Corporate Lobbying – The Tradeoff Between Payback, Accountability/Responsibility, and Democracy

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Abstract

Lobbying has become an integral part of everyday corporate business. Strategic political management, as it is euphemistically called, has changed its demeanor over time. This is due to changing social, economic and political landscapes, influence opportunities, and the overall payback on lobbying efforts. The U.S. has perfected a legal system that is considered corruption in other countries of the world, thereby giving corporations an excellent avenue for revenue enhancement. This phenomenon is also a result of the continued degradation of corporate governance, the Principle–Agent accountability, and a dissolution of the boundaries between corporations and their political pendants, that is, those elected to be agents of the people in regulating economic activity for the good of the population, i.e. democracy.

This paper attempts to lay out a general framework of democracy and the role of economic actors within this framework drawing on the principles of corporate governance and the checks and balances of the Principle-Agency theory. The discussion necessarily encompasses the concept of externalities, i.e., costs encompassed by the license to operate and the developmental path of how these have been handled by the economic and political spheres over time.

Keywords

Corporate Governance, Corporate Social Responsibility, Democracy, Lobbying, Agency Capture.

> [Corporate lobbyists] are the hirelings of private property interests [working to protect those interests] to the detriment of a growing majority of dispossessed Americans... Property has not hesitated to corrupt government when necessary to preserve its precious advantages, and to extend them. (Crawford, c. 1939).

The above quote was made with respect to the drastic rise in lobbying in response to FDR's New Deal and its extensive social reforms. Since then, lobbying and lobbyists, often highly-paid lawyers, have become much more sophisticated and influential, and are able to wield direct power over public policy and even control the regulatory bodies created to mitigate corporate impact on society and the environment. This is, in some cases, a clear indication of poor legislation, industries pursuing myopic economic paths (e.g., health, energy, agriculture, finance) while controlling the media and public opinion on matters of democracy, individual rights, and free trade.

A general framework of democracy and the role of economic actors will be drawn utilizing the principles of corporate governance. The discussion necessarily encompasses the concept of externalities, i.e., costs encompassed by the license to operate and the developmental path of how these have been handled by the economic and political spheres over time. The article will conclude with systemic suggestions for improvements based on the analytic framework.

Lobbying

Lobbying has become an integral part of everyday corporate activity. Strategic political management, as it is euphemistically called, has changed its demeanor over time. This is due to changing social, economic and political landscapes, influence opportunities, and the overall payback on lobbying efforts. The U.S. has perfected a legal system that is considered corruption in other countries of the world, thereby giving corporations an excellent avenue for revenue enhancement. Strategic Political Management (lobbying) and Supreme Court decisions have created a system in which individuals and Corporations can use unlimited funds in influencing our regulatory framework and those aspiring to and /or in political office. These phenomena in their entirety have resulted in continued degradation of corporate governance, the Principle Agent accountability, and a dissolution of the boundaries between corporations and their political pendants, those elected to be agents of the people in regulating economic activity for the good of the population.

Lobbying, as defined by Webster's Dictionary is:

- to conduct activities aimed at influencing public officials and especially members of a legislative body on legislation
- to promote (as a project) or secure passage of (as legislation) by influencing public officials
- to attempt to influence or sway (as a public official) toward a desired action

As a process, lobbying has a long history as well as a critical role in politics, especially, democracy. Of course, influence can be positive or negative and with most things in life, one cannot expect to reap only the positive. Therefore, we can assume that some forms and unspecified amounts of negative lobbying influence are inherent in the political process.

The body politic, which elects officials who are then put into public office in order to ensure the propagation of the body politics' will, is represented appropriately in the decision making process. This process is at the very core of what we hold to be dear and true of democracy and the epitome of how Principle-Agency Theory should work. Lobbying, as an overall process, can be viewed as the vested powers of a system, in this case, economic and political systems, attempting to solve the problems that arise for society, or the people within the framework of the institutions, which have been created as the decision-making actors. That is to say, in a perfect, theoretical framework/world, lobbying is the critical exchange of information in ensuring the justice and equity of the system. In this "perfect world", one would then view the media as the conduit for gathering information as well as dispersing it from and to the general body politic. The directness and openness with which this should occur ensures the perfect information required of perfect competition, driving prices down and benefitting the consumer as the masters of the system. This in turn assumes an optimal level of transactions within which the political, economic, and societal spheres create the lowest possible cost basis for all goods and services. What a wonderful world it is in which we all live – in theory! The above however, is illustrative of the theoretical basis upon which this article will proceed. That is to say, there are significant elements of Transaction Cost Economics, Institutional Theory and Principle-Agency Theory which are relevant to corporate lobbying, specifically with respect to democracy and the phenomena of Agency Capture.

- Transaction Cost Economics evaluates the amount and 'costs' of transactions involved in economic activity. As more lobbying occurs, the costs of the overall transaction increase as well.
- As the economic institutions, specifically, corporations outgrow other institutions (e.g. unions, courts, education, health care, etc.) in their prevalence and power, other institutions no longer wield the same power and the negotiation becomes more skewed towards the specific interests of the prevailing institution.
- Principle-Agency Theory explains the skewing of this power and is intrinsically inferred as understanding these relationships and searching for solutions to enable and/or restore a semblance of harmony amongst the principles and the agents in all of the cases above, and beyond.

However, to set the appropriate backdrop for further discussion, we will begin with some historical background. According to Robert Kaiser, (2010), lobbyists were present at the first Congress' first session in March of 1789. Wealthy New York merchants, who were interested in delaying the passage of legislation on tariffs, which they felt would be disadvantageous to them, were also present. Hollywood has shown us that lobbyists are associated in the public imagination with corruption and payoffs - and for good reason! Examples of bribes and payoffs by pleading for special (usually wealthy) interests recur throughout American history. Perhaps the definitive case was the Credit Mobilier scandal in the late 1860's, an era when the young railroad industry learned to work its will in Congress through complex financial transactions that produced simple outcomes: members were bought and paid for (Kaiser, 2010, p. 84).

The growing use and reach of power brokering (lobbying) was even noted at the U.S. Supreme Court in 1871 when Justice Swayne stated, “[t]he theory of our government is, that all public stations are trusts and that those clothed with them are to be in the discharge of their duties solely by considerations of right, justice, and the public good.” (Kaiser, 2010, p. 89).

According to David Graham Phillips, in spite of Justice Swayne’s judicious words, these influence peddlers, as a profession, enjoyed continued growth and opportunity up until the brief Progressive Movement in the U.S. The Progressive Movement was characterized by enlightenment and a zeal for truth, justice, and equity, and was led by a group of intellectual ‘muckrakers’. “[...P]rogressivism relied upon the moral and ethical efficacy of democracy to correct social evils once they were exposed. In most social upheavals, a vanguard usually brings old institutions into disrepute, paving the way for new ones.... From 1902 till 1912, [the muckrakers] led the nation in the systematic uncovering of the strands of a giant web of control, linking politics, education, the press, religion, health, and high finance.” (Phillips, 1964, p 10).

The aforementioned demonstrates the omnipresence of negative lobbying in the U.S.’ democratic form of government, even in its nascent period. During this same time period, around the end of the 19^{th} century, corporate lawyers became successful in their bid to create the doctrine of ‘corporate personhood”, i.e., that a corporation may enjoy the full legal status and protections originally designed and created for human beings. What is blatantly missing from this new “corporate personhood” is the addition of the responsibilities and obligations to which the individual human beings are subject. Indeed, there is no conditionality attached to this newly created “corporate personhood” whatsoever. That is to say, according to Carl Gibson, “Essentially, immortal, fictional, man-made legal phantoms that neither eat, drink, breathe, make love, nor die, are fully armed with every constitutional right you and I have” (Gibson, 2014). As an example, corporations are groups of people brought together in a specific organizational form to achieve a specific goal. Although all of the individuals making up the organization and creating the value, that is the company, most certainly have divergent political opinions, as does the shareholder base, management can, at its own discretion make political contributions in any amount they deem appropriate (and have available) to specific political parties, organizations or even individual candidates. Not only does this create an entity whose influence is not necessarily representative of its shareholders or stakeholders, it creates a ‘super individual’ who is able to exert far more influence than any of the other individuals in society. This relegates mere citizens to a secondary role of influence, at best.

This creative corporate lobbying continues to haunt the U.S. today, from the formation of the Washington Consensus, to the repeal of the Glass-Steagall Act (1999), the corporate fraud of the 1990’s (Enron, WorldCom, etc.) and early 21^{st} century when we experienced the 2008 financial meltdown. Corporate lobbying and influence peddling drove much of this, as is discussed in more depth at a later point in this article. The following chart, which was adapted from the Center for Responsive Politics and based on data from the Senate Office of Public Records, gives an overview of number of Lobbyists and Lobbying spend from 1998 to (Oct 31^{st}) 2011.

Total Lobbying Spending			**Number of Lobbyists***		
1998		$1.44	1998		10,406

1999		$1.44	1999		12,940
2000		$1.56	2000		12,540
2001		$1.65	2001		11,842
2002		$1.82	2002		12,127
2003		$2.04	2003		12,920
2004		$2.18	2004		13,168
2005		$2.43	2005		14,075
2006		$2.62	2006		14,534
2007		$2.85	2007		14,861
2008		$3.30	2008		14,185
2009		$3.49	2009		13,693
2010		$3.51	2010		12,941
2011		$2.45	2011		12,220

Figure 1: US$ amounts are in billions.

Figures on this page are calculations by the Center for Responsive Politics based on data from the Senate Office of Public Records. Data for the most recent year was downloaded on October 31, 2011.

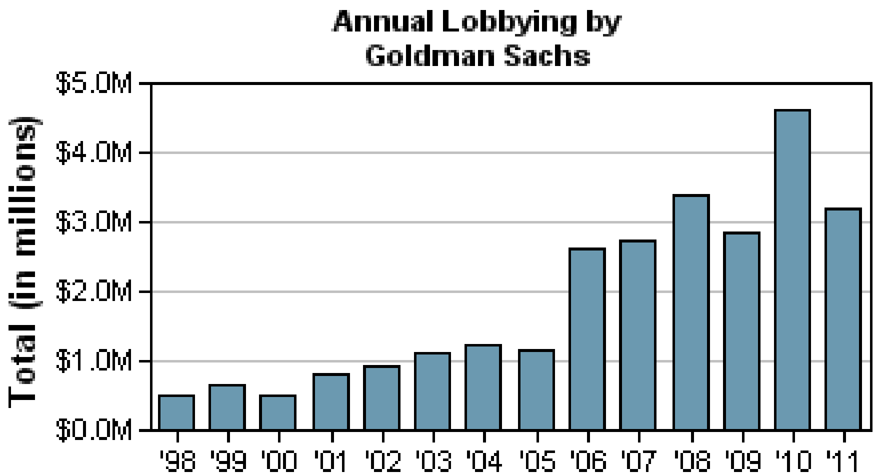
*The number of unique, registered lobbyists who have actively lobbied

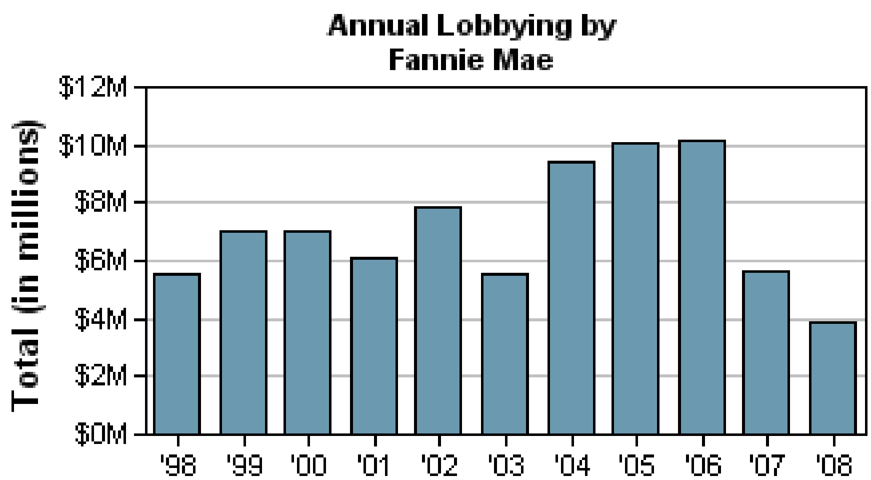
As can clearly be seen, the overall market for lobbying and lobbyists has seen continuous growth. The Lobbying Disclosure Act of 1995 (LDA) mandated the public disclosure of lobbying expenditures. The resulting data show that between 1998 and 2010, lobbying expenditures increased from $1.45 billion to $3.51 billion U.S. dollars, and the number of registered lobbyists grew from 10,406 to 12,941. Further, the LDA provides an opportunity to examine lobbying within a corporate context. In perusing the literature on the economic returns associated with lobbying, it is clear why this field of activity is increasing as well as being considered an actual firm resource, or competitive advantage. Alexander, Mazza and Scholz demonstrate in their article, “Measuring Rates of Return on Lobbying Expenditures” (2009), which studies the specific returns on multinational corporations’ lobbying efforts in conjunction with tax breaks, that, “... corporations that lobbied for the tax benefit spent $282.7 million on lobbying expenditures and received $62.5 billion in tax savings, resulting in an average return in excess of $220 for every $1 spent on lobbying, or 22,000[%]”. Additionally, Hill, Kelly and Van Ness from the University of Mississippi, in an unpublished working paper issued their results in “Determinants and Effects of Corporate Lobbying” as follows: “[a]fter controlling for factors known to influence firm-value, results indicate the market value contribution of an additional dollar of lobbying is roughly $200.” In addition, the authors found that fraudulent firms on average spend 77% more on lobbying than non-fraudulent firms, and spend 29% more on lobbying during their fraudulent periods than during non-fraudulent periods (Hill, Kelly, & Van Ness, 2013).

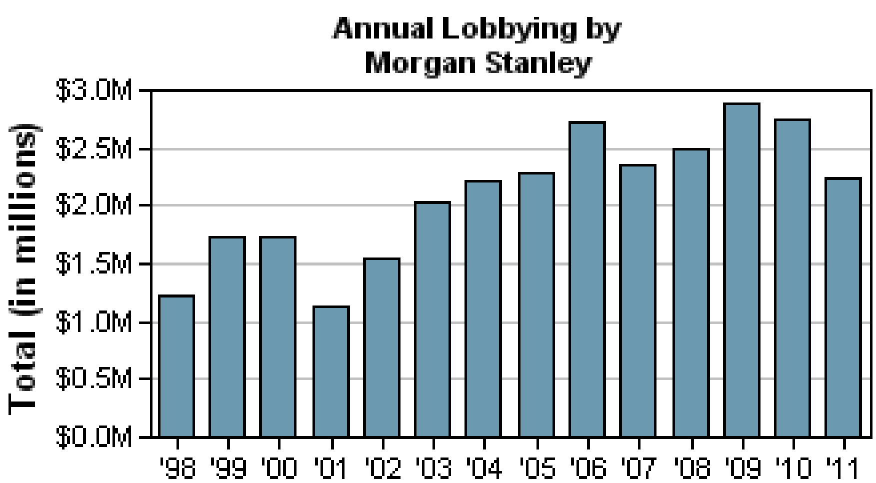
This payback on lobbying is in stark contrast to philanthropy. This is indicative of the lopsided ability of corporations/companies to produce returns and what the ability of the system is to give back to the people and communities. Of course, it is far more complex since wages and benefits are, at least in most cases, paid to employees as well. However, any costs incurred are more than balanced by the same corporations/companies via local, state and federal subsidies (most often through tax abatement) and being able to depreciate their sunk costs, which normal citizens cannot do. On the contrary, private citizens’ real estate holdings are assumed to always increase in value, thus raising their tax base. Once again, we see that there is imbalance in the system, giving increased leverage to those who can produce or profit the most, arguably, the corporation. Through their corporate personhood, corporations receive all the benefits of owning and entering contracts but do not assume the same responsibilities.

Consider the following charts taken predominantly from the Lobbying Database. Many questions arise when viewing the exchange of monies from the companies below, all of which were recipients of the U.S. Department of Treasury's (DOT) Troubled Asset Relief Program (TARP) funds. It's worth noting that Fannie Mae, a quasi-governmental agency, is on this list, thus, the government spends money, through Fannie Mae, to lobby itself.

Figures 2-4: Source: The Lobbying Database, www.opensecrets.org







When looking at these figures and correlating them to the lobbying returns data and our regulatory framework, money = power. The lobbying power potentially exerted by just a few companies over our institutional/political framework is astronomical. Furthermore, as Reuter's reporter, Kim Dixon stated, many of the breaks for companies are what are referred to as riders, or pork barreling, the traditional practice of congressional representatives holding their votes on legislation hostage for special tax breaks and subsidies in their own political districts. Recipients of over $30 billion of tax breaks were slated to catch a ride on the payroll tax legislation which expired in February 2012. Additionally, many of these tax breaks and subsidies are renewed automatically, without further discussion or reference. (Dixon, 2012). One should also ask why U.S. oil companies enjoy tens of billions of dollars in tax breaks and subsidies when some are reporting profits in the tens of billions of U.S. dollars per quarter. This points to a breakdown of our institutional framework that can no longer be expected to deliver on their original purposes, i.e., democracy, freedom, justice, etc.

Before we venture into institutional theory, it needs to be pointed out that this is solely a U.S. phenomenon. A country's institutions and cultural nuances are quite often incorporated directly into their system of economics and/or politics. That is to say, what we in the U.S. have institutionalized and condoned, is exactly what we criticize as bribery and corruption in those countries that have not systemized and condoned lobbying. As an example, in Germany the political economic culture was such that a social market economy condoned and encouraged close cooperation between the banking, insurance and money industries with other industries, such that there was an extreme cross-pollination via networked board members. That is to say, bank and insurance executives were prominently on the boards of producing industries, helping them make their decisions in a way that benefitted Germany and not only a singular company (Stuhr, 2001). This is very much like the Keiretsu of Japan, in which major industries are linked via extreme cross-shareholding. This cross-shareholding serves multiple purposes: it spreads risk across industries, it precludes the demise of a specific industry, or industry player, and it allows decision making on a more holistic level, i.e., not merely the maximization of shareholder wealth. Since individual shareholders make up only a very small fraction of the world's population (in the U.S., individual direct shareholding represents less than 10% of all shareholding)(Grout, Megginson, & Zalewska, 2009), perhaps this form of decision-making is more beneficial to a larger number of people. Of course, this debate on economic and political structure is exactly what is at the root of the discussion of corporate and political behavior and to what extent the actual population is being affected by these two realms of power, which are, in the U.S., becoming a singular power.

Institutional Theory

Institutional theory portends to provide us with an objective reality, which readily lends itself to analysis and interpretation, from a rational perspective. This perception of rationality is based, in large part, on the acceptance of social prescriptions, which in turn receive overall social approval and therefore legitimize themselves. This transformation of social prescription via an organization into legitimized behavior can be viewed as the crux of institutional theory. Contemporary institutional theory had its beginnings with the 1977 publication of Meyer and Rowan's "Institutionalized Organizations: Formal Structure as Myth and Ceremony." Meyer and Rowan's contribution pointed out two crucial aspects that form the foundation of institutional theory:

1. Organizations are subject to pressures that are external to their actual performance environment. For example, managers organize themselves into professional organizations that are also sanctified by the organizational structures of universities and academic scholarship. All of this creates standards of what to expect and what is 'socially acceptable' for managers as well as the acceptance of these perceptions via brick and mortar institutions within our society.

2. Many of the external pressures to which organizations are subject become part of the environment into which the organization is embedded, i.e., the external pressures are no longer actively analyzed but integrated into the realm of the accepted way of doing things.

> Since starting U.S. operations in 1978, Pirelli has hired a lobbyist, raised $119,300 from 19 executives for its political action committee, contributed $25000 toward an academic chair in the name of the ranking member of the House Appropriations Committee, paid for travel of members of Congress to such destinations as Hawaii and New Orleans, and handed out thousands of dollars in honoraria to members of the House and Senate. In that same period, Congress has earmarked $4 million toward the cost of Pirelli's $8 million fiber optics research building in South Carolina and funded a futuristic research and development project in Hawaii that ultimately could net Pirelli and others hundreds of millions of dollars in commercial business... (Kaiser, 2010, p. 183).

This passage corroborates other material previously presented in this article and elsewhere concerning the 'payback' on lobbying dollars spent, being between 200% and 22,000%. In the case above, if we add the $119,300 and $25,000 U.S. dollar amounts with a concrete $4 million U.S. dollar return, we calculate a 2,772% return on Pirelli's investment. Pirelli is not even a U.S. company, but rather, an Italian company exerting influence in the U.S. system. To what extent the profits from these ventures will remain in the U.S. or be expatriated back to Italy, or elsewhere, is unknown. However, this also presents a picture of privileges for those who can afford to pay for them.

This is simply one example of how lobbying and influence peddling have become institutionalized in the U.S. system. Although the Pirelli example also led to U.S. jobs and certain U.S. benefits, there is no clear distinction between what we, in the U.S., have systematized and legalized as lobbying, and what we refer to in other countries as bribery and corruption. That is not to say that bribery and corruption cannot reach an additional level of unethical and/or illegal behavior.

The Financial Industry:

O'Halloran, Epstein and McAllister of Columbia University did a study on the developments in financial regulations over the last 50 years. Their study, examined 77 major pieces of legislation passed between 1950 and 2008 with respect to the financial industry. The findings indicated that although the financial industry has grown from approximately 3% of Gross Domestic Product (GDP) to 8% of GDP in that time frame, the executive branch has ever less discretionary authority over this industry despite its growth. In addition, the number of political actors involved in "authority" over the financial industry has increased, creating a web of overlapping and conflicting. (2010). Thus the government is unable to effectively regulate and/or oversee the financial industry. The amount and complexity, as well as increased internationalization of financial products, has increased dramatically in this same period. The obfuscation of these products via this increasingly complex and copious legislation has been accompanied by a decreased ability of federal regulators to ensure suitable risk within the financial markets. Although it would be overly pessimistic to assert that these developments were contrived by industry, the mere complexity and inability to manage the influence peddling market, as well as the inability to discern private gain from public good, suggests that regulation is not fixing any problems in the financial industry at this juncture, to which lobbying, as a market for power brokering, belong. There is a great and clear need for simplified and competent oversight accompanied by the ability to levy sanctions against transgressing individuals, groups, and companies in order to ameliorate the financial meltdowns of the future.

Within the current regulatory environment in the financial sector, one can make the argument for rampant agency capture, i.e., that the regulator is controlled by the regulated. This is also accomplished via the so-called revolving door, i.e., the constant transfer of personnel between the industry being regulated and the regulating institution, for which there are innumerable examples (www.opensecrets.org/revolving/). However, the more likely scenario is not so much agency capture as it is a mere confusing of the "enemy" by forcing politicians to rely on corporate monies in their attempts to represent the people, thereby creating a general confusion and inability to concentrate effort. This gives the regulated company and or industry free reign, and although it is not distinguishable as 'agency capture', it certainly has the same effect.

The Energy Industry

Let us turn our attention to the energy industry, where we can see much more concrete evidence of agency capture and clear violation of the Principle–Agent contract. British Petroleum's (BP) 2010 "Deepwater Horizon" oil spill in the Gulf of Mexico, provides us with probably the most recent and dramatic evidence of actual agency capture. The oil industry was, until the Deepwater Horizon catastrophe, regulated by the Minerals Management Service (MMS). A Wall Street Journal article, *Oil Regulators Ceded Oversight to Drillers* states: "[t]he small agency that oversees offshore drilling doesn't write or implement most safety regulations, having gradually shifted such responsibilities to the oil industry itself for more than a decade....[and] the safety record of U.S. offshore drilling compares unfavorably, in terms of accidents, to other major oil producing countries." (Gold & Powers, 2010).

In another report from Washington Post staff writers Juliet Eilperin and Scott Higham wrote that two weeks after the BP well exploded, MMS finalized regulations intended to control deep-water drilling operations. The text of the new regulation was provided to the MMS by the oil industry's trade (lobbying) group, The American Petroleum Institute (API). In fact, MMS had adopted at least 78 industry-drafted standards as federal regulation. Since MMS was also a revenue generator via the leases given to oil companies for drilling permits, the emphasis was once again on the maximization of revenues without regard for consequences. MMS employees were caught between the governmental demand for increased revenues and the growing complexity of oil extraction methods. (2010).

Beyond the regulatory aspect, the oil industry has other idiosyncrasies that merit some attention. The textbook view of economics as well as U.S. political rhetoric teaches us that subsidies are for those businesses which cannot be run for profit and yet are defined as some form of public necessity, at which point they become heavily regulated or even government owned. The various sources indicate that U.S. oil subsidies alone range from approximately $20 billion/year to over $80 billion per year (if we include ethanol subsidies from the agricultural sector), or as high as $113 billion per year in direct subsidies (www.cleanupwashington.org). Needless to say, it is probably impossible to discern an exact amount. However, it is also clear that exorbitant amounts of money are being given to the oil industry in the form of subsidies that are only marginally, if at all, being used to maximize the wealth of the non-shareholding investors, i.e. the taxpayers footing the bill.

> In fact, in the top five oil companies, managers direct most of their excess cash to dividends and stock repurchases, both of which drive up the companies' share prices and the executives' stock option values. The percentage of net profits directed towards dividends and stock repurchases for the top five oil companies was 58% in 2005, 73% in 2006, 72% in 2007, 71% in 2008 and 89% in 2009. (*CPS, 2011*).

None of the estimates for these subsidies include the transactional costs of climate change, pollution and etc. which have yet to be fully assessed and are currently only paid for via individual human suffering. The above quote however, gives us a direct correlation between oil subsidies, i.e. taxpayer dollars, and executive management self-enrichment. Although this behavior does seem to fulfill the maximization of shareholder value concept on a certain level (dividends and share price), executive management is reaping a much larger portion of the wealth than are the common shareholders. In addition, it is difficult to justify subsidies to oil companies that are reporting $20 billion U.S. dollars per fiscal quarter in profits (BP one year after the Deepwater Horizon)(BP Annual Report and Form 20-F, 2011). This violates the very core of our economic understanding of the (U.S.) world as we know it. A lot of political rhetoric has been spent on propagating an energy independent America. This is akin to the same disconnect between the concept of free trade, politically and in practice. The U.S. government and U.S. companies may espouse many things within the borders of the U.S. However, once the borders of the U.S. are not the perimeter containing a given contractual agreement, companies can and will act in their own best interest, and not according to U.S. political rhetoric. Gaining more cash for specific companies in the short run via oil exportation does not equate to U.S. oil self-reliance. That is to say, the granting of increased drilling rights to companies is not correlated to U.S. oil self-sufficiency as long as companies may act according to their own best interest.

The Health Care/Pharmaceutical Industry

The largest monetary effort by lobbyists to gain favorable status with legislators over the past few years has come from the pharmaceutical industry. According to the Center for Responsive Politics through www.opensecrets.org, a nonpartisan guide to money's influence on United States public policy, the pharmaceutical industry paid over $2.6 billion U.S. dollars in lobbying activities from 1998 to 2012. (Potter, 2013).

This kind of spending has continued through the current year. Research performed by the Center for Public Integrity, displayed in a report by the Huffington Post, showed that before

‘Obamacare’ was implemented, the pharmaceutical companies Amgen, Inc. and GlaxoSmithKline increased their quarterly lobbying expenditures by $2.52 million U.S. dollars and $1.27 million U.S. dollars, respectively (Levinthal, 2013). Other companies with similar interests in the health care industry also increased their lobbying expenditures, like the American Chemistry Council (U.S. $4.75 million), the American Medical Association (U.S. $4.27 million) and the Biotechnology Organization (U.S. $2.02 million) (Levinthal, 2013). From 1998 to 2013, the pharmaceutical industry spent almost $2.7 billion on lobbying expenses. (www.drugwatch.com/manufacturer).

This data goes to show that companies are using their money to influence and shape the policies and regulations being put in place within their respective industries. One of the most relevant examples of this working in the best interest of companies is exemplified with the expansion of the Medicare system in 2006 to include prescription drug benefits. While this may have been beneficial for Medicare recipients, it was also a lucrative deal for the pharmaceutical industry. The industry was able to enforce a policy that disallowed the negotiation of prices with pharmaceutical companies to make drugs/medicines more affordable to the beneficiaries (Potter, 2013). This ensured high profits for pharmaceutical companies without fear of competition, while patients suffer via higher prices and fewer alternatives.

Additionally, companies are able to maintain a stronghold over the health care industry (as well as other industries) via the “revolving door.” (www.opensecrets.org/revolving/). The revolving door works in two ways: first, legislators create beneficial laws for an industry while holding a political position (for example, a role within a regulatory agency), or a position which exerts great influence over a regulatory agency. Thus, the legislators are employed by those industries whose interests they have represented; secondly, the industry players move somewhat seamlessly into political positions either in Congress or within regulatory agencies. (Makkai, 1992).

International Differences

Returning to the culturally different institutions in, for example, Japan and Germany, these countries’ companies have a far greater penchant for acting in their national interest, as opposed to only self-interest, simply because of structural and cultural forms which are historically founded and institutionally cemented. Germany, for example, is no longer as intertwined politically and economically as it once was (Stuhr, 2001). Privatization of markets has led to the breakup of many of the relationships referred to herein. However, despite the creation of a strong regulatory regime to counterbalance the growing power of economic actors, there are still other institutionalized aspects of the system that were retained. The foremost example is the principle of codetermination, which mandates employee representation in executive management as well as on the board of directors. There is much debate about this particular piece of legislation, mostly in the form of criticism for ameliorated discretion for management and longer periods of time for decision-making. However, there is no conclusive empirical evidence that supports these claims. Furthermore, the stability of Germany, its extremely high standard of living, universal health care, free education, and extremely high level of infrastructure in communications and transportation, are all more concrete examples of the advantages of such a system of governance.

Indeed, corporate governance is again the crux of the matter. According to what rules will the game be played and who will make those rules? The rules determine the winners and the losers, or at a minimum, those with an advantage over those with none.

Conclusory Remarks

> The true friend of property, the true conservative, is he who insists that property shall be the servant and not the master of the commonwealth; who insists that the creature of man's making shall be the servant and not the master of the man who made it. (U.S. President, Theodore Roosevelt (1858-1919) "The New Nationalism," speech, Osawatomie, Kansas (31 Aug 1910)).

> It is interesting to note that a significant shift away from liberty and towards interventionism came at the behest of so-called capitalist entrepreneurs" during the Progressive period... Conventional wisdom still holds that the Progressive Era was in large part a response to a growing monopolization and concentration of economic power in fewer and fewer hands around the start of the twentieth century. The exact opposite is more the case. Unrelenting competition and market uncertainties led large business interests to lobby government for regulations designed to stifle their competition...Competition was unacceptable to many key business and financial interests...As new competitors sprang up, and as economic power was diffused throughout an expanding nation, it became apparent to many important businessmen that only national government could rationalize the economy...Ironically, contrary to the consensus of many historians, it was not the existence of monopoly that caused the federal government to intervene in the economy, but lack of it. (Foulkes, 2006. pp. 22-23).

Lobbying has been at the heart of U.S. democracy since its beginning. The legitimate (of course the burning question is always: "what is *legitimate*?") use of influence in the interest of either the democracy or the people, is the crucial aspect of the analysis. The economy and politics are the main problem-solving mechanisms for society and are the crux of legitimacy in influence peddling and both must be used to solve societal goals and not individual goals. No discussion of lobbying is complete without reference to corporate shareholders. Representing only a fractional percentage of the U.S. population, and it is the population with the largest concentration of shareholders, the maximization of shareholder value cannot be used as a justification within a democratic environment.

In the infinite wisdom of the United States' Founding Fathers, the church and state were separated. This was done in order to ameliorate the power of one of the strongest institutions from the 'old countries' of Europe in the newly created republic, the one which was responsible for their previous perceived repression. This same wisdom and foresight was not, however, employed with respect to the state and the economy in the U.S. This has led to a once-nascent industrial sector becoming the absolute hub around which modern society (almost everywhere) revolves. The integration of economic and political systems, with all power slighted towards the economic system, can no longer be assumed to be anchored in democratic principles and can no longer be expected to represent the people who elected the polity.

This article has examined and shown clear examples of the economic power that now rules politics in the U.S., in the money, agricultural and energy sectors, probably the three most critical sectors of an economy in serving the needs of the people. Each of these sectors exhibits large-scale lobbying as well as large-scale benefits for those lobbying dollars. The dilemma is then two-fold: first, understanding the transaction cost basis of too little regulation/oversight and too much, both of which lead to high costs; and, second, finding that optimal point between regulation and lack thereof has proven an onerous task. It is also an easy argument to say that democracy is supported by more oversight, i.e., ensuring the rights of the many as opposed to the few. However, there is also a point of regulation becoming non-economic. This certainly begs a far deeper question as one crosses the lines between control and ownership. At which point does ownership get relinquished when another is controlling the object in question. This is the essence of the theoretical constructs that divide capitalism, socialism and communism. From a corporate governance/regulatory perspective we can view the world as such:

Figure 5: The political/regulatory spectrum of control (Kibler, B., 2014)

The interpretation here is that governance and regulatory frameworks are the tools of democracy, the assurance of personal rights and freedoms. If our economy is 100% regulated then this is akin to 100% control and therefore eliminates the underlying assumption of capitalism, i.e., personal property in order to ensure equity and freedom from oppression (assuming no oppression from the regulatory entity). So, we have a tradeoff between freedom to take what we can as long as we can defend it (anarchy), or relinquish the concept of ownership, i.e., communism. This places the freedom to own within a regulatory framework, having relinquished some of our rights somewhat in the middle of our sliding scale of a percentage of democracy within the given system. Transaction cost economics, when interpreted with a human behavioral component, tells us that the costs on both ends of the spectrum are too high. Of course this example is analogous as the point at hand is that of business/economic control and not personal control and personal rights.

In essence, we have, most specifically in the U.S., the aberration that the regulatory framework, or government, is not an autonomous being protecting the rights of the private citizens. As organizational behavior, psychology, sociology, anthropology, and the legal system teach us, the corporate organization is a rights bearing individual in U.S. society/law that is not burdened with the same obligations as other individuals in the same society. Additionally, the corporate entity, or 'super individuals,' are allowed to exert a disproportionate amount of influence on the regulatory regime. That is to say, the money from corporations, or the representation of a very small portion of society can, in large part, determine the regulatory outcomes via support of political candidates of their own, or similar, persuasion. This, in fact, detaches our reality from the founding principles of the U.S. which were based more on Rousseau's "Social Contract' and Bentham and John Stuart Mills' utilitarianism, or the assumption that the economy was created to serve the population and the greatest good for the greatest number, respectively. "The unregulated rise of markets undermines democracy through two interrelated processes enabled by the deregulation of capital. First, so-called free markets result in rising inequality in income and wealth. This increasing inequality itself leads to fusion of political power with economic power, leaving the vast majority of the population without effective political voice as elections and politicians become commodities bought and sold.

'Free markets' themselves render it impossible to organize society in the interests of the many. The liberation of market forces establishes an antisocial tyranny that enforces its own version of Hobbes' 'state of nature." (Weeks, 2014, p. 187). In closing, the path towards recreating business and society in a democratic vein requires the separation of politics and money. Although there are a number of other measures which must be identified and implemented, the overpowering force of the market and its financial power and players is not counterbalanced via any other institution. The U.S. and its theoretical system of checks and balances on systemic power did not foresee the financial power that markets would achieve and have not developed any counter mechanisms.

As J. Weeks aptly said, "I defend markets as effective social mechanisms, if and only if they are regulated through a democratic process for the collective good, not when they are left "free", to concentrate riches in the hands of a few" (2014, p. xviii).

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