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# You don't know Jack: Principals, agents and lobbying

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**Executive Summary** Most recent work on the politics of interest representation assumes that lobbyists represent their clients' interests with fidelity. As a check on the validity of this assumption, we examine the potential for principal-agent problems to emerge in the relationship between lobbyists and clients. We first consider the nature of agency problems in lobbying, emphasizing problems of outcomes, interests and monitoring. Next, we examine market, hierarchical and social controls of agency problems in lobbying. We then discuss the implications of our analysis for studies of interest organization mobilization, tactics and strategies, and influence. And finally, we argue that renewed attention must be paid to the internal operation of interest organizations, a subject that has been given scant attention in recent research on interest representation.

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In 2006, lobbyist Jack Abramoff was convicted – along with two White House officials, US Representative Robert Ney, and nine other lobbyists and Congressional aides – of a range of crimes, including mail fraud and conspiracy. The *Washington Post* summarized one of the core elements of the case against Abramoff as follows:

Washington lobbyist Jack Abramoff and public relations consultant Michael Scanlon quietly worked with conservative religious activist Ralph Reed to help the state of Texas shut down an Indian tribe's casino in 2002, then the two quickly persuaded the tribe to pay \$4.2 million to try to get Congress to reopen it. Dozens of e-mails written by the three men and obtained by The Washington Post show how they built public



support for then-Texas Attorney General John Cornyn's effort to get the courts to close the Tigua tribe's Speaking Rock Casino in El Paso in late 2001 and early 2002. The e-mails also reveal what appears to be an effort on the part of Abramoff and Scanlon to then exploit the financial crisis they were helping to create for the tribe by securing both the multimillion-dollar fee and \$300 000 in federal political contributions, which the tribe paid. (Schmidt, 2004)

Instead of representing his clients, Abramoff manufactured the very issue on which he solicited their contract to lobby by pitting one set of interests against another. In a broader sense, he lobbied not on behalf of but against the interests of his clients.<sup>1</sup>

There are, of course, any number of astonishing things about the Abramoff case that might draw our attention. But there is one that we find especially compelling as students of the politics of interest representation. Simply put, interest group scholars had nothing to say about the case. There is virtually nothing in our theories of interest representation that might allow us to account for what happened or how similar cases might be prevented in the future. It was as if the grand swindle were a one-off event, which implies, of course, that there are no others deserving of note. While perhaps extreme in its brazenness, we think it unlikely that Jack Abramoff's case was unique. If so, then it is incumbent to consider the theoretical implications of why such cases can happen.

Before doing so, it may be useful to explore why the extant literature has so little to say about such cases. In large part, we have nothing to say about Jack Abramoff because lobbyists have largely disappeared from the study of interest representation. Instead, the unit of analysis we now use in studies of mobilization and organization demography is typically the lobby organization itself, not its lobbyists (for example Schlozman, 1984; Gray and Lowery, 1996). Similarly, studies of lobbying tactics and strategies now typically focus on issues as a unit of analysis, ascribing their selection to the context in which an issue is considered (for example Kollman, 1999; Baumgartner *et al.*, 2009). More to the point, in both scenarios, the lobbyist is conceptualized as a superconducting transmitter linking the issues of concern to organizations to responsible officials with no loss of energy and with perfect fidelity. In an important sense, then, lobbyists have become invisible in the literature on interest representation, serving mostly as sources of data but lacking any will of their own; they are servants who advise clients and execute their orders (Kersh, 2000).

If there are any doubts in the literature about the fidelity of lobbyists, they are almost entirely focused on the legislator–lobbyist relationship where trust is thought to be vital and its maintenance so important that it alone serves as a sufficient check on the independence of lobbyists (Kersh, 2002; McGrath, 2006).



Most assume, as does Rosenthal (2001), that competitive pressures and the need to maintain one's reputation will keep contract lobbyists faithful to their clients' interests. And while Heinz *et al* (1993, pp. 372–373) do allow for some slippage between the interests of clients and contract lobbyists, they simply assume that the behavior of in-house lobbyists, who do the vast bulk of lobbying, is fully controlled via hierarchical monitoring (Kersh, 2000, p. 241). Indeed, only one extant theory of interest representation addresses – even if only by implication – gaps between the interests of clients and lobbyists: Olson's (1965) by-product theory. But even this theory is limited to organizations with members, which are now a minority of interest organizations. More importantly, it blames any gap between the interests of constituents and their representatives on a lack of concern for lobbying on the part of the former given that they are presumed to join groups solely for selective material inducements. In effect, by-product theory makes any gaps between the interests of lobbyists and their clients uninteresting. Given this inattention to variations in the relationships between clients and their lobbyists, it is not surprising that we lack any theoretical leverage on the problems raised by the case of Jack Abramoff.

We try to gain such theoretical leverage by examining the relationship between clients and lobbyists using principal-agent theory as developed in studies of the economics of organization (Furobotn and Richter, 1997, pp. 179–264). We are not the first to do so. Stephenson and Jackson, for example, examined client–lobbyist relationships in a 2009 Harvard Law School Working Paper, and, even more importantly, Kersh, in a 2002 *Critical Review* essay already cited, preceded us by observing that, 'individual lobbyists ... are an afterthought in most accounts of interest groups and policy making. Lobbyists are assumed to promote their clients' interests, usually along narrow lines'. But while instructive in a number of respects, as will be seen in the multiple citations of their works herein, we also found their analyses to be limited given the predominant attention they give to contract rather than in-house lobbyists, their lack of theoretical development of the origins of agency problems, and their failure to address how a fuller consideration of agency problems might influence how we address several important topics on interest representation.<sup>2</sup>

Therefore, we build on their work by first considering the nature of agency problems in lobbying, emphasizing problems of outcomes, interests and monitoring. We then examine the efficacy of market, hierarchical and social controls of agency problems. Simply put, agency problems arise because control systems are weak. We explore these weaknesses. In the third section of the article, we discuss the implications of our analysis for three of the major topics in the literature on interest representation: studies of interest organization mobilization, tactics and strategies, and influence. And finally, we



argue that renewed attention must be given to the internal operation of interest organizations and the selection of organizational forms in lobbying, subjects that have received scant attention. Importantly, we undertake this inquiry not to suggest that client–lobbyist relations are fraught with unresolved agency problems. Rather, we hope to suggest that to assume the opposite as the literature now does – that lobbying agents always represent their principals’ interest faithfully – is equally unjustified and that agency might matter in important ways when we study the politics of interest representation.

### **Agency Problems in Lobbying**

There are a number of potential agency problems bearing on those engaged to lobby on behalf of an organization. Principal-agent problems are often divided into issues of adverse selection and moral hazard (Moe, 1984, pp. 754–755; Furobotn and Richter, 1997, pp. 179–264). We focus instead on problems of outcomes, problems of interests and problems of monitoring. The latter two topics correspond roughly to traditional analyses of adverse selection and moral hazard, while the first highlights the special characteristics of lobbying as an activity that might compound agency issues beyond the narrower set of issues typically considered in discussions of moral hazard.

Before doing so, however, we must note that there are two different kinds of lobbyists working for firms and other institutions (organizations without members): the *contract lobbyists* that are the focus of Stephenson and Jackson’s (2009) analysis and *in-house lobbyists* or *public affairs officers*. Either or both types of lobbyists might also work for organizations with members; as *representatives of associations* (which have firms as members, such as trade associations) or *representatives of membership organizations* (which have individuals as members).<sup>3</sup> More to the point, we could expect to see variation in both the severity of the principal-agent problems faced by these several types of lobbyists and in the efficacy of alternative mechanisms to control them. We examine these problems below giving special attention, where appropriate, to the severity of three sets of principal-agent problems bearing on each of the types of agents engaged as lobbyists. We will then consider potential remedies to such problems in the following section.

#### **Problems of outcomes**

Lobbying is unlike many other goods and services and these differences may increase the frequency and/or severity of agency problems. At the most fundamental level, these problems arise from the *ambiguity of the outcomes* of



lobbying activity. Indeed, even defining lobbying goals against which to evaluate lobbying success is difficult given lobby organizations' complex set of interests (Godwin *et al*, 2007; Lowery, 2007). But, this inherent ambiguity is compounded by a number of traits of lobbying itself that distinguish it even further from other kinds of goods and services.

The first of these factors in the *institutional complexity* of the policy process; a complexity that can be especially bewildering to those not routinely engaged in it. Indeed, for organizations whose primary purpose is something other than public policy *per se*, such as automobile companies and breweries, knowledge of the policy process may be wholly separate and distinct from any of the technologies employed in its major line of work. As a result, some suggest that it is not uncommon to find interest organizations even lobbying the 'wrong' institution on a given issue, for example, lobbying the legislature when the issue is before an agency (Hillman *et al*, 2004, p. 846).

Second, the outcomes of lobbying are not solely dependent on the work of a single organization but rather on the collective efforts of all organizations lobbying on all sides of that issue (Baumgartner *et al*, 2009, p. 110). The efforts of *all* organizations lobbying on *all* other issues are also related to lobbying outcomes given scarce space in the policy agenda (Keim and Baysinger, 1988, p. 175; Baumgartner and Jones, 1993). As a result, any precise linkage between a lobbyist's activities and the final outcome on an issue may be obscured by such collective efforts. While true for the policy process as a whole, and for the opponents and supporters of a specific proposal, this becomes perhaps most clear when considering the efforts of lobbying coalitions (Hojnacki, 1997; Hula, 1999). Such team efforts generate what Alchian and Demsetz (1972) identified as metering problems or an obscuring of the relationship between the level and quality of inputs into a production process and the quality and level of outputs. Such metering problems create fertile ground for the emergence of potentially serious agency problems.

Third, unlike other production processes, lobbying success is more often than not defined as *the occurrence of a non-event*. That is, unlike the provision of many goods and services, most public policy issues are two-sided, pitting those who want to change the status quo against those fighting for it. Recent research (Baumgartner *et al*, 2009, p. 242) on this topic confirms a long-standing finding about public policy: the status quo usually wins. Thus, a lack of policy change constitutes evidence of success for those supporting the status quo. However, it is difficult to link effort to the absence of an event. When one of the authors had a prior career as a legislative aide to a state legislative tax committee, he often attended annual meetings of trade associations with interests in taxation. It was not uncommon in these meetings to hear, for example, the head of the Candy, Tobacco, and Liquor Vendors' Association claiming considerable credit for once again preventing discussion of imposition



of selective excise taxes on these products. The fact that no such proposal was on the legislative table did not seem to diminish the value of this claim to the head of association in his relationship with its members. Such claims are easy to make in lobbying and very difficult to refute.

Fourth, when lobbying tries to change the status quo, successes are likely to be *lumpy and rare*. In regard to the former, Keim and Baysinger (1988, p. 175) have noted that, 'Another factor making it difficult to measure effectiveness [of lobbying] is that some political issues are resolved in discrete, all or nothing, decisions. It is conceivable that a very good political effort by a firm or group of firms may fall short of success when the final decision is made'. Indeed, while some change is certainly incremental, findings of the policy agendas research program highlights the importance of sharply punctuated changes in the status quo (Baumgartner and Jones, 1993). This claim is supported by lobbying research that emphasizes the difficulty of simply getting on the policy agenda, much less altering the status quo. But lumpiness and rarity are even more problematic when we note that the payoffs from altering the status quo may be very large indeed.<sup>4</sup> This combination of lumpiness, rarity, uncertainty and large payoffs might make lobbying operate as a partial or variable reinforcement schedule (Ferster and Skinner, 1957). It has long been recognized that, under such schedules, rats will continuously press a lever in hopes of a reward of a food pellet and gamblers will stay at slot machines long after it is reasonable to do so (National Research Council, 1999, p. 39). This characteristic of some policy goods may feed cognitive biases that make lobbying addictive, with the lobbyist as the enabling pusher.

When these issues are taken together, it seems clear that it may be very difficult to assess whether lobbying is successful or not. As noted by Keim and Baysinger (1988, p. 175), 'a problem peculiar to political strategies [lobbying] stems from the greater difficulty associated with evaluating the effectiveness of political strategies relative to product-market strategies ... . A very good losing effort may net nothing for the firm bearing the cost of the effort, whereas a poorly planned and implemented effort that happens to put the firm on a winning side of an issue may be perceived as good work by top management'. Similarly, Heinz *et al* (1993, pp. 369–414) described the world of lobbying as lacking nearly any of the certainty of a supermarket with its well-defined roles, goals and prices. Instead, the lobbying environment is one governed by extraordinary uncertainty in goals, means and the relationships between goals and means. But such problems are not unique to lobbying. For example, Arrow's (1963, p. 951), analysis of health-care services highlighted the importance of the ambiguity of outcome criteria. The problem of the causality of non-events arises with claims that the nuclear arms races resulted in the absence of nuclear war. Evaluating success in searching for oil or gold entails considerations of lumpiness and rarity. Similarly, a firm contesting a product



market depends for success not just on its own efforts, but those of other firms and the tastes of consumers. Still, it is hard to find another endeavor that has all of these problems simultaneously, with health perhaps coming closest to lobbying (Arrow, 1963).

Arrow (1963), of course, cited such difficulties as reasons why the market could only imperfectly provide health-care services; the same may be true, if not fully so, for lobbying. The previously noted distinctions among contract lobbyists, public affairs officers, and representatives of associations and membership groups will become very important when we consider the next two sources of potential agency problems. However, drawing a major distinction between organizations that engage in frequent and infrequent lobbying (sometimes labeled old bulls, such as General Electric and mayflies, such as the Tigua Indian Tribe swindled by Jack Abramoff) is more likely to illustrate the direct effects of outcome assessment problems (Anderson *et al.*, 2004; Berkhout and Lowery, 2011). Such differences in experience might well matter. As Arrow noted (1963, p. 951) in regard to health care, 'In most commodities, the possibility of learning from one's experience or that of others is strong because there is an adequate number of trials. In the case of severe illness, that is, in general, not true; the uncertainty due to inexperience is added to the intrinsic difficulty of prediction'. Similarly, experience in lobbying may entail learning about the evaluative difficulties arising from the complexity of the policy process, recognizing causality issues arising from the non-events of defending the status quo and sorting through the consequences of multiple actors' actions. In a complex and subtle environment, experience may matter a great deal irrespective of the type of organization – institution, membership group or association – and/or whether it employs an in-house or contract lobbyist. On the other hand, the addictive qualities of lobbying for lumpy and rare changes in the status quo may be more of a problem for those routinely lobbying than for first-timers. Differences in the severity of these problems may also affect some types of interest organizations more than others given that groups with members tend to engage in more routine lobbying than do institutions, which tend to lobby for quite specific purposes and then leave when the issue is resolved (Gray and Lowery, 1995).<sup>5</sup>

### **Problems of interests**

The problem of adverse selection concerns misalignments between the interests of principals and those of their agents, an issue on which Stephenson and Jackson's (2009) analysis is especially useful. There are two broad types of such conflicts. The first and easiest to understand is associated with contract lobbyists who have multiple clients. The simplest conflict of this sort arises



when the *interests of two clients might conflict* at one point in time (Rosenthal, 2001, p. 103). In choosing to represent either client with greater fidelity, he or she will fail the other client.<sup>6</sup> This simple type of conflict is the subject of professional ethics rules, the efficacy of which we will consider below.

It is worth noting, however, that such conflict need not arise only between two actual clients and their lobbyist. Instead, *conflicts might arise over time*. As a major American manufacturing firm's chief state lobbyist noted to us, he was always confident lobbying in states where the firm had manufacturing plants where he and his colleagues had extensive local knowledge. But when lobbying more occasionally in other states, they necessarily relied on contract lobbyists. Even when accompanying the contract lobbyists to visit legislators, however, he noted that he could never be completely sure that the hired lobbyist was not shading the conversation in ways less than fully satisfactory for the firm due to the contract lobbyist's longer-term relationship with the legislator on behalf of future clients. Simply put, the contract lobbyist and his future business would remain in the state long after the in-house lobbyist and his firm returned home.

Another potential source of such conflict of interest, also at least in part with a temporal aspect, arises when *the true client is not a party seeking redress with government, but representatives of the government itself*. This issue became especially salient with the K-Street project of the Republican-led House of Representatives during the last part of the Clinton Administration and the first part of the Bush Administration (Loomis, 2007), an operation in which Mr Abramoff played a significant role. Quite simply, in order to have access to represent any client, the lobbyist had to bend to the wishes, expectations and contribution needs of legislators. For those who pay to play, the benefits of such ties might well serve the interests of partisan legislators, lobbyists and clients (Loomis, 2007, p. 413). But it is not difficult to imagine that the need to accommodate legislators' demands for campaign contributions in such a situation can constrain, bend and distort the fidelity with which a lobbyist might represent the interests of clients. Indeed, the Abramoff scandal was in large part only an especially extreme version of this conflict of interest. But such conflicts might well arise over time even if lobbyists are not so directly responsive to legislators demands. 'Lobbyists might well, for example, edit client preferences for either lobbying objectives and/or tactics so as to meet legislators' fund-raising needs and subsequently secure longer term access to legislators on behalf of future clients'.<sup>7</sup>

The second set of potential conflicts concerns are those that might arise between the interests of a single client and a single lobbyist. First, there is likely to be a difference of interest in the *amount of service* provided. This conflict is common between consumers and providers of any professional service, such as physicians and attorneys. All other things being equal, service providers benefit from providing more services while consumers benefit from receiving





less. In Stephenson and Jackson's (2009, p. 9) discussion of this issue, special attention is given to contract lobbyists. But it applies equally as well to the in-house lobbyists of institutions and to the representatives of associations and membership groups (Kersh, 2000, pp. 248–249). The former must justify their home within organizations where lobbying is often far from its core purpose. And while lobbying certainly lies at the core of what many associations and membership groups do (Gray and Lowery, 1995), that proximity, in combination with the problems associated with maintaining membership in the face of free riding (Olson, 1965), means that leaders of membership organizations have incentives to exaggerate the public policy threats and opportunities facing the organization. Consistent with psychological research on prospect theory (Kahneman and Tversky, 1979), threats in particular are powerful in securing membership at least in part because they take advantage of cognitive biases among potential members that lead them to join more frequently than they might otherwise do (Moe, 1980). Thus, even when organizations do not rely on contract lobbying, they may suffer from agency problems associated with oversupply, albeit in this case of a type similar to those noted for bureaucracies and their political principals (Niskanen, 1968; Moe, 1984).

The interests of lobbyists and their clients, whether via contract or within a firm, may also diverge in terms of the *types of lobby activities and issue targets* of lobbyists. Stephenson and Jackson (2009, p. 10), for example, note that, 'precisely because certain aspects of lobbyist performance are easier to observe than others, lobbyists have an incentive to distort their efforts in the direction of those activities that are more easily observable by the clients, even if other forms of more subtle difficult-to-observe effort would better advance the clients interests'. This problem might stem from variation in observability, but it also might depend on their costs. That is, lobbying encompasses a range of activities running from the inside lobbying of elected and appointed executives, legislators, and courts to outside lobbying relying on advertising and campaign activity. Not all lobbying firms, public affairs offices, or associations or membership groups are equally invested in all of these influence technologies. Thus, it may be more costly for the lobbyist to employ the most suitable lobbying technology when he or she has another on hand that, while less effective, is more easily used. Finally, the misdirection of lobbying efforts may even extend to lobbying targets. Again as suggested by Stephenson and Jackson (2009, p. 10), 'imperfect monitoring may give lobbyists an excessive incentive to achieve easily-observable short-term successes that can be directly attributed to the lobbyists' efforts, and an excessive incentive to avoid easily observable defeats'. In all of these respects, then, the activities lobbyists engage in might well not represent the interests of clients.



Another version of this conflict especially applicable to contract lobbying might even become more important in the future given changes on-going within the structure of the lobbying industry. That is, the lobbying industry has been for some time undergoing considerable change via the consolidation of traditional lobbying shops and other types of organizations associated with more specialized lobbying tactics, such as polling and public relations firms (Loomis, 2007; Edsall, 2012). In many cases, these traditional lobbying shops are becoming subsidiary units within international conglomerates. Such industrial consolidation increases, of course, the potential for conflicts of interest with other lobbying clients of the type we have already noted simply as a result of contract lobbyists representing more clients. But it also gives rise to another unique conflict by the way it creates incentives to secure potential cross-subsidization among the set of subsidiaries within the larger conglomerate firm. For example, a contract lobbyist might unnecessarily steer a client to a sister public relations firm so as to engage in outside lobbying when the strategic situation in which the client's interest is embedded might better call for exclusive use of internal lobbying. Or even if some outside lobbying of the public is called for, the sister firm of the contract lobbying firm might not be the most appropriate or cost-effective provider of the service. The inevitable strains of such conflicts arising from centralization within the industry might well be one of the reasons such subsidiary firms have recently lost clients as well as lobbyists (Palmer, 2012).

An even worse potential conflict lies in *the overall success of lobbying*. The same incentives that might lead any type of lobbyist to suggest more services than required might well lead him or her to eschew ultimate victory in securing the client's interest. As Rosenthal (2001, p. 102) quoted one lobbyist, 'You should never kill a bill so bad [sic] that [the opposition] can't come back next year, or you'll be out of business'. Indeed, such incentives might be especially powerful for firms' in-house lobbyists and representatives of membership groups and associations. Quite simply, contract lobbyists have more than one client to rely on. Lobbyists with but one client might be well inclined to leave some doubt as to the final resolution of an issue or, at a minimum, search for an alternative, as the March of Dimes did following the discovery of a cure for polio (Sills, 1957). Or perhaps more realistically, they may prefer dividing a long-term policy goal into smaller pieces that are achieved over a longer period of time than a single, comprehensive win.

### **Problems of monitoring**

The origins of agency issues with respect to monitoring lobbyists have already been touched upon regarding both outcome ambiguity and conflicts of interests.



It is now well understood that at the core of such issues lies an *asymmetry of information* between the principal and the agent (Miller, 2005). As Stephenson and Jackson (2009) note with respect to lobbyists, 'The fundamental opportunity that creates the opportunity for agency slack is asymmetric information. The lobbyist usually knows more about how the legislative process works, what options are feasible, what strategies are likely to be successful or unsuccessful, the potential ramifications of certain government actions, and so forth'. Kersh (2000, p. 242) goes further, arguing that, 'clients ... exhibit scant awareness of the issues and strategies involved in their representatives' Washington activities'. However, Kersh and Stephenson and Jackson do not delve sufficiently into the distinctive underlying characteristics of lobbying as an activity that make asymmetries in information especially difficult to solve in comparison to the production of other goods and services. In part, these difficulties arise from an issue we have already discussed: the ambiguity of lobbying outcomes. But there are additional issues arising from asset specificity in lobbying – specific or non-redeployable investments (Riordan and Williamson, 1985).

First, monitoring is likely to be especially difficult in the case of lobbyists and their clients owing to problems of physical or technological asset specificity (Williamson, 1981, p. 555). That is, the technology of lobbying may be quite different from the core technology of the organization. The knowledge, experience and technology useful in producing tires, for example, are not readily useful for assessing the need to lobby or its success. This means that the management of the tire firm will be unlikely to have the internal resources or the experience needed to monitor the quality and quantity of lobbying done for it. This problem varies, of course, with the organizations' core. Although lobbying is a central activity of many groups with members and a few policy-focused institutions, the vast majority of lobbying is done on behalf of institutions whose core business is not public policy (Salisbury, 1984). The severity of the principal-agent problem should also vary with the frequency of lobbying, whereby the old bulls of lobbying should be able, because of their experience, to more readily overcome barriers of monitoring and even to invest at the core in technologies useful in assessing the bang they get for their lobbying buck.

Also, the monitoring of lobbying often suffers from site asset specificity, which occurs when an activity takes place at a distance from the core activity of the organization (Williamson, 1981, p. 555). Most inside lobbying takes place in capitols. Thus, simple physical distance from the locus of lobbying, except for those located in capital cities, is likely to make monitoring more difficult. For this reason, among others, the scholarly coding of American and European interest organizations often notes whether they are located in Washington or Brussels, respectively. But this problem might also arise less



through physical barriers to access than through the act of lobby registration required by some governments. Registration is usually adopted to promote transparency in the use of influence. But it might also serve as a barrier to entry – and thereby to effective monitoring of agents by a lobbyist’s principals – by privileging only some members of organizations, those registered as lobbyists, as legitimate advocates of an organization’s interests.

And last, the various tasks of lobbying are not equally observable. Outside lobbying of the public (Kollman, 1999) is at least sometimes – such as image advertising campaigns – readily observable in the same fashion that a CEO of a soap factory can see his ads for detergent on television. The impact of such image advertising, however, may not be as readily measurable as monitoring increasing sales of suds. And lobbying regulatory agencies usually entails submitting briefs in response to proposed regulations, briefs that are open to review, even if they are sometimes rather opaque. But classic inside lobbying is not readily observed and monitored, even after the advent of lobby registration and lobby disclosure reports. One can rarely see inside the legislator’s office to see what is said and how it is said, to say nothing of observing the informal exchanges that occur at campaign events or fund raisers. Thus, we would expect the quality of monitoring to vary across lobbying tactics and to be most severe with inside lobbying.

For these reasons, agency problems are possible and perhaps even likely in lobbying. But can the consumers of lobbying control such problems or mitigate their consequences?

### **Controlling Agency Problems**

We have seen to this point that lobbying is potentially rife with agency issues given its very nature and the many potential conflicts of interest within lobbying relationships. Still, the world is awash in both complex exchange relationships and conflicts of interest, and human beings are very clever in designing mechanisms to minimize and control such conflicts. But they do not always work well, and as a result agency problems should not be viewed as solely a function of complexity in exchange and/or conflicts of interest *per se*. Rather, they arise when control mechanisms are weak. To get some handle on the question of whether agency problems in lobbying are rare or ubiquitous, we need, then, to assess the utility of control mechanisms designed to prevent agency problems. Agency problems, like other sources of market failure, are typically addressed through a variety of social control institutions. Typically, economists consider two of these: markets and hierarchies. But, as Arrow (1969) and Williamson (1993) have noted, social norms constitute another frequently used alternative. We consider all three below, with the first mostly



applicable to contract lobbying, the second to in-house lobbying and the last to both.<sup>8</sup>

Before doing so, however, two important caveats are required. First, we do not examine these mechanisms for normative purposes. Rather, as noted above, examining the effectiveness of mechanisms to control conflicts of interest in the face of complex exchange relationships is an integral element of principal-agent analysis. Indeed, much if not most of the attention in both the theoretical and the empirical literature on principal-agent issues in bureaucracy is devoted to assessing whether the manipulation of a given control by a given political principal – appointments, budgets, oversight hearings and so on – is associated with changes in bureaucratic output (Miller, 1992; Wood and Waterman, 1991). We need to do the same here, at least in terms of considering the possible effectiveness of control mechanisms, if we are to make the case that agency problems are potentially significant in lobbying. And second, while we consider their potential effectiveness, giving each control strategy its best shot, we should be clear from the outset that we do not consider any of the three mechanisms we consider, especially the third, to be especially useful.

## Market solutions

Contract lobbying is a specific type of market exchange in which a client buys a service from a provider. Solving potential principal-agent problems in such market exchanges does not necessitate an abandonment of market provision of a good or service. Indeed, any number of modifications of market exchange might and do address agency problems and they are frequently used in complex economic exchanges where service markets might otherwise fail. Such modifications of the exchange relationship are often suggested as an alternative to abandoning the market in favor of government production of goods and services in the face of market failure. We consider, then, the applicability of the most common of these mechanisms to the lobbyist-client exchange, sometimes noting their use in other types of service exchanges as a baseline from which to consider their applicability to the lobbying process.

The first of these would be to address directly the information asymmetries underlying adverse selection via the *licensing* of lobbyists either by the government or the consumers of lobbying services. Consumers of lobbying services, like consumers of health services, would have more information about the actual qualifications of potential service providers. Collective action problems would seem to make industry self-regulation unlikely (Williamson, 1973, pp. 321–322). But, if governments can license hair stylists, they could conceivably license lobbyists too. Still, no governments now license lobbyists in the quality control sense applied to physicians and lawyers. Perhaps the closest we come to



such accreditation is the implicit licensing of interest organizations found in corporatist systems that recognize some interests and not others at the bargaining table (Schmitter and Lehmbruch, 1979). But even in this case, it is the interest organization or the interest itself that is recognized as deserving to be at the table, not the lobbyist representing that interest. Thus, corporatism does not solve agency problems. Lacking such entry barriers, lobbyists exhibit a remarkable range of backgrounds and prior experiences (Heinz *et al*, 1993) and it may remain difficult for organizations, especially those not routinely in the market, to sort out who would or would not be a good advocate.

Another market-based solution would be the writing of better contracts between the consumers and producers of lobby services. Unfortunately, given the ambiguous outcomes and complexity of the policy making process, lobbying would seem to be a likely source of *incomplete contracts*. Classical contracting schemes assume that the features of an agreement are well-specified and remedies for failures to fulfill the parties' duties are clearly defined (Williamson, 1979, p. 236). Given the complexities and uncertainties of lobbying that we have already observed, contracts are likely to be more open ended. But as noted by Williamson, even incomplete contracts:

would nevertheless be feasible if human agents were not given to opportunism ... Principals would simply extract promises from agents that they would behave in the manner of steward when unanticipated events occurred, while agents would reciprocally ask principals to behave in good faith. Such devices would not work, however, if some economic actors (either principals or agents) are dishonest or, more generally, disguise attributes or preferences, distort data, obfuscate issues, and otherwise confuse transactions, and it is very costly to distinguish opportunistic from nonopportunistic types *ex ante*. (1981, p. 554)

Unfortunately, we have seen that all of these reservations or contingencies apply, or at least plausibly do so, to the production of lobbying.

A third market-based approach would also focus on the contracts between the consumers and producers of lobbying. That is, scholars studying principal-agent models have noted that when contracts focusing on inputs and activities cannot be easily written they should, instead, address *outcomes*. In such situations, notes Miller (2005, p. 206) 'The principal chooses to use outcome-based incentives to overcome in part the problems of moral hazard, despite operating at an informational disadvantage with the agent'. Thus, lobbyists would be paid on the basis of the results of their lobbying, not their lobbying *per se*. The problem, of course, is that we have already seen that lobbying outcomes can be as amorphous and complex as lobbying activity. But even when a narrow, specific outcome might be identified, Stephenson and



Jackson (2009, pp. 7–8) note that, ‘evaluating the impact of the policy outcome on the client’s welfare involves a comparison between that outcome and one or more unobserved counterfactuals. Even if the client is happy with the legislation, the client doesn’t know if it would have been even better off with a different legislative outcome. Likewise, even when a policy outcome appears adverse to the client’s interests, the lobbyist may assert that this was the best achievable result, and any alternative would have been worse’. Indeed, one contract lobbyist noted to us that his firm began its relationship with new clients by defining the ‘deliverables’ upon which the firm would be paid. In this kind of situation, the notion of outcome contracting is turned on its head with the agent, rather than the principal, specifying the outcomes justifying compensation.

Even if all of the inputs and/or outputs could be specified via contracts, the market might still fail once it moves past the first round of bargaining. After that initial round, the provider of lobbying might have an extraordinary advantage in bargaining with consumers of such services due to another type of asset specificity – human asset specificity. As identified by Williamson (1981, p. 555), human asset specificity arises from lobbying being a ‘learning by doing’ service. The value of the work of a contract lobbyist hired in the market arises to at least some extent from the personal relationships that he or she develops with appointed and, especially, elected officials (Rosenthal, 2001, pp. 108–123; McGrath, 2006). These personal relationships are not readily transferable from one hired lobbyist to his replacement after a second round of bidding. As a result, the lobby consumer might find his organization locked-in to a lobbyist in successive rounds of bidding for lobbying services (Williamson, 1979, p. 241). This is especially troubling given that we have noted that the experience gained from repeat play might moderate the severity of some of the agency problems we have identified. But, given the problems arising from human asset specificity, even repeat players might be ultimately disadvantaged. That is, the advantages they gain from repeat play must be traded off against giving their lobbyists greater bargaining power owing to their joint investment in the lobbyist’s specific assets. As a result, principal–agent relationships exhibiting high levels of human asset activity are commonly embedded within hierarchical relationships (Williamson, 1981, p. 563; Demsetz, 1988, p. 153).

For all of these reasons, then, we do not think that market controls of conflicts of interest in complex service exchanges are especially effective. This does not mean that they always and inevitably fail. CEOs vary in their attentiveness to political issues bearing on a firm; some find the political process distasteful and keep a distance from lobbying while others enjoy the play of politics. Organizations also vary in their capacity to write enforceable contacts and to oversee them. And some may be more willing to walk away



from sunk costs than others. But the market, even modified, is hardly a simple solution to a complex problem for all wishing to engage in lobbying.

### **Hierarchical solutions**

This is one reason, of course, that many organizations resort to hierarchical forms of organizations as an alternative to market exchange when exchanges prove problematic. Indeed, firms and other forms of hierarchical organizations, including associations and membership groups, often emerge as alternatives to market production of goods and services because of the former's advantages in reducing transaction costs (Coase, 1937). One important category of such costs includes those that give rise to opportunism – self-interest with guile (Williamson, 1993, p. 458) – of the type associated with agency problems. Although we will consider a more complex interpretation later, the simplest version of *hierarchical management* credits its comparative advantage over the market to the former's enhanced monitoring of and bargaining power with employees. Thus, to Williamson (1973, p. 322), 'The ideal manager in this model is one who has talents in discovering and extinguishing opportunistic behavior'. In the world of lobbying, of course, recourse to hierarchical solutions entails reliance on internal lobbyists: in-house public affairs officers of institutions and representatives of associations and membership groups. But is such internalization of the lobby function really effective in addressing agency problems? The literature on the economics of organization offers two competing answers on this question.

The more optimistic view is provided by the transactions cost perspective (Williamson, 1981). Indeed, Williamson (1979, pp. 252–253) has considerable faith in the capacities of hierarchical organization to overcome transaction costs of many kinds, including those leading to opportunistic behaviors of the type associated with agency problems. At the core of this optimism is a notion that hierarchical firms are extremely heterogeneous, ranging from simple hierarchies emphasizing vertical integration to complex multi-divisional structures, all of which address specific types of transaction costs. It should be easy then to match the right type of hierarchy to a given type of transaction cost problem. And other scholars suggest further that that this selection process is policed by market pressures bearing on the firm. Whether by adaptation or through selection (Aldrich and Pfeffer, 1976), competition provides powerful incentives for firms to develop the most efficient form of organization. As Farma (1980, p. 288) noted, 'The firm is disciplined by competition from other firms, which forces the evolution of devices for efficiently monitoring the performance of the entire team and of its individual members'. Organizations that fail to control opportunism will eventually be weeded out or restructured.





In this positive view, then, the internalization of lobbying is generally seen as sufficient to control agency problems.

However, a number of scholars, especially those working from a principal-agent framework, are more pessimistic about the capacity of hierarchical organizations (including associations and membership groups) to suppress agency problems. Several different perspectives are relevant. First, while sympathetic to elements of the transactions cost approach, several scholars reject the notion that internal and external contracting are fundamentally different since both entail exchanges of labor for compensation (Alchian and Demsetz, 1972; Demsetz, 1988). Indeed, Demsetz (1988, p. 152) suggests that, if anything, 'shirking [is] an activity to which firm-like organization ... is particularly susceptible' owing to a lack of market discipline. Further, the literature on agency issues in public bureaucracy is sometimes quite pessimistic (Miller, 1992; see also Brehm and Gates, 1997, 2008) and offers an extensive catalogue of reasons why the monitoring and incentive systems of hierarchies are unlikely to control shirking. Indeed, similar to the earlier cited ambiguity of outcomes in external contracting noted by Stephenson and Jackson (2009), Brehm and Gates (1994, p. 325) go so far as to suggest that, 'In practice, the supervisor may not be able to distinguish compliance from defection'. Nor are the market pressures operating at the level of the firm noted by Farma (1980) likely to be effective given that they are plausibly more telling of the organization's core activities rather than its peripheral functions. Selection changes entities on the trait being selected for, not peripheral traits. And for most organizations, lobbying is a peripheral activity. Accordingly, the selection forces bearing on organization survival are unlikely to influence how lobbying is done.<sup>9</sup> Further, such pressures might bear more powerfully on those institutions, such as think tanks, whose primary business is public policy. But such controls might be irrelevant in organizations with members, such as associations and membership groups. In these cases, joining for selective incentives (Olson, 1965, pp. 132–135) might exacerbate shirking problems by decoupling membership and the public policy purpose of the organization, with lobbying then becoming a mere by-product whereby lobbyists might pursue their own interests, rather than those of group members.

There is another way, however, to bring market-like discipline to non-market situations – by setting up competition among providers of services within an otherwise hierarchal setting. This, of course, was Niskanen's (1971, pp. 195–201) solution to the problem of a budget maximizing bureaucracy, an approach that was then considerably extended and developed by Bendor (1985): designing in redundancy via intentional duplication and overlapping agencies' tasks so that competition between them cancels out the information monopoly each might have in a simpler hierarchical design. This approach would accord well with Williamson's (1993, p. 458) understanding of



opportunism, that the problem is not self-interest *per se*, but rather the self-interest with guile that arises when there is little or no competition. Would such an approach be feasible for organizations consuming lobbying services? Certainly, there are examples of using multiple lobbyists. At the height of its anti-trust battles in the United States, for example, Microsoft opened an office in Washington and hired 15 lobbying firms. While perhaps extreme in both the numbers and the resources brought to bear to secure their services, many institutions employ permanent public affairs officers and hire contract lobbyists for more specific purposes. Although this is likely done to gain access to different types of lobbying technologies, it has, from this perspective at least, some potential – barring conspiracy – in using one set of lobbyists to monitor another. But such reliance on multiple lobbyists as a control device is also costly in terms of the resources institutions might otherwise employ for their core set of production activities.

The efficacy of these various hierarchical approaches is likely to be related to a number of organizational features. Organizations vary in terms of their hierarchical capacities for internal controls, and those whose core business is more closely related to public policy are more likely to have fewer asset specificity problems in using monitoring and oversight controls. Further, while we have included associations and membership groups among those labeled as hierarchical, firms and other institutions are more likely to actually function in a command and control fashion than are membership groups. Institutions, then, should have an easier time in implementing monitoring-based controls of agency problems. And size should matter since implementing and employing these controls is costly. However, CEOs also vary in terms of their interest in exercising oversight over lobbying. If no one is watching, even large size and extensive internal controls do not guarantee effective control of in-house lobbyists. For all of these reasons, reliance on in-house lobbying is not a foolproof solution to agency problems.

### **Social control solutions**

The final approach to controlling agency problems, and the one we find least plausible for the lobbying relationship, is reliance on social controls. The logic of social controls is markedly different from those underlying the prior control mechanisms. The simple version of hierarchy just discussed attempts to strike at agency problems via addressing the moral hazard or monitoring side of the principal-agent problem. Work on organizational economics, as well as organization theory more generally, has also approached agency problems by instead focusing more directly on the adverse selection or interests' side of the equation. Such efforts seek to use non-pecuniary incentives to *align the motives*



*of principals and agents* so as to minimize reliance on overly complex pecuniary incentive systems and extensive monitoring as controls.

Reference to such social controls is widespread in the larger literature of organizations. Williamson (1993, pp. 475–477, 1979, p. 240), for example, discusses the roles of trust and culture in restraining opportunism by principals or agents. Similarly, Alchian and Demsetz (1972) noted that team spirit and loyalty can lead agents to adopt the interests and values of principles. Stepping outside economics, a number of organization theorists from Barnard (1938) to DiIulio (1994) suggested that effective management can transform opportunists into ‘principled agents’. With respect to lobbying more specifically, Salisbury’s (1969) analysis of the role of solidary and expressive benefits – which speak more to the kinds of cultural constraints just noted – in lobby organizations with members suggests that these might be more powerful incentives for joining than selective material incentives. They should also help to align the interests of principals and their lobbying agents for the same reasons. If true, Olson’s (1965) by-product hypothesis might be short-circuited in such organizations by more tightly linking the interests of organization members, leaders and lobbyists. If so, then the essential task of management is not, Williamson (1973, p. 322), ferreting out shirking, but engendering trust among employees so as to secure their commitment to organizational goals (Brehm and Gates, 2008).

Although it is clear from the literature on agency problems in public bureaucracies that such an alignment of interests is possible, it is by no means easy or certain. Brehm and Gates (1994), for example, found that some police departments effectively use such cultural controls to align the preferences of principals and agents while others failed to do so. Thus, even within similar types of organizations, differences in internal management in engendering trust should matter. Moreover, two other variables might also matter in explaining differences in the baseline capacity of different kinds of interest organizations to employ and effectively use social norms to control agency problems.

First, the development of trust is time and context-dependent. Therefore, all other things being equal, it appears that social controls would be more effective with in-house rather than contract lobbyists. As outsiders, the latter would be less exposed to the cultural norms of the organization owing to simple proximity or exposure effects. And among those relying on contract lobbyists, organizations relying on long-term relationships would likely be advantaged in terms of the efficacy of social controls in comparison to visitors. The mayflies that lobby once with a contract lobbyist and then leave the lobbying community would have little time to culturally align interests. But even the old bulls of the lobbying community might experience agency problems if they fail to develop a long-term relationship with contract lobbyists and instead rely on repeated spot hiring.



Second, as implied earlier, it is likely that organizations with members (associations and membership organizations, and especially the latter) would be, all other things equal, better situated to rely on social controls of agency problems. The reason lies in Salisbury's (1969) emphasis on solidary and expressive incentives for joining. Although Salisbury (1969; see also Moe, 1980) introduced and examined these incentives to address and soften the implications of Olson's (1965) by-product hypothesis, they also bear directly on the agency problem in lobbying. That is, people join membership groups at least in part to promote a cause that is important to them, especially so for membership groups in comparison to associations founded on professional or business interests. For the former, members' interests would be pre-aligned with those of the group. This likely includes the founders of such organizations and those who then work themselves into leadership positions. As it is often these leaders who serve as the groups' in-house lobbyists, it might require little conscious effort to align the interests of principals and agents. Indeed, the distinction between principals and agents might not be especially meaningful.

A second major type of social control bears on the lobbyist agents as a class. That is, *professional norms and ethics* might check opportunism by compelling agents to suppress their own interests in favor of those of their clients. Many professions have agreed-upon standards of ethical conduct.<sup>10</sup> It is not surprising, then, that dyadic trust relationships and the effect(s) of ethical standards have been topics of discussion in the fields of business, law and medicine (Bean, 2001; Burns and Lubet, 2003; Ostas, 2007; Audi, 2008; Erola, 2008). However, ethical codes for lobbying are hardly straightforward, and the literature has been largely silent on the role(s) that ethics play in lobbying.<sup>11</sup> Indeed, discussions have generally restricted their attention to ethical behavior and the maintenance of trust in legislator–lobbyist relationships (Rosenthal, 2001, pp. 102–107), not lobbyist–client relationships.

Although the literature, perhaps for good reason, has been largely silent on lobbyist ethics, some expectations seem reasonable. Although lobbyists may not be held to the same ethical standards as, say, medical professionals or even accountants, there is still a reasonable expectation of trustworthy behavior and honest representation. Thus, it seems that the ethical standard most applicable to lobbyist–client relationships is similar to that between lawyers and clients. Like lobbyists, lawyers often have significant leeway in decision-making on behalf of clients. As Burns and Lubet (2003, p. 4) have noted, 'The paternalistic lawyer may, if he or she chooses, exercise nearly full control over the representation, presenting a limited range of choices to the client or sometimes none at all. In these circumstances, the only real restraint is often self-restraint'. Despite their emphasis on self-imposed ethical standards, Burns and Lubet (2003) also recognize that lawyers in the United States, as in most countries,



are guided by a set of ethical principles developed and loosely enforced by professional associations.

And as in the case of lawyers, associations of lobbyists in US states and at the national level in the United States and several other countries often specify broad standards of ethics for their members. The American League of Lobbyists (ALL; [www.alldc.org/](http://www.alldc.org/)) states, for example, that lobbyists should 'vigorously and diligently advance and advocate the client's or employer's interests, and, to the extent possible, give the client the opportunity to choose between various options and strategies'. In spite of this call, the Woodstock Study on lobby ethics encourages stronger ethical standards to guide lobbyist behavior (Woodstock Theological Center, 2002), given continuing ambiguities in the role of lobbyists. More problematic, not all lobbyists belong to such associations even where they exist. Ostas (2007) has noted that the ALL standards do not carry the force of law; lobbyists' adherence to them depends upon the strength of arguments in favor of their usage. Ultimately, Ostas (2007, p. 42; see also Audi, 2008, p. 98) argues that 'the truthfulness of lobbying activities will have to depend on the lobbyist's desire to preserve his or her reputation for honesty and on personal ethics ... rather than on direct legal regulation'. Such reliance, however, readily devolves to letting the market police the relationships between lobby agents and their organization principals, a policing power that we have already seen is very weak.

Therefore, in the end, we remain pessimistic about the effectiveness of such social controls. The weakness of professional norms, especially, as a constraint on lobbying behavior, lies, in the end, not with the weak ethical codes of the professional associations nor with their few members, but in their failure to be embedded in the ancillary institutional structures that might make such codes effective. Thus, Williamson (1993, p. 478) notes that, 'The obligation to fulfill the definition of a role is especially important for professionals – physicians, lawyers, teachers, and so on. Although their roles generally arise in a spontaneous ... manner, they are thereafter supported by entry limitations (such as licensing), specific ethical codes, added fiduciary obligations, and professional sanctions. Such support features are highly intentional. They have the effect of infusing trading confidence into transactions that are characterized by costly information asymmetries'. What is missing for lobbyists are the entry limitations – along with enhanced fiduciary obligations and sanctions – that are necessary to make ethical codes useful in controlling opportunism.

Again, none of the three major mechanisms of control conflicts of interest in complex exchanges is likely to provide a perfect inoculation against principal-agent problems. Again, this does not mean that all such relationships fail. Large organizations with strong hierarchical capacities for oversight might be able to write better contracts with contract lobbyists and/or monitor in-house lobbyists. The preferences of the heads of some membership organizations may



so aligned with those of their members that no oversight is needed. But it seems unlikely that this will always be the case. As a result, we should expect that agency problems might be common in lobbying.

## Implications

We have, to this point, laid out a case that agency problems might emerge in the relationship between lobbyists and their clients. Why should we care? We think that this topic merits attention in its own right if we are to better understand lobbying or, more specifically, we are to have anything to say about such scandals as the Abramoff affair. But should students of the larger literature on interest representation care? Such agency problems might not be an issue for much of the literature if they are small rather than large and infrequent rather than frequent. Further research will be needed to better characterize agency issues on both dimensions. Even if frequent, agency problems may not be too troubling if they introduce only random noise into our models. And in many cases, we suspect that agency problems can be treated as noise without systematic import. But we do not think that this is always the case. Given our lack of empirical knowledge, we have no sense whether agency issues are common or rare in lobbying. And if they are the former, agency might well have a significant impact on how we think about those other topics. Therefore, we need to examine the central topics within the literature on interest representation that might benefit from further consideration of these agency issues and the additional research topics their consideration might suggest for us.

## Organizational demography

The first of the existing literatures that might benefit from a fuller consideration of agency problems is that on the demography of interest representation. For example, the now standard model of interest system *density*, the ESA model, suggests that the size of interest organization populations is determined by the number of potential constituents of interests (area or supply) and the policy and political uncertainty (energy or demand) that can be used to mobilize them for political purposes (Gray and Lowery, 1996). But Olson's (1965) logic of collective action argument suggests that, irrespective of the supply and demand forces leading to differences in mobilization across jurisdictions or interests or over time, mobilization rates will likely be suppressed over their otherwise true levels owing to problems of free riding. This means that the response coefficients of the supply and demand variables in the ESA model might be smaller than they should be, indicating that there is



likely an undersupply of lobby organizations. Yet, we have seen that perhaps the most powerful difference in the interests of clients and those of their lobbyists lies in the very production of lobby services; lobbyists benefit from doing more rather than less lobbying, perhaps much more than their clients might prefer were they fully informed and/or fully capable or managing their representatives. This suggests that existing forces in the lobby relationship might lead to an oversupply of lobbying. We do not, however, think that such pressures are fully determinative; there is plenty of evidence that lobby populations cannot long be sustained in the absence of sufficient demand for lobbying (Brasher *et al.*, 1999). Still, we have offered a number of conjectures about variations in these over-supply forces – between those organizations rarely lobbying and those maintaining a permanent presence in the lobby community, between those relying on contract lobbyists and in-house advocates, and between institutions and organizations with members – that might be used to tease out their severity.

Another implication of this variation in the oversupply of lobby services concerns the *diversity* of the interest system, a topic that has long attracted the interest of scholars (Schattschneider, 1960; Schlozman, 1984). In accounting for why the populations of some types of organized interests increase faster than others, and thereby jointly determining the diversity of an interest systems at any point in time, Lowery *et al.* (2005) found that interest guilds with larger numbers of institutions (organizations without members) grew faster than those without. We have pointed out here a number of reasons why adverse selection and moral hazard might be especially great for such institutions in comparison to membership organizations. Thus, it may not be just their relative capacities for mobilization that account for the faster growth rates of these organizations.<sup>12</sup> Their demographic advantage might also lie in a more general oversupply of institutional lobbying arising from their relatively more severe agency problems.

How might we know if an oversupply of lobbying occurred because of principal-agent problems? One possibility would be to take advantage of some of the variation across lobbying forms in terms of the degree to which they promote lobbying in general. At the macro-level, we might compare states in which the proportion of lobbying done by contract lobbyists is higher to those states where it is lower. We might expect the former, perhaps with some difficulty controlling for all else that is different, to have higher levels of lobbying on the part of institutions. Mediating our analysis by an institution's use of an in house vs. a contract lobbyist, we might compare lobbying effort (as measured by entrance into the lobbying population and the extent and type of tactics used) among institutions that are similar in terms of their issue concerns and lobbying capacities. We might expect the former, if market controls are comparatively weaker than hierarchical controls in terms of



controlling agency, we might expect organizations employing in-house lobbyists to be somewhat less active than those employing contract lobbyists. But while extracting and assessing test implications may be difficult, doing so will be essential if we are to address what is essentially an endogenous determinant of the density and diversity of interest systems that goes beyond the kinds of exogenous forces usually discussed within the organization demography literature.

### **Lobbying process**

A second topic within the literature upon which our analysis might bear concerns the practice of lobbying: *the issues lobbied, who is lobbied and how they are lobbied*. In all three cases, the implication is the same: lobbyists might well prefer to lobby on some topics, lobby in some venues and lobby using certain techniques because it is more convenient for them to do so than to lobby in a manner that would better serve their clients. Of the several hypotheses generated from the principal-agent analysis of Stephenson and Jackson (2009), this is perhaps the most telling. Thus, in regard to issues lobbied, they (Stephenson and Jackson, 2009, p. 14) suggest that, 'lobbyists may have an excessive incentive to identify issues where the potential rewards of lobbying activity to the lobbyist appear to be high, even when they are not so high for the client'. They suggest, for example, that opportunistic lobbyists might prefer to seek cheap victories on symbolic issues rather than to address issues with more tangible consequences. By the same logic, they might prefer to lobby in venues with which they are more familiar using techniques they are already practiced in.

One useful way to examine such agency problems is to look more closely at empirical analyses of our models of issue selection, venue choice, and tactic or strategy use. Or more specifically, we should look more closely at cases where the issue, venue, tactic or strategy deviated from that predicted by the model in question. In regard to tactics, for example, we might look more closely at cases of inside and outside lobbying – whether via a large number of cases or through carefully chosen case studies, such as Rothenberg's (1992) analysis of Common Cause – that are not correctly predicted by issue popularity and the salience of issues (Kollman, 1999). Agency problems would be evident if an experienced inside lobbyist persisted with inside lobbying even if the popularity-salience configuration of the issue points to greater utility from outside lobbying. Similarly, if we observe a lobbyist specialized in direct mail persisting in these activities on a high salience, low popularity issue, such misalignment could constitute evidence of opportunism. Such deviant cases, and their comparison with cases more consistent with theoretical expectations across the range of empirical tests of venue choice, the use of tactics and strategies, and issue





selection could serve as a rich resource for scholars with which to uncover agency problems and empirically assess their frequency, severity and eventually their causes.

This is not the only approach that might be taken to gain some access to potential agency problems. Another approach might entail comparing similar organizations with similar issues, but relying on different lobbying forms, in terms of the breadth of lobbying and their selection of tactics and strategies. Again, at several points, we have noted that comparing across institutional forms suggests that some forms of agency problems apply more strongly to contract or in-house lobbying. Alternatively, we could hold the contract lobbyist or the in-house lobbyist constant and vary the strategic situation in which the lobbyist finds him or herself. If agency problems exist, we would expect the use of tactics and strategies to be constant for the lobbyist, not the issue and its strategic context, because the lobbyist would be serving his/her interest, not that of the client. Such analyses, of course, would be difficult given the variety of other factors that influence the choice of lobbying tactics and strategies. As in the case of the organizational demography topic, such analyses would focus on a determinant of lobbying behavior that is endogenous to the industry and its structure, not something that arises from the nature of the issue.

### **Lobbying influence**

The third and final research area to which our analysis of agency problems might apply concerns *lobbying influence*. One obvious question concerns the relative influence of different kinds of interests, especially the influence of large institutions in comparison to citizen organizations and other membership groups (Schattschneider, 1960; Schlozman, 1984). Some have suggested, however, that the dominance of business interests in lobbying communities may not constitute evidence of excessive influence so much as weakness in the face of policy uncertainty (Heinz *et al.*, 1993, pp. 379–380). In some respects, our analyses may lend support to the latter position in that we have seen that principal-agent problems might be more severe for business interests with relatively fleeting policy concerns given their greater reliance on contract lobbyists and diminished opportunity for recourse to solutions relying on social norms that might more readily align the interests of principals and agents. All other things equal, membership groups might be better positioned to represent their organizations' positions to governmental officials with fidelity. Although perhaps fewer in number than their business counterparts, such organizations may lose less energy and fidelity in their communication of preferences to responsible policy officials.



Turning to a final, even broader issue of influence, agency problems might help to explain one of the major conundrums facing the field. That is, much of our research on lobbying has failed to find that lobby organizations are very successful in influencing policy (Page *et al.*, 1987; Gerber, 1999; Smith, 2000; Lowery, 2007). Of course, Baumgartner and his colleagues (2009) caution that the status quo is always powerful, which militates against finding influence in the sense of change. However, they find that a very large proportion of lobbyists fail even to get their issues on the policy agenda. If success is so unlikely, why do organizations lobby? Our analysis suggests that in addition to the power of the status quo and the constrained space of policy agendas, we might also look at the competence of lobbyists. Some may simply do a poor job of representing the interests of their clients.<sup>13</sup> Why ascribe variation in lobbying success almost completely to variations in lobbying context? And if skill and motivation do matter, why should they be distributed randomly across different types of interests rather than, as we have seen, be more likely to occur in some lobby contexts than others? Surely, not all lobbyists are like Jack Abramoff. But neither are they all Wayne LaPierre of the National Rifle Association (Sugarmann, 1992) or Wayne Wheeler of the Anti-Saloon League (Okrent, 2011), both highly successful lobbyists in the United States who fully and energetically represented the interests of their constituents. This variation is something that should matter for our theories of interest representation and merits our attention.

In particular, if we can map the severity of principal-agent problems – not in itself an easy task with an obvious solution – across different kinds of lobby organizations and strategic contexts, we should then see if variation in that severity influences the level and frequency of lobbying success. If such variation does not matter, then the many issues discussed here can be considered noise with respect to the lobbying influence literature. Agency problems might be rare. And even if they are not, their impact on lobbying success may still be random and unsystematic. At this point, however, we can only say that agency problems are plausible while their severity and impact remains an unknown source of specification error in our models.

## Conclusion

Contrary to the existing literature, our analysis suggests that agency issues in lobbying are plausible. Still, we do not mean to suggest that all or nearly all lobbyists' interests diverge from those of their clients or that shirking is common in the face of completely ineffective monitoring. Rather, we wish to point out that the opposite of this claim – that lobbyists always faithfully



represent the interests of their clients – is also not justified. And it is the latter claim that implicitly underlies nearly all of our collective work on the politics of interest representation. Our theories and empirical analyses have nothing to say about the case of Jack Abramoff because they do not allow for the possibility that lobbyists might not faithfully and energetically represent their clients.

Going beyond the impact of our analysis on existing topics in the field, perhaps the most important implication of our attention to the possibility of agency problems in lobbying concerns the internal working of lobby organizations. With only few exceptions (Rothenberg, 1992), we have paid little attention to the internal processes of interest organizations in recent decades. There is good reason for this in that earlier examinations of their internal processes were typically conducted via case studies, an approach that has been largely eschewed in recent decades via long-needed recourse to large *n*-studies (Baumgartner and Leech, 1998). And even Kersh's (2000) landmark discussion of agency problems in lobbying is empirically based on less than systematic observations of lobbyists in their work. While powerfully instructive in terms of construct validity, such techniques are less useful when we wish to understand the processes governing agency problems and their causes. But there is no reason why these cannot be studied via large *n*-methods.

More to the point, our analysis has demonstrated that agency issues can present a number of dilemmas to interest organizations. For example, we have seen that long-term ties between organizations and their lobbyists, or what Williamson called relational contracting (1979, p. 240), may enhance the strengths of normative controls on agent opportunism. But long-term relationships also suppress the use of market controls as they, because of asset specificity arising from prior lobbying, enhance the agent's bargaining power in succeeding rounds of contract renewal. Further considering how *organizations manage these dilemmas* may provide some empirical and theoretical leverage in understanding the potential impact of agency problems on lobbying. At present, we do not know how interest organizations manage or even understand these dilemmas. Nor do we know how frequently organizations face them; we do not know if the Jack Abramoff affair was only an extreme case of what is common in less severe form or if it was a truly rare event.

In addition, mapping the frequency and severity of agency problems in lobbying and the dilemmas they present to organizations with interests in public policy may also allow us to better understand how organizational forms are adopted in lobbying. The economics of organization literature suggests that such dilemmas are addressed by attending to the production and transaction costs different solutions pose for organizations (Williamson, 1981; Demsetz, 1988) whereby organizational forms are adapted to (Aldrich, 1999) or selected for (Hannan and Freeman, 1989) optimal responses. If this is true, then the



severity of agency problems might well be minimized via the internal decisions of interest organizations. The choice between in-house and contract lobbyists would, under the pressure of competition, be optimized to reduce opportunism. But such market pressures may be insufficient to optimally control opportunism if they do not bear directly on non-core activities of organizations (and lobbying is rarely a core activity of most institutions). Even worse, the choice of organizational forms may be governed more by a ‘logic of appropriateness’ than a ‘logic of consequences’ (March 1991). If so, we might expect that agency problems are more ubiquitous than they might otherwise be. But we will not be able to determine if this is true or how much it matters until we determine how frequently agency problems occur and how organizations respond to them.

Finally, we return to the problem we raised in the introduction of this analysis – our collective lack of anything much to say about the Jack Abramoff scandal. Jack Abramoff was not a good man. But self-interest *per se* does not explain the scandal. Instead, his relationship with the Tigua Indian Tribe was fraught with agency problems so that opportunism – self-interest with guile – was likely. The Tribe was an infrequent and inexperienced visitor to the Washington lobbying scene and, physically, far removed from it. In such situations, contracting for services with an unprincipled lobbyist whose interests were very different from theirs, and with no effective means – via market, hierarchy or social norms – to better align their interests, created ample opportunity for Mr. Abramoff to exploit his clients. Thus, principal-agent analysis can help us understand what happened. More importantly, except for the perhaps admittedly extreme lack of principles on Abramoff’s part, the *situations* giving rise to the agency problems in this case are not, on their face, especially different from those observed in many, many others.

## Notes

- 1 Abramoff was later sentenced to 6 years of prison time and served 3 years and 6 months before being released to a Baltimore halfway house on 8 June 2010.
- 2 Stephenson and Jackson (2009) also develop a number of hypotheses about lobbying, only one of which – discussed later – we find to be especially plausible given numerous unexplicated steps in the rather long causal chains underlying their expectations. Kersh (2000) also gives considerable attention to the links between political officials and lobbyists that lead lobbyists to have their own preferences that are distinct from their clients, an issue that we do not readily address. While it is very likely that this mattered in the Jack Abramoff case given its broader ties to the K-Street project of Republican leaders such as Tom DeLay, we think that this was a more uncommon problem in other venues in which lobbying takes place.
- 3 The latter two types of lobbyists are often analyzed together given that they seem to respond to environmental constraints in a similar manner (Gray and Lowery, 1996). However, we will argue below that they may differ in terms of the suitability of various mechanisms that might ameliorate principal-agent problems. And while, as we will see, the contract lobbyists and



public affairs officers might seem quite distinctive, Alchian and Demsetz (1972) argued long ago that the capacity of principals to control agents is conceptually no different when internal employment contracts are used than when recourse is made to contracting with an external agent.

- 4 While not always true, there are certainly many cases – for example, the lobbying associated with the Clinton administration's efforts to break-up Microsoft (Hart, 2002), lobbying on the regulation of tobacco (Wright, 2004), or lobbying associated with the Obama administration's bailout of the auto industry – when lobbying outcomes fundamentally reshape the prospects of the lobbying entities.
- 5 Although institutions now dominate lobby populations (Salisbury, 1984), very, very few institutions actually lobby. For example, only a tiny proportion of manufacturing firms that could lobby actually do so (Lowery *et al.*, 2004). And they leave lobbying rolls at an alarming rate, going on, however, producing tires or laundry detergent (Gray and Lowery, 1995). In contrast, lobbying is more central to the work of many associations and membership organizations. Indeed, when they stop lobbying, this usually means that the organization has died (Gray and Lowery, 1995).
- 6 Or, as in the case of Jack Abramoff and his Indian casino clients (Stone, 2006), the lobbyist may represent neither client's interest, playing them off against either other to provide benefits to only the lobbyist. But this is not a conflict between clients as an example of the next set of adverse selection issues associated with divergence in the interests of a single client and his/her lobbyist.
- 7 The problem of multiple principals is, of course, of central concern to the literature on agency problems in controlling bureaucracy (Wood and Waterman, 1991).
- 8 There are, of course, other social control mechanisms that are designed to address agency problems more generally. Perhaps the most prominent in human history is patronage. Still, we focus on the three most plausible for the lobbyist–client relationship.
- 9 It might, however, still influence whether lobbying is done as this is a cost to the core of the organization, as suggested by Gray and Lowery (1996).
- 10 In the medical and legal professions in the United States, these are guidelines set by the American Medical Association and the American Bar Association, respectively.
- 11 The very notion of lobbyists' ethics is often viewed as an oxymoron in most public discussions of lobbying, something that is not true (or certainly less true) for physicians and lawyers.
- 12 Indeed, Lowery *et al.* (2005) find no differences in the rates of mobilization among interest guilds with more and fewer resources. Still, see Maloney (2008) for a competing argument.
- 13 Such a thought should not be strange. We use variations in the skills of participants to explain many outcomes in life, from success in sports to election to office. Therefore, why should be assume that all lobbyists are equally competent or motivated to serve their clients?

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