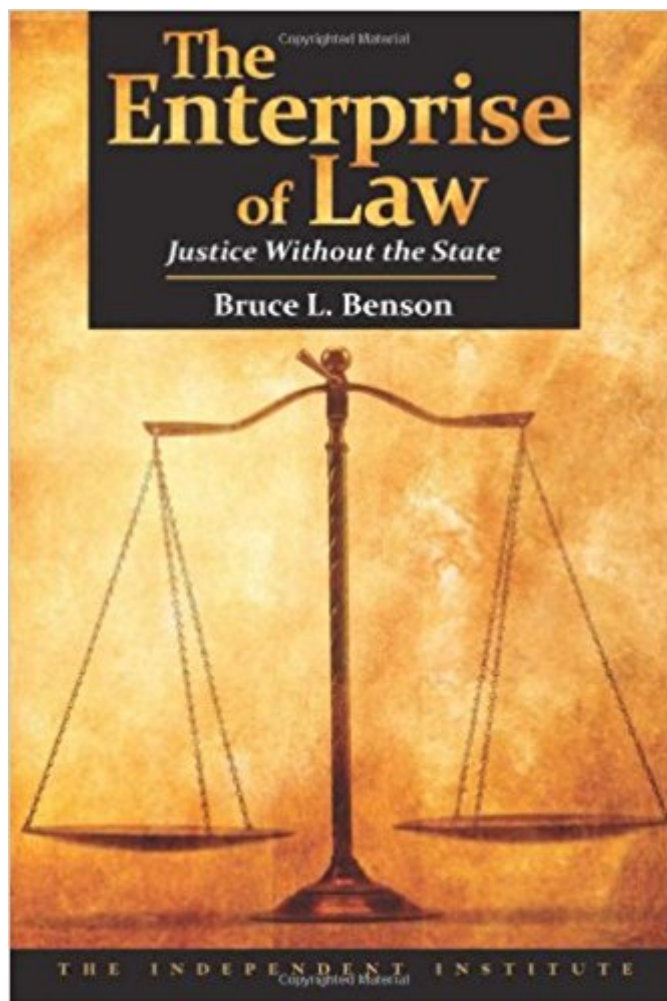




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The Enterprise Of Law: Justice Without The State



Synopsis

In the minds of many, the provision of justice and security has long been linked to the state. To ask whether non-state institutions could deliver those services on their own, without the aid of coercive taxation and a monopoly franchise, runs the risk of being branded as naive anarchism or dangerous radicalism. Defenders of the state's monopoly on lawmaking and law enforcement typically assume that any alternative arrangement would favor the rich at the expense of the poor "or would lead to the collapse of social order and ignite a war. Questioning how well these beliefs hold up to scrutiny, this book offers a powerful rebuttal of the received view of the relationship between law and government. The book argues not only that the state is unnecessary for the establishment and enforcement of law, but also that non-state institutions would fight crime, resolve disputes, and render justice more effectively than the state, based on their stronger incentives.

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Customer Reviews

Do we need the State to produce law? There are libertarians aplenty who believe we do. Some of them have actually thought carefully about the issue, and some of them are merely Objectivists who have accepted Ayn Rand's oracular dismissal of anarchocapitalism in her (thoroughly statist) essay on "The Nature of Government." Both of these groups will benefit from a reading of Bruce Benson's fine volume. Benson picks up the argument where Murray Rothbard and David Friedman left it, and carries it forward by several miles. Here he provides a short history of market-based law, from its rise to its near-demise at the hands of "authoritarian" law; a public-choice analysis of the political

market for law; an overview of recent trends toward reliance on private sources of law and justice; rebuttals of common arguments for the necessity of State law; and a short summary of what a private, non-State system of law might look like. There are treats throughout. Some of my favorites are Benson's replies to Landes and Posner -- e.g. their argument that "private" law is parasitic on legal standards developed in the public sector, and their claim that such "private" law would be less efficient than public law. (In general I am of the opinion that Richard Posner is one of the most overrated legal thinkers of the past century or two.) Benson is also exceptional among libertarian writers in his familiarity with the relevant legal literature. One of the other exceptions -- the altogether brilliant Randy Barnett (whose book *The Structure of Liberty* belongs on your shelf next to this one) -- is credited by Benson for drawing the latter's attention to such literature and making some specific recommendations.

Despite the impression one might draw from the other reviews here, this is not an overtly political tract. But some background on the author would be in order. Benson is an economics professor at Florida State. Generally, his research interests involve law enforcement, the drug war, private security alternatives, arbitration, and the history of arbitration and privately-produced commercial law (the law merchant). I have never seen a writing by him in which he explains all of his personal views and opinions, but he's obviously a pretty serious libertarian and he's had some involvement with the *Quarterly Journal of Austrian Economics*. I discourage linking websites in reviews, but those interested could easily find his academic webpage by doing a google search for "Dr. Bruce L. Benson." Benson is probably every bit the political extremist that I am, but this book doesn't really argue politics (mostly). It has a very fascinating history of the evolution of law in England, which forms the basis of modern American law, also. The presentation is mostly dry and academic, but the subject matter is completely fascinating, and Benson does a better job than any other writer in tying it all together to show the reader a picture of the historical origins of law, and the relationship between law and the state. We have all been taught that the administration of law and justice is one of the purposes of government. Benson shows that this bit of conventional wisdom just doesn't fit the history. Courts and laws originated from communities and their customs, not from any governmental body.

In his celebrated book, *Order Without Law*, Robert Ellickson criticizes law-and-economics theorists for "underappreciat[ing] the role that nonlegal systems play in achieving social order." One of the few exceptions he cites, along with law-and-economics luminaries Richard Posner and Harold

Demsetz, is Bruce L. Benson. Ellickson refers specifically to Benson's significant journal article, "The Spontaneous Evolution of Commercial Law," which describes the system of social control that emerged from the medieval merchant community and which is largely still in effect today. _The Enterprise of Law: Justice Without the State_ begins by expanding this study, documenting not just voluntary commercial law but the decentralized legal order of the Anglo-Saxons leading up to the Norman conquest. Benson traces the establishment of departments and bureaucratic procedures that remain to this day, providing context for things like the Magna Carta and the adoption of the jury system. Whereas Saxon law was focused on restitution to the victim, the influence of the Crown and the bureaucracy, acting in accordance with its institutional incentives, shifted the prevailing system to criminal law and crimes committed "against the King's peace." Punishment and enforcement transformed from restitution and forms of self-help to payment to the government and incarceration and the eventual creation of the professional police force. Benson follows this process carefully, step-by-step, until he has arrived at the modern conception of the common law, criminal law and public enforcement. What sets this work apart from many other libertarian books is the consistent and exhaustive application of public choice analysis to the question of law creation and enforcement.

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