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Book Review

Rents: How Marketing Causes Inequality by Gerrit De Geest

Dennis W K Khong
Centre for Law and Technology, Multimedia University, Malaysia
wkkhong@mmu.edu.my
ORCID iD: 0000-0002-9730-0944
(Corresponding author)

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Introduction

In his book titled *Rents: How Marketing Causes Inequality*, Gerrit De Geest, previously a professor at the Utrecht School of Economics and now Charles F Nagel Professor of International and Comparative Law at the Washington University School of Law, examines the problem of economic rents, diagnoses their causes and offers some possible legal solutions

Rents can be categorised as a book in the law and economics tradition. It draws ideas and theories from the economic literature to examine the role of the legal system in enabling the capitalist class to extract economic rents from consumers.

The concept of rent, being supernormal profits beyond the cost of production, came from 17th-18th century British political economist, David Ricardo. Ricardo derived this idea of rent from the payment made by peasants to feudal landlords for the use of their land. Nowadays, the concept of economic rent extends beyond that of real property to all kinds of profits above the marginal cost of production. It is in this latter sense of the term that the author uses the concept of rent.

The author makes the case that rent extraction is analogous to theft. The only difference is that theft is non-consensual, whereas payment of rent, is ostensibly consented by the

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payor. In other words, rent extraction is legal if there is 'consent' by the giver, notwithstanding that some form of market failure may be at play.

The author attempts to estimate the size of rent in the US economy in chapter 3 and makes the argument that social inequality is caused by the existence of rent. Much like a Marxist argument, the capitalist class becomes richer because they have the means to obtain rent, whereas the working class have little or no means of extracting rent. In relation to this, the author offers a novel theory of the firm, which says that 'firms are tools to hide cost structures and concentrate rents', or firms are devices used by capitalists to extract rent from both customers as well as employees.

Market Failures and Legal Failures

Although the author does not emphasise the term 'market failure', most of the problems leading to economic rent can be classified as a form of market failure commonly studied by economists. For example, non-transparency of prices of medical services, which the author calls 'fog', is a form of asymmetric information exploited by providers of medical services as a business strategy, by hiding the true price of services until after the treatment has been done.

The author also discusses the trick used by manufacturers to create several versions of essentially the same product, with slightly different qualities, in order to give the impression to consumers that they have many choices. This is a textbook example of price discrimination, and one of the effects of price discrimination is that it allows producers to earn higher than normal profits.

The role of intellectual property rights, such as patents, trademarks and design rights, are also discussed by the author. Unfortunately, this appears to be under-emphasised, because a lot of so-called product differentiation is made possible because of restrictions imposed by intellectual property laws. Also, copyright and patent rights grant the right-holders an opportunity to exclude potential competitors and therefore allow them to sell at a monopoly price.

The book can also be read as a collection of examples of legal failure. Legal failures occur (i) when there is no law to correct the problem (for example, antitrust law has no control over businesses without a market dominance), (ii) when there is no enforcement because it is too costly to go after businesses that commit fraud on consumers, and (iii) when the law itself allows for rent extraction, such as through zoning regulation and intellectual property rights.

Opportunities for Legal Reform

In chapter 8, the author argues against the idea of taxation as a solution to inequality caused by rents. He shows the distorting effect of taxes and argues that rents are analogous to taxes, except that instead of money going to the government in the latter case, rent goes to the pocket of another private entity. Since taxes have distortionary effects, taxing rents will only exacerbate the problem, because consumers will still end having to pay rent. The author argues instead that legal reform should focus on the legal system, particularly in areas such as ‘antitrust law, contract law, agency law, consumer protection law, intellectual property law, real property law, oil and gas law and zoning law’ by removing opportunities for rent extraction.

Legal reform is more advantageous than taxation because it intervenes at the point before rent is acquired. Although the author eschews taxation, he suggests that because reforming the legal system may not be able to eliminate the source of rents, taxation may still play a ‘backup role’. However, it is not clear how this is achieved, and whether using different tax rates for different industries is equitable to members of the society. Furthermore, capitalists can always hire an army of tax consultants to implement financial arrangements to avoid paying taxes.

In the final chapter, the author offers a long list of possible reforms in the legal system to reduce rent extraction. Some of the proposals, such as standardised pricing on the Internet, is already been partly implemented through e-commerce websites. On the other hand, some suggestions do not seem to be particularly practical. For example, it is very difficult to compel insurance companies to disclose actuarial costs and the associated risks because that would be akin to compelling businesses to disclose their production costs. Also, the ‘Bertrand post-and-hold regulation’ as a game-theoretic mechanism that forces oligopolies to participate in price competition by delaying price information exchange seems to be technically demanding on any regulator.

Other legal reforms, on the other hand, are doable. As argued by the author, it is high time for contract law to completely do away with the *caveat emptor* doctrine, so that duty is imposed on sellers and manufacturers to disclose correct information and be responsible for it. Antitrust or competition law can also play a role in expanding anti-lock-in rules and reduce network externalities such as supporting data portability requirements. In respect to intellectual property law, the author rightly suggests that patents should not be more generous than strictly necessary. One of these is not to keep on expanding the duration of protection, especially retrospectively.

Conclusion

This book can be read from a few different perspectives. It is an economics text on rent. Although it is written with the public in mind, the book is generously littered with endnotes to guide serious readers who are more academically inclined. The book can also be read as a business strategy book, as it exposes the underlying theory of how to acquire wealth by exploiting loopholes in the law and in the marketplace. It is also a critic of Western capitalism or market economy, where markets are allowed to operate as an engine of scam for the capitalist class. Finally, the book is a book for legal activists for its exposé of the multitude of failures of the legal system in protecting the interest of consumers.

Overall, *Rents* is a very accessible book to students of law and economics. Economic theories are explained using simple examples absent the usual sophisticated mathematics. In several places, numerical examples are used to make the illustrations more relatable, but they do not depart from the generality of the theories. The last chapter is a treasure trove of potential research ideas. A careful reading of the ideas will yield fruitful results for research in many directions of the law. This book is a must-read for legal scholars exploring opportunities for economic research in consumers related areas. ●