

Libertarian Pollution Control

By Max T. O'Connor

Capitalism, or more accurately *laissez-faire* capitalism, has commonly been blamed for the evils of pollution, particularly by those ignorant of economics. In the ideal socialist state (where nothing is impossible) there would be no pollution at all since pollution is caused by greedy selfish capitalists out to make a profit at anyone's expense but their own, it is said. Some critics refuse to recognise the fact that industrial processes necessarily create by-products but even those who do are convinced that capitalism exacerbates the problem and foists its deleterious effects on innocent parties. I don't propose to examine the heavy pollution endemic in even semi-socialist countries like the USSR (where the life expectancy in industrial areas is tragically low) but rather to examine the 'problem' in relation to a libertarian, capitalistic property rights schema.

Pollution is only considered a problem because of the factor known to economists as 'externalities' or the divergence between private and social costs. Externalities arise where one man's action imposes costs on third parties without his bearing this cost. Thus bellowing black smoke out of a factory chimney costs the owner (and therefore his customers) nothing, but it may be imposing costs on others such as house-owners whose property is made dirty by the smoke. Why does the free market allow this state of affairs to exist? It doesn't. Just as the government is a failure in every other area so it is a failure here. The existence of non-optimal amounts of pollution is due to the failure of the state to create or enforce private property rights in the environment. The solution is to apply the principle of property rights to the air, to seas and to rivers.

Ludwig von Mises recognised this when in *Human Action* he wrote: "It is true that where a considerable part of the costs incurred are external costs from the point of view of the acting individuals or firms, the

economic calculation established by them is manifestly defective and their results deceptive. But this is not the outcome of alleged deficiencies in the system of private ownership of the means of production. It is on the contrary a consequence of loopholes left in this system. It could be removed by a reform of the laws concerning liability for damages inflicted and by rescinding the barriers preventing the full operation of private ownership". Property rights in the air around one's home did exist before the Industrial Revolution but then the courts began to systematically allow violations of these rights as long as the air pollution produced was not unusually greater than that from any similar manufacturing firm. Obviously a highly effective control! Before proceeding to see how this libertarian solution would operate let us first examine other suggested methods of pollution control. One way of providing the producer with an incentive to reduce pollution to the socially optimum amount is to set a pollution tax which is equal to the social cost of pollution. The pollution produced would be decreased until the costs of doing so further equalled the cost of the tax. It makes little difference whether a tax on each extra unit of pollution is charged or a subsidy for each unit less is given but a tax may be thought preferable as in the long run people may set up business in a highly polluting activity solely to claim the subsidy. The problem with this is that one would have to entertain a very jejune idea of the working of government to believe that the taxes (or subsidies) would be set anywhere near the socially optimal level. Even if this level was accurately calculated this would not be the one that prevailed since pressure groups (business, unions, the 'Friends of the Earth') would have plenty of advice to give or, more cynically, threats to make, if the level wasn't set where they wanted it. In addition, it is highly unlikely that the taxes collected would go to compensate those affected - rather they would be added to general government revenues to be spent as politicians and bureaucrats thought fit.

Another possible method of utilising the price mechanism is by the creation of 'pollution rights'. The government would determine the maximum amount of a specific

type of pollution to be allowed and would then sell rights to this amount of pollution in a free market rather like shares. This system would allow those firms to pollute for which it was most economically justifiable. But this method, while it would be a great improvement on our present system, is still open to the objections adduced with regard to taxes and subsidies - although it is better than a tax in that it doesn't run the risk that pollution may exceed some upper limit due to the authorities overestimating the effects of a tax.

There are three main advantages in using the price mechanism to combat pollution (for more detail see Wilfred Beckerman's *Two Cheers for the Affluent Society*): The first is that if all firms face the same cost per unit of the damage done by pollution the firms that can reduce pollution most cheaply will do so more than those that face relatively high costs of doing so. This ensures the best use of resources. The second advantage is that firms will have a continuing incentive to experiment and seek new and more economical methods of reducing pollution. By contrast systems of direct control give firms no incentive to do better than the control limit set to them. Technical progress in reducing pollution will therefore be far greater with a pollution charge (or an order for continuous payment of damages, or 'rights' issue since the number of rights could be changed) than with direct regulation. Consequently the optimum level of pollution will tend to be lower under a pollution charge system than with the direct regulation system. A third advantage is that direct controls tend to be uneven in their application according to how popular the anti-pollution fashion happens to be. Local interests petitioning the authority concerned may lead to local or regional variations in the enthusiasm with which anti-pollution policies are pursued. These advantages of the price mechanism can conversely be seen as points against a system of direct control. It should also be considered that enforcement of direct controls is a difficult process, requiring for example the accumulation of enough evidence to satisfy a court which has no property rights criteria to guide it and even then the fine is usually ludicrous. For example, Professor Beckerman tells us that "in Britain over the whole period 1967 to

1971 inclusive, there were 8 convictions for air pollution as a result of prosecutions by the Alkali Inspectorate and the average fine imposed was £3"! The price mechanism systems so far suggested do have limitations but these are shared by a system of direct control.

With these considerations in mind what can we say specifically of our libertarian solution utilising a reformed legal system? S.C.Littlechild (*The Fallacy of the Mixed Economy*): "In Austrian thinking, the task is not primarily one of computing the optimal solution to a well-defined 'problem', but rather one of discovering the 'problem' in the first place (and the possibility of making some improvement), then gathering and utilising the necessary information, and finally implementing an improved solution. What kind of institutional framework is most likely to promote the discovery of activities with significant externalities? Will complaints from people affected by aircraft noise be sufficient to alert the appropriate department of national or local government? Or is the prospect of paying and receiving damages more likely to spur the parties to agreement?"

"How will the information necessary to reach an efficient solution be acquired? In the market, negotiations take place between parties who act in accordance with their own preferences and the opportunities they believe open to them. For an agency carrying out a public enquiry or a cost-benefit analysis, or setting externality taxes, a major difficulty is that these preferences and opportunities must be estimated ... Finally, what incentives do the individuals involved in each process have to implement the solution thought to be most efficient? In the market the incentive is private gain; in a bureaucracy other incentives and pressures take precedence. Experience so far suggests that for political reasons it is unlikely that the recommendation of a cost-benefit analysis will be unhesitatingly accepted, or that an externality tax will be imposed at the rate calculated as optimal".

Although a private landowner suffering from smoke emissions from his neighbour's chimney or bonfire is not entirely without remedy under the common law, 'it is

generally considered that the initiative in preventing or alleviating pollution under modern conditions should be in the hands of the government, and Britain is no different. Private nuisance (such as the neighbour's bonfire) is usually dealt with effectively but in the area of public nuisance the system functions badly. If you are building a steel mill and are causing damage not only to your neighbour but to all the inhabitants of a forty-mile radius the threat of a suit and the imposition of damages is in fact far less since only an agency of the government is empowered to sue for public nuisance. Effective public nuisance suits would, in practice, mean the creation and enforcement of property rights in air and water. As Dolan says, "With a General Motors owning the Mississippi River, you can be sure that stiff effluent charges would be assessed on industries and municipalities along its banks, and that the water would be kept clean enough to maximise revenues from leases granted to firms seeking rights to drinking water, recreation and commercial fishing" (Tanstaaf, *The Economic Strategy for Environmental Crisis*).

It may be objected that there is a difficulty in this solution to the pollution problem in that there are a large amount of damages to be claimed but each one is of a small amount so that it is not worth anyone's while to sue. To solve the problem it has been suggested that the law be modified to allow an individual to bring a 'class suit', a suit requiring payment of damages to himself and all others similarly damaged, however many thousands of these there may be, The mere threat of a class suit would be an enormously powerful deterrent to industrial pollution. Thus one of the users of a lower stretch of a river would be able to bring an action against an upstream polluter for the total sum of damages to all users. This would make the pollution expensive and the firm involved would have to close down, compensate for any violations of property right, or to clean up (or a combination). "Any lawyer or law firm may act for the general public and sue, being required to distribute a proportion of the amount collected to each member of the included public who claims it from them. (Since different people are differently affected by the same polluting acts, the lawyers might be required to distribute

different amounts to those in different specified groups.) The lawyers' income would come from those who do not write in to claim their due, and from earnings of the money of those who do not claim promptly. Seeing some receiving great income in this way, others would go into business as "public's agents", charging a yearly fee to collect and turn over to their clients all the pollution payments to which they were entitled. Since such a scheme gives great advantage to a lawyer who acts fast, it ensures that many would be alert to protect the interests of those polluted. Alternative schemes might be devised to allow several to sue simultaneously for distinct sets of persons in the public" (Robert Nozick, *Anarchy, State and Utopia*, pp 80-81).

I would contend that this is the best solution and it is also the libertarian solution (the two naturally go together, of course). Murray Rothbard has dealt with the pollution issue in *For a New Liberty*, and generally I would agree with all this except that he makes a mistake in saying that there should be a prohibitive injunction against all pollution. This is plainly silly and if we followed the logic of it we would find it necessary to place a ban on breathing and visits to the lavatory, among other activities! The point that Rothbard has missed is that not all pollution results in a violation of property rights and some of that which apparently does is of too little consequence for the property owner to be concerned about it. Ex ante we cannot know how much pollution is wanted but ex post we can, and those individuals affected could, under this system, do something about it.

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