

Lobbying and Democracy:

The Effect of Organized External Influences on Democratic Legitimacy

MA-Thesis

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Introduction

In a representative democracy there are many different forces a politician deals with on a daily basis which can affect his decisions. As an elected representative a politician has the obligation to make decisions based on how this affects the population. Although certain forces may simply be beyond anyone's control, there are also various organized groups which seek to actively influence the politician in the decision-making process. This raises the question how a politician should deal with these organized groups, which we normally call lobbyists. These organized groups have a right to be heard by politicians as they represent certain interests of the population, but the question still remains whether and how a politician should let this influence his decisions. Some parties in society do not try to influence, or perhaps cannot influence a politician at all, so if a politician lets lobbyists influence him this may create an imbalance in representation. In the 1992 European Parliament hearing on lobbying the critical side had three major accusations to lobbying. The first accusation was that lobbying creates an imbalance in decision-making: the industrial multinationals lobby the most which would imply the creation of an imbalance of decision-making leaving smaller groups such as workers, consumers and smaller enterprises at a disadvantage. The second accusation was that there seemed to be a lack of transparency in lobbying. Much of it takes place behind closed doors which makes it more difficult for competitors, the mass media and other officials to understand what is going on. The final accusation was that lobbyists use immoral practices such as document robbery, blackmail and bribery.¹ I will argue that the final accusation made here is not lobbying at all, although it is done by lobbyists. The reason that this accusation cannot be considered to be a form of lobbying is because in this case the lobbyist tries to influence the politician personally. A lobbyist should focus on the policies of the politician, and a politician should focus on how he represents his constituents, rather than focus on his personal gain. However, I will argue that the first two accusations are in fact rightly made to lobbying.

¹ Rinus van Schendelen, *Machiavelli in Brussels: The Art of Lobbying the EU*. (Amsterdam: Amsterdam University Press, 2002), 279.

In this thesis I will look at lobbying from a philosophical perspective. I will answer the question how lobbying influences democracy and how it affects democratic legitimacy. Philosophical theories of democracy are a very important part of political philosophy, and it is important for a philosophical theory of politics to understand what the organized external influences on democracy are. It is important to know what non-elected factors do in a democracy, and how this can be beneficial or detrimental to democratic legitimacy as well as democracy itself. The accusations of the European Parliament provide a good basis for us to tackle the problems caused by lobbying. The first accusation is that it can create imbalances in decision-making, the second accusation is that it can lead to a lack of transparency and the final accusation is that lobbyists use certain immoral practices, which would undermine the legitimacy of lobbying.

In order to answer the question how lobbying influences democracy and how it affects democratic legitimacy I will start by looking at the first problem with lobbying: that it can lead to an imbalance in democratic decision-making. If certain parties lobby more, or lobby more effectively, this can lead to a situation where some interests are represented better than others. In the first chapter I will look at this problem of lobbying. In order to come to a good understanding of this problem I will first discuss different types of democracy and what the important features of a democracy are. I will also discuss what the requirements of democracy are. For instance, how does a representative democracy differ from a deliberative democracy? Firstly I will focus on representative democracy as understood by Nadia Urbinati and Mark Warren, as well as how it is understood by Hanna Pitkin. Secondly I will discuss deliberative democracy as it is understood by Amy Gutmann and Dennis Thompson, before moving on to how Joshua Cohen understands deliberative democracy. Following this, in the third part, I will focus on the requirements of democracy. I will argue that these requirements are vital to ensure a good democracy, regardless of which theory is supported. The requirements are participation of citizens in government, freedom of speech, publicity of government, and accountability of the government to the people. It is also important to find out exactly what we mean by lobbying; this will be discussed in the fourth part. In order to gain a better

understanding of lobbying, I will discuss the effect lobbying had on the founding and changing of the Freedom of Information Act in the United States. In the fifth part I will discuss one of the problems of lobbying, namely that lobbyists use immoral practices to achieve their goals. I will argue that these practices are often mistaken for lobbying, but that they are strictly speaking not lobbying. It is important to understand what lobbying is not, so that you gain a better understanding of what constitutes lobbying. However, since the problems we associate with lobbyists play an important role in discussions about lobbying, we must consider these problems as well.

In the second chapter I will focus on the second major problem of lobbying: that it can lead to more secrecy in the government. One of the most important factors in theories of democracy is the notion of secrecy and the idea of publicity. It is important for a government to be open towards the public in a democracy. In fact, publicity is one of the requirements for democracy. Publicity and secrecy also play important roles in lobbying and the various problems surrounding lobbying. Lobbying can in fact lead to more secrecy, which as I will explain is not beneficial for a democracy. In order to explain this I will firstly discuss governmental secrecy, and how governmental secrecy affects democracy. Secrecy is generally seen as problematic for a democracy because it can lead to a system of government where the government is not accessible to the population. However, a certain measure of secrecy may be required in some cases in order to allow the government to continue to work effectively. In the second part of this chapter we will look at the concepts of deep secrecy and shallow secrecy in order to come to a better understanding of secrecy. These concepts distinguish between two different kinds of secrecy. They maintain that there is a difference between secrecy where information is simply not disclosed to the population and secrecy where the population is not even aware of certain secrets. Although governmental secrecy may be problematic for a democracy, there may be certain cases where governmental secrecy is justified. This will be discussed in the third part. After this in the fourth and final part I will look at what kind of influence lobbying has on secrecy, whether it leads to acceptable secrets or whether this constitutes a negative factor for democracy.

However, in spite of these negative aspects of lobbying there are certainly also aspects of lobbying which have a positive influence on the government, democracy, and democratic legitimacy. These positive aspects are the focus of chapter 3. The first reason lobbying can be positive for the government is because it allows for an exchange of information between politicians and external parties. This means that governments can ask companies and groups of citizens for their opinions on certain policies. This can lead to improved policies as well as better government effectiveness overall, because the government can ask certain expert opinions. It can also lead to better representation by allowing for more information about the opinion of the population, thereby helping politicians be better representatives. This ties into the second positive aspect, namely that lobbying can lead to better representation by politicians. The reason for this is that citizens can talk to government officials directly, which makes sure that citizens are more actively involved in their government. Obviously this is very positive for a democracy that seeks to represent the interests of the population as best as it can. Lobbying allows for representation to be better implemented in a democracy by having the politicians listen to voices from the population. A democratic government should always strive to represent the interests of the population as best as it can. A third positive aspect is increased publicity. Lobbying can only work if there is a certain measure of publicity, therefore lobbyists would try to make sure that a certain measure of publicity is maintained, which is obviously beneficial for democracy as well. In other words, lobbying is not without its merits.

Finally, in chapter 4, we will discuss possible solutions to the problems of lobbying, namely imbalance of influence and secrecy in democratic government. It is important that when you attempt to solve the problem of lobbying the positive aspects of lobbying are maintained. The first solution we will discuss states that publicity in the government remains a strong way to counter many of the problems of lobbying. One way to ensure publicity is to enact a mandatory lobby register. This makes sure that the people know who exactly is lobbying and for what they are lobbying. The second way to solve the problems of lobbying is by turning towards a more deliberative mode of democracy. This means that the people are more inclined to deliberate about certain problems. This can lead to a

better representation for the people, while tackling the various problems of lobbying. By turning more towards deliberative democracy various problems can be solved, because it is necessary for a deliberative democracy to ensure publicity and accountability. In other words, there can be no deliberative democracy without publicity and accountability, which would ensure that certain problems of lobbying are minimized.

Chapter 1: Lobbying and democratic imbalance

Introduction

In a democracy there are always various forces at work that influence the direction of the decision-making process. This can be the electorate who choose other politicians, changes in political parties, an external factor to the political process, or something else entirely. Although these external forces cannot always be controlled or organized, there are certain forces that organize themselves in such a manner that is specifically designed to influence politicians and policy. These external forces are also known as lobbyists. There are various problems that can come from the organized external influences on democracy. In this chapter I will discuss one of the major problems, namely that these forces can disturb democratic balance. In a democracy the voice of every citizen should be heard as much as every other citizen, but lobbying can have the effect that certain interests are weighed more heavily than others. If some voices or interests are listened to more than others in politics this is of course not a positive thing for a democracy. For example, there might be big corporations who have the means and the knowledge to influence politics more heavily and effectively than others. In order to come to a good understanding of this problem of lobbying I will first discuss different forms of democracy and how these forms of democracy deal with the influence of the population. We will look at the notion of representation as understood by Nadia Urbinati and Mark Warren, followed by how representation is understood by Hanna Pitkin. Once we have a clear understanding of representation we can move on to another understanding of democracy entirely, namely deliberative democracy. In order to come to a good understanding of deliberative democracy I will discuss deliberative democracy as understood by Amy Gutmann and Dennis Thompson, before moving on to how Joshua Cohen understands deliberative democracy. I will conclude from these theories what the requirements of democracy are. I will argue that these requirements are necessary, regardless of which theory of democracy is used. I will then move on to what we consider to be lobbying. In order to explain the phenomenon of lobbying I will begin by explaining exactly what lobbying entails, who lobbies, and how lobbying is done. I will then give an example of how

lobbying can shape various legislative procedures by discussing the Freedom of Information Act and how lobbying contributed to its implementation as well as the restrictions that followed it. Following this, I will discuss what is often thought to be lobbying, but is actually not lobbying at all. Many people believe that certain activities fall under lobbying when these activities are not strictly speaking lobbying. I will argue that what many people hold to be lobbying is actually a form of personal corruption of the politician, not lobbying at all. However, I will argue that it is still important to understand these accusations since they are important in the discussion surrounding lobbying. Finally, I will discuss how lobbying can have a negative influence on democracy. Lobbying can lead to democratic imbalance because it can ensure a system where some actors have more influence than others. This means that some interests are weighed more heavily than others. Before we can move on to discuss the problems of lobbying in more detail, we must first look at how democracy may be organized, and what the important aspects of democracy are.

Representation

There are many theories of democracy which all have various ways of organizing the relation between the people and their representatives. Theories of democracy range from relying heavily on the consensus of the population, such as deliberative democracy, to relying more on the indirect consensus of the population, such as liberal democracy, or representative democracy. In order to gain a better understanding we will first look at how political representation can be organized in democracy. I will start by discussing the notion of representation as understood by Urbinati and Warren, then I will move on to how representation is understood by Pitkin.

In a liberal democracy people have the right to choose their government while retaining their liberties and their rights. According to Mill, one of the most influential authors on liberal democracy, the most important liberties to protect are the freedoms of conscience, thought and feeling, holding and expressing opinions, pursuing one's life plans, and combining with others for any (non-malicious)

purpose.² These liberties only affect those who enjoy them, and should not be interfered with by others, for example the state. These ideals are often respected in representative democracy, a theory of democracy where people choose who will represent their interests. Democracy is almost always organized in a representative manner. Political representation can be shaped in different ways. It can be the representation of the population's interests, the representation of the population as if they were making the choices themselves, or some other form of representation. In other words, a representative might be a trustee of the population's interests, a representative might be a delegate who decides on what the population says they want, or something else. Regarding the idea of representation as trust, here the population entrusts their interests to the elected.³ Urbinati and Warren define representation as having four features. The first feature is that representation is understood as a principal-agent relationship, meaning that the voters, or principals, elect agents to stand for and act on their interests and opinions. This entails that the sources of legitimate power are separated from the exercise of this power. The second feature of electoral representation is that the sovereignty of the people is identified with state power. The third feature is that electoral mechanisms have a measure of responsiveness to the people they represent. This can also be done through political parties who speak in the name of the people. The final feature is that there is a certain measure of political equality in the electoral representation.⁴ This manner of representation still has certain complexities of course. How votes are worked into representation, how agendas are set, and how public opinion is formed is all part of the system of representative democracy. Urbinati and Warren also discuss representation with regard to democracy. As they state: "If democratic representation is to be understood as more than a division of labour between political elites and citizens, we need to understand representation as an intrinsic part of what makes democracy possible."⁵ Again they discuss democratic responsiveness, which according to them includes the

² Frank Cunningham, *Theories of Democracy*, (London: Routledge publishing, 2002), 28.

³ Nadia Urbinati and Mark E. Warren, "The Concept of Representation in Contemporary Democratic Theory," *Annual Review of Political Science* 11, no. 1 (2008): 400, doi: 10.1146/annurev.polisci.11.053006.190533.

⁴ *Ibid.*, 389.

⁵ *Ibid.*, 395.

authorization of a representative by those who are represented, as well as the accountability of representatives to those represented.⁶ Representatives are elected in order to do certain things, and when they fail at their jobs they fail to fulfil an obligation. One might say that this is an ethical obligation of a representative. There seems to be a relationship between representation and responsibility, and representation also seems to be related to rights.⁷ This means that accountability is inherent in representation; a representative is someone who will have to answer for what he does to another, namely those he represents. Here the meaning of representative democracy is that the government is held responsible to the society as a whole, for example by holding them accountable at periodic elections.⁸ We can use this view of accountability to distinguish between ‘real’ representation and ‘fraudulent’ representation.⁹ Genuine representation exists only where there is accountability towards the represented, where there are certain controls of the representatives. As Pitkin states, accountability theorists aim to show that true representation entails responsiveness to the represented.¹⁰ For a representative it might be said that he should act as if he would eventually have to account for his actions.¹¹

The question of accountability goes back in part to the question of representation. If a politician makes a decision based on the interests of his constituents, is he then accountable to others? Does a politician for instance have a responsibility to uphold certain basic human rights, even in the face of backlash from his constituents? Does he have a responsibility to future generations, or teenagers who do not have the right to vote? As Urbinati and Warren state: accountability is one of the most important aspects of representative democracy. As we have mentioned this is a feature of responsiveness to the people they represent. After all, if a politician does not abide by public opinion there are ways in which the population can respond to that politician, for instance by not re-electing

⁶ Ibid., 396.

⁷ Hanna Pitkin, *The Concept of Representation*, (Berkeley: University of California Press, 1967), 54-55.

⁸ Ibid., 56.

⁹ Ibid., 57.

¹⁰ Ibid., 113.

¹¹ Ibid., 119; cf. Justus Beijk, “Accountability and Democracy: The Notion of Accountability Explored” (unpublished, manuscript, June 24, 2016), Microsoft Word file.

that politician. In a representative democracy it is required that representative politicians can be held accountable for their actions as representatives. It has been said that democratic responsiveness includes authorization of a representative by those who would be represented, and accountability of the representative to those represented.¹² If they are not representing our interests as we would like, we can hold them accountable for their actions by not re-electing them, or perhaps even by impeaching them. Furthermore, one might argue that a politician does not just owe an amount of accountability to the electoral constituents but also to their moral constituents. This can include citizens in other nations, groups of disadvantaged citizens, and citizens yet to be born.¹³

Not only does this pose a challenge to representative democracy, it also poses a big challenge to another theory of democracy, namely deliberative democracy. Deliberative democracy is based on the idea that citizens should have an active deliberation in their government in order for there to be legitimacy, and that the government should listen to the citizens. But for some moral constituents like unborn citizens it is simply impossible to deliberate. A measure of accountability might still be saved however, since it is by no means the case that representatives should attend only to the interests of those who elect them.¹⁴ Even still, politicians could appeal to moral accountability to their constituents. They might attempt to convince the electorate that others are worth taking into account as well, the moral constituents.

Deliberative democracy

Now that we have an understanding of representative democracy and how accountability features in this system we can move on to deliberative democracy. Deliberative democracy is a system of democracy where there is a strong focus on the active participation and deliberation of the public. Deliberation is central to the decision-making of this type of democracy. Or as Gutmann and

¹² Urbinati and Warren, "The Concept of Representation," 396.

¹³ Amy Gutmann and Dennis Thompson, *Democracy and Disagreement*, (Cambridge, Massachusetts: Harvard University Press, 1996), 145-146.

¹⁴ *Ibid.*, 146.

Thompson understand the concept of deliberative democracy: “The core idea is simple: when citizens or their representatives disagree morally, they should continue to reason together to reach mutually acceptable decisions.”¹⁵ Although this already takes place to a certain degree in most conceptions of democracy, deliberative democracy asks that deliberation is done more consistently. It is important to note that deliberative democracy does not exclude representation. Deliberation amongst citizens as well as between citizens and the government takes a central place in the theory, but in deliberative democracy representation would still be required. The three main principles Gutmann and Thompson maintain for deliberative democracy are reciprocity, publicity, and accountability. These principles express the conditions of deliberation.¹⁶ By reciprocity is meant the idea that the population seeks to find solutions which are acceptable to all parties. If this is not the starting point of deliberation it becomes impossible to reach a consensus. Publicity is required because it motivates people to deliberate and allows people to fully grasp what they are deliberating about. It is also a requirement for accountability. After all, if a policy is not known to the public it becomes impossible to hold the politicians accountable for their actions. There are also three substantive principles that govern the content of deliberation in the theory of Gutmann and Thompson: basic liberty, basic opportunity, and fair opportunity.¹⁷ In fact, these substantive principles are all constitutional principles of a deliberative democracy. This means that these are standards which must not be violated in the making of public policy serving as self-constraints.¹⁸ Basic liberty entails the idea that everyone should have a certain amount of sovereignty over themselves, their mind and their body.¹⁹ Basic opportunity refers to the distribution of goods that enable people to live a decent life and have certain opportunities. Fair opportunity on the other hand refers to the distribution of goods on the basis of qualifications.²⁰

¹⁵ Ibid., 1.

¹⁶ Ibid., 7-8.

¹⁷ Ibid., 8.

¹⁸ Ibid., 199.

¹⁹ Ibid., 230.

²⁰ Ibid., 9.

Now that we have a better understanding of deliberative democracy as understood by Gutmann and Thompson, an important aspect to expand on is how accountability features in their theory of deliberative democracy. After all, this is one of the principles of deliberation. It might appear as though deliberative democracy does not fully incorporate accountability, because this would in part entail that the citizens could be held accountable to themselves. But Gutmann and Thompson understand it differently, each is accountable to all.²¹ By this it is meant that people, citizens as well as officials, try to justify their decisions to all the affected. In other words, in a deliberative democracy representatives are required to do more to justify their choices. It is not the case that they are only there to win elections or only there to respect certain rights. In a deliberative democracy representatives are expected to justify their actions, they give reasons that can be accepted by those who are to be bound by the laws and policies.²² But on the other hand, citizens should also try to justify their decisions to the affected; they should give their reasons for their decisions.

In order to attain a more complete understanding of deliberative democracy we now turn to the theory of Joshua Cohen, who maintains a different notion of deliberative democracy. As Cohen describes, a deliberative democracy is an association whose affairs are governed by the public deliberation of its members.²³ Deliberative democracy is rooted in the ideal of a democratic association in which the justification of the terms and conditions of association proceeds through public argument and reasoning among equal citizens.²⁴ Deliberative democracy searches for forms of representation that support an interaction between citizens and legislative and political bodies, based on argumentation. Gutmann and Thompson have posited that deliberative democracy may include a combination between representative and direct democracy.²⁵ According to Cohen the

²¹ Ibid., 128.

²² Ibid., 129.

²³ Joshua Cohen, "Deliberation and Democratic Legitimacy," in *The Good Polity*, ed. Alan Hamlin and Philip Pettit, (Oxford: Basil Blackwell, 1989), 17.

²⁴ Ibid., 21.

²⁵ Gutmann and Thompson, *Democracy and Disagreement*, 131.

formal conception of deliberative democracy has five main features. The first feature is that a deliberative democracy is an ongoing and independent association, whose members expect it to continue into the indefinite future. The second feature is that the members of this association share the view that the correct terms of association provide a framework for, or are the results of their deliberation. Thirdly, it is required that a deliberative democracy is a pluralistic association. This means that the members have diverse preferences, convictions and ideals concerning the conduct of their own lives. While they share a commitment to the deliberative resolution of problems of collective choice, they also have divergent aims, preferences, and convictions. The fourth feature entails that the members of a democratic association see the deliberative procedures as the source of legitimacy. Finally, the members of the deliberative society recognize one another as having the deliberative capacities required for entering into an exchange of reasons and for acting on the result of such reasoning.²⁶

But for a democracy it is important not only to understand the formal requirements. We must also discuss the procedure of deliberative democracy. Cohen is proposing an ideal scheme of deliberation; he focusses on how deliberative procedures should proceed. An ideal scheme of deliberation means that it might not necessarily be practical. However, his aim is to make the conditions for deliberative decision-making explicit, and to highlight the properties that a democratic institution should try to embody as much as possible. For this procedure there are four general aspects of deliberative procedure which will be discussed. However, the overarching theme is still that outcomes are democratically legitimate if they could be the result of an agreement among equals which is free and reasoned, for instance between the government and the people. This agreement being free and reasoned can also be described as deliberative. The ideal deliberative procedure is formed on the basis of this principle.²⁷ The first aspect of a deliberative procedure of democracy as described by Cohen is that in deliberation participants think of themselves bound only

²⁶ Cohen, "Deliberation and Democratic Legitimacy," 21.

²⁷ *Ibid.*, 22.

by the results of their deliberation. The idea that their deliberations should not be limited by a certain authority is a requirement for deliberation. Because people should think of themselves as only bound by their deliberations, we can say that the people should act based on the results of their deliberation. The reason for this is that in a deliberative democracy the fact that certain decisions are arrived at through deliberation is sufficient reason to comply with it. The second aspect of deliberative procedure is that deliberation should be reasoned rationally. This means that the parties in a democracy are required to give their reasons for advancing, supporting, or criticizing proposals. Cohen even goes so far as to say that proposals may be rejected if they are not defended with acceptable reasons, even if it is possible that they be defended by acceptable reasons. The third aspect of the ideal procedure is that participants in deliberation should be equal. This can be applied to deliberations between citizens, as well as deliberations between the government and citizens. The people that deliberate should be equal in a formal way as well as being substantively equal. By being formally equal it is meant that everyone has an equal standing in the deliberative process. Everyone can put issues on the agenda, propose solutions, and criticize. By being substantively equal it is meant that citizens are not limited by external forces on the deliberative process. This means that the current distribution of resources should not limit their deliberations. Participants should not be bound, or have the idea that they are bound in their deliberations by some existing system of rights of others or themselves. The exception to this idea is that people can be bound if this establishes the framework of deliberation. The fourth and final aspect is that the aim of deliberation should be a rationally motivated consensus. If a consensus cannot be reached, the deliberation should conclude with voting and proceed with a form of majority rule.²⁸

Requirements for democracy

Now that we have discussed representative democracy and deliberative democracy we can move on to which parts of these theories are required in order to maintain a democratic form of government,

²⁸ Ibid., 22-23; cf. Beijk, "Accountability and Democracy".

regardless of which theory is being used. Although the theories of democracy we discussed are very different and have various ways of interpreting democracy and the aforementioned values that come with it, there are important aspects which are required to ensure a democratic form of government. In this part we will focus on these aspects before moving on to the effect lobbying has on some of these aspects of democracy. I will argue that the most basic requirements for democracy include a form of government where citizens at least can participate in government, have freedom of speech, where the government is required to have publicity, and where there is accountability of politicians to the citizens. If these requirements are not met, both representative and deliberative forms of democracy would be unattainable.

Firstly, participation is required for a democracy so that citizens can influence governmental decision-making. Participation can take the form of suffrage, since it is a very clear way to determine the will of the people. This of course includes choosing the politicians in a representative democracy. This is where a part of the justification for representative democracy comes from, since state power gets its justification from the sovereignty of the people. If this were not present there would be no way for the citizens to influence politics, and there could be no democracy.

Freedom of speech is required so that citizens can express their opinions about the government. If there would be no freedom of speech it would be very hard for citizens to organize themselves in a way that could influence politics. This would also get in the way of the participation of citizens, which we have just discussed. If there would be no freedom of speech it would be very difficult to discuss policies and come to a reasonable conclusion about the policies of the government. Along with freedom of speech comes freedom of press, which is a requirement for democracy as well because again, if this were not in place, citizens could not make an informed decision about their government. The reason for this is that the press organizes knowledge about the government and researches new information concerning the government. This allows citizens to inform themselves better about the government. If citizens are unable to inform themselves they are not able to judge how their government has made policies. Obviously citizens should be able to make

judgments about their government, otherwise it could not function as a democracy.

The third requirement is publicity of the government. This requirement was explicitly named by Gutmann and Thompson in their requirements for deliberative democracy. Publicity entails that the government is required to make the reasons behind political actions public, as well as to make information necessary to assess those reasons public.²⁹ Again, this is required so that the citizens can make an informed decision about their government. Although the government is required to have publicity, there are cases where the government is allowed to keep certain pieces of information from the public. We will discuss governmental secrecy in further detail in Chapter 2.

Something which is closely related to publicity and which is essential for an effective government and an effective democracy is the idea of political accountability. Again, this was explicitly named as a requirement by Gutmann and Thompson. The idea of accountability entails that a politician should be able to be held responsible for his political decisions and his actions during the time he was an elected representative. If a politician has not done a good job or simply has not carried out his promised policies, the citizens of a state have the right not to re-elect him, hold him accountable through impeachment, or some other form of accountability. In order for this important part of democracy to function effectively a certain measure of publicity is required from the government. From this we can clearly see that secrecy is also connected with accountability; democracy requires publicity in order for there to be accountability. We will find that lobbying can have a negative impact on democracy because it interferes with publicity, and thus also with accountability. But before we can move on to what kind of effect lobbying has on these requirements of democracy, we will first need to discuss lobbying itself.

What is lobbying?

Lobbying is becoming more and more accepted in the European Union as a part of the political

²⁹ Gutmann and Thompson, *Democracy and Disagreement*, 95.

spectrum.³⁰ Lobbying has the reputation of being very secretive and a negative factor on democracy, and even democratic legitimacy. As lobbying is becoming a more important factor in the European Union, as well as in many other political spheres, it is important to understand exactly what we mean by lobbying and how it affects democracy. In other words, we must first consider what exactly we mean by lobbying, what constitutes a lobby group, and why politicians cooperate with lobbyists to begin with. Lobbying is often criticised because of its damaging effects on democratic functioning. One of the major problems which is often mentioned is that lobbying can lead to an imbalance in decision-making. But before we can come to an understanding of the effects of lobbying on democracy, we need to have a clear understanding of what we mean when we talk about lobbying itself.

Generally we think of lobbying as something only done by big corporations in order to influence politicians, but it is broader than that. Broadly speaking, lobbying is the attempted or successful influence of political decisions through interested representatives. What determines interest group influence is a central question in the study of politics.³¹ The act of lobbying is carried out by a lobby group. There are three factors which must be present to define an actor as a lobby group: a certain amount of organization, political interests, and private status.³² It is important to note that these groups are not democratically elected. They are in fact an outside influence on elected politicians or civil servants. There are many different interest groups and a wide variety of actors who have a certain amount of organization and have political interest without striving for public office. This definition applies to employers' associations, trade unions, environmental groups, companies, and professional associations. All these can be considered lobby groups.

For influence to be considered lobbying the influence must be intentional, use

³⁰ Peter Koepl, "The Acceptance, relevance and dominance of lobbying the EU Commission – A First-time Survey of the EU Commission's Civil Servants," *Journal of Public Affairs* no. 1 (January 2000), 79-80, doi: 10.1002/pa.51.

³¹ Heike Klüver, *Lobbying in the European Union*, (Oxford: Oxford University Press, 2013), 1.

³² *Ibid.*, 5.

communication to achieve this influence, and be targeted at legislative or executive bodies.³³ This means lobbying can be focussed on politicians, but also on administrative bodies. This political interaction is in part an exchange of information, which is an important factor in lobbying as well. For the European Union lobbying can often be conceptualized as an exchange relationship in which the European institutions trade influence for information, citizen support, and economic power. It is important to understand that lobbying is always organized in such a way that it can wield some influence. A group without organization which nonetheless is capable of influencing politicians, however, cannot be considered a lobby group. For example, if there are various riots that disturb the peace this may have a lot of influence on policy. Politicians may increase funding for law enforcement, or take action in order to prevent social injustice so riots are less frequent. But although an unorganized group may still influence politics, we are looking at how *organized* groups can influence politics. Another important aspect of lobbying is the exchange of information. For lobbyists this is the most important way to influence politicians. Lobbyists are often called to politicians to provide technical information on certain subjects. Lobbyists can then give the information from a certain perspective.³⁴ It is then up to the politician to make a decision based on the information provided. Finally, it is vital to note that although a lobbyist often tries to influence a politician, he does so by influencing policy, not by influencing the politician directly. This means that when a lobbyist tries to bribe, blackmail, or pressure a politician in any way by directly influencing his person, he is not taking part in lobbying strictly speaking. In this case he is trying to influence a politician based on personal gain. This also extends to matters of personal gain which are sometimes legal, such as accepting campaign contributions or benefiting certain corporations in the hope of a career after politics. This last example is also known as the revolving door. The reason that a politician should not make decisions based on his own benefit is that representative politicians should try to make decisions on the basis of the representation of the electorate. If he makes

³³ Koepl, "Lobbying the EU Commission", 70-71.

³⁴ Harmon Zeigler and Michael A Baer, *Lobbying: interaction and influence in American state legislatures*, (Belmont California: Wadsworth publishing company Inc., 1969), 62.

decisions not based on how this affects the population but how it affects him personally, he is not properly representing the population. We can call this illegitimate means of influence.

In order for a lobby to be successful a politician needs to want to work together with the lobbyists. There are a number of reasons that explain why and in what way a politician may cooperate with lobbyists. Many of these reasons for the cooperation with lobbyists come from the fact that politicians want to be re-elected. It is important to note that this does not necessarily constitute a negative aspect of democracy. For instance, a politician may want to be re-elected because he represents the interests of the population well. According to Moshe Cohen-Eliya and Yoav Hammer, the reason why politicians cooperate with lobbyists can be explained in three different ways. Lobbying can be seen as an exchange of various things between lobbyist and politician, it can be seen as a persuasion, or lobbying can be seen as a legislative subsidy, where lobbyists help to supply and edit complex information.³⁵ When lobbying is viewed as an exchange we are referring to voter support or money, which politicians need for re-election. Lobbying can provide both of these. Voter support can be provided by the lobby group if the lobbying group has a large number of supporters, this can make sure the politician is making a decision which has voter support behind it. In terms of the financial exchanges, we are referring to donations made by lobbyists to an election campaign.³⁶ As we have discussed, this can be of questionable status, but it is generally considered to be a form of lobbying. The lobbyist may also provide information about voter preferences, which can be necessary for the politician to make a good decision as a representative. This can be seen as persuasion. In other words, persuasion can also take the form of convincing the politician it is in the general interest that certain decisions are made by the politician. The final reason politicians may work together with lobbyists is because lobbying can function as a legislative subsidy. This theory holds that the information provided by lobbyists often takes the form of edited

³⁵ Moshe Cohen-Eliya and Yoav Hammer, "Nontransparent lobbying as a democratic failure," *William & Mary Policy review* 2, no. 2 (2011), 269.

³⁶ *Ibid.*, 269-270.

complex information. This can fill the information gaps for politicians.³⁷

An example of how lobbying works can be found in the way the Freedom of Information Act was founded and how it changed throughout the years. The Freedom of Information act allows people to request information from the US government which is generally not open to the public. It was first created to give people more trust in their government, since many people were becoming increasingly sceptical of the US government after the Vietnam War. There was also a lobby to support the act from various trade group members. They were asked if the Freedom of Information Act would “afford adequate protection with respect to information given the government by business,” to which the responses were affirmative.³⁸ However, since then business and industry representatives, which are the largest groups making use of this act, have lobbied for changes in the Freedom of Information Act.³⁹ The US government has certain provisions which regulate what can and cannot be disclosed. One of these exceptions to the freedom of information is the exception for confidential business information. This exception was implemented after a representative of a company testified before congress that such an example should be made.⁴⁰ Multiple associations were involved in shaping the freedom of information act and its exemptions. For example, to persuade the government that it was becoming too lenient in the granting of requests of the act. The associations argued that the openness of the government was hurting business interests. According to them it was causing economic harm through industrial espionage.⁴¹ Businesses have been heavily involved in the setting of agenda’s relating to the Freedom of Information Act. Although the Freedom of Information Act was founded through lobbying, the influence of lobbyists eventually led to a less open Freedom of Information act, which meant less information about businesses being available to

³⁷ Ibid., 271.

³⁸ Jeannine E. Rely and Carol B. Schwalbe, “How business lobby networks shaped the U.S. Freedom of Information Act: An examination of 60 years of congressional testimony,” *Government Information Quarterly*, 33, no. 3 (July 2016), 3, doi: 10.1016/j.giq.2016.05.002.

³⁹ Ibid., 2.

⁴⁰ Ibid., 3.

⁴¹ Ibid., 3-4.

the public.⁴² This raises certain questions as to whether lobbying, and citizen participation in general perhaps, is positive or negative when it comes to things like democratic legitimacy, governmental secrecy etc.

Problems we associate with lobbying

As mentioned before, a lot of problems which can be caused by lobbyists do not actually have anything to do with lobbying strictly speaking. One of the accusations of the European Parliament was that lobbyists use immoral practices such as document robbery, blackmail, and bribery. I will argue that this is not lobbying strictly speaking. Lobbying is the act of persuading a political actor through certain means, but it is always focussed on the political actor, on the policies. If a lobbyist tries to influence a political actor by focussing on the person of the political actor, this is not lobbying in fact. This type of influence takes the form of personal corruption. Personal corruption is the effort of the lobbyists or any other group to try to get the politician not to act on the basis of the general interest but on the basis of his own interest. In the past, it has been the case that civil servants have either been pressurized, have been attempted to be blackmailed, or have experienced other negative ways of persuasion.⁴³ These cases carry with it certain normative implications. If public policy is biased in favour of some interests while others are constantly losing, the democratic legitimacy is undermined. We saw these accusations in the hearing of the European parliament, where the critical side of a hearing claimed that lobbying creates an imbalance in decision-making, that it secondly lacks transparency, and finally that immoral practices are used by lobbyists. But although these accusations give an impression of lobbying, I will argue that these accusations do not strictly relate to lobbying. What I will argue is that the third accusation made in the European Parliament hearing is not lobbying at all, although it is done by lobbyists. However, I will argue that the first two accusations do in fact relate to lobbying. The reason that this accusation, namely lobbyists using

⁴² Ibid., 10.

⁴³ Koepl, "Lobbying the EU Commission", 73.

immoral practices, cannot be considered lobbying is because it is a form of personal corruption. This means the lobbyist tries to convince the politician not to look at certain issues from a representative aspect, but to look at these issues from a perspective of personal gain. He is no longer trying to represent anyone in this case; he is simply trying to achieve the biggest advantage he can for himself. Lobbying is an external influence of a non-elected party onto an elective party. Lobbying should focus on the political interests, not the personal interests of the politician. So when a lobby group tries to bribe, blackmail, bully, or try to influence a politician on personal grounds, this party is no longer involved in lobbying, strictly speaking. Of course, if you were to openly ask a lobby firm exactly what they do and exactly how they influence politicians they would not claim that they were involved in these illegal practices. Bribery, blackmail and bullying are obviously not legally allowed, but there are other types of personal gain which are allowed. For instance campaign financing by lobby groups, something which has been a source of protest in the United States, and the phenomenon of the revolving door.

The problem of the revolving door is one of the main problems caused by lobbying in a democracy. The revolving door refers to the fact that many politicians start working for a lobbying firm after their political career. It appears that this number has even increased the past few years, at least in the United States. This could entail a certain 'business model' for a political career, where politicians who leave their position can automatically get a job at a public affairs bureau if they have cooperated with their interests.⁴⁴ It is possible that the lobby firm could promise certain positions if the politician makes certain decisions in line with the interests of certain companies. But it is also possible that the politician does so without explicitly making agreements with a lobbying firm. However, in both cases this is a matter of personal gain. The politician does not have the interests of the population in mind; he is making decisions on the bases of his personal gain. In this case, a lucrative career after politics. Obviously this is not a form of lobbying, but it is a factor that is relevant in lobbying which is why it is important to discuss that factor here.

⁴⁴ Cohen-Eliya and Hammer, *Lobbying as a Democratic Failure*, 277.

Another way in which politicians can be influenced, and which is also a generally allowed method of personal gain, is campaign financing. It is up for discussion whether campaign financing is a form of lobbying strictly speaking, but it is a factor which plays an important role in lobbying which is why it is important to discuss it here. Campaign financing often takes the form of the support of a political campaign by a lobby firm or someone else with a corporate interest. A campaign is generally the personal interest of a politician, and when an outside influence can promise that a politician has more to spend for his campaign this can be an effective method of influence. A company may promise funds for the campaign if a politician has the interests of the company in mind. This can obviously lead to a conflict of interest when it comes to the representation of the interests of the population. There is evidence to suggest that in the United States lobbying agencies influence the political agenda to have their issues prioritized.⁴⁵ Many countries limit campaign financing in order to prevent this. Of course it can also be said that campaign financing can be done through grass-roots financial support by individuals. If this is the case then it would not constitute a problem for democratic legitimacy as much as when it is done by corporations. The reason for this is that individuals would find it more difficult to compete with the superior means of corporations. However, this would still constitute a problem for democratic legitimacy. The reason for this is that individuals with more means could influence politics more than the people who do not have as much money to invest in political campaigns. In a democracy every person has just as much to say as anyone else, and the idea that certain people with more means generally have more influence is of course at odds with this notion.

Lobbying and the problem of democratic imbalance

Now that we have a better understanding of representative and deliberative democracy as well as what lobbying is, we can turn towards the effects lobbying has on democracy. We have seen that there are four requirements for democracy, participation of the public in the government, freedom

⁴⁵ Ibid., 280.

of speech, publicity, and accountability. I have argued that if these requirements are not met this constitutes a fundamental problem for democracy. As discussed, one of the main concerns that people have with lobbying is the idea that it can disturb democratic legitimacy by giving some actors more influence than others. Lobbying can lead to an imbalance in representation and decision-making. In fact, this aspect has been mentioned in a hearing of the European Parliament on the problems of lobbying. The critical side in the hearing stated that the dominant interest groups in society lobby the most. The critical side implied that this creates an imbalance in decision-making leading to a disadvantage for smaller interest groups such as workers, consumers and smaller enterprises.⁴⁶ It is clear that this can constitute a problem for democracy, because in a democracy we expect everyone's interest to be represented equally. Everyone should be represented as much as anyone else, regardless of money, power, or other factors. This is problematic for democracy because this undermines one of the requirements for democracy, namely participation. The way the people participate in a representative democracy is by electing representatives who will make decisions for the people. A representative either should make decisions based on the interests of the population, where he works as a trustee, or he should make decisions based on what choices the population themselves would make, where he works as a delegate.⁴⁷ In other words, a politician has a responsibility as a representative to take the interests of the population into account. Lobbying can lead to an imbalance in the representation of these interests. This means that the way we use participation is undermined, since some participate more than others. The imbalance in representation through lobbying comes into play when some lobbies or influences on politicians are more efficiently run than others. If an oil company has more means and can organize itself in a better way it can obviously influence more politicians and be generally more effective. An environmental group might then be left behind which can lead to an imbalance in decision-making because politicians have been influenced more heavily by this oil company. This means that the democratic

⁴⁶ Schendelen, *Machiavelli in Brussels*, 279.

⁴⁷ Urbinati and Warren, "The Concept of Representation", 400.

interests are not evenly represented.

Another reason the imbalance in representation is problematic is because it interferes with the basic justification of government. The government gets its justification from the sovereignty of the people, and the government should act from this perspective. If politicians and lobbyists seek to disrupt the balance of democracy by letting a particular interest group exert more influence than others, this constitutes a conflict with the sovereignty of the people, the source of legitimacy. Of course everyone should have a voice in politics, including oil companies, but this does not mean they should be overrepresented, and have significantly more influence than others.

Conclusion

As we have seen lobbying can have a negative influence on democracy. There are various requirements which are essential for a democracy to function effectively and maintain democratic legitimacy. We can also see that there are various ways to interpret the concept of democracy and the will of the population. I have discussed representative democracy and deliberative democracy which have different interpretations of democracy. But despite various differences between the theories, there are certain requirements that must be met for a particular polity to be considered a democracy. These requirements are participation of the people in government, freedom of speech and freedom of press, publicity of the government, and accountability of the politician to the people. Knowing these important aspects of democracy the question raised what lobbying does to these aspects. Lobbying can be done in different ways, but as we have seen there are different ways one can persuade politicians, which are not strictly speaking ways of lobbying. But even if lobbyists stick to the familiar ways of lobbying which are legally allowed, lobbying can still have a negative impact on democracy. Lobbyists can influence politicians in such a way that they see their viewpoints as more important than others. This means that parties that have the means to hire more lobbyists or lobby more effectively have their voice heard more than other parties. Now that we have a better understanding of the ways public policy can be influenced by lobbying, in the next chapter we will

focus on the requirement of publicity in a democracy, secrecy in democracy, and the effect lobbying can have on secrecy.

Chapter 2: Secrecy in democracies and lobbying.

Introduction

In this chapter we will look at the second problem of lobbying for a democracy, namely that it can lead to more secrecy in government. Governmental secrecy is problematic for democracy, since it is required for people to have a clear idea what they are voting about and what is going on in the government. As we have seen in the previous chapter, publicity is one of the most important requirements for democracy. Of course there are certain areas where government secrecy should be allowed, but it is important to know what should and should not be kept secret. In this chapter we will first look at the notion of publicity in democracy, as described by Kant and Luban. Secondly we will look at different notions of governmental secrecy, namely the distinction between deep secrecy and shallow secrecy. After we have gained a better insight into different notions of secrecy, in the third part we will turn to how secrecy can be justified in a democracy. Following this, in the fourth part we will turn to lobbying, and how lobbying deals with these notions of governmental secrecy. We will find that lobbying can have a negative impact on governmental secrecy, leading to more secrets and making the democratic process less transparent. We will also consider secrecy in a democracy and how it relates to lobbying. In this chapter we will also explore the effects secretive lobbying has on democracy.

Publicity in democracy

One of the most important parts of democracy is the notion that citizens should be able to make informed decisions about their government. For the government and for politicians this means they are required to be open towards the public. When the government becomes so secretive that its citizens are unable to make informed decisions about their government, secrecy has gone too far; democracy requires publicity so citizens are able to make informed democratic decisions. The principle of publicity as described by Immanuel Kant can give an answer as to whether keeping a certain piece of governmental information secret is immoral or not. When the government asks itself

whether making something public will affect the public consensus, it in a certain sense asks whether the citizens would resist this policy because it is unjust. As Kant states: "All actions relating to the rights of others are wrong if their maxim is incompatible with publicity."⁴⁸ This means that if a certain action of the government could not be made public without invoking the anger of the general public, this action is not justified. According to Kant this has both an ethical side as well as a legal side; it should be a test for maxims that has ethical and juridical consequences.⁴⁹ However, as it stands it is still merely a hypothetical test, it is a thought experiment. It is also limited. Although it shows when something is wrong when it cannot withstand publicity, this does not mean that the policy is therefore good.⁵⁰ It serves only to show what is wrong in respect to others; it is a negative principle. Aside from this, the policy is not just a proposition of morality; it is also a principle of institutional design. This means it is a principle which should be taken into account for institutions of government.

In order for us to gain a deeper understanding of the publicity principle, we must ask ourselves exactly what we mean by publicity, and what it means for something to be incompatible with the principle of publicity. When it comes to publicity, David Luban has three interpretations of what Kant could have meant. Publicity as general knowledge, publicity as mutual knowledge, and publicity as critical debate.⁵¹ We might say that a certain piece of knowledge is public if everyone knows that piece of knowledge. Of course who we mean by everyone is limited as well. It does not mean absolutely everyone since there are some people who are so isolated that they would not normally gain certain knowledge. When Luban talks about general knowledge, he is describing the general public, and the knowledge they possess. It is important to note that for general knowledge it may be the case that people do not realise that other people have the same information as well, it may be a type of parallel private knowledge.⁵² We both know something, but we do not know that

⁴⁸ Immanuel Kant, "Perpetual Peace: A Philosophical Sketch," *Practical Philosophy*, ed. Mary J. Gregor, (Cambridge: Cambridge University Press, 1996), 347.

⁴⁹ *Ibid.*, 347.

⁵⁰ David Luban, "The Publicity Principle," in *The Theory of Institutional Design*, ed. Robert E. Goodin, (Cambridge: Cambridge University Press, 1996), 156.

⁵¹ *Ibid.*, 169.

⁵² *Ibid.*, 169-170.

the other person knows the same thing. On the other hand, when we have a certain type of information, and we know that other people have the same information, this can be regarded as mutual knowledge. Not only do we know something, another person knows the same thing and we know that he knows, and this person in turn knows that we know. This is a different type of publicity, although general knowledge can be mutual knowledge as well.⁵³ The third type of publicity as described by Luban is the notion of critical debate. This is the idea that knowledge should be regarded critically in the public sphere; it is an idea proposed by Habermas. However, the idea of publicity as described by Kant is difficult to apply to the notion of critical debate. How can someone determine a priori whether a maxim is compatible with publicity if publicity is understood as rational public debate? One could try to anticipate the debate, but this is not the same as actually debating the issue. Kant meant for the publicity principle to provide an easy-to-use test of public policies for those who govern. Luban argues that this test is more difficult to apply to critical debate than the other forms of public knowledge.⁵⁴ Luban therefore holds that mutual knowledge would be a better way of interpreting publicity and public knowledge.

It is also important to ask what it means for a maxim to be incompatible with publicity, that it cannot withstand publicity. Kant discusses two interpretations of incompatibility: a policy being self-frustrating with publicity, and a policy arousing necessary and general opposition. Luban discusses two further possibilities: a policy being kept secret because it is unpopular, and a policy being kept secret because it is politically suicidal.⁵⁵ It is relatively straightforward that a policy is incompatible with publicity when it is self-frustrating. This is the case when a policy cannot be declared openly without frustrating the intentions of the policy; it would defeat its own purpose if operated on public footing. According to Kant's theory this means it is morally wrong.⁵⁶ However, there are different ways in which a policy can be self-frustrating. A policy may be performatively inconsistent, self-

⁵³ Ibid., 170.

⁵⁴ Ibid., 171.

⁵⁵ Ibid., 172.

⁵⁶ Ibid., 172.

defeating, or collaterally self-defeating. For example, a policy is performatively inconsistent if it has as its goal to mislead. An example of this would be what Luban calls a nuclear bluff, to threaten a foreign nation with a nuclear strike while not actually being prepared to carry that threat through.⁵⁷ Nuclear war would be one of the worst outcomes for everyone involved, so obviously most countries would do what they can to prevent it. Furthermore, it is not unthinkable that a country would never even use its weapons, but that it merely has them to threaten other countries, in order not to be outdone by another country that has nuclear power. Obviously if the other party knew that the threat would not be carried out it would not be an effective bluff. A self-defeating policy would do much the same, but in this case it would be a policy which would set a chain of events in motion which would eventually be self-frustrating. An example of this would be a policy where the institutions of justice have as their goal to stabilize society rather than to judge each individual fairly. This would mean that they do not treat every individual equally. However, if this were to be made open to the public, this would defeat the purpose of the policy.⁵⁸ The third manner in which a policy would be self-frustrating is that it would be collaterally self-defeating if it were completely candid. This would be a policy which would not be directly frustrating, or even indirectly frustrating of itself, but frustrating of other some other related policy which in turn frustrates the original policy.⁵⁹ An example of this would be a law that eventually causes a breakdown in the trust in the law, or in society itself in some form. Although the law itself is not frustrated directly, if the trust in the system of law is frustrated the law cannot be executed effectively anymore.

Aside from the notion that a policy can be self-frustrating Kant also writes about a maxim which cannot be publicly acknowledged without thereby inevitably arousing the resistance of everyone to the policy. By this it is meant that it can only have stirred up this necessary and general opposition against it because it is itself unjust. This seems straightforward as well; if a policy cannot be made open because everyone would oppose it, this policy is intrinsically loathsome and

⁵⁷ Ibid., 172-173.

⁵⁸ Ibid., 173.

⁵⁹ Ibid., 173.

undemocratic.⁶⁰ The reason for this is that if it is clear that certain policies cannot be made public because the people would disagree with the policy if they had full knowledge, this would be at odds with our democratic ideals. This brings us to the third way in which a maxim can be incompatible with publicity. We cannot always know that a policy is necessarily and generally opposed; perhaps we should then turn to whether we can foresee that a policy will be extremely unpopular. It is clear that it would be easier to decide whether a policy would be unpopular than to decide whether a policy will be generally opposed. However, it is important to note that this is most likely not a principle of morality.⁶¹ The publicity test is not the same as a popularity contest. This makes it more difficult to decide whether a policy is justified or not, since as we have said, it is more difficult to decide whether a policy would actually be opposed rather than just be unpopular. Lastly we come to the idea of a policy being politically suicidal. Whether a maxim can withstand publicity can come down to the question whether a policy can withstand the political fallout that it generates. Frustration of citizens with the policy can mean backlash in the form of angry letters, but also impeachment or being forced to resign. These angry letters can come from citizens who feel that the policy does not abide by their wishes, but it can also come from people who feel that the government may be fundamentally threatening parts of the democracy. The more strongly the proposed policy differs from what citizens feel that the direction of the government should be, the stronger the backlash would be. As has been said, it could even mean that a politician is forced to resign. However, the idea of a certain policy being incompatible with publicity because it is politically suicidal is problematic. It presupposes that a politician actually cares about the public opinion and abides by it. But a politician can also maintain a very tough stance and simply choose not to step down. The politician simply does not abide by the public opinion even if his policy is in fact incompatible with publicity. Therefore this interpretation of incompatibility with publicity does not hold up to scrutiny.⁶²

⁶⁰ Ibid., 174.

⁶¹ Ibid., 174.

⁶² Ibid., 176.

Now that we have an understanding of the principle of publicity, it is important to find out whether and when the principle of publicity may be justly violated. Respecting the principle of publicity is not always the best option, neither morally nor politically. An example of a moral reason not to maintain the publicity principle would be in cases of mercy. For example: a court may let a perpetrator go because the accused has succumbed to very human flaws, in other words because no man is perfect. This is generally inconsistent with publicity. When it becomes publicly known that courts allow prisoners to go back to society unpunished this presents a hefty problem for the deterrence of criminal activity. Obviously if there is no punishment in certain cases it would be more difficult to deter potential criminals from committing crimes, which is why it would not hold up to the publicity principle. Another more practical example which was mentioned by Luban is the sunseting of certain policies. When certain policies are about to be discontinued, it can be problematic if everyone knows that the sunseting is going to happen. For example, the introduction of more restrictive gun control could lead to a run on certain weapons if the government announced when the ban on certain weapons would be set in place.⁶³ Although most governments would indeed announce this ban, there is certainly ample reason to keep the date of the ban a secret. Another practical example would be the fact that in the cold war the USSR and the United States would allow the other to fly spy planes in their air space. They did not announce this fact to the public, since an official announcement would force them to take a stance against the other. If they indeed made a stance it is possible that the conflict would only escalate. Since the other government did not publicize its flights it was possible to keep the policy of tolerating the other's spy planes a secret.⁶⁴

Publicity remains a very important part of democracy; it allows people to make informed decisions about their government. The principle of publicity can also give us insight in how we should deal with governmental secrets. As we have seen, there can be various legitimate reasons why a policy is being kept secret, but if a policy is secret this can mean that certain checks and balances do

⁶³ Ibid., 185.

⁶⁴ Ibid., 186.

not work quite as effectively. Now that we have a better understanding of publicity, we will turn towards the notion of secrecy.

Deep secrecy and shallow secrecy

Another way of looking at government secrecy and the nature of secrecy itself as well as its problems is by using the notions of deep secrecy and shallow secrecy, as posited by David Pozen. As he states, there are things we know we know about the government, things we know we do not know, and things we do not know we do not know.⁶⁵ In other words, there are things which we have knowledge of, there are secrets which we are aware of, and there are secrets which we do not even know exist. The latter category is what he calls deep secrets. Deep secrecy is the kind of secrecy where we do not even know that there is something being kept from the public by the government. If we do not even know what is being held from us, we have no means to judge whether we agree with the policies of the government. This is clearly a case where the idea of publicity is not being used. There are different interpretations of the notion of deep secrecy. As Scheppele puts it: Secrets are items of information that one party, the 'secret-keeper', intentionally conceals from another party, the 'target'. Sometimes the target of a secret knows or suspects that information is being concealed, even though this person does not know the content of the information. This can be called a shallow secret. Other times the target of a secret is not aware, and has no reason to be aware, that something is being kept from her. This is a deep secret, according to the definition of Scheppele.⁶⁶ Shallow secrets in other words would be secrets we do now exist, we just do not know the exact content of the secret.

According to Pozen, deep secrecy is problematic on utilitarian, democratic and constitutional grounds.⁶⁷ For the purposes of this essay we will focus on democratic arguments against deep

⁶⁵ David E. Pozen, "Deep Secrecy," *Stanford Law Review* 62, no. 2 (2010), 260.

⁶⁶ Kim Lane Scheppele, *Legal Secrets: Equality and Efficiency in The Common Law*, (Chicago: University of Chicago Press, 1988), 21.

⁶⁷ David E. Pozen, "Deep Secrecy," 275.

secret, although these are quite similar to the utilitarian arguments against state secrecy. It is clear that deep secrecy exacerbates problems of secrecy in democracy. It keeps outsiders of the secret more ignorant, and the secret keeper has more room to pursue impermissible or inappropriate ends through impermissible and inappropriate means. But it also erodes checks and balances; Parliament and the judiciary may never receive vital information necessary in order to keep certain things in check. By keeping the activities of the state a secret, the ability of the people and of the people's representatives to monitor and judge the activities of the government is severely reduced.⁶⁸ It is also hard to see how deep secrecy can be justified in a liberal democracy. A democratic defence of secrecy may rely on hypothetical consent. This becomes difficult for deep secrets since gauging the public sentiment becomes more difficult when secrets become deeper. This does not suggest that government policies must always be under public control. It might even be impossible for people to allow the government to do something which undermines the very idea of self-rule. The very idea of democracy is that the people are in control of the actions of the government to a certain extent. There has to be a way for the population to judge the decisions of the government, and if a government were to ask permission for deep secrecy it would make this impossible. The reason for this is that the government is in effect asking for permission for something which the population cannot know. How can the population then give permission? Surely it is a prerequisite that we know what we are deciding on before we can make a democratic decision. This is why it is problematic for a democracy to have too much secrecy.

Justification of secrecy

However, some democratic policies require secrecy in order to be effective. Various secret operations in foreign countries spring to mind, where the safety of covert agents is dependent on secrecy. Another example where secrecy is acceptable would be the possibility of the moderation of secrecy, to give some information to allow democratic accountability without revealing too much. In

⁶⁸ Ibid., 286.

this case there should be enough publicity about the policy so that citizens can judge whether there is enough publicity, and that they agree with the policy.⁶⁹

Thompson identifies three cases where it is necessary to keep the policy a secret for its effectiveness. The first is the case of excuses and non-enforcement of punishments. For example, although a politician would want to enact tougher measures on crime, there might not be enough institutional support to carry out these measures. The politician could then act as if he has taken a tougher stand, even though people are not actually getting harsher punishments. The reason that this secret would be justified would become clear that the harsher punishment is indeed not enforced, the effectiveness of the judicial system would diminish. In other words, the discrepancy between what the law says and how it is enforced is normally at least partially secret.⁷⁰

The second kind of case where a principle of transparency might not be maintained is compelled silence. This is a step further than the previously discussed non-enforcement. Here the law explicitly requires that the practice be kept a secret, and the prohibited conduct becomes illegal only if it is revealed. An example of this would be the so called 'don't ask don't tell' regulations in the US army. This policy, although now discontinued, entailed that gay men and women could serve in the US military as long as they did not reveal their sexuality to anyone. Before this policy was implemented gay men and women were not allowed to serve in the US military at all. When the policy was still in effect gay men and women could be fired from their job when they revealed their sexuality, so it was indeed only effective when kept a secret. It is important to note that the policy is not vulnerable to the objection that it breaches democratic accountability. Generally this kind of policy would mean that there would be no chance to vote on the policy. This was not the case in the 'don't ask don't tell' policy, in fact there was a lot of discussion about its implementation. This means that people indeed were able to make an informed decision about the policy.⁷¹ The third and final case where transparency may be transgressed is the notion of political hypocrisy. When a politician is

⁶⁹ Dennis F. Thompson, "Democratic Secrecy," *Political Science Quarterly* 114, no. 2 (1999), 183.

⁷⁰ *Ibid.*, 186, 188.

⁷¹ *Ibid.*, 189-190.

campaigning for a certain policy which he personally does not abide by, for example soliciting prostitutes while making prostitution illegal, the focus becomes more on his person rather than his policies. This hurts the democratic process, which is why it is acceptable to keep this a secret as well.⁷² The ideas proposed by Thompson are closely related to the notion of shallow secrecy.

Lobbying and governmental secrecy

With the knowledge of publicity and secrecy, we can turn to the role of lobbying in publicity and secrecy, and what this means for democracy. We have found that there are two reasons why lobbying can be negative for democracy. The first reason is that lobbying can lead to a lack of transparency. As we have seen, one of the accusations made in the hearing of the European Parliament on lobbying was that lobbying lacks transparency. This would mean that competitors, the mass media, and officials would find it harder to effectively carry out their work.⁷³ If lobbying is done secretly this indeed constitutes a problem for democracy. Not only can lobbying lead to a lack of transparency in the government, it can also lead to one-sided lobbying. This is the second reason lobbying can be negative for democracy. One-sided lobbying means that politicians do not talk to different sides that are trying to influence them, they are only getting information from a single party, this can be called niche lobbying. The reason for this is that some parties may not even know that other parties are influencing policy makers. If some parties do not even have this information they cannot provide policy makers with other information, so the policy maker gets a very one-sided view of the situation.

The first reason lobbying can be negative for democracy is because lobbying can lead to a lack of transparency. As the critical side of the European Parliament stated, lobbying takes place behind closed doors where competitors, the mass media, and officials cannot gain insight in what exactly is happening. It is an important pillar of democracy that people are able to make decisions

⁷² Ibid., 190-192.

⁷³ Schendelen, *Machiavelli in Brussels*, 279.

about the government and vote for certain parties based on the information presented to them. In fact, publicity is one of the requirements of democracy I mentioned in the first chapter. If the mass media cannot gain certain information this undermines an important part of democracy, namely a measure of publicity. There is no specific reason why it could not be generally known what lobbyists do and how politicians are influenced by them. Indeed, this could only be the case if there were certain things that go on that are not compatible with publicity. If it becomes clear that certain politicians are indeed being influenced by lobbyists in such a manner that they forego their responsibility as representatives, this means that lobbying can have a very negative impact on democracy. There are of course certain secrets that can be justified in a democracy, but most instances of lobbying would not fall into this category of justified secrets.

The second aspect of lobbying which can be negative for democracy is the phenomenon of niche lobbying without counter-lobbying, as described by Cohen-Eliya and Hammer.⁷⁴ Cohen-Eliya and Hammer described this phenomenon as follows. "Lobbying often occurs in niches with almost no involvement of the public and almost no rivalry. This constitutes a failure in the democratic process from the perspective of the pluralistic theory, for it is exactly in those niches that rent-seeking lobbying succeeds."⁷⁵ By "pluralistic theory" Cohen-Eliya and Hammer mean a theory of democracy where interest groups struggle to realize their interests.⁷⁶ By rent-seeking is meant increasing one's influence without actually having a proper reason to have more influence. This is of course reminiscent of the accusations made by the European Parliament to lobbying which we mentioned previously. What this entails is that if certain interest groups have more information than others, they can talk to representatives to try to influence them. If only one group talks to politicians, this obviously means that other groups cannot have their view on the subject heard. This in turn means that a politician only gets one side of the information on a certain debate, whereas a politician should try to hear out as many sides as possible in a conflict. In other words, because of niche-

⁷⁴ Cohen-Eliya and Hammer, "Lobbying as a Democratic Failure," 265.

⁷⁵ Ibid., 266-267.

⁷⁶ Ibid., 265.

lobbying it becomes more difficult for a politician to make a balanced decision based on multiple sources of information.

Conclusion

In this chapter we have seen that lobbying can have a negative impact on democracy by creating more secrecy. We have also seen that a transparent government is required for democracy, and that publicity is an important part of governmental policy. Citizens should be able to make an informed decision about their government; this requires a measure of publicity. But publicity can be interpreted in different ways. Kant holds that publicity is the measure for ethical actions of the government. There are of course also different interpretations as to what Kant exactly meant by publicity, whether he understood it as general knowledge, mutual knowledge, or critical debate. There are also different ways a policy can be incompatible with publicity. We have discussed a policy being self-frustrating with publicity, a policy arousing general opposition, a policy being unpopular, and a policy being kept secret because it is politically suicidal. If a policy is indeed frustrated by publicity this would mean the policy is not ethical. However, this is formulated somewhat too simply. There are some practical examples where the principle of publicity may be violated. This ties in to the idea of democratic secrets. If democratic secrets are in fact allowed, to what extent can they be allowed? Although governmental secrecy can be justified, it is only in specific cases that it can be justified. We know of certain secrets which are allowed, but we have found that deep secrecy, a secret which we do not even know exists, is problematic on democratic grounds. Lobbying ties in with our discussion of secrecy and publicity. Lobbying can have an exacerbating impact on democratic secrecy, as it can lead to more secrecy and difficulties in the democratic process by making political processes less public. It can also have other negative influences, by creating a system where lobbyists can influence a politician on their own, rather than a politician being influenced by multiple lobbies. Although there are many negative aspects of lobbying in democracy, there are of

course also certain positive aspects of lobbying for democracy. We will discuss these aspects in the next chapter.

Chapter 3: positive aspects of lobbying

Introduction

In the previous chapters we have seen the negative sides of lobbying and the problems that can be created by lobbying. However, this does not do justice to the positive side of lobbying. As we will see in this chapter, lobbying can have a very positive effect on democracy, the requirements of democracy, and the government in general. In the past chapters we have seen that there are important factors in a democracy which can contribute to a better government, or a government which is more reflective of the will of the population. Lobbying can have a positive effect on some of these important aspects of democracy. Firstly, lobbying can have a positive effect on the exchange of information therefore letting politicians make better decisions. The reason for this is that lobbying allows for politicians to solicit information from organized groups so decisions can be made more effectively. Secondly, lobbying can increase participation by citizens, which means that citizens can have a more active role in the decision-making process. Thirdly, it can help in a better representation of the population. This is connected in part to increased participation. The reason for this is that better representation can also be achieved through more active participation. If citizens participate more, this also means that people are represented in a better way. Finally, lobbying can have a positive influence on publicity in democracy. Lobbying can ensure that certain information is brought out into the open. The reason for this is that lobbying itself requires publicity to an extent. In this chapter I will discuss how lobbying can help these aspects of democracy.

Important aspects of democracy

The outside influence of certain groups on politicians, normally known as lobbying, can be beneficial to the government, to the democratic process, and even democratic legitimacy. Lobbying can be seen as a sign of the ongoing improvement in a democratic society, with interests competing with each other. It can thus be argued that when lobbies try to influence political decision-making, this is a

symbol of democracy in good working order.⁷⁷ Many politicians would argue that a lobby of some description is necessary in a democracy. As we have seen there are different theories of how a democracy should be designed, but the different theories still share a number of requirements that should be met. It is important to take another look at these requirements so that we understand whether lobbying can have a positive influence on them. The first requirement is participation, meaning that citizens have an active part in the political process. This often takes the form of the right to vote, since this an easy way for the people to let their voices be heard. The second requirement is freedom of speech and freedom of press. The third requirement is publicity of the government, the government needs to be open about their affairs. The reason for this is that it is necessary in a democracy that people can form an opinion of their government. In order for this to be possible there has to be enough information so that the citizens can make a judgment. The fourth and final requirement is accountability of the politician to the public. We will find that both participation and publicity can benefit from lobbying.

Effectiveness of policies

When trying to understand the positive aspects of democracy, it is important to have a good understanding of how lobbying works. There have been theories which postulate that the best way to conceive the relationship between politicians and lobbyists is one of an exchange relationship between two groups of interdependent organizations.⁷⁸ Lobbyists exchange information with policy makers, for example in the form of expert knowledge from private actors.⁷⁹ The first reason why lobbying can be positive in a democracy is because it can provide additional information to politicians. Many lobby groups will be called by politicians for additional knowledge, or more specialised knowledge. Many lobby groups can have more influence if they are seen as experts in

⁷⁷ Koeppel, "Lobbying the EU Commission", 72.

⁷⁸ Pieter Bouwen, "Corporate Lobbying in the European Union: The Logic of Access," *Journal of European Public Policy* 9, no. 3 (2002), 368, doi: 10.1080/13501760210138796.

⁷⁹ *Ibid.*, 369.

certain areas. Political decisions are based on information from society. The political system should seek to integrate as many interests as accurately as possible in its decision-making. The input of lobbyists can help solve problems of decision-making by providing information.⁸⁰ Lobbyists aggregate detailed expertise and specialised knowledge concerning their demands, which the decision-makers need to carry out their work. The effectiveness of lobbying correlates strongly with the usefulness of the information and its potential for simplifying the decision-makers' task. The interaction between a lobbyist and a decision-maker is the result of the lobbyist's intention to influence. The decision-maker then has to accept the information communicated to him, as well as the communicating source. Knowing this, lobbyists strive to offer specific benefits to the decision-maker.⁸¹ There can be different ways to exchange information with regard to politics. Large companies have enough means to research, and often have a well-funded R&D division. This enables them to provide expert knowledge to policy makers.⁸² If a company is large enough it can even give policy makers information regarding the interests of the company. For a very large company the national interests may very well be in line with the interests of the company. For many political institutions the information provided may also give valuable input as to how they can reduce the democratic deficit and increase legitimacy. For example, the European Union.⁸³ From this it is clear that lobbying can be used to improve democratic institutions, but lobbying mostly helps the government because it provides a service so the government can function more effectively. This form of lobbying, the exchange of information, may thus be justifiable more from the reasoning that this leads to a better government than that it provides a better democracy.

Participation and representation

As I have mentioned the second reason why lobbying can be positive for democracy is because it can

⁸⁰ Koeppel, "Lobbying the EU Commission", 70, 72.

⁸¹ Ibid., 73.

⁸² Bouwen, "Corporate Lobbying in the European Union," 376.

⁸³ Ibid., 371.

be seen as a form of political participation. The third reason why lobbying can be positive for democracy is because it can increase political representation. This is closely related to participation, which we have discussed previously. We have defined lobbying as outside influence on politicians. When it becomes clear that citizens can influence their politicians through a form of lobbying, citizens can participate in democracy and influence decision-making. For example, a citizen might join or support a group which advocates environmental protection because he feels that the current government is not paying enough attention to this. Practically any citizen can either join a group to promote his interests and increase their participation or make a group themselves. This is of course beneficial for democratic legitimacy because more people are actively involved in political decisions by having their voice heard. This in turn means that politicians would find it easier to represent people accordingly. This means that lobbying can play an important part in legitimacy and in compliance. Governance should take place by involving citizens and interest groups as much as possible in the decision-making process and its control. This can be done through the exchange of information between lobby groups to politicians.

Making sure that more parties are part of the exchange of information and more parties participate in the decision-making process can also help in representation in a democracy. Lobbying can thus be justified because it helps in achieving equal representation, thus reducing the problem of some people being better represented than others. Through lobbying anyone can make himself heard by a politician if he can organize himself, and groups that may be underrepresented in the political sphere can now have their voices heard by politicians. For example, if a group of farmers feels the government is not representing their interests as it should, the farmers can organize themselves in such a way that their interests are heard by the government. They could organize themselves and talk to the politicians to explain their interests. If the farmers feel they are not represented properly, they can do something about it.

Lobbying influence on secrecy

As we have seen in the previous chapter, lobbying can lead to more secrecy in the government. But on the other hand, a number of problems can be created for lobbying when the government becomes too secretive as well. By this it is meant that when a democracy is too secretive, and does not want to let its citizens weigh in on decisions and does not disclose how decisions are made, it becomes a lot more difficult for a lobbyist to influence politicians. As we have seen, lobbyists are not always a negative factor in a democracy, lobbying can have beneficial effects on democracy as well as the democratic process. One might even argue that democracy requires a form of lobbying, even if it is only for citizens and companies to make their voices heard more actively. If a democracy is truly secretive in its decision-making this would mean that lobbying cannot work. This means it would make sense for lobbyists to argue for more openness in certain parts of the government, so that they can do their work properly. We have seen this being done in our discussion of the Freedom of Information Act. Here lobbyists supported the enactment of a law such as this, so that more openness would be required for the government. If lobbyists are more successful in their attempts to create more publicity in government, this is obviously very positive for democracy, as it is one of the requirements for democracy mentioned in chapter 1.

Conclusion

In this chapter we have discussed positive effects of lobbying on democracy. The first reason why lobbying can be positive for democracy is because it helps the effective functioning of a government. A government always requires certain input from the population to make sure policies are effective, and to increase their effectiveness. Politicians require expert opinions in order to predict whether their policies are going to be effective, which is a very valuable aspect of lobbying. Secondly, lobbying allows the population to participate in democracy. If a person wants to have their voice heard, a very effective way is to do this through lobbying. This means that, thirdly, representation can be improved a lot since it becomes easier for a politician to determine how to best represent the population. If a

person does indeed have their voice heard in politics, this is clearly a positive sign for representation. The final reason why lobbying can be positive for democracy is because it can help to make information more public. Publicity is an essential requirement for democracy, but it is also a requirement for lobbying. So it would make sense for lobbyists to lobby for more publicity, which is what happened in the creation of the Freedom of Information Act. In a democracy it is important that certain values are upheld. We have discussed various of these important values, or requirements of democracy in previous chapters. Lobbying is often seen as negative for a democracy, but in this chapter we have seen that lobbying can also be very positive for these requirements. Especially when we look at the requirements of participation and publicity lobbying can have a very positive effect. In the next chapter we will look at how problems of lobbying can be solved, while trying not to undermine the positive aspects of lobbying.

Chapter 4: Possible ways forward to a lobby in line with our democratic ideals.

Introduction

We now have an understanding of democracy, an understanding of what role lobbying plays in democracy, what effects of lobbying can have on democracy, as well as an image of the problems which can be created by lobbying. And as we have seen, lobbying is not necessarily a negative thing. However, lobbying can have very negative effects on democracy. We will now try to find solutions to the problems and move towards a more democratic way of organizing lobbying. The problems of lobbying might be solved by restricting lobbying, in other words by ensuring that lobbyists cannot influence politicians as much. Perhaps this would in fact solve some problems. However, this would also undermine the positive aspects of lobbying. If the positive aspects of lobbying are to remain intact there cannot be too strict control of lobbying. One of the strong aspects of lobbying is that it allows citizens to contribute more actively in a democracy. It is important that this is not undermined when one tries to find solutions to the problems of lobbying. In this final chapter I will discuss in what possible ways we can improve democracy and lobbying in such a way that it leaves the positive aspects of lobbying intact. The first way in which lobbying can be improved is by simply making the government more transparent. Many of the negative aspects that are caused by lobbying are in fact caused by an opaque government which does not allow certain information to be made public. An important way in which the government might be made more transparent is by creating a mandatory lobby register. This makes sure that a certain amount of publicity is maintained by the government. Another way of solving the problems of lobbying can be found by looking at a different way of organizing democracy. Many aspects of lobbying that are problematic in representative democracy are not as problematic in deliberative democracy. In this chapter we will explore these different solutions to the problems of lobbying.

Increased publicity of the government

Many problems related to the imbalances of democracy caused by lobbying come down to a lack of

publicity. This can either be a lack of publicity from the government, but also from lobbying. If lobbyists ensured there was more publicity in the way they lobby not only would there be no niche lobbying where certain interest groups have no knowledge of other interest groups, there would also be no way the general population does not know what lobbyists are doing. So not only is publicity essential for democracy, it is also necessary for the accountability of politicians. It can also be used to solve other problems related to lobbying.

A major problem of the way lobbying is usually organized is the fact that some players with more means can organize themselves better than other players with less means. For instance, there is a lobby of big corporations which has more influence when compared to groups with smaller means, even though big corporations usually already play a big part in politics. This means that smaller groups or groups which cannot organize themselves quite so effectively are effectively shut down in a democracy. The bigger groups with more means can overpower them. One way to combat this is by turning towards the politicians. It is up to the politician to decide what to do when it comes to difficult decisions in the democratic process. As has been said, it is the responsibility of the politician to make decisions as a representative. If a politician does not act as a representative he is not fulfilling his role as a politician properly. Of course there are different ways one might represent the electorate, but a politician should always keep in mind that he is not acting on his own interests but on the interests of the people he is representing. Although he may be influenced by numerous parties which all have their own interests, the politician should weigh the interests of various parties and come to a decision how to best represent the people. If we expect a politician to make balanced decisions which are democratically feasible we must have the means to check whether his decisions are in fact democratic enough. The politician should be held accountable for his decisions and the effect these decisions have on the public. Prerequisite for checking the responsibility of politicians is a certain measure of publicity and a system where the politician can be held accountable. If there is no feedback to the politician for his actions and his policies a fundamental part of democracy is undermined. This feedback can take the form of impeachment for instance, or not begin re-elected.

It is obvious that for the feedback to be effective there would need to be enough publicity so that citizens can judge whether a politician is in fact doing his job properly. In other words, publicity and accountability are essential for democracy.

Although publicity does not focus on the associated problems of lobbying as mentioned in chapter 1, it is still worth mentioning that publicity also works to tackle these problems. After all, if a government provides more information on how political decisions are made and policy is decided, it becomes more difficult for politicians to take bribes, and more difficult for lobbyist to bully or threaten politicians. The reason for this is that politicians would be forced to explain their decisions in detail, and they could not give reasons that relate to personal corruption. The same goes for campaign financing. There are different ways a government might provide publicity, but if one uses the publicity principle as we defined it before it would be relevant to disclose information surrounding public campaign financing. If this information is disclosed this would solve many of the problems surrounding public campaign financing as well. It would be more difficult for politicians to make decisions solely based on where the money for their campaign is coming from. If this were the case the public could hold the politician accountable for their possibly corrupt decisions.

One way a government can make itself more public is by enacting a mandatory lobby register. A lobby register is a way to ensure that lobbying becomes more transparent. It ensures that it is clear who is lobbying, what they are lobbying for, how much is spent on lobbying, and it can make it easier to penalise lobbyists who do not abide by lobbying regulations. Not only can this increase transparency, it can help accountability as well.⁸⁴ A lobby register can help in another way because unlawful lobbying practices would be harder to conceal. Lobbyists might be too scared to actively blackmail a politician if they can be held accountable, because they are registered as a lobbyist. In other words, this solution helps against practices done by lobbyists, which are in fact not acts of lobbying strictly speaking.

⁸⁴ Direnc Kanol, "Should the European Commission enact a mandatory lobby register?," *Journal of Contemporary European Research* 8 no. 4 (2012), 522.

Deliberative democracy

A different way to tackle the problems of lobbying can be found by looking at a different type of organizing democracy. As we have seen, lobbying can have a negative influence on the balance of interests, but this can be improved by turning towards deliberative democracy. In deliberative democracy we find many important aspects which can help with the problems of lobbying. According to Gutmann and Thompson important aspects of deliberation include reciprocity, publicity, and accountability. Reciprocity is important because of the way citizens can cooperate. If citizens can reason reciprocally, they are looking for ways of resolving moral disagreements in such a way that is acceptable for both parties.⁸⁵ This is an essential part of deliberation. If reciprocity is not accepted by both parties the very aspect of deliberation could not lead to a solution of conflict. People need to reason beyond their narrow self-interest and towards a morally acceptable solution if certain problems are to be resolved.⁸⁶ Publicity is another aspect which is essential for deliberation in a democracy. After all, the population needs to know what they are deliberating about if there is to be meaningful deliberation in a deliberative democracy. Publicity is also a requirement for accountability, because there would be no way that someone could be held accountable if it were simply not known exactly what he had done. These aspects of deliberative democracy can help in lobbying because if these principles are upheld, various problems of lobbying would be minimized.

The problem of democratic imbalance would weigh far less heavy on the decisions in a deliberative democracy as proposed by Gutmann and Thompson. Democratic imbalance is caused by the fact that bigger players in lobbying can organize themselves more effectively and thus influence politicians more. But in a deliberative democracy the very idea of deliberation makes this more difficult. In a deliberative democracy the principle of reciprocity makes sure that everyone has to take one another's interests into account, and the goal of deliberation is always that a solution is

⁸⁵ Gutmann and Thompson, *Democracy and Disagreement*, 2.

⁸⁶ *Ibid.*, 2.

reached which is acceptable for all. This means that public influence of big corporations by lobbyists is made more difficult since they would have to present their arguments in such a way that is acceptable to all. Everyone would have a say in the deliberative procedure and everyone would have the ability to speak up and declare that certain interests are not being taken into account enough. This makes sure that the problem of interests which are not equally represented is far less of a problem.

The other problem of lobbying, namely that it can lead to more secrecy, is also less problematic in the actual implementation of deliberative democracy. If the ideals of a deliberative democracy are put into place, this would require a good amount of publicity. It is a requirement for deliberation that everyone knows what they are deliberating about. So if deliberative democracy is put into place and everyone accepts the values of deliberative democracy, the actual problems of secrecy would prove far less poignant.

Conclusion

In this final chapter the various different parts of previous chapters have come into play once more. As we have seen in chapter 1 and 2 lobbying can create various problems for democracy. Lobbying can have as its effect a less democratic society, or a more secret government. These are both obviously very negative for society as well as democratic legitimacy. However, we have also seen that lobbying can have a very positive effect on democracy. Lobbying can lead to better decisions by the government, better representation, and a society in which citizens participate more actively in the decision-making process. In this chapter I have presented methods in which the problems of lobbying can be tackled without disrupting the positive aspects of lobbying. In order to do this, I first looked at how publicity in the government can be used to improve lobbying. This can either be done through a lobby register. This has as its effect improved accountability and a more democratic government. It also undermines problems of personal corruption by providing more publicity. After all, if a politician has to give information regarding their policies and the implementation of these policies it would be

more difficult to succumb to things like bullying or corruption. Another way one might improve democracy is by turning towards deliberative democracy. We have discussed the theory of deliberative democracy as and the important aspects as posited by Gutmann and Thompson. In deliberative democracy publicity is a very important aspect in the democratic process. It is required that people discuss policy with politicians and with other citizens. It is thus a prerequisite that most information surrounding the government is open to the public, solving various problems of lobbying.

Conclusion

In this thesis I have answered the question what kind of influence organized interest groups, commonly known as lobbyists, have on democracy and therefore on democratic legitimacy. It is important to understand what kind of influence non-elected groups have on democracy. To gain a better understanding I have looked at lobbying from a philosophical perspective. As I have shown, there are vastly different facets of lobbying which all do vastly different things to democracy. Lobbying can have very negative effects by leading to democratic imbalance and adding more secrecy to a government. However, it can also have a very positive effect on democracy. It can make sure people's voices are heard by offering more chances for participation in the democratic process. It can also help the government by allowing experts to give their opinion of policy. I have argued that although lobbying has negative aspects, it cannot simply be dismissed as it also has important positive elements for democracy.

In order to answer what kind of influence lobbying has on democracy I started by discussing different types of democracy. Two of the most influential forms of democracy are representative democracy and deliberative democracy. Representative democracy is a theory of democracy where our interests are represented by politicians. We have looked at the theory of representation of Nadia Urbinati and Mark Warren, as well how representation is understood by Hanna Pitkin. I have also discussed deliberative democracy, where the focus lies on the deliberation between politicians and citizens. There are different theories of deliberative democracy as well. I have discussed the theories of Amy Gutmann and Dennis Thompson and the theory of Joshua Cohen. Whereas Gutmann and Thompson formulated a theory which is based more on the deliberation between citizens and the government, Cohen formulated a theory which was focussed more on the procedure of deliberation. However, both of these theories give us a good insight into how a deliberative democracy can take shape. After having discussed both representative democracy and deliberative democracy we can turn to the requirements of democracy. There are aspects of democracy which are required to ensure a form of democratic government regardless of which theory is maintained. These aspects

include: participation of the people in government, freedom of speech, publicity of the government, and accountability of the government to the citizens. These aspects provide a good basis to judge whether lobbying can be positive or negative for democracy. In order to come to a deeper understanding of the risks of lobbying we also discussed lobbying is and what lobbying certainly is not. Finally, we discussed the first problem of lobbying, namely that it can lead to an imbalance in representation and thus an imbalance in democracy.

In the next chapter I discussed a different problem of lobbying. The problem is that lobbying can lead to more secrecy in government. This can be problematic because it undermines some of the requirements for democracy, namely publicity and accountability. To explain this in further detail I discussed the notion of publicity as understood by Kant and explored by David Luban. This theory explains when a certain piece of information should be made public, and when it cannot be kept from the public. Another important aspect is the notion of governmental secrecy. In order to better understand this I also explored the notion of deep secrecy and shallow secrecy as understood by David Pozen. Although there are reasons why certain things may be kept secret, these reasons usually do not apply to acts of lobbying.

But as I have mentioned there are certainly positive aspects of lobbying for democracy. Lobbying allows for information requests by the government so that experts can give their opinions on policies. This can obviously lead to better policies and a more effective government. But it can also provide information for the politicians how their constituents feel about certain policies. This in turn allows for better representation. It also allows for better representation by giving citizens the means to organize themselves and directly influence politicians by providing information from their perspective. Finally, another positive aspect is the fact that lobbying can lead to less secrecy. This may seem paradoxical because lobbying can also lead to more secrecy. But as we have seen, lobbying itself cannot function without a certain measure of publicity. It is therefore in the interest of lobbyists themselves that they maintain a certain amount of publicity, and try to persuade the government that more publicity is in the general interest.

In the final chapter I have attempted to come to an answer how we can deal with lobbying in such a way that the positive aspects remain, while tackling the problems of lobbying. In other words, a solution should deal with unequal representation and secrecy in democracy while allowing the government to call in experts and allow groups to provide them with information. The answer how this can be done comes back to the notion of publicity as discussed in chapter 2 and deliberative democracy as discussed in chapter 1. More publicity ensures that it becomes more difficult for lobbyists to influence politicians secretly, and with means that we would argue are negative for democracy. This solution exposes negative parts of democracy and lobbying and allows for better accountability of the government. This can be done in many different ways. An example would be by enacting a mandatory lobby register where it is registered who lobbies for what, and which politician is being approached by lobbyists. A different solution is to turn towards deliberative democracy. Not only does this lead to more publicity, since this is a prerequisite for deliberative democracy, it also allows for more direct influence of the population. This means that both the problems of democratic secrecy and democratic imbalance are tackled, since the entire population can deliberate. This brings us to the final conclusion of this thesis. Lobbying can be both positive and negative. Lobbying can undermine democracy and strengthen democracy, but it is up to the responsibility of the citizens and the politicians to ensure that the positives outweigh the negatives. Understanding democracy and understanding the philosophy behind it can help in this task, and we should take the opportunity to use philosophy in order to help us tackle the problems of lobbying.

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