Chapter 11

Legislators and Legislation

1. INTRODUCTION

The legislature in a democracy refers to the set of elected individuals (legislators) who make laws according to procedures specified in the constitution. Consider how laws are made by a typical legislature. The legislators hold a meeting which is administered by a chairperson, who is elected by all the legislators. At the meeting, a legislator may propose a law by submitting a bill to the chairperson. Upon receiving the bill, the chairperson sets aside a time during which legislators who support it can speak in its behalf and opponents can speak against it. At a designated time or as the result of a vote, the discussion stops and a poll is taken in order to determine the number or percent who approve the bill. If the number or percent is greater than that specified in the legislature's or constitution's rules, the bill is passed. The percent usually chosen is a simple majority – 50+ percent.

The U.S. has two legislative houses: the House of Representatives and the Senate. A bill must obtain a majority in both houses in order to become a law. Moreover, the U.S. president can veto legislation even though it has passed both houses. The legislature can override the veto, but only with a two-thirds majority in each legislative house. Thus, for a bill to become law in the U.S., there must be a kind of supra-majority.

A new law must be consistent with the constitution. The judicial branch can overturn a law if a majority of high court judges believes that it violates some provision of the constitution. In the U.S., the first federal income tax was declared unconstitutional because it included taxes on real estate and personal property, which the Supreme Court judges regarded as “direct” taxes. Direct taxes, according to the constitution, must be apportioned according to the population of the states. This provision was included in the constitution in order to prevent a redistribution of wealth from larger and wealthier states to smaller and poorer states. An amendment was made to the constitution in 1913 which gave the legislature the power to collect income taxes. So today the legislature can impose taxes on incomes without worrying about a Supreme Court review.

Public Goods and Legislative Failure

The study of legislatures presents a serious problem for Public Choice. Economic theory shows that there are many possible market failures. Not only do many goods have public goods characteristics, the correction of market failures, such as natural monopoly and externalities, has public goods characteristics. Accordingly, economics teaches that the legislature in a democracy has a potentially important purpose. However, when real legislatures and government administrators are assigned to perform this function, they often fail.

One example is national defense expenditures. Much national defense spending has been shown to be wasteful. Items have been ordered that are either unnecessary or harmful to defense. Defense contractors have typically been able to earn higher profits than firms in other industries, suggesting that they have been overpaid. Contracts are often awarded to large campaign contributors or to firms located in voting districts that are represented by powerful politicians or pressure groups. And information from secret weapons’ research has been sold by bureaucrats and defense contractors to foreign governments and potential enemies.

Another example is the regulation of the market economy. Legislatures have often sanctioned monopolies, they have passed laws that cause external effects rather than reduce them, they have prevented buyers and sellers from freely setting the prices of traded goods and services, they have regulated the quality and character of products, they have interfered with intra-national trade and international trade, and they have disrupted the market economy with unpredictable fiscal and monetary policies.

Such actions are sometimes the lesser of two evils. Economic theory shows that it is sometimes better to interfere with the market economy in one way in order to avoid a worse market failure. But government policies are often just the opposite of what the economist would recommend. In other words, they often cause the wealth of an economy to be less than otherwise.

Laws and Self Interest

How can we explain the fact that legislators often make laws that cause or increase market failure rather than reduce it? We have already presented some fundamental (and indirect) explanations. These include campaign spending, the probable inefficiency of majority rule, and vote trading. Our aim in this chapter is to provide more direct explanations. To understand these we put ourselves in the shoes of legislators. We try to identify ways in which legislators can gain by passing bills that reduce efficiency.

Consider an example. Suppose that you own a large steel company and that you have been recently losing customers to cheaper foreign imports. Suppose further that you believe that by becoming a legislator, you could substantially increase the probability that the legislature would pass an import tariff on or a ban against foreign steel. Then it might be in your self interest to become a candidate so that, if you are elected, you can influence the vote. Or suppose that you are an experienced stock market speculator. Then you know that stock prices will be effected by government decisions. By influencing the vote, you can cause the price of a stock that you own to rise. Or, by finding out how other legislators will vote, you can use your inside information to make profitable stock market investments.

> Legislators often find that they helping to pass a law serves their self interest even though it may reduce efficiency or cause market failure.

Informed members of the collective would try to have a constitution or laws that makes it difficult (costly) for people to profit directly from legislation that they help to pass. Indeed, U.S. legislators are not permitted to own companies or shares that enable them to gain from legislation. However, a legislator may be an agent for others. By agreeing to vote for legislation that benefits particular individuals or groups, a legislator can often obtain large campaign contributions to help him win an election. He also may be able to earn favors from beneficiaries for himself or family. Examples are free vacations, payments for invited lectures, employment for a family member, gifts of property, and so on. He may even be able to obtain bribes. Also, because legislators are elected in voting districts, their self interest leads them to vote for legislation that helps people in the district regardless of whether it reduces economic efficiency.

Thus, as Public Choice sees it, some laws get passed even though they may reduce efficiency or cause market failure. The reason is that legislators find that they can serve their self interest. They may be able to do this directly under some circumstances or indirectly by serving the interests of others who are willing to help them win an election and/or who are willing to give favors or pay bribes. The problem we face is to describe how this process works.

"Special" Interests and Political Pressure

Before we begin, it is wise to make a few remarks about terminology. Writers on how legislators are influenced by outsiders often use terms like "special interests," "interest groups," or "pressure groups." Regarding these terms, we should recognize the following. First, every person who expects to be effected by legislation has an "interest" in it. To that person, the interest is special. Thus, the term "special" is redundant. It is nevertheless useful because it helps us distinguish individuals who aim to achieve their goals through political interaction (special interests) from those who aim to achieve them in other ways. (The term "special interest" is often used to represent an interest of which the writer does not approve. We should avoid using terms in this way.) Second, writers who use the terms "interest *group*" and "pressure *group*" ordinarily want their readers to focus on the influence of several or many people acting together, rather than on the influence of a single individual. However, because individuals have different amounts of wealth and are in different positions in the market economy, it is possible that a single wealthy individual will have greater influence than the combined influence of the members of some group. We shall study the group in Chapter Twelve when we turn our attention to pressure groups. In this chapter we make no distinction between the attempts by individuals to influence laws and attempts by groups.

> Pressure on a legislator: net benefits perceived by a legislator of acting in one way or another due to the various actions taken by individuals to influence his voting choices in the legislature.

In the following discussion, we use the term "pressure" to refer to a legislator's perceived consequences of the various tactics used by individuals to change the behavior of legislators. The most common of these are (1) offers to vote for (and implied threats to vote against) a legislator or for his party in the next election, (2) campaign contributions, and (3) bribes or favors.

Plan of this Chapter

In order to understand why legislators pass laws that do not meet the criterion of economic efficiency – or why they pass any kind of law, for that matter – we must put ourselves in the shoes of legislators and of those who try to influence legislation. The first step is to try to understand legislators' goals and their means of achieving them. Part two of this chapter discusses these goals, including the goal of serving the "collective interest." It also introduces the notion that Public Choice uses the analytical technique of treating legislators as functionaries. The second step is to identify pressures on legislators from the prospective gainers and losers. To understand such pressure, we must show how people can benefit or be harmed by the laws that legislators can make. This is done in part three. Chapter Twelve discusses the methods that can be used to influence legislators.