Private Police?
Guest: Bruce Benson
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WOODS: I think in general a lot of libertarians are likely to know about you because of your book *The Enterprise of Law*, which of course is a great book and very important, but I think *To Serve and Protect* is equally valuable. Both books are covering a topic that I think even most free-market people want to run away from or aren't even really sure is an issue that can be evaluated from a free-market perspective. This is a classic case of a public good, whether it's law or law enforcement. Give me the one- or two-minute reason that my superficially plausible belief that government has to provide these services might not be right.

BENSON: There are actually a few reasons. One is that everything in the area of law enforcement, including criminal law, has at one time or another been handled by the private sector quite adequately, and in some places it's occurring even today. The second reason is that in fact the law and law enforcement are not public goods. Public goods are supposed to be goods that everyone has equal access to and that the private sector will not provide. As I said, the private sector does provide these things, and furthermore the idea of equal access to justice is just not true. We have scarce resources being used in law enforcement and adjudication and prosecution and in punishment, and so the use of these resources for one thing means they are not being effectively used for something else. There are tradeoffs. The vast majority of crimes that are reported to police are never resolved. The vast majority of crimes committed are never reported to police. So the belief that law and law enforcement are public goods simply doesn't stand up to reality.

WOODS: I think some people assume that the kind of system we have today, the government-supplied system we have today, is just the way things have always been. There's always been a publicly supplied police force, and it's engaged in the kinds of activities that it does, and it throws people in prison, and this is the way things have gone since time began. But that's not really the case.

BENSON: No, and in fact it's far from the truth. The first true public police force in the United States was created in the 1840s, I think. Before that, most policing was done by community arrangements and that sort of thing. If we go back to England, the first public police were instituted a little earlier than in the United States, but going back through history we see that many of the offenses—in fact, virtually all of the property and violent offenses that we think of as crimes today—were actually treated more like torts, where community, voluntary organizations pursued the offenders, supported each other to the degree necessary to bring an offender to trial, and the trials typically resulted in compensation payments to the victims or restitution. So the belief that we've always had a public criminal justice system is false.

The shift that we see in England actually predominantly occurred after the Norman invasion, when you get establishment of a very strong kingship, and the first use of the word "crime" actually indicated that the payments by the offender went to the king instead of to the victim. So there was a distinction that developed between civil and criminal at that point, but it was about who got the money, and the kings over time expanded the scope of crime so that they could get more and more of the money. Of course, the result was that the private arrangements, the voluntary arrangements to pursue offenders and so on, broke down because people were no longer getting compensation for the harms that they endured, and so ultimately after centuries of the king trying to force local communities to voluntarily perform criminal policing and their refusal to do

so, we start seeing the development of public institutions for that purpose.

WOODS: You have a chapter in here looking at the process by which the public sector came to be so involved in this area, and it really punctures the myths that people might have been led to believe—that the reason that the government is involved is it's deeply, deeply concerned for justice in the abstract. It has no interests of its own. It's simply pursuing justice in the abstract. As you pointed out just a moment ago, the real explanation might be slightly more mundane than that.

BENSON: One problem I always have with these public-good or public-interest arguments really is that public officials, people who work for the government, are just like everyone else. They have their own objectives. They are concerned about job security. They are concerned about taking care of their families. They may be concerned about the wages they get or the kind of power or influence that they have and so on. So the idea that public officials are both omnipotent and also totally altruistic is simply a misrepresentation of the human mind.

WOODS: Let me read a passage from page 224. You say, "After the first true public police force was established in New York in 1844, other cities followed suit shortly. From the outset, however, these police departments were used primarily for political purposes. Crime control was at best a secondary concern. First of all, local elected officials used their police departments as a way to reward political supporters. A new elected mayor typically fired virtually the entire police department and replaced it with his own supporters. Bribery was often necessary to obtain a position on the police force. That practice was financially reasonable, given the potential payoff from police corruption." At any rate, mayors and their political machines then used their police departments to control the city for their own benefit, and you point out that it doesn't seem to be a coincidence that this very moment is when the modern private security industry developed as, apparently, a perceived response to the total inadequacy of public provision. Well, thank heavens, Professor Benson, we've done away with police corruption today.

BENSON: Yeah, that's fortunate except for the repeated stories—virtually every week, it seems—like in newspapers about police corruption some place, I guess we've done away with the rest of it.

WOODS: (laughs) I guess we've been tiptoeing around the key question, which would be: why should we favor privatizing either—we'll focus on law *enforcement* here because the law itself is the subject of *The Enterprise of Law*—but why should people favor this? It seems like a leap in the dark or yes, there may be some historical precedent for it, but it's way, way in the past.

BENSON: Well, first of all, it's not in the past. Today in the United States it's estimated that we employ probably three times as many private security personnel as we do public police. The private security industry is one of the fastest growing industries in the country and has been for quite a long time, as people turn to private alternatives to try to make their property safe or their persons safe. So it isn't just a thing of the past. Today, for instance, the railroad system in the United States and Canada is policed by private policing organizations that have police powers. They, it turns out, resolved many more crimes committed against the railroads than public police do against the people they are supposed to be protecting. They also have a larger proportion of the crimes committed that are reported to them because the railroads expect their police to do a good job, whereas the public citizen oftentimes expects no response, no consequences from reporting to the public police except perhaps that they get hassled and have to go talk to different people and miss work and that sort of thing.

WOODS: What about the complaint somebody might have in advance of seeing how a system like this would work, that certainly if we were to privatize security and police, the rich would be favored?

BENSON: Well, first of all, when I talk about privatization, I don't just mean markets. I mean voluntary organizations as well, and there are voluntary neighborhood watches and that sort of thing all over the country in poor communities as well as more wealthy communities. Secondly, when there is an opportunity for serving a segment of the market that isn't being effectively served, entrepreneurs in the United States will try hard to find a way to do it. One example is a private security firm that is headquartered in Tampa, Florida. An individual recognized that the low-income housing areas of the city were not being effectively policed by the public, and so he started his firm with a $2,000 loan from his father and offered various landlords the service of protecting the housing projects that they have, including the tenants of the housing projects. The landlords found this was a tremendous deal for them because it, of course, reduced turnover rates, reduced vandalism, all those sorts of things, and the tenants also benefited dramatically, as the crime rates in these

housing projects declined by an estimated 50 percent. So now someone will say well, the tenants had to pay for that because they are paying rent to the landlords. But if the cost to the landlord of things like vandalism and turnover and those sorts of things fall enough, the tenants end up not paying any more for a much more secure environment. This particular individual very quickly expanded his firm into several other cities. He's written a book about how to go about doing this, and it's been a dramatic example of the private sector protecting the poor much more effectively than the public sector does.

WOODS: Now, I think people inclined to believe in the free market would hear what you're saying and be inclined maybe to revise their own skepticism, but if I were talking to somebody let's say on the so-called progressive left, where there is tremendous suspicion of the private sector in general, the idea that I would want security provided by the private sector would be viewed as hopelessly naïve—there would be abuses of power the likes of which I could not imagine. What would you say to that?

BENSON: Well, first of all, a private security firm is liable for damages that arise through abuses by its employees and so on. They are subject to lawsuits, and therefore their incentives are very strong in terms of hiring the right kind of people, who are not going to be abusive, and making sure the people they hire are not abusive. On the other hand, we see things like the Rodney King incident and so on cropping up all the time with public police, in part because they are rarely liable for those sorts of things. They might be reprimanded. Sometimes they might even lose their job. But they are not going to be sued into bankruptcy. The public officials who run these police programs generally aren't liable at all. The taxpayers are sometimes liable for such damages, but it's very difficult to sue the public sector anymore. So the incentives for abuse, and I believe the level of abuse, are much higher in the public arena than they are in the private arena. People forget that we have a legal system where abuses by private individuals can result in substantial costs to the individual, and I think that oversight really is a big flaw in the typical arguments against privatization of anything. Sure, we have abuse occasionally by private individuals, but one response would be do a search on the web looking for police brutality, police corruption, police abuse. And then do a search looking for private security, corruption, private security abuse and brutality. I suspect you're going to find way more stories about public police than you are private security, and as I said before, there is about three times as many private security as public police in the country.

WOODS: Also, I don't think it's particularly controversial to say that judges seem to have an inclination to give the public police the benefit of the doubt, by and large, which I don't think they would do if it were some private security company. I think they would look more impartially in that case. Whereas we think of public police as being a special class of people, and when it's your word against the police they are inclined to support the police. I don't think they would be so inclined if you were dealing with a private firm.

Let's say something about restitution, because you are proposing a system that would be based less on retribution and more on restitution. Can you elaborate on that? Because that's, I think, the most attractive part of all this.

BENSON: Well, as I pointed out earlier, the earliest forms of law and law enforcement that we find involve voluntary organizations pursuing compensation or restitution for victims, and we've totally moved away from that, and we call it criminal justice now. We don't call it victim justice. There's very little concern in a relative sense about trying to make the victim whole or at least compensate the victim to a degree compared to the concern about making the criminal pay. But the criminal isn't paying anything to the victim. He's just spending his time in prison or something like that. So my proposal is to refocus the system on victim justice, victim restitution. That would create much stronger incentives for victims to report crimes—much stronger incentives for the private sector, like insurance companies and individual consumers, individual communities that form, joint policing arrangements and so on, to pursue offenders because they are expecting compensation from the offenders. Obviously, you can't collect compensation from everybody, but I think if we look at what's going on around the world in terms of prison work programs, with firms going into prison and contracting with prisoners to work in secure facilities and so on, we would see that in fact, it's quite possible for a lot of criminals to work off their debts to victims over time. And so I would expect that an increase in these kinds of private policing, private security, private investigation, private contracting with offenders in order to use their time productively rather than just locking them up and leaving them to sit in jail, and so I think this refocus would have a tremendous impact throughout the entire process. And of course, if more victims are reporting crimes and more of them are being caught, as with the railroad police and that sort of thing, then crime should fall through deterrence effects, and so the whole system would improve.

WOODS: Now I understand you have an article coming out this summer in *The Independent Review*, which is the academic publication of the Independent Institute, in which you are taking the thesis of this book and updating some of the data. Are the trends positive or negative?

BENSON: I think they are very positive. We've seen actually very interesting developments in the area of adjudication—for instance, the development of victim-offender mediation programs, and community mediation programs are cropping up around the world and handling more and more kinds of crimes. When they first started they were typically minor crimes or juvenile crimes or something like that, but now we're seeing some of these victim or offender mediation programs dealing with felonies and serious felonies, and over, I think, 92 percent of them result in an agreement between the victim and the offender that involves compensation for the victim, and something like 90 percent of all of those contracts are fulfilled. So the potential there is tremendous. And of course, we have a huge private adjudication process in contract law and labor arbitration and so on anyway, but I [CHECK] would see tremendous relief for the public court system with that. Another example was the reaction to the private bail bonding market, where individuals, if they want to be released before their trial, had to pay a bond, and so a public alternative was created, and initially there was a big shift to the public alternative. But judges have been so dissatisfied with that that they are not —well, the portion of released prisoners before trial that are being dealt with by the private bail industry is growing over time due to judicial pressures. So in addition to private security we're seeing private investigation and pursuit. We're seeing private adjudication. We're seeing private firms contracting with prisoners for their labor. All of these things are happening in increasing amounts.