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It is now orthodox in economics to explain the desirability of government by pointing to the existence of public goods and the difficulties which the private market would have in dealing with them.[1] It is the theme of this article that the operations of the government itself raise a new and extremely difficult public-goods problem. Consider a federal judge who is making a decision on some case. The decision is a direct generation of externalities by him—the externalities falling on the participants in the case. In addition to these rather restricted externalities, he is participating in the production of a public good: law enforcement. If he should, for example, decide to bring in a decision which is not in accord with the law, he not only changes the situation in this particular case, but he also, in a sense, changes the law for the future.

This latter phenomenon is most important in those cases in which judges are actually making law; their decisions generate a pure public good (or public bad). Note, however, the judge himself has almost no private incentive to reach the "right" decision. Suppose that he reaches a decision which leads to an increase in the crime rate; the rise in the crime rate might have a significant effect on the country as a whole, but the likelihood that this particular judge or his immediate family would be victims is very low compared with the damage inflicted on others. The same principle would apply if the judge extended the definition of some crime to include acts which had previously not been regarded as within the statute.

Once again, it would be extremely unlikely that he himself would suffer any damage from the act; hence, he has created a public good (or bad) without significant private gain (or loss). He cannot be removed from office, nor can his salary be reduced. In practice it is also impossible to even deny him pay raises which are given to other members of the judiciary. It is true that in some cases the judge's decision will not be final;

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[1] The tradition dates from Samuelson (1954); for further examples of this, see Musgrave (1959), Buchanan and Tullock (1962), and many others. The simple slogan "public goods" conceals a large collection of difficulties. I would like to skip over these problems for the purposes of this article because, as we shall see, the public good discussed herein is particularly simple and straightforward.

there may be an appeal. A reversal, however, may be a little hard on his self-esteem, but it does not really injure the judge. Supreme court judges are immune from even this control. Thus, the judge is in a position where his behavior generates public goods or public bads and where he gets almost no private costs or benefits as a result of these decisions.

If the judge has no private motives that influence him on any particular decision, then the very feeble effect on himself of the public good would be enough to lead him to the correct decision. He could not be a free rider because there would be no gain from bringing in a "wrong" decision. This is presumably the reason that we are so concerned with possible conflict of interests in the case of government officials. But it is always better to have someone strongly interested in a correct outcome than merely feebly interested. Further, the judge has reasonably strong private motives which may lead him to reach a decision contrary to that which would maximize his production of public goods. He can be (and very likely is) a free rider.

In the first place, the judge may well have preferences with respect to the issue under consideration, even if he has no conflicting interest. In particular, his personal ethical system may not be that of the legislators. Under these circumstances, he would bear a certain private cost if he followed the legislators' views rather than his own. He may, of course, have an ethical system which not only provides, for example, that execution of murderers is wicked but also that judges should follow the will of the legislature. In this case, he would have an ethical conflict if the law provides for capital punishment. Still, there would be some personal cost involved in carrying out the law in this case. This private cost would be offset against the public good.[2]

I do not know how important this particular private cost is. When I was a law student, there was a good deal of talk about the "fireside equities," lawyer's language for common, ordinary ideas of morality instead of the law. The problem is particularly severe because different judges may have different private ethical systems, with the result that the "law" can vary considerably from judge to judge. To offer a guess, I would think that judges are, to a considerable extent, affected by their personal preferences; and when their personal preferences are contrary to the law for any one of a number of reasons, the public-good aspect of the law is likely to receive relatively short shrift.

Another and more important aspect of the problem, however, concerns the energy and thought which the judge puts into making the decision. This is, for him, a purely private cost. Suppose a particularly difficult

[2] Many people who are opposed to capital punishment believe that it also does not generate public goods because it has no effect on the murder rate. In this case, the judge would, at best, be generating the public good of developing respect for the laws that existed if he carried it out, rather than carrying out his own personal preferences.

question is presented to him. He can produce a quick solution to the problem without much thought. If, however, he wants to be sure that he makes the "correct" decision, he must devote a great deal of time and thought to it. This is a private cost, and the decision will primarily produce public goods.[3] Ordinary public-goods reasoning would imply that he would underinvest in this private expenditure to obtain the public good of a superior decision.

So far, I have talked about judges because they are an almost perfect illustration. Most other government officials are also examples. Indeed, many have policy-making responsibilities which lead to even more severe conflicts between their private costs and the public good or bad that they are producing. Consider the average civil servant. Although it is not true that he cannot be discharged for inefficiency, it is extremely difficult to fire him. Under the circumstances, if he makes a decision, there is no strong reason why he should go against his own preferences if these happen to conflict with the preferences of the majority. In addition, he has no strong reason to work overly hard.

This last factor is particularly likely to be important if he has a very strongly ingrained opinion with respect to some subject. He will be extremely reluctant to take the trouble to study the problem for the specific purpose of finding out whether his judgment is good or bad. There is very little cost to him if his judgment is bad, and the cost of the work together with the change of mind is considerable. Further, discovery that his judgment is bad on some subjects may imply that he has made a number of erroneous decisions in the past and thus has worked considerable harm. The desire to avoid admission of such mistakes is readily understandable. Thus, there are a number of private costs which can be set against the public good of a careful and accurate decision. Needless to say, the same general principles apply to bureaucrats who wear military uniforms.

So far, we have been talking about government officials who are essentially free from the possibility of being fired. In a democracy, the officials who hold the most important positions are not immune from discharge. Politicians can be fired by the voters, and they obviously do have some control over civil servants, if not over the judges. Politicians, then, are motivated to consider the effects of their decisions on their own personal future, and, hence, do have a significant private benefit as well as a private cost attached to the intellectual effort of producing a desirable decision. In this respect they are similar to an employee of a firm producing goods for the market, but unfortunately there is also a major dif-

[3] It is quite possible that judges sometimes get pleasure out of thinking about the problems which come before them, but surely the amount of energy put into these problems for entertainment of the judge is not the social optima.

ference between the elected politician and the official of a private company.

Consider, for example, General Motors. They have an employee who is engaged in designing bumpers for Chevrolets. Presumably, the benefit that he is likely to receive from a superior bumper is, in direct terms, very small. He may or may not buy a Chevrolet, but if he does, the effect upon him of a good bumper design is vastly smaller than the effect on the nation as a whole. Further, his production of this bumper is the generation of a "public good" for the company, that is, it will affect the company's profits. Once again, however, injury to the individual designer from shrinkage of General Motors sales because he has designed a poor bumper will be vastly less than the effect on General Motors. General Motors deals with the problem by imposing upon him a private cost in order to motivate him to produce this "public good"—a good bumper design—for his own private reasons.

To return to our governmental example, the politician is subject to somewhat the same kind of sanction as the General Motors employee. He can be easily fired by the voters if he displeases them. Further, he does have some influence on the future careers of the civil servants and even (in terms of getting salaries) of the federal judges. This influence is much milder than the influence we normally anticipate in the market part of the economy, but it is not zero. Here, we encounter another very important public-good problem. The individual citizen, in choosing what car he will purchase, is making a private decision, the full cost of which will fall upon himself. Thus, he is motivated to put an optimal amount of energy into finding out what is the best car for him. In addition, if he makes a mistake, no one pays for it but himself. If, on the other hand, he is considering voting, then, as Kenneth Arrow (1969, p. 107) points out, "since the effect of any individual vote is so very small, it does not pay a voter to acquire information unless his stake in the initial issue is enormously greater than the cost of information." The individual voter is producing a public good when he casts his vote, and he has very little, if any, reason for acquiring information to see to it that his vote is properly cast. The probable cost to him of miscasting his vote is trivial.[4]

Under the circumstances, we would not anticipate that the voter would bother to become very well informed. Data on information held by voters seem to confirm this hypothesis. People who do not know the names of their congressmen are common. Misjudgments of political issues and, for that matter, belief that the parties are making promises which are directly opposite to the promises that they are actually offering are normal. Granted the public-goods theorem, all of this is what we should expect and what we do observe. Thus, there is a fundamental difference between

[4] See Downs (1957) and Tullock (1967).

the market and politics in that the ultimate customer is engaged in producing a private good for himself when he makes a decision to purchase in the private market. When he casts his vote in the "public market," he is producing a public good. Since there are private-information costs associated both with purchase and with voting, we would anticipate that these private costs would be incurred up to the point where their marginal utility balances that of an improved decision to the individual. This is near zero in the case of the vote.

In the private market, the ultimate prosperity or failure of the entrepreneurs depends on their sale of goods or services to persons who are purchasing private goods for their own benefit. In the public market, the political entrepreneurs succeed or fail in terms of selling public goods to individuals whose misjudgments will redound mainly on others rather than on themselves. The information conditions are quite different in these two markets, and we would expect a far lower degree of consumer satisfaction in the public market than in the private market, simply because the consumer sensibly invests very much less energy in making his decision in the public market. Here again, the public-goods theorem indicates that rational individuals will make choices which are socially nonoptimum.

To return to the theme of this article, democratic governments, which are now normally explained in economics courses as efforts to deal with public goods, generate an extremely difficult public-goods problem themselves. The public decision-making process is a procedure for generating a public good; and the persons involved in it, whether they are the voters, judges, legislators, or civil servants, all can be expected to treat it as any other public good. Hence, we can anticipate that they will invest less in the "private costs" of considering that public decision than is optimal.

Having pointed out a major problem, it is the custom to suggest a solution. Unfortunately, in this case, I cannot do so, although in one situation there is a possible solution. Local governments in the area around major cities frequently are in competition with each other for residents. The individual deciding where to live will take into account the private effects upon him of the bundle of government services and taxes in each suburb. In this case, the decision is a private decision, the bulk of the cost of which falls upon the person making it. Even in this case, however, we do not have a purely private good similar to a car, because the government of the community will be appointed, not by profit-seeking persons attempting to maximize the number of their customers, but by the majority of the customers themselves working through the voting market. Although the individual has a strong motive to consider carefully in which suburb he will live, he has only weak motives to exercise his vote intelligently once he gets there. Since the various alternatives which he faces are all managed in this public-good-dependent way, it is likely that the tendency to "adjust to the demand" is very much weaker than it would be if the suburbs were profit-making firms. There would be very great difficulties in applying this solution to major government units, but the idea is worth further study.

The end product of this investigation is rather depressing. The private market can provide an adequate solution for only those externalities which can be fully internalized privately. The public market which can fully internalize many more "public goods" generates an extreme public-goods problem in its decision process. Thus, we have a choice between a private market which will systematically produce biased decisions and governments which will equally systematically produce ill-considered decisions.

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