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CONTRIBUTION

from

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to the General Debate on

"Lobbyists and interest groups: the other aspect of the legislative process"

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Introduction

Legislation is the result of a process involving a variety of participants, primarily the parliament and the government, along with their administrations. It is the responsibility of the latter to identify a general interest and to seek out the majorities required through a public discussion.

However, parliamentary decisions can also result from external influence applied by groups that are promoting their own vested economic or social interests. The extent of the influence of these extra-institutional actors is hard to determine because they usually evade the transparency requirements that apply to the democratic debate. Their discreet presence in the corridors of power leads to fears that they have usurped the decision-making process.

The term lobbyist (from the “lobby” or hallway of parliament) is often said to have been coined by the US president Ulysses Grant (1822-1885), who was annoyed by persons who would wait for him in the foyer of a large hotel in Washington hoping to secure favours. However, the term originated as reference to the hallway of the House of Parliament in London, where members of the Houses of Commons and Lords met before and after parliamentary debates.

Lobbying and interest groups: a question of definition

Lobbies are interest groups that seek to influence the government and the political process in manner favourable to their own interests. In contrast to political parties, which take part in elections and accept the decision of the electorate, interest groups normally operate outside the margins of the public debate.

Interest groups are organised in a variety of ways. This is reflected in the various terms used to describe their activities: the talk is of influence groups, interest associations, or pressure groups, of networks, think tanks or lobbies, not to mention NGOs, specialist consultancy firms or certain multinational companies.

By definition, the lobby is a non-institutional agency that has no public duties or obligations.

A distinction may be made between seven main categories of lobby

1. Business, social, and professional associations and trade unions;
2. Consultancy firms;
3. Non-governmental organisations;
4. Think tanks and academic and para-academic institutions;
5. Groups of associations, religious and community groups;
6. Organisations representing provincial, regional or local authorities;
7. Public relations services of large, often multinational companies.

Lobbying is a difficult phenomenon to measure precisely. No one disputes that it goes on, or that it influences public policy and the decisions taken by governments and parliaments. The fact that more than 8,000 lobbyists (as of March 2015)¹ are duly listed in the European Union transparency register is proof of this. In the Swiss Parliament, the wide range of active groups is reflected in the public list of persons accredited by MPs for access to the corridors of the Parliament Building and in the number and diversity of cross-party parliamentary groups².

The actual influence of lobbies over the legislative process is also difficult to assess, but it certainly exists: if you need convincing, you need only ask MPs: for each legislative bill or before any major debate, their mailboxes fill up with leaflets, reports, memoranda of all kinds, proposed amendments, not to mention invitations to lunch, to take part in debates or to set up parliamentary clubs.

The lobbies intervene at several stages in the law-making process:

- the pre-parliamentary phase when a bill is drafted,
- the parliamentary phase when the bill is debated, and
- the post-parliamentary phase when the bill is implemented.

The group of persons involved is therefore very large and the lobbying targets not only public office holders in the legislature and executive but also civil servants. Moreover, indirect lobbying also takes place, using other agents to put pressure on the authorities (media coverage, demonstrations, opinion campaigns, etc.).

Originally, interest groups were mainly found in business circles (employers' associations, trade unions, federations from agriculture or industry, etc.). In Switzerland, for example, the business community was the first to organise its activities from the second half of the 19th century, and they were quick to institutionalise their relations with the political authorities. This gave rise to a form of parastatal administration, certain features of which remain to this day.

Over time and as the domain in which the state's sphere of action has expanded, the influence of interest groups has extended to other fields of interest for society in a broader sense (patient or consumer rights organisations, environmental protection organisations, citizens groups, etc.). Nowadays, these groups can be found in all areas of state activity and regulation.

Lobbying and interest groups: a problem of role

Relations between lobbyists and politicians traditionally fluctuate between cooperation and confrontation. The explanation for this lies in the ambivalence of the lobbyist's role in the law-making process.

For some people, the role of interest groups is to supply information and expertise. Their function is to provide data, insights and ideas. To this extent, they reflect a society

¹ <http://ec.europa.eu/transparencyregister/public/homePage.do>

² Cross-party parliamentary groups are not parliamentary bodies but are forums for members of parliament who are interested in a specific issue (art. 63 para. 1, Parliament Act of 13.12.2002, SR 171.10).

based on freedom of expression and association and on a plurality of opinions. From this angle, lobbyists can be viewed as representatives of civil society who are participating in public affairs. In Switzerland, interest groups are regularly listened to in consultation procedures and at parliamentary hearings. Moreover, this right to participate is set out in our Federal Constitution³ and in the law⁴ and it constitutes a key stage in political decision-making process. This approach can be explained by a need for efficiency: opening the legislative process up to non-institutional representatives allows us to identify needs, locate problems and find possible compromises. A system of this type is essential in a system of direct democracy, where each law passed by parliament can be contested by calling for a referendum.

For others, interest groups are tainted by a negative image based on suspicions of underhand activities. Lobbies are part of the dark side of politics and operate secretly, without limits or controls. They are said to have an excessive power to influence. Their aim is to circumvent the traditional channels of power and to promote vested interests that are contrary to the general interest. In such cases, lobbying is synonymous with patronage, collusion, and dodgy dealing and is the root of all evil. Clear cases of this arise when interest groups put pressure on elected representatives, by attempting to establish complicit relationships or by doing their job by preparing questions to ask the government, or even paying them money. At the start of this year, the Swiss Parliament was confronted with a situation like this when it was revealed that a former Swiss ambassador to Germany, who had since become a lobbyist, had drafted various parliamentary questions on behalf of the ministry of justice of a foreign state. In the United Kingdom, two former government ministers recently resigned after being accused by journalists of accepting money to exert their influence for the benefit of a private company⁵. In 2011, three members of the European Parliament who had tabled amendments to legislation in return for money were entrapped by *Sunday Times* journalists posing as lobbyists. Trafficking in influence in this way has fuelled suspicions as to the integrity of certain interest groups and has contributed to their demonisation.

There are two schools of thought on how the role of interest groups should be regarded: the Tocquevilian tradition takes the view that the state must be limited in size and cannot assume responsibility for the common good on its own without competition from different social groups. In contrast, the Rousseauist tradition believes that interest groups corrupt the general interests of the people⁶.

The truth of the matter almost certainly lies between these two positions and there are certainly as many situations as there are types of interest group. This is why it is difficult to lay down unequivocal rules for supervising lobbying efficiently, because the line between giving sound advice and defending vested interests is constantly moving.

³ Art. 147 of the Federal Constitution of the Swiss Confederation of 18.4.1999 (SR 101) : “[...] interested groups shall be invited to express their views when preparing important legislation or other projects of substantial impact as well as in relation to significant international treaties”.

⁴ Consultation Procedure Act of 18.3.2005 (SS 172.061).

⁵ „Sturz zweier Titanen in Grossbritannien“, *Neue Zürcher Zeitung*, Zurich, 25.2.2015, p. 5.

⁶ In his work *The Social Contract*, Rousseau argued: “It is therefore essential, if the general will is to be able to express itself, that there should be no partial society within the State, and that each citizen should think only his own thoughts” (*The Social Contract*, Volume II, Chapter III, librairie de la Bibliothèque nationale, Paris, 1894, p. 45).

Lobbying and interest groups: defining the regulatory framework

If it appears reasonable for interest groups to plead their cases to elected politicians, it is important at the same time to prevent lobbies from compromising democratic principles and good governance, the principal objective of which is to ensure that general interests prevail over individual interests.

A number of international organisations⁷ are proposing various methods of regulating lobbying. Several approaches are feasible:

1. Increase the transparency of lobbying activities

- State regulation of lobbying activities or self-regulation.
- Setting up public registers of interest groups, on a voluntary or mandatory basis.
- Strict regulations on access to decision-makers (lists, system of accreditation, public register of authorisations for access to parliament and its buildings).
- Publication of information, position papers and opinions issued by interest groups and sent to policy political makers.
- Publication of details of persons and organisations consulted when drafting legislation.
- Public disclosure of schedules and meetings between decision-makers and interest groups.

2. Encouraging a culture of integrity

- Drawing up codes of ethics to regulate the conduct required from political and administrative decision-makers when dealing with representatives of interest groups (refusing gifts, declaring assets and financial interests, declaring other interests, etc.).
- Drawing up codes of conduct to regulate the conduct required from lobbyists when dealing with political decision-makers and to prevent influence peddling.
- System to regulate conflicts of interest when a public servant (member of parliament, minister, public official) leaves the public sector to work, for example, as a consultant.

In a word, the challenge is

- to contain/provide a framework both for lobbyists and public decision-makers,
- to instil a culture of transparency,
- to ensure access to administrative information and the publication of information on party financing

⁷ See in particular the recommendations from the Council of the Organisation for Economic Cooperation and Development (OECD) on Principles for transparency and integrity in lobbying, 18.2.2010 - C(2010)16

- and to fight corruption and conflicts of interest.