

## BOOK REVIEW



The Economics of Law, Order, and Action: The Logic of Public Goods, by Jakub Bożydar Wiśniewski

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Wiśniewski's (2018) *The Economics of Law, Order, and Action: The Logic of Public Goods* is a gem of a book. In six short and eminently readable chapters, the author builds upon the Austrian school tradition, stressing, in particular, the productive power of entrepreneurial dynamism and voluntary self-organization, to bring forth a cogent case for the private, polycentric provision of public goods.

The author provides his readers with a demolishing case against the neoclassical theory of public goods. Not only does he question the meaningfulness of the non-rivalness and non-excludability characteristics that economists attribute to some goods but he also challenges the postulated necessity, desirability, and efficiency of establishing a monopoly of force for their supply.

In this spirit, Wiśniewski disarms and takes to court two public goods examples of text-book fame: defense and law providing and arbitration services. He demonstrates not only that a monopoly over coercion is not necessary for ensuring law and order, but that such an institutional arrangement is inferior to what the polycentric alternative is capable and would be incentivized to supply. Wiśniewski offers a plethora of arguments why a polycentric order, that is, an arrangement based on private property, contract and competing suppliers of defense services

and law issuing and enforcement agencies, is the only institutional arrangement capable of providing economically efficient solutions and can prevent their suppliers from overstepping their contractual tasks and competencies.

But, if the state is not necessary for producing law and order, is it possible to dissolve it and replace it with a polycentric arrangement? Also, what hope is there to prevent its reemergence, maybe as a result of colluding private suppliers of defensive and law providing agencies, taking into consideration all the material benefits that could stem from taxation and redistribution? Difficult as it might be to put into practice and to maintain a polycentric arrangement, it is not impossible. People's choices are determined by the values, beliefs, and social norms they hold. It is a problem of preferences, not incentives that ultimately decides what kind of institutions will supply defense, law enforcement, and the other "public goods." In other words, it is a problem of mind (what individuals hold to be true and legitimate action) over matter (the material gains that one stands to win and the difficulty of organizing collective action).

Ethical considerations are relegated to the final chapter of the book. It is not that the ethical case against the supply of public goods by a coercive monopoly is in any way less important than the economic considerations. Wiśniewski has two reasons for choosing this order for presenting his case. First, the book is a scientific text dedicated to analyzing the economics of public goods under two different institutional settings -- monopoly and polycentric governance. Therefore, the author does not want to engage in normative discussions and thus take the limelight off the *wertfrei* analysis that demolishes any scientific pretense behind the alleged need for state intervention if non-rivalrous and non-excludable goods are to be supplied. The second reason rests on epistemological grounds. Following the Rothbardian tradition, Wiśniewski does not see economics and ethics as two hermetically sealed silos. Economics qua science informs the ethicist on what is possible or impossible to achieve in light of the objective laws that govern our reality. Because an unachievable or

incoherent *desideratum* cannot represent a moral goal, any ethical consideration pertaining to a monopoly over coercion and a polycentric order must be preceded by a scientific analysis of the viability and results that each institutional setting can produce.

This entire nifty package of heterodox economic reasoning and ethical arguments comes at just under 150 pages. For a text on economics and political philosophy, the book is accessible and clearly argued. Moreover, Wiśniewski makes excellent use of the dialectical approach. He pulls no punches when it comes to challenging his reasoning and proposed solutions. Throughout the text, Wiśniewski raises difficult questions and charitably presents the counterarguments that other authors have constructed against the polycentric order, but then he manages to put all concerns to rest and bolster his initial position by pointing out the inconsistencies and errors behind all such objections. Because of this engaging style, the book comes out as a stimulating intellectual product that manages to be very dense in ideas, and yet reading it never seems like a daunting task. There are sections in the book where the reader grows curious about the argument that the author is going to use to get out from the corner he put himself into.

For instance, might Buchanan be right when he points out that any market interaction requires prices and property rights, and therefore there can be no market for protection services that guarantee the integrity of such rights? For Buchanan, this is an example of circular reasoning, which can only confirm his theory that the state had to come first, as a result of a social contract. After the state was created, secure property rights allowed for the expansion of market relations. However, a market for protection services is no exception; therefore, it has to enter the picture only later, as a consequence of having a monopoly over coercion that sets the general rules of the game.

Wiśniewski addresses this challenge of circular reasoning raised against the polycentric order by arguing that the situation is better understood as a historical progression. Wiśniewski first points out that even if we were to accept the social contract

hypothesis, we still have to concede that peaceful interactions must have existed as a precondition for its negotiation. Therefore, customs, religious ties, and cultural affinity had to come first. However, if this is the case, it means that people were not leaving in a chaotic state of nature before they agreed to confer the monopoly over coercion upon some individual but were cooperating based on a set of soft norms. These soft norms are a precondition for any peaceful cohabitation and represent a prerequisite for the hard norms that underpin more complex forms of human cooperation. It may be that complex forms of contracting, and some aspects of property rights cannot be used in the absence of such hard norms, but this is not to say that these more detailed rule did not appear at a later stage in the historical progression of laws. If a social contract cannot be imagined in the absence of soft norms, and if such rules allow for some recognition of property rights, then a polycentric arrangement could also have emerged. We are not in a circle but in a diachronic evolution of norms that is compatible with having a polycentric arrangement that guards against infringements of property rights and that can settle disputes among the members of society. There cannot be a thriving division of labor and civilization without hard norms, but soft norms must come before this. The two sets of rules are complementary, not substitutes.

Besides the economic theory that it builds upon, the book offers the reader a "heterodox" approach in yet another sense. The past couple of years, political scientists and economists have been very active in producing books on political institutions and their effect on development that offer their readers a particular type of brew. Authors like Fukuyama (2012; 2014), Acemoglu and Robinson (2012; 2019) have churned out massive tomes that postulate the importance of a monopoly of force for economic growth. It appears to be beyond any dispute that the state is necessary for economic growth, technological advancement, social mobility, and the supply of public goods. We are told that the state's capacity to tax, enact and apply legislation, wage war and suppress the elites,

and oppressive traditional lifestyles is the mainspring for an efficient economy and equitable social order. After a brief presentation of these ideas, the authors proceed to illustrate their hypotheses with countless historical examples drawn from different geographical and cultural areas and from different time periods. Pre-state societies or those societies that have never allowed a monopoly of coercion to emerge and organize human interaction are always presented as primitive. At the same time, prosperous and less oppressive societies are seen as the product of a well-functioning state, one that is efficient in both collecting resources and their redistribution and in allowing or even stimulating the creative juices in the economy.

The preferred research approach of these authors could be described as presenting as little theory as possible and then shoring up against counterarguments by providing a large number of historical cases, presented in broad strokes. The results are thick books spanning several hundred pages. However, the final product strikes the reader as light in terms of ideas, especially of the controversial sort. These interdisciplinary works provide an enjoyable reading experience for those that like a little bit of history with their political philosophy and are tired of the practical irrelevance of the economic models that fill the pages of most mainstream economic journals. However, such an approach, which is richer in terms of the variety of examples than in the number of fundamental ideas that it presents, comes closer to what this reviewer would call products for intellectual consumption, than an intellectual investment.

Wiśniewski's book is an entirely different animal from the works mentioned above. Methodologically, it is founded on the praxeological tradition, which means that it uses deductive reasoning to draw conclusions based on the logic of human action. Therefore, the insights pertaining to the difference between a monopoly of coercion versus a polycentric order in providing public goods are necessary implications that do not need ceaseless testing against historical examples.

Instead of providing us with countless historical illustrations of his theory, thus leaving his case exposed to contestations of the historical facts and their interpretation, Wiśniewski adopts another methodological device: testing for institutional robustness. This approach seeks to test how well a given system of social organization would manage to function when confronted with hard cases. For example, how well would a monopoly of coercion fare in comparison to a polycentric order if the motivation and information possessed by the members of a given society are relaxed?

Wiśniewski employs this type of intellectual experiment to great effect when he compares the performance of a monopolistic provider of law and juridical services against a polycentric order with no political barriers against competitors offering alternative sets of laws and arbitration services. Even if the institutional arrangement that holds the monopoly over coercion was run by democratically elected representatives that were genuinely publicly spirited and if the state apparatus operated under the auspices of a system of checks and balances, it would still have to be considered inferior to the polycentric alternative, although these are the best-imaginable circumstances under which the state apparatus could operate. To justify his position, Wiśniewski analyzes all the problems inherent in the democratic process (rational ignorance, rational irrationality, the problems of collective action, the diachronic nature of democratic competition) and the incentives that encourage the various branches of government to collude and act like a legally enforced oligopoly seeking to maximize state power. However, all these problems can be put to the side if one assumes that the electorate and the political caretakers perform their civic duties with gusto and are benevolent.

Nevertheless, even under such favorable assumptions in the benefit of the monopoly based political order, this arrangement still fails to produce a better outcome than a polycentric arrangement. This is because the individuals that are (presumably) served by the state never have the option to refuse the services they are offered. Nor can citizens challenge the results of an

arbitration process, or opt for a different supplier of such services. Neither can potential entrepreneurs that see profit opportunities in offering law and juridical services bid for the factors of production necessary for supplying such services. In such circumstances, the benevolent lawmakers and members of the judiciary find themselves in a similar position to an individual that creates his own language. As Wiśniewski (2018, p. 70) explains, such a situation "actually points towards a more fundamental, conceptual difficulty, which stems from the fact that a monopolistic lawgiver and law interpreter cannot make a logically meaningful distinction between obeying the law (i.e., making verdicts compatible with the binding legal code) and only claiming to obey it, just as the user of a private language cannot make a logically meaningful distinction between obeying the rules of such a language and only claiming to obey them. just as the user of a private language cannot make a logically meaningful distinction between obeying the rules of such a language and only claiming to obey them."

The situation is different in a polycentric order because contracts between the suppliers of such law and justice services and their clients would exist. This fact makes the polycentric order the only voluntary and contractual based system that can exist. Consumers could always choose the best services provider, while suppliers would be in a position to experiment with various types of institutions and contractual arrangements with the aid of monetary calculation. At the same time, the market process will reward those entrepreneurs that strike the optimum balance between rule fixity and rule adaptability to the ever-changing social norms and values that are shared by their clients.

Also, in a polycentric system, there is no need to achieve the unanimity of opinion in matters concerning the constitutional rules according to which society is going to be governed. Nor do we have to concede that "conceptual unanimity" would be a good enough compromise that would have to do in practice. A polycentric order can overcome the issue of the diversity of preferences, values, and inclinations held by citizens by allowing

each to choose that set of rules that best suits him. Wiśniewski thus maintains that entrepreneurial competition when it comes to identifying the best institutional setting, or as he calls it "creative institutional entrepreneurship," and the private supply of public goods is the best option for maximizing society's well-being.

Another point of departure that distinguishes Wiśniewski's heterodox approach from that of the other authors that uncritically embrace the neoclassical theory of public goods is represented by Wiśniewski's emphasis on the entrepreneur's role in identifying and providing efficient solutions for what economists call public goods. Wiśniewski challenges both the non-rivalness and non-excludability characteristics that public goods are attributed.

Based on Austrian capital theory, Wiśniewski argues that there is no such thing as a non-rivalrous good. Even if, in the short run, there is a zero marginal cost for providing certain services (e.g., allowing an extra person in the cinema hall, while ignoring the associated costs of watching a movie in a relatively more crowded cinema and the subjective costs associated with the immorality of accepting a free-rider although someone had to pay for his enjoyment), there is no such thing as a non-rivalrous good in the long run. All goods and services require capital expenditure for supplying them and for the maintenance of the facilities where they are provided. However, all capital goods have an opportunity cost. For instance, returning to the cinema example, there is an opportunity cost for maintaining the hall where the movie is run. If non-rivalness was ever possible to achieve, free of any costs, no matter the time horizon, then there would be no sense in considering the resulting product to be a public good, as it would become a free good -- a general condition of human action, to use Mises's term.

Therefore, if non-rivalness is not a real problem, typical of certain goods, what about non-excludability?

When it comes to negative externalities, the solution is simple: any infringement of the integrity of property rights is the



subject of tort law, and the private providers of arbitration services are going to specialize in addressing such conflicts with the utmost efficiency. In the case of positive externalities, Wiśniewski plays the entrepreneurial card yet again. There is no such thing as non-excludability if the benefit provided is great enough to make it worth it to entrepreneurs to supply it to paying customers. If this is not the case, there are only two other possible explanations. Either the (alleged) benefit is not sufficiently great to make its production profitable as there are more urgent needs to satisfy with the available factors of production. Or, suppliers have other things to gain so that the activity is undertaken regardless of the positive externality that may also result from it. In each of the three cases mentioned above, who, if not the entrepreneur, is in the best position to think of a way of profiting from the potential benefits that result from an economic activity?

Wiśniewski puts this emphasis on entrepreneurship to good use when he argues that the market could unproblematically supply defense services. Wiśniewski makes a very interesting distinction between three types of defense services -- short-, mid-, and long-range.

Short-range defense is relatively easy to imagine. For instance, it is not difficult to understand that an individual would pay a bodyguard company for its services and how a contract for the supply of this kind of defense would look like.

Mid-range services are more of a challenge. Wiśniewski gives an example of such services by referring to the video surveillance of an area. The author points out that, in the short run, extra passers-by could benefit from the security a monitored area can provide. However, this does not mean that there is a benefit that can be provided free of charge for any time horizon and an infinitely large number of individuals. In the long run, the capital investment in cameras and the complementary equipment has to be replenished. So, there is a cost for providing the benefits associated with these services.

Also, Wiśniewski points out that there is a change in the type of crimes that such an area will now attract. If the increased

security of the now monitored area attracts more foot traffic, which represents a boon for the businesses in the area and therefore incentivizes them in providing such defense services, break-ins and muggings might be substituted by pickpocketing. This change in the type of crimes being committed might suggest that surveillance services will have to be supplemented and complemented by other defense services. Perhaps hiring more bodyguards to patrol the streets will now become lucrative.

Therefore, even in the case of mid-range defense services there are costs that must be entailed and potential tradeoffs that must be taken into consideration. Perhaps limiting foot traffic is a cheaper option than installing extra cameras and hiring new personnel, but a monopoly provider of all defensive services would never be able to determine in an objective manner which is the best option.

Wiśniewski also provides an elegant solution for long-range defense services. For instance, nuclear weapons or ballistic missiles are illustrative examples of this category of services. What if a free, polycentric governed area was to attract the ire of an ideologically hostile state? Could the privately governed area provide for its safety?

Wiśniewski sees two solutions to this predicament: how costly would it be to wage war against a polycentric order, and why providing long-range defense services could still be profitable. In both instances, we must take into consideration the ideological inclinations of the population living in the polycentric governed territory. Wouldn't the liberty inclined population be aware of the hostile state and thus be willing to engage in guerilla warfare? Also, because of this ideological inclination of the population, wouldn't defense companies throw in extra services with the short-range and mid-range services already provided. For instance, weapons handling training could become a marketing strategy for attracting new clients, which also ensures that the local population will be ready to actively resist any hostile invading force. Moreover, in the case of the second argument,

wouldn't defense companies promote their services by signaling their patriotic zeal and commitment to the defense of the polycentric community by acquiring heavy-duty weapons such as fighter jets, tanks, and missiles. Not only would defense companies find it lucrative to provide such extras with their services and even be willing to pool their resources, but the community would probably boycott those companies that refrain from dedicating resources for the collective defense.

It is the same ideological inclination that represents the best chance for a polycentric order to remain a free society and not mutate into a coercive monopoly. Wiśniewski emphasizes that incentives are not everything and that they are secondary in importance to preferences. Ideas and ideology are what determine an individual's actions, not incentives. Because of this, there is hope for a community that embraces a freedom-oriented ideology to frown upon and even actively oppose any attempt to recreate a state. Therefore, the state is not necessary, although, as Wiśniewski admits, it is very difficult to dismantle and replace it with a polycentric order.

While the mainstream authors do not choose to transparently discuss the ethical presuppositions upon which they build their policy recommendations and historical interpretations, Wiśniewski opts for the opposite approach. In the last chapter of the book, the author engages in a critique of different moral views concerning how a just moral order should look like. Wiśniewski employs a Misesian type of approach against a number of political philosophy arguments. The author does not attack their position for being ethically unwarranted, but because the instruments that these philosophers propose (primarily a monopoly over coercion that redistributes resources) are not suited for the achievement of the objectives their champions seek to achieve. Wiśniewski then argues that a polycentric order is better suited even for the attainment of a more prosperous and more charitable society.

Among other things, in this final chapter, Wiśniewski refers to what he considers to be an irrational action and how he would

improve upon Mises's treatment of the problem. Wiśniewski intake on this issue is that objectives cannot be judged as good or bad, but one can label a certain behavior as irrational as long as it does not represent the final goal that is being pursued but a means or intermediary goal that is deemed necessary for achieving the final, greater goal. Wiśniewski maintains that a simple discussion with the individual pursuing a given end by following certain intermediary objectives should be enough for a rational person to change course if his interlocutor can pertinently argue that the intermediary objective cannot lead to the achievement of the final goal. However, if the individual keeps following the same strategy, despite the apparent failures of his actions in reaching the given end and his interlocutor's pointing out to him where he went astray, then this type of action could reasonably be deemed as irrational. For Wiśniewski, persevering with the same type of action in the face of patent error and after benefitting from clarifying discussions concerning what went wrong, is evidence that the person is incapable of performing neither inductive (learning from one's error), nor deductive (absorbing the arguments raised against the adequacy of his actions in achieving the given goal) reasoning. Therefore, the display of perseverance in following the same erroneous path cannot be classified in any other way than irrational.

Although Wiśniewski provides several reasons for why such an apparently bizarre behavior could be thought of as being irrational, his argument seems to be a turn away from the demonstrated preference argument he explores in the other chapters of the book. Wiśniewski must first assume that the person committing the errors is not lying about his ultimate goal. Also, it might be that another goal is the one to which the individual is actually committed to, e.g., one might deplore losing face by admitting that he once made a mistake even more than he loathes the costs he suffers. Moreover, as long as the individual Wiśniewski refers to is able to distinguish between a successful and an unsuccessful result, i.e., he realizes that the means employed

did not bring him closer to his ultimate goal, then it has no importance if he chooses to persist with the same type of behavior because he pursues a different goal than the one initially declared or he now thinks that circumstances have changed in such a way that the same action can achieve the envisaged goal.

While this reviewer does not think that Wiśniewski has managed to displace the Misesian interpretation of rationality, this argument has little bearing on the main argument of the book. Wiśniewski himself regards that his take on what can be deemed rational and irrational action has more importance for future research, while it remains marginal for the subjects touched upon in this work.

All things considered, Wiśniewski has produced a well-argued book that builds on the edifice of the Austrian school of economics. As the sample of ideas provided in this review shows, Wiśniewski's work is a text that is densely packed with original ideas, and that attests that its author is well versed in the relevant economics, political philosophy, and ethics literature.

Due to its brevity, the book is not intimidating. However, the reader should be warned that, if picked up, Wiśniewski's *The Economics of Law, Order, and Action: The Logic of Public Goods* has all the ingredients necessary to convince its audience that a polycentric order is the only reasonable way forward.

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