

Polk, Andreas

**Article**

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# LOBBYING

## LOBBYING: PRIVATE INTERESTS AND PUBLIC CONDUCT

ANDREAS POLK\*

It is a basic tenet of democratic rights that those affected by policies have the chance to be heard. Participation also improves the decision-making process. Those affected are usually specialists closer to the issue than are generalist politicians. Well-informed decisions are not made in ivory towers, and the willingness of political actors to listen to the public is a necessary precondition of good-decision making. Otherwise there is a substantial risk that important information will not be included in the decision-making process. As a consequence unbalanced or at worst unrealistic policies emerge.

At the same time, one of the most controversial aspects of politics is lobbying and how private actors can take control of the political decision-making process. The public generally believes that influence seeking leads to biased policies catering to the interest of a few at the expense of the general public. Often this leads to the perception that certain groups (“big business”, for example) unduly influence or even “buy” politics. Examples abound in many countries – I will consider two recent ones from Germany.

In the year 2000, the red-green coalition of Chancellor Gerhard Schröder reached an agreement with the German nuclear power plant operators on the phasing-out of nuclear energy production in Germany. This “nuclear consensus” supposedly ended a long-standing debate about the peaceful use of nuclear power generation, which began in the 1970s and has divided the German public for many decades. In 2009/10, the conservative coalition of Chancellor Angela Merkel decided to end this consensus and extend the deadline for phasing out nuclear power.

Surveys indicate that the great majority of the public rejects this policy change. One reason seems to be ideas about who will profit the extension: a majority believes that the policy change benefits the four nuclear power generating companies, whereas a clear minority thinks that the lifetime extension benefits the ordinary citizen (Infratest dimap 2010a, b).

From a lobbying perspective, the circumstances surrounding the decision-making process might have spurred the idea that the lifetime extension of nuclear power plants was not justified. Aspects relating to transparency apparently played a crucial role in creating this impression. First, the government based its decision on a scientific report by the Institute of Energy Economics (EWI) at the University of Cologne (and two others). The financial structure of the EWI led to doubts about its scientific independence. Important financiers of the EWI are E.ON and RWE, which benefit greatly from the lifetime extension. The institute has never published detailed information about their financial dependency on E.ON and RWE, not even upon request. Second, the parliamentary process that ensued made the impression that urgent action was necessary. Leading members of the opposition stated that crucial participatory rights were ignored, that an orderly parliamentary process did not take place and not all relevant issues were thoroughly discussed in the parliamentary committee meetings. Third, during the debate it was revealed that the government had secretly bargained an agreement with the nuclear power industry, which provided for the redistribution of part of the extra profits generated by the lifetime extension to state finances, thereby anticipating a parliamentary decision which at that time had not yet been voted on. The existence of the agreement was made known to the public by coincidence and only subsequently revealed by the government.

These circumstances provoked numerous remarks about politicians catering too much to lobbying interests and having lost their focus on good decision making. It was not only opposition party leaders who accused the government of biased policies but also representatives of the governing coalition parties themselves. For instance, the president of the German



\* Berlin School of Economics and Law, Berlin.

parliament, who is the second highest representative of the German state and a member of the governing Christian Democrats Union, stated that due to governmental pressure there was not sufficient time for consultations, leading to a suspicion of negligence in the parliamentary decision-making process. In his opinion the arguments brought forward in connection with the lifetime extension were devoid of plausibility. Important aspects of the law were negotiated rather than founded in fact (FAZ.net 2010).

A second example which underscores the importance of transparency in lobbying is the employment of external staff members in German ministries. Initiated by a former federal minister of the interior and German companies in 2004, the “Staff Exchange Program” is aimed at an interchange in personnel between the administration and industry in order to gain mutual insights into their structures and procedures and to “increase understanding of their concerns and interests” (Bundesregierung 2006). This practice, which in fact led to industry-paid staff members being lent to ministries for several months, came to the public’s attention in 2006. The question arose as to whether the program serves as a means for industry to influence law making at a very early stage of the decision-making process. A supervisory process conducted by the Federal Audit Office resulted in the establishment of rules for the government: since 2008 the federal minister of the interior is obliged to annually inform a parliamentary committee about the staff employed and the terms and duration of their employment. These reports are not disclosed to the public.

These examples indicate that the institutional framework within which lobbying takes place is important. It affects substantially the welfare of the country and the acceptance of politics by the general public. Economics can provide a good tool to analyze the mechanisms underlying lobbying and how it affects welfare. But the institutional framework is also important and needs to be investigated. This puts a more country-specific aspect in the research agenda.

### Is lobbying good or bad?

The question whether lobbying is harmful or beneficial is closely related to its channel of influence. First, lobbying may occur as a kind of trade, an exchange of benefits. In a seminal paper (Grossman and Helpman 1994), the politician is posited as being interested in maximizing aggregate welfare, for instance be-

cause he cares for the general public or hopes to be re-elected. He is ready to deviate from this welfare-maximizing policy in exchange for private benefits, i.e., money for his own or the party’s use or anything else beneficial to him like the mobilization of swing voters. An interest group donates these benefits in exchange for policy deviation in line with the interests of that group. As a by-product aggregate welfare decreases. If lobbying occurs through this channel of influence, it is not welfare enhancing for at least two reasons.

One reason lies within the logic of the model. Without special interest groups, the politician does not face incentives to deviate from the welfare-maximizing policy. It is the existence of interest groups which brings these incentives into play, and this does not increase welfare. How harmful it is depends on different factors like the degree of organization of competing interests, the ability of the politician to favor special interests or the policy instrument at hand. If lobbying competition is strong, it does not tend to reduce welfare significantly. All interest groups try to influence politics in their favor. Since all do so, everyone is trapped in a prisoner’s dilemma paying contributions just to avoid unfavorable policies in case of absence. In fact, with strong competition between opposing interests, we are tempted to take a more relaxed view of lobbying even if it involves an exchange of benefits. The opposite applies if lobbying competition is weak. Interest groups may then influence policies at low costs, resulting in effective lobbying and reduced welfare. Next consider the likelihood of the politician catering to special interests and the policy instrument at hand. If the politician cares a great deal about welfare, compensation payments for policy deviations must be high. Then lobbying is costly and less influential. That politicians care about aggregate welfare is likely to depend on the policy instrument and on the institutional framework. Suppose the general public prefers reliable and welfare-oriented politicians, and assume their behavior is easily observed. For the politician alignment with special interests bears the risk of being perceived as unreliable and greedy. It may also play a role if the policy is technically difficult to understand or can be communicated without difficulty. In the latter case, transparency is high, and lobbying tends to be less harmful.

The second reason why lobbying may be harmful, if it is carried out as a trade, is beyond the scope of the model. It is of no less importance and takes into ac-

count the responsibilities and duties of politicians and bureaucrats alike. State representatives receive their mandate from the general public, conferred through elections or by a service commitment to the state. They are agents on behalf of the general public, a role which is coincidentally accompanied by power. It is not the power of a private person acting in a private sphere, but that of an agent committed to the tasks and duties for the best of the citizens. It is bestowed upon the person and temporarily awarded, but not deserved. As a result of this relationship between the agent and the general public, it is presupposed that personal benefits are not gained from office and expected that dignitaries adhere to this principle. If lobbying occurs as an exchange of public benefits for the official's own or the party's benefits, he violates the implicit contract between himself as an agent and the citizen as the principal. Not only is it detrimental to the participants of the contract, it also involves a more general implication. Democracy rests on participation and relies on the identification of the citizen with government representatives. If lobbying exploits this relationship, identification may deteriorate and lead to a general disenchantment with politics. In a worst-case scenario lobbying could undermine democracy. Of course, it is impossible to legislate personal integrity, but a transparent institutional framework will no doubt promote openness and discourse.

This view of lobbying changes if it takes place through its second channel of influence – the transmission of information (Potters and van Winden 1992). Politicians are generalists who rely on information which experts provide. Since independent and reliable information is not always available, it may be beneficial to listen to information even though it is most likely biased. Information transmission may occur in vastly different forms, for instance as mass movements like demonstrations (indicating public preferences) or as statements, scientific reports or face-to-face communication. If the politician is able to extract the reliable part of the content, lobbying tends to be welfare enhancing. It reduces the risk of misaligned policies and increases the quality of the decision-making process. The beneficial effect tends to be stronger with intense lobbying competition. Political institutions should thus be open and provide fair, equal and timely access to all involved groups.

Lobbying still has shortcomings even within the second channel of influence and with open institutions. Since Olson (1965) made his famous statement about

the group formation process, we should be skeptical about the idea that anyone with a specific interest will be able to formulate his view and participate in the political process. Small groups with strong and focused interests find it easier to overcome the free-rider problem associated with political action than do large groups with minimal cohesion. Thus, even if lobbying occurs as information transmission and tends to be welfare enhancing, issues of participation are crucial. Underlying asymmetries in political representation and the unequal distribution of power, for example, are often (though not always) manifest as business interests versus those of consumers or environmental interests.

### **Institutions matter: The role of transparency**

Open and transparent institutions governing influence-seeking activities promote welfare. They enhance the decision-making process and strengthen the reliability of the political system. But there are other, unresolved issues: first, even with the best possible degree of transparency, there is still the problem of the inherent asymmetry of interest representation as referred to by Olson. Second, although it is clear that a high degree of openness and transparency is beneficial, the question of how to best implement it institutionally is not easily answered. Third, the fact that the political system and the institutions governing influence-seeking activities differ across countries hamper a uniform empirical and institution-based research approach, especially for Europe. Many contributions refer to the US, and thus the insights for European countries are relatively sparse. Institution-related research may be less attractive for a profession which earns its spurs in international publications. However, it is of no less importance.

I would like to discuss some transparency-related issues in the institutional context of Germany. Let us examine transparency within the first channel of influence: additional incomes earned by members of parliament (MPs). In 2005, the German parliament made the decision to increase transparency with respect to the additional incomes of its members. According to this rule, which came into effect in 2007 after the failure of a group of MPs to question its constitutionality, every MP is required to provide a report about his additional income. Any activity which takes place outside parliament is reported as well as the amount of income generated. There are no details given, but the amounts range from EUR 1,000

to 3,500 (step 1), EUR 3,500 to 7,000 (step 2) and more than EUR 7,000 (step 3). Although publication of the data increases transparency, the decision not to break down income above EUR 7,000 appears arbitrary and less transparent. (Nor is there a justification for this restriction in the wording of the law.) As it is likely that the incomes of influential MPs lie substantially above these amounts, the law obscures the real income situation. A higher degree of transparency would be possible at very low costs.

The publication of this data has led to research with the aim of identifying patterns of payments. (It also reveals that, exceptions aside, most of the members did not receive excessive outside earnings). Personal characteristics of the MPs, like party affiliation, explain the differences in activities and earnings (Mause 2009). For instance, MPs from the Christian Democrats Union and the Liberals engage more often in economic-related activities than members of other parties, but they differ according to average earnings. The average earnings of the ruling parties do not differ much and are significantly higher compared to those of the parties presently in the opposition. The question of whether these are party-specific effects or related to the individuals in office cannot be determined, since there are as yet no time series available. The duration of parliamentary membership also plays a role and is positively correlated to earnings. The extent of electoral competition influences outside activities as well (Beckers et al. 2009). MPs facing less political competition tend to engage in more outside activities.

We will now examine the second institutional aspect, the creation of a lobbying register. It relates to the second channel of influence and aims at increasing transparency by publishing data about lobbyists and their activities. The question is how to design an institution that allows for the publication of meaningful and timely information at reasonable costs. The existing practice, a list of registered lobbyists at the federal parliament, does not provide useful and timely information about lobbying activities (for instance statements provided to politicians). At the European level, the same applies to the creation of a transparency register, even though the Joint Working group of the European Parliament and the European Commission recently agreed to a draft proposal for publishing data which also includes aggregate money expenditures.

To obtain a better understanding of the issues at hand, timely access to relevant lobbying activities are important. (Publication in retrospect is interest-

ing in terms of research, but less appropriate in terms of critically monitoring good decision making and public participation.) To a substantial extent, lobbying takes place as the provision of information, often informal and in bilateral talks. How can a lobbying register cover these activities and be feasible? Is it suitable to make any paper written by an interest group available to the public? What about accessibility – information covering who meets whom? Would it be beneficial, for example, for government members to inform the public about who attends their meetings? If so, who should be affected by such a rule – just the executive branch of the government or ordinary members of parliament as well? Successful lobbying not only occurs at top levels but also to a substantial extent at the lower levels of administration. There are good reasons to make more information available, but the details of appropriate procedures are difficult to determine and require debate.

A third institutional issue also relates to the practice of “revolving doors”. As the employment of external staff members in German administrations indicated, there are good reasons to believe that lending paid staff does more harm than good, especially if the public is not informed. If the administration needs external expertise, it could use alternative means like expert hearings or consulting services. This may create costs, but employing staff who only pretend to be objective is considerably worse. The revolving door practices also affect the activities of officials after their terms end. The free choice of the employer is a basic right which former politicians and bureaucrats enjoy as does everyone else. However, it is likely that an official will have gained access to confidential information, such as business secrets. If a general phase-out period is needed, what is best in terms of duration and coverage? Institutional questions are rife with lobbying issues. They are difficult to solve, but crucial for the quality of the decision-making process and the effect that lobbying may exert.

## Conclusions

Lobbies, whether business or grass-root organizations, represent particular interests. Whatever strategy appears best from a group’s perspective, the public conduct of a lobbyist is likely to be that of someone pretending to act on behalf of the general public. We should be critical of this, but there are good reasons to take a more relaxed stance if lobbying is transparent and open to all interests.



The discussion of political institutions is country specific, but transparency plays an important role. First, the availability of comprehensive and timely information about who receives money from whom is crucial. This applies both to party donations and MP's additional incomes. Second, there is a need for effective rules governing the revolving door practice, specifically the trade-off incentives for those officials catering to special interests during their terms and the freedom of choice after their terms have expired. Third, there is a need to improve transparency concerning who has access to whom and the information provided to politicians. Modern communication technology may offer a new perspective on this issue.

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