2013

Pharmaceuticals, Political Money, and Public Policy: A Theoretical and Empirical Agenda

Paul D. Jorgensen
The University of Texas Rio Grande Valley

Recommended Citation
Jorgensen, P. (2013). Pharmaceuticals, Political Money, and Public Policy: A Theoretical and Empirical Agenda. Journal of Law, Medicine & Ethics, 41(3), 561-570. doi:10.1111/jlme.12065

Pharmaceuticals, Political Money, and Public Policy: A Theoretical and Empirical Agenda

Paul D. Jorgensen, Assistant Professor
Department of Political Science
The University of Texas – Pan American
College of Social and Behavioral Sciences, Room 204
1201 West University Drive
Edinburg, Texas 78539-2999

Work Phone: 956-665-2639
Email (Preferred): jorgensenpd@utpa.edu

Text: 4,665 words

Biography

Paul D. Jorgensen, PhD, is an assistant professor of political science at the University of Texas – Pan American in Edinburg, Texas and a nonresident fellow at the Edmond J. Safra Center for Ethics at Harvard University.

Acknowledgments

I would like to thank the Edmond J. Safra Center for Ethics at Harvard University for its generous support and Marc A. Rodwin for his helpful comments and suggestions.

Abstract

Why, when confronted with policy alternatives that could improve patient care, public health and the economy, does Congress neglect those goals and tailor legislation to suit the interests of pharmaceutical corporations? In brief, for generations, the pharmaceutical industry has convinced legislators to define policy problems in ways that protect its profit margin. It reinforces this framework by selectively providing information and by targeting campaign contributions to influential legislators and allies. In this way, the industry displaces the public's voice in developing pharmaceutical policy. Unless citizens mobilize to confront the political power of pharmaceutical firms, objectionable industry practices and public policy won't change. Yet we need to refine this analysis. I propose a research agenda to uncover pharmaceutical influence. It develops the theory of dependence corruption to explain how the pharmaceutical industry is able to deflect the broader interests of the general public. It includes empirical studies of lobbying and campaign finance to uncover the means drug firms use to: 1) shape the policy framework adopted and information used to analyze policy; 2) subsidize the work of political allies; and 3) influence Congressional voting.

The point, for the 946,326th time is that people get elected to office by currying the favor of powerful interest groups. They don't get elected for their excellence as political philosophers.[1]

Congress has consistently failed to solve some serious problems with the cost, effectiveness, and safety of pharmaceuticals. In part, this failure results from the pharmaceutical industry convincing legislators to define policy problems in ways that protect industry profits. By targeting campaign contributions to influential legislators and by providing them with selective information, the industry manages to displace the public's voice in developing pharmaceutical policy.

Pharmaceuticals and Political Money

The pharmaceutical industry is a major player in United States elections. Individuals working for pharmaceutical manufacturers and sometimes the firms themselves donate money directly to candidates, political parties, and political action committees (PACs), and the industry also funds outside spending organizations or spends this money separately from the candidate or political party (e.g., independent expenditures in the form of television advertisements). Published accounts have pharmaceutical manufacturers spending a grand total of $21.3 million on federal elections in 2012, which is 407 percent more than the 1990 inflation-adjusted total. The peak in real spending, however, was reached in 2002, when that same amount was 549 percent more than the 1990 inflation-adjusted total.[2] Most of this money goes to incumbents, to those in the majority party, and to those who sit on Congressional committees important to the industry—a pattern entirely consistent with the intention of seeking legislative favors.[3]

Pharmaceutical manufacturers and individual employees of these corporations contribute predominantly to the Republican Party (although with some notable exceptions), especially when it holds a majority in either the House of Representatives or the Senate. In 1990, 65 percent of the industry's Senate contributions went to Republicans (the majority party) and 44 percent of its House contributions went to Republicans (the minority party). By 1996, the first election cycle after the Republicans became the House majority; donations to House Republicans increased to 70 percent and remained above that level in 2002 and 2004, the electoral cycles bracketing the 2003 Medicare Modernization Act. Democrats captured slightly over 50 percent of this industry's contributions in 2008, the election cycle leading to the Affordable Care Act (ACA), but the percentage dropped to 39 percent in 2012, the first election after Republicans regained the House majority in 2010. Regardless of party affiliation, the pharmaceutical industry donated most of its money to incumbents—never less than 74 percent from 1990 to 2012.[4] The industry also donates large sums to Congressional leadership and committee chairs.

A member or candidate's party affiliation and that party's majority/minority status explain most of the variation in this industry's Congressional donations.[5] In 2012, the average contribution to a Republican House member was $21,280 ($16,708 for Democrats), but Fred Upton (R-MI), chairman of the Energy and Commerce committee, got $173,865. Of the top recipients, many are in the Congressional leadership and all received over $90,000: John Boehner (R-OH), Eric Cantor (R-VA), Steny Hoyer (D-MD), Kevin McCarthy (R-CA), and James Clyburn (D-SC). Also included among these top recipients are Senators Orrin Hatch (R-UT), Scott Brown (R-MA), and Robert Menendez (D-NJ), who all received more than $150,000, well above the Republican and Democrat Senator averages of $28,202 and $34,760, respectively.[6]

But in fact, published totals almost certainly underestimate actual spending, either by ignoring money donated to state-level committees (such as the Republican Governors

Association) or by missing industry donations due to inconsistent reporting in campaign finance records.[7] After correcting for these problems in the 2012 data, I found an additional $9 million in contributions from pharmaceutical manufacturers. Of all industry donations, 65 percent supported Republicans and 26 percent supported Democrats directly.[8] The Republican advantage in state-level and outside spending (e.g., money spent on television advertisements separate from the political parties or candidates) drove the overall advantage, with three-quarters of industry money going to Republicans.

Money Well Spent in Setting the Policy Agenda

History suggests that all this money was well spent. The pharmaceutical industry is very profitable and its profits depend in large part on several industry-specific federal policies. In a nutshell, the federal government actively provides drug firms with very profitable patent protection and market exclusivity for new products, while refusing to set any controls on prices as a condition for those advantages. In the 1980s, for example, pharmaceutical corporations received a boost from the Bayh-Dole Act and the Hatch-Waxman Act, which allowed them to acquire patents on drugs produced through research funded by the National Institutes of Health. Hatch-Waxman also increased the length of biotechnological patents.[9] There were no corresponding constraints on prices passed at the time.

The advantages granted to the industry are meant to promote a public good—development of medications to reduce suffering and death. In reality, the industry has corrupted the system so that, in several ways, the system now subverts the public good. Pharmaceutical firms have learned how to make huge profits with drugs that do not much improve public health and that sometimes are unsafe or are prescribed without need.[10]

The industry has also ensured that prices are kept abnormally high. Most of the market share for drug purchases is not subject to price controls even though pharmaceutical spending would be one-tenth of what it is now if all purchases were priced as generics.[11] American consumers cannot buy less-expensive drugs imported from other countries, and Medicare, which sets prices for other medical products and services, cannot set drug prices. Price-control policy ideas exist and are not far-fetched, but Congress maintains the current patent system even though Pharmaceutical corporations can hold patents—and charge accordingly high prices—for minor variations on existing drugs (so-called me-too drugs).[12]

A substantial line of analysis suggests that the current patent system does not result in the innovation it was intended to produce and that the cost of funding clinical trials could be supported through alternative incentives such as awarding prizes for important therapeutic innovations.[13] From 1993 to 2004, R&D costs doubled for pharmaceutical firms and for the National Institutes for Health, while the number of priority reviews of new molecular designs fell.[14] Pharmaceutical firms have little incentive to create path-breaking drugs, even with federal subsidies, because they can earn such handsome profits at much lower risk by developing me-too drugs. It is more profitable for manufacturers to "maximize the value of their patent monopolies, by increasing the length of patent protection" and by increasing sales through over-marketing, paying doctors to switch products, and skewing knowledge of drug risks and benefits.[15] The writing was on the wall nearly 40 years ago, when economist M.J. Murray wrote:

> Criticism of the pharmaceutical industry has intensified, focusing on restrictive patent regulation, ineffective products, duplicative marketing procedures, misrepresentative advertising, overpricing, noncompetitive pricing, and the ill effects of many drug lines owing to insufficient research and ineffective quality control. Yet these features … cannot be fully understood without an analysis of the structure of the industry and the

> actual locus of power…At present, the stability of the pharmaceutical industry rests on its high rate of profit.[16]

These issues persist in part because Congress shuns policy alternatives.

What Could Have Been? The Legislative Victories for the Pharmaceutical Industry

Political scientist Thomas Ferguson has proposed his own version of the Golden Rule: "To discover who rules, follow the gold."[17] For over 50 years, there have been attempts to make the pharmaceutical industry more responsive to the public welfare. These attempts have largely failed. Who rules indeed?

While Senator Estes Kefauver (D-TN) was chairing the 1959-1961 hearings on the pharmaceutical industry, he became the main architect of a bill that would subject pharmaceutical corporations to antitrust lawsuits and redesign patents in order to foster more competition and reduce prices.[18] These economic reform efforts failed, although Congress did enact drug safety legislation after the Thalidomide scandal in the early 1960s. This pattern was repeated in the early to mid-1990s, when the Clinton administration proposed the Health Security Act, which included an advisory council that would provide input on the appropriate price point the government would pay for new drugs, comparing each drug to others in its therapeutic class and using variables such as manufacturing cost while excluding advertising expenditures. The House of Representatives never voted on the bill.[19]

In 2003, the House attempted to reduce drug prices by passing the Pharmaceutical Access Act, which would have allowed individuals or retailers in the U.S. to purchase drugs in foreign countries for much lower prices than the same drugs were sold for in the U.S. The pharmaceutical industry opposed the bill, claiming that it is unsafe to import drugs from other countries and that the transportation of pills during the re-importation process could cause their potency to diminish. They also argued that drug prices needed to be high so that firms would have an incentive to invest in research.[20] These arguments held sway in large part because they were supported with political money. Evidence shows that the coalition to block drug re-importation received more cash than the coalition to allow re-importation and that the industry used campaign contributions to reward or punish each representative's vote.[21] The bill never became law. While other factors—such as being in a border state and having a high percentage of senior citizens in a district—can partially explain who voted for and against re-importation, pharmaceutical industry campaign contributions are the more important explanatory variable.[22]

The 2003 Medicare Modernization Act added an outpatient prescription drug benefit to Medicare, a reform that Democrats had sought since the 1990s. The bill, championed by a Republican president and a Republican majority in Congress, did not include the price control mechanisms that had been part of previous Democrat bills.[23] Analysis of campaign contributions and lobbying contacts show significant "hard money donations to Senators' election campaigns" in both the 2002 and 2004 electoral cycles from groups that favored the bill.[24] By 2009-2010, the Democratic Party took notice and avoided major conflict with the industry, which proved fruitful for its members' campaign coffers.[25] Pharmaceutical corporations had again averted a threat to high drug prices and profits.

When Congress started drafting the bills for health care reform that became the ACA, control of drug prices was not on the agenda. But to ensure that it stayed off the agenda, the pharmaceutical-manufacturing industry increased its lobbying budget nearly 15 percent to $185.5 million.[26] One recent study forecasting pharmaceutical business after the ACA expects pharmaceutical profits to rise because of expanded coverage without price controls.[27]

Taken together, this string of victories for the pharmaceutical industry socialized its costs and privatized its benefits—so much so that, by 2004, there was a public backlash.[28] Some states used lawsuits to reduce Medicaid drug prices, while insurance companies offered patients financial incentives to choose generics rather than branded drugs. Nevertheless, the main industry-serving features of American pharmaceutical policy remained in place.[29]

Today, there are several detailed, well-researched policy solutions to high drug prices, the development of me-too drugs, unethical conduct in clinical trials, selective disclosure of clinical-trial data, and payments to doctors for prescribing certain drugs. These problems are exacerbated by the medical community's *dependence* on pharmaceutical corporations for funding.[30] Most reform plans to resolve these and other problems involve new legislation, or a change in legal enforcement and administration so that trade-offs between profit maximization and public health are not as stark. Proposals such as economist Dean Baker's plan for public funding of clinical trials,[31] do not advance as legislation, largely because of industry funding of electoral campaigns and lobbying.[32]

Redressing Political Power by Expanding the Scope of Conflict

Why, when confronted with plausible policy alternatives that could improve lives, save money for consumers, and reduce federal spending, does Congress repeatedly choose to maintain the status quo or tailor legislation to advance the interests of pharmaceutical corporations? This question raises issues for political participation and representation. James Madison addressed the motivation for political participation among economic interests in *The Federalist*:

> A landed interest, a manufacturing interest, a mercantile interest, a moneyed interest, with many lesser interests, grow up of necessity in civilized nations, and divide them into different classes, actuated by different sentiments and views. The regulation of these

> various and interfering interests forms the principal task of modern legislation, and involves the spirit of party and faction in the necessary and ordinary operations of the government.[33]

Since a primary task of legislation is to regulate among *these various and interfering interests* it is inevitable that interested parties would be involved in making and passing such legislation. Today, interested parties exercise the *spirit of party and faction* by lobbying, funding policy research (for example, in think tanks), and making campaign contributions; that is, by injecting their own information, ideas, and money into the legislative process. While voters can always vote, wealthy people and profitable industries have these additional ways to influence what government does and what it leaves alone.[34]

According to political scientist E. E. Schattschneider's *scope of conflict theory*, policy change in a democracy is "determined by the scope of public involvement in conflicts."[35] Political actors use the language of policy rhetoric to narrow or expand the number and type of decision-makers; in other words, to expand what they see as necessary and rightful government intervention or to prevent or roll back what they see as unwarranted or counterproductive government intervention. They use terms such as *free market*, *capitalism,* and *private property* to keep certain decisions out of the public's—that is, the government's—hands, while terms such *as public health*, *equality*, and *justice* are meant to put certain decisions into the public's hands rather than leave them to private individuals or corporations.[36]

Schattschneider was optimistic that democratic government, made up of competitive and responsible political parties, could expand conflict—or, as he put it, *socialize* conflict—in order to solve important economic and social questions. However, he noted, "the effectiveness of democratic government *as an instrument for the socialization of conflict depends on the* *amplitude of its powers and resources*."[37] Government should be able to provide a space for conflict that protects actors from retaliation, but to do that takes a political party with *resources*.

The motives of those who supply the party with those resources are important because political parties prioritize conflicts and formulate policy alternatives. As Schattschneider observed, "the definition of the alternatives is the supreme instrument of power."[38] Put another way, if you are paying the people who solve social problems, you may have a say in deciding what gets called a social problem. If you are a pharmaceutical company, you might not want to define inflated prices, opaque safety testing, and a lack of innovation as social problems. Thus, it is possible that a resource-dependent party will not be able to socialize conflict—to bring it more into the realm of public rather than private/corporate decision making.

Schattschneider was not shy when it came to blaming political leaders and political organizations for failures in American democracy, but he never explained exactly why they failed. Public policymaking related to pharmaceuticals is certainly rife with failure and is, indeed, a good place to examine whether the competitive two-party system has failed to produce the socialization of conflict that Schattschneider thought necessary for change and, if so, why it has failed. The answers can be found in this critique of pharmaceutical policy:

> The sort of thoroughgoing changes required will take government action, which in turn will require strong public pressure. It will be tough. Drug companies have the largest lobby in Washington, and they give copiously to political campaigns. Legislators are now so beholden to the pharmaceutical industry that it will be exceedingly difficult to break its lock on them.[39]

There is no question that our political leaders depend on resources from the pharmaceutical industry—cash while campaigning and information (providing through lobbying) while governing. But we need to develop this critique in a more sophisticated way.

Dependence Corruption and Policymaking: A Theoretical and Empirical Agenda

I propose an agenda that would provide (a) a theoretical framework (*dependence corruption*) with which to view pharmaceutical political power and (b) two empirical projects to document links between political money and pharmaceutical policy.

Theoretical agenda

The *dependence corruption* framework posits that that a political system over-reliant on the pharmaceutical industry will cater to the needs of the industry while disregarding the public's needs and values. While the study of individual corruption focuses on nepotism, bribery, and other law-breaking behavior, the study of dependence corruption focuses on the way particular economic and political relations can cause moral and political decline. It brings the role of political money to the forefront.

This framework recalls eighteenth-century definitions of corruption.[40] Diverse thinkers such as Adam Smith and Jean-Jacques Rousseau all saw corrupting influences occurring at the societal level and, accordingly, saw that "corruption was not so much an individualized breach of duties as a condition that spread contagiously and diffusely throughout the polity affecting leaders and citizens alike."[41] The corrupting influence on an institution can vary by legitimacy and importance. When a less-than-legitimate influence becomes more important than others, it can cause an institution to deviate from its intended purpose, and this process/phenomenon is called dependence corruption. It is important not to define the health of U.S. representative democracy by the presence or absence of quid pro quo corruption, because outright bribery is unnecessary in order for money to influence policy.

In 1932, political scientist Louise Overacker pondered the possibility of American democracy becoming a plutocracy through the private financing of political parties and the undermining of popular control that could result.[42] Her work distinguished between those who fund political parties and those who vote for them, foreshadowing the work of analysts who argue that the private financing of U.S. elections corrupts the legislative process by pushing it away from democratic principles.[43] The government collects more data than ever before to analyze the differences between donors and voters, and the prospects for dependence corruption. Alas, these data are fraught with errors and difficult to ascertain.

Empirical agenda

For each pharmaceutical-industry donation, we must document who gave the money, who received it, what effect was intended, and whether or not the intended effect was achieved. We need to begin by refining the data that is already available. My research shows that current data on political funding are incomplete. There is substantial evidence that the Federal Election Commission (FEC) and Internal Revenue Service (IRS) data on campaign donations underestimate the actual spending by most industries due to reporting errors, omissions, and lack of compliance with federal campaign finance reporting laws.[44]

At least some of this missing information can be recovered using new data-management techniques. For example, Thomas Ferguson, statistician Jie Chen, and myself are combining the campaign finance data collected by the FEC and the IRS and using name-matching techniques to detect when multiple transactions reported under different names are actually donations by the same donor. We are also applying industry codes so that when the same donor reports in one transaction that he is the CEO of a pharmaceutical corporation and in another that he is retired, these so-called retired donations can be attributed to the company.[45]

These unattributed industry-tied donations add up. For example, when scholars examined one of the few occasions on which the House of Representatives passed a bill that would limit industry profits—the Pharmaceutical Access Act of 2003 allowing drug re-importation—they concluded that donors listing their occupation as *retired* did not influence the roll-call vote, even though the percentage of constituents over 65 in a Congressional district did increase the probability of voting for the act. I suspect the reason why *retired* donors did not influence the roll-call vote is because they were not retired, and in fact, worked for industries that do not represent the interests of retirees.[46]

I also find, with Ferguson and Chen, donations by political action committees (PACs) that have gone uncounted due to the complexity of reporting procedures and the rules about how to identify a documented contribution. We found over $100 million dollars in unidentified PAC contributions in the 2008 election cycle and over $73 million in 2012.[47]

Despite the limitations of the existing data, a variety of studies find the influence of money on legislation. Scholars have found that (a) legislation passed by the Senate often corresponds with the policy preferences of the wealthy, (b) members of Congress switched their votes in the 1990s during the run-up to repealing the Glass-Steagall Act, which was a huge boon to the financial services industry, (c) Congressional committee participation is more active (e.g., amendment proposals, asking questions, attendance) on issues of concern to campaign contributors, (d) stock prices fluctuate based on a firm's political donations (this finding is based on an assumption that professional stock traders know the value of political favors when judging a company's profitability), and (e) fundraising distracts Congressional representatives from their official duties and undermines public trust in Congress.

In addition to tracking the flow of money, we need to identify more precisely the links between that money and public policy by studying how lobbying and other activities actually work. Such research will help explain the mechanisms by which pharmaceutical corporations influence the legislative process so that Congress does not pursue policies that would alter patent law, regulate drug prices, and restrict Big Pharma's funding of continuing medical education and other professional medical activities.[48]

One new approach is to view lobbying as a "form of legislative *subsidy*—a matching grant of costly policy information, political intelligence, and labor to the enterprises of strategically selected legislators."[49] Lobbyists contact sympathetic congressional members to help them and their staffs do the hard work of research and bill writing. Campaign contributions, too, are directed to the friendliest and most productive members of Congress. (Since it is very difficult to change the mind of a determined politician, lobbying an unfriendly member of Congress is often ineffective.) The campaign contribution maintains access by supplying much-needed funds, while the lobbying reinforces the campaign contribution by supplying much-needed information. To document how this process works for the pharmaceutical industry, we need to establish the connection between campaign contributions and lobbying contacts, demonstrate how lobbyists use information to attain favorable public policy, and show how a member of Congress might depend on the information provided.

Political scientists Richard L. Hall and Robert P. Van Houweling demonstrate that campaign contributions are associated with lobbying contacts, particularly contacts by those lobbyists most influential in writing and passing the bill.[50] Integrating such findings with a study of how lobbyists use information to influence a bill should help explain why members of Congress select some policy alternatives over others.

There are many different styles and types of policy analysis; each can frame issues in different ways and provide different sorts of information.[51] If lobbyists supply information to help conduct policy analysis, what sorts of information do they provide? How is the information used? How does it frame policy options? Crucial elements of a policy design that use information include how a problem is defined, the goals of the policy, the population targeted, and the distribution of the policy's costs and benefits.[52] The study of how information is used can help explain why certain policy alternatives are selected over others.[53]

Recent research has identified cases in which information was used in ways that conform to dependence corruption. As one scholar noted, "policy analysts, policymakers, and observers alike do not recognize policy analysis for what it is. Policy analysis has changed, right along with the policy process, to become the provider of ideas and frames, to help sustain the discourse that shapes citizens, preferences, and to provide the *appearance of rationality* [italics added].[54] Scholars of dependence corruption therefore need to examine the possibilities for policy design and ask what could have been and why alternative policies were not selected. This work should be central to the study of pharmaceutical politics.

For generations, the pharmaceutical industry defined policy problems and reinforced these definitions through campaign contributions. The pharmaceutical industry claimed it needed high profits to have an incentive to invest in research, that price controls in other countries amount to U.S. subsidizing the cost of drugs for other countries and that it is unsafe to import drugs from other countries. [55] The industry has defined problems in a way that protected profits while arguing that there was no conflict between profit maximization and public health. But there is indeed much conflict.[56] To uncover the details of how the pharmaceutical industry's definitions of pharmaceutical policy problems permeate legislative debates, we need to examine the work of Congressional committees, the testimony at hearings, the work of lobbyists involved in drafting bills, and industry campaign donations.

Prospects for Change

We have seen that the opportunity to define the terms of a political policy debate is in part a matter of having the right resources. For the last 50 years, the pharmaceutical industry—alone among the interested parties—has had those resources and it has made full use of them. Until there are enough alternative political resources to support alternative definitions of the issues of pharmaceutical cost, effectiveness, and safety, it will be difficult for any political actors to alter the policy design for pharmaceuticals.

There have been some hopeful signs at both the state and federal levels. In 2000, state employees and senior citizens in Maine mobilized and the state used its purchasing power as leverage to legislate a price control policy for pharmaceuticals.[57] And as this essay goes to press, the U.S. Supreme Court ruled that federal regulators may bring antitrust suits against pharmaceutical manufacturers when these firms pay generic producers to limit the supply of generics.[58]

However, these glimmers of hope could be fleeting. Conditions are growing unfavorable for efforts to enlarge the scope of political conflict through the mobilization of citizens. The general decline in turnout, especially among the unemployed, the least educated, the poor, and the young was lost in the celebratory headlines about voter-turnout in the 2012 federal election.[59] The Supreme Court's decision in *Shelby County v. Holder* (2013) abolishing the criteria in the Voting Rights Act for subjecting electoral law in states and other electoral boundaries (Section 4) to oversight by the Federal Department of Justice (DOJ), has already paved the way for states formerly subject to the DOJ to pass strict voter identification laws and to seek early-voting and registration limitations.[60] When combined with the Supreme Court's decision in *Crawford v. Marion County Election Board* (2008) to uphold restrictive voter identification laws (even though in-person voting fraud does not exist), and the on-going court cases to limit early voting and registration, the decline in turnout may accelerate.[61] Simultaneously, federal court decisions in *Citizens United v. Federal Election Commission* (2010) and *Speechnow.org v. Federal Election Commission* (2010) helped to spawn a rise in the total amount of money pouring into U.S. politics, and this rise is coming from an increasingly smaller faction of donors.[62] Schattschneider's *scope of conflict* seems to be shrinking rather than expanding. Political scientist Walter Dean Burnham describes these trends as "the path to plutocracy."[63]

We should remember Madison's prediction in *The Federalist* about living in a large republic:

> Extend the sphere and you take in a greater variety of parties and interests; you make it less probable that a majority of the whole will have a common motive to invade the rights of other citizens; or if such a common motive exists, it will be more difficult for all who feel it to discover their own strength and to act in unison with each other.[64]

Schattschneider's insight was that we who are already citizens of a very large republic require leadership and organization to find strength and commonality. It is a fact that political parties have not mobilized American citizens to protect their own interests in the cost, effectiveness, and safety of drugs. This failure is probably the intended result of political money, and is the insight gleaned from following Ferguson's Golden Rule: "To discover who rules, follow the gold."[65]

Notes

[1] This quote is from the 21 December 2008 blog posting by Dean Baker, economist and co-founder of the Center for Economic and Policy Research, found at: http://www.prospect.org/csnc/blogs/beat_the_press, or at http://www.cepr.org.

[2] The author calculated these percentages from the Center for Responsive Politics, accessed here: http://www.opensecrets.org.

[3] For an overview of different PAC strategy models and an empirical test of those models, please read P. Jorgensen, "Campaigning on Fruit, Nuts, and Wine," *Political Research Quarterly*, 63, no. 1 (2010): 16-28.

[4] From the Center for Responsive Politics, supra note 2.

[5] P. Jorgensen, "Organized Interests in Congressional Elections," Unpublished Dissertation, University of Oklahoma, May 2011.

[6] From the Center for Responsive Politics, supra note 2.

[7] For example, published lists have pharmaceutical manufacturers donating over $21 million to candidates, political parties, and outside spending organizations. This figure likely underestimates total money in two ways. First, transactions to state-level, party committees may not be included. This money should be included in any partisan breakdown, since the fundraising prowess of these party committees follows a four-year, presidential cycle. Second, the method of aggregating transactions into economic industries should be more precise. With each transaction over $200, the individual donor must list an employer. Published industry codes of campaign finance records use the given employer to aggregate into industry-level analysis; however, it is common for an individual to give multiple transactions, with each employer listing having spelling errors, or worse. In 2012, just over $1.1 billion of transactions had no identifiable employer (including *retired* donors), which was 27 percent of the total. Unless this percentage is lowered, all counts of industry donations will underestimate the true total. After standardizing the employer for each individual donor, and including all donations to state-level party committees, I found nearly $9 million more donations from pharmaceutical manufacturers in 2012. The differences in total money and partisan split, after utilizing new data management techniques on the 2012 electoral-cycle data, brings to light many of the empirical problems facing the study of pharmaceutical politics.

[8] These numbers do not include donations to pharmaceutical PACs who then redistribute to candidates and political parties.

[9] M. Angell, "The Truth About Drug Companies," *New York Review of Books*, July 15, 2004.

[10] See, discussion of these issues by other authors in this issue, especially, MA Gagnon, "Corruption of Pharmaceutical Markets: Addressing the Misalignment between Financial Incentives and Public Health," *Journal of Law, Medicine & Ethics* 41, no. 3 (2013): **XX-XX (page numbers coming)**; D.W. Light, J. Lexchin, J. Darrow, "Institutional Corruption of Pharmaceuticals and the Myth of Safe and Effective Drugs," *Journal of Law, Medicine & Ethics* 41, no. 3 (2013): **XX-XX (page numbers coming)**; S. Sismondo, "Key Opinion Leaders and the Corruption of Medical Knowledge: What the Sunshine Act Will and Won't Cast Light On," *Journal of Law, Medicine & Ethics* 41, no. 3 (2013): **XX-XX (page numbers coming).**; L. Cosgrove and E. Wheeler, "Drug Firms, Codification of Diagnostic Categories, and Bias in Clinical Guidelines," *Journal of Law, Medicine & Ethics* 41, no. 3 (2013): **XX-XX (page numbers coming);** M.A. Rodwin, "Rooting out Institutional Corruption to Manage Inappropriate Off-label Drug Use," *Journal of Law, Medicine & Ethics* 41, no. 3 (2013): **XX-XX (page numbers coming)**; S. Sah and A. Fugh-Berman, "Physicians Under the Influence: Social Psychology and Industry Marketing Strategies," *Journal of Law, Medicine & Ethics* 41, no. 3 (2013): **XX-XX (page numbers coming).**

[11] D. Baker, "Issues in Trade Protectionism," Report for the Center for Economic and Policy Research, November, 2009: 1-10, at 4; for the role of advertising in economic theory, see R.D. Wolff and S.A. Resnick, *Contending Economic Theories: Neoclassical, Keynesian, and Marxian* (Cambridge, MA: The MIT Press, 2012).

[12] D. Baker 2009, supra note 10.

[13] M.A. Rodwin. "Independent Clinical Trials to Test Drugs: The Neglected Reform." *Saint Louis University Journal of Health Law & Policy* 6, no. 1 (2012): 113-166.

[14] D. Baker, "Stagnation in the Drug Development Process: Are Patents the Problem," The Center for Economic and Policy Research, March 2007: 1-18.

[15] D. Baker 2007, supra note 13: at 8, 10-11.

[16] M.J. Murray, "The Pharmaceutical Industry: A Study in Corporate Power," *International Journal of Health Services*, 4, no. 4 (1974): 625-640, at 637.

[17] T. Ferguson, *Golden Rule: The Investment Theory of Party Competition and the Logic of Money-Driven Political Systems* (Chicago: University of Chicago Press, 1995): at 8.

[18] W.S. Comanor, "The Political Economy of the Pharmaceutical Industry," *Journal of Economic Literature*, 24, no. 3 (1986): 1178-1217.

[19] A. Daemmrich, 'U.S. Healthcare Reform and the Pharmaceutical Industry,' Harvard Business School Working Paper, 12-015, September, 14, 2011.

[20] A. Daemmrich 2011, supra note 18; O. Gokcekus, M. Adams, H. Grabowski, and E. Tower, "How Did the 2003 Prescription Drug Re-Importation Bill Pass the House," *Economics & Politics*, 18, no. 1 (2006): 27-45.

[21] Gokcekus, et al 2006, supra note 19.

[22] O. Gokcekus, et al 2006, supra note 19. In arguing that senior citizens pressured their congressional member to allow drug re-importation, the authors measure the presence of senior citizens in the constituency in two ways. First, by measuring the amount of campaign contributions from donors listing their occupation as *retired*. Second, by using the percentage of the 65+ population in a congressional district. They find that retired donors did not influence the vote, while the 65+ population did increase the probability of voting to allow drug re-importation. This finding is not surprising given the argument of this paper that those donors who list themselves as retired have very little in common socio-economically with the average retiree and many of those donors are not actually retired. There is more on this issue later in this essay.

[23] R. Hall and R.P. Van Houweling, "Campaign Contributions and Lobbying on the Medicare Modernization Act of 2003," paper presented at the annual meeting of the American Political Science Association, Philadelphia, PA, September 3, 2006.

[24] R. Hall and R.P. Van Houweling 2006, supra note 22: at 15.

[25] T. Ferguson, P.D. Jorgensen, and J. Chen, "Poles Apart? Party Polarization and Industrial Structure in American Politics Now – A Preliminary Quantitative Assessment," paper presented at the Institute for New Economic Thinking Annual Conference, Hong Kong, April, 2013, available here: (http://ineteconomics.org/sites/inet.civicactions.net/files/Ferguson%20Jorgensen%20Chen%20Poles%20Apart%20INET%20paper%20.pdf).

[26] Author calculations from the Center for Responsive Politics, supra note 2.

[27] A. Daemmrich 2011, supra note 19.

[28] M. Angell 2004, supra note 9.

[29] M. Angell 2004, supra note 9.

[30] M.A. Rodwin, "Conflicts of Interest, Institutional Corruption, and Pharma: An Agenda for Reform," *Journal of Law, Medicine & Ethics*, 40 (2012): 511-522.

[31] D. Baker, "The Benefits and Savings from Publicly-Funded Clinical Trials of Prescription Drugs," The Center for Economic and Policy Research, March 2008: 1-19, at 4. M.A. Rodwin and J.D. Abramson, "Clinical Trial Data as a Public Good," *JAMA*, 308, no. 9 (2012): 871-872.

[32] D. Baker, "The Reform of Intellectual Property," *Post-Autistic Economics Review*, 32, no.5 (2005): Article 1.

[33] J. Madison, "Federalist Paper No. 10," *The Federalist* (New York: Signet Classics, 2003).

[34] On the various means by which money influences politics, please read: J. Mayer, "Covert Operations," *New Yorker*, 86, no. 25 (2010): 44-55; A. O'Connor, "The Privatized City," *Journal of Urban History*, 34, no. 2 (2008): 333-353; R.L. Hall and F.W. Wayman, "Buying Time: Moneyed Interests and the Mobilization of Bias in Congressional Committees," *American Political Science Review*, 84, no. 3 (1990): 797-820; W. Greider, *Secrets of the Temple* (New York: Simon & Schuster, 1989); T. Ferguson 1995, supra note 16; L. Overacker, *Money in Elections* (New York: MacMillan Company, 1932); T. Ferguson and R. Johnson, "Too Big to Bail: The 'Paulson Put,' Presidential Politics and the Global Financial Meltdown, Part I: From Shadow Financial System to Shadow Bailout," *International Journal of Political Economy*, 38, no. 1 (2009): 3-34; T. Ferguson and R. Johnson, "Too Big to Bail: The 'Paulson Put,' Presidential Politics, and the Global Financial Meltdown, Part II: Fatal Reversal – Single Payer and Back," *International Journal of Political Economy*, 38, no. 2 (2009): 5-45; S. Johnson and J. Kwak, *13 Bankers: The Wall Street Takeover and the Next Financial Meltdown* (New York: Pantheon Books, 2010); J.S. Hacker and P. Pierson, *Winner-Take-All-Politics: How Washington Made the Rich Richer – and Turned Its Back on the Middle Class* (New York: Simon & Schuster, 2010); J.A. Winters and B.I. Page, "Oligarchy in the United States," *Perspectives on Politics*, 7, no. 4: 731-751.

[35] E.E. Schattschneider, *The Semisovereign People: A Realist's View of Democracy in America* (New York: Thomson Learning, 1975): at 5.

[36] M. Edelman, *The Symbolic Uses of Politics* (Urbana-Champagne: University of Illinois Press, 1985).

[37] E.E. Schattschneider 1975, supra note 34: at 16.

[38] E.E. Schattschneider 1975, supra note 34: at 66.

[39] M. Angell 2004, supra note 9: at 5.

[40] L. Hill, "Adam Smith and the Theme of Corruption," *Review of Politics*, 68 (2006): 636-662; L. Hill, "Adam Ferguson as Corruption Theorist," paper presented at the annual meeting of the American Political Science Association, Washington, D.C., September 2010.

[41] L. Hill 2006, supra note 39: at 637.

[42] L. Overacker 1932, supra note 33: at vii.

[43] R.L. Hall and F.W. Wayman 1990, supra note 33; T. Stratmann, "The Market for Congressional Votes: Is Timing of Contributions Everything," *Journal of Law & Economics*, 5 (1998): 1-16; T. Stratmann, "Can Special Interests Buy Congressional Votes? Evidence from Financial Services Legislation," *Journal of Law & Economics*, 45, no. 2 (2002): 345-373; M.J. Cooper, H. Gulen, and A. Ovtchinnikov, "Corporate Political Contributions and Stock Returns," *Journal of Finance*, 45, no. 2: 687-724; A. Tahoun, "The Role of Stock Ownership by US Members of Congress on the Market for Political Favors," London School of Economics, Working Paper, 2011; M. Gilens, *Affluence and Influence: Economic Inequality and Political Power in America* (Princeton: Princeton University Press, 2011); Lessig 2011, supra note 43.

[44] T. Ferguson, P. Jorgensen, and J. Chen, "Who's Watching the Watchdog? The Federal Election Commission, Missing Data, and the Current State of Campaign Finance," paper presented at the annual meeting of the Law & Society Association, May, 30, 2013.

[45] I, along with Thomas Ferguson and Jie Chen, will analyze these new name- and industry-matching techniques in a forthcoming Edmond J. Safra Center Working paper.

[46] Gokcekus, et al 2006, supra note 19.

[47] T. Ferguson, P. Jorgensen, and J. Chen 2013, supra note 43.

[48] On Pharma funding of CME and other professional activities, see, M. Rodwin, "Five Uneasy Pieces to Pharmaceutical Policy Reform," *Journal of Law, Medicine & Ethics* 41, no. 3 (2013): **XX-XX (page numbers coming).**

[49] R.L. Hall and A.V. Deardorff, "Lobbying as Legislative Subsidy," *American Political Science Review*, 100, no. 1, (2006): 69-84: at 69.

[50] R.L. Hall and A.V. Deardorff 2006, supra note 48: at 4. The authors are interested in using the Medicare Modernization Act, specifically the pharmaceutical-related sections, to test the core hypotheses of their theory, which are lobbyists lobby their productive friends. I am arguing that scholars should use this theory to understand the pharmaceutical industry, and the dependent corruption of Congress created in part by this industry. I am pushing the agenda of their research to an area that they do not want to pursue in their conference paper, when they write, "We do not purport to explain why this bill – rather than some other bill, or no bill at all – passed the critical threshold of enactment."

[51] W.N. Dunn, *Public Policy Analysis: An Introduction* (Upper Saddle River, NJ: Prentice Hall, 2004); C.V. Patton and D.S. Sawicki, *Basic Methods of Policy Analysis and Planning* (Englewood Cliffs, NJ: Prentice Hall, 1993).

[52] J.S. Dryzek, "Don't Toss Coins in Garbage Cans: A Prologue to Policy Design," *Journal of Public Policy*, 3 (1983): 345-367; A. Schneider and H. Ingram, "Systematically Pinching Ideas: A Comparative Approach to Policy Design," *Journal of Public Policy*, 8, no. 1 (1988): 61-80.

[53] T.E. James and P.D. Jorgensen, "Policy Knowledge, Policy Formulation, and Change: Revisiting a Foundational Question," *Policy Studies Journal*, 37, no. 1 (2009): 141-162, at 143-144.

[54] N. Shulock, "The Paradox of Policy Analysis: If It Is Not Used, Why do We Produce So Much of It," *Journal of Policy Analysis and Management*, 18, no. 4 (1999): 226-244, at 240.

[55] A. Daemmrich 2011, supra note 18; O. Gokcekus, et al 2006, supra note 18.

[56] See the other articles in this symposium, particularly the articles by A. Brown, L. Cosgrove, M. Gagnon, G. Gray, A. Landau, D. Light, M. Rodwin, S. Sismondo, and S Sah.

[57] R. Castellblanch, "Challenging Pharmaceutical Industry Political Power in Maine and Vermont," *Journal of Health Politics, Policy and Law*, 28, no. 1 (2003): 109-132. Castellblanch's work is a good example of clarifying policy alternatives and explaining why

Maine was able to base a drug-price reduction bill in 2000, while the state legislature in Vermont was not able to pass a similar bill. The author argues that the Maine State Employees Association and the Maine Council of Senior Citizens had more resources and mobilized more people than their Vermont counterparts. In addition to mobilizing public support, sympathetic policymakers in the state included pharmacists in the decision-making process, negating the influence of pharmaceutical firms on pharmacists, and the state used its social program's purchasing power as a bargaining chip. The thesis of the article is the same as this essay: to reform the practices of the pharmaceutical industry, citizens must challenge the industry's political power.

[58] E. Wyatt, "Supreme Court Lets Regulators Sue over Generic Drug Deals," *New York Times*, A1, June 17, 2013. The federal government also pursues fraud settlements. On this issue, read K. Thomas and M.S. Schmidt, "Glaxo Agrees to Pay $3 Billion in Fraud Settlement," *New York Times*, July 2, 2012, at A1.

[59] H. Yen, "Black Voter Turnout Passes Whites in 2012 Election, A First in Census History," *Huffington Post*, May 8, 2013, accessed here: http://www.huffingtonpost.com/2013/05/08/black-voter-census_n_3240403.html; S. Ansolabehere, "The Turnout Mystery," *Boston Review*, January 10, 2013, accessed here: http://bostonreview.net/state-nation/turnout-mystery; T. File, "The Diversifying Electorate – Voting Rates by Race and Hispanic Origin in 2012 (and Other Recent Elections)," *Current Population Survey*, May 2013, accessed here: http://www.census.gov/prod/2013pubs/p20-568.pdf.

[60] For a synopsis of state actions after the Supreme Court's decision in *Shelby County v. Holder* (2013), especially concerning voter identification and restriction on early voting, see M. Cooper, "After Ruling, States Rush to Enact Voting Laws," *New York Times*, July 5, 2013, accessed here: http://www.nytimes.com/2013/07/06/us/politics/after-Supreme-Court-ruling-states-rush-to-enact-voting-laws.html?_r=0.

[61] On the potential for decline in turnout caused by strict voter identification laws, see M.A. Barreto, S.A. Nuño, and G.R. Sanchez, "The Disproportionate Impact of Voter-ID Requirements on the Electorate – New Evidence from Indiana," *PS: Political Science & Politics*, 42, no.1 (2009): 111-116; M.R. Hershey, "What We Know about Voter-ID Laws, Registration, and Turnout," *PS: Political Science & Politics*, 42, no.1 (2009): 87-91; on the lack of evidence for

in-person voting fraud and partisanship of voter identification laws, see W.R. Groth, "Litigating the Indiana Photo-ID Law: Lessons in Judicial Dissonance and Abdication," *PS: Political Science & Politics*, 42, no.1 (2009): 97-101; M. Kinnard, "Report: No Widespread Fraud Found in SC Elections," *Associated Press*, July 5, 2013, accessed here: http://hosted.ap.org/dynamic/stories/S/SC_VOTER_ID_SCOL-?SITE=AP&SECTION=HOME&TEMPLATE=DEFAULT; for an example of a court case on early voting, see S. Childress, "Court Rules Florida's Early Voting Restrictions are Discriminatory," *Frontline,* August 17, 2012, accessed here: http://www.pbs.org/wgbh/pages/frontline/government-elections-politics/court-rules-floridas-early-voting-restrictions-are-discriminatory/.

[62] Ferguson, Jorgensen, and Chen 2013, supra note 24.

[63] W.D. Burnham, "Democracy in Peril: The American Turnout Problem and the Path to Plutocracy," The Roosevelt Institute, Working Paper No. 5, December 1, 2010.

[64] J. Madison, supra note 32: at 51.

[65] T. Ferguson 1995, supra note 16: at 8.