarchist (p. 11).

19. M. N. Rothbard, *Man, Economy and State* (Los Angeles, 1970), p. 887.
20. This, first of all, should be kept in mind whenever one has to assess the validity of statist-interventionist arguments such as the following, by J. M. Keynes ("The End of Laissez Faire," in the same, *Collected Writings* (London 1972), vol. 9, p. 291): "The most important Agenda of the state relate not to those activities which private individuals are already fulfilling but to those functions which fall outside the sphere of the individual, to those decisions which are made by *no one* if the state does not make them. The important thing for government is not to do things which individuals are doing already and to do them a little better or a little worse: but to do those things which are not done at all." This reasoning not only *appears* phony, it truly is.
21. Some libertarian minarchists object that the existence of a market presupposes the recognition and enforcement of a common body of law, and hence a government as a monopolistic judge and enforcement agency. (see, for example, J. Hospers, *Libertarianism* (Los Angeles, 1971); T. Machan, *Human Rights and Human Liberties* (Chicago, 1975)). Now it is certainly correct that a market presupposes the recognition and enforcement of those rules that underlie its operation. But from this it does not follow that this task must be entrusted to a monopolistic agency. In fact, a common language or sign-system is also presupposed by the market; but one would hardly think it convincing to conclude that hence the government must ensure the observance of the rules of language. Like the system of language, then, the rules of market behavior emerge spontaneously and can be enforced by the "invisible hand" of self-interest. Without the observance of common rules of speech, people could not reap the advantages that communication offers, and without the observance of common rules of conduct, people could not enjoy the benefits of the higher productivity of an exchange economy based on the division of labor. In addition, as I indicated above, independent of any government the non-aggression principle underlying the operation of markets can be defended a priori as just. Moreover, as I will argue in the conclusion of this article, it is precisely a competitive system of law-administration and law-enforcement that generates the greatest possible pressure to elaborate and enact rules of conduct that incorporate the highest degree of *consensus* conceivable. And of course the very rules that do just this are those that a priori reasoning establishes as the logically necessary presupposition of argumentation and argumentative agreement.

22. Incidentally, the same logic that would force one to accept the idea of the production of security by private business as economically the best solution to the problem of consumer satisfaction also forces one, so far as moral-ideological positions are concerned, to abandon the political theory of classical liberalism and take the small but nevertheless decisive step (from there) to the theory of libertarianism, or private property anarchism. Classical liberalism, with Ludwig von Mises as its foremost representative in this century, advocates a social system based on the nonaggression principle. And this is also what libertarianism advocates. But classical liberalism then wants to have this principle enforced by a monopolistic agency (the government, the state)—an organization, that is, which is not exclusively dependent on voluntary, contractual support by the consumers of its respective services, but instead has the right to unilaterally determine its own income, i.e., the taxes to be imposed on consumers in order to do its job in the area of security production. Now, however plausible this might sound, it should be clear that it is inconsistent. Either the principle of nonaggression is valid, in which case the state as a privileged monopolist is immoral, or business built on and around aggression—the use of force and of non-contractual means of acquiring resources—is valid, in which case one must toss out the first theory. It is impossible to sustain both contentions and not to be inconsistent unless, of course, one could provide a principle that is more fundamental than both the nonaggression principle and the state's right to aggressive violence and from which both, with the respective limitations regarding the domains in which they are valid, can be logically derived. However, liberalism never provided any such principle, nor will it ever be able to do so, since, to argue in favor of anything presupposes one's right to be free of aggression. Given the fact then that the principle of nonaggression cannot be argumentatively contested as morally valid without implicitly acknowledging its validity, by force of logic one is committed to abandoning liberalism and accepting instead its more radical child: libertarianism, the philosophy of pure capitalism, which demands that the production of security be undertaken by private business too.
23. On the problem of competitive security production, see Gustave de Molinari, "Production of Security"; M. N. Rothbard, *Power and Market* (Kansas City, 1977), chap. 1; the same, *For A New Liberty* (New York, 1978), chap. 12; W. C. Woolridge, *Uncle Sam the Monopoly Man* (New Rochelle, 1970), chaps. 5–6; M. and L. Tannehill, *The Market for Liberty* (New York, 1984), part 2.
24. Cf. M. Murck, *Soziologie der oeffentlichen Sicherheit* (Frankfurt, 1980).
25. To say that the process of resource allocation becomes arbitrary in the absence of the effective functioning of the profit-loss criterion does not mean that the decisions that somehow have to be made are not subject to any kind of constraint and hence are pure whim. They are not, and any such decisions face certain constraints imposed on the decision maker. If, for instance, the allocation of production factors is decided democratically, then it evidently must appeal to the majority. But if a decision is constrained in this way or if it is made in any other way, it is still arbitrary from the point of view of voluntarily buying or not-buying consumer.

Regarding democratically controlled allocations, various deficiencies have become quite evident. As, for example, J. Buchanan and R. Wagner write (*The Consequences of Mr. Keynes* (London, 1978), p. 19), "Market Competition is continuous; at each purchase, a buyer is able to select among competing sellers. Political competition is intermittent; a decision is binding generally for a fixed number of years. Market competition allows several competitors to survive simultaneously . . . political competition leads to an all-or-nothing outcome. . . . in market competition the buyer can be reasonably certain as to just what it is that he will receive from his purchase. In political competition, the buyer is in effect purchasing the services of an agent, whom he cannot bind. . . . Moreover, because a politician needs to secure the cooperation of a majority of politicians, the meaning of a vote for a politician is less clear than that of a 'vote' for a private firm." (See also J. Buchanan, "Individual Choice in Voting and the Market", in the same, *Fiscal Theory and Political Economy* (Chapel Hill, 1962); for a more general treatment of the problem J. Buchanan and G. Tullock, *The Calculus of Consent* (Ann Arbor, 1962).

What has commonly been overlooked, though,—especially by those who try to make a virtue of the fact that a democracy gives equal voting power to everyone, whereas consumer sovereignty allows for unequal "votes"—is the most important deficiency of all: Under a system of consumer sovereignty people might cast unequal votes but, in any case, they exercise control exclusively over things that they acquired through original appropriation or contract and hence are forced to act morally. Under a democracy of production everyone is assumed to have something to say



regarding things one did not so acquire, and hence one is permanently invited thereby not only to create legal instability with all its negative effects on the process of capital formation, but, moreover, to act immorally. See on this also Ludwig von Mises, *Socialism* (Indianapolis, 1981), chap. 31.

26. Sums up Molinari ("Production of Security" pp. 13-14), "If . . . the consumer is not free to buy security wherever he pleases, you forthwith see open up a large profession dedicated to arbitrariness and bad management. Justice becomes slow and costly, the police vexatious, individual liberty is no longer respected, the price of security is abusively inflated and inequitably apportioned, according to the power and influence of this or that class of consumers."
27. See the literature cited in note 22; also B. Leoni, *Freedom and the Law* (Princeton, 1961); J. Peden, "Property Rights in Celtic Irish Law," *Journal of Libertarian Studies* (1977).
28. See T. Anderson and P. J. Hill, "The American Experiment in Anarcho-Capitalism: The Not So Wild, Wild West," *Journal of Libertarian Studies* (1980).
29. On the following, see H.-H. Hoppe, *Eigentum, Anarchie und Staat* (Opladen, 1986), chap. 5.
30. Contrast this with the state's policy of engaging in battles without having everyone's deliberate support because it has the right to tax people; and ask yourself if the risk of war would be lower or higher if one had the right to stop paying taxes as soon as one had the feeling that the state's handling of foreign affairs was not to one's liking.
31. And it may be noted here again that norms that incorporate the highest possible degrees of consensus are, of course, those that are presupposed by argumentation and whose acceptance makes consensus on anything at all possible, as indicated on p. 31-32.
32. Again, contrast this with state-employed judges who, because they are paid from taxes and so are relatively independent of consumer satisfaction, can pass judgments that are clearly not acceptable as fair by everyone; and ask yourself if the risk of not finding the truth in a given case would be lower or higher if one had the possibility of exerting economic pressure whenever one had the feeling that a judge who one day might have to adjudicate in one's own case had not been sufficiently careful in assembling and judging the facts of a case, or simply was an outright crook.
33. See on the following in particular M. N. Rothbard, *For A New Liberty* (New York, 1978), pp. 233ff.
34. See B. Bailyn, *The Ideological Origins of the American Revolution* (Cambridge, 1967); J. T. Main, *The Anti-Federalists: Critics of the Constitution* (Chapel Hill, 1961); M. N. Rothbard, *Conceived in Liberty* (New Rochelle, 1975-1979).
35. Naturally, insurance companies would assume a particularly important role in checking the emergence of outlaw companies. Note M. and L. Tannehill (pp. 110-11):

"Insurance companies, a very important sector of any totally free economy, would have a special incentive to dissociate themselves from any aggressor and, in addition, to bring all their considerable business influence to bear against him. Aggressive violence causes value loss, and the insurance industry would suffer the major cost in most such value losses. An unrestrained aggressor is a walking liability, and no insurance company, however remotely removed from his original aggression, would wish to sustain the risk that he might aggress against one of its own clients next. Besides, aggressors and those who associate with them are more likely to be involved in situations of violence and are, thus, bad insurance risks. An insurance company would probably refuse coverage to such people out of a foresighted desire to minimize any future losses which their aggression might cause. But even if the company were not motivated by such foresight, it would still be forced to rate their premiums up drastically or cancel their coverage altogether in order to avoid carrying the extra risk involved in their inclination to violence. In a competitive economy, no insurance company could afford to continue covering aggressors and those who had dealings with aggressors and simply pass the cost on to its honest customers; it would soon lose these customers to more reputable firms which could afford to charge less for their insurance coverage."



# **Anarchism and the Public Goods Issue: Law, Courts, and the Police**

by David Osterfeld

*Department of Political Science, St. Joseph's College*

In the early 1970s, James Buchanan and Gordon Tullock held a series of seminars examining anarchism as a feasible method of social organization (Tullock 1972b; Tullock 1974b). The general consensus was that that good which may be termed "security" is a public or collective good. Since "security" is both (a) essential for the very existence of any social order and (b) incapable of being supplied *voluntarily*, government, that agency with a (legitimate) monopoly on the use of compulsion and control, is indispensable.

Interestingly, numerous articles have appeared since then in *Public Choice* (Goldin; Moss; Kim and Walker; Isaak, Walker and Thomas; McCaleb and Wagner) and elsewhere (Brubaker; Marwell and Ames; Schneider and Pommerehne; Brownstein; Hoppe; Rothbard 1970–; Bendor and Mookherjee) that have called into question, on both conceptual and empirical grounds, the accepted wisdom regarding the concept of collective goods and its corollary, free riding. These articles would seem to call for a reassessment of the original "public choice" consensus on the feasibility of anarchism as a method of social organization, but to date no such reassessment has been forthcoming.

This paper is an attempt to use what is essentially "public choice" analysis—which assumes that individuals will make "rational" choices based on self-interest—to show how the primary collective good, security, might be provided noncoercively, i.e., in the absence of a state. For purposes of presentation, the broad concept of security will be subdivided into three components: (1) law, (2) the courts, and (3) the police.

The "public choice" position on anarchism is thoroughly traditional. The proposition that security is essential for social order is combined with the usually *implicit assumption* that it is a single, indivisible lump, i.e., that since security is a "nonexcludable" good, in order for it to be supplied to any one individual it must be supplied to the entire population, and supplied in the same quantity and quality. The rational individual will therefore reason that he will maximize his utility