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LOBBYING IN A LEGAL FRAMEWORK OR “BRIBERY IN A SUIT”?

ЛОБІЮВАННЯ В ЮРИДИЧНИХ МЕЖАХ АБО «ХАБАР У КОСТЮМІ»?

*Aleskerova Sara Tahir gyzy,
Doctoral Student
of Baku State University*

The article discussed some aspects of is lobbyist a legal actor of decion making process or just “bribe giver and taker”. Indeed, some state laws limit the definition of lobbying to attempts to exert undue influence. Decisions made by private organizations or corporations or from outside do not affect the entire political body. All lobbying is motivated by a desire to influence government decisions. Many actions and events influence the outcome of government decisions, but they are not accompanied by the intention of influence, which is not lobbying. The purpose of study is to determine the real definition of lobbying in the USA and the difference between “lobbyism” and “corruption”. The methodology of the research involves using the qualitative methods including content analysis, discourse anylysis, analysis of existing rules, documents, recommendations, research papers, experience and also expert critique of lobbying is used. Moreover, a strong empirical background and descriptive method of study are used in this research. The scientific novelty of the article is that this research is the first broader research on identifying diffirience between lobbying and corruption. In the final analysis, outcomes of debates over the role of lobbying in the USA policy and lobysits’ impact on decision making process in Washington are researched in this article. Whenever, in this article these two synthesized words were analyzed as totally different concepts. This article can include both what we define as corruption but also what we define as lobbying. Our exploration starts with a brief history of legislative lobbying in America. Famous researchers’ such as Lester Milbrath, John Mearsheimer, Stephen Walt’s opinions related the topic also are included to the article. We tried to figure out, to shine light on the “dark art” of lobbying by explaining who lobbyists are and what exactly they do. All in all, nobody suffers (except the public) so it’s a case of no harm no foul. (The public don’t count.) I think this statement by Chris Price is a reality of American lobbying process: “No harm, no foul because the public don’t count”. In my opinion, lobbying is necessary and healthy part of democracy which keeps system dynamic.

Key words: Lobbying, bribery, corruption, USA policy, American Congress, lobbyists.

Мета дослідження – визначити реальне значення лобіювання в США і різницю між «лобізмом» і «корупцією». Дійсно, деякі державні закони обмежують визначення лобіювання спробами зловживати впливом. Рішення, прийняті приватними організаціями або корпораціями або ззовні, не впливають на весь політичний орган. Усе лобіювання мотивоване бажанням впливати на рішення уряду. Багато дій і події впливають на результати урядових рішень, але вони не супроводжуються наміром впливу, який не є лобіюванням. Методологія дослідження включає в себе використання якісних методів, включаючи контент-аналіз, дискурс-аналіз, аналіз існуючих правил, документів, рекомендацій, дослідницьких робіт, досвіду, а також експертну критику лобіювання. Крім того, в дослідженні використано сильний емпіричний фон і описовий метод. Наукова новизна статті полягає в тому, що це дослідження є першим найширшим дослідженням із виявлення відмінностей між лобіюванням і корупцією. У кінцевому підсумку в даній статті досліджуються результати дебатів про роль лобіювання в політиці США і вплив лобістів на процес прийняття рішень у Вашингтоні. У даній статті ці два синтезовані слова були проаналізовані як абсолютно різні поняття. Сформульовано, що саме ми вважаємо корупцією і що ми називаємо лобіюванням. Наше дослідження починається з короткої історії легалізації лобіювання в Америці. Відомі дослідники, такі як Лестер Мілбрат, Джон Мершаймер, Стівен Уолт, розглядали дану тему. Ми спробували з’ясувати, пролити світло на «темне значення» лобіюванні, пояснивши, хто такі лобісти і що саме вони роблять. Загалом, ніхто не страждає (крім суспільства), так що то не шкода, не фол (товариства не беруться до уваги). Вважаємо, що заява Кріса Прайса є реальністю американського лобістського процесу: «Ні шкоди немає, ні фолу, тому що публіка не береться до уваги». Але, на наш погляд, лобіювання є необхідною і повноцінною частиною демократії, яка підтримує динаміку системи.

Ключові слова: лобіювання, хабарництво, корупція, політика США, американський конгрес, лобісти.

Introduction. Nowadays lobbyists has become third actor of decion making process. However the words lobbyist and lobbying have so various meanings that use of them almost inevitably can lead to misunderstanding. As is the case with all such words, it is lack of precision results in faulty communication

of ideas among people. Different people can perceive the definition of lobbying in different ways. One man thinks of lobbying as the factual presantation of useful data to legislators. To another, it means sinister influence peddling by pressure groups with reckless disregard for the general welfare.

The main goal of the article is to show all those reasons for that lobbying and corruption are completely different notion from each other.

The methodology of the research. In trying to understand the underlying differences between these two phenomena, the fact that something is legal or not, does not seem a useful distinction in itself, particularly as different legal systems will disagree on specific examples, and a number of scientific methods were used in this article. Such as content analysis, discourse analysis, analysis of existing rules, documents, recommendations, research papers, experience and also expert critique of lobbying is used. Using these methods we tried to suggest that the underlying difference between lobbying and corruption might be in the means used to obtain influence. Therefore, lobbying might be defined as a series of activities that influence the decision making of state representatives but which do not provide these representatives with direct gains. Corruption, on the other hand, consists precisely of those activities that provide direct gains. Thus, providing politicians with expert advice in order to influence their vote on a specific piece of legislation will be interpreted as lobbying while paying the same politicians to vote in a certain way will be defined as corruption.

The scientific novelty. This is the first broader research on identifying difference between lobbying and corruption which also took into an account the position of critics of lobbying.

The main matters. Unfortunately, in American politics “lobbyist” has always been a dirty word. Despite being an instrument of social participation legitimizing and expanding the democratic process by articulating visions of different sectors, subsidize the formulation of public policies and guide state actions, the lobby suffers with the prejudice and the stigma of marginality when being associated, in a way corruption, and influence peddling. However, it is undeniable that the lobby, exercised within the law and ethics, with clear and defined objectives in the influence of the decision-making process and the definition of the governmental agenda, imposes relations between the State, private entities and civil society, strengthening and thus perfecting democracy [1, p. 5–7].

Lobbying was originally made as a way for politicians to understand new laws and regulations. Think along the lines of a political tutor. Over time however, money became an issue, and lobbyist started to serve as a middleman. Fueled by the money of various industries, lobbyists have become their men and women at Washington. It is undeniable that, as a time passed these middlemen became the richest people in America. Therefore, lobbying became one of the most profitable jobs in the USA [1, p. 15–17]. But the lobbyist is not just a mediator between decision maker and the person who wants to influence the decision-making process. There are a number of characteristics of a good listed lobbyist [8]:

- Good knowledge of the legislative process and the decision-making process.
- Discretion.
- Understanding of the political scenario.
- Understanding of the client’s goals.
- Honesty and ethics.
- Qualified information.
- Provide reliable and well structured information.
- Power of communication and persuasion.
- Have good contacts.
- Serenity.
- Strong academic background.
- Work the information in defence of your client and know how and where forward them.

What is a real definition a lobbying?

It is said that lobbying is probably as old as government. But as the time passed lobbying has become an integral part of policy-making process in Congress. Once, liberal-democrat MEP Chris Davies explained: “I need lobbyist and I depend on lobbyist” [6, p. 20].

In fact, Congressman Celler suggests that lobbying probably preceded government since the establishment of a governmental system implies the accommodation of conflicting demands of participating groups. We can look at the end of the 18th century to trace the history of lobbying and understand the origin of its influence. On 22nd November 1787, James Madison – one of the Founding Fathers and 4th President of the United States to-be – published an essay called “Federalist No 10” [10]. This text is part of a series of writings arguing for the ratification of the future Constitution and refers to the management of factions, i.e. groups of individuals who share a common purpose in various interests: social, economic or intellectual.

Regulating the profession of lobbying in the United States first came in 1938 with the Foreign Agents Registration Act (FARA). The primary purpose of FARA was not to restrict lobbying practices, but to open the books on who is paying for lobbying campaigns [5, p. 4]. Since lobbying is legal, lobbyists are required to register with the Secretary of the Senate and the Clerk of the House. Furthermore, lobbyists must file disclosures of their lobbying activity according to the Lobbying Disclosure Act of 1995. No such formalities are required of bribe givers or takers [10].

Indeed, some state statutes limit the definition of lobbying to attempts to exert improper influence. Despite the imprecision of the term lobbying some boundaries can be defined: Firstly, lobbying relates only to governmental decision-making. Decisions made by private organizations or corporations or from without but they do not affect the entire body politic. Secondly, all lobbying is motivated by a desire to influence governmental decisions. Many actions and events affect the outcome of governmental decisions but they are not accompanied by an intent to influence, there is no lobbying. Thirdly, lobbying implies the presence of an intermediary or representative as

a communication link between citizens and governmental decision makers. Indeed, legitimate lobbying activities therefore improve the quality of public decision making and promote the democratic right to petition government [9]. A citizen who sends a message to a governmental decision maker is not considered a lobbyist – though he is attempting to influence governmental decisions. Some may not agree with it. However, if all citizens are potential lobbyists and if all voters all lobbyists the word lobbying would lose its usefulness [2, p. 23–27].

Lobbying is one of the means by which “the people” – as represented by individuals, corporations, non-profit organizations, professional associations and other entities – “petition” elected officials to take up their cause. For instance, the oil lobby wants Congress to loosen regulations on offshore drilling. The pharmaceutical lobby wants stricter intellectual property laws to protect its patents. The telecommunications lobby wants to widen the wireless spectrum. The social justice lobby wants more funding for homeless shelters and unemployed worker training programs.

Lobbying, we often hear, is the favored tactic of “special interest” groups. In truth, explained the late Senator Robert C. Byrd, every American belongs to a multitude of special interest groups. We’re defined by our gender, age, religious affiliation, location, educational background and employment, and all of those associations give us a “special interest” in the actions of our elected officials. The complexity of the legislative process makes lobbying and lobbyists essential to the function of government. According to the Lobbying Disclosure Act of 1995, and amendments made by the Honest Leadership and Open Government Act of 2007, a professional lobbyist is someone who [10].

- Is paid by a client.
- Whose services include more than one lobbying "contact" (an elected official or members of their staff).
- Whose lobbying activities constitute 20 percent or more of his time on behalf of that client during any three-month period.

Now that we know a little more about who lobbyists are, let’s take a look at what lobbyists do all day. Generally, lobbyists focus on trying to persuade decision-makers. In American Congress it was often hard to tell where the legislator leaves off and lobbyist begins. It is a highly controversial phenomenon, often seen in a negative light by journalists and the American public, with some critics describing it as a legal form of bribery or corruption. While lobbying is subject to extensive and often complex rules which, if not followed, can lead to penalties including jail and so on.

Critics of lobbying suggest that it’s “bribery in a suit”. But the majority of researchers in political field does not agree with this view. A bribe giver usually gives an offer of money “under the table” in order to

subvert standard processes. However, a lobbyist tries to influence political opinion to his or her benefit [11]. Lobbyists traditionally were considered “information givers”, usually in support of their cause to swing legislation and government agencies in their favor. Lobbying is organized persuasion of officials while corruption is at its simplest – paying officials.

The big line between corruption and lobbying

It is undeniable that, lobbying without payment does exist, but isn’t anywhere near as successful as persuasion plus payment. What the officials really want to hear is a great argument for why they should vote or act in accordance with the lobbyist’s request, so that when they are paid to do so they can not only say the argument had merit, but most of the objections will have already been headed off. Nobody suffers (except the public) so it’s a case of no harm no foul (The public don’t count). This statement by Chris Price is a reality of American lobbying process: “No harm, no foul because the public don’t count”.

Some university researchers tried to measure the relationship between money and power in the fight for dominance in Washington. In the book “Lobbying and Policy Change, who wins, who loses, and why?” Frank Baumgartner conducted a study which was supposed to measure the impact of different lobbying techniques. The results show that money is not always the decisive factor for the success of lobbyists regarding a given problem but, generally speaking, the financial resources determine the capacity of a group to last and organize its actions. Lobbying remains intimately linked with financing. The main objective of a lobbyist is to make his worries known to the political agenda, to influence the decision making, whether at an executive, legislative, federal or State level. Their influence can also be applied to block the decision-making process. Therefore, influence is created on the long-term by forming strong contacts with politicians and often accompanied by financial benefit relating to electoral campaigns. Surely, no system will be able to meet every challenge it encounters, and even effective political solutions will often – perhaps always – appear imperfect, as they address multiple and conflicting goals.

On the other hand, some scholars have looked at lobbying as an aspect of the legislative process. They claim that lobbying is an indispensable part of decision make process in USA. No scholar has systematically studied lobbyists as an individual before. They focused on lobbyists as a political actor. Washington has become a club in which the line between those inside and those outside the government is not clearly drawn. Corporate lobbyists have so suffused the culture of the city that at times they seem to be part of the government itself. Not only are lawmakers and policy-makers reluctant to make changes that would hurt businesses, they even have a tendency to try to help them as long as budgetary pressures do not interfere [3, p. 3].

Junior actors of decision making process

We shall see that traditions, role expectations and other functional relationships in an interdependent system are important determinants of lobbyists' behaviour. System controls seem to be much more powerful at the federal than at the state level for this reason, one finds less special privilege lobbying in Washington. Most lobby regulation laws cover only legislative activity, and it is popularly believed that a man is a lobbyist only if he attempts to influence legislators. Yet it is indisputable that many important governmental decisions are made in other branches and that representatives of interest groups attempt to influence those decisions. Even judicial decisions are sometimes the target of lobbyists [3, p. 7].

Despite their key role in the world of government lobbyists are almost the junior players in decision making process, because ultimately, they do not make decisions. Taken as a group, they are a kind of underclass in the nation's capital, a lower caste that is highly compensated in part to make up for their relatively low stature in the city's severely stratified culture. At the top of the hierarchy are members of Congress and Cabinet secretaries. Next come congressional and Cabinet staffs. And then, at the bottom, come lobbyists [4, p. 6].

Lobbyists do not even like to be called "lobbyists". One famous lobbyist notes in his diary "My mother has never introduced me to her friends as my son is the lobbyist. She has said my son is the Washington representative maybe or the legislative consultant, or the government relations counsel. But never as the "lobbyist". I can not say I blame her. Being a lobbyist has long been synonymous in the minds of many Americans with being a glorified pimp [2, p. 7]. Woodrow Wilson was the first of U.S. presidents to mount a challenge to the authority of the business lobby. He made it a villainy an important part of his campaign in 1912. When he was a professor Wilson had studied lobbyists' impact in Washington and concluded that it was overbearing and dangerous. One of his scholarly papers, he noted that special interests could not buy an entire legislature, but could purchase individual committees, which was where the real power resided anyway. When Wilson took office in 1913, he in effect told the lobbyists to leave town, and for the most part they did. But they did not stay away for long. During 1920s special interests again began winning in Washington, raising hackles anew. One of the big legislative fights of the 1930s involved so called Wheeler-Rayburn Bill, a reform measure that was meant to stem the power of public-utility holding companies by placing them under federal regulation. The utilities hired almost every well-connected lobbyist in town and worked their ways outside of Washington as well. Their most spectacular effort was uncovered by a congressional committee chaired by Senator Hugo L. Black a democrat of Alabama a

future Supreme Court justice. Outraged by the effort, Black introduced yet another bill to register and regulate lobbyists which passed both chambers of Congress. But thanks to the efforts of hundreds lobbyists it too died, in a House-Senate conference Committee [4, p. 12–14].

Lobbyists and the deficit were always clashing. Every time a lobbyist wanted to get some goodie for client, whether it was a tax break, a federal grant, or a deferred regulation, lawmakers demanded to know. And there was one question, that most lobbyists were reluctant to answer "How are you going to pay for it?" which usually meant taking money away from somebody else's client. That made a lobbyist's job a hard sell even under the best circumstances.

Worse, yet the deficit meant that no matter how noble a lobbyist was able to make his clients appear, they were never completely out of danger. They, too were liable to become victims of what seemed a never ending stream of deficit-reduction measures flowing out of Washington and no matter how hard federal officials tried, they could not cut deficit enough. Lobbyists therefore were always checking over their shoulders to see when the next inevitable attack would come [2, p. 17–18].

In 1869, Washington D.C. newspaper correspondent Emily Edson Briggs, one of the first women to be allowed in the congressional press gallery, wrote a column titled, "The Dragons of the Lobby". Her opening sentence reads: "Winding in and out through the long, devious basement passage, crawling through the corridors, trailing its slimy length from gallery to committee room, at last it lies stretched at full length on the floor of Congress – this dazzling reptile, this huge, scaly serpent of the lobby" [4, p. 31–32].

Junior players but great impact

When the procurement of government favour becomes the province of vested and well-funded interests, lobbying can significantly damage public trust in the integrity of democratic institutions. Without effective regulation, the influence industry can become an "exclusive and elite pursuit". While theoretically consistent, the relationship between ethical lobbying practices and democracy is imperfect. As expected, according to Transparency International's Corruption Perceptions Index, the least corrupt nations are, almost without exception, democratic. However, corruption has been found to persist despite democratization, economic liberalization and the adoption of transnational laws and domestic enforcement designed to eliminate it. Corruption levels in democratic states are moderated by the state's degree of poverty, national culture and perceptions towards corruption, and strength of key social institutions. Various studies indicate an association between economic underdevelopment and corruption regardless of whether a state is democratic or non-democratic; however, the types of corruption may vary depending on governance types. Countries

with more economic opportunities than political ones, such as China, experience different types of corruption than countries with more political opportunities than economic ones, like India. These disparities engender different relationships between citizens and government. Economic problems encourage patronage. Patronage in turn encourages personal relationships with individual decision makers, rather than broad affiliations with political parties. Where there is restricted individual economic freedom, economic success depends less on the efficacy of lobbying regulation depends largely on how lobbying is defined and who is considered a lobbyist. Policy should consider the different types of entities and individuals that may engage public officials and the theatres where lobbying activities may occur. All in all, lobbyists may be encouraged to obscure disclosures or avoid compliance all together. Lawmakers must balance the risks of mandating specific information disclosures with the challenges of accepting only summary descriptions of lobbyists' objectives [4, p. 5].

Conclusions. All in all, more than 140 years later, the public perception of lobbying and lobbyists is largely unchanged in America. Thanks to unscrupulous figures like Jack Abramoff, who admitted spending \$1 million a year on tickets to sporting events and concerts for congressmen and their staffers, we equate the word "lobbyist" with corruption. On the surface, there appears to be a simple solution to the corrupting

influence of lobbyists: make lobbying illegal. But not only would that be disastrous for the American political and legislative process, it would also be unconstitutional. I argue that the modern growth of corporate lobbying reflects a path-dependent learning process. Companies may come to Washington for many different reasons, but the act of establishing an office sets in motion several reinforcing processes that make companies value lobbying more and more over time and that lead companies to become more proactive in their political strategies. The overall effect is that American businesses, once skeptical of government, cautious about getting involved in politics and reactive in their strategies, have now become increasingly confident, proactive, and aggressive in their lobbying efforts, and businesses are increasingly seeing government policy as not just a threat, but also as a tool. All things being equal, the chance to improve the status quo (playing offense) is better than having to defend to preserve the status quo (playing defense) [4, p. 21–23]. Perhaps political activity was always a good investment. But because of the power of routine and the costliness of information-gathering, as well as a generalized ideological aversion to being involved in politics, few corporate managers historically thought to devote substantial resources to politics. Corporations needed first to be mobilized in order to pay attention to politics and then to develop enough capacity to affect outcomes before politics seemed like a worthwhile strategy.

REFERENCES:

1. Tayyar ARİ. Amerikada Siyasal Yapı, Lobiler ve Dış Politika. Bursa : "Alfa" Ocak, 2000. P. 311.
2. Lester W. Milbrath. The Washington lobbyists. Chicago : "Rand McNally", 1963. P. 452.
3. Jefsrey H. Birnbaum. The Lobbyists. Washington: "Three Rivers Press" December 1993. P. 334.
4. Frank. J. Farnel. Lobbying. Strategies and techniques of intervention. Paris : "Les Edition De Organization" January, 1994. P. 174.
5. Conor McGrath, ed. Edwin Mellen Press. Craig Holman. Interest Group and Loobyist, 2009. P. 20. URL : <https://www.citizen.org/wp-content/uploads/lobbying-reform-in-the-us-eu.pdf>.
6. Burley et al eds. Brussels the EU quarter. Will Dinan, Erik Wesselius. A Lobbying paradise. Tuesday, March 27, 2012. P. 28.
7. Daniel Carpenter, David Moss. Preventing Regulatory Capture, Special Interest Influence and How to Limit It. New York : "Cambridge University Press", 2014. P. 24.
8. About Lobbying. URL : https://www.academia.edu/38225107/About_Lobbying (17.12.2019).
9. Regulation of lobbying. URL : https://dspace.library.uvic.ca/bitstream/handle/1828/9253/Ch.%2010_April2018_web.pdf?sequence=11&isAllowed (16.12.2019).
10. Lobbying the political influence in USA. URL : https://www.lejournalinternational.fr/Lobbying-the-political-influence-in-USA_a3505.html (16.12.2019).
11. Differences between bribery and lobbying. URL : <https://www.investopedia.com/financial-edge/0912/the-differences-between-bribery-and-lobbying.aspx> (16.12.2019).