

DEBATE on property rights

One more comment on Mr. Birindelli's statements

Prof. Pascal Salin

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In the debate between Mr. Birindelli and me, many things have come to the fore, but it is particularly interesting to observe that this debate has shifted little by little from the definition of competition and monopoly to the problem of property rights. Would this imply that, at the limit, it is no more useful to speak of competition and monopoly and that the only relevant problem is the one of property rights, as well as the problem of liberty vs. coercion ?

In any case, Mr Birindelli makes clear that in some cases our apparent disagreement stemmed from misunderstandings. But his very fertile mind also induces him to push forward some new and interesting problems.

To come back first to the example of Mr Marconi, Mr Birindelli makes clear now that he assumed more or less implicitly that Mr Marconi is the owner only of the frequencies he is actually using. There is certainly no disagreement between us about that. Now, Mr Birindelli also suggests that a proviso be added, namely that in getting hold of frequencies Mr Marconi "should not violate other people's legitimate rights". This seems obvious. But Mr Birindelli adds : "e.g., if I discover a new resource and a new use of it in the form of a powerful weapon, and if I mix my own work and faculties in order to build such a weapon, this does not give me the right to use it against another person". In fact, although I can certainly not get the right to *use* the weapon, it remains true that I have a legitimate right to *own* it, which is quite different. It means that we do not need to add the proviso about the use of constraint to define a legitimate property right (or, even, we *must not* add it). In other words one must make a distinction between legitimate property rights and legitimate actions.

A second misunderstanding pointed out by Mr Birindelli is the one about "plurality of information". He agrees that one cannot have a right to "plurality of information" and he suggests to replace this later term by the "absence of total control on all TV and radio information (say, in a country)". But I fear that there is not a great difference between both concepts. If ever you deny to someone the right to own all frequencies, for instance on air waves in a given country, it does mean that the "society" has rights on him and does not allow him to own what he is legitimately entitled to own. Moreover, as in all cases in which one tries to define a monopoly, there is a completely arbitrary definition of the scope of the "Monopoly" (or total control). Is there a total control when someone owns all frequencies for radio and TV or only for one of them, for airwaves, cable and

internet or only one of them, for a city, a region, a country or a continent? Moreover, if one owns all frequencies at a given time, for instance on air waves, there is an inducement for others to develop new techniques, for instance cable-TV. This is precisely the role of competition, defined as freedom of entry (without consideration to the possibility of an over-all control of some production by a so-called "monopolist" at one point of time) : It is a force of innovation. In fact, we do see it right now : Plurality of information is offered through the internet web.

Similarly, one cannot say that people have "a positive right to a fair trial and an independent judge", as is suggested by Mr Birindelli. This right seems to exist in present judicial systems, because the state in each country has imposed by coercion a public monopoly on these systems. Without this state monopoly and if competition in judicial systems did exist, one cannot be certain that anyone would get a fair trial (since perfection never exists), but, anyhow, one may do the assumption that, little by little, people would select the systems in which people get the fairest trial. In such a case, the so-called right to get a fair trial becomes meaningless and the problem of arbitrariness, stressed by Mr. Birindelli, also disappears. Contrary to what he says, arbitrariness is not "the result of the existence of a legitimate right", it is the result of the existence of a right which seems to be legitimate, but which is not.

More generally, I cannot agree with Mr. Birindelli when he states that "Illegitimate actions are those which produce damage to others, and the law of a free society is that which forbids this kind of actions". Broadly interpreted, this

sentence would imply that any negative externality ought to be forbidden, which is not acceptable and which is not consistent with the principles of a free society. Therefore, one should rather say that " Illegitimate actions are those which produce *illegitimate* damage to others, namely those which are not respectful of legitimate rights" (which, by the way, would be somewhat redundant...)

To go back to the problem of arbitrariness, I agree that arbitrariness necessarily exists whenever there are competing principles which can be considered as universal and eternal principles, but which are not consistent one with the other. But can such a situation exist ? Mr. Birindelli quotes the right to a fair trial, but I do not consider it as an universally acceptable principle in a free society. Therefore, it implies that, as far as one does not believe in the possibility of competing rights - as I do -, one ought even not care about the problem of arbitrariness in a free society. Mr. Birindelli is right in pointing out that arbitrariness is necessarily present whenever competing rights do exist, but do they exist ?

Now, I do know that we live in systems in which governments do not care too much about legitimate rights. And we have to act and to live in such an environment. Thus, I am tempted to concede to Mr. Birindelli that, in this very imperfect world, we may have to accept the idea that " liberty is that condition of men in which recourse to arbitrariness is not eliminated, but reduced as much as possible in society... it is in this imperfection, in this indefinite tendency towards an undefined, slowly changing "minimum possible" that lies a great part of the humanity and of the beauty of liberalism".