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A Neo-Mengerian Examination of the Regulatory Process

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Stigler (1971) and Tullock (1967) both rejected "public interest" or "market-failure" explanations for regulation that dominated mainstream economics before their publication, emphasizing instead that regulation is the outcome of a political competition between relatively narrowly focused interest groups seeking wealth transfers or artificial rents.[1] Benson (2002, 2005) agrees with the rejection of the public-interest/market-failure models of regulation but contends that Stigler, Tullock and the literatures they spawned do not accurately predict the consequences of regulation either because they do not systematically consider insights from the Austrian School with its emphasis on the passage of time, limited knowledge, and entrepreneurship, or New-Institutional Economics with its focus on the impact of insecure property rights. A more complete and coherent critique is suggested by Wagner (2010): the public-interest/market-failure theory as well as the Stigler and/or Tullock inspired literatures rejecting it rely on neo-Walrasian economic analysis. A more accurate characterization of regulation and its consequences requires a neo-Mengerian approach as described by Wagner (2010: 13-16).

It is easy to see that both public-interest/market-failure models and Stigler-Tullock models are developed within the neo-Walrasian research program as characterized in Wagner (2010: 11-13). They all rely on static equilibrium modeling, although the public-interest/market-failure models abstract from any institutional considerations and assume that any "market-failure" can be costlessly corrected by government while the Stigler-Tullock models add some institutional considerations and recognize that government actions often undermine the efficiency of competitive markets.[2] Markets are still modeled as fields, however, and the autonomous agents still rationally maximize utility, subject to known benefits and constraints.[3]

A Neo-Mengerian Perspective on Regulation[4]

Wagner (2010: 6-9) explains that there are two general categories of definitions of the domain of economics, materialistic definitions that focus on those human activities associated with the allocation of resources and creation of wealth, and scarcity definitions that consider "all intentional human activity, wherein people act continually to secure more highly desired states of existence in the face of a universal inability to satisfy all of their human wants." Under the second definition social configurations supervene on individual minds, and "Perhaps the most significant object of supervention for social-economic theory is property and rights of property, along with arrangements for resolving disputes over property" (Wagner 2010: 27-28). Property rights establish the kinds of actions that individuals can expect to be able to pursue without confronting resistance, but property rights are not created by individuals. Other members of society must recognize obligations in order for rights to be relevant. Indeed, "our very nature requires property as the framework for governance, along with procedures for resolving boundary disputes that are also part of our nature" (Wagner 2010: 32). Furthermore, property rights are, "as a substantive matter … subject continually to challenge and change" (Wagner 2010: 28, also see 38, 41; and see Demsetz 1967; Benson 1984, 1999, 2002, 2005). In this context, let us define the objects of demands for regulation, and the functions of regulatory supply as (Benson 1984): a) the assignment of property rights, and b) enforcement of each property rights assignment.[5] This is completely consistent with the "public-good" objectives groups like the Sierra Club believe they are seeking.[6] Property rights "convey the right to benefit or harm oneself or others" (Demsetz 1967: 348), however, as they dictate the distribution of rents and of wealth. Changes in property rights reallocate, destroy, and create rents and therefore transfer wealth. Whenever the assignment of property rights changes as a consequence of political pressures, some individuals lose. Thus, political competition occurs even if some groups are not seeking monetary or physically measurable wealth or rents, because their successes impose costs on others, creating incentives for those who may lose or have lost to take actions to retain or regain rights (Benson 1984; Wagner 2010: 25). Scarcity implies that conflict is inevitable,[7] and the resulting competition for control of property rights can take many forms ranging from negotiation to litigation to political action to violence (Benson 1999). As Wagner (2010: 30; also see 31, 35, 39, 42) states, "The presence of wealth invites plundering. … That plundering, moreover, can take different forms." Regulation is one form of the competition over rights in the pursuit of plunder (Benson 1984, 2002, 2005).

The multi-attribute character of most assets and the transaction costs associated with delineating and enforcing property rights mean that rights to an asset or resource are never likely to be perfectly delineated and secured (Barzel 1989, Benson 1984, 2002, 2005, Wagner 2010: 38). That is, using Barzel's (1989) terms, "some valued properties will always remain in the public domain." One source of entrepreneurial opportunity is the value that remains in the public domain due to incomplete property rights delineation. Thus, as a result of the entrepreneurial discovery process discussed below, individuals may discover potential values that were unknown, particularly if any claimed rights are expected to be secure. Individuals attempt to discover and capture such value, in part through institutional innovations that reduce transaction costs, but these costs do not fall to zero.

The transaction costs of enforcing any property rights assignment and especially an assignment arising though political regulation means that enforcement will be imperfect. After all, new regulations intended to assign property rights to particular interested parties will tend to place additional value in the public domain, creating incentives for entrepreneurial individuals to take actions to capture that value. Thus, a regulation leads to spontaneous responses, many of which are not anticipated by members of those demanding the regulation, let alone the legislature, or the regulatory bureau (Mises1949:758-776 and elsewhere; Kirzner 1985: 133-145; Ikeda 1997: 94-99 and elsewhere; Benson 2002, 2004, 2005).

The Spontaneous Evolution of Regulation. The neo-Walrasian approaches to regulation focus on the equilibrium that should emerge if conditions remain stable, but the focus here is on the inherently destabilizing evolutionary process that characterizes regulation (Benson 2002, 2004, 2005; Wagner 2010: 138). The evolution of regulation and regulatory institutions clearly involves deliberate "human design," for instance, and significantly, designed rules can disrupt spontaneous orders, but the result is not likely to be a designed order, as Hayek (1973: 51; also see Wagner 2010: 16, 131) explains:

> It is impossible, not only to replace the spontaneous order by organization and at the same time to utilize as much of the dispersed knowledge of all its members as possible, but also to improve or correct this order by interfering in it by direct commands.... it can never be advantageous to supplement the rules governing a spontaneous order by isolated and subsidiary commands concerning those activities where the actions are guided by the general rules of conduct ... the reason why such isolated commands requiring specific actions by members of the spontaneous order can never improve but must disrupt that order is that they will refer to a part of a system of interdependent actions determined

> by information and guided by purposes known only to the several acting persons but not to the directing authority. The spontaneous order arises from each element balancing all the various factors operating on it and by adjusting all its various actions to each other, a balance which will be destroyed if some of the actions are determined by another agency on the basis of different knowledge and in the service of different ends.

While balance created by a spontaneous order does tend to be destroyed by efforts to deliberately implement "isolated and subsidiary commands," these deliberately designed rules are not able to completely dictate the targeted behavior because knowledge is incomplete for the rule maker (Hayek 1973; Kirzner 1985: 145; Ikeda 1997: 50-52), and because policing is imperfect (Benson 2002, 2004, 2005). The knowledge problem suggests, among other things, that there are too many uncontrolled margins and unanticipated responses for a rule designer to recognize and anticipate, in part because the changes create a new set of opportunities that have not previously been available. After all, as Kirzner (1985: 135; also see Wagner 2010: 180) stresses,

> In the face of these controls, regulations, and interventions there remains, nonetheless, a genuine market ... Government controls constrain and constrict; they rearrange and re-pattern the structure of incentives; they redistribute incomes and wealth and sharply modify both the process of production and the composition of consumption. Yet within the limits that such controls impose, buying and selling continue, and the constant effort to capture pure entrepreneurial gain keeps the market in perpetual motion.

Regulations are likely to have a significant impact on the discovery process, however. Deliberate efforts to impose rules create incentives to find and exploit the uncontrolled margins in order to avoid the full consequences of the rules (Benson 2002, 2004, 2005; Wagner 2010: 22, 31, 176, 179). Thus, the discovery process tends to be redirected along a new path. As Wagner (2010: 22) notes, "The identity of those paths is limited only by the imagination of the participants." This means, as Kirzner (1985: 141-144) explains, that discoveries which probably would have been made in the absence of the regulation are never made. Such stifled discoveries are an additional, and conceivably the most significant, cost of regulation, which the static equilibrium analysis of neo-Walrasian economics fails to reveal. In addition, regulation creates a "wholly superfluous" discovery process as "entirely new and not necessarily desirable [either from the perspective of the interest groups involved or from an

efficiency perspective] opportunities for entrepreneurial discovery" (Kirzner 1985: 144).

Mises (1949: 859) stresses that "As soon as something happens in the economy that any of the various bureaucratic institutions does not like or that arouses the anger of a pressure group, people clamor for new interventions, controls, and restrictions." As entrepreneurs discover new opportunities, many of which involve ways to avoid or mitigate the intended transfer consequences of the regulations, the intended benefits of the regulation for those demanding it fall, they pressure legislators and/or bureaucrats to do something about it, and the likely response is new regulatory rules intended to block such maneuvers. Those subject to the new rules react again, however, leading to more "clamor", new blocking efforts, and so on. Therefore, deliberately designed rules and institutions also evolve spontaneously as regulators and their subjects attempt to discover ways to achieve their subjective and often conflicting ends. In other words, the evolution of intentionally created regulatory rules is path dependent, as such rules are influenced by what has come before and they in turn influence the path of the spontaneous evolution that follows, but the result is not likely to be equilibrating. The perception that a deliberately designed market order (equilibrium) through regulation as an alternative to spontaneous order is incorrect (Ikeda 1997: 74-75, 143-144; Benson 2002, 2004, 2005; Wagner 2010: 16).

Market Entrepreneurship in a Regulatory Environment. Kirzner (1997: 62) explains that entrepreneurial discovery of opportunities in a market environment gradually and systematically pushes back the boundaries of ignorance, thereby driving down costs (both production and transactions) and prices while increasing both the quantity and quality of output. Such opportunities can arise through discovery of a new product that will fulfill consumers' desires more effectively, or of a production technique that lowers the costs of providing an existing product. They can also arise through discovery of an "error" (or a "difference in knowledge") in a market that creates an opportunity for arbitrage, for entry into a profitable niche in an existing market, or entry into an untapped market for an existing product. And they can arise through discovery of an organizational innovation that lowers transaction costs. When a market is subject to regulation, the potential for entrepreneurial discover may decline, although it also may actually be enhanced, and more importantly, it is also redirected (Kirzner 1985: 141-145; Benson 2004; Wagner 2010: 119). Regulations introduce errors into markets, so by finding ways to circumvent regulations or reduce their impact, entrepreneurs capture some of the rents that are suppose to benefit others. Perhaps this can best be illustrated by an example.

Consider Mises' (1949: 762-766) and Cheung's (1974) analyses of the consequences of price ceilings (also discussed in Wagner 2010: 22), focusing first on the following question: How are property rights allocated to a commodity that is sold at a money price below the market equilibrium?[8] The standard neoclassical textbook prediction is that a permanent shortage arises with a price ceiling, but this ignores the potential for rational responses by individuals to the resulting situation. Essentially, the price ceiling puts the value between the price consumers are willing to pay and the legal price into the public domain [i.e., creates "gaps between costs and revenues," as Kirzner (1985: 132) explains] creating incentives for both buyers and sellers to attempt to capture that value. Therefore, buyers and/or the sellers can take additional steps to get or to provide another unit at a cost below added gain. For instance, consumers compete for the limited supply by queuing and searching (Mises 1949: 763), but these activities are costly, so the full price consumers pay is much higher than the money price. Demand based on full price implies that the shortage shrinks, and given no other adjustments, ultimately disappears. Some consumers may be better off (e.g., those with low values of time) but others are worse off. Other margins of adjustment also often exist, however, so this "full price" equilibrium is not actually likely to arise as both entrepreneurial buyers and sellers will "take advantage of disequilibrium conditions" (Kirzner 1985: 129).

Barzel's (1989) discussion of an example, the price ceiling on gasoline during the early 1970s, suggests the kinds of reallocations of resources, a la Mises (1949: 763), and superfluous discoveries, a la Kirzner (1985), that inevitably arise (Benson 2005). In this case, sales were in terms of tanks of gasoline, so consumers tended to queue up relatively frequently (not allow their tanks to get as close to empty as they would if there was a market clearing price), but the resulting high time costs created incentives for some consumers to add gas-tank capacity and others to pay people to wait in the queue for them. Entrepreneurial sellers had more margins to adjust on, however. Under the law, they were supposed to maintain pre-price control money prices, but regulations did not control numerous characteristics of the product. Producers were able to capture part of the value from the public domain by reducing quality (e.g., octane), unbundling products (e.g., removing additives to sell them separately, removing the "services" that had been bundled with gasoline by moving to self service, reducing the hours of operation and therefore the level of convenience that consumers had previously enjoyed), re-bundling products in different ways (e.g., selling gasoline only to consumers who purchased an oil change or a lube job at prices raised to capture the value of the accompanying gasoline), requiring cash payments (refusing credit cards), and so on. Furthermore, enforcement of the price regulation itself was imperfect, so some

sellers also gained part of the value in the public domain by illegally selling on the black market at prices much higher than would be necessary to clear the market. The point is that the discovery process continued, apparently at an accelerated pace (although this cannot be determined for sure because the discoveries that were stifled by the regulations are not known), but with largely superficial discoveries. The full costs of the regulations will never be known, however, because the path of market evolution was altered (e.g., full service stations never returned after price deregulation), suggesting that at least some of the discoveries which would have arisen had the controls not been imposed, never have been.

One reason for not returning to the original path is that the initial very profitable (because of the size of the gap between costs and revenues that had been artificially created) entrepreneurial discoveries under the regulatory regime tended to sharpen the awareness of other entrepreneurs to such profits, promoting the emergence of a competitive profit seeking process that quickly evolved along a new path [e.g., see Ikeda (1997: 60) and Benson (2002, 2005)], creating a very different market environment for which the post-price-ceiling discovery process proceeded. In addition, the fact that the government had been willing to impose such controls once probably created an expectation that it could do so again, making property rights to value relatively insecure. Therefore, entrepreneurs were probably unwilling to abandon some of the innovations they had discovered that might mitigate future price controls. Another reason is that as superfluous discoveries under price controls spawned additional regulations, as Mises predicts (1949: 763-764), and even when the price control was abandoned some of the other regulations were not, as noted below.

Political Entrepreneurs and More Regulation. Entrepreneurship is not restricted to market innovations (Breton and Weintraub 1982; Benson 2002, 2005; Wagner 2010: 165). Entrepreneurs also discover opportunities in the political arena.[9] This may involve the identification of an unexploited political opportunity that can be pursued through the organization and leadership of an interest group. Indeed, entrepreneurship of this kind presumably is the source of the initial demands for regulation. Such entrepreneurship raises the cost of protecting property, as those who lose transfers to this new group now have incentives to organize and attempt to retain their wealth. Indeed, politicians have incentives to respond to the demands of new groups by transferring wealth from unorganized individuals, but in doing so, some of those unorganized individuals are likely to organize in an effort to regain their wealth. Rather than transferring wealth back from the previously favored group, however, the politician has incentives to find wealth that can be taken from as yet unorganized individuals, creating more incentives

to organize (Benson 1984). Furthermore, because a regulation places value into the public domain and political entrepreneurs, like market entrepreneurs, have incentives to capture it, new interest groups may emerge who are not initially involved in the regulatory process. The result is a spiraling process of more and more political competition (Benson 1984), a process that is at least complementary to, if not dominant in the Austrian political economy description of increasing regulatory intervention [e.g., see Mises 1949: (763-764) and Ikeda (1997: 99-137)].[10]

Political entrepreneurs demand regulations expecting their constituencies to benefit from them, but the benefits are dissipated (e.g., as time costs rise for consumers under a price ceiling, for instance, and as both market and other political entrepreneurs adjusted along numerous margins to capture value that was intended for members of the interest group constituencies). Thus, political entrepreneurs who initiated the original regulations are likely to demand more regulations [e.g., in the price ceiling case, to reduce time costs by instituting some other rationing mechanism such the use of rationing coupons or a lottery -- for instance, see Mises (1949: 763)] and control the previously uncontrolled margins along which superfluous adjustments are being made [e.g., to prevent reductions in octane levels by firms selling gasoline in the price ceiling case]. Bureaucratic enforcement cost will rise as the regulatory apparatus expands to apply these new regulations. If these additional regulations fail to allocate the rents to the targeted benefactors, more regulations will be demanded. Ultimately, deregulation may occur as the regulation effort fails to produce the anticipated rents and political support for the regulations wanes, and as those who discover that they are worse off because of the regulations are organized (probably under the leadership of another political entrepreneur) to demand change (Benson 2002, 2005). Thus, the price controls on gasoline discussed by Barzel (1989) were short lived, for instance, although other regulations remain that were instituted at the time (e.g., some states set minimum octane levels for various classifications of gasoline to limit unbundling options). Of course, many regulatory regimes, including some involving price-ceilings persist for very long periods by continually evolving in the face of market and political changes. An examination of the complex and multidimensional system of New York rent controls would reveal that the regulatory authority has made many changes and additions to regulations, for instance, in an effort to maintain the system [also see Benson (2002) for discussion of interstate trucking regulation]. Enforcement and compliance costs rise both to implement the new regulations and to control illegal activities. But more importantly, the path of superfluous adjustments continues and the unmeasurable and more non-regulation-induced discoveries are stifled (Benson 2004).

Bureaucratic Entrepreneurs. Mises (1944: 80) explains that

> The bureaucrat is not only a government employee. He is ... at the same time a voter and as such a part of the sovereign, his employer. He is in a peculiar position: he is both employer and employee. And his pecuniary interest as an employee towers above his interest as employer, as he gets much more from the public funds than he contributes to them.
>
> This double relationship becomes more important as the people on the government's payroll increase. The bureaucrat as voter is more eager to get a raise than to keep the budget balanced.

In this context, Breton and Wintrobe (1982: 108-131) characterize the bureaucratic institutional process as one dominated by entrepreneurial competition wherein the discovery process involves individual bureaucrats pursuing their subjective goals by selectively seeking and implementing policy innovations. The multi-dimensional competition includes the general struggle for budgets, as well as for power and influence, and no doubt, for implementation of policies various bureaucrats believe to be in the public interest. After all, "successful action is wider than the range of action that can be monetized. Nonprofit forms of enterprise surely offer greater scope for non-monetary forms of profit extraction, in addition to indirect extraction through market based enterprises" (Wagner 2010: 166).

Bureaucratic power and discretion to pursue their objectives depend on uncertainty, and bureaucrats can expand that uncertainty through "selective distortion" including: "(i) alterations in the flows of in information ...; (ii) variations in the quality or quantity of information leaked to the media, to other bureaus in the organization, to special interest groups, and/or to opposition parties and rival suppliers; and (iii) changes in the speed of implementation of policies as these are put into effect" (Breton and Wintrobe 1982: 37-39). Tullock (1965: 193) suggests that when a bureaucracy is set up to accomplish some political goal, it inevitably fails, and

> The continuous failures of bureaucracies are met in part by continuing reorganizations, the reasoning being that the failure has resulted from organizational details. In part, the failures are met by concealed shifts in the objectives for the organization. As an experiment, if one examines the original arguments for establishment of almost any government bureau and compares these arguments with those that may be currently offered for the retention of the bureau, one is likely to find that a considerable shift has occurred in the specification of the objectives that the bureau is supposed to attain. The

> governmental bureau becomes a permanent fixture, with the objective continually changing. Over time the vested interests of the bureaucrats themselves become more and more important in justifying the organization, although this can never be the sole argument in discussions with outsiders.

Bureaucracies fail in the sense described by Tullock because of the knowledge problem and the superfluous market and political discovery process. Once a regulatory regime is in place, however, the bureaucratic enforcers have incentives to maintain the system whether it accomplishes its objectives or not, so they have incentives to add more regulations, seek new objectives that might be achieved, and so on.[11] Thus, the bureaucracy is a spontaneously evolving institution. Even when the demands for regulation wane because it continually fails to provide anticipated rents, and the demands for deregulation grow as losers organize, the bureaucracy is not likely to disappear. It will have to supervise the deregulation process, after all, and it will probably retain some regulations to enforce as well. Furthermore, with deregulation, wealth is again transferred (from those who have captured some rents from regulation) and some property rights temporarily move back into the public domain, waiting to be captured. Reregulation, perhaps in some new form, becomes attractive to some interests, and the cycle starts over. A bureaucracy might survive and prosper for a long time in such a dynamic environment even if it is not achieving the politically demanded objectives that it was intended to provide.

Conclusions

Economic regulation or government policy more generally can be characterized as (1) a competitive process to influence the allocation of property rights through political action, in order to (2) facilitate the pursuit of personal objectives, many of which are believed to be in the "public interest" by individuals involved in the process, (3) including politicians and bureaucratics attempting to impose regulation, (4) who cannot regulate every potential margin of reactions (5) because they lack sufficient information to do so, and (6) because enforcement is imperfect as the regulatory process itself requires the use of scarce resources. Furthermore, (7) the allocation of property rights determines control of resources and distribution of wealth, so (8) market, political and bureaucratic entrepreneurs have incentives to discover and undertake actions to protect potential losses, recapture losses that have occurred, and pursue additional reallocation of rights in order to gain control of resources and wealth, (9) generating a continuous path-dependent spontaneous evolution (as opposed to a static equilibrium) of objectives and beliefs,

regulatory activities and institutions, the economic activities being regulated and other activities that are interrelated through political and market networks, (10) driven by an ongoing discovery process.

Notes

[1] The term "regulation" as used here refers to "regulation through public ordering" (Wagner 2010: 130), not regulation arising through "private ordering" of commercial activity that arises with private property and the competitive market process (Wagner 2010: 129).

[2] The literature on the efficiency of the political/regulatory process [e.g., Wittman (1989), Stigler (1992)] traces, at least in part, to Stigler (1971). For instance, Posner (1974: 217) concludes that a Stigler-type model of regulation implies "that the regulatory process can be expected to operate with reasonable efficiency to achieve its ends. The ends are the product of a struggle between interest groups, but . . . it would be contrary to the usual assumptions of economics to argue that wasteful or inappropriate means would be chosen to achieve those ends." In contrast, Tullock (1967) stresses that the resources expended to establish lobbying groups, invest in political campaigns, and so on, have opportunity costs (they could be used to produce new wealth rather than to transfer existing wealth), so they are "wasted" and the political process is inefficient. The apparent difference is largely definitional, however, as Tullock implicitly uses efficiency as traditionally defined in a neoclassical general equilibrium model, while the Posner quote and related literature does not. Tullock emphasizes the fact that potentially productive resources are diverted into the political competition for rents, and as a result, the economy cannot achieve Pareto optimality by reaching its production possibility frontier. In contrast, the literature building on Stigler emphasizes the fact that transaction costs exist, considers outcomes "efficient" if these costs are minimized, and contends that the political process tends to minimize such costs. The regulatory process can be inefficient relative to the neoclassical paradigm's ideal of Pareto optimality, as Tullock emphasizes, but efficient in the sense that rational individuals operating in the face of opportunity costs in transactions tend to maximize their well-being (and therefore minimize costs) subject to the constraints they face.

[3] The public-interest/market-failure model assumes utility maximization by consumers and profit maximization by producers. Profit maximization in perfectly competitive markets is equivalent to constrained utility maximization, however, as failure to pursue maximum profits results in losses and exit before equilibrium is achieved . Those whose comparative advantages lie elsewhere maximize profit (utility) by producing in some other competitive market [government, however, is implicitly made up of omnipotent and benevolent people (Mises 1949: 692)]. Stigler (1971) also assumes that the object of interest group demand is a transfer of wealth (personal well-being or utility), while the rent-seeking assumption generally traces to Tullock. Rents are returns to the use of unique assets (real resources such as fertile land, advantageous locations, personal skills, as well as artificially created assets such as licenses, franchises, or legally defined markets), but rents are dissipated through competition. Therefore, competition for rents is analogous to profit maximization in perfectly competitive markets. Failure to pursue rents presumably results in losses unless the opportunity cost of rent seeking exceeds the benefits (i.e., when individuals do not have a comparative advantage in rent seeking). Therefore, this assumption is essentially equivalent to the utility maximizing assumption given a competitive equilibrium, an assumption that Wagner (2010: 12) contends is part of the "hard core" of neo-Walrasian analysis. In this same context, legislators act as agents who maximize votes in a competitive political process. Maximizing votes also is analogous to maximizing

profits in perfect competition. Failure to do so results in losing the competition and exiting [see Wagner (2010: 166-170) for neo-Mengerian discussion of voting]. Finally, bureaucrats who actually "produce" the regulation also pursue their own interests. This creates a potential principle-agent problem, of course, but some neo-Walrasian research [e.g., McCubbins, et al. (1987); Winegast and Moran (1983)] indicates that the constraints imposed by legislative oversight are quite tight, so bureaucrats who may prefer to pursue their own agendas do not depart from the wishes of their legislative/interest-group sponsors in a political equilibrium. If this is the case, the interests of the bureaucrats can be ignored, focusing only on legislators as the "suppliers" of regulation, as Stigler and his followers do. Others see political control of bureaucracies to be weak [e.g., Tullock (1965, 1980); Niskanen (1975); Breton and Wintrobe (1982); Benson (1995)], however, so they are able to capture rents [e.g., discretionary budgets (Niskanen 1975; Benson 1995)]. This does not imply inefficiency in the transaction-cost minimizing sense [see note 2], of course, as monitoring costs are part of the transaction costs of the political process.

[4] Wagner (2010: 115-116, 119, 121, 129-131) discusses some aspects of a neo-Mengerian view of regulation through public ordering [see note 2], but does not claim to offer a fully articulated theory. His chapter on "Politics, markets, and political economy" (2010: 160-183) provides additional neo-Mengerian implications, however, as do many other passages.

[5] It should be noted, in this context, that property rights precede the rise of the state (Ellickson 1993, Benson 1999). The state is not the source of property rights, but the state is a threat to property rights because of its coercive power and ability to reassign or attenuate rights.

[6] Beliefs are endogenous, however, as they change over time as institutions, including property rights, evolve (Benson 2007). Wagner (2010: 44-48) also implicitly makes this point.

[7] Wagner (2010: 121) goes further, suggesting that "scarcity is just another name for conflict, regardless of whether that conflict is manifest or suppressed."

[8] Cheung's (1974) analysis fails to bring out important implications, however, in part because he sees the process as equilibrating. In fact, he contends that rational responses by economic agents imply that wealth dissipation should be a constrained minimum, as people should use the lowest-cost methods available to them under the constraints that exist in order to claim the value that the regulations place in the public domain. In other words, given the price controls, such adjustments are efficiency enhancing in the sense proposed by the post-Stigler approach in that transaction costs and wealth dissipation are reduced. But this ignores at least two important issues: (1) an important cost of regulation is that unknowable "efficient" discoveries that might have occurred in the absence of regulation have been stifled (Kirzner 1985, Benson 2004), as noted above, and (2) the consequences of the superfluous discovery process, which directs rents away from their intended recipients, will lead to new regulations (Mises 1949: 763-764; Ikeda 1997: 99-136; Benson 2002, 2005).

[9] Note that there are important differences between entrepreneurial discovery in markets, and entrepreneurial discovery in the political arena (e.g., price signals are not likely to be relevant in non-market settings, except through bribery and "contributions", so barter exchange is generally required), as explained by Ikeda (1997: 77-83; also see Wagner 2010: 166, 175).

[10] Political entrepreneurs might also pursue political offices where they are in a position to make and/or enforce rules in ways that will generate personal benefits [for instance, once in office they may simply have to threaten to reallocate some property rights in order to extract part of the existing

rents for themselves (McChesney 1987)]. Furthermore, the bureaucratic institutional process can be characterized as one dominated by "entrepreneurial competition" (Breton and Wintrobe 1982: 108-131), as explained next.

[11] When bureaucrats are seen as self-interested entrepreneurs, as in Breton and Wintrobe (1982) then it becomes clear that they create various kinds of institutional arrangements (e.g., the informal networks that Breton and Wintrobe stress) to facilitate bargaining in the "political equivalence of barter" (Ikeda 1997: 88). It also becomes clear that they have incentives to respond to political signals that are analogous to (but less accurate than) price signals, such as interest group lobbying and campaign contributions [as well as bribes (Benson 1988) which are more analogous to market prices except that they are payments for the "illegal" transfer of property rights controlled by the bureaucrats], and these signaling mechanisms will develop as special interests seek rents.

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