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An Absurd Tax on our Fellow Citizens: The Ethics of Rent Seeking in the Market Failures (or Self-Regulation) Approach

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Abstract Joseph Heath lumps in quotas and protectionist measures with cartelization, taking advantage of information asymmetries, seeking a monopoly position, and so on, as all instances of behavior that can lead to market failures in his market failures approach to business ethics. The problem is that this kind of rent and rent seeking, when they fail to deliver desirable outcomes, are better described as government failure. I suggest that this means we will have to expand Heath's framework to a market and government failures approach. I then try to defuse objections that as a government failure, rent seeking may not appear relevant to what managers ought to do. Solving this conceptual issue will also give us an excuse to revisit a separate conceptual issue: the normatively thick conception of "rent" and rent seeking behavior that some use. This normatively thick conception is problematic, I argue, and I offer the beginnings of a novel, normatively neutral conception that is useful for our purposes in making the ethics of rent and rent seeking behavior more than a merely trivial exercise.

Keywords Business Ethics · Regulation · Self-regulation · Rent seeking · Stakeholder theory · Market failures approach · Market failure · Beyond-compliance obligations

Market Failures Approach

> *The interest of the dealers… in any particular branch of trade or manufactures, is always in some respects different from, and even opposite to, that of the public. To widen the market and to narrow the competition, is always the interest of the dealers. To widen the market may frequently be agreeable enough to the interest of the public; but to narrow the competition must always be against it, and can serve only to enable the dealers, by raising their profits above what they naturally would be, to levy, for their own benefit, an absurd tax upon the rest of their fellow-citizens.*
>
> ~ Adam Smith

Joseph Heath (2004, 2006) has argued that the shareholder/stakeholder debate should be supplanted by a market failures approach. His suggestion is that rather than focus on the duties that managers might owe shareholders or stakeholders, we should instead focus on behavior that contributes to or causes market failures and urge managers to constrain their profit-pursuit in those contexts. In practice, this means not profiting from information asymmetries, externalities, and monopoly power, among other things.

Heath's market failures approach to business ethics is, in my judgment, a significant improvement over other frameworks, including the stakeholder and shareholder frameworks. The reasons why this is an improvement are well captured by Norman (2011). Norman argues that this approach, unlike many others, avoids a normative asymmetry between the "concepts, principles, and normative methods for identifying and justifying… beyond-compliance obligations" and the concepts, principles, and normative methods "used to set the levels of regulations themselves (Norman 2011, p. 43)." But the "tools and concepts" used to justify the latter "can also be used to justify business practices, policies, and procedures that are

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'higher' or 'more demanding' than the actual regulations in force (Norman 2011, p. 44)." Business ethics can be more unified by borrowing from or making stronger contact with the broader literature in political science, political philosophy, economics, and in the justifications for our legal system.

Here, my interest is neither to defend Heath's market failures approach, nor to defend the Paretian view that is to ground the justice of the market. In effect, this article seeks to contribute to the research agenda that Norman pleaded for by working out a particular problem within Heath's framework. Heath lumps in rent seeking with cartelization, taking advantage of information asymmetries, seeking a monopoly position, and so on, as all instances of behavior that can lead to market failures. The problem is that not all instances of rent and successful rent seeking count as *market* failures. In many cases, rent and rent seeking, when they fail to deliver socially desirable outcomes, are instances of *government* failure. While Norman appears to recognize this fact by mentioning government failures,[1] it would do us well to distinguish them firmly to better understand what managers ought to do.

Below, I will first explain Heath's approach to business ethics. With that in hand, I will offer my criticism of including the seeking of quotas or tariffs, when they generate inefficiencies and social waste as instances of market failure, arguing, instead, that it is commonly and better understood as a government failure. I then try to defuse objections that as a government failure, these forms of rent seeking may not appear relevant to what managers ought to do. Solving this conceptual issue will also give us an excuse to revisit a separate conceptual issue: the normatively thick conception of "rent" and rent seeking behavior that some use. This normatively thick conception is problematic, I argue, and I offer the beginnings of a novel, normatively neutral conception that makes discussing the ethics of rent and rent seeking behavior more than a merely trivial exercise.

Heath's Approach

Heath's approach begins with the general justification of the market, which he locates in the improvement of our well-being through the satisfaction of our desires in the most efficient way possible. This is why we go with the market. The market, as a system, comes with certain roles to play, including the role of manager in a company. These roles entail certain duties and obligations. Fiduciary duties to shareholders are an example of these duties. However, Heath argues that all of these obligations are actually derivative obligations. We derive the requirement of a manager having to maximize, say, profits for shareholders from the empirical assumption that this individual behavior will promote the effective functioning of the price system, and thus the efficiency of the market as a whole.[2] It is not, as Milton Friedman might say, that we ground this obligation in the fact that the manager, Sally, is making use of others' property, say, Bobby's, and Bobby would only permit Sally to manage what is ultimately his resource on the condition that she do the best she can to maximize the benefit (most often, but not exclusively, financial profit) to him. Private property and contractual obligations are not ground level obligations—Heath is neither a Lockean nor a Kantian about this, but a Paretian.[3] Market promises, contracts, and property rights are instrumentally justified, conditional on their usefulness in promoting market efficiency, which is good just in case it improves social welfare. The rules and roles are constructs serving the end of improved general well-being through market efficiency.

Sometimes, however, the rules of the roles imply or suggest that a manager take some action that conflicts with the general justification of the market. So, for example, the rule "maximize profits for shareholders" would suggest, in some contexts, that a manager should form a cartel with her competitors, strive to take advantage of information

[1] In summarizing Heath's approach, for example, he prefaces what Heath says with "…it is a distinction between firms that succeed fairly in market competition and firms that succeed by exploiting loopholes created by market failures and government failures (Norman 2011, p. 51)." And, again, "…we find it prima facie unethical for firms to try to gain competitive advantage by ignoring legitimate norms, whether they are grounded in market failure, government failure, considerations of justice, public decency, or what have you (Norman 2011, p. 55)."

[2] Writes Heath (2004), "…profit is not intrinsically good. The profit-seeking orientation of the private firm is valued only because of the role that it plays in sustaining the price system, and thus the contribution that it makes to the efficiency properties of the market economy as a whole (Heath 2004, p. 550)."

[3] Writes Heath (2004): "the more promising defense of profit is the Paretian one, which points to the efficiency properties of the market economy as a way of justifying the profit orientation of firms. According to this view, the point of the market economy is not to respect individual property rights, but rather to ensure the smooth operation of the price system. The profit orientation is valued, not because individuals have a right to pursue certain interests, but rather because it generates the competition necessary to push prices toward the levels at which markets clear. When markets clear, it means that all resources will have been put to their best use, by flowing to the individuals who derive the most relative satisfaction from their consumption (Heath 2004, p. 541)." In responding to an earlier criticism of mine (Jaworski 2013), Heath (2013) explains: "…my major claim is that the point of marketplace competition is to promote Pareto-efficiency, and in cases where the explicit rules governing the competition are insufficient to secure the class of favored outcomes, economic actors should respect the spirit of these rules and refrain from pursuing strategies that run contrary to the point of competition (Heath 2013, pp. 50–51)."

asymmetries, seek a monopoly position, start a false whisper campaign about the safety of her competitor's product, produce pollution, advertise in misleading and manipulative ways, secure a transfer in the form of a subsidy, attempt to regulate the competition out of existence through tariffs or quotas, take advantage of cognitive biases in customers, and so on. Heath calls these profit seeking strategies of competition "nonpreferred strategies." He contrasts these with "preferred strategies" which include lowering prices, improving quality, innovating in the industry, and so on. What unifies our objections to the use of nonpreferred strategies, Heath suggests, is that they either generate, promote, or are instances of market failure, or inefficiencies, and so fail to generate social gains by creating distortions that lead the price mechanism to send the wrong signals.

We cannot, however, regulate many of these nonpreferred strategies out of existence. To get rid of them will require managers to refuse to make use of nonpreferred strategies, even when that is the best way to maximize profits. In these contexts, the rules of the roles, which are instrumentally justified, conflict with the end for which they are instruments, and so are themselves unjustified strategies.

So we see that the role of manager with its concomitant role-specific rules is analytically tied to the general justification of the market. If the point of the rules of the road is to get most people wherever they are going in a safe and efficient manner, then sometimes this end is better served by ignoring the specific rules like "always stop at a red light." If you spot someone sliding uncontrollably in your rear-view mirror, and you are stopped at a red light with no traffic, you should probably drive on through to avoid getting rear-ended. Your sufficient excuse is that breaking this specific rule in this case actually serves the aim for which the specific rule is an instrument. To view "always stop at a red light" as a ground-level obligation is to make a fetish of it. Which is what we do if we see our role as managers requiring "maximize shareholder value within the law" as some sort of absolute obligation? It's not.

Government Failure

In general, we may say so far, so good. But in offering a list of activities that managers should not engage to avoid "market failure," Heath offers "do not seek tariffs or other protectionist measures (Heath 2006, p. 64)." Tariffs and protectionist measures do make the market less efficient, and I agree that that's bad, and I agree that managers should avoid doing this. However, it would sow confusion, and is out of step with the dominant way of wielding this concept, to call this way of making the market less efficient a *market* failure. Government-created rents and the seeking of these rents, when it has the effect of making the market less efficient than it otherwise would be are more felicitously described as instances of *government* failure.

A market failure is a failure in market institutions to deliver an efficient allocation of resources. If nonmarket institutions are the primary culprits, then we would be mistaken to call that a market failure, since it is not a failure on the part of agents operating within market institutions. On the standard view, the function of the concepts "market" and "government failure" is to identify the proximate cause of a social inefficiency; the adjectives "government" and "market" are treated as causal modifiers.[4] Further, it matters that we have agents whose decision-making contributes to the failure. An extraordinary and unexpected weather event that generated socially inefficient outcomes would, therefore, neither be called a market nor a government failure. If the cause of the weather event really were an "act of God," say Zeus flinging lightning bolts from Mount Olympus, then we would be right to call it a "Zeusian failure."

This way of wielding the concepts has become standard within economics. There is a nonstandard use of the concept that Heath is partial to. Using the framework of transaction-cost analysis, Heath and others distinguish decentralized market transactions from administered transactions within an organizational hierarchy. Organizing into firms, for example, substitutes the price mechanism with administration, and thus creates nonmarket means of organization within the firm. Whenever market transactions, rather than administered transactions, lead to inefficiencies, this framework identifies them as market failures, even if the proximate cause of the failure were an intervention by the government like the imposition of a quota or a protectionist measure. The reason why market failure is used in this way is because the function of the adjective "market" in "market failure" and "administrative" in "administrative failure" is not to identify the proximate cause of the failure but, instead, to identify the kind of transaction that is failing. The social inefficiencies can be caused by market actors or by government actors (or by Zeus), but so long as the core transaction is a market rather than an administered transaction this framework calls it a market failure.

There is nothing the matter with nonstandard uses of concepts. Indeed, the transaction-costs framework is ideal in a different contexts, the context of signaling when adversarial competition is appropriate, and when more

[4] I'm grateful to Alexei Marcoux for helping me to see it this way.

cooperative behavior is called for.[5] However, we have good reason to prefer the standard use of the concept "market failure" in *this* context and for a similar reason. The standard use signals which group of agents are primarily responsible, and thus permit us to know when the role morality of managers as opposed to civil servants applies more relevantly. Used as a causal modifier, "market" in "market failure" signals that the primary responsibility for a social inefficiency lies with nonstate actors, while "government" in "government failure" directs our attention toward regulators, civil servants, politicians, and other state actors. "Market failure" in this sense allows us to avoid equating moral obligations in within-firm contexts (e.g., managers to their executives, supervisors to their employees), with the moral obligations of government actors (e.g., regulator to industry, civil servant to citizens). Both may be kinds of administration, but the moral obligations will likely differ, in part because the nature of the relationship differs. That the primary transaction remains a market transaction when quotas or protectionist measures are causing a social inefficiency may be why we might want to describe this as a "market failure" for some purposes, but in this context it is simply less illuminating than the standard use of the concept.[6]

When the existence of distortionary rents is due to government interventions like the imposition of tariffs or quotas, any inefficiencies caused by them are better described as instances of government failure, not market failure. However, just as it would be either futile or counterproductive to try to regulate away some kinds of market failure (which leaves an exclusive space for ethics), so there are some instances of government failure whose reform would be similarly futile or counterproductive. When that is the case, and I suggest that's true of the existence of socially wasteful rents and socially wasteful rent seeking behavior, we have an exclusive space for ethics.[7]

This conceptual issue suggests that calling the framework the "market failures approach" may be misleading and less illuminating. One suggestion, then, is to adopt the standard use of the concepts market and government failure, and to expand it to include a moral obligation to avoid engaging in behavior that causes or contributes to *either* market *or* government failure. It is not a market failures approach, it is a market *and* government failures approach. Insofar as nonstate actors have a moral obligation not only to avoid behavior that generates market failures, but also behavior that puts pressure on state actors to deliver rents that have the effect of making the market inefficient we can insist that the responsibility of managers qua managers is to avoid market or government failure.[8] These are ways of capturing the wrong, when it is wrong, of quotas, protectionist measures, and other similar rents and the seeking of those rents in Heath's model.[9]

This resolves the conceptual issue with the market failures approach. We can now turn to a separate conceptual problem within the rent and rent seeking literature.

Rent and Rent Seeking

DeBow (1992) was the first to wonder about the relationship between corporate social responsibility and rent seeking activities. More recently, Boatright (2009) sought to contribute to this particular discussion in his article entitled "Rent Seeking in a Market with Morality: Solving a Puzzle about Corporate Social Responsibility." These two articles constitute almost the entire in-depth normative discussion of the ethics of rent seeking.

According to Tollison (1982), "rent" is defined as "a return on a resource in excess of the owner's opportunity cost or the difference between the return on a resource and its next best use (Tollison 1982, p. 575)." On this definition of "rent" there is little to distinguish it from "profit." Indeed, Tollison writes that, given this definition, "it is a

[5] In a separate paper, Heath argues that business ethicists, in seeking to give moral guidance to managers and other market actors, fail to see that different moral obligations apply in between-firm contexts where adversarial relationships obtain, and within-firm relationships where adversarial ethics may not be appropriate: "there is, rather, an institutional division of moral labor. In market transactions, the checks and balances built into the system of commercial exchange are such as to permit more instrumental (or "self-interested") forms of behavior. In administered transactions, by contrast, these checks and balances are absent (indeed, managers often wield great power over the lives of subordinates), and thus the institutional context calls for much greater exercise of moral restraint." (Heath 2006, p. 360).

[6] The transaction-cost sense of "market failure" may lead us to misidentify the problem, and thereby to misidentify a possible solution. Market failures are often wielded as arguments in favor of government intervention. Government failures, meanwhile, call for reforms in government institutions and policies.

[7] Separately, there is a lovely analog here for government ethics, as distinct from business ethics. Government agents, politicians in particular, should not engage in activities that contribute to, promote, or are instances of government failure. There are analogous principal-agent problems, but sometimes different goals. Exploring the possibility of a government failure approach to government ethics would be interesting.

[8] Some permit requirements and some occupational licensing, for example, are already instances of government failure. Sometimes bribing an official may, all things considered, have the effect of minimizing the social waste involved. Whether we should endorse this bribery, a second-order government failure, is an interesting question I leave aside.

[9] Alternatively, we can accept Norman's "friendly amendment" to rename the framework the "self-regulation" approach, which is to include a manager's obligation to not participate in activities that generate both market and government failures.

fair guess that most economists would consider 'rent seeking' to be equivalent to 'profit seeking', whereby it is meant that the expectation of excess returns motivates value-increasing activities in the economy (Tollison 1982, p. 575)." James Buchanan (1980) said as much, suggesting that rent seeking "is simply another word for profit seeking (Buchanan 1980, p. 3)." Seeing as how there really is no point in having two pieces of jargon to describe the very same thing, both Gordon Tullock and Buchanan chose to distinguish "rent" from "profit" and "rent seeking" from "profit seeking" by giving rents and the seeking of rents a normatively thick conception. Tullock (1989) writes that rent seeking should be used "solely for cases in which whatever is proposed has a negative social impact (Tullock 1989, p. 55)." Buchanan (1980), meanwhile, writes that "[t]he term *rent seeking* is designed to describe behavior in institutional settings where individual efforts to maximize value generate social waste rather than social surplus (Buchanan 1980, p. 4)."[10] Sometimes the distinction is made by suggesting that rent seeking is descriptive of individual value-maximizing behavior in zero- or negative-sum contexts, while profit seeking describes behavior in positive-sum contexts.

Somewhat consistent with Tullock and Buchanan's thick conception of rent seeking, Bhagwati (1982) offered a taxonomy that made rent seeking only one kind or instance of a general category of behaviors that he dubbed "directly unproductive profit seeking activities," or "DUP" (pronounced "*dupe*") activities. In being "directly unproductive," rent seeking is "directly" a form of social waste (although Bhagwati makes no judgment about its desirability). After offering a categorization of logical possibilities for DUP activities, Bhagwati indicates the possibility of positive-sum outcomes from these directly unproductive activities. He calls this possibility "paradoxical."

This should immediately raise a conceptual question: given that rent seeking, a kind of DUP activity, and rents are *defined* by Tullock and Buchanan as either generating or being instances of (undesirable) *social waste*, the "paradoxical" outcomes Bhagwati describes are actually not paradoxical, they are conceptually impossible.[11] On the Tullock/Buchanan conception of rent seeking, even the bare logical possibility of positive-sum outcomes cannot square with their proffered definition of rent seeking. It would be like granting the logical possibility of married bachelors.

Sowing more confusion, the rent seeking literature appears to be full of married bachelors, of which Bhagwati's paradoxical outcomes are just one instance. Tollison (1982) suggests that without competition and with only a direct transfer, rent seeking could be socially neutral. Bhagwati and Srinivasam (1980) suggest the possibility that rent seeking may increase social welfare in the context of international trade models. Cowen et al. (1994) discuss ways in which rent seeking might lead to the provision of public goods. Rent seeking can, in their words, "increase political effort and thereby increase social welfare (Cowen et al. 1994, p. 132)."

If we were to accept the Buchanan/Tullock definition of rent seeking, then we would have to conclude that whatever this empirical work is about, it is not about rent seeking. We already know it leads to (undesirable) social waste, because that is part of our definiens. Treating rent seeking as an independent variable, with the social outcome (whether waste or surplus) as the dependent variable is, to press my earlier analogy, like treating bachelors as an independent variable and marital status as the dependent variable. There is no need for any field work or nose-counting, all we need is a dictionary. So either this empirical work is conceptual confusion, or the empirical work operationalizes rent seeking in a way that is (a) normatively neutral, and (b) does not depend on social waste for its definition, while (c) not being merely a synonym for "profit seeking."

It is also worth pointing out that a normatively thick conception of rent and rent seeking trivializes questions about the ethics of rent seeking. At best, it reduces such questions to questions about when it is right to do wrong, analogous to the question, under what set of circumstances should we tell a lie (if we think lying is always pro tanto wrong)? But it is worse than that because Buchanan and Tullock appear to be defining rent and rent seeking in a way that makes it not merely pro tanto undesirable, but all in undesirable. We could at least argue about interesting cases where social waste is desirable, but there is no possibility of argument about the desirability of *undesirable* social waste—the inference rule of simplification makes quick work of it.

Ricketts (1987) was an early critic of this thick conception of rent seeking: "as commonly used the term "rent seeking" almost always requires us to accept implicit normative propositions about what is desirable (Ricketts 1987, p. 457)." Boatright (2009) also objected to this "question-begging" definitional trick: "the question is whether 'rent seeking' can be defined objectively in a way that makes no reference to its wastefulness, or whether rent

[10] Importantly, Buchanan thinks that this social waste is undesirable: "the unintended consequences of individual value maximization shift from those that may be classified as 'good' to those that seem clearly to be 'bad,' not because individuals become different moral beings and modify their actions accordingly, but because institutional structure changes. The setting within which individual choices are made is transformed (Buchanan 1980, p. 4)."

[11] It should be noted that Bhagwati includes cases where rent seeking leads, "paradoxically," to socially beneficial outcomes.

seeking theorists slip a requirement of wastefulness into the definition (Boatright 2009, pp. 541–542).” Presently, I will try to demonstrate why Boatright and Ricketts are right to take issue with Buchanan and Tullock’s conception of rent seeking.

(Re-)Defining Rent Seeking

Tullock’s normatively thick conception of rent and rent seeking would have counter-intuitive outcomes. Consider *Vaccine Vanity*.

Vaccine Vanity. There have been many efforts to discover a vaccine for cancer. Most of this effort has been in vain. We still do not know if the entire enterprise is futile; it is possible that finding a vaccine is not possible. Suppose we discover that a vaccine is impossible. If we knew this, the effort to find a vaccine would be very much like the effort put into alchemy. The resources that went into discovering this fact of futility may have been profitably spent, and there may be unintended side-benefits of the activity, but any expenditure of resources over and above this would be social waste. This appears to be a case where Tullock and Buchanan’s conception of rent seeking applies. This does not square with the way economists would describe the behavior. They would call the behavior profit seeking.

Hindmoor (1999, p. 439) offers his own counter-intuitive outcome in a related case I will call *Patent Pugilism.*

Patent Pugilism. Two companies, X and Y, are both competing to get a patent for a new cancer drug. Whoever gets the patent gets “rents” through a temporary monopoly. Since there is a fixed resource, the patent, that only one company can get, the battle is zero-sum. If X wins, say, Y’s resources have been wasted. Still, says Hindmoor, we would intuitively describe this fight over the patent as socially desirable.

Vaccine Vanity and *Patent Pugilism* tell us that sometimes we are happy to call something profit seeking, as in *Vaccine Vanity*, or socially desirable, as in *Patent Pugilism*, even when the behavior in question (predictably) leads to or is an instance of social waste. They also show that we would frown on anyone attempting to redescribe the activities in each case as “rent seeking” even though they meet the definiens for the Tullock and Buchanan conception of rent seeking.

We can also reflect on standard market failures themselves to see the problem:

Market Failure. A market failure is an instance where private attempts to maximize value through market institutions lead to economic inefficiency. The behavior is not described as “rent seeking,” even though the outcome is undesirable social waste. When there are information asymmetries, monopolies, cartelization, and so on, that are not a result of government intervention, we describe the behavior engaged in by the individual actors as profit seeking behavior.

So either the economists working on market failure are choosing not to use rent seeking when it clearly applies, or rent seeking is not to be definitionally distinguished from profit seeking on the grounds that it is profit seeking plus either empirical or within-idealized-model (undesirable) social waste. The latter is more probably the case. After all, those economists perfectly competent with both concepts, and contributing to the literature in each, do not invoke rent seeking in talk of market failures.

Changing Institutions

Buchanan’s conception of rent seeking appears to be tied to a shift in the institutional structure. In one context and in the absence of market failure private value maximization leads to social gains, while in a different contexts the very same kind of behavior has a tendency to lead to social waste. The change in institutions (a change in incentives) is supposed to help explain the different outcomes, according to Buchanan, because neither the behavior nor the character or personality of the agent is relevant to the changed outcome.

In the idealized models used by Tullock, Buchanan, and others in the public choice school of economics, the individual pursuit of value-maximizing through political institutions necessarily leads to social waste, rather than social benefit. This contrasts sharply with idealized models of markets which appear to necessarily lead to social benefits as though by an invisible hand, or through spontaneous order. However, scholars have recognized that market failures are a theoretical possibility. It is a genuine empirical question if the market in this or that widget will lead to social benefits, or whether there exists some market failure that yields lesser benefits, or social waste. This is partly why we do not identify “profit seeking” with “individual efforts to secure a private gain over costs, including opportunity costs, where the result is a social benefit.” The result may be a net social benefit in most cases, or even in all actual, real-world cases, but the logical possibility of a market failure vitiates any attempt to *define* profit seeking as being necessarily tied to social benefits.

What would be a mistake in the context of market institutions is surely also a mistake in the context of political institutions. Just as there is the logical possibility of a market failure, and the possibility of profit seeking leading to social waste, so there is the logical possibility of social benefits being generated through political institutions via the provision of rent or the pressure exerted by rent seekers. Defining rent seeking with the outcome of a particular kind of behavior within idealized models would be a mistake of the same kind as defining profit seeking with the outcome in idealized market models.

One way to remain true to the spirit of the Buchanan/Tullock conception, while eliminating the normatively thick conception of rent seeking is by focusing not on the outcome of the private effort at individual value-maximization, but on the change in the institutional context within which the behavior occurs. We can propose a conception of rent seeking for our purposes as follows: rent seeking is profit seeking in a specific institutional context that differs from the traditional market. In particular, rent seeking is profit seeking where those who determine the distribution or allocation of the rent are political agents or political actors in their role as political actors.[12] Lobbying governments is an example of rent seeking, while advertising for customers on the market is an example of profit seeking. "Social waste" is a separate empirical fact to be discovered by comparing the outcomes of the very same type of activity in the two different contexts.

Distinguishing these two different ways of generating gain over opportunity costs works well for the public choice school of economics as well as for business ethicists. Public choice theorists attempt to explain and predict the behavior of public actors—bureaucrats, regulators, politicians, etc.—as compared with the explanation and prediction of private actors making private choices in the context of a market. Meanwhile, our interest is primarily in the role morality of market agents, managers in particular. When we assess the morality of profit seeking behaviors, we are assessing how managers and other market actors are to relate to one another within market institutions. Distinguishing profit from rent in this way would function as a signal and reminder that we are engaged in analyzing the desire for private individual value-maximizing behavior within different institutional settings, and so within contexts that may require an analysis using a different role morality.

The extension of this conception of rent seeking would then include standard activities universally called rent seeking: occupational licensing, agricultural price supports, legislated price floors and ceilings, import and export quotas and tariffs, education subsidies, environmental and safety regulations, and so on. This conception would, however, be both over-inclusive and under-inclusive. An example of under-inclusivity might be the fact that we would no longer call "rent" the gains had by monopolies that arise without government intervention. Similarly, we could no longer describe as "rent seeking" the competition over inheritance on the part of family members of a deceased, which Buchanan has done.[13] An example of possible over-inclusivity might be government enforced property rights, including intellectual property like patents, which would be "rent," and the effort to institute a property rights regime would be rent seeking behavior.[14]

The benefits of this conception include, most importantly, its normative neutrality. All it does is distinguish two different contexts within which actors attempt to privately gain over their costs, including opportunity costs. We can also clearly distinguish the behaviors without having to do any empirical work, and without having to explain away any "paradoxes." On the one hand is the market, and on the other is the sphere of politics. Actors seek "profits" in the case of the former, and "rents" in the case of the latter. It is a genuine empirical question whether the latter generates social waste, while the former generates desirable social surplus. And it is an interesting, and not trivial, normative question about if this behavior is desirable.

Ethics of Rent Seeking

Heath's market (and government) failures approach is heuristical. He offers a list of (defeasible) prohibitions against behaviors that tend to generate social waste, rather than social gains, in imperfect regulatory environments. He offers a framework that goes beyond-compliance, but is unified with the general justification of the market. In being heuristical, the market (and government) failures approach generates rules of thumb, or short cuts. It is not true, for example, which all efforts at cartelization or monopolization must lead to social waste. What is true, however, is the amount of information necessary to know this, and the expense involved in figuring out exceptions, is high. In the majority of cases, we do better recommending that managers avoid attempting to cartelize, much like we recommend that each of us follow the rules of the road.

[12] Someone who happens to be a regulator buying potatoes at the grocery store is not distributing or allocating rents.

[13] We might also point to "quasi-rents" in cases where activities in the market sufficiently resemble the behavior of political actors. So we might capture monopoly positions as well as feuds over inheritance in this way.

[14] I suspect that it may be possible to exclude property rights from our list on the grounds that what we mean by the market is voluntary exchanges in a context with fixed and secure private property. Notice that this would have to be a conceptual claim, rather than a claim arising from a normative theory about the legitimate functions of the government. This would result in controversies (like over intellectual property in general, or over the specific contours and details of physical property rights), which would mean the concept of rent seeking would not find uncontroversial application. But the possibility of including property rights as analytically a part of the meaning of a "market" might insulate this conception of rent and rent seeking from the charge of over-inclusivity, at least with respect to property rights.

If rent seeking (in my sense) reliably leads to social waste, then we can endorse a general moral prohibition on rent seeking behavior. It counts as a "nonpreferred strategy" and is prima facie wrong. However, in specific cases, rent may improve social welfare, and so it would be morally permissible to pursue it in those cases. Determining when rent and the pursuit of rent would generate social benefits, however, is no easy task. In addition to the costs associated with discovering if this or that instance of rent seeking would generate social gains, managers must overcome self-serving bias, the inability to imagine what would occur without rents, and consider the fact that expenditures on seeking rents diverts resources away from product improvements, research and development, and improving customer relationships, before deciding to improve the bottom line through politics, rather than through the market.

Let me close by addressing two objections to this general moral prohibition by making use of an illustration in the financial industry sector. One objection is that it is inconsistent with the manager's fiduciary duty to her shareholders, while the second is that, in addressing ourselves to managers, we are addressing ourselves to the wrong subject of the obligations. If rent is wrong, and if I'm right that it's a government failure, then it is the responsibility of government actors to shape up, not market actors.

Lloyd Blankfein, CEO of Goldman Sachs, might be a perfect example of someone who counts as engaging in behavior that violates the market (and government) failures approach, sometimes in grossly egregious ways. Stiglitz (2012) explains that Goldman Sachs, under Blankfein's leadership, created financial products that Goldman knew would fail, but sold them to investors who did not know any better. Goldman created asymmetries of information, profited from those asymmetries, while investors and others suffered from this market failure. Common sense morality would condemn this action, and the market failures approach helps by offering a framework that helps to explain the wrongness of this kind of behavior.

But Goldman Sachs did more than merely engage in behavior that generated a market failure. Stiglitz describes the financial industry, including companies like Goldman Sachs, as the "rent-seeking sector par excellence (Stiglitz 2012, p. 32)." He explains that this industry has managed to secure favorable treatment at the hands of government, including in the form of bailouts. Of course, blocking this form of rent-seeking appears impossible because of the First Amendment's Free Speech and Petition Clauses in the U.S. Constitution. While some regulations may pass Constitutional muster and restrict some forms of lobbying, it cannot be eliminated entirely. Thus, we cannot rely entirely on formal regulations to alleviate any social inefficiencies from activities such as these. We would have to rely on self-imposed constraints.

If the bailout of Goldman Sachs was inefficient or socially wasteful is a matter of debate that I don't intend to participate in. But if we suppose, for the sake of illustration, that bailing out Goldman Sachs was, all-things-considered, socially inefficient, the government failures part of the market and government failures approach would not place the blame only on government actors. It would not, i.e., let Goldman Sachs and their engaging in lobbying activities off the hook.

Fiduciary Duty Justification of Rent Seeking

One "excuse" that Blankfein might offer us is by appealing to the fiduciary duty of Goldman Sachs to its shareholders. DeBow (1992) writes: "if, in the famous words of Milton Friedman, the social responsibility of business is to increase its profits, then this would seem to entail a responsibility on the part of corporate managers to pursue rent-seeking opportunities when, in light of all the evidence available to them, such a pursuit will yield the highest return possible from the set of options available. Are managers in this situation compelled by their fiduciary duty to the corporation and its shareholders to engage in rent-seeking? (DeBow 1992, p. 15)." Blankfein might urge that engaging in socially inefficient, but privately profitable activities like rent-seeking might be unfortunate from a social point of view, but required by the fiduciary duty.

One response might be to say that Heath's framework is intended to replace the shareholder framework entirely, thereby avoiding this potential obligation. But this response would be too quick. This model would be implausible if it did not account for the special fiduciary duties owed to shareholders, and the fact that managers are to act as agents for the principal. These special duties, created either explicitly by contract, or implicitly by the norms and understandings of the roles by the principals and agents are to work within the framework. DeBow asks the question in a way that implies that the fiduciary duty is a ground-level obligation. In Heath's model, the justification of this role-specific rule is derivative on the general justification of the market. If rent seeking would lead to government failure and this failure would lead to a market inefficiency, then the rule "maximize shareholder value" is unjustified in this case. It is outweighed or trumped by the knowledge that this heuristic in this case fails to achieve Pareto efficiency leading, instead, to social waste.

DeBow's question ignores the inheritance of side-constraints in the principal-agent relationship. If it would be wrong for P to Φ, it would be wrong for Q, acting as an agent for P, to Φ. It is wrong to do indirectly, through an agent, what you ought not to do directly. We ought not to participate in socially wasteful or destructive behavior, and we cannot empower others to engage in that behavior on our behalf. So this kind of response would not save Blankfein from being described as acting unethically.

It's Not my Problem

Blankfein could, however, try to insist that the problem of the bailout and similar rents, and Goldman Sach's rent seeking behavior, is not a problem with market institutions and market actors, but with government institutions and government actors. The inefficiency generated in the market is a government, not a market, failure. Just as I try to pursue the best medical services for myself and leave concerns about the role-morality of doctors to the doctors when I appear at the hospital as a patient, so Goldman Sachs and other companies should pursue profits through every legal avenue and leave worries about the role morality of politicians and civil servants to them. The problem, according to this excuse, with problematic forms of rent seeking is not that businesses *seek* rents, but that governments make rents available to dole out. We would be closer to the mark if we focused on rent *distributing* or rent *allocating* behavior—the primary wrong of socially wasteful rent is that public agents violate their duties to be good stewards or effective custodians of tax dollars. Just as, in Blankfein's view, it was not Goldman Sach's responsibility to enlighten investors about the almost-certain failure of certain investment products, so it is not their responsibility to inform government agents that these rents will be socially inefficient. It is not part of our job description, Blankfein might say.

The primary wrong of socially wasteful rents really is a problem not with the seeking of rents, but with the distribution of it. To be the primary problem, however, is not to say that it is the only problem. Rent seeking in socially wasteful contexts may be viewed as a kind of inducement to corrupt behavior, behavior that, when engaged in by legislators, breaks a public trust.[15] Just as it would be wrong for me to try to pressure my doctor to write me a prescription for painkillers, so it would be wrong for businesses to try to pressure public actors to create or distribute rents that generate social waste, or promote market inefficiencies. It may not be a core or key responsibility in the job description for managers, but it is, nevertheless, a genuine responsibility.

[15] Importantly, the wrongness of corruption cannot be understood using a market failure approach. This is especially so when corruption improves economic efficiency, which is possible, rather than harms it. A government failure approach may better capture the wrong of corruption. Interestingly, a politician is expected to prioritize the preferences of her constituents, just as managers are to prioritize their shareholders, but both of these rules are derivative on the general justification of government and markets, respectively. Thompson (1993) has persuasively argued in favor of an account of corruption, which he calls "mediated corruption," which locates the wrong of corruption not in any corrupt motive on the part of the official but in the damage it does to democracy.

Conclusion

A default moral prohibition on rent seeking fits well within Heath's market failures approach, although it would need to be appended to capture the fact that quotas, protectionist measures, and similar forms of rent and rent seeking are better understood as instances of government failure. I have also suggested that, for our purposes, "rent" and "rent seeking" might be better understood as a gain over cost, including opportunity costs, from government institutions, rather than on the market. This normatively neutral definition leaves open the possibility of rent seeking being socially beneficial, and makes the question of the ethics of rent seeking more than merely trivial. There is one other feature of this framework that I find compelling and attractive. While Norman suggests that this approach is a "beyond-compliance" approach to business ethics, it has the potential for being instructive in cases where compliance itself would be morally wrong. There are numerous cases where laws and regulations generate social waste, where complying with laws and regulations is something that businesses ought not to do. This framework has the potential of not only unifying our normative concepts, principles, and tools, but also of helping us to see when businesses are right to do what is illegal.

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