

Ethical Lobbying, an Oxymoron?

On the fairness of lobbying



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Abstract

Lobbyists have a negative reputation, but their influence increases. At the same time, the legitimacy of current democratic systems is being questioned. This thesis investigates whether lobbying harms the ideal of equality. It concerns lobbyists in all modern democracies, but is mainly focussed on corporate lobbies in The Hague, Brussels and Washington. The institution of lobbying will be assessed by the application of complex proceduralism. This method, developed by Charles Beitz, is based on a social contract to warrant equal respect.

The thesis consists of six sections. Section one gives an introduction to lobbying. Thereafter, in section two, various theories of political equality will be discussed. The reasons for rejecting the theories of best results, of popular will, and of equal procedures underlie complex proceduralism, which is described in section three. This method contains three central categories of values: recognition, equitable treatment and deliberative responsibility. In section four, complex proceduralism will be applied to the institution of lobbying. I conclude that it is reasonable to object to lobbying, but that in the foreseeable term there is no better alternative. Therefore I give recommendations to make the practice fairer in section five. In Appendix I, I reflect upon the limitations of my analysis.

Preface

That's my job. I'm a lobbyist," Nick answers.

"I know, but did you study to do that?"

"No, I just kind of figured it out."

"Then can't anyone just do that?"

"No, it requires a moral flexibility that goes beyond most people."

(Thank You for Smoking)

While deciding upon a topic to dedicate myself to finishing my master Applied Ethics, I re-considered many important issues. Why is the climate still changing so quickly and why do governments decide not to heavily tax the use of natural resources? Why are people still free to buy cigarettes at an affordable price, while we have proven to lack enough autonomy to make the healthy choice? And how come world systems do not change, despite the efforts of prominent philosophers who have demonstrated that we are responsible for the intolerable poverty of many?¹

Realizing that adding one thesis to the endless literature on those topics would not make any change, I adopted a scapegoat. The group of people that are generally seen as stopping governments from making the right decisions is the lobbyists. Large companies hire them to delay moral improvements that might harm their corporate interests. My suspicion was confirmed by the numerous newspaper articles, which reveal the secretive influence of lobbyists in the tobacco, banking, or natural resource industries.

Luckily I had the chance to challenge this quick judgment. During my internship at Dietz Dröge & van Loo I learned that lobbyists also pursue positive ends. Therefore I want to thank my former colleagues, Rene Rouwette in particular. He actually chose lobbying as his profession to be able to make a change and puts endless efforts in protecting human rights in the Netherlands. A special thanks also goes to Ingrid Robeyns for her helpful comments and to Grammy Judy and Katy for their corrections. Last but not least, I want to thank the Govert Flinck community for their support and motivation.

¹ Thomas Pogge, *World Poverty and Human Rights*, (Cambridge: Polity Press 2008).

Introduction

Throughout history the practice of lobbying seldom enjoys a positive appreciation. News articles disclosing lobby scandals appear on a regular basis. Naturally, the public opinion associates the profession mostly with secretiveness and corruption. Nevertheless, the amount of lobbyists and their influence in current societies keeps rising. At the same time the legitimacy of democratic regimes becomes the topic of discussions.² These discussions concern political inertia³; citizen's diminishing trust in their representatives⁴; and the fact that fewer people take part in elections⁵.

The combination of the increasing influence of lobbyists and the decreasing trust in current democratic societies prompted me to consider the relation between the two. Employing an ethical perspective leads to the central question in this thesis: **Is lobbying a fair practice?** Expecting a negative answer to this question, I will consider if there is an alternative or if the practice could be improved. This eventually leads to recommendations on how to make lobbying a fairer practice.

Amazingly little literature on the topic is available in the field of applied ethics. Many theories in political philosophy outline an ideal of the just society, where lobbying does not exist. Therefore I adopted 'complex proceduralism', a method of political equality Charles Beitz has developed to understand what the democratic ideal of equality requires of institutions in democratic societies. Therefore my central question could also be formulated as: **Does lobbying harm political equality?**

In section 1 I will give an introduction to lobbying by discussing its history and characterizing activities. I will also explain why lobbyists form an institution. The introduction is followed by section 2 where different interpretations of political equality will be discussed. The reasons for rejecting these theories are most important, because complex proceduralism is developed on the basis of these arguments. Section 3 sets out Beitz' theory of equality, in which equality is interpreted as equal respect. Based on the assumption that everyone wants to reach an agreement, institutions can only be rejected when they are harmful and there is a better alternative. The same

² E.g. See: David van Reybrouck, *Tegen Verkiezingen*, (Amsterdam: de Bezige Bij, 2014), 13.

³ Gardiner uses 'political inertia' to describe the current political inaction to deal with climate change. See: Stephen, M., Gardiner, "A Perfect Moral Storm: Climate Change, Intergenerational Ethics and the Problem of Moral Corruption", *Environmental Values* 15, (2006). 397–413.

⁴ European Commission, "Public Opinion in the European Union", *Standard Eurobarometer 78, first results, Autumn 2012*, http://ec.europa.eu/public_opinion/archives/eb/eb78/eb78_first_en.pdf, (consulted 31 January 2015), 14.

⁵ David van Reybrouck, *Tegen Verkiezingen*, 15. And: "The American Presidency Project: Voter turnout in Presidential Elections", January 2015, www.presidency.ucsb.edu/data/turnout.php, (consulted 31 January 2015).

section also discusses three categories of values that can be used to assess lobbying. This assessment will take place in section 4, where the method is applied to lobbying. I conclude that outlawing is an option, but that this alternative is not preferable neither morally defensible; therefore I give recommendations to make the practice fairer. These are described after the conclusion in section 5. A critical note on the method of fair proceduralism can be found in Appendix I.

1. Introduction to lobbying

1.1 A short history

Everyone lobbies: we all try to influence others to our advantage. In this thesis I will focus on lobbying as a profession. This is the practice the Romans named *ambitio*; political candidates went around in order to gain support using writings, gifts and other propaganda means to influence public opinion. Julius Caesar was a master at this and hereby prepared the public for his emperorship.⁶

The origin of the word “lobbying” comes from the lobbies of the British House of Parliament. Ministers gathered here before and after debates, those that wanted to influence the opinion of the politicians would go to those lobbies in order to chat with them before the debates. The verb ‘to lobby’ first appeared in print in Ohio, where it was used in local politics. The word ‘lobbyist’ was first found in the 1840s and most times related to Washington.⁷ In 1857 a French magazine noted the activities of over 300 lobbyists aiming to influence delegates around the White House.⁸

Since the nineteenth century lobbying has become a million dollar industry. In 2014, 3.21 billion dollars were spent on lobbying in the United States⁹. Brussels currently counts 7545 lobbying organisations of which the biggest spenders are US companies¹⁰. Even in The Hague there are about 2000 individual lobbyists.¹¹ These lobbyists work at professional consultancies or are in-house lobbyists, representatives of local or regional authorities, think tanks, representatives of churches and religious communities, or non-governmental organisations. There is one thing they all have in common: they represent their client’s interests to legislators and public officials. The ways in which they influence lawmakers diverge; some are considered more ethical than others.

⁶ Frans Kok and Tom van der Maas, *De Wandelgang lobbyen in de Politiek*, (Amsterdam: Bakker, 2001), 24-25.

⁷ Liane Hansen, “A Lobbyist by Any Other Name?”, (January 22, 2006), <http://www.npr.org/templates/story/story.php?storyId=5167187> (consulted January 26, 2015).

⁸ Frans Kok en Tom van der Maas “De Wandelgang lobbyen in de Politiek”, 27.

⁹ Center for Responsive Politics, “Lobbying database”, January 26, 2015, <https://www.opensecrets.org/lobby/> (consulted January 26, 2015).

¹⁰ Joint secretariat by European Parliament and European Commission, “Transparency Register”, <http://ec.europa.eu/transparencyregister/public/homePage.do>, (consulted January 26, 2015).

¹¹ Erik van Venetië, “Groeit aantal lobbyisten in Den Haag”, December 23, 2013, <http://www.berenschot.nl/actueel/nieuws/nieuws/nieuws-2012/groei-aantal/>, (consulted January 26, 2015).

The European Parliament and Commission have summarized the following activities under the practice: “*Contacting Members, officials or other staff of the EU institutions, preparing, circulating and communicating letters, information material or discussion papers and position papers, and organizing events, meetings or promotional activities and social events or conferences, invitations to which have been sent to Members, officials or other staff of the EU institutions.*”¹² This enumeration of activities, derived from the European transparency register, also describes the common activities of lobbyists in other countries. The main goal of the efforts of a lobbyist is to influence the people in power to make decisions that are beneficial to the lobbyist’s client.

1.2 The bad reputation of lobbyists

Almost as far back as the lobbying profession goes, so goes the criticism. The Latin word *ambitio* does not only mean the pursuit of influence, but has a more negative connotation as well: it refers to a strategy of foxiness and secretly exercising influence. Two millennia ago it was associated with bribery and corruption.¹³ Cicero was one of the first critics. According to him the desire for fame made one more tempted to unjust acts.¹⁴ The generosity and popularity that is related to *ambitio* comes not from moral kindness, but was considered hypocritical by Cicero.¹⁵

Cicero points towards practices not listed in the description by the European Commission, but that are often associated with current lobbyists as well. This is the generous behaviour of men trying to influence politicians. Lobbyists in the past have invited influential politicians to expensive dinners or provided them with material benefit, which is considered unfair. Criticism has led to the adoption of laws that put restrictions on these ways to ‘buy influence’ and that aim to make lobbying activities more transparent to the public. Nowadays, members of Parliament have to declare their gifts. Even their associates are expected to be reluctant to accept offered dinners or (study-) trips.

¹² European Parliament and European Commission, “EU transparency register” December 2014, <http://www.europarl.europa.eu/EPRS/EPRS-Briefing-542170-European-Transparency-Register-FINAL.pdf>. (Consulted January 2015).

¹³ Frans Kok en Tom van der Maas, “De Wandelgang lobbyen in de Politiek”, 24.

¹⁴ Cicero, *De Officiis*, trans. Walter Miller, (Loeb Classical Library, Harvard University Press, vol. XXI, 1913), September 18, 2014, http://penelope.uchicago.edu/Thayer/E/Roman/Texts/Cicero/de_Officiis/home.html, 68 (consulted January 2015).

¹⁵ Cicero, *De Officiis*, 357.

Another concern about unfair influence that contributed to the shady reputation of lobbyists is the (former) relations they may have with public officials and which are unavailable to most people.¹⁶ This often-extensive social network can be considered one of the lobbyist's most valuable assets and is considered lawful in The United States as well as in Europe. According to the Dutch Constitution everyone has the right to submit written requests to a competent authority.¹⁷ In the 1950s the American Supreme Court recognized that the First Amendment protects lobbying.¹⁸ Despite this protection, there still is a lot of criticism about influencing old friends and especially the infamous 'revolving door movement', which means that legislators shift to the private sector after their political career is over.¹⁹ Only few countries have legal measures against this practice; one of the few is France. Public officials in this country have to wait three years before they can take up a position in the private sector.²⁰

1.3 Lobbying as an institution

The legal status of lobbying combined with moral criticism creates a tension around the profession, which attracts the attention of many journalists, citizens and activists. Most lobbyists tend to avoid the term 'lobbyist' and mostly work under the title of 'public affairs manager' or 'political advisor'. According to public affairs advisor Eric van Venetië this is because of its negative connotation, despite the fact that the term is often used in the corridors.²¹ In my attempt to write an ethical analysis of this subject I will approach the assembly of lobbyists as an institution, which can be divided in several sub-institutes around different political capitals. This approach has methodological advantages, but before the method will be explained, I will explain why lobbyists form an institution.

Cultures and societies consist of different institutions, which are trans-generational organisations or systems that play an important role in society. Social

¹⁶ Richard Briffault, "The Anxiety of Influence: The Evolving Regulation of Lobbying", *Election law journal* 13, Number 1, 2014, 163.

¹⁷ Dutch Constitution, Art. 5.

¹⁸ Richard Briffault, "The Anxiety of Influence: The Evolving Regulation of Lobbying", 169.

¹⁹ What is morally troubling about the revolving door practice will be explained in 4.3.1.

²⁰ Code Penal France, Article 432-13,

<http://www.legifrance.gouv.fr/affichCodeArticle.do?cidTexte=LEGITEXT000006070719&idArticle=LEGIARTI000006418525&dateTexte=20090329> (consulted January 2015).

²¹ Erik van Venetië and Jaap Luikenaar, *Het grote Lobbyboek*, 5^e dr. (Amsterdam/Antwerpen: uitgeverij Business Contact: 2012), 260.

institutions have been characterized in different ways by sociologists and philosophers, and consist of social norms and conventions and rules that evolve over time, depending on the individual actors that occupy institutional roles. Repeated activities by agents form an institution, of which examples range from the English Language to Utrecht University, that often have the following four properties: structure, function, culture and sanction.²² According to sociologist Anthony Giddens the structure provides the framework wherein actions take place; which includes the set of actors, the relation between their actions and their habitual actions.²³

Lobbying can be understood as an institution, because it concerns a certain kind of inter-related agent activities. These activities are characterized by their own norms and structure that have evolved since Caesar. The structure of lobbying is dynamic, like that of all institutions, and defined by the roles played by individual actors.²⁴ Actors are related because they perform the same actions that are dependent on each other. The professional association ‘Beroepsvereniging voor Public Affairs’ (BVPA) is the organisation that is closely intertwined with the Dutch lobby institution. Its members have written down the norms in a code of conduct and apply sanctions against members that transgress these rules.

Institutions also have an informal dimension, the way in which the related acts are undertaken, and known internal cultural differences. Consider for example the differences between corporate lobbyists and those working in the NGO branch: the former group wears more expensive clothes and often has more right wing ideas. Most lobbyists share a drinking culture. Over a drink they expand their network. In the Netherlands, this is centred on the ‘Plein’ in The Hague.

Finally, lobbyists have close relationships to the press and political institutions like ministries and the government, but their actions can influence everyone in society. Institutions can be intra-institutionally unjust and externally institutionally unjust. The first meaning of injustice is the case when a role occupant from within the institution performs unjust acts towards others within the practice, for example a lobbyist not being open to his colleagues about his clients. In this thesis I

²² Seumas Miller, "Social Institutions", *The Stanford Encyclopedia of Philosophy* (Winter 2014 Edition), Edward N. Zalta (ed.), URL = <http://plato.stanford.edu/archives/win2014/entries/social-institutions/> (consulted: January 27, 2015), section 1.

It is still the topic of discussion if formal sanctions (for example legal punishments) are a necessary feature of institutions. With some institutions, like languages, this does not appear to be the case. In any case does not conforming to the institutional norms lead to (moral) disapproval. The norms follow from the culture of an institution: the way in which the activities are undertaken.

²³ Anthony Giddens, *New Rules of Sociological Method*, (London: Hutchinson, 1996), 121.

²⁴ For example Acro Timmermans, the first Dutch lobby professor, who tries to give the practice a scientific dimension. Or Lincoln, who is famous for his lobby against slavery.

will focus on external injustice, which means that I will investigate if lobbyists perform unjust actions or stand in an unjust relation to persons who occupy no role in their institution.²⁵ My main concern is the relation between lobby activities and citizens at large, but external injustice also encloses relations between lobbyists and politicians and public officials.

1.4 Influence in democracies

Prior to my investigation of the fairness of lobbying in light of political equality, I want to emphasize that my focus is on Western democracies, more specifically on lobby activities in the political capitals Washington, European Union capital Brussels and The Hague. The meaning of democracy is frequently the subject of discussions, but for now I will primarily focus on its current form and clarify how lobbyists operate in it.²⁶ The institution of lobbying occurs in dictatorial regimes as well as in democratic societies, notwithstanding large differences. It is possible to lobby a dictator, but never with as many people as in our political systems, because more people share the power.

Political scientist Robert Dahl distinguishes six institutions that are protected in what we ordinarily call democratic countries. These institutions are: (1) freedom of expression, (2) freedom to form and join organisations, (3) access to alternative sources of information, (4) free and fair elections, (5) competition by political leaders for support and votes, and (6) institutions for making government policies dependent on votes and other expressions of preference.²⁷ Lobbyists operate by using these protected institutions to exercise influence on the political leaders. This stands for the relation between the aims or desires of the lobbyist's funder and the opinions and actions of politicians.

There is a scientific consensus that influence cannot be exactly measured or compared, and according to Dahl it is per definition unequally distributed. He explains that someone's amount of influence depends on a person's political resources (information, money, social standing, friendship, jobs etc.), and his political skills and

²⁵ Seumas Miller, "Social Institutions", section 5.

²⁶ For example the discussion stimulated by David van Reybrouck if a democracy coincides with representation: Dahl (4). David van Reybrouck, *Tegen Verkiezingen*.

²⁷ Robert A. Dahl, *Modern Political Analysis*, 4th edition (New Jersey: prentice-Hall inc., 1984), 75.

motivation to use these resources for influence.²⁸ The chance of successful lobbying depends on the resources and skills. Citizens lacking extra time or money are therefore less influential. Unless they are very well organised, their preferences will receive less attention, which is currently the case for inter alia refugees. A more recent approach to determine (EU-) lobby success is access. Here the focus lies more on a special kind of information that is important in the decision-making process, and recognizes the interdependency of European institutions and business interests.²⁹

Beitz has defined power as “the capacity to get what one wants despite resistance”³⁰, but agrees with Dahl that power cannot only be understood in terms of money. One can persuade another through different ways of exercising influence, of which some are considered more or less ethical. Dahl distinguishes influence by communications from influence by means. The first category includes rational persuasion, convincing someone through correct information, and manipulative persuasion; when a person deliberately shares incorrect or incomplete information. Influence by means takes place when one changes the alternatives of a certain choice by adding (dis) advantages to it. For example: a lobbyist may declare that he will have to approach another fraction when the politician cannot guarantee that he will submit the motion. Other options of means are physical force, coercion and the use of power; for instance the power to make the cabinet fall in case a certain law does not pass.

All these forms of influence still occur in present democracies. Although institutional norms show that lobbyists are expected to employ only few of them.³¹ The recent development of access as an important approach demonstrates that rational persuasion is considered increasingly effective compared to less ethical means. Nevertheless, the question whether this indicator of influence can be considered fair in terms of political equality needs to be investigated.

²⁸ Robert A. Dahl, *Modern Political Analysis*, 31.

²⁹ Pieter Bouwen, “Corporate lobbying in the European Union: the logic of access”, *Journal of European Public Policy*, 9:3, 365-390.

³⁰ Charles Beitz, *Political Equality*, (United Kingdom: Princeton University Press, 1998), 12.

³¹ See for example the code of conduct from the BPVA: BVPA, “Handvest”, 2007, http://bvpa.nl/documents/BVPA_Handvest.pdf (consulted February 16), 2015.

2. Political equality

In the former section I outlined an account of the practice of lobbying and the negative image that surrounds the institution of lobbying in current democracies. This is the first step towards using a method that can be used to write a judgement on the external fairness of the institution considering the effects of lobby activities for other citizens and democratic institutions. I will formulate a judgement in terms of political equality. Does lobbying undermine political equality? Are lobbyists a sign of a malfunctioning democracy?

Charles Beitz has set out a method to assess institutions on political equality. Many philosophers have given meaning to the concept of political equality, but their interpretations vary widely. In this section I will first give a short introduction to the problematic concept of equality (2.1) followed by an overview of different interpretations of political equality where by I will approach lobbyists (2.2-2.4).

2.1 Equality

To be equal is not the same as being identical. Equality includes the idea that the related objects differ in at least one way. In the case of political equality the related objects are persons. They can differ in numerous ways, but must be (adult) citizens of the same society. Citizenship is the descriptive element. According to Felix Oppenheim every descriptive element must also contain a prescriptive element to solve the question of identification.³² This raises issues as “Who is considered a citizen?” and “Which citizens have the right to vote and why?” I will not enter these discussions here, but focus on the characteristics of equality itself.

Equality can be conceived as a relation consisting of at least three parts: minimally two objects (or persons in case of political equality) and one quality. The relation between the objects and the quality is defined as equality. The remaining question concerns the quality. In what respect must the equality be applied? Many philosophers have attempted to answer this question, but no conception has come

³² Felix Oppenheim, “Egalitarianism as descriptive concept”, *American Philosophical Quarterly*, Vol. 7, No. 2 (University of Illinois Press :Apr., 1970), 143-152.

forward as the answer that has been accepted by all.³³ Before considering some of the efforts to understand political equality related to citizens living in democratic societies, I will give Kant's ground for believing that all human beings must be treated equally. The theories that will be considered are indebted to his ideas about autonomy as the source of equality.

2.1.1. Foundation for Equality

Kant's philosophy forms an essential part in the development of human rights and the principle that all humans are equal. In his *Grundlegung zur Metaphysik der Sitten* Kant explains that equality is based on the rational capacities possessed by human beings.³⁴ All living beings have natural tendencies, which drive their actions. In addition, human beings have the faculty of reason. This faculty can force the will and make a person perform an action because of certain principles.

In his explanation why a moral principle must be found in the domain of reason Kant distinguishes the rational from the empirical world. The empirical world is always shaped by our perception of it, while what is good must be good a priori; it is a 'Ding an Sich'. In contrast to principles called hypothetical imperatives, which are good considering the persuasion of a certain end, the moral principle is an end in itself. This moral principle is the Categorical Imperative, which is firstly formulated as the following command: "Ich soll niemals anders verfahren, als so, daß ich auch wollen könne, meine Maxime solle ein allgemeines Gesetz werden"³⁵ wherein a 'Maxime' should be understood as a ground for action, which can also be a natural tendency.

Only rational beings have the capacity to subject their will to the moral law. This law cannot be found in the empirical domain, so it must be defined by reason. All individuals can therefore only be subjected to laws of their own. Every rational being has this general and unconditional end, which is the basis for the practical imperative that every human being must be treated as an end by itself.

This notion that all humans are autonomous leads to the recognition that autonomous beings have an intrinsic value and must not be subjected to the will of others. In contrast: things with a relative value are only means to an end; their value

³³ Stefan Gosepath "Equality", *The Stanford Encyclopedia of Philosophy* (Spring 2011 Edition), Edward N. Zalta (ed.), <http://plato.stanford.edu/archives/spr2011/entries/equality/> (consulted: 27 January 2015).

³⁴ Immanuel Kant, *Fundering voor de Metafysica van de Zeden*, trans. Thomas Mertens, (Amsterdam: Boom, 1997)

³⁵ Immanuel Kant, *Grundlegung zur Metaphysik der Sitten*, ed. Theodor Valentiner, (Stuttgart: Reclam, 1952), [S.402], 40.

depends on empirical facts. Everything with intrinsic value excludes a possible equivalent. Therefore all persons are equal and must be treated with dignity. Therefore Kant formulated the practical imperative: “Handle so, daß du die Menschheit sowohl in deiner Person, als in der Person eines jeden anderen jederzeit zugleich als Zweck, niemals bloß als Mittel Brauchest.”³⁶

2.1.2 Equal societies

Beitz’ theory on equality concerns political equality, but his ideas can be traced back to Kant’s moral philosophy. In a society, citizens are no longer only bound by their own moral law, but have to abide by the laws of the state. According to Beitz no person in a democratic society should be disproportionately subjected to the wills of others. Nevertheless, accepting the insight that people are equal does not determine the conception of the quality whereto individuals must be equally related. This brings us back to the question raised above: how to understand political equality?

In the simple view (what Beitz accuses Dahl of) equality is understood as equal power. Beitz argues that there is no unequivocal conception of power whereby an unambiguous principle for equal power is lacking as well.³⁷ This simple view leaves many issues undecided, because it overlooks the complexity of equal relations. How complex the choices are between different institutional designs that aim for equality, will be shown in the following parts. Here interpretations of principle of equality will be discussed, respectively: best results, popular will and equal procedures.

2.2 Theories of best result

The first conception of equality that Beitz discusses is the best results theory, introduced in an earlier version by John Stuart Mill. In Mill’s understanding the best form of government is the one that generates the most beneficial consequences to society.³⁸ I will explain how these best results should be realized according to Mill. Subsequently I will consider how lobbying would be perceived by Mill. Finally I will focus on Beitz’ arguments for rejecting Mill’s interpretation of political equality.

³⁶ Immanuel Kant, *Grundlegung zur Metaphysik der Sitten*, [S429], 79.

³⁷ Charles Beitz, *Political Equality*, 7.

³⁸ Charles Beitz, *Political Equality*, 64.

2.2.1 Mill's theory of best results

In the ideal government all adults have a vote. Mill underwrites this: using the power to regulate people's destiny without consulting them is degrading.³⁹ Nevertheless he brings forward two reasons for non-permanent exclusion of the right to vote. The first and most important one is that someone may only vote when he has been educated. According to Mill every just society makes sure all citizens have access to learning the basic skills: to read, write and perform basic arithmetic operations. "Universal teaching must precede universal enfranchisement."⁴⁰ The second reason why someone might be excluded from voting concerns taxes. To have political influence someone should also pay taxes. According to Mill the non-taxpayer does not identify with the public purpose. Therefore community members that are depending on others have no claim to decide how community money is spent, until they start paying taxes.

Having an equal vote is totally different from having a vote, according to Mill. He rejects the first situation, because it would lead to domination of the largest class, of whom most have a too low standard of political intelligence. Mill pleads for a plurality of votes, because it is of joint interest to give more votes to those who have superior knowledge or intelligence: Primarily because, according to Mill, this would lead to better legislation. Those in privileged positions would make sure that poor individuals improve their knowledge and get the chance to claim their privileges.⁴¹ In addition Mill argues that only a fool would feel offended by giving more consideration to others who understand the subject better. That coincides with Mill's perspective on the importance of critical self-assessment.⁴²

Although Mill acknowledges that it was not yet the time to give the proposal practical shape, he shares his ideas on who should be privileged. In search for a measure to approximate the means for individual mental superiority Mill first named property. He assumes the rich are mostly well educated, but admitted the imperfections of this means. According to Mill University graduates, people with satisfactory certificates and people holding superior functions should have plural votes, because: "A banker, merchant, or manufacturer is likely to be more intelligent than a tradesman, because he has larger and more complicated interests to manage."⁴³

³⁹ John Stuart Mill, *Considerations on Representative Government*, (London, Harvard University Library), chapter 8, 159.

⁴⁰ John Stuart Mill, *Considerations on Representative Government*, 160.

⁴¹ John Stuart Mill, *Considerations on Representative Government*, 160-170.

⁴² Fred Wilson, "John Stuart Mill", *The Stanford Encyclopedia of Philosophy* (Spring 2014 Edition), Edward N. Zalta (ed.), URL = <<http://plato.stanford.edu/archives/spr2014/entries/mill/>>.

⁴³ John Stuart Mill, *Considerations on Representative Government*, 168.

2.2.2. *Lobbying through the eyes of Mill*

Lobbyists can be regarded as a different approach to increase the influence of well-educated men or those holding superior functions. Instead of a privileged voting position the interests of these groups are more heavily represented by means of lobbyists. Through the eyes of Mill, lobbyists contribute to political equality by defending the interests of the wise man in society paying the most taxes. Thanks to this group governments can make better informed decisions, resulting in a better economic position, better education, synchronization of interests of different large institutions, and so on. This leads to an overall benefit for society.

There is one potential criticism: according to Mill critical skills are developed through open debate.⁴⁴ Lobbyists often exercise influence outside the public realm. If this has as a consequence that fewer people will participate in the public debate and assess their opinions, then Mill would object, because political discussion makes one a member of a community.⁴⁵

2.3.1 *Beitz' reasons to reject best result theories*

Beitz rejects Mill's interpretation of political equality, because it takes account of results in the wrong way. I will explore three problems mentioned by Beitz. Firstly, Mill presumes that highly educated people are less self-interested and will use their vote for the best of the whole society. Beitz calls this naïve: "It seems at least likely that those granted procedural advantages will use them to secure more effective representation of their interests than they would receive under a scheme of equal votes."⁴⁶ The prospect of egalitarian reform is hereby diminished. To understand the second problem mentioned by Beitz, suppose that the well educated would try to create the largest overall benefits for society: would everyone care? It is very likely that the poorly educated are more concerned with interests of their own. They might rather have their interests represented than of society at large. The third but perhaps most important counterargument involves the effect of the procedure: the diminishing self-esteem of the disadvantaged group. Even if they would benefit in the future, the division of influence can be considered disrespectful and can lead to friction in society. Mill called people who do not understand the distinction a fool, but ignores

⁴⁴ Fred Wilson, "John Stuart Mill", *The Stanford Encyclopedia of Philosophy* (Spring 2014 Edition), Edward N. Zalta (ed.), URL = <<http://plato.stanford.edu/archives/spr2014/entries/mill/>>.

⁴⁵ John Stuart Mill, *Considerations on Representative Government*, 158.

⁴⁶ Charles Beitz, *Political Equality*, 35.

the possible intuition that the disadvantaged group might feel treated unfairly.⁴⁷ Argument two and three justify a rejection of plural voting. Beitz calls these “the costs of plural voting”. Theories that focus on equal results are concerned with people’s welfare, but leave the effects of the procedure out of sight.

2.3 Popular will theories

In his third chapter Beitz discusses popular will theories and illustrates them with Rousseau’s Social Contract Theory. Popular will theories are concerned with fairness to people’s political preferences.⁴⁸ I will start with three typical conditions of popular will theories and subsequently explain what makes Rousseau’s theory exceptional. After this introduction I will argue why Rousseau would regard lobbying as an unfair institution. I will close this part with the core of Beitz’ reasons to search for an alternative conception of political equality.

2.3.1 Rousseau’s exceptional popular will theory

Popular will theories warrant political equality by attaining equal weight to every citizen’s interests. Beitz distinguishes three conditions from Rousseau’s Social Contract Theory that are common to most popular will theories: ⁴⁹ (1) “Government decisions should confirm to the general will (or equivalently the common interest),”⁵⁰ (2) “The general will is *defined* independently of any social choice procedure”⁵¹ and (3) “Legislation is to be enacted by a social choice procedure normally requiring a majority vote.”⁵²

Rousseau’s theory is distinguished by the assumption that all citizens vote for the outcome they deem best for society as a whole, instead of prioritizing their individual preferences. When an individual becomes a member of the state he deliberately gives up his natural freedom and gains moral and civil freedom.⁵³ The individual hereby accepts that justice and self-interest require submission to laws securing the common interest. This ‘law of the social pact’, to always vote for the

⁴⁷ Charles Beitz, *Political Equality*, 45.

⁴⁸ Charles Beitz, *Political Equality*, 23.

⁴⁹ Charles Beitz, *Political Equality*, 52.

⁵⁰ Jean-Jacques Rousseau, *The Social Contract and Other later Political Writings*, 1710- 1778, ed. Victor Gourevitch, (Cambridge University Press, 1997). Bk.2 chap.1 p.41.

⁵¹ Jean-Jacques Rousseau, *The Social Contract*, Bk.4 chap.1 p.121.

⁵² Jean-Jacques Rousseau, *The Social Contract*, Bk.4 chap.2 p.124.

⁵³ Christopher Bertram, "Jean Jacques Rousseau", *The Stanford Encyclopaedia of Philosophy* (Winter 2012 Edition), Edward N. Zalta (ed.), URL = <<http://plato.stanford.edu/archives/win2012/entries/rousseau/>>.

common good, is the only one that requires unanimous consent. Hereby the respect for persons is secured; thereafter everyone's interests will be equally represented.⁵⁴ As long as a person's property and liberty are protected he will comply with the common interests.⁵⁵ So in contrast to most popular will theories, in the Social Contract Theory voting is not used to determine what the majority wants, but to discover the general will. "Therefore when the opinion contrary to my own prevails, it proves nothing more than I made a mistake and that what I took to be the general will was not."⁵⁶ This includes the civil duty to learn about public affairs, because the general will is the result of collective deliberations.

Rousseau's ideal state has no government that represents the general interest, but only the Sovereign. This body consists of all individual citizens in the social pact with the sole purpose of pursuing the common good. Rousseau rejects representative governments: "Sovereignty [...] consists essentially in the general will, and the will does not admit to be represented."⁵⁷ According to Rousseau citizens of a representative democracy are only free during the elections, thereafter the people is enslaved. Citizens are only free when obeying a self-prescribed law and when members of parliament decide upon laws this is no longer the case. Rousseau also states that collectives endanger society by creating tension between the general and individual will. "But when fractions – partial associations at the expense of the larger one- are formed, the will of each of these associations becomes general to its members and particular in relation to the state. There can no longer be as many voters as there are men, but only as many as there are associations."⁵⁸

2.3.2 *Lobbying through the eyes of Rousseau*

Current democratic societies face more complex issues than at the time Rousseau wrote 'The Social Contract' and have become the homes of people from all over the whole world. This makes The Social Contract idea seem more utopian. Without further entering the discussions on today's value of Rousseau's theory, I want to discuss two hypothesises that can be distinguished from his political

⁵⁴ Jean-Jacques Rousseau, *The Social Contract*, Bk.4 chap.2 p.123. And Charles Beitz, *Political Equality*, 63.

⁵⁵ Jean-Jacques Rousseau, *The Social Contract*, Bk.2 chap.2 p.63.

⁵⁶ Jean-Jacques Rousseau, *The Social Contract*, Bk.4 chap.2 p.124.

⁵⁷ Jean-Jacques Rousseau, *The Social Contract*, Bk.3 chap.15 p.114.

⁵⁸ Jean-Jacques Rousseau, *The major political writings of Jean-Jacques Rousseau: the two Discourses and the Social contract*, 1712- 1778, ed. John T. Scott (London: The University of Chicago Press, 2012), 182.

philosophy: (a) that lobbying is a symptom of a malfunctioning democracy and that (b) lobbying poses a further threat to democracy.

The reason why lobbying is a sign of an unfair democracy is obvious: lobbying takes place in a representative system. After all, the point of the practice is to represent interests to these representatives. Moreover, lobbying demonstrates that a society is fragmented. The primary concern of a lobbyist is to call attention to one of several particular issues commissioned by his client. Regardless of the client's purpose, the interests always belong to a partial association.

Lobbying can be considered a threat to democratic societies because the practice promotes fragmentation. It facilitates the opportunity to buy extra influence to individuals that are already better off. Only relatively well-funded organisations have the means to hire a lobbyist that will reinforce their positions. For this reason, the practice enforces inequality. According to Rousseau, a stable state knows no extremes. In a free society the well-off are expected to be modest in their influence and goods on behalf of poorer fellow citizens.⁵⁹ One could remark that some lobbies promote the common good, but they have very few means compared to the lobbyists promoting corporate interests.⁶⁰ According to Rousseau the greediness of the rich is destructive for society and lobbyists that aid them are enlarging their power and capital.

2.3.4. Beitz' reasons to reject Popular will theories

The fundamental idea behind popular will theories is that fairness depends on an equal relation between individual preferences. In a just society every will counts equally. In all popular will theories all public decisions must be preceded by a procedure to define the general will. Beitz discusses two methods to define the popular will: Simple majority rule and the popular will theories with more than two alternatives. He concludes that both fall short, because the general will cannot be defined without the exclusion of essential concerns.

Simple majority rule is more complicated than it may seem. Beitz refers to the mathematician Kenneth May, who has formulated four conditions that a social preference relation ought to satisfy. Beitz notes that asking what conditions the

⁵⁹ Jean-Jacques Rousseau, *The Social Contract and Other later Political Writings*, Bk.2 chap.11 p.78 footnote.

⁶⁰ Lobbyfacts Database, 29 January 2015, <http://lobbyfacts.eu/> (consulted: 29 January 2015).

relation must satisfy objectifies the moral problems of social choice.⁶¹ As an example, he regards the need for background assumptions, such as Rousseau's motivational assumption.⁶² The fact that simple majority rule needs these conditions makes clear that the simple procedure alone is insufficient to warrant the equal moral status of a person. Beitz further criticizes the inability of simple majority rule to take account of the intensity of individual political preferences.⁶³

Beitz notes that when there are more than two alternatives it is impossible to determine the general will without the influence of institutional factors. Condorcet's voting paradox proves that it is impossible to reach an unambiguous answer in a vote with more than two alternatives.⁶⁴ In addition, Beitz remarks that social choices differ from individual choices. For example; the existence of numerous options creates the option to vote strategically. According to Beitz it is of ethical significance that the popular will is not necessarily reflected by social choice. Political fairness is only plausible when the analogy between individual and social choice would be accepted, but this is invalid according to Beitz.⁶⁵

With these rather technical explanations Beitz intends to show that popular will theories can be rejected, because they need a decision procedure and that is not incorporated in the theory. The general will can only be defined after some procedural and moral choices are made. Therefore Beitz concludes that: "Political fairness implicates a wider range of concerns than this conception allows."⁶⁶

2.4 Simple proceduralism

In the former section I explained why Beitz refuses equality of preferences as a sufficient conception of political equality. To identify the popular will a social decision procedure has to be adopted. In his fourth chapter Beitz investigates whether political equality can be understood as a society wherein procedures are equal. The motivation behind simple proceduralism is the idea that it remains possible to reach agreement on the resolving procedures despite disagreements on the issue. Beitz

⁶¹ The conditions of May are: decisiveness, equality, neutrality and positive responsiveness, but due to limited words I will not treat them separately.

⁶² Charles Beitz, *Political Equality*, 62.

⁶³ Charles Beitz, *Political Equality*, 66.

⁶⁴ Charles Beitz, *Political Equality*, 68 and Eric Pacuit, "Voting Methods", *The Stanford Encyclopaedia of Philosophy* (Winter 2012 Edition), Edward N. Zalta (ed.), URL = <http://plato.stanford.edu/archives/win2012/entries/voting-methods/>, (consulted February 2, 2015).

⁶⁵ Charles Beitz, *Political Equality*, 67-72

⁶⁶ Charles Beitz, *Political Equality*, 74.

distinguishes two accounts of this interpretation of equality. I will discuss both of them and directly explain why neither suffices as sufficiently rich accounts of political equality.

2.4.1. Fairness as a compromise

The first procedural approach of equality determines fairness as a compromise, whereby equality is understood as a strategy to adopt a decision.⁶⁷ The approach is based on the idea that all parties are better off when they reach an agreement. When all parties prefer a decision to no decision, this is a reason for them to accept making a concession from their initial demands. The ‘minimax relative concession’ is a method to compare the significance of the concessions. In this case a compromise is considered fair when all parties make the same concession relative to their initial demand.⁶⁸

Take for example the climate change discussions. Suppose country x is a rich industrial country and aims to be climate neutral by 2050. Country y is relatively poor and suffers from floods. Country y initially demands that country x reaches climate neutrality in 2030. Assume both prefer to reach an agreement so they each make a concession: they agree that country x will be climate neutral by 2040. This is an example of a fair compromise; but is this a fair interpretation of equality?

Beitz rejects this interpretation of equality, because the account of fairness is based on the weak assumption that all parties’ initial demands are symmetrically opposite and that a lack of agreement equally harms every participant. But in reality this is hardly ever the case. In the example shown, country x will harm the whole world by this decision. The compromise is procedurally fair, but does not attain any moral weight to the issue at stake and can therefore be seen as potentially endorsing substantive unfairness.

2.4.2 Fairness as impartiality

The second approach of procedural fairness Beitz discusses is fairness as impartiality. Contrary to the former procedural theory, this kind of agreement has the potential to incorporate the interests of people in weak positions. It concerns a hypothetical agreement, which means that none of the contracting parties is aware of

⁶⁷ Charles Beitz, *Political Equality*, 79.

⁶⁸ Charles Beitz, *Political Equality*, 79.

its social position or interests. Behind the “veil of ignorance” a strategic agreement can be reached on the procedure that is acceptable to everyone.⁶⁹

Beitz names one pragmatic reason for restricting the knowledge of the parties: behind the veil of ignorance it will be possible to reach agreement on just procedural principles. In this position knowledge of future political events, the range of issues on the political agenda, individual political interests and distribution of political interests throughout a community is absent.⁷⁰ Beitz explains that because of this all individuals know they would rather win than lose political struggles. All parties are independent and ignorant of their position on all substantial issues. Therefore they would be motivated to minimize their chance to suffer and try to reduce their chance to be in the minority. According to Beitz this makes it most likely that the simple majority rule (including conditions similar to May’s⁷¹) will be selected.⁷² The second reason for conceiving fairness as impartiality has a moral character; namely that regardless of our preferences the procedural principles are rationally acceptable by all parties.

Beitz rejects fairness as impartiality as the interpretation of political equality because of its formality. This kind of procedural theory lacks essential information about urgency of certain issues. Unaware of the political interests in a community, the persons developing equal procedures behind the ‘veil of ignorance’ cannot know if a minority in his society is facing humiliating situations. The theory is too abstract to capture the content. According to Beitz, the content does matter to impartiality. His conception of impartiality says that greater weight is given to urgent interest. Fairness as impartiality would lose its character as a strict procedural view in case it would incorporate differences in urgency. It can only be impartial on an abstract level, but is incapable of incorporating the ethically significant factors. Since procedures by themselves cannot secure that everyone’s basic needs will be satisfied Beitz points out that there is the need for an alternative interpretation of political equality.

Before developing the alternative, let us consider an example with the UN climate discussions to illustrate the rejected theory. The main objective of the Paris summit in December 2015 is to get a global agreement on actions to combat climate change.⁷³ Suppose the present world leaders would use the method of fairness as

⁶⁹ On p.87 Beitz underlines the differences from John Rawls’ original position. In contrast to Rawls, this theory of impartiality is only about adoption of fair procedures.

⁷⁰ Charles Beitz, *Political Equality*, 88.

⁷¹ See footnote 61. Charles Beitz, *Political Equality*, 58.

⁷² Charles Beitz, *Political Equality*, 84-88.

⁷³ Rebecca Willis, *Paris 2015: getting a global agreement on climate change*, (London: Green Alliance, 2014).

impartiality in order to adopt a decision procedure. I assume that without knowledge of the amounts of extractions, emissions, consumption, reserves or historical responsibility of individual countries, agreement would be reached easily. They will agree on a procedure that will minimize their chance of losing political struggles. Using the ‘fairness as impartiality’ might most likely mean adopting a simple majority rule without reading the IPCC rapport and understanding the urgency of the matter. This procedural fairness can have disastrous consequences (extreme poverty, floods, extreme temperatures) for some countries in case the majority consists of relatively invulnerable countries.⁷⁴ Therefore this account of simple proceduralism is also rejected.

So far we have arrived at the conclusion that a specific focus on results, preferences or procedures is insufficient as a theory of political equality. Simple proceduralism is rejected because the fair procedures attain no moral weight on the results. In the next part I will discuss complex proceduralism. This is Beitz’ own theory of equality that I will subsequently use to assess lobbying as an institution.

⁷⁴ Kln.it, Carbon map – “Which countries are responsible for climate change?”, *The Guardian* 23 September 2014, <http://www.theguardian.com/environment/ng-interactive/2014/sep/23/carbon-map-which-countries-are-responsible-for-climate-change>, (consulted: January 29 2015).

3. Complex proceduralism

In the previous sections I have discussed several interpretations of the quality related to equality and discussed lobbying in light of them. The arguments Beitz developed against the theories of best results, popular will and simple proceduralism, explain how he constructed his theory of political equality, because it is derived from the shortcomings of these theories. Complex proceduralism is the name of Beitz' method to assess political equality. In this chapter I will discuss Beitz's theory and the three included categories of values that help to assess institutions, like lobbying.⁷⁵

3.1 Complex proceduralism

Respect is the core notion of Beitz's conception of political equality. This norm prescribes that every citizen must be treated with equal dignity and can be traced back to Kant's moral Imperatives.⁷⁶ "Institutions that satisfy this condition can be said to be egalitarian in the deepest sense: being equally justifiable to each of their members, they recognize each person's status as an equal citizen."⁷⁷ Equal respect implies that a sole focus on equality of results, of simple procedures, or of preferences is either too abstract or too one-sided to function as a theory of fair political institutions. According to complex proceduralism the condition for political equality is that all agree on how one can participate in the political decision-making process and that even the poorest citizens live under decent conditions. Thus Beitz' theory of equal respect as political equality does not directly say how institutions should be shaped; it is only used to judge the fairness of the institutions.

Complex proceduralism relies on Scanlon's idea of "principles that no one could reasonably reject."⁷⁸ In line with Scanlon, Beitz assumes that all citizens desire to reach agreement. It is to everyone's advantage that political institutions function well; therefore it would count as unreasonable to object to every proposed institutional design. The idea that there is not one single best form of society follows from Scanlon's choice for "a principle one cannot reasonably reject" rather than what

⁷⁵ For my justification for choosing complex proceduralism and the critiques see 'methodological reflexions' in Appendix 1.

⁷⁶ This follows from Beitz sources as well, who refers to Michael Scanlon, who is again influenced by John Rawls. See: John Rawls, *A Theory of Justice*, Cambridge: Harvard University Press, 1971), 179-183.

⁷⁷ Charles Beitz, *Political Equality*, 99.

⁷⁸ Charles Beitz, *Political Equality*, 104.

one “can reasonably accept.”⁷⁹ Several forms might be acceptable, but the starting point is the current situation. According to Scanlon as well as Beitz, what is considered unfair depends on the circumstances.⁸⁰

This contractarianism assumes that all individuals in society are the matter as well as the makers of political decisions.⁸¹ These decisions must be based on informed and unforced general agreement. Citizen’s interest might now and then be disappointed, but according to Beitz this should be accepted as long as it happens for a reasonable cause. It must be understood that a unanimous decision is an unobtainable ideal, except in a hypothetical situation.

In contrast to simple proceduralism Beitz deliberately chooses not to hide individual circumstances from the decision making process. The only assumption he makes is about ones motivation: the aspiration to reach agreement.⁸² His main reason for his choice to adopt no further conditions is to stimulate public debate; according to Beitz conflicts should not be concealed within the structure of a theory. Societal problems must be openly discussed. His second reason to make no further assumptions is the idea that a decision on procedural design is a freestanding moral issue that should be worked out in light of specific historical circumstances. Values are culturally shaped through the history of a society and influence the notion of respect. This cultural relativism can also be traced back to Scanlon, who argued that the different morals in the past have led to our understanding of current moral values.⁸³

How can institutions be judged by the notion of respect? The normative force of complex proceduralism lies in two questions that must be answered to determine if the institution can be justified to everyone that falls under its sway. According to the theory of complex proceduralism, objections to a certain institution are valid when 1) the objection is urgent and objective, and 2) there is a reasonable alternative that is less harmful.⁸⁴ Beitz has defined three categories of values that help answering these questions: recognition, equitable treatment and deliberative responsibility. They are distilled from the reasons against unfair procedures given above. The categories give

⁷⁹ T. M. Scanlon, “Contractualism and Utilitarianism”, in *Utilitarianism and Beyond*, ed. Amartya Sen & Bernard Williams,

⁸⁰ T. M. Scanlon, “Contractualism and Utilitarianism”, 112.

⁸¹ Charles Beitz, *Political Equality*, 97.

⁸² See also Scanlon: T. M. Scanlon, “Contractualism and Utilitarianism”, 116.

⁸³ T. M. Scanlon, “Contractualism and Utilitarianism”, 107.

⁸⁴ Charles Beitz, *Political Equality*, 109.

pointers to compare different institutions and see what is justified in a democracy. Discussing these will be the last step before lobbying can be judged.

3.2 Recognition

The first important value category is recognition. It is based on the following idea: “The political roles defined by democratic institutions should convey a communal acknowledgement of equal individual worth.”⁸⁵ For an extreme example of devaluation of this kind Beitz refers to the work of Orlando Patterson. The sociologist describes slaves as “socially death”: Their humanity is denied, which makes the injustice they are exposed to acceptable to others in society. Slavery is characterized by the absolute loss of civil and political rights.⁸⁶ Slaves have no public role:⁸⁷ None of the laws that apply to them is adopted because of claims made by them, but have originated from others in society. Therefore they took no part in the decision making process. The value category of recognition is thereby severely harmed, since slaves were not treated as sources of value or treated with dignity.

Recognition coincides with one of the respects in which citizens view themselves as free according to Rawls. One condition of freedom is the condition that citizens must be able to regard themselves as self-originating sources of valid claims, because of the capacity of having a conception of the good.⁸⁸ Regardless of this personal conception of the good, this may be a religion or other conviction; free citizens must feel able to hold opinions on what is valuable. This is a reason for Beitz to emphasize the importance of ‘recognition’, so that all citizens must be able to share their principles in the public debate.

According to complex proceduralism it is reasonable to reject an institution when it makes certain groups believe that their opinions are less valuable. This reason is deduced from the rejection of Mill’s theory of best results: weighted voting makes less educated people feel less worthy and thereby hurts their self-esteem. This harm conflicts with the descriptive element of equality that all human beings have an intrinsic value and must be treated with dignity. Beitz therefore regards practices like weighted voting, slavery or the exclusion of women from voting as disrespectful.

⁸⁵ Charles Beitz, *Political Equality*, 109.

⁸⁶ Orlando Patterson, *Slavery and Social Death*, (Cambridge, MA: Harvard University Press, 1982), 9.

⁸⁷ Orlando Patterson, *Slavery and Social Death*, 5-9.

⁸⁸ John Rawls, “Justice as Fairness: Political not Metaphysical”, *Philosophy and Public Affairs*, Vol. 14, No. 3, (Princeton University Press, 1985), 239-244.

3.3 Equitable treatment

Other than recognition, which focuses on citizens as the makers of political decisions, the second condition ‘equitable treatment’ is concerned with citizens as the matter of public decisions. Equal institutions produce results that are acceptable to everyone who is governed by them. Beitz argues that it is disrespectful to endanger ones actual interests in case a reasonable alternative is available. He has defined actual interests as “the satisfaction of needs and success in ones projects”.⁸⁹

The earlier rejection of Mill’s utilitarian theory has shown that the outcomes are not the only important aspect of political institutions. Nevertheless, the importance of outcomes must not be underestimated. According to Beitz, discussions about procedures can frequently be described as a reflection of underlying disputes about their outcomes.⁹⁰ This corresponds to the rejection of fairness as a compromise, because the procedure pays no attention to what we can justly demand of each other. Everyone’s basic interests should be protected and according to Beitz this acknowledgement leads to the greatest convergence about procedures.⁹¹ This again coincides with one of the reasons Beitz gave to reject the procedure ‘fairness as impartiality’. Beitz claims that the urgency of someone’s needs is an important ethical factor in the decision making process. For example hunger and cold are disproportional worries, especially when there are enough resources available to provide basic needs for everyone.

It is unreasonable to accept a system wherein the large majority flourishes at the expense of the suffering minority, which is the traditional democratic concern that we try to overcome through the adoption of constraints as a bill of rights and a judicial review. Nevertheless it remains hard to decide where the line should be drawn. Up to what level can differences in the outcomes of procedures be deemed reasonable? According to Beitz it is difficult to decide when someone’s projects and needs are “unfairly placed in jeopardy”.⁹²

⁸⁹ Charles Beitz, *Political Equality*, 110.

⁹⁰ Charles Beitz, *Political Equality*, 113.

⁹¹ Charles Beitz, *Political Equality*, 113.

⁹² Charles Beitz, *Political Equality*, 111.

3.4 Deliberative responsibility

The third interest that plays a role to determine whether societal institutions are fair is ‘deliberative responsibility’. Citizens should be able to participate in public debate, through which fair outcomes will be reached. This deliberative process in which decisions will be taken, is consistent with the public recognition of every individual’s equal worth.

Deliberative mechanisms can only function under certain circumstances. At first, all participants must have adequate information at their disposal that they should be able to frame and select relevant facts from. With ‘informed agreement’ Scanlon means the exclusion of agreement based on superstitious or false beliefs. This incorporates the duty to provide correct and complete information.⁹³ Secondly, every citizen must be willing to make an effort to resolve political issues and be open to a wide range of alternative views. In public debates conflicting parties should publicly defend their views and thoughtfully consider opposing arguments. The motivational force for individuals to participate in public debate can be found in Scanlon as well, since he stated that human beings have the desire to justify their actions. Knowing that a certain choice may be harmful in some sense, creates the urge to convince others of the reason for making that decision.⁹⁴

According to Beitz, reforms of political institutions aim to avoid certain forms of harm.⁹⁵ When someone in society objects to a certain procedure and has a less objectionable alternative, others should seriously consider the proposed reform. Therefore, in order to judge the fairness of lobbying as an institution by complex proceduralism, it is important to stimulate public discussion on the practice and possible alternatives or improvements. The next section intends to give an incentive for this debate.

⁹³ T. M. Scanlon, “Contractualism and Utilitarianism”, 111.

⁹⁴ T. M. Scanlon, “Contractualism and Utilitarianism”, 116.

⁹⁵ Charles Beitz, *Political Equality*, 218.

4. Lobbying: objections and alternatives

Now I have arrived at the final part where complex proceduralism can be applied to the institution of lobbying. Recall that the normative judgement is achieved by examining whether 1) the objection is urgent and objective, and 2) whether there is a reasonable alternative that is less harmful. I will first elaborate on the first question (4.1). Hereafter I will consider the complaint against lobbying by making the comparison to campaign finance (4.2), because there is a large overlap between those two institutions. In the following parts I will discuss some dubious practices of lobbying and the historical developments of our valuation of transparency (4.3). Finally, I will consider the possible alternative and argue why it should not be preferred to an incremental approach to ethically improve the institution of lobbying (4.4).

4.1 Urgency and objectivity

An objection is per definition unreasonable when it is merely subjective. A personal negative experience with a lobbyist would be no argument on which the profession can be judged. Neither could my personal condemnation of the institution suffice as a reasonable objection. An objection should be based on objective grounds and well-founded. Beitz has defined the objectivity criterion as follows: “That the weight of the harm should reflect the degree of importance or urgency one could expect others in society to accord to it.”⁹⁶ This criterion can be reformulated into the following question: Can we agree that lobbying harms citizens as matter and as maker of political decisions? To answer this question, it is necessary to find out if lobbyists harm citizens as makers of public decisions through violating the categories of value of recognition and deliberative responsibility. In addition, we must be ascertained if lobbyists violate the value of equitable treatment, which is related to citizens as the matter of public decisions.

The EU citizen’s poll draws the following conclusion: “Public trust in the decisions taken by the European Union can be negatively affected if citizens perceive that their voices are being outweighed by the targeted pressure of particular interest

⁹⁶ Charles Beitz, *Political Equality*, 109.

groups.”⁹⁷ 70 per cent of the interviewees agree that it is widely known that lobbyists have a strong influence on EU policy-making and 80 per cent finds that there should be mandatory regulation of lobbying to ensure a balanced participation of different interests in decision-making. The fact that the large majority thinks lobbyists are influential and that their position should be regulated indicates the urgency of the perceived harm done.

Note again that this concerns the institution of lobbyists. Therefore I will for the most part ignore discussions on the distinctions in topics one can lobby for. Lobbying is foremost a profession wherein well-connected and informed agents offer their services –to defend the cause of their clients to legislators- in exchange for financial means. Most lobbyists receive requests to lobby for issues considered unethical. Deliberations whether or not to accept a job coincide with the reflections of a lawyer deciding whether or not to defend a gruesome criminal: it is accepted by law, but not by most fellow citizens. Every dubious case requires a separate ethical consideration, which I will leave to the individual lobbyist himself. As a rational being he has the responsibility to consider the (lobby) action and its possible results; when these are considered harmful an ethical lobbyist will reject the job.

My research is based on the current fact that the largest group of lobbyists have commercial interests and this group does the most harm.⁹⁸ This latter assumption is revealed by the EU citizen’s poll where 77 per cent agrees that “lobbying by business representatives can result in policies that may not be in the public interest”.⁹⁹

4.2 Lobbying and campaign finance: how money and political influence are related

Scholarly literature about lobbying is hard to find, especially in the field of ethics. Comparing lobbying to campaign finance has the benefit of being able to profit from past discussions on the latter theme.¹⁰⁰ Law professors Heather Gerken and Alex Tausanovitch made this comparison before.¹⁰¹ They focus on the similarities of the

⁹⁷ “EU citizens Opinion Poll on Transparency, Ethics and Lobbying”, January 2013, http://www.access-info.org/documents/Access_Docs/Advancing/EU/Infographics_EU_citizens_Opinion_Poll_ENGLISH_ONLINE.pdf (consulted January 2015).

⁹⁸ Centre for Responsive Politics, “Lobbying database”, February 2, 2015, <https://www.opensecrets.org/lobby/> (consulted February 2, 2015) and ⁹⁹ Lobbyfacts Database, 2 February 2015, <http://lobbyfacts.eu/> (consulted: 2 February 2015).

⁹⁹ “EU citizens opinion poll on transparency, ethics and lobbying”.

¹⁰⁰ E.g. Charles Beitz, *Political Equality*, 192-216.

¹⁰¹ Heather K. Gerken and Alex Tausanovitch, “A Public Finance Model for Lobbying: Lobbying, Campaign Finance, and the

relation between money and political influence, the source of this relation, and the problems of regulating the practices since the First Amendment protects their core activities. My discussion is limited to the first two agreements: I will first discuss the source of the relation between money and political influence and then discuss the relation itself along with the related harms. The troubles of regulating lobbying will be treated in section 4.4.

4.2.1. The source of the relation: dependency

In the ideal society lobbyists would not exist, but at this moment our societies function more efficiently thanks to them. Just as in campaign finance, lobbying is an example of a privatized aspect of democracy. This is the aspect of supplying information. Lobbyists fill the (large) gap between legislators and an infinite pile of complicated and unstructured information. Gerken and Tausanovitch make the amusing yet truthful analogy of the work of lobbyists to fast food: “The lobbyists provide McLegislation, McTalking Points, and the McResearch neatly packaged in a nice bag, along with the equivalent of a Happy Meal toy — polling results that tells legislators that the bill in question is a safe choice.”¹⁰² Due to a chronic lack of time and staff, legislators depend on these unhealthy options. People who are not working in the political capitals often consider the financial aspect of lobbying but do not realize that their work is often appreciated. Lobbyists and legislators have trusted and long-lasting relations based on mutual dependency.

Despite these trusted relations, private actors pay lobbyists and these private interests are determining factors for the kind and color of the information they supply. As already stated above, in this way lobbyists facilitate the possibility of buying extra influence. Beitz agrees with Dahl that it is impossible to distribute it perfectly equally (see 1.4). “Substantial background inequalities will be reflected in the outcomes of the political process however that process is organized.”¹⁰³ But when citizens are as a result unequally respected, this means something should change in the relationship between private money and political power.

Privatization of Democracy”, *Election law Journal* (Volume 13, Number 1, 2014), 75-90.

¹⁰² Heather K. Gerken and Alex Tausanovitch, “A Public Finance Model for Lobbying”, 80-81.

¹⁰³ Charles Beitz, *Political Equality*, 192.

4.2.2 *The relation between money and influence*

Before considering measures that would make lobbying fairer, it is important to realize that the relation between money and influence should not be exaggerated. Lobby expenditures cannot be directly translated to influence, as is the case with votes. Just like campaign financing, where the influence is mediated by the campaign activities, the influence of lobbyists is mediated by the lobby activities and occurring events that may drastically change the political agenda.¹⁰⁴ In general, lobbyists in the ‘underdog position’ or lobbying for morally beneficial causes can expect more success with less effort.

Beitz introduces this observation as an argument against the adoption of restrictions on the use of private means for political uses, referred to as “ceilings”.¹⁰⁵ Despite the lack of hard scientific evidence I assume that it also counts for lobbying that the marginal value declines when the expenditures are expanded.¹⁰⁶ Moreover equal lobby success is not the same as political equality, because it only affects a limited group in society: the ones that participate in the political decision process through lobbyists.

Most citizens have only very limited knowledge about the diverse possibilities to influence legislators and would never consider recruiting a lobbyist on issues that concern them. This group shows similarities to the citizens Rousseau considers enslaved: they are unable to exercise influence between the moments of elections. I understand this division as a de facto exclusion, where the conception about the good of the less-wealthy group receives less attention in the public debate. In addition, they will only receive information through the media, in contrast to the group that directly takes part in the decision making procedures with the help of lobbyists. Therefore the excluded group will receive less information and at a later time, which harms their position in the public debate.

Adopting measures to equalize the success of already existing lobbies does not improve the recognition of this de facto excluded group, nor will it stimulate them to participate in the public debate. In reality this group might be capable of reaching legislators, but is unaware how to do this. They lack the time or network to engage in lobby activities themselves and have no money to hire a professional to do it for them.

¹⁰⁴ Charles Beitz, *Political Equality*, 202.

¹⁰⁵ Charles Beitz, *Political Equality*, 193 and

¹⁰⁶ Lobby influence remains very hard to measure. See Arco Timmermans, “On speaking terms, Public affairs en de dialoog tussen wetenschap en praktijk”, September 2014, <http://www.vmonline.nl/SiteFiles/Pdf%20Openbaar/oratie%20Timmermans.pdf>, 7.

This leads to the current situation where the disadvantaged persons' opinions and preferences receive less attention. This lack of recognition shows that citizens are not equally respected and is therefore considered harmful.

4.2.3. Qualitative unfairness

Every person has one vote but preferences are unequally satisfied. This is what Beitz defines as qualitative unfairness¹⁰⁷. Eventually the votes of the wealthier will weigh more thanks to purchased influence. Beitz notes that equal power (one person, one vote) does not guarantee a perfectly distribution of preferences.¹⁰⁸ These differences may be acceptable when nobody's projects and needs are unfairly jeopardized, because everyone wants to reach an agreement. But when lobby activities produce harmful results, this is a valid reason to object to the institution based on the value 'equitable treatment'.¹⁰⁹

4.3 Dubious practices

Above I explained how lobbyists fulfill an important function in current democratic societies and have confidential relations with politicians. Despite that, they score low in the public opinion. One likely reason we have just discussed: the facilitation of influence expansion to the already rich and powerful, which enlarges inequalities. A second reason for the bad reputation of lobbying is the vagueness surrounding the institution. Little do people realize that lobbying happens almost everywhere and that they could start a lobby themselves. This second reason for the poor reputation is a consequence caused by some hazy lobbying strategies or customs and numerous incidents. I will first discuss some of those customs with their main ethical concerns.

4.3.1. Revolving door

In 1.3 I already mentioned the 'revolving door movement', which receives a lot of negative publicity. The EU citizens poll' confirms the public opinion: 80 percent of the interviewees reports that they are less confident that a Member of the European Parliament (MEP) represents the interests of citizens if they also work for a lobby

¹⁰⁷ Charles Beitz, *Political Equality*, 153.

¹⁰⁸ Charles Beitz, *Political Equality*, 156.

¹⁰⁹ This appears somewhat inconsistent with my primary remark in 4.1 about neglecting the issues one lobbies for. The issues that one lobbies for play an essential role in an ethical judgement, but for now I am limited to the bare facts indicating most private/corporate lobbies.

group or a private company; 67 percent finds MEPs should not be allowed to work for a lobby group or private company while they are serving as elected representatives.¹¹⁰ The revolving door scenario also holds for politicians or their assistants who switch to private functions. In these functions they largely benefit from their political knowledge and contacts. This is a very common step for politicians and logical from their perspective: The private sector will give them better pay and the luxury to focus on fewer key issues.¹¹¹

In order for preferences to count equally, parliamentarians are supposed to represent citizens' interests only; they should be free of private influence. Citizens are harmed when the people who are supposed to represent them have a double agenda. Their conception of the good and interests should be represented, and not the sector in which the politician has a side job (or would like a position after his time as a deputy). As discussed in 4.2, the value of equitable treatment is harmed when private interests weigh higher than individual votes. The fact that citizens realize this, also has consequences for recognition and the deliberative responsibility.

What the revolving door movement also shows is the apparent need for people to have substantive and political knowledge and a large network. This combination of qualities is shown to be very valuable by the huge sums the private sector is willing to pay for those who possess them. What if they would directly work for representatives? I will return to this possibility in 4.4.

4.3.2 Politics of the attention

In contrast to the common or 'old school' lobbyists, lobby professor Arco Timmermans noticed a new phenomenon (focused on the Netherlands, but earlier conceived in Washington as 'grassroots lobbying'¹¹²) that can be translated as 'the politics of the attention'.¹¹³ This kind of lobbying is directed towards the outside world, instead of lobbying a selected group of politicians. In a nutshell, it involves the formation of unexpected and large coalitions who agree on one specific issue. Within a very short period of time they bring about large changes or hasten difficult political

¹¹⁰ "EU citizens opinion poll, on transparency, ethics and lobbying, January 2013"

¹¹¹ Heather K. Gerken and Alex Tausanovitch, "A Public Finance Model for Lobbying", 82.

¹¹² Richard Briffault, "The Anxiety of Influence: The Evolving Regulation of Lobbying", 171.

¹¹³ Arco Timmermans, "On speaking terms, Public affairs en de dialoog tussen wetenschap en praktijk", 6. Own translation.

decisions. The media play a very important part in this kind of lobbying and the speed increases even more through the rise of social media.¹¹⁴

The development might lead to the involvement of smaller parties that would normally not receive political attention by themselves, and this development informs many citizens on the issue. Therefore the ‘politics of the attention’ can have positive consequences for the deliberation process, if everyone has access to equal information. Lobbying activities no longer only take place behind closed doors, so lobbyists and politicians are forced to be open about motives and decisions. This will stimulate the public debate and encourage citizens to think about and critically examine their opinions.

I foresee several potential risks: that initiators of temporary coalitions will not treat their smaller partners or the public with respect; the possibility of unprofitable outcomes; and the power of the media. Smaller coalition partners may be forced to align their ideas to the perspective of the uniting lobby group. To join coalition on issue x they will have to compromise, in which case their initial aims may get lost by the demands of the powerful initiators. The second risk concerns the outcomes; when the media suddenly pick up complex issues, politicians might be rushed into decisions. This may lead to overall negative results. My third worry concerns the power of the media. Beitz notes that the amount of topics on the political agenda will always be constrained.¹¹⁵ Media report about issues that attract the public to maximize viewers or readers, because they have to make revenues. Issues will only make the news when there is a momentum. Which themes become the topic of discussions therefore becomes more dependent on the whims of the day. The ‘politics of the attention’ indirectly transfers power from representatives to the media, because politicians cannot ignore the issues the media bring up. When the new lobby strategy involves the media, which is already extremely powerful, the ‘politics of the attention’ will increase the complexity of existing power relations.

Yet I am unsure if these developments contribute to the deliberative process or that large players are merely using the public as a means towards their own ends. I will not further elaborate on the ‘politics of the attention’ here, also because of a lack of empirical evidence and I recommend it as a topic for further research. Instead I will

¹¹⁴ Arco Timmermans, “On speaking terms. Public affairs en de dialoog tussen wetenschap en praktijk”, 18.

¹¹⁵ Charles Beitz, *Political Equality*, 169.

focus on another development in the lobbying institution: the increasing emphasis on transparency.

4.3.3. A history of similar incidents and the value of transparency

In section 3 I explained why complex proceduralism takes historical circumstances into account. Despite the differences per political capital, I will discuss the increasing emphasis on transparency in the institution of lobbying as the consequence of disclosures of misconduct and unfair influence in the past.

The choice to discuss lobbying as an institution, unspecified to a certain country, makes it impossible to incorporate one cultural narrative to understand moral values, because the democratic countries have been through different cultural developments. Rousseau's conception of the general will may explain why lobbying is less accepted in France than in America with its more pluralist tradition.¹¹⁶ Yet Washington, Brussels and The Hague are familiar with numerable incidents of disrespectful lobbying activities.¹¹⁷ Those similar incidents have created awareness that lobbying should be fairer.

All Dahl's categories of influence mentioned in section 1.4 are still used in the institution of lobbying today. Although most cases of corruption probably never become public, they do still occur.¹¹⁸ These vicious tactics harm the people in several ways. Firstly, the results of the decisions made under heavy lobby pressure are unlikely to benefit society. Secondly, corruption excludes the process of public deliberation, or vicious tactics limit the discussion by reducing the available information or pollute the discussions with false arguments.

Rational persuasion is a fair method because the other person is convinced by true and complete information. Nevertheless it often remains questionable if information is manipulated. "Was the McResearch composed in light of a certain aim?" This has to be intelligible to the public as well as legislators. Even the latter group is sometimes unaware of the interests of the information supplier. In the small

¹¹⁶ Cédric Polère, "Lobbying : l'influence des groupes d'intérêt s'accroît, et favorise une transformation de notre modèle démocratique", June 2007, http://www.millenaire3.com/fileadmin/user_upload/syntheses/lobbying.pdf (consulted February 2015), 7.

¹¹⁷ Examples: Randeep Ramesh, "Right-wing think tank pulls funds for Commons groups after disclosure row", *The Guardian*, December 30 2014, <http://www.theguardian.com/politics/2014/dec/30/rightwing-thinktank-pulls-funds-commons-groups-disclosure-rules> (consulted February 2015). Or Ivo van Woerden & Stella Braam, "De tabakslobby: de industrie en de winkelier", *Vrij Nederland* 13 augustus 2013, <http://www.vn.nl/Archief/Politiek/Artikel-Politiek/De-tabakslobby-de-industrie-en-de-winkelier.htm> (consulted February 2015).

¹¹⁸ Example: Arjen van der Horst, "Lobbyschandalen dwingen Britse regering nu tot actie", *Trouw* June 4, 2013, <http://www.trouw.nl/tr/nl/5009/Archief/artikel/detail/3452184/2013/06/04/Lobbyschandalen-dwingen-Britse-regering-nu-tot-actie.dhtml>, (consulted February 2015).

scenario there is a lobbyist chatting about issue x at an informal occasion without declaring his interests. But it might also be a think tank that pretends to give independent advice, while it is actually financed by a corporation that benefits from the advices. ‘Informed agreement’ includes the duty to provide complete information, so in these cases the funder and interests are extremely relevant.

Numerous news articles on political corruption or manipulative influence have emphasized the importance of transparency. The lobbying institution is characterized by an historical sequence of negative publicity. The increasing value of transparency follows from initiatives like the lobby registers by governments, the EU, or organizations like the BVPA to prevent similar incidents in the future. A counter lobby has been established as well, with initiatives like “TabakNee” and “Corporate Europe” that aim to expose corporate lobby activities.¹¹⁹ The institution should be open about their interests, partners and clients in order to treat the people in the society in which they operate with respect.

4.4 A reasonable alternative

From sections 4.1 - 4.3 it follows that the practice of lobbying is considered harmful in several ways. First I will briefly review the harm of lobbying before concluding that lobbying should be forbidden in an ideal society and explain how this would be possible. Nevertheless, this ideal situation seems unrealistic in the short term. Instead of arguing for a complete prohibition of lobbying, I choose to adopt an incremental approach and will make recommendations on how to improve the fairness of the lobbying institution, to those involved with and related to the practice after my conclusion in section 5.

4.4.1 The objection against lobbying

Citizens with comparatively little time, money, and connections have considerably less influence on political decisions. This is due to the institution of lobbying, because lobbyists facilitate the possibility of buying influence. Weaker groups are harmed based on diminished recognition; these groups’ conceptions of the good receive less attention. Therefore their needs can be unfairly placed in jeopardy, which is harmful

¹¹⁹ <http://tabaknee.nl/> or <http://corporateeurope.org/>

considering the value of equitable treatment. The revolving door movement also helps private interests outweigh those individual votes, whereby preferences are unequally satisfied because of the work of lobbyists. Finally, one should question how the information supplied by lobbyists is framed. Since it is always supplied in order to support a private end, it may be biased or incomplete and thus violates the value of deliberative responsibility.

The institution of lobbying unequally respects citizens; this makes the objection to lobbying reasonable according to complex proceduralism in case there is a better alternative. This alternative will now be considered.

4.4.2 The ideal situation

Since the institution of lobbying is considered harmful, it should not exist in an ideal society. It is therefore possible that all countries, e.g. via de United Nations, collectively decide to forbid professional lobby offices or individuals that defend private interests by payment. This prohibition would disturb the current relation between private money and political influence, which increases inequalities in society.

Yet the abolishment of lobbyists could have troublesome effects without a decent substitute: I explained above why in the world as it is legislators are dependent on lobbyists for their information. Without them there would be a gap between among others, businesses, NGO's, communities and legislators. Lobbyists add value by packaging information and uniting parties. When the institution would be forbidden, other actors should replace this function.

In an ideal world, public actors initiate contacts between different societal players and supply well-organised information to legislators. Ending the privatisation of this aspect of democracy has two main advantages: 1) The officials who take over the function of lobbyists supply objective information and 2) these public officials also invest (a lot more) time in the interests of the disadvantaged groups in society and give voice to their preferences.

Ideally the government equips officials to perform the activities now carried out by lobbyists. As observed in 4.3.1, the government requires people with substantive and political knowledge and a large network. When the government employs these highly skilled people they can provide legislators with objective and

complete information about the needs and interests of all groups in society. The harm caused by lobbyists will thereby be removed.

4.4.3 Reasons to adopt an incremental approach

Even though it is theoretically possible to imagine that professional lobby offices are forbidden and public officials perform their tasks, it seems unrealistic that this will happen in the foreseeable term. There are at least two reasons: one concerning the moral aspect of this financial decision and one about the difficulty of regulating lobbying.

First of all, the decision to replace lobbyists with public officials is complicated because of the enormous amount of money it would cost. Unfortunately the required data is unavailable to make a reasonable comparison in the case of the EU or the Netherlands, but in America the total (registered!) lobby expenditures in 2013 were 3.24 billion dollars. This would come down to 0.02% of the GDP.¹²⁰ Even considering the harm mentioned above, it remains a complex political choice to forbid the profession of lobbying. The option raises many difficult moral questions. For example, why publicly fund information but not campaigns? Or why not spend it on another, perhaps even more urgent issue? Media also influence this decision; when it chooses to pay a lot of attention to the harm of lobbying, the practice is more likely to be forbidden.

The second reason why it is unlikely that an ideal society without lobbyists will be pursued in the near future is more pragmatic: the practice is hard to regulate. Many lobbying activities are protected in democratic societies: for example, citizens are free to organise events and express their preferences to public officials. These rights must be guaranteed, but without being performed by professional lobby organisations or individuals that use these rights to exercise influence in exchange for a generous fee. It is also hard to draft suitable laws because political institutions like lobbying and campaign finance keep on renewing themselves. Both institutions continuously find new ways to adapt to the changing legal circumstances.¹²¹

According to the research of political scientists Timothy LaPira and Herschel Thomas III, more than half of the professionals engaged in influencing public officials

¹²⁰ Sources for numbers: International Monetary Fund, "World Economic Outlook Base, GDP 2013, <http://www.imf.org/external/pubs/ft/weo/2014/02/> (consulted February 2015). And Center for Responsive Politics, "Lobbying database. Calculation: (GDP / lobby expenditures)/100 = 0,02 percent.

¹²¹ Heather K. Gerken and Alex Tausanovitch, "A Public Finance Model for Lobbying", 77.

in Washington in 2013 worked “under the radar”.¹²² This shows that lobbyists tend to change tactics in response to regulations and to public opinion. Lobbyists just deregister (or not register at all) and continue to operate as a “strategic advisor” or “historical advisor”; they either employ new tactics like the politics of the attention or buy influence through sponsoring or establishing “independent” think tanks that inform governments.¹²³

The capacity to quickly adapt and find loopholes in the laws indicates that when public officials have taken over the tasks of lobbying, wealthy actors will nevertheless continue to enlarge their influence on politicians by the development of new lobbying strategies. The abolishment of lobbying would require continuous efforts to improve and adapt regulations to the current situation. In addition, the percentage of 0,02 of GNP mentioned above proves too low considering the research by LaPira and Thomas. Actually replacing the institution of lobbying (so including the “strategic advisors etc.) will require at least twice as much money.

4.4.4. An incremental approach

The previous section showed that it requires a lot of effort, further calculative research, political will and media attention before the ideal situation will become a factual option. An incremental approach is also capable of reducing the inequality caused by lobbying, but without these complications. Societies should aim to improve the current institution by making it more accessible and ethical. In the short-term this is more realistic than a focus on the complete replacement of lobbyists by the public sector.

In order to make lobbying a fairer institution it should become more transparent and accessible. All citizens should be empowered to influence his or her legislators between elections. Therefore I propose the establishment of subsidies and platforms to unite citizens who share the same concerns. In addition, the government can employ more senior officials who possess the same qualities as lobbyists. They will focus on issues that barely receive attention by lobbyists. These officials defend the interests of the groups that are now under-represented and advise legislators with solely the common good in mind. This can be considered as a counter-pressure to the

¹²² LaPira, Tim and Thomas, Herschel F., “Just How Many Newt Gingrich's Are There on K Street? Estimating the True Size and Shape of Washington's Revolving Door” (April 2, 2013).

¹²³ For recent examples see: Eric Lipton, Brooke Williams and Nicholas Coffessore, “Foreign Powers Buy Influence at Think Tanks”, *NY Times September 6 2014*, http://www.nytimes.com/2014/09/07/us/politics/foreign-powers-buy-influence-at-think-tanks.html?_r=0, (consulted February 2015).

corporate lobbyists. Finally, governments and lobby organisations should cooperate to continue transparency improvements. All lobbyists should be registered, even when they work under the title of ‘advisor’, and be open about their clients and interests. Other transparency measures should give insight to the access of lobbyists to legislators and officials. Some examples are given in my recommendations after the conclusion in the next section.

5. Conclusion and remarks

Complex proceduralism is developed through the consideration of arguments against different interpretations of political equality. The rejection of theories of best results, popular will and fair procedures led Beitz to interpret political equality as equal respect. From the assumption that everyone wants to reach agreement follows that institutions are fair when they cannot reasonably be rejected. This implies that there is no better alternative available.

Whether a complaint is reasonable can be determined by means of three central values: recognition, equitable treatment and deliberative responsibility. Applying the theory to the institution of lobbying shows that it harms citizens in their role as maker as well as matter of political decisions. Their interests are no longer fairly represented by their representatives due to the biased information lobbyists supply to them. This increases inequalities in a society and decreases the value of individual votes, which makes groups of citizens tend to withdraw from the public deliberation process.

In the ideal world, lobbying would not exist. Legislative staffers would fulfil their role and supply legislators with unbiased information and political advice. In reality this is unlikely to become the case in the foreseeable future, because the practice is difficult to regulate and it involves a complicated moral and financial choice. It is therefore to be recommended to adopt an incremental approach and improve the institution.

Over the course of years various incidents and criticisms have already led to the creation of a lobby register and adoption of new regulations. These positive developments can be fortified by making citizens more aware of their chances to exercise political influence not only during election time. Note that all possible improvements rely on the way influence is exercised. Corresponding with complex proceduralism, all agreements should be reached on the basis of informed and unforced general agreement. This makes it easier to recognize each other's ends and treat them respectfully.

5.1 Recommendations to make lobbying a fairer institution

Subsequent recommendations follow from Charles Beitz's theory of complex proceduralism and are intended to make lobbying a fairer practice. They are directed towards four groups of people related to the institution of lobbying: individual lobbyists, organisations that exercise a central role in the practice, governments who are supposed to regulate it, and other organisations that do not (yet) employ lobbyists.

Lobbyists should:

- Treat everyone with respect. This means providing potential coalition partners and legislators (or their staff) with correct and substantive information; only exercise influence by rational persuasion or by means of alternatives;
- Draw their own moral boundaries; consider fairly the cause they are lobbying for and the potential consequences of their efforts.

Lobbying organisations should:

- Supply information about the main activities of the practice to the public;
- Encourage transparency among lobbyists: all lobbyists should always be open about their funder and his interests.

Legislators should:

- Increase knowledge about lobbying; citizens should be aware that they can also initiate issues that concern them;
- Employ more senior political staff-members who would normally transfer to the private sector;
- Establish funds for non-corporate lobby activities that citizens can apply for;
- Stimulate citizen initiatives and platforms to unite people to represent their interests; for an example, visit www.thelob.by;
- Start research on the influence of the media and how to cope with the 'politics of the attention';
- Adopt strict rules about side-jobs of parliamentarians and provide transparency about potential conflicting interests;

- Insert a cooling-off period¹²⁴;
- Increase transparency by disclosing who has access to legislators; for example, by making public who have passes to Parliament and who vouched for them; or by making legislators' office agenda's public.

Organisations who do not employ lobbyists should:

- Make expenditures on lobbying morally acceptable;
- Use lobbyists or platforms to their advantage.

¹²⁴ In some countries, public officials are legally bound to wait a certain time before they can take up a position in the private sector: this is called a 'cooling-off period'. See the example of France in 1.2.

Appendix 1: Methodological reflections

In this appendix, I discuss some methodological reflections on the procedure of Complex Proceduralism that I have used in this thesis to conduct my analysis. Complex proceduralism is suited for the assessment of separate institutions in societies. This was the initial reason for using this theory. Its main advantage is that it is suited for the purpose of assessing a practice that does not occur in theories of an ideal society, while it still has a fundamental idea about a just society. The theory is based on equal respect. Most other approaches that define a just society are less suited to judge a practice like lobbying. This is seen in ‘fairness as impartiality’, which has many similarities to Rawls’ theory of fairness. Lobbying would not be discussed in a hypothetical situation, as this would make it hard to say anything about the institution, since in the ideal situation it would not exist. Therefore complex proceduralism seems the ideal combination of a comparative and a transcendental approach.¹²⁵

Nevertheless, this main advantage also has some drawbacks. I will elaborate on the three weaknesses of assessing lobbying by means of complex proceduralism concerning (1) the need for empirical facts, (2) the gap between theory and application and (3) the lack of inspiration.

1. The application of complex proceduralism requires a lot of empirical information in order to demonstrate the urgency of complaints. For my purpose, judging lobbying by its fairness, it mostly requires information about influence. The fact that influence is hard to measure weakens some assumptions that play a role in my conclusion about the institution. The incomplete information on the effect and amount of lobbying activities, plus the differences between countries also hampered the ability to draw a stronger conclusion.
2. Whether an institution should be marked as unfair is determined by the combination of a complaint and the availability of a reasonable alternative. Complex proceduralism lacks sufficient means to completely answer these

¹²⁵ Amartya Sen has first distinguished the transcendental from the comparative approach. Pablo Gilabert argues against Sen in favour of transcendental theories. See Amartya Sen, “What Do We Want from a Theory of Justice?”, *The Journal of Philosophy*, (2006), 215-238. and Pablo Gilabert, “Comparative Assessments of Justice, Political feasibility, and Ideal Theory”, *Ethical Theory and Moral Practice* (Springer, 2000), 23-56.

questions. The ideal 'respect' is too indeterminate to make comparisons with. Beitz refers to the three categories of values; recognition; equitable treatment; and deliberative responsibility, but they are not exhaustive and sometimes conflict. The shortage of hard empirical facts in combination with the vagueness of the ideal weakens my final conclusion that there is no preferable and morally defensible alternative for lobbying. Whether it is desirable to make the tasks of lobbyists performed by government actors depends on political considerations. Being more specific about the best ethical outcome would require a more determinate idea of 'fairness as equal respect' than the categories of values enclosed in this theory. The intermediate option of improving the institution of lobbying seems the most reasonable alternative for the time being.

3. Complex proceduralism allows for assessing separate institutions on their degree of fairness. This method aims to reduce injustice step-by-step and accepts that there is not one image of "the perfect society".

The downside of this incremental approach in combination with the vagueness of the ideal 'respect' is that the theory might not be very inspiring. Complex proceduralism is useful to improve a society step-by-step using the ideal of respect, but the ultimate end is unclear. So the advantage to approach institutions from the current situation has the flipside that it does not offer a motivation to drastically improve society. "If you want to get 50, you sometimes do well to aim at 100."¹²⁶

The research I used from other disciplines in combination with the philosophy of Rousseau, which is an outspoken example of a transcendental theory, made me realize that lobbying might indeed also be a consequence of a malfunctioning democracy, instead of only an institution that harms society. The core of the democratic systems has not changed for about 200 years, while the amount of political issues and speed in which they occur has increased enormously. Many citizens still reveal their judgements and preferences only during elections. In addition, the formation of unexpected coalitions on separate topics shows that it becomes more difficult to divide

¹²⁶ Pablo Gilabert, "Comparative Assessments of Justice, Political feasibility, and Ideal Theory", 55.

society into groups based on political preferences (political parties). This made me realize that we should ask ourselves the question if the specific institutional form of society we know today is still satisfactory. Unfortunately complex proceduralism focuses one particular institute at a time in relation to the current situation. The ideal of respect is too indeterminate to function as an inspiring and motivating dot on the horizon.

Despite these critical remarks, complex proceduralism can be used to analyse the function and harm of lobbying. Through the application of the values of recognition, equitable treatment and responsive deliberation it becomes insightful how lobbying should improve to make the institution fairer. Hopefully my final recommendations will be helpful to get one step closer to a society where everyone is equally respected.

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