

# Book Review: Legal Systems Very Different From Ours

*Posted on November 13, 2017 by Scott Alexander*



## I

Medieval Icelandic crime victims would sell the right to pursue a perpetrator to the highest bidder. 18th century English justice replaced fines with criminals bribing prosecutors to drop cases. Somali judges compete on the free market; those who give bad verdicts get a reputation that drives away future customers.

“Anarcho-capitalism” evokes a dystopian cyberpunk future. But maybe that’s wrong. Maybe we’ve always been anarcho-capitalist. Maybe a state-run legal system isn’t a fact of nature, but a historical oddity as contingent as collectivized farming or nationalized railroads. [\*Legal Systems Very Different From Ours\*](#), by anarcho-capitalist/legal scholar/medieval history buff David Friedman, successfully combines the author’s three special interests into a whirlwind tour of exotic law.

Law is a public good. Crime victims have little economic incentive to punish the perpetrator; if you burn my house down, jailing you won’t un-burn the house. If you steal my gold, I have some interest

in catching you and taking it back, but no more than I do in catching some other poor shmuck and taking *his* gold. It's only society as a whole that wants to make sure criminals are reliably punished and the innocent consistently safe. This is the classic situation where economists usually recommend government intervention.

But sometimes that doesn't work. Maybe you live in an area like Somalia or medieval Ireland without a strong centralized government. Maybe you live in a strato-klepto-kakocracy run by warlords who can't even pronounce "jurisprudence", let alone enforce it. Maybe you're a despised minority group whom the State wants nothing to do with, or who wants nothing to do with the State.

**Gypsies** living scattered in foreign countries have generally wanted to run their own communities by their own rules. Nothing stops some of them from calling themselves a "legislature" or a "court" and claiming to make laws or pass sentences. But something does stop them from trying to enforce them: from the State's point of view, a "court" that executes an offender is just a bunch of Gypsies who got together and committed murder. So the Vlach Rom – Romanian Gypsies – organize courts called *kris* which enforce their sentences with threat of banishment from the community.

Gypsies traditionally believe in *marime*, a sort of awful pollution that infects people who don't follow the right rituals; anyone who interacts with polluted people will become polluted themselves. *Kris* courts can declare the worst offenders polluted, ensuring their speedy ostracization from Gypsy society. And since non-Gypsies

are polluted by default, the possibility of ostracism and forced integration into non-Gypsy society will seem intolerable:

The effectiveness of that threat [of ostracism] depends on how easily the exiled gypsy can function outside of his community. The marimé rules (and similar rules in other societies) provide a mechanism for isolating the members of the community. Gaije, non-gypsies, do not know the marimé rules and so do not and cannot obey them. It follows that they are all polluted, unclean, carriers of a contagious disease, people whom no Rom in his right mind would willingly choose to associate with; when and if such association is unavoidable it must be taken with great care. The gypsy view of gaije, reinforced by the gaije view of gypsies as uneducated and illiterate thieves and swindlers, eliminates the exit option and so empowers the kris to enforce gypsy law by the threat of exclusion from the only tolerable human society.

This reminds me of [The Use And Abuse Of Witchdoctors For Life](#): once your culture has a weird superstition, it can get plugged into various social needs to become a load-bearing part of the community structure.

**Amish** also live under the authority of a foreign culture and have settled on a similar system, with a twist. The basic unit of Amish society is the church congregation; Amish settlements big enough to support multiple churches will have many congregations mixed together. Each congregation will have its own rules, especially

about which technologies their members are or aren't allowed to use. Amish people who violate their congregation's rules, either by using forbidden technology or by the usual litany of sins, are punished with public confession or temporary ostracism. Amish people who refuse to abide by lesser punishments are excommunicated, though they can be un-excommunicated if they change their minds and agree to follow the court's orders.

Amish congregations are nominally democratic, but in practice Friedman calls them dictatorship-like because everyone votes the way the bishop wants. But they are a "competitive dictatorship"; since there are so many different congregations in the same town, an Amish family who doesn't like their congregation's leadership or legal system can move to another congregation and agree to be bound by their laws instead. This makes it a rare remaining example of a polycentric legal system outside anarcho-capitalist fantasies or [\*Too Like The Lightning\*](#):

Such a system can be viewed as a competitive market for legal rules, constrained, like other competitive markets, to produce about the product that the customers want. Competitive dictatorship is the mechanism we routinely use to control hotels and restaurants; the customers have no vote on what color the walls are painted or what is on the menu, but an absolute vote on which one they patronize.

They do encounter the same problem as the Gypsies: can you just commit a crime, then accept your ostracism and integrate with an-

other society somewhere else? The Amish have some internal mechanisms to prevent this: congregations are usually on good terms with each other, but if Congregation A accepts a member being shunned by Congregation B, then all of Congregation B's members will shun all of Congregation A's members. In practice, this makes it easy to switch rules as a member in good standing who honestly doesn't like the laws, but hard to break the laws and get away with it.

Of course, you can still leave the Amish community and go join broader American society. But have you seen broader American society?

**18th century England** had a government, a court system, and some minimal law enforcement – but it really sucked. There were no public prosecutors; anyone who felt like it could bring a criminal to court and start prosecuting him, but if nobody felt like it then the crime remained unpunished. Prosecuting took a lot of time and money and was generally a thankless task. And the government didn't want to go to the expense of imprisoning people, so they usually just hanged convicted offenders (if the crime seemed really bad) or pardoned them (if it didn't seem to merit hanging). The exotic anarcho-capitalist part comes in as English civil society creates its own structures to work around these limitations.

Merchants, landowners, and other people with wealth banded together in mutual-protection-insurance-groups. Everyone in the group would pay a fixed amount yearly, and if one of them got robbed the group would use the money to hire a prosecutor to try

the criminal. Group members would publish their names in the newspaper to help inform thieves whom it was a bad idea to rob. But this wasn't about leaving poor people out to dry. The groups would also help indigents who couldn't afford their own prosecutors, partly out of a desire to crack down on crime before it reached the point where it could inconvenience them. They wouldn't help people who could have afforded insurance but declined anyway, though – otherwise there would be no incentive to buy in.

(if this sounds familiar, it's from [another, very different David Friedman book](#))

What about the lack of good punishments? Once a trial was underway, prosecutors would usually cut a deal: the offender would bribe the prosecutor with a certain amount, and the prosecutor would drop the case. The size of the bribe would vary based on how much the offender could pay, the extent of their crime, and the facts of the case (and therefore the likelihood of the magistrate choosing hanging vs. pardon). This not only helped tailor the punishment more precisely to the crime, but helped defer the cost of prosecution: victims (or their mutual-protection-insurance-groups) were incentivized to press charges because they could recoup their costs through the bribes paid to drop them:

What both modern and contemporary commentators seem to have missed is that, however corrupt such arrangements might be from a legal standpoint, they helped solve the fundamental problem of private prosecution. The possibility of

compounding provided an incentive to prosecute-it converted the system into something more like a civil system, where a victim sues in the hope of collecting money damages. And while compounding might save the criminal from the noose, he did not get off scott free. He ended up paying, to the prosecutor, what was in effect a fine.

**10th through 13th century Iceland** was in the same position as the Vlach Rom: a legislature (the Althing), some courts, but no executive branch. Unlike the Rom, the Icelanders' problem wasn't foreign oppressors – it was that they were the Viking equivalent of those hard-core libertarians who live in compounds in Montana where the Feds can't reach them. In this case “the Feds” were the forces of King Harald Fairhair, who had just taken over and centralized power in Norway. Some Norwegians decided they would rather live on a remote and frequently-exploding piece of rock on the edge of the world than be anyone's subject: thus, medieval Iceland.

If an Icelander thought a crime had happened, they would go to court and plead the case themselves. If the court pronounced a guilty verdict, it would demand a penalty from the criminal. Usually this was a fine paid to the victim; even murders were punished with wergeld. If the criminal paid the fine voluntarily, all was well. If they refused – or didn't even come to court – then the court could declare the criminal an outlaw, meaning it was legal to kill him and take his stuff. And:

One obvious objection to a system of private enforcement is that the poor (or weak) would be defenseless. The Icelandic system dealt with this problem by giving the victim a property right – the right to be reimbursed by the criminal – and making that right transferable. The victim could turn over his case to someone else, either gratis or in return for a consideration. A man who did not have sufficient resources to prosecute a case or enforce a verdict could sell it to another who did and who expected to make a profit in both money and reputation by winning the case and collecting the fine. This meant that an attack on even the poorest victim could lead to eventual punishment.

A second objection is that the rich (or powerful) could commit crimes with impunity, since nobody would be able to enforce judgment against them. Where power is sufficiently concentrated this might be true; this was one of the problems which led to the eventual breakdown of the Icelandic legal system in the thirteenth century. But so long as power was reasonably dispersed, as it seems to have been for the first two centuries after the system was established, this was a less serious problem. A man who refused to pay his fines was outlawed and would probably not be supported by as many of his friends as the plaintiff seeking to enforce judgment, since in case of violent conflict his defenders would find themselves legally in the wrong. If the lawbreaker defended himself by force, every injury inflicted on the partisans of the other side would result in another suit, and



every refusal to pay another fine would pull more people into the coalition against him.

There is a scene in Njal's Saga that provides striking evidence of the stability of this system. Conflict between two groups has become so intense that open fighting threatens to break out in the middle of the court. A leader of one faction asks a benevolent neutral what he will do for them in case of a fight. He replies that if they are losing he will help them, and if they are winning he will break up the fight before they kill more men than they can afford! Even when the system seems so near to breaking down, it is still assumed that every enemy killed must eventually be paid for. The reason is obvious enough; each man killed will have friends and relations who are still neutral—and will remain neutral if and only if the killing is made up for by an appropriate wergeld.

I think this is asking: are we sure you can't end up with outlaw cascades, where everyone just agrees to be outlaws together? Suppose Warren Buffett cuts off my arm. The court asks him to pay a fine, and he refuses, so the court declares him an outlaw and legally killable. I gather some of my friends to form a posse to kill him, but he hires a hundred bodyguards to resist me. There's a fight, the bodyguards kill my friends, and the court fines the bodyguards. They don't pay, so the court declares the bodyguards outlaws. I gather a thousand people to kill Buffett and/or his hundred bodyguards, and Buffett and his bodyguards pool their money to hire a whole force of mercenaries to resist us. The mercenaries kill lots of us, the court fines them, and the mercenaries don't pay.

Now the court declares the mercenaries outlaws. But it seems like at some point maybe more than half the population of Iceland will be outlaws, and then maybe they just have to declare a new legal system or something.

An Icelander might retort: why doesn't that happen in modern America? A policeman catches you dealing drugs, so you offer the policeman \$10,000 to let it pass. The policeman refuses because it's illegal and he would get in trouble. Well, you say, what's the worst thing that could happen if you got in trouble? The police would come after you? But police would hesitate to arrest a fellow officer, plus we've already established that they can be deflected with bribes. Sure, there's a stable equilibrium where you arrest me right now. But there's *also* a stable equilibrium where 51%+ of the nation's police join our sordid bribery chain, accumulate more power than the law-abiding police, and end up as some weird mercenary army that takes over the country and rewrites the law to their own advantage.

This is a good place to remember that David Friedman is also the author of [A Positive Account Of Property Rights](#), maybe the single most mind-opening essay I've ever read. No summary can do it justice, but the basic outline is that governmental "legitimacy" is the government's position as a conspicuous Schelling point for everybody who wants to avoid civil war/the state of nature/a worse government. Once it's common knowledge that a government is legitimate, everyone expects everyone else to enforce its rules, and so they'll enforce its rules in turn until it becomes common knowledge that the government isn't legitimate anymore. This works just as

well in medieval Icelandic anarcho-capitalism as it does in modern America. Just because our government dresses all of its enforcers-of-state-sanctioned violence in snazzy uniforms and makes them work out of the same building doesn't make the whole system any less of a mass hallucination.



This book works well alongside James Scott's [\*Seeing Like A State\*](#) and the whole discourse around [cultural evolution](#).

In *Seeing Like A State*, ordinary people living their daily lives blunder into highly advanced systems for doing whatever it is they do. Primitive farmers will know every tiny detail about exactly when to plant which crops, and how to exploit microvariations in soil quality, and know ridiculous tricks like planting fish heads in the ground as fertilizer. Ordinary city-dwellers will organically build houses and stores and streets in exactly the right fractal patterns to maximize some measure of quality of life. Scott dubs this "metis", an evolved intuitive sense of practical wisdom that often outperforms seemingly more scientific solutions.

Many of the societies Friedman profiles in *Legal Systems Very Different From Ours* seem to operate on *metis*. Most don't know who developed their legal system; in a few of them, it is explicitly declared to have been the work of God. Most don't really know why their legal system works – in some cases, Friedman only gives an economic analysis of why some rule might exist after admitting

that previous scholarship (both modern academic, and within the society in question) has failed to come up with answers. And a lot of them are too brilliant, and need too many weird interlocking parts, to be the work of any single person.

“Cultural evolution” is the idea that cultures evolve in a way analogous to biological organisms. The definition gets kind of fuzzy – if I come up with a good idea and my culture adopts it, is that the result of “cultural evolution” or ordinary human ingenuity? `But a lot of people find the concept to have some value – and if it has any at all, *Legal Systems Very Different From Ours* has to include some of the best examples.

Friedman frames this in economic terms. Social “entrepreneurs” come up with some new system that solves a need, and it catches on by raising the utility of everyone involved. The mutual-protection-insurance-groups of 18th century England work this way: somebody invents them and offers the opportunity for other people to sign on, everyone who does ends up better off than the people who doesn’t, and they eventually reach fixation. Same with the criminal-prosecutor bribes; someone thinks it up, it leaves both sides better off, so everybody who hears about it does it. Viewed very optimistically, wherever there’s a problem in your culture, institutions to solve the problem will magically appear and spread until everybody does them.

Conflict is an especially fertile ground for cultural innovation. Friedman stresses how many legal systems, including advanced ones with lawyers and codes and everything, show signs of originating

from feud systems, which might be the most basic form of law. They work like this: “If you offend me in some way, I will try to kill you”. A slightly more advanced version that takes account of possibly power differentials between offender and victim: “If you offend me in some way, everybody in my family will try to kill everybody in your family”. This originally sounds unpromising, but it turns out that people really don’t want their family members murdered. So we end up with an even more advanced version: “If you offend me in some way, we had better find some way to arbitrate our dispute, *or else* everybody in my family will try to kill everybody in your family”.

The Somali system seems to be somewhere around here: if two people have a dispute, they find a mutually agreeable judge to arbitrate; the judge will decide who’s in the wrong and what fine they need to pay to make it right. If someone refuses to go to the judge, or refuses to abide by the judge’s decision, then it’s family-member-killing time. Needless to say, Somali judges’ services remain popular. And since judges gain status by arbitrating, and since only judges who make widely-regarded-as-good decisions get invited to keep doing so, there’s economic pressure for the judges to make good decisions (which then go down as precedent and inspire future cases). It’s easy to see how something like this can turn into a perfectly respectable legal system where people totally forget that killing each other’s family members is even an option. Catch it at this last stage, and hear enough people admit they have no idea who “invented” their legal system, and it looks like it appeared by magic.

In fact, one of the most interesting things I got from this book is that all legal systems need a punishment of last resort – one that can be enforced whether or not the offender agrees with it – but these punishments practically never happen in real life. The Gypsies and Amish will ostracize members who defy the court – but since everyone lives in fear of ostracization, in real life they'll just pay the fine or make their public confession or whatever. The English will hang criminals at the drop of a hat – but since the threat of hanging incentivizes them to bribe prosecutors, in reality few people will need to be hanged. The Icelandic courts could declare offenders outlaws who can be killed without repercussion – but the threat encourages Icelanders to pay the wergeld, and nobody has to get outlawed. The Somalis are ready to have murderous family feuds – but the possibility of such a feud keeps people willing to go to arbitration. Even our own legal system works like this. The police can physically drag you to jail, kicking and screaming. But more likely you're going to plea bargain, or agree to community service, or at least be cooperative and polite while the police take you away. Plea bargains – which are easier for prosecutors, easier for defendants, and easier for taxpayers – seem like a good example of cultural evolution in action; once someone thought them up, there was no way they weren't going to [take over everything despite their very serious costs.](#)



Three other things worth noting about *Legal Systems Very Different From Ours*.

**First**, something kept seeming *off* about all the legal systems mentioned, which only clicked into place about halfway through: they really, really didn't seem prepared for crime. A lot of them worked on a principle like: "If there's a crime, we'll call together a court made of all the town elders, plus at least three different religious leaders, plus the heads of the families of everybody involved, plus a representative of the Great King, plus nine different jurists from nine different universities, and all of them will meet on the Field Of Meeting, and a great tent will be erected, and..." The whole thing sounded like it might work as long as there was like one crime a year. Any more than that and none of the society's officials would ever have time for anything else.

As weird as it is to punish murder with a fine, the fines these societies levied for murder sounded really high: the Islamic price was a hundred camels, the Irish price was seven female slaves. The average person wouldn't have that many slaves or camels, so people in Arabia or Ireland would band together into clan/family-based blood-money-paying-groups that acted kind of like insurance companies. If a member got convicted of a crime, everyone else would come together to help them pony up the money. I assume this helped incentivize people's families to discourage them from committing crimes. But it has the same feeling of nobody expecting very many crimes to be committed. How much of medieval Arabia's GDP consisted of transfers of 100 camels from murderers to victims' families?

One little-admitted but much-worried-about justification for mass incarceration in our society is the concern that some people are just

so naturally violent that, left in the outside world, they would offend again and again until they died. The societies in this book didn't seem to worry about this. If someone killed, their family would give up the relevant number of camels, and then everyone would be on their way. As far as I can tell, the Amish have *no idea* what to do about any crime more dire than using a telephone. Nobody used anything at all like incarceration. 18th century England occasionally sent prisoners somewhere horrible like America, but once the colonies revolted they experimented with jails, found them too expensive, and just sort of flailed around punishmentless until they finally discovered Australia.

There's a lot of concern about police brutality, police racism, police failure-to-actually-control crime, et cetera. A few far-leftists have flirted with the idea of abolishing police, and the only way I can make sense of this is by analogy to something like Somali or Icelandic law. These were genuine community-based non-hierarchical legal systems. And, for the place and the time, they seem to have worked really well (Somaliland, which uses traditional Somali law, is doing way better than Somalia proper, whose law system is somewhat westernized). But I also know that it's weirdly hard to get a good picture of how modern crime rates compare to ancient ones. On the one hand are statistics like the ones saying crime has increased by an order of magnitude since 1900 or so; on the other are findings like Steven Pinker's that violence is constantly declining. Apply the "court made of town elders plus at least three different religious leaders plus..." to Baltimore, and the Field Of Meeting is going to get pretty crowded. On the other hand, in my past work with criminals I've been constantly surprised by how



much role their families and their communities still play in their lives, and maybe a system that left legal enforcement up to them would do better than the overstretched and underperforming police.

(but what would the transfer process look like? Just cancel all funding for the Baltimore Police Department and hope for the best?)

**Second**, some complaints that are kind of unfair because they're along the lines of "this book is too good", but which probably need a mention.

Whenever I read a book by anyone other than David Friedman about a foreign culture, it sounds like "The X'wunda give their mother-in-law three cows every monsoon season, then pluck out their own eyes as a sacrifice to Humunga, the Volcano God".

And whenever I read David Friedman, it sounds like "The X'wunda ensure positive-sum intergenerational trade by a market system in which everyone pays the efficient price for continued economic relationships with their spouse's clan; they demonstrate their honesty with a costly signal of self-mutilation that creates common knowledge of belief in a faith whose priests are able to arbitrate financial disputes."

This is great, and it's important to fight the temptation to think of foreign cultures as completely ridiculous idiots who do stuff for no reason. But it all works out so neatly – and so much better than

when anyone else treats the same topics – that I’m always nervous if I’m not familiar enough with the culture involved to know whether they’re being shoehorned into a mold that’s more rational-self-interest-maximizing than other anthropologists (or they themselves) would recognize.

And also, the cultural evolution idea is really optimistic. I’ve been trying to read a bit more about Marxism and Postmodernism lately, and they would be pretty skeptical about analyzing social systems by asking “What large-scale problem of human interaction is this system the exactly optimal solution for?”

Like, there’s a perspective where lots of countries have a King, because societies that have a single central nexus to their coordination structure are able to coordinate better than ones that don’t, and having them rule for life promotes long-term thinking, and them be hereditary provides a clear Schelling Point for secession disputes that prevents civil war *and* cleverly ensures that the previous ruler is incentivized to promote the peaceful transfer of power to the next one, and this is why [constitutional monarchies have slightly higher yearly GDP growth](#) than other forms of government.

And there’s another perspective where lots of countries have a King, because some guy seized so much power that he can live in a giant palace and order people around all day instead of doing work. And if anyone tries to prevent him from doing that, he can arrange to have that person beheaded. *Legal Systems Very Different From Ours* is very much part of the first perspective. It’s a story of nations and legal systems evolving towards ever-more-optimal

and ever-more-efficient institutions for the good of all, and it presents strong evidence supporting that story. I can't disagree with its evidence from within its narrative, but I still wonder how much to worry about this alternate way of looking at things.

**Third**, in all of the fretting about how terrible our government is, and trying to change our government to be less terrible, and trying to convince other people to go along with our terribleness-decreasing government change proposals – it's important to keep on remembering the degree to which you can still pretty much do whatever you want.

In New York, Orthodox Jews with business disputes still bring them before a tribunal of rabbis, who judge them based on Jewish law. In Pennsylvania, the Amish live their own lives in their own way pretty much completely disconnected from US government decisions (although they needed a decent lobby group, the Amish Steering Committee, to work out a few special exemptions like from the draft). Socialists occasionally set up worker-owned companies run for the good of the proletariat, and they make products and earn money just like everyone else.

If you don't like the government, you're out of luck. But if you *and your whole community* don't like the government, you can organize your own internal relations however you want. You can't override existing laws – you'll still have to pay taxes, and you can't set up a bomb-making factory in your backyard. But you can add as many new laws as you want, enforced by threat of ostracism from your community, plus any other clever commitment mechanisms you

can think of. There's nothing stopping communities – a broad term covering anything from villages to church congregations to cults to political organizations to online message boards – from creating internal welfare systems to help their poorer members, taking a say in when their members marry or divorce, making home schools that educated their members' children, demanding their members in business treat their employees or business partners a certain way, et cetera.

Right now doctors' services are super-bloated and expensive because if a patient sues them they can be held liable for not filling out any of seven zillion forms or following any of twenty zillion best practices. But if the doctor only saw patients in their own community, and everyone in the community had mutual arbitration methods that worked better than the courts, maybe they could charge [a fraction](#) of the current price. This might not be illegal, as long as the community wasn't based on a protected group like race or religion. There just aren't many existing communities strong enough to make it work.

But some small seeds are starting to sprout. Social justice communities have sexual harassment policies much stronger than those of the country at large, and enforce them by ostracism and public shaming. Christians are trying to build the [Benedict Option](#), an embedded society that works on Christian norms and rules. And there's always the [seasteading movement](#), currently led by – oh, that's interesting – David Friedman's son. *Legal Systems Very Different From Ours* hints that we could build something like [Archipelago](#) gradually, without anybody noticing. The Jews and Gyp-

sies did something like it. So did the Amish. Maybe all we have to do is start threatening to feud against each other's families, and utopia is right around the corner.

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***Legal Systems Very Different From Ours*** is available for free online at [this link](#).