More Than One Cent for Tribute

Fred S. McChesney
Money for Nothing: Politicians, Rent Extraction & Political Extortion
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Will Rogers famously quipped that Americans have the best Congress that money can buy. In his new book, *Money for Nothing: Politicians, Rent Extraction, and Political Extortion*, Professor Fred S. McChesney turns this idea around. He investigates not how private parties purchase favorable legislation from the government, but instead how they must offer up tribute – in the form of campaign contributions and in-kind benefits – to block proposed legislation that would cost them dearly (p. 19). Politicians, he asserts, cynically threaten to enact harmful laws simply to extract payments from the groups whom the laws would hurt, and not because they truly want the legislation to go into effect (p. 19). Just when you thought you knew everything rotten about the political system, McChesney convinces you otherwise. Congressmen and state legislators, he shows, sell protection just like the Mob.

I

Money for Nothing builds on the previous work of others. Economists long have recognized that businesses lobby for laws that will increase their wealth. Sometimes firms seek legislation that will give them uncompetitive advantages over consumers.[1] Existing companies, for instance, may want the government to establish barriers to entry, such as licensing requirements, or may seek regulation ensuring minimum prices (p. 11). At other times, businesses will ask politicians to pass laws that will harm competitors (pp. 14-17). For example, a producer that employs capital equipment may support expensive regulations, such as minimum wage laws or worker safety rules, that will increase the costs of competitors who rely more heavily on labor (p. 15).

McChesney, however, has a different focus in his economic study. He concentrates on an-

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1 *See* pp. 9-13 (summarizing pathbreaking work by economist George Stigler).

other goal of lobbying, namely, persuading legislators not to enact laws. He observes that private parties not only may want favorable laws, but also may fear that the government will adopt legislation that will harm them. For instance, Congress may create new rules that limit their output or reduce the price they can receive for it (pp. 26-28). Other troublesome laws simply may increase their costs, such as by raising taxes (pp. 29-32).

Private parties, McChesney observes, presently expend large sums of money simply to avoid wealth reducing regulation. He notes, for example, that Citicorp employs eight registered lobbyists and six law firms in Washington almost exclusively for the purpose of persuading Congress not to impose burdens on its credit card, student loan, and financial services business (p. 2). Despite the political importance of this kind of lobbying against legislation, economists have not studied it adequately (p. 19).

McChesney offers what he considers a fairly uncontroversial analysis of the financial calculation behind a business's decision to fight unfavorable legislation. He theorizes that private parties facing the threat of regulation will compare the costs of lobbying to the costs that new legislation will impose on them. "If the threatened cost of the act exceeds the value of what private parties must give up to avoid legislative action," he predicts, "they rationally will surrender the tribute demanded of them" (p. 22). For example, Citicorp gladly would contribute thousands of dollars to Republican and Democratic candidates to persuade them not to enact credit card regulations that might cost them far more in terms of lost profit.

In fact, McChesney believes that private parties often worry more about avoiding harmful regulations than about obtaining beneficial legislation. He explains that the decreasing marginal utility of wealth makes laws that might reduce profits by one dollar matter more than laws that could raise profits by the same amount. Money spent on lobbying against laws, moreover, may have a greater effect than money spend lobbying for them. In many instances, lobbyists will have an easier time persuading politicians not to pass a bill, than to enact one (p. 22).

Unlike other commentators who have considered the issue of lobbying, McChesney pays considerable attention to the motivations of politicians. He theorizes that politicians act in economically rational ways, taking actions that best will increase their wealth. He hypothesizes that politicians want lobbying money because much of it ultimately ends up in their own pockets. McChesney says that, despite campaign reform efforts, "little practical distinction exists between spending of funds donated for campaign objectives as opposed to personal use" (p. 49). He recounts how politicians have used campaign funds to buy cars, food, housing, and entertainment. In addition, he notes, members of Congress often receive handsome speech and appearance fees and lavish in-kind benefits, such as travel and recreation opportunities (pp. 50-53).

The ability of politicians to obtain payment to not enact laws, McChesney believes, explains some of the actions that they take. Many legislators propose bills that they later withdraw or that ultimately do not pass. Why would they do that? McChesney suspects that politicians introduce these bills as a way of shaking down the parties that the bills would affect (p. 19). They threaten harmful legislation in hopes that businesses will cough up some lobbying money to block it. Apologizing for technical terminology, he notes that economists would describe this type of antisocial behavior as "rent extraction" (p. 2).

To support his theory, McChesney describes the Illinois legislature's routine practice of considering "fetcher bills." These bills typically threaten to impose a new type of tax or to ban sale of a certain type of product for the purpose of "fetching" rich treatment from lobbyists who oppose the measure (p. 30). In California, legislators call such proposals "milker bills" (p. 29). As an example at the federal level, McChesney discusses at length President Clinton's proposed health care reform measures (pp. 77-78; 83-85). He shows that the proposal extracted considerable wealth from pharmaceutical makers who spent vast sums lobbying out of fear that enactment of the reforms would reduce their wealth.

The rent extraction theory also may explain some other actions that legislators take. McChesney speculates that Congress creates entitlement programs in part to give its members opportunities for demanding payoffs. He explains that politicians may like to foster dependency on government programs because they can extract payments from lobbyists whenever they threaten to curtail them (pp. 123-24).

McChesney concludes by discussing briefly the question whether the law should prohibit rent extraction (pp. 168-70). Although he considers the practice deplorable (p. 2), he worries that an outright ban might do more harm than good. He reasons that if members of Congress or state legislators could not take money to refrain from passing laws, they simply might enact more harmful regulations (p. 169). Americans, in other words, very well might need the protection that they are paying for.

II

The central idea of *Money for Nothing* – that businesses spend money to avoid regulations – is not really something new. Although economists may not have studied the topic rigorously, government watchers long have known that lobbyists try to stop legislative initiatives. The media, for instance, regularly reports how the tobacco industry blocks anti-smoking legislation,[2] how the trial lawyers block product liability legislation,[3] how the securities and insurance industries block legislation that would allow banks to compete with them,[4] and how banks block pro-consumer legislation.[5] These industries, needless to say, already understand the economic principles at stake. They would not spend money on negative lobbying unless they thought it would save them more money in the long run.

Most lawyers, nonetheless, would benefit from reading McChesney's analysis of the political process. Attorneys tend to respect legislation as the final product of the democratic process. Bills that pass through Congress and the President have the status of law, while mere legislative proposals do not. Naturally, what Congress has enacted seems more important than what it has not. The same holds true at the state level.

McChesney wisely questions this customary way of thinking. Private parties, as noted, often care more about blocking unfavorable legislation than about getting favorable legislation passed. Moreover, when a bill does become a law, its passage actually may reflect the failure of the political process. In many cases, an enactment does not mean that politicians have accomplished their activities. Instead, it may indicate only that someone failed to shell out sufficient contributions to block a bill that

2 *See, e.g.*, Phil Kuntz, *The Settlement: Pact Sends Powerful Lobby On Its Way to the Ash Can*, WALL ST. J., June 23, 1997, at B10 (describing the activities of the Tobacco Institute).

3 *See, e.g.*, John Harwood, *GOP Sponsor Sees Victory on Product Liability Revision*, WALL ST. J., Apr. 24, 1995, at A7F (describing efforts by trial lawyers to block product liability reform legislation).

4 *See, e.g.*, Kenneth H. Bacon, *New Clash by Banks and Securities Firms Delays Bid to Aid Deposit Insurance Fund*, WALL ST. J., Nov. 8, 1991, at A1 (describing how the lobbyists for the securities and insurance industries block legislation that would allow banks to compete with them).

5 *See, e.g.*, Kenneth H. Bacon, *For Citicorp, Which Has Largest Lobbying Force In Banking Industry, Victories Are Won Quietly*, WALL ST. J., Dec. 14, 1993, at A18.

no one really wanted.

Another strong attribute of the book is its accessibility. McChesney has kept his study concise and easygoing despite including technical economic analysis. He has a fine sense of humor, reflected in the witty epigrams at the start of each chapter and the occasional cartoon that he has included.

Although the book is well worth reading overall, some parts of McChesney's analysis seem problematic. One area of difficulty relates to McChesney's thesis that politicians routinely introduce bills to obtain contributions from the private parties whom the bill adversely would affect. Although what the author describes may happen in some instances, the opposite also may occur. Often when a politician threatens to tax or regulate private parties, the parties respond by donating money to the politician's opponents.

For example, when Republicans propose tort reform legislation or want to cut the rate of Medicare growth, the American Trial Lawyers Association and the American Association of Retired Persons increase their donations to Democrats. Likewise, when Democrats threaten to reform the health care system, pharmaceutical companies increase their donations to Republicans. In these cases, something other than what McChesney has addressed must explain the politicians' motivations.

Another difficulty relates to McChesney's contention that politicians personally benefit from campaign contributions. McChesney exaggerates a little in suggesting that almost no practical difference exists between campaign contributions and personal expenses. Misusing campaign funds has led to criminal prosecutions in cases at both the federal and state level. The Justice Department, for example, indicted the former Chairman of the House Ways and Means Committee, Daniel J. Rostenkowski, for spending campaign funds for personal use and then misrepresenting the expenditures to the Federal Election Commission.[6] The State of Alabama, in addition, convicted its former Governor, Harold Guy Hunt, for using what he considered campaign funds for personal expenses.[7] Other politicians have suffered similar fates.[8] Accordingly, McChesney needs to explain what else besides personal gain from campaign contributions motivates politicians when they propose harmful bills.

These problems, however, must be kept in perspective. As one of the first economists to study in depth how private parties make payments to avoid regulation, McChesney has broken new ground and written a provocative book. He openly acknowledges that several important questions remain unanswered (pp. 159-165). With luck, he will find the time to address the subject again, and to direct more light on the sinister racket that our leaders are running.

6 *See United States v. Rostenkowski*, 59 F.3d 1291, 1296 (D.C. Cir. 1995). Rostenkowski later entered a plea bargain agreement in which he pleaded guilty to two counts of mail fraud in exchange for having the other charges against him dropped. *See What's News*, Wall St. J., Apr. 10, 1996, at A1.

7 *See Ex parte Hunt v. Alabama*, 642 So.2d 1060, 1064 (Ala. 1994).

8 *See United States v. Blanford*, 33 F.3d 685, 701 (6th Cir. 1994) (conviction of state legislator on racketeering charges for spending campaign funds for personal use).