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How some rules just don't matter: The regulation of lobbyists

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Abstract. Brinig, Holcombe, and Schwartzstein (1993) have argued recently that lobby regulation restricts entry into the population of lobbying organizations, and that the number of lobbying organizations then influences legislative activity. However, they analyze only the relationship between the restrictiveness of lobby regulation and legislative activity, thereby assuming that regulation actually reduces numbers of registered interest organizations. We test this assumption with data on state interest organization populations and find little support for it. We consider several other explanations and comment more generally on the status of institutions and their rules in the study of political phenomena.

1. Begging the question of lobby regulation

Brinig, Holcombe, and Schwartzstein (1993), henceforth BHS, argued recently that restrictive regulations on lobby activity serve legislators by raising barriers to entry, thereby screening out those organizations that are low demanders of legislation. As a result, legislators need only to respond to a smaller number of well-identified high demanders when engaging in legislative logrolling. This implies, they suggest, that we should observe a lower proportion of bills passed (relative to those introduced) in states with more restrictive rules. This hypothesis seems to be supported in their analysis of state data on bill passage and lobby regulations. But this is surprising given that the usual criticism of lobby regulations is that they are so lax as to constitute minimal barriers to entry (Opheim, 1991: 405; Thomas and Hrebenar, 1991).

Given this standard criticism, we question the theoretical plausibility of their findings and the empirical support they provide. In regard to the former, our experience working in and with state legislatures suggests that politicians rarely know if a petitioner is or is not a "registered" lobbyist. While some clerk in the legislature's administrative office surely has this information, legislators themselves rarely evidence concern over registration status. And the reason is obvious. Elected officials are acutely, even painfully, aware of the electoral strength of organized interests within their districts, their legislative

agenda, and whether or not they have contributed to the official's re-election fund. In short, politicians have far better sources of information by which to sort out high and low demanders of legislation. The marginal benefit from knowing registration status is almost certainly nil.

We also question the evidence offered by BHS. To be specific, their analysis begs a fundamental question. They argue that lobby regulation restricts entry into the population of lobbying organizations, and that the number of lobbying organizations then influences legislative activity. But they do not analyze data on *numbers of organizations registered to lobby*, only the relationship between the restrictiveness of lobby regulation and legislative activity. They assume, thereby, that regulatory restrictiveness actually reduces numbers of registered interest organizations.

Is this assumption valid? To date, there have been very few studies on the impact of lobby regulations on numbers of registered interest organizations (Hunter, Wilson, and Brunk, 1991), and they are inadequate in their failure to assess the impact of lobby regulation within the context of a general model of interest organization density. Still, most scholars assume that stringent regulation increases the number of groups registered, the opposite of BHS's assumption. We address the issue with data on interest organization numbers within the context of a viable model of the density of interest systems. That model is presented in the following section. It is then tested – while including the BHS measure of regulatory stringency – with 1990 data on state lobbying registrations. The results provide little support for the suppositions of BHS. Finally, we conclude by offering several other reasons for the adoption of lobbying regulations by legislative bodies.

2. A model of interest organization density

To validly assess the impact of regulatory restrictiveness on the density of registered interest organizations, we must start with a more general model of density to avoid misspecification. Attempts to explain the density of lobbying organizations have not been very successful (Hunter, Wilson, and Brunk, 1991). However, Lowery and Gray have developed a simple model that accounts for both the density of total lobbying organizations (1993a) and the number of organizations engaged in lobbying for several specific industries (1993b).

They argue that numbers of interest organizations are determined by the size of state economies and by the level of party competition. In regard to economic size (as measured by GSP), Lowery and Gray (1993a) find that a second order polynomial model accounts well for the density of state interest systems.[1] That is, as interest organization systems become more dense as

economies expand, the rate of increase in numbers of organizations declines so that populations approach an equilibrium – which they define as the interest organization carrying capacity of a state's economy (1993b).[2] They (1993b) also find greater interest organization activity in states with high levels of party competition.

The rationale for these relationships is straightforward. In regard to GSP, more latent, specialized interests pass the threshold number of members and/or resources required to form interest organizations as state economies increase in size. For example, a large state economy may be required before we would expect to find one or even a few widget producers. Therefore, the likelihood of forming a *Widget Producers Combine*, even one based solely on selective incentives, should increase as economies expand. Also, there may be economies of scale in the provision of selective incentives that make it easier to sustain organizations in larger economies. For example, there are probably more hikers in California than in Vermont. While this may increase diseconomies of organizing the former, the large numbers of hikers in California may reduce the unit cost of providing such selective incentives as a hiking magazine.

Lowery and Gray (1993a) offer two likely explanations for the negative sign of the squared value of GSP. First, there may be declining marginal utility in the formation of new groups. Thus, once a widget producer joins a *Chamber of Commerce, a Manufacturers Association*, and a *Widget Producers Combine*, the marginal gain in representation from participating in a *Left-Handed Widget Producers Association* may be minimal. This may inhibit the formation of new interest organizations as interest systems become more dense. Alternatively, newer organizations passing thresholds of organization may displace older ones given their greater specialization in representation. Gray and Lowery (1993a) found stronger support for the latter expectation; groups continue to form at a constant rate, but organization mortality increases sharply with density.

Finally, state politics scholars have looked to party competition as the most general source of issue *un*certainty for interest groups (Walker, 1991: 10, 154). In highly competitive states, the out-party stands a good chance of suddenly becoming the in-party and, thereby, initiating a broad range of policy reversals. For potential interest organizations, this poses either a threat or an opportunity. In either case, we should expect to find greater interest organization activity in more politically competitive states.

Given this model, we can assess the relationship implied, *but not tested* by BHS by incorporating two variables into the Lowery and Gray model. First, we introduce per capita value of GSP as a control reflecting BHS's (1993: 381) argument that urbanization and income increase demand for legislation.

Given their logic, these variables should also increase incentives to form interest organizations. While not identical, per capita GSP is highly collinear with urbanization and income in the states, and should, therefore, serve as an adequate control. Second, and more importantly, we include in the model the BHS (1993: 379) index of lobby law restrictiveness. If they are correct, then per capita GSP should be positively related and lobby law restrictiveness negatively related to numbers of registered interest organizations.

3. Testing the extended model

Our dependent measure is the number of organizations registered to lobby in 1990 as derived from lists of registered lobbyists provided by the 50 states.[3] While an imperfect indicator of political activity on the part of interest organizations, it directly taps the claim made by BHS. Turning to the independent variables, 1989 GSP and population data were gathered from published sources. Similarly, our indicator of state party competition – the inverse of a folded Ranney index from 1981 to 1988 – is available in standard references. The index of lobby law restrictiveness, of course, is that used by BHS.[4]

One estimation problem concerns the case of Florida.[5] While interest system density increased markedly from 1975 to 1990, from an average of 195.57 to 586.82 registered organizations, the relative position of the states was quite stable with a simple correlation of the two years' rankings of 0.730 (Gray and Lowery, 1993b). The one exception is Florida, where registrations increased so dramatically that by 1990 there were double the number of any other state. During this period, Florida made no major changes in its lobby registration laws of their enforcement. Instead, the increase is most plausibly explained as a one time response to the political hullabaloo created by Florida's short-lived sales tax on services. In any case, Florida is a rather extreme outlier, one that distorts the party competition coefficient. Therefore, while we present results both including and excluding Florida, we interpret only the latter.

These are presented in models 5 through 8 in Table 1. Estimates for the basic Lowery and Gray model are presented first. As expected, the coefficient for PARTY COMP is positive and significant. Also we expected, the estimates for GSP and GSPSQ are, respectively, positive and negative, and both are highly significant. Importantly, this pattern is replicated in the more elaborate models 6 through 8 with the coefficients remaining remarkably stable. Registered interest organization populations grew as state economies increased in size, but the rate of growth decreased as populations became increasingly dense. Also, numbers of registered interests increased with levels of party competition.

Table 1. 1990 State interest organizations model regression results

Independent variable	Dependent variable: No. of registered State interest organizations							
	M-1	M-2	M-3	M-4	M-5	M-6	M-7	M-8
GSP	.517**	.532**	.549**	.358**	.358**	.369**	.371**	.377**
	(.098)[1]	(.099)	(.103)	(.013)	(.048)	(.048)	(.051)	(.050)
GSPSQ	–.528**	–.523**	–.570**	–.567**	–.380**	–.313**	–.326**	–.325**
	(.164)	(.163)	(.168)	(.168)	(.079)	(.078)	(.082)	(.081)
Party	.223	.417	.220	.389	.603**	.725**	.600*	.715**
comp.	(.469)	(.494)	(.469)	(.496)	(.224)	(.231)	(.224)	(.234)
PCGSP	–	–.159	–	–.138	–	–.103	–	–.096
		(.132)		(.135)		(.062)		(.063)
Lobby law	–	–	–15.740	–12.870	–	–	–5.821	–3.882
strictness			(14.916)	(15.170)			(7.136)	(7.146)
Const.	339.465	771.755	464.586	816.585	655.728	930.955	699.708	943.789
R^2	.499	.514	.511	.523	.746	.761	.750	.763
N	50	50	50	50	49	49	49	49

* = p < .05; ** = p < .01

[1]Figures in parentheses are standard errors.

Variables and their operationalization: Number of interest organizations is the number of organizations registered to lobby state legislatures in 1990. GSP is 1989 Gross State Product and GSPSQ is its squared value. GSP is expressed in units of hundreds of millions and GSPSQ is expressed in trillions for ease of presentation of the resulting coefficients. Party competition is a folded Ranney index of state party competition for 1981–88 multiplied by negative one. PCGSP is GSP divided by state population in 1989. And Lobby law strictness is the Brinig, Holcombe, and Schwartzstein (1993: 379) index of lobby law restrictiveness. Models 1 through 4 were estimated with all 50 states, while, for reasons noted in the text, Florida was excluded in the estimation of models 5 through 8.

Model 6 and 7 introduce into the basic model, respectively, per capita GSP and the index of lobby law restrictiveness. When introduced separately, the coefficient of neither is significant at even relaxed criterion levels. And the per capita GSP coefficient in model 6 is incorrectly signed, indicating that as wealth (an indirect indicator of demand for legislation) increased, numbers of registered interest organizations declined. Although not significant, the coefficient of lobby restrictiveness is negative as hypothesized by BHS. This pattern is replicated in model 8, which includes both per capita GSP and the index of lobby law restrictiveness. The coefficient of neither is significant, and the GSP estimate is again incorrectly signed.

Given these findings, we cannot dismiss the real possibility that lobby laws have no impact on numbers of registered organizations.[6] But assuming for the moment that the restrictiveness coefficient of –3.882 in model 8 is meaningful, we can gain a more substantive interpretation of its impact by estimating the responsiveness of a typical organization population to changes in legal restrictiveness. To begin, the values of all five independent variables were set at their 49 state means. When combined with the coefficients in model 8, this generated a predicted population of registered interests of 538.190, which compares favorably with the actual population mean of 538.204.

Two other predictions were produced by setting lobby law restrictiveness at one standard deviation (3.357) above and below its mean (9.490) without changing the values of the other four variables. At one standard deviation above its mean, the high restrictiveness prediction is 525.157, or 13.032 organizations and 2.42 percent lower than the base-line mean prediction. At one standard deviation below its mean, the low restrictiveness prediction is 551.222 interest organizations. Thus, moving from a high to low lobby law restrictiveness regime increases the typical population by 26.064 interest organizations.

How big is this difference? We can place it in some perspective by noting that the average number of registered interest organizations in the 49 states (excluding Florida) increased 175.980 percent between 1975 and 1980, or an average of 22.842 groups per year. Thus, the predicted difference of 26.064 organizations between our high and low restrictiveness regimes is equivalent to 1.141 years worth of the average observed growth in state interest populations over the last 15 years. Within the larger context of the rapid expansion of state interest organization populations, then, the impact of even extreme changes in the restrictiveness of lobby law regulations has only a minimal impact equivalent to the passage of one year of time. This impact is certainly too small to serve as a serious screening device for state legislators seeking to distinguish between low and high demanders of legislation.

4. Discussion

Our results indicate neither that legislators fail to distinguish between high and low demanders of legislation nor that interest organizations are insensitive to all costs of lobbying; strictly speaking, our data speak to neither question. However, they provide an unfortunate answer to the specific question begged by BHS. The restrictiveness of lobby regulations has little impact on numbers of organizations registered to lobby. It appears, therefore, that the relationship they found between lobby regulation and legislative output is spurious. From the perspective of conventional wisdom, this is not surprising. The regulation of lobbying is more restrictive in states with moralist political cultures in comparison with individualistic and traditional cultures (Opheim, 1991; Thomas and Hrebenar, 1991). And the rate of legislative activity is also thought to be higher in moralist states (Gray and Eisinger, 1991: 23). Thus, the omitted variable of state political culture could very well account for the empirical findings reported by BHS.

If not for the reasons suggested by Brinig and her colleagues, why do legislatures regulate lobbying? At least three other reasons are plausible, each increasingly less public choice-like in flavor. One is that regulations are adopted at the behest of interest entrepreneurs so as to enhance monopoly status *within* their organizations as "official" spokespersons vis- å-vis the government. While plausible, we presently have no evidence on this account. Another is that lobby laws are exercises in symbolic politics whereby, following episodes of corruption, legislatures can appear to do something while changing little. This account fits well the pattern of cycles in revision of lobby laws; the current generation of regulations were produced in the mid-1970s in response to Watergate-era scandals (Thomas and Hrebenar, 1991: 7–10). Indeed, recent legislative scandals (e.g., Arizona, South Carolina, and California) have set off another round of ethics reforms during the early 1990s.

A third possibility is that the regulations are actually adopted for the reasons stated by their sponsors – to increase public scrutiny and reduce corrupt practices. BHS dismiss this "public interest" account as naive. While we too are suspicious of such accounts, they should at least be examined. On occasion, they may even be true. And in this case, there is at least some indirect supportive evidence. Tests of models of regulatory stringency (Opheim, 1991; Thomas and Hrebenar, 1991) find that most of the variance in lobby regulation restrictiveness can be accounted for by variations in the political cultures of the states. Moreover, there is even some systematic if qualitative evidence (Thomas and Hrebenar, 1991) that tough regulation and enforcement actually have a modest positive impact on the openness of government.

Finally, public choice analyses contribute greatly to our understanding of the importance of rules and regulations on the play of politics. Rules and

regulations are important instruments in the exercise of power and the pursuit of interest within institutions. But because some rules are important from the perspective of the maximizing behavior of individual politicians does not mean that all rules are important. Or rather, because all rules presumably have some purpose, not all rules are important in terms of such politically interesting objectives as vote maximization or managing legislative agendas. Our analysis indicate that such import cannot be assumed, but must be carefully demonstrated. Only then can we accurately distinguish between the significant and the trivial in the understanding and design of political institutions.

Notes

1. They focus on economic size, as opposed to BHS's attention to population, because many interest organizations have no members. In 1990, for example, 49.02 percent of registrants in the states represented institutions as opposed to associations or membership groups (Gray and Lowery, 1993a). Thus, a population frame of reference may miss the essential basis of representation. As Schattschneider (1960) notes, the fundamental basis of representation is economic. For the same reason, we use the term "interest organization" rather than the more commonly used designation of "interest group".
2. Equilibrium is used here in the sense it is understood in population biology and population ecology analyses, not as it is typically understood in economics.
3. Lowery and Gray focus solely on private interests by excluding state public officials who lobby in their official capacities. Obviously high-demanders of legislation, these officials are required to register in only six states.
4. We are also concerned about the index's validity. BHS tell us little about its construction, not even the year sampled nor the source of data. And there are alternative measures. Opheim (1991), for example, provides a 22 item index from 1987 data covering three dimensions of regulation: statutory definitions of lobbying, disclosure requirements, and oversight and enforcement provisions. The Opheim index is only weakly correlated ($r = 0.169$) with the BHS index.
5. When regressed against the other independent variables, the R-square values produced for per capita GSP and the index of lobby law restrictiveness were negligible: 0.206 and 0.130, respectively. Thus, the lack of significance of these two coefficients is unlikely to be a function of collinearity. Nor is heteroskedasticity with respect to economic size a problem. In a Park test for this violation of the OLS assumptions, the slope coefficient of the log of GSP was not significant at the .05 criterion level when regressed on the squared values of the residuals from Equation M-8 of Table 1.
6. Or, the impact may actually be positive. When the Opheim (1991) index was substituted for the Brinig et al. index in model 8, it produced a positive coefficient, albeit not significant ($t = 1.76$), while all else remained the same.

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