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Michael S. Ariens

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AGAINST THE PROFIT MOTIVE: THE SALARY REVOLUTION IN AMERICAN GOVERNMENT, 1780-1940

BY NICHOLAS R. PARRILLO

Yale University Press, New Haven, CT, 2013. 568 pages,
\$125.00 (cloth), \$55.00 (paper)

Reviewed by Michael Ariens

In *Against the Profit Motive*, Nicholas R. Parrillo expertly explains how and why state and federal governments moved from paying their employees and contractors fees to paying them salaries. The book offers insights into the history of government finance and administrative law, shifting dramatically in time (covering from 1780 to 1940), subject matter (from criminal prosecution and naval bounties to naturalization and land titles), and geography (discussing how different states and regions, as well as the federal government, reacted to the uses and abuses of fees).

The book begins with a helpful 50-page introductory summary and then is divided into two parts, each of which discusses a type of activity that generated fees for government officers: facilitative payments and bounties. A facilitative payment was made when a government officer performed a service that a person desired, and it was ordinarily paid to the officer by that person. For example, if a person who homesteaded federal land wanted to receive title to that land, then, for a fee, a government employee could facilitate that for him. A bounty, by contrast, was a payment, usually (though not always) made by the government, for a service resisted by a person. A bounty might be offered by the government to create an incentive for someone to apprehend a fugitive from justice, or to prosecute a person criminally accused. As Parrillo notes, the relationship between the fee-taker and one desiring a service, and the relationship between the fee-taker and one resisting the service, were qualitatively different, giving rise to different complaints about abuses of the fee system.

Salaries replaced fees for facilitative services in a two-stage process. The first stage took place largely in the early 19th century, and Parrillo makes a convincing case that it occurred for reasons related to ideals of democratic governance. For example, a homesteader could gain title to federal land only from the federal government. This gave federal employees charged with issuing land titles a monopoly in granting them. In general, the homesteader and the federal employee entered into what Parrillo

calls a “customer-seller” relationship, in which the parties negotiated a fee to facilitate the exchange. The negotiated payment was criticized at the time as closer to monopoly price-gouging on the part of the federal employee than to a fair bargain. Facilitative payments were also attacked as an effort by the executive to impinge on legislative (that is, democratic) authority to fund the government. Finally, what was in effect the sale of government privileges, such as homesteaded land or federal citizenship, violated the ideal of disinterested service by government employees, turning them into hustlers rather than gentlemen.

Parrillo notes that these arguments originated with the opposition to the early Stuarts in 17th-century England, but, given the incentives (such as money for land title or for citizenship), the perceived corruption of facilitative payments continued until the late 19th and early 20th centuries in most states, when the second transformative stage took place. This stage, in which facilitative payments were finally replaced by salaries, occurred only when government viewed the services provided by its agents as a limited good.

Parrillo offers an example. At the time when, in exchange for a facilitative payment, government agents granted title to homesteaded land, they did so quite liberally. From the late 19th century through the early 20th century, this approach was criticized as what we might call a zero-sum game, in that land granted to one cannot be granted to another. This view of land as a limited resource led to the end of the customer-seller transaction model predominant in the facilitative payments era. This model, Parrillo argues, was replaced by an interest-group politics model, in which the desires of one group were compared with the interests of another, and adjusted by Congress to make it less claimant-friendly. One way to achieve a less claimant-friendly administrative process was to replace facilitative payments with salaries.

Salaries replaced bounties for a different reason: Resistance to some government actions, such as its efforts to collect taxes and customs duties, made a bounty a less effective tool in accomplishing these actions. Bounties, in Parrillo’s telling, overemphasized coercion and underestimated the need, in a democratic society, for public cooperation. When the government gave a bounty hunter a strong economic incentive to enforce the letter of the law, it made those against whom the law was applied suspicious and distrustful of the government. Power tends to corrupt, and the

delegation of governmental power to those with an incentive to earn more by finding more and more persons in violation of the law led bounty hunters to apply the law mercilessly and, in some cases, fraudulently.

When the federal or state governments used bounties as incentives, they often failed to account for the possibility that those incentives might generate harmful consequences, including greater corruption. *Against the Profit Motive* demonstrates, in the disparate areas of criminal law enforcement, tax collection, and naval warfare, the difficulty that governments had in creating effective incentives that did not give rise to corruption.

That difficulty was a signal reason for the move from bounties to salaries. This shift is particularly interesting in light of the recent scandal at the Department of Veterans Affairs, in which some VA employees were paid bonuses for reaching performance metrics even as some veterans failed to receive timely care, and in the cases in several states in which public school teachers and administrators falsified records related to student performance on standardized tests to receive bonuses or to retain their jobs.

Though some of its material is daunting, *Against the Profit Motive* makes for rewarding reading. ☉

Michael Ariens is a professor of law at St. Mary’s University in San Antonio, Texas, where he teaches American legal history, constitutional law, evidence, and other courses. He is the author of *Lone Star Law: A Legal History of Texas (2011)* and other books.

