THE REGULATION of lobbying and lobbyists has been an issue in American politics for over a hundred years and it remains so today at the federal, state and recently at the local level. Thus America provides a range of experiences and lessons on lobby regulation. Given this, five questions present themselves: (1) What has been the impetus and rationale behind regulation; (2) How has America approached lobby regulation over time and in terms of basic premises; (3) What specific lobby regulations exist today; (4) Has the regulation achieved its goal or goals, and what effects has this regulation had on the political system, particularly on American democracy; and (5) What general conclusions can be drawn from America’s extensive experience with lobby regulation? Here answers are offered to each of these questions.

The thesis of the article is that the effect of lobby regulation in the United States has been largely to change the modus operandi of certain interest groups, some lobbyists and, in particular, politicians. Activities are now much more open than they used to be. However, evidence suggests that this has not changed the power of many ‘insider’ interests or increased the effectiveness of ‘outsider’ interests. In several ways the results of regulation have fallen short of the expectations of many of its proponents. This is clear from studying federal, state and local experience. However, regulation at the local city and county level is so new, largely a product of the 1990s, and still only present in a few large cities like New York and Los Angeles, that while the impetus behind it can tell us much, its lessons are too new to be of much use here.

At first sight it may seem unnecessary to include these levels in this analysis. Why not just focus on federal regulation? There are three good reasons for not doing so. First, the federal government has not been the leader in lobby regulation; much of the germination of ideas, the laboratories of practice, have been the states. Second, various approaches to regulation can be found in different states, thus aiding the answers to the five questions listed above. Third, and most important, surprising as it may seem, there has been no academic evaluation of federal lobby regulation. There has, however, been an evaluation at the state level and, by extrapolation, this allows us to assess the likely consequences of recent federal reforms.
Some background
Some background about the scope and components of regulation and monitoring, and differing legal definitions of interest group found in the American experience, will help us appreciate the analysis of the five question set out above. The distinction between regulation and monitoring is important in considering the American approach. While it is common practice to use the term ‘regulate’ to refer to all legal provisions regarding interest group activity, and we follow that practice here, in a strict sense ‘regulate’ denotes legal provisions that specify what a group and its lobbyists can or cannot do in their attempts to influence public policy; ‘monitor’ refers to provisions that enable the public and those being lobbied in legislative and executive branches of government to keep track of the public policy activities of groups and their representatives. Partly because of the First Amendment to the Constitution, much of the American approach to lobby regulation, at least until the mid-1970s, was monitoring rather than regulating. Today four types of legal provisions provide for this regulation and public disclosure of lobbying in the United States (though not all four types exist at the local level). The majority of these provisions are lobby laws, supplemented by three other types of provisions.

So-called lobby laws provide for the registration of lobbyists and usually their employers, the reporting of expenditures, and sometimes prohibition of certain types of activities, such as lobbying for a contingency fee, a percentage of the amount of money that the lobbyist secures or saves the group he or she represents.

Second are conflict of interest and personal financial disclosure provisions sometimes generically referred to as ethics codes or laws. These are intended to disclose the financial connections that legislators, elected executive officials and senior civil servants have with individuals, groups, organisations and businesses. Sometimes they prohibit certain types of financial relations or dealings. At all three levels of government, in an attempt to reduce corruption, public ethics laws often prohibit top level civil servants, particularly political appointees, from being employed by an interest group within a period of time of their being involved in governmental decisions that directly affected that interest.

Third are campaign finance regulations. These provide for public disclosure, to a varying extent, of contributions from individuals and organisations (that is, various interest groups). They often impose limits or prohibitions on contributions. Restrictions are sometimes placed on the period in which contributions can be made; for example, in some states they are prohibited during legislative sessions. Many states also limit or prohibit contributions from companies, unions and regulated industries, particularly public utilities.

Fourth, and another aspect of campaign finance, are regulations relating to political action committees generally know as PACs. PACs
are formed primarily for the purpose of channeling money to political campaigns, often to circumvent campaign contribution limits. The federal government, all states and some larger cities have laws relating to PACs. As is the case with campaign finance regulations, some of these laws impose limits and prohibitions on contributions from PACs.

All four types are important elements in the regulation and monitoring of interest groups in the United States, though the importance of each element varies across the country. To fit with the general theme of this volume, the focus is on regulation of lobbying legislative bodies. However, because it is often difficult to differentiate, both legally and politically, between the four elements of lobby regulation in the United States, some reference to the other three types of provisions are necessary on occasion.

As we consider the development and effect of lobby laws in the United States, we need to be aware that there has been a long-standing debate in Washington, state capitals and cities about what actually constitutes an interest group or lobby and a lobbyist. There has been a debate, for example, as to whether senior personnel from executive department should register as lobbyists. Generally, these are excluded, usually implicitly, by statute or local ordinance from having to register; but some states require that local and sometimes state officials register. Legal definitions for private interest groups are usually based upon rather arbitrary thresholds of the amount of money and time spent on lobbying in a particular period, such as a month, three months and so on. For these reasons definitions vary from one jurisdiction to another. Thus, there are many interest groups that are not required to register, so called non-registered groups (sometimes called ‘hidden’ lobbies in America), and a good argument can be made that this exclusion undermines the purpose of many lobby laws.

*The American experiment*

Public demands were at the root of the impetus for lobby regulation. Beginning with the populists in the 1870s, much of the pressure has come from the public or sections of it. Abuses by interest groups and their lobbyists have probably been far less than generally believed. Surveys also suggest that the American public does not understand the nature of lobbying or the role of lobbyists.¹ From the heavy-handed, and sometimes blatantly illegal, political activities of railroad lobbyists in the years following the Civil War to the Teapot Dome scandal of the 1920s to the scandals in South Carolina and Arizona in the early 1990s, however, there have been enough incidents to reinforce public scepticism of interest groups, particularly moneyed political interests and their lobbyists. So whether or not the public understands lobbying and whether or not the abuses are real, the demands for reform have not been lost on politicians. The anti-government and populist strain of the American political culture, a political egalitarianism and the lack of a
permanent political elite, and the early development of participatory institutions have all meant that concerns were not only voiced early in the history of the nation but these factors also worked to galvanise members of Congress and state legislators into action on lobby regulation. And the quest to modify these regulations, to bring them nearer to some ideal, keeps the reform issue on the public policy agenda.

This brings us to the rationale behind American lobby regulation. At the most general level, its purpose is to improve the processes of government based on some notion of democracy, a notion that may be very vague and that changes over time. The major reason why improving the processes of government has been such an impetus is that public perceptions are intertwined with the question of the legitimacy of government in a society born of liberalism and that, at least in theory, claims to be a government of the people, for the people and by the people. On the practical level of the reformer, this has meant that the rationale for lobby regulation has been based on three major and interrelated arguments: (1) the need to restore confidence in government because of real or perceived abuses; (2) the need to prevent undue influence by interests with wealth and favoured access, in other words the need to even-up the political playing field; (3) the need to disclose activities in the public policy arena to increase the flow of information: since information is essential to decision making and in the accruing of political power, access to information would, at least in theory, enhance the decision-making capacity and influence of its recipients, particularly the public and interest groups not part of the entrenched scene.

Looked at another way, as with any type of government regulation, the purpose has been to redistribute certain benefits in society. One explanation is found in public interest theory, in which the government attempts to redistribute a benefit to the public at large or to some part of it: in either case this is seen as of general public benefit and continues to function as such. Another explanation is capture theory: here redistribution is either promoted by a special interest or is eventually ‘captured’ by it, in which case it may actually be detrimental to the public. Development of American lobby regulations can be explained largely in terms of public interest theory, but it can be argued that some ‘capture’ has taken place in this regulatory process, as we note later. To what extent has this public interest purpose been successful in redistributing benefits and what are its shortcoming? These are questions that we will also consider later.

Given the above, the essence of the American approach to reform is to regulate both the strategy and tactics of interest groups in their contact with the political system, particularly the policy process and policy-makers, as opposed to attempting to regulate group organisation. From the very beginning, however, there has been a tension between the desire to reform and the stipulations of the First Amendment, particularly its rights to freedom of speech and to petition the government.
This tension has had great influence on the content and implementation of lobby regulation. Some First Amendment rights have been restricted by the Supreme Court, but serious concern exists about the constitutionality of lobby legislation that would restrict the right to petition (or lobby) a citizen’s elected representatives.

Over the years, proponents and opponents of regulation have agreed that the ability of individuals or groups to lobby government should not be restricted. Consequently, the objective of both camps has been to publicise lobbying activities. In other words, a major part of the American approach has been monitoring activities as opposed to restricting them. Where the two groups disagree is on the range of activities that should be exposed to public scrutiny and the further step of restricting them. Strong proponents of reform want effective laws requiring lobbyists to register, to list the issues they are concerned with and to disclose their expenditures. Additionally, they want logging of all contacts between lobbyists and policy-makers, with regular reports. Some seek to force organizations to open up their records of financial contributions made to them relating to lobbying campaigns and to report efforts to get their mass membership to lobby by mail, e-mail, phone or personal contacts (widely-known in America as grassroots lobbying). Restricting certain activities, such as gift giving to public officials and limits on financial contributions, has also been an element of certain segments of this camp of lobby reformers. Many who oppose such provisions believe that the constitutional right to free speech and to petition one’s government may not be compatible with a law that regulates lobbying effectively.

The development of lobby regulations has not followed any long-term, systematic pattern, nor any clearly-defined notion of an ideal state of democracy. Rather, it has followed the dominant pattern of policy-making in the United States incrementalism. Lobby laws and related provisions have been enacted in response to scandals, to perceived abuses in the political process and to changes in the attitude of politicians or public regarding the conduct of government in light of some vague view of a populist democratic process.

There is no agreement on when the first attempt to pass a lobby law occurred. What we do know is that at the federal level as early as 1852 the House of Representatives sought to protect itself from lobbyists posing as journalists.2 In 1876 the House attempted to require lobbyists to register but was unsuccessful. Since 1911 lobby regulation has been considered in almost every session of Congress.3 However, prior to the 1995–97 Congress, only two major pieces of legislation had been passed: the Foreign Agents Registration Act of 1938, and the Legislative Reorganisation Act of 1946 which included the first general federal lobby registration laws.4 In 1995 the most extensive lobby law was passed since the 1946 Act. While the verdict is still out on its effects, federal lobby regulation is generally considered to be ineffective (see below).
At the state level, down to the 1960s and largely because of the influence of the populist and progressive movements, lobby laws were enacted in several states. Sometimes lobby regulation was included in the state constitution as was the case with the Alabama Constitution of 1901 which forbade legislators from accepting free railroad passes. Progress, however, was slow, provisions were minimal, and enforcement was lax. This was largely due to politicians who opposed public disclosure, and entrenched interest groups which were often able to hold up or defeat registration and disclosure provisions.

A study enables us to assess the extent of lobby regulations in the early 1950s. It shows that 38 states plus the territory of Alaska had provisions for lobby regulation in 1953. They varied widely, as did the definition of what constituted lobbying. Only 29 plus Alaska required lobbyists to register, though most states excluded state and local government employees when performing their official functions. Only 19 required the reporting of lobbying expenditures. The West had the least extensive laws: Nevada, New Mexico, Washington and Wyoming had none; Arizona, Montana, Oregon and Utah had no registration or reporting requirements. The Northeast, with the exception of Delaware, New Jersey and Pennsylvania, had the most extensive laws, though not very comprehensive by present standards. The Midwest and the South fell in between. The study did not examine the issue of the stringency, or lack, of their enforcement.

As a result of the Watergate scandal and intense lobbying activity by ‘good government’ interest groups like Common Cause and the League of Women Voters, there was a frenzy of activity across the states with passage of lobby laws, public disclosure provisions and campaign finance regulations. In 1988, Arkansas politicians and lobbyists were no longer able to prevent the enactment of lobby laws and the voters passed an initiative (a law enacted through the ballot and places there by a voter petition) which included lobbyist registration and reporting provisions. By then, all 50 states had some form of lobby laws, conflict of interest provisions and campaign finance regulations. In fact, in most states, these four types of provisions (lobby laws, conflict of interest, campaign finance and PAC regulations) were more comprehensive than the corresponding federal regulations. Yet the incremental, ad hoc nature of their development at state level has produced a patchwork of regulations across the states. While less pronounced than in the past, differences are still very apparent.

The history of lobby regulation at the local city and county level is much shorter. Most of it postdates Watergate. As of 1996, it seems to be confined to large cities such as Baltimore, Chicago, Denver, Los Angeles, New York and San Francisco and large counties which include large metropolitan areas such as Orange (Orlando), Dade (Miami) and Hillsborough (Tampa-St. Petersburg) Counties in Florida.

The decision came from the localities themselves. This is because, in
all fifty states, state lobby laws apply only to lobbying state-level policymakers and do not have local application. Nevertheless, local governments often turn to their state lobbying agency for models for their ordinances. This was the case in New York and in California, for example. Also, while the decisions were local, the conditions that produced them have been operating nationwide. They include: an explosion in the number of interest groups lobbying at all levels of government; increased sophistication of local groups, including their use of modern lobbying techniques; the need to hire lobbyists in big cities as government gets more complex; and the general trend toward openness in government. Regarding the last, a major concern in several cities, Los Angeles being one, was the potential for corruption in the awarding of construction and supply contracts. American local governments have been notorious for such corruption, and many have passed ethics laws to deal with this. Though it is surprising that it took so long to come to the local level, there is now a definite trend in cities and large metropolitan counties to adopt lobby regulation. The next twenty years will likely witness a surge in such provisions akin, perhaps, to the frenzy of activity at state level following the Watergate affair.

**Federal regulation**

**The Foreign Agents Registration Act 1938.** As the clouds of war began to collect on Europe’s political horizon in 1938, Congress became concerned about the propaganda activities of agents of foreign governments, particularly those of Germany and Italy. The Foreign Agents Registration Act, or the McCormack Act as it is known, was an attempt to register anyone representing a foreign government or organisation. The purpose of the periodic reports was that ‘the spotlight of pitiless publicity will serve as a deterrent to the spread of pernicious propaganda’. Initial enforcement was placed in the State Department, but was deemed to be inadequate and enforcement shifted in 1942 to the Justice Department, where it has remained since.

The act has been subjected to many amendments which have served to restrict its scope or reduce its effectiveness. A 1962 Senate report said that the Justice Department had only sporadically enforced disclosure requirements, with attention being paid mainly to agents of Communist nations. Changes in 1966 considerably reduced its scope and agent registration fell off sharply from that year. Exemptions were given by narrowing the definition of ‘agent,’ requiring a clear agency relationship demonstration of political activity. Lawyers were exempted if they engaged in routine legal activities for their foreign clients. The redefinition greatly increased the burden of proof for government prosecutors and while some new tools of enforcement, such as civil injunctions, were given to the Justice Department, neither injunctions nor prosecutions have been used since the amendments were made.

The Billy Carter Libyan agent exposé in 1980 brought the McCormack
Act once again to the nation’s attention. Pressures forced the President’s brother to register belatedly as an agent of Libya. Lobbyists for the Concorde aircraft and the United States-Japan Trade Council, among other foreign representatives, also began to register in the face of increased attention. Thus one minor success of the 1966 amendments was the slightly more effective enforcement of the registration aspects of the act in well-publicised cases.

THE FEDERAL REGULATION OF LOBBYING ACT 1946. This extremely short (four pages) act was quickly drafted and added almost as an afterthought to the Legislative Reorganisation Act of 1946. During the hearings held on the latter, little attention was given to the question of lobbying reform and in the final committee report only three pages out of 40 were directed at that issue. Replaced in 1995, it was the major piece of lobby regulation at the federal level for 50 years and its history is enlightening as lessons.

The act had very modest objectives. It merely provided for the registration of any person who was hired by someone else for the principal purpose of lobbying Congress and for submission of financial reports of lobbying. Its key phrases required registration of any individual ‘who by himself, or through an agent, or employee or other persons in any manner . . . solicits, collects, or receives money or any thing of value to be used principally to aid . . . the passage or defeat of any legislation by the Congress.’

Not surprisingly, this brief piece of legislation, hurriedly drafted, suffered from flaws of vagueness. This surfaced in the federal court case, U.S. v. Harriss, which involved the indictment of a New York cotton broker for hiring persons to lobby Congress while failing to register or submit financial reports. The court declared the act unconstitutional because it was too vague to meet the requirements of due process (Fourteenth Amendment to the Constitution) and because the reporting and registration requirements violated First Amendment rights. In 1954 the Supreme Court reversed this decision and declared the act constitutional, but proceeded to attempt to redefine some of its terms in a highly restricted manner. In ruled that the act applied only to persons or organisations whose principal purpose is to influence legislation. Second, it covered only a person who ‘solicits, collects, or receives’ money or anything of value for lobbying. Finally the lobbying activities included only direct communications with members of Congress on pending or proposed legislation.

As a result of the initial drafting failures and the subsequent redefinition by the Supreme Court in the Harriss decision, the following were the major problems with the 1946 lobbying act:

1. Many lobbyists refused to register since they claimed that lobbying was not their ‘principal purpose’. Several of the most
powerful Washington lobbying organisations refused to register for decades. For example, it took the National Association of Manufacturers 29 years until it finally decided it was a lobbying organisation in 1975.

2. Others did not register because they used their own financial resources to lobby and thus they did not ‘solicit, collect, or receive’ money for lobbying.

3. Mass lobbying by a group’s membership, orchestrated by group leaders (grassroots lobbying), was not covered by the act. This was an especially serious weakness as large organisations spent millions of dollars to initiate such campaigns. This meant that campaigns like the American Trial Lawyers Association’s efforts to defeat no-fault automobile insurance did not have to be reported as a lobbying efforts. Frequently, moreover, organisations involved in these mass membership campaigns failed to register as lobby groups.

4. The Supreme Court’s decision that only direct contacts with Congress counted meant that activities such as testifying before congressional committees, or the preparation of that testimony, did not need to be reported. Moreover, some groups claimed that their contacts with Congress were purely informational and thus not lobbying as defined by the act.

5. Restriction to members of Congress also excluded lobbying of the staff of individual members and the staffs of committees. Ironically, members of Congress are probably the least frequently lobbied group in Congress.

6. Since the law covered only Congress, lobbying of the White House, executive departments, regulatory agencies, and other governmental organisation was exempt. It is generally recognised that the vast majority of important governmental decisions, in any case, are not made in Congress in the form of new legislation, but in executive branch implementation of laws and regulatory agencies’ interpretation of them.

7. The decision on what to report under the financial reporting provision was basically left up to the lobbyist to determine. Some lobby organisations such as Common Cause reported all related expenditures to Congress, while others only a minuscule proportion. In 1971, for example, El Paso Natural Gas Company did not report lobbying expenditures of $839,862 despite an acknowledgment that it was ‘for purposes of influencing public opinion’.

8. Finally, investigation and enforcement of the provisions of the act were almost nonexistent. No lobbyist really feared prosecution for evading its provisions. The Justice Department had not policed lobbying since its lobbying unit was disbanded in 1953 and from the 1960s onward it denied responsibility for enforcing
the law. After some half-hearted tries during the early years, it gave up any attempt to enforce an unenforceable law.

The result was a registration law, according to one estimate, that accounted for between a sixth and a third of the lobbyists working in Washington, with only about 1% of the total money spent on lobbying reported. As a result, there was a broad-based demand either to amend it or to write an entirely new law.

**The 1995 Reforms.** The 1946 Federal Regulation of Lobbying Act was repealed and replaced by the new Lobby Restrictions Act passed in November 1995. Many, but not all, of the earlier loopholes were closed. The following are the major provisions of the new law.

1. Lobbyists and lobbying organisations include all those who seek to influence Congress, congressional staff and policy-making officials of the executive branch including the President, top White House staff, Cabinet members and their deputies, and independent agency administrators and their assistants.

2. Lobbyists must register with the Clerk of the House of Representatives and the Secretary of the Senate within 45 days of being hired or within 45 days of making their first lobbying contact with a person covered by the act. Lobbyists who expect to receive $5,000 or less in a six-month period, or organisations that expect to spend $20,000 or less in a six-month period on lobbying with their own employees, do not have to register or make reports.

3. Semi-annual reports must be filed and list the issues lobbied on, a list of the institutions contacted, the lobbyists involved and the involvement of any foreign interest such as a foreign government or company. Representatives of U.S. subsidiaries of a foreign owned company and lawyer-lobbyists for other foreign interests must register.

The loopholes that could not be closed in the 1995 law are still substantial. The exemption of all group leader orchestrated mass campaigns (grassroots lobbying) from reporting requirements is particularly troubling since many lobbying efforts in the 1990s depend heavily on this. Another major weakness is the exemption of religious groups which have become a major lobbying force in Washington.13

**State regulation**

With fifty governments, a variety of political sub-cultures, histories and levels of political development, experience with lobby regulation in the states is quite diverse. The 1995 edition of the Council of State Governments’ Blue Book detailing current lobby laws and related provisions is almost two hundred pages long. However, we can encapsulate the experience in the states in the following way. There are two
criteria for evaluating lobby laws: their inclusiveness and the stringency with which they are enforced. The former can be better understood by identifying the four technical elements that make up lobby laws in most states: (1) provisions concerning who is (and sometimes who is not) required to register as a lobbyist; (2) what, if any, activities are lobbyists prohibited from engaging in; (3) who has to report lobbying activities and what is required in those reports; (4) what investigative and enforcement authority does the administering agency have to ensure compliance.

The differences in who is covered under state laws produces a wide variation in the number of persons registering as lobbyists. States like Washington and Oregon require state executive agency personnel to register if they deal directly with the legislature, so these states tend to have higher numbers. California and Hawaii exempt state executive agency personnel from registering. Differences in other provisions lead to further distortions. The largest non-registered or hidden lobby in the states is, in fact, government, particularly state agencies, boards and commissions, and local governments. One study revealed that on any one day as many as a third of ‘lobbyists’ working the legislatures and the upper echelons of state agencies in the American West (which is particularly reliant on government) and up to a quarter in other regions, represent government. Even in states where government may be a much less important factor in the society and economy, as in Wisconsin, this may be as high as 10% of total lobbyists and probably even higher.14

Regulations regarding reporting requirements also vary, as do prohibited activities, though not to the same degree. The extent to which lobby registration agencies review reports and can investigate and enforce their regulations also varies. The Alabama Ethics Commission, for example, has little investigative and no enforcement authority, while the Nebraska Accountability and Disclosure Commission has extensive authority in both areas.15

The disclosure provisions in conflict of interest regulations also vary considerably, as do the disclosure, limitation and prohibition regulations of campaign finance laws and PAC regulation. In addition, in many states, incremental policy-making in this area has resulted in the absence of any integrated administration of lobby regulations and standardised publication of data. In the South and most of the West, for example, not one but two or more agencies administer the four types of provisions. Agencies like Washington State’s Public Disclosure Commission and California’s Fair Political Practices Commission, where all provisions are the responsibility of one organization, are found in only a few states.

From a researchers perspective all this means that comparing the extent of lobby regulations between states is fraught with problems.16 However, a preoccupation with trying to explain these variation may be clouding one fundamental point. The important thing is the extent
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of actual or perceived political corruption and unsavory dealings in a particular state. The extent of lobby regulations is not necessarily an indication of either, nor of a commitment to move toward a more level political playing field in the lobbying process. It is the political culture of a state, albeit modified over time by reforms, that will probably be the most important influence on how that game is played. In other words, lobby regulations may bear little relation to attitudes and practice of political morality. One could argue that the lack of comprehensive provisions in South Carolina was, in part, responsible for its recent lobbying scandal involving legislators and lobbyists, but comprehensive regulations in Arizona did not prevent several legislators and lobbyists from engaging in apparently illegal activity there.

Local regulation
The small number of local governments that have regulations tend to emphasise public disclosure and not restriction on lobbying activity. At the same time, local governments have been concerned (as have many state governments) to write lobby regulations that only include professional lobbyists and do not inhibit the activities of civic and community groups and ordinary members of the public. This, for example, was a major concern in the drafting of the Orange County ordinance in Florida. So most local governments have similar provisions to those of Los Angeles which require lobbyists and their clients to register if they spend over a certain amount of money in a period of time. In Los Angeles this is $4,000 in a calendar quarter. Such provisions aim to net professionals without restricting citizens. In New York similar provisions resulted in 75 lobbyists and 200 lobbyists’ clients registering in 1995.

As mentioned earlier, however, local lobby regulations are in the infant stage and their effects, both positive and negative, are yet to be seen. Los Angeles is currently conducting a study to assess the effects of its law, which came into operation less than four years ago. In most local governments, often including those with lobby regulations, more information about the activities of lobbyists can be obtained from related provisions such as conflict of interest statements and campaign finance disclosure.

What has regulation achieved?
Assessing the impact of lobby regulations on American politics is fraught with difficulty. This is because it is virtually impossible to isolate their effect from other influences on the conduct of politics at federal, state and local levels, particularly over the last twenty years or so, such as the increased role of government, the decline of political parties and the expansion of political pluralism. Nevertheless, research does provide relevant observations.

It was noted earlier that lobby laws cannot restrict the right of citizens
and groups to lobby government. What they can do is limit certain activities such as the value of gifts to elected officials or the amount spent on entertaining them. The major value of lobby laws is in providing public information on who is lobbying whom. Public disclosure is the major element in all four types of regulations. Such disclosure increases the potential, at least, for public and particularly press scrutiny. Increased public information has probably been the element of lobby regulation that has had the major impact on state politics and government and appears to be having a similar effect at the local level; and the 1995 reforms should strengthen this element at the federal level.

What, then, has the impact of lobby regulation been on American politics? We can briefly comment on three aspects: who has benefited from public disclosure of lobbying; the impact of regulations on the conduct of business by established interest groups and lobbyists; and how elected officials and political appointees have been affected by these regulations.

According to lobby agency officials at both the state and local levels, it is not the public but the press, candidates seeking election or re-election, as well as interest group staff and lobbyists themselves who make most use of registration and related information. Most information about lobbyist spending and activity is disseminated by the press; so while the public has benefited from these provisions, the extent is largely determined by the press. This, of course, raises questions about the selectiveness of cover, filtered through reporters and editors. To overcome this potential problem, several states have made information more readily available through unedited listings of lobby expenditures and other registration information. Such attempts are sensitive politically, however, and have met with varying degrees of success. What might be termed ‘outsider interests’ (those not part of the old lobbying establishment) may have also benefited from lobby regulations. Public information has made the activities of their entrenched opponents more visible and as a result more restrained in many instances.

This brings us to the effect regulations have had on the established interests and their lobbyists in America. Restraint in dealings with elected officials, political appointees and top level civil servants, a greater concern for their groups’ public image and increased professionalism, appear to be the three major influences. Lobbyists, especially those representing powerful interests, are much less likely to use blatant strong-arm tactics. Even dominant interests, like Boeing in Washington state, prefer to use low-key approaches buttressed by public relations campaigns. Though the relationship is far from a simple one, the more public disclosure of lobbying that exists in a state and the more stringently regulations are enforced, the more open is the process of group attempts to influence public policy.

Public exposure is also partly the reason for the apparent disappearance of the old wheeler-dealer lobbyist from the state and to some
extent federal political scene, and the increased professionalism of lobbyists in general. However, what has in fact happened is that modern big-time lobbyists are wheeler-dealers under a different guise. Like the old wheeler-dealers, they realise the need for a multi-faceted approach to good relations with policy-makers, particularly elected ones. This includes everything from participating in election campaigns to helping these policy-makers with their personal needs. In addition, this modern-day wheeler-dealer is very aware of the increased importance of technical information, the new professionalism, the changing needs of policy-makers and the increased public visibility of lobbying.

In turn, public disclosure of activity, including campaign contributions and PAC activities, has changed the way that politicians deal with interest groups and lobbyists. Much more aware of their public image than any time in the past, legislators, Presidents, Governors and other elected and appointed executive officials, are much less likely to deal with or tolerate unsavoury practices.

Perhaps a less noticeable but nevertheless important effect of lobby regulation on some politicians is that it often increases antagonism between them and the press. It can become a source of antagonism between politicians and lobby regulating agencies, resulting from disagreements about the application and enforcement of disclosure information, especially when it affects the politician directly. This may appear of little consequence until one realises that in most states it is legislators and elected and politically appointed members of the executive who must approve the funding of these agencies. Even slightly reduced funding can impair an agency’s ability to perform its tasks. Hence the idea of ‘capture’ of the regulatory process by those being regulated.

The lessons of lobby regulation

Five important findings have emerged from examining lobby regulation in American politics. First, the development of the four types of provisions that relate to disclosure of information about lobbying activity lobby, conflict of interest, campaign finance and regulating PACs were developed largely in an incremental way. Second, these provisions have until now been ineffective at federal level, vary widely across the states, and are so new locally that no real assessment of them can be made as yet. Third, and largely as a result of this second point, lobby registration records are an inadequate indication of the extent and type of lobbying being conducted in America. Fourth, at least as far as lobby laws are concerned, comprehensiveness of regulations in a particular state does not mean that these are stringently enforced, while the absence of comprehensive is not necessarily an indication of a lax attitude toward public disclosure or unsavoury politics. Fifth, the development of lobby regulation in America has been a highly contentious political issue and continues to be so. These five points are
important for understanding the problems in providing a systematic explanation of the development and impact of lobby regulations, for understanding the political realities and practical limitations of such regulations, and for predicting their likely course in the future.

Enactment and enforcement is a public interest issue, at least in theory. In reality it is subject to all the conflict inherent in the public policy making process resulting from clashes of values and the redistribution of benefits. In the end, it is politics, not theory, that determines the extent and enforcement of regulations. Lobby regulation is rarely a popular subject with those being regulated. In many cases there is a natural antagonism between the regulating agency and the politicians or interests that are subject to disclosure regulations. Nowhere is this more evident than in the budget process, where underfunding the monitoring agencies is a way of reducing their effectiveness. There is also the very legitimate issue of whether the cost of extending regulations can be justified in terms of increased public awareness. In the face of little evidence for or against, this too becomes a political decision.

Evidence does suggest, however, that the growth of lobby regulations and other disclosure provisions have had a positive effect on the conduct of public policy making in the American states. In providing information on who is lobbying for whom, which legislators, elected and politically appointed members of the executive and senior civil servants have what relationships with what groups, and who is contributing to whose campaign, the states have ushered in a more open and professional era in government. While the political playing field will never be completely level, the laws do go a long way in identifying the players and their relationships. In fact, it is not the control or the channeling of interest group activity that is the major contribution of lobby regulation to the political process but, as the clerk of the Florida State House of Representatives has observed, it is the provision of public information in the form of the identification of the players.20

Because of the constitutional problems inherent in attempting to curb lobbying activity, it is unlikely that the future will see major extensions in lobby regulations as a means of evening up politics, and particularly the lobbying game. The interest group and lobbying system in America will continue to favour those interests with major resources at their disposal. But lobby regulations, especially public disclosure provisions, will provide information for those who care to use it to make more informed political decisions. Increasing public awareness and the exposure of scandals are the most likely influences to produce more stringent laws and a more, open if not equal, lobbying process.

1 R.C. Benedict, R.J. Hrebenar and C.S. Thomas, Public Attitudes Toward Interest Groups and Lobbying Reform in the United States, paper at meeting of the Western Political Science Association, 1996.

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4 Before the 1946 act, a 1935 law required registration of lobbyists representing holding companies before Congress, the Federal Power Commission or the Securities and Exchange Commission. Lobbyists for shipping and commercial marine interests were also required to register by a 1936 act (Schlozman and Tierney, op. cit., p. 318).


9 National League of Cities, Information Packet of City Circulars on Lobbying Regulations, including existing laws and proposed laws, prepared by Tom Sullivan, Research Analyst, July 1996; and Orlando Sentinel, 31.7.93.

10 Interview with Barbara Freeman, Analyst at the Los Angeles Ethics Board (June, 1996) and with Denise Pianoforte, Special Assistant for Lobby Registration, City of New York (June, 1996).

11 Los Angeles Times, 25.8.93.


13 San Francisco Chronicle, 11.3.96.


17 Orlando Sentinel, 31.7.93.

18 Interview with B. Freeman (June, 1996) and City of Los Angeles Governmental Ethics Ordinance, 1996.

19 Interview with D. Pianoforte (June, 1996) and Local Law 14, City of New York, 1986.