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Culp: Discretionary Justice: A Preliminary Inquiry

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DISCRETIONARY JUSTICE: A PRELIMINARY INQUIRY. By *Kenneth Culp Davis*. Baton Rouge: Louisiana State University Press. 1969. Pp. 233. \$8.50.

Professor Davis, a distinguished professor of law at the University of Chicago and author of the scholarly four-volume *Administrative Law Treatise*,¹ delivered the Edward Douglass White Lectures

1. 1955.

at Louisiana State University in 1966. Those lectures have now been rewritten and published as an essay entitled *Discretionary Justice: A Preliminary Inquiry*. The work's central inquiry is, in the author's words "what can be done to minimize injustice from exercise of discretionary power" (p. 3). His answer is

that we should eliminate much unnecessary discretionary power and that we should do much more than we have been doing to confine, to structure, and to check necessary discretionary power. The goal is not the maximum degree of confining, structuring, and checking; the goal is to find the optimum degree for each power in each set of circumstances. [Pp. 3-4.]

The primary concern of the author is with discretionary justice for individual parties, particularly in the administrative process. He deliberately excludes, therefore, situations in which discretionary justice is applied to other than individual parties, such as when discretionary justice is present in the making of decisions or policies which affect particular social groups or segments of the population. One may wonder whether the grounds for those exclusions are convincing. Is it of no relevance to the argument that a substantial proportion of today's youth believes that policy decisions concerning our military and foreign policy in Vietnam or concerning legal aid to the poor are pertinent in considering justice for individual parties? Is it not the case that often the major basis for concluding that injustice has been done to individual parties is a showing that the social groups to which they belong are systematically excluded?

Professor Davis offers no rationale for selecting and treating particular problems of discretionary justice in some agencies and not in others. My guess is that Professor Davis' concerns arise more from his values and experience as a legal expert in administrative law than they do from systematic attention to theoretical or empirical concerns about discretionary justice to individual parties. He has the expert's eye for discretionary justice in the United States Immigration Service, the Federal Trade Commission, and regulatory agencies in the public sector; and he displays the liberal's concern for injustice in selective enforcement and in the administration of privileges and gratuities. Moreover, he shares contemporary alarm over the discretion exercised by police and prosecutors. His omissions, however, scant important problems that must be dealt with in any theory concerning discretionary justice. Brief mention of a few may call attention to such theoretical problems.

Nowhere, for example, does Professor Davis discuss the administrative procedures of the military forces or of the selective service system, even though the former is particularly notorious for excessive rule making and for the arbitrary application of rules. Indeed,

the problem of *Catch 22*—exercising choice among alternatives and creating new rules for decisions—is inadequately treated in the book. Yet, in my opinion that problem is the central one in discretionary decision making.

Furthermore, nowhere does the book treat discretionary justice in civil rights agencies despite the existence of some rather important investigations on the subject.² Those investigations make it clear that demonstrating injustice to an individual party is often out of the question when discrimination occurs against the minority group to which that party belongs. Often it is far easier to show that an employer is discriminating on a particular basis than it is to demonstrate the specific ways in which the discrimination is being carried out. Indeed, if one is concerned with discretionary decisions about “failure to act,” often the only way of demonstrating such failure is to resort to behavioral-science research on populations which are not part of an agency’s caseload. The study of civil rights organizations also demonstrates how important public policy may be in the way those organizations exercise discretionary justice. Problems of selective enforcement in administration are just as glaring among civil rights agencies as they are among the police. There is little theoretical difference between a civil rights agency exercising discretion in setting a policy to ignore discrimination in housing, universities, or hospitals in order to focus on discrimination in employment, and a police department establishing a policy to ignore gambling but not homicide.

Finally, nowhere does Professor Davis discuss the special problems of exercising discretionary justice in situations in which professionals are involved as administrators, except when he treads lightly on the discretionary powers of judges in sentencing and somewhat more heavily on that of prosecutors. I find this omission not at all surprising, not, as might be suspected, because one goes lightly on matters involving one’s own profession, but because the core element defining any profession is the exercise of discretionary judgment—a judgment that ordinarily is subject to review only by one’s peers.³ One of the basic problems in discretionary decision making, then, is the relationship between a professional decision and an administrative decision. For example, doctors in hospitals, professors and deans in law schools and universities, and public-school teachers make many professional-administrative decisions; and those decisions may be of greater consequence to individuals than are many of the ones about which Professor Davis gets so excited. Thus a physical blow by the police might have less long-run

2. See, e.g., L. MAYHEW, *LAW AND EQUAL OPPORTUNITY* (1968).

3. See Reiss, *Professionalization of the Police*, in *POLICE AND COMMUNITY RELATIONS* 215-30 (A. Brandstatter & L. Radelet ed. 1968).

effect on an adolescent than would the bad judgment of a teacher whom the child confronts every day.

The relationship between a professional decision and an administrative one is not simple. Bureaucracies are built on rules and on the notion that decisions must be made according to those rules and with relatively little choice in applying them. Professional decision making is based on quite the opposite model—the necessity to exercise judgment when confronted with the individual case. That difference may explain why professionals are so easily alienated by bureaucracies and find it difficult to work in them. There is perhaps another reason why we do not like to regard both of these types of organizations as having the same kind of problem: to do so tests the generality of our model. But should the informal procedures in our law schools—selective admission, training, grading, and appeal—be regarded any differently from those of a state employment service or a state mental hospital? While Professor Davis might reply as he does at the beginning of his book—“[t]he goal is not the maximum degree of confining, structuring, and checking; the goal is to find the optimum degree for each power in each set of circumstances” (p. 4)—nowhere does he tell us how one may determine “the optimum degree for each power in each set of circumstances” and to whom it should apply. Yet, above all, that determination is central to his or any theory of social control.

Quite clearly, the author is most comfortable in the bureaucratic or administered society, if by that term we mean a society in which as much decision making as possible is accomplished by making and applying rules. Officials rather than legislators make rules, and officials rather than judges apply them. Like many sociologists who regard bureaucracy as a great social invention, Professor Davis believes that “[t]he procedure of administrative rule-making is . . . one of the greatest inventions of modern government” (p. 65). The Administrative Procedure Act⁴ is the model of procedure in rule making, and he writes of it in very positive terms: “The procedure is both fair and efficient. Much experience proves that it usually works beautifully” (p. 65). Insight into his approach may be seen from his model of a body of rules:

The most precise and detailed set of administrative rules I know of is the Federal Tax Regulations which fill more than four thousand double-column pages of rather fine print. These rules are the product of the effort of thousands of federal employees over many decades, and the whole set of regulations seems to me an especially admirable body of law, even though the process of correcting imperfections seems endless. [P. 43.]

4. 5 U.S.C. §§ 701-06 (Supp. IV, 1965-1968).

Experience is hardly a substitute for research, however, and it seems doubtful that the host of studies on bureaucratic rule and decision making supports such testimony.⁵

It seems that Professor Davis' ideal is to have a rule for every decision, although, practical man that he is, he withdraws from what he regards as "excessive detail" in rule making, since "reasonable human beings who are expected to apply the rules will inevitably rebel against excessive detail" (p. 43). Despite his apparent awareness that an increase in the amount of administrative detail results in a corresponding increase in administrative discretion, nowhere does he treat this relationship as a problem or obstacle. The behavioral-science literature on choice in decision making strongly suggests that an increase in the choices available reduces the capacity to discriminate among them, thereby substantially reducing the probability that the most rational choice will be made.⁶

Perhaps the reason why Professor Davis is so comfortable with rule making is that he firmly believes the principle which he claims that Judge Henry Friendly does not understand: "An adjudicatory opinion can never say anything that cannot be said as well or better in a rule" (p. 46). The reason underlying this maxim is that "a rule need not contain any generalization" (p. 60). The practice is simple enough: when faced with a decision, find a rule; when a rule cannot be found, turn to *Catch-22* and "announce a decision as a rule." But just how the rule reduces arbitrariness in decision making is no clearer than *Catch-22*.

Professor Davis advances many specific proposals for structuring and confining the discretion exercised by administrative officials in a variety of agencies. Those proposals seem eminently reasonable. Why shouldn't an applicant for a visa, for a bank charter, or for admission to a public university be given reasons or an opportunity for rebuttal when his application is denied? Why shouldn't plea bargaining be denied to public prosecutors, or at least why shouldn't they be required to announce the rules that govern their choices? Why shouldn't the sentencing power of judges be restricted so as to reduce the disparity of sentences among judges? And finally, why shouldn't the selective enforcement practices of officials be confined by rules?

What Professor Davis does in his book, then, is to raise questions such as these about practices in governmental agencies and to point to the kinds of injustice that can arise because discretion is exercised.

5. Feldman & Kanter, *Organizational Decision Making*, in HANDBOOK OF ORGANIZATIONS 614-49 (J. March ed. 1965).

6. See Edwards, *Decision Making*, in 4 INTERNATIONAL ENCYCLOPEDIA OF THE SOCIAL SCIENCES 34-41 (1968); Newell & Simon, *Simulation: Individual Behavior*, in 14 INTERNATIONAL ENCYCLOPEDIA OF THE SOCIAL SCIENCES 262-68 (1968).

But nowhere does he provide evidence of "injustice" occurring because discretion is not structured, confined, or checked in the manner he would have it, and nowhere does he provide evidence that following his guidelines would necessarily result in "justice." Rarely does he document the effect of any change; consequently, the book lacks, in the language of behavioral scientists, any evidence drawn from "before-after" studies of the effect of changing the structure of decision making in organizations.⁷ One wonders whether the changes are to be thought of as inherently good even though they may not achieve the objectives.

Throughout his essay, Professor Davis relies on rule making as the principal means for confining discretion, on openness of discretionary processes as the major means for structuring discretion, and on supervision and review as the major means for checking discretion. These are, of course, the classic means and processes operating in modern bureaucracies. What is absent from Professor Davis' treatment, however—a deficiency that may puzzle behavioral scientists—is both a consideration of the relative importance of these factors and a consideration of how bureaucracies can turn these means to ends of justice or can find ways to circumvent them so that decisions go against the interests of individual parties.

Were I to speculate on the relative importance of the three factors in protecting individual parties, it would seem to me that openness is the most important; yet it may be most easily subverted. The openness of the courtroom, for instance, is easily subverted by proceedings in chambers, conferences, and so on; and the openness of hearings in agencies may easily be subverted by fictions that place private ends above public ones. This question of the relative importance of openness to the other factors is, of course, an empirical question that should be investigated; but a consideration of the theory of, and research on, bureaucracies should aid one in predicting effects of change.

Professor Davis' concern with making rules to protect individual parties provides an example of his failure to consider such empirical questions. Since he is almost altogether concerned with how the *absence* of rules gives rise to injustice, he fails to examine how their *presence* may create grounds for it. Does not the very existence of rules as well as their absence give rise to discretion that may be arbitrary and unjust? It is not enough for Professor Davis to resolve questions of fact by opinion, as he often does. At the very outset, for instance, he announces:

7. Leavitt, *Applied Organizational Change in Industry: Structural, Technological and Humanistic Approaches*, in HANDBOOK OF ORGANIZATIONS 1144-70 (J. March ed. 1965).

I believe that officers and judges do reasonably well at the rules end of the scale because rules make for evenhandedness, because creation of rules makes it relatively unemotional, and because decision-makers seldom err in the direction of excessive rigidity when individualization is needed. And probably injustice is almost as infrequent toward the middle of the scale where principles or other guides keep discretion limited or controlled. I think the greatest and most infrequent injustice occurs at the discretion end of the scale, where rules and principles provide little or no guidance, where emotions of deciding officers may affect what they do, where political or other favoritism may influence decisions, and where the imperfections of human nature are often reflected in the choices made. [P. v.]

Perhaps so, but these are empirical questions which call for a consideration of the theory and research relating to bureaucracies.

Indeed, examination of the structure and nature of bureaucracies seems crucial for determining the quality of administrative justice. While it is a cardinal principle in the Weberian theory of bureaucracy that rules are a way of ensuring consistent treatment of all individual parties,⁸ it also is a principle that bureaucracies neutralize civic power.⁹ Paradoxically, then, protection exists only so long as bureaucratic officials behave properly. When they do not, the capacity for citizens to affect official actions is very limited. How can one ignore the fact that the history of regulatory commissions is a history of their co-optation, that the power to litigate is the power to neutralize much administration, and that for every formal procedure there is an informal one of circumvention. Above all, there is *Catch-22*.

A major concern of Professor Davis is with injustice arising from selective enforcement. He comments that "the power to be lenient is the power to discriminate" (p. 170), and he opposes selective enforcement. But modern administrative bureaucracies invariably allocate scarce enforcement resources under a policy of selective enforcement. Even his much-admired Internal Revenue Service engages in such enforcement when auditing tax returns. To be sure, the IRS follows computerized stochastic, or random, processes in doing so; but is random selection, based on computerization, what defines justice in selective enforcement? Perhaps so for Professor Davis, since he advises:

Take for instance the Social Security Administration in its adjudication of claims. The answers are highly crystallized for old age and survivors claims, and computers do most of the work; the tiny pro-

8. See MAX WEBER ON LAW IN ECONOMY AND SOCIETY (M. Rheinstein ed. 1954); M. WEBER, *Bureaucracy*, in FROM MAX WEBER: ESSAYS IN SOCIOLOGY 196-244 (H. Gerth & C.W. Mills ed. 1946).

9. Weber, *Bureaucracy*, *supra* note 8, at 230-32.

portion of disputed claims are disposed of with great efficiency; significant policy questions still arise and probably always will, but they are highly exceptional! [Pp. 7-8.]

Indeed, the stipulated advantages of an administrative bureaucracy, with its high degree of rationality, application of rules through computerized justice, and informal accountability through communication, are all apparent in Professor Davis' prescription for enforcement and adjudication.

The problem of avoiding injustice to individual parties when discretion is exercised is a problem in constructing fail-safe organizations and systems. As yet, we do not know very well how to go about such construction. But many of the questions posed by Professor Davis, and his answers to those questions, are amenable to scientific investigation. Two examples make this fact apparent. Professor Davis asserts: "For problem cases, group decisions made possible through subdelegation are clearly preferable to decisions by board members without group delegation" (p. 132). Similarly, he states: "A jury of twelve is better than a jury of one because the twelve check each other's weaknesses, emotions, and idiosyncracies; a nine-judge court or a three-judge court is better than a one-judge court for the same reason" (p. 143). So far as I know, neither the literature on small-group studies nor that on natural experiments confirms either of these propositions,¹⁰ although they are hardly testable in the form stated. Legal scholars and behavioral scientists might profitably pursue such questions together.

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INDIAN ECONOMIC POLICY. By *B. R. Shenoy*. Bombay: Popular Prakashan. 1968. Pp. xviii, 354. Rs. 25.

Seventy per cent of the investment resources of India are allocated to the public sector. The dominating participation of the government in India's mixed economy underscores the necessity for economists to exercise a constant and critical vigil on Indian economic policy. Professor Shenoy's book, therefore, deserves a hearty welcome. However, contrary to the expectations engendered by the

10. See S. SIEGEL & L. FOURAKER, *BARGAINING AND GROUP DECISION MAKING* (1960). See also *The Group as a System of Social Interaction* (pt. III), in *SMALL GROUPS* 345-574 (P. Hare, E. Borgatta & R. Bales ed. 1955).

title of the book, it is not a comprehensive treatment in coordinated chapters of the Indian government's general economic policy. Instead, it is a collection of Professor Shenoy's articles, published from 1958 to 1966 in daily newspapers as well as in professional journals, in criticism of the government's policies. Consequently, the chapters are at times annoyingly repetitive and often relate to particular policy decisions made by the government on various occasions. However, a theme does emerge from the book as a whole, and it is sometimes supported by excellent analysis. That theme is that the centralized economic planning and the diversion of resources to the public sector have resulted in serious economic and social ills in India.

Professor Shenoy observes that the Indian national income is among the lowest as well as slowest rising in the world. Although nearly one half of it is drawn from agriculture, and although nearly seventy per cent of the population lives on that one half, agriculture has remained neglected. This neglect is evident from the poor allocation of resources to agriculture, while growing proportions of domestic savings and foreign aid are appropriated to the public sector and to the heavy industries in the private sector. The growth of national income (3.2 per cent per annum) has barely kept pace with the growth of population (2.2 per cent per annum); and after these statistics are adjusted to real terms, the actual well-being of the masses appears to have declined. Inflation has been on the increase as a result of the combination of the budget deficits covered by Reserve Bank and commercial bank borrowing, the secondary expansion of credit due to deficit financing by commercial banks on their reserves, and the rupee payments made to the United States Agency for International Development (USAID) in New Delhi for the imports of food grains and other agricultural surpluses from the United States under its Public Law (P.L.) 83-480.¹ Although the P.L. imports have discharged the humanitarian function of making up for crop failures, they have, in Professor Shenoy's opinion, distorted the price structure and induced shortfalls in production, and consequently have created the need for food imports. These imports squeeze the food grain farmer and induce him to shift land and resources away from food crops. Since the shift is artificial, the national product is adversely affected. The need for such imports is likely to continue so long as the policies of forced industrialization continue to the neglect of agriculture. The rise in food grain prices is the result of physical shortages of food grains and inflation, not of any monopoly combination or hoarding on the part of traders and large farmers. Therefore, according to Professor Shenoy, anti-

1. Agriculture Trade Development and Assistance Act of 1954, 68 Stat. 454, codified in 7 U.S.C. §§ 1427, 1431, 1691-94, 1701-09, 1721-24 (1964).

hoarding ordinances would merely shift the hoarding from a comparatively small number of traders and large farmers to householders. Moreover, Professor Shenoy feels, long-range help cannot be expected from the Food Corporation, a public-sector corporation designed to ensure a minimum price to the producer and to protect the consumer from speculative trade. The Corporation, in its effort to meet its high running costs and to show profits, would squeeze both farmers and consumers and would open up fresh portfolios of political patronage and power. The price controls have failed not because there has been collusion between traders and cultivators, but because the government has failed to deal properly with the two major causes of rising prices, mentioned above. In addition, in Professor Shenoy's view, food rationing in urban areas would not help the food crisis, since support for rationing depends on the mistaken theory that hoarding is the cause of the crisis. Indeed, rationing may be worse than no rationing at all, since, on account of the black market, it does not reduce consumption, and since, at the same time, it works against the poor by raising the black-market prices. Professor Shenoy believes that dependence on food imports is both unnecessary and uneconomic, because the food deficit, being only 6.6 per cent of the net domestic production, is marginal in relation to domestic production, and because it is possible to achieve substantial increase in food production at costs much lower than the costs of United States food grains. However, farmers are unable to increase production since the bulk of investment resources from domestic savings and foreign aid is appropriated to the public sector, instead of meeting the capital needs of the farmer, and since the existing laws narrowly circumscribe the activities of private bankers and moneylenders in attending to the needs of the farmer.

According to Professor Shenoy, the state domination of investment activity is the cause of social injustice, because it concentrates economic power in the hands of the politicians and civil servants with the result that those state functionaries gain arbitrary rights of disposal over the employment, livelihood, and welfare of "virtually the entire nation" (p. 38). Moreover, forced industrialization has retarded the growth of the national product by diverting the resources away from agriculture and the consumer goods industries, in which the yields and employment potential are the highest, to the production of capital goods and intermediate products, in which the yields and employment potential are generally the lowest. Appropriation of seventy per cent of the investment resources to the public sector has created excess production capacities in public sector undertakings, has led to wastes through corruption and inefficiency, and has resulted in the capital starvation of agriculture. The overemphasis on industry has, in certain favored areas, pushed

industrial production beyond its economic limit and has prevented agricultural production from reaching its proper economic limit. Professor Shenoy believes that exchange controls and import restrictions do not add to the available supply of investment resources, but that, instead, they retard the pace of development, fail to alleviate the adverse balance of payments, and in fact accentuate income contrasts by shifting enormous incomes to the beneficiaries of import licenses. He does not accept the official explanation that the phase of price rise which began in 1955 is the natural consequence of economic development, and he finds the cause of that rise to be in the government's attempts to invest nonexistent resources through the device of budget deficits which result in the expansion of money. The current inflation, he believes, does not result from indiscriminate use of bank funds, and thus the policy of a credit curb against banks is a punishment which they do not deserve. It may be noted here that the larger banks in India have been nationalized since Professor Shenoy's writings.

Professor Shenoy advocates drastic cuts in revenue collections by the state in order to step up national savings and avert the human cruelty involved in cuts in the consumption standards of the masses who are already at the margin of subsistence. He regards progressive taxation as particularly pernicious and deserving of abolition, since

[i]ts incidence is anti-social in that it virtually closes the route to vertical mobility in the acquisition of income and wealth; tends to freeze the prevailing pattern of income and wealth distribution; deprives the community of the full production advantages of its ablest men as it penalizes talent and efficiency; and thus debilitates a major force of dynamism and growth. [P. 177.]

He thinks that "[m]odern communities have been saved from the full impact of progressive taxation through tax avoidance and illegal tax evasion, though the moral and economic costs of this have been heavy" (p. 177).

The foreign exchange reserves of India have suffered a "swing . . . from abundance to penury" (p. 181). The official explanation for the swing cites defense expenditures, economic development, the food crisis, high imports, and adverse movements in international prices. Professor Shenoy refuses to accept that apology; instead, he sees foreign exchange difficulties as a functional counterpart of inflation. Inflation has overvalued the rupee; and overvaluation of the rupee has handicapped export production and has necessitated exchange control and import restrictions which, in turn, with the help of other general economic policies, have resulted in indiscriminate import substitution, that is, a shift away from export production in order to fill the domestic need created by import

restrictions. Despite receipts of foreign aid, the balance-of-payments difficulties have persisted because of the increase in the imports of raw materials and capital equipment due to the expansion of the national product, and because of the inability of the economy to produce sufficient export earnings to pay for the increase in essential imports. The overvaluation of the rupee has thus resulted in (1) a heavy decline in currency reserves, (2) a rise in external prices of Indian exports, (3) an undue cheapening of import goods in relation to the corresponding home products, (4) gaps between the landed costs of import goods and their market prices, and (5) a gap between the internal and external prices of gold which has resulted in illicit imports of gold.

Foreign aid, in Professor Shenoy's opinion, has not been able to achieve its objective of bringing to the masses a relief from poverty and from unemployment. Rather, much of the aid has been misdirected. That misdirection has not been a deliberate act, but a fortuitous outcome of centralized economic planning, extensive controls, phenomenal illicit incomes produced by the controls, undue extension of the public sector to the point that it absorbs seventy per cent of the available investment resources, inflation resulting from attempts to invest nonexistent resources, and overvaluation of the rupee resulting from the past inflation.

In addition to giving his criticisms of the Indian government's economic policies, Professor Shenoy offers his own solutions to the problems he examines. He suggests, for example, that in order to meet the balance-of-payments difficulties, there be a complete stop to overinvestment and a devaluation of the rupee to the equilibrium level.² His remedy to the food crisis calls for a stop on inflation and, at the same time, sufficient imports of food grains to cover the food shortages. But he sees no lasting solution to the food problem unless

first, the colossal public sector appropriations of investment funds are drastically scaled down to permit a larger flow of these funds into agriculture; and, secondly, legislation now crippling the business of agricultural credit by obstructing the flow of credit and capital into farm finance and by imparting [*sic*] the credit-worthiness of farmers is suitably amended. [P. 33.]

He feels that the removal of exchange controls and import restrictions is a necessary prerequisite to accelerated economic and social progress. His solution to inflation requires drastic cuts in the allocation of resources to the public sector in order to stop investment of nonexistent resources. His cure for the foreign exchange difficulties is to stop inflation and to adjust the value of the rupee

2. The rupee has in fact been devalued since Professor Shenoy's writings, and he makes a note of that fact in the preface to his book.

to equilibrium level, preferably through the device of a floating rupee. He suggests these same measures—that is, prevention of further inflation and devaluation of the rupee—as remedies for illicit imports of gold. Professor Shenoy recommends four reforms to meet the problem of overvaluation of the rupee: (1) a policy of zero inflation; (2) a shift back from production for the home market to production for exports; (3) a downward adjustment in the exchange value of the rupee; and (4) elimination of price gaps between the landed costs and the market prices of import goods, and between the official and the market prices of gold. All in all, he wants to “scale down drastically nationalization through the extension of the public sector, governmental interventionism in the life of the community, and to rely on [*sic*] a much larger measure than now on the market mechanism for the allocation of resources” (p. 189).

Professor Shenoy’s criticisms of the Indian government’s economic policies are valuable and merit serious attention. Indeed, it is very distressing for me to see, upon visiting my homeland, that the economic lot of the man on the street is less satisfactory than what I expect upon reading the growth statistics of the country as a whole. It is equally disturbing to learn that “black market” is a household word, that that market, particularly in food grains, is more open than clandestine, and that bribery and other forms of corruption are the mode of life at most levels of intercourse with governmental officials.

Despite his valid criticisms, however, Professor Shenoy has failed in his own turn to develop fully the arguments supporting his solutions to the Indian economic problem. As a result, one finds him taking even contradictory positions. For example, he calls for the foreign-aid-giving countries to induce shifts in Indian economic policy through economic diplomacy (p. xiv); and at the same time he deplores such interference (p. xv). His remedy for the food crisis calls for imports of food grains, in addition to stopping inflation (p. 30); but, at the same time, he finds P.L. 83-480 imports to be a cause of inflation (p. 19) and other ills (p. 78). He pleads for drastic cuts in revenue collections by the state in order to step up national savings (p. 177); while at the same time he acknowledges that the masses of the people are at the margin of subsistence (p. 177) and therefore, deductively, not a potential source of savings. Moreover, the person at the margin of subsistence would probably either be exempt from taxation or pay at a low rate under a progressive income tax. Professor Shenoy makes a strong plea for the abolition of progressive taxation (pp. 173-75), but he does not establish that the equities which form the argument for the concept of progressive taxation are not worth pursuing. He criticizes legislation regulating the activities of bankers and moneylenders as a hindrance to the

flow of capital to the farmers (p. 32), but he neither specifies the laws involved nor establishes his point beyond simply stating it. Indeed, this reviewer finds a great deal of merit in regulating, for example, usury and other traditional forms of exploitation of the farmer in India. Professor Shenoy criticizes antihoarding ordinances with respect to food grains, because such ordinances merely shift the hoarding from a comparatively small number of traders and larger farmers to householders. The reviewer, however, finds merit in this shift, since there is a significant distinction between a householder accumulating grains to feed his family in harder times to come and a trader arresting the flow of the grains to the householder with a view to profiteering when the harder times do come upon the householder.

Finally, although it is not quite clear from the book, it seems that Professor Shenoy would like to have the state abstain from engaging in the production of goods and services and leave the economic life of the country as much to *laissez-faire* as is possible. However, in order to make a case for abolishing or minimizing the diversion of resources to the public sector of the Indian economy, it is necessary to answer at least two basic questions. First, if the government does not engage in those activities which private entrepreneurs are not willing to undertake, how will that task, vital to the implementation of the public interest, be accomplished? Second, how, if not through the public sector, is it possible in India to muster sufficient investment resources for the country's needed economic development? In this regard, Professor Shenoy does little more than mention capital markets and the market mechanism. Perhaps he does not recommend a complete abolition of the allocation of resources to the public sector in India, but only the restriction of that allocation within certain limits. In that case, it would have been extremely useful if he had presented his thoughts in detail and suggested principles or guidelines for determining the proper economic limits for the public sector.

In the last analysis, then, Professor Shenoy's book is more noteworthy for his valuable criticisms of the economic policies of the Indian government than it is for the remedies he suggests. Yet it certainly must be read by those interested in Indian economics.

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