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On *Private Governance*

Comments

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On Private Governance

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Abstract

Edward Peter Stringham's book *Private Governance: Creating Order in Economic and Social Life* is a compelling defense of the proposition that private governance is more widely used and more effective than most people think. Stringham looks to history to see how people solved problems of fraud and cheating without government intervention and provides example after compelling example to contradict the strong claim that a government or any third-party enforcer is necessary for voluntary exchange. While Stringham doesn't take on the tough problem that private governance is not sufficient for its task, his book is intended to be the beginning, not the end, of thinking about private governance.

JEL Codes: K10, P16

Keywords: private governance, legal centralism, anarchism, markets, morality

Edward Peter Stringham's book *Private Governance: Creating Order in Economic and Social Life* is dedicated to "legal centralists of all parties." Given the quotations disapprovingly cited throughout the book, the term "legal centralists" may or may not include such luminaries as Douglas North, F. A. Hayek, Oliver Williamson, Mancur Olson, Gordon Tullock, Milton Friedman, Richard Epstein, James Buchanan, and Israel Kirzner. So if you're a legal centralist, you're in good company. But dropping such names doesn't mean Stringham is going to let you or them off the hook. Nor should he.

When I opened *Private Governance*, I didn't know if Stringham's dedication included me or not. I have been skeptical of the necessity of government to regulate free and voluntary exchanges since I took my first economics class. But at the same time, I never considered myself to be, like Stringham, a committed anarchist. *Private Governance* has been valuable for me in working through my reluctance to go whole anarchist.

Defining Legal Centralism

First, what is legal centralism? The law professor Marc Galanter (1981) credits John Griffiths with coining the term "legal centralism" in a 1979 working paper. Galanter notes, "The view that the justice to which we seek access is a product that is produced—or at least distributed—exclusively by the state, a view which I shall for convenience label 'legal centralism,' is not an uncommon one among legal professionals" (p. 1).

Early on, Stringham interprets legal centralism this way: "To a legal centralist, any cooperation must be attributable to the state, but in actuality, cooperation can be attributable to steps taken by the individual parties" (p. 22). It is in this statement that I see my reluctance. If legal centralism is about the state exclusively providing justice—and by that I mean negative justice, the meting out of punishments for wrongs committed in concrete cases—then I am inclined to unashamedly clothe myself in the label. But when legal centralism jumps to the point that cooperation in the positive sense must be attributable to the state, I am quick to shed the label "legal centralist."

Private Governance is a compelling defense of the proposition that "mechanisms of private governance are far more ubiquitous and far more powerful than commonly assumed" (p. 6). Early on, Stringham references Hayek's use of the word *marvel* to describe the price system (p. 7). The reference is apt. This book exudes wonder; it exudes excitement for voluntary associations; and it exudes an enthusiasm to share the author's astute observations with the reader. In short, it exudes Professor Stringham.

I agree with the central thesis, and with most of his specific arguments as well. Stringham looks to history to see how people actually solved problems of fraud and cheating without government

intervention. His examples, from the first stock market in early 17th-century Amsterdam to PayPal in the 20th and 21st centuries worldwide, are illustrative and insightful. I particularly like how he diagrams the financial crisis and explains financial tools in simple language.

Rules Emerge from Markets

The book's great strength is a careful history of how rules emerge from the market rather than somehow preceding it. I will focus on fine shades of the core argument.

Stringham writes, "Most theorists, including a large percentage of anarchist libertarians, are wedded to the idea that exchange must be enforced with rules against fraud or widespread cheating and conflict will occur" (p. 40).

I agree that "must be" is too strong. The book's project is to provide example after compelling example to contradict the strong claim that a government or any third-party enforcer is necessary for voluntary exchange. As Stringham writes, "Credit does not imply that transactions require third-party enforcement" (p. 56). So why does credit work without government or third-party enforcement? Stringham's answer is that the parties themselves have an interest in making it work, an interest that no government or third party can instill. One reason why economists are so quick to look to the government as a reason why credit works is that they, in Stringham's words, "ignore morality, they attribute all cooperation to external sources of governance" (p. 136).

I think that's right, and it's why I think that chapter 9, "The Most Personal Form of Private Governance: Individual Self-Governance," is one of the book's most important chapters. When Stringham sticks to examples from commerce, the book is at its strongest, because he says that morality makes markets work, and if you're McCloskean, markets also make you moral. The argument works because the project is to provide counterexamples that refute the claim that government enforcement is why markets flourish.

But let's take this claim of Stringham's critics, as summarized by Stringham: "Private provision of law enforcement cannot meet any needs and government provision will" (p. 123). Stringham responds that private provision of law enforcement can meet the needs of justice. But is that private provision sufficient to keep the peace and to protect the weak? What do critics fear if the government doesn't provide law enforcement? That the private entities are corruptible?

Legal centralists attack the problem of governance by providing numerous examples of how private governance is not sufficient for its task and then glissade into a claim that government is necessary. By the same token, anarchists attack the problem of governance by providing numerous examples of how public governance is not necessary for its task and then glissade into the claim that private governance is sufficient.

To his credit, Stringham is careful in his book not to partake in the last dance. But he also doesn't take on the tough problem that private governance is not sufficient for its task. The committed anarchist that he is, he does come close. In one of his many critiques of Douglass North, he rhetorically asks: "Where North asserts that more complex exchanges require government enforcement, as deals become more and more complex, how likely are judges and jurors in government courts to be able to reasonably understand them?" (p. 155)

Governance and Human Fallibility

As it turns out, while I was reading this book, I was summoned to jury duty, called to the jury box for voir dire questioning, and nominated to be the foreman of a civil trial case. (If you look through the transcripts of Orange County Superior Court No. 47 in early November 2015, you will find "Private Governance" in the transcripts as the answer to the question, "Juror number 10, what book are you currently reading?" For a moment, I had hope that I might be dismissed.)

The case was, as virtually every case is, a sad one. The issue was whether to recommit someone to a state mental hospital against his expressed will. The point of a public system of justice is not for the judge or jury to understand the complexities of the case, whether it be credit default swaps, or in my jury's case, schizophrenia. The judge was there to verify that fair procedures were followed, and we the

jury were there to verify the moral boundaries, the very abstract general rules that bond strangers of all stripes in Orange County, California. While I sat in the jury box, it didn't take much for me to imagine and fear the historical inhumanity of private citizens when dealing with the mentally ill and dangerous.

The point, I finally realized while reading *Private Governance* and simultaneously sitting involuntarily on a jury, is that legal centralists and anarchists of all parties are, in part, talking past each other. In the debate about private and public governance, everyone must first come to grips with the fact that there is no necessary and no sufficient solution to the problem of governance.

We human beings are flawed: private governance can't make people be good, and public governance can't, either. The problem of overcoming violence privately or publicly, however, is not one that Stringham engages with. In the commercial world infused with bourgeois ethics, I'm all with Stringham and Deirdre McCloskey (2006). Let morals make markets, and let markets make us moral. But in a great society on noncommercial relations, I am still not swayed that public governance of justice won't fulfill its purpose more broadly and humanely than a private system would, particularly when the central questions are violence, a-voluntary actions, and unrationalizable mental disorders.

Despite this reservation, *Private Governance* is a great contribution to the debate over governance. Both critics and supporters of private governance arguments have much to learn from it. Moreover, it is not fair to ask that a book so broad in empirical examples be broader still in its theory and application. It is only because Stringham has handled so well the material he set out to handle that I wish he had handled more. There is, in fact, no reason for him to do so. A book like his is intended to be the beginning, not the end, of thinking about private governance. Although it does not tackle the problem of overcoming violence, Stringham's book provides examples that others can use in theorizing about how private governance works.

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