> The inflation-deflation procedure starts with the latest census population adjusted for estimated net census undercount by age, sex, and race. This inflated population is carried forward to the base date (with data on births, deaths, and net migration) and on to future years using the cohort-component method. For each future year the projected population is deflated to reflect the percent of estimated net census undercount by age, sex, and race at the latest census. Finally, a small pro rata adjustment is made in the deflated figures by age, sex, and race to bring them into exact agreement with an independent estimate of the population in each sex-race group obtained by carrying forward the census population with information on subsequent births, deaths, and net immigration without regard to age. [U.S. Bureau of the Census, Current Population Reports, *Projections of the Population of the United States, 1977–2050,* No. 704, July 1977, p. 11.]

The two sets of projections reported in table 13.1 begin from the same base population, employ the same mortality assumptions, and assume a net immigration level of 400,000 per year. They differ in assumption about fertility rates: the series II projections assume a fertility rate of 2.1 lifetime births per woman, whereas the series I projections use a figure of 1.7. Both sets of projections make the same assumptions about childbearing age frequency, another factor that affects population growth.

14

Mercantilism as a Rent-Seeking Society

by

BARRY BAYSINGER, ROBERT B. EKELUND, JR., *and* ROBERT D. TOLLISON

> The proposal of any new law or regulation of commerce which comes from this order [merchants and manufacturers], ought never to be adopted till after having been long and carefully examined, not only with the most scrupulous, but with the most suspicious attention. It comes from an order of men, whose interest is never exactly the same with that of the public, who have generally an interest to deceive and even to oppress the public, and who accordingly have, upon many occasions, both deceived and oppressed it. —Adam Smith, *Wealth of Nations*

MERCANTILIST economic doctrines are typically summarized in terms of the central tendencies found in the literature of the period, roughly dated from 1500 to 1776. Among the most often-stressed tenets of the mercantilists are the equation of specie with wealth, regulation of the trade sector to produce specie inflow, and emphasis upon population growth and low wages. Absolutist historians of economic thought tend to stress the presence of grave errors in mercantilist logic, which were exposed by David Hume, Adam Smith, and the classical economists generally. The primary example of such faulty reasoning was, of course, the failure of the mercantilists to recognize the self-regulating nature that the "specie-flow mechanism" imposed on the mercantilist objective of a perennial trade surplus.[1] Relativist histo-

[1] Keynes defended the mercantilists on the grounds that a favorable balance of trade was the only feasible means available to a country at that time of lowering domestic

rians of thought tend to view the mercantilists more charitably. Writers in the German Historical School, such as Gustav Schmoller, and their English disciples argued that mercantilist policies were very rational for a period in which the attainment of state power was the overriding goal of the polity.

Methodological preferences aside, the major students of mercantilism seem to organize their interpretations of this period and its writers around a paradigm that stresses that certain regulatory implications follow from a balance-of-trade and specie-accumulation objective.[2] Adam Smith, perhaps the keenest student of the mercantilists, suggests a different view. He argues (in Mark Blaug's words) that "mercantilism is nothing but a tissue of protectionist fallacies foisted upon a venal Parliament by 'our merchants and manufacturers,' grounded upon 'the popular notion that wealth consists in money.'"[3] In this view causation is reversed in the mercantilist paradigm, that is, the balance-of-trade objective is seen as flowing from the effective demand for regulatory rents by domestic economic agents.

We will develop such an interpretation of mercantilism in this paper.[4] In doing so, we will concentrate on the gains to economic agents in using the state for profits, and we will use concepts from modern developments in the theory of the rent-seeking society to explain mer-

interest rates and increasing home investment and employment. See J. M. Keynes, *General Theory of Employment, Interest and Money* (New York: Harcourt, Brace and World, Inc., 1936), chapter 15. Heckscher argued in rebuttal that unemployment in mercantilist times was essentially voluntary and not sensitive to changes in aggregate demand. See Eli Heckscher, *Mercantilism*, trans. Mendel Shapiro, 2 vols. (London: George Allen and Unwin Ltd., 1934).

[2] The two great writers on mercantilism were, of course, Heckscher, *Mercantilism*, and Jacob Viner, *Studies in the Theory of International Trade* (New York: Augustus M. Kelley, Publishers, 1967; first published, 1937).

[3] Mark Blaug, *Economic Theory in Retrospect* (Homewood, Ill.: Richard D. Irwin, Inc., 1968), p. 11.

[4] In other work on the general topic of mercantilism, two of the present authors have (1) expanded the theory of the emergence of the modern corporation (R. B. Ekelund and R. D. Tollison, "Mercantilist Origins of the Corporation," *Bell Journal of Economics* (forthcoming); (2) developed a cartel interpretation of mercantile French business organization (Ekelund and Tollison, "A Cartel Theory of French Mercantilism," unpublished manuscript, 1979); and (3) analyzed the role of the justices of the peace and the mercantile judiciary in the domestic regulation of mercantile England (Ekelund and Tollison, "Economic Regulation in Mercantile England: Heckscher Revisited," *Economic Inquiry*, forthcoming).

cantilist doctrine and policy.[5] Methodologically, we will not evaluate mercantilist economics from the standpoint of modern economic theory (à la Keynes); we will simply try to explain the doctrines of the mercantilists in terms of the larger rent-seeking society in which they lived. In other words, we are engaging in an exercise in positive economics, not arguing that the mercantilists were good economists from the standpoint of modern economic theory.

The model developed in this paper explains the rise and fall of mercantilism in the positive terms of costs and benefits accruing to the participants in the often deadly game of mercantile rent seeking. Merchants, monarch, and the public (as represented by democratic institutions, legislative and judicial) are featured as self-interested protagonists in institutional change. Focusing upon specific examples of rent seeking in England and France, as well as upon the comparative institutional frameworks in these countries, we seek to explain with our theory (1) why mercantilism declined in England at the same time it was being strengthened in France, and (2) how an analysis of self-interested forces reacting to shifting costs and benefits to rent seeking presents a more satisfying explanation of mercantilism than the well-known alternatives.

With respect to the latter point, there appear to be two wholly consistent views of mercantilism in the literature. The first view, espoused and promulgated to a large extent by the historians (with modified and improved versions by Jacob Viner and Eli Heckscher), emphasizes mercantilism as a concerted policy of nationalism or state-building, stressing an exogenously determined economic policy divorced from the endogeneous interplay of self-interested forces. Thus, a policy of taxing the import and subsidizing the export of "finished" goods is seen as a method of state-building or of accumulating specie or promoting domestic employment, rather than as the simple product of rent maximization by parties to the resulting income distribution. "Mercantile policy," in this view, achieved a life of its own, and

[5] In particular, we refer to the work of George J. Stigler, "The Theory of Economic Regulation," *Bell Journal of Economics and Management Science* 2 (Spring, 1971): 3–21; Gordon Tullock, "The Welfare Costs of Tariffs, Monopolies, and Theft," chapter 3 in this volume; Anne O. Krueger, "The Political Economy of the Rent-Seeking Society," chapter 4 in this volume; and Richard A. Posner, "The Social Costs of Monopoly and Regulation," chapter 5 in this volume.

the underlying forces that produced it (which, to us, is the important matter) remain unexplored and, worse, unexplained.

A second tactic of historians of thought in dealing with the mercantile era, which does not compete with the first view, has been to argue, at least implicitly, that the achievement of laissez-faire was the product of the subjective philosophical forces of the times. Here, we encounter "anticipatory" works on individualism and the natural ordering of economic phenomena, ranging from the writings of John Hales, John Locke, William Petty, and Richard Cantillon through those of Bernard Mandeville, David Hume, and the Physiocrats. Indeed, most common references imply that the intellectual case for free trade (Adam Smith, David Ricardo, and earlier writers) made such an impression on legislators that they quickly transformed the policy proposals of these authors into practice.

Although the latter of these positions may possess merit as an auxillary, supporting explanation of the mercantile era, the former in our view obfuscates an understanding of the period, and, especially, of its tortuous evolution to laissez-faire. Although neither position is inconsistent with our own, we reject both these interpretations of mercantilism and of the movement to a free economy in England as a primary explanation for the emergence of liberalism. They are simply incomplete. Rather, we seek explanations in terms of institutional changes (e.g., the growth of the rule of law), which altered the costs and benefits of regulation to rent seekers. The emergence of a modern theory of rent seeking greatly facilitates such a re-evaluation.

We begin in the next section by presenting a model of the use of the state for profit in the mercantilist era. We stress the importance of institutional developments to the relative profitability of rent seeking in these times. In particular, our model stresses the role of an unfettered monarchy as an almost perfect setting for the creation of regulatory rents and state interference in the mercantile economy. Additionally, the rise of representative democracy and the consequent struggle over the power to supply legislation may be viewed as the primary reasons for a fall in relative rates of return to political investments (e.g., lobbying) under mercantilism and for the demise of mercantilism and the rise of a free economy in England.[6] In the subsequent three sections, we apply our model to the mercantile economies of England and France. Our purpose in these sections is to show how well the rent-seeking model elucidates the doctrines and policies of these economies relative to the paradigm of mercantilism as a confused collection of ideas centered around the concept of specie accumulation. We also seek to show how our model is useful in interpreting differences in English and French mercantilism. Some concluding remarks are offered in a final section.

[6] On the latter point see the hint of a suggestion by Friedrich A. Hayek, *The Constitution of Liberty* (Chicago: University of Chicago Press, 1960), p. 163.

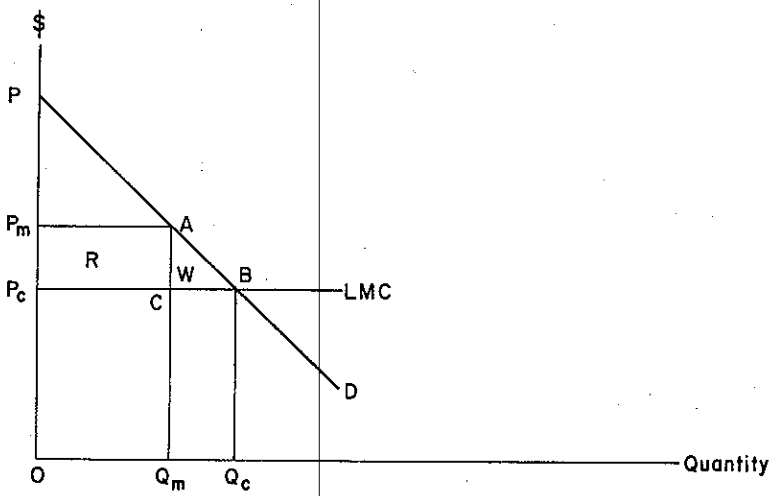
Rent Seeking in the Mercantile Economy

The central purpose of our model will be to explain the record of the mercantile era as individual rent-seeking behavior in a variety of institutional settings. Our positive model seeks to explain the development of the mercantile state and its evolution into modified laissez-faire, as the result of consistent individual behavior under slowly changing institutional constraints. The blend of methodological individualism and slowly changing institutional constraints is central to our main thesis concerning the rise and fall of mercantilism. If we define the mercantilist era as a collection of economic phenomena, then we may explain these phenomena using the standard theory of choice, without recourse to historical or dialectical explanation. Given the standard (timeless) assumptions of individual choice theory, the model of rent seeking simplifies into a specification of the constraints that modify economic behavior. Once the model is developed, we may turn to the historical record and seek the institutional features that served as constraints to explain observed phenomena.

THE RISE OF MERCANTILISM

We assume for purposes of initial exposition that monopolies are created by the rent-seeking activities of individuals, rather than spontaneously appearing or being independently created by governmental authorities. At some point, emergent competition is the rule in the production of goods and services, and there exists a state or government with authority to order society as it chooses within the limits of feasible production possibilities (which include enforcement costs). In this context we imagine individuals who see potential gains accruing from the sole rights to produce particular goods and services. These

FIGURE 14.1



individuals will attempt to subvert the forces of the market and to monopolize the production of goods and services by having the state limit production to themselves by fiat. The process may be simply illustrated by figure 14.1.

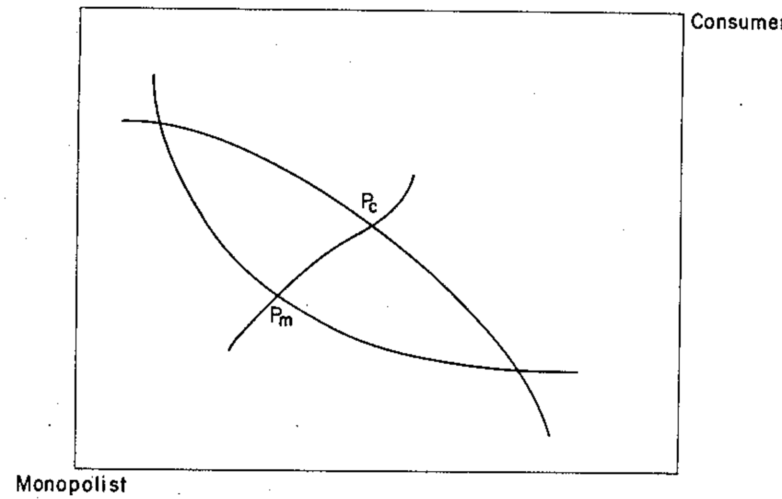
It is clear that the entire triangle, P_cPB, is a measure of surplus in the case of competitive organization, a surplus to which no one has a property right. It exists because of technological conditions that preclude producers from perfect price discrimination. The entire area belongs to no one, yet consumers and producers can both attempt to claim it. This situation is further illustrated in figure 14.2.

From the point of view of the contenders for the surplus, the problem is not one of efficiency. Monopolists seek to achieve a position on the contract curve close to P_m, and consumer forces to seek a position toward P_c. There is nothing in the theory of choice that assigns preference to either position; both are on the contract locus.[7] Thus, the issue of dynamic monopoly creation is (net of the welfare triangle) a matter of bilateral monopoly.

It stands to reason that in such matters the two parties will retain

[7] Figure 14.2 adjusts for the monopoly welfare loss involved if the market solution is P_m.

FIGURE 14.2



brokers (lobbyist-lawyers) to assure a favorable outcome, and each will devote resources equal to an epsilon below the potential gains in their efforts. That producers are better able to effect the P_m solution is well known but is no more undesirable (net of the welfare triangle) than the technological constraints precluding perfect price discrimination. The social waste of monopoly thus involves the traditional welfare triangle, which measures both the portion of consumers' surplus that is lost to society because some individuals refrain from purchasing the monopolized output at higher prices (area W in figure 14.1) and also the use of lobbyist-lawyer resources to effect a pure transfer (area R in figure 14.1).[8]

If an incipient monopolist is successful in his dealings with government, he will be able to impose the classic monopoly solution of P_mQ_m in figure 14.1, receiving a return on his rent-seeking investment of P_mACP_c. With the gain in rents so depicted, we expect several other features of the rent-seeking society to be present. There is no reason to believe that only one individual will discover the gains from seeking

[8] On the static welfare loss from monopoly, see Arnold C. Harberger, "Monopoly and Resource Allocation," *American Economic Review* 44 (May, 1954): 77–87. For the original statement of the rent-seeking welfare loss from monopoly, see Tullock, "The Welfare Costs of Tariffs, Monopolies, and Theft."

monopoly rights sponsored by the state. We thus expect numerous rent seekers to compete for these rights, and that in the long run this competition will dissipate the returns from using the state as a source of profit.[9] Also, as the above discussion intimates, we expect those who stand to lose from the monopolization of an activity to have an interest in preventing such losses. Consumers stand to lose $P_m ACP_c$, the rent gained by the successful monopolist, plus the deadweight welfare loss, ABC. In a costless world consumers would invest resources to retain this surplus, but we will abstract from such behavior here, because of the well-known transaction costs in organizing consumer efforts to resist government action in raising prices.[10]

But what about the remaining party in the rent-seeking society, that is, the state authority holding the power to grant monopoly rights? The interest of the rent seekers is clear, but what are the interests of the supplier of monopoly rights? One may conceive of a range of possibilities. At one extreme we may picture the state as a unified, revenue-seeking leviathan, where fiscal needs (defense, court expenses, and so forth) prompt the sale of protective legislation. For example, to "the mercantilist politician, the state was more or less the leviathan, absolute and all powerful."[11] In the rent-seeking society this case corresponds to an absolute monarchy. Entry into the business of granting monopoly rights is completely limited in this case because—in the extreme case at least—the monarch rules by divine right, the supply of which is very inelastic. This type of institutional arrangement tilts the bargaining power in the market for monopoly strongly in favor of the crown. If enforceable monopoly rights cannot be bought elsewhere in the dominion, the king should be able to price-discriminate effectively in the award of such rights. Most of the consumer surplus in figure 14.1 will end up in the king's coffers under these circumstances.

As we will develop more fully in the next two sections, revenue seeking was an important aspect of European history in the early mercantilist era. For example, one historian of the period characterizes

[9] See Posner, "The Social Costs of Monopoly and Regulation," for this argument.

[10] On this point see especially James M. Buchanan and Gordon Tullock, "The 'Dead Hand' of Monopoly," *Antitrust Law and Economics Review* 1 (Summer, 1968): 85–96.

[11] C. H. Heaton, "Heckscher on Mercantilism," *Journal of Political Economy* 45 (June, 1937): 392.

mercantilism "as a negative and restrictive factor, which had its principal source, not in any deliberate plan of promoting economic progress, but in the fiscal exigencies of short-sighted and inpecunious government."[12] C. H. Heaton, reflecting on this appraisal, concurs, adding that "rarely in framing government policy did a government have the deplorable condition of the exchequer far out of mind, and every 'projector' who presented a scheme to his ruler stressed the benefit that would directly or indirectly flow into the royal coffers."[13] Further evidence comes from Heckscher: ". . . one of the most important features of economic policy if not the most important of all [was] what is called in French *fiscalisme*. . . . The state, by its intervention, wanted to create large sources of revenue for itself. . . . The state exploited for its own ends the monopolistic advantages which the guilds had secured for their members or the owners of private producers had received for themselves."[14]

In general, then, we may analyze the situation faced by the monarchical state authority and potential rent seekers in the context of an Edgeworth-box diagram. Given royal prerogative, consumer interests are effectively left out of consideration. Hence, under competitive organization, with the crown at one corner of an Edgeworth box and "projectors" at the other, the solution is off the contract curve, and each party stands to gain from cooperation. The remaining issue is merely the location of the solution on the contract curve. With a unified state authority the ease with which mutual interests were recognized and realized was relatively great.

In sum, we posit that the pursuit of special favor by individuals was the driving force behind the rent-seeking activities that flourished during the mercantile era. "The incentive rarely came from a whole class, for a class was too unwieldy, too class-unconscious, and too much torn by conflicting factors or interests to have one will or voice. Action came from individuals or compact groups who saw an opportunity to profit by protection or promotion."[15] The ascension of mercantilism in the early part of the era is readily explained by the institutional setting

[12] R. H. Tawney (ed.), *Studies in Economic History: The Collected Papers of George Unwin* (London: Royal Economic Society Reprint, 1958), p. lxiv.

[13] Heaton, "Heckscher on Mercantilism," pp. 375–376.

[14] Heckscher, *Mercantilism*, I, 178.

[15] Heaton, "Heckscher on Mercantilism," p. 387.

facing the participants in the process of monopolization. Since the transaction costs required for seeking rents were low with a unified state authority (the monarch), the flowering of mercantilism during this period is explained. That is, since the cost of seeking monopolies was relatively low under absolute monarchy, other things equal, we expect to observe relatively more of this activity in this institutional milieu.

THE DECLINE OF MERCANTILISM

At the other extreme from the rent-seeking leviathan was the rise of representative democracy. This historical development in England was embodied in a struggle over the power to supply legislation in a rent-seeking context. This struggle ultimately led to the demise of English mercantilism because of the profound changes that took place in the institutional environment. Under the assumption that self-interest is independent of time, the source of the fall of mercantilism must be found in the changing cost-benefit structure facing potential rent seekers. We have thus far suggested that mercantilism arose because the relative costs of negotiating favored treatment with a state in which authority was vested in a central figure were low. Prior to the centralization of authority, rent seekers had to deal with a multitude of feudal rulers, which made the costs of negotiating and enforcing exclusive rights relatively higher. The correlated rise of mercantilism and central monarchies was thus the result of changed cost conditions, and the fall of widespread mercantile activity in England may be explained as a manifestation of changes in the bargaining environment, which occurred as the result of political upheaval.

In seeking an explanation for the decline of English mercantilist policies within the rent-seeking paradigm, we follow Friedrich Hayek when he notes that "it was finally in the dispute about the authority to legislate in which the contending parties reproached each other for acting arbitrarily—acting, that is, not in accordance with recognized general laws—that the cause of individual freedom was inadvertently advanced."[16] Throughout his discussion of the emergence of the rule of law in England, Hayek stresses that economic freedom came about as a by-product of a struggle for the power to supply legislation. In this

[16] Hayek, *The Constitution of Liberty*, p. 163.

struggle several important institutional changes occurred, which dramatically affected relative rates of return on rent-seeking investments. We seek to explain the deregulation of mercantile society in terms of these changes.

As the power of the monarchy in England declined, the movement toward representative democracy shifted the locus of rent-seeking activity to new forums, primarily the legislature and the judiciary, with predictable implications for the decline of the rent-seeking society of mercantilism. For example, the costs of lobbying a representative body are higher than the costs of lobbying a unified monarchy for monopoly charters because there are many decision makers rather than one. The rational rent seeker will reduce his bid for a monopoly right when lobbying costs rise. Moreover, the uncertainty costs facing the rent seeker will rise under representative government. Logrolling in the legislature will mask current votes to some extent, making current legislative outcomes more uncertain. There will be turnover among politicians and uncertainty about the durability of legislation from session to session of the legislature.[17] For these and other reasons, the costs of lobbying to rent seekers will rise under representative democracy, and we would therefore expect to see a decline of government interference in the economy because of these higher costs.

With respect to the mercantile judiciary in England, there was an important jurisdictional competition between the common law courts and those supporting the king's interests. The common law courts evolved a doctrine that held that royal monopoly and prerogative were illegal, whereas the special interests sanctioned by Parliament were legitimate. The king's courts obviously disagreed with this doctrine. The net result was a legal conflict in which one court system would rule that a monopoly right was valild and the other that it was invalid. There was, in effect, no legal basis for a completely valid monopoly right under these conditions. So, even if a rent seeker could obtain a monopoly grant from the king or Parliament, he had no guarantee that it could be sustained against interlopers. Seeking monopoly through the shelter of the state was clearly going to be a less profitable activity under these circumstances.

[17] For further discussion of the durability of special-interest legislation, see William M. Landes and Richard A. Posner, "The Independent Judiciary in an Interest-Group Perspective," *Journal of Law and Economics* 18 (December, 1975): 875–901.

As we shall outline in the next sections, a great struggle evolved in England between the king and Parliament and between the king's courts and the common law courts allied to parliamentary interests. This struggle, which had important religious and political bases, was also a struggle over who was to run and to profit from the rent-seeking economy of English mercantilism. This conflict over authority to legislate and to adjudicate legal disputes meant that the costs of seeking monopoly protection from the state ultimately exceeded the potential benefits for rent seekers, and state interference in the economy consequently declined.[18]

SUMMARY

Our argument here is that the theory of the rent-seeking society is a more useful paradigm for explaining the rise and fall of mercantilism than the usual specie-accumulation interpretation. The rent-seeking paradigm rationalizes the emergence of the social order of mercantilism and its demise in terms of individual behavior in the face of varying institutional arrangements, rather than in terms of such arguments as that mercantilism was a highly irrational social order.

Mercantilism as a Rent-Seeking Society: Some Historical Evidence

Although historians of economic thought are wont to label the period 1500 to 1776 as (roughly) the "mercantile period," this convenient generalization fails when one considers rent seeking as a primary feature of the mercantile economy. The battle for property rights (i.e., the right to rent seek) arose in an environment where industrial and constitutional interests were emerging in the context of ongoing monarchies. This process, though historically complex, is clearly discernible, under vastly different institutional structures, in England, France, the Netherlands, and Spain between the thirteenth and eighteenth centuries.

It is instructive to contrast some of the central features of the institutional structures of England and France vis-à-vis the fisc in those countries before proceeding to some historical evidence that illustrates our theory of the rise and fall of mercantilism. In the first place, French and English monarchs differed greatly in their power to tax over this long period, and the "mercantile" systems of venality, which the power to tax (or lack thereof) created, were accordingly vastly different. The "French system" was absolutist in the sense that, from the time of Charles VII and the Ordinance of 1439 the Estates General gave the king the absolute power to tax without popular consent, a power that molded the form of rent-seeking in French society for over three hundred years.

[18] See Ekelund and Tollison, "Economic Regulation in Mercantile England: Heckscher Revisited," for a more detailed discussion of the role of legislative and judicial conflict in explaining the demise of English mercantilism.

In contrast, there were early consensual constraints on the English monarch's ability to tax. (England's Parliament was already well established when France's first Estates General met in 1302.)[19] These elements of parliamentary consent were not absolute until the revolutionary period of the mid-seventeenth century, largely engendered by conflict between monarch and the House of Commons over authority to collect rents to support armed struggles. As noted previously, costs and benefits of regulation were changing over this period (late sixteenth and early seventeenth centuries), and these changes led to the fall of a predominantly rent-seeking society in England.

MERCANTILE MONARCHY IN ENGLAND

The process of rent seeking described in the last section of this paper was a prominent feature of English government for centuries before 1649 and the execution of Charles I. The conduct of the wool trade in fourteenth-century England provides a very clear example of this process, which, during the reign of the three Edwards, precipitated constitutional crisis, presaging those of the seventeenth century. The first crisis was over the taxation of wool.

The wool trade of medieval England included a large number of competitively organized wool producers, a smaller number of large-scale producers (mostly monasteries), and an even smaller number of wool exporters. An export monopoly was fostered by the combined

[19] Martin Wolfe, *The Fiscal System of Renaissance France* (New Haven: Yale University Press, 1972), pp. 10, 33. For an interesting examination of fiscal policy and alterations in population and property rights as causal factors in the emergence of efficient economic organization, see Douglass C. North and Robert P. Thomas, *The Rise of the Western World* (Cambridge: Cambridge University Press, 1973). Our analysis of mercantilism is broadly in the spirit of their investigation.

rent-seeking interests of large merchants and exporters in bilateral negotiation with the king. The mechanism through which these activities took place was an "assembly of merchants" called by the king as early as the late thirteenth century for the purpose of advice and consent on the matter of export and other taxation, especially on wool. This body, which rivaled Parliament in its functions, was willing to consent to taxation, given that monopoly and other privileges could be exacted from the crown.[20] In short, merchants would accept the costs of taxation and regulation so long as the benefits conferred by regulation exceeded these costs.

The ability of merchants to shift the incidence of the wool tax, both backward to wool growers, large and small, and forward to foreign consumers (depending, of course, upon elasticity of demand), forced a polarization of parliamentary interests, which came to recognize the deleterious effects of higher wool prices. This interest group was composed of lay and ecclesiastical magnates (the large wool producers) and the knights of the shire, who represented more than a million small freeholders in Commons. Parliament's fight for the abolition of the tax was thus premised upon their objection to the income-reducing effects of the regulation of the wool market by the king (Edward I) and the wool merchants. Significant constitutional crises, which occurred in the 1290's and 1330's, resulted principally because of realigned and eventually shared interests between Parliament and the merchants. The costs of monarchial regulation (taxes) exceeded the benefits (entry-restricted monopoly) only so long as the king did not impose *new* taxes on the wool merchants. When this did in fact occur, owing to war and other pressures on the English fisc, wool merchants clearly recognized that the bilateral form of rent seeking was one-sided and unprofitable. Merchant voices thus joined those of Parliament calling for *abolition* of the tax.[21]

[20] Eileen Power, *The Wool Trade in English Medieval History* (London: Oxford University Press, 1941), p. 71.

[21] The alienation of merchants was furthered when the king shifted his favor to a group of "rogue financiers," less than thirty in number, who advanced money to the crown on wool granted to him. Power notes that the "king was . . . compelled to impose an embargo on general export for a time (sometimes a whole year) in order to enable his financiers to dispose of the wool on his behalf. And every time this happened a virtual monopoly of a financial group was established" (ibid., p. 83). The result was the dissolution of the larger group of merchant exporters, with those "shut out" becoming disposed (in their self-interest) to urge Parliament to impose constraints on the king.

Though Parliament was unsuccessful in abolishing the periodically imposed ("extraordinary") wool tax ("maltote"), the increased demand of the sovereign for funds at the outbreak of the Hundred Years War (1336) was met by a tax, but with domestic price controls on wool as quid pro quo.[22] In 1350 Parliament finally gave up on the issue of abolishing the tax, but got control over it and converted it into a parliamentary subsidy for specified time periods. A quasi-monopoly of the wool trade (the English Company of the Staple) remained, and as Power reports, " . . . it is by virtue of this monopoly alone that they were able to shoulder the subsidy," the latter contingent on the will and consent of Parliament.[23]

A MERCANTILE PATTERN OF RENT SEEKING

The pattern and effects of mercantile monarchy, as developed in our theory of rent seeking, may be seen in the early history of the medieval wool trade. Again and again in the mercantile period—most significantly in the sixteenth and seventeenth centuries—Parliament was strengthened to limit and oppose the crown's ability to regulate. In England the rent-seeking proclivities of the crown were strengthened by a legislative constraint on its possible revenues. Extraordinary expenditures, which arose with ever-increasing frequency in order to conduct wars, meant that English monarchs were always in need of funds. (The French crown was often in similar need, but it did not face the same constraints, as we shall see in a later section.) The crown's reaction to this situation was initially to offer special favors, monopoly-entry control, to growing national industries (large exporters were often fewer in number, organized with lower transactions costs, and more easily controlled), who, in return, submitted to taxation.

Reactions to this state of affairs were twofold, and both eventually brought about the decline of monarchial rent seeking and an increase in costs to legislative supply of regulation. First, Parliament, which represented "society's" and, ultimately, merchants' interests, grew restive at the rent-seeking franchises of the king. As the mercantile period wore on, this restiveness became more pronounced. Second, and more important perhaps, the absolutism of the English monarchy

[22] At this point the wool merchants were still sanguine about the export monopoly franchise, since the prospect of passing the tax forward still existed (ibid., p. 81).

[23] Ibid., p. 85.

was more and more eroded with the aid and action of the merchant classes themselves. Great uncertainty crept in as merchants grew wary of the net benefits of a regulatory alliance with the king. Specifically, this uncertainty of benefits drove merchants to support parliamentary interests, which reduced the powers of the monarch in economic as well as in legal and religious matters. Thus, the caprice of monarchial power, which led to uncertainty among merchants, landowners, and freeholders, resulted in the emergent constitutional solution of the late sixteenth and seventeenth centuries.

THE DECLINE OF ENGLISH MERCANTILISM

We must now amplify and further illustrate the pattern of rent-seeking discerned in the medieval wool trade and described by our theory. Here, we focus upon a "high period of mercantile monarchy," followed by its fall in 1640 or so. Roughly, our treatment extends from the reign of Elizabeth I (the last Tudor monarch) through those of James I and Charles I (the first two Stuarts).

The constraints on regulatory supply and demand between the death of Henry VIII (1547) and the execution of Charles I (1649) were in kind very much like those of the earlier period. The monarch still required the consent of the taxed in order to obtain revenue. He still depended, in other words, upon the good will and self-interest of the wealthy gentry and landowners in order to function, especially when he had to meet "extraordinary" expenses. Over this period the three major checks upon the crown's power and rent-seeking activities were (1) private local interests composed of increasingly wealthy city merchants and magistrates, (2) the common law courts, and (3) the House of Commons. The latter two institutions were increasingly representative of and peopled by the wealthy merchants from whom the king wished to extract rents.[24]

[24] Here, we must emphasize that we are not trying to explain the decline of rent seeking solely in terms of the rise of constitutional democracy, though we argue that it is a major causal factor in explaining mercantile policies. Technological growth and an emergent factory system, a familiar *deux ex machina*, may have (for example) fostered powerful interests (such as wool buyers or household producers), which arose to compete with the large wool producers and exporters for rents in Parliament, thereby dissipating them. North and Thomas, *The Rise of the Western World*, emphasize still other changes as the grounds for economic development and the emergence of property rights. While their arguments concern somewhat more fundamental causal features of development, they do not emphasize, as we do, the role of rent seeking in the decline of mercantilism.

The actual means of rent seeking and the king's ability to enforce it were likewise in transition, being eroded by self-interested forces and developments in constitutional law. Basically the crown had to depend upon three means of imposing industrial regulation: (1) enactment of regulation by statutes of Parliament, (2) royal proclamations and letters patent, and (3) orders of privy council or decrees instituted by privy council sitting in Star Chamber (the king's court). Developments of the period 1547–1640 led to the utter supremacy of Parliament in imposing regulation. The concept of the "crown in council" as ultimate authority—the great Tudor contribution to administrative government—was also swept away by the events of these years, though the "council" form of executive administration survives and, indeed, is enshrined in the forms of most contemporary representative governments.[25] During this period, self-interested forces successfully opposed every attempt of the crown to impose and enforce industrial regulation. We now turn to a few examples of these forces.

EXAMPLES, 1563–1597

The reign of Elizabeth I (1558–1603) is regarded by many as the high time of successful mercantile policy. Historical facts do not appear to justify this view, however. To echo a modern directive, regulation should be judged not on the basis of its aims or intent, but on grounds of its effects.[26] In fact, Elizabeth opened her reign with a great deal of patent granting and lusty rent seeking from industry, but closed it by meekly admitting that patent monopoly was a dangerous innovation contrary to common law.

In common with successful French systems of regulation, the English monarch would have liked to have controlled industry locally through the guild system and crown representatives like local magistrates, justices of the peace, and their subordinates. Much regulation to this end was imposed during the reign of Elizabeth. In 1563 a Statute of Artificers was passed commanding craftsmen to serve a seven-year apprenticeship and regulating wages in all occupations

[25] Bureaucratic reforms in Tudor administration are treated exhaustively in G. R. Elton, *The Tudor Revolution in Government: Administrative Changes in the Reign of Henry VIII* (Cambridge: Cambridge University Press, 1966).

[26] The growing literature of the "effects and effectiveness" of regulation dates to George Stigler and Claire Friedland, "What Can Regulators Regulate? The Case of Electricity," *Journal of Law and Economics* 5 (October, 1962): 1–23.

then existing.[27] In 1596–1597, by an act of the privy council, Elizabeth attempted to fix the prices of grain, bread, ale, beer, and malt, and, for a time, those of building materials, bricks, and the wholesale price of coal. The crown's response to new and growing industries, such as tobacco pipe makers, gun makers, and spectacle makers, and to the nascent manufacturing towns they supported, was to incorporate these industries (an attempt to bring them under the umbrella of guild regulation) and to enact statutes aimed at keeping industry from moving from old towns to the country, where many regulations did not apply.

THE LOCAL REACTION TO REGULATION

Such regulations yielded Elizabeth very meager results, except to implant in the minds of most of those she attempted to regulate the notion that self-interest and progress demanded nonregulation. Reasons for the failure to impose price and wage controls could not be more clear. It was a question of unpaid enforcers (local justices of the peace), or highly self-interested magistrates (industrial merchants harmed by regulations) attempting to enforce a system of regulation that injured the influential majority of those it affected. The opportunity cost structure for regulatory enforcement was changing drastically. As John U. Nef has noted, "During the eighty-five years which followed the accession of Elizabeth and culminated in the civil war, the privy council was not able to strengthen the royal authority for enforcing industrial legislation by introducing new, disinterested officials into the local administration to help the justices of the peace in performing the increasingly heavy duties imposed on them by the new enactments."[28] Heckscher goes even further on the matter, noting that "neither before nor after 1688 was there in England a paid *ad hoc* bureaucracy to supervise the enforcement of industrial legislation which Colbert had been at pains to create in France."[29]

As mentioned above, the statutes regulating wages applied only to existing industries. It takes little imagination to predict what happened, given this loophole in the law. Large numbers of new industries forming between 1575 and 1620 were simply exempt from the laws. Other industries such as textiles, which were undergoing a transition to large-scale manufacturing, simply evaded the laws altogether by moving to the countryside (where the laws did not apply), by importing cheap unskilled labor from the country, or by "letting" or "putting out" the finishing of textiles to large numbers of workmen in their homes. Outright disobedience of the law was facilitated by self-interested local magistrates and justices of the peace and by decisions of the common law courts limiting the applicability of local regulations over industry.[30]

MONOPOLY REGULATION

Apart from the attempt to impose local industrial regulation, which was virtually swept away by parliamentary acts of 1575–1576 and 1623–1624, there was no dearth of attempts by industrial rent seekers and crown to institute monopolies over specific branches of trade. But in these cases, the self-interest of those left out (potential competitors) and eventually of those protected—together with the common law judges and a House of Commons pliant to the wishes of merchant-capitalists—combined to overthrow and render ineffective monopolies created by patents, royal decree, or proclamation of the crown's privy council. Examples are numerous, and here we might note the attempted monopolization of the saltpeter, gunpowder, salt, and paper industries and the attempt of the queen to tax mines and mineral extraction, most of which failed to provide any rents to the crown.[31]

On familiar grounds of national defense, Elizabeth claimed exclu-

[27] See the discussion of the statute in Heckscher, *Mercantilism*, I, 227 ff.

[28] John U. Nef, *Industry and Government in France and England, 1540–1640* (Ithaca: Cornell University Press, 1957; first published, 1940), p. 36. We question the extent to which local officials were disinterested (see Ekelund and Tollison, "Economic Regulation in Mercantile England: Heckscher Revisited").

[29] Heckscher, *Mercantilism*, I, 263. Professor Hartwell has recently amplified Heckscher's point, contrasting his view to the character of nineteenth-century administration. See R. Max Hartwell, "Capitalism and the Historians," in *Essays on Hayek*, ed. Fritz Machlup (New York: New York University Press, 1976), p. 84. Hartwell's interpretation of Heckscher is certainly correct with respect to England and perhaps the Netherlands, but this was not the case in France and Spain, as we shall see. Moreover, Hartwell does not provide a cogent explanation for the *origins* of bureaucratic control in nineteenth-century administration.

[30] The classic judicial decisions of Sir Edward Coke in the Tolley case and others were of singular importance in bringing about legal limits on crown regulation. See D. O. Wagner, "Coke and the Rise of Economic Liberalism," *Economic History Review* 6 (March, 1935): 30–44.

[31] See Nef, *Industry and Government in France and England*, pp. 88–112.

sive rights to the manufacture of saltpeter and gunpowder. A monopoly was granted to George and John Evlyn. The Evlyn family enjoyed the rent splitting for almost fifty years (until 1635).[32] But steady opposition from both merchants and the common law courts (dating from the initial award) finally brought the monopoly restrictions down. Subsequently, the manufacture of both saltpeter and gunpowder became the object of open competition. Principal opposition came from the merchants and "from the increasing number of town traders and landed gentlemen with money to invest in the new industries, the same persons who were becoming lax about complying with royal industrial legislation. They objected to all industrial monopolies as trenching upon the liberty and the property of the subject, whose rights, they claimed, were guaranteed by the fundamental law of the country."[33]

Other examples may be cited. The rights to the royalties from ores other than gold and silver were removed from the crown in a court decision of 1566, which limited regalian rights to gold and silver only (none in England). Officials charged with dealing with mining leases *on royal lands* were not above the lure of self-interest, moreover. Thus Professor Nef notes, "Even in royal manors and forests, where the king or queen like any other landlord owned the minerals and appointed special officials to deal with their mining lessees, these officials, like the justices of the peace and the sheriffs, were always local men who were frequently more mindful of the wishes of their rich neighbors with investments in the mines than of the interests of their royal masters."[34]

Elizabeth tried to imitate the French king's successful and lucrative salt tax (the *gabelle*), but these efforts were also doomed. In 1564 Elizabeth attempted to establish a patent monopoly in salt, but the patentees gave up after five years, leaving huge salt pans rusting on the

[32] Though Elizabeth claimed regalian rights on grounds of national defense, she stood to gain monetarily by the conditions of the rent-split. All unused gunpowder could be sold by her at a profit to both domestic and foreign consumers. Since by law she claimed *all* Evlyn's output, a time of peace meant pure profit to Elizabeth.

[33] Nef, *Industry and Government in France and England*, p. 92. An issue of "illegal search and seizure" was also involved here, since the collection of saltpeter required entry to henhouses and barnyards across England.

[34] Ibid., p. 101.

English coast. At this point private capitalists, without franchise, entered the industry and profitably produced and marketed salt over the next three decades in spite of repeated attempts by the crown to reestablish monopoly rights.

Yet another example of the futile attempt of Elizabeth's councillors to grant monopolies to court favorites was the paper monopoly, originally granted to one John Spilman in 1588. Spilman claimed to have a new process for producing white paper. Although patents issued to protect a new process or invention were ordinarily unopposed by Commons and the common law courts, they were often extended, enabling patentees to "engulf" closely related products. Such was the case with Spilman, who in 1597 was granted a monopoly over *all kinds* of paper. The monopoly privileges were not enforceable, however, and within six years Spilman had to rest content with "such a share of the expanding market for paper as the efficiency of his machinery, the skill of his workmen, and the situation of his mills enabled him to command."[35] Elizabeth's luckless adventures into the creation of monopolies ended in 1603 (the year of her death), when she personally declared, with respect to proposed monopoly on playing cards, that such patents were contrary to common law, and that such issues were to be decided by Commons and the courts.

POST-ELIZABETHAN RENT SEEKING

Opposition to crown attempts to monopolize industries during Elizabeth's reign grew, culminating in civil war, during the next forty years. Generally, it may be said that after 1603—despite even more vigorous attempts to establish monopolies on the part of Elizabeth's successors—no acts establishing national monopolies were enforceable that reduced the profits of merchants and the interests of those represented by Commons and the courts. At this point we find the de facto end of monarchial mercantilism when, in the context of expanding industries, the net benefit from open competition outweighed the net benefit from crown protection. The *demand* for regulation was reduced owing to rising franchise costs in the form of taxes, together with the uncertainties of regulation by the crown. Potential competition for investment outlets and political pressures upon Commons by

[35] Ibid., p. 106.

affected merchants must have greatly increased the uncertainty of gains from crown-created monopoly.

James I and Charles I revived Elizabeth's early policy of patent grants as sources of revenue, but both met with very limited success (principally in the cases of alum and soap manufacture). Meanwhile, Commons gathered all its strength to fight the king's prerogative to seek rents via monopolization. After a protracted struggle with James over the issue, Commons revived impeachment as a means of punishing monopolists within their ranks and of reminding the king of their total intolerance for his claimed prerogative to seek rents in this manner. Thus, in 1621, for the first time in almost two hundred years, Commons impeached Sir Giles Mompesson and Sir Francis Mitchell for "fraud and oppression committed as patentees for the exclusive manufacture of gold and silver thread, for the inspection of inns and hostelries, and for the licensing of ale houses."[36] The House of Lords rendered the judgment and imposed fines and imprisonment on both men. Commons's objection to the crown's supposed right to supply regulation reached its zenith in 1624, when the famous act concerning monopolies legally stripped the king of all prerogative in patents and other means to monopolize industry.[37]

In 1625 Charles I came to the throne and promptly set about attempting to restore the "divine right of kings," which, of course, included a reassertion of rights to grant monopoly via letters patent or by order of privy council. In doing so, Charles was led to a direct confrontation with constitutionalists, a battle he ultimately lost, along with his head, in 1649. Together with his persuasive and powerful minister Francis Bacon, who supported the royal prerogative to supply regulation, Charles found a loophole in the 1624 statute: the statute did not apply to corporations for benefit of trade or to companies of merchants. Thus, after the repeated refusal of Parliament to fund the king's military adventures and the king's dissolution of Parliament in 1629, Charles tried to make deals with large producers in many industries.[38] Alum and soap monopolies had been exempted from the 1624 act, but the king encouraged the formation of huge corporations in coal, salt, brickmaking, and others, to which monopoly protection was given (for fourteen years) in return for rents to the crown. Between 1629 and 1640 the alum patent brought in £126,000, with an additional revenue from soap (between 1630 and 1640) of £122,000, but the *new* rent seeking of Charles was doomed to failure.[39] The circumstances of this failure should be, by now, very familiar. The king's monopoly protection and taxing arrangements were *too costly* for *all* the merchants to continue to acquiesce to them. A competitive system in this period of rapid industrial expansion yielded them higher rents than could be obtained through legalized entry control, price fixing, *and* taxation. Thus, cartel arrangements broke down as participants blithely evaded price-fixing agreements or laws when profitable. Moreover, these attempted new monopolies aroused the hostile and vociferous opposition of those merchants left out. The nonmerchant voices correctly perceived monopoly (recall the wool trade example) as inimical to their interests.

Thus the cartel breakdown and the more fundamental problems of enforcement brought on by strong consumer and excluded merchant objections combined to yield the patents of Charles I ineffective three years after they were issued. Antimonopoly interests opposed to the king—reflected in self-interested inaction or adverse decisions by justices of the peace and by Commons—joined forces with legal and religious objections to the king's blatant and audacious assertion of supreme rights and signaled an end to his authority. In a landmark reassertion of rights, Parliament ended the despotism of monarchy and established fundamental constitutional rights. Included in this legislation was the passage in 1640 of a statute putting an end to all but one of the exceptions in the statute of 1624.[40] Monarchial mercantilism

[36] Hannis Taylor, *The Origin and Growth of the English Constitution*, Part II (Boston: Houghton, Mifflin and Company, 1898), p. 246.

[37] Exceptions granted were for "patents of Invention" and the alum and soap monopolies. The latter were excepted because the patents were soon to expire and, further, because the privy council agreed not to renew them.

[38] Parliament was demanding a restoration of sovereignty and other constitutional rights in return for the subsidy.

[39] Nef, *Industry and Government in France and England*, p. 115.

[40] Although some of the more scientifically minded merchants and gentlemen supported the exemption of limited "patents for invention" in the Statute of 1650 in order to encourage inventors (i.e., in permitting internalization of benefits), the self-interest of members of Parliament, judges, and magistrates may have been a larger factor in this decision. Nef notes, in this connection, that "the increasing industrial investments of the

was repulsed by sharply limiting the ability of the king to *supply* regulation. More important for understanding the course of constitutional history and regulation, the monarch lost this ability largely because actual and potential demanders found the effects of these regulations very uncertain, and most often of negative benefit, given the salubrious state of the competitive system in the English economy of the time.

As argued in the theoretical section of this paper, future attempts to demand and supply monopoly privileges through regulation were far more costly to participants because of the higher transactions costs associated with collective decision-making in a representative body such as Parliament. Thus, the attempt by merchants in the short run to wrest power to confer monopoly from the monarch (culminating in the mid-seventeenth century) led to a long-run situation, lasting until the latter part of the nineteenth century, which severely inhibited the possible formation of rent-seeking regulation.

Customs, Monopoly, and Dualism

Of special interest in a mercantile context is the issue of tariffs and quotas, that is, the issue of tariffs and quotas in protection or encouragement in international competition. Clearly, the nexus of power to levy customs duties ("tonnage and poundage") shifted often from the medieval period through the seventeenth century. Indeed, one of the major factors leading to the constitutional revolt in the reign of Charles I was exactly the matter of prerogative in customs duties. Charles claimed an "ancient right" to customs, but Parliament finally seized the exclusive power to set these duties in 1641.[41] While Parliament was dissolved, however, an event took place that reveals that vested interests were operative in the matter of trade policy. In the

wealthy merchants and the improving landlords, represented in parliament, in the courts, and in the town governments, led them to welcome any invention designed to reduce costs of production and to increase profits. . . . Such industrial adventurers and their political representatives saw in the granting of patents a means of encouraging the search for the new inventions with which their prosperity was increasingly bound up" (ibid., p. 119).

[41] Parliament later gave William and Mary customs and port duty for *limited* terms of four years, partially a ploy to guarantee frequent parliaments (Taylor, *The Origin and Growth of the English Constitution*, pt. II, p. 419).

interim in which Charles claimed absolute authority to levy taxes, merchant importers refused (in their own interests) to pay customs to the king, obeying a remonstrance of Parliament to refuse to pay any duties not authorized by Parliament. The king ordered the seizure of goods, whereupon several merchants resisted and were brought before the privy council. One of them, Richard Chambers, declared that "merchants are in no part of the world so screwed as in England. In Turkey they have more encouragement."[42]

This incident, small in itself, reveals that, although motives of unification and state power building may be pressed to explain protectionist trade policies, self-interest was never far from the surface in shaping those policies which we regard as typically mercantile in nature. That is to say, there is a commonality about rent seeking, whether its subject is international trade controls or domestic industrial regulation.[43] Although a number of writers have noted a "dualism" in *mercantile writers'* approach to domestic controls on the one hand and to protectionist "mercantile" policies in trade on the other, the apparent contradiction may be resolved when mercantilism is viewed in terms of rent-seeking activity.[44]

An example drawn from Heckscher will illustrate this point:

[42] Quoted in ibid., p. 274. Prison was the cost to Chambers for his flippancy.

[43] Adam Smith made this point very emphatically: ". . . in the mercantile system, the interest of the consumer is almost constantly sacrificed to that of the producer; and it seems to consider production, and not consumption, as the ultimate end and object of all industry and commerce. . . . In the restraints upon the importance of all foreign commodities which can come into competition with those of our own growth, or manufacture, the interest of the home-consumer is evidently sacrificed to that of the producer. It is altogether for the benefit of the latter, that the former is obliged to pay that enhancement of price which this monopoly almost always occasions" (*Wealth of Nations*, ed. Edwin Cannan [New York: Random House, 1937], p. 625). All restrictions, domestic and international, were for the benefit of merchants and manufacturers. Smith even extends the self-interest axiom to an explanation for the Navigation Acts and to colonial policy: "To found a great empire for the sole purpose of raising up a people of customers, may at first sight appear a project fit only for a nation of shopkeepers. It is, however, a project altogether unfit for a nation of shopkeepers; but extremely fit for a nation whose government is influenced by shopkeepers" (p. 579).

[44] That there was a contradiction in English mercantile *statements* concerning the desirability and efficacy of applications of natural law and free trade is beyond doubt. See A. F. Chalk, "Natural Law and the Rise of Economic Individualism in England," *Journal of Political Economy* 59 (August, 1951): 330–347; or W. D. Grampp, "The Liberal Element in English Mercantilism," *Quarterly Journal of Economics* 66 (November, 1952): 465–501. Their observation that the emergence of a philosophical defense of the domes-

> . . . from the end of the Middle Ages onwards, the import of wool cards into England was prohibited. They constituted an important means of production in the textile industry, which normally enjoyed greater favour than any other. A decree of 1630 went so far as to proscribe the sale of cards produced within the country from worn-out patterns. The maintenance of employment was given as the official motive for the measures, but in fact, as least as regards the latter prohibition, the object was to assist one of the oldest industrial joint-stock companies, the Mineral and Battery Works.[45]

The point that this quotation illustrates is that the "official" motive for protectionist measures was, in all likelihood, seldom if ever the real motive. Most writers on mercantilism identify some sort of "homogeneous" mercantile trade policy, employment policy, population policy, domestic policy, and so on, as if interests independent of those which drive economic man in all ages were responsible for the economic policy called "mercantilism." We, however, agree with Smith's assessment that mercantilism was but a tissue of protectionist fallacies supported by merchants, and we go further and argue that thinly varnished rent seeking by merchants, monarch, and ultimately by the masses represented by Parliament explains the sum total of the economic intervention, as well as a good deal of the political and legal change, over the period. A "philosophical dualism" may have existed, as philosophers were converted to individualism (Locke) and natural law as a guide to economic conduct (Mandeville, Petty, Cantillon, Hume, and Smith). But, as we have seen, the philosophical revolution was fostered by the conduct of rent seekers, constrained by a particular form of polity. The form of that polity, moreover, changed fundamentally through the interplay of these self-interested economic forces. Mercantilist writers, Jacob Viner suggests, created "an elaborate system of confused and self-contradictory argument."[46] Our application to mercantilism of the theory of the rent-seeking society suggests that the practitioners of mercantilism were anything but confused and self-contradictory. Through their actions, self-interested individuals ultimately altered the constraints within which rent-seeking activity took place.

tic market economy came in the late sixteenth century is indisputable. But to defend free trade internally and simultaneously support import and export controls is not "dualistic," if both are of net benefit to the individual involved. When mercantilism is viewed as a rent-seeking process, moreover, the explanation for why mercantilism as a *system* has eluded all attempts at characterization by historians of economic thought becomes readily understandable. Thus, our conclusion extends Viner's belief that "pleas for special interests, whether open or disguised, constituted the bulk of the mercantilist literature. The disinterested patriot or philosopher played a minor part in the development of mercantilist doctrine" (*Studies in the Theory of International Trade*, p. 115).

[45] Heckscher, *Mercantilism*, I, 148.

[46] Viner, *Studies in the Theory of International Trade*, p. 109.

France: The Venal Society

The French experience at rent seeking and the environment under which it took place contrast at almost every point with the case in England. If mercantilism means "a system of extensive economic controls," one could hardly find a better example than France from the thirteenth to eighteenth centuries. The source of this difference lies in large measure with the absolutist property rights in taxation vested in the crown from 1439 through the French Revolution of the late eighteenth century. With minor alterations the tax system of the Old Regime followed that of the Renaissance. Characterized by institutionalized venality, French monarchs shared the power to tax with the French aristocracy over the entire mercantile period. Rent seeking by the monarch in the form of contracting to enterprises or to "tax farmers" was common as early as the thirteenth and fourteenth centuries. A scholar of fiscal systems of the period aptly describes the situation: " . . . the most important local revenues were 'farmed out' to enterprisers, who received the right to collect the domaines in return for lump sum payments. Amounts in excess of this sum became the revenue farmers' profits; and, if they collected less than the amounts paid, it was their loss—not the king's."[47] Corruption permeated a gigantic fiscal bureaucracy, and, as in certain modern political systems, it became a way of life. Property rights shifted as the centuries passed, with tax farming and other "leases" becoming hereditary. Legal and judicial offices were sold by the crown, for example, and provide an interesting example of venality. Revealing the utter hypocrisy of the system, the oath of office in the case of justices and crown lawyers required a state-

[47] Wolfe, *The Fiscal System of Renaissance France*, p. 12. Also see B. F. Hoselitz, "The Early History of Entrepreneurial Theory," in *Essays in Economic Thought: Aristotle to Marshall*, ed. J. J. Spengler and W. R. Allen (Chicago: Rand McNally & Co., 1960), pp. 234–257; and R. B. Ekelund and R. F. Hebert, "A Tale of Two Theories: Concepts of Competition in Economic Literature," unpublished manuscript, Auburn University, 1978.

ment that they had not paid any money for their position. It has been observed that "for the whole sixteenth century the justices and royal lawyers began their careers with an act of perjury."[48]

Royal venality was of such magnitude at the end of Louis XIII's reign (between 1636 and 1642) that the French monarch was collecting between three and four times the per capita taxes from his subjects as Charles I, who was locked in a death battle with Parliament at the time. The mercantile writer Gregory King estimated the "general income" of France in 1688 at £80,500,000 sterling and that of England at £41,700,000, estimates rough in themselves but sufficient to indicate a much larger success of royal rent seeking in France over the "mercantile" period.[49]

THE INSTITUTIONAL FRAMEWORK OF RENT SEEKING IN FRANCE

The rent-seeking coalition of crown and aristocracy was facilitated in France by a number of institutional features stemming from and related to the absolute power to tax by the crown. There are the interrelated matters of (1) the enforcement of industrial regulation, (2) the degree of *effective* crown rent-seeking interference with old and new industries, and (3) the incidence of the tax structure and the incentives established thereby.

The guild system in France grew stronger from the time of the Middle Ages onward, in contrast with the English experience. At the opening of the sixteenth century, most local industry was done by free craftsmen, but by the reign of Henry IV (1589–1610), the guild regime was dramatically strengthened. Two crown edicts (1581 and 1597) laid down uniform rules for the organization of handicrafts all over France and permitted master craftsmen who were not members of guilds to organize and obtain from rent-seeking royal officials all the advantages of formal guild membership—regulated apprenticeships and entry, hours of work permitted, and so forth. Guild regulations, moreover, were confirmed by royal letters patent. The result of these activities was a massive extension of royal prerogative, superseding guild and local prerogative in the matter of decentralized royal control over

[48] Wolfe, *The Fiscal System of Renaissance France*, p. 297.

[49] Gregory King, quoted in Nef, *Industry and Government in France and England*, p. 128.

industrial activity. Entry control, the imposition of maximum wage rates upon journeymen, price controls, and the establishment of rent-seeking offices, which all this engendered, became centralized crown prerogatives.

Although these developments set the stage for a venal society with centralized property rights, further developments significantly strengthened the control of the king's officers over municipal authority. *Intendants des provinces*, tried servants of the crown, were sent as commissioners to the provinces to establish administrative reforms. Gradually, under the aegis of Richelieu and Louis XIII, these well-paid *intendants* took over and consolidated most of the functions of earlier royal provincial administrators, thereby permitting crown ministers far greater assurance that the crown's policies would be undertaken. Adjudication of regulatory disputes at the local level was also more and more becoming the business of the crown courts by invocation of the principle of *cas royaux*, whereby disputes over guild regulations and other industrial encumbrances could be tried in royal courts due to "crown interests." Certainly Colbert, minister of France between 1661 and 1683, must have found these inherited institutions a great advantage in implementing the intensified rent seeking of Louis XIV.

Over this important period, then, the institutions of legislative and judicial enforcement over industry and trade were developing along sharply opposed lines in England and France. During the crucial century from 1540 to 1640, institutions that facilitated rent seeking by crown and aristocracy were greatly strengthened in France, while such "enforcement" institutions, legal and administrative, were becoming atrophied in England. The French crown did not have to brook the *combined* opposition of enforcers, those disgruntled by regulation, and the public in its quest for economic rents.

The administrative machinery that served rent seekers vis-à-vis local handicraft regulation was duplicated over specific industries in a manner that could only be pitifully imitated by the English. Tight royal control over mines, saltpeter and gunpowder, and salt was greatly facilitated by decentralized local production, with centralized control over rent-producing "franchises."

In the matter of saltpeter and gunpowder manufacture, the "grand master of the artillery" (the Minister Sully served for a long while) was given exclusive management. In imitation of the tax-collection system, these rights were "farmed out" to commissioners, who represented the grand master in granting or revoking rights to produce. Commissioners, in turn, exacted a split in the rents created for themselves. Concession rights to the produce of mines were likewise farmed out to court favorites through an elaborate administrative machinery. Revenues in the form of lump-sum payments went to the crown, as did a regalian tax on ores (*droit du dixième*). Entry, exit, and abandonment were all regulated to the mutual advantage of aristocratic franchise holders (*concessionaires*) and the king.

The French crown, in common with its English counterpart, granted patents for new inventions and, along with them, money subsidies and official salaried help for inventors. But the French went much further, determining the entire direction of technology. By granting a large number of limited tax-exempt concessions, kings from Henry IV and Louis XIII directed technological change by shifting emphasis toward new branches of *artistic* craftsmanship (cloth, glass, tapestries) and away from cost-reducing devices necessary for the introduction of quantity-oriented, large-scale production. Though patents for the latter were not refused, crown advisors were establishing conditions that greatly favored the establishment of high-quality artistic productions. Such emphasis expanded into the well-known government studios and art factories of Louis XIV and his royal successors.

Perhaps the single most successful application of venality by the French crown related to the salt monopoly. Claiming regalian rights (which roughly corresponded to the salt tribute of the imperial Roman state) in most of the provinces of France, the crown imposed intricate regulations on salt producers, requiring them to sell all salt produced to royal storehouses at prices fixed by the king's officers. Consumers were then forced to purchase salt, with required quantities per parish, at rates four times as high as free market rates.[50] Although there were infractions, monopoly conditions were rigorously enforced, in large measure because of the fidelity of royal representatives at the local levels.

The *gabelle* and other taxes on salt became the single most important revenue source next to the infamous *taille*. The *taille* was a tax

[50] These are Nef's estimates.

levied on the income and real property of peasants, shopkeepers, and craftsmen, who were not exempted by virtue of participation in royal manufactures. In real terms receipts from the *gabelle* rose eight or ten times between 1523 and 1641.[51] The imposition of both the *gabelle* and the *taille* had stark implications for the distribution of income and economic growth. Both these taxes and the indirect taxes on commodities fell heavily upon the poor, discouraging capital formation. Unbridled taxing powers facilitated redistributions to the nobility and to the clergy, who utilized wealth redistributions for "artistic consumptions."

A POSTSCRIPT ON THE VENAL SOCIETY

Institutionalized rent seeking had a number of implications for the ultimate form of the French mercantile state. Growth in real output lagged far behind that of England due to a dearth of investment opportunities and, more importantly, to a lack of incentive for capital formation. Absolutism created so much uncertainty in property rights that, as has been remarked of the Spanish mercantile system of the time, one became a student, monk, beggar, or bureaucrat, since there was nothing else to be.[52] The best minds, as in all controlled societies, were attracted to the areas of highest return. In France this meant that they sought a bureaucratic sinecure that could be passed on through hereditary rights.

The certainty of absolute power and of an imposed system of rent seeking contrasted sharply with the uncertainty of private entrepreneurial returns in France. The high *private* returns of a relatively unfettered competitive system, which proved sufficient to bring down mercantile monarchy in the English case, were not possible in France. The tradition of the venal system created there was so strong that the emergence of a liberal order was postponed until the late eighteenth century.

Conclusions

Historical episodes from France and England appear to fit the theory of mercantilism as rent-seeking activity, as well as to provide a solid

[51] Nef, *Industry and Government in France and England*, p. 83.
[52] North and Thomas, *The Rise of the Western World*, p. 131.

base for explaining its decline in England. In the latter case, higher cost due to uncertainty and growing private returns reduced industry demands for regulation and controls. All this strengthened the emergent constitutional democracy, which created conditions making rent-seeking activity on the part of both monarch and merchants more costly. When the locus of power to seek rents shifted from the monarch to Parliament via more stringent controls on the king, the costs of supplying regulation through legislative enactment rose because transaction costs to rent seekers went up. Moreover, a competitive judiciary created massive uncertainty about the durability of *any* monopoly right. In addition, the inability of the monarch to enforce even simple local regulations was premised upon the political structure of England and, as we have seen, upon the changing cost-benefit structure to royal representatives charged with such enforcement.

The pattern of mercantile rent-seeking in France until the late eighteenth century was manifestly different. Absolute tax powers and ever more efficient royal enforcement at local levels permitted and supported a system of outright venality administered by an institutionalized aristocratic bureaucracy. Monarchial controls over technology further altered the cost-benefit structure of the demand for monopoly franchises by reducing the returns to production and participation in the private economy. Along with monopoly in the supply of franchises, it is easy to understand the persistence and growth of venality in France. The absence of meaningful representative institutions or conditions that would facilitate their emergence is sufficient to explain the historical pattern.

We have argued that the application of the theory of the rent-seeking society to the mercantile period yields new insights into the rise and decline of mercantile restrictions in England and France. Surely our argument would not have surprised Adam Smith, and we view it as an extension of Smith's (admittedly) fragmentary analysis of the rent-seeking modes of the period.[53] As noted throughout the present paper, however, there is no dearth of arguments concerning the decline of overt mercantile policies in England, although the reasons for this significant episode of deregulation are largely unexplored in the literature. Credit is given implicitly to Adam Smith and his "liberal" predecessors, who advocated the advantages of the free and spontaneous coordination of economic activity, for making such a forceful intellectual case for their point of view that it was translated into public policy. Our interpretation of mercantilism as a rent-seeking society does not suggest that intellectual developments will have much impact on public policy. We thus tend to disagree with Keynes, who was certain "that the power of vested interests is vastly exaggerated compared with the gradual encroachment of ideas."[54] As fine an academic scribbler as Adam Smith was, we suspect that the roles of special interests and ideas were either reversed or subsidiary to other forces in the ascension of free enterprise over mercantilism. Certainly Smith himself characterized mercantilism correctly as a system built entirely upon self-interest.[55]

We believe, in short, that commentators on mercantilism, such as Heckscher, have "overscholarized" the period. It is not that these renowned writers have not greatly added to our knowledge of the pe-

[53] One of Smith's principal themes in the *Wealth of Nations* was that mercantilism was equivalent to the demand for regulation and rents by merchants and manufactures (see pp. 250, 403, 420, 425, 460–461, 695). Smith attributes mercantile restrictions of all kinds—colonization, restrictions designed for specie accumulation, and so forth—to the self-seeking interests of merchants. Typical of Smith's "capture" theory is the following "It cannot be very difficult to determine who have been the contrivers of this whole mercantile system; not the consumers, we may believe, whose interest has been entirely neglected; but the producers, whose interest has been so carefully attended to; and among this latter class our merchants and manufactures have been by far the principal architects" (p. 626). Although Smith featured the monarch as a rent seeker, he did not elaborate much on the self-interested aspects of politicians, but probably more so than Professor Stigler believes (see G. J. Stigler, "Smith's Travels on the Ship of State," *History of Political Economy* 3 [Fall, 1971]: 265–277).

[54] Keynes, *The General Theory*, p. 383.

[55] Other types of explanations are equally unlikely. For example, within the context of our rent-seeking model, the movement to free enterprise might be explained as a general process of Pareto-optimization. The inefficiencies concommitant to monopoly organization offer a range of mutually beneficial gains from exchange. Presumably, consumers could offer to buy monopolists out to the net benefit of both parties. The difficulty with such a solution is the existence of prohibitively high transaction costs to consumers, which implies that monopoly and regulation will persist despite the potential social gains (Buchanan and Tullock, "The 'Dead Hand' of Monopoly"). Moreover, perhaps there were fewer consumers in mercantilist times and more such Pareto-superior bargains could be struck. If this were operationally so, the movement to free enterprise from the monopolistic policies of mercantilism would be susceptible to rational explanation. This is, however, an extremely unlikely explanation of the decline of mercantilism, since the mathematics of transaction costs imply that the number of transactors must be very small before meaningful reductions in transaction costs obtain. It is therefore quite likely that in mercantilist times the organizing costs to consumers would have dominated the returns from abolishing monopoly via Pareto-superior moves.

riod, but rather that they have implicitly emphasized ideas as primary causal forces of change rather than as (sometimes interesting) rationalizations based upon one's position in the rent-seeking game of income redistribution. The motives of mercantile writers, as Smith cunningly indicated, should always be suspect. Heckscher, for example, has pointed out, with reference to "intellectual arguments," that "there was little mysticism in the arguments of the mercantilists. . . . they did not appeal to sentiment, but were obviously anxious to find reasonable grounds for every position they adopted."[56] We certainly do not disagree that writers of *all* persuasions sought reasonable grounds for their arguments, but we argue that these grounds in the main were laid over the underlying self-interested forces of the times. It is our thesis, in short, that rent seeking engendered forces that drastically altered institutions in England, while producing, in a milieu of French constraints, a mercantile rigidity lasting until the nineteenth century. As such, our view is a reassertion of Smith's primitive analysis of mercantilism. It is, moreover, an elaboration of that view, in that it finds a crucial link between rent-seeking activities and fundamental institutional change.

[56] Heckscher, *Mercantilism*, I, 308.

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The Cost of Transfers

by

Gordon Tullock

MOST discussions of transfers have assumed that they are costless. They are movements from one point to another on the same Pareto-optimal production frontier. In utility terms they may actually move the Pareto-optimal frontier out because, with interdependence of utility functions, everyone may feel better off after they are completed. The point of this essay is to demonstrate that transfers may well involve significant costs. Further, we shall demonstrate that the mere possibility of transfers imposes certain costs on society. We are thrown into a game that we cannot avoid playing and that is, unfortunately, negative-sum. This game, moreover, applies to a number of situations in addition to those we have traditionally denominated transfers. Specifically, bargaining, voluntary charity, government-sponsored income redistribution, theft, and war all produce somewhat the same structural problems. As we shall see, our analysis will fit all of them. It should not be taken, however, as a proof that government income redistribution is theft. It is perfectly possible to be in favor of one and not the other. It will remain possible for those readers who favor income redistribution but who are firm pacifists to keep that pair of beliefs, and those readers who believe we should really hit the Communists hard but that government income redistribution is undesirable will be able to retain those beliefs also.

Let us begin with a simple bargaining example. Suppose that we have a two-person society with K and T the citizens. Currently, they are at point O on figure 15.1. Most economists would agree that movement into the area above and to the right of O (to such a point as A) is unambiguously desirable because it benefits at least one person and in most cases both. Movement to point B, however, is normally regarded

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