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**Special Orders**

***From the Framing to the Fifties:  
Lobbying in Constitutional and Historical Contexts***

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From the very beginning of the American experiment, lobbying has proven simultaneously central and suspect to our politics. Steeped in their knowledge of legislative politics from state assemblies and the Continental Congress, the framers of the Constitution had ample first-hand experience of the pressures that particular interests, like farmers, merchants, and churches, could place upon them. They appreciated both the virtues of petition and the unseemly potential for corrupt bargains between legislators and even loosely organized interests.

Between 1787 and 1789, James Madison demonstrated a deep understanding of both how interests required protection to make their case and how a given interest could actually do so. As the chief architect of the Constitution, Madison helped devise an intricate, layered governmental structure that explicitly invited interests to organize and make their case in one or more governmental venues – the House, the Senate, the executive, the judiciary, or the states, with their own divisions of authority.

But the structures crafted by Madison and his peers were just the beginning. The First Amendment guaranteed the freedom of speech as well as the rights of association and of petition to the government for redressing grievances. Together, these rights provide a constitutional cornerstone for the practice of lobbying, a cornerstone more solid today than when the Bill of Rights was ratified. What follows is a series of sketches that demonstrate the continuity of lobbying over the course of more than two centuries of American politics. Although the practices of lobbying have evolved, as the nation itself has grown and changed, the essential practice of seeking to influence policy agendas, decisions, and outcomes has been present since the creation at the intersection of government and politics.

**James Madison: Framers, Theorist, Lobbyist**

If, in drafting the Constitution, James Madison had consciously sought to create a governmental system that would encourage – indeed dictate – that lobbying would become central to policymaking, he could have scarcely done a better job than he did in devising the check-and-balances system that continues to thrive 220 years after he penned his first draft. With the separation of powers and federalism, Madison and his allies generated multiple venues for those who would surely seek to influence public policy decisions. Most

importantly, the framers created a powerful but constrained legislative branch where majorities were purposely made difficult to come by.

As theorist, most notably in his *Federalist 10* arguments, Madison expresses a fatalistic acceptance of the inevitability of factions and implies an assumption that lobbying would be a commonplace activity within a thriving Republic. Still, *Federalist 10* offers no defense of organized interests or lobbying as a positive good.<sup>1</sup> But as a political actor, Madison both took part in what would now be called lobbying and specifically expressed his approval of the lobbying efforts of religious and agricultural groupings. Within the politicking of the Continental Congress, Madison sided with one group of land speculators, against another such group, in a classic struggle over defining the national interest in a way that would benefit parochial interests. Moreover, Madison recognized that groups, such as religious sects, could be motivated by passions as well as by economic calculations.<sup>2</sup>

With the *Federalist* papers, Madison not only theorized about groups and their inevitable lobbying, he and his colleagues (Hamilton, Jay) became lobbyists themselves, and succeeded brilliantly. And although it took more than the inspired pamphleteering of Madison and Hamilton to turn the tide, the *Federalist* arguments, in 85 installments, enhanced the potential for ratifying the Constitution in the pivotal state of New York.<sup>3</sup>

Perhaps even more important, as part of the ratification deal brokered by Hamilton, the Bill of Rights was added to the Constitution, and the core elements of lobbying – the guarantees of free speech, petition, and association – were soon ensconced in the fundamental law of the United States, with consequences (e.g., spending money on messages as a speech issue) that resonate in twenty-first century politics.

### **Lobbying from the Gilded Age to the New Deal: The Institutionalization of Interests**

As soon as the U.S. Congress began to meet, lobbying the body began as well. For example, land speculators and anti-war advocates came together to oppose the prosecution of frontier Indian wars in the first Washington administration, a clear precursor to the coalition lobbying of the modern era. “Not all of those who demanded an end to the fighting did so from moral conviction. Many land speculators with holdings on the Pennsylvania and New York frontiers also sought a cessation to hostilities. These men were strange bedfellows, . . . but they were powerful allies nonetheless.”<sup>4</sup> Likewise, organized lobbying took place on anti-slavery issues within the first federal Congress, and interest-driven factions – combining elements of both lobbying groups and political parties – had become central to congressional politics by the early 1800s.<sup>5</sup>

Although these and other illustrations of lobbying dot national and state politics in the pre-Civil War era, the growth and metamorphosis of lobbying to more modern dimensions occurs most clearly in the late nineteenth century, as interests became larger, wealthier, and more organized and as the stakes of governmental policies began to rise sharply. Equally important, perhaps, was the development of lobbying that complemented the congressional system of the late 1800s. David Rothman and Margaret Thompson, for the Senate and House, respectively, provide perspectives on congressional lobbying that presage both the theory and practice of such lobbying a century (and more) later.<sup>6</sup> In particular, Rothman emphasizes how senators, lacking adequate staff, relied heavily on lobbyists to give them the information they needed to legislate effectively, especially as bills became more specialized and technical.<sup>7</sup>

While acknowledging this “subsidy,”<sup>8</sup> Thompson notes that lobbyists also used favors and public relations campaigns to move issues on to the congressional agenda, or, perhaps more frequently, keep them off.<sup>9</sup> In other words, lobbyists did many of the things they do today, and theories developed to address lobbying in contemporary politics do more than a passable job of describing and explaining the actions of those who sought access to and influence over nineteenth century lawmakers. Given Madison’s expectations and actions, to say nothing of his wit, we should scarcely be surprised.

More generally, the post-Civil War era sets the stage for any consideration of lobbying Congress, given the rise of large industries, the construction of a coast-to-coast railway grid, and the growth of instantaneous communication, via the telegraph, which meant that the lobbying could come immediately from the “grassroots” as well as from those who walked the halls of the Capitol.

Although challenged by Progressives, Populists, and muckraking journalists, corporations consolidated their position as a favored interest in American society at the turn of the century. The Standard Oil Trust was prosecuted successfully, U.S. Steel was not, as the trust argued that, despite controlling about half of the country’s steel production, it “had behaved well” and should not be penalized merely because of its size.<sup>10</sup> The very fact that U. S. Steel executives could make this claim stick demonstrates that corporations could live or die by their representation in Washington. Thus, interest group scholar Grant McConnell concludes that the steel victory “established the pattern by which the Corporation’s leaders have necessarily been politicians.”<sup>11</sup> Much later in the twentieth century, a new monopolist, Bill Gates, learned much the same lesson.

Still, corporations did not go unchallenged. Beginning in the late nineteenth century, growing numbers and varieties of groups organized effectively enough to participate actively in national policymaking. As Thompson observes, “[M]ore and more kinds of people – from feminists to labor leaders, and from prohibitionists to physicians – caught onto the scheme and enjoyed at least some measure of satisfaction...lobbyists could and sometimes did serve as facilitators and catalysts, loosing the system from inertia. Far from being disruptive, therefore..., the lobbyists helped to focus, to rationalize, and, in the long run, to modernize late nineteenth-century Congressional Government.<sup>12</sup>

Despite substantial business investment in and influence over the legislative branch, John Judis argues, “the major legislation passed during the [Theodore] Roosevelt, Taft, and Wilson administrations represented a compromise between these [national] business groups and labor and the left. That reflected the relative power of the competing groups, but it was also the result of an entirely different kind of organization: the elite policy group.”<sup>13</sup> Groups like the National Civic Federation and various women’s organizations (e.g., Consumers’ Leagues) and new foundations (Russell Sage, Rockefeller, Carnegie) represented a host of societal interests and provided some vision of a national interest.

The early 1900s also represented a “strong party” era in congressional politics, in which lobbying could focus on a relative handful of legislators in both the House, with the strong speakerships of Thomas Reed (R-Maine) and Joseph Cannon (R-Ill.), and the Senate, under the powerful leadership of Senators Nelson Aldrich (R- R.I.) and William Allison (R-Iowa). But both chambers repudiated the idea of centralized leadership, and the Congress of 1920s through 1970s generally reflected dispersed power, organized largely along committee lines.

In *Group Representation before Congress*, published in 1928, political scientist Pendleton Herring stated that Washington lobbying had changed considerably since the strong-party era or Aldrich and Cannon. Indeed, he saw the rise of group politics as directly linked to the weakening of political parties, both within the electorate and on Capitol Hill.<sup>14</sup> Like other studies of politics in the 1920s, such as Louise Overacker’s path-breaking work on campaign finance, Herring conjures up a modern vision of congressional lobbying, as he quotes one senator, “I have seen the corridors leading up to the Finance Committee room so filled with [lobbyists] that it was almost impossible for an outside Senator to get to the committee room, and barely possible to get in.”<sup>15</sup> The focus on committees accelerated in the wake of the increased use of open hearings, which allowed organized interests to make their information-based presentations to a larger audience. In addition, a major 1913 lobbying scandal demonstrated to many groups that the old days of simply buying access had come to an end; gaining access remained important – even crucial – but “the men with the power are [the] spokesmen of the organized groups.”<sup>16</sup>

Herring offers the first comprehensive look at the Washington interest group universe. For example, he notes that the number of trade associations (e.g., the Fertilizer Association) had grown from 800 in 1914 to approximately 1500 in 1923.<sup>17</sup> Furthermore, he finds more than 500 Washington-based groups of all kinds and contends that between 60 and 100 groups are “consistently effective.”<sup>18</sup> More valuable than determining the scope of the group system, Herring provides a coherent overview of the “new lobby” whose practices look a lot like those of organized interests at the end of the twentieth century.

As for lobbying techniques, Herring describes a remarkably modern set of activities. Lobbyists and their groups engaged in systematic public relations work, as they sought to frame issues for the public at large. And grass roots responses were solicited by the groups through the “form letter,” sent by large numbers of constituents to their legislators. Groups invented so-called Astroturf lobbying long before chemists created the substance. Lobbyists sought out friends in the legislature, testified at hearings, tried to influence party agendas, and shared information with each other. Indeed, the lobbyists who made up the “Monday Lunch Club” of the 1920s represented a clear precursor to similar gatherings, such as Grover Norquist’s regular gatherings of conservative group representatives that began in the 1990s.

In the Congress of the 1920s, where party influence had waned, reliable sources of information had become increasingly important. And Herring demonstrates that the growing community of groups and lobbyists filled this void. Likewise, political scientist John Mark Hansen concludes, “The farm groups triumphed [in the 1920s] because the parties lacked not the power to contain them but the will to channel them....”<sup>19</sup> In the end, lobbyists from agricultural and other groups had to convince individual lawmakers that they could provide useful information, and keep on providing it. By and large, they met that challenge.

### **Lobbying the Textbook Congress**

Writing in the late 1980s, political scientist Kenneth Shepsle labeled the mid-century congressional era as that of the “Textbook Congress,” when sustained scholarship described and analyzed a Congress that was scarcely dynamic. He wrote: “With limited time and resources, legislators of the 1940s and 1950s concentrated only a few activities. They simply did not have the staffs or the money to involve themselves in a wide range of policy issues, manage a network of ombudsman activities back home, raise campaign finances, or intercede broadly in the executive branch’s administration of programs. Rather, they picked their spots selectively and depended on jurisdictional decentralization and reciprocity among committees to divide the legislative labor....”<sup>20</sup>

With some short-lived exceptions, either in the wake of a decisive election, as in 1937 or, especially, 1965-66, the Textbook Congress era is defined by two complementary institutions: strong committees and the Conservative Coalition. Organized interests understood the implications of the coalition’s existence. In terms of achieving any substantial legislative victory, David Mayhew accurately assessed how large the Democratic majorities needed to be if major labor, civil rights, or education bills were to pass the House.<sup>21</sup> Overall, the prospects were not good for major change, so groups and their lobbyists focused heavily on the committees, whose chairmen were disproportionately Southern and conservative.

A reasonably large and activist government had become a fact of life, and thus guaranteeing as much certainty as possible was crucial for any interest whose daily activities were affected by federal policies. If access had been crucial in the 1920s and 1930s, it became all the more important in later decades, when governmental decisions touched growing numbers of interests and citizens.

In agricultural politics, the groups’ politics of access changed noticeably by the 1950s, in that the Farm Bureau declined in significance relative to the specific commodity groups, whose aims were much more specific than those of the umbrella group. Hansen points out that among 18 major commodity

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groups, four formed between 1865 and 1922; the remaining 14 groups established themselves between 1932 and 1960.<sup>22</sup> The proliferation of agricultural groups preceded those in other policy areas in large part because federal farm policy had a lengthy history of the 1940s and 1950s, in contrast to relatively modest intervention in arenas such as education or the environment. Moreover, commodity interests were narrow enough to fit snugly into the highly specialized and static politics of the seniority-dominated congressional committee system.<sup>23</sup>

For commodity groups and other highly specific interests, such as military weapons manufacturers, a Congress of committee barons who resisted most change was perfectly acceptable. For many other interests, however, the Congress stood as an obstacle to their legitimate demands. Indeed, advocates for social change did not rely on traditional organized interests, such as the National Association for the Advancement of Colored People (NAACP), to make their case, despite that organization's long history and great legitimacy. Rather, activists developed new groups within a broad social mobilization context, and pressured the Congress from the outside, as with Martin Luther King's 1963 march on Washington.

Although organized interests did engage in some grassroots lobbying (labor unions) and some public relations work (the nuclear industry) during the Textbook Congress period,<sup>24</sup> most groups employed a traditional combination of direct and social lobbying. That is, in both formal and informal settings, lobbyists made personal contact with their targets among members of Congress (MCs) and top staffers. Despite attempts to regulate lobbying as part of the 1946 Legislative Reorganization Act,<sup>25</sup> no effective controls existed as to what lobbyists could provide MCs. Although there was certainly some abuse here, in terms of honoraria, trips, and expensive meals, most social lobbying derived from the desire for access. Becoming friendly with MCs increased access for many lobbyists, who could then both provide and absorb relevant information as part of a long-term, trusting relationship. Using data gathered in the late 1950s, Lester Milbrath reports that both lobbyists and legislative personnel (members and staff) downplayed entertaining, but noted that establishing access was most important in conveying information.<sup>26</sup> Thus, the immediate effect of social lobbying was viewed as modest, even nil, but, as a means for opening legislative doors, it could make a difference in the process of exchanging information.

More generally, Milbrath added to our knowledge of who lobbyists are and what they do. In surveying 114 lobbyists and 30 congressional members and staff during the late 1950s, perhaps the acme of the Textbook Congress, Milbrath provided both a sketch of lobbying activities and a wealth of interview data, much of which he reports in direct quotations. In retrospect, the most valuable general element of *The Washington Lobbyists* is the rounded picture of the lobbyist's job that flows from Milbrath's interviews. More specifically, he finds that both lobbyists and legislators focus on the information-provision elements of their relationships. For example, both lobbyists and congressional respondents (members and staff) rated the value of the "personal presentation of viewpoints" at more than 9 on a 10-point scale.<sup>27</sup>

Milbrath's lobbyists approached a Congress that was ideally constructed to receive information based on trusting individual relationships between legislators and lobbyists. Party played little role in these bonds. And in the context of strong-committee government, lobbyists knew exactly whom they needed to approach within the Congress. Unfortunately for old-line lobbyists, these conditions were soon to change.

By the mid-1960s, the institutional arrangements that defined the Textbook Congress era were unraveling, as electoral politics reshaped the memberships of both the House and Senate. Aside from the large numbers of younger Democrats who came to Capitol Hill in 1958 and 1964, often from formerly GOP districts, the Supreme Court's "one person, one vote" decisions of the early 1960s and the passage of the Voting Rights Act of 1965 meant that the composition of the Congress would change, especially in

the South. The democratizing forces of reform on Capitol Hill were ascendant, and the next decade would throw both the Congress and lobbying into disarray, as committees lost clout and individual legislators (and subsequently, party leaders) became more important elements in a decision-making mix where lobbyists could not focus their attention on a handful of powerful, senior legislators.

### **Lobbying: Continuities in the Madisonian System**

Although the scope of the U.S. government and its reach have changed dramatically over the past 220 years, the Madisonian system remains intact and continues to encourage lobbying over policies and the distribution of benefits and burdens. Indeed, the lobbying techniques of the past two centuries demonstrate many similarities, as lobbyists use social contacts, grassroots efforts, public relations campaigns, and coalitions to shower legislators with information they may find useful, and perhaps even essential. The excesses of lobbying – be they in the 1870s, the 1910 era, or the 1990s – have drawn the attention of reformers, whose efforts have scarcely produced a ripple in Washington politics.

Madison's construction of multiple venues, his theories of faction, his willingness to guarantee particular rights, and his example in campaigning for ratification of the Constitution combine to produce a solid foundation for lobbying today and for the future. The influence industry has grown tremendously, and it should be held accountable, but the American system is one that, from the beginning, has expected and encouraged advocacy on behalf of interests. We should be neither surprised nor disappointed when that advocacy is vigorous.

### **Notes**

1. James Yoho, "Madison on the Beneficial Effects of Interest Groups: What Was Left Unsaid in 'Federalist' 10," *Polity* 27, no. 4 (Summer, 1995): 596. The argument in this section derives generally from Yoho's *Polity* article.
2. Ralph Ketcham, *James Madison: A Biography* (Charlottesville, Va.: University of Virginia Press, 1990), 75.
3. Martin Diamond, Winston Mills Fisk, Herbert Garfinkel, *The Democratic Republic* (Chicago: RandMcNally, 1966), 61-2.
4. Gerard Clarfield, "Protecting the Frontiers: Defense Policy and the Tariff Question in the First Washington Administration," *The William and Mary Quarterly* 32, no. 3 (July 1975): 446.
5. William C. diGiacomantonio, "For the Gratification of a Volunteering Society: Antislavery and Pressure Group Politics in the First Federal Congress," *Journal of the Early Republic* 15, no. 2 (Summer 1995): 169-197; and James Sterling Young, *The Washington Community, 1800-1828* (New York: Columbia University Press, 1966).
6. David Rothman, *Politics and Power: The United States Senate, 1869-1901* (New York: Cambridge University Press, 1966) and Margaret Susan Thompson, *The "Spider Web": Congress and Lobbying in the Age of Grant* (Ithaca, N.Y.: Cornell University Press, 1985).
7. Rothman, *Politics and Power*, 203-4.
8. See Richard L. Hall and Alan V. Deardorff, "Lobbying as Legislative Subsidy," *American Political Science Review* 100, no. 1 (February 2006): 69-84.
9. Thompson, *The "Spider Web,"* 161-2, 175.
10. McConnell, *Private Power and American Democracy*, 56.
11. *Ibid.*
12. Thompson, *The "Spider Web,"* 272-3.
13. John Judis, *The Paradox of American Democracy* (New York: Pantheon, 2000), 38-9.

14. Pendleton Herring, *Group Representation before Congress* (Washington: Brookings, 1928), 46.
15. Herring, *Group Representation before Congress*, 21; Louise Overacker, *Money in Elections* (New York: Macmillan, 1932)
16. *Ibid.*, 41.
17. *Ibid.*, 95.
18. *Ibid.*, 19, 245.
19. John Mark Hansen, *Gaining Access: Congress and the Farm Lobby, 1919-1981* (Chicago: University of Chicago Press, 1991), 61.
20. Kenneth Shepsle, "The Changing Textbook Congress" in *Can the Government Govern?* (Washington, D.C.: Brookings, 1989), 238.
21. David Mayhew, *Party Loyalty among Congressmen* (New Haven: Yale University Press, 1966).
22. Hansen, *Gaining Access*, 164 ff.
23. Barbara Hinckley, *The Seniority System in Congress* (Bloomington: Indiana University Press, 1966).
24. George B. Galloway, *History of the House of Representatives* (New York: Crowell, 1961), 166.
25. Roger Davidson and Walter Oleszek, *Congress and Its Members*, 7th ed. (Washington: CQ Press, 2001).
26. Lester Milbrath, *The Washington Lobbyists* (Chicago: Rand McNally, 1963), 257-8.
27. *Ibid.*, 213.



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