

Thoughts on Hans-Hermann Hoppe “Private Law society” Presentation

In my conversations with anarchists - trying to interest them in the constitution as a template for living an anarchic lifestyle, I kept getting asked to watch or read some of the Hans Herman Hoppe material, specifically this video about private law societies. I started it a few times, but found it problematic from the outset so did not proceed. However, after repeated requests, I sat down, watched, and made some notes - here are those notes:

The video can be found here:

<https://www.youtube.com/watch?v=TBER0noHGC8>

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1. Democracy - means “the people rule”. Hoppe thinks democracy is dead/ has failed (Imagine the energetics of that), because he thinks that democracy is about voting in elections. Democracy is actually about the people governing themselves through authentic trial by jury. In a democratic constitution working correctly, there would be some voting for men and women to be public servants, entrusted to uphold the constitution, but not voting for policies.
2. Hoppe wants predictability in law - striving for this means trying to legislate for every eventuality. He recognises that the state legislating has led to unpredictability -through the changeability of law. Legislating also leads to more control. It caters to the “bad man” (see Oliver Wendell Holmes jnr.) You have to tailor your legislation for what the bad man might do - the bad man can then push to the limits of what would be deemed breach of the legislation/ contract/ whatever.... In this way, the bad man shapes society. (As opposed to the moral man shaping society when people use their conscience to shape the application of law). Hoppe just switches the legislating from the state to contracting and insuring for everything. This is still legislating - yes, by agreement - but, people need to understand that they cannot legislate for all eventualities - every decision should be tailored for the particular circumstances, with a decision according to conscience. This is how the authentic jury operates - an act which is right in one situation may be morally reprehensible in another. So, at all times, a person is required to apply their moral compass to any action they consider taking.
3. He speaks of the fact that the state replaces “constant law” (presumably Natural Law?) by whim. Yes - States do this, and change laws on their own whims or the whims of the people clamouring for protection: ‘There ought to be a law about that!’ But at the end of the presentation, Hoppe talks of different private security firms enforcing different types of law - for example Catholic/ Canon law for a Catholic property owner, applying to their property - and Islamic law and so on - this is madness. Unless it is Natural Law, it cannot bind others, unless by contract. Yes, someone could contract with you that if they come onto your property they abide by your house rules - but, depending on the circumstances, this might not be moral or enforceable -what if someone wanted a rule such as “Trespassers will be Castrated”!?! You might say this is not an established law, like Canon law or established religious laws - but I’m sure you could find some pretty harsh rules in some of the religions. Then there is the question of what does it take to qualify as such an established law??? Which laws will insurance companies and private security firms agree to enforce on someone’s property? This whole suggestion seems to be contradictory to his earlier statement that law should be constant - and, this idea is not in alignment with Natural Law.

4. Hoppe talks about all property being private property. I agree to an extent, but the situation is not so clear cut with land. I think we are just stewards of the land. We can carve out a piece of land sufficient for our needs and make a shelter on it, grow some food etc and we have the right to defend that property against those who would wish to trespass or damage that shelter. But is it really ours? Certainly, a wider geographical area - such as a village - is not owned by the people of the village in a way whereby they could preclude others who do not agree to their rules from coming onto that land. For this reason - when we talk of a private law society, ruled by contract to which all members of the society agree - this society cannot be based on a geographical area, in my opinion. If someone infringes the individual rights or damages the house a person is living in at that time, or steals his personal possessions, etc then that is another matter - the criminal can be dealt with and separated from society if necessary (after conviction by trial by jury).
5. So, if we were living in alignment with Natural Law, then people would realise that they should not be amassing a portfolio of property (land-based) - I'm not saying that we should redistribute this wealth - that would be communism - but people have to come to a voluntary understanding that we are but stewards of the land. Does our land law (England and Wales) , in a way, reflect this? And when people say - you don't own your house, you only have a freehold interest - it is all owned by the King - was not the original intention more that the King holds it on our behalf (as our public servant, not in his private capacity), that in truth, the land belongs to all the living people. This is why, in my view, you can't have a society where everyone, if they want to be a part of that society, has to sign a contract agreeing to the rules, when that society is based on a geographical area. You can't exclude people from a geographical area if they don't want to sign your contract. This is one of the reasons why a constitution of a country cannot be a contract which binds the people. It binds only the public servants of the people (when they are acting as public servants - though, in a society in alignment with Natural Law, it would be hard to be 'off duty' and, in a sense, we are all our public servants - because part of living in alignment with Natural Law is calling out, and putting right, injustice).
6. Hoppe suggests that States make laws which grant special privileges to certain people/ functions. The English common law constitution, as expressed in Magna Carta 1215, ensures that all are equal under the law - nobody is above the law. The fact that this has been obfuscated over the years and we have not upheld this principle does not mean we should not try to restore it (Reclaim it, I now feel has the more the sense of the energy needed). Also this concept is very familiar with the people - particularly those who have grown up in a common law country (even though these common law countries are operating as a shadow of what was intended)... there is a recognition and a knowing of these principles within the people (and the vestiges of it remain throughout the system).
7. I agree with Hoppe that we cannot have forced taxation - it is immoral.
8. Hoppe states that nobody can prohibit another from using his own property for any industry or trade the property owner wishes. Hoppe needs to be clear that what you choose to do on your property must not cause harm to another, because the way he expresses it makes it sound as if you could set up anything you liked without regard to your neighbours. We need to keep talking to each other about what we consider constitutes harm - it is not as simple as it seems. Imagine living next door to someone who wants to have a tyre burning business, or an all night bar with loud music, etc etc.... Neighbours need to speak together about what they want to do with their properties. It's because we didn't believe that people could agree amongst themselves, the planning laws were enacted - maybe this legislation came from a good place. Sometimes, these planning rules are helpful even now. For example, in helping

us to object to phone masts, preservation of ancient buildings and heritage etc - this is a reason against tearing down the current system, but, instead, holding our public servants to account and making sure they do their jobs. As people come to understand Natural Law - that their rights end where another's begin - these somewhat protective legislations will become less necessary. We have to start to practice negotiating with each other within our communities - and if necessary convene a jury to hear the issues and decide.

9. The use of private security firms is very problematic in my opinion. Money obviously causes issues - and, going forward, we need to re-think our relationship with money and, ideally not have money at all. Money has become a false measure of our worth, a resistance in the system, a way to avoid vulnerability and gratitude.... But that is an enormous topic.

Peel's Nine principles of policing and the tradition of individual police constables acting on their own consciences is still taught on policing degrees and is correct. In practice, however, the police often feel they have no choice but to enforce the legislation - in the same way that most people believe they have no option but to obey legislation (whether or not they agree with it or feel it is morally correct). They don't see this as order following as precluded by Nuremberg (obviously contrary to Natural Law but this principle confirmed at Nuremberg). We need to return to an emphasis on this individual accountability and making decisions according to one's own moral compass. There are bad apples within the police, obviously, and the culture has, historically allowed bad behaviour to be covered up... but the way that policing was initially devised, seems to me to have some very good elements. Without a raising of consciousness amongst the people - a system of privately paid security companies will fare no better.. remember Peel's 7th principle in particular:

"Police, at all times, should maintain a relationship with the public that gives reality to the historic tradition that the police are the public and the public are the police; the police being only members of the public who are paid to give full-time attention to duties which are incumbent on every citizen in the interests of community welfare and existence."

10. We are going to need people in society who are public servants (without money existing as currently, the payment of these people will not be a problem - people will be doing what they are good at in the knowledge that this will be returned to them in the form of other people providing for their needs by doing things that they (the other people) are good at.)
11. He speaks of police having no incentive to solve crime - because they don't have to compensate the insured if they don't solve the crime.... Well, a public servant's incentive would be that he wants to keep his community safe.... If he doesn't do his job properly then we get another public servant. Sometimes not doing his job properly would be a crime... the people need to hold these people to account, prosecute them if necessary. Compare this with private security firms competing for business and having the incentive to solve the crime for money- where is the consciousness-raising here? The private companies would implement targets - costs targets - put people under pressure to solve crimes - maybe the incentive would be so strong that the private security officer would fabricate evidence in order to meet his targets - fit up the wrong man. This may be more likely in competing private security firms than in current policing (because one of the reasons it happens in current policing is because of the corporatisation, making targets .. that pressure). The thing can't be fixed by money and contracting - it has to be a raising of consciousness exercise.
12. I agree, being able to defend yourself, or another is vital - it is provided for now in our current law (from the common law), but in defending yourself, you may only do what is reasonable in the circumstances. This is fair enough, surely? There are situations where to defend yourself

with fatal force would be unnecessary and unjust. We can't have carte blanche here. Ultimately, any decision as to whether or not excessive force was used is for a jury. Yes, the government should never have taken away people's weapons of defence, nor weakened them in other ways either. However, I disagree with Hoppe's assertion that insurance companies would reduce premiums for those who can defend themselves - not necessarily. Sometimes the possession of weapons can escalate the violence - if there is then a dispute about whether force should have been used, or whether the force was excessive, the compensation claim may well be higher where weapons are involved. That said, people should be able to have weapons of defence - scary as the prospect of weapons in the hands of certain people may be. Without people working to raise their consciousness, this idea of bearing arms is not as straightforward as many would have us believe.

13. Private security firms enforcing a person's particular choice of law (on their own property) smacks much more of order following for money than the individual, autonomous constable, applying his moral compass to the decision whether he should take action in a situation or not.
14. Hoppe speaks of the right of consenting adults to have a gun-fight in the street. This may actually cause harm to society - injury to passers by and fear and stress. This kind of behaviour might lead to people not going out, with all the issues of unsafely that largely deserted streets would cause. Hoppe may have been having a bit of a joke here - but this kind of activity is not as benign as he makes out - obviously.
15. Hoppe advocates for arbitration agencies providing an arbitrator, agreed by both parties where there is a dispute. This would be decision making by just one person. Remember, there is a reason for 12 jurors - the broad range of character, life experience etc, a discussion together about the issues.. there are also mathematical reasons why 12 is a good number and makes it easier for people to speak up and contribute. Decision-making by the 12 makes the decision safer. Hoppe states that the arbitrator must come up with a decision which is fair to both parties, otherwise they won't be used again.... I fear that, in this scenario, there would be pressure to compromise, rather than fearlessly doing the right thing. Sometimes, even in private contractual disputes (as opposed to a crime situation), someone will have done something wrong - that wrongdoer is probably not going to find it fair if he feels penalised by the decision even if that decision may well seem fair to an outside observer. Sometimes it is good to help two warring parties to come to an agreement with which they can both live - but there must never be pressure to sweep wrong-doing under the carpet. We can use arbitration and mediation services currently. These are provided by private companies or people, competing for the work. Sometimes, out of court settlements mean that the person who has been wronged, and society generally, never receives justice - in civil matters as well as criminal. People are bought off and paid to keep silent about what happened as part of the settlement. With insurance companies involved, they are bound to weigh up the financial pros and cons before anything else - they will settle rather than fight for justice - this will still be the case using insurance companies in a private law society.
16. Certainly, criminal matters need to come before a public tribunal - the members of the community have an interest in these matters - for their own protection and the moral well-being of the community. Part of living in alignment with Natural Law is to call out injustice and right those wrongs. This would not be achieved in private arbitration with insurance companies having an eye on costs. I am all for the more informal restorative justice processes in the right circumstance and used correctly.... But, often, a jury will be required. Remember, though, that trial by jury can itself be a restorative process for the individuals involved and for the community.

17. Hoppe speaks of how someone fit and strong might have less need of security than someone who is frail. This perpetuates a notion of each for himself. In a society living in alignment with Natural Law, as I said above, we all have a duty to call out injustice - to help people when their free will is being infringed. The way Hoppe explains the arrangement of the private security firms is that we are leaving the most vulnerable to pay for their own security. Surely, in a conscious society living in alignment with Natural Law, the security of the community is the moral responsibility of us all. We have to police this for ourselves and each other. (Though I am not saying we can force people to fulfil their moral obligations - see next para).
18. There is another problem with these private firms being paid to provide security to a certain person - what if, whilst they are on duty for Mr. X there is a crime occurring up the road at Mr. Y's... we could write into the contracts that the security guards are to leave their post and attend a neighbour in distress, but it is not inherent in the way the arrangement is described. In fact, the whole arrangement would encourage an 'every man for himself' attitude. Really, what should be happening, is the strong men in the society, should be providing containment, physical and mental for the women, children and those who are more vulnerable. There will, no doubt be some women who would also fit this role. Leaving Mrs. Old Lady who needs more security than Mr. Schwarzenegger, to pay for her own, just sounds hideous to me. I'm not saying that anyone can be forced to look out for others - but if we understand Natural Law properly, we would want to. A lot of private security firms on the patch might make it difficult for us to help each other in an organic way. It's also a kind of outsourcing.
19. What if Mr X commits a crime against Mrs Y. Will Mr X's security prevent Mrs. Y's security from coming on his land to arrest him for this injustice? There are problems of territorial jurisdiction in this model.
20. What if the parties in dispute cannot decide on their arbitrator? This can be provided for, in advance, under the contract - but here, Hoppe was speaking of disputes between insurance companies (who may not even have a contract with each other) when they insure clients who want their property secured under a different type of law to another!! (Which, as I've said earlier, is unworkable and wrong).
21. Competition between private security agencies may lead to corner-cutting, and, as I've said earlier, may also lead to financial incentives/ pressure which make order following more likely. (How will this be different to the current situation where you can already pay for private security?).
22. You may get hot spots where private security agencies refuse to work (admittedly, there are 'no go' areas for police in our current system)....
23. Hoppe suggests that currently, police might employ agent provocateurs in order to support claims for higher taxes to be paid to the state- for sure, the police/ state use agitators - to drive fear and various agendas. Well, the same might apply to private security agencies competing for work, with targets for performance and compensation for non-performance - they might tell a customer that they saw suspicious activity that they didn't see - in order to drive fear and get the customer to buy more protection from them, or to make sure the customer does not go elsewhere. They might pay an actor to pretend to be a criminal, so that they can look like a hero - they might get together with other private security firms to perform such stunts to drive the perceived need for protection. They might get together and devise agreed standards for the industry which mean that some customers will not, after all, be able to buy the security they want.

24. Hoppe makes the point that, in a state system, the taxpayer foots the bill for the incarceration of the criminals, whilst receiving no compensation for what they have suffered. I agree that forced taxation is immoral. But a conscious society will have a responsibility for keeping dangerous criminals separate from the rest of the community, and to rehabilitate and heal those for whom that is possible. In the private security firm arrangement, I am not sure what Hoppe proposes should happen to dangerous criminals? He suggests that the security firm will have an incentive to solve the crime because then the criminal can compensate the victim, rather than the security firm have to pay, but many criminals have no money to pay any compensation.
25. There will be clauses in the security firm contracts excluding them from having to pay compensation where the commission of the crime was out of their control - so there will be further disputes arising as to what was, or what was not, out of their control.
26. For similar reasons Hoppe suggests that the insurance companies will have incentives to find stolen goods, whereas state police do not. I would argue that the insurance companies will do the same costs v benefits analysis they do now - if an item is not worth much financially, but of sentimental value only -they will pay the compensation rather than go looking for the item. Also, there is no guarantee that, should they find the item, it will be in a condition acceptable for return to the customer - so they may cut their losses, pay out, and not bother to look for it.
27. Hoppe says that the insurers would have incentives to prevent crime - but crime can also drive their business under this model - so, I'm not so sure. Our current insurers have incentives to prevent crimes now - but do not necessarily put their minds to how they can do this.
28. There seems to be a sense from Hoppe that the security firms and insurance companies will suddenly, magically, become more ethical should we move to a private law society. Why would they - unless we do the work to raise human consciousness..... and, if we raise human consciousness, we won't need all this insurance and security.
29. Hoppe seems to hold a very bleak view that the only way to incentivise people to do a good job - catch the criminal, prevent the crime, etc is through financial means. Actually, some people WANT to do the right thing. This is the basis of public service. We have just forgotten that people in public office are our servants. We have stopped holding them to account. We have formed a belief in their authority over us and we have let the state machinery get out of control. Our constitution as it was set up to work, does not create the condition of a state... but, rather, the people govern themselves through authentic trial by jury.. judging the facts, the law, the evidence and the punishment. We will need public servants to help us with this - but, in reality, we are all our public servants - though some people may be more suited to upholding the constitution and reminding others of it when necessary.
30. Hoppe talks of lazy police who would rather sit in coffee shops than go into dangerous situations - yes, I am sure there are some who shirk their duties - but very many put themselves at risk every day, going into horrible and dangerous environments that most of us would not wish to enter.
31. Hoppe talks of the insurance companies precluding people from vigilante justice... this may lead to some disputes as to what is self-defence (which he supports) and what is vigilante action. A vigilante is one who takes action against criminals without official authority - who are the officials from whom one should seek authority to move against criminals in this PLS? If it is made up of anarchists who are we giving this authority to? The insurance companies? The

security firms? This all smacks to me of outsourcing our own duties to call out and prevent crimes, to another body - private security firms, with none of the sense of the duty which should accompany public servants.

32. Hoppe states that the fact that different firms would be providing security to enforce different choices of law would, eventually lead to a universal law, because the insurance companies would have to resolve disputes between different types of law through arbitration. I'm not sure this is workable at all. In any event we are already subject to Natural Law.
33. All in all, it appears that this model is still trying to legislate for many eventualities, as does the current State - but in this PLS model, the legislation takes place through private contracts enforced/ adjudicated through arbitration. Compare this with our common law constitution as per Magna Carta 1215 - which says very little, is not legislation, but provides principles by which any public servants are bound... if we start holding public servants to account under our constitution, remind them and the people that the public servants are our servants - working for us, not us obeying their dictats, with final decisions on law always made through authentic trial by jury, the State would wither and the people would govern themselves. Of course, people would be free to make private contractual arrangements and negotiate for what they want amongst themselves, but these contracts should not be used as a way to replace government legislation with 'legislation' through contract for all eventualities.
34. Any moves to replace the constitution and the authentic trial by jury it upholds (not how it is (not) working now, but how it was meant to work) will be at our peril.... Especially at a time when the people have not properly understood its brilliance, protectiveness of individual rights, and how it aligns with Natural Law.

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