

Anarcho-capitalism and its enemies

Many people believe law and order is a public good and cannot therefore be guaranteed in an anarcho-capitalist society. But this seems to me not only to be false, but also to rest on a simple confusion between "security" (an abstract concept), and "provision of law and order", (a description of facts in the world). In the sense of being non-rival in consumption, "security" is plainly a public good: in no way does one person's enjoyment of freedom from violent invasion prejudice anyone else's enjoyment of the same. But the "provision of law and order", which means patrolmen, burglar alarms, bodyguards and so on, is highly rival in consumption: if more money is spent on enforcing anti-porn laws, then less must be spent on policing streets; if much wealth is devoted to providing protection for the Royal Family, then there's less which can be used for hiring men to guard me when I go shopping. So the means by which we may obtain law and order, as opposed to the ideal good we hope to reach by this means, is in reality a very private good. "Three minutes thought," Housman once remarked, "would suffice to find this out; but thought is irksome and three minutes is a long time."

Libertarian opponents of anarcho-capitalism (as contrasted with those drawn from the ranks of the benighted statist!) normally deploy a more subtle argument. Following Robert Nozick (*Anarchy, State & Utopia*), they claim that anarcho-capitalism would never work because a "dominant protective association" (DPA) would emerge.

Though it's not made abundantly clear quite why this result would obtain, many obviously think that it would, and not just Professors of Philosophy at Harvard either.

James Buchanan, (*Freedom in Constitutional Contract*) however, offers some substantiation for the DPA thesis (p.52):

"Conflicts may occur, and one agency will win. Persons who have previously been

clients of losing agencies will desert and commence purchasing their protection from winning agencies. In this manner a single protective association will eventually come to dominate the market for policing services over a territory."

THREE REASONS

This argument will satisfy many. But it shouldn't, because it is mistaken in almost every particular. Let us examine it carefully, starting with the conclusion.

The first point is so obvious that it only needs to be stated. It is that a DPA, is not actually a bad thing *per se*: only if it acts in an unlibertarian fashion will it be harmful. But is there *any* reason to think that it *would* act in such a fashion?

There are three reasons why we may expect that it would not.

First, a DPA wouldn't command the allegiance which a state commands. Today, if a government oversteps the mark, then there aren't too many people willing to take up arms against it. Contrast the attitude shown towards business organisations, even when they are engaged in legitimate activity: they are viewed, at best with suspicion, at worst with contempt. But a DPA would be a business organisation. It would make no claim that the rules it enforced were sanctified by the Divine Right of Kings, Majorities or whoever. If therefore it began harassing people, it could expect none of the tolerance which non-libertarian states enjoy now.

Second, if the population in a territory who might become victims of an unlibertarian DPA were also the people who financed it, then they would of course waste no time in refusing to make any further payments, should it become clear that the DPA was about to injure them. Obviously this sanction wouldn't cripple the DPA's progress instantaneously. But it would mean that it would have to do its plundering with a vengeance (and not, say, by gently edging up the 'voluntary payments'), which it might be afraid to do, for fear of provoking a mini-revolution. Suppose that a DPA started a

'moderate exploitation' of the people within its area. Then many of these people might stop paying anything at all. But then the DPA has to make a choice between two alternatives, if it is to obtain sufficient funds to survive for more than a brief period: either it must give up its attempt at domination, or it must start robbing in an immoderate way. If it chose the latter, then it could provoke outright hostility.

FREE MARKET POWER

The third reason why a DPA wouldn't go berserk is the most important one. The libertarian analysis of the 'problem' of monopoly is well-known. The point is that for competitive behaviour to occur it is not necessary for there to be any more than one enterprise in operation, because of the threat of potential competition. What the DPA hypothesis boils down to in the end, is the belief that if only one company is in existence it can behave exactly as it likes. But it cannot.

Potential competition for the business of providing protection is likely to be very stiff. In the first place, everyone would be able to own, and learn how to use, a gun. And groups of potential victims of a DPA could very easily band together to guard their street or neighbourhood. They probably wouldn't win a battle with the agency. But they might look like they could do enough damage to give the DPA a hard time in recruiting agents willing to get their heads blown off by an angry client. But the main source of potential competition would be other protective agencies, from other territories. As soon as the DPA got out of hand, or even looked like it was about to, then many of those under threat would simply call up an outside agency to protect them. The only situation in which this would not be possible would be if the DPA extended its control over the whole world. But to make an assumption of this nature is to assume that the DPA would have been able to achieve what no state now has ever achieved nor even looks remotely likely to achieve.

In other words, a DPA operating in say, Greater London, would be subject to potential competition from other agencies in, say, Surrey. (These other agencies could

even themselves be DPA's). Transportation being as easy as it now is, it would be well worth such an agency's while to rush to the assistance of concerned Londoners.

Outside agencies would provide potential competition in another way. Critics of the free-market provision of, for example, water supply, often make the mistake of believing that competing companies must be geographically near to one another for competition to be effective. This is not true. Competition will result if customers are able to move to areas serviced by more favourable suppliers. Very few people need actually make a move for the effect to be felt by the supplier. So, people in an area threatened by a DPA could, at the first sign of trouble, transfer themselves, or just their resources, to a new area. But this would not probably be necessary.

The final form of potential competition, which differs in important respects from the casual associations already mentioned, would be provided by the possibility of new protective associations, professional and well organised and equipped, which could spring up very easily indeed. Think yourself for a moment how you would set up a protective agency. It would surely be one of the less difficult business ventures, far less difficult indeed than setting up, say, an aluminium-producing plant.

ARBITRATION

So far in the discussion we have assumed that there would be DPA's over certain territories. But on the face of it there is no particular reason why this should be so. After all, we don't expect that if we free the market for heroin there will arise, just like that, heroin producers enjoying monopolies over certain territories, the dope equivalents of DPA's. There would have to be some special reason. Buchanan thinks he knows such a reason. He conjectures that clients of losing agencies would desert and then become clients of the winning ones.

For the time being let us assume that agencies would frequently do battle. (This assumption will later be examined). Agencies would fight when they disagreed too seriously for arbitration to be of any use.

They could disagree over one or both of two things. First, there could be legitimate differences of opinion concerning what actions were to be considered as crime. Second, there could be disagreement about whether, in a particular case, an action accepted by all relevant parties as a crime, was in fact perpetrated. What this second source of disagreement reduces to, is the suggestion that the two participating agencies would not have been able to find a mutually-acceptable epistemological procedure for ascertaining guilt or innocence. Once more there are two possibilities. Either the two agencies made an agreement, before any crime took place, that in the event of a dispute they would settle it with a certain arbitration agency, but then one of them refused, when it came to it, to accept the judgement of that arbitration agency. Or they had never made such an agreement, and now there was a dispute, they still could not agree on an arbitration agency.

The point about both these sources of potential disagreement is that they represent genuinely different policies of different protection agencies, which the clients of the agencies would know in advance about before they made their choice. If therefore a client's agency lost its fights consistently (and it's just conceivable that there would not be strings of consistent victories or defeats between warring agencies, and that they could win or lose roughly equal numbers of fights), then that client would not desert to the winning agency, because the policy of the winning agency would be the one to which he was opposed.

So if I didn't think that swearing at people ought to be thought a crime, I would patronise an agency which took that same view. But if subsequently the agency kept losing fights over that issue, I wouldn't join the agency which beat it, because that agency would hold that swearing at people was a crime, which is precisely the view I patronised the first agency to avoid.

Similarly, if I bought protection from an agency which guaranteed to use the 'twelve-good-men-and-true' system, and it was soundly defeated by an agency which did not approve of juries of this type, I would hardly join the latter agency.

COSTS AND BENEFITS

What, then, would happen if an agency found itself frequently losing battles over some issue? Well, what wouldn't happen is that it would continue fighting till all its operatives were dead. Fighting battles would be an expensive business. Employees would have to be paid higher wages if they faced the prospect of injury or death. Compensation due to the owners of damaged property could be considerable. What would happen if an agency kept on losing is that it would change its policy in the relevant areas, so that it was no longer brought into conflict with an agency it stood a good chance of taking a beating from. Some of its customers would doubtless be peeved, perhaps sufficiently to move to a different region where different laws prevailed. For others, the reduced premiums, made possible by the agency's reduced costs, would be adequate compensation. Others might take their chances as independents. Of course, there would be nothing stopping anyone from joining the winning agency. But there would not be any particular reason for them to do this, even if, which is in itself a pretty silly assumption, there were only two agencies, the winning one and the losing one.

So it turns out that Buchanan's special reason for a monopoly emerging in the market for protection is not really so special. In fact it's not even a reason; the mechanism he claims would operate simply wouldn't.

The time has come to examine the assumption that protective agencies would be doing frequent battle. A little reflection shows that they would not.

The two potential sources of disagreement have been outlined above. Now many agencies would be perfectly able to agree beforehand on what arbitration company or system they would use in the event of a disagreement. So those agencies would have no difficulty, unless any of them went back on their word later on. Obviously they could do this, but their clients might well take a dim view of the practice, and so would the remaining agencies. Many companies today go to arbitration whose judgements are not enforced by law. The vast majority abide by those judgements.

BUNDLES OF LAWS

But what of the agencies who could not agree in advance? The answer is that a bargaining process would most likely occur, by which the agencies would come to agreements, but at the price of not being prepared to enforce whatever laws their potential clients desired. Some critics of anarcho-capitalism seem to believe that agencies would enforce any conceivable law which anyone wanted. They would not. Many people would not be able to buy exactly the bundle of laws which they would have chosen, if they could have picked any they liked. David Friedman explains this bargaining process well on page 161-2 of his excellent *The Machinery of Freedom* (Arlington, New York, 1978). I refer the reader to it.

But would agencies *bother* to either form agreements or engage in bargaining beforehand? Yes, they would, and for good reasons.

If they failed to do so, they could look forward to a fair amount of rough stuff. It would be, as I suggested above, extremely costly and very dangerous. Additionally clients may refuse to patronise agencies which had failed to make prior agreements. I for one would not look with relish on the prospect of my front garden being used as a battlefield. Furthermore, the directors of the agency might have a subjective dislike for unnecessary violence. Perhaps the most important reason is that the agency would not know in advance its chances of winning battles.

Naturally, there would be nothing stopping an 'agency' setting itself up without the slightest intention either of making prior agreements or of enforcing just laws. But it would have to take on the rest of society, against whom it would not stand a chance.

The upshot of all this is that there is every chance that free market anarchy would be much, much more peaceful than most people imagine. But if the agencies would not be continually in violent conflict, then the case of both Nozick and Buchanan falls absolutely flat.

The DPA objection to anarcho-capitalism is simply a more sophisticated-sounding version of the old, old reply to the anarchist that under anarchy the strong would dominate the weak. The reply is perhaps true with regard to primitive societies, in both a technological and cultural sense. But it has no relevance whatsoever to the conditions of today, or, more pertinently, to the conditions of the hoped-for tomorrow.