The Backward Society: Static Inefficiency, Rent Seeking, and the Rule of Law

Gordon Tullock

In my youth, I spent some time in China. I was deeply impressed by the fact that a group of very energetic and intelligent people did not seem to be producing very much and hence had a very low living standard. A careful inspection turned up two obvious reasons for their relative poverty. First, there was a very large number of economic institutions which promoted inefficiency—government-sponsored monopoly, for example. Numerous and detailed regulations which not only created monopolies but sharply reduced efficiency were also very common. Second, the principal economic activity of the more intelligent and better-educated citizens was not actually producing things but attempting to achieve rents of one sort or another or at least to avoid exploitation by achieving the favor and special consideration of the government. It was obvious that this activity, although personally profitable, was socially unproductive.

The purpose of this essay is to examine much the same model of a backward society in a more rigorous and formal way. The first of these two reasons, the existence of widespread government-sponsored monopoly and detailed regulations of an inefficient character, has, of course, been discussed by economists since Adam Smith. I propose to call these the *static inefficiencies* of the economy and I shall begin with a discussion of them.

After having dealt with the static inefficiencies I propose to turn to the activity of getting a monopoly or getting some other government favor, i.e., rent seeking. Lastly, I shall briefly discuss one of the reasons that Western states have been able, at least in the past, to keep these phenomena in check. This is what is commonly called "rule of law," although if the reader continues with the article that far he will find that in my opinion this is something of a misnomer.

Turning then to the static inefficiencies, all economists are aware of the fact that local monopolies generate inefficiency in economy. It has recently been realized that the traditional analysis in which the welfare triangle was depicted as the real social cost of monopolies is inadequate. There is also the resource investment devoted to acquiring monopoly and this is a further and generally larger social waste.[1] I propose, however, to leave this second activity, the seeking of monopoly, until I turn to the third section of the paper and currently discuss only the static inefficiencies that come from the existence of monopolies.

These inefficiencies have been measured in a number of modern economies and, in general, the verdict is that the net loss, i.e., the welfare triangle, is not all that great. I have no quarrel with these measurements although, of course, they are subject to detailed criticism, but in the poorer part of the world the situation is much more severe. There, monopolies are much more common and in consequence the situation in which there are several monopolies, all of which affect the single production process but which are not themselves coordinated, is fairly common.

This situation of several monopolies in series is much worse than a single monopoly. This has been known since Adam Smith. Not only is it inefficient from the standpoint of the economy as a whole, it is inefficient from the standpoint of the individual monopolies who have a very strong incentive to coordinate their activities. As in medieval Europe, however, the political situation is such that such coordination is normally not possible. The reader will recall, for example, that the Industrial Revolution occurred in areas which were not officially cities in order to escape the power of the guilds.

In the Third World, in addition to the natural problems of such coordination under these conditions, there is another difficulty. The government as a whole tends to regard any even reasonably large organization as something which requires careful attention and, in general, which must pay very large amounts of graft. Under the circumstances, amalgamation, even on an informal level, is likely to attract the attention of the government, and the resulting costs may well be greater than the benefits.

In addition to creating small monopolies all over the place, governments very commonly engage in regulations which, from a standpoint of production, are essentially arbitrary. The emperor Claudius rewarding the inventor of a number of devices for reducing the labor input in construction, then prohibiting the use of the devices because they would cause unemployment, is but one of the innumerable examples which any student of the area can find. Indeed, simply contemplating our Occupational Safety and Health Administration (OSHA) or Environmental Protection Agency regulations will give a very large number of examples.

In my opinion, detailed investigation of such regulations and their effects is worthwhile, but we will simply assume that they raise the cost of production. The fact that the regulations are continuously changing adds another cost in that there is very significant risk involved in engaging in business in this kind of unpredictable environmental change. Discussion of this, however, will be put off until later when we discuss rent seeking and rent avoidance.

Let us consider the condition of the society in which these traditional economic inefficiencies exist but in which there is no rent seeking, i.e., no resources are put into attempting to achieve government-granted monopoly, to change regulations in your favor, or to protect yourself against these activities. The first thing to be said is that there would be a very considerable waste but there would be no dynamic waste in the sense of resources invested in attempting to make society less efficient for private gain.

Everyone would be adjusting optimally to a peculiar environment. There might be a prohibitive tariff on the import of automobiles and one guild might have a complete monopoly on the manufacture of ball bearings for automobiles, but there will be efficient adjustment to the conditions. The situation would be very much the same as if natural barriers such as expensive raw materials or backward technology were causing difficulty. Human energy would be devoted solely and specifically to efficient production subject to these hazards.

Suppose, for example, that a monopoly has been given to an enterprise which is not the lowest-cost producer, or regulations require the use of a relatively inefficient production technique. In both cases, the society will be poorer than if these regulations did not exist but economic adjustment to them is exactly the same as if the permitted producer were the owner of a unique natural resource or if the more efficient methods of production have not yet been discovered. The waste would be a static but not a dynamic waste. Resources would be devoted to improving efficiency given the conditions and not to reducing efficiency, as they are under rent seeking.

No doubt the traditional economic writing was correct in pointing out that these inefficient institutions were indeed both inefficient and important. The fact that energy, capital, and invention, are devoted toward efficient production under this system, however, even if that production is production under handicap, does make it quite different from a rent-seeking society. There are at least two cases of societies which came close to, although they did not perfectly fit, this condition.

The British government in the sixteenth century, like other governments in Europe, had an elaborate set of economic regulations which were continuously changed. This led to large investments in courting the favor of the king, and for that matter Parliament, in efforts to get monopolies. Thus, in 1620 or thereabouts a very inefficient set of legislation was on the books.

Beginning with Charles I's difficulties with Parliament, however, the government of England was substantially paralyzed on the economic front for twenty years. Cromwell had his difficulties, too, and after the Restoration and even more after the glorious revolution, the government of England did relatively little to bring this antique legislation up to date. In consequence, all the inefficiencies remained but rent seeking did not occur. This was, of course, a period of very considerable progress, although much faster progress was made later, partly because the regulations literally became obsolete, i.e., there was no longer anything for them to apply to, and partly because as a result of the Smith-Bentham revolution the bulk of them were repealed.

Note that it is not true there was no rent seeking or that this was a government conspicuous for honesty. Indeed, it was generally regarded as one of the most corrupt in Europe. The king, who was responsible for actually running the government, got his bills through Parliament more or less by bribery, and the bribery consisted almost exclusively in offering rents in the form of appointments or monopolies to individual members of Parliament. But although this is the way the government ran, it was not a major phenomenon. Most Englishmen were little, if at all, affected by it except insofar as part of their taxes went to pay for these bribes. Rent seeking was a major activity on the part of a very small minority of people, but for the bulk of the population it was irrelevant. The total cost was trivial over the economy as a whole, and it did not cause any inefficiency in the bulk of the economy.

My second example is colonial United States. The colonies inherited from England a set of detailed economic regulations, and on the whole made efforts to enforce them. They did not, however, expand them or change them very much and with time they fell into disuse. This was also a period of rapid growth in the colonies. Thus, this kind of static waste, although certainly important and worth both study and vigorous criticism, is not inconsistent with a fairly rapid growth. What happens, in essence, is that the growth comes from a lower base but it can be quite rapid. Needless to say, this is no argument against getting rid of such unfortunate institutions. Each time you get rid of them there is a spurt of additional growth which comes from eliminating inefficiency added on to the regular growth pattern.

Let us now turn, however, to the situation in which energy in society is devoted not to just making the best of a bad deal, but attempting to make the deal worse because there are profits for individuals under those circumstances. This, of course, is rent seeking, a subject upon which a great deal has been written.[2] A brief outline of the rent-seeking argument will serve as background for further discussion. Figure 1, therefore, is the classical rent-

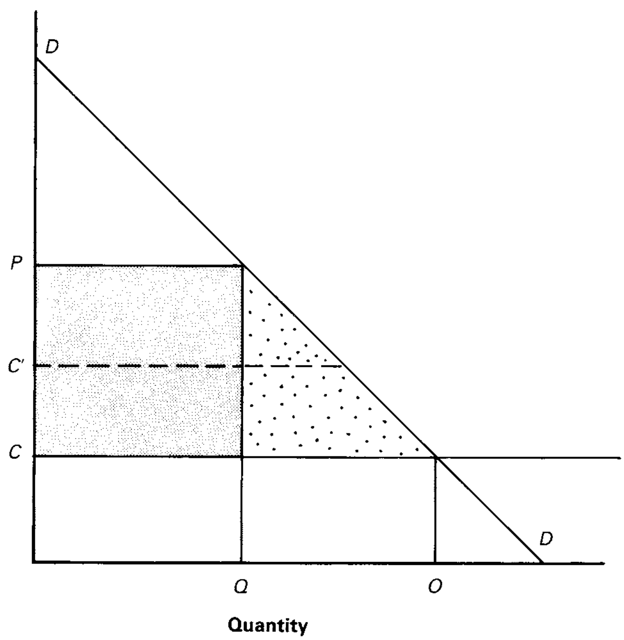

Fig. 1

seeking diagram. We have some product which can be produced at cost *C* and for which there is a demand shown by *D*. Quantity *O* would be produced at the price of *C* in a competitive market. Suppose, however, it is possible to get a monopoly either by private efforts or through government intervention. The monopoly will now charge price *P* and sell *Q* units, making a profit equal to the rectangle. The traditional argument was that the social cost of such an activity was not the shaded rectangle, which was simply a transfer from the customers to the owners of the monopoly, but the stippled triangle, which represented a net deadweight loss. This argument is not really accurate and its inaccuracy was apparently known by Adam Smith[3] but was largely forgotten by economists until I revived it.[4] Roughly speaking, the argument which we now call the rent-seeking argument is simply that getting a monopoly whether by influencing the government or by getting it privately is essentially a competitive industry. Resources will therefore flow into the activity of getting the monopoly and will continue their flow until the present discounted value of the resource investment equals the present discounted value of the monopoly, taking account of risk. Thus, the shaded rectangle is not a transfer from the customers to the monopolist, but something which the monopolist has obtained by investment of resources and, hence, is a net social waste as well as the stippled triangle. Thus, the waste of monopoly is much greater than the traditional argument would imply.

So far I have not said anything very much about the cost of creating a monopoly. It is quite probable, however, that it is in fact not the same as the present discounted value of the shaded rectangle over the future. This problem is discussed in greater detail in my article, "Efficient Rent Seeking."[5]

Note that it is not only monopoly which has these characteristics. Any activity which transfers a rent from one person to another or which creates a rent for someone has this characteristic. Thus, policemen are permitted to accept small bribes from traffic offenders. Their activity may well prevent traffic offenses just as readily as would a court fine. It will, however, lead people into investing resources into becoming policemen and thus lead to waste unless the sum of the policeman's basic wage, plus his expected bribe, is the amount necessary to attract appropriate quality people into police activities.

Note that not only are people interested in obtaining this kind of rent, but they will also defend it because its removal costs them something. Further, people from whom the rent is extracted may, if possible, organize to fight against the creation of the rent. Thus, the total resources involved in the fight for and against the rent can have a value greater than the present discounted value of the shaded rectangle.

So much for the foundations of rent seeking. There are several factors which must be admitted to modify the above reasoning. The first of these I will call the public interest cover and the second the public good problem. Beginning with the public interest cover, economists normally like to assume that everybody is perfectly informed and behaves rationally. It is hard to examine the special interest legislation of governments, however, without realizing that there are certain elements of irrationality in it. It should be kept in mind that the average citizen is not motivated to be particularly well informed about government but he is motivated to vote in accordance with what he knows. A special interest, therefore, if it wishes to get legislation through Congress which will injure the average man but benefit the special interest group, will have to cover their intentions well enough that a rather casual newspaper reader will not realize what is happening.

This cover normally takes two forms. The first, of course, is simply lying, i.e., false statements are made about what will happen. In some cases, as for example the worry about unemployment if we do not put on protective tariffs, the falsity of the false statement may not even be recognized by the person who makes it. But, in any event, whether it is consciously or deliberately a falsehood it is certainly untrue. But simple falsehood is less important than the other methods of covering up the special interest legislation. The second thing that usually must be done is to design the special interest intervention in such a way that it looks as if it is devoted to public interest.

As a general rule, from a welfare standpoint, simply giving the special interest group cash money raised by taxes is superior to whatever intervention they are arguing for. They can get more money for the same cost to the customer-taxpayer.

The reason this method is almost never used is that it would be too obvious. It is necessary to fool the average man, at least to a small extent, and hence a method of transferring funds to the special interest which is less efficient must be adopted. This means that there is always an inherent element of inefficiency in these special interest transfers. We can show this on figure 1 by assuming that the particular method of transferring power to the special interest raises its cost in some way and hence that it wastes C' per unit of production. Thus its monopoly gain is only half what it would be if it had not adopted the inefficient production technique.

There are many cases in which monopolies or at least some monopoly power are conferred by regulations on production which do raise cost while at the same time restricting competition. An obvious case is the restrictions on the practice of medicine in the United States which require that people either get no medical advice at all or buy high-quality medical advice even though whatever is wrong with them might well be treated by a less skilled practitioner. When the Carnegie Foundation funded the drive for the present arrangements with respect to medicine they gave as objectives improving the quality of medical care and providing the doctors an income suitable for their status in society. They could have reached the second without the first and everyone would have been better off. It would have, however, been a little too blatant and hence would not have gone through the legislature.

Anyone with any knowledge at all of government activity in these areas must realize that this kind of thing is very, very common. The waste costs are presumably very large, although they are offset in part by a reduction in the total amount of rent-seeking activity. Unfortunately, as we shall see below, this is not as much of a saving as one might hope.

If the voter-consumer is to be kept fooled, it is also important that various special interest groups whose interests are at least partially contrary to the interest group pushing for the particular bit of special interest legislation not inform the voters. This is usually accomplished by buying them off, by splitting part of the monopoly profits with them. This normally also involves various special rules which are inherently inefficient.

Thus, rent-seeking activity, in addition to a direct waste from efforts to achieve rent normally in the real world, will lead to considerable waste in that inefficient production methods are required as a sort of disguise. Note once again that this does not necessarily increase total waste because it lowers the total value of the monopoly and hence the amount of rent seeking which will be involved.

Another basic restriction on rent seeking under these terms is more significant and tends to make rent seeking much less common than it otherwise would be. This is a problem of the public good.[6]

In general, it is very hard to organize large groups to press the government not to take action because individual members of the groups are aware that their contributions make relatively little difference in the success, or lack of success, of pressure group activities. Thus, each individual is likely to refuse to participate or to participate at a quantity which is much below his actual interest in the matter.

The result of this public good characteristic is that a great many interest groups are not organized or if they are organized are relatively ineffective. This means that many opportunities for generating monopoly profits or other special benefits out of government activity are ignored simply because it is too hard to organize a pressure group.

Unfortunately, and this is a point which has been made by many economists, the defense against specialized pressure group activity also suffers from this kind of a public good problem and, hence, also tends to be underprovided. The result is that since, in general, special interest groups tend to spread the damage of their activity over a much larger group than they benefit, there is a good deal of fairly large scale special interest activity. Further, as pointed out by Wagner,[7] the professional politicians may act as entrepreneur for these pressure groups with the result that the individual is called upon to do nothing except to vote in his own interest. Much waste can follow.

Still, what we do observe is that it is hard to get large pressure groups organized and that the number of such groups is not gigantic and the total cost is as a necessity low. Suppose, for example, that the dry cleaners would like to have a law passed prohibiting entry of other new dry cleaners and, hence, permitting them to charge higher prices. Perhaps the law will provide that there is some restriction on the quality of dry cleaning and that a board of dry cleaners are to enforce this and they will, of course, decide that dry cleaning which is cheap, as can be seen from its price, is below standard and should be abolished.

In this law, if enacted, there undeniably will be a loss from the monopoly, but this will be a static loss in the terms of our previous discussion. The actual resources invested in generating this particular monopoly are apt to be very much less than its value simply because a great many of the dry cleaners will choose to free ride on a minority. Indeed, Mancur Olson's book would have argued that the pressure group would have had to be organized around something like a technical journal for dry cleaners. It would simply charge a little more for its subscriptions than the actual cost of producing the journal and then use the additional fund for lobbying.

Thus, the cost of the rent seeking in this case is apt to be quite small even though once the monopoly has been organized the total social cost may be very large. As long as we confine ourselves to consideration of these cases in which large numbers of people have to be brought together in order to lobby for the generation of rent, the actual costs in rent seeking are apt to be relatively minor for the economy as a whole and, hence, the net waste from rent seeking will tend to be small. This does not mean the problem is not important because the monopolies or other inefficiences generated can be very expensive indeed for society. But the costs are in the more traditional field which we have chosen to denominate "static." The "dynamic" costs of rent seeking are relatively modest.

As the number of people who are involved in the effort to achieve a given rent goes down, however, the practicality of free riding on other people's activity declines. Therefore, although a fairly small privilege of some sort would tend to inflict only modest costs on a society once it is established, the rent-seeking activity necessary to get it may be a very significant addition to that cost.

Suppose, for example, that a minor change in the tariff is proposed which will benefit only one company because that is the only company producing the particular minor product in the United States, and it is unlikely that anyone else will move in even if it becomes quite profitable. It is clear that enactment of this particular tariff change will have only a very modest effect on the total economy, although, of course, that effect will be completely negative. It is also clear, however, that the single company has motives to invest funds in rent seeking and that there is no way it can free ride. Under the circumstances, although the total static cost is small, the dynamic cost, i.e., the rent-seeking cost, is apt to be fairly close to the present discounted value of the gains which they made over the years to the individual company.[8] Suppose we are contemplating two types of government restrictions. One is a single measure for the benefit of wheat farmers which will cost the country a billion dollars a year. The farmers, being a hard group to organize, will put not more than, let us say, fifty million into lobbying for it, The static cost is great but the rent-seeking cost is small.

Let us contrast that to a large bundle of individual privileges offered to individuals or corporations which sum up to about the same amount. Here we would have a static loss once again of a billion dollars a year but the dynamic cost, the cost of rent seeking, might go up to somewhere on the order of ten billion dollars. That is the present discount value of the monopoly at a 10 percent interest rate. Clearly this collection is far more expensive than the single monopoly.

With smaller amounts of money invested in rent seeking in our public good case, it is less likely that lobbying will be effective. The ten billion in small lobbying activities is far more likely to get this large collection of small rents than is the fifty million to get a single very large rent.

It should be pointed out that the farmers may get their rent through another form of pressure. They may simply vote for whichever candidate offers the best deal. This makes the politician himself the entrepreneur, but note that there is once again a large cost here. The farmers are voting with respect to only one issue, i.e., how much they will get out of the government on this project. Their lack of concern for the other issues may lead to a very significant cost. If each pressure group votes only in terms of benefiting itself, the cost to society of this is the loss of the supervision over the government which voters can provide. In a way, the farmers pay for their rent by granting large grants to other people which hurt them. The cost may turn out to be larger than the benefit even from that standpoint, but of course they don't notice this.

In any event, information is not free and it is unlikely that politicians will be as good at organizing this kind of pressure group as a professional lobbyist would be. Thus, although some "public good" pressure group activity and rents will be generated by congressional entrepreneurs, the amount will be smaller than would be generated if somehow or other the members of the pressure group could be organized. The worst of all possible arrangements would be to provide the farmers with the right to pass special taxes by majority votes among themselves for the purposes of maintaining lobbies in Washington. But note that that is what we are beginning to do with respect to local governments. A local government is capable of putting a tax on its own citizens for the purpose of maintaining a lobby in Washington and as time goes by more and more of them are doing so. This, with respect to special privileges for geographic areas, gets around the free rider and public good problem and hence probably leads to a very large and very wasteful investment in rent seeking.

What we have been saying so far, then, is that the static inefficiences in the economy which come out of rent-seeking activity are relatively independent of the way in which the rent is created. If the beneficiaries are numerous with the result that there is a great deal of free riding and avoidance of contribution, then it is less likely that the rent will be created. But once it is created it is just as bad as if it were created in the other way. Small privileges, on the other hand, affect only a very few people and are individually less costly although they may add up to very large sums over the whole collection.

In any case, there is an additional dynamic cost becaue normally a great deal of resources compared to the size of the rent will be invested in the rent seeking because it is not possible to free ride on the activities of others. Thus, once the government is so organized that the small benefits, particularly individual benefits, are available, one anticipates that first a great deal of resources will be put into getting them and second, as a consequence of this large investment in resources, a great many of them in fact will be obtained. The picture that I saw in China was of a very large number of local monopolies and special administrative rules together with overpaid government officials on the one hand, and a very large investment of individuals in getting possession of these various rents on the other. That is what could be expected.

In the present-day world the invention of the corporation permits "individuals" to be quite large, and it may be that one of the reasons for existence of large corporations is the fact that their very size permits them to avoid the free rider problem. In a way, the stockholders of a large corporation are a collective group who have the right to put taxes on themselves for the purpose of lobbying in Washington. This is true but that is not the way it goes in terms of bookkeeping. The management simply allocates some of its resources to maintaining a Washington office or bribing a congressman, but the effect is the same.

As a result of this line of reasoning we can see that if most laws are broad laws covering many people, there is apt to be very little in the way of rent seeking and probably lower static inefficiency than would otherwise develop. This was the situation in England in the eighteenth and nineteenth centuries and the United States in the same period and this, of course, was also the period during which those two countries achieved their immense economic predominance. It turned out that their basic ideas were catching and the Industrial Revolution and modern capitalism spread from them.

Today, we seem to be in the middle of a retrogression. Our laws are immensely lengthy and detailed, they are frequently changed, and they are subject to administrative discretion which permits specialized interests, even very small ones, to get a positive return on investments in rent seeking. This development has, of course, been accompanied by a general decline in the relative growth rate in both England and the United States, although I would not like to argue that it is the sole reason for that development.

It is notable that those countries which have been growth leaders in the period since World War II have all in one way or another been areas where rent seeking activity of this particular nature has been severely restrained. Specifically, they have all been countries where the export trade is of very great importance. In general, it is not possible for a government of, let us say, Sweden, to give any particular rents to someone who sells most of his products to South Africa.

It should be noted, however, that in Sweden, the economists classify the economy into two parts, the export trade, which in Sweden makes up almost half the economy, and what they call the sheltered areas where there is little or no competition with foreigners. In the latter, rent seeking has had a major role and that part of the economy is extremely inefficient. I am told the same is true in Switzerland, although there have been no formal studies in the matter. I suspect we would find it true also in Japan.

The common market has had much to do with forcing European countries out of the rent-seeking mode. Elimination of most tariffs between European countries deprived the governments of control over their own markets in many areas. The Brussels organization has devoted its time almost exclusively to attempting to make up for this by establishing cartels but, except in agriculture, it has always failed because there is always at least one country that can do better under competitive conditions than it could under a monopoly dominated by the other countries. This explains the very rapid growth in the post–World War II period of those countries whose economy is dominated by the export trade.

If I am right about this, we have coming up a nice test for the hypothesis. England is moving into the common market and in fact is now in with the result that a number of English industries are in very severe trouble and others—for example, hotels and the service trades—are booming. If my hypothesis is correct, the net effect over time is almost certainly going to be an increase in the rate of growth in England even though it is going to be very painful to those people who find it necessary to shift from one occupation to another.

The economy of the United States, fortunately, is large enough that foreign trade does not dominate its activities. To a large extent, our prosperity in the nineteenth century came from the fact that the federal government was relatively inactive, like the Brussels EEC, and the states found themselves in a situation where the export trade (to other states) drove their economy. They might not be shipping too much to Germany, but they were shipping a good deal to Nebraska. The states, then, were prevented from developing a rent-seeking economy by much the same things that are bringing it under control in Europe. Unfortunately, this changed. The federal government developed far, far more control and in fact began organizing cartels for the states, with the result that rent seeking became much more prosperous. I would guess that the same development will occur in Europe with time, but as one who wishes Europe well, I hope it takes a very long time.

To continue with remarks on the present American situation, however, although we have had an immense body of detailed regulations, the bulk of them are general in the sense that they cover the whole United States, and tend to be written in Washington. This kind of regulation is subject to a great deal less in the way of rent seeking than local regulations covering specific companies or individual plants. The reason, quite simply, is that there usually are at least two or three different enterprises covered by each part of the regulations and it is rare that their interests are exactly coincident. Thus there is some free riding and some internal fighting within the group who might want a regulation.

Another advantage is that our present regulation is essentially a very recent development. The length of the federal register is increasing exponentially and this rapid increase seems to have proceeded more rapidly than the institutional structure for rent seeking can develop. The massive expansion in development of specialists in Washington who know who is writing the section on safety requirements for tennis shoes, know him well, and know how to provide that he receives some (indeed 90 percent) of the gain if the regulation is written in such a way as to produce a rent for someone, is not yet developed. Indeed, as far as I can see, the payoff system, which was so important in the countries where rent seeking has been going on for a long time, is still very much in its infancy in the United States. In general, the bureaucrats and politicians who write these regulations receive only the most modest and indirect payoffs from the people who benefit from them.

Thus, although we are moving in the direction of a rent-seeking society, we have by no means reached it. We have an immense amount of static inefficiency as a result of government creation of monopolies or restrictive regulation. Rent seeking, however, is still only a rather minor part of our economy. Unfortunately, the trends point toward more and more rent seeking. Unless something is done to stop these trends we may end up in the same situation as the backward societies I have described.

This brings me, finally, to the rule of law. Giving the words rather unusual meaning, I am going to discuss the use of a jury as the primary enforcement mechanism.

Those who have read my previous work[9] know that I do not like juries. I think that they tend to make mistakes, do not necessarily understand the evidence, and, in particular, do not carry out the law if they do not feel that it is ''just.'' I don't propose to withdraw any of these statements as to the use of the jury in the enforcement of the law but I gradually come to the conclusion that although the jury is a bad method of enforcing the law it may have a desirable economic effect. Note, I am not arguing that we could not get these desirable effects by other means. My point is simply that historically the use of the jury was one of the major reasons for rent seeking being relatively unimportant in England and the United States. It is notable that most regulations in the United States and England today are enforced by techniques which avoid juries.

Consider the situation in England in 1700 and suppose that an English Parliament or king had decided to enact the kind of detailed economic regulations which were then dominant in France. A person who was alleged to have violated these regulations would have had the right of jury trial. The prospects that a jury would convict and send to prison that man for violating the rule which they had never heard of before and which in any event seemed of rather dubious moral value were very low indeed. In order to have rent seeking, we have to have an immensely detailed set of rules which more or less by definition most people will not know exist and which will, in general, have very little moral weight behind them. Juries simply do not enforce such rules with any degree of regularity.

Recently, OSHA, which had had a specific rule as to the height at which a fire extinguisher must be placed on a wall, rescinded this rule and permitted factories and other installations to have some variance in the height of their fire extinguishers. Suppose that OSHA, from the beginning, had been compelled whenever it felt that some factory was violating the rule on the height of fire extinguishers to take that factory before a jury. In the first place, the government attorney would probably have refused to make a fool of himself by presenting a case. If they did present the case, however, they would find extreme difficulty getting convictions. It would not be true they couldn't get any. Juries are highly unpredictable but they wouldn't get very many and after a while, the regulation would in essence be repealed even though it remained on the books because no one would go through the frustrating business of trying to convict people of the crime of placing a fire extinguisher at the wrong height on the wall. The administrative state requires an economical and efficient way of enforcing its regulations and the jury is emphatically not such a mechanism.

Note, however, that the reason the jury is not such a mechanism is that it does not necessarily carry out the law. I earlier said that I was going to use a somewhat odd definition of "rule of law" and I have surely done so. What actually happens is that the law, although not totally ignored by the jury, is regarded by most juries as less important than other matters, one of which is their own basic code of morality. This means that reforms and improvements in the law are almost impossible under a jury system, but it also means that the jury system prevents the development of detailed regulations of the sort which are necessary to produce large-scale rent seeking. The rent-seeking society must have some method of enforcing its laws other than by trial by jury. Of course, it does. In modern times even the English-speaking people have worked out techniques for avoiding any necessity of presenting regulatory matters of this sort to a jury.

Thus, the fact that from 1650 to 1900 England depended primarily on juries for enforcing the law, as did the United States until recently, may well have had the accidental by-product of making it impossible to have a highly detailed set of economic regulations. In a way, I am arguing that the development of a jury was probably unfortunate from the standpoint of the legal system of England and the United States but very fortunate indeed from the standpoint of development of their economy. It provided, rather by accident, a barrier to the development of the kinds of detailed administrative regulation which was so prevalent in most of the rest of the world.

Needless to say, I do not argue that the jury is the only or the best barrier against detailed economic regulation. In particular, the jury carries with it the very large cost that desirable changes in the law are as hard to get through as undesirable ones. It also carries a large cost in that it very commonly does not understand the evidence and hence simply makes wrong decisions. It does, however, in the areas where it operates, make detailed economic regulations unenforceable and hence makes people relatively unconcerned with their content. This eliminates rent seeking.

It can be seen that the particular interpretation of "rule of law" which I have been using implies that a lot of the success in England and the United States was essentially an accidental by-product of an institution adopted for other reasons and which, in my opinion, is relatively inefficient for the objectives toward which it formally points. We should not be too surprised. We cannot yet predict everything that happens in history and we still have many areas where apparent accident and random behavior are of great importance. Thus, the English-speaking people, rather by accident, got out of the rent-seeking society and began the Industrial Revolution before anyone understood what a good economic system was. I would hope that we will not have to depend on historical accident to make our economic progress in the future. We can avoid the rent-seeking society by consciously deciding not to have the kind of government which promotes rent seeking. This is better than to abort monopolies by an inefficient enforcement mechanism.

NOTES

1. Gordon Tullock, "The Welfare Costs of Tariffs, Monopolies and Theft," *Western Economic Journal* 5 (June 1967): 224–32.
2. James M. Buchanan, Robert D. Tollison, and Gordon Tullock, eds., *Toward A Theory of the Rent-Seeking Society* (College Station: Texas A&M University Press, 1981).
3. E. G. West, "The Burdens of Monopoly: Classical Versus Neoclassical," *Southern Economic Journal* 44, no. 4 (April 1978): 829–44. He has a superb discussion of Smith's view on the matter.
4. Gordon Tullock, "The Welfare Costs of Tariffs, Monopolies, and Theft," *Western Economic Journal* 5 (June 1967): 224–32.
5. In *Toward a Theory of the Rent-Seeking Society,* pp. 98–112.
6. The discussion here will owe much to Mancur Olson, *The Logic of Collective Action* (Cambridge, Mass.: Harvard University Press, 1965), and to my own "Cost of Transfers," *Kyklos* 24 (1972): 629–43. Also see E. K. Browning, "On the Welfare Cost of Transfers," *Kyklos* 27 (1974): 374–77, and my reply to Browning, "More on the Welfare Cost of Transfers," *Kyklos* 27 (1974): 378–81.
7. Richard Wagner, "Pressure Groups and Political Entrepreneurs," *Papers On Non-Market Decision Making* 1 (1966): 161–70.
8. But, once again, see my "Efficient Rent Seeking," in *Toward a Theory of the Rent-Seeking Society.*
9. *The Logic of the Law* (New York: Basic Books, 1971), and *Trials on Trial: The Pure Theory of Legal Procedures* (New York: Columbia University Press, 1980).