



Private Governance
Guest: Edward Stringham
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Edward Stringham is the L.V. Hackley Endowed Professor for the Study of Capitalism and Free Enterprise at Fayetteville State University.

WOODS: You know, Ed, just yesterday I had Walter Block on the program to talk about the environment, and boy, he doesn't mince words. When he says "privatize everything," he really means it, more than anyone I have ever met in my life. Now you were a student of Walter's? Did you go to the College of the Holy Cross as an undergrad?

STRINGHAM: That's right. I was a student of Walter Block, and he really sparked my passion in all of these ideas. I remember going into his class really not knowing even the term libertarian. When he asked me, "Are you a libertarian?" I said, "Yeah, I think so." And then coming out of that class it was like, politics all makes sense. So hearing as it an undergraduate, as a young kid, is just really a special thing. And he inspired me to get into academia to start teaching about these ideas, writing about these ideas, and I am forever grateful to be a student of Walter Block.

WOODS: Well, Ed, it is such a great success story for you because now you have a forthcoming book from Oxford, for heaven's sake. I don't think Walter has done that. You have surpassed the master—which is, of course, what he would want you to do. So *Private Governance* is what the book is called. Does it have a subtitle?

STRINGHAM: Yeah, it's *On the Unseen Beauty that Underpins Markets*.

WOODS: That's unbelievable that that book gets published by Oxford. I think people think that university presses are exclusively radically Left, which is not true, but they are not necessarily super-favorable toward us. I think that is a testament both to the quality of your work and to the fact, frankly, that I think the conversation has shifted a bit, a little bit favorably in our direction. What do you make of this? Maybe your response is, well, this just shows how awesome I am, and that could indeed be part of it.

STRINGHAM: [Laughter] Of course, that's true, Tom. But I do agree with you that I think there's a lot of interesting ideas out there, and I think if we can show the world how many interesting ideas are there and present them in a way that people find interesting, we can say, "Look at this." So in my book I go through and give historical examples of markets that have been privately regulated in history and today. So it's more than just saying, "I believe markets might be able to solve problems in this way." Rather than me speculating, well, maybe they could do this, maybe they could do that, I go through history and say, well, in this example, here's how they actually solved this problem, and in that example, here's how that actually solved that problem. So it is of potential interest for people who are interested in historical examples, and then looking at the analysis of how markets solve what people consider governmental problems.

WOODS: Now there are two types of these sorts of problems and how they are solved. One of them would be problems and solutions that are right in front of everybody's faces every day, but because they are right in front of our faces, we don't see them or realize that they are examples of the market in action. In fact, wasn't there a book, something about "hidden order"? Maybe it was David Friedman?

STRINGHAM: Yeah! That's right. That's one of the titles of his book. That's correct.

WOODS: Yeah, right, so there's that. There's the fact that actually you're surrounded—and that's true, by the way, also of anarchism. You are surrounded by examples of anarchism, and yet people are all convinced that there's no such thing, it can't possibly work, and yet almost all of their interactions are in effect anarchistic. But you also have other examples in your book of cases that most people would not be familiar with, that you draw on from history. So let's try and do one of each.

Let's take PayPal—and before people start bristling and saying, well, I don't like PayPal because I don't like the fees they charge, forget that. Forget that. PayPal is solving a massive and very difficult problem, and it's quite interesting that it manages to solve it. It's a problem that we assumed up to now that can't be solved without government. So let me throw that over to you.

STRINGHAM: Okay, so most people assume that contracts and exchange must be enforced by government courts. You need to have the threat of a policeman and a court coming in to say, "If you violate your contract, you've got to go through this legal procedure, and then you're going to be forced to pay." Well, PayPal came out about 15 years ago at this point, and they were faced with anonymous fraudsters from around the world. The problem was that even when they could track them down—which to begin with is quite difficult because they are these quasi-anonymous fraudsters—the government has no legal authority and no ability to actually deal with these people. So if you find a guy from Kazakhstan stealing money from your account—the PayPal people actually at one point contacted the FBI and said, "We know who did it. Here's the person. Here's the evidence," and the FBI basically said we're on the case. But they really couldn't be on the case. At one point they had a debate between the FBI office in San Francisco versus the FBI office in San Jose of which one had jurisdiction over Kazakhstan. So there's tons and tons of problems that we face that you can't rely on courts of law. So rather than relying on government, here's what PayPal did and what since then credit card companies have gotten very good at as well. So this technology expands beyond PayPal, but what they did was they figured out a way to predict fraud *ex ante* using a combination of computer intelligence and human intelligence to create a scoring method and say: is this transaction likely to be fraudulent? If so, we're not going to allow it. If it is, we're going to allow it. And the better companies are at predicting fraud *ex ante*, the more irrelevant it becomes when you can't rely on government, of course.

WOODS: That is a fascinating story. I didn't know about that. I thought that the big deal about PayPal was simply that it made it easy for you to make payments to people in various parts of the world, but it's also solving a crime problem with an innovative solution, given the fact that they can't rely on the government institution in this case. An institution they are told is indispensable, right? You can't live without the FBI. But in this case they may as well have been. If the FBI isn't doing anything, they may as well have been living without the FBI. And yet they managed to come with a private solution.

Now let's shift gears and talk about another example, and this is one that people will be less familiar with. You also talk in this book—it's forthcoming, remember—about private police in history. This is another hurdle for people because they imagine that if the police are privatized, well, think of the abuses that would ensue—without stopping to think about the abuses they tolerate every single day from the government police. But give us an example. You talk in particular about the case of San Francisco.

STRINGHAM: That's right. During the gold rush, San Francisco started out as very tiny—smaller than a village, actually—and within months, within years, hundreds and thousands and tens of thousands of people from all over the world started coming into what was formerly a tiny, little less than a village, a camp. And at the time there were commentators and they said, they have no police. They have no jail cell. And they basically made do without any government at first, and things actually were working fine, but over time, as more and more people started coming—including many criminally-minded people who were frustrated gold miners—there started to become conflict. People started having disputes with each other. At certain points these criminal gangs started forming called "the regulators," and "the hounds." In many cases they were blaming the Spanish speakers. They called them the "chilenos" for preventing them from having as much as they should, and so there were a lot of potential conflicts. At certain points they would go into bars and just demand drinks and say, "If you don't give us drinks, we're going to smash the bar." So

a lot of potential problems, and in the early days there was no government police, and so merchants created their own type of voluntary police force, and over time they started growing.

The government eventually started creating a police as well, but these people were considered worse than the criminals. They were underfunded. They were paid poorly, and in most cases people were afraid of them. So alongside the government police since, day one of San Francisco there have been private police. By 1900 there were far more of these private police—well over 1,000 of these private police—than government police. These police are still written into the city charter in San Francisco today, and today they are referred to as the “San Francisco Patrol Special Police,” which is a network of independent firms which have the authority to police the streets of San Francisco. So this is an example. You might even see these people. You might have seen the movie *Cops* with Christian Slater and Mila Jovovich about the San Francisco Patrol of Special Police, but most people don’t realize that these are purely privately funded, funded by merchants and for-profit academics.

WOODS: I don’t know if you can speak from the example of San Francisco, but maybe from theory or other examples, what do you make of the claim that you would hear especially from a Left progressive, who would say: good heavens, if this function of government were to be privatized, we can only imagine the sorts of abuse of the public that would ensue. As I hinted at before, these same people, if they are honest, are complaining all the time about abuses from government police. Is there any reason right off the bat to expect that there would actually be less abuse and fewer grounds for complaint if the police were not a government monopoly?

STRINGHAM: Well, there’s some great examples in the San Francisco history where different minority groups actually had to rely on the private police. So one of the first examples is the regulators and the hounds threatening to burn the city and drive all the chilenos out of the city, and it was the private police who actually came to the chilenos’ aid.

Another great example is with Chinatown. The government police did not police that area in San Francisco. In many cases, the government police were on the sides of the workers who wanted to harass the Chinese residents of San Francisco. And in that case as well they hired private police to protect them. It was also actually the companies that hired Chinese workers would hire private police to protect the Chinese residents of San Francisco, and so the idea that companies and for-profit enterprise is going to be against the minorities actually was not the case in San Francisco. In this case, they were on the side of these people. So I think this is a great example where we contrast this with government police, who right now incarcerate a very high percentage of minorities. The idea that the government is on the side of the downtrodden and on the side of the people who are not politically connected is just totally false.

WOODS: I want to say something about this paper that you wrote that won the best paper prize from The Society of the Development of Austrian Economics, and it was called, is it called “Hayekian Anarchy” or “Hayekian Anarchism”?

STRINGHAM: That’s right. It’s called “Hayekian Anarchism,” published in the *Journal of Economic Behavior and Organization*.

WOODS: All right. I want you to tell us what that is all about, given that Hayek was not an anarchist, but somehow you’re deriving that idea from him, so let’s hear how you did it.

STRINGHAM: Well, I wouldn’t say I am deriving the idea from him, but what we do argue is that in Hayek’s economics he famously talks about things like decentralized knowledge, the importance of discovery in markets—without competition you don’t know what the ideal outcome is. And when he came to law he certainly did believe at the end of the day that government should have a monopoly. But in his discussion of law he did use a lot of the same terminology of things like discovery. So he talks about in the common law the importance of common-law judges discovering the law, and saying that people should not be legislating these types of things. So Hayek—I would argue that if we take his economic point seriously enough and then talk about this discussion of discovery within the law, we should follow his logic and apply an economic thinking to the area of law, and we conclude that even though Hayek was not an anarchist, Hayek should have been an anarchist.

WOODS: All right, now let me raise the objection that some people may have. We have a diverse listener base here, so let me try to represent some of them. They may say that look, I am sure that Hayek did recognize the virtues of the marketplace, and he was a great exponent of that, but the reason that he doesn't extend this analysis to law is that law has to be monopolized by the state. It's true that the common law was a case in which the law was not emerging as legislation imposed from without by a legislature, and that indeed it was something that was discovered over the course of time and reflection, and there's nothing wrong with that, but it was still monopolized, eventually, by the king's courts. And the reason is that if we didn't have that sort of system, then we would be having pitched battles with each other all the time because no one would agree to appear in a court favored by his accuser or favored by the perpetrator of a crime. We would just be at loggerheads all the time. No this is a case when monopoly can be a salutary feature of society.

STRINGHAM: Well, it's true that over time the courts did become monopolized and much of what we now refer to as common law in modern America or modern England was eventually monopolized by the government, but a lot of the legal concepts and a lot of the legal procedures that we still use actually were developed in a time period when there was actual competition between courts. So in the area of contract law, for example, there were tons of different types of competing courts in England over the past thousand years. There were the law merchant courts, the **[inaudible 0:20:49.9]** courts for people, basically similar to modern arbitration where people didn't have the time to rely on government courts which met not on a fast enough basis. They were too slow, and so people would opt in to these private systems, and a lot of the modern contract law comes out of these private courts.

Another example of this were the ecclesiastical courts, which were created in theory, just to deal with issues of morality and issues with God, but they actually encouraged and allowed people to have their contract adjudicated in ecclesiastical courts, and you could do so at contract time by pledging an oath to God to say, "I promise to give you these goods, and if not, I swear to God this will happen." That was basically the modern equivalent of an arbitration clause, and so that allowed people to opt in to the ecclesiastical courts in the same way people opt-in to a mediation or an arbitration agreement before they sign a contract. So yes, there is potential that people have a dispute, but because that potential exists, people have incentives to figure out ways to minimize the problems with these disputes, and historically we can find tons of examples of this where people want to solve those problems and they come up with private solutions.