

TRAGIC CHOICES, by Guido Calabresi and Philip Bobbitt. New York: W.W. Norton & Company, 1978. Pp. 252. \$9.95.

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In *Tragic Choices*, Guido Calabresi¹ and Philip Bobbitt² explore how societies allocate tragically scarce resources—how societies make “tragic choices.” The authors consider the efficacy and morality of different devices used to allocate scarce resources. These devices include traditional markets,³ markets that are neutral in their impact on the distribution of wealth,⁴ nontraditional markets,⁵ political agencies,⁶ lotteries,⁷ and other methods. To illustrate these devices, the authors focus on three paradigm cases of tragic choices: the allocation of kidney dialysis machines (a “good”), military service in wartime (a “bad”), and entitlements to have children (a mixed blessing).

Resource allocation confronts a society with two distinct but related questions: how many resources should the society make available, and to whom should it award them. A society obviously has a wide range of choice in deciding how to answer these questions. In cases of particularly scarce resources, however, the allocation method finally chosen may create troublesome social costs. For example, permitting the free market to allocate kidney dialysis machines could mean that wealthy patients will live while the poor will die. Such a result creates moral indignation and offends a fundamental social value—the equal worth of all human lives.

Calabresi and Bobbitt seek to develop the roles of morality and economics in the making of tragic choices. They believe that careful investigation of the methods and results of a society’s tragic choices reveals much about that society’s moral standards and ideals. In general, every society has a set of principles that its members believe are equally fundamental. For example, in constitutional democracies with

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3. G. CALABRESI & P. BOBBITT, *TRAGIC CHOICES* 31-34 (1978) [hereinafter cited as *TRAGIC CHOICES*].

4. *Id.* at 98-117.

5. *Id.* at 117-27.

6. *Id.* at 34-41, 57-72.

7. *Id.* at 41-44.

market economies, the values of individual autonomy, equality, social utility, and efficiency are held dear. Market allocation of ordinary consumer goods—from beverages to dixie cups—does not usually bring these values into conflict, influenced as that allocation is by the prevailing distribution of wealth. When confronted with tragic choices, however, the claim that these principles are equally fundamental and beyond trade-off cannot be sustained. The tragic choice exposes the tension that exists among a society's basic norms and reveals its ordering of them.

The authors contend that because there is something important in maintaining the view that no ordering of basic principles really exists, a society will alter over time the allocation procedures it adopts. At one time, society may favor a naive conception of equality over efficiency by preferring lotteries to markets. At another time, it will reverse the procedure. In that way, not only can a society appear to maintain its commitment to a set of principles that are not consistent in every case, but it can also continually correct for the weaknesses of the allocation mechanisms currently in effect. By well-conceived manipulation of the various mechanisms of social choice, a society can minimize the "tragedy" of tragic choices.

The first two-thirds of *Tragic Choices* explores how different allocative devices create tension among a society's basic values. The last third of the book discusses the factors that must be considered in fitting the allocative machinery to the particular scarce resource in order to reduce the tension and minimize the tragedy.

The authors believe that although it is useful to provide an accounting of the costs and benefits of various allocative measures, analysis in the abstract cannot determine the best method for making tragic choices. Rather, the best approach to the tragic situation depends upon the particular good to be distributed as well as the values and attitudes that prevail at the time the choice is to be made. The right decision, then, depends on what is appropriate at a given time in a particular society. What is appropriate, in turn, depends on *existing* social norms.

Tragic Choices, therefore, relies almost exclusively on norms of conventional, as opposed to critical, morality to evaluate alternative allocative devices.⁸ That is, the authors judge these devices on the basis of widely held beliefs within a society rather than on abstract principles of right action. The book is consequently more sociological than philosophical; after all, it takes only empirical research, not moral argument,

8. In moral philosophy a distinction is drawn between principles of critical and conventional morality. Standards of conventional morality are authoritative if they are widely shared; standards of critical morality are authoritative not because they are shared but because they are correct or true.

to determine which principles exist in a particular society. *Tragic Choices* will therefore disappoint readers who pick it up in the hope of finding an analysis of particular allocative devices based on normative principles that the authors defend.

The focus on conventional moral standards is justified, however, because it is the apparently unresolvable conflict among prevailing values that leads individuals to view a choice as tragic. For example, the "openness" of the free market is highly valued—society benefits from the information that market pricing offers. This "openness," however, conflicts in the tragic situation with other values. Market allocation of tragic goods forces society to consider the price of human life, and such pricing offends the principle that human life is priceless. Society can avoid this "cost" of market pricing, but the failure to be open and honest may be equally costly. Thus, society might use political agencies to dispense tragic goods and not require them to justify their allocations. Open pricing of human life would not occur under this scheme. Such a scheme, however, would generate the fear that decisions are arbitrary or are based on unjust standards.

The upshot is that fundamental values such as honesty and openness are both prized and feared. In the end, this conflict in the social psyche is the essence of the tragic situation. Individuals want to know the standards that society employs in a tragic situation so that they can prepare a proper case. At the same time, these individuals are not anxious to know that their case is inadequate. Still others may find the mere fact that substantive standards are employed as evidence that some lives are deemed more suitable for saving than others. Furthermore, members of a society faced with tragic choices might prefer to have such decisions made without regard to a person's moral worth or social utility. A lottery nevertheless is viewed as objectionable precisely because it takes no account of individual differences, including differences in moral worth and social value.

The central lesson of *Tragic Choices* then is that tragic choices are "no-win" situations. Various methods for dispensing tragic goods have particular advantages; all in the end have their "tragic" flaws. Indeed, the authors' view is that the flaws that beset all allocation devices are strictly analogous.⁹

This Review, however, cannot systematically explore Calabresi and Bobbitt's cost accounting of the various means of tragic choice. Instead, it will focus on their discussion of the traditional market. Their criticisms of markets as vehicles for dispensing tragic goods are

9. TRAGIC CHOICES, *supra* note 3, at 131-46.

particularly forceful and have wider appeal to potential readers of the book.

I

THE TRADITIONAL MARKET

Calabresi and Bobbitt point to three weaknesses that characterize traditional markets. First, markets are inequitarian because they allocate resources according to the prevailing unequal distribution of wealth. Second, markets in general do not respond to social or individual needs, and markets substitute expressions of individual preferences for considerations of social utility. The third weakness of markets relates to their function in setting prices. Prices are often thought to express the relative value society places on goods.¹⁰ Society, however, might prefer to think that certain goods are invaluable and cannot be priced. The authors refer to this third weakness—the moral offense of pricing the invaluable—as the “cost of costing.” These three flaws are tolerable where society employs markets to allocate ordinary goods like dixie cups. Some goods, however, are not as abundant as dixie cups nor are public attitudes toward them so unemotional or objective.¹¹ Consequently, as one moves along the continuum from ordinary goods to scarce resources, these shortcomings of the market become more troublesome.

Calabresi and Bobbitt develop these claims through their analysis of the three paradigm cases of tragic choices. Tragic choices, such as those involving the allocation of kidney dialysis machines and wartime military service, raise matters of life and death. If a society allows the market to distribute a “tragic good,” some individuals will live and others will die according to their willingness to pay—which, in turn, is a partial function of their wealth. This offends the sense of justice expressed in the principle of the equal worth of human lives. If, on the other hand, society prefers to make the choice on utilitarian grounds, capacity or willingness to pay would hardly constitute an appropriate ground for making tragic choices. Society might instead make the choice on social utilitarian grounds. For example, it might prefer that Einstein, rather than a wealthy, but less socially useful, individual, receive a dialysis machine. In short, allocating tragically scarce resources through markets cannot be adequately defended on grounds of justice or social utility.

The authors’ arguments for limiting or restricting the market in the allocation of tragically scarce resources is powerful but incomplete.

10. For a critical discussion of the view that prices express value, see Part IC *infra*.

11. For a discussion of the role of public attitude in the tragic choice, see Part III *infra*.

The following sections explore Calabresi and Bobbitt's arguments in greater detail and develop some difficulties with them.

A. Efficiency and Economic Analysis

Calabresi and Bobbitt advance two distinct arguments against the economic approach to the allocation of tragically scarce resources. The first argument, sketched above, is that markets are too costly in terms of human values to be employed in the tragic situation. Specifically, they are inequalitarian and involve the costs of costing. The more provocative argument is that the economists' standards of Pareto efficiency—the bread and butter of economic analysis—are virtually useless in the public policy arena generally and in tragic situations in particular.

To evaluate Calabresi and Bobbitt's claims about the uselessness of the Paretian standards of efficiency, some preliminary distinctions must be drawn among different conceptions of economic efficiency. In particular, the distinctions between Pareto optimality, Pareto superiority, and Kaldor-Hicks efficiency are important. A distribution of goods and services is Pareto optimal if and only if any further redistribution of resources will improve the welfare of one person only by diminishing the welfare of another. A distribution is Pareto superior to another distribution if and only if the new allocation improves the welfare of at least one person without diminishing anyone else's welfare. A Pareto optimal distribution has no distributions Pareto superior to it. A distribution of goods and services is Kaldor-Hicks efficient with respect to another distribution if and only if the gainers would still experience an increase in welfare were they required to compensate those whose welfare diminishes. A Kaldor-Hicks efficient distribution is therefore potentially Pareto superior. It is not in fact a Pareto superior distribution because winners do not actually compensate losers. Kaldor-Hicks efficient distributions can produce losers; Pareto superior distributions do not.

It is important to note one further distinction; this is the inadequately appreciated distinction between the *economic* and *market* approaches to policy. The economic approach is based on the principle that economic efficiency is the fundamental goal of social policy. Efficiency, however, rarely results from market exchanges. This is because to be efficient in the Pareto sense, a market must be competitive, but the conditions for competitive equilibrium are often unsatisfied. To pursue efficiency, the economic approach therefore often calls for intervention in the market. In contrast, the market approach assumes that markets secure efficiency or that, even where they do not promote efficiency, they have unique advantages. For example, the free but Pareto inefficient market can be defended on the grounds that it is essential to

human liberty or that it coordinates preferences, supply and demand, and so on.

Tragic Choices is important because Calabresi and Bobbitt are skeptical of the usefulness of Pareto efficiency as a guide to public policy generally and the adequacy of markets to dispense tragic goods. The authors, in other words, question both the economic and market approaches to policymaking. They restrict their doubts about the market approach to the situation of tragic choices; their doubts about one sort of economic approach, however, are more general.

With these distinctions in hand, the authors' claim that standards of Pareto efficiency are useless not only in the tragic situation but also in social policy generally can be stated and developed. Calabresi and Bobbitt put their claim this way:

Far from being an instrument by which the public policy decision of whether to intervene in the market is determined, or by which the workings of markets may be compared with proposed nonmarket methods, Pareto standards are virtually useless since a nonmarket can never be shown to be Pareto superior to the market and, more importantly, nor can the market ever be shown to be Pareto superior to a nonmarket.¹²

Consequently, "Pareto standards are of no use to us in deciding whether or not to make structural changes within the market."¹³ And the Coase theorem, which in the minds of most proponents of law and economics is the foundation for public policy, reveals instead "the bankruptcy of the neoclassical welfare economics" Pareto standards as guides for policymaking.¹⁴

The argument Calabresi and Bobbitt advance to support these controversial claims relies on a very simple problem of the common pool:

Suppose by overfishing a lake, the fishermen from villages around it find their catches annually declining; no one village is willing, however, to cut back its fishing since other villages may simply take advantage of this; but it is clear that only a cutback will allow the lake to replenish its population of fish so that, this having been accomplished, the total yields for all villages will be greater and the hours spent fishing actually less. . . . A perfect opportunity, one thinks, for the Game and Fish Commission. And so a nonmarket method is employed. . . . Soon yields go up, and ultimately more fish are being caught by all with fewer resources spent on their catching, surely a more efficient result.¹⁵

12. TRAGIC CHOICES, *supra* note 3, at 83.

13. *Id.* at 85.

14. *Id.*

15. *Id.* at 83-84.

The nonmarket solution is, in the authors' own words, more efficient than the market. Why then is intervention in the market not justifiable on Pareto efficiency grounds? It is not because we cannot show that intervention is Pareto superior to the market because "the very fact that a nonmarket intervention took place meant that the actual value for each fisherman's loss, to him, was not arrived at through his market action."¹⁶ In other words, because there is no way of determining if each fisherman is better off under the Game and Fish Commission's rules than he was under the market, we cannot say that the intervention is warranted on Pareto grounds. Consequently, we cannot employ the notion of Pareto efficiency either to justify market intervention or to condemn it. If Calabresi and Bobbitt are correct, the Pareto criteria are merely fatuous.

The authors may be right that we cannot demonstrate that intervention in the market is Pareto superior. This fact, however, is inconclusive on a number of points. First, it does not establish the uselessness of Paretian standards of efficiency. It is often possible to determine if and when an intervention in the market will secure a Pareto optimal distribution of goods and services. So even if economists cannot employ the standards of Pareto superiority to justify the intervention, they can justify it through the standard of Pareto optimality. The attainment of efficiency by a series of non-Pareto superior interventions will satisfy any economist who believes that efficiency or Pareto optimality in the face of scarcity is a valuable social goal.

Second, economists might justify an intervention on Kaldor-Hicks efficiency grounds. If the intervention is more efficient than the unregulated market, those who gain by the intervention could (hypothetically) compensate the losers and still be better off. Economists are not wedded to Pareto superiority; Kaldor-Hicks efficiency is as central to economic analysis as is Pareto superiority. Indeed, in competitive markets, steps taken to secure Pareto optimal distributions are more often Kaldor-Hicks efficient than Pareto superior.

The general point is quite simple. To determine if economic theory can justify an intervention in the market, the economist does not in fact ask whether the intervention will be Pareto superior. Instead, he asks whether the gainers will gain sufficiently so that they could experience a net gain in welfare were they required to compensate the losers. If the answer is in the affirmative, then the intervention is justified on *economic* grounds.

This criticism of Calabresi and Bobbitt may not appear significant, for their view is that Pareto standards are useless for evaluating market

16. *Id.* at 84.

intervention, while ours is that economists do not generally employ such standards. There is a deeper problem with the authors' analysis, however. It concerns the grounds that society in fact employs, or ought to employ, to provide an economic justification for market intervention.

There are at least three theories for evaluating the economic basis for market intervention:¹⁷ Kaldor-Hicks, Kaldor-Hicks/Pareto superiority, and potential Pareto superiority with tolerable distributional consequences. The Kaldor-Hicks test, described above, addresses only the economic or resource allocation questions. Once the test has been satisfied, questions of distributional equity and justice remain.

In contrast, the Kaldor-Hicks/Pareto superiority test maintains that satisfaction of the Kaldor-Hicks test is *minimally necessary*, whereas satisfaction of the more stringent Pareto superiority test is invariably sufficient, to warrant a market intervention. Proponents of the Pareto test consider satisfaction of the Pareto test preferable to satisfaction of the Kaldor-Hicks test. Thus, if the costs of compensating the losers from an intervention are not prohibitive, market interventions will be justified only if such compensation is paid, *i.e.*, only if the intervention is Pareto superior. If, on the other hand, compensation is economically inefficient, satisfaction of the Kaldor-Hicks test will suffice to warrant intervention. Consequently, this standard maintains that if it is feasible to pay full compensation, it must be paid; otherwise, compensation is unnecessary.

As between the Kaldor-Hicks and Kaldor-Hicks/Pareto superiority tests, only the latter gives lip service to the distributional component of efficiency. The Kaldor-Hicks test applied alone indicates only that the winners from an intervention could theoretically compensate the losers and still be better off. But if the winners do not compensate the losers, society attains the economically justified reallocation of resources at the expense of certain individuals who experience a net loss in welfare or utility. The addition of the Pareto test protects those individuals who would lose under an application of Kaldor-Hicks alone. Where compensation costs are prohibitive or where pertinent information about losers cannot be obtained, however, the second test collapses into the first; the distributional questions are pushed to one side.

One way of reading Calabresi and Bobbitt's criticism of Pareto standards is that such standards do not operate once society has abandoned the market. Without the market, it is impossible to obtain the information necessary to determine if an intervention is Pareto supe-

17. See generally Coleman, *Efficiency, Auction, and Exchange: Aspects of the Philosophic Foundations of the Economic Analysis of Law* (forthcoming in the *California Law Review*).

rior. Lacking this information, distributional questions will of necessity be set aside.

To obviate this difficulty, Calabresi and Bobbitt offer a third theory for evaluating the economic basis for market intervention: potential Pareto superiority with tolerable distributional consequences. The striking feature of this test is that it merges questions of resource allocation (welfare or utility) and wealth distribution (equity). This merger is accomplished by making acceptable wealth distributional effects a constraint on the pursuit of welfare improvements. Under this test, market intervention is not warranted on economic grounds unless the Kaldor-Hicks test is satisfied *and* the wealth redistribution effects of intervention are tolerable. Thus, the Calabresi-Bobbitt test reduces a central component of a general theory of distributive justice—justice in the distribution of wealth—to an element of an economic argument about resource allocation.

There are at least four problems with the Calabresi-Bobbitt standard; two technical and two substantive. This Review will discuss each problem only briefly.¹⁸ First, there are the technical problems. The standard does not avoid the information cost difficulties of the Pareto superior test. Once society has abandoned the market, making it impossible to determine whether individual losers are no worse off than before the intervention, it is likewise impossible to determine if they are *acceptably* worse off.

The Calabresi-Bobbitt criterion also makes the economic question of resource allocation inherently controversial. Under the Kaldor-Hicks test, the resource allocation question is basically empirical. Justification of a redistribution is based on an analysis of the relative gains and losses of participants. Under the Calabresi-Bobbitt test, justification of an intervention would involve both empirical and value analysis. The test will necessarily be more controversial and difficult to apply.

It is arguable, however, that labeling the Kaldor-Hicks test uncontroversial is misleading. The test does not eliminate controversy; it merely sets the controversial questions to one side. In the end, one cannot simply ignore questions of wealth distribution. Calabresi and Bobbitt could then argue that since controversy is inevitable, economists should face it at the outset.

The most serious problem presented by the Calabresi-Bobbitt standard is substantive. The test may justify too much by building one aspect of the moral defensibility of a market intervention into an analysis of the economic justification of intervention, thereby inappropri-

18. For a further discussion, see Coleman, *supra* note 17.

ately suggesting that economic justification is tantamount to moral justification. This is problematic because it is conceivable that a Kaldor-Hicks resource allocation would not unacceptably redistribute wealth but would still fail on balance to be morally justifiable. Such a case would arise if social welfare were increased by taking wealth from an individual who has a *right* to such wealth—that is, wealth that the state cannot confiscate in the name of either the common good or equity.

Moreover, the Calabresi-Bobbitt standard is indiscriminate, charting as it does a middle ground between Kaldor-Hicks and the Pareto standard. Cases could arise where Kaldor-Hicks was satisfied but an acceptable wealth distribution would occur *only* by providing compensation to some losers who *neither deserved* compensation *nor were entitled* to it. For example, if impediments to competition are removed, monopolists lose. The Calabresi-Bobbitt test *could* require compensation for the undeserving monopolists—the losers from the intervention—if doing so were the only way to make the wealth redistribution effects tolerable.

All of this does not mean that satisfaction of the Paretian or Kaldor-Hicks standards of efficiency are necessary or sufficient to warrant intervention in the market or to justify deregulation. Arguments from efficiency do not carry the day. Still, in matters of public policy it is important to know whether a proposed policy is efficient in the Paretian and Kaldor-Hicks senses.¹⁹

B. *Inegalitarianism and Equilibrium*

The argument against Paretian economics is a frontal attack on the very worth of certain forms of economic analysis. In contrast, Calabresi and Bobbitt advance more narrowly conceived arguments against employing markets for the allocation of tragically scarce resources. Here, the essential claims are that markets are inegalitarian and involve externalities, especially the cost of costing.

Markets, the authors contend, are inegalitarian because they allocate goods to the highest bidder(s). This is not quite true. Markets do not allocate goods to the highest bidder unless there is only one unit of the good for all time. Instead, markets yield goods to anyone willing

19. For a discussion of the weaknesses of the Kaldor-Hicks test and its limits as a device for extending the Pareto criteria of social choice, see Coleman, *Efficiency, Utility, and Wealth Maximization* (forthcoming in the *Hofstra Law Review*). There, Coleman argues that economists use Kaldor-Hicks, but that Kaldor-Hicks is not a standard of social utility and that it is logically inconsistent. In the end, the author's view is that economic analysis is in serious trouble, but for reasons other than the ones that Calabresi and Bobbitt offer.

and able, through income and income transfers, to pay the *equilibrium* price.

In the free market, supply and demand for a good are continually shifting—the number of goods supplied shifts in response to changes in consumer demand. The equilibrium price is that price at which demand for a good equals supply, and this price can be significantly lower than what the tragic good would command were it “auctioned” to the highest bidders. As new technology is introduced—thereby causing a shift in supply—the equilibrium price of the good may fall. For example, ten years ago use of kidney dialysis cost an individual \$60,000 and required that a patient make two trips each week to a hospital. Now, at considerably lower cost, the procedure can be done in the home. Innovation, spurred by traditional market incentives, has delivered better service at a lower price.

In contrast to the market, the political process would very likely settle on a fixed supply of dialysis machines. This in effect creates an auction. Incentives for entry into the market and for technological advance are reduced under this scheme. Moreover, where demand for the machines increases in the face of a fixed supply, prices will inevitably rise. Unlike the market, however, the political process could decide to make the tragic good available to everyone who needs it. Still, as Calabresi and Bobbitt point out, the decision to make one tragic good available to everyone means that fewer individuals will receive some other tragic good. In other words, the political decision to service everyone in one tragic area results in shortages in other tragic areas. This is the Paradox of First-Order Sufficiency.

The allocation of tragic resources through the political system impairs the goal of efficiency. If it is true that not every life can be saved, that not every individual who needs a tragic good can receive one, then society might prefer to preserve the virtues of the free market on the supply side. Furthermore, society can take steps to mitigate the inequalitarian features of markets. Vouchers, subsidies, and wealth transfers can be used without adversely affecting the market's capacity to increase supply and reduce the equilibrium price.

Finally, the alternatives to market allocation may not be any less inequalitarian. Economists define a market as a set of institutions that respond to scarcity by transactions involving the transfer of real resources. The medium of exchange is usually, though not necessarily, money. When the monetized market is forsaken,²⁰ the alternative criterion by which allocations are made becomes important. Receipt of a tragic resource might depend, for example, on the need demonstrated

20. Calabresi and Bobbitt make this point very well. *TRAGIC CHOICES*, *supra* note 3.

for it. An individual desiring the good would have an incentive to hire a lawyer, priest, doctor, or other spokesperson to bolster his appeal. This would, of course, cost money; and it would seem that the wealthy would be able to afford the best advocates. The point is that wealth would continue to play a vital role in the allocation of such goods—perhaps as vital a role as it plays in the free market, and it would do so without the coordination and information benefits of the market.

C. *The Costs of Costing*

Economists define the opportunity cost of an activity as the value foregone by failing to pursue an alternative activity. In *Tragic Choices*, Calabresi and Bobbitt express concern about the values and principles society compromises or abandons in the pursuit of particular goals. This problem is given prominence in their discussion of placing values on human lives. Here, several principles and goals are in conflict: in particular, efficiency and life's pricelessness. The problem is this: Life is priceless. That markets presume to price the unpriceable is good reason, in the authors' view, for limiting the role of market allocations.

The authors' discussion of this problem is important but flawed. Markets do not attempt to place a value on human life or, for that matter, on any good. What the market price does is provide information. It informs society of the monetary cost of obtaining one more unit of a particular good²¹ or expanding a particular activity. This information helps individuals determine how they want to allocate their resources. But the market price does not place a *value* on the good or activity itself.

Prices, nevertheless, permit comparisons. For example, the cost of saving a victim of renal failure—reflected in a price—can be compared with the cost of straightening a road to save a potential car crash victim—also reflected in a price. Neither of these prices places a value on human life. When compared, however, the prices reveal how many crash victims can be saved for each renal failure victim foregone. For Calabresi and Bobbitt, such price comparisons are deeply disturbing because they erode human values. Calabresi and Bobbitt, however, are somewhat unclear about what this “cost of costing” is. The phrase describes both an objective erosion in human values that results when market prices are placed on lives and the “felt” offense that the authors contend arises if such prices are set. Yet it is difficult to see how costing by itself erodes fundamental values; what costing does is provide infor-

21. This is the essence of the marginalists' resolution of the diamond/water paradox. Water, which is very valuable, has a low cost because it is relatively abundant. Diamonds, which are of limited intrinsic value, are costly in part because they are so rare. The next unit of a diamond is costly; the next drop or cup of water is not—at least not yet.

mation essential to a rational ordering of such values. Moreover, the "felt" offense created by costing results from an unwillingness to confront the need to discover pertinent information about the relative costs of life-saving alternatives. If this is the case, what weight should be given the felt offense in matters requiring presumably rational debate?

In a world of scarce resources, the pricelessness of life is mere sentiment, unhelpful as a basis for public policy. Choices must be made and implicit prices must be placed on *lives saved*. Suppose, for example, that society has only \$500,000 to spend on life-saving devices. It might cost the full \$500,000 to save one kidney patient. An alternative could be to spend the money to straighten a freeway curve thereby saving ten lives. Should society choose to save the kidney patient, it would do so at the expense of ten lives.²² However distasteful this calculation may seem, it must be made to maximize lives saved. The myth of life's pricelessness must be sacrificed to comprehend the difficult choices societies confront. This sacrifice, the cost of costing, is part of the cost of pursuing the goal of efficiency.

The cost of costing can only be avoided by being dishonest. Dishonesty, in this situation, requires that the information the market could make available be ignored even though more persons die as a result. In so doing, however, the very principle sought to be protected—the pricelessness of life—is undermined. By ignoring the market's information, society may lose more lives than it otherwise would by using market information and developing policy accordingly.

II

ECONOMIC ANALYSIS: A PRACTICAL APPLICATION TO A TRAGIC SITUATION—THE MILITARY DRAFT

Calabresi and Bobbitt criticize the market or volunteer army in *Tragic Choices*. They base their objection to the volunteer army on the historical lesson that societies have found it offensive to allow the distribution of income to play a significant role in determining whose lives are to be risked at war. A historical analysis, however, fails to detect a number of important issues revealed by economic analysis.

Historical analysis usually misses the crucial distinction between price and cost. The *price* to the taxpayer of supporting an army will decrease under a draft system because, by definition, wages paid to draftees are insufficient to attract volunteers. But the actual *cost* to society rises in the form of uncompensated opportunities foregone by those who are drafted and because of the increased demand for man-

22. For an interesting argument against maximization, see Fried, *The Value of Life*, 82 HARV. L. REV. 1415 (1969).

power. The value of these foregone opportunities to the drafted men and draft-induced volunteers is a subsidy to the taxpayer from the soldier; in effect, a large tax on relatively low-income individuals with a regressive redistribution.

Economic analysis can point out other aspects of the volunteer army that historical analysis cannot. That higher wages and benefits must be paid under a volunteer army means that the adjustment problems of the soldiers' return to civilian life can be reduced. The higher wages also force the military to treat soldiers as valuable and scarce, even if it is not inclined to do so on humanitarian grounds. Moreover, the higher wages of soldiers induce capital substitutions for manpower.

One objection to the market or volunteer army is that its membership is disproportionately poor and nonwhite. Although everyone is free to serve in a volunteer army, the troubling fact is that only a very special segment of the population is inclined to exercise this liberty. No doubt the racial and economic mix of volunteers is, in part, a function of opportunities in the civilian sector. Low civilian wages and racial discrimination can skew the distribution of volunteers toward low-income nonwhites. Nonetheless, low military wages of the sort the draft guarantees will not improve conditions in the civilian sector for the less well off. A higher military wage brought about by the volunteer system will not alleviate these problems either; but it may provide an escape from these conditions. Moreover, in order to avoid skewed racial distributions in the military, a society could simply raise the wages above the equilibrium point. Such action would induce an excess supply of volunteers. The proper racial mix could then be chosen from this larger group of volunteers.

Furthermore, wartime military service is only one of many dangerous jobs, most of which are now in the civilian sector. Lumberjacking and firefighting as well as some police and construction work entail danger and attract workers mainly from among lower income groups. It is also true that a disproportionate number of individuals engaged in skyscraper construction are American Indians. Should society abandon the market for a draft in these areas as well?

III

PUBLIC DRAMA AND TRAGIC CHOICES

The authors do not explicitly define what it is that makes a choice or good tragic. It is tempting to think of tragic goods as expensive life-sustaining goods. But, as Calabresi and Bobbitt eloquently point out, there is more to a tragic choice: in order for the choice in the tragic

situation to impinge on values held dear, the suffering any choice imposes must be apparent. The authors note as an example of this the disproportionate share of research dollars that were allocated to win the fight against polio. The reason was F.D.R.'s bout with polio. What counts as a tragic choice is in many ways a matter of public drama.

The current groundswell for gasoline rationing documents the role of public drama in determining whether a good is tragic. Recent increases in the price of gasoline are far greater than the rate of inflation. Although the price Americans are now paying is less than half the going price in Italy, this increase is of enormous public concern. For many individuals, the increase is sufficiently large to declare gasoline too valuable and scarce a resource to be allocated through a market, even a regulated one. A paradox may occur, however, when public drama is central to the designation of tragic goods. Society may treat a good as tragic that, in fact, is not tragically scarce, and devise an alternative allocation scheme to distribute it. If the alternative scheme is inappropriate, however, the good may actually become tragic. Thus, public drama may turn an otherwise ordinary scarce resource into a tragically scarce one.

CONCLUSION

Tragic Choices is an exemplary text in readable model theory, virtuous as much for the authors' imagination in fashioning alternative allocation devices as for the painstaking detail with which they cover more familiar turf. The book's central claims are modest; the main arguments are well constructed. Although it is not written in a glib or flashy style, *Tragic Choices*, given its subject matter, is engaging and enjoyable to read. It is worthy of a careful reading by individuals concerned with the moral and economic dimensions of scarcity.