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Teamwork, Markets, and Regulation: Distortions Arising from Legal Parochialism

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In the United States today, we suffer growing problems with a crucial element in the network of labor markets. These are the distortion effects resulting from biases in the legal process and its occupational parochialism.[1] These increasing distortions limit, quite substantially, what we may expect to achieve with the law.[2] This is a report on a crucial leadership profession that shapes, to an enlarged degree, our marketplace, rules of the game, and methods by which we try to correct its shortcomings. In other words, this unique, peculiar labor market, "lawyering," vitally affects the entire control mechanism for the whole marketplace, its industries, product markets, and labor markets. Lawyering has become, in fact, a significant part of politics, especially for its role in lobbying and representation within the regulatory process. Also, lawyering, more than most occupations, helps shape market demand for its own services.

The Problem of Legal Parochialism

Legal parochialism should be understood through five principal dimensions: the nature and character of law as a process; increasing specialization patterns in the law; unbalanced representation in politics that affects legal change; distorted regulatory policies; and lack of consensus on skillful reform.

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The Legal Process

Legal systems comprise a network of obligations, liabilities, remedies, and/or penalties. These networks are animated by enforcement machinery, staffs, and lawyers available to prosecute claims, defend interests, and adjudicate (or mediate) controversies. It may be relatively easy (and low cost) to enforce property rights and commercial or organizational interests with strong legal positions and ample resources, but more difficult (and expensive) for other claims and interests. This is particularly true for those that conflict with powerful adversaries, require extensive investigation to develop, involve weaker legal positions (with greater complexity, uncertainty, and risk), or generate weak remedies that may not justify a substantial investment of legal resources. Inevitably, vested interests concerned with each detailed area of law have been eager to maximize their strength (and minimize weakness) wherever possible.[3]

Legal reformers have tried to make corrective adjustments and offset the vulnerability of weak and diffuse interests,[4] but their success declines as pluralistic, neomercantilist politics becomes the dominant method by which legal rights, liabilities, and remedies are adjusted. As law becomes more pervasive and detailed, the danger of parochial distortion increases. Elite and able oversight becomes less influential and is often spread thin. Underrepresentation of weak and diffuse interests (such as consumers, ordinary taxpayers, the poor, victims of inflation, unorganized workers, and so forth) magnifies these distortions and helps to entrench parochialism in the legal process.

Corrective adjustments can be achieved and often have worked well historically, but the problem of making them becomes more difficult politically. Splinter-group pluralism and public ignorance mean that a great premium is placed upon well-informed and public-minded political cadres. Recent tendencies toward media politics and favor-oriented legislators (and their staffs) put these cadres at an increasing disadvantage, and relatively more naïve politicians tend to be elected. Increasing turnover in legislative ranks, peopled with less experienced politicians, may dilute skill levels and insight significantly.

Law is not a free service. Its enforcement requires substantial investments in investigative effort, training, research, writing, advocacy, staff support, and clerical help; it also involves extended decision making and significant time lags.[5] With recent "progress" in the refinement of law, characteristic of an affluent society that defers generously to lawyers, this technical complexity and the cost of operations have increased sharply. Competent legal service (and all forms of "police" administration) takes

more work, people, and billable hours, and results, paradoxically, may be less certain and reliable. Thus, "there oughta be a law" cannot necessarily be relied upon as a simple, neat, efficient way of getting things done. In fact, recent track records suggest that legal and regulatory processes often promise far more than they deliver, even though considerable legal machinery is put into apparent operation.

Passing a new law, or expanding existing legal remedies or defenses, may seem cheap to legislators or politicians, but they do not pay the bills. The costs (and benefits) of "legal reform" appear in litigation or clearance procedures, altered relationships, shifts in bargaining power, suppressed behavior and opportunities forgone. Disillusionment about accomplishment not achieved must be included as well. The distortion effects for special interests often benefit more than the proclaimed beneficiaries or goals of "social policy." Unfortunately, full cost accounting for all consequences and every externality is rarely considered, and it would be quite expensive to sustain on a regular basis.[6]

Most alarmingly, the process of legal change itself is largely captive to narrow circles of special interests, politicians, co-opted scholars, legislative staffs, and key bureaucrats. This specialization process tends to produce "conservatism" (with a small "c"), and is vulnerable to serious distortions from unbalanced representation. Press and media coverage tends to be thin, haphazard, and often namby pamby. One might cynically observe at the dawn of the 1980s that one of the better forms of camouflage invented by mankind is an extensive and highly detailed network of regulatory legislation (and specialized tax laws). It becomes an increasingly difficult form of underbrush to penetrate, and it effectively shields many industries, markets, occupations, and interests from serious review. A crowning achievement, in this adaptation process, is changing the overall labels and "direction" to suit shifting moods in public ideology. Thus, chameleon-like, industrial and occupational regulation, and our complicated tax laws, can go through many stages of "reform," including major deregulation or simplification bills, that leave the underlying market structure, power distribution, trade practices, and performance largely undisturbed. Do not expect the bulk of lawyers or other experts involved to blow the whistle on this gamesmanship.

Specialization

Specialization has grown along with the legal profession in the last several generations. The law has become increasingly detailed and technical in many areas, and market forces put a greater premium on specialized

talent. Clients get better and more reliable service, and lawyers earn higher incomes and develop more control over their leisure time.[7]

Larger volumes of legal work (of a specialized nature) can be handled this way. The U.S. legal profession doubled in the last two decades, from one-quarter to half a million (compared to a 25 percent population growth).[8] The volume of "legalistic work" probably grew even more. The common law system in the United States encourages this legal proliferation, with its emphasis on ad hoc specificity, case-by-case evaluation, and extremely detailed writing of laws and regulations.[9]

The growth of tax regulation has reached the stage at which most industries and markets view themselves as significantly regulated by detailed, specialized processes. These regimes require experienced representation, lobbying, and tax advice on a regular basis. Although "general laws" still operate, one no longer can rely simply on generalists and feel safe or adequately protected.

Unbalanced Representation

Organizations, companies, and individuals with large resources naturally find it easier to obtain high quality legal services and lobbying support. Isolated individuals, small businesses, and diffuse interests find it much harder to obtain legal services or political champions with appreciable clout. For large organizations, legal and lobbying expenses are relatively modest, bearable, and normally deductible under the income tax laws as legitimate expenses (in one form or another). Furthermore, these large organizations (and especially their trade associations) vastly outweigh weaker entities and individual citizens in legal strength and the ability to influence change (or "reform") in the legal process.[10] It is little wonder that even public-minded politicians seek limited objectives and settle for modest accomplishments in dealing with parochial momentum in the law and tax systems. Few should be surprised when "reforms" display a heavily cosmetic character.

Even though "public" watchdog agencies (such as the NLRB, Antitrust Division, FTC, Office of Consumer Affairs, and so forth) have been created to offset parochialism in the legal marketplace, these institutions have become increasingly defensive, less visible, and less powerful. Even though many of them have received budget increases and slightly enlarged staffs, their effect tends to be softened in the litigation and lobbying struggle. A shift against "regulation from Washington," along with a more conservative Supreme Court, has weakened these agencies. Punitive damages, attorneys' fee awards, and class actions do operate in limited areas of the

law and can offset stronger interests, but recent court interpretations, softened substantive rules of law, and a more hostile legislative-judicial environment have weakened these remedies.

Distorted Regulation

Regulation is a compromise process. Its tendency to mediate between established powerful interests and "public-minded" reformers affects basic regulatory mandates, periodic amendments, lobbying politics, administrative rulemaking, and consent agreements. Something that established interests "can live with" becomes a powerful guideline. This, at times, may be in the public interest, too (and needless, abrasive conflict may be counterproductive). But regulatory regimes in the law tend to accept, accommodate, and build upon established interests. Socially *sub optimal* Pareto optimality seems built into the mechanism of law reform and pluralistic politics in an extensively regulated society.[11]

Lack of Consensus on Skillful Reform

It has become increasingly difficulty to mobilize a coherent consensus on regulatory and legal policy in the United States, at least in the last twelve years or so. Several generations earlier, the Progressive movement inspired a desire for improved competition, efficiency, and fairness for industries affected with the public interest. Because reform efforts had limited success, the list of regulated industries remained manageably small, progressive ideology kept its cohesion, and the movement sustained its "integrity." Even into the 1960s, most law and economics scholars (save the conservative fringe) found reasonably strong agreement on the direction of reform. Improved competition, when feasible, and strengthened accountability and supervision were the watchwords.[12]

In recent years, matters have become more complicated. Poverty relief and environmental and consumer protectionism were added to the reform menu, reflected in a surge of new legislation in the late 1960s and early 1970s. As the list of regulated industries expanded and details proliferated, the problems of oversight, accountability, and political review became more difficult. Waste and government spending enlarged.[13] Meanwhile, the conservative challenge grew in strength and respectability. Excessive protectionism, red tape, and needless restrictions found more critics. Industries and other interests opposed to regulation found broader support. A recent alliance of some older Progressives, younger Naderites, Chicago conservatives, and special interests has created a new and fashionable

movement for deregulation. Yet, their work is already controversial. In transportation, the major area of supposed achievement for deregulation, weakened accountability and supervision have allowed substantially more pricing variability and discrimination, without much altering the basic market structures. In other areas, very little deregulation has occurred. How long will this new fashion in reform retain broad support?[14]

An overriding problem for regulation and the law generally in recent years has been stagflation. We have come to realize that structural rigidities, limits on competitive productivity, and wage-price momentum are significant elements in sustaining inflation, but a serious incomes policy still finds rather narrow political support. Conservatives preach against controls and prefer to believe that monetary-fiscal discipline can stop inflation quickly enough. Progressives and neo-Keynesians seem perplexed by their political difficulties and are in disarray. Even though the post–1973 success of Switzerland, West Germany, and Japan demonstrates conclusively the importance of wage-price discipline in halting inflation, interest groups in the United States and elsewhere seem more concerned with indexing themselves—and, thus, helping to entrench inflationary momentum.[15]

The Remedies

Four remedies are available to reduce the distortions of legal and regulatory parochialism: skilled selection of structural reforms and behavioral rules; institutional reforms to shift power and information flows in this direction; improved scholarship, research, and education; and development of political cadres eager to implement reforms. The difficulties facing such a program are substantial, and enforcement will be an uphill struggle.

Structural Reforms and Behavioral Rules

Legal and regulatory reforms can be implemented to strengthen competition, emphasize efficiency, retain effective oversight and accountability, and reduce legalistic clutter and delay.[16] But a simplistic movement toward deregulation that destroys public accountability would not serve these ends; nor would a switch toward self-regulation and cartelized limits on competitive efficiency.

Some behavioral rules and accountability can be enforced effectively and at bearable costs. But these responsibilities must be firmly imposed and little room allowed for evasion or extensive litigation. Generally speaking, behavior rules and disclosure mandates that eliminate or lower

entry barriers, reduce excessive or unneeded concentration, encourage growth of new enterprises, reduce burdens upon healthy market competition, and enforce public awareness of costs and profit in production will be in the public interest. So long as visibility can be enforced at moderate cost, sensible laws and regulations can be implemented in these directions.

Structural reforms that fragment some of the larger corporate and public bureaucracies into smaller, more efficient, and humane organizations will be required, but the political presumptions in favor of large scale are powerful. As recent experience with Chrysler, Lockheed, and Penn Central demonstrates, the logic of politics is to preserve, prop up, bail out, or merge the sluggish giant enterprises. Tariffs and quotas find broad support in shielding them (and sick industries) from world market competition. Even though the public bears a double burden (government subsidies and increased prices), the voices for greater decentralization and smaller firm competition carry little weight. Yet, in the long run, efficient, leaner, and supple enterprises will produce more and provide better livelihoods in the public interest.

A crucial battleground is access to data. Legal reforms are essential to simplify accounting flows and make them more easily available and usable. This does not mean, of course, that expensive, burdensome retabulations of existing reports and data should be encouraged. Rather, needless confidentiality restrictions should be lifted so that *existing data* can be disseminated further at extremely low marginal costs. Unfortunately, recent trends toward privacy rights for *individuals* have been exploited by larger corporations, which assert a comparable immunity from accountability. They vastly overstate the costs involved in simply *making available* to public authorities the data already generated by corporate organizations. Such claims to exclusive control are irresponsible.

Reforms to Shift Power and Information Flows

Oversight institutions with a public interest mandate have had difficulty keeping up with the proliferation of laws and regulatory details.[17] Spending and budget oversight has received increasingly greater emphasis by the Office of Management and Budget (OMB), General Accounting Office (GAO), and, most recently, the Congressional Budget Office (CBO). The same applies to the Council of Economic Advisors (CEA), the White House staff generally, and the Joint Economic Committee (JEC). Tax law receives special interest impetus from the tax writing committees of Congress, only offset to a modest degree by the tax policy staff of the

Treasury Department. In legal regulation, the Department of Justice (particularly its Antitrust Division) and, to some degree, the Federal Trade Commission play a limited oversight role. But their mandate and scope are much more severely constrained than those of the budget and spending review agencies.

Congressional committees and subcommittees have the most influence over legal development at the federal level. Pluralistic and parochial influence is strongly entrenched. Executive oversight can be helpful for the most important "nodes" of legal change and for occasional overhauls, but it is much less influential in follow-through and in curbing detailed proliferation. Big legislative steps must be taken jointly with Congress, and in recent years, for many areas of law, it would seem that Congress has been the senior partner. (This tradition of congressional "leadership" in lawmaking probably is the longer run historical trend except for a few brief periods.)

In lawmaking and regulatory policy, state and local governments also are significant. These levels have added substantially to legal and regulatory proliferation. Oversight and accountability are weak in most states, and the circles of key decision makers are smaller, often creating more vulnerability to parochialism. Although significant national trends are reasonably well publicized and often affect state and local government, the fundamental problem of legal parochialism is strongly reflected in this sphere. Public access to information may be weaker at state and local levels, which greatly limits accountability.

Established legal regulation, its supporting constituencies within the bar and marketplace, and political forces unwilling to entrust more power to public-minded oversight institutions will offer formidable resistance to healthy changes.[18] It will require a strong President and substantial congressional support, and a comparable movement at state and local levels, to reverse the tide of recent trends. Even though a logical case can be made for these reforms, changes in law schools, economics departments, political parties, and popular ideologies will be required.

Improved Scholarship and Education

Unfortunately, the present state of our law schools does not encourage the recognition, treatment, or removal of legal parochialism. For the most part, law teachers are highly intelligent and pragmatic, but they have a limited background in political economy and institutional economics. This leaves them somewhat insecure and without a strong philosophy or overall viewpoint regarding regulatory strategy. Their dominant training and ex-

perience reflect ad hoc, myopic problem solving. To the extent that a general ideo ogy is fashionable among younger law scholars, Chicago School conservatism and its libertarian tendencies have made very strong inroads. Even though many older law teachers still have sympathy for the New Deal and the Progressive reform movement, their influence is concentrated in environmental, civil liberties, domestic relations, and consumer law courses, as opposed to regulation, tax, labor, or administrative law. Law teaching on the regulatory front, broadly speaking, has been moving in a more conservative, deregulation direction.[19]

Part of the problem seems inherent in the mind-set of lawyers. Students are taught familiarity with, and respect for, the leisurely process of adversarial litigation. They are often blind to the social costs of delay, excessive discovery, and cumulative red tape. They tend to respect and favor established interests. Career, income, and class motivations encourage this trend, especially as lawyers settle into practice with firms and corporations. Lucrative consulting opportunities often co-opt law teachers, and fund raising pressures for law schools also encourage collaboration with successful lawyers and business interests. Most lawyers and law teachers feel insecure in challenging this system, and most economists they know either accept the status quo or urge more conservative deregulation policies.

If things are to change, those favoring a more efficient, renovated, and progressive revival in regulatory law teaching need a great deal of support from institutional economists. A stronger flow of research and writing will be needed to reverse the tide. The Chicago School showed us how this job could be done. In two decades, their viewpoint has become ascendant and is more influential with the public than any other. It is surprising that economists in the institutionalist tradition should have let Chicago School conservatives take such a strong lead in recent law and economics research. The opportunity for good and corrective publication and writing is very large.[20]

Political Cadres

Creating a political movement to offset legal parochialism presents difficult but not insuperable problems. The pragmatism of law scholars and their public-mindedness offer opportunities for recruitment. The incentives for legal scholars to participate in reform efforts are always attractive, and their ad hoc, myopic habits of thought allow them to be converted to particular reforms, without needing to change their overall philosophy.

It is critical to establish a clear, respectable, economic case that such

reforms are truly desirable.[21] Institutional economists should become leaders in this effort, along with like-minded law teachers with economic training. Given this "new" direction, the law and economics literature could become very exciting in the 1980s. Law reviews are an important and largely neglected avenue for publication by economists. Their writing styles require fully developed arguments, fewer abstractions, vivid illustrations, and generous footnotes. Math and econometric jargon should be minimized, if not eliminated. Problem-remedy themes are preferred.

Another major task is to obtain collateral support in political science. Pluralism and the virtues of a full representation network have become leading themes in political science writing. Unfortunately, this governmental literature has not fully accepted or understood the cost implications of legal and regulatory parochialism, which indirectly received support from political science. Although public-mindedness has long been a feature of most political scientists, their recent efforts (and parochial pluralism) have undercut that perspective.[22]

To establish a new outlook and surge of public-minded regulatory reform, allies and supporters in political science must be recruited. (Historians should be included, too. They often are keenly sympathetic to institutional economics and potentially aware of the problems of legal parochialism.) If this broadly based academic alliance is forged, the momentum for a resurgent political cadre should move along nicely. Its growth will take care of itself.

A final thought about political parties is in order. (These remarks are intended to be *apolitical* in the immediate sense.) Substantial support to reduce and alleviate legal parochialism can and must be developed in the business community, among middle class professionals, and among neoconservatives. Yet, many elements of the liberal-democratic mélange also can support this new movement. In short, political cadres should be recruited very broadly and should seek kindred spirits in many other countries. It would be a great mistake to "politicize" this movement narrowly and tie its development solely to the fortunes and personalities within existing political parties. More than ever before, I see among our younger generation an unwillingness to make that kind of partisan commitment. Given present alternatives, institutional economics and legal reform should preserve independence, integrity, and options. The problems of legal-regulatory parochialism must be dealt with, ultimately, by a wide spectrum of sophisticated collaboration in law, economics, business, government, and the science and engineering establishment. Political independence is essential.

Notes

1. This article stems from a larger work, *Teamwork, Markets and Regulation* (in draft). That book emphasizes the importance of leadership professions, accountability processes (including the market mechanism), and oversight agencies. Its overall theme is the problem of making government and the marketplace work together effectively, a marriage that is often shot through with parochialism and underachievement.
2. In their specific, narrow areas of practical expertise, lawyers normally achieve a much more realistic, cynical, and worldly wise appreciation for the limits and perversities of the legal process. This insight lawyers largely keep within their own fraternity, partly not to spoil public confidence and client support, and partly because this wisdom is not easy to convey to outsiders with much accuracy. And so it is that a parochial, incomplete grasp for the distortions and limits of legal remedies within the lawyering profession is not adequately reported to the public at large, legislators, economists, and other social scientists who concern themselves with using the law to achieve justice and to correct marketplace deficiencies.
3. Modern legal education prepares fledgling lawyers to place themselves within these role networks and serve effectively as advocates. Developing an instinct for strength and weakness of legal positions, the work and risk entailed, is a large part of the "savvy" good lawyers must acquire. Inevitably, lawyers employ this insight to their advantage as lobbyists, legislators, administrators, and judges.
4. Justice and fairness in mediating interests are traditional legal aspirations but these instincts are tempered with pragmatic softening and are shaped by the adversarial roles and experiences of most advocates.
5. Capital investment is required, too, for libraries, looseleaf services, xerox machines, word processing, typewriters, and automated information systems (such as Westlaw, Lexis, Juris, and Dialog).
6. The fate of recent efforts to achieve serious "sunset review" for the accumulated mass of all existing regulation, spending, and law reveals the problem. Very quickly, it became evident that many interest groups, existing policies, and laws would escape careful inquiry. In the struggle for exemption or light review, politics took over. The most powerful entrenched interests typically achieved immunity from substantive reviews. Legislatures frequently continued the sunset principle with pro forma proclamations and riders (on new bills) supposedly implementing sunset evaluation, but few intend or believe that "everything" is going to be seriously reexamined regularly. It would be too expensive and divisive politically.
7. In addition, lawyers are working toward the kind of specialty certification that has proven so profitable in the medical profession. See, for example, the A.B.A. Special Committee on Specialization, "Summary of Action and Reports to the House of Delegates," 1974 Annual Meeting; Marvin Mindes, "Lawyer Specialty Certification: The Monopoly Game," *American Bar Association Journal* 61 (January 1975); David R. Brink,

"Let's Take Specialization Apart," *American Bar Association Journal* 62 (February 1976); and "Specialization: The Resulting Standard of Care and Duty to Consult," *Baylor Law Review* 30 (1978): 729.

8. The source of the size of the U.S. legal profession is the American Bar Foundation, Chicago, Illinois. In other words, one out of every 450 people in the United States is a lawyer, or roughly one of every 300 working Americans. By dramatic contrast, according to the Japanese embassy in Washington, Japan's legal profession of only 11,000 serves a highly productive nation of 105 million (or one out of every 9,400 people).
9. Civil code systems (following the Napoleonic, Germanic, and other Romanist models) use less specific provisions. But even in these countries, the trend has been toward legal proliferation and greater detail.
10. Even though some politicians try to represent the "unorganized" people in society, as technical momentum builds up, their efforts are outweighed heavily by the greater preparation, skill, and expertise of organized and well-funded lobbyists.
11. Most practicing lawyers have never heard of Pareto optimality, and only within the last ten years or so has the concept been used with any frequency by law and economics teachers in some of their courses.
12. A good summary of the regulatory wisdom, vintage 1960s, is found in A. E. Kahn, *The Economics of Regulation*, vols. 1 and 2 (Chicago: Wiley, 1970). The recent trend, with more sympathy for deregulation, is summed up in Commission on Law and the Economy, *Federal Regulation: Roads to Reform* (Chicago, Ill.: American Bar Association, 1978), esp. chapters 3 and 4. See also the contrast between Robert Dahl and Charles Lindblom, *Politics, Economics, and Welfare* (New York: Harper, 1953), and Charles Lindblom, *Politics and Markets* (New York: Basic Books, 1977).
13. Civilian government spending grew from 18 to 27 percent of GNP between 1963 and 1979, while defense spending declined from 9 to 5 percent. See *Economic Report of the President*, January 1980.
14. Obviously, the 1980 election may have considerable influence. But I have been impressed by how many older lawyers, mostly moderate conservatives, see no drastic cuts in the scope or volume of legal regulation, regardless of the outcome in November.
15. See William A. Lovett, "The American Inflation Crisis: Fiscal, Monetary and Wage-Price Discipline," in progress.
16. Most of the recommendations by the A.B.A. Commission on the Economy express this theme. However, they reflect a certain modesty, are difficult to achieve, and tend to neglect structural reform and oversight discipline in regulatory industries.
17. See William A. Lovett, *Economics, Law, and Governance* (New Orleans: Tulane University: 1977), esp. chapters 9 ("Government Renovation"), 10 ("Administration and Oversight"), and 11 ("Accountability and Tribunates").
18. The strength of opposition was reflected in the decisive defeat of the Agency for Consumer Advocacy (relabeled Consumer Protection Agency in the later bills) in Congress in 1977–1978. This modest increase in con-

sumer lobbying power was felt to be a menace by the business establishment generally, and it tried, successfully, to prevent its creation. A very modest Office of Consumer Affairs continues from the Virginia Knauer days of the Nixon administration, lodged mainly with HEW (except for a tiny staff working in the White House for Esther Petersen).

19. These trends have been evident to law teachers regularly attending the American Association of Law Schools Annual Convention, and to those actively involved in recruitment of new law teachers.

20. An interesting question is *how* institutional economists (of the more traditional, Progressive school, tracing descent from Thorstein Veblen, John R. Commons, and so forth) let the lead in law and economics literature pass to the Chicago School, free market oriented conservatives. (Certainly such an outcome would not have been expected in the 1950s or early 1960s.) A tentative explanation might be that mainstream neoclassical economics merged with institutionalism during the late 1930s, 1940s, and 1950s, when "imperfect" competition dominated professional thought. Mainstream economics then became strongly "econometric" in the 1960s and 1970s, which deemphasized institutional and law and economics work. For reasons relating to their challenge of excessive and "unwarranted" government activity, conservative economists still encouraged substantial research on legal and regulatory institutions. Somehow, in the 1970s, the more conservative economists took a more aggressive role in mounting an attack on public sector activity, and they placed a majority of the new recruits in legal education dealing with law and economics. (This was a crucial decade of major growth for law schools in enrollment and faculty expansion.) A Republican administration and more conservative Supreme Court appointments, together with a mood opposed to growth of government since the 1976 election, provided an environment favorable to more conservative law and economics writing. Professional sentiment began to turn more conservative on public spending, regulatory, and tax matters, as the "excesses" of recent government and legal proliferation generated more doubts and criticism. Interestingly enough, the late 1960s and early 1970s, which saw much intense criticism of the marketplace and larger corporations (with considerable overstatement), gave way to a strong swing in the opposite direction in the mid- to late 1970s.

21. Increasingly, the impression is being created by Chicago School writers that legal regulation rarely works, almost always undermines efficiency, and should be replaced with "free enterprise." This message has some merit but tends to be overstated. This new wisdom normally neglects the problems of externalities, limits on competition, concentration, and accountability that provoke "public-minded" concern. Ironically, I suspect, the practical upshot of this neoconservative surge may be to cripple efficiency-oriented regulation, greatly weaken accountability, and leave intact a substantial amount of cartelistic business protectionism, industry self-regulation, and complex tax subsidies. True competitive vitality in the economy, when we take into account some weakening of antitrust enforcement, could well suffer a net loss.

22. The pluralistic literature in political science has understood the problem of unbalanced representation and draws much of its inspiration from the need to correct these imbalances. More complete representation and stronger oversight institutions have been their chief solutions. But one serious complication has been neglected: How can a public-minded oversight tradition be sustained under the onslaught of overwhelming pluralism? Recent political trends in the United States suggest that splinter groups may become dominant, with public-minded "elitist" oversight steadily eroded by regular appeals to top political leaders in the executive and legislative branches. In a context of pervasive regulation, subsidy, and government involvement, it becomes hard to prevent parochialism, as "might makes right" in the resolution of conflict and in accommodation. In this way, pluralism ultimately undermines public-mindedness. Political science needs to recognize, once again, the crucial importance of elite, public-minded oversight agencies and the accountability process.