

Foreword

Standard economic theory and analysis have concentrated primarily on the workings of the private sector. Study of the public sector has been secondary and has centered on the impact of the government on the private sector — mainly the impact of taxes, but also the effects of debt and expenditures. Theoretical studies most often have been concerned with establishing criteria for justifying government intervention or the evaluation of government performance.

The dominant theme in discussions of government intervention has been that of market failure. It is generally presumed that under certain conditions the private sector will allocate resources efficiently, but that the market cannot always be depended upon to accomplish this end. Failure of the market may occur when increasing returns to scale inhibit competition, or when individual behavior produces externalities, that is, positive or negative effects on the welfare of others. Awareness of the externalities has become a major theme of modern politics, after having been neglected for too long. There is general agreement that the government should intervene to restore efficiency when the private sector cannot do so — for example, by increasing expenditures for pollution prevention or for national defense.

We have also come to think of government as the guardian of equity and the interests of future generations. Perceptions about the nature and extent of government's responsibility for such matters differ sharply, of course; controversy in these realms can never be completely resolved. But few would now deny that the government has at least some responsibility for counteracting the market's pressure at the bottom end of income distribution and for avoiding discrimination against particular groups.

At no time in history, however, has the cor-

rection of market failure been regarded as a government monopoly. What might be called the "voluntary public sector" has always played an important part, at least in Great Britain and the United States. Private charity was the only floor for the market-generated income distribution until government assumed responsibility in the 1930s. In the past, reform movements, frequently spear-headed by churches and synagogues, have helped correct the deficiencies of the market.

Private activity might be regarded as making up for government's inaction. But in another sense much of it is specifically directed toward more general government failure, a concept parallel to that of private market failure. When private groups urge reform legislation, they are essentially seeking to repair government's own deficiencies.

As government regulation on all levels has increased, a need has arisen for intermediaries between individuals seeking redress and the bureaucratic agencies. It is in this context that Burton Weisbrod and his collaborators have brought forth this monumental study. It concentrates on a particular example of voluntary activity — public interest law firms, which are concerned with the repair of market and government failures. Public interest law is a relatively new field, although the legal activities of the National Association for the Advancement of Colored People began as long ago as 1909 and the American Civil Liberties Union emerged in the early 1920s. But the number of public interest law firms burgeoned after 1960.

Weisbrod and his collaborators subject the public interest law industry to a thorough economic analysis — sympathetic but critical. They begin by detailing the fundamental principles of the public interest and the role of public interest

law firms in achieving their goals. Law firms are then studied as though they were industrial organizations. This is followed by analyses of public interest law activities in eight different areas: environmental affairs, housing and zoning, employment discrimination, occupational safety and health, education, medical practice, consumer protection, and income taxation. Each study examines the degree to which the criteria of efficiency and equity are satisfied. The analysis is very far from mechanical, however; the concepts of efficiency and equity are flexibly interpreted for the individual cases, while an underlying unity is preserved. Various methods of analysis are used, including quantitative studies in tabular form, regression relationships, and case studies. The roles of particular institutional situations and the problems of financing also receive consideration.

The authors recognize that although litigation is the primary instrument of public interest law activity, it is by no means the only one. They

study the effects of publicity, lobbying and information dissemination as alternative and complementary routes to changing government policy. When there is indication that the outcome of some public interest activity has been deleterious, the authors do not hesitate to criticize.

Here is a rich body of materials to serve as the basis for improvements in both practice and theory, providing a challenge to the well-known "free rider" doctrine. This book shows that there are in fact private interests, though possibly of a nonconventional sort, in public interest activity, and that there is a public motivation for both individuals and foundations who have financed so much of the public interest law activity. We learn that the structure and activities of the public interest law industry do not differ greatly from the private sector. The similarities and differences suggest the potential for fruitful theorizing.

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