Reflections on Legal Polycentrism[1]

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Introduction

In attempting to promote the libertarian viewpoint, particularly in its anarchic variety, one is faced with a variety of problems. Some problems are theoretical, and they are well-treated in the comprehensive literature;[2] other problems, however, are practical or rhetorical and while the theoretical problems (and their solution) are intrinsically the more important it is vital that the practical/rhetorical problems be overcome the latter if the theoretical points are to get a hearing.[3] As human beings, we perceive and understand

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[1] A version of this paper was given to the Austrian Scholars Conference in March 2007. I should like to thank the organisers of the conference for the opportunity to deliver this paper and the participants for their comments and suggestions.

[2] A division may be drawn between Libertarians and non-Libertarians, with non-Libertarians running the gamut from ultraConservatives Individualists to ultraSocialist Statists. The keenest dispute, however, is within the Libertarian camp between those Libertarians who support anarchism (such as Murray Rothbard and Hans-Hermann Hoppe) and those who do not (such as Ludwig von Mises and Tibor Machan). In *The Ultimate Foundation of Economic Science* Mises writes as follows: "…peaceful human cooperation…cannot exist without a social apparatus of coercion and compulsion, i.e., without a government. The evils of violence, robbery, and murder can be prevented only by an institution that itself, whenever needed, resorts to the very methods of acting for the prevention of which it is established. There emerges a distinction between the illegal employment of violence and the legitimate recourse to it. In cognizance of this fact some people have called government an evil, although admitting that it is a necessary evil. However, what is required to attain an end sought and considered as beneficial is not an evil in the moral connotation of this term, but a means, the price to be paid for it. Yet that fact remains that actions that are deemed highly objectionable and criminal when perpetrated by 'unauthorized' individuals are approved when committed by the 'authorities.'" [pp. 59-60]

  Mises, then, sees the paradox clearly but seems to regard it as ineliminable. The reason why soon becomes obvious. It has to the with the imperfection of human nature: "Governments and states can never be perfect because they owe their *raison d'etre* to the imperfection of man, and can attain their end, the elimination of man's innate impulse to violence, only by recourse to violence, the very thing they are called upon to prevent." [p. 60]

  Mises characterises anarchism as a 'shallow-minded' philosophy. His criticism of them amount to their ignoring the imperfection of human nature and failing to realise that men are not angels. That being said, Mises recognises that "the main political problem is how to prevent the police power from becoming tyrannical." [p. 60]

  There is no ideal constitution that can be framed that can overcome the imperfection of human nature, attempts of political scientists notwithstanding: "…the main deficiency of this allegedly realistic approach to the problem is not this alone. It is to be seen in the illusion that government, an institution whose essential function is the employment of violence, could be operated according to the principles of morality that condemn peremptorily the recourse to violence. Government is beating into submission, imprisoning and killing….No reform can render perfectly satisfactory the operation of an institution the essential activity of which consists in inflicting pain" [p. 61] Despite this, Mises thinks that government is not a necessary evil! Summing up, he says "If men were perfect, there would not be any need for government. With imperfect men no system of government could function satisfactorily." [p. 61]

[3] See the Mises Economics Blog on Polycentric Law, July 2005 to January 2007.

in accordance with our needs, our desires and our interests.[4] No matter how marvellous a theory may be, it is useless if the audience is unreceptive. The point of rhetoric, then, is to open the eyes of the blind and the ears of the deaf so that they may see and hear.

The Grip of Myth

Someday I'd like to write a book entitled *Things We All Know that Just Ain't So*! Included in this book will be the following: There was a time when everybody believed the world was flat—maybe, but not any half-educated person in the last 2,000 years. The Barbarians brought about the collapse of the Roman Empire and the onset of the Dark Ages. No, they didn't. Galileo was an apostle of reason, brutally treated by a tyrannical and obscurantist Church. He wasn't and it didn't. These 'facts', however misguided, are refutable in principle. However, some of our epistemic structures go deeper and are more difficult to dislodge.

Our patterns of belief are constituted by myth. As I use the term 'myth' it is not a euphemistic way of saying that something is untrue but simply a way of naming the foundational narratives, the ultimate framing devices, in the context of which our humdrum beliefs and practices find their place. Such myths, whatever their ultimate truth, cannot be called into question from within—from that point of view, their falsity is literally unthinkable. The English philosopher, R. G. Collingwood referred to such a set of such myths as 'absolute presuppositions'[5]; similarly, Wittgenstein recognised a functional class of propositions as 'standing fast' in relation to any given mode of thought.[6] Because we see through (by means of) myths we find it difficult to see through them, i.e. to recognise their non-necessity, their lack of foundation, their contingency.

Political theory—and, I suggest, most political practice—is dominated by a myth to the effect that the state is necessary, for many things, perhaps but primarily for the provision of peace and security; without the state (the state being that group of people which wields a territorial monopoly of alleged legitimate force financed by a compulsory levy of the inhabitants of that territory) there would be anarchy—anarchy being understood to be widespread disorder, violence, and chaos. In the words of Bruce Ackerman, without the State and its laws, we would live in a world "where everyone is

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[4] *Quidquid recipitur recipitur secundum modum recipientis*—whatever is received is received according to the mode of the receiver. "But up to what point and to what extent a man must deviate before he becomes blameworthy it is not easy to determine by reasoning, any more than anything else that is perceived by the senses; such things depend on particular facts, and the decision rests with perception." Aristotle, *Nicomachean Ethics*, Book II, Chapter 9 1109b20-24.
[5] R. G. Collingwood, *Metaphysics* (Oxford: Oxford University Press, 1940), p. X
[6] Ludwig Wittgenstein, *On Certainty* (Oxford: Blackwell, 1969), passim

free to grab anything he can without ever being obliged to justify his conduct before any institution charged with settling disputes."[7]

Such is the power of being first in the field ('positioning' in advertising terms) that the State can literally get away with murder if it can foster the notion that it is legitimate. As Murray Rothbard puts it, "One of the crucial factors that permits governments to do the monstrous things they habitually do is the sense of legitimacy on the part of the stupefied public. The average citizen….has been imbued with the idea—carefully indoctrinated by centuries of governmental propaganda—that the government is his legitimate sovereign, and that it would be wicked or mad to refuse to obey its dictates. It is this sense of legitimacy that the State's intellectuals have fostered over the ages, aided and abetted by all the trappings of legitimacy: flags, rituals, ceremonies, awards, constitutions, etc."[8]

The important rhetorical point of the historical examples of functioning anarchic societies and the contemporary evidence of functionally anarchic elements in Statist societies is, among other things, to emphasise the sheer contingency of what seems like a necessity—to show that it wasn't always like this, that it isn't like this everywhere or in every respect even now, and that it doesn't have to be like this. For example, Bruce Benson, in the second chapter of *The Enterprise of Law*,[9] shows clearly that the system of criminal law which we now possess—state legislatures,[10] public prosecution, prisons, juries, crimes against the State, public police forces—all of which seem as if they sprang, like Venus, fully armed from the head of Jove, are merely historically contingent developments. Moreover, the pressure for these developments came not from any perceived increase in efficiency but from motives that were far less noble. And Harold Berman demonstrated in his remarkable book, *Law and Revolution*, that polycentrism was the norm in medieval Europe

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[7] Bruce A. Ackerman, *Social Justice in the Liberal State* (Yale University Press, 1980), p. 252, n. 8.

[8] Murray Rothbard, *For a New Liberty*, pp. 214-241, reprinted in Stringham *Anarchy and the Law*, pp. 18-39, p. 35.

[9] Bruce Benson, *The Enterprise of Law: Justice without the State* (San Francisco: Pacific Research Institute for Public Policy, 1990), p. 30.Bruce L. Benson, 'An Evolutionary Contractarian View of Primitive Law: The Institutions and Incentives Arising Under Customary Indian Law', *The Review of Austrian Economics* Vol. 5 No. 1 (1991), 41-65. See also his 'Legal Evolution in Primitive Societies', reprinted in Stringham, *Anarchy and the Law*, pp. 624-638.

[10] Parliament was originally not a lawmaking body but a tax-granting body opposed to the executive. After the 'Glorious Revolution' of 1689 the opposition gradually disappeared so that tax-levying was unopposed. (War was primarily a private business, a matter of hostile (actual, as distinct from metaphorical) takeovers, as it were!

Early Irish Society revisited

In Austrian treatments of anarchism it is not unusual to point to Medieval Iceland[11] and Medieval Ireland, *inter alia*, as examples of societies that functioned successfully for substantial periods of time without coercive central government. (According to Peter Leeson and Edward P. Stringham, we have to add to these societies the Eskimo of the North American Arctic, Zairian Pygmies, the North American Yurok "the Ifagao of the Phillipines, the Land Dyaks of Sarawak, the Kuikuru of South American, the Kabyle Berbers of Algeria, the Massims of East Papua-Melanesia, and the Santals of India" plus a substantial list of African societies, including the Nuer, the Tiv and so on. [p. 372])

Joseph Peden published his ground-breaking article on early Irish Law in 1977. Much of what he had to stay still stands. Since his article was published, a diplomatic edition of the surviving legal material has been published (D. A. Binchy, *Corpus Iuris Hibernici*, 1978) and an introductory but comprehensive guide was published by Fergus Kelly in 1988. This was followed by Stacey's *The Road to Judgment*, 1994 and McLeod's *Early Irish Contract Law*, c. 2000 so that we now have a much fuller and more detailed picture of how things were some 1500 years ago. None of this material contradicts any of Peden's substantive points.[12]

The Irish law texts originated in the 7th-8th centuries, surviving in 14th-16th century manuscripts.[13] While not completely coherent, the texts manifest a basic unity. The society in which these texts found a home was a largely self-sufficient mixed farming economy, with pasture for cattle sheep and pigs, and cereal production. Lord and client related to one another economically. Society also supported a set of professionals—poets, judges, smiths, physicians and wrights.

The *tuath* was the basic territorial unit, ruled over by a king (*ri*). There were approximately 150 of these *tuatha* in the whole country. The population of Ireland at this period was about 500,000 with, approximately, 3,000 people per *tuath*.

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[11] See Friedman (in Stringham, ed) et al.

[12] See Joseph R. Peden on "Property Rights in Celtic Irish Law" *Journal of Libertarian Studies*, Vol. 1, No. 2, pp. 81-95, Reprinted in Stringham, *Anarchy and the Law*, pp. 565-585: "Early Irish society had "no legislature, no bailiffs or police, no public enforcements of justice….there was no trace of State administered justice", D. A. Binchy, *Early Irish Socie*ty (Dublin 1954, pp. 56-58), cited in Peden p. 83. For a comprehensive treatment of Brehon Law see Fergus Kelly's *A Guide to Early Irish Law* ((Dublin: Dublin Institute for Advanced Studies, 1988). See also Neil McLeod's *Early Irish Contract Law* (Sydney: Centre for Celtic Studies, 1992) and Robin Chapman Stacey's *The Road to Judgment: From Custom to Court in Medieval Ireland and Wales* (Philadelphia: University of Pennsylvania Press, 1994.)

[13] The next page or so is a précis of Kelly.

The king, as the wealthiest and most powerful man in the neighbourhood, was central to the affairs of the *tuath*. All free men owed him loyalty and paid a special tax. He could call upon the freemen to repel invaders or to attack a neighbouring *tuath*. He also had the power to convene an *oenach* (a fair) for political, social and commercial purposes. Another type of meeting was the *aireacht* (meeting of freemen) at which legal business was transacted. Freemen generally stayed within their own *tuath*; only the professionals normally travelled outside the *tuath's* borders. The large degree of legal uniformity suggests that the *tuath's* lawyers kept in close touch with their colleagues in other *tuatha*.

The king[14] was responsible for external relations, treaty-making, treaties of this kind being confirmed at an *oenach*. Under such treaties, a victim of a crime in one tuath committed by a member of another was entitled to legal redress. Crimes that were redressable included homicide, rape, wounding, and robbery with violence, theft, house-breaking, arson and satire.

It is important to realise that early Irish society was not egalitarian. One's legal rights and obligations were a reflection of one's social status, though upward and downward social mobility was an accepted fact of life. The measure of a person's status was what was called his honour-price (*log n-enech*—literally, the price of his face). The greater one's honour-price, the greater the cost of any injury done to one: the honour-price of a provincial king could be as much as 42 milch cows, whereas that of a young man still living at home could be as little as a yearling heifer. There was a basic distinction between outsiders and those with legal standing in the tuath. Generally, those without a place in a tuath were either *ambuae* (non-persons), 'grey dogs (*cu glas*) – exiles from overseas or castaways (*murchoirthe*).

The basic distinction in Irish society was between those who were *nemed* and those who were not; and those who were free (*soer*) and those who were unfree (*doer*). The basic unit of currency was the female slave (*cumal*) or various kinds of cows. A typical *ocaire* (small free farmer) was said to possess a dwelling house 19 feet in diameter and an out-house of 14 feet. His land was worth 7 *cumals* and supported 7 cows, one bull, 7 pigs, 7 sheep and a horse. Additionally, he had a share in a plough-team (one-quarter) and a share in a kiln, mill and barn.

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[14] The role of the king was quasi-sacerdotal, no doubt reflecting an earlier stage of social development which persisted in other societies and recurred with surprising frequency until relatively recently, e.g. the Chinese Emperor, the Egyptian Pharaoh, the Roman and Byzantine Emperors, and the notion of the Divine Right of Kings.

The categorisation of *nemed*/non-*nemed*, and *soer*/*doer* can be diagrammatically represented thus:

	Soer (Free)	*Doer* (Unfree)
Nemed (Privileged)	King, Lord, cleric, poet	Some texts: physician, judge, blacksmith, coppersmith, harpist, carpenter and other craftsmen
Non-*Nemed*	Freeman—*boaire* (wealthy farmer) and *ocaire* (small farmer)	Semi-freemen or tenants (*fuidir*); hereditary serfs (*sencleithe*); male slave (*mug*) and female slave (*cumal*)

A *nemed* had special privileges. There were limits to the distraint of his property and some legal obligations did not fall on him. *Nemed* failing in their duties or obligations were liable to be reduced in rank. Cowardly kings, sexually immoral bishops, fraudulent poets and dishonest lords could be degraded to commoner rank. Similarly, a lord who could not maintain the requisite number of clients was similarly degraded. Upward mobility was possible, if not for a given individual, then for his children or their children. A customary expression in Irish literature is "A man is better than his birth." Typically, a *boaire* would become wealthy enough to attract and retain clients. In so doing, he moved into a grey area between commoner and lord. If his sons could maintain or increase this level of wealth and retainership, they or their children would attain *nemed* status.

According to Peden, private ownership played a critical role in the social and legal institutions of early Irish society; "Thus ownership of property in all its forms was the basis of a man's legal status and marked the extent of his participation in and protection within the legal system."[15] Peden remarks on social mobility as a striking characteristic of early Irish society. So, while economic self-sufficiency was the hallmark of free status, someone unfree could, with the accumulation of wealth, or the possession of a particular talent or skill, achieve that status.

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[15] Peden, p. 87 Cf. Myles Dillon and Nora Chadwick, *Celtic Realms*, (London, 1967), 98-99.

Not only was early Irish society not egalitarian, it was also not one in which individualism was unrestrained. The kin-group (*derbfine*), all those descended from the same great-grandfather, exercised legal powers over its members. Each kin-group had its own land; an individual's share in such common land could not be alienated contrary to the wishes of the rest of the group. It was possible to own land outside the kin-group and such land could be alienated freely. The kin-group was, in certain circumstances, responsible for the crimes and debts of its members, being obliged to pay the debts or fines of one who absconded after judgement. The body-fine (*eraic*) due when a member of a kin-group had been illegally killed was payable to the kin-group. The head of a kin-group was chosen, largely on the basis of his wealth, rank and demonstrated good sense.

While many early law codes in other societies were instigated by powerful kings "there is little evidence of royal involvement in the composition of the Old Irish law-texts." [Kelly, p. 21] In fact, the law and its formulation seems to have been the preserve of a special class of practitioners, more or less dispersed through the whole country, and not under the control of any king. Kelly attributes this low- or non-involvement of the kings in the law-making process to what he terms the "political fragmentation" of the country at the time of their composition/redaction, clearly seeing this as a negative point and assuming, without grounds for so doing, a prior state of non-fragmentation. Kings could, however, issue emergency legislation (after defeat in battle or in the presence of a plague). If the king was not involved in law-making, neither was he involved in law-implementation. This was done via a tort-like process involving suretyship, pledging and distraint.

Irish society in the historic period up to the 17th century constitutes one of the best examples of a functioning anarchic society. Irish law was the product of a body of private and professional jurists (called *brithim* or brehons) and was flexible and capable of development to response to evolving social conditions.[16] Law was a (largely) family business, enjoying high status. It is important to note that Irish law did not distinguish between what we now distinguish as tort and criminal law, in this respect resembling most systems of customary law that seem to come late, if at all, to this distinction. From the point of view of traditional law, crimes against the person tend to be regarded a special kind of offence against property.

The jurists gave judgement—enforcement was effected via a system of sureties. Sureties came in three forms: 1. a surety might guarantee payment by pledging his

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[16] Peden, p. 82.

enclann; or 2. a surety could pledge his person and freedom; or 3. the surety could guarantee the payment in the case of default. As Peden puts it, "Law and order, and the adjustment of conflicting interests, were achieved through the giving of sureties rather than State-monopolized coercion."[17]

Irish society, organised on anarchical principles, lasted for almost 2,500 years! During that time it showed a capacity, vital to any organic and developing system of social organisation, to absorb alien elements and internalise them. The Brehon Law was adapted by the English/Norman invaders/settlers, despite repeated attempts to dissuade them (e.g. statutes of Kilkenny, etc.), so much so that, to the disgust of the English authorities, they became "more Irish than the Irish themselves." The Irish legal system came to an end only when native Irish society collapsed after the Battle of Kinsale and the Flight of the Earls. It ended, not as the result of insupportable internal strains, but as a consequence of external assault. To sum up its salient characteristics:

1. the possession of property, with its rights and duties, was central to one's legal standing;

2. there was no substantive distinction between criminal law and tort law;

3. the legal system was private, customary, evolutionary and agreed-upon;

4. justice was primarily restorative, with restitution going to the victims rather than to a state; enforcement operated via a system of sureties and pledges, the ultimately recalcitrant being excluded from society and its protections.[18]

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[17] Peden, p. 83. He notes that while the Irish had kings, it is important to realise that they were not lawmakers. Moreover, they could, in fact, be sued, just as any other freeman albeit with difficulty. Each freeman had what was known as his honour-price, his *dire* or *enclann*. This honour-price was essential to the working of the systems of sureties. In taking or in defending an action, a petitioner or a defendant took sureties to ensure the honouring of the judgement of the brehon court. See also Kathleen Hughes's *The Church in Early Irish Society* (London, 1966).

[18] The Icelandic case is interesting. We have an historical beginning to the Commonwealth, and a date for its end. We have a scheme of operation. In contrast, the Irish case has no discernible beginning. When the records start, it is already in operation and has been so for who knows how long? Whereas in the Icelandic case, one's connection with a *godi* was extra-territorial, in the case of Ireland, one's connection was fixed via the tuath in which one resided or in which one had property. Whereas the Icelandic Commonwealth lasted for about 300 years, the Irish system lasted from, probably 1,000 B.C. until the beginning of the 17th century. In both cases, the precipitating cause of the change was political; in the case of Iceland, a reduction in competition caused by the emergence of 5 large families—in the case of Ireland, the impact of the Anglo-Norman invasion was to add impetus to an already present tendency on the part of the Irish kings to a more assertive and dominant role. See Thomas Wiston, 'Medieval Iceland and the Absence of Government', http://www.mises.org/story/1121; Birgir T. Runolfsson Solvason, 'Ordered Anarchy: Evolution of the Decentralized Legal Order in the Icelandic Commonwealth', http://www.hi.is/~bthru/iep.htm; Robert P. Murphy, 'The Possibility of Private Law'. http://www.mises.org/story/1874 posted on 8/3/2005; T. O. Morrow, 'Why Respect the Law? The Polycentric Justification of Jurisdiction', [Proceedings of Extro1, The First Extropy Institute Conference on Transhumanist Thought], http://members.aol.com/TOMorrow/PolyJust.html [March 2007]; David Friedman, 'Private Creation and Enforcement of Law: A Historical Case', *Journal of Legal Studies*, Vol. 8, 1979. Available online at

Critics of anarchistic theory have not been slow to point out that Medieval Ireland is dead and gone. "What," they ask, "has anarchism done for us recently?"

Anarchic Life-signs in a Statist World

In the early 90s, Tom Bell, then a student at University of Chicago Law School and now a Law Professor at Chapman, wrote a paper on Legal Polycentrism for some courses taught by Richard Posner! This paper was primarily an attempt to provide a theoretical justification for non-statist legal systems, for which Bell adapted (presumably from Michael Polanyi) the term 'polycentric law', its subcategories being customary law and privately-produced law. Around the same time, Bell published a paper on the same topic in the *Human Studies Review* and still later, a short paper on practical applications a Cato *Policy Report* in 1998. [19]

Bell notes that, once one becomes familiar with the notion of polycentric law, one sees instances of it everywhere—in churches, clubs, businesses, and so on. Without the focusing lens of the concept, polycentric law is largely invisible. Although he provides a concise account of some historical examples of polycentric legal systems, Bell notes that a justification of polycentric law requires more than case studies of small and/or insular societies; it requires a justification for how polycentric law would work here and now. Following Benson, he isolates 6 features common to most systems of customary law, the first 5 of which would likely be mirrored in systems of privately-produced law. Modified slightly, these are:

1.   individual rights and private property take centre stage;

2.   victims are the enforcers of the law;

3.   violence is avoided by the emergence of standard (and, I would add, mutually agreeable) adjudicative procedures;

4.   restitution/reparation (primarily economic) would follow from treating offences as torts (invasions of personal rights) rather than crimes (offences against the state);

5.   the enforcement mechanism is ostracism, blackballing, blacklisting, banishment, exclusion from society;

6.   legal change comes about by evolution rather than by (legislative) revolution.

http://www.daviddfriedman.com/Academic/Iceland/Iceland.html; Roderick T. Long, 'Privatization, Viking Style: Model or Misfortune?', http://www.lewrockwell.com/orig3/lon1.html

[19] Tom W. Bell, 'The Jurisprudence of Polycentric Law', Unpublished. http://www.tomwbell.com/writings/JurisPoly.html; 'Polycentric Law', *Humane Studies Review*, Vol. 7 No. 1 (Winter 1991/192); 'Polycentric Law in a New Century', *Cato Policy Report* Vol. XX No. 6 (November/December 1998).

One can immediately see that these features are all characteristic of early Irish law.

As practical examples of the evolutionary power of polycentricity, Bell instances (apart from the continuing presence of polycentricity in the midst of the dominant Statism) three items: Alternative Dispute Resolution (ADR); Private Communities; and the Internet.[20]

With its historical antecedents in the medieval Law Merchant and the Maghribi law of the Mediterranean, ADR today is a fast-growing alternative to State-Law. As Bell notes: "The largest private provider of ADR services in the United State, the American Arbitration Association, administered 62,423 cases in 1995" twice as much as it had handled 20 years earlier. There are about 1,000 other agencies competing with the AAA. Bell notes that "The state's courts have less and less time to *find* the law for civil litigants because their dockets overflow with criminal prosecutions *enforcing legislation.* That the Drug War generates most of those prosecutions merely illustrates the manifold hazards of unjust legislation." (p. 10)

In 1970 there were about 10,000 private communities. This rose to 55,000 in 1980 and 130,000 in 1990. In 1992 the number reached 150,000, encompassing some 28 million people. I don't have the latest figures but projections would indicate that the numbers should be significantly higher. Bell writes: "Residents of private communities experience polycentric law, not as a theoretical abstraction, but as a working reality. Those people have deliberately removed themselves from the inefficient political machinations of municipal governments, seeking instead to live under regulations of their own choice and making. Faced with the futility of trying to exercise any real influence over the politicians and bureaucrats, who would run their lives, residents of private communities have rediscovered the pleasures—and undoubtedly the pains—of reaching consensus with their neighbours." (p. 10)

Restorative Justice

Finally, even within Statist circles, the feeling that all is not well with the criminal justice system is growing. Victim-impact statements, flawed as they might be, are recognition that the one offended in the commission of most crimes is not the State, but Joe Soap.

Just recently, in Ireland, we have been experimenting with what is being called 'Restorative Justice.' Such programmes are in use in other countries and the Irish Government is keen to evaluate their effectiveness. My cynical impression is that this is

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[20] The Internet's anarchic credentials really require little or no comment.

motivated not so much by concern for victims of crime or the welfare of criminals as it is by a concern for the spiralling cost of imprisonment.

The Director of the experimental pilot programme, Máire Hoctor, notes that "It has given offenders an opportunity to rebuild their life without a criminal record."[21] She adds: "It's also very cost-effective. For example, our voluntary service here costs €40,000 to run for a year and deals with around 20 offenders. In contrast, it costs €80,000 a year to keep one person in jail," she said. Assuming a better or at least the same rate of recidivism (and the indications are that around 70% of offenders do not re-offend), then the Restorative Justice programme is fiscally more effective by a factor of 4000%!

There is much to commend in the notion of Restorative Justice. The basic principle of law, or what should be its basic principle, namely, the restoration of the *status quo ante*, is the *desideratum*. The victim, so often shunted to one side as a kind of disagreeable ghost at the wedding in your standard criminal justice system, takes centre stage and the offender makes reparation directly to the victim, not to the State.

In keeping offenders out of jail the State not only saves massively (money which it would be idle to hope would be returned to the long-suffering taxpayer), but keeps the neophyte criminal away from being better-tutored in crime, and limits the creation of criminal networks. Of course, this Restorative Justice system is intended to work alongside the bloated and ineffective Criminal Justice system; it is not intended as a substitute. However, we live in hope.

Conclusion

Much of the resistance to Libertarian anarchic proposals stems from a genuine inability on the part of one's audience to entertain such proposals as serious alternatives to the status quo. To be able to demonstrate convincingly to that audience that what one is proposing has already been done and continues to be done, albeit in different historical circumstances or in a variety of (not-so-obvious) ways, cannot but have a salutary effect on the receptivity of that audience to the theoretical arguments.

I have no intention of placing my fate in the hands of men whose only qualification is that they managed to con a block of people to vote for them. Michael Corleone[22]

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[21] *Irish Times*, 10 March 2007.
[22] Mario Puzo, *The Godfather* (William Heinemann, 1969: London: Arrow Books, p. 366).

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