

JUSTICE IN AMERICA

Declining Respect for the Judicial System

With the soaring rate of crimes against persons and property in America has come a steadily decreasing respect for the justice system. It is now in such low esteem that many persons view the judicial process as nothing more than a tacit conspiracy among lawyers to line their pockets with money.

Perhaps the average citizen cannot appreciate all the fine points of common law and Supreme Court decisions dealing with proper procedure in safeguarding the rights of the accused. But he sure knows that something is wrong with the system when he reads that an accused murderer out on bail has struck again, or that police officers in many communities can still brutalize citizens with impunity, or that decent people cannot leave their homes for fear of the savages outside while police patrols are elsewhere busting pot smokers and raiding massage parlors.

Given the almost complete failure of the system to insure justice, the natural impulse for many people is to advocate a crackdown on criminals and sterner measures—even to the extent of simply liquidating every alleged criminal that falls into the hands of the police.

Two Concepts of Justice

That what now passes for justice can exist in the face of such strong desires for revenge points up the fact that the present justice system has contradictory premises. On the one hand, there is the idea that convicts should be rehabilitated so that they can return to society, that their prisons be as "free" as possible, and that the criminal is merely a victim of society which created the conditions which motivated his crimes. On the other hand, there is the notion that society must revenge the victim (and scare potential criminals) by tossing the criminal into a forbidding cage and throwing away the key.

A typical politician's response would be that the proper practice of justice lies somewhere between these two extremes. The Libertarian concept of justice does not lie within these parameters at all.

The Libertarian Concept of Justice

When someone's rights are violated—their property used or taken without permission, their person assaulted, or their freedom of action limited—by the activities of another party—then libertarian justice demands that the consequences of these actions be negated as nearly as possible. (The fact that it is

nearly always impossible to completely negate the consequences of criminal action is strong incentive for protective rather than retaliatory measures.)

Justice is therefore a restitutive process for insuring that the perpetrator "make whole" his depredations against the victim. (Note: some states have passed so-called restitution programs to aid victims of crimes. These programs consist of the taxpayers being robbed once to pay the victim and a second time to house the criminal, if caught, in a penal institution. While this undoubtedly makes victims feel better, this program merely compounds the injustice of theft.)

Justice is not retaliation and revenge. To retaliate against the thief who steals a loaf of bread by cutting off his hands is as unjust as it would be for a judge to rule that hungry people have every right to steal from a well-stocked grocery store.

Blood-lust and coddling are merely two manifestations of the movement to deny that individual rights exist or that they have any use other than as decorations for Fourth of July speeches. A free society, i.e., a society based on individual rights and practicing the enjoyment of those rights, will, by definition, have a code of justice that is restitutive in nature. A society where rights are trampled—which, unfortunately, includes every nation on earth today to a greater or lesser degree—is a degenerative society.

At this point, libertarians are always called upon to prove the practicality of their system. What is practical, of course, depends upon what it is you seek to practice. If one wishes to protect the rights of members of a society and provide justice for the victims of crimes, then the libertarian system is eminently practical.

Restitution In Practice

Several examples serve to demonstrate the principle of restitution in practice:

1. A person is caught by your protective agency in the process of selling your rare coin collection which he has stolen. The court orders the return of the remaining coins and orders him to pay you for the costs of apprehending him and the cost of finding and buying duplicate coins.

If the thief does not have the assets to pay you, the court will let him choose to which workhouse he wants to be turned over. There he works at a job with part of his wages going to you until you are paid off, with interest, of course.

The length of time the thief spends at the workhouse depends on the proportion of his wages he

turns over to you and the type of work he is able to perform.

2. You are murdered by a mugger who thinks your wallet is too thin. Another citizen witnesses the crime, grabs his shotgun and chases the murderer. He corners him in an alley, where the citizen now has two options . . . He can blast the criminal or he can turn him in.

Now, prior to this, the prudent man would have made out a life insurance policy stipulating how much was to be paid to his heirs in case of murder. He might deal with a company that allows for revenge by the heirs in return for higher premiums on the policy. He might choose a company where the heirs would get a certain sum each month for life and the murderer was put in a workhouse to pay off the insurance company.

The capturer could be doing society a favor by blasting the murderer. Or he could be putting himself in debt to the insurance company, if the murderer's forfeited life now belongs to them under the terms of the victim's policy. In most cases, the murderer would be turned in for the reward money. In some notorious cases, the insurance company would allow "dead or alive" rewards. While your life could not be returned, you would—while still alive—be able to value your own life and set the terms of disposing of anyone who chooses to kill you. (Policies could also be taken out against rape and other crimes where only the victim can set compensating values.)

Insuring Justice

In a libertarian society, most restitution would be through insurance policies covering certain criminal activities. There would be a strong incentive to place convicts in the most productive and highest paying jobs so that victims of their crimes and insurance companies could quickly recoup their money. And there would also be organizations that would insure that the rights of criminals were not violated through the process of restitution, and such considerations would become the main concern of lawyers (as opposed to procedural tricks which enable the guilty to go free).

In this short an essay I naturally cannot deal with all of the questions which the libertarian concept of restitution raises. How would you deal with petty crimes? Crimes in which a monetary value is hard to set? Crimes committed by the rich who can afford to pay damages? Crimes committed by unknown persons? The key to answering such questions lies in a thorough understanding of libertarian

social principles such as the role of social ostracism, the nature of insurance policies, and the inherent risk of crime in a society in which individuals retain the right to arm and defend themselves. These ideas and more are dealt with in a variety of libertarian works including *The Machinery of Freedom* by David Friedman, *Society Without Coercion* by Jarret B. Wollstein, and *The Market for Liberty* by Morris and Linda Tannehill which you are encouraged to read.

Under our present system of justice, 100 guilty people may go free to prevent the imprisonment of one innocent person. Today this makes some sense since prisons are now hell holes which provide no rehabilitation for criminals and no restitution for victims whatsoever. In a libertarian society they would simply not exist, and in such a society there would therefore be no danger of so victimizing the unjustly accused. Restitution for the victim and non-aggressive removal of aggressors from society thus would be infinitely easier in the context of a libertarian society.

It is an outrage that society has failed to realize that the first concern of any system of justice should be insuring that criminals "make whole" their victims. The only way to end this injustice and the only path to true justice lies in popular acceptance and social implementation of the libertarian concept of individual responsibility and restitution to the victims of crimes.

Coercion gives men no special powers or abilities that they do not otherwise possess. All that which is truly worthwhile can be accomplished without aggression. Free men are not idiots or brutes—they do not need governments to force them to provide for their education, their sick, their poor, or for their old age. Historically the greatest advancements in human welfare have been made in precisely those periods with the least governmental regulation of human action.

The omnipotent state is the archaic remnant of tribal war lords and witch doctors; it is the super-parent who tells us that we are not fit to run our own lives. But there comes a time in the life of every man and society when they must leave the stifling safety of a programmed existence, discard the myths of childhood, and venture forth into the world of self-responsible adults. There are, to be sure, risks in abandoning the nursery, but no human development is possible without risk.

As libertarians we say to the world: Wake up and cut the cord. There is a world of infinite pleasure, variety and adventure open to the person with the courage to be free.

Jarret B. Wollstein

SIL DECLARATION OF PRINCIPLE

Adopted October 1969

As Advocates of Individual Liberty We Affirm:

That every person has an inalienable right to their own life, liberty and property;

That the only proper use of force is in retaliation against those who violate human rights;

That the basic violation of human rights consists of the initiation or the threat of the initiation of force against the individual;

That all proper social organization can only be a consequence of voluntary association between individuals;

That the only economic system consistent with human prosperity and happiness is laissez-faire capitalism;

That the ideologies and instrumentalities of coercive collectivism are the basic threat to human rights and the existence of moral human societies;

And that both moral individuals and moral societies have the obligation to act in their own rational self-interest to protect themselves from those who seek to coercively control, direct and enslave them.

With the apostles of coercion increasingly predominant in the councils of man, it is the duty of all those who value their life, liberty and property to take appropriate action—intellectual and social—to preserve and extend their freedom.

We as libertarians resolve to resist all forms of involuntary collectivism and all programs and activities of government which violate our rights and attempt to take from us the ability to set our own goals and to determine our own destiny.

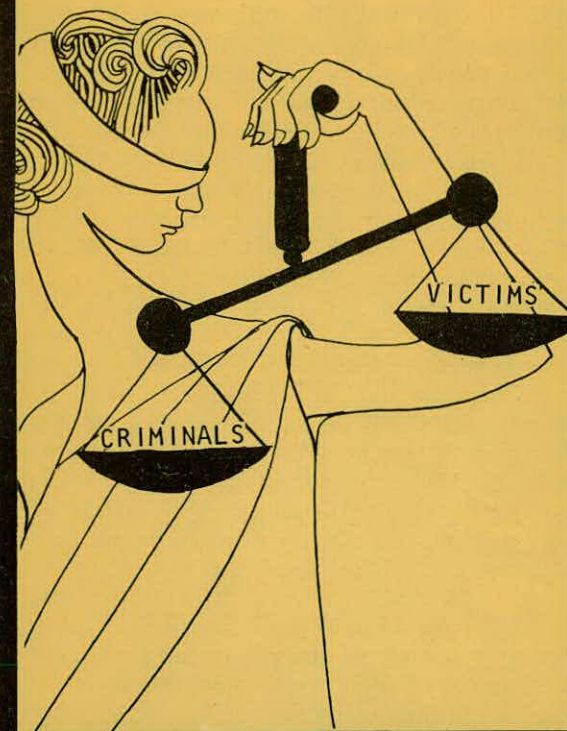
We work for the day when all individuals are free, and we look forward to a society of peace, plenty and freedom where the individual's rights are truly politically inalienable. As advocates of reason and liberty we seek and will settle for no less than:

FREEDOM IN OUR TIME

Get a complete set of all 45 SIL issue papers for only \$2! Order from: SIL, PO Box 1147, Warminster, PA 18974.

JUSTICE IN AMERICA

DAVID K. WALTER



**SOCIETY FOR
INDIVIDUAL
LIBERTY**