

THE IMPACT OF PRESSURE GROUPS ON THE LEGISLATIVE PROCESS*

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The outstanding political phenomenon of the past two decades has been the increased and increasing assumption of power and control by government, both federal and state, over the economic affairs of the nation. While this extension would probably have resulted in time simply as the evolutionary product of a more interdependent society, it was accelerated considerably by the economic paralysis of the early thirties and by the second World War. These catastrophic events necessitated, at least, so it was generally believed, the active intervention of government in social economic affairs in a variety of capacities. The result was that the forces which make up the economic whole, the producers, the distributors, the consumers, found that a power heretofore more or less content to participate as an observer was now playing a major and active role in the control and development of their affairs.

As was to be expected, this new role could not be played without numerous and continuing repercussions. Not the least of these reactions was and is the intensification in the struggle of multitudinous and diverse special interest groups to have their voices heard and their requests acted upon favorably by those who guide the destinies of the legislature, the executive, and the judiciary.¹ While our society has always witnessed

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1. In a general interim report the majority members of the "House Select Committee on Lobbying Activities," popularly known as the "Buchanan Committee," observed: "Certain aspects of lobbying's recent development were particularly responsible for the creation of this committee in August 1949. Primarily among these was the fact that the sheer weight of group pressures has increased enormously during and subsequent to the Second World War, reaching an unprecedented peak during the Eightieth Congress. In a very real sense, the impact of war solidly established lobbying as a major industry. Our national effort, entailing as it did far-reaching controls over the entire economy, prompted a hitherto unequalled mobilization of group interests of every conceivable kind." H. R. REP. No. 3138, 81st Cong., 2d Sess. 2 (1950).

and even encouraged demands from its economic components, it is submitted that those who now seek to assert their influence are impelled by a sense of urgency, in truth a desperateness which at times borders on hysteria, not present in previous conflicts. Those who engineer the battles for privileges recognize that a revolutionary change in government's relation to the social economic structure has occurred and that as a consequence the stakes for which they are fighting are higher, more vital.² They are cognizant in other words not only that the increased assumption of control by government makes the rewards of effective influence potentially greater, but also that this same development makes ineffectiveness potentially more costly. They accept, though reluctantly, the fact that the current position of government is not a temporary one, that it will continue to play a major, if not dominating, role in shaping our economy. For these reasons they believe that they are combatants in a battle for survival, and they fight with an intensity which in itself is evidence of the sincerity of their belief.

Shrewd observers of this struggle are perturbed by its fierceness and its implications. Professor Hurst in his excellent treatise, *The Growth of American Law*, has given voice to such concern. Because he accepts John C. Calhoun's theory which held, in Mr. Hurst's words, that "The central job of law was to bring power into balance sufficiently so that particular blocs could not run roughshod over other interests in society,"³ he is acutely aware of the stresses and strains placed on law making bodies in our society. As Professor Hurst observed:

By 1950 it was apparent that these currents had moved far enough to call into question the capacity of our main legal institutions to mediate. . . . Organized spokesmen for industry, commerce, labor, and agriculture wielded a practical veto on measures adverse to their separate concerns, or at least had enough force to modify pending public mea-

2. In discussing current aspects of lobbying, the interim report issued by the Buchanan Committee stated: "Not only was there a sharp increase in the number of groups intent on influencing government, but their effort was also more intense, more diversified, and more effectively financed than it had ever been before. Here again, the impact of the war was basic; for with profits, wages, and taxes running at unprecedentedly high levels it was nothing more than good business to spend freely to protect one's self from adverse legislation or administrative rulings—particularly when the costs were chargeable to 'operating expenses.'" *Ibid.*

3. HURST, *THE GROWTH OF AMERICAN LAW*, 440 (Little, Brown and Co., 1950).

sure closer to their liking. They used their veto frankly and bluntly in their own interests, and not as trustees for a broader public. In positive action they displayed precisely the danger that Calhoun foresaw, the formation of majorities which expressed not an agreement upon the general interest, but merely a sum of temporary alliances of special interests. The forces in the society which drove in directions away from the central core of common concerns seemed steadily to gain strength relative to the forces that drove towards the center. As blocs pushed their particular programs in legislative chambers, they made a picture of a society which seemed less like a structure of interlocking, mutually supporting parts, than like billiard balls on a table, knocking against each other and rolling apart from the impact, to hit and rebound from others.⁴

The majority members of the House Committee which recently conducted an investigation of lobbying activities⁵ lent support to Professor Hurst's analysis when in a general interim report they observed:

As stated . . . one of the central purposes of government is that people should be able to come to it; in our system, lobbying has been a principal means by which this can be done. But at the same time it is important to ask whether our kind of popular government can indefinitely absorb the impact of an inherently expansive system of organized pressure; whether we can continue to afford the social cleavages, the clusters of private power of which this mounting pressure is both cause and symptom. This is no abstruse problem in political theory. The way in which these questions are resolved is the key to our institutional future.⁶

These observations, expressing as they do the concensus of contemporary political thought, challenge our society to take increased cognizance of the existence, the power, the consequences of economic groupism. Whereas the need for such recognition and appraisal is general, the necessity for self information and soul searching in respect to this political

4. *Id.* at 443.

5. This committee was known as the House Select Committee on Lobbying Activities. It was created by the 81st Congress pursuant to a resolution passed in August, 1949. (H. RES. 298). Members of the committee were Representatives Buchanan (D., Pa.), Lanhan (D., Ga.), Albert (D., Okla.), Doyle (D., Calif.), Halleck (R., Ind.), Brown (R., Ohio), and O'Hara (R., Minn.). For a good analysis of the operations of this committee, see Comment 18 U. OF CHI. L. REV. 647 (1951).

6. H. R. REP. No. 3138, 81st Cong., 2d Sess. 4 (1950).

phenomenon should be felt especially by those of us who are members of the legal profession. With understandable pride we repeatedly point to the fact that we contribute proportionately more personnel than any other group to the law making bodies of this nation.⁷ The same is true in respect to the administrative branch and of course we possess a virtual monopoly over the judiciary. Such representation alone would be enough to place upon us the primary responsibility for seeking to assay the methods and influence of current patterns of economic power, but another, more personal, reason exists as to why the legal profession cannot in smug indifference watch the increased activities of various and numerous pressure groups. That reason is that frequently the organizing genius and influence behind a given pressure group and the voice that is heard pleading its cause is that of a member of the legal profession. In truth, it has been alleged, that this voice is sometimes that of the organized bar.⁸

These factors mean that either knowingly or unknowingly the legal profession is playing a major role in the battle for

7. In 1940 Charles S. Hyneman, professor of political science at Louisiana State University (since 1947, professor of political science at Northwestern University) published the results of a study which he made relating to the occupations of the legislators of 13 states for the years 1924 to 1934. In his observations he noted that in seventeen chambers lawyers were the most numerous while in the remaining eight they were second or third in importance. Prof. Hyneman further observed that lawyers held more chairmanships than any other occupational group in twenty of the twenty-five chambers which he analyzed. These facts caused him to conclude that truly "the lawyer is (the) representative for all population groups." Hyneman, 55 *POL. SCI. Q.* 556, note especially pages 558, 562, 564 (1940).

8. In a monograph which he prepared for the Temporary National Economic Committee on pressure groups, Donald C. Blaisdell, economic consultant for the committee observed: "If the Chamber of Commerce is the spokesman at Washington for American business, its special pleader before Government and people is the American Bar Association. Collectively, the association rarely lobbies for or against a particular bill, although in 1937 it made no secret of its pressure activities against President Roosevelt's Supreme Court reorganization plan. From the point of view of business control of Government, the Bar Association is important, aside from the obvious value of its membership as individual lawyers to business, because it has assumed the role of trustee of American institutions. It is in this latter sense that its influence is felt beyond Washington, extending over the country and redounding, on the whole, to the advantage of business." BLAISDELL, *ECONOMIC POWER AND POLITICAL PRESSURES* 37 (TNEC Monograph 26, 1941).

For a further comment on the lawyer as a representative of pressure groups see: Mechling, *Washington Lobbies Threaten Democracy*, 22 *VA. QUARTERLY REV.* 321, at p. 341 (1946).

influence in government. As a consequence it behooves us to step back and observe in broad perspective the weapons, the maneuvers, and to some extent evaluate the consequences, inherent and actual, in our current patterns of organized pressure. While this approach admittedly omits concrete suggestions for a solution, it is submitted that information on and a recognition of the problem precedes the remedy. It is also submitted that perhaps a realistic awareness of the *modus operandi* of economic groups is in itself the best guarantee against abuse.

Before describing this *modus operandi* a few general observations should be made. First of all it should be clearly understood that it is not the purpose of this article to condemn promiscuously those forces which see fit to exert their influence upon government.⁹ Economic groupism is part and parcel of our social economic life. In fact, therein lies our current political paradox, for, as Professor Jaffe has pointed out, our constitutions and philosophies are geared to a territorial representation of individual citizens while in reality the "most significant and powerful components of the social structure are economic groups" which are not confined to and cannot be represented on an individual or geographic basis.¹⁰ It should further be observed that this article recognizes that it is necessary for the government to meet certain of the demands advocated by various collective voices in our society. As has been observed:

Stability and repose are imperatives of government, and without minimum group satisfactions they may not endure.

9. In this connection the observations of Dr. Hadley Cantril, professor of psychology and director of the office of public opinion research, Princeton University, are in point. Testifying before the Buchanan Committee, Cantril stated: "Now I would say that pressure groups and lobbies are obviously an inevitable coproduct of our form of Government. . . ."

It is therefore, of course, completely unrealistic and naive to condemn lobbying activities wholesale. Whether they are good or bad depends upon our own particular point of view, what the lobbyist is up to. From the point of view of the student of public opinion, it seems to me that the practical problem boils down to two questions.

First, to what extent do lobbyists represent the public, whether this public is taken on a Nation-wide basis or a State basis or on the basis of a congressional district, and second, to what extent do the lobbyists actually faithfully reflect the views of the particular interest group they claim to be representing." *Part 1 of Hearings Before House Select Committee on Lobbying Activities*, 81st Cong., 2nd Sess. 20 (1950).

10. Jaffe, *Law Making by Private Groups*, 51 HARV. L. REV. 201-202 (1937); also see Comment, *California's New Lobby Control Act*, 38 CALIF. L. REV. 478 (1950).

Where yesterday this fact was glossed with rhetoric, today the naked exposure and intensification of group alignment has made this rhetoric tasteless. Congress and the state legislature pass laws for the farmer, laws for labor, laws for business.¹¹

Accepting then the inevitable fact of organized pressures formed primarily on economic lines, let us turn the spotlight on the devices these forces have developed to make themselves effective.

It is somewhat common among those who have sought to describe these techniques to infer that today's operational approach to influence is considerably different from what it was in the post Civil War era. These analysts refer, for example, to the "old lobby" and the "new lobby" as if to suggest that little in common exists between the two.¹² In its broadest concept this observation is warranted, but from a narrower aspect this suggested differentiation is not to be taken too literally. A study of the methods by which the lumber interests operating in the 1870's and 1880's made their wishes known and their influence felt reveals that direct "personal contact" was the most effective weapon in their arsenal.¹³ A reading of the reports issued by the Buchanan Committee will show beyond question that "personal contact" remains the primary approach to dividends.¹⁴ Contemporary groups it would seem accept as truth the observation of one of their spokesmen when he said:

The way to get bills through is to go up and grab the fellows and talk to them. A speech never changed a vote yet. It's a matter of political strategy. Take the leaders and sell 'em.¹⁵

11. Jaffe, *Law Making by Private Groups*, 51 HARV. L. REV. 201, 202-203 (1937).

12. See BLAISDELL, *ECONOMIC POWER AND POLITICAL PRESSURES*, 3 (TNEC Monograph 26, 1941); Note, *The Federal Lobbying Act of 1946*, 47 COL. L. REV. 98 (1947); Comment, *Improving the Legislative Process*, 56 YALE L. J. 304 (1947).

13. For examples of legislative hearings and committee reports which reveal lobby techniques of the post Civil War period see: WIS. ASSEMBLY J., appendix (1872).

14. For illustrations see: H. R. REP. No. 3138, 81st Cong., 2d Sess.; H. R. 3233, 81st Cong., 2d Sess.; Hearings, *supra* note 9.

15. Coffin, *No Speech Ever Changed a Vote*, 117 NEW REPUBLIC 16 (July 14, 1947) the quotation is allegedly a statement made by Byron Wilson, lobbyist for the National Wool Growers' Association.

Because direct personal contact remains the most effective approach, interviews, dinners with legislators, special favors, and the extension of numerous courtesies continue to play prominent roles in the patterns of making the demands of special groups reflect themselves in legislative and administrative action. The personal contact technique also explains unquestionably why many ex-legislators and former administrators are retained to serve as representatives of special groups.¹⁶ Their "know-how" as to the ways of government and their relationships with those in a position of authority understandably make them valuable assets to those forces that are requesting a little added consideration from their government.

Just as "personal contact" in its various forms remains an essential characteristic of modern pressure tactics, so also does the practice of having special groups prepare their own bills for eventual transmission to the legislature. In the period of economic expansion witnessed by the latter half of the nineteenth century, it was common for railroads, corporations, lumber companies, mining concerns when interested in certain grants, subsidies, or special franchises to have counsel draft the necessary bill and then to have "their legislative representatives" introduce this bill to the law makers.¹⁷ Today special groups follow this same technique and consequently many laws now on the statute books were first drafted and tailored by and for economic blocs seeking to obtain certain benefits.¹⁸

16. For comment on use of former congressmen and administrators by pressure groups, see: Mechling, *Washington Lobbies Threaten Democracy*, 22 VA. QUARTERLY REV. 321 (1946); an editorial in the *New Republic* for March 7, 1949 stated that among the lobbyists registered under the lobby registration act were five ex-senators and 12 ex-representatives. 120 *NEW REPUBLIC* 7, (March 7, 1949).

17. A study of the "private" and local laws passed on behalf of lumber companies in Wisconsin from 1865 to 1873 revealed that in nearly every instance the companies selected one of a small group of Legislators to introduce their bills.

18. The following observation contained in a note published in the *Columbia Law Review* is in point: "The initiative for the great mass of statutes enacted by legislatures each year rarely comes from the legislators. Indeed, legislators have been likened to courts, with 'plaintiffs, urging changes, and defendants protesting against the injury which will be done them by the change.' These 'plaintiffs' and 'defendants' may be governmental agencies or departments, official organizations such as law revision commissions or the Commissioners on Uniform State Laws, or private pressure groups represented by lobbyists." Note, *Nonlegislative Intent as an Aid to Statutory Interpretation*, 49 *COL. L. REV.* 676 (1949). The analogy contained in the preceding quotation is properly credited to

The introduction of these measures is not, incidentally, a matter to be taken for granted. Various interest groups properly appreciate the fact that not all the myriad demands made upon the legislature will find their way into the legislative hopper. Because this is true, these groups rightfully value the legislator who is willing to give official voice to their wishes.¹⁹ Also because this is true certain factions have found it desirable to draft contingent contracts, where not expressly declared illegal,²⁰ which commit them to pay a certain sum to their lobbyist if he succeeds in having a desired bill placed before the legislature.²¹

The fact that much legislation does not originate within legislative chambers or even under the supervision of law makers, but is instead drafted and given impetus by special groups, gives rise to important questions of judicial policy. While it is not the purpose of this article to enter into a discussion of these problems, their significance warrants enumeration. Should judges recognize the true origin of measures obviously drafted by a special bloc in order that these acts may more accurately be construed in keeping with their objectives and with legislative intent? Should courts take note of the birthplace of such legislation in ascertaining whether they should construe such statutes "strictly" or "liberally"? Should judges recognize the political facts of life for purposes of enabling them consciously

CHAMBERLAIN, LEGISLATIVE PROCESSES: NATIONAL AND STATE 64 (1st ed. 1936).

For specific reference to the preparation of measures, by a non-legislative group, for submission to the legislature, see the report devoted to the activities of the U.S. Savings and Loan League, issued by the House Committee on Lobbying Activities. H. R. REP. No. 3139, 81st Cong., 2d Sess. (1950).

19. A reading of the Buchanan Committee reports reveals that most organizations have a certain small group of legislators upon whom they call to do their bidding in respect to the introduction of the measures they desired to have submitted.

20. Twenty-one states at the present time expressly ban contingent fees for lobbying purposes. See statement by Congressman Frank Buchanan, *Part 3 of Hearings Before House Select Committee on Lobbying Activities*, 81st Cong., 2d Sess. 17 (1950).

21. In this connection the following extract from a letter sent by the chairman of the Twenty Percent Cabaret Tax Committee to the person who subsequently represented them is revealing and interesting: "I am authorized as chairman of the 20 Percent Cabaret Tax Committee pursuant to a meeting held at the Sherman Hotel on March 9, 1948, at which time this committee was organized by a group of hotels affected by this tax.

We will furnish you from time to time revised list of the members of this committee. A list of the members as of this date is attached hereto.

In accordance with our agreement, you are to be paid a retainer of

to play the role of economic moderator?²² It is submitted that the manner in which these questions are resolved will determine to a considerable extent the role which the judiciary will play in shaping our economic course in the years that lie ahead.

Returning to a consideration of the similarities between the methods and objectives of the economic forces of the 1870's and those of today, it is significant to note that the pressure elements of the earlier age recognized, as do their present-day counterparts, the significance of having "friends of cause" placed in strategic administrative positions. In Wisconsin, for example, the lumber inspectors appointed by the Governor to supervise timber transactions in each of several districts were men of considerable authority, and as a consequence loggers and mill owners constantly vied with one another in an effort to secure the appointments of individuals sympathetic to their respective positions. The aid of "solid party workers" and the influence of "friends of the Governor" were sought by each group in their anxiety to have the "right men" named as lumber inspectors. Scores of letters containing reminders of previous favors rendered by their authors and begging him to appoint their nominee were sent to the Governor each time a vacancy occurred.²³ How similar are these activities to current struggles

\$10,000 and, in addition, the sum of \$15,000 for expenses in order to bring to the attention of the Congress of the United States the necessity of a reduction in this cabaret tax.

In the event you are successful in bringing this matter to Congress' attention by an amendment, rider, or proposed legislation, there will be advanced to you an additional sum of \$25,000 for expenses to further guide and assist in any manner which you deem necessary the successful passage of this legislation on both the floor of the House of Representatives and the Senate of the United States.

In further accordance with our agreement, in the event you are successful in having passed legislation that will reduce the cabaret tax from the present 20 percent to 10 percent you are to be paid the sum of \$35,000 for your services. In the event the tax is reduced to 5 percent, you are to be paid the sum of \$50,000.

You are admonished to conduct the lobbying of this legislation in strict accordance with the laws and regulations of this country and to hold in valued respect the members of this committee that you are representing." *Id.* at 8.

22. For a provocative comment on the questions raised see: Note, *Non-legislative Intent as an Aid to Statutory Interpretation*, 49 COL. L. REV. 676 (1949).

23. Numerous illustrations may be found in the Wisconsin Executive Records on file at the Wisconsin Historical Library, Madison, Wisconsin. See especially the set consisting of two boxes which contain correspondence concerning and from lumber inspectors.

to have men with "proper views" placed on the Inter-State Commerce Commission, The Federal Trade Commission, the Federal Communications Commission and on the innumerable other agencies and bureaus which daily touch the welfare of many economic groups.²⁴ While in the main popular attention has been directed towards pressure groups in relation to legislative activities, economic interests with understandable eagerness and with considerable success have concentrated in many instances their energies on administrative agencies. These interests well understand that the scope given to legislation, the strictness or laxity of its enforcement, in fact its entire efficacy rests in the hands of those entrusted with administrative authority.

The observations contained in the preceding paragraphs indicate that in primary objectives and in many essential techniques there is much in common between those who sought to exert their influence on government fifty to seventy-five years ago and modern pressure groups. If earlier methods were occasionally touched with unbecoming coarseness and bluntness, and were too often tainted with fraud, it may discreetly be mentioned that modern history is not without its stories of "influence peddling" and purchased favoritism. It is also safe to observe that then as now the usual approach was direct and dignified, conducted by men sincerely convinced for the most part that their interests were in the interests of all.

This comparison of pressure tactics should not, however, be carried too far. In a very significant sense there is a considerable contrast between current sources and methods of influence and those of yesterday, and in this very contrast lies the necessity for taking increased cognizance of economic groupism in the mid-twentieth century. Not only does today's setting provide a more fertile hunting ground for influence, for as noted the weight and interest of government cuts more deeply into social economic relationships than heretofore, but also the increased interdependence of all forces in society has resulted in a welding of these forces into economic blocs possessing greater, more

24. For an example, see a brief account of the manner in which railroad companies brought pressure to bear to defeat the appointment of Thomas R. Amlie, former congressman from Wisconsin, to the I. C. C., see, BLAISDELL, *ECONOMIC POWER AND POLITICAL PRESSURE*, 61-62 (TNEC Monograph 26, 1941).

insistent and virulent voices than have heretofore been heard on the American scene. Herein lies the difference.

The pleas raised in demand in the 1870's and 1880's were essentially, although there were exceptions, e.g. the railroads, the grange, the cries of individuals, or of those representing the wishes of a single business entity, or at best of those who spoke for but a small group of entrepreneurial interests. This was understandable, for economic considerations were primarily local and thus a mass consciousness of interdependence was yet largely unborn. While within given geographic areas special groups were formed to raise their voices collectively,²⁵ organizations on a national scale were either non-existent or were yet to emerge from infancy. The efforts to secure favors from the government, though not without effectiveness, were essentially uncoordinated and were in most instances directed by a single corporation, or by a local unit of the economy, rather than by an entire industry or a significant portion thereof.

Today, how different is the source of influence. Businessmen, laborers, farmers, veterans, teachers, lawyers, doctors, bankers, home owners, beauticians, and so on *ad infinitum*, have all learned the value of organization, not only on a local scale, but on a national scale.²⁶ The story is an endless one, for organizations breed organizations, and in an age of collectively focused influence the pleas of the unorganized are like voices crying in the wilderness. The supplications now heard are no longer those of individuals or of local business units, but they emanate from an organized segment or segments of our political economy. Thus, it is, for example, true that the American Medical Association with considerable success wages battles for the doctors of the land; the CIO and A. F. of L. plead labor's cause and brings labor's influence to bear; the Farm Bureau speaks for the farmers; and the National Association of Real Estate Boards mobilizes the collective influence of those they represent.

25. For example the majority of lumber mill owners of the Mississippi River were successfully organized into an effective group by the Weyerhaeuser interests in the 1870's.

26. While during the period 1946 to 1949, 495 groups reported expenditures under the Federal Lobby Act passed in 1946, it has been estimated that there are some 1800 permanent national organizations. See GRAVES, ADMINISTRATION OF THE LOBBY REGISTRATION PROVISIONS OF THE LEGISLATIVE REORGANIZATION ACT of 1946. (Washington, Government Printing Office, [1950].)

In addition to groups of this nature, there are also many self-styled "educational" associations which have been formed within recent years. These organizations profess to be independent, objective, fact-finding and fact-disseminating bodies. For the most part they are not concerned with direct appeals to government for special favors but instead they concentrate on the molding of public opinion on national issues.²⁷ Despite their claims to objectiveness,²⁸ it is significant to note that the financial support of many such organizations comes primarily from a given branch of our economy,²⁹ and that the tone and conclusions of each analysis prepared by such groups follows a definite political pattern.³⁰

27. For information on the nature and scope of the activities of organizations of this type, see the following releases issued by the Buchanan Committee in 1950: 4 *Hearings: National Economic Council, Inc.*; 5 *Hearings: Committee for Constitutional Government*; 6 *Hearings: Americans for Democratic Action*; 7 *Hearings: Public Affairs Institute*; 8 *Hearings: Foundation for Economic Education*; 9 *Hearings: Civil Rights Congress*.

28. The Foundation for Economic Education in a booklet describing its activities stipulates that the foundation is a "non-political research and educational institution." It further adds that the sole purpose of the foundation "is a search for truth in economics, political science, and related subjects," 8 *Hearings, supra* note 9, at 4. The American Enterprise Association states that its purpose is to: ". . . inquire into and appraise current economic and social questions as they bear on public policy, and to disseminate its findings, so as to further public understanding of such matters. As an educational and non-partisan body, the association endeavors to be completely impartial and objective in its work. The association takes no stand either in favor of or against any proposed legislative measures." Quoted in H. R. REP. No. 3233, 81st Cong., 2d Sess., 7 (1950).

Dewey Anderson, Executive Director, The Public Affairs Institute, also asserts that his organization is an independent research organization. See 7 *Hearings, supra* note 9, at 3-9. William H. Patterson, executive secretary, Civil Rights Congress, said the Congress was formed to defend constitutional rights, and it was not a lobbying organization. See 9 *Hearings, supra* note 9, at 7.

29. The Public Affairs Institute for example receives its primary support from organized labor. 7 *Hearings, supra* note 9 see especially pages 62-65; the Committee for Constitutional Government, the National Economic Council, and the Foundation for Economic Education rely mainly on contributions from businessmen and corporations. See: H. R. REP. No. 3138, 81st Cong., 2d Sess. 9-23 (1950). Also see the reports of the hearings conducted by this committee, parts 4, 5 and 8. The American Enterprise Association frankly admitted that its program "has been carried on with the support of some 400 business firms and individuals." H. R. REP. No. 3233, 81st Cong., 2d Sess. 5 (1950).

30. It should be stressed that no particular "political shade" has a monopoly on these groups. The views of the extreme left are represented, for example, by the Civil Rights Congress; liberal sentiment is expressed by the materials distributed by the Public Affairs Institute; conservative

Organization for purposes of influence is then the fundamental factor which distinguishes current methods of soliciting governmental favors. This feature of course facilitates the coordination of pressure tactics and the cultivation of public sentiment to an extent not formerly possible. The means by which these things are accomplished are worthy of further observation.

While the direct contact approach of earlier years continues to be the primary means of making influence effective, organization has made it possible to give a scientific touch to this mode of operation. It is now possible for example to have each or most congressmen contacted directly by influential individuals, members or friends of a given organization, who live in the district represented by the legislator.³¹ It is possible also to secure spokesmen before legislative committees who come from many geographic areas, thus lending breadth and political attractiveness to their appeal, and by proper briefing from organizational headquarters it is possible to coordinate their views and facts. If the group is effectively organized at the lower level, it is a comparatively simple matter also to produce a flood of telegrams and letters which deluge legislators at strategic times.

Illustrations of these techniques may be selected from the legislative campaigns of any number of organizations whose activities have been investigated by the Buchanan Committee. The U. S. Savings and Loan League for example makes a practice of having Savings and Loan representatives present as witnesses at committee hearings to exhibit the interest of that group whenever any bill which might conceivably affect them comes under discussion.³² As part of their plan to make their presentation effective they occasionally hold briefing sessions to enable witnesses, as stated on one occasion, to "avoid some of the more critical questions which are likely to be propounded and to answer some of them which can be easily and conveniently answered."³³ The Civil Rights Congress has on several occasions attempted to impress Congress by mass migrations to Washington at strategic times for the purpose of showing support for a

views are expressed by such organizations as the Foundation for Economic Education and the Committee for Constitutional Government.

31. For illustrations see H. R. REP. No. 3139, 81st Cong., 2d Sess., 73, 94 (1950).

32. *Ibid.*

33. H. R. REP. No. 3139, 81st Cong., 2d Sess. 127 (1950).

given cause.³⁴ The National Association of Real Estate Boards according to the report issued by majority members of the House Committee investigating lobbying has systematized "all means of direct contact between its members and legislators more completely than any other group appearing before this committee."³⁵ This report goes on to describe the Association's activities in the following terms:

This group conducts letter and telegram campaigns. It also prepares, sometimes on request, specific letters which local members transmit to their Senators and Representatives. The association has developed through its local member boards remarkably extensive lists of congressional "contacts," persons who are expected to wield particular influence with the Representative or Senator from the district or State concerned. There is, among others, a list of "special contacts" for the House Banking and Currency Committee; another for the Senate Banking and Currency Committee; a third for the House Rules Committee; and a fourth which is labeled "Key Senate Phone Contacts." When a pressure campaign reaches the critical stage, when a final ounce of effort may be the margin between success or failure, the "contact" swings into action.³⁶

While normally requests for letters and telegrams to local units and individual members are in themselves sufficient stimulus to produce the desired response,³⁷ on occasion various pressure groups have found it necessary to inject a more artificial note to their method of approach. For example, the National Association of Real Estate Boards in its campaign to defeat rent control sent the following memo to realtors throughout the nation:

Suggested paragraphs for use in letter to Congressmen (note.—be sure to change form and ideas into your own words, rearrange, omit some facts, and add personal experiences):

Dear _____: We have both heard a lot of complaint about rent control and OPA generally. . . .

34. 9 Hearings, *supra* note 9, at 10-11.

35. H. R. REP. NO. 3138, 81st Cong., 2d Sess. 24-25 (1950).

36. *Ibid.*

37. For example, the secretary of the Oklahoma Savings and Loan League proudly reported to Morton Bodfish, Chairman of the Executive Committee of the U.S. Savings and Loan League that: "Starting Thursday morning, June 16 (1949), Friday, June 17, and Saturday, June 18, we are getting out 1000 letters and telegrams a day to the Oklahoma congressional delegation." H. R. REP. NO. 3139, 81st Cong., 2d Sess. 461 (1950).

Recently I met with some of our good friends, including _____, and we discussed what best should be done to correct the injustices being practiced in the name of controlling rents.

Our decision was to start here in (city) _____ a movement to force the OPA Administrator to allow adjustment in rents of at least 15 percent. This should be done this fall in order to give all of us plenty of time to arrange the adjustments. I am taking this up with (name of friend) _____ of (another city) _____ also and may discuss it with others to see whether we might spread the movement over the country.

Before doing that, however, I want to ask you if you will (sponsor) (support) such an amendment to the price-control law. If you will do so, I will try to get such a movement started in other sections immediately.

Here are some of the reasons why I think this should be done _____ and they apply only to rents:

(State in your own words some of the "15 facts" which you think will appeal to him most.)

I am asking others of the group to write you about this, and I will telephone you later, we are anxious to start the movement with your help.

(Signed) _____³⁸

On occasions, the evidence shows, the synthetic nature of appeals similar to this is readily detected by legislators and their suspicions are naturally aroused as to whether they are hearing the genuine wishes of their constituents.³⁹ The commonness of the practice suggests, however, that frequently the pressure-inspired nature of these messages can be successfully concealed and that sheer volume of letters and wires does in some instances influence legislative action.

38. H. R. REP. No. 3138, 81st Cong., 2d Sess. 24 (1950). In this connection a letter sent to Morton Bodfish (U. S. Savings and Loan League) is also of interest. This letter in part said: "Every effort was made by me . . . and several other interested parties here to flood both Kerr and Cooley with letters, telegrams, post cards, and long-distance calls relative to our opposition to socialized public housing legislation. We carefully arranged so that telegrams went at different times, carrying varying messages. The letters that were prepared in my office for other people were prepared on different typewriters, and in every case, on their stationery or, in the case of individuals, on blank stationery." H. R. REP. No. 3139, 81st Cong., 2d Sess. 375-376 (1950).

39. For illustration see, Coffin, *The Slickest Lobby*, 162 NATION 340 (Mar. 23, 1946). In this same vein Congressman Halleck of Indiana observed that one well-reasoned letter might do more to persuade the judgment of a legislator than would the sheer volume of letters he received. 1 Hearings, *supra* note 9, 20-21.

This fact suggests another characteristic which typifies current means of translating group wants into governmental actions. It is a characteristic which while it is part and parcel of the organizational movement is none the less distinctive in itself. This feature is an increased consciousness of the necessity of cultivating "grass roots sentiment," of selling to the public the concept that the wants of a given group are its wants and wishes. While it would be a misstatement to assert categorically that special interests of former years were completely indifferent to the degree of public support which they could solicit,⁴⁰ it is safe to state that it is only within the past two decades that economic groups have assiduously mobilized their resources and utilized current communication facilities for the purposes of winning or neutralizing public sentiment.

This struggle to win the minds needless to say requires vast expenditures. An exact total of the sums thus spent is impossible to obtain and estimates are singularly unreliable, for the means of cultivating popular support are numerous and methods by and through which appeals are made frequently successfully hide the power behind them. An inquiry sent by the Buchanan Committee to approximately 200 corporations, labor unions and farm groups did, however, solicit from them statements to the effect that during the period January 1, 1947 to May 31, 1950 they had collectively spent over \$32,000,000 for purposes, directly or indirectly, of influencing legislation.⁴¹ This figure in itself illustrates beyond question that the pressure potential of our many economic units is not insignificant.

One of the principal means by which the concept that "our battle is your battle" is broadcast is through the distribution of booklets, pamphlets, reprints of articles and speeches, and books. Costs of disseminating these materials are often greatly reduced, thanks to the second class mailing rights, and the pri-

40. For example, the lumber interests of Eau Claire, Wisconsin during the 1860's and '70's when they were fighting desperately to secure a franchise from the legislature succeeded in raising public sentiment in the community to a point where they gave considerable financial help to aid the legislative efforts of the millowners. See WIS. ASSEMBLY J., Appendix (1872).

41. H. R. REP. No. 3138, 81st Cong., 2d Sess. 9 (1950). For detailed reports containing a breakdown of the amounts contributed by each firm or group reporting see: H. R. REPS. Nos. 3238 and 3137, 81st Cong., 2d Sess. (1950).

vate use of the franking privilege.⁴² Illustrations of mass distribution are numerous. The United States Savings and Loan League circulated 600,000 copies of a specially prepared pamphlet entitled "Government Ownership of Homes."⁴³ The Public Affairs Institute, an organization which draws its primary support from labor circles, distributed to farm groups, Congressmen, trade associations, religious organizations and schools over 14,400 copies of a study entitled the "Role of Collective Bargaining in a Democracy."⁴⁴ The Foundation for Economic Education, an organization of conservative leanings, though it professes to be an objective educational group, disseminated almost 4,000,000 booklets and pamphlets carrying such titles as "So You Believe in Rent Control," "Two Paths to Collectivism" and "Crisis According to Plan."⁴⁵

While the activities of these groups are by no means inconsequential, they are dwarfed by those of the Committee for Constitutional Government, for this organization between the years 1937 and 1944 distributed "Eighty-two million pieces of literature—booklets, pamphlets, reprints of editorials and articles, specially addressed letters and 760,000 books."⁴⁶ Evidence that the efforts of this particular group have not diminished is seen in the fact that since its publication in 1949 the Committee has circulated "close to 700,000" copies of John T. Flynn's book *The Road Ahead*.⁴⁷

Needless to say the newspaper and radio facilities have not been overlooked in the battle to control "grass roots sentiment." While the direct approach through the medium of advertising is extensively used in these means of mass communications, news releases and editorial support are considered even more effective and important. To facilitate such publicity local units are urged to contact radio stations and newspapers in their area requesting that their activities and views be given prominent display.⁴⁸ Canned releases and editorials play no small

42. 2 Hearings, *supra* note 9, 199; 5 Hearings 96, 113; 6 Hearings 100.

43. H. R. REP. No. 3139, 81st Cong., 2d Sess. 616 (1950).

44. 7 Hearings, *supra* note 9, 47.

45. 8 Hearings, *supra* note 9, 46.

46. H. R. REP. No. 3138, 81st Cong., 2d Sess. 31 (1950).

47. *Ibid.*

48. For example, the Housing Research director for the United States Savings and Loan League wrote a memorandum to its local units pertaining to government housing. One of the suggestions concerned with publicity,

part in this picture. In this connection it is of interest to note the statement made to the House Committee investigating lobbying by Professor Stephen K. Bailey, author of the book entitled *Congress Makes a Law*, which is an analysis of the various pressures at work in shaping the "Full Employment Act" of 1946. In his testimony, Bailey observed:

The one thing I should like to point out here is the close connection—or parallelism of ideas—which exists between the opinion leaders in big business and opinion centers in agriculture. It seems to me significant that the National Association of Manufacturers sends editorial material all ready to print to 7,500 rural weekly newspapers and that it maintains a service called farm and industry—a release which it sends to 35,000 farm leaders.

When I studied the press clippings on the full-employment bill, I counted 72 editorial comments in 50 small-town dailies and weeklies. Of these 72 editorial comments, all except 5 were hostile to the original bill. I think it is interesting to note some of the following "coincidences": On February 20, 1945, without credit line, editorials attacking the bill appeared in the Zanesville (Ohio) Times Recorder and the Cheyenne (Wyo.) State Tribune. These editorials were identical. On September 7, 1945 the Clarksburg (W. Va.) Exponent published an editorial against the bill. On September 10, 1945, the identical editorial appeared in the Lima (Ohio) News. On September 7, 1945, identical editorials quoting anti-full employment bill material prepared by the Committee for Constitutional Government appeared in the Macon (Ga.) Telegraph and the Cumberland (Md.) Times.⁴⁹

An essential part of this never-ending campaign of "education" is solicitation by the management and members of one group for the support of the directing forces and associates of other groups. To solicit such backing invitations are sought to speak before civic groups, church gatherings, veterans organizations, business clubs, and labor unions.⁵⁰ In most instances

stated: "The facts about Government housing are invariably newsworthy, and direct news releases—such as Poor People Not Living in Public Housing, Veterans Barred From Government Housing by Illegal Tenants, City's Public Housing Costs Taxpayers \$100,000,000—will be welcomed by the local papers. Speeches, magazine articles, and paid advertisements can also be employed to get the story before the public." H. R. REP. No. 3139, 81st Cong., 2d Sess. 317 (1950).

49. 1 Hearings, *supra* note 9, 35-36.

50. In the memorandum referred to in note 48, *supra*, it was recommended that local affiliates of the U. S. Savings and Loan Association get cooperation in their study of Government Housings from: Veterans' organizations, home builders, Real Estate boards, banks and other financial institutions,

obtaining a hearing is not difficult, for frequently representatives of the special interest factions who wish to sell their point of view will be members of other organizations and thus in a position to aid in the selection of speakers and in arranging the agenda. In fact, part of the program of creating sentiment is the placing by one group of its men on strategic boards and policy forming committees of other organizations. Thus, for example, the U. S. Savings and Loan League exhibited proper appreciation of the fact that its past president was elected as a director of the U. S. Chamber of Commerce and they were naturally pleased that this representative was helpful in getting the Chamber to endorse the position of the League⁵¹ in respect to certain legislation. Correspondence from local associations shows that the U. S. Savings and Loan League is also successful at the local level in getting endorsement from U. S. Chamber and other groups via the same means. Naturally such support—resulting as it does in resolutions, more telegrams, more letters, press releases and other publicity—gives the desired impression of popular support. In many instances it would seem, however, that this appearance of added strength is illusory for the reason that often it is, because of duplication of membership, but the voice of a given special interest group using several different labels.

While further examples and details of modern pressure techniques could be cited, such a recitation would serve no further purpose. The preceding account illustrates the primary objective of this article—namely to reveal that current attempts to influence government are carried on by well coordinated forces, primarily organized as economic blocs, which forces utilize with considerable effectiveness modern means of communication and cultivate to an extent heretofore unknown “grass roots” support for their particular points of view.

It has been argued in defense of organized pressure blocs that they represent the means by which minorities may be heard.⁵² While this argument unquestionably has some merit and is not to be discounted, it is also true that the proportions to

taxpayers' organizations, home and property owners' associations, civic and business clubs.

51. H. R. REP. No. 3139, 81st Cong., 2d Sess. 532 (1950).

52. For an interesting and able defense of lobbying see Bellows, *In Defense of Lobbying*, 172 HARPERS 96 (1935).

which modern techniques of pressure mobilization have developed have caused other minorities possessing less "know-how" and fewer resources to be completely submerged and thus more ineffective. What is even more serious is the fact that the forces which can be successfully organized by certain minorities are occasionally the means by which the voice of the inarticulate unorganized majority is lost and unheeded. The sheer volume of propaganda that certain groups generate and the variety of means by which they disseminate their point of view results at times in the undue magnification of the popular desire for certain measures,⁵³ and as a consequence the actual wishes of the great mass of people are at least temporarily ignored.

It is also asserted that organized economic blocs represented by well-informed spokesmen serve as an essential source of information to legislators and administrators. The value of this service is not to be discounted and there appears to be no adequate substitute for it on the current political horizon. It is unfortunate, however, that much of this information is touched with bias. It is difficult to have it otherwise, for the success of the group organization and more particularly the future of the group's spokesman depends upon how skillfully facts are marshaled and presented, not for purposes of achieving an objective appraisal but rather for purposes of selling a point of view. Further, pressure groups—because their views must have mass appeal—frequently disguise and dress their facts and arguments in slogans and clichés. Thus one hears on a maze of issues talk of the "American way," "free enterprise," "inalienable rights," "socialism," "communism," "economy" and a vast variety of other terms which too often tend to hide facts and divert attention from the true merits of a measure a particular group is advocating or opposing.

One may well sympathize with the statement contained in a report submitted by the Buchanan Committee which observed,

53. Professor Hadley Cantril, Princeton University, in his testimony before the Buchanan Committee mentioned that in 1940 a comparison was made between opinion as expressed in congressional mail relative to the Burke-Wadsworth Selective Service Act and public opinion as determined by careful survey. Some 13,000 letters, the total sent to five senators, were obtained. Ninety percent of these were against the bill. At the same time the public opinion surveys showed 70 percent of the people were for the bill. 1 Hearings, *supra* note 9, 20.

"One of the greatest difficulties under which Congress works is a scarcity of objective information."⁵⁴

As previously observed, the organization of one group leads to the creation of other groups. If it could be assumed that all blocs thus formed had equal facilities for organization and that one power could successfully curb the selfishness and excesses of others, it would be safe to accept without alarm the phenomenon of economic groupism. As it is, it must be recognized that this balancing of interests is not automatic. It is a condition which must be consciously obtained by legislators aware of the realities of political life, by executives and administrators uncommitted, to the extent to which this is feasible, to any given minority, and by judges who are conscious that their decisions are not made in a political economic vacuum.

Recognizing that information on the activities of pressure forces that carry their campaign directly to the legislators is highly desirable, some thirty-eight states and the federal government have enacted lobbying laws designed to procure such data.⁵⁵ These measures vary greatly in their definition of lobbying, in the information which they require and in their enforcement provisions.⁵⁶ Despite these differences it may be stated quite categorically that they have one characteristic in common—that is that all such measures have singularly failed to accomplish their desired objective.⁵⁷ In some instances this ineffectiveness appears to be the result of loose and ambiguously worded statutes, particularly in respect to definitions of lobbying;⁵⁸ in others to a failure to provide for any effective means of enforcement;⁵⁹ in still others to a general indifference to the objectives of the law.⁶⁰

54. H. R. REP. No. 3233, 81st Cong., 2d Sess. 1 (1950).

55. See testimony of Dr. Belle Zeller, professor of political science, Brooklyn College, before the Buchanan Committee, 1 Hearings, *supra* note 9 at 59, 78-79.

56. For current data and observations concerning regulation of lobby groups, see: Futor, *An Analysis of the Federal Lobbying Act*, 10 FED. B. J. 366 (1949); Zeller, *The Federal Regulation of Lobbying Act*, 40 AM. POL. SCI. REV. 239 (1948); Comments: 38 CALIF. L. REV. 478 (1950); 47 COL. L. REV. 98 (1947); 56 YALE L. J. 304 (1947).

57. See Dr. Zeller's testimony before the House Select Committee on Lobbying, 1 Hearings, *supra* note 9, especially pages 71-77.

58. Dr. Zeller stated to the committee: "Few statutes provide clear, specific and meaningful definitions of what constitutes legitimate lobbying." *Ibid.*

59. A comment on lobbying printed in 56 YALE L. J. 304, 315 (1947)

While for the most part the purposes sought to be accomplished by these measures is commendable and much could be achieved by redrafting them and by implementing their enforcement provisions, it should be recognized that such enactments represent an extremely narrow approach to the problem. Designed as they primarily are to turn the spotlight of publicity on those who carry their campaign directly to the legislature, they fail for the most part to take account of "grass roots" activities—activities which constitute the essential characteristic of modern pressure forces. This is not to suggest that a measure could be devised which would successfully regulate and gather adequate information on this means of soliciting support, for the techniques employed are many, the difficulties of distinguishing between bona fide educational endeavors and the peddling of propaganda numerous and real. What is more any such regulation would give rise to serious and genuine questions of constitutionality.⁶¹

contains the following observation: "A major weakness of all state statutes is the lack of adequate enforcement provisions. Although criminal sanctions are imposed for violation of the registration requirements, no special agency is charged with investigating either the accuracy or inclusiveness of the registration lists and financial statements. That Attorneys General have exhibited no particular desire to bring actions except in the case of flagrant violations accompanied by wide publicity is indicated by the wide variation in the number registering from state to state and year to year, and the absence of entries of large sums in expense accounts. A conclusion that the law is broken with impunity is inescapable. (Footnotes omitted)."

60. This general indifference is reflected in the fact that very few prosecutions have occurred under the various lobbying laws. In a statement submitted to the Buchanan Committee, Dr. Zeller observed: "There are a number of States who have not had a single prosecution under the lobbying laws. There are only three reported decisions relating to the State lobby acts, two in Kentucky and one in Missouri (*Commonwealth v. Aetna Life Insurance* 263 Ky. 803, 93 S. W. 2d 840, 1936) (defendant acquitted); *Campbell v. Commonwealth*, 229 Ky. 264, 17 S. W. 2d 227, 1929 (conviction reversed); *State v. Crites*, 227 Missouri 194, 209 S. W. 863, 1919 (lobbying act held to violate a constitutional provision that no bill should contain more than one subject expressed in its title.) On March 7, 1950, the Wisconsin Supreme Court unanimously upheld as constitutional the State's lobbying law, thus enabling the district attorney to proceed with an action involving revocation of a lobbying license for alleged false statements in the filing of expenditures." 1 Hearings, *supra* note 9, 76.

The Wisconsin case to which reference is made is *State v. Hoebel*, 256 Wis. 549, 41 N.W.2d 865 (1950).

To date there has also been one reported prosecution under the Federal Lobby Law, *U. S. v. Slaughter*, 89 Fed. Supp. 205 (D. D.C. 1950); 89 Fed. Supp. 876 (D. D.C. 1950). (Court found defendant not guilty).

61. As a recent comment so truly observed in discussing the work of the Buchanan Committee, "Much of the investigation was conducted within the shadow of alleged constitutional objection." These objections pertained

If despite these difficulties a measure can be drafted which succeeds in collecting data that could be kept current for purposes of having a constant picture of pressure activities, the major problems would yet remain unsolved. All who participate in the democratic process would still be confronted with the necessity of securing an adequate balance of economic forces by curbing excessive privilege, and by rectifying burdens disproportionately distributed. This balance can only be secured and maintained by self-discipline on the part of the members who make up the economic groups, on the part of those, including lawyers, who serve as their organizers and spokesmen, and by a general public aroused to an awareness that the general welfare of all is only preserved by conscious intent and informed endeavors.

both to proposals referring to the regulation of lobbying and to the work of the committee itself. Comment, 18 U. OF CHI. L. REV. 647, 653-654 (1950).