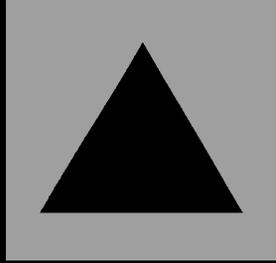
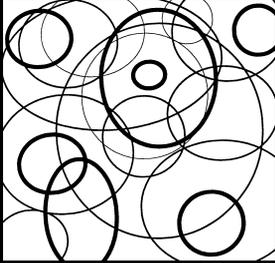




POLYCENTRIC LAW VERSUS THE MINIMAL STATE: THE CASE OF AIR POLLUTION



ADAM CHACKSFIELD

Libertarians are generally agreed that many so called environmental problems can be solved by the privatisation of government controlled or common land, water and animals. However, with the more thorny environmental issues such as air pollution many minimal statist are happy to have government enforced solutions. Dealing with these environmental problems is accepted as a function of the minimal state and used as a justification for the minimal state.

Minimal statist often advocate trade in government issued pollution permits and a balanced approach to air pollution problems. However, I contend that even in the minimal statist's ideal world, which thanks to 'public choice' analysis we know will be very hard, if not impossible to achieve, the solutions to air pollution problems will be inferior to those achievable under a system of polycentric law established through market processes.

The Utilitarian Minimal State and Air Pollution

Utilitarian minimal statist argue that the state's authority to solve air pollution problems comes from the failure of the market to maximise happiness and the ability of the state to improve collective well-being by imposing solutions to air pollution problems.

To take a simple example of this approach. If there is a factory that pollutes the air of a town, utilitarians would attempt to calculate the costs and benefits of the factory's polluting activity, and then impose a solution that maximises benefits over costs.

This paradigm amounts to government planning of solutions to air pollution problems even if they utilise market processes as much as possible in the plans themselves.

Weaknesses of the Utilitarian Minimal State

The most obvious problem is that the minimal state's solutions rest upon the idea of calculating benefits to a group over costs to a

group, despite the fact that the notion of collective benefits and costs is totally incoherent. There is no collective organism that seeks benefits and bears costs in order to maximise its happiness through action. In reality it cannot be disputed that only individuals experience benefits and costs, and only individuals can evaluate them. Attempts to get around this problem necessarily involve the comparison of costs and benefits affecting different individuals. There is no way of objectively comparing costs and benefits affecting different individuals, as they all have unique sets of values. Any such interpersonal comparison of costs and benefits can represent no more than the subjective preferences of the individual making the comparison.

Some might object that although ultimately there is no sound method of calculating costs and benefits, there can be widespread agreement about them, and there are criteria that could be generally agreed upon to measure them, therefore such extreme subjectivism is unwarranted. In response to this it is necessary to stress that widespread agreement does not equal objective truth, and represents only the subjective preferences of the group agreeing, which can be in no way objectively correct preferences. To show the strength of this response we could consider music, which all but the most diehard objectivists would admit is subjectively valued. The existence of widespread agreement over what is good or bad music, does not alter the incoherence of claiming a piece of music to be objectively good or bad and not just a matter of personal taste.

The incoherence of calculating the costs and benefits of the factory's pollution makes any imposed solution purely arbitrary and dependent on the preferences of those with political power. This means that any imposed solution lacks a sound claim to moral authority, and is not necessarily likely to be any more desirable than any other solution. Even a totally beneficent planner of air pollution policy would lack the knowledge of people's preferences that is discovered and utilised in a system of polycentric law. Later, it will be shown why the polycentric law approach to air pollution problems is likely to be more desirable than the minimal state approach.

The Rights-Based Minimal State and Air Pollution

Another group of minimal statist justify their position with reference to rights. There are a multitude of disagreements between advocates of rights, often quite detailed and technical disagreements that need not be entered into here. The fundamental position of supporters of rights, relevant to us, is that property rights, the minimal state, and its solutions to air pollution problems can all be derived logically through a process of philosophical reasoning. They advocate a logically derived system of property rights to solve pollution problems. Rights to pollute, or to breathe clean air, are derived, from first premises, and then enforced by government.

Weaknesses of the Rights-Based Minimal State

Firstly, the premises from which all reasoning starts are all-important, and not at all obvious. Also the course of the reasoning typically hangs on a number of value judgements which if altered totally change the conclusions reached and the solutions imposed. The complete lack of agreement between moral philosophers generally and rights advocates more specifically over the foundation of morality, suggests that disputes over morality are not resolvable through reasoning, but are ultimately disputes over matters of value. It is certainly fair to say that if a morality has been logically proven, this has not yet been widely recognised, even by believers in logical moral proof. Therefore, the idea that air pollution problems should be solved by the application of rational morality is not easily supported.

It is also difficult in many cases to apply rights solutions to air pollution problems, as property rights are not easily defined or established in air. How does one come to own air or pieces of the ozone layer? Certainly the technology does not presently exist to make desirable a division of air into individual pieces of property with individual owners. This is because such units would be unusable. The only outcome of such a division would have to be a total ban on many polluting substances, as anyone wishing to discharge such a substance would have to buy the consent of every single owner of the air affected before doing so. Unless the use of all air

Political Notes No. 76

ISSN 0267-7059 ISBN 1 85637 143 3

An occasional publication of the Libertarian Alliance,
25 Chapter Chambers, Esterbrooke Street, London SW1P 4NN

© 1993: Libertarian Alliance; Adam Chacksfield.

Adam Chacksfield graduated in 1992 in Economics and Politics at the University of York, where he was the Chair of York Freedom Society and York Conservative Students. He also managed the successful 1992 Libertarian Party Ballot Drive in Virginia.

The views expressed in this publication are those of its author, and not necessarily those of the Libertarian Alliance, its Committee, Advisory Council or subscribers.

Director: Dr Chris R. Tame

Editorial Director: Brian Micklethwait Webmaster: Dr Sean Gabb



FOR LIFE, LIBERTY AND PROPERTY

polluting substances is undesirable, even given the benefits of the substances, the imposition of rights in this situation must also be considered undesirable. Of course, a rights advocate could argue an alternative solution recognising the rights of polluters acquired through use of the air, and say that ownership of the air should be restricted by the rights of polluters to do so. However, such a solution has no more means of being a desirable solution than a total ban. This is because rights solutions to air pollution problems are typically derived independently of the actual values people place on clean air or polluting chemicals. Indeed, they must be derived independently of their consequences. Therefore, it should not be surprising if the consequences are undesirable. Given the undesirability of rights solutions, and the implausibility of their having moral authority, it is difficult to see why they should be applied.

Polycentric Law and Air Pollution

The minimal state approach to air pollution problems involves the state deciding which solutions should be adopted, and then imposing them with what we have seen to be clearly inadequate moral justifications for the initiation of force. A system of polycentric law, where individuals would defend their own interests and pay protection agencies to do so, involves no one decision-making agency deciding the solution to air pollution problems. Instead it is reasonable to believe that there would be numerous approaches taken according to the unique circumstances of any particular situation. Peaceful negotiation over problems such as air pollution would be the norm as violent conflict is a high cost way of resolving disputes.

This vision may seem fanciful, to some, but there is no reason to think it any less likely to occur than a minimal state guided throughout time by one moral code. If enough people wish to live in a stateless society it is hard to see how they could be prevented from doing so. Therefore, this society is not an impossibility. All that is required to create it is for enough people to be persuaded that it is desirable.

The conflicting interests of a polluting factory and the population of the town in which the factory is situated would, in a system of polycentric law, lead to negotiations between the agents of the factory and the agents of the town's population. It is impossible to know exactly who these agents will be, but in the final instance their position will be constrained by the laws the respective protection agencies have contractually obliged themselves to enforce. The factory may try to buy the right to pollute from the town's population. The agents of the town's population would be aware that there was no way of extracting enough compensation to please all of their clients. They would also be aware that not to accept what many of their clients would be likely to cost them business. Therefore, if the factory could afford to satisfy the agents of the town's population and still operate profitably, it would do so.

In this case air pollution is shown to be allowed where it is approved through a bargaining process involving the victims of the pollution. It also shows that the firm is provided with an incentive to efficiently cut pollution so as to reduce the amount of compensation necessary to buy the right to pollute. Indeed it may be that the initial bargain would financially encourage the firm to reduce pollution. The length of the contract is likely to be decided in order to provide maximum benefit to both parties by balancing the need for stability of rights, with a recognition that changing conditions may make contract rigidity costly to either party.

The town's population are likely to be satisfied by their compensation on the whole, as measured by the willingness of the people to remain or become clients of the agencies that negotiated their compensation. Differences in preferences mean that whatever solution was reached would dissatisfy some, but with this solution the negotiating agencies have an incentive to benefit their clients as much as possible. If it were possible to find out exactly how much every individual required to be satisfied the agents would have an incentive to pay every individual that amount so as to avoid losing any customers. However, the identification of how much people truly require to be satisfied is notoriously difficult, as every individual has an incentive to bid up their price, but in a system of polycentric law at least this information may be sought.

In a polycentric law system institutions would evolve to suit the requirements of those in dispute. They could be as simple or as complex as necessary. Even in the relatively difficult case of air pollution caused by numerous firms and affecting large numbers of people, a system of polycentric law would throw up institutions that could deal efficiently with the negotiations. Contractual relationships between agents may well vary from case to case according to the interests of those involved. Obviously it is impossible to know in advance what these specific arrangements will be, but it is important to note that the incentives under this system of law always reduce costs and increase benefits. This compares very favourably with the rigidity of political solutions to air pollution which must always be fixed by a centralised monopoly. Or at least the institutions designed to solve the problems must be planned by that central monopoly. Air pollution settlements created by free individuals in a polycentric system based on exchange and negotiated prices, must be more efficient in terms of knowledge employed, than solutions planned by a coercive monopoly without the aid of the prices that would emerge from negotiations in a polycentric system. There is no way the minimal state could know of, let alone imitate, the institutions that would emerge in a free society to solve air pollution problems.

Political institutions are not only more rigid than those of a free society, they are also less stable, in that the laws and regulations they produce are only passing political phenomena with an indefinite lifespan. From the perspective of the firm, the arrangements within which it functions can look very vulnerable to unpredictable alteration. These changes may well be coercively imposed upon them at great cost. Under a system of polycentric law, the importance of stability can be fully accounted for by the use of long term contracts, and permanent, but tradeable, rights.

Many air pollution problems not only lead to disagreement because of differing values and interest, but also because the scientific evidence for their existence is hotly disputed. Governments tend to influence the scientific debate through their distribution of research grants, and by their decisions about who they agree with when it comes to defining problems. In a system of polycentric law there would be no distribution of extorted funds to scientists, and no single source of decision-making. Those who defined air pollution problems and paid scientists would only be likely to continue doing so as long as their performance remained good and they continued to make profits.

In a system of polycentric law, competition would remove poor institutions and arrangements and lead to good ones being duplicated. This process, the market process, is the method by which almost every commodity there is has been improved upon considerably since its initial invention. A system of polycentric law promises to make air pollution settlements subject to this process, so that they may be improved in the same manner. A minimal state, by contrast, is a monopoly protected by force, with little incentive to improve the quality of its solutions to air pollution problems, and no way for it to be replaced by more efficient institutions. Even consistent failure will not put it out of business as it can rely on a constant flow of extorted funds.

Possibly the greatest advantage of the polycentric law system in regard to air pollution is that the settlements it produces would be made according to the people's willingness to pay. This contrasts very favourably with minimal state policies developed through a public choice process where the distribution of political power is all-important.

Conclusion

Conflict over air pollution occurs because of the particular difficulty of defining and allocating property rights in air. The minimal statist position is to advocate central planning of the definition and allocation of rights to use air. The polycentric law approach enables the definition and allocation of property rights in air to be made through decentralised negotiation and bargaining so that the best settlements are made at least cost. Air pollution problems are plainly no justification for the minimal state, indeed they emphasise the case for polycentric law.