

Reply to Sampson

By David Ramsay Steele

Note: *This article was a response to Article 2 in the same issue*

"If the world's a sphere, how come the Australians don't fall off? Betcha never thought of that one."

It is on this level of smug, gloating ignorance that Sampson undertakes to refute anarcho-capitalism. It cannot seriously be denied that he does so with almost immaculate grammar, and in prose delectable enough to make us swoon (so long as we keep the fourth form composition as our Platonic ideal). On the other hand, Sampson cannot be accused of so immersing himself in the theory of free market anarchism that it has become stale by over-familiarity. The only excuse I can offer for replying at all is that there may be some pedagogic value in answering the objections which leap to the mind of an innocent who has never given five minutes' serious thought to the matter.

Nowhere does Rothbard mistake the definition of the state for an empirical fact. Rothbard clearly defines 'the state' as (roughly) a monopoly of coercion over a given territory. The potholes illustration is beside the point. Free market anarchism will entail coercion, at least in the sense that I expect Sampson and I would agree upon. Some natural rights anarchists might contend that restraining a rapist or locking up a murderer pending his trial are not examples of 'coercion'. Like all arguments about the meaning of words, this is fruitless to pursue. In the obvious and everyday sense, free market anarchism will involve the coercive enforcement of law. Where it differs from the state is that the generation and enforcement of law are not monopolies of any particular agency. Actually, even Sampson must understand this, for the bits he quotes from Rothbard say as much.

If the state were magically to vanish tonight, there would be pillaging, looting, social breakdown and the eventual emergence of new states. That is a commonplace. Not only free market anarchists, but the most woolly-

minded of socialist anarchists, have always said as much. No one has proposed that the state be made to disappear tonight. We don't believe in magic. There has to be a preparatory period of social and intellectual evolution. Let us consider a less radical example. In modern states, the military power is completely subordinate to the civil authority. In certain regimes in South America and elsewhere, this is not so, and wishing will not make it so. If military repression were magically to disappear "tonight" in those countries, there would be "chaos" and civil strife, and new military juntas would soon take over. This obviously does not demonstrate that there is never any hope for democratic, constitutional states in those countries. It shows merely that there is no hope for these "tonight", or tomorrow morning.

Legality and legitimacy

At least Sampson understands that the state is no more than a tarted-up Mafia, but it is doubtful whether he sees just what the tarting-up amounts to. "But, if a court which decides against ... Brown, is not an organ of a coercion-monopolising State, why should Brown take any notice of its decision?" Now it is futile to ruminate on this question (or to pose it) without first being crystal clear about the answer to another question: supposing the court is an organ of the coercion-monopolising state, why should Brown take any notice of its decision?

It is all very well to say that the State monopolises coercion, but precisely how is this neat little trick worked? After all the police and armed forces would stand no chance if the rest of the population, or ten per cent of the rest of the population, were to combine in a determined fashion against them. In the event, the Shah's armed forces mostly surrendered with tears in their eyes, but if all of them had fought to the death they could have prolonged the Shah's monopoly of coercion by a few weeks at most. Even on the outlandish assumption that the state's personnel possessed some science fiction devices for controlling the rest of the population, there remains the puzzle of why the military and police remain firmly under the control of six hundred-odd

unprepossessing middle-aged gentlemen in a grubby hall in Westminster. I wouldn't give much for their chances in a straight scrap with six of Ruari O Bradaigh's boys. Yet the MPs will win and the Provos are hopelessly lost: they have known all along that their only chance was to get the MPs to act objectively in alliance with them.

Let us use the term 'legal system' to embrace the enforcement procedures of both the state and free market anarchy. It is a prior condition of the successful operation of any legal system that it must have 'legitimacy'. The great majority of people must go along with it, and a fair number must positively approve of it. Let us now return to our two questions, in reverse order. Why should Brown take any notice of the State court? Because the State has nearly everyone effectively on its side. Why should Brown take any notice of the free market court? Because the system of free market courts has nearly everyone effectively on its side.

Rothbard's position that the will is inalienable, and that no one should be able to sell herself into slavery, is an interesting side issue. But if the general sentiment is that any contract of service is to be enforceable, no doubt Rothbard would agree that this would be compatible with a functioning anarchist system, though he would disapprove of that legal detail. Sampson says that if men with weapons force him to obey the legal code, he will greet them as agents of a state. It won't work, but if it does we'll call it a state! That is all there is to Nozick's argument too. It doesn't matter two hoots whether we call it a state, though this would necessitate far-reaching changes in usage. For example, it would mean that the many hundreds of "stateless societies" known to social anthropologists would have to be reclassified as states, since they all (or nearly all) have law.

Sampson bad on public goods

Sampson is pleased to inform us of terms standardly used by 'economists' but absent from the indexes of Rothbard's books. Unfortunately Sampson's economics appears to be a hazy recollection of 'O' level. He thinks that a 'public good' automatically has to be produced by the state. (See Demsetz, *The Private Production of Public Goods*, *Journal of Law and Economics*, October

1970.) He had not heard of the long history of private supply of lighthouses. (Coase, *The Lighthouse in Economics*, *Journal of Law and Economics*, October 1974.) He even seems to think there is a problem about private provisions of roads (and presumably therefore of railways, canals and aisles in department stores). Not even the dimmest recall of 'O' level economic history! Nearly all goods are 'public goods' to some extent. Roads are certainly no more public goods than bingo halls or hotel lobbies.

He witters on about the individual Swede and the individual English factory, without stumbling upon the (doubtless terribly subtle) notion that an association, or alliance, or group of Swedes can sue a class, or category, or bunch of English factory owners. Alternatively, if suing proved difficult, the Swedes could pay the factory owners not to pollute.

Sampson's comments on Rothbard's view of 'public bads' illustrates how difficult it is to comprehend a writer's message by skimming through his indexes. In the first place, Sampson has taken no pains to grasp the Rothbardian conception of justice. Calvinism, pork consumption or inter-racial sex may at various times and places be 'public bads', but they should never be outlawed because that would be unjust. The forcible suppression of Geoffrey Sampson's writings, pending the date when he finds out what he's talking about, would be an enormous 'public good', but it would (though at this point, for some reason, my fingers tremble uncertainly on the keys) be unjust. Apart from that, the question of whether harmful oversupplies are to be considered actionable, or even criminal aggression, depends upon general convenience and the current state of opinion. Until there is overwhelming agreement that an overspill constitutes invasion, there will be a *de facto* liberty to cause such overspills. In that case, prevention of the overspill ultimately depends upon purchase of that prevention by the victim. Secondly, the aesthetic standards of hoardings, the timbres of voices and the wearing of veils in public will all be regulated in exactly the same way as flag days, picket lines, dropping litter or spitting on the pavement: by the private owners of streets, roads and public places.


Sights and sounds which it turns out to be inconvenient to make actionable, and which are transmitted across the boundaries of land-holdings, can be regulated by covenants, as described in Siegan's *Land Use Without Zoning*. Sampson's discussion of 'access' displays a dour obtuseness about the way the market operates which might surely cause him to shake his head if he encountered it in any other context. If a 'rich man' bought up all the food in the world, he would be able to starve all the rest of us to death. Consequently, food must be supplied to all by the state. Sampson's argument is just a variant on this theme, and no more realistic. The point is that those who might be threatened with encirclement have money to spend, just like those who might wish to do some encircling. The former are not intrinsically less numerous, or poorer, than the latter. But if they were, the matter would nonetheless be more urgent for them, so they would still outbid the latter. And the latter would have to spend several thousand times the former to outbid them, since at a pinch, the folk threatened with encirclement need only one route to a friendly region, whereas the encirclers have to block off each possible route at every stage. 'Access' could be defined as access to a public highway owned by a reputable company which subscribed to a code of conduct including unimpeded passage for non-criminals. But there's really no need for this contrivance. Neighbouring landowners will generally contract for mutual access. If there is a demand for this facility, why shouldn't the supply be forthcoming? As for me, I get the creeps every time I remember that, wherever I happen to be, I'm totally encircled by the state.

Historically progressive imperialism?

Sampson suggests that it is cheating to suppose that "even Russia" has been converted to free market anarchism. First, anarchism means the end of nation-states, and the question of what route we follow to an anarcho-capitalist solar system is an issue of revolutionary strategy, not utopian mechanics. If the entire world except Russia were anarchist, the downfall of the Russian state would be imminent. If Britain *alone* went libertarian, then it is a legitimate opinion within free market anarchism that a minimal state might have to be temporarily

retained. Second, it is not clear that the main danger would come from Russia. Sampson supports imperialism provided the imperialist power is more liberal than the cultures it rules. (*Liberty and Language*, 164-177). He refers warmly to "the principled liberalism of Margaret Thatcher and Sir Keith Joseph" (Op. cit., 39). He takes the view (above) that opposition to taxation objectively favours "a greater-than-minimum level of coercion in society". With the establishment of an area free of the state, a neighbouring Sampsonian and Thatcherite regime will therefore send its troops into the anarchist territory, to raise the cultural level by reintroducing taxation and other civilised amenities. (Incidentally, Sampson might have a hard job refuting the proposition that the Russians are more humane, cultivated and rational than the Afghans, and therefore closer to liberalism. But perhaps he wouldn't want to.) Third, Sampson presents no arguments that an anarchist society would be incapable of defending itself against Russian attack.

Letter in reply

 Mr Sampson replied to the above article in FREE LIFE Vol.1, No 3

Anarcho-capitalism

Sir,
To judge by the vehemence with which David Ramsay Steele dismisses my critique of Murray Rothbard's anarcho-capitalism, it seems that I may have brought him uncomfortably close to the point at which awareness of the contradictory foundations of his faith can no longer be repressed. At one point, indeed, Steele seems to concede the statist's case when he says: "If Britain alone went libertarian, then it is a legitimate opinion within free market anarchism that a minimal state might have to be temporarily retained". Provided the anarcho-capitalists are willing to concede the legitimacy of a minimal State in current circumstances, many non-anarchist liberals might be happy to agree that the State will lose its legitimacy if the time ever comes when the functioning of the market ceases to be threatened from outside or from within. (That time never will come, so the point is academic.) Elsewhere

in his reply, though, Steele writes as if he had refuted me; without discussing all his fallacies, perhaps I could take up some of the main issues.

Steele suggests that public bads (such as acid rain produced by British factories and failing on Sweden) could be controlled via civil actions between Swedes as a class and British manufacturers as a class. But either it is possible to factor out accurately the contributions of individual polluters and the damages sustained by individual sufferers, or not. If it is, then the example is scarcely relevant because the law could be invoked (though at great expense) between individuals separately; but, if it isn't (as will often be the case) then a class action would be unjust since there can be no fair way of apportioning responsibility for or receipts from the damages awarded.

When discussing the privatisation of roads I tried hard to make it clear (but evidently I didn't make it clear enough) that I was attacking the quality of Rothbard's argumentation, as evidenced by his failure to discuss the obvious objection to his policy on roads; I wasn't attacking that policy itself, or claiming that the objection was unanswerable. That said, I am unimpressed by Steele's wholly specious analogy between access and food as two necessities of life. If the owner of any particular loaf of bread refuses to sell it to the Sampson family we can always buy bread from someone else – no "rich man" could "buy up all the food in the world". If the owner of the B6255 refuses to let us use it, on the other hand, virtually all our capital is destroyed (even though we might survive by escaping over the hills carrying a few basic possessions, e.g. our children). To repeat: I accept that one may be able to show by subtle reasoning that this sort of problem is less serious than it appears at first blush; but anyone who hopes to be taken seriously as an advocate of anarchism must confront it explicitly, rather than just glossing over it as Rothbard does in his most important book. (By the way: yes, I had heard that turnpike roads, railways, and canals were constructed by private enterprise. I also know that the terms on which their owners made them available to the public were tightly controlled by the State.)

But the heart of the matter, of course, is the central State function of law enforcement. Market relationships depend on law, but without a State how can law be more than a dead letter? Steele is at least more responsible about this than is the leading American libertarian Ralph Raico, who complains in the January *Libertarian Review* about non-anarchist liberals' "Interminable discussion of some of Murray Rothbard's ideas on criminal justice, as if these were absolutely crucial to the libertarian position". They are indeed crucial, and although Steele perceives this he fails to solve the problems they pose.

Steele argues that a State can enforce its laws only if it "has nearly everyone effectively on its side", and that if nearly everyone was effectively on the side of a Stateless system of law then that system could equally well be enforced. The first half of this is obviously untrue: Czechoslovakia is just one example of a nation in which very few people are in any sense on the side of the State but the State enforces its oppressive edicts nevertheless. It is true but irrelevant to say that "the police and armed forces would stand no chance if ... 10% of the rest of the population were to combine against them", since combining against them is something that States are good at preventing individuals from doing.


As for the second half of Steele's argument: yes, indeed anthropologists know of many societies in which law is (or was) enforced not by a State apparatus but by pressure of public opinion; but I had not supposed that Steele wanted Britain to become a society of that type. It is characteristic of such societies to circumscribe individuals' choices of action very narrowly; law survives without rulers precisely because people see themselves as collaborating to maintain a traditional, unchanging way of life rather than as independently seeking to maximise the satisfaction of their individual wants. We do not have to go as far as Africa or Australia for an example. Before they were evacuated fifty years ago, the inhabitants of St. Kilda formed such a society, which ran its affairs through daily communal discussions between equals. On one occasion a St. Kildan whose earth floor was more than averagely damp and uneven imported some

cement in order to concrete it over; this dangerous departure from precedent was deemed unacceptable, and the cement left on the same boat which had brought it. But the virtue of liberalism is that it allows individuals to seek ways of improving, their lot by maximising the range of actions open to them. It is paradoxical to imagine that there could be a society which encourages its members to press outwards towards the bounds of the permissible, but in which individuals nevertheless avoid over-stepping those bounds despite the lack of an agency forcibly preventing them from doing so.

If we want individual freedom, we must accept a State to patrol the limits of that freedom. But, deep down, David Steele knows this; if he were convinced of the anarchist case, his defence of it would be more temperate.

Yours faithfully
Geoffrey Sampson

Letter in reply

 Mr Steele replied in FREE LIFE Vol.1,
No 4

Sir

Anyone who thought Geoffrey Sampson's article in *Free Life No. 2* was so bad merely because he was slumming in such undistinguished company will have been disappointed to see his subsequent nasty attack on libertarianism in the *Spectator*. His letter in your last issue is no improvement.

I do not "concede the statist case" when I countenance the possibility that full anarchy might be unviable in a small area surrounded by hostile states. (I wrote "Britain *alone*". Quoting me, Sampson omits the emphasis.) Ideas today travel faster than ever before. A major ideological shift in any one country has repercussions (and usually imitations) in every country. A tide of free market ideas is now sweeping the world, already affecting developments in nearly every land. These are truisms past arguing about. But Sampson seems to envisage a libertarian Britain in a world otherwise the same as it is today. His reference to Russia is particularly myopic. Surely it is clear that the Russian empire is in its final throes and will not live to see the

turn of the century. (For it to survive the eighties would require Political genius of the phenomenal stature of Stalin, and present methods of Politbureau recruitment hardly favour the emergence of such a man.) Soviet Russia is finished. Socialism is finished. Let us not live in the past.

I am at a loss to understand Sampson's persistence with his Swedish factory example of a public bad. (1) From his standpoint it must strictly follow that *nothing* can be done unless Sweden and Britain are brought under a single state. (2) The contribution of each factory to total acid rain pollution would seem easy to "factor out". And if it weren't, Simpson's anti-pollution state would not know what to prohibit. (3) A great many respectable statist economists advocate a tax on polluting activities as a more efficient alternative to prohibitory regulation. (It might be best to have the pollution and compensate the victims, and the only way to find out is to see what people are prepared to pay.)

Sampson's argument denies the workability of anti-pollution taxes, as well as the Free Market solution. (4) The matter of the contribution of total pollution to each individual victim's suffering is already answered by my point that numerous possible victims can associate together to bring an action. (5) History demonstrates that individuals' imaginations are less inventive than the anarchic social process of the market. Certainly Sampson's imagination is less inventive than mine. He thinks "there can be no fair way" of "apportioning ... receipts from the damages awarded." How about lower insurance premiums? (6) Sampson ignores my point that if suing proved inconvenient, the victims could pay the factories not to pollute. According to Coase's theorem, this will lead to roughly the same outcome.

Sampson maintains that he introduced his case against free market roads only to show that Rothbard must be a very bad arguer since he failed to discuss Sampson's "obvious" criticisms. But if these criticisms are in fact quite silly, as I maintain, then there is no such implication. Even if Rothbard be not on every occasion a paragon of rigour, that is no argument against anarchy. On roads, Sampson doesn't reply to

my arguments. He ignores the point that access can be guaranteed by contractual arrangements. We must presume that he now accepts this. He asserts that virtually all a family's capital might be destroyed if the owner of one important road, forbade them to use it. Various free market remedies would easily spring up to cope with this possibility. For instance, a motoring club might issue licences to its members, enforce certain standards on them (on pain of expulsion) and negotiate with major road companies terms including the provision that all club members be permitted use of those roads except under specific conditions laid down in advance, and confirmed by independent arbitration bodies. The exact institutional arrangement is immaterial here: the point is that millions of people wish to insure against the chance of being isolated in the way described, and therefore part of the service which they buy from the road companies, or some intermediary, is the assurance that they would never be arbitrarily stranded. If the possibility of being cut off is a matter of widespread concern, there must be a lucrative market in guarantees of not being cut off. Trying to buy out millions of people in the market for such guarantees would be as foredoomed as trying to buy up all the world's food. I don't see how I can make this any simpler. If Sampson's denseness remains impenetrable I may have to resort to a strip cartoon.

It's not evident why Sampson considers me "more responsible" than Raico (though in all candour I can't deny it), when the bit he quotes from Raico seems to make a point identical to that which I made in my reply to Sampson: that we can discuss the feasibility of free market anarchy independently of some of Rothbard's detailed views on what free market courts ought to say.

Sampson's example of Czechoslovakia fails to disprove my contention that the state needs "nearly every one effectively on its side". Czechoslovakia is no more a state than is the Greater London Council. It is a district department of the Imperial Russian state. The great majority of people within the borders of that state effectively supported the 1968 "invasion" (or local police action). Precisely because most Czechs and Slovaks favoured the Dubcek reforms, they could be stopped only by *external* intervention. As

Hume said, all government is ruled by opinion.

Sampson mysteriously adds that "States are good at preventing individuals" from combining, though whether this facility is exercised by adding something to the water or by psychokinesis he does not reveal. A state of the modern type is quite powerless to prevent 10 per cent of the population combining against it. The state's power hangs on the fact that no 10 per cent wants to.

In response to my reference to social anthropological accounts of non-state legal systems, Sampson says: "yes, indeed anthropologists know of many societies in which law is (or was) enforced not by a state apparatus but by pressure of public opinion." Are there no limits to the man's capacity for missing the point? There is no reason why a stateless society has to be extraordinarily tradition-bound, any more than there is any guarantee that the existence of a state will prevent the suffocating traditionalism of St. Kilda. Whether the law enforcement agencies are statist or anarchist, they are always ultimately reliant upon "pressure of public opinion". But in neither case is public opinion usually the immediate sanction.

Yours faithfully

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