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PUBLIC CHOICE AND ANTITRUST

Robert D. Tollison

I. Introduction

The field of antitrust and industrial economics is one of the last bastions of the economics profession to be untouched by the public choice revolution. Economic analysis in this area proceeds in roughly the following way. First, the efficiency of market arrangements and organizations is analyzed. Second, those markets found wanting on the efficiency scorecard are assigned to government, through an antitrust case, to correct. The first step in this process is unobjectionable and represents one of the richest applied parts of modern economics. The second part is weak because it rests on a public interest theory of government. A market failure (monopoly) is found in the private sector, and government (an unexamined alternative) is invoked to correct it. Judges and antitrust bureaucrats are assumed to operate in the public interest, which in this case means the promotion of economic efficiency in the economy.

This is not a very useful way to approach antitrust (or any other) economic analysis. As a positive theory, it is wrong. As many critics have shown, the historical record of antitrust decisions will not support the public interest theory. If we are to understand the course of antitrust better, the behavior of the relevant actors must be made endogenous to our explanation of antitrust outcomes. As a normative basis for criticizing antitrust, the public interest approach is not very helpful. When all is said and done and government is not following one's conception of the public interest in antitrust, we are reduced to such tried and true nonsense as "better people make better government." Change the decision makers and the policy will change. This sounds good but it never seems to work. Government cranks

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along by an internal logic of its own, which in this case we do not know because we have not tried to find out what it is. If we want to have a powerful critique of antitrust, the first thing that must be done is to achieve a positive understanding of how antitrust decision makers behave. Launched from such a platform, antitrust criticism and reform can be more effective.

My interest in this paper is to review the state of the (small) art with respect to developing a positive public choice theory of antitrust and to illustrate the potential of this approach. In Section II, I offer the reader a brief introduction to public choice. In Section III, I briefly outline the prevailing public interest approach to antitrust commentary. In Section IV, I survey some of the useful steps that have evolved in the literature away from the public-interest perspective. In Section V, I present some of the literature directly on the positive economics of antitrust and detail a couple of examples of the approach. Finally, in Section VI, I offer some concluding remarks.

One caveat is in order at the outset. I have not tried to be copious in my search of the literature. As a result, I have undoubtedly missed work that bears on the issues of this paper. My apologies are offered in advance for any glaring omissions.

II. Public Choice

"Public choice" refers to a revolution in the way government is analyzed. Before public choice, government was treated as exogenous to the economy, a benign corrector of the market economy when it faltered. After public choice, the role of government in the economy became something to be explained, not assumed. As a result of the public choice revolution, economists now place government failure alongside market failure as a useful category of analysis.[1]

What is public choice? I advance my own particular answer to the question. Public choice is an expansion of the explanatory domain of economic theory. Traditional economic analysis uses the apparatus of economic theory to explain the behavior of individuals in private settings. Public choice represents the use of standard economic tools (demand and supply) to explain behavior in nonmarket environments, such as government.

This expansion of economic theory is based on a simple idea. Individuals are the same people whether they are behaving in a market or nonmarket context. The person who votes also buys

[1]See Mueller (1979) and Buchanan and Tollison (1984) for useful surveys of public choice research.

groceries; the workers in government bureaucracies do not have radically different temperaments from workers in corporations; and so on. There is no Dr. Jekyll and Mr. Hyde dichotomy in economic behavior whereby we behave one way in the private sector and another way in the public sector. As a practical working hypothesis, individuals seek to promote their self-interest in any given situation. Public choice represents the application of this axiom to behavior in nonmarket settings. This approach has been employed by public choice analysts to explain the behavior of voters, bureaucrats, politicians, interest groups, and other political actors and organizations.

Obviously, this is not an argument that rational behavior in private and public settings leads to the same types of outcomes. The result of self-interest in government manifests itself in a different way than elsewhere because the constraints on individual behavior are different. The managers of a private corporation and a government bureau behave differently, not because they are different people but because the rules that govern their behavior are different. This is a simple but important point.

Finally, note that public choice closes the behavioral system of economic analysis (Buchanan 1972). It incorporates the behavior of government actors into economic theory, and it pushes us beyond the Pigovian fantasy that the market is guided by private interest and the government is guided by public interest. It is this step that is sorely needed in the field of antitrust and industrial organization.

III. The Antitruster's View of Government

There is a nearly unanimous tendency in antitrust commentary toward a public interest theory of government. In short, there is an implicit and unexamined view in the literature that antitrust decision makers are benign seekers of the public interest. If they knew better, they would do better. This case can be made without much effort by drawing selective references from the literature.

The primary U.S. antitrust statutes—the Sherman Antitrust Act (1890), the Clayton Antitrust Act (1914), and the Federal Trade Commission Act (1914)—are largely seen as being without economic motivation. Rather they are seen as efforts by the Congress to protect the public interest (Bork 1966, p. 7). Moreover, the role of the antitrust bureaucrats put in place by this legislation is seen as that of maintaining a competitive economy (Bain 1968, p. 515). Scherer (1980, p. 491) summarizes when he observes that antitrust is "one of the more important weapons wielded by government in its effort to harmonize the profit-seeking behavior of private enterprises with the