

# Extension of Remarks



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## From the Editor

Sean Q Kelly  
*Niagara University*

In late-2005 I was thinking about a past exchange in *Extension of Remarks (EOR)* from the late-1980s that I wanted to use in a class. I was somewhat surprised to learn that an archive of the printed versions of *EOR* did not exist. In an attempt to preserve part of the legacy of *EOR* I appealed to members of the Legislative Studies Section for their pre-Internet printed issues of *EOR*. While I did not turn up all of the issues, generous individuals combined to provide me with all of the issues between 1991 and 1998. Those issues have been scanned and added to our website along with a cumulative index for volumes fourteen through twenty-eight.

As I perused these back issues I realized how well past issues of *EOR* had addressed contemporary issues over those years. Considering the current debate in Washington over congressional ethics reform I decided to reprint a number of past contributions to *EOR* that touched on legislatures and reform. By presenting these classic essays I hope to accomplish several goals. First, I want to highlight the renewed availability of some past issues. Second, I want to highlight issues of enduring interest and concern to the legislative studies community. Third, using these essays as a backdrop to contemporary debates legislative scholars can consider what we've gotten right (and wrong) in our contributions to the public debate over reforming legislatures.

I hope you enjoy these essays and the expanded availability of past issues. Should you find that you have issues in your possession that are not included on the site please share them with me and I will get them scanned and get them posted.

Also included in this issue is an essay by Kenichi Ariga. Ariga provides insight into his ongoing research on intra-party bargaining in parliamentary institutions.

## Changing of Washington Culture: Lobby Disclosure and the Gift Ban

Ronald G. Shaiko, *American University* (now of *Dartmouth College*)  
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During the last three years, more changes have been made in the relationships between organized interests and their representatives and the federal government than at any time in the last fifty years. In January of 1993 President Clinton issued Executive Order 12834, which added restrictions to the post-employment lobbying activities of executive branch officials. The one-year cooling off period that banned contracts with former agencies or departments was extended to five years. The Executive Order also places a lifetime ban on former executive branch officials from working as a foreign agent on behalf of foreign governments or foreign political parties, but does not include a ban on lobbying for foreign corporations. Later in 1993 the Clinton White House eliminated the tax deductibility of lobbying expenses by corporations and related business organizations in budget reconciliation legislation.

The following year proved to be a difficult one for broad lobby reform efforts. In S. 349 and H.R. 823, the Congress had fashioned solid lobbying disclosure legislation. The Lobbying Disclosure Act of 1994 would have provided comprehensive reporting requirements, an independent registration and disclosure entity, and would have included grassroots lobbying and gift ban provisions. Ironically, the Lobbying Disclosure Act was lobbied to death in the Senate by a "strange bedfellows" alliance of nonprofit organizations, including such groups as the Christian Coalition and the American Civil Liberties Union.

Even more ironic is the lobby reform passed in the 104<sup>th</sup> Congress. Floor opposition to lobby reform in the House in the 103<sup>rd</sup> Congress was directed by Minority Leader Newt Gingrich and Rep. Tom DeLay (R-TX). With Gingrich, as Speaker, and DeLay, as whip, leading the new Republican majority in the House, one would not expect lobby reform to see the light of day. Part of the new Republican legislative strategy was to separate the gift ban from lobby reform by giving only the lobby reform jurisdiction to the newly created Sub-committee on the Constitution of the House Judiciary Committee, chaired by sophomore Charles Canady (R-FL). Figuring that Canady would be swamped by all of the items in the Contract with America that involved constitutional issues, (e.g., term limits and balanced budget), the leadership did not expect much action on lobby reform. Unfortunately for Gingrich and the House leadership, the freshmen Republicans (as well as the sophomores, including Canady) had run campaigns targeting congressional reforms as high priorities. While the leadership was implementing a divide and conquer strategy for the gift ban and lobby reform, the rank-and-file membership had other plans.

### **The Lobbying Disclosure Act of 1995**

Following the first hundred days of the 104<sup>th</sup> Congress, the House began to explore the issue of disclosure-based lobby reform. The first round of hearings began in late May in Canady's subcommittee. The Senate, unencumbered by the Contract agenda, moved more quickly on lobby reform, as Senator Carl Levin (D-MI) redoubled his efforts to pass significant legislation. Working with

subcommittee chair Senator William Cohen (R-ME), Levin moved S. 1060 unanimously through the Senate in July, 1995. Though delayed by the Contract and other issues, the House passed the Senate version of the bill in November by a vote of 421-0. President Clinton signed S. 1060 into law (P.L. 104-65), and the new lobbying disclosure law took effect January 1, 1996.

After almost fifty years of monitoring the lobbying industry under the unenforceable 1946 Lobbying Act and several more targeted legislative efforts, The Lobbying Disclosure Act of 1995 consolidates many of the provisions contained in the 1946 Act with these related laws. More importantly, the new law acknowledges the realities of lobbying in the late 1990s. For example, contacting "covered" congressional staff and executive branch officials on specific policy issues now constitutes lobbying under the new law. Under the 1946 Act, lobbying was limited to direct contracts with Members of Congress on legislative matters by paid professionals who spent a "substantial part" of their time meeting directly with Members of Congress. Under the new Act, a lobbyist is defined as any individual employed or retained by a client or organization for financial or other compensation, and whose lobbying activities constitute more than 20 percent of his or her activities during a semiannual period. One is exempted from filing if total income related to lobbying for a particular client is \$5,000 or less during a semiannual period; similarly, an organization that employs its own lobbyists and spends less than \$20,000 on lobbying activities need not register. A variety of activities and communications are not considered lobbying, including communications made by a public official acting in an official capacity or a representative of the media for the purpose of news gathering. Congressional testimony is also exempted as is information provided to Members of Congress or senior executive

branch officials when requested in writing by these officials. Communications required by subpoena or similar action do not constitute lobbying, nor do contacts made by a church or religious order.

According to Peter Levine, staff counsel to Senator Levin and chief architect of the legislation, there were four broad questions that guided the crafting of the new lobbying reform bill, all of which were directed at disclosure rather than regulations. The legislation needed to identify: 1) who was lobbying; 2) on behalf of whom; 3) on what issue or issues; and 4) the amount of money received for lobbying. The 1995 Lobbying Disclosure Act does provide this information. Through a two-step process involving the initial filing of lobbying registration forms and the subsequent filing of semiannual lobbying reports.

The initial registration form must be filed with the Clerk of the House or the Secretary of the Senate no later than 45 days after a lobbyist makes a first lobbying contact. The information requested includes basic information about the registrant to the client, although in many instances these will be the same. In addition, data on general and specific lobbying issues are required, as is information on affiliated organizations and foreign entities.

The second stage of lobby disclosure involves the filing of semiannual lobbying reports, with the initial semiannual (Mid-year) reporting period ending on June 30, 1996. According to John Kornacki, director of the Legislative Resource Center in the House, the bulk of the reports should be available on computer by late August. The requirements for the semiannual reports are similar to those of the registration forms.

The Lobbying Disclosure Act of 1995 is certainly an improvement over the 1946 Act and the assortment of legislative remnants that constitute lobby regulation. Nonetheless, there are glaring weaknesses in the Act. First, there is no mention of grassroots lobbying in the

law. This omission occurred largely because the legislation failed in the 103<sup>rd</sup> Congress due to the inclusion of grassroots provisions. One cannot understand the role of organized interests in Washington in the late 1990s without including grassroots lobbying. Similarly, the language created to identify the activities of coalitions in Washington is too vague to capture the variety of ways in which coalitions operate. Many of the activities undertaken by coalitions are focused on grassroots mobilization and broad media campaigns. Neither of these activities constitute lobbying under the new rules. Therefore, it is quite easy for a multi-million dollar coalition to avoid registering as a lobbying entity as long as each of the coalition members provides less than \$10,000 semiannually for lobbying purposes. Various attempts by investigative journalists in Washington to uncover possible hidden coalitions that are now forced to register under the new law have identified a grand total of six groups. In addition, we will be learning little about the specific targets of lobbying as the legislation requires only that specific bills be identified, as well as the chamber that was lobbied. Contacts with individual Members are not reported, in another concession to the political necessities of passing the disclosure legislation.

Finally, Senator Levin claims that the number of registered lobbyists has doubled from about 6,000 organization and individuals to more than 12,000 today, as a result of compliance with the 1995 Act. This is a bit of an overstatement. Under the 1946 Act, the House received, on average, about 8,000 lobbying activity registrations. The new law does not focus on the activity as the unit of analysis, as did the 1946 Act. Nonetheless, as of May 19, 1996, there are roughly 9,000 clients reported on the Lobby Registration Forms being represented by about 3,000 registrants, with the total number of employees at about 23,000. Senator Levin (and Peter Levine)

would have us add the 9,000 clients represent the number of interests registered. For example, Akin Gump, a powerful Washington law/lobbying firm lists 69 clients; Cassidy and Associates filed 88 registration forms; Hill and Knowlton identified 24 clients, while Timmons and Company lists 21 clients. In these instances the firm would appear as one registrant. Levin would be correct in adding registrants and clients only if every client in Washington was represented by a multi-client firm. This is simply not the case. The number of clients listed as "Self" (i.e., an in-house lobbyist representing registrant organization) accounts for well over half of all clients. Perhaps there has been an increase in lobbying registration, but certainly the number has not doubled. Another problem in reporting lies in the counting of the employees associated with lobbying activities. When listing their employees, some firms have chosen to list their entire lobbying related staff on **each** registration form; therefore duplication in counting the total number of employees is very likely. Despite these shortcomings, we now have some very interesting data that previously did not exist and lobbying disclosure requirements that more closely reflect the realities of lobbying in the late 1990s, even without significant enforcement mechanisms.

### **S. Res. 158 and H. Res. 250: Gift Ban Provisions**

Perhaps more than the Lobbying Disclosure Act, the Senate and House Resolutions relating to the acceptance of gifts and travel from lobbyists and organized interests has changed the political culture on the Hill. On July 28, 1995 the Senate passed S. Res. 158 by a vote of 98-0. Effective on January 1, 1996, Senators and their staffers are severely restricted in accepting gifts, including meals and entertainment. The gift restriction resolution prohibits any Senator or staffer from receiving a gift or meal over \$50; it also places a \$100

annual limit on gifts from a single source. Under the new rules, meals over \$10 will count as part of the \$100 annual limit and must be reported. As a result there has emerged in many Hill restaurants the "Senate Special," a full lunch for \$9.99. Gifts from family and friends also fall within the jurisdiction of the new rules, with personal gifts of more than \$250 prohibited without the written approval from the Senate Ethics Committee. Senators and staff may receive commemorative materials such as plaques, trophies, or other awards of nominal value. The Resolution also bans the acceptance of free travel to events that are substantially recreational, but does not allow for travel in connection with their official duties. Senators may still receive honoraria of up to \$2,000, which they must subsequently donate to charitable organizations. The rule "continues to allow Senators and their aides to accept: campaign contributions from lobbyists and others; contributions from those who are not lobbyists to a Senator's legal defense fund; gifts from other Senators and staff aides; anything of value resulting from outside business not connected with official duties; pensions and benefits; informational materials, such as books and videotapes; honorary degrees, including travel to ceremonies; items of little intrinsic value; inheritances; or any gift for which a waiver is approved by the Ethics Committee."

The House of Representatives went even further than the Senate by passing an outright gift ban on November 16, 1995. H. Res. 250 severely limits the ability of any Member or staffer to accept meals or gifts from lobbyists or constituents. Only in "widely attended" events that include a range of participants, not simply lobbyists and Members, may a Member or staffer even accept a meal. Like the Senate, there is a "friends and family" limitation as well as an exception of awards, plaques, hats, and other items of nominal value. Members may also

request from the House Ethics Committee waivers on the acceptance of certain gifts.

What is truly ironic about the gift ban efforts in the House and Senate is that these attempts to limit the role of money in the political process through the acceptance of gifts and travel from lobbyists and other interested parties have made money more important in the political process. Now the only time a lobbyist may have access to a Member or Senator outside of the confines of a congressional office or in the hall on the way to a vote is at a fundraising event. Since the gift ban does not limit the abilities of Members and Senators to accept PAC contributions of up to \$5,000 per election, those moneyed interests will continue to wine and dine elected officials in the context of financing their reelections. The House and Senate gift ban provisions have changed the ways in which organized interests do business on the Hill. As time passes, more and more lobbyists will figure out new ways to operate under the new rules.

### **Future Lobby Reform Efforts**

House Republicans have several lobbying reforms on their agenda for the remainder of the 104<sup>th</sup> Congress. William Clinger (R-PA), Chairman of the House Government Reform and Oversight Committee has proposed the "Anti-Lobbying Act of 1996," which would strictly prohibit executive agencies from conducting lobbying efforts in support or opposition to any legislative initiative. Currently the 1919 Anti-Lobbying Act limits the grassroots lobbying activities of executive agencies. A number of House Republicans have targeted the Environmental Protection Agency, the Department of Veterans Affairs, and the Department of Commerce for violations of the anti-lobbying law. Thus far, this legislation has received 190 votes when offered as an amendment to the Lobbying Disclosure Act of 1995.

A second controversial legislative effort that involves lobby regulation is championed

by Ernest Istook (R-OK) and David McIntosh (R-IN). Istook and McIntosh have targeted nonprofit organizations for particularly close scrutiny. The Simpson amendment included in the 1995 Act deals with 501(c)(4) organizations. The Istook-McIntosh proposal would expand the prohibition on lobbying on 501(c)(3) organizations that receive federal funding. Viewed by its opponents as the “Defund and Left” movement, Istook and McIntosh have tried to attach their legislation to a variety of bills, to this point unsuccessfully. They remain vigilant, however, in their pursuit of the issue. On a less partisan, yet equally controversial effort, attempts are underway to apply the post-employment restrictions outlined in the Clinton Executive Order 12834 to Members of Congress and senior staffers, lengthening the cooling-off period from one year to five years. Finally, Congress may revisit the Lobbying Disclosure Act of 1995 in an attempt to amend some of the provisions as well as to add items not included in the original legislation, particularly relating to grassroots lobbying and revolving-door practices. Although a House Judiciary subcommittee approved some new provisions in May, 1966, the possibility of passage during the 104<sup>th</sup> Congress remains remote.

### Endnotes

1. For additional details of Executive Order 12834, see Ronald G. Shaiko, “Lobby Reform: Curing the Mischiefs of Factions?” in James A. Thurber and Roger H. Davidson, eds., *Remaking Congress: Change and Stability in the*

*1900s*, (Washington, DC: Congressional Quarterly Press, 1995), pp. 160-161.

2. For an account of the failed lobby reform effort in the 103<sup>rd</sup> Congress, see Ronald G. Shaiko, “Lobby Reform: Curing the Mischiefs of Factions?” pp. 156-165.

3. In addition to the Federal Regulation of Lobbying Act of 1946 (2 U.S.C. 261-270), Congress also monitored the activities of lobbyists through the Foreign Agents Registration Act (FARA) of 1938 (22 U.S.C. 611 et seq.), the 1976 Lobby Law that regulates the activities of nonprofit organizations (Section 1307 of P.L. 94-455), the 1989 Byrd Amendment (31 U.S.C. 1352), and the Housing and Urban Development (HUD) Reform Act of 1989 (42 U.S.C. 3537b); for an explanation of these legislative initiatives, see Ronald G. Shaiko, “Lobby Reform: Curing the Mischiefs of Factions?” pp. 158-160.

4. See Ruth Marcus and Guy Gugliotta, “Number of Lobbyists Who Register Doubles,” *The Washington Post*, March 16, 1996, p. A4.

5. The Lobbying Disclosure Act of 1995 replaces the criminal penalties of the 1946 Act with civil penalties for noncompliance, including fines up to \$50,000. It is doubtful that the Clerk of the House or the Secretary of the Senate will pursue unregistered lobbyists or sanction improper registrants as nothing in the Act can be construed to grant audit or investigate authority to the clerk of the House or the Secretary of the Senate.

6. Jonathan Salant and Richard Sammon, “Senate Bans Lavish Gifts from Interest Groups,” *Congressional Quarterly Weekly Report*, July 29, 1995, p. 234.

## Ethics and Lobbying

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Lobbying state legislatures traditionally has been an “inside game,” played by lobbyists and legislators. This game is based in large part on relationships, by means of which lobbyists demonstrate their credibility and legislators develop a sense of obligation. Credibility ensures the acceptance of information by legislators of information that lobbyists convey. A sense of obligation encourages legislators – other things being relatively equal, the lobbyist’s cause doing no harm, and the legislator have no principled or political objection – to help lobbyists out. A good relationship affords the lobbyist preferred access, the benefit of the doubt, and assistance at the margins of behavior or on peripheral issues.

One way of establishing and maintaining relationships is through socializing, with legislators and lobbyists meeting and connecting with one another. Socializing works best at dinner, attending a sporting event, while playing golf, or on a hunting or fishing trip. Socializing occurs in a variety of venues but it has one feature in common. It takes place under conditions where the lobbyist is paying the tab, giving the gift.

Relationships are no longer the bedrock of the legislative process, because of the “new ethics” that are sweeping nation and states. The focus of this essay is on the consequences of the “new ethics,” in particular the laws designed to regulate the interaction between legislators and lobbyists. A variety of such laws are on the books, including those governing campaign finance, honorariums, and entry by legislators into the lobbying profession. Of interest here are laws that regulate gift-giving and gift-taking (“benefit passing” as it is called in some places),

activities that seem essential in the development of relationships.

What we posit to be the consequences of ethics law are attributable to other factors as well. Given the hostile environment in which legislators and lobbyists do their work, increased political competitiveness and partisanship, and the phenomenon of term limits, we assume that ethics is part of the equation but by no means all of it.

### The New Ethics Environment

Even without any legislation, relationship building would be harder today. The new breed of legislator is unlike the old breed. Recent generations are more ambitious, more professional, and more individualistic. They eat and drink less; they engage in solitary pursuits (running) rather than social pursuits (card-playing); and they spend whatever time they have left over from politics with their families.

The physical community of the capital city is dispersed, not concentrated as in the old days. Formerly, legislators and lobbyists congregated at one or two hotels near the capitol and would get together after the day’s session. The old hotels have been torn down and legislators are spread out in their living arrangements in condominiums, apartments, and motels. Gathering together is neither as each nor as spontaneous as it once was.

The press makes legislator-lobbyist relationships especially precarious. Legislators and lobbyists have always been targets of the press, but the negativity is particularly evident nowadays. The print press, which furnishes primary coverage of state legislative news, is under the gun. Challenged by the electronic media, including “infotainment” and call-in and talk radio and television, it has to compete

in the marketplace to survive. It does so with muckraking, investigation, and “gotcha” journalism. The press casts suspicion on both lobbyists and legislators, relationships among them, and anything of momentary value that changes hands.

The public, on its part, feels that special interests and their hired guns, have their way with legislators while ordinary citizens are left out in the cold. Citizens have little positive to say about either lobbyists or legislators. A poll by the *Hartford Courant* found that 40 percent of people in Connecticut thought that the state would “be better off in all respects if there were no lobbyists.” In Utah, a *Salt Lake Tribune* survey reported that eight of ten people believed that free meals, gifts, and tickets to sporting events influenced legislators. One of the questions asked on the *Star Ledger/Eagle* Poll in February 1994 turned up similar attitudes. It asked New Jerseyans, “What percentage of state legislators are willing to sell out to lobbyists in return for free meals, free trips, or campaign contributions?” Only 3 percent responded “none of them,” while 6 percent said “all of them,” and 17 percent replied “half”. As many as 58 percent of New Jerseyans responded that half or more of the state’s legislators are willing to sell out.

The new environment is distinguished not only by an aggressive press and cynical public, but also by scandals that have occurred in an number of states. The major scandals, involving FBI or local law enforcement strings, have led to the indictment and conviction of both legislators and lobbyists. In California, the fourteen individuals who were tried, including three senators and two assemblymen, were convicted. In South Carolina, of the twenty eight individuals indicted, all but one pleaded guilty or was found guilty. Arizona and Kentucky also lost legislators and lobbyists, including Kentucky’s speaker of the house.

While major scandals have been relatively few, lesser scandals have been

numerous. A few legislators in Ohio failed to disclose the source of honorariums they were paid and one was accused of shaking down interest groups for invitations to speak in return for honorariums. Twenty-four Florida legislators who had accepted hunting, fishing, and pleasure trips failed to report them, claiming that they did not regard trips as gifts. The speaker of the Massachusetts house pleaded guilty to federal tax evasion for filing false expenses and the majority leader of the Minnesota house was responsible for excessive charges on the state’s long-distance telephone line. In New Jersey, New York, and Washington the legislative parties got into trouble for making use of state staffs and facilities for their campaigns. Texas, Maine, Tennessee, Wisconsin, Maryland, Michigan, New Mexico, and other states did not escape scandal of one sort or another.

Legislatures reacted to these environmental conditions by writing laws. The most stringent laws regulating legislators and lobbyists have been passed in those states that experienced a major scandal or in those where the initiative was available to bypass or put pressure on the legislators. Ethic laws pertaining to legislator-lobbyist interactions are diverse, but gift-giving and gift-taking in the states are regulated in these principal ways:

1. Laws that prohibit gifts, the so-called “no-cup-of-coffee” rules. Usually exceptions are made for receptions to which all members of the legislature (or of the legislative chamber or of the legislative committee) are invited and for gifts of minimal value. Wisconsin has observed the rule since the 1950’s. South Carolina, Minnesota, and Massachusetts adopted it recently.
2. Laws that limit the amounts lobbyists can bestow on legislators in gifts and meals. California and New Hampshire legislation cannot accept gifts worth more than an aggregate value of \$250 from a single source

per year. Kentucky's limit is \$100, Ohio's \$75. Florida's legislators cannot accept more than \$100 worth of gifts, but can take all the food and drink they can consume in a single sitting. Iowa limits any single gift, including meals, to \$3.

3. Laws that require the disclosure of all gifts about a threshold amount. States that limit amounts also require disclosure. Other states, like New Jersey, do not have specific limitations but require disclosure of who is taking how much from whom.

### **Consequences of Ethics Reform Gift-Giving/Gift-Taking**

The most immediate result of ethics reform is less gift-giving and less gift-taking. In the few states with prohibitions, entertainment of legislators by lobbyists is a lost art. In the many states with limits and/or disclosure, a number of legislators and quite a few lobbyists have gone cold turkey on their own. That is because public disclosure in today's environment of "shoot first, ask questions afterwards" has such a chilling effect. Few legislators wish to leave themselves open to the reporting of gifts by the press. Fewer still want to risk exploitation by an electoral opponent who would contrast the life style of the high-and-mighty incumbent with that of the simple folks back home.

In Connecticut, legislator Stephen Dargan ranked as the number one target of interests, receiving \$1,450.98 in food and drinks and \$144.85 in gifts from a number of groups (each of which, it should be pointed out, could give a legislator no more than \$150 per year). Although Dargan defended his behavior, he agreed to support a total ban on gifts, explaining that "I don't want to see any more of these stories about the top 10 list." In California, where inexpensive gifts are still permitted, a sign on the door of the suite of offices of Assemblyman Phil Isenberg reads:

### **Please, No Gifts, Please**

We appreciate the thought, but it takes us more time, and it costs us more money to report the gifts than it would to buy them for ourselves.

Few lawmakers travel on pleasure trips with lobbyists anymore. Few take gifts. Entertaining is by no means extinct, but it is down. Lobbyists are spending less on legislators. In New Jersey, for example, since the disclosure requirement went into effect in January 1992, spending on the 120 members of the legislature declined to \$76,083 in 1995.

### **Relationships**

Socializing still goes on, but not to the same extent as earlier. Watering holes are drying up and the restaurant business is suffering in capital cities. "People disappear after work," says Larry Levitam, a former Maryland senator and now a contract lobbyist.

The main occasions for legislators and lobbyists to mingle socially these days are receptions and fundraisers. The former are hosted by major interest groups. When the legislature is in session, on two or three nights a week, several receptions run concurrently. Legislators attend because they are obliged politically to do so (although some go for free food and drink), and not to socialize. Fundraisers offer other occasions for lobbyists to mingle with legislators. But the friendly relationships that were built on other grounds cannot be built at fundraisers, which are dedicated to business. Lobbyists have little more than a chance to show that they contributed to the legislator's campaign.

Term limits, which are in effect in twenty states, make relationships even more tenuous. Under term limits, legislators will be moving in and out in six, eight, or twelve years. Their inclination will be to score immediately and not invest in the future or in intangible relationships.

The close relationships of former times are almost out of question today. Entertainment, socializing, and friendships are

on the decline. Even in earlier times, friendships were few and far between. How many lobbyists, we may ask, remained friendly with legislators after they left public office?

### **Capital Culture**

Capitol cultures are pale shadows of what they once were. Communities of lobbyists and legislators are attenuated, especially in states that have been hit by scandal. In California, South Carolina, and Kentucky the gulf between lobbyists and legislators has grown wide. "The two," writes one observer, "are now waltzing at arm's length in these states instead of dancing cheek to cheek.

Lobbyist largesse once provided the glue that held the capital community together. If Florida leaders wanted to hold a retreat for their leadership teams, lobbyists would pay the bill. If South Carolina's self-styled "Fat and Ugly Caucus" wanted food and drink for a party, lobbyists could be counted on to pony up. Legislators now are apt to dine with colleagues of their own choosing rather than with the legislator grouping that lobbyists may select. This means that relationships tend to be more circumscribed than when lobbyists brought together members from both chambers and both parties.

In some places community has dissolved almost completely. It has less to do with who pays the check than with the fear on the parts of legislators that getting close to anyone may lead to trouble. At one level, legislators worry that inadvertently they may fail to disclose when required to do so. In the words of a former speaker of the Oregon house (now a lobbyist), the new ethics laws "are really putting a lot of honest people at risk of doing something criminal because they may have made an honest mistake." At another level, where undercover operations ensnared legislators, distrust and suspicion run deep. One California senator wore a wire for the FBI and secretly taped conversations with his colleagues. Even years later, California

lawmakers are wary of talking candidly with one another, let alone with lobbyists.

### **Winners and Losers**

Access is not what it used to be. If legislators cannot have their lunch or dinner bought by lobbyists, they have much less incentive to dine with them. Consequently, they spend less time with them. Lobbyists have to beard legislators in their offices, around the capitol building, or back in their districts, and not at meals.

Those lobbyists who rely on other techniques suffer least; indeed, they gain a comparative advantage over those who depend on relationships. Lobbyists whose relationships are already well established, such as former legislators, do not need to socialize. They come out ahead. So do lobbyists who prefer to go home to their families for dinner and lobbyists who would like to be protected from being shaken down for benefits.

Many legislators think of themselves as having lost as a result of ethics reform. In places where salaries are low and legislative service entails economic sacrifice, legislators count on a free lunch (and dinner). Fringe benefits made legislative life possible, and enjoyable. Veteran legislators lament, "It's not fun anymore." The public does not want it to be fun. People's jobs are seldom enjoyable, so why should their representatives' jobs be enjoyable? Legislators, in this as well as other respects, have grown closer to the citizens they represent.

### **Lobbying by Other Means**

When relationships count less, other means of lobbying will count more. Campaign contributions have been a principal currency of interest groups for a while. With the attenuation of relationships, campaign contributions are now the principal means by which lobbyists develop a connection and sense of obligation. But contributions, too, are

suspect by the press and public and campaign finance reform is a burgeoning industry.

The relationship squeeze has also led to grass roots, public relations, and advertising campaigns, a trend that was developing anyway. The contemporary environment of partisan competition, angry voters, and term limits necessitates more than relationships and campaign contributions. It necessitates the involvement, or what can be made to appear to be the involvement, of voters. No longer is it enough to communicate with legislators; now interest groups communicate with the public, who in turn tell it to lawmakers. Facilitating "indirect lobbying," this "outside strategy" is the recent development of technology - direct mail, fax, cellular phones, telemarketing, computer databases, internet. Promoting this approach are the political consultants, whose previous seasonal employment was on election campaigns and occasional referenda. Now they can work on issue campaigns year round.

A former staff director of the Iowa Legislative Council, who is now a lobbyist in Des Moines, described the changes taking place in his state:

...We're probably driving a lot of legislators crazy both at home and at the statehouse because of our phone banks and other grass roots campaigns. We use those techniques because legislators don't necessarily want to see us at the statehouse. It's partly the ethics issue. Our new Iowa ethics law has changed the whole lobbying procedure....We have about 40 new members in the legislature this year, and we don't know them very well. They are being taught not to trust us, which makes lobbying extremely difficult.

This description pertains to many states in addition to Iowa.

The outside strategy ranges broadly. At one end of the continuum are simple grass roots campaigns, relying on key contacts who know legislators and can make special appeals

to them. Groups can "farm their memberships" to enhance their capacity to mobilize telephone contacts and letters from members. Consultants may be brought in to run "astroturf" campaigns from boiler rooms within the Washington Beltway. The scope of conflict can be extended beyond a group's membership to broader base with public opinion polls, public relations, advertising, and the media being utilized to persuade legislators of the political wisdom of a group's position.

It should be noted that while any group can resort to grass roots, the broader a campaign's reach, the more expensive it will be. PR and advertising are not available to everyone. Large memberships, huge war chests, or a natural appeal give some groups advantages over others.

### **The Ethical Consequence of Ethics Law**

The irony of changing from an inside to an outside game is that instead of the ethical issues being solved, they have only changed shape and size.

Despite the sense of obligation inside lobbying may engender, it is overall an honest game. It has to be. Lobbyists must hew to the straight and narrow. They cannot afford to jeopardize their credibility, so they communicate truthfully to legislators. If they deceive, mislead, or perhaps omit, they risk making enemies. Lobbyists are in the business for the long run, so no single issue is worth mortgaging the future. Moreover, the work spreads quickly in a legislature; wronging one member can tarnish a lobbyist's reputation with all members.

The objective of the outside game, in which constituencies and publics are mobilized, is to exert pressure on legislators. This can be done by having citizens contact their representatives or making it appear to representatives that citizens are concerned. Managers of such an enterprise are in the business of shaping public opinion and/or the perception legislators have of it. These issue

campaigns, like candidate campaigns, can be highly manipulative. The political strategists, pollsters, and media consultants who run them need not worry about their reputations in a particular legislature. Their reputations derive from the victories they achieve, whatever the techniques they use. It is not unusual for these campaigns to deal in the slanted, negative, and misleading.

The integrity of the information the public and legislators receive as a result of grass roots, public relations, and advertising campaigns is considerably less than that which legislators receive as a result of lobbying based on relationships. Ethics laws have dealt with some old problems, but have given rise to some new ones.

### Endnotes

1. This essay is based in part on my *Drawing the Line: Legislative Ethics in the States* (Lincoln: University of Nebraska Press, 1996): 103-137, and my *Legislative Democracy: Power, Politics, and Process in the States* (in progress): Ch. 6.
2. New York Times, May 5, 1996.
3. Cited in State Capitols Report, May 20, 1993.
4. New York Times, May 5, 1996.
5. Election Law Enforcement Commission, News Release, April 3, 1996.
6. Christopher Schwarz, "Remodeling the Lobby," State Government News (May 1994): 28.
7. Gary Boulard, "Lobbyists as Outlaws," State Legislatures (January 1966): 22.
8. Laureen Lazarovici, "The Rise of the Windmakers," California Journal (June 1955): 16.
9. Quotes in Karl T. Kurtz, ed., *The Old Statehouse, She Ain't What She Used to Be*. National Conference of States Legislatures (July 26, 1993): 13.

## Is Professionalization a Pathogen?

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Every so often a talented journalist examines the nitty gritty of legislatures in such a way as to highlight important relationships that might otherwise escape the typically more distanced political science community. Such a service was performed by Charles Mahtesian, whose February 1997 *Governing* article, "The Sick Legislature Syndrome and How to Avoid It," posits the idea that as state legislatures professionalize they become less civil places to work and, ultimately, less successful governing bodies. This is an important hypothesis that deserves serious attention.

According to Mahtesian, the sick legislature syndrome results from the needs of politically ambitious careerist legislators whose personal electoral needs drive them to ignore institutional norms of civility as they pursue their individual goals. Far fewer violations of good behavior are to be found in less professionalized legislatures because their members are legislators of a different breed: less ambitious, less concerned with their own political futures, and therefore, more willing to work together for common goals. This relationship seems plausible, but it runs contrary to Polsby's (1968) observation about institutionalization, which holds that norms of civility increase as members adopt long-term perspectives about their service. The notion is that as members serve together longer they have greater incentive to figure out ways to do that civilly.

The cases Mahtesian studies in depth certainly appear to support his hypothesis. Minnesota, among the more professionalized bodies, has suffered from bitter partisanship and near gridlock for much of the decade. In contrast, the much less professionalized Tennessee legislature has enjoyed a more tranquil atmosphere and, arguable, more

productive sessions, despite spending less time in session and having fewer staff resources to support its members' efforts.

It is California, however, that Mahtesian cites as the "flagship of legislative professionalism" and as the "most dramatic exhibit" of sick legislature syndrome. There is little doubt that Mahtesian's characterization of the current California Assembly as a sick legislature is correct. After all, recent sessions have witnessed numerous uncivil outbursts, with members calling each other names and making rude gestures toward each other. One recent story is the *Los Angeles Times* (Gladstone 1997) began by noting, "California's 80-member Assembly has been called disorderly, dysfunctional and as unruly as an elementary school playground during a food fight." But, at the same time the Assembly is justifiably held in low regard, the state Senate, while no bastion of exemplary manners, has managed to maintain a reasonable level of civility and productivity. Yet, of course, the state Senate is operating in the same political culture and electoral system as the more troubled Assembly. Thus one possible problem with Mahtesian's analysis of sick legislature syndrome is that if professionalization is the cause, then the problems it causes should be found in both houses in a state and to the same degree. It is not clear if that is the case in California.

There are, of course, other ways of assessing the possible causes of troubled legislative bodies. One way is to look at the development of the legislature as an institution. In the case of the California Assembly, we know when the professionalization movement took off - the adoption of Proposition 1A in 1966 (Squire 1992). If the Mahtesian thesis is correct, we

should see a legislature which is better behaved, and as a consequence more productive, before professionalization than after. Indeed, as the legislature continues to professionalize sick legislature syndrome ought to become more pronounced.

Looking at the behavior in the California Assembly over time, the picture is actually quite murky. The legislature acquired a poor reputation early in its history. The initial session was called the "session of a thousand drinks" because of the long bars set up outside the meeting chambers by lobbyists, U.S. Senate candidates, and patronage seekers (Goodwin 1916, 261). Things improved little over the next half century. By 1911 the body's reputation was so low that the legislature's chaplain began that year's session by beseeching members to "give us a square deal, for Christ's sake" (Mowry 1963, 139). The Progressive era reforms were intended in part to improve the legislature's reputation and performance. What followed the reforms, however, was a period where the legislature was dominated by the legendary lobbyist Artie Samish, referred to as the Secret Boss of California (Samish and Thomas 1971). Samish influenced legislative behavior by providing members campaign funds and money to help meet their Sacramento living expenses (Samish and Thomas 1971, 122; Buchanan 1963, 59-60). Even after Samish was removed from the political scene by a conviction for income tax evasion, corruption festered in the legislature. Indeed, at the time Jesse Unruh entered the Assembly in 1955, two former Speakers were under indictment for bribery (Buchanan 1963, 55-6).

There is little on the record to suggest that the Assembly Unruh took over was a particularly healthy institution. Moreover, even as he endeavored to improve the legislature's lot, there were episodes of sick legislature syndrome. Take, for example, the fight over the state budget in 1963. Assembly Republicans demanded to see an agreement

that Speaker Unruh had reached with the state Senate on an education budget. The speaker denied the GOP a look, and the minority party exercised its prerogative not to vote. (California requires an extraordinary majority to pass the budget, thus giving the minority party considerable leverage).

According to one recounting of the events that followed (Richardson 1996, 114),

at 1:40 A.M. on July 30, after an evening of heavy drinking, Unruh ordered the Republicans locked into the Assembly chambers until they voted.... That night Republican State Chairman Caspar Weinberger swiftly issued a press release denouncing the lockup as the tactics of "Stalin, Hitler and other dictators." ...Unruh retreated to a bar at the El Mirador Hotel and got even more drunk.... Finally, after twenty-two hours and fifty minutes, Unruh caved in and showed the Republicans the school budget.

The great lockup would seem to be an acute episode of sick legislature syndrome, and it preceded the big professionalization push. And from the picture painted by a member at the time, while the great lockup was the most visible evidence of problems, it was not the only example that could be offered (Mills 1987).

After the reforms of the 1960s, the legislature in general, and the Assembly in particular, enjoyed an excellent reputation. California, for example, placed at the head of the class in The Citizens Conference on State Legislatures (1971) rankings of legislatures. Close observers claimed there were fewer alcoholics and that members were more serious about their duties than in the pre-reform legislature (Fisher, Price and Bell 1973, 69; Salzman 1976, 79-81). A much larger percentage of members live year-round in Sacramento with their families - 70% according to one survey (Dodd and Kelly 1989, 25). Decorum and appearance mattered, as

evidenced by the uproar over one member's attempt to go without a tie on the floor (Endicott 1975) and concerns with another member's intemperate comments on the floor (Hoover 1989). All of this happened after professionalization took hold.

Professionalization, then does not appear to lead directly to sick legislature syndrome. The case of California suggests that the disease may well manifest itself before professionalization. The available evidence suggests that like herpes, sick legislature syndrome flares from time to time and then it seemingly disappears.

Other possible causes may be suggested by looking across the fifty state legislatures. By most definitions, a handful of state legislatures are professionalized, the rest lag those bodies by a little or a lot. Those that are the farthest along the road toward professionalization - those identified by Mahtesian as the most likely to suffer problems - are not a random sample of all states. The most professionalized legislatures are found in the largest and most socially and economically diverse states (Mooney 1995). Thus, if these are the legislatures that are most likely to have problems it may be that they are the organizations that are most under stress from the multitude of demands being made of them.

Additional variables that might contribute to sick legislature syndrome are term limits and heightened partisanship. If term limits are a cause, it would appear to substantiate Polsby's (1968) claims; as members are forced to adopt short-term time frames they lose the incentive to establish norms that encourage civility. But it may be the case that term limits in professionalized legislatures creates the best possible scenario for sick legislature syndrome, with ambitious career-minded legislatures competing with one another during legislative service of short duration. Heightened partisanship, with the memberships of the two parties anchoring the opposite ends of the political spectrum, may

also lead to sick legislature syndrome for obvious reasons. It is not clear, however, if professionalization leads to heightened partisanship or not.

There is little doubt that sick legislature syndrome as described by Mahtesian is a real malady with real consequences for legislators and the people they represent. What is not clear is the cause of the disease.

Professionalization is not a likely source because many of these problems can be found before it took hold. But it may be that for other reasons sick legislature syndrome is more apt to be found in more professionalized legislatures.

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## Legislative Reform and Revisionism

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Several months ago, the Center for California Studies convened a conference in Sacramento.<sup>1</sup> One of the topics was the nature of today's California state assembly and senate, thirty years after passage of Proposition 1-A, the voter-approved measure which created the "modern", professional state legislature. The opening plenary session included a roundtable discussion by several members of that body - people who were actively involved in promoting the ideal of the professional legislature. The general view shared by most of the panelists was the professionalization had gone too far. Thus, in the shadow of the golden dome of the capital building in Sacramento, the very cradle of state legislative reform, revisionism was in the air.

This revisionism-the view that legislative professionalization has a distinct down-side has been with us now for some years. Charles Mahtesian's article, "The Sick Legislature Syndrome" is the latest in a growing line of journalistic accounts (see, e.g., Ehrenhalt 1991; Gurwitt 1991) and academic discourses (see, e.g., Loomis 1990; Rosenthal 1993, 1997; Moncrief and Thompson 1992) on the subject.<sup>2</sup> The basic argument in this body of work is that the trend toward state legislative professionalization has been accompanied by a "new breed" of career-minded legislator.<sup>3</sup> For example, Rosenthal (1993:118) identified a trend of a "growing number of career politicians among the membership of many state legislatures. The careerist orientation of legislators is having an enormous impact on legislative life. It is largely responsible for the increasing political nature of legislatures and partly responsible for their greater fragmentation as well."

Mr. Mahtesian's argument is quite similar. His premise is that professionalization

of the legislature is accompanied by significant behavioral changes among those serving in the institution. He states the crux of the argument in this way, "...professionalism, partisanship, and incivility are linked to each other in some unholy way."

Indeed, there is evidence that many legislators themselves recognize these changes. In a survey of "veteran legislators (those who had served for at least 15 years), respondents from the more professional legislatures were particularly likely to perceive that their fellow-legislators increasingly (a) gave priority to their re-election, (b) campaigned against the legislature, (c) spent more time and effort raising campaign funds, (d) were more partisan in their actions, and (e) exhibited less commitment to the legislature itself (Thompson et al. 2996).

But it is not enough to simply agree with Mahtesian and the revisionist argument, as I generally do. My concern is that the pendulum of legislative reform (a.k.a. "modernization", "professionalization"), having reached its outer arc and begun its return path, not swing too far in the other direction. There is the fear that public opinion will embrace the notion of the "citizen legislature" blindly. In this regard, I want to emphasize the following points:

- *We should not forget why the legislative professionalization movement began in the first place.*

It arose out of a need, perceived by a coalition of journalists, academics, reform-minded politicians and citizens, to bolster the state legislatures of the 1950s and 1960s.<sup>4</sup> If some of today's legislatures can be characterized as "sick", then the legislatures of

the previous era are best described as “critically ill, in need of intensive care.” They were viewed as institutions dominated by the executive branch and interest groups. Turnover was high and satisfaction with the job was low. As William Keefe (1971, 190) noted in regard to those earlier state legislatures, “It is very possibly true that no American political institution has ever had so many detractors, so few defenders, or such a wide array of charges levied against it.” In particular, reformers wanted to modernize the physical facilities (office space, etc.), rationalize the internal organization and structure, expand the time in which legislatures could operate (increase session length), develop a professional staffing component, and increase salaries in order to attract capable individuals (Rosenthal 1997, 50-54).

It is interesting to note that even today some of these charges are still heard in regard to the more part-time, “citizen” legislatures. For example, a recent article entitled, “Making Laws and a Living Challenges Legislators,” noted the difficulties in serving in the Montana state legislature:

Spending only about one-third of a year in Helena, every other year, Montana’s 150 citizen legislators find it tough to keep up with increasingly complex workloads while managing professional and personal lives often hundreds of miles away....Lawmakers aren’t always well-versed in the issues on which they’re voting. Many admit to only a vague familiarity with the laws. (Associated Press 1997).

Or take the case of the recent article in *The Wall Street Journal* (a publication not known for supporting the concept of professional politician!). Focusing on the Georgia state legislature, the article reports,

...torn between earning and governing, citizen legislators are finding it tough to keep up with their mushrooming workload. With few staffers and short

sessions, many lawmakers feel overrun by better-equipped governors, bureaucrats, and lobbyists. (Milbank 1997)

The author concludes that on important and complex issues like welfare reform, “Georgia lawmakers will instead wind up tinkering with-and, most likely, rubber-stamping - whatever the governor suggests.”<sup>5</sup>

- *Not all the problems in professional legislatures today can be blamed on “careerist” legislators.*

There seems to be a tendency in reform movements to focus on a single cause of our institutional ills, and to put inordinate weight (or hope) on a particular ‘fix’ to the problem. As revisionists, we need to avoid this tendency.

State legislatures must contend with a multiplicity of demands from numerous segments of society. They often must do so with constrained resources and a limited set of feasible policy options. Some state legislatures (including all the more professional ones), operate in a complex socio-economic environment. They often experience divided government (in the partisans sense). None of these things would disappear if we could magically wave away career politicians.<sup>6</sup>

Nor are all the characteristics identified with careerism found exclusively in careerist institutions. While I agree with Mahtesian that professional legislatures experience heightened partisanship and diminished civility, these features show up elsewhere as well. The rise in interpersonal discord which Mahtesian notes in professional legislatures he also find in institutions which presumably are not careerist, such as the Cedar Rapids city councils, he attributes the lack of civility to the more open forum of today’s politics (including televised proceedings), and to “the American political culture of the moment.” Alan

Ehrenhalt sounds a similar theme in *The United States of Ambition*, noting the lack of civility in many of our social institutions today. Indeed, the public shares this view that society generally is just nastier today than it once was; one recent survey reports that 80% of Americans think that people today are less civil now than they were ten years ago. (Roper Center 1997-64).

Increased partisanship, which is clearly a feature of many professional legislatures today, may be caused at least in part by the increasingly polarized ideologies of the two political parties. Partisanship is also likely to increase when the majority-minority status of the parties in the chamber is in doubt. Both of these factors can, and do, occur in part-time legislatures as well as in professional ones.

- *Our revisionist agenda will depend in part on how we view the causal arrows.*

Among political scientists, there is some disagreement about the casual relationship between legislative professionalization and careerism. Some perceive that institutional professionalization begets careerism. This is essentially a supply-side perspective, arguing that careerists are attracted to the legislative institution as incentives (e.g., salary, staff and other resources) increase. Others suggest that careerism breeds changes in the legislature changes associated with legislative professionalization. This is basically a demand side view, assuming that careerists work to alter the institution to fit their needs. It is unlikely that either of these hypotheses is entirely wrong or right; but many of us basically view the relationship from one or the other of these perspectives. And the perspective from which we operate will affect what, if any, changes we think ought to be made to the system.<sup>7</sup>

For example, supply-siders might argue that the solution to growing careerism is to alter the incentive structure in the legislature,

perhaps by reducing staff and salary. A few years ago, California's Proposition 140 reduced the size of the legislative staff by about one-third, and there is some talk in California about limiting sessions to six months.<sup>8</sup> On the other hand, term-limit advocates appear to me to take a demand-side view.

Regardless of which particular perspective one holds, I think it quite likely that we will witness efforts in many states - particularly those states in which the initiative ballot process exists - to find ways to alter the particular dynamics found today in many state legislatures, professional or otherwise.

### Endnotes

1. The Ninth Annual Envisioning California Conference, hosted by The Center for California Studies, California State University, Sacramento and the California State Library, 25-27 September 1997, Sacramento, California.

2. Nor is observance of this phenomenon limited to American legislatures. A particularly good earlier account is provided by Anthony King, "The Rise of the Career Politician in Britain - And Its Consequences," *British Journal of Political Science* (1981) 11: 249-85.

3. The term "professionalization" is a concept used in somewhat different ways by different analysts. I try to use the term to refer to attributes of the legislative institution itself, and to use the term "careerist" to refer to attributes of the individual legislator. For a more detailed view of the ways in which these and related terms have been used, see Mooney 1995; Squire 1992 or 1997; Moncrief 1994; or Rosenthal 1997 (especially 54-67).

4. It is occasionally instructive to return to some of the publications of that reform period. In addition to the standard *The Sometime Government* by John Burns (New York: Bantam Books, 1971). I especially recommend Donald Herzberg and Alan Rosenthal, ed. *Strengthening The States: Essays*

on *Legislative Reform* (New York: Doubleday and Co., 1971).

5. See also, Alan Ehrenhalt, "Legislatures and the Salary-Mismatch Syndrome," *Governing* (August 1997); and Karen Hansen, "Legislator Pay: Baseball It Ain't," *State Legislatures* (July/August 1997).

6. See Elizabeth Capell's excellent essay on this situation in the context of California: "Partisan Realignment and The Myth of the Golden Age: the California Legislature in the 1990s," paper presented at the 1996 annual meeting of the Western Political Science Association.

7. Some of these points are raised, although not necessarily in the manner presented here, by Richard Clucas in "Legislative Professionalism and Careerism: Determining the Casual Order." unpublished manuscript, Portland State University, November 1997.

8. Jon Mathews, "Full-time Capitol Called a Failure: Critics Urge Return to Part-Time Legislature," *Sacramento Bee*, 2 November 1997.

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## **Lawmaker, Limit Thyself, Or The Politics of Congressional Term Limits**

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The U.S. Congress is the primary target of the legislative term limit proponents and term limits are aimed to strike at the core of the way the Congress operates. Divested of all the rhetoric surrounding term limitation propositions, supporters want to change the U.S. Congress by attacking it at its most sacred points: the nearly unlimited capacity to retain office, seniority, and professionalism. Most advocates want to do more than correct excesses; they want to change the nature of the institution.<sup>1</sup>

Historically, advocacy of term limitations has ample precedent. The proposal dates to before the Constitution and has found voice throughout our nation's history (Petracca 1993; and *CQ Researcher* 1992, 8-12). More recently we have seen Rep. Bill McCollum (R-FL) introducing term limitation amendments into the House each session since 1980. Before him former Rep. Bill Frenzel (R-MN) carried the torch, having picked it up from a former congressman from Minnesota, Rep. Walter Judd (R-MN). The list of legislation and sponsors is surprisingly lengthy.<sup>2</sup> But, the current standing of term limit proposals in the U.S. Congress has changed dramatically. Current proposals are no longer considered merely symbolic gestures, but rather are serious efforts to alter fundamentally the U.S. Congress.

Interestingly, the reaction of opponents to term limitations appears much more subdued than one might expect from those facing such a fundamental and serious challenge. We see few public pronouncements, limited hearings, and a "business as usual" façade. What is happening here? The purpose of this paper is to answer the question of how

Congress is handling this issue. It begins by considering the status of term limits in the Congress before exploring obstacles to congressional action and how Congress might deal with the issue should it move forward.

### **Term Limits on Capitol Hill**

The current status of term limit proposals on Capitol Hill is somewhat different from what has transpired in the past, but to this point the difference is primarily quantitative rather than qualitative. Traditionally legislation to limit congressional terms was introduced by a few members and the subject was essentially closed for the remainder of the term. Now, over 100 members have signed onto term limit legislation and there is some agitation to move the proposal through the legislative machinery. One day hearings were held in late 1993 by the Subcommittee on Civil and Constitutional Rights. But, little more has occurred or is likely to occur in the near future. Congressional leadership is firmly preventing the bill from moving forward while awaiting a decision from the Supreme Court on the constitutionality of state imposed limitations and they have not had to work too hard to succeed in keeping it bottled up.

Still, some members are more aggressive on the subject. Rep. Don Edwards (D-CA), chairman of the Subcommittee on Civil Rights, is under some pressure to hold more extensive hearings. It is reported that 70 members have signed a letter circulated by Rep. Bob Inglis (R-SC) requesting more hearings and McCollum's discharge petition has about 200 signatures on it. Rep. Peter Hoekstra (R-MI) (with over 50 co-sponsors) more recently attempted to increase political pressure to move term limits

forward by proposing a hold on non-binding “national referendum” on the issue in November of 1994. None of these propositions is expected to progress during the 103<sup>rd</sup> Congress.

Even less activity is seen on the Senate side. There, (in)action can be illustrated by a personal anecdote. In January, 1993, Sen. Dan Coats (R-IN) introduced term limit legislation into the Senate. I went that very day to his office for an interview and was surprised to see a press conference about to being. Term limits, though, was not the topic, rather, it covered the senator’s legislative agenda for the state of Indiana. Rather than ballyhoo the politics of change, the senator was practicing politics as usual.

### **Term Limit Obstacles**

Advocacy for term limits, then, tends not to be very ardent, but even with great support the likelihood of a constitutional amendment may be so remote as to make a discussion of this entire issue moot. The obstacles to success for advocates are overwhelming. The Democratic leadership of both the House and Senate are firmly against the proposal as are several Republican leaders. Further, legislative leaders have shown a willingness to use the resources of the institution to battle term limit legislation. They have, for example, authorized congressional funds to provide legal representation for members opposing term limits in court.

Second, asking Congress to limit legislative terms is, of course, asking members of Congress to limit themselves. Most members seek office with the intention of holding it for some relatively undetermined duration. Many members, after some service, determine that more service would be even better. The Congress is full of members who promised to serve a discrete period of time only later to argue that the interests of the state would be better served by abandoning that commitment.

Further hampering efforts to enact term limit legislation is the fact that most members of Congress have firmly ingrained into their consciousness the values of professionalism, seniority, expertise, and specialization. Much of what members are socialized into believing is of value about their institution revolves heavily around legislative service as a career and the advantages of longevity. Hence, asking members to support term limitations not only counters their self-interest, but also what many of them value about the institution.

Finally, enacting a constitutional amendment faces all the challenges that any amendment faces and that only 27 proposals have managed to surmount – that last one taking about two centuries to succeed. The requirements of extraordinary majorities in both houses of the Congress (for the identical proposal) and support in three-fourths of the states continue to be as difficult to obtain as our founders intended.

### **Term Limit Possibilities**

Before dismissing an amendment as an impossibility, it is important to recognize that offensive weapons can be offered to counter each of the challenged outlined above. The opposition of the leadership, for example, might well prove to be a point of vulnerability as leaders, themselves, come under term limitations enacted in the states. Pending a court decision, the Speaker of the House is limited under the state constitutional amendment enacted in Washington in 1992; Majority Leader Richard Gephardt is limited by the Missouri state amendment.

Additionally, some supporters believe if public opinion is sufficiently mobilized members can be persuaded to support term limits. They will vote for term limitations that will confine them to a set number of terms in the future rather than incur voter wrath and immediately meet term limitations of the old fashioned variety – electoral defeat. “These

guys,” one supporter said referring to members of Congress, “are so cynical that they will vote for term limits just so they can be reelected.”

### **Congressional Response**

To recap, the situation in Congress, is that the leadership intends to keep term limit proposals in committee until the Supreme Court reaches a decision on the constitutionality of state imposed limits. Undoubtedly they will succeed in that goal, so any exploration of how Congress will handle term limits will need to look down the road and to consider two alternative scenarios: 1) if the court rules (as most expect) that term limits are not constitutional, and 2) if the court uphold the states’ rights to limit congressional terms.

Under the scenario that term limits imposed by the states are not constitutional, the nature of congressional deliberations and actions seem quite predictable. The leadership will attempt to block action on term limits. They may well simply succeed, but proponents have proven themselves capable of delivering votes, exerting pressure, and keeping the issue before the public. Simply ignoring it may not work. Political pressure may build. The discharge petition may gain momentum.

Should there be a vote, it would be difficult for many members to oppose term limitations as a straight up or down proposition. The leadership will have to provide political cover for members who want to oppose term limits by offering various shades of support or opposition so that our elected officials can adequately “explain” their vote to their constituents. Options would likely be aimed at responding to public pressure rather than addressing the issue. They will make the issue very complicated: procedural and legislative issues will cross and obfuscate floor voting, alternative proposals will be offered, and different versions of the amendment may be presented.

Even with these tactics, there may be enough support for change within the body to extract real reform, perhaps electoral or rules reform. If opponents need votes to defeat term limits, the legislative leadership will undoubtedly find alternative ways for those with mixed views on lukewarm support for term limits to express dissatisfaction through less extreme reforms.

Should the courts uphold the capacity of states to limit congressional terms, the situation within the Congress would change dramatically. First, it would be extraordinarily troublesome should many of its members be under term limits when the majority are not. U.S. Term Limits, the leading advocacy group, has as its goal to enact congressional term limitations in Alaska, Mississippi, Oklahoma, Maine, Massachusetts, Utah, and Nevada in 1994. Recent history suggests that goal is achievable. If it is reached, that would leave 185 House members and 44 Senators under congressional term limitations.<sup>3</sup>

How would Congress react if a very large minority of its members are under term limitations and the majority are not? Obviously, the limited would lack the numbers among their own rank to force a discharge in the House or to achieve a two-thirds vote in either body to propose a constitutional amendment. Success would hinge on obtaining the support of members who are not limited in service. It is unlikely that the issue will be readily resolved, so it is possible that for one or more Congresses a number of members will confront the reality of term limits while others are not limited.<sup>4</sup>

That situation would seem to present the clear possibility for the majority to abuse the minority in pursuit of their own legislative goals. The votes will be available to beat those limited on key issues such as an amendment or altering House or Senate rules. It is unlikely, however, that a stable coalition could hold together for long if that is its only basis for existence. Partisan or regional differences may

well develop among those who are not limited potentially providing support to limited members. Junior, not-limited, members, for example, might join forces with limited members to change rules in key ways (e.g., limiting the tenure of committee chairs) or to replace leaders.

Further, at least until the term limit sword drops the first time, many of the limited members will have extensive tenure and be very powerful. Not only is the Speaker limited, but so are many committee chairs and others in positions of influence. If members who are not limited wish to play hardball politics, limited members would have the resources to play that game very well. Limited members could certainly bring the body to a complete standstill which would almost certainly lead to public outcries that could demand a constitutional amendment or lead to the defeat of incumbents. That scenario is undoubtedly not attractive to anyone – proponent, opponent, or the general public.

A key to the success of the term limit movement will also be sowed at this stage. Very likely, proponents will offer a constitutional amendment that would restart “the clock” for members whose states have already enacted term limitations. (That is, any proposed amendment would likely usurp states’ prerogatives and begin counting toward a limited term after ratification.) Doing so will surely increase support for the proposal among those whose states have already acted to limit their terms. It will also substantially increase the political pressure at this point to bring the issue to a vote. You would almost certainly no longer see the Speaker of the House and the Chairman of the House Judiciary Committee blocking a vote on the issue.

The action in the states would also be very interesting. State legislators, in states where the voters have limited terms, will be reluctant to support delaying the start of the term limitation calendars for members of Congress when their own calendars will not

begin anew. It also would mean noticeably altering the position that the voters in their state had previously taken. That difference will even be greater if the national amendment contains a term of a different length than the one passed in the state. Still, support of the national amendment would ensure that the representatives of their state are not at a disadvantage *vis-a-vis* representatives from other states who are not limited.

### **The Possible Nature of Congressional Debate**

To review, success will come only if advocates can convince members of Congress to: 1) vote against their own self-interest, and 2) to vote against what most of them perceive to be the institutional and national interest. The chore will, obviously, be onerous. Certainly, both the politics and the debate would be fascinating. To succeed term limitation supporters are going to have to expand their coalition substantially. Coming out of their experiences with the electorate, the movement had broad support from a coalition of strange bedfellows (Republicans and Democrats, in and outs, good government and anti-government advocates), but when the issue moved to the Congress it exposed its core. Its core is anti-government, out-of-power Republicans. Support is narrow both in terms of numbers and in terms of political character. *Roll Call* recently indicated that there were just 63 votes in the House with freshman Rep. James Barcia (D-MI) being the only Democrat among the 10 co-sponsors of Inglis’ amendment.<sup>5</sup>

If outside political pressure cannot be brought to bear to expand the coalition, the issue will have to be won on its merits. It is always interesting to watch Congress debate an issue where they have a vested interest and where they all have substantial personal expertise,<sup>6</sup> but the outcome is generally predictable. Clearly the members will define the terms of debate and focus on issues that differ from that of the general public.

First, the sophistication of the arguments will have to increase when trying to persuade members rather than the general public. [It is doubtful that, "Six years in long enough to get done what you want to get done," will work with members of Congress.] But, the entire tenor of the debate will also change. Among the general public, the inclination is to support limitations so that the onus is on opponents to change that predisposition. For most legislators, the bias is to oppose limitations, so supporters will have to argue the merits to sway member opinion. Those arguments will be in part political, but they will also have to be based on the merits of the proposal. Here supporters may encounter difficulty.

Even if incumbents see the problems that the advocates of term limits see and even if they think that term limits might address those problems, they are also more likely to see the unintended consequences more than the general public. Incumbents have serious disagreements over the length of the term; they will fear the loss of the electoral connection; they will have misgivings about the loss of expertise; they may have concerns over the decline of the ombudsman role; they may worry about ethics, and on and on.

Undoubtedly what will concern members more than the general public will be the institutional vitality and its relative position versus other political actors, most notably the president. Many have argued that absent experience and expert legislators they body will have to look outside of its own walls for expertise and guidance. That need may be filled by interest groups or others, but most fear that the executive branch will be greatly enhanced by term limitations. They quickly note that not only will the rank and file be limited, but so will the leadership. Under Inglis' proposal, a Speaker will be selected after his or her fourth year in office.

Finally, it is quite possible that term limit will abate while awaiting a Supreme

Court decision. Congress may reform sufficiently to meet public demands. The public may become convinced that limits are a bad idea or that there are better alternatives. They may simply become less concerned about the performance of Congress. The end of gridlock, progress on the budget deficit, reviving economic conditions, or other advances in the confidence in our nation would certainly decrease pressure for fundamental institutional change. Finally, the issue may increasingly be viewed as a veiled Republican Party power grab or as the revenge of the otherwise unelectable.

Should all other obstacles be overcome, there is a strong likelihood that the movement may self-destruct as it moves closer and closer to success. Supporters come from a wide range of philosophical perspectives that are in some fundamental ways incompatible. The split that is relevant to this discussion is found between those with a libertarian perspective, embodied by U.S. Term Limits, the leading advocacy group, who seems to have as its primary goal limiting the ability of the Congress to govern and other supporters who want to influence how Congress governs. The source of the split will likely be the length of the limited term. U.S. Term Limits is a hawk on a six year term. They fight even other supporters over any attempt to weaken that provision. Many other supporters prefer 12 to 18 year, or even longer limits. It is very likely that supportive Members of Congress will not back off a 12 year or 18 year limit and that U.S. Term Limits will not back off its six year limit. While the sources and nature of those differences cannot be explored here, it is, in my mind, an irreconcilable difference.

### **Conclusions**

To add a further dose of realism to this discussion, we can examine whether the seeds of success that facilitated triumph in the states are also present in the Congress. Jewell (1933) identified organizational support in the states

as coming from conservatives and Republicans, but votes seemed to be based on a general disaffection with the legislature. A key to the outcomes was the organizational capacity of supporters, but even more so was the lack of intensity of the opposition. Media support in the states also seemed to help advocates.

Those elements will not translate well to the Congress. Support centered among conservative Republicans is detrimental to the cause. Disgruntlement with the Congress is found even among its members, but they seem less likely to be swayed that radical reform is necessary. In the states, opposition was weak and support strong; in Congress opposition will be fervent, experienced, and hardy. It will be centered right in the middle of the leadership. Media support will be more mixed with both sides having a greater opportunity to make their views known.

The promise for the advocates is not great. But in the end, the legislative arena may provide the most interesting political battle in some time. That battle will be a quintessential power struggle – a struggle over power relying on political power. Where that power lies – and we know where it lies – will determine the outcome.

## Endnotes

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<sup>1</sup> This conclusion (and the remainder of what follows) is based on the written record, a large number of interviews, and endless informal discussions on the matter. The interviews began around the time that the state of Oklahoma passed its initiative in the Fall of 1990 and have continued since.

<sup>2</sup> For a summary see Sula Richardson, 1991.

<sup>3</sup> Susan B. Glasser, "After Their Impressive Victories in 14 States, Term-Limit Backers Plan Next Steps on Hill," *Roll Call*, January 18, 1993, p. 24-26.

<sup>4</sup> I, of course, recognize that 156 House members and 30 Senators are currently serving under limited terms – some as short as six years. But, my interviews strongly suggests that virtually no one is serving under the reality of limits. As will be explored below, the reality will develop only after the courts have ruled on constitutional issues.

<sup>5</sup> Susan B. Glasser, "With Term-Limiters' Support, Inglis Offers Measure to Restrict Hill Tenure to Six Years," *Roll Call*, March 25, 1993, p. 7.

<sup>6</sup> Campaign reform is, of course, another such issue.

## Intra-Party Bargaining and Public Policymaking in Parliamentary Democracies

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This article advocates the utility of *intra*-party bargaining between party leaders and backbench legislators of government parties as a basic model of the legislative process of parliamentary democracies to derive interesting, testable comparative static predictions on policy outcomes, based on my ongoing dissertation project. Theoretical models of the legislative process in parliamentary democracies have so far focused predominantly on *inter*-party bargaining between parties forming government coalitions (e.g., Austen-Smith and Banks 1988, Baron 1991, 1998, Diermeier and Merlo 2000, Laver and Shepsle 1996). Many of these models also treat parties as unitary actors. *Intra*-party bargaining between government party leaders and backbench legislators has not been given much attention. Bargaining in this dimension, however, is an important aspect of parliamentary systems since, as elaborated more later, it is a common, basic characteristic of the legislative process in parliamentary government and expected to reflect an important variation across countries, over time, and across parties. The first section of this article describes a basic theoretical framework of this argument; the second and third sections apply this framework to two types of variation in distributive policies.<sup>1</sup> This article presents only a theoretical argument and does not provide empirical evidence as this research project is still underway. The purpose of this article is therefore limited to showing, based only on an informal theoretical account, the potential of theoretical models of *intra*-party bargaining of government parties for a rich comparative analysis of legislative outcomes of parliamentary democracies.

### Basic Theoretical Framework

A theoretical account developed here is about the *intra*-party bargain between party leaders and backbench legislators of governing parties. It assumes away coalition governments and focuses on single party governments. Basic arguments can be applied to coalition governments, though, since there always exists *intra*-party bargaining outlined here in each coalition partner. Although there are several other dimensions of *intra*-party bargaining such as those among policy-based or non-policy-based factions and those between the prime minister and other cabinet ministers from the same party, the focus here is on bargaining between party leaders who form the cabinet and backbench legislators of government parties. This is because, first, bargaining in this dimension is common and fundamental for the legislative process in parliamentary democracies; and second, it has a potential for interesting comparative static predictions since it reflects important variation in the electorally motivated incentives of legislators across countries, over time, and across parties.

The primary features of the legislative process of parliamentary democracies can be summarized as follows. First, because of the confidence relationship between the cabinet and the parliament, political parties act as a far more stable legislative coalition than in presidential systems. Legislators from the same party regularly follow their party line and cast their votes accordingly in the legislature. Bills submitted by the cabinet are passed with high success rates. In this context, bargaining within governing parties to arrive at the party line is more important than bargaining in the legislature as a whole and at least as important as the *inter*-party bargain

between coalition partners. Second, the agenda control power is concentrated in the hands of the cabinet which is usually formed by government party leaders. In most cases, legislation under parliamentary systems begins when the cabinet submits bills to the parliament. Although in principle anyone in the parliament can propose a bill (usually with some minimal requirements on the number of legislators who collectively submit a bill), bills submitted directly by individual government party legislators are rare, or those bills submitted this way (either from government or opposition legislators) are not deliberated seriously. Anyone in the parliament can propose any amendments, but agenda power of party leaders extracted from this setting is clear from a standard spatial model. An agenda setter (party leaders in the present case) can always choose her best proposal among those acceptable to collective veto players (backbench legislators of their party), and thereby make sure the bargaining result is most preferable to her among possible outcomes.<sup>2</sup> These two features suggest that a basic lawmaking process in parliamentary democracies can be modeled as a variant of an *agenda-setter model* in which party leaders propose a bill to their party's backbench legislators whose unanimous approval is necessary for the passage of the bill. Although the parliamentary system is modeled occasionally in this manner (Huber 1996, Tsebelis 2002, ch.4), its potential for a comparative static analysis has not been fully explored yet.

The two features described above are not formally specified in the constitution of parliamentary democracies. They are rather behavioral regularities as a consequence of more fundamental institutional arrangements of parliamentary democracies including, but not limited to, the confidence relationship between the executive and the parliament, which can be considered the minimal

definitional feature of parliamentary democracies (Müller et al. 2003), as well as electoral competition for legislative seats. Why these behavioral regularities emerge from these fundamental institutions of parliamentary government is itself an important question, and several studies have explored it (e.g. Cox 1987, Diermeier and Feddersen 1998). For the purpose of this article, however, I take these behavioral regularities rather as given and as primary features of parliamentary democracies, and consider their consequences on legislative outcomes.

Not only is *intra*-party bargaining between party leaders and backbench legislators a common, primary characteristic of parliamentary democracies but also it reflects an important variation in the electorally-motivated incentives of politicians across countries, over time, and across parties. The variation is about the importance of collective party reputation vis-à-vis individual reputation of backbench legislators. An important role political parties play in elections is to provide collective party reputation (or "party label") to voters and thereby increase the winning probability of all individual party members (Cox and McCubbins 1993). The electoral fate of individual candidates depends both on their party's collective reputation and their own individual reputation. Individual party backbenchers, however, face a collective action dilemma in maintaining party reputation since legislation that improves party reputation is public goods for individual backbenchers. With non-excludability of their benefit, individual legislators have little incentives to put their efforts in this type of legislation. To overcome this collective action dilemma, the task of coordinating this type of legislation would be delegated to party leaders from backbench legislators (Cox and McCubbins 1993). The extent to which backbench legislators wish to delegate the policymaking task would depend on their

evaluation of the relative importance of party label to their reelection. The more they perceive party label is important, the more backbench legislators would like to delegate the task to party leaders. Thus, if this evaluation is different across countries, over time, and across parties, then it implies that terms of bargaining between leaders and backbenchers would also vary and so does the outcome of this bargaining.

A theory of electoral rules based on their incentives to cultivate *personal vote* indeed suggests that there would be a systematic difference in the importance of party label across different electoral rules (Carey and Shugart 1995). Carey and Shugart (1995) classifies various electoral rules according to the degree to which they differentiate the relative value to legislators of personal reputation versus party reputation to win elections. Reinterpreting their theory from the current purpose, first, party label would be more important under electoral rules without *intra*-party competition (i.e., candidates from the same party do not compete with each other in the same district) than those with it (candidates compete with their copartisans); second, the importance of party label would increase as district magnitude (the number of legislators elected from one district) increases under electoral rules without *intra*-party competition but it would decrease as district magnitude increases under rules with *intra*-party competition.<sup>3</sup> Furthermore, the importance of party label would also vary beyond the difference in electoral rules. Even under the same electoral rules, factors such as the nature of party competition would change the value of party label across countries, over time, and even across parties. For example, if there is an intense debate on a policy issue that divides parties and the entire society, party label would be a more important factor for the electoral fate of individual candidates than otherwise. The value of party label would also

be more important for a small party who can field only one candidate in multimember district elections than a large party who can field multiple candidates. It is therefore reasonable to expect that there would be a systematic, significant variation in the relative importance of party label across countries, over time, and across parties, and this variation could lead to an interesting comparative static prediction for policy outcomes under parliamentary democracies.

Note that the theory of party (leaders) as a solution to the collective action dilemma of backbench legislators in maintaining party label is applied to presidential democracies as well. Indeed, the theory was originally developed in the context of the U.S. presidential system. However, this theory has a more immediate and fundamental bearing on parliamentary systems because, as discussed above, bargaining between party leaders and backbench legislators of government parties is a common, basic characteristic of parliamentary systems. Any variation in the relative importance of party label immediately changes the terms of bargaining between party leaders and backbenchers and therefore affects policy outcomes of this bargain.

### **Aggregate Spending Balance between Public Goods and Particularistic Programs**

How can this basic theoretical framework be applied to specific policies? This section and the next consider its application to two types of variation in distributive policies respectively. The first type of variation concerns the balance in the aggregate spending between the public goods type policies that benefit a broader citizen base and the particularistic, pork-barrel type policies that target narrow segments of the society. A greater allocation to public goods type spending implies that, on balance, tax revenues are distributed more evenly and broadly among citizens, while a larger allocation to

particularistic policies means that, on average, government resources are more disproportionately targeted toward the parochial interests. Which type of policies is more emphasized in the aggregate government spending of a given country at a given time period merits explanation as it is an important consequence of a democratic process of income redistribution. Popular accounts in the literature focus on the difference in electoral rules as a key explanatory variable.<sup>4</sup> The most widely accepted view concerns the difference between majoritarian and proportional representation (PR) systems (Persson and Tabellini 1999, 2000; Lizzeri and Persico 2001; Milesi-Ferreti et al. 2002). It predicts that the majoritarian system leads to greater (smaller) spending on particularistic programs (public goods) while the proportional system results in the opposite. Although the existing literature rightly points out that electoral competition shapes the incentives of politicians, their exclusive focus on electoral rules fails to capture the effect of elections on the balance between these programs to the fullest extent. The difference in electoral rules may be among most important factors but should still be only one of many factors that shape the electoral incentives of legislators for these programs. The exclusive focus on the difference of electoral rules misses these important variations across countries and over time. The theoretical account developed here redirects our attention from the exclusive focus on the fixed institutional features of electoral rules to the legislators' electorally-motivated incentives more generally as an explanatory variable.

A basic premise is that the greater provision of public goods is likely to improve collective party reputation while the increase in the provision of particularistic goods is likely to improve individual incumbents' reputation. Then, each incumbent backbencher could perceive his winning chance in the next election as a function of the provision of both

public and particularistic goods. Although the provision of particularistic goods to a backbencher's district would improve his individual reputation, it would also diminish collective party reputation by presenting the party image as that of serving narrow particularistic interests at the expense of broad public interests. No single incumbent fully internalizes such negative externalities generated by his provision of particularistic goods. As a result, if individual backbenchers are free to choose the level of particularistic goods to their districts, they would end up with inefficient overprovision of particularistic goods that result in excessive deterioration of collective party reputation and suboptimal winning chance. On the other hand, concerned with the fate of a party as a whole, party leaders fully internalize negative externalities on party reputation generated by particularistic goods. This is a special case of the collective action dilemma of backbench legislators discussed above. In this context, it may be optimal for backbenchers to delegate decision-making authority to party leaders. As discussed before, the relative importance of party label would differ across countries, over time, and across parties. This leads to a comparative static hypothesis that the allocation of aggregate budget to public (particularistic) goods would increase if the relative importance of party label increases (decreases) for backbench legislators of governing parties. This hypothesis can be tested in a time-series-cross-section (TSCS) multivariate statistical analysis of parliamentary democracies in which a dependent variable is the share of public goods type spending (e.g., social transfers) or particularistic type spending (e.g., economic infrastructure) in the total government expenditure and a key explanatory variable is the relative electoral value of party label for government parties. The methodological challenge here is to come up with an

appropriate, comparable measurement of the relative importance of party label which would vary across countries, over time, and across parties. If we could construct such a measurement, this empirical test would produce interesting new insights into the determinants of the aggregate spending balance of public goods and particularistic programs, and the legislative process of parliamentary democracies.<sup>5</sup>

### **Allocation of Distributive Spending across Electoral Districts**

Once the balance between these two types of spending is settled, the next question would be how targetable distributive programs are allocated among different parts of the society. A particular concern here is a geographical distribution of these programs across electoral districts since most democracies employ electoral rules that divide a country into multiple electoral districts and their political representation is based on these districts. Therefore, the second type of variation considered here is the cross-country difference in the pattern of the geographical allocation of distributive spending across electoral districts. The existing literature lacks specific predictions of the difference across parliamentary countries. Existing theoretical models provide several competing hypotheses, but generally are silent about systematic difference across countries (e.g., Cox and McCubbins 1986, Dixit and Londregan 1996, Lindbeck and Weibull 1993). A notable exception deals with the effect of the difference in legislative cohesion of parties – the cohesion of voting behavior of legislators from the same parties –, which is a byproduct of the presidential-parliamentary difference, under the single-member district (SMD) plurality electoral rules (McGillivray and Smith 1997, McGillivray 1997); however, there is no theory which specifically predicts a systematic difference across parliamentary democracies.<sup>6</sup>

The discussion in the previous section deals with the variation in the value of party label across countries, over time, and across parties. This is an appropriate level of conceptualization when considering the balance in the aggregate government spending, but it is not when thinking about the allocation pattern of distributive spending across electoral districts. A more appropriate conceptualization in this case would be the variation in the relative importance of party label *across* individual backbenchers of the same government party. Other things being equal, those who value party label less than others would demand more distributive spending to their districts in order to boost their individual reputation. Legislators who value their party label less than others in the same party would be those who are electorally vulnerable compared to their copartisans. If their demands are accommodated, districts with government party legislators who are electorally more vulnerable and therefore value party label less than others would receive more distributive spending.

To derive a hypothesis on the cross-country difference in the allocation pattern of distributive spending across districts, we need to consider this issue further in the context of the model of *intra*-party bargaining between leaders and backbenchers of government parties. It is discussed above that it may be optimal for backbenchers to delegate decision-making authority to party leaders as backbench legislators face a collective action dilemma in balancing public goods and particularistic programs. The delegation would not be optimal, however, if party leaders' evaluation of the relative importance of collective party reputation is different from backbenchers'. It is expected that the difference in electoral rules, particularly whether they allow *intra*-party competition at district level, will affect whether the evaluation of the relative importance of collective and

individual reputation is different between party leaders and backbenchers. Under electoral rules without *intra*-party competition, the evaluation of the relative importance of reputation largely coincides for party leaders and backbenchers. It is likely to be different, however, if electoral rules allow *intra*-party competition. This is because, when thinking about winning the next election, what party leaders care about is not necessarily the fate of incumbent *backbenchers* but rather the fate of their *party's seats* currently held by them. Party leaders want to maintain their party's seats, but who occupies these seats is given relatively lower priority. If *intra*-party competition is allowed, it is possible that while incumbent candidates lose their seats, their seats are merely replaced by candidates from the same party. It is therefore expected that backbench legislators value collective party reputation less than party leaders under electoral rules with *intra*-party competition. In this case, the delegation to party leaders would be less appealing for backbenchers, and party leaders must accommodate their demands.

A comparative static hypothesis derived from this argument is as follows. Under electoral rules without *intra*-party competition, electoral vulnerability perceived by leaders and backbenchers coincide and therefore, distributive spending is targeted to districts where electoral support for their *party* is vulnerable. Under electoral rules with *intra*-party competition, however, electoral vulnerability perceived by them differ, and distributive spending is targeted to districts where *personal* electoral support for backbench legislators is vulnerable, which do not necessarily coincide with districts where party support is vulnerable.

This prediction is further qualified if we consider another primary feature of parliamentary democracies – relatively strong *party discipline*. Party discipline is defined here as party leaders' power to change the voting

behavior of its members such that these members vote along the party line even its policy outcome is not what they prefer to the outcome that would result when they do not follow the party line. The primacy of parties under parliamentary democracies leads to party-based career paths for most legislators (Epstein et al. 1997). As long as parties control the future career of individual legislators, party leaders could impose their preferences over individual legislators to a certain extent (Müller 2000, Saalfeld 2000). Of course, this does not mean that party leaders can do whatever they want because "discipline" imposed by party leaders must be legitimate and acceptable for most backbench legislators; otherwise, backbenchers would simply replace their party leadership.<sup>7</sup> Still, it is reasonable to expect that party leaders can make at least some backbench legislators to vote in favor of their leaders' preference at the expense of their own. This argument implies that under electoral rules with *intra*-party competition, government party leaders do not need to accommodate all backbench legislators' demands for particularistic programs. Rather, they accommodate backbenchers' needs to the extent that discipline exercised by them is legitimate and acceptable. That is, party leaders can effectively build *intra*-party winning coalition of backbench legislators whose demands will be accommodated, and then let other backbenchers accept leaders' proposal by exercising discipline. How should this *intra*-party winning coalition be built? There could be two considerations. First, since backbench legislators' perceived vulnerability is always greater than vulnerability of their *seats* perceived by party leaders, party leaders might want to include less vulnerable backbenchers so that the extra amount of distributive spending which leaders must concede would be minimal. Second, party leaders might want to accommodate relatively more senior, powerful legislators who have

already built party-based career to a certain extent since they play an important role in the management of various party affairs. Legislators to be included by these criteria would largely coincide since more senior legislators tend to be less vulnerable candidates. Following this argument, the hypothesis under electoral rules with *intra*-party competition should be modified as follows: distributive programs are directed to districts where senior, powerful legislators are elected (they are less vulnerable on average) and their personal electoral support is relatively more vulnerable than other powerful legislators; these districts do not in general coincide with those where electoral support for their party is vulnerable.

This hypothesis can be tested using data on the allocation of distributive spending across electoral districts and electoral results for countries using electoral rules with and without *intra*-party competition. The main explanatory variable, vulnerability of government party seats and backbench legislators, can be operationalized by the margin of victory in the last election for a party and an individual legislator respectively. Electoral vulnerability of a government party can be measured by the difference between the party's vote share and oppositions' vote share in each district.<sup>8</sup> Based on the hypothesis derived above, it is expected that this variable clearly predicts the allocation of distributive spending for countries using electoral rules without *intra*-party competition but not for countries using rules with *intra*-party competition. Electoral vulnerability of each backbench legislator under electoral rules with *intra*-party competition can be operationalized by his personal margin of victory, i.e., the difference between his vote share and a top loser's vote share.<sup>9</sup> Based on the hypothesis above, we expect that this variable predicts well the allocation of distributive spending for countries using electoral rules with *intra*-party

competition, if that legislator is a senior, powerful legislator (i.e., an interaction variable between his margin and seniority [or some other indicator of his powerfulness] would predict the allocation well). If an empirical test verifies this prediction, the theory developed here will add a new understanding of the political determinants of the allocation of distributive spending across electoral districts.

## Conclusion

This article presented a theoretical framework based on *intra*-party bargaining between party leaders and backbench legislators of government parties which accounts for the difference in policy outcomes across parliamentary democracies. Although hypotheses derived from the model have not been tested here, the argument here demonstrated that this theoretical account could provide new, interesting comparative static hypotheses.<sup>10</sup> It is my hope that the argument presented here would convince readers that *intra*-party bargaining between leaders and backbenchers of government parties – so far a rather understudied topic – is worth investigating for a comparative analysis on the legislative process in parliamentary democracies.

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## Endnotes

<sup>1</sup> For accessibility, all theoretical arguments here are made without formal models. My ongoing dissertation research also deals with a formal treatment of these models.

<sup>2</sup> *The vote of confidence* procedure – by which the cabinet can attach the vote on a specific policy to the fate of the government –, available for most parliamentary systems, further adds to party leaders' agenda power since this procedure in effect allows party leaders (= the cabinet) to make the final, leave-it-or-take-it policy proposal (Huber 1996).

<sup>3</sup> They classify electoral rules in four dimensions, one of which is district magnitude. Other three largely correspond to the extent to which there is *intra*-party competition.

<sup>4</sup> Another popularly suggested institutional factor is the difference between presidential and parliamentary regimes (Persson and Tabellini 1997, 2000). Since this project focuses on parliamentary democracies, this aspect is not discussed here.

<sup>5</sup> In my on-going dissertation, I am working on constructing this measurement and conducting empirical tests outlined here.

<sup>6</sup> McGillivray and Smith's model predicts that under the presidential system with low legislative cohesion (they call it "party discipline," but I reserve this term for a different meaning) and the SMD-plurality rules, distributive benefits are allocated to safe districts with powerful legislators, while under the parliamentary system with high legislative cohesion and the SMD-plurality rule, they are allocated to marginal districts.

<sup>7</sup> In addition, backbench legislators also have an option of switching parties although it is exercised rarely (Heller and Mershon 2005).

<sup>8</sup> An appropriate measurement of the margin of victory of government parties would be different between single-party government and multiparty coalitional government as well as between single-member electoral district (SMD) and multimember district (MMD) electoral rules. For example, for a single-party government with SMD, an appropriate measurement would be the difference between the vote share of the government party and the vote share of the largest opposition party. For a multiparty coalition government with MMD, an appropriate measurement would be the difference between the vote share of all government parties altogether and the vote share of all opposition parties altogether. The most appropriate measurement must be well considered given the combination of particular institutions.

<sup>9</sup> A top loser here could be from any party including the same party of the legislator in question.

<sup>10</sup> The empirical tests on these hypotheses are being undertaken in my dissertation research.