

Lobby. Is It a Type of Co-operation or Corruption?

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Lobbying in our days has significant decision-influencing power in many parts of the world. Huge amounts of money are used in connection with it. After a brief conceptual clarification and the introduction of the historical background, I give a summary about the methods and the dangers that arise in practice in many cases, including the difficulties in defining the demarcation between lobbying and corruption, as boundary is often not easily recognizable between the two concepts.

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Introduction

Although the concept of lobby is quite old, it began to play an increasingly important role in social and scientific public discourse in the 1990s. The topic has now become a huge literature; in several places there are specifically lobbyist courses in higher education, but in many areas of the world, public discourse and a significant proportion of voters associate the lobby with corruption. In this short writing, I examine where the concept comes from, what it deals with it, and what has often made it a pretty bad brand in front of the public.

Clarification of the Concept

The concept itself originates from the lobby of the House of Representatives, where many people waited to have a chance to speak briefly with members entering or leaving the Chamber and persuade them to vote on a particular issue as requested. It can be assumed that in countries operating as non-representative democracies there were also ways and means of claiming from the decision-maker, but we will not deal with these in this article.

By the turn of the millennium, legal rules of the lobby activity have been established in most democracies around the world. These rules are the most detailed in the US, with other countries typically implementing the US rules with major or minor modifications.

According to the literature and the profession, the task of the lobbyist is to provide the constitutor with the highest probability of success in the followings (Topolánszky, 2003):

- form the professional question in a way that can be interpreted by the politician;
- make a priority list of questions in case there are several of them;
- carry out comprehensive data collection about the topic and the network of the targeted decision-makers;
- look for the decision-maker(s) who are entitled to decide on the issue;
- build an appropriate network of contacts with decision-makers and their staff for easy communication;

- map the relationship system of the decision-makers and possible rival lobby groups (fighting for opposing goals), their strengths, weaknesses, and vulnerabilities;
- gather allies to bring the topic to a success.

Although the concept of lobbying is generally seen as an advocacy activity of various interest groups towards a sovereign power, it is worth noting that in many respects diplomats engage in similar activities in the host country. The presence of the diplomat in the social life of the host state has played an extremely important role in diplomacy since ancient times, as such non-formal organizations (with own internal formal rules) have always played a significant role in history in (economic, political, etc.) decisions. These “organizations”, “clubs”, almost never appeared *officially* on the map of diplomacy, but the substantive decision-makers “visited these clubs” and there, in addition to “club life”, even political-diplomatic issues were “accidentally” discussed. Thus, having the same club membership contributed to the fact that the respective club members found the common voice easier in topics of other nature, too, and this influenced the final political and diplomatic decisions. Diplomats are therefore “expected” by their sending state to have a certain hobby popular in the host state and to join a corresponding club where many local celebrities are also members. If we mean informal persuasion and conviction by lobbying, we have reached the point of participating in social events widely used by diplomacy, where attendants can communicate with each other in a looser, more informal way than the official one, in accordance with different rules. This diplomatic lobbying activity has been and still continues to be an integral part of the diplomatic activities of all states throughout history and nowadays, too. Due to the interpersonal and cultural nature of the activity, diplomats can only be banned if the diplomat cannot leave the diplomatic building or receive guests, except for the contact with the host state through its foreign affairs apparatus. This level of “cooling down” of diplomatic relations in history has often predicted great conflicts.

The simplified operational description of the diplomatic lobbyist can be summarized in the following points:

1. Find out who is the person who is personally entitled to make/change the decision you wish! If this is a board decision, the steps below have to be followed by your colleagues: for each member of the board, a different colleague of yours!
2. Get to know the personal interests of the key decision maker as thoroughly as possible!
3. Find in this a field in which you are good at (or learn that field)!
4. Join the club in which the decision-making is a member!
5. Become an active and recognized member of the club!
6. Talk to him/her about your common interests.
7. Once you're respected enough, start gently introducing him/her the context of the issue that's important to you in the way you prefer!
8. If he/she is already accepting this, start to show him/her which are the meaningless/unfair elements in the current system!
9. If you have worked well, sooner or later the decision maker will tell you at a club meeting, or you will hear from the media that the your long-awaited change has been realized on his/her initiative.

It is important to clarify that this “recipe” does not contain anything illegal according to the legal system of any state. The system operates on the basis of a sufficiently deep knowledge of the human psyche, the socio-cultural relations in society, and the decision-making mechanism of official bodies regulated by law. Therefore, it is technically impossible to ban, and very difficult to monitor this activity in a society where

socio-cultural interaction between certain members of society is possible. Even in today's technical level, when the Internet activity of an individual can be monitored with good efficiency based on an IP address, not all interactions can be traced with absolute certainty, e.g., because of the ability to create pseudo profiles and hide the IP address.

In many parts of the world, there have been legal clubs for centuries that suit a variety of interests/hobbies and are waiting for newcomers to join, usually on the recommendation of a club member.

Perhaps one of the best documented cases in the history of lobbying is the American Federalist Papers. Alexander Hamilton, James Madison, and John Jay engaged in strong lobbying for the ratification of the U.S. Constitution. In the course of this, in addition to speeches and participation in social events, they published 85 newspaper articles, and as a result of these, the constitution was mainly approved and entered into force with the content they wanted. The success of this campaign played a significant role in the fact that lobbying has been playing such an important role in U.S. public life also since then.

Lobbying and Money

There are for-profit, and charitable, non-profit organizations in the world. Most people usually assert self-interest at some level, expecting a positive consequence and result for their actions, at least in the long run. This "long run" means a very different time horizon in some cases, from a few minutes to hundreds of years. Especially in cases where the lobbyist expects to be compensated for his/her activity in the long run, traditional financial compensations are becoming less and less common, regardless of the fact that nowadays business has developed mathematical formulas for all conceivable goods (physical, intellectual, psychical goods), with the help of which goods can be given a monetary value. We see the practice of this mostly in the insurance industry.

The things written above basically apply to the lobbyist's principal, who orders and finances the entire lobbying campaign to endorse his/her interests, while the lobbyist, who in many cases carries out the specific activity as a business, receives a monetary reward for his/her activity. Depending on the form of activity, this can be called a salary in the case of an employee, a wage in the case of an entrepreneur, or possibly a success fee if the lobbyist receives remuneration only in case of success.

Are Lobbyists Friends of the Court?

The role of "amicus curiae" (friend of court) derived from ancient Roman law is known in many countries and legal systems around the world. In Roman litigation, no one could appear in front of the judge other than the documents requested and the witnesses summoned. On the basis of this evidence the non-lawyer judge answered yes/no to the question to be decided that was asked by the praetor¹. In the role of amicus curiae, legal experts have acted in specific lawsuits where they helped the questioning lawyer praetor to see the certain parts of the case in broader legal context, so that he can chisel the question to be asked.

The remaining data clearly show the development effect of this practice in Roman private law from the 1st century onwards. There is no evidence left if the amicus curiae received remuneration for his activities from the litigant he assisted (Földi & Hamza, 1999). Nowadays, it varies from country to country, from place to place, and from judge to judge whether and how a judge will consider such submissions in a given case. Typically,

¹ According to our concepts today, the judge under Roman law is most similar to the jury in the common law system, as the judge was an elected official who rarely had legal qualification and he had to make a yes or no decision in a question raised by a praetor with legal qualifications based on the debate. The judgement was the question asked and the judicial answer to it together.

even today, it is not possible to say for sure if the writing of an *amicus curiae* was motivated solely by the love for his/her profession, by the help of legal development, or by the desire for a specific prize promised by one of the litigants.

Does the Lobbyist Always Work for a Remuneration?

Overall, we can say that both the lobbyist and the principal perform their activities in exchange for some benefit to be gained. Sometime this advantage is difficult to be converted into money², but it is also a real benefit for the person concerned, even if it is regarded by an outside observer as a charitable, *pro bono* activity. We are familiar with long-term planning and its implementation in the for-profit business, where at the beginning of the project, or even for several years, the project only continuously “makes a loss”, and then after a few years the activity turns profitable. If the decision maker decides to end the unprofitable project before the turning point, the loss so far has to be written off losses, the chances of realizing the expected profit are practically reduced to around 0% due to the early cessation of the activity. It is also important to be noted that lobbying is never 100% likely to succeed. The activity deals with influencing and orienting the decision-maker, but does not take away his/her sovereign decision-making capability, as with this it would constitute a criminal offense according to the legal system of each country.

The “cost” of the lobby activity in monetary terms does not only include the fee paid to the lobbyist. It also means the costs of lobbying campaigns performed, which are carried out not only by the commissioned lobbying company, but in many cases the client also conducts its own marketing campaigns in order not to orient the target person only by the lobbyist, but also to turn the public in the desired direction, which in democracies can help the decision-maker be persuaded to take the decision in the desired direction.

In addition, lobbying as a business marketing activity usually includes business gifts. Most societies have a traditionally established sociocultural practice of courtesy giving of presents. To protect the purity of public life, such gifts and their value are set by the U.S. regulation at a maximum of \$5, and several countries have introduced similarly low threshold values in recent years (de Kieffer, 2007). Protocol gifts are widespread in all cultures of the world and their value can be quite significant depending on the particular protocol event and participants. Rulemaking here should take into account that the object and value of the gift should, on the one hand, express the appreciation of the giver and, on the other hand, not to put pressure on the recipient that would influence his/her sovereign decision, which may raise suspicions of unintentional corruption for both parties.

Who Will Be a Lobbyist?

At first glance, we say those people will be good lobbyists who have good communication and interpersonal skills. These are skills that can be learned and further developed. This type of education is also provided in communication courses at universities and, for example, in law faculties. Communication skills are essential during lobbying, and legal skills are necessary for the selection of the target person and for the preparation of a legally interpretable draft amendment to a regulation (Hall & Deardorff, 2006). In addition, there are courses, typically post-graduate ones in many countries where lobbyists are specifically trained.

The two to-do lists described in point 2 do not include a “completion time” for each task, but we know from everyday life that the first difficulty in contacting a stranger is to persuade the target person to receive our

² See: in long-term planning, the calculation of its current present value.

first introduction “with open ears” and to be open to knowing our substantive communication. In many cases, this depends on metacommunicative, sociocultural factors, but this first barrier can be overcome immediately and the focus can be on the acceptance of the substantive goal if the target person and the lobbyist already know each other. Therefore, it is not at all surprising that many people find themselves as lobbyists after their active political careers and thus they are able to get in touch with their former colleagues much more easily and can present their specific requests. According to surveys, after the expiration of 30% of the members, the European Parliament starts working as a lobbyist around the European Parliament after the termination of their mandate (Freund & Brendel, 2017). This also shows that in addition to the qualifications and skills of a lobbyist, his/her contact capital is also of extreme importance for the successful performance of his/her activities.

Nowadays in many countries, lobbyists can legally operate under state registration. In many countries, the obligation to register extends not only to lobbyists but also to companies employing lobbyists. In many countries, the transition between the governmental sector and the lobbyist profession and lobbying companies is particularly high, especially in high level. In several countries, quite a few experts and politicians believe that the purity of democratic public life requires the strict limitation of such transitions, but due to the interpersonal contact building and caring nature of lobbying, these movements can be restricted only in a minimal extent without violating fundamental democratic basic rights³.

Working Methods of the Lobbyist

The most traditional technique is to present the advantages of the desired goal professionally, with scientific references, with a leader's summary placed at the beginning that can be understood also by the laymen. With this technique, the lobbyist can work while sitting in his/her office, and the finished material can even be sent by post to the target person(s). In some countries, this method is also popular both by the state administration and by the target persons, as the lobbyist actually performs the detailed elaboration and testing of the plan instead of the state administration, and can even provide a schedule for the implementation of the decision.

It is also a traditional method, operating with the use solutions known from scientific life, when the lobbyist convenes a scientific conference, where he/she invites renowned members of the certain field of science, mainly those who share his/her preferred opinion as speakers and invites the target person as a guest of honor, who will have the opportunity to ask questions to the expert speakers after their lectures. In case of a proper preparation, the conviction of a laic target person can be realized in the long run.

It is not possible to apply the solution in all topics when the lobbyist invites the target person to an invitational or public event where the practical realization and application of the desired goal can be presented to him. In case of planning such an event, it is important to take into consideration the rules of the target person's personal law, since if the lobbyist's aim is to decriminalize an act punishable in the target person's country, then it is a criminal offense for the target person also in case if the place of act does not regard it so⁴.

³ There are many examples in history, but even today we can find some states where the holders of certain positions are restricted to some extent in practicing certain freedoms (e.g., free movement or freedom of speech) by the law of the state.

⁴ The criminal law of all states agree if an act is considered a criminal offense by the legal system of a person's nationality, that person commits the offense even if he/she commits the act under the territorial jurisdiction of a state where it does not constitute a criminal offense, as jurisdiction always follows the citizen (see, for example, the different legal systems of marijuana use in different countries today).

In such a case, the target person could easily lose his/ her decision-making position after the case is revealed and may also face the criminal justice of his/her own country. However, after such a trip, the target person may become the most determined believer in the rule change, fearing from the legal consequences.

Occasionally, lobbyists also use the steps of diplomacy lobby listed in point 2. As the methods described there are typically difficult or impossible to interpret upon state laws governing lobbying; these are invisible for democratic control.

In addition, a significant part of the lobbyist's work is the checking and continuous monitoring of not only of potential target persons, but also of the target area and the participators acting there (cf. Topolánszky, 2003).

Although it is not a rule "engraved in stone", most lobbyists adhere from business and marketing reasons to the principle known to salespeople in business, often in connection with the fall history, that "an untruth, a lie is too risky to the successful development of long-term relationship, and the potential gain is not worth the risk" (Woodstock Theological Center, 2002).

Lobby Is No Corruption?

The question is this form is clearly provocative. It is a fact that in many countries around the world a significant part of society often associates the concept of lobbying almost "instinctively" with corruption, as if the two terms were synonymous.

In scientific terms, lobbying means building and maintaining relationships with decision-makers within the legal framework allowed by the certain state, while corruption means forcing a decision-maker, in exchange for money or other gain, to make an official decision in favor of the principal, disregarding legal rules (Ligeti, 2021). Based on these, it can be seen that the two concepts can be sharply distinguished from each other. There are countless examples in history when an originally peaceful invention that was for the benefit of the people was later used by mankind as a weapon to kill. Communication between people is basically a community-forming interaction, but people can also engage in communication with each other, the purpose or outcome of which will be materially or physically detrimental to individuals or larger communities in the short or long term.

Many people may associate the lobby with corruption because according to published data, the amount of money used in lobbying is almost incomprehensible for ordinary people. According to various lobby organizations as well as analysts, the amount involved can be between \$500 and \$1,000 million annually for the U.S. alone (Opensecrets.org, 2010). The huge discrepancy originates on the one hand in the differences in measurement methodologies (e.g., whether only fees paid to lobbyists or other campaign costs borne by the principal are included) and on the other hand in the estimated value of latency. Significantly less data is available for the rest of the world, so it is not possible to make scientifically evaluable estimations based on available but not validated data from only few countries.

Many countries, following the example of the US, are trying to reduce the possibility of corruption during lobbying by setting a strict monetary limit on the value of gifts that lobbyists can give to the target person. Applying the rules of commercial law and commercial criminal law, business lawyers can develop a variety of contractual and corporate structures for their clients in order to make the monetary or non-monetary advantage provided by the client to the target person with a non-legitimate influence aim, to become or seem to be legitimate.

Conclusion

Lobbying, as a summary name for assertion of interests, has appeared in history with the emergence of parliamentary democracies, but there has probably been similar activity in other states with different political and social structures. The form and rules of this mode of assertion of interests appeared in the US in parallel with the adoption of the constitution, and since then most countries have adopted into their own systems the rules developed here. Nowadays, lobbying has developed into a dominant “industry” in many democracies, which has gained its significance not only by successfully influencing the decisions of public actors, but also by the size of the amount used for this purpose. The methods of lobbying are diverse. Some of them are from the scientific public life, some are from the business PR field; and some are taken from interstate diplomacy. These are transformed for their own purposes by the lobbyists.

In the field of regulation, lobbying and corruption are generally well separated at the regulatory level in democratic states, but there are often situations in social life where the persons concerned, whether the lobbyist, the target person or the watchdog media, perhaps none of them can tell in a particular situation where the line is between a legally permissible and an illegal attempt for influencing trial and corruption. The task of the stakeholders is shaped not only by the legislation setting strict boundaries, but also by the relevant professional rules and standards, as well as by the methods developed by the socio-cultural consensus. These factors form the practice, too.

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