

Is Perpetual Feuding Inevitable in a Stateless Society?*

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Abstract

Many historians describe the rise of the state as a naturally evolved response to the problem of feuds. For them, the creation of state-monopolized justice is a preferred alternative to growing and unending violent conflict. This paper provides a process description of the feud to counter this perspective. The economic process of the feud supports updating state-origin historian's definition of the feud to be compatible with the way feud historians use the term. Feuds have the potential and tendency to self-resolve without state monopolized enforcement.

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1 Introduction

The *Oxford English Dictionary* defines a feud as: “a state of perpetual hostility between two families, tribes, or individuals, marked by murderous assaults in revenge for some previous insult or injury.”¹ For scholar’s interested in explaining the origin of the state, the essential elements of the feud are also the most dangerous to social order: perpetual violence, and a tendency for violence to escalate. People constantly decide between the long term rewards from truck, barter, and exchange on the one hand, or the immediate returns from rape, pillage, and plunder on the other.² Social order is safe when the former continually gets chosen over the latter. The feud threatens civilization. Even when voluntary exchange has won out over predation - stores of wealth and knowledgeable people are put at risk when feuds erupt nearby. With their alleged tendencies to grow and persist, like a black hole, feuds displace the order commerce creates, until eventually there is no order left.

Where do feuds persist? Historians and theorists who trace the origins of state governance, correlate feuds with statelessness. Theoretically we are told that man’s untamed self-interest naturally leads to the feud,³ and historically we are told that state governments were created to suppress primitive feuds⁴. In this view, the state is a naturally evolved response to feuds. But are feuds really unsolvable without the state? Is this historical description of an evolved, yet accepted state monopoly of justice accurate? This paper answers no to both questions.

Some writers have argued that there is potential for order without the state, and state-sponsored justice brings with it a host of additional problems.⁵ Barnett (1985, 1986, 1977

¹Oxford English Dictionary (second edition, 1989)

²This wording of the choice between trade and theft was originally Adam Smith’s (1776 [1981]).

³Almost every political theorist consents that the state is a necessary institution to preserve civilization. They typically site Locke (1690 [1980]) and or Hobbes’s (1651 [1985]) description of the state of nature to describe human existence without the state.

⁴Barnett (1985) referenced Schafer (1965 and 1970), Oppenheimer (1913, pp. 162 – 174), Laster (1970, pp 71 – 80), Hobhouse (1951, pp. 45 – 62), and Jacobs (1977, printed in Hudson and Galaway, 1977) when stating: experience has shown that where punishment and restitution have attempted to coexist and where third parties are given the responsibility of seeking punishment, punishment has ultimately come to supplant restitution.

⁵This is a small but growing field of interest. While many libertarian economists have spoken about

printed in Barnett and Hagel, and with Hagel, 1977 printed in Barnett and Hagel) has described an alternative paradigm of justice based on liberty and individual rights. He suggests restitution⁶ to be a better foundational principle of justice than our current retributive system.⁷ He has given a functional description of how markets can provide justice effectively without overlooking victim's losses like current retribution and punishment-based systems do. Because of its reliance upon the private sector to function, the restitution camp has had to deal with the feud debate. If Barnett's liberty-based society requires the private sector to provide services like courts, police, and enforcement, then he must respond to the accepted view that unrestrained self-interest leads to escalating and perpetual conflict.

To explain the origins of current justice Barnett (printed in Barnett and Hagel, 1977) attacks the traditional description of the feud-filled stateless society and the story of how the

privatizing traditional state services like roads, utilities, the post office, etc. Anarcho-capitalists take the privatization arguments and apply them to the minimum operations of the state - the provision of justice. This literature began with Molinari (1849) and received new attention by Rothbard (1973 [2002], and 1982 [1998]), Friedman (1989) and many more recent publications unnamed here. On the provision of private police see: Tinsley (1999), Rothbard (1973, pp. 201 – 205 and 215 – 22), and Friedman (1989, pp. 114 – 120). On the provision of private courts see: Benson (1990, pp 349 – 378), Rothbard (1973, pp. 222 – 34), Friedman (1989, pp 114 – 120), and Stringham (1999).

Leeson (unpublished) has divided the anarchy literature between those studies that explain isolated order: Clay, (1997), Dixit (2004), Greif (1989 and 1993), Kranton (1996), Landa (1994), Leeson (2007, 2006a, and 2006b), Milgrom et al (1990), Zerbe and Anderson (2001) and those that explain social order: Benson (1988 and 1990), Friedman (1979), Anderson and Hill (2004), Ellickson (1991), Sobel and Osoba (2006), Bandiera (2003). In cases of isolated order, similar agents engage repeatedly. Institutions are created which coordinate behaviors, avoid conflict, and induce cooperation. Isolated order is less anomalous to the view that unrestrained self-interests lead to feuds, because people have close similarities to one another. Social order in general is a more over-arching system of rules amongst diverse agents in non-repeated interactions. In regards to the provision of broader social order, unrestrained self-interest is still viewed as hazardous. Leeson (unpublished) argues against the “inability of institutions of isolated order to provide a legal system” and against the claim that “anarchy cannot produce social order (Ibid, p. 3).” I am in full agreement with Leeson on this point, but I divided the literature differently. I see the literature as focusing on the choice between rewards of predation v. the rewards of exchange. I'm more interested in solving feuds where they exist rather than trying to avoid them altogether. Once predation has been selected, can actors get out? I think this is very similar to Leeson's focus on diverse agents because on the margin of dispute, agents in my model are also different from one another.

⁶Restitution can be defined as “the action of restoring or giving back something to its proper owner, or of making reparation to one for loss or injury previously inflicted (Oxfords, second edition, 1989).”

⁷While retribution is often a synonym for restitution the terms refer to very different systems of justice. A retributive system is more focused on extracting payment in fine or punishment from the aggressor, most commonly as time served in prison or fines paid to the state.

Restitution is not the only principle of justice supported by advocates of order without the state. Other anarchy literatures have embraced paradigms including pacifism supported by LeFevre (Long, 1993, p. 2), and retribution (Rothbard, printed in Barnett and Hagel, 1977, pp. 259 - 270).

state monopoly naturally developed. Typically, historians of the state argued that the choice between punishment on the one hand, and restitution on the other, resulted in punishment displacing restitution. Barnett points out an important oversight in the historical record. In Anglo-Saxon Europe, monetary composition systems had been in place and functioned for 600 years before the rise of the centralized state. In conclusion, Barnett boldly states that [t]he image of a state criminal punishment arising from a bloody Hobbesian jungle is pure myth (Ibid, p. 354).

This paper strengthens the implications of Barnett's work. I ask, is the blood feud an inherent problem for human interaction without the state? Is the centralization of justice by the state a necessary response? Are the incentives of self-interested individuals inevitably prone to feuds? The conclusions are as follows. Restitution-based justice naturally emerges from the conditions of people's interacting self-interests without the state. The origin of state justice cannot be characterized as a naturally evolved solution to feuds. Though the feud appears to be a form of institutionalized punishment, it is more often a snapshot of a larger process leading towards restitution spontaneously. Institutionalized punishment systems come about and persist only through state-monopolized justice.

There are qualities of self-interested behavior that restrain individuals from performing greater acts of violence or taking greater amounts of property from others. Even without a supreme final authority, conflict is likely to be restrained by existing social norms or the spontaneous creation of a social norm. The causal forces that create social norms against the feud are as follows. First, feuds are costly; second, retaliation is more costly than forgiveness; and finally, property lines are drawn where people can afford to enforce them and the costs of enforcement are rarely zero.

Feuds are costly. Engaging in conflict costs real resources. In a feud, people devote real resources to protecting their own property and trying to take penalty property from their opponents. These resources are fulfilling the ends of winning the feud rather than producing utility from their own use, consumption, or investment. As the feud persists, the

utility from consuming these resources is delayed. This delay is a profit opportunity that can be recognized by people inside and outside the feud. If the delay increases in time, or the resources increase in quantity, then the profit opportunity and the probability of its discovery also grow. The more resources a feud eats up, the more reason there is to settle the feud. Under competition, these profit opportunities get bid down to zero. Firms that efficiently specialize in resolving conflict out-compete lesser firms for remaining profits and real rewards get doled back out to the original property owners. The system tends to return property according to full restitution, or at least full restitution according to a new property line mutually accepted by all parties.

Acting-out in aggression or retaliation against the property or person of another, carries with it a risk of returned retaliation that forgiveness does not. Recognizing this causal relationship is a task of entrepreneurial discovery. Finally, solving an existing feud requires allocating resources in such a way that is acceptable to all people involved. This may include threats of future retaliation if borders are not respected, but borders, boundaries, and property rights are more effective at protecting self interests amongst diverse people throughout history than is constant feuding. The process by which property rights are established is essentially the same as the process that feuds undergo to be resolved. Feuds are rarely present compared to the prevalence of functioning property rights.

The economic process of feuds shows that feuds are momentary rather than persistent. Persistent feuds are a product of rare institutional conditions that inhibit the development of property rights. States are not an evolved solution to these conditions. When one recognizes the feud as a moment within a longer process, he sees the feud to contain the seeds of its own destruction. Historical examples of feuds show their functionality and tendency towards restitution-based justice. Finally, the understanding of state-monopolized justice must be updated as a disruption rather than a solution to this process.

The remainder of this paper is organized as follows. Section II will summarize the literature that makes the argument for state justice by exposing the problems of the feud.

While Barnett points out that monetary composition existed before state-only justice, I will demonstrate that there are economic forces acting upon those composition systems. These forces towards feud settlement and the establishment of restitution-based justice systems Section III will walk through the economic process of feuds. Just as supply and demand in consumer markets interact to produce equilibrium prices - self interest and social acceptance interact in the market for justice to promote norms of restitution that alleviate conflict and feuds. Section IV will show evidence from scholars focused on the history of feuds that supports the economic process view. Section V will conclude.

2 What Has Been Said About the Feud, and the Historical Origins of the State?

Max Weber (1921) defined the state as a "monopoly of the legitimate use of physical force within a given territory." If private individuals were to provide the services that states typically provide, then there would be competition and conflict. Competition is typically welcomed in the private sector because it instigates efficiency and discovery, but conflict in the market of physical force sounds like a dangerous proposal. Is the security of the state worth the forgone benefits of private provision? Those who favor state-controlled justice have focused on the feud as one of the critical costs of conflict without the state. They argue that when individuals conflict outside the authority of the state their self-interests provoke unending and escalating violence. Hobbes (1651 [1985]) notoriously described the state of nature as a "constant war of all against all." Nozick (1974) summarizes the state of nature also described by Locke (1690 [1980]):

Men who judge in their own case will always give themselves the benefit of the doubt and assume that they are in the right. They will overestimate the amount of harm or damage they have suffered, and passions will lead them to attempt to punish others more than proportionately and to exact excessive compensation

(sects. 13, 124, 125). Thus private and personal enforcement of ones rights (including those rights that are violated when one is excessively punished) leads to feuds, to an endless series of acts of retaliation and exactions of compensation (Nozick, 1974, p. 11).

In summary, to avoid the feud-filled state of nature, society has responded with the construction and application of state-governance.

The pro-state argument does not deny the responsiveness of private market activity, but claims it is this very quality of the market that leaves it vulnerable to feuds. Barnett (1986) describes how markets can provide the security services demanded by society, but summarizes the escalating violence objection as a typical response:

[w]hen one seriously compares the potential responsiveness of each system, many readers may concede the point and offer the opposite objection: Competing jurisdictions would most likely be too responsive to their customers, and this would inevitably lead to injustice and serious conflicts among agencies, creating serious social disruption (Ibid, p. 40, italics in original).

Most historians focused on tracing the origins of the state have described the events as a conscious response to feuds. Barnett (1985, p. 65) summarizes their position; in the absence of a justice monopoly, individuals are confronted with the choice between punishment on the one hand, and restitution on the other. Allegedly, the course of history shows punishment winning out over restitution. It is accepted amongst this literature that there is a natural transition from vengeance to composition and again from personal private composition to state monopolized justice (which is eventually void of victim compensation). Schafer (1970) describes the evolutionary shift from vengeance to composition:

The change from vengeful retaliation to composition was part of a natural historical process. As tribes settle down, reaction to injury or loss became less severe. Compensation or composition served to mitigate blood feuds, which, as

tribes settled and became more or less stable communities, only caused endless trouble: an injury once committed would start a perpetual vendetta. Composition offered an alternative which was in many ways equally satisfactory to the victim (Ibid, p. 5).

He goes on to describe the shift from composition to state sponsored justice, “[a]s the state monopolized the institution of punishment, so the rights of the injured were slowly separated from the penal law: composition, as the obligation to pay damages, became separated from the criminal law and became a special field in civil law (Ibid, p. 7).” Schafer (1965) also notes that the composition system naturally led into the state monopoly of justice,

[t]here is more than a germ of truth in the suggestion that the composition, the medieval ancestor of the present day restitution to victims of crime, was one of the fertilizers of the state criminal law. Composition soon was emasculated by that very law by being expelled from the penal system and left to the field of civil law (Ibid, footnote 6, pp. 246).

Schafer’s evolutionary description was influenced by Oppenheimer (1913) who described feuding and dispute resolution in history’s earliest civilizations. “In older times liability to bear the feud of an adversary was the natural state of things, immunity from his vengeance, peace an exceptional condition, intimately connected with the religious life of the people (Ibid, p. 165).” He supported the opinion that the conversion to systematic and centralized law was a conscious choice by individuals avoiding violence when he states: “[s]lavonic mythology [thus] aptly symbolizes the great historical truth that the desire for peace was the main cause which led to the establishment of courts of law (Ibid, p. 162).” Finally, he attributes the successful halt of feuding to the monopolistic qualities of the state. “The first legislative acts which deal with disputes between citizens restrict in various ways, in the interest of the peace of society, the right of revenge, by narrowing the circle of persons entitled to exercise it (Ibid, p. 164).” Laster (1970, pp 71 - 80), Hobhouse (1951, pp. 45 -

62), and Jacobs (1977, printed in Hudson and Galaway, 1977) were other social evolutionary thinkers who similarly described the rise of the state as a response to feuds.

Scholars who describe the history of the feud rather than the history of the state present the feud as less menacing and even a source of conflict resolution. They are all too familiar with the first impressions feud descriptions give off. On the Hatfields and McCoys feud, Waller (1988) summarizes the “most prevalent interpretation,” on the matter:

the feud and the culture from which it emerged were anachronisms in modern society. That is, they represented a primitive way of life which had somehow been preserved in much the same way that prehistoric fossils are preserved. the quaint, idiosyncratic speech, folk dress, log cabins, and plaintive music of the mountain people, as well as a propensity for indiscriminate violence set them apart from the rest of us. This was, wrote one sociologist, a “retarded frontier” and the mountain people ‘our contemporary ancestors’... whatever the background factors, the feud, according to these writers, was caused by the primitive and ‘uncivilized’ nature of mountain culture (Ibid, p. 6).

In research on the feuds of medieval Iceland Miller (1990) points out that “[i]t is often the case that people use the term feud as a shorthand for its more violent manifestation: vengeance killing (Ibid, p. 181).” He goes on in a footnote to say that “[r]evenge was seen as an early manifestation of public order, feud as disorder (see e.g. Wilda 1842, 189 - 90) (Ibid, p. 350).”

As a sample of a more contemporary thinker more involved in the field of economics, Seabright (2004) describes the violent tendencies of the human species. “[T]he message is sobering: where there are no institutional restraints on it, systematic killing of unrelated individuals is so common among human beings that, awful though it is, it cannot be described as exceptional, pathological, or disturbed (Ibid, p. 53).” It’s currently popular for economists to claim that there is some minimum criteria of state law-enforcement institutions to protect social order from spiraling into chaos. Conflating statelessness with violence reinforces the

argument for state-sponsored justice and it begins to appear intuitive. Everywhere action takes place outside the laws of state-governance it is wrought with violence. Street-gangs, mafia organizations, frontier territories, and most quasi-stateless scenarios are recognized as violent.⁸ Recent research has shown surprising conclusions that these scenarios host much more orderly conditions than is traditionally assumed. Likewise, scholars focused on the history of feuds have shown a surprising amount of functionality and peacemaking amid this apparently violent custom.⁹ I will present theoretical support for why these feud historians give a more appropriate description of the feud than do their state historian counterparts.

In the social evolution literature there are two distinctive changes in law. The first, is the change from violent vengeance to composition, and the second is the change from composition to full state monopoly. While there are obvious causes for the first change (I will explain in more depth later), none are available to explain the second. Should the second conversion of law be perceived as natural or artificial? Answering this question is important to judge whether restitution is feasible.

Barnett (1977 printed in Barnett and Hagel, pp. 350 - 4) confronts the typical social evolutionists by asking; was the development of the state truly instigated as a solution to the blood feud? By surveying some of the previous historians on the development of primitive law in Anglo-Saxon Europe, Barnett concludes:

The image of a state criminal punishment arising from a bloody Hobbesian jungle is pure myth. Monetary payments had replaced violence as the means of dispute settlement and functioned well for over 600 years. It was only through the violent conquest of England, Ireland and other parts of Europe that state criminal punishment was reluctantly accepted (Ibid, p. 354).

⁸On street gangs Levitt and Venkatesh (2000) have shown systematic motivation amongst drug selling gang members. Sobel and Osoba (2006) model street gangs as substitutes for governmental application of physical force. Bandiera (2003) explains that mafia profits are generated when land titles are more fragmented. Finally, Anderson and Hill (2004) show the wild west frontier to be more peaceful than commonly thought.

⁹Friedman (1979), Daniel (1987), Dean (1997), Miller(1990) and Wormald (1980) have all emphasized order rather than chaos resulting from feuds and vendettas in various historical settings.

But monetary composition is not a complete argument against the chaotic description of the stateless society if these monetary payments are subject to escalation and persistence. Converting criminal sentence to monetary terms alone does not suffice as a restitution paradigm. If the penalty for stealing a stick of bubble gum were a million dollars, the lack of proportionality would require labeling the sentence as punitive.¹⁰

Monetary compensation schemes are evidence of an effective restitution paradigm only when positioned within an entire process of justice. How do individuals respond to crime over time? Is there a tendency for these monetary payments to increase to unreasonable levels? Or do prices settle at recognizable and agreeable levels. If the competitive environment for legal services begins with monetary compensation schemes and tends toward a leveling off of responses by victims, than escalating violence is not the inherent tendency of a stateless society, and the centralized state maybe more of a disruption of the process than a result of it.

This paper strengthens Barnett's argument against the feud myth and state-justification. Barnett suggests that monetary settlements replaced physical violence. There is a meaningful process where money and property settlements are adopted to resolution to legal disputes instead of violence. I will begin by describing the economic action and reaction of participants in a feud. Then I will offer an explanation as to why money becomes a preferred alternative to violent retaliation. I'll show that competitive markets for the services of dispute resolution affect the price levels that monetary compensation schemes take on. The amount of money imposed as compensation to crime is subject to equilibrating economic forces similar to other market prices. While the traditional feud description implies that these price levels would escalate and grow un-endingly, I will demonstrate that the opposite is true.

¹⁰In the past, high levels of monetary penalties have resulted in high levels of secondary punishment. In ancient Athens, for example, when a criminal could not pay his fine (to the state) it was then transformed into a lengthy prison sentence. Under these circumstances, victims similarly lacked recourse for their own losses. Unmet civic representation fueled hostilities between criminals and victims, rich and poor, etc. Allen (2000) points out Athens' debt-based punishment mixed combined with state provided prisons had the appearance of equal application but resulted in de facto lengthy punishments against the poor majority. Such inequalities contributed to a politically fractioned population as pointed out by Levy (1989) and Ellis and Stanton (1968).

3 The Economic Process of The Feud.

There are three potential solutions to the feud: learned deterrence, third party arbitration, and monopoly state enforcement. Individuals in the feud can recognize that it is in their interests to stop participating. People outside can be hired or self-motivated to construct a solution to the feud. Or a monopoly state can prohibit and enforce a ban on retaliatory violence. There are causal mechanisms that bring about the first two solutions without explicit effort to construct the third. A state monopoly on force requires an overt prohibition on competing justice services that can be very costly and at its best lacks attention to repaying victims of crime their due losses.

Diagram 1 in the Appendix is a simple line - a visual representation of a stock of physical property. Menger (1871 [1994]) described how the property becomes assumed into ownership by individuals X and Y.¹¹ X and Y would prefer full possession of the entire property, rather than share it with the other. If either of them were alone he would use the resources to his own ends. How do the individual's conflicting interests avoid conflict? Because each exists in the company of the other and an extended society, he recognizes a causal relationship described by Menger (1871 [1994]).¹² Property rights are a social phenomenon and emerge as a result

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[W]herever men recognize that the requirements for a good are greater than its available quantity they achieve the further insight that no part of the available quantity, in any way practically significant, may lose its useful properties or be removed from human control without causing some concrete human needs, previously provided for, to remain unsatisfied, or without causing these needs now to be satisfied less completely than before.

The first effects of this insight upon the activity of men intent to satisfy their needs as completely as possible are that they strive: (1) to maintain at their disposal every unit of a good standing in this quantitative relationship, and (2) to conserve its useful properties (Ibid, p. 95).

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[T]he social life of men, pursuing their individual interests even as members of society, brings to a view a special phenomenon in the case of all goods whose available quantities are less than the requirements for them

If the quantitative relationship under discussion occurs in a society (that is, if the requirements of a society for a good are larger than its available quantity), it is impossible, in accordance with what was said earlier, for the respective needs of all individuals composing the society to be completely satisfied. On the contrary, nothing is more certain than that the needs of some members of this society will be satisfied either not at all or, at any rate, only

of the conflicting usages of scarce resources. Just as property rights spontaneously develop to solve conflict, one should recognize the spontaneous development of legal institutions specifically honed to solve conflict. Is a state-authority needed to define the ownership for property rights to be enforced? No, it is in the self-interests of persons X, Y and their outside neighbors to promote recognizable property lines, as the process description of the feud will show.

The feud begins when the traditional property line is trespassed by X taking some of Y's property (quantity A in diagram 2). A is only a partial amount of the total property space controlled by Y. X takes property up to the amount in which his expected returns from possessing it exceed his costs. X faces real costs when taking Y's property and breaking traditional property line. Maybe taking more than A significantly raises the probability that X will be caught in the act of taking Y's property? Maybe X does not value Y's non-A property as highly as A, so he faces higher perceived costs when taking more than A? Or maybe there are higher costs to taking non-A property, like it is kept under lock and key while A is not? Property are not complete and homogeneous, some amounts of property are more subject to being taken than others. The size of A is restrained and has an upper limit.

X's taking of A instigates a set of possible responses from Y. Y could ignore his loss of A, or seek to regain its possession. If Y ignores the loss, it could be because he placed a low value on its possession, or because his costs (perceived, real, and opportunity) to regaining it were too high. Y will act to regain A to the degree that the expected returns of reclaiming it exceed the costs. Already, there is an opportunity for a feud to be avoided. If Y ignores X's theft altogether then no feud takes place, but turning the other cheek is easier said than done.

In reality, people feel connected to their property. They feel offended when their rela-

in an incomplete fashion. Here human self-interest finds an incentive to make itself felt, and where the available quantity does not suffice for all, every individual will attempt to secure his own requirements as completely as possible to the exclusion of others (Ibid, p. 96 - 97).

Hume (1739 [2005], pp. 484 - 501) introduced this concept while Menger (1871 [1994]) and Demsetz (1967) reintroduced it later.

relationship with their property is ignored or trespassed, but retaliation seems contrary to strict economic logic. Y did not find it profitable to trespass the X's property boundary before X took a marginally small piece of Y's property. Why is Y suddenly willing to put himself at great cost and risk to obtain a relatively small amount of property? If Y's behavior is rational then we hold the assumption that he prefers his expected value from retaliating more than the alternative. What is causing Y to put a high expected value on retaliating? Y might recognize a social norm of justice, or a Schelling point, where it is most likely for community perceptions of justice to converge.¹³ If he believes that he is in the right to reclaim his property and that the current institution of justice would agree with him, then his retaliation appears rational. But just as property rights are not complete, emergent justice institutions (especially in quasi-state or stateless scenarios) are incomplete. Different people may have different perceptions of what is and is not just for X or Y to do. But an incomplete institutional context is not an institutional vacuum. Without a formal and explicitly defined code of justice, Y's retaliation is rational if he perceives generally that his community will recognize him to be in the right. Will he be judged in the wrong by his neighbors to instigate another retaliation against him, or will they assist him to keep X from taking his property again? Rubin (2002) has argued that when it comes to the human species, there is no such thing as an institutional vacuum, and some form of a Schelling point always exists. "[T]he state of nature in which humans were lone individuals and in which there were no rules never existed and could not, in principle exist (Ibid, p. xiv)." Rubin goes on to demonstrate the unavoidable recognition of focal points of ownership by pointing out that these norms originate in our genetic ancestors - apes and chimps.

Focal points of ownership and justice can be a double edged sword. They generally serve to avoid repeated conflict by developing recognized borders and boundaries of acceptable behaviors. But they also appear to fuel victim's responses when they have been wronged. There are several examples of social norms instigating victim's to retaliate from the history

¹³Schelling (1963) first introduced this concept in describing obvious focal points where individuals have good judgement about what other people's expectations are likely to be.

of state origins, and the history of feuds literatures.

[W]hen the clan organization is at its height, when there is complete solidarity between the members of each of these small ethnical groups and the desire for vengeance has become collective. It is the phase in human history known as the era of the blood feud. It is at this epoch that vengeance, ‘at first neither a right nor a duty, but simply a fact’ (De La Grasserie), having become a constant habit, at last acquires the force of custom and is thus converted both into a right and into an obligation (Oppenheimer, 1913 [1975], p. 8).

Hobhouse (1951) similarly points out that such obligations are typically dictated by family ties. He explains that grave differences separate, “barbaric vengeance from civilized justice...These differences are inherent in the nature of the social organization upon which the blood feud rests. For the blood feud is retribution exercised by a family upon a family; it rests upon the support which each individual can count upon from his own immediate relations (Ibid, p. 78 - 9).” Hobhouse later describes legal evolution moving away from excessive and obligatory family relationships. “It is, in fact, only the decay of the joint family system and the rise of the free individual as the basis of the modern state which definitely does away with the strictly ethical notion of justice (Ibid, p. 88).” While surveying feuds in early modern Scotland, Wormald (1980) critically includes kindred as one of the key elements motivating the social phenomenon and Dean (1997) attributes the family as the line of demarcation for legal disputes.

Feuds would be of no concern if after an injustice people turned the other cheek. The problems of crime could be alleviated by taking security precautions like locks and alarms to better enforce property rights and avoid the losses of theft. But as was said earlier, people in the real world retaliate when they are wronged. Does the human condition force the feud? Not necessarily, opportunities for settlement still exist at later stages of the feud but before they come about there is a significant incentive to promoting retaliation beyond reclaiming Y’s original property.

Y acts to regain his lost property from X’s store of wealth and spends costs to do so.

Y's perceived costs of taking X's traditional property (not A) are lower. The relative cost of Y taking some of X's property is lower when Y is in the act of reclaiming his lost property. Y is likely to take from X greater amounts of wealth than he otherwise would have, had X not taken Y's property. Diagram 3 depicts Y reclaiming A from X and taking an additional amount (B) from X's wealth.

As an example of Diagram 3, think of the following scenario. Say you stole my wallet full of cash (A) and took it back to your house. I will have to spend resources out of my wealth (a fraction of not-A) in order to get my wallet back. These costs could be real and objective, like a cab fare to get to your house, or opportunity costs like taking time off from work. Choosing to spend these resources depends on how much I value the amount of money in my wallet, and how much I value the costs I have to spend to get it back. Assuming the value of the returned wallet is greater than the perceived costs, I go to your house to get my wallet back. Once I get to your house and have my wallet in hand (let us assume you're not home, and breaking-in was easy), I am at a better position to take items from your household beyond my wallet than I was before I had come to get my wallet. I'm more likely to walk off with your lamp (B) or some other item than I was when my wallet was mine and all your stuff was yours (Diagram 1). The traditional property line and all of its functionality are threatened.

The process of escalating retaliation has begun a cycle. X faces the incentive arrangement Y faced earlier. He can ignore the loss of property B if his perceived costs of regaining it outweigh the benefits, or he can reclaim it if the opposite holds true. If X does decide to regain B then the relative cost to taking A again and another positive amount of Y's property (C) is lower than before. X has expended more costs in regaining B than he had expended to take A in the first place. This tendency to escalate is the major concern of the blood feud. It appears that the feud is prone to escalate, and thus consumes larger and larger amounts of the available resources within the system (A + B + C + etc). Is there a reason to believe that this process would end?

4 Theoretical and Empirical Solutions to Feuds.

X's initial aggression against Y is directly related to the following exposure of his property (B) to be taken by Y. This relationship can be observed before X acts to take A, and often sufficiently deters any aggression beyond the traditional property line. When the relationship is not recognized at time zero (diagram 1) it is exposed through the feud itself (moving through diagrams 2 to 4). Deterrence can take hold at any later stage of the game simply by either party recognizing that each act of retaliation opens him up to costs that can be avoided by not retaliating. Even when predation has been performed and caused harm, participating in a back and forth conflict can force the recognition of these costs. Sobel and Osoba (2006) point out that while gangs, like governments use coercion and violence to enforce their rules, the net impact of gangs is to lower the overall amount of violence. Kaminski (2004) uses game theory to explain the competitive world of Polish prisons and exposes this insight by playing up the important role that demonstrating a reputation for violence can have on securing a safe prison stay. "A *cat* is quick to quarrel with other inmates and ready to self-injure himself for fun... In the latter case the unpredictability of their reactions buys them some peace from grypsmen¹⁴ (Ibid, p. 87)." The hierarchy of inmate culture Kaminski describes, supports the claim that participation leads to solving the feud. It is the new members of the community who must be tested and subjected to trials, while older veterans have learned and adapted to the high-stakes environment. What first appears as violent, cruel, or even barbaric retaliation mechanisms actually serve to maintain broader stability, peace, and order under extreme conditions of scarcity and uncertainty upon deeper inspection.

Despite the immediate rewards of taking property from the opposition, even winning sides of feuds face losses of man-power in terms of deaths, and resources in terms of retaliation. These are often a sufficient deterrent to instigating aggression or continuing retaliation.

¹⁴Grypsmen, is the slang term used for veteran prisoners who hold positions of authority in the cell hierarchy

Individuals or groups within the feud have ends and purposes beyond participating in the feud. Mafia syndicates make profits off of illicit trades like gambling, hijacking, loan-sharking, or serving as an enforcer of illicit property rights.¹⁵ Jankowski (1991) report that nearly all street gangs typically earn profits from drug trafficking or similar illicit activities. Despite being assumed as violent or cut throat these organizations operating outside the umbrella of state authority are protective of their profit potential and averse to costly violence. Levitt and Venkatesh (2000) report that

[g]ang wars are costly, both in terms of lost lives and lost profits. Almost all of the deaths of drug sellers are concentrated in war periods. Moreover, the violence keeps customers away. This negative shock to demand is associated with a fall of 20 - 30 percent in both the price and quantity of drugs sold during fighting, and the drug operation becomes far less profitable (Ibid, p. 758).

How much of an incentive, do people have to avoid feuding? What causes this incentive to grow or diminish? The higher the returns expected from generating revenue outside the feud, the less likely feuding will persist. The family-ties and social norms mentioned earlier cause feuds if they are valued higher than all other available or perceived baskets of goods. In religious conflict like in today's Middle East, violence persists because each side is unwilling to give up claim to land which they hold sacred. In today's market there seems to be nothing that either side would give up in exchange for that land, thus they are continually investing additional resources to competing in the feud (suicide bombings, etc). The resources caught in the growing dispute send a growing and clearer signal to individuals outside the feud who may not share the extreme preferences as the feud participants. The feud can still be resolved. In a diverse market economy the potential basket of goods that the feud-ers give up is constantly growing.

Smith (1776 [1981], p. 26) said, "In civilized society [man] stands at all time in need of

¹⁵On the internal operations and profitability of Mafia organizations see, Repetto (2004) who presents a thorough history of the development of organized crime in America, and Bandiera (2003) who models the Sicilian Mafia as a quasi-state collecting land rents from its ruled over population.

the cooperation and assistance of great multitudes, while his whole life is scarce sufficient to gain the friendship of a few persons.” The division of labor is critical to understanding the process for resolving feuds. It forces us to recognize that the family style governance is not persistent. Individuals are motivated away from strict familial justice norms, so formally imposed institutions are not always necessary to dictate a justice system based on individualism. As the division of labor expands, the productive output of other people that an individual must rely upon moves further and further away from his own network of relationships, and grows in size. Adhering to a social norm that dictates extreme retaliations along family lines grows more costly over time with an expanding market. Hobhouse consents this point when he says, “[i]t is the natural effort of friends, relatives and neighbors to prevent the development of a quarrel into a fight, particularly when the fight may involve ultimately all the consequences of a party feud (Ibid, 1951 p. 93).”

A policy suggestion to third-party enforcement agencies comes from Coyne (2007, and with Boettke 2006)., who compares the post war reconstruction strategies like military occupation on the one hand, and trade liberalization on the other. While military occupation is on-going, costly and minimally effective, the feud model sets up trade liberalization as having a profound impact on growing the opportunity costs of participating in feuds.

A third-party is attracted to resolve the feud if he similarly values the goods under dispute, or the individuals in the feud are willing to exchange goods or money in for resolution of the feud and the claim over the disputed territory. The disputed property ($A + B + C + \text{etc}$) is the potential profit base for this market for justice. During the feud the utility gained from the consumption and use of the property is zero. Individuals X and Y are inclined to accept any amount of wealth greater than zero to avoid the perpetual waste of these resources in the feud. Thus the full amount of disputed resources minus a marginally infinitesimal amount is up for profit. It seems like enforcement agencies could run quite the racket, encouraging disputes amongst people settling them with minor pay-outs to each party, and keeping a bulk of profits. In a competitive market for providing this service these

profits would get bid down to zero as firms offer greater amounts of the disputed property to be returned to their original owners. The end state equilibrium is at a point of full restitution or at the creation of a new social focal point of ownership.

This general insight is supported by today's legal reality where the majority of disputes are not taken to trial but are instead settled out of court. There is a full law and economics literature dedicated to explaining the incentives which encourage legal settlements rather than perpetual disputing.¹⁶ By settling a dispute a litigant can capture what would otherwise be taken up in litigation. More trials get settled out of court as disputants and their lawyers more clearly recognize the likely turn out of going to trial.¹⁷

During disputes economic forces arise that encourage outsourcing arbitration. The causal relationship between response and secondary retaliation would encourage an individual to find an agent rather than himself to act in legal disputes. There are also gains to be exploited for those with a comparative advantage in the market for force. I may be a bumbling klutz and want someone better suited to regain my property. Finally, specialization can lower the transaction costs of engaging in conflict. Firms that repeatedly engage in conflict resolution can standardize their procedures and pass savings onto the consumer in the form of lower prices for services rendered. Friedman (1989) has thoroughly laid out these incentives to outsourcing the provision of security. He goes so far as to argue that this outsourcing and specialization serves well to avoid much of the original concern focused on unrestrained self-interest. Large specialized firms who provide security and enforcement are likely to be more concerned with their future profitability, long term investments, and reputations than are individual people engaged in conflict.

Scholars concerned with describing specific histories of individual feuds throughout history present a definition of the feud that is strikingly different from the social evolutionary historians previously surveyed. Feud historians have continually fought an uphill battle.

¹⁶Posner (1986) includes a substantial survey of this material

¹⁷The author would like to thank Richard Wagner for pointing out this similarity between feud resolution and modern formal arbitration.

They have learned to overcome people's false perceptions of historical feuds before they can describe the complex functionality of the feud. The feud is more of an institution of conflict resolution, peace keeping, and restrained violence than it is a chaotic, violent or barbaric custom. The feud according to their usages fits well with the economic process description previously described.

The tendencies of feuds to serve as dispute resolution mechanisms and instigate a broader process of legal evolution is not confined to one specific local. The general tendencies of self-ordering and spontaneous development of restitution norms have already been mentioned in contemporary and domestic scenarios outside the umbrella of the state. These tendencies show up throughout history in diverse locations. Daniel (1987) describes the Cherokee Native Americans as functionally applying the rules of the blood feud to settle conflict, and distinguish members in the tribe from outlaws.

The blood feud in Medieval Scotland neither escalated nor continued without-end according to Wormald (1980). Instead, it functioned as a reasonable enforcement device called upon in dispute but restrained by well-known social norms and clearly accepted levels of response and retaliation. The term blood feud itself is held onto less because of its feud like qualities and more because it invokes the prices paid in real blood for certain criminal offenses. Leeson (unpublished) goes on to explain how similar functioning rule systems governed over even the most different groupings of people in the Scottish borderlands. An entire culture of criminality seemed to develop, where acceptable behavior has a loose meaning but still has its boundaries. Wormald (1980) begins his description by explaining the role compensation played in the culture of the time.

So deeply embedded was the principle of compensation in the fabric of Scottish justice that it could be invoked, if for diplomatic reasons, for a king as for the lowest of the gentry; for anyone, in fact, who had the means to compensate, and who had kin and friends to support him.

Medieval Iceland is perhaps the favorite example of a functioning stateless society, and

a prime example of functioning rules over feuds used to resolve dispute.

It is a almost unique instance of a community whose culture and creative power flourished independently of any favouring material conditional, and indeed under conditions in the highest degree unfavorable. Nor ought it to be less interesting to the student of politics and laws as having produced a Constitution unlike any other whereof records remain and a body of law so elaborate and complex, that it is hard believe that it existed among men whose chief occupation was to kill one another (Bryce, 1901, p. 263).

Friedman (1979) has continued the historical investigation of this interesting setting and points out strong and functioning deterrents to violence.

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 judgement, 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...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.¹⁸

Finally, Miller (1990) is continual agreement with the previous two that the typical view of the feud is overstated, and the reality of the feud is far more functional.

The Icelanders did have a model of feud and of the disputing process. It was a model of balance and reciprocity...Wrongs done to someone, like gifts given to

¹⁸ “[T]he price set upon a man according to his rank, paid by way of compensation or fine in cases of homicide and certain other crimes to free the offender from further obligation or punishment (Oxford English Dictionary, second edition, 1989).”

him, unilaterally make the recipient a debtor, someone who owes requital...The model involves careful scorekeeping, an alternating rhythm of giving and taking, inflicting and being afflicted.

It is no coincidence that these historical scenarios repeatedly mention the development and prolonged existence of restitution-based justice. The final implication of the economic process of feud resolution is a tendency to settle on restitution, and a continual reinforcement of restitution as a norm of broad social application.

5 Conclusion

The traditional description of a feud-filled state of nature is unfounded as shown by the economic process which feuds undergo. Even amidst conflicting agents there is ample opportunity for peace and resolution without state-imposed or monopoly-enforcement. Functioning markets in security and law enforcement tend toward a final equilibrium of full restitution. This conclusion is supported by several different historical examples. Repeatedly, where the state is absent, and first impressions lead one to believe that violence and chaos are the rule, an underbelly of functioning restitution is either at play or in the midst of being developed. Multiple service providers competing with one another provide better and more suitable solutions to conflict. This competition and discovery keeps the process of resolution moving towards better results, without the state. This draws the question; what is to be gained from a monopoly on the service of law enforcement? In each of the surveyed examples, state monopolized justice cannot be characterized as a needed solution to the problem of feuds. This requires updating traditional arguments that justify the state's existence.

4.png

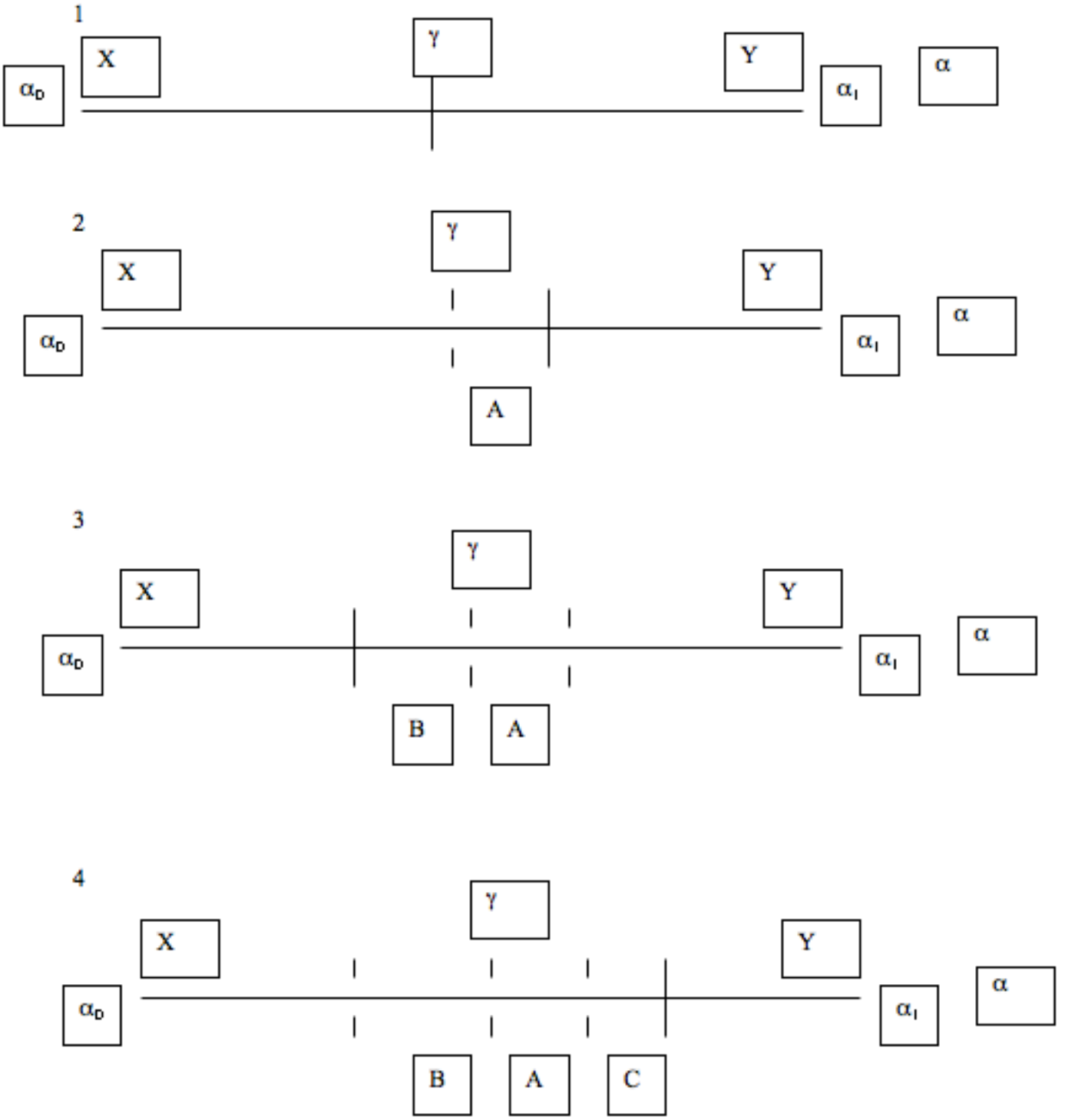


Figure 1: Appendix: Line based model of the feud through time

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