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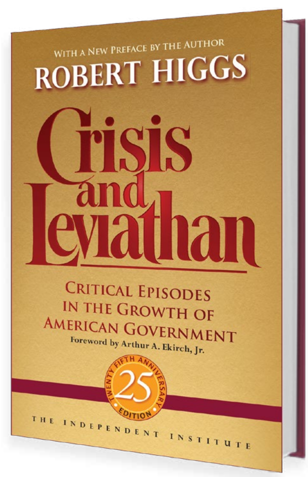

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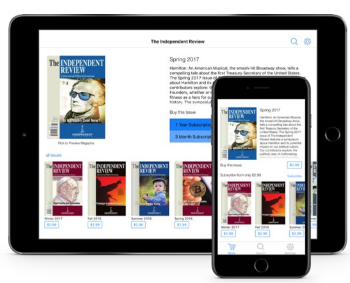

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"Pay to Play" Politics Examined, with Lessons for Campaign-Finance Reform

FRED S. MCCHESNEY

I don't care if she waddles like a duck
And talks with a lisp.
I still think I'm in good luck
If the dollar bills are crisp . . .
'Cause if the purse is fat
That's where it's at.

William Robinson Jr. and Robert Rogers,
"First I Look at the Purse" (BMI) [1]

Once upon a time, at least as popularly portrayed, politics was about public service, not personal gain. Political office was something that individuals did in addition to rather than instead of their jobs as butchers, bakers, and candlestick makers. As G. K. Chesterton noted, however, the notion of politics as a substitute for rather than a complement to ordinary economic pursuits has changed in

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1. The Contours popularized this song in 1965. See also Janie Bradford and Berry Gordy Jr., "Money (That's What I Want)" (BMI), made popular by Barrett Strong in 1960: "Money don't get everything, it's true; but what it don't get I can't use."

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the past century: "The mere proposal to set the politician to watch the capitalist has been disturbed by the rather disconcerting discovery that they are both the same man. We are past the point where being a capitalist is the only way of becoming a politician, and we are dangerously near the point where being a politician is much the quickest way of becoming a capitalist" (qtd. in Fuller 1961, 337). One way politicians become capitalists starts with selling access to the political process to private groups, just as Internet portals, such as America On Line, provide access to the World Wide Web for a fee. Paying for access to politicians is sometimes termed a "pay for play" arrangement: money exchanged for a chance to transact in the political marketplace.

In this article, I discuss some ways in which political office enables its holder to be a political capitalist. It is popularly assumed that what is being sold in political markets is special favors for special interests, and so "pay for play" is synonymous with rent seeking. The political game being played, however, is more complex than that suggested in this typical good-guy/bad-guy characterization. Many payments are made to avoid the imposition of special costs, not to secure special favors. Much of what is popularly perceived as rent seeking by private interests is actually rent extraction by politicians.

That distinction is crucial in any evaluation of legal limitations on giving to politicians. Proposals to reform campaign finance are all based on the popular view that citizen payments to politicians are made for special favors. Therefore, campaign-finance reform plans typically include limitations on payments to politicians, especially on "soft money" payments that do not go directly to candidates. For several reasons (to be discussed), there are many arguments against limitations on political giving, even when the payments are made for special favors. And if some payments are made to avoid special costs that politicians would otherwise impose, then the case against limiting campaign contributions is even stronger.

The "Pay to Play" Phenomenon

Background: Pay

Concerns about "pay to play" begin with the first part, *pay*. The role of money in politics seems to be growing. It is difficult to establish this thesis rigorously, for no one has ever ascertained exactly how much is paid to politicians either in the past or in the present. (The extent to which political donations can be documented is discussed in Milyo, Primo, and Groseclose 2000, 77.) Even modern campaign-disclosure laws do not require the reporting of every check written in every campaign. Moreover, payments may be made in money or in kind. For a political candidate needing a car to tour his district or state at election time, the loan of a car is just as valuable as a check that would go to rent a car from Avis.

Nonetheless, from what can be documented, growth in political contributions seems apparent. The most visible fund-raising organizations during the past generation have been political action committees (PACs), creatures of the 1970s revolution in campaign-finance laws. (Although I focus in this section on PAC contributions, I do not intend to suggest that they necessarily constitute the most important source of political giving.) As figure 1 shows, the growth in PACs from the mid-1970s through the mid-1980s was substantial, especially the growth in the number of corporate PACs. In 1974 (not shown), there were fewer than 1,000 PACs (Sabato 1984). By 1977, the first year shown in figure 1, the number had risen to considerably more than 1,000. By 1985, the effects of the 1970s campaign-law changes had produced a new and seemingly stable equilibrium. The total number of PACs in 1985, just short of 4,600, was virtually the same as the number in 1997.

However, the appearances may be deceiving. Although an equilibrium in the sheer number of PACs was established during the 1980s, the amount of money they collect and disburse has grown substantially. The figures shown in table 1 (reported for two-year election cycles), can be summarized for the period from 1985–86 to 1997–98 as follows: growth in PAC receipts, 42.2 percent; growth in PAC contributions to candidates, 57.3 percent. To put the numbers from table 1 in perspective, consider that the figures for 1997–98 represent an average contribution to PACs of $939,396 for each of the 535 House and Senate seats, and PAC disbursements of $411,109 per seat. Ignoring the handful of open seats, incumbents receive some 82 percent of the money disbursed, which means that incumbents receive on average $338,126 in PAC contributions per two-year election cycle (Federal Election Commission 1997). The figure is conservative; with six-year Senate terms, not all 535 seats

Figure 1: PAC Count, 1977 to 1995

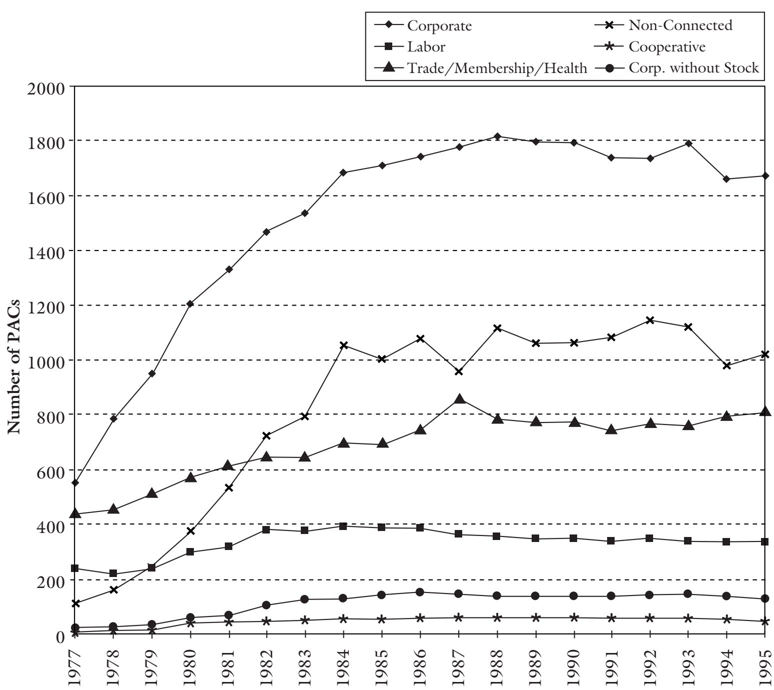


Table 1: Changes in PAC Receipts and Contributions for Two-Year Election Cycles, 1985 to 1998.

Year	*No. of PACs*	*Receipts*	*% Change*	*Contributions to Candidates*	*% Change*
1985–86	4,596	$353,429,266		$139,839,718	
1987–88	4,832	$384,617,093	8.82%	$159,243,241	13.88%
1989–90	4,677	$372,091,977	–3.26%	$159,121,496	–0.08%
1991–92	4,727	$385,530,507	3.61%	$188,927,768	18.73%
1993–94	4,621	$391,760,117	1.62%	$189,631,119	0.37%
1995–96	4,528	$437,372,321	11.64%	$217,830,619	14.87%
1997–98	4,599	$502,576,840	14.91%	$219,943,566	0.97%

are contested every two years. In the six national elections from 1988 to 1998, PAC contributions on average made up 34 percent of all campaign receipts in House races and 23 percent of those in Senate races (Milyo, Primo, and Groseclose 2000, 79–80).

Comparably detailed figures from the Federal Election Commission are not available for 2000 as this is written, but there is every reason to think that the growth trend for campaign contributions continued into the most recent national election. Reporting on "soft-money" contributions for 2000 (a record $457.1 million), Common Cause says that the amount is "98 percent more than the $231.1 million raised during the same period of the 1995–1996 election cycle, the last comparable presidential election period" (2000b, 1).[2]

The previous sentence adopts the terminology used popularly (as well as by the Federal Election Committee) in referring to money paid to politicians as campaign *contributions.* Campaign *donations* is another term often used. The terms connote eleemosynary motives and self-denial rather than personal motives and self-interest. It is safe to say, however, that few people believe today (if they ever did) that political contributions are truly donations. Discussing PAC contributions and other soft-money payments, Common Cause recently opined, "the soft money system taints everyone in it—the givers, the candidates, and the parties. . . . [T]hanks to soft money, the public now sees parties largely for what they, sadly, have become: mail drops for special interest money" (2000a, 1).

Thus arises the concern over "pay." If contributions were truly that—donations made without expectation of reward—presumably concerns about the money being paid to politicians would diminish. As indicated by Common Cause's reference to "special interest money," however, altruism is generally thought to play little role in campaign contributions.[3]

2. "Soft" money is money not contributed directly to candidates in particular campaigns, but rather to some other recipient, typically a political party organization. Soft money, unlike donations made directly to candidates, is essentially unregulated. According to Common Cause, 48 percent of the $457 million donated in 2000 went to Democrats, 52 percent of it to Republicans (2000b, 1). Federal Election Commission figures are slightly different, showing $487 million in soft-money contributions for 1999–2000, the sum divided almost equally between the two parties (Public Citizen 2001).

3. Nevertheless, some commentators maintain that political giving does not influence legislation, in part because the amounts given are small relative to the economic largesse that the government has to bestow. With the federal budget now in the neighborhood of $2 trillion annually, not counting "off-the-books"

The Issue: Play

Although the "pay" phenomenon seems well established, the meaning of *play* is not so clear. What exactly do contributors purchase? For the most part, commentators content themselves with describing the payments as being made for "access." Milyo, Primo, and Groseclose believe that campaign contributions do not influence politicians in the first place and that "PAC contributions are better characterized as an entrance fee, rather than a bribe" (2000, 82). Ordinarily, however, those who pay for entry, such as movie-goers, are not paying for entry itself. People pay to see what appears on the screen, not just to sit in a theater. (For discussions of how transactions between private interests and politicians work, and of what private interests pay for, see Bronars and Lott 1997; Kroszner and Stratmann 1998; Stratmann 1991, 1992, 1995, 1996, 1998, and the sources cited therein.). To quote Common Cause again, "corporations, unions, and wealthy givers know that big money can result in extraordinary access and influence for their interests. Today, in Washington, if you want to be heard, it's much easier if you have a big soft money check that can help pave the way" (2000a, 1).

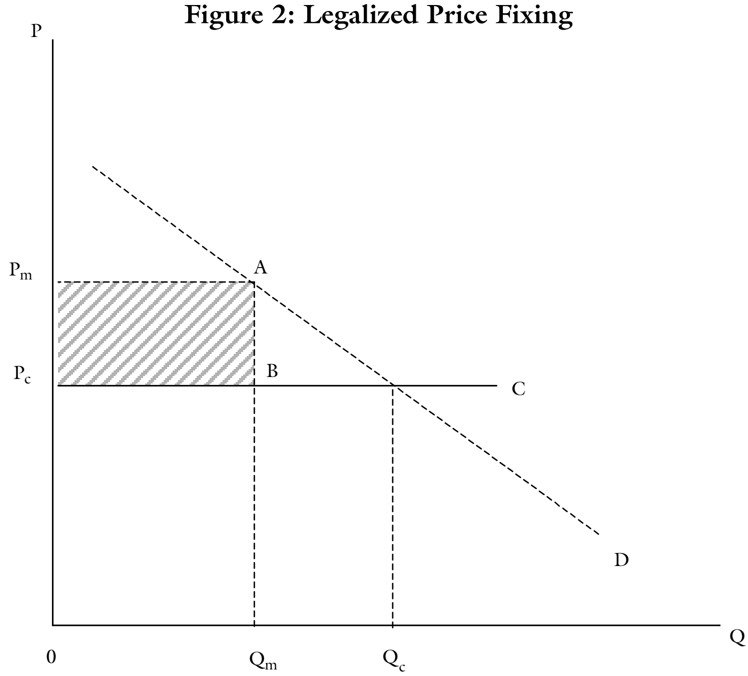
Surely, rational private parties pay not for mere access but for influence. Still, to say that the payments purchase influence is imprecise in an important way. Two very different games are being played—two different sorts of influence possibly being purchased—when private interests make payments ("contributions") to gain access to politicians.

The Orthodox Story: Rent Creation

In referring to private-donor money as buying "access and influence for their interests," Common Cause presents the orthodox version of the game that private interests and politicians are thought to play: rent seeking, where *rent* refers to returns obtained through the political process rather than through private-market exchanges (Tullock 1967; Stigler 1971). The process can be illustrated by the use of the standard economic diagram of a government-created (or government-sustained) monopoly. In figure 2, the demand for some good or service—say, milk—is shown by the downward-sloping curve D. As the price (P, measured on the vertical axis) declines, the quantity (Q, measured on the horizontal axis) of milk demanded increases. The per unit cost of milk (including a competitive rate of return on investment) is a constant amount. In a competitive marketplace, the equilibrium price (P_c) would equal its cost (C), and Q_c units of milk would be sold.

effects of government, such as rents from regulation, "it is difficult to imagine that much of consequence is being sold at such low prices" (Milyo, Primo, and Groseclose 2000, 82). However, this argument confuses total and marginal value, as did the diamond-water paradox that stumped economists centuries ago. In markets (be they economic or political), the price of a good or service reflects only the value of the last unit sold, not the total value of everything transacted. "Political action committees would waste resources if they paid every legislator his or her supply price" (Stratmann 1992, 650). It is also claimed that there is no way to enforce a contract with a legislator, so private interests will not donate to influence legislation (Milyo, Primo, and Groseclose 2000, 79–82). That claim is refuted empirically in Kroszner and Stratmann 1998 and in Stratmann 1991, 1992, 1995, and 1998.

Figure 2: Legalized Price Fixing



Assume now that the government allows producers legally to collude to raise prices (or, equivalently, to limit the quantity produced). Milk producers will choose some higher price P_m. The difference between this higher price and the competitive price, multiplied by the quantity sold at the higher price (Q_m), is rent to milk producers. Area P_cP_mAB represents those rents.

In Washington, D.C. (or in state capitals or in city halls), rents don't just pop up spontaneously; private interests and politicians create them. Knowing that gains are available if politicians can be persuaded to take the necessary actions, private interests will seek out politicians in order to undertake the requisite persuasion. Politicians willing to create the milk cartel (or to allow it to function unmolested by antitrust law) expect to be compensated for their services. Competition among private interests to be the favored firms or interests (that is, rent seeking) assures that politicians will in fact be paid.

Legalized price fixing of the sort illustrated in figure 2 has occurred frequently in this country. The Depression-era National Industrial Recovery Act mandated industry codes, under the authority of which producers in various industries fixed prices (Bittlingmayer 1995). More recently, trucking regulation by the Interstate Commerce Commission and airline regulation by the Civil Aeronautics Board likewise served as elaborate schemes of legal price fixing.[4] Legal price fixing, however, is only one way

4. In all these examples, the legality of the price fixing was less important than its legal *requirement*. Cartels are highly unstable and, even if legal, tend to collapse into competition. The National Industrial Recovery

of creating political rents. Midwestern producers of ethanol seeking government-mandated inclusion of their product in gasoline, bar associations seeking state restrictions on entry to practice by new lawyers, farmers looking for crop subsidies or payments not to grow crops, and city contractors or union locals seeking "set-aside" legislation or closed-shop laws to favor themselves—all are rent seekers. Consider a recent example:

> U.S. sugar producers reap about $1.6 billion a year from a shaky federal price-support program that the Clinton Administration just shored up with a big sugar-buying spree. The government has long kept U.S. sugar prices far above the world market price by curtailing imports of lower-cost sugar and sticking consumers with the price-support tab in the form of higher sugar, candy and soft-drink prices. . . . Since 1981, sugar refineries, food makers and consumers have been paying inflated prices for raw cane sugar, refined sugar and sweetened food products. Two years ago, the total bill amounted to $2.2 billion, up 29% from 1996, the GAO says. Dairy farmers and tobacco growers, among others, have received special compensation for low prices or crop losses. Sugar producers deserve the same "compassion," Jack Roney, an American Sugar Alliance spokesman, says. (Ingersoll 2000, B4)

The means may differ, but the ends are the same: increased returns through success in the political marketplace rather than in the economic marketplace.

It is rent seeking that concerns those worried about money and about the access to the political process that money facilitates. Private interests pay to play the rent-seeking game, hoping to come away a winner in the competition for political returns. The winners in the process are the notorious special interests; the losers are the little guys, especially the consumers who pay the higher prices owing to the politically created rents. The little guys have no PACs, contribute little or nothing to politicians, and so can expect to be excluded from the political game (Olson 1965).

Belief that this game is the one being played in Washington (or in Albany or Sacramento) leads to a simple rule of thumb based on a series of seemingly logical propositions. First, you have to pay to play: politicians do not provide something for nothing. Second, those contributing to politicians are purchasing special treatment, which must come at the expense of those who are not paying (or not paying enough) to be real players in the game. Therefore, third, one can identify those getting special treatment by examining the extent to which they pay to play.

Act, the Interstate Commerce Commission, and the Civil Aeronautics Board all required that producers in the industry work within the cartel and imposed penalties on those who did not.

So viewed, the game centers on a contract. Rent seekers pay politicians for political returns not available in the economic marketplace. Like the parties to a standard economic contract, both sides are better off as a result of the transaction. As long as the contract is concluded within existing legal bounds, such as those specified in the federal campaign laws, the contract is perfectly legal.[5]

Contracting, of course, is not the only means by which human beings interact. Much of their interaction involves tortious interference with the rights of others. Some torts (say, traffic accidents) may be unintentional, but many (say, theft and murder) are intentional. Intentional torts differ from contracts in that although one party may be better off because of the interaction, the other is made worse off.

In the rent-seeking game that private interests pay to play, both parties are made better off by the contract that ensues. The question arises, however, whether something analogous to torts sometimes occurs in political games, just as it does in life beyond politics.

Rent Extraction and "Pay to Play"

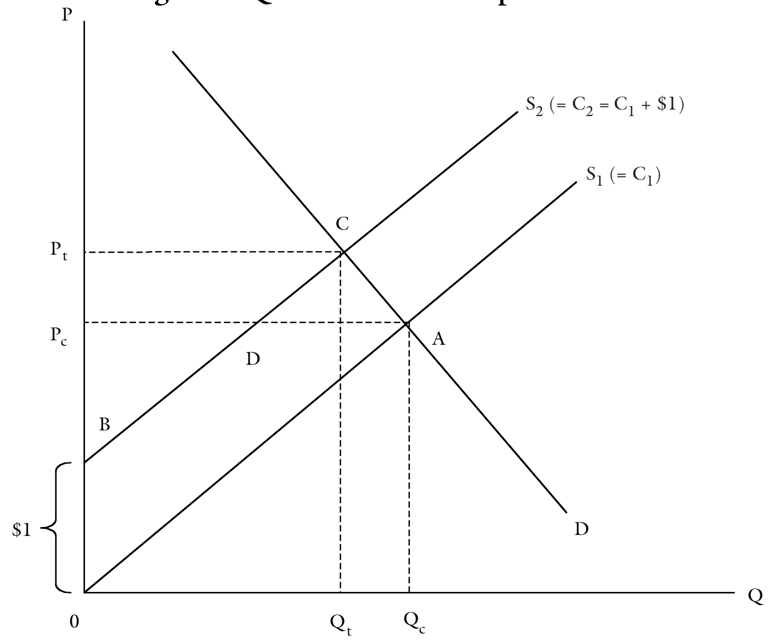
Rent Extraction as Extortion

Consider figure 3, which portrays an industry differing from the one shown in figure 2 in an important respect. Now the industry supply curve (S_1) is upward sloping, reflecting marginal cost (C_1) that rises with the quantity produced, rather than the constant marginal cost portrayed in figure 2. The competitive price (P_c) is determined by the intersection of supply and demand (D), and, in equilibrium, quantity Q_c is produced and sold. Producers' total revenues are $0P_cAQ_c$, whereas total costs are only $0AQ_c$. Producers earn a return over cost of $0AP_c$ because at rates of production less than Q_c the price exceeds the marginal cost of production.

These returns are not the result of political rent seeking. Rather, they are economic quasi-rents that arise in competitive markets because of factors affecting the cost of production at different rates of output. Such returns are economically important because they compensate producers for making fixed-cost investments in plants, equipment, advertising, and so forth that by definition would not be compensated if revenues covered only the marginal costs of production. When firms cannot anticipate the revenue stream represented by the quasi-rent triangle, beneficial fixed-cost investments will not be made.

5. Contracts for exchange in the political market and those for exchange in economic markets differ in some respects. Economic contracts are welfare enhancing, but, as shown in figure 2, rent-seeking contracts are welfare reducing overall. Political contracts might better be described as "extralegal." If breached by a politician refusing to provide the services he promised, they cannot be enforced or yield a court-ordered damage award. Parties to political contracts must and do find various mechanisms to ensure performance (McChesney 1997, chap. 5).

Figure 3: Quasi-Rents in Competitive Markets



Suppose, for example, that beer is the relevant industry and that Congress contemplates imposing an excise tax of \$1.00 on a six-pack of beer. As figure 3 shows, the imposition of such a tax would shift the supply curve from S_1 to S_2, the difference at every rate of output being equal to the \$1.00 excise tax. Once taxed, beer will sell, in market equilibrium, for price P_t, cutting the quantity sold to Q_t. Of particular concern to brewers will be the loss of quasi-rents caused by the higher price and reduced quantity sold. Quasi-rents shrink from $0AP_c$ to BCP_t—causing a net loss for producers.[6]

Faced with this threatened loss, producers are willing to pay politicians as much as the amount of the net revenues they stand to lose in order to avoid having the excise tax imposed, and gains from trade are available. The excise, if imposed, will be paid into the federal treasury. But if payments are made to representatives and senators to induce them *not* to impose the tax, those payments will go directly into the politicians' own campaign treasuries—perhaps even into their own pockets. The rules concerning politicians' expenditures of campaign funds for seemingly personal reasons are remarkably fluid. "In the 15 years that the personal-use prohibition has been on the books, the FEC has never punished anyone for violating it, and the broad power over how campaign money is used has remained one of lawmakers' most prized perks" (Wartzman 1994, A12). Politicians have successfully

6. Producers lose area 0BDA and gain area $P_c P_t CD$. It is evident from inspection of figure 3 that the former area exceeds the latter.

justified as campaign rather than personal expenditures such things as country club dues, Kentucky Derby tickets, cars, football tickets, liquor, insurance for artworks, trips abroad, tax-sheltered investments, bronze figurines for investment, and golf clubs. Campaign money has been used to defend against lawsuits alleging drunken driving, sexual harassment, and, ironically, financial transgressions. It has been used for deceased politicians' funerals, cremations, and burial expenses (McChesney 1997, 49–50). Thus, both private interests and politicians are often made better off if costly legislation is avoided by means of side payments from the would-be victims to the politician victimizers. Rents are extracted from private interests, whose concern is to minimize their losses.

Because politicians can also gain by submitting legislation and then, for a price, withdrawing it (or allowing it to languish in committee), they routinely do so. In fact, among themselves they refer to such legislative proposals as *juice bills*—proposals intended to squeeze private interests for money. *Milker bills* is another term politicians use to describe legislative proposals intended only to milk private producers for payments not to pursue the rent-extracting legislation. *Cash cows* is yet another term used. For example, by proposing product-liability legislation annually, Washington politicians for years "have been feeding off the contributions from political action committees" so that "product liability legislation will remain in legislative limbo—a cash cow with plenty of milk left" (Abramson 1990, A16). Money has flowed from PACs on both sides of the issue: trial lawyers and manufacturers. Ralph Nader observes, "The bill is a PAC annuity for members of Congress. It's like rubbing the golden lamp" (Wartzman 1994, A12).

Newsweek reported that legislation introduced only to menace and then to extract rents is known in some locales as a "fetcher" bill, "introduced solely to draw—fetch—lavish treatment from lobbyists" ("Buzzwords" 1989, 6). Reportedly, fetching is practiced often in Illinois. One study noted state legislators who "introduce some bills that are deliberately designed to shake down groups which oppose them and which pay to have them withdrawn." (qtd. in Aranson 1981, 253). Illinois legislators transplanted to Washington still practice the art of fetching:

> Rep. Jim Leach quietly introduced a bill a few days ago aimed at reducing speculation in financial futures. Barely 24 hours later, the Iowa Republican learned that Chicago Commodity traders were gunning to kill his proposal. Rep. Leach said one Illinois lawmaker told him the bill was shaping up as a class "fetcher bill," a term used in that state's Legislature to describe a measure likely to "fetch" campaign contributions for its opponents. Sure enough, one of the first to defend the traders was Democratic Rep. Cardiss Collins of Illinois, recipient of $24,500 from futures-industry political action committees. She called on colleagues in the Illinois delegation to beat back the Leach bill and watch out for similar legislation. (Jackson and Ingersoll 1987, 64)

Any number of other examples might be cited. President and Mrs. Clinton's 1993 threats to impose price controls on the health care industry— proposed but ultimately abandoned—resulted in a flood of private money aimed at stopping the legislation. The *New York Times* reported: "As Congress prepares to debate drastic changes in the nation's health care system, its members are receiving vast campaign contributions from the medical industry, an amount apparently unprecedented for a non-election year. While it remains unclear who would benefit and who would suffer under whatever health plan is ultimately adopted, it is apparent that the early winners are members of Congress" (Lewis 1993, A1).

Nor is the evidence of rent extraction all anecdotal. Statistical analyses of legislation proposed and then withdrawn show that the process is not a neutral one, even if ultimately no legislation passes (Beck, Hoskins, and Connolly 1992; McChesney 1997, chap. 4).

Needless to say, the rent-extraction game is hardly one in which private interests pay for special favors in the political marketplace. Rather, they pay to avoid the even greater burdens that politicians might impose. The process reeks of extortion, except that it is legal. Not surprisingly, the rent-extraction game is practiced especially by legislators on the principal tax and business regulatory committees. As one member of the House observed, "The only reason it isn't considered bribery is that Congress gets to define bribery" (qtd. in Maraniss 1983, A1).

Rent Extraction and Incentives to Play

"Pay to play" now is seen to involve two different sorts of games: payments for political favors and payments to avoid political disfavors. Mere observation of payments does not permit one to infer that the infamous "special interests" are subverting democracy. Many interests pay politicians just to be left alone—to be permitted to produce goods and services valued by consumers. Industries such as toiletries and cosmetics, which are unregulated and seek no particular political breaks, "pump hundreds of thousands of dollars to federal candidates" and millions more to local legislators in states where regulation is threatened (Kaplan 1990, 1). Similarly, other industries seek only to be left alone: "The nation's largest banking company [Citicorp] employs eight registered lobbyists in its Washington office. In addition, six law firms represent Citicorp's interests on Capitol Hill. No one should judge this strike force ineffective by how little banking legislation gets through: The lobbyists spend most of their time blocking and blunting changes that could hurt Citicorp's extensive credit-card operations, student-loan business or ever-broadening financial-service offerings" (Bacon 1993, A18). Most of Citicorp's lobbying aims at getting politicians' permission to compete in various markets, not at obtaining special favors in markets where the company already competes.

The fact that private firms and industries organize in order to pay not to have their wealth extracted points up alternative strategies available in the face of politicians' actual or anticipated extraction demands. One means of protection from some politicians' extraction demands is to induce others to pass legislation forbidding payments to avoid extraction (a strategy I discuss in the next section). Potential victims of politicians' extraction tactics also have an alternative strategy, especially when individually they have relatively little wealth to be extracted. They simply make it too expensive for politicians to bother them.

Imagine a lump-sum tax of $1.00 on each of the 285 million persons in the United States. The amount of money at stake is considerable in the eyes of politicians. If those who would be subject to the tax paid as little as 25 percent of what they would lose ($285 million), the payments would be important to the members of the House and Senate who would consider the tax, approximately $133,000 per politician. But how would a politician collect his or her $133,000? There is no national organization of U.S. residents that can collect and pass along to politicians the $0.25 per head needed to buy off the tax. The costs of organizing and collecting $0.25 per capita would certainly exceed the amount at stake. (Just think of the multi-million-dollar cost to the Census Bureau of contacting 285 million Americans and inducing them to respond.) Aside from the basic transaction-cost problem, considerable free-riding predictably would also arise: let my neighbor pay $0.50 on behalf of both of us because he will still be better off than he would be if he paid the $1.00 tax. When everyone reasons that way, of course, no one pays.

With large numbers of persons, each with relatively small amounts at stake from potential rent extraction, politicians have no way credibly to threaten to take the collective wealth at stake. The costs of picking up the payments not to take the wealth are too high. Recognizing this fact, dispersed interests have an incentive to stay dispersed—not to organize into PACs or any other sort of organization. Refraining from organization represents a strategy of refusing to negotiate—that is, of refusing to play.

Putting oneself in a no-negotiation position to avoid being forced to bargain is a well-understood strategy. Schelling discusses the use of communications difficulties as a way to maintain a no-bargaining position that ultimately will lead to concessions from the other side (1963, 26). A person incommunicado cannot be deterred from his own commitment to stay out of the game. Analogous tactics have been analyzed in other contexts (Schwartz 1988, 173) in which remaining unorganized can be useful.

Refraining from organization, in other words, is a tactic to avoid being made to pay. However, it also entails incapacity to play. If one wants to play in order to avoid having wealth and rents extracted, then organization is necessary, but organization is undertaken with the realization that politicians' extraction demands will follow. The National Rifle Association (NRA) furnishes an excellent example. Long-gun owners are numerous and highly dispersed. Political threats to regulate or ban guns arise annually at both state and federal levels. Yet, for the most part, when the dust settles, no legislation has been passed.

In the process, however, much money has been transferred via the NRA from gun owners to politicians. NRA contributions to politicians are reported regularly, often in large headlines. Without the NRA, these transfers would not be economically feasible. It is much cheaper for politicians to negotiate with the NRA, which has already collected the contributions from its members, than it would be to deal with millions of gun owners separately. Thus, the very existence of the NRA guarantees that politicians will practice more rent extraction than they otherwise would.

This is not to say that organizing the NRA was counterproductive. If the NRA did not exist—if politicians did not perceive a potential for rent extraction in proposing but not legislating a gun ban—then guns might well have been banned. The point is rather that organization has its costs. It may well fend off more draconian political threats, but it also creates a means for politicians to extract wealth more cheaply, making them more likely to attempt to do so.

Rent Extraction and the Petty Tyranny of Government

Paying to play the rent-extraction game is hardly the same as paying for special favors. In a confrontation with an armed thug demanding "your money or your life," a person handing over his wallet would hardly be viewed as buying a special favor. Euphemisms such as *juice bills, fetchers,* and so forth may be used to cover up what goes on, but extortion by any other name smells just as foul.

The potential for wealth extraction also helps us to understand the frequent acts and enactments of governments seemingly designed more to annoy and harass citizens than to advance any useful purpose. Criminalization of victimless actions is one example. If both adult buyers and sellers in transactions involving goods and services such as drugs and prostitution are made better off, why are those transactions outlawed legislatively, not to mention made criminal? Outlawing victimless crime seems especially unjustified when the prohibitions themselves give rise to crimes with real victims, the murder of rival dealers in illicit drugs being an especially common example.

Viewed through the lens of rent extraction, criminalizing victimless acts is easily explained as a way for law enforcers to extract the wealth generated by private, welfare-enhancing transactions. Not only does the illegality of drugs increase taxpayer-provided budgets for police departments, but police now are allowed to keep the proceeds of assets forfeited as a result of drug-enforcement actions and thereby to increase their discretionary budgets. Not surprisingly, police have responded to this ability to practice extraction legally with greater numbers of drug-related arrests (Benson and Rasmussen 1997).

Budget increases and legal confiscations do not measure fully the personal gains available to police from keeping victimless crimes criminal. Police shakedowns of drug dealers and prostitution rings for cash (or for drugs or sex) are so common they are scarcely newsworthy. Almost anything can be made illegal then used as the basis for rent extraction. The transvestite Miss All-America Camp Beauty Pageant and similar drag beauty contests of the 1960s were illegal, but nonetheless renowned in the transvestite community nationally. How did something illegal become so well known and popular? "The organizer was Jack Doroshow, also known as Sabrina, who held 46 contests a year from 1959 to 1967 through his company, the National academy, which in its hey day had 100 employees on the payroll. Mainstream America didn't know it, but the nation had a flourishing drag subculture, and not just in the major cities. . . . Since local laws often prohibited cross-dressing, Mr. Doroshow would meet with officials and propose a donation to some unspecified charity. In return, the town would pass a variance allowing the contest to take place" (Grimes 1993, 13).

Similar to criminalizing victimless acts as a way for politicians to extract wealth is the requirement to obtain a license for activities such as gambling and racing. This requirement legally opens the door for politicians to demand their cut of the take. The recent conviction of former Louisiana governor Edwin Edwards for taking payments in exchange for Mississippi riverboat casino licenses is only the latest example; a generation ago it was Maryland governor Marvin Mandel and horse racing. The political practice of making private interests pay just to practice their skills in the economic marketplace, however, has been common for a long time. Adam Smith observed in *The Wealth of Nations,* "In order to erect a corporation, no other authority in ancient times was requisite in many parts of Europe, but that of the town corporate in which it was established. In England, indeed, a charter from the king was likewise necessary. But this prerogative of the crown seems to have been reserved rather for extorting money from the subject. . . . Upon paying a fine to the king, the charter seems generally to have been readily granted" ([1776] 1937, 123–24).

"Pay to Play" and Campaign Finance

When George W. Bush became president in January 2001, no issue seemed more contentious than the proposal to reform campaign-finance law so as to limit the amounts that can be given to politicians. In 1999, the Senate killed by filibuster a bill to limit such spending submitted by Republican John McCain and Democrat Russ Feingold. Campaign giving was a key issue in McCain's run for the Republican nomination for the presidency, and he has made it clear that he will pursue this issue throughout the Bush presidency. Several "public-interest" organizations such as Common Cause back McCain heartily. At the same time, objections have been raised to proposed legal limitations on campaign spending.

Standard Arguments against Limits on Campaign Spending

Opponents of campaign-spending limitations advance two arguments that many find persuasive. First, opponents question whether the limitations would really alter politicians' behavior. Campaign-finance reformers seem to assume that limiting monetary (especially soft-money) contributions would end citizen-politician transactions. "Those who decry the role of money in politics imagine a world where the 535 members of Congress along with the president sit around in togas discussing the best way to serve the people" (Roberts 2000, 63). That vision of politics, opponents say, is bad economics. When politicians have something of value to sell, it will be sold one way or another.

Almost certainly, legal limitations on spending would induce shifts to other sorts of contributions. Campaign-finance proposals would limit monetary contributions only to politicians and political parties, so, for example, threatened firms might still promise to make donations to politically favored groups in a politician's home jurisdiction, much as the Community Reinvestment Act forces banks to make donations to local constituents. Donors might establish scholarships in the politician's name. "The federal government currently spends about $1.7 trillion annually. With that much money up for grabs, it's awfully hard to stop people from trying to influence how it's spent. It's only a question of how that influence will manifest itself" (Roberts 2000, 63).

Moreover, nonpecuniary payments, such as contributions of labor services, can substitute for monetary donations. "The different forms that these contributions can take is essentially infinite" (Lott 2000, 362). Some unions favor contribution limits because unions can relatively cheaply deliver manpower rather than money to aid politicians. Likewise, prohibited from employing capital to buy off onerous political action, firms might contribute political endorsements, agree not to close offices or plants in politicians' jurisdictions when otherwise they would, or agree not to oppose legislation they normally would. It is easy to imagine firms purchasing tax relief by, for example, agreeing to remain silent when politicians propose legislation to foster union organizing in plants.

Economically, in effect, campaign-contribution limits are just price controls. When politicians have something to sell (be it special favors or relief from special costs), the market will clear, one way or another. If markets cannot clear directly via monetary payments, they clear via nonmonetary payments. Rent controls are the classic example. When valuable apartments must be rented at below-market rates, landlords allocate scarce units by other criteria. Racial discrimination, sexual harassment, and other undesirable phenomena follow (Arnott 1998, 308). It may be difficult to anticipate just how the undesired adjustments will occur, but the law of "unintended consequences" will surely assert itself (Norton 1993).

Which raises a second point, one perhaps more striking to economists and therefore not heard as often in the popular debate. As price controls, campaign-contribution limits are more than just ineffective. They are costly. Campaign donations are mere transfers, welfare neutral in themselves, but nonmonetary substitutions for the cash donations impose real costs.

In short, the economics of campaign contributions is simple. As the size and power of government have increased markedly in recent decades, so has the amount of campaign contributions. This increase is hardly surprising. When government grows, politicians have more to sell, and buyers naturally spend more. As John Lott puts it, in demonstrating the empirical link between campaign spending and the size of government, "The irony is that those who seem most concerned about the level of campaign expenditures are also frequently the ones who most strongly support increasing the size of government" (Lott 2000, 359).

Campaign-Finance Limitations in a World of Rent Extraction

The standard arguments against legal limits on campaign donations are important, but they are incomplete. Those who decry "pay to play" politics focus exclusively on the sums involved, without asking the critical question: Who is selling what? Calling for limits on campaign donations, Common Cause refers to "the hundreds of millions of special-interest dollars laundered into campaign 2000" (2000b, 1) and to "the undue influence of special-interest money" (2000c). Public Citizen inveighs against "unlimited contributions from wealthy special interests," who in 1999–2000 "practically drove a Brinks' truck full of huge contributions through the soft money loophole" (2001, 1). Even the "conservative" Committee for Economic Development (CED) lists as the first "fundamental problem" with the current system the fact that "the campaign expenditures of the average House candidate [are] over $500,000, while the average Senate contender spends nearly $3.8 million" (1999, 2). Likewise, the CED's first recommended reform is "to reduce the supply of soft money" by enacting state and national legislation to ban it (1999, 4).

Reform organizations of all stripes thus ignore the possibility that private interests are not paying to gain favoritism but to avoid disfavoritism. Public Citizen (2001) discusses the following interests as big-money contributors: gambling industries, pharmaceutical manufacturers, computer/Internet companies, and NRA/gun rights organizations. Yet these interests for the most part seek only to get politicians to leave them alone, not to obtain special favors.

The equation of political giving with the receipt of special favors, albeit typical, misses an essential point. It implicitly assumes that the transactions represented by campaign donations are welfare reducing and therefore should be stopped. However, that proposition applies only to rent-seeking contributions, which truly are part of a welfare-reducing process (Tullock 1967, 1993). Rent-extraction payments, though, occur in a process that is welfare increasing in a second-best world, one in which politicians can and do threaten to expropriate even more wealth if the payments are not made. That world, like it or not, is the one in which we live. Reform that would end both sorts of private interaction with politicians—some economically malign, others economically benign—is not necessarily welfare enhancing overall.

Take, for example, the recurring threats to impose price controls on prescription drugs. Such controls have great voter appeal. Only because pharmaceutical companies contribute millions of dollars do lawmakers refrain from imposing these controls. Campaign-reform laws that succeeded in blocking drug firms' compensation of politicians would inaugurate a new, third-best world in which not only are politicians not public interested, but firms cannot motivate them to be less destructive. To take another example, Gary Becker and George Stigler note that "bribes that reduced the effectiveness . . . of the laws in Nazi Germany against Jews . . . would improve, not harm, social welfare (although not as defined by the legislature)" (1974, 6).

Even when rent extraction is recognized as part of a politician's arsenal, the standard arguments against campaign-finance reform still apply. First, legislation is not likely to end rent-extracting demands from politicians. Limitations on the amounts that private interests can pay to be left alone are more likely to shift rent-extraction payments into different channels. True, the victims of politicians' grabs at private wealth have sometimes sought laws that would stop further depredations. Nelson Rockefeller thanked Congress on behalf of his family (with its important financial and management interests in industries such as banking, insurance, and transportation) for laws that restrained the Rockefellers' ability to make political contributions (Aranson and Hinich 1979). Banks have sought from the Federal Election Commission regulations making it illegal to lend to politicians (Langley and Jackson 1986). Bond dealers have collectively agreed to discontinue the practice of making large contributions to political campaigns (Fuerbringer 1993). Typically, however, such efforts bespeak aspirations more than expectations. Recently, in donating to a ballot initiative to limit campaign contributions, Max Palevsky, a longtime political donor in California, said, "I am making this million-dollar contribution in hopes that I will never again legally be allowed to write huge checks to California political candidates" ("Perspectives" 2000, 21). Second, diverting efficient transfer payments to politicians into inefficient channels creates deadweight losses. The principal point here is that, to the extent that any legislation is successful, impeding rent-extraction payments to politicians also stops transactions that are wealth enhancing.

Conclusion

It is a mistake to view "pay for play" as a single game in which those seeking special favors (political rents) pay politicians for the privileges they seek. That game goes on, obviously, but the political situation in which "pay for play" prevails is like the interactions in a family. Parents have alternative ways to make children behave: carrots (allowance) and sticks (extra chores). Typically, both rewards and punishments are used—likewise with "pay to play" politics.

In his book *The Law,* French politician and economic journalist Frederic Bastiat summarized the two games being played: "As long as it is admitted that the law may be diverted from its true purpose—that it may violate property instead of protecting it—then everyone will want to participate in making the law, either to protect himself against plunder or to use it for plunder" ([1850] 1998, 29). More than a century later, economist George Stigler made the same point: "The state—the machinery and power of the state—is a potential resource or threat to every industry in the society. With its power to prohibit or compel, to take or give money, the state can and does selectively help or hurt a vast number. . . . Regulation may be actively sought by an industry, or it may be thrust upon it" (1971, 3).

That message is important in the current debate over restricting the amounts private interests can pay to play. When people have valuable services to sell but are legally prohibited from increasing their revenues, neither buyers nor sellers are better off. Markets will clear, as they always do, but in costly and nonpecuniary ways. Laws that would force citizens to deal with politicians in nonpecuniary ways harm not only politicians—the presumed victims of any such legislation—but also the supposedly benefited citizenry. Moreover, transactions that truly are beneficial, those that buy off politicians seeking to extract wealth rather than to grant special favors, should not be prohibited in the first place.

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