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# Crime Control Through Private Enterprise

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**I**srael Kirzner (1997, 62) explains that entrepreneurial discovery of opportunities gradually and systematically pushes back the boundaries of ignorance, thereby driving down costs and prices while increasing both the quantity and the quality of output. In the public-sector production of crime control, ignorance abounds, costs are high and rising, and both the quality and the quantity of the effective output of the criminal justice system clearly have room for improvement. A 1976 National Advisory Commission on Criminal Justice Standards and Goals report notes that

this country has become the unwilling victim of a crime epidemic. The present seriousness of the disease has outstripped even the most pessimistic prognosis. Coupled with a steadily rising numerical frequency of crimes is a savage viciousness that has rendered the American public almost immune from further shock. . . .

In a valiant but vain attempt to stem this massive tide of criminality, government officials, scholars, politicians, and a vast array of other professionals have responded with plans, programs, and projects all designed to reduce crime. . . . [A]lthough many of these programs were improvements over outdated practices, crime, the cost of crime, the damages from crime, and the fear of crime continued to increase.

In such circumstances, turning the entrepreneurial discovery process loose on crime control may have real advantages.

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Others have also recognized that private-sector entrepreneurs can discover better ways to control crime. Perhaps surprisingly, the preceding quote from the 1976 report anticipates the suggestion made here, concluding that

One massive resource. . . has not been tapped by governments in the fight against criminality. The private security industry. . . offers a potential for coping with crime that can not be equaled by any other remedy. . . . [T]he private security professional may be the only person in this society who has the knowledge to effectively prevent crime.

This conclusion had no noticeable impact on public policy toward crime. A 1985 National Institute of Justice (NIJ) report (Cunningham and Taylor 1985, 1–3) explains that despite continual increases in taxpayer dollars spent on the criminal justice system, “neither local, State, nor Federal resources had seriously affected the problem of crime” and that yet still “conspicuously absent from. . . crime prevention programs. . . is the input of the private security industry.”

This statement is not completely accurate. Although recommendations and resources from the private security industry remain absent from most public policy programs, private citizens’ own programs are relying on entrepreneurs in ever-increasing numbers in order to obtain new and innovative crime-control services (Benson 1990, 1996b). Indeed, as Lawrence Sherman (1983, 145–149) observes, “Few developments are more indicative of public concern about crime—and declining faith in the ability of public institutions to cope with it—than the burgeoning growth in private policing. . . . Rather than approving funds for more police, the voters have turned to volunteer and paid private watchers.”

A typical policymaker’s question is “What can government do to reduce crime?” but a better question is “What is the most cost-effective way to reduce crime?” I maintain that the answer must include a significant increase in private market provision of the four Ps of crime control: prevention, pursuit, prosecution, and punishment. To frame this argument I shall discuss examples of current markets for the four Ps, the alleged failings of such market activities in crime control, and policy alternatives to encourage more entrepreneurial discovery.

## Nature and Growth of Markets in Crime Control

Market provision of goods and services to facilitate all types of crime control activities is quite substantial, but much of it is undocumented. A few surveys and studies have been conducted, however, and although some are dated, indications of the types of markets that exist and their growth can be gleaned from these sources.<sup>1</sup>

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1. The following presentation stresses “market” responses to crime in a narrow sense (i.e., the production and sale of various goods and services to private individuals and organizations by profit-seeking entrepreneurial firms), but private-sector responses to crime, including private actions by individuals and by voluntary organizations, are actually much more widespread. See Benson (1990, 1996b).

*Private Security Personnel for Protection and Pursuit*

Table 1 indicates that from 1964 to 1991, employment by private firms specializing in protective and detective services increased by 746.8 percent, and the number of firms offering such services grew by 543 percent. Entrepreneurial entry has clearly been substantial. Furthermore, the figures in table 1 do not include direct employment of private security personnel by nonsecurity firms (vertical integration), residential developments, or other institutions. A 1970 estimate put the number of privately employed security personnel, including internal security, at roughly equal to the number of public police, but by 1983, there were more than twice as many private security personnel as public police in the United States (Reichman 1987, 247). A 1991 NIJ study reports a ratio of about 2.5 private security employees to each public police officer (Cunningham, Strauchs, and Van Meter 1991). Roughly \$21.7 billion was paid to 1.1 million full-time security employees in 1980 (Cunningham and Taylor 1985, 12). By

**Table 1. Number of Firms and Employees in  
Detective Agency and Protective Services, 1964-1991**

<b>Year</b>	<b>Number of Firms</b>	<b>Number of Employees</b>
1964	1,988	62,170
1967	3,389	151,637
1973	4,182	202,561
1976	5,841	248,050
1979	6,502	310,333
1982	8,424	345,874
1985	10,066	410,625
1988	11,675	473,308
1991	12,783	526,435
<b>% change</b>		
1964-91	543.0	746.8
<b>Average % change</b>		
1964-91	20.1	27.7

*Source:* Bureau of the Census, *County Business Patterns*  
(Washington, D.C.: U.S. Department of Commerce,  
Bureau of the Census, various years).

1991, these estimates were up to \$52 billion for 1.3 million private security personnel (Cunningham, Strauchs, and Van Meter 1991), making this the second-fastest-growing industry in the United States. Even these employment figures “greatly underestimate the extent of private policing. Surveillance of private places and transactions is being conducted by actors who traditionally have not been counted as among the rank and file of private police” (Reichman 1987, 246). Examples are insurance adjusters, corporate risk managers, and other “loss consultants.”

Security personnel include the stereotypical minimum-wage night watchmen, of course, but also included are fully qualified police officers (many public police moonlight as private security, and many other police officials have resigned their positions in order to enter the lucrative private-security market), and highly trained and skilled electronic-security experts. Although manufacturing firms and retailers rank first and second in contracting with security firms, government agencies rank third (M. Chaiken and J. Chaiken 1987, 3), which suggests that the government also is turning to the market to take advantage of the various cost-effective services available.

A 1972 survey found no city contracting directly with a private firm for all police services, and fewer than 1 percent dealing with private firms for subservice police functions (Fisk, Kiesling, and Muller 1978, 33). This situation has changed dramatically. Local governments now contract with private firms for a wide array of traditional police functions, particularly in the area of “police support” services, including accounting, maintenance, communications, data processing, towing illegally parked cars, fingerprinting prisoners, conducting background checks on job applicants, and directing traffic (M. Chaiken and J. Chaiken 1987, 1–3). Security firms also provide guards for public buildings, sports arenas, and other public facilities. Wackenhut Services, Inc., for example, has a number of contracts with governments. A partial list includes security for courthouses in Texas and Florida, patrols for the Miami Downtown Development Authority, guards for the Miami Metro Rail and the Tri-Rail from West Palm Beach to Dade County, complete police services for the Tampa Airport, and predeparture security for many other airports (Reynolds 1994, 11). The state of Florida contracted with Wackenhut for security guards at all its highway rest stops after a 1993 rest-stop murder of a tourist.

Wackenhut also provides the entire police force for the Energy Research and Development Administration’s 1,600-square-mile Nevada nuclear test site and for the Kennedy Space Center in Florida (Poole 1978, 41–42). Several local governments have also contracted for complete police services. For instance, in 1975 Oro Valley, Arizona, arranged such a contract with the major provider of contract fire-control services, Rural/Metro Fire Department, Inc. (Gage 1982, 25). The Arizona Law Enforcement Officers Advisory Council challenged the arrangement, however, arguing that under Arizona law an employee of a private firm could not be a police officer. Rural/Metro could not bear the high court fees required to fight the challenge, so the arrangement ended in 1977. Several other similar contracts have been written elsewhere.

Guardsmark, Inc., began providing full police services to Buffalo Creek, West Virginia, in 1976 (Poole 1978, 42). Wackenhut had contracts with three separate Florida jurisdictions in 1980 and had proposals pending with twenty communities in 1985 (Cunningham and Taylor 1985, 47). Reminderville, Ohio, contracted with Corporate Security, Inc., in 1981 (Gage 1982, 24). After the entire police force of Sussex, New Jersey, was dismissed due to a drug scandal, the community contracted with Executive Security & Investigations Services, Inc. (*New York Times*, July 13, 1993). Government contracting for all police services is, it appears, increasingly recognized as a serious alternative. In fact, this practice is quite common in certain other countries. For instance, in Switzerland one firm, Secuitas, provides police for more than thirty villages and townships (Reynolds 1994).

### *Specialized Products for Prevention*

Security personnel are not the only privately provided source of crime prevention. A 1970 study by Predicast, Inc., estimated that sales of crime deterrence equipment grew at an annual rate of 8.8 percent from 1958 to 1963 and 11 percent from 1963 to 1968. A Research and Forecasts (1983, 68) study of fear of crime found that 52 percent of surveyed residential respondents had added extra locks to their doors, 8 percent had barred windows, approximately one-fourth of the sample had automatic timers to switch lights on and off, and many had more sophisticated devices to turn televisions or stereos on and off. Fifty-two percent also indicated that they owned a gun to protect their homes. And people do use their guns for protection. For example, California had 126 justifiable homicides by private citizens in 1981, compared to 68 by police (California Department of Justice 1981).

Similarly, sales of monitoring and detection equipment grew by 7.1 percent per year over the 1958 to 1963 period and 10.4 percent per year from 1963 to 1968 (Predicast 1970). Indeed, "alarm systems are the most frequently used component of security programs," at least for businesses, and the residential market for such services is growing rapidly (Cunningham and Taylor 1985, 21). Fifteen percent of the Research and Forecasts (1983) respondents had burglar alarms of some sort, and an estimated 10 percent of the homes in the United States were connected to central alarm systems in 1990, up from 1 percent in 1970 (Reynolds 1994, 8). Central stations for alarms are now provided by several national companies (e.g., Honeywell, Wells Fargo, Sonitrol, and Westinghouse) as well as by large numbers of small local firms (Cunningham and Taylor 1985, 21).

These equipment sales accounted for more than a third of the total expenditures on security (including spending for guard and investigative services) during the 1958 to 1968 period (41 percent in 1958 and 36 percent in 1968), and this relative level of expenditures apparently has continued to hold (Cunningham and Taylor 1985, 24). Technological advances through research and development are lowering the cost of

such equipment while simultaneously producing ever more effective detection and monitoring, thus requiring more educated and skilled specialists in security. Therefore, both increasingly sophisticated security labor and capital combine to produce ever higher levels of security where it is demanded. A Research and Forecasts (1983, 110) survey of 1,000 large corporations found that most corporate headquarters had a “vast array” of security procedures and devices, including building security checks (88 percent), burglar alarms (66 percent), floodlighting (64 percent), automatic light timers (50 percent), closed-circuit television (48 percent), electronic card identification systems (38 percent), photoelectric timers (30 percent), and armed guards (24 percent). Four hundred of the companies used at least six of these eight security systems, and unarmed guards, plainclothes security personnel, and coded door locks were also common. Most respondents had comprehensive security programs, including employee education (73 percent), crisis management plans (63 percent), and employment of a security specialist (62 percent).

Clearly, potential entrepreneurs are discovering numerous opportunities for and new ways to provide crime-control services, and potential victims are finding the results attractive. Actual victims are also choosing not to use the public sector’s criminal justice system, which suggests that private alternatives are substitutes for the public criminal justice apparatus. According to the Bureau of Justice Statistics’ most recent victimization survey (BJS 1993), for instance, only about 39 percent of all Index I crimes (murder and manslaughter, sexual offenses, aggravated assault, robbery, burglary, larceny, and auto theft) were reported. Such a substitution effect arises in part from the falling relative prices of private alternatives (as quality is rising, the price per unit of effective protection appears to be falling) and from the rising costs of cooperation with police and prosecutors. Victims’ costs of reporting crimes and cooperating in prosecution can include (1) out-of-pocket expenses such as transportation, baby-sitting, and parking; (2) lost wages in order to meet with police and prosecutors and appear in court; (3) emotional and psychological costs brought on by rounds of questioning, confronting an assailant, and enduring a defense attorney’s questions; and conceivably (4) retaliation by an offender who is either unsuccessfully prosecuted or not confined for long (Benson 1994). Victimization surveys also indicate that the goals of revenge and incapacitation (punishment and prevention of further crimes by the offender) are the two primary reasons for reporting violent crimes to public police (BJS 1993, 34), whereas a desire to recover losses is also an important motivation for reporting property crimes. But such benefits tend to be small due to the low probabilities of arrest, prosecution, conviction, and punishment (see Benson [1996b, 1996c]), as many victims appreciate (BJS 1993, 33). In this context, many theft victims also cite insurance collection as a primary motivation for reporting (BJS 1993, 34). In other words, these crimes are reported not because victims expect the criminal justice system to produce benefits but because the victims have invested in a form of private “protection” of their wealth—insurance—and are required to file a crime report to collect.

Thus, the extent of private protection clearly goes beyond private security, and victims also use private alternatives to resolve crimes and sanction criminals.

### *Private Investigation and Pursuit of Criminals*

Although private investigators are not viewed favorably by most public officials, many reputable firms provide and employ such services. Insurance companies' employees investigate many crimes (i.e., if their losses are large enough to warrant investigation costs), and private firms provide similar services to some of these companies. Many other private organizations and businesses also employ private criminal investigators. The American Banking Association and the American Hotel-Motel Association both contract with the William J. Burns International Detective Agency, for example, because they do not get satisfactory results from public police (Reynolds 1994, 12).

The railroad police, established at the end of World War I as a complete and autonomous police force, have compiled a remarkable record of effectiveness, particularly relative to public police. Between the end of World War I and 1929, freight claim payments for robberies fell by 92.7 percent, from \$12,726,947 to \$704,262 (Wooldridge 1970, 116). This success has continued. In 1992, major railroads in the United States employed a 2,565-person security force, which cleared about 30.9 percent of the crimes reported to them. Public police cleared about 21.4 percent of reported crimes that same year, but because of the railroad police's relative effectiveness an estimated 75 percent of all crimes against railroads are reported to their police, compared to 39 percent reported to public police. Therefore, adjusted for reporting, the clearance rate for railroad police (23.2) was 286 percent higher than that for public police (8.1) (Reynolds 1994, 11–12). Furthermore, arrests by railroad police have resulted in an overall conviction rate of close to 98 percent over the years (Dewhurst 1955, 4), roughly two to six times that from public police arrests, depending on the type of crime and the jurisdiction. William Wooldridge (1970) observed that the primary reason for this success is that the railroad police specialize in one area of enforcement, developing "an expertise not realistically within the grasp of public forces" (117). Specialization and consequent proficiency (and efficiency) often characterize private security firms.

Another interesting example of private-sector pursuit is in the bail-bonding market, where the quality of the private market's output can be compared even more directly to a public-sector counterpart. Many alleged criminals must be released prior to trial, of course, due to court delay, limited jail space, and constitutional guarantees of bail. Two primary mechanisms exist for initiating release and ensuring appearance for trial. First, historically, defendants for most crimes have posted a monetary bond. Most do not have enough money to post the bonds, however, so a commercial bail bondsman posts the entire bond in exchange for a fee. Bondsmen lose the bonds if defendants fail to appear in court, so they spend a good deal of time, effort, and

money to guarantee appearance. If a defendant flees, a national network of private “bounty hunters” is notified. Bounty hunters’ incentives to find fugitives are strong because they do not get paid unless the fugitives are returned to court.

A “public bail” alternative was developed in the mid-1960s with a stated goal of helping those accused of nonviolent crimes who could not afford to post a bond. However, “it rapidly evolved into an indiscriminate release mechanism to cap the jail population. It has failed miserably to accomplish any of its aims” (Reynolds 1994, 18). The system is administered by tax-funded pretrial release (PTR) bureaucracies, and its costs are high. For instance, the Harris County, Texas, PTR program, which cost an average of \$356 per defendant in 1992, had one staff employee for every 16 defendants supervised, compared to one staff person for every 87 defendants supervised by one of the county’s private bail-bonding companies (19). Alleged offenders are interviewed by PTR staff, and recommendations are made to judges. Those released are freed under a “personal recognizance bond” (Monks 1986, 8). Essentially, the alleged offender simply promises the judge to appear in court when called. Failure to appear presumably means that a specified fine or forfeiture can be collected, but in general nothing is paid up front (in some cases, a defendant may be required to put up 10 percent of the specified fine or forfeiture), so these “bonds” provide weak incentives to appear (18). Such “public bail” is now widespread, and accused criminals obviously prefer it.

PTR programs tend to release the prisoners who are most likely to appear, leaving the remainder for private bail bondsmen (BJS 1990; Sorin 1986), but nonetheless, about 27 percent of defendants supervised by PTR agencies initially do not appear in court, compared to about 14 percent of those under a private bonding arrangement (Reynolds 1994; BJS 1990; Sorin 1986). Furthermore, private bail bondsmen have much lower fugitive rates. Although fugitive rates vary from year to year and depend on the time period examined, Reynolds (1994, 17) reports rates of 3 percent for private bondsmen and 9.5 percent for public PTR after one year, and less than 1 percent versus 8 percent after three years (Reynolds 1994, 17). Many urban counties have more than 50,000 fugitives from PTR, and nationally the number probably exceeds a million (19). Clearly, the private alternative appears to be more effective than the public bureaucracy. Some state legislatures have passed Uniform Bail Acts in an effort to constrain PTR agencies’ discretion (e.g., they may specify that no one who has a prior criminal record or who has “jumped” a previous free recognizance bond can be released without a monetary bond). More significant, some judges refuse to deal with PTR agencies (19).

### *Private Punishment*

Fireman’s Fund Insurance Company estimates that one-third of all business failures are caused by employee theft (Cunningham and Taylor 1985, 8). Presumably, these thefts are prosecutable, but police give them little attention, as the public-sector crimi-



nal justice system tends to be “unsympathetic to business losses due to crime” (11-12). Hence, the crime investigated most frequently by security personnel in business organizations is employee theft, and the majority of security managers for business firms report that these crimes (and most other crimes by employees) are most often totally resolved “within the organization”—close to half of all employee thefts are resolved internally; most of the rest are solved through internal investigations followed by direct contact with a public prosecutor, thus bypassing public police (11). Indeed, within business organizations, “private justice may exert far greater control on citizens than the criminal justice system itself” (12). The process may be formal, involving internal disciplinary bodies, boards, or panels (Henry 1987, 46), or informal, with confrontations and “negotiation” between security personnel or managers and accused offenders. Resulting sanctions include dismissal, suspension without pay, transfer, job reassignment or redesign to eliminate some duties, denial of subsequent advancement, and restitution agreements.

Private provision of justice can also develop outside the corporate structure. One of the earliest formal community dispute-resolution projects, run by the American Arbitration Association (AAA) in Philadelphia, began hearing minor criminal cases in 1969. During the 1970s and early 1980s, the AAA became increasingly involved in minor criminal and civil disputes, such as neighborhood fights and juvenile offenses (Poole 1978, 55). Sanctions can include restitution (money or services). This program’s success provided the impetus for moving minor criminal cases into other neighborhood justice centers.

### **Are Criticisms of Markets in Criminal Justice Valid?**

The rapid growth of market alternatives to prevent crimes and to resolve them once they are committed reflects more than simply a negative response to certain aspects of public-sector failures. Discussions of private alternatives (e.g., bail bonding, railroad police, justice internal to business firms) suggest that market providers are producing outputs superior to those of public bureaucracies. But critics of private-sector activities in criminal justice contend that by placing the emphasis on efficiency and effectiveness one tends to overlook important flaws and failings.

One common criticism is that *the profit motive leads to cost cutting and poor quality*. Private police firms presumably will reduce quality and cut corners to raise profits, for instance, as evidenced by the “undertrained,” “old,” “high-school dropouts” who work as security personnel (*U.S. News and World Report*, January 29, 1983).

First, the allegation is not true. Cunningham and Taylor’s (1985, 89) survey found that the average age of private security personnel was between thirty-one and thirty-five, and that over half (59 percent) had at least some college education. Similarly, Edwin Donovan and William Walsh’s (1986, 37-42) study of the Starrett City, New York, private security force (discussed more fully later) found that the average age of the force was thirty-nine, 83.3 percent of the officers had at least high school edu-

cations, 70.4 percent had prior security experience before taking the Starrett City job (more than 25 percent had been either a public or military police officer), and all had received prior security training, either from another security agency or from the New York City Police Academy.

Second, the premise is not valid. The quality-cutting argument holds only when (1) sellers have short-term profit goals, or (2) the market is not competitive. Of course, in some markets con artists and hucksters move into an area for a short period, defraud a number of consumers, and move on. But no matter how uninformed consumers might be, it is unlikely that many of them would buy security services from such fly-by-night operations. A sense of permanence and a reputation for high-quality services certainly would be more important considerations for consumers than the quality-cutting argument assumes. For that reason, firms “invest” in building reputations by providing high-quality services: such investments pay off in higher long-run profits. Furthermore, the number of private protection and detective agencies in the United States probably exceeds 13,000 today, and competition is fierce. When competitive firms have long-range profit goals, their incentives are to beat the competition by offering the same service quality at lower prices (and, therefore, they must have lower costs) or superior quality at comparable prices (i.e., increased quality without increased costs). After all, profits are total revenues minus total costs, so when reducing costs and quality means losing customers and revenue, profits may fall.<sup>2</sup>

It would be foolish to employ a person with the training of an urban police officer as a night watchman (e.g., to check ID cards and set off an alarm in the event of trouble), and to pay the \$20,000 to \$40,000 it would cost to hire that person. On the other hand, to design and initiate a corporate security system, it would be foolish to hire someone who has only the training and skills of an urban police officer. “Virtually ignored [by the critics of private security] are the many thousands of well-qualified proprietary loss control personnel” (Bottom and Kostanoski 1983, 31). As already noted, increasing technological sophistication in electronic detection equipment plays an important role in the increased demand for and proficiency of skilled private security personnel. Thus, “there is emerging a new security person, highly trained, more highly educated and better able to satisfy the growing intricacies of the security profession” (Ricks, Tillett, and Van Meter 1981, 13).

Another criticism is that *without the constitutional due-process constraints that public police face, providers of private security and justice are likely to abuse their power*. “Armed and dangerous” private security officers are expected to use excessive force,

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2. Critics have also raised such concerns about the quality of government services purchased under contract from the private sector, and they may be right, but not because of the profit motive subject to market forces. Here the incorruptible market regulator, competition, has been replaced with regulation by a corrupt inefficient public official, or bias has been created in the contracting process by political considerations (Benson 1994, 1996a). Markets with private-sector buyers and sellers avoid many of the pitfalls of contracting out, however, and generate more certain benefits.

for instance, because most are disgruntled people who want to be police officers but cannot make the grade. Edward Iwata (1984, 10) implied as much when he reported that in 1983, twenty-two people in California were killed in shooting incidents involving private security personnel. Iwata failed to point out, however, that there are at least two to three times as many private security officers as public police in California and even so public police kill many more people than private security employees do. The truth is, private security personnel commit relatively little violence, which is not surprising. After all, less than 10 percent of the total private security force is armed (Cunningham and Taylor 1985, 20). Guardsmark, one of the largest national firms, estimated that only 3 percent of its uniformed personnel were armed in 1985. Security entrepreneurs report that though customers increasingly request armed guards, these requests are discouraged, both because the agencies believe weapons are generally not needed and because they face more liability and higher insurance costs when employees are armed (20).

Private police are not disgruntled rejects from the public police. Cunningham and Taylor (1985, 38-39) report, for example, that many senior public-sector law enforcement personnel are actually attracted into private security because most security directors and many security managers now earn more. Of greater significance, this extensive survey “tends to confirm other research indicating that 1) private security personnel are drawn from different labor pools than law enforcement officers, and 2) their personal characteristics are consistent with the functions they perform” (67). Similarly, table 2 shows that the fifty-four-person private police force in Starrett City was, in general, more satisfied with what they were doing than were New York City public police officers. Although security companies actively “discourage employees from detentions, searches, and the use of force” (Cunningham and Taylor 1985, 34), they apparently go much further by employing people inclined to be very “service oriented” in comparison to public police (Donovan and Walsh 1986, 49), as suggested in table 3. And this action pays off: for instance, the “concern shown by security personnel for care of property and prevention of disorder as well as the safety of residents and visitors” explains the high level of reporting (discussed later) in Starrett City (Donovan and Walsh 1986, 36).

Many individuals, whether publicly or privately employed, might abuse their positions by cutting costs, doing poor-quality work, and bullying *if they could*. Institutional arrangements within which people perform their tasks determine whether such abuses can be carried out, and competitive markets are one of the best (if not *the* best) institutional arrangements to discourage abusive, inefficient behavior. Of course, individuals not fully responsible for the consequences their actions are likely to be *relatively* unconcerned about those consequences. But private firms must satisfy customers to stay in business. Therefore, a security officer who abuses shopping-mall patrons will not remain an officer for long. Furthermore, even if a firm fails to respond to market incentives, a civil suit brought against an abusive private security firm can be

costly, perhaps even destroying the business. In contrast, public police departments rarely go out of business, no matter how corrupt and abusive their members may be. Abuses investigated internally rarely lead to serious sanctions against public police (Benson 1988), and in a suit against a public law-enforcement agency, taxpayers pick up the tab, so the cost to the manager of that agency is relatively small. A public police officer cannot be sued even for false arrest unless the plaintiff can prove that he or she is innocent *and* that the police officer had no reason to suspect that individual. In addition, an innocent person wrongly imprisoned can make no legal claim against the government or its officials. It might be recognized that police made an error, but they have the *legal right* to make such errors and are not liable for them. Not surprisingly, tales of public police abusing suspects are common.

The primary mechanism for limiting police abuses appears to be court-imposed limitations on admitting evidence. But these “exclusionary rules” actually shackle prosecutors’ ability to bring the guilty to justice (Jones 1979, 83), while the civil liberties of the *innocent* have not been protected effectively. For instance, if the police enter a home, destroying or damaging household property but finding nothing incriminating, exclusionary rules do not protect the homeowner, whose only recourse is a damage suit. Such suits are frequently unsuccessful. Public police’s liability is limited by requiring that plaintiffs prove vicious intent or prior knowledge of innocence before damages will be paid (Neely 1982, 144–45). Thus, “there is little effective remedy

**Table 2. Job Satisfaction: Private and Public Police**

	Starrett City Security Officers (%)	New York City Police Officers (%)
Overall job satisfying	77.77	75.71
Job interesting	98.15	82.14
Feeling of helping people	81.48	79.14
Work role satisfying	93.60	88.06
Feeling of accomplishment	94.12	64.18
See results of work	88.24	47.14

*Source:* Donovan and Walsh (1986, 47).

against the police available to those who are not guilty,” and “for every search that produces contraband there are untold scores that do not” (Barnett 1984, 54).

Given their goal of limiting police abuse, the courts have little option but to establish exclusionary rules. Rules of evidence are under the court’s control, but more efficient means of achieving the desired end are not. West Virginia Supreme Court Justice Richard Neely (1982, 162) contends that if a state legislature were to enact a comprehensive compensation system for all citizens with reasonable money damages for all unconstitutional police intrusions and simultaneously prohibit the use of exclusionary rules in the state’s courts, the U.S. Supreme Court would be forced to reconsider these rules. Essentially, Neely has proposed that to eliminate exclusionary rules

**Table 3. Service Orientation: Private and Public Police**

	Starrett City <u>Security Officers (%)</u>	New York City <u>Police Officers (%)</u>
Enjoy assisting citizens in noncrime situations	94.34	81.62
Always comply with requests for assistance	94.44	30.60
Enjoy incidents that require investigation	84.91	92.14
Feel they receive adequate support from citizens	80.77	40.60
Feel citizens have right to complain about improper behavior by officer	98.15	91.24
Feel that citizens respect security officers	81.48	49.64
Officers with service orientation	96.30	59.57

*Source:* Donovan and Walsh (1986, 49).

requires that public police be privatized, at least to the degree that they face liability rules similar to those faced by private security firms. One way to achieve this goal is to contract with private firms, which are already liable for the misbehavior of employees. As Cunningham and Taylor (1985) note, “cases brought by private security are usually well developed” (12)—not surprising given their expected liabilities if prosecution is not successful.

Another common criticism is that *only the wealthy can afford private security*. Rich and poor certainly do not have access to precisely the same private security resources. As John Lott (1987) stresses, someone who earns a high wage should be able to employ security services because that person’s own time has valuable alternative uses. An array of private participatory security (e.g., crime watches and patrols), hired security, and equipment (locks, firearms, alarms, etc.) is available, so individuals can choose according to their willingness and ability to pay, with either money or time. Historical evidence suggests that with appropriate property rights structures (e.g., where victims have a transferable right to restitution), private arrangements will be made to ensure that criminals with poor victims are brought to justice (Friedman 1979; Benson 1990).

More fundamentally, the cost of the public-sector criminal justice system is disproportionately borne by the poor. The probability that a woman from a family earning under \$3,000 a year will be raped is almost four times that for a woman from a family that earns \$23,000 or more; the same is true for other violent crimes (Neeley 1982, 140). “In terms of tax revenues,” Neeley states, “the release of dangerous felons is very cheap. The cost of the sanction is then shifted [to the poor] because that is the class that disproportionately bears the brunt of crime” (140). Thus, for the poor, increasing privatization potentially means moving from a system in which they bear heavy costs toward a system that grants the protection and justice they pay for.

### *Market Performance*

Unfortunately, unlike data on the public sector, where a penchant for keeping records makes research relatively easy, data on the effectiveness of investments in various private-sector crime prevention and protection activities are difficult to obtain and as a result have attracted relatively little attention from researchers. Donovan and Walsh (1986) performed what apparently is the only full-scale evaluation of a large private security system: the fifty-four-person force in Starrett City, a 153-acre complex in a high-crime area of Brooklyn, with fifty-six residential buildings containing 5,881 apartment units and about 20,000 racially and ethnically diverse but largely middle-income residents. Starrett City also has eight parking garages and one outdoor parking lot; a shopping center with twenty-five businesses; a recreation complex; various open spaces and parks; and one elementary, one intermediate, and two nursery schools.

Of residents surveyed, 88.8 percent felt safe within Starrett City (Donovan and Walsh 1986, 56), and this perception was clearly warranted. Table 4 lists reported

1984 and 1985 crimes per 1,000 persons for Starrett City, for the seventy-fifth precinct, in which Starrett City is located, for New York state, and for the United States as a whole. Donovan and Walsh (1986) conclude that “Starrett City must be considered one of the safest communities in the United States” (36). (Of course, many other communities protected by private security probably compare favorably to Starrett City.) Furthermore, Starrett City’s low crime rates do not reflect nonreporting. Residents are much more likely to report crimes than others in the seventy-fifth precinct, as evidenced by their reporting of many more incidents of criminal mischief, trespass, petit larceny, reckless behavior, and disorderly conduct than are reported to public police. This difference may reflect recognition that the public police and courts will do little in response to such reports, as noted earlier, but it also suggests that people have confidence private security will respond. As a result, 77.5 percent of the residents would report an assault to the Starrett City security force, but only 12.6 percent would call the New York City Police. Similarly, thirty-four of thirty-five Starrett City retailers would call Starrett security if they had a problem (the manager of a thirty-store chain with one in Starrett City, would call city police [Donovan and Walsh 1986, 75]).

**Table 4. Reported Crimes per 1,000 Residents, 1984 and 1985**

Crime	United States		New York State		75th Precinct		Starrett City	
	1984	1985	1984	1985	1984	1985	1984	1985
Murder/ Manslaughter	0.08	0.08	0.10	0.10	0.30	0.22	0.00	0.05
Rape	0.36	0.39	0.32	0.32	0.90	0.83	0.05	0.10
Robbery	2.05	2.14	5.07	4.56	16.00	15.51	3.60	2.57
Assault	2.90	3.20	3.66	3.86	6.10	6.88	1.90	1.05
Burglary	12.64	13.41	12.57	12.55	15.40	15.26	2.10	0.40
Larceny	27.91	30.49	27.55	28.41	12.10	11.65	2.90	1.30
Auto theft	4.37	7.27	6.51	5.90	10.10	9.51	1.80	1.10

*Source:* Donovan and Walsh (1986, 31).

Beyond the Starrett City evaluation, most studies of crime control have examined the effects of public-sector efforts while ignoring potential market impacts. However, Timothy Hannan (1982) finds that the presence of guards in banks “significantly reduce[s] the risk of robbery. Accepting point estimates, the magnitude of this reduction is approximately one robbery attempt a year for those offices which would have otherwise suffered a positive number of robbery attempts” (91). More generally, Charles Clotfelter (1977, 874) considers the impact of private and public security services on the manufacturing wholesaling, finance, insurance, and real estate sectors; his empirical results “indicate that private protective firms are more effective than public police at protecting firms in these industries” (the same is true for railroads, as noted earlier). He also finds that private protection is more effective and more readily responsive in areas experiencing rapid population growth.

An individual’s purchases of self-protection equipment may also be effective. Because of the controversy surrounding firearms, gun ownership has attracted more study than other forms of protection. After reviewing evidence from several sources, Gary Kleck and David Bordua (1983) conclude that

it is a perfectly plausible hypothesis that private gun ownership currently exerts as much or more deterrent effect on criminals as do the activities of the criminal justice system. . . . [T]here is the distinct possibility that although gun ownership among the crime-prone may tend to increase crime, gun ownership among the noncriminal majority may tend to depress crime rates below the levels they otherwise would achieve. (296)

In support of this conclusion, John Lott and David Mustard (1997) find that simply allowing citizens to carry concealed weapons deters violent crimes without increasing accidental deaths. They estimate that if states that did not have right-to-carry laws in 1992 had adopted such laws, approximately 1,570 murders, 4,177 rapes, and more than 60,000 aggravated assaults would have been prevented.

### *Information and Discovery*

Findings such as those I’ve discussed should not be surprising. The price system determines how resources are allocated in a private market, and these allocative decisions are typically based on better information for both demanders and suppliers than those made in the public sector. After all, buyers in private markets consume what they purchase, so they *benefit directly* from any time, effort, or expense invested in gathering information. Furthermore, they pay only for goods and services they are *persuaded* will generate sufficient benefits to cover their prices. Thus, a high price implies that relatively informed individuals think the good or service is desirable compared to the alternatives available and tells existing producers and other entrepreneurs that supplying it is desirable (profitable).



In sharp contrast, producers of government products do not need persuasion to sell the goods or services. Consumers may decide to support candidates who promise a particular bundle of services, but then taxes are collected and specific services produced for an individual taxpayer whether that taxpayer values them at their "tax prices" or not. Consumers of government services often do attempt to inform producers of what they want, but the information transfer mechanism is crude relative to market price signals. Furthermore, if individuals invest in gathering information in order to choose the candidate promising the best bundle of government policies, they have no guarantee that the candidate will be elected or that the desired policies will be provided if the candidate is elected. (Appreciating these realities, most people do not bother to vote or get involved in other political activities.) Thus, the potential benefits of gathering information are uncertain, and as a consequence consumers of government services tend to be relatively uninformed about options. Any messages they pass to producers are, therefore, based on relatively little knowledge. Even with information, civil-service and union restrictions and political manipulations can constrain both merit rewards for innovators and punishments for inefficient, inept, or intentionally incorrect behavior. Thus, the incentives to monitor government producers and measure their performance are weak, and government officials have a great deal of discretion in allocating resources. Rationing in the public-sector criminal justice system is obviously more complicated than suggested here (see Benson [1990] or Rasmussen and Benson [1994]), but the point remains: incentives for information gathering by consumers or producers are much weaker than in private markets.

Producers and potential producers also can search for additional information and look for unfulfilled desires in order to offer a new product or service. Because private entrepreneurs reap the profits arising from such discoveries, they have strong incentives to discover relevant information in contrast with their public counterparts, the heads of various criminal justice bureaucracies. Though police chiefs, sheriffs, prosecutors, judges, and corrections officials may gain benefits (e.g., a raise, a promotion or election to higher offices, a good feeling for serving what the official perceives to be the public interest) from discovering new ways to serve citizens, consumers' lack of incentives to gather information and inability to express direct "votes" (i.e., prices) for specific products entail that innovative bureaucrats may not even be identified, let alone rewarded. Thus, discovery and innovation are much less likely in the public sector.

### **How Can We Encourage Greater Entrepreneurial Discovery to Control Crime?**

Markets are not perfect, but even with undesirable consequences from market provision of private security and justice, government production is not necessarily justified, as government failure often is more serious. The discovery process in markets will tend

to reduce or eliminate imperfections over time, but government failures are less likely to be alleviated and, indeed, often become increasingly severe.<sup>3</sup> Therefore, the following discussion suggests how to encourage even greater entrepreneurial discovery and market provision of the four Ps of crime control.

### *Private-Sector Crime Prevention*

The number of arrests and “response times” to reported crimes are the primary “statistics” police focus on as “output” measures to justify budgets (Sherman 1983, 156). From his extensive review of research on police performance, Lawrence W. Sherman concludes that “Instead of *watching to prevent crime*, motorized police patrol [is] a process of merely *waiting to respond to crime*” in order to make arrests, and that “In general, as the level of *crime prevention watching* has declined, the level of crime has risen” (149). Considerable empirical evidence supports the hypothesis that a higher probability of arrest deters crime, of course. My argument, which is not inconsistent with this empirical result, merely suggests that waiting to make arrests is *not the most effective* way to deter crime. A growing body of evidence implies that taking police officers out of “emergency response systems” to patrol neighborhoods on foot and actively watch creates more effective crime prevention (Skolnick and Bayley 1988) and gives officers better information about the problems and people of the neighborhoods (Trojanowicz and Moore 1988).

Payments to private security personnel (and benefits for voluntary watchers) arise, in large part, from protection of persons and property, not from making arrests after crimes are committed. Thus, private security personnel provide the kind of services “community policing” advocates say public police should be providing. One implication is that public police should not be the primary providers of crime prevention (see also Sherman 1983). In this vein, security services performed by police are often identified as candidates for contracting out, including public-building security, parking enforcement, patrol of public parks, special-event security, court security, prisoner transport, and patrolling public-housing developments (Cunningham, Strauchs, and Van Meter 1991, 2). It may be appropriate to go much further. For example, the northern section of San Francisco has sixty-two “private police beats” that are “owned” by private “patrol specialists” (Dorffi 1979). All have completed police academy training and have full rights to carry firearms and make arrests. However, they are paid by the businesses, homeowners, and landlords on their “beats.” Each patrol specialist purchases a beat from its previous owner and then negotiates contracts with each property

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3. For discussion and rejection of other arguments against market provision of the four Ps, see Benson (1990, 271–328); for analysis of the causes and consequences of government failure in criminal justice, see Benson (1990, 43–175) and Rasmussen and Benson (1994).

owner on the beat who wishes to purchase his or her services. The level of attention required by a customer determines the fee. In order to encourage greater use of such privatization, however, various barriers to the effective use of private policing must be eliminated. These barriers will be discussed later, but first consider the potential for private pursuit.

### *Private Investigation and Pursuit and the Potential Benefits of Victims' Rights to Restitution*

Insurance companies and some business groups purchase investigation and pursuit services, as explained earlier, but victimized individuals have, at best, only weak incentives to pay for such services. Victimization surveys suggest that victims do not even have incentives to report most crimes to public police, let alone pay for additional investigative and pursuit services. The main reason for the lack of such incentives is that the expected personal benefits of cooperating with investigators, whether private or public, are small relative to the costs. Deterrence may be a benefit of such cooperation, but people other than the victim are likely to capture most of the benefit. However, incentives for victims to invest either time or money in pursuit and prosecution can be created by giving them property rights in restitution (Benson 1996b, 1996c).

Many states now have laws that require judges to consider restitution in sentencing decisions, but victims do not have property rights to such restitution. Indeed, restitution is generally viewed as an alternative *punishment* rather than a mechanism for making victims whole. In 1990, state courts ordered only 16 percent of convicted felons to pay restitution (Reynolds 1994, 29). More significant, the criminal justice system is either inefficient or impotent at enforcing restitution orders even when they are made (Pudlow 1993, E1). There is no hope of collecting restitution if a criminal goes to prison, given the limited use of prison-work programs (discussed later). When criminals are sentenced to probation, the supervising officers charged with collecting restitution are generally unable or unwilling to do so. Redirecting criminal justice by establishing a restitution-based rather than a punishment-based system would create stronger incentives for victims to report crimes and cooperate in pursuit and prosecution. Victims also could offer portions of their restitution as rewards to private entrepreneurs (indeed, restitution should cover the costs arising from prosecuting the crime as well as appropriate damages [Benson 1996c]). Specialized firms (bounty hunters) would then arise to pursue *criminals* and collect fines. Alternatively, if the right to restitution were transferable (Friedman 1979), a victim might simply sell the right to collect a particular fine to a firm that pursues the offender and recovers the debt. Indeed, if restitution were a transferable property right, entrepreneurs would be likely to offer "victim insurance" wherein victims are immediately compensated and the insurance company then pursues the criminal in order to collect the payments.

### *Legal Barriers to Private Pursuit and Prosecution*

Statutes in many states mandate that private citizens, including those employed in security and investigative services, cannot take people into custody, let alone gather evidence for trial or cite suspects in court. Some governments grant private security personnel either full or limited “police powers” within confined areas, however, such as the San Francisco police beats. In New York, security personnel in retail establishments can act as agents of their employers and apprehend suspects, cite the suspects in court, and preserve evidence if they have completed an approved course of training. Other states grant similar powers to security personnel in plants, stores, campuses, or retail malls. In a survey of private security managers, only 29 percent report having some special police powers (Cunningham and Taylor 1985, 16). In order to encourage more investigation and pursuit by private security, “police powers” should be granted under many more circumstances.

Licensing and regulatory restrictions may appear to be desirable mechanisms for protecting citizens from inferior services by unqualified personnel, but licensing often creates a barrier to entry, preventing competition (Stigler 1971), and competition is generally a more effective regulator than government. Indeed, security managers, who usually favor state licensing (probably in part because it provides a signal of reliability to uninformed consumers, but also perhaps because it can limit competitive entry to challenge established firms) recognize that licensing and regulatory boards dominated by industry representatives “lead to a limitation on competition, through the enactment of provisions that only certain firms could meet” (Cunningham and Taylor 1985, 28).

Private security firms are increasingly seen as a threat to police budgets and job security (Cunningham and Taylor 1985, 43). Nonetheless, of the thirty-five states that required licensing of guard and patrol firms in 1985, fifteen conducted regulation through the State Police or Department of Public Safety (28), seven through a Department of Commerce or occupational licensing agency, and five through the Department of State. Not surprisingly, “[O]f these mechanisms, the regulation by law enforcement agencies appears to be the least popular. . . . [S]ecurity firms generally oppose the practice. . . . [I]t has led to unfair and counterproductive controls, such as an overemphasis on police training in the curriculum for security guards” (28–29). When police are in charge of regulation, the predictable result is limits on competition through unnecessarily strict regulations and licensing requirements. If regulation and licensing are desirable, some agency other than the police should perform them.

Local ordinances and licensing of security firms appear to be more troubling than state regulations. For one thing, differing requirements across jurisdictions can create barriers to successful security operations, raising the costs of firms serving regional clients, preventing the pursuit of suspects across jurisdictions, preventing testimony, and so forth. An NIJ study recommends that there should even be “regulation and

licensing reciprocity between states” in order to overcome barriers to serving multistate clients, as well as other costs that arise because of varying requirements and limitations on powers across states (Cunningham, Strauchs, and Van Meter 1991, 4). Also, these local regulations are more likely to be controlled or easily manipulated by public police interests. About one-third of the law enforcement agencies surveyed by Cunningham and Taylor (1985) had the power to suspend or revoke private security licenses, and law enforcement executives strongly advocate more widespread use of city and county ordinances granting them such powers. The 1991 report for NIJ (Cunningham, Strauchs, and Van Meter 1991, 4), however, concludes that any licensing and regulation should proceed “through state, not local” authorities. If licensing is to be done, this recommendation should be followed, but there are alternatives. One reason for worrying about the quality of private security and therefore one alleged justification for regulation is that security personnel may be criminals. However, this condition arises because security firms are generally denied access to criminal records of job applicants. Both the 1985 (Cunningham and Taylor 1985, 65) and 1991 (Cunningham, Strauchs, and Van Meter 1991, 4) NIJ reports recommend that all security employers have access to criminal records in order to screen their applicants. This change would reduce the need for regulatory oversight. Because private firms are generally liable for the actions of their employees, entrepreneurs have stronger incentives to carefully screen applicants than public officials do. In fact, security firms often obtain applicants’ criminal records “illegally,” so the recommended change would legalize what many firms already feel compelled to do in order to provide high-quality services.

### *Private Prosecution*

Every accused criminal is guaranteed counsel, but though the public prosecutor supposedly represents victims, there are far too many victims for prosecutors to represent them all effectively. Prosecutors must plea-bargain away victims’ charges or simply drop charges for many of the criminals they face. Why not allow private prosecution? After all, history tells us that private prosecution can work. Indeed, it was the norm in England until this century (Cardenas 1986). Of course, an important question is: How would a private citizen finance the prosecution of a criminal? One possibility is a voucher system such as the one suggested by Stephen Schulhofer and David Friedman (1993) for privatizing indigent defense and eliminating the public-defender bureaucracy (another attractive candidate for privatization). A superior way to pay for private prosecution (and one that simultaneously creates incentives to pursue prosecution) is the refocusing of the criminal justice system on restitution suggested earlier, including repayment of the costs of collection (e.g., prosecution and supervision of payment). Effectively, this procedure turns crimes with victims into torts, creating strong incentives to pursue prosecution in order to collect damages (Benson 1990, 349–78, 1996c). This is not a far-fetched idea. For instance, in France, a crime victim can file a civil

claim against the accused, and it can be filed in the criminal proceedings. Furthermore, if a judge in France finds a claim to be groundless, the accuser pays the court costs and damages to the accused, and if the accusation is believed intentionally false, charges can be brought against the accuser (Cardenas 1986, 386). This procedure should be adopted in the United States for criminal law (and, indeed, for tort cases in general), even when a police officer is the accuser.

Other countries also allow some private prosecution. In England, victims perform about 3 percent of criminal prosecutions (Cardenas 1986). Germany, like the United States, has created a virtual public monopoly over prosecution, but Germany has two exceptions that do not exist here (Reynolds 1994, 27). First, a class of misdemeanors, including violations such as domestic trespass, can be prosecuted by victims. Second, a crime victim can demand that the public prosecutor pursue a case, and if the demand is refused, the victim can appeal to the court. If the court orders prosecution, the victim can act as a “supplementary prosecutor” to ensure that the public prosecutor adequately presents the case. In Japan, mediation between the accused and the victim occurs before the formal criminal trial, and if the accused admits guilt and pays appropriate restitution the victim writes a letter to the judge that reduces or eliminates punishment (Benson 1996c).

Informally, sanctions are being imposed within business firms and by various other groups of private citizens, as noted earlier, thus reducing the demands on public courts and perhaps the need to dismiss or plea-bargain so many cases. Civil liberty concerns about private judges mandating punishment will probably prevent the development of formal private-sector criminal courts, even though civil dispute resolution has been shifting into private forums for some time. Commercial arbitration began in the American colonies and has grown in importance almost continually since then (Benson 1995, 1997). Labor and consumer arbitration also have a long and well-documented history (Benson 1997).

Furthermore, a significant entrepreneurial innovation has developed and spread over the last two decades, creating a new industry. In 1976, California had a 70,000-case public court backlog, with a median pretrial delay of 50.5 months (Poole 1980, 2). Two lawyers who wanted a complex case settled quickly found a retired judge with expertise in the area of the dispute, paid him at attorney’s-fee rates to resolve it, and saved their clients a tremendous amount of time and expense (Granelli 1981, 1–2). This idea was quickly imitated and improved upon. The first private for-profit firm offering trials, Judicial Arbitration and Mediation Services Company (JAMS), was started in 1979 by a retired California state trial judge. It has become the largest firm in a rapidly expanding market, with gross revenue growth of 826 percent from 1988 to 1992 (Phalon 1992, 126). More than fifty firms are now active in this market and have moved from business disputes into personal injuries, divorces, warranty disputes, loan defaults, and other areas.

Formal private courts could move into criminal justice quickly if the system were refocused on restitution, making the issue one of determining damage payments rather than punishment, at least for most crimes. Deciding damage awards is, after all, a frequent function of private civil courts. Furthermore, as explained later, restitution decisions are likely to involve contracts specifying debts and their terms of payment—an issue regularly handled by private mediators and arbitrators. Under a restitution system, the number of available courts could expand dramatically, reducing the need for plea and charge bargaining as they are currently practiced. Bargaining and pretrial settlement might still be important, but they would take place between criminals and victims, facilitated perhaps by a private mediator, as in Japan (Benson 1996c).

### *Private Punishment*

Almost every aspect of corrections in publicly run facilities, including food services, counseling, industrial programs, maintenance, security, education, and vocational training, is under contract with private firms on a piecemeal basis (Logan and Rausch 1985, 307). In addition, contracting out for provision and management of entire correctional facilities is common. The Federal Bureau of Prisons contracts out all of its halfway-house operations (Poole 1983, 1). In 1985, thirty-two states also had nonsecure, community-based facilities (e.g., halfway houses, group homes, community treatment centers) under contract (Mullen, Chabotar, and Carrow, 1985, 56–68). In that same year, approximately 34,080 juvenile offenders were held in nearly 1,996 privately run facilities nationwide. The first privately operated high-security institution in recent history was an intensive-treatment unit for juveniles at Weaverville, Pennsylvania, that RCA began running in 1975; by 1983, there were seventy-three privately provided secure juvenile facilities (Logan and Rausch 1985, 307). No privatized secure adult facilities existed yet in 1980, and indeed, no jurisdiction other than perhaps the federal government had express legal authority to contract for such a facility. By the end of 1994, however, about one-half of the states had legislation establishing such legal authority, and all three federal agencies that run prisons had the clear authority to contract out. Privatization of major adult detention facilities began in the early 1980s, when Behavioral Systems Southwest provided a minimum-security Immigration and Naturalization Service prison (Fixler 1984, 2). This market is expanding rapidly. Corrections Corporation of America, Inc. (CCA), formed in 1983 and now the largest private supplier of secure adult facilities, received a contract from New Mexico to design, finance, construct, and operate a prison for all of the state's female felons, becoming the first private minimum-through-maximum-security state prison in recent history. In 1994, twenty-one different firms shared eighty contracts for adult prisons with 49,154 total beds ("Privatization Census" 1995, 1).

The potential gains from contracting out for prisons clearly have not been exhausted. The relatively limited use of contract prisons reflects government barriers

rather than a lack of suppliers. For instance, Tennessee lawmakers turned down CCA's offer to take over the state's entire prison system, despite the prospect of substantial cost savings. Various states put tighter budgetary or operating restrictions on private prisons than on those built and operated by public agencies. These laws shelter state-run facilities and their employees from competition. After all, a major source of political resistance to contracting out for prisons is organized correctional officers (Benson 1990, 334).

Imprisonment is only one form of punishment, of course, and many of the alternatives are also contracted out (e.g., drug treatment programs). However, two large pools of criminals are supervised almost exclusively by public employees: those on general probation and on parole. And "to say that there are problems with both the probation and parole systems is putting it mildly" (Reynolds 1994, 30). Although parole and probation supervision has not been privatized, it easily could be, using the commercial bail system as a model (31). Criminals eligible for probation or parole could be required to post a financial bond, obtained for the most part from private bondsmen for a fee, against specified violations of their release conditions. Such a private financial market would provide valuable information for the courts and parole boards: if a convicted felon is too risky to bond, then, as Reynolds suggests, "why should the general public risk having that person on the street" (31)?

### *Paying the Cost through Private Labor Markets*

During the nineteenth century, many state prisons financed their own operations by selling prison labor or its products, even turning over surplus funds to state treasuries (Reynolds 1994, 33). Today, the prison population represents a huge pool of almost completely unused labor that simply drains state treasuries rather than contributing to them. Why? One answer may be revulsion against the inhumane treatment of prisoners in the historical state-run, prison-work programs. However, criminals can be protected against such abuses by having a choice between a specified prison term in a conventional state facility (or contract prison) and voluntarily being supervised while working off a specified fine. Competing firms could offer contracts that specify the work conditions and wages, and perhaps the portions of the wages going to pay off the fine, to "room and board," and to the prisoners' families (thereby reducing the welfare burden of the state as well). If a firm does not live up to the contractual promise, modern contract law could be brought to bear, and the inmate could collect damages. In addition to contract law, competitive forces would work to preclude inhumane treatment of prisoners as a firm with a reputation for abuses clearly would not attract voluntary contracts from prison laborers.

Would criminals voluntarily contract to work off their "debt"? Consider the results of a very limited prison-work experiment. At the Maine State Prison, inmates were given access to the prison's shop equipment to produce novelties. Other prisons



have done the same thing, but Maine has a strong market for novelties because the prison is located on a major tourist route. In addition, Maine inmates were allowed to employ one another, which permitted efficiency-enhancing specialization and division of labor, and beginning in 1976 prisoners were allowed to “patent” their novelty designs, so they had incentives to innovate and expand their production. A “miniature economy” developed inside the prison, with two-thirds of the inmates acting as employers, employees, or both, even though prisoners could not use dollars for their labor-market transactions (they used coupons that could be spent in the prison’s canteen or banked in the prison’s business office [Shedd 1982]). Clearly, prisoners will work voluntarily if incentives to do so exist, as they would if a prisoner could work off a predetermined fine. In fact, the sentence would have a self-determinative nature in that the harder a prisoner works, the faster he or she can obtain release (Barnett 1977, 294). The resulting incentives could also have significant rehabilitative impacts (Barnett 1977, 293; Shedd 1982, 24). John Sneed (1977) argues that “the convict will have a direct incentive to exhibit good behavior. The better risk he appears to the penal agency, the more likely he is to be allowed parole or other freedoms in the interest of increasing his productivity” (123).

Political and bureaucratic resistance to prison-work programs provides the major barriers to their development. For example, despite the Maine Novelties program’s significant benefits, on April 16, 1980, a lockdown of the Maine State Prison began. An extensive search and seizure operation destroyed the prisoners’ businesses. After the lockdown, substantial reductions in economic rights and incentives were implemented that destroyed any potential for reviving the program. Why? For several years the Maine Corrections Bureau had tried unsuccessfully to obtain larger budgets and to have the bureau elevated to cabinet level. Following the lockdown, budget increases were approved, and the Bureau of Corrections was elevated to cabinet-level status. Key legislators switched their position on both issues because of the lockdown. Another factor was bureaucratic rigidity and resistance to change. Prison authorities wanted complete control over prisoners, not “ambitious and talented individuals finding a way around bureaucratic restrictions on their activities” (Shedd 1982, 9).

In most states, political pressure by business to eliminate competition resulted in laws or constitutional provisions that prevented the sale of all but a few prison-made items (e.g., license plates). In 1935, under pressure from business and labor unions, Congress prohibited interstate commerce in prison-made products when the receiving state had laws against the marketing of such goods. In 1936 private contractors were prohibited from using prison labor to meet government contracts exceeding \$10,000. Then in 1940, transportation of prison-made goods across state borders was made a federal offense, regardless of state laws. “The effect of all these statutes was virtually to wipe out the market for prisoner labor and for prisoner-made goods” (Shedd 1982, 27–28). Prison-work programs were further undermined in the 1950s and 1960s “with

the ascendancy of the correctional treatment model” (Auerbach and others 1988, 1). Rehabilitation was thought to be more directly achievable through education, vocational training, and counseling programs than through work. However, in the face of soaring prison costs and increasing prison populations that are placing greater pressures on prison administration to reduce idleness, both state and federal laws have begun to change. The growing belief that the correctional treatment model of the 1950s and 1960s has failed and that life in prison is too “soft” also adds to political support for prison work (9). In 1979, Congress removed the federal restrictions on the interstate sale of prison-made goods, provided that (1) inmates working in private prison industries are paid at a rate equal to or greater than the rate paid locally for similar work; (2) local unions are consulted before the project is initiated; and (3) no employed workers outside the prison are displaced, the prison work does not involve an occupation for which there is a local surplus of labor, and existing contracts for services are not impaired (10–11). This legislation also authorized up to an 80 percent deduction of the participating workers’ gross wages for taxes, room and board, family support, and state-run victim compensation programs. Between 1979 and 1988, more than half of the states also passed legislation authorizing private-sector involvement in prison-work programs (11–13). With the development of the various federal experimental programs as well as several state and county programs, evidence is mounting that prison-work programs can be developed to the satisfaction of both prisoners and public officials (25–39). In South Carolina, for example, prisoners in the start-up phase of two private-sector programs had earned \$2.4 million in wages by the end of 1992, with about \$500,000 going to taxes, \$119,000 to victim compensation, \$322,000 to room and board, \$364,000 to family support, and \$1.1 million to inmate savings accounts (Reynolds 1994, 34).

### **Restitution versus Punishment**

Robert Poole (1980) describes a decision reached in an experimental restitution program:

When “Fred Stone” broke into the Tucson house and stole the color TV, he had little idea that he would be caught. Still less did he expect to be confronted face-to-face by the victim, in the county prosecutor’s office. In the course of the meeting, Stone learned that the TV set was the center of the elderly, invalid woman’s life. With the approval of the Pima County, Arizona, prosecutor, he agreed not only to return the TV, but also to paint her house, mow her lawn, and drive her to the doctor for her weekly checkup. By doing so he avoided a jail sentence, and saved Tucson area taxpayers several thousand dollars. (1)

Poole makes three important points. First, even though sanctioned by public prosecu-

tors and courts, some restitution programs have found it desirable to mediate private restitution contracts between the offender and the victim (Poole 1977, 1; Anderson 1983). Thus, the prosecutor and court become an arbitrator-mediator, clearly a role that can be played by private courts. Second, restitution need not be monetary. One criticism of monetary fines is that criminals may be judgment proof because they are unable to pay a fine large enough to either compensate the victim or be an effective deterrent. However, criminals should be allowed to work off their restitution, either by working directly for the victim or by selling labor, perhaps under contract in a prison environment. "Community service" sentences seem to be popular in many states today for various misdemeanors and minor felonies. Why not implement "victim service" sentences? Third, restitution is a relatively efficient form of punishment (Friedman 1979, 408; Barnett 1977, 29). Imprisonment wastes large amounts of resources in the form of idle prisoners' time. Even if close supervision in prison-work programs is required to ensure restitution payments, prisoners are working to produce goods for sale rather than being idle.

Refocusing the criminal justice system to emphasize restitution means that the restitution payment process can be specified contractually. If a victim perceives a risk of renegeing, a private "collection" agency can be employed to supervise the contract, providing the necessary monitoring and security to ensure that payments are made. This arrangement is not very different from a restitution program called EARN-IT, in Quincy County, Massachusetts, where forty local businesses provide jobs to offenders unable to find jobs elsewhere (Anderson 1983, 27). The employers act as supervisors during work hours, and the offenders report to probation officers. In other experimental restitution programs, offenders return to jail or a halfway house at night (recall that most halfway houses are contracted out, and the same private entity could also collect and distribute restitution payments). If the risk of renegeing is large enough, private firms employing prison labor can serve as collection agencies. Indeed, such a firm might pay a bond to the victim equal to the discounted value of the anticipated restitution and then collect the payments itself in order to recover the bond plus costs and interest.

For the imposition of punishment, as for increasing the probability of pursuit and successful prosecution, refocusing criminal justice on restitution for victims will create many more opportunities for entrepreneurial discovery. In fact, the full potential for private provision of the four Ps cannot be achieved, or probably even envisioned, without a reorientation of criminal justice toward concern for victims, who should be the most important "customers" in the market for justice.

## Conclusions

Many options to encourage entrepreneurial discovery have been discussed. If governments do not follow at least some of these recommendations, increased private protec-

tion, pursuit, prosecution, and punishment will occur to a large degree anyway (Benson 1990, 1996b). After all, the growth in private security and private justice I have discussed has occurred in spite of the legal barriers that are the focus of several of the recommendations made here. Legal barriers can prevent some cost-effective improvements (private markets for criminal labor, formal private prosecution and courts, and others), and they can slow the process of discovery, even diverting its evolutionary path, perhaps in undesirable ways (e.g., creating incentives for the secretive application of destructive or violent private justice), but it is too late to halt the process. Therefore, as an alternative, criminal justice policymakers should seriously consider supporting and even encouraging free and open entrepreneurial discovery, thereby perhaps influencing some of the inevitable developments.

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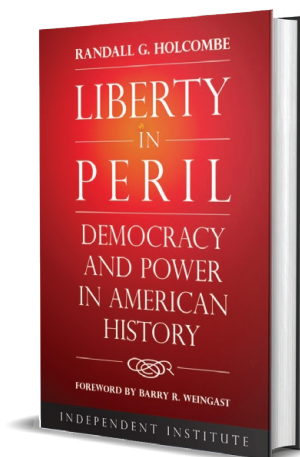
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