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# Law and Good Intentions

BY ANDREW P. MORRISS

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Americans, not just classical-liberal ones, have an almost instinctual distrust of government. Our nation began in a revolt inspired partly by the “Intolerable Acts” of King George III and taxation without representation. The Declaration of Independence recited a lengthy list of grievances against the British government, summarized as “a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute Tyranny over these States.”

This instinct, which often mystifies our foreign friends despite their own experiences with tyrannies, is put on a solid theoretical footing by Public Choice theory, pioneered by James Buchanan and Gordon Tullock in *The Calculus of Consent* in 1962 and developed thereafter by an ever-growing number of scholars. Public Choice explains why governments favor special interests. Providing benefits to a small group at the expense of the diffuse majority seems like such an obvious course of action once one has read Buchanan and Tullock that it is hard today to grasp just how revolutionary their theory was when it appeared.

Yet *The Calculus of Consent* was a revolutionary document, as revolutionary in its way as the Declaration not quite 200 years earlier. When the book was published, the reigning theory of government (one still taught in many high schools and even some colleges) was the “public interest” theory. Under this theory each legislator is motivated to serve the interest of the public at large. If pollution is the problem to be addressed, then the legislature seeks to minimize the total costs of both reducing pollution and pollution itself by choosing the

least costly methods and the most appropriate regulatory measures to do so. Statutes and regulations are not intended to advantage particular industries or regions at the expense of others, but to benefit all.

Despite Americans’ skepticism about government, they continue to have a great deal of faith in some aspects of it. Polling data consistently support the contradictory conclusion that although Americans do not

believe the government is looking out for the public interest and correctly identify a variety of special interests as benefiting from regulations, they also think well of their own representatives and of the local governments with which they have more direct experience. General questions about trust in government find most people are

skeptical quasi-libertarians. Questions about specific regulatory policies often find the opposite, however, with majorities in favor of government action. In short, the American attitude is something like: “They’re all crooks except for my guy—he’s looking out for me” and “Special interests control the government except for the environment, labor protection, workplace safety, and so on.”

This seeming paradox is present in many people’s reaction to Public Choice analysis: “Yes, but what about the good intentions of the really dedicated public servants?” While recognizing that particular accounts of the dispensation of special favors are true, nonclassical

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liberals often react to attempts to generalize from those case studies by accusing classical liberals of being “cynical.” We classical liberals can protest until our faces turn blue that Public Choice does account for good old Congressman Smith and Bureaucrat Jones, who really are selflessly dedicated to the public good. Smith and Jones have to keep their jobs to exercise their selflessness, and keeping their jobs means getting re-elected and maintaining (or increasing) their agency budgets. After all, if Smith loses his seat and Jones her job at EPA, neither will be able to be selfless on behalf of the rest of us. Competing for resources in the political arena requires even those with good intentions to get down in the trenches—seeking votes and campaign contributions, for example—and trench warfare requires allies. Sometimes those allies come with a price, such as a minor tweak to rules or legislation that helps a particular interest group. Such compromises, which are absolutely necessary to maintaining an agency or a seat in Congress, are inevitable and offer special interests the opportunity to influence even the best-intentioned public servant.

Unfortunately, I rarely find that this answer persuades those convinced of Congressman Smith’s and Bureaucrat Jones’s dedication to the public. Smith and Jones have such good intentions that no list of counterexamples will persuade some folks to not fall back on a public-interest explanation from time to time. How then should we address the question of the good intentions of our public servants?

A recent visit to Guatemala gave me some new answers to the problem of good intentions. I have spent several months over the past few years teaching at Universidad Francisco Marroquín, a free-market university in Guatemala City, and traveling around Guatemala. Unlike Americans, Guatemalans do not have many illusions about government. Having experienced a brutal civil war for several decades, military dictatorships (including some headed by generals of questionable sanity), and endemic corruption, Guatemalans with whom I have talked go well beyond Public Choice theory’s “getting re-elected means I need to compromise my principles to gain votes and campaign contributions” explanation for how the well-intentioned politician might serve special interests. (Although my impressions

of Guatemalan public opinion are not based on scientific surveys, they are based on talking with many students and faculty, as well as individuals outside the university.)

Guatemalans largely believe their politicians are thieves—with considerable justification. Members of the last government, for example, appear to have stolen on a scale that even legendary Chicago machine politicians would admire: the former tax administrator is accused of stealing more than 62 million quetzales (approximately \$8 million); millions more vanished from the social-security trust fund; and the former president fled the country. These are but a few of the scandals since the last election. Not surprisingly, besides believing that government is generally corrupt, many Guatemalans also believe that almost any particular politician is corrupt as well.

Despite this history of corruption, three programs of recent Guatemalan governments are examples of good-intentioned policies, and few people tell special-interest stories about them. Yet all three have failed spectacularly. Their failures provide at least a partial answer to the question of how to understand why even good intentions are not enough to justify government action.

### **Traffic-Safety Mimes**

**B**ecause unemployment is high, many street corners in Guatemala City feature individuals hustling to earn money by entertaining drivers stuck at traffic lights. Clowns, acrobats, and mimes of various skill levels perform and then walk down the line of cars asking for contributions. Far less obnoxious than the “window cleaners” who used to plague New York City drivers, some of these individuals are genuinely entertaining, while others are simply sad.

To promote the use of seat belts, the Guatemala City municipal government hired 20 street mimes in April 2001. They approached cars and when an occupant was seen not wearing a seat belt, they mimed buckling up. The program’s intent was only the best: Guatemala City traffic is alarmingly chaotic, with frequent accidents. Seat-belt usage is clearly lower than it ought to be, particularly given the driving habits. Buckling up is a low-cost way to save lives—by any measure, encouraging more people to use seat belts voluntarily would improve Guatemala.

Moreover, hiring a few street mimes can hardly be seen as a special-interest program, and it would cost relatively little. (Admittedly, the program benefited the mimes, who no longer depended on tips, and insurance companies, which might pay out less in injury awards if more people used seat belts.) If we concede that this was an attempt to serve the public interest, we are left with the puzzle that the program was unpopular and abandoned after only a few months. Why?

Most people with whom I spoke about the program said it was unpopular because people found it annoying to be hectorated by strangers. Drivers did not like the well-intentioned advice to buckle up being personally directed at them by a mime. Government failed not because it delivered a windfall to street mimes, but because the idea of a nanny state is unattractive

when it is personalized. Guatemalans do not want the government to station people on street corners to lecture them (even silently) on appropriate behavior—even behavior that is virtually costless and has large benefits. People tolerate things like the increasingly strident warning labels on cigarette packages because we can ignore them if we choose. But put a mime just inches from our faces, buckling his imaginary seat belt, and people rebel because the nanny is impossible to ignore. Good intentions aren't enough.

### Teaching Literacy

Guatemala has an enormous literacy problem. Many of its people speak only one of the 23 indigenous languages (and an even larger number of dialects) rather than Spanish, and even more cannot read and write Spanish or any indigenous language. (The official literacy rate is only 71 percent.) Unless Guatemala solves this problem, its economic future is bleak. Promoting Spanish literacy is critical and clearly in the public interest, however defined.

To do so, the education ministry in December 2000 decreed that every Guatemalan high-school student would have to teach someone to read and write in Spanish. The aim was noble. And although the means chosen were questionable (are high-school students really

equipped to teach literacy? By what right does the state conscript labor even for noble purposes?), the program hardly benefited a special interest. If anything, for-profit Spanish teachers were disadvantaged by the competing flood of conscript labor. Nonetheless after three years the program was discontinued.

Again, let us concede that this was a genuine attempt to advance some public interest. Why did it fail? One important reason was the predictable result of making

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something valuable (a high-school diploma) depend on the cooperation of someone other than the student, in this case the illiterate. The illiterate cannot read and write, but they understand incentives. Quickly realizing that they had something valuable (their teachable status), the illiterate (who, of course, were mostly poor as a result of their illiteracy) began charging

the high-school students to give them lessons. Paid by the lesson, the illiterate lacked any incentive to succeed in learning to read—indeed, the slower people learned, the more lessons they could charge the students to give to them. Good intentions were not enough to overcome the bad incentives created by this program. Eventually, the stories about the need for high-school students to pay the illiterate to learn led to the program's downfall.

### Protecting Forests

Guatemala is a lush, green country. The central highlands have extensive forests. The jungle in the northern region stretches as far as the eye can see. Seeking to protect its forest resources, the Guatemalan government restricts logging. In particular, because of extensive deforestation in the department of Totonicaban, the government in the 1990s decreed that landowners must pay the government a fee and agree to plant five new trees to gain permission to cut down a tree on their own land. (The fee varied with the size of the tree cut down.) Being sensible (and this is the good-intentioned part), the government left an exception for cutting down trees infected with the *gusano peludo*, or "hairy worm." That pest had infected large areas of the department, and the only remedy was to remove the

trees. This is the weakest of my public-interest examples because there is abundant evidence that government land-management policies are driven by interest-group pressures. Let us nonetheless concede for purposes of argument that this was a good-faith effort to protect the environment.

Not too surprisingly, people who wanted to cut down trees determined that infecting them with the worm, easily done by placing infected pine cones near healthy trees, avoided the fee and the need for replacements. After this decree was issued the number of infected trees skyrocketed. The policy failed to protect Guatemala's forests, even harming them as the infected area spread to provide an excuse for timber harvests. The reason is simple: Something valuable was available only if it first was infected. Not taking account of the economic incentives created by the well-intentioned rule doomed it to failure.

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Good intentions were not enough to overcome the bad incentives created by Guatemala's literacy program.

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My three examples of good intentions gone bad are not, of course, a formal proof that they will never produce a successful government program. They do illustrate the perils of relying on good intentions alone, however. The street-mime program failed because the Guatemala City government did not consider how drivers would react to being personally nagged. Spending someone else's money, the city government had little incentive to do market research on the effective means of increasing seat-belt use and, with the best of intentions, did not accomplish its goal. The literacy program and forestry law addressed serious problems, but failed to consider the obvious economic incentives created by the programs' structures.

Street mimes teaching seat-belt use are good for a chuckle, but the point is not that governments do silly things from time to time. The point is that good intentions are not enough. 