

PSW - PAPERS

1998 / 3

**Symbiosis or Controversy?
Governmental appraisal of lobbying and
lobbying regulation in the EU and USA.**

David Criekemans

1 maart 1998

Introduction ¹

During the last decade, lobbying has become a growing phenomenon in the European Union. Especially when judged upon the number of people that currently engage in lobbying activities in and around the EU-institutions. The phenomenon became more apparent since the Single European Act (SEA), which enlarged the EU-competencies (Bursens, 1996). Recent articles estimate that in Brussels around 10.000 people are involved in lobbying (Stephan, 1996).

Because of these developments, the European institutions became more aware of the advantages of lobbying, but also of the possible threats this posed towards the governmental decision-making process. In the European Parliament, attempts were made to harness the phenomenon, first with the ill-received report of Belgian MEP Marc Galle (1992), later on with the reports of the MEP's Nordmann and Ford. The debate however showed differences in European political culture concerning how the government and its administration should cope with lobbyists. These 'cleavages' result in a European decision-making process which is rather *transnational 'pluralist'*, a major depart from some existing *national corporatist* models. EU-lobbying still is being seen as rather controversial. Attempts are made to "anchor" the *principles of pluralism* into the very foundation of the newly forming European polity. First step was a compulsory registration of lobbyists.

¹ This article summarises some of the main research results of a much wider thesis-study '*Symbiosis or Controversy ? A comparative study of lobbying in the EU and USA with particular stress on governmental appraisal and lobbying regulation*' performed to obtain the degree of 'European Master in Public Administration' (EMPA) at the Catholic University of Leuven (KUL), during the academic year 1996-1997. The author would like to offer his sincere thanks to Professor W. Dewachter (KUL), Stefaan Fiers (KUL) and Peter Bursens (UIA) for their comments on the format and content of that study.

In the United States of America, pluralism is at the very core of its political institutions. Lobbying in the USA is approached as a normal and even *essential* aspect of the governmental decision-making process. But, this has *not* led to a more corporatist solution. However, in such a 'pure' pluralist model one would expect the lobbying regulation to be rather minimalist, as it is the case in the European Union. But Salisbury claims that the American lobbying regulation is rather strong (Salisbury, 1979, 220-221) :

"We do not have a comprehensive survey on the matter, but it seems clear that no democratic nation even remotely approximates the seriousness of the American effort to regulate the details of group-government interactions. "

Is the claim of Salisbury valid ? Is it true that this American regulation is fairly severe ? Is the EU-approach equal, or based upon another context ?

In the United States, a basic lobbying regulation has existed since 1946. The last adaptation is president Clinton's Lobbying Disclosure Act of 1995. However, although America upholds the principles of pluralism, their political election system seems to be one in which parties possibly can "win" elections thanks to the election support money given by (rich) interest groups. This is a feature of the American system that is rather unique when compared to other polities, certainly when compared to the European Union. It has nonetheless become an element of great controversy and became an election topic in the last presidential elections of 1996. In his campaign, president Clinton promised to make '*campaign finance reform*' one of the priorities of his administration.

Some also claim that the American system is in general moving towards more fragmentation : the central state is reducing its size ² and the states & local level gradually acquire more competencies. This could result in a system in which American lobbyists will possibly have even more '*points of entry*'. In the EU, a similar phenomenon is developing, but the other way around: interest groups have come to understand that many of the basic decisions are made at the EU-level. So, they have moved part of their lobbying efforts to this 'newly' developing polity. Looking at the institutions however; in the USA lobbyists mainly approach the U.S. Congress, in the EU they mainly use the route of the 'administration', the Commission. Why is this the case ?

The aspects and questions mentioned above make it interesting to study 'lobbying' in the EU and the USA in a more systematic way : to further enhance our understanding of the nature and evolution of interest intermediation on the Old and the New Continent.

The research question for this paper is thus descriptive in nature. It focusses on outlining the apparent differences and similarities in (the governmental appraisal of) lobbying, between the EU and USA. ³

² In the 1994-mid term elections, Republicans won the majority in the House of Representatives. Their "*Contract with America*" stated that the government should become 'smaller and smarter'. In his following 'State of the Union', president Clinton would take over this theme. This can be understood as a tendency of federal government to 'give back' some of its competencies to e.g. the States and the local level.

³ The thesis that forms the basis of this article, suggested also some possible explanations for these differences in the (governmental appraisal of) lobbying. These explanations were mainly formulated via a detailed comparative study of the Executive and Legislative Branch in both America and Europe, and their different attitudes towards "being lobbied".

In order to study this question, a number of elements will be looked more closely at. After defining 'lobbying' (1.), a brief general overview is given of the basic characteristics of the European and American decision-making polities (2.). After this first 'orientation', the paper will concentrate on two comparative case-studies in order to enhance our understanding of lobbying in the EU and USA. These two cases are : the structural impact of business and the lobbying regulation. In the first case-study, business elite groups are chosen as an object of study because they seem to have a rather similar structural impact on decision-making in both Europe and America (3.). A fourth and final element in this paper focusses on the second case-study: the American and European 'lobbying regulation'. Lobbying regulation is used here as a research tool to 'measure' and understand the position of governmental & administrative institutions vis-à-vis lobbying (4.). The basic hypothesis of this paper will be that lobbying in the American polity clearly finds itself in a further stage of development (institutionalization) than in the polity of the European Union.

1. Lobbying as a 'communication process'

Bart De Schutter says "*lobbying activity*" is an external sign of the activity of a 'pressure group' (De Schutter, s.d., 3). Lobbying is thus the way an interest group exerts its pressure on decision-makers. Or, as Milbrath describes more accurately (Milbrath, 1963, 8):

"Lobbying is the stimulation and transmission of a communication, by someone other than a citizen acting on his own behalf, directed to a governmental decision-maker with the hope of influencing his decision".

From this definition one can drift two conclusions. First, the fact that the actual action, the work of lobbying, can be done both by a representative of the interest group itself or by someone delegated by it. Secondly, the fact that lobbying is not only concerned with the legislative process *sensu stricto*. It can also involve *indirect* methods like the spreading of position papers, publications, and public adverts, making use of scientific studies, etc. ⁴

2. American & European interest intermediation scenes in depth

In order to get a systematic picture of the interest intermediation scene in both the EU and the USA, it is best to analyze the macro-level. Question is: do the American and European interest intermediation scenes mainly exhibit *pluralist* or *corporatist* traits ? Quite fundamentally, '*pluralism*' ⁵ and '*corporatism*' ⁶ are used here in their widespread and well-known meaning as defined by Schmitter (Schmitter, 1974, 93-98). Using these concepts, how could one best describe the nature of the American and European interest

⁴ The idea behind this definition of 'lobbying' is the following: when one wants to influence the decision-maker, it is essential to understand that the his/her decisions will be largely dependent of his/her perception of the situation or political reality. Therefore, the best way to influence the decision-maker is to influence his perception. This can only be done by communication, hence : *lobbying as a communication process*.

⁵ "**Pluralism** can be defined as a system of interest intermediation in which the constituent units are organized into an unspecified number of multiple, voluntary, competitive, non-hierarchically ordered, and self-determined (as to type or scope of interest) categories that are not specifically licensed, recognized, subsidized, created, or otherwise controlled in leadership election or interest articulation by the state and that do not exercise a monopoly of representational activity within their respective categories."

⁶ "**Corporatism** can be defined as a system of interest intermediation in which the constituent units are organized into a limited number of singular, compulsory, non-competitive, hierarchically ordered, and functionally differentiated categories, recognized or licensed (if not created) by the state and granted a deliberate representational monopoly within their respective categories in exchange for observing certain controls on their selection of leaders and articulation of demands and supports."

intermediation scenes ? What are the *similarities & differences* in lobbying for both polities ?

In 1967, Sidjanski predicted a possible growth of “European” lobbying:

"The more important, immediate and autonomous the powers, the more probable it is that groups will try to organise themselves at the level of these powers." (Sidjanski, 1967, 402).

When looking at lobbying in Washington and Brussels nowadays, a first aspect must be borne in mind: lobbyists mainly approach those institutions that - from the lobbyist's point of view - somewhat have *key* positions in the legislative and decision-making process.

In the European environment, lobbyists mainly approach the '*administration*': the Commission. Not surprisingly, since the Commission has the exclusive right of initiative (at least in the so-called 'First Pillar').⁷ In the first pillar, the Commission has an extremely important position. Lobbyists are very aware of this and will try to be on the scene, that is : to be as early as possible in contact with the official responsible for drafting the relevant legislation. The same is true for the United States. As indicated by Zegers, only members of Congress have the right of initiative for proposing legislation. Obviously, this makes Congress extremely important for the lobbyist. Nevertheless, the Presidential administration, which doesn't have such a right of initiative, can "hint" legislative proposals via its close contacts with loyal party-Congressmen (Zegers, 1992, 250).

⁷ In the other two pillars, the '*Common Foreign and Security Policy*' (CFSP) & '*Justice and Home Affairs*' (JHA), the memberstates are the main actors for initiation.

A first observation can thus be made: *as a result of the character of the legislative and decision-making process, lobbyists in the EU will primarily focus on the Executive - the Commission - , where they in the United States primarily focus on the Legislative branch: the U.S. Congress.* But, how could one characterize the specificity of lobbying both in the USA and the EU ? This question touches the very core of the political institutions and its underlying political culture.

2.1. Lobbying & American political practices: pluralism as guide

Anne Deysine claims that an essential cornerstone in the American political practices is the so-called "*First Amendment*" (Deysine, 1995, 9) :

"Congress shall make no law ... abridging the freedom of speech or of the press; or the right of the people peacefully to assemble and to petition the government for redress of grievances."

The public is thus free to organize their interests. Lassale accurately states that public power is however not monolithic. It may appear more as a constellation of rival and concurrent powers that 'lobby' and try to let their own viewpoints prevail (Lassale, 1995, 19-20). *Lobbying* becomes in this way a compensatory game between the public & private sphere (also inside the State itself), operating with *checks and balances*. This equilibrium contributes to both the weakness of the American State as to the force of its democracy. Lobbying, as seen from the American viewpoint, is an essential aspect of exercising democracy: a market where public and private interests collide with one another permanently. This "*market of interests*" is the main guarantee for political liberty. One can regulate its functioning, but one cannot deprive citizens of their fundamental right to group themselves.

2.2. The specificity of the American model

Many researchers see pressure groups in the US-system as the "price" of democracy and as the inevitable consequence of the growing complexity of managing the American political system. However, Lassale claims that researchers tend to underestimate the specific particularities of the American interest intermediation scene *and* the risks that directly flow from them. There are three particularities: (1) *the importance of (electoral) money*, (2) *the 'Iron Triangle'* and (3) *the 'revolving door'* (Lassale, 1995, 24).

* **(1) The importance of (electoral) money:** Increasingly, politics in the United States has become a product of interactions in an interest intermediation 'market'. In these circumstances, it is not surprising that money tends to play an essential role in the process. The average "price" of an electoral campaign in the U.S. House of Representatives is about \$ 600,000. A seat in the U.S. Senate "costs" about \$ 3,500,000. The re-election of parliamentarians can often only be assured if they dispose of the necessary financial means to outspend potential competitors. This is why American interest groups financially support a candidate via the so-called *Political Action Committees (PACs)*⁸ (O'Conner, Sabato, 1993, 554).

⁸ The 'Federal Election Campaign Act' of 1971, and its 1974-amendments, tried to prevent that any single group or individual would gain too much influence over elected officials, who "naturally" feel 'in debt' to their campaign contributors. The amount any interest group could give was sharply limited via creating the PAC's; these could give only up to \$5,000 per election. However, with this, 'giving money' was now "institutionalized" ...

* **(2) The 'Iron Triangle':** This indicates a configuration which tends to be a rather powerful characteristic for the American interest intermediation scene and which influences the decision-making process. In an *'Iron Triangle'*, three societal groups are closely involved with each other: officials from the Executive and their assistants, the Subcommittees of the U.S. Congress & the representatives of the interest groups. Together, they form an objective alliance in a largely dispersed and fragmented American political system. According to Zegers, this 'Iron Triangle' can even be seen in a pejorative sense as a triangular 'conspiracy' *against* the public interest. Lobbyists can then 'give' their own legislative proposals to Congressional subcommittees, that then, after approval, affect the 'defenseless' public (Zegers, 1992, 251).

* **(3) The 'Revolving Door':** The "revolving door" describes public officials (previously holding strategic positions in the administration) that start working as a lobbyist in the private sector. These ex-officials will bring their experience with them to their new private employers, often doubling or even tripling their previous remuneration. One could thus say that the law of the market is "king" in the US. However, the 'revolving door' brings inconveniences that have to be corrected. Under the Carter administration, the *'Ethics in Government Act'* was voted as a measure against the "revolving door". The law has recently been further reinforced via an *Executive Order* of President Clinton. He implemented the toughest ethics code on executive officials in American history. Former executive employees would be prohibited to: (1) act as a lobbyist vis-à-vis their former department or agency for *five* years, and (2) to help or represent a foreign company *for the rest of their lives* ⁹ .

⁹ XXX, (1995) *Remarks by the president at signing ceremony for the lobbying disclosure act of 1995*. Washington, D.C. : The White House ; 4 .

However, the "revolving door" is also possible with former members of Congress.¹⁰ Indeed, former members of the U.S. Congress often start working as a lobbyist (Vergeylen, 1989, 28-32). Some estimate that more than 100 of them today work as lobbyists. Many decide to stay in Washington after the end of their mandate and to use their knowledge and experience of the legislative & governmental decision-making process in another way. They can offer many potential advantages to a lobby firm: they have extensive knowledge of the functioning of the parliamentary system; and possibly can 'speed up' the legislative process, using their friends in the system.

2.3. The European "Revolving Door"

The phenomenon of the "revolving door" is also present in the EU. However, according to Kerstens, it is rather limited as compared to the United States (Kerstens, 1991, 141). Kerstens offers two reasons for this. First, the European polity is not characterized by a "spoils system", where the entire top of the administration is replaced when a president of another party assumes office. Second, the EU-officials receive a quite substantial salary, which makes them think twice before stepping over to the uncertain (but financially rewarding) profession of lobbyist.

¹⁰ According to Lammers, two factors seem to have accelerated the American "revolving door": (1) Today's Congress, with its demanding year-round schedule, cuts a member off from home and outside business interests. An ex-member may find he has little reason to go home, and little to sell (at least for his accustomed salary) but his knowledge of Congress. (2) Businesses have steadily enlarged their Washington presence, responding to increasing government regulation, to a dispersal of power in Congress and to competition from public interest groups. This expanded the demand for knowledgeable people to report on what the government is up to and attempt to influence it (Lammers, 1982, 93).

In the USA, the "*Ethics in Government Act* prohibits former executive employees to act as a lobbyist vis-à-vis their former department or agency for five years. For members of the Commission, there exists a minor regulation (art.157, Treaty on the European Union):

"...The members of the Commission cannot perform any other professional activities, with or without compensation. With accepting their office, they also commit themselves to follow all obligations resulting from their assignment, and to practice honesty and considerateness in accepting certain functions or benefits after that period of office."

There are also two articles in the "*Statute of civil servants & personnel within the European institutions*", which indicate how the EU-official should act vis-à-vis a pressure group (Kerstens, 1991, 139-140). *Article 11* says the official should always exclusively pursue the Community-interests without accepting directives from any other government, organization or person. The official *cannot accept any favours, presents, etc.* *Article 12* says the official cannot retain or receive any interests in those enterprises that are subjected by control of the [European] institution of which he or she is a member.

2.4. The specificity of the European model

According to Mény, the EU-decision-making-process can be characterized by several specific elements (Mény, Muller & Quermonne, 1996, 13-15) :

* **(1) Uncertainty:** the result of the absense of stable forms of leadership.

* **(2) Openness of the process:** The access to the circles of decision-making is generally easier than at the national level. The Commission is very open and has not closed in on itself, on the contrary. Keyword for external input is *expertise*. The Commission seeks to master such expertise by multiplying formal and informal contacts with the various partners in its orbit. This 'comitology' is not only present under the Commission. One could also discover it when studying the working-group level of the Council. So, the Commission adheres to the principle of 'open administration' vis-à-vis special interest groups (European Commission, 1992, 10). It tends to favour European (con)federations over representatives of individual or national organizations. Nevertheless, the Commission is committed to the equal treatment of all special interest groups, to ensure that every interested party - irrespective of size or financial backing - is given the opportunity of being heard by the European Commission.

* **(3) Opacity of the process:** Paradoxically, *the functioning of the system becomes less readable, the more open it becomes*. According to Mény, this can be explained by the fact that the 'rules of the game' are not yet stabilized.

2.5. American versus European lobbying: additional remarks

According to James Gardner, some critics fear that a rapid proliferation of special interest lobbying in Brussels will yield to the same political paralysis that afflicts the legislative process in Washington, D.C. However, again according to Gardner, this is unlikely. The EU's legislative process operates in a tradition of civility, the anti-thesis of the atmosphere of hostility and stalemate increasingly characteristic of special interest politics in America. It seems improbable according to Gardner that an increase in the volume of EU-lobbying will disrupt its 'civil' tradition (Gardner, 1991, 13-18).

*** (1) The Style of EU / US - lobbying --- *low-key* versus *high-key* :**

Numerous studies have shown a difference in style between lobbying on the New and the Old Continent. As Gardner describes it: "*In Brussels, you must learn to speak very softly.*" The "watch-word" is low-key. Many observers indicate that the high profile, swaggering style cultivated by certain American lobbyists in Washington is not useful in Brussels. On the contrary, it can even be counterproductive. High-pressure lobbying tactics aimed at Eurocrats or MEPs will backfire. Such techniques are often seen as being offensive. Furthermore, as Gardner stresses, it would be *a major breach of etiquette* to bring up the topic of campaign contributions with elected officials of the European polity ...

*** (2) The European "Information Deficit" :**

U.S. lobbyists are accustomed to having a fairly easy access to drafts, proposed legislation and to Congressional committee meetings open to the public. For them, the so-called European "information deficit" is a serious problem. This deficit not only manifests itself by a *lack of availability of certain key-documents* (proposals, amendments, etc.), but also by the fact that important *committee-meetings* in the *European Parliament* are often closed to the public. Working drafts of proposed legislation are normally unavailable from official sources. Important meetings of Council working-groups and of the European Commission's technical specialists occur out of the public view.

2.6. Corporatism: unsuccessful in both the EU and USA ?

Thus, synthesizing the above findings, one would soon conclude that both the polities of the EU and USA have a lot of characteristics of pluralism -- at least at the "macro-level". In both instances, (macro-) corporatism seems to have been an unsuccessful "experiment".

According to Graham Wilson, interest groups in the USA representing important economic groups lack the unity, membership and authority essential for the system to be classified as corporatist. According to Wilson two enduring factors, *geography* and the *strength of capitalism*, make a shift to corporatism unlikely in the United States (Wilson, 1982, 219-236).

A more or less similar remark can be made for the European Union, looking at the uniqueness of this last polity. Although a start has been made to develop a "Social Europe" in the recent controversial Amsterdam-Treaty, with its new Chapter on employment, the future of the 'European social dialogue' remains uncertain. One can even question whether in such large geographical areas as the USA or a future EU of 25 (or even more) members a real, structured social dialogue really can take place. The ill-fated *European 'tripartism'* for example was in part an effort to create institutional mechanisms to ensure that business interests were counter-balanced by organised labour. But the conflict between capital and labour is no longer at centre stage. The EU nowadays has to ensure that less-organised interests such as consumers, environmentalists, etc. are able to make their voices heard in Europe, alongside that of business. Grant fears however that a European lobbying regulation could lead to 'the emergence of an "inner" and "outer" circle of Euro-groups' (Mazey, Richardson, 1993, 258). This might be *less beneficial for democracy*: it could reinforce existing biases which tend to favour big multinationals.

Indeed, business has a very strong *structural* impact, both on the European and American polity. An additional approach, “*Marxism*”, can outline a framework that assists in a better comprehension of this structural impact of business.

3. ‘Amending’ macro-pluralism: the structural impact of business

Pluralism starts from the assumption that there exist internal and external 'checks and balances' to ensure that power is not concentrated into the hands of a few groups. Externally, the pressure of interest groups is compensated by so-called 'anti-groups'. Internally, governments need support to be re-elected and therefore also consider the opinions of others. However, the following critiques on pluralism have been made (Smith, 1990, 302-322):

- (1) *there is a lack of attention to the interests and activities of the government and its bureaucracy*
- (2) *the influences of pressure groups derives not so much from their resources, but from the organization of government*
- (3) *pluralists fail to take account of the role of ideas ('ideologies') in the policy process*
- (4) *pluralists fail to take sufficient account of external structural demands on government (e.g. a country's competitive position)*

Classic pluralists see countervailing powers as sufficient to ‘check’ business. However, it can be seriously doubted that this is the case in reality. Business has a *privileged* position, both in Europe as in the United States. A major development in the effort to understand this phenomenon was Lindblom's recognition that business has extra resources in the political sphere. Two important factors augment the position of business groups : (1) *Government needs the economy to be successful*. In order to achieve these aims, it has to give business inducements. In this way, business thus achieves a 'privileged

position in government', (2) *In a market system, many decisions are taken by business* which are then removed from the governmental agenda. Consequently, there is no democratic control over important decisions which affect crucial aspects of people's lives.

Lindblom can thus be seen as a representative of the Marxist's view. The structuralist approach of *Marxism* claims something which is difficult to accept by traditional pluralists: that power can exist in the very organization of society. *Firstly*, power can exist without business having to take any action. *Secondly*, it exists in structures, not in individual or group actions.

A quite usable concept of looking at the impact of business groups again comes from Lindblom. With his distinction between '*Grand Issues*' and '*secondary issues*', Lindblom indeed offers a way to investigate the activities of business interest intermediation activities on the scene (Lindblom, 1977, 178). According to Lindblom, 'Grand Issues' are those which are closed to the general public and concern major interests of business. 'Secondary issues' on the other hand, are those where there is pluralism and debate.

This approach could possibly be applied to the European scene. Grant describes for example how the top European Executives followed the American approach and created a 'European Round Table of Industrialists', which has enjoyed direct access to the members of the Commission (Grant, 1995, 115-118). Furthermore, Streeck and Schmitter explain how European business and governmental elites joined forces in the '*1992 Project*' (surely, a 'Grand Issue'), each for their own reasons (Schmitter, Streeck, 1994, 180-182). The two researchers judge this project to be nothing more than a "*subtle form of deregulation*" in response to similar American deregulations and deunionizations, carefully constructed to renew competition.

The *American Business Round Table* is according to Astre and Lepinasse one of the most invisible, yet most efficient lobbies at Capitol Hill (Astre, Lepinasse, 1985, 71-77). Established in 1973, it enjoys the most direct access, at the highest level, with the Executive and the U.S. Congress. Its principal objective was *combatting the power of the unions*, specifically the AFL-CIO, whose demands significantly threatened the profits of industry.¹¹

As Grant affirms, the most effective business organization in the European polity has been the '*European Round Table*' (ERT), set up in 1983 (Grant, 1995, 116-118). It brings together 45 executives of leading European companies. Membership is by invitation only. The ERT enjoys direct access to the Commission members as well as heads of government. Its formation was encouraged by the then industry commissioner, the Belgian Davignon, hoping the ERT could give a new momentum to the integration process. However, there has been some controversy about the extent to which the ERT was responsible for the launch of the Single European market :

" the agenda for the Single Market program was largely set by the ERT. Through their articulation of the need for European industrial growth and the creation of European-scale projects, ERT members made it clear in direct meetings with government leaders why a unified market was vital. When the French government and the Commission produced a concrete proposal for a unified market, the ERT provided a solid plan. It also proved to be an indispensable ally for Delors, Cockfield and the Commission when they undertook their policy initiatives in 1985."

¹¹ Today, the American Business Round Table remains to be guided by two major preoccupations : (1.) favoring laws that are favorable to the interests of business, (2.) avoiding irreconcilability of business interests, so as to be strong and favor all usefull compromises. The 'obsession' of the Round Table rests however mainly focussed on *combatting all*

Similarly, Streeck & Schmitter provide some stunning evidence of how close observers think business approaches the European polity. The extract below is something the two scientists claimed they overheard at a conference for business on Europe '92, in december 1989 (Schmitter, Streeck, 1994, 170):

"I know what the EC really stands for: 'the "Executive Committee" for managing the common affairs of the bourgeoisie !' These businessmen really do expect to recuperate at the level of Europe as a whole what they have lost at the level of the nation states -- the capacity to govern as they please in the interest of capitalism as a whole "

To conclude this part, it has been shown that 'Marxism' highlights a sometimes forgotten variable; the structural impact of business in both the European and American interest intermediation environments.

4. Lobbying regulation : touching the core of a political system

4.1. Theoretical relevance of lobbying regulation for this paper

Until now, it has been shown that both the EU and the USA - when studied at the macro-level - are rather pluralist in nature (cf. definition 'pluralism', page 9). However, it must be admitted that the Commission subsidizes or even has assisted in creating certain interest groups. But, this should not be seen as 'corporatism' since the objective of this subsidization was to promote pluralist interest representation at EU-level.

reglementation projects that potentially could hurt big business. Clearly, the objective of the American Round Table is to protect business-interests in 'Grand Issues'.

Both lobbying cases thus seem to be similar. Nevertheless, there are also *substantial differences*: in political culture, in the ways in which the institutions operate and which kind of institutions are mostly lobbied. Therefore, a final question: how does pluralism affect lobbying regulation in a particular polity ?¹² Further extrapolating from the research, one would expect that:

Lobbying regulation in a mostly pluralist environment will tend to be formulated in a fairly 'negative' way; primarily to prevent abuses and to "anchor" a minimum pluralist competition between potential pressure groups. It concerns a set of minimal requirements that define: (1) the conditions under which some persons may (not) lobby, (2) the interests for whom they can (not) lobby, and (3) the circumstances under which lobbyists may (not) lobby certain governmental institutions (executive, legislative or even juridical). The minimum regulation often concerns a directory of all people "lobbying" for some interest.

The above expectation is founded on the scarce literature that exists concerning the relation between pluralism & lobbying regulation. Olson indicated that pluralists are not very fond of strong lobbying regulations (Olson, 1971, 125). Another 'classic' pluralist author, David B. Truman, only agrees with a regulation if it is kept as minimal as possible. Olson claims that Truman feared a too tight lobbying regulation could bring the equilibrium of group pressures in an unbalance.

¹² *Lobbying regulation* is used here as a research tool to 'measure' the position of governmental & administrative institutions vis-à-vis "lobbying" as a phenomenon.

The goal of the final part in this paper is thus to understand the current legislative debates on lobbying practices in both Brussels and Washington. It will be argued that the above expectation concerning a minimal lobbying regulation in *pluralist* societies is true to some extent, *but* that it is necessary to look at the context of "lobbying" in both America and Europe. Does the *specificity of both the American and European polity* perhaps have an impact upon the priorities for lobbying regulation ?

4.2. USA: regulatory adaptation for business' structural impact

Earlier it has been mentioned that interest groups in the US are seen as a basic and necessary element in a viable democratic governmental process. As a result, one would expect restrictions on interest groups to be rather minimalist. The question raises whether the current *lobbying regulation* and *campaign finance reform*-debate in Washington affirms this expectation.

It took nearly a century before the American political system responded to the (potential) adverse effects that lobbying could generate. The first to be regulated were the foreign interests, and this for a logical reason: the fear that foreign interests possibly might compromise Washington's national sovereignty. The so-called "*Foreign Agents Registration Act*" was a product of its time : it was enacted in 1938 to keep watch on Nazi's and other subversive groups in the US. Since then however, the law's focus changed: from identifying persons trying to 'subvert' the government to - nowadays - identifying those seeking special influence.

After the registration of foreign interests, it would take until 1946 before a basic regulation on lobbyists would be developed. Its main purpose was to guarantee the *pluralist* foundations upon which the American political system was built. The situation would however turn out quite different: *loopholes*¹³ in the new law were discovered by (important) interest groups that didn't want their activities to be disclosed. This is why the "*Federal Regulation of Lobbying Act*" of 1946 would become quite controversial for many decades (Vergeylen, 1989, 67).

American lobbying groups have been relatively successful in preventing severe regulation of their activities. In this effort, the groups repeatedly referred to the '*First Amendment*' of the Constitution (cf. supra). They used this basic concept to judge each effort for severely regulating lobbying as a fundamental attack upon their constitutional liberties. The 1946-law tried to install a certain control without violating the fundamental right of expression arising from the First Amendment. However, pressure groups soon found ways to circumvent it. As a result, the very foundation upon which the American political system has been built, pluralism, was gradually at risk of becoming surpassed by the powerful interest groups.

¹³ Among the 'loopholes' of the law were: (1) the collection or receipt of money: the law didn't cover groups or individuals that spent money to influence legislation *unless* they also collected or received money for that purpose, (2) the 1946-law just obligates to mention the nature and origin of the means used to "influence" Congress. The court said that an organization or individual was not subject to the regulation *unless* the method used to influence Congress involved some direct contact with Congressmen. But many groups claimed their main objective was not to lobby, but to "*inform*" their members. (3): The 1946-law left it up to each lobbyist to determine what portion of total expenditures were to be reported as spending for lobbying. (4): It applied only to attempts to influence Congress, not administrative agencies or the executive branch (Lammers, 1982, 36-37). (5): In order to be submitted to this law, "lobbying" has to be one's major occupation. But, it is difficult to prove whether you use 40 to 60 percent of your time to lobby. (6): A final weakness concerned the lack of enforcement. In practice, the Minister of Justice had to receive a complaint before an investigation could be initiated.

4.2.1. The 'Lobbying Disclosure Act' (1995): preserving pluralism

Indeed, as the decades after 1945 went by, the impact of business interest groups would become more and more apparent. The American public would only gradually become aware of this. A new lobbying registration initiative, designed to replace the ineffective 1946-Act, was launched.

The millions of dollars spent each year to influence members of Congress and executive branch officials would be exposed to newfound public scrutiny thanks to the "*Lobbying Disclosure Act*" of 1995. The new legislation toughened the nation's lobby registration requirements for the first time in 40 years. Virtually anyone hired to lobby would now be required to report what issues they were seeking to influence and how much they were spending on the effort. How the legislation (technically referred to as 'S 1060') will change Congress in the long term is still an open question at the time of the writing of this paper. However, it is clear the American public (and academic world) now has the means for having a more detailed look into the world of lobbying, which has long operated behind closed doors. At the signing ceremony, Clinton stated ¹⁴ :

" The days of secret lobbying are over. Throughout our history, the people of our country fought to make the government hear their voice. This new law is in the best tradition as articulated by President Andrew Jackson a long time ago, 'Equal opportunity for all; special privileges for none.' "

¹⁴ XXX, (1995) *Remarks by the president at signing ceremony for the lobbying disclosure act of 1995*. Washington, D.C. : The White House ; 4 .

The 'Lobbying Disclosure Act' of 1995 neutralized the major loopholes of its predecessor. While the 'old version' only covers those who lobby members of Congress, the new bill would cover lobbyists who sought to influence congressional staff members and policy-making officials of the executive branch, including the president, top White House officials, Cabinet secretaries & their deputies, and independent agency administrators & their assistants (Salant, 1995, 3632).¹⁵

The 1995-Act took place in a new atmosphere to "renew America". However, the most difficult of all reforms was still ahead: *Campaign Finance Reform*. Its aim was to reduce the influence of money on elections.

4.2.2. Campaign Finance Reform, the next step ? (1996- .?)

At the core of the 'campaign finance reform'-debate lies the fear (or even: proven fact) that *the more money a candidate can spend, the higher his or her chances for being elected*. Thus, pressure groups seem to be able to have an enormous impact upon the electoral process. Money is the element that binds political parties and pressure groups together. This phenomenon is visible at every level of government; the local, state or federal level.

¹⁵ Concerning the *information requirements*, the new registration forms include the name, address, principal place of business and phone number of the registrant, and a general description of the registrant's business or activities, as well as the same information about any client. Semi-annual reports have to list the specific issues lobbied on, including, to the extent possible, bill numbers or references to specific actions, a list of the chambers of Congress and the executive agencies contacted, the lobbyist(s) involved, and the involvement, if any, of a foreign entity. The lobbyist would not have to disclose the names of the lawmakers, staff members, executive branch officials, or congressional committees contacted. Semi-annual reports would also have to include an estimate of the cost of the lobbying campaign.

During the 1996-presidential race, the search (for money) took such proportions that the public started to ask questions whether the system wasn't brought out of balance by the 'search for even more election funds'. George Stephanopoulos, President Clinton's First Term White House Spokesman, would later write (Stephanopoulos, 1997, 27):

"We knew that it would take a miracle for Bill Clinton to be re-elected. It would take also cash, tons of it, and everybody from the president on down knew it. So, money became a near obsession at the highest levels. We pulled out all the stops: overnights at the White House, coffees, intimate dinners at Washington hotels, you name it. "

The president was those last months more occupied with raising money, than with 'governing' the country. Clearly, in the mind of the public, the situation had gone out of hand. Recently however, the McCain-Finewood-bill proposed far-reaching campaign finance reforms (McCain, 1996, 29).¹⁶ As Alexander points out, American campaign finance reform is a *continuing experiment* (Alexander, 1995, 37-38). Like American democracy itself, the system of campaign finance regulation is an experiment that undoubtedly will continue to be modified. Today, the issue is to further limit the impact of wealthy and powerful pressure groups.

¹⁶ Among these proposals; **(1) Limit spending:** objective is to level the playing field in elections. Past races showed that the candidate who raises the most money usually wins. Spending limits could change that dynamic. Candidates would voluntarily agree to a spending ceiling. *In return,* they would be eligible for certain incentives: 30 minutes of free broadcast time; reduced postal rates for campaign mailings, and lower rates for TV-advertising. **(2) Restrict out-of-state contributions:** the majority of funds should come from people who live in a candidate's state, not from wealthy donors in other parts of the country. The proposal is that candidates would raise at least 60 percent of their contributions in their home state. **(3) PACs** (cf. supra) **should be abolished:** If this is unconstitutional, then one could strictly limit the amount of money given to them.

So, concluding on American governmental appraisal of lobbying, one could claim that the US finds itself today in a 'further' stage of "institutionalization" of the phenomenon of lobbying (concerning the regulation of lobbyists, but also the 'acceptance' of lobbying as a *vital* aspect of the decision-making-process) than the EU. The **most important insight** is however that *although a pluralist society can be expected to have - on principle - only a minimal lobbying regulation* (cf. Truman; see supra), the further a political system develops, the more profound the regulation adaptations it needs : to prevent a domination of the system by certain groups, and so to preserve pluralism itself in the long run.

The next item shows that the current European lobbying-debate mainly focusses on 'anchoring' of these principles of pluralism into the 'newly' crystallizing European polity. This is '*transnational pluralism*'; installing pluralist principles on a polity-level above the 'heads' of the nation states.

4.3. The EU's minimal regulatory framework on lobbying

It took quite some time (but not so long as in the US) for Europe to address the issue of lobbying. Interestingly, the EU-debate on lobbying regulation, has been closely linked to the issue of bringing more transparency into the EU-institutions (cf. the EU's *democratic deficit*). The first steps in the European lobbying regulation-debate were the ill-received report of MEP Marc Galle and the Commission-initiative on transparency (1992).

In the EP, the Galle-report of 1992 on the "*reglementation of the representation of interest groups within the European Parliament*" resulted in insurmountable discussions. The report wanted to regulate interest intermediation in order to prevent abuses, rather than restricting it. It suggested that these objectives could be achieved by specifying *minimum requirements*

as part of a code of conduct (e.g. on trespassing in institutional buildings, selling Commission documents, registering of lobbyists on an annual basis, etc.). Centrepiece of the Galle-report was the creation of a register of lobbyists¹⁷. The Commission had the benefit of watching the debate in the EP before responding with its own proposals. While promising more *transparency for lobbyists*, the Commission also stressed for a *lobbying directory* to make clear "who is who"¹⁸. This will shortly be used as a 'tool' by Commission officials to ensure they are consulting as many interested parties as possible. An official would still be able to receive and talk to lobbyists which are not present in the database.

After the Commission's transparency-efforts, the stress upon the EP grew to take further measures on 'EP-lobbying registration'. In the second report on interest groups in the EP, Glynn Ford tried to install a "minimum relementation". His proposals were designed to combat the alleged 'buying' of support & harassment by certain groups^{19 20}. In May 1997, after fierce discussion, an eight-point code of conduct (Ford, 1997, 9) - drafted by British Socialist MEP Ford - was adopted by a large majority of MEPs (Watson, 1997, 10). He reminded people that the code is *compulsory*, not voluntary.

¹⁷ XXX, (1992) 'PE/Lobbying: M. Galle va proposer une réglementation spécifique pour les lobbies auprès du PE - auto-organisation et enregistrement', in *Agence Europe*, 40(5661): 12.

¹⁸ The database will contain: *the name of the organisation, its address, phone and fax numbers, names of senior managers and the principal objectives of the organisation.* Maintenance of the directory will be contracted out to a private enterprise.

¹⁹ XXX, (1995) 'New code of conduct aims to combat cowboys', in *European Voice*, nov, 16: 16.

²⁰ (1°:) MEPs should declare any gifts worth more than 1,000 Euro, (2°:) lobbyists should declare any gifts or payments they make, (3°:) lobbyists must sign a register giving justifiable reasons for wanting access to Parliament before gaining an entry pass, (4°:) a pass must be worn visibly at all times.

However, there was insufficient support for the idea that in exchange for the annual renewal of their entry passes, lobbyists should provide a detailed report each year of their efforts to influence the Parliament's decision-making process (as is the case in the USA nowadays). Most MEPs argued that such a requirement was excessively bureaucratic and Dutch Liberal Florus Wijsenbeek dismissed it as "complete nonsense".

5. Conclusion: a different lobbying-context in the EU and USA

This paper's main conclusion is that both political systems (EU and USA) tend to be in a different stage of development. The institutionalization of "lobbying" seems much further entrenched in the USA. The American administrative & legislative bodies have wide experience with lobbying. Lobbying and the American decision-making process have developed in such close *symbiosis* since the origin of its political institutions, that they have become closely intertwined. Recent U.S.-regulatory lobbying reforms aimed at further ensuring *pluralism*; to prevent a further overweight of business.

Europe however, finds itself in a different situation; it 'recently' encountered an immense growth in lobbying, mainly because the European polity itself is still developing. However, in Europe only the 'ground rules' of lobbying have been formulated. The EP had a lot of difficulty with developing a minimal regulation. The days just after the SEA, when MEPs clapped in their hands for the first lobbyists to arrive in the assembly buildings, are over. Now that the serious work is done, MEPs increasingly complain "being harassed" by lobbyists. Clearly, *a culture still has to develop* so that MEPs and lobbyists can see each other more as being in symbiosis with each other.

Bibliography

ALEXANDER, H., (1995) 'Financing of elections and lobbying: the role of the PACs in the 1992 elections', in *Revue Française d'Études Américaines*, 63: 31-38.

ASTRE, G.-A., LEPINASSE, P., (1985) *La démocratie contrariée. Les lobbies et le jeu des pouvoirs aux Etats-Unis*. Paris: La découverte; 246.

BINDI, F., (1992) *Lobbying the EC: that Unknown Power*.
s.l. : NUPI ; 454 + 38.

BURSENS, P., (1996) 'De Europese lobby's en de Europese instellingen', in *Res Publica*, 38(1): 113-134.

DE SCHUTTER, B., (s.d.) *De pressure groups in de Verenigde Staten. De lobby als instelling tegenover de wetgeving*. Brussel: Vrije Universiteit Brussel; 32.

DEYSINE, A., (1995) 'Facettes du lobbying : l'Amérique est-elle à vendre ?', in *Revue Française d'Études Américaines*, 63: 7-16.

EUROPEAN COMMISSION, (1992) *SEC(92)2272 final - An open and structured dialogue between the Commission and special interest groups*. Brussels: European Commission; 10.

FORD, G., (1997) *PE 219.668/def. - VERSLAG over de gedragscode voor lobbyisten*. Brussel: EP Commissie Reglement, geloofsbrieven en immuniteiten; 9.

GARDNER, J., (1991) 'Charming the Eurocrats: How to lobby effectively in the EC', in *The Journal of European Business*, jan/feb: 13-18.

GRANT, W., (1995) *Pressure Groups, Politics and Democracy in Britain*. London: Harvester, Wheatsheaf; 177.

JONES, T., (1995) 'Firms turn to lobbyists to knock at EU's door',

in *European Voice*, nov, 16: 16.

McCAIN, (1996) 'How to Clean Up the Mess', in *Newsweek*, 128(18): 29.

KERSTENS, P., (1991) *Lobbyen op het Europese beleidsniveau*.
Leuven: KUL Eindverhandelingen; 148.

LAMMERS, N., (ed.) (1982) *The Washington Lobby*.
Washington: Congressional Quarterly, Inc.; 166.

LASSALE, J.-P., (1995) 'Les lobbies aux États-Unis: privatisation ou démocratisation du pouvoir ?', in *Revue Française d'Études Américaines*, 63: 17-30.

LINDBLOM, C. (1977) *Politics and Markets*. New York: Basic Books.

MAZEY, S., RICHARDSON, J., (1993) *Lobbying the European Community*. Oxford: Oxford University Press; 258.

MENY, Y., MULLER, P., QUERMONNE, J.-L., (1996) 'Introduction', in MAJONE, G., (1996) *Adjusting to Europe. The impact of the European Union on national institutions and policies.*: 1-22. London: Routledge.

MILBRATH, L., (1963) *The Washington Lobbyists*.
Westport, Connecticut: Greenwood Press; 431.

O'CONNOR, K., SABATO, L., (1993) *American Government. Roots and Reform*. New York: MacMillan Publishing Company; 723.

OLSON, M., (1971) *The logic of collective action: public goods and the theory of Groups*. Cambridge, Mass.: Harvard University Press; 186.

SALANT, J., (1995) 'Bill would open windows on lobbying efforts. Registration requirements toughened as far-reaching bill ends era', in *Congressional Quarterly Weekly Report*, 50(47): 3631-3633.

SALISBURY, R., (1979) 'Why No Corporatism in the United States ?', in SCHMITTER, P., LEHMBRUCH, G., (1979) *Trends Toward Corporatists Intermediation.*: 213-230. London: SAGE Publications.

SCHMITTER, P., LEHMBRUCH, G., (1979) *Trends Toward Corporatists Intermediation.* London: SAGE Publications; 327.

SCHMITTER, P., LEHMBRUCH, G., (1982) *Pattern of Corporatist Policy-Making.* London: SAGE Publications; 291.

SCHMITTER, P., STREECK, W., (1991) 'From National Corporatism to Transnational Pluralism: Organized Interests in the Single European Market', in *Politics & Society*, 19(2): 133-164.

SCHMITTER, P., STREECK, W., (1994) 'Organized Interests and the Europe of 1992', in NELSEN, B., STUBB, A., (eds.) (1994) *The European Union. Readings on the Theory and Practice of European Union.*: 169-188. London: MacMillan Press, Ltd.

SIDJANSKI, D., (1967) 'Pressure Groups and the European Community', in *Government and Opposition*, 2(4): 397-416.

SMITH, M., (1990) 'Pluralism, Reformed Pluralism and Neopluralism: the Role of Pressure Groups in Policy-Making', in *Political Studies*, 38: 302-322.

STEPHAN, P., (1996) '10.000 Lobbyisten à Bruxelles', in *Paris Match*, 2448.

STEPHANOPOULOS, G., (1997) 'The View From Inside. A former Clintonite on why the White House was so desperate for cash', in *Newsweek*, 129(10): 27.

VERGEYLEN, G., (1989) *Lobby: een vergelijkende studie van de VS en Europa.* Brussel: VUB Eindverhandelingen; 160.

WATSON, R., (1997) 'New code to bind lobbyists',
in *European Voice*, 3(19): 10.

WILSON, G., (1982) 'Why is there no corporatism in the United States ?',
in SCHMITTER, P., LEHMBRUCH, G., (1982) *Pattern of Corporatist
Policy-Making*: 219-236. London: SAGE Publications.

XXX, (1992) 'PE/Lobbying: M. Galle va proposer une réglementation
spécifique pour les lobbies auprès du PE - auto-organisation et
enregistrement', in *Agence Europe*, 40(5661): 12.

XXX, (1995) 'New code of conduct aims to combat cowboys',
in *European Voice*, nov, 16: 16.

XXX, (1995) *Remarks by the president at signing ceremony for the
lobbying disclosure act of 1995*. Washington, D.C.: The White House; 4.

ZEGERS, J.-M., (1992) 'Hoofdstuk 15 - Washington: the American Way',
in BENNIS, W., PAUW, B., VAN SCHENDELEN, M., (1992) *Lobbyen,
hoe werkt 't ?* : 243-256 ; 's-Gravenhage: SDU.
