

Markets, privatisation and law and order – some economic considerations

Kevin Albertson discusses the difficulty of aligning private incentives with the public good

In the following article, I discuss the social efficiency of delivering criminal justice from the point of view of the neo-liberal economic paradigm. I do not seek either to critique or support the principles of neo-liberalism; rather, I consider, if I chose to accept the neo-liberal discourse, how might the provision of criminal justice be carried out most effectively and in line with social wellbeing.

Neo-liberalism has many meanings; here I adopt common usage as a description of a body of theory which broadly promotes a circumscribed role for the state and economic and social policies informed/determined by the operation of incentive structures in (supposedly) free-markets (Friedman, 1962).

The theory of markets *The roles of individuals and corporations*

The neo-liberal paradigm is based on the principles of individuals' pursuit of self-interest and the corporate sector's maximisation of shareholder returns (ibid). It is suggested such self-interest, coordinated through the market, will lead to efficiency – the best possible outcome for a given cost.

Markets are, in theory, efficient because the asking price serves to align customers' expectations with production costs. Where good value for money is supplied, the supplier may expect payment and repeat trade. Conversely, if the consumer fails to receive that for which they

are prepared to pay, they will either not pay or will change suppliers. Thus, free-markets provide an evolutionary process, moulding trade through millions of individual choices; motivating consumers and suppliers to engage in efficient exchange (Beinhocker, 2006).

The coordinating power of markets is illustrated by the economist Paul Seabright in recounting the perplexity of a former communist official who asked 'who is in charge of the supply of bread to the population of London?' (Seabright, 2004). In a market economy, according to Seabright, 'nobody is in charge'. Leaving it to individuals to decide what is in their own interest is more efficient than trying to work out, centrally, what it is those millions desire.

The roles of the state

There is, however, a paradox in market-based systems; without regulation, markets are liable to provide goods and services inefficiently from a social point of view. If Seabright's official had asked, 'who is in charge of the purity of the bread in London?', or, for that matter, 'who is in charge of ensuring that beef lasagne in London contains only beef?', perhaps the answer might not have been 'nobody'.

For markets to work efficiently at a social level there must be full information on costs and outcomes, and rapid and direct feedback from consumers to suppliers. Where the level of information and feedback is poor, suppliers' profits may be

enhanced by deceiving the consumer. The less information is available to the consumer and the fewer the opportunities for feedback, the greater is the potential for market inefficiency.

The policy response to such inefficiency is to create an incentive structure such that the pursuit of individual and corporate profit will lead to maximised social wellbeing (Friedman, 1962). Hence, neoliberal states exist 'to preserve law and order, to enforce private contracts, to foster competitive markets' (ibid). In addition, 'government may enable us at times to accomplish jointly what we would find it more difficult or expensive to accomplish severally' (ibid).

In short, individual pursuit of self-interest will not necessarily lead to maximised social prosperity unless the 'invisible hand' of the market is constrained by the rest of us through the state (ibid).

The provision of law and order *Social efficiency*

While it is the state's responsibility to provide law and order, neo-liberalism does not prescribe whether such provision should be directly by publicly owned enterprises or through contracted agents. However, when considering such contracting, the question of the relative efficiency of the private and public sectors must be framed in such a way which reflects overall social benefit. For instance, historically it has been the case that a decline in employment and/or wages is observed in publicly owned industries after privatisation (Haskel and Szymanski, 1993). In deciding whether privatisation is appropriate, the public decision maker has a responsibility to consider the level of direct costs and services delivered, but must also take into account external effects such as the impact of the decision on unemployment, and the knock-on effects on tax receipts and benefits.

Targets

Whether law and order is provided directly by the state, or whether it is contracted out, its efficient provision relies on market principles.

The ultimate customer is society; the supplier is government or its contracted agent. Practically, it is not straightforward for citizens to determine whether the required amount of criminal justice has been delivered. Justice is not easily quantified and statistics are difficult to interpret, even where they are accurate. Society may therefore come to rely on rather blunt indicators, for example a reduction in proven reoffending. This motivates the whole concept of payment by results (Fox and Albertson, 2011), where society empowers the state efficiently to deliver performance targets as proxies for criminal justice.

However, the adoption of targets as a substitute for effectively operating markets has been shown to lead to inefficiency and 'corruption pressures' (Campbell, 1976). The market will deliver the most efficient way of hitting any target, whether or not this target accurately reflects the matter of interest to the customer (ibid). Ultimately, it is perceptions of safety and levels of crime which society seeks to address through criminal justice – such qualitative policy goals may prove difficult, if not impossible, to reflect in a simple quantitative measure.

Localism

Empowering local government through devolution of state power is a second general thrust of neo-liberal policy (Friedman, 1962). In whatever they ask of the state, the feedback process from consumers to government will theoretically be more effective at the local level. Citizens are generally more knowledgeable about their locale than about the nation as a whole; local preferences may differ from those of the nation; and there is a greater chance voters will have more experience in judging competence and performance of a local elected politician compared to a centrally designated minister.

In the UK, we have recently elected Police and Crime Commissioners (PCCs) responsible at a local level for law and order provision. By construction, voting for a PCC is informed by voters' local perspectives on crime, whereas

voting patterns in national elections will be informed by a variety of issues. Therefore, neo-liberal theory suggests, if PPCs were given the power to contract for criminal justice, their focussed mandate should facilitate customer feedback and increase the efficiency of provision.

Transparency

To maximise the information content of criminal justice expenditure and provision – further to facilitate informed voter behaviour, and increase efficiency – all criminal justice expenditure and associated statistics and interpretation ought to be publicly and clearly available. If the market is to work effectively, the customer must be able to determine whether they have received the service for which they have paid. Similarly, to minimise the potential for corruption of criminal justice targets, society might establish a means by which stakeholders can bring such matters to the attention of the public at large.

In sum

Free-markets are not adequate to align social goals, such as the provision of criminal justice services, with the pursuit of corporate profits. Establishing, socio-political and regulatory mechanisms by which the two might be aligned is by no means straightforward. I suggest neo-liberal theory indicates criminal justice contracts are most likely to be aligned with community aspirations where:

1. The social benefits of public provision are accurately compared to the social benefits of private sector provision.
2. Contracts are negotiated and delivered at the local level by community representatives,

democratically elected, with direct local accountability.

3. So far as possible, contracts reflect holistic social goals, rather than simplistic targets.
4. Contracts are clear and transparent, and the terms and conditions are freely available so citizens can provide feedback through democratic processes.
5. Facilities are made available, informally and formally, for the performance of elected representatives and criminal justice contractors to be monitored by citizens.

Ultimately, markets work best when they are: simple; open; and amenable to effective regulation. ■

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