

Department of **Political Science**

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**The Ethics of Lobbying:  
how to ensure effective representation of special interests in  
harmony with transparency and integrity standards**

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*Al Dottor Renato Colombaioni,  
mio nonno,  
per avermi insegnato l'importanza della conoscenza  
ed il valore della gratitudine  
prima ancora che potessi comprenderne il significato.*

*To Dr Renato Colombaioni,  
my grandfather,  
who taught me the importance of knowledge  
and the worth of gratefulness  
long before I could even understand their meaning.*



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## **INTRODUCTION**

The influence of the decision-making process operated by particular groups within the institutional framework is an unavoidable feature of democratic systems of our time. The phenomenon which puts in place this dynamic is called lobbying and it contributes to reduce the gap between politics and civil societies, providing data and insights to policy makers and guaranteeing the access of stakeholders in the developing and implementation processes of public policies. However, from an ethical and practical perspective, it is possible to achieve the praiseworthy of this aim only when lobbying is implemented along with adequate regulation and virtuous demeanour of the subjects involved in the procedures of representation of community's instances. Otherwise, the lobbying activity risks to overturn into unfair competition, undue influence and endangerment of the effectiveness of public policies and the safeguard of public interest.

The basic issue is to identify the value system and the legal framework which defines the relation between public decision-makers and interest groups – pressure ones in particular – with the aim of avoiding degenerations and threats to the integrity of public officials and to improve transparency within the public decision-making process. In doing so, both lobbyists and institutions must practice responsiveness and accountability, strengthening the implementation of tools for guaranteeing transparency also with the aim of measuring the costs, identifying the benefits, monitoring the performances of the influence process through regulation and addressing the concerns related to tricky practices.

This dissertation springs from the desire to answer to questions such as “why the treatment of vested interests related to the common welfare, has such fundamental implications in common good issues?” or “why is the analysis of these particular matters necessary and crucial for the well-being of community?” and it investigates the urgency of achieving not only a coherent and enforceable regulation of the practices, but also the need for an ethical framework of lobbying, providing an analysis of valuable perspectives where the fairness, the transparency and political equality are respected and correctly applied to the representation of interests. In other words, the ultimate purpose of this argument is the development of an ideal process – ethically speaking – of making lobbying, in compliance with the achievement of successful and

positive validation of particular interests originating from society, within the politics sphere.

On all the work, it has been assumed to treat the topic as a Global Justice issue, as it affects not only states' frameworks or national contexts, but rather the different roles and relations involved in social responsibilities, which duties have become further and further dependent on international realities, since the actions stemming from the representation of groups in a country, may affect some of the units abroad. Consequently, the role played by the groups of interest within policy making bodies has been considered as part of Global Justice matters, taking into account the crucial factor of the relation between the actors who define the rules, influencing the social contexts and the structure of the socio-economic environment where rules and influence are developed.

With the globalization, the competition between countries is no more only a matter of markets and economics, since competitiveness is present even in the legislative and social systems, through the struggle of ethical standards, which level of integrity must be safeguarded. That is why it has been retained that what is needed is also a "globalization" of the rules and the codes of rivalry, a strong definition of the allowed and not permitted behaviors of the actors, with the aim of presenting a united front of the regulatory frameworks adjusting expressions of political participation and interests' representation, such as lobbying.

In order to serve the mentioned purposes, the dissertation has been drafted in two parts, where the former one is dedicated to the description of lobbying from an analytical point of view, primarily focusing the attention on the classification of the phenomenon and the relationship that ties ethical concepts to it.

In the first chapter, the analysis defines the edges of lobbying, describing the actors involved in its manifestations, the boundaries and already achieved results concerning the interests regulated in democratic regimes and the role that lobbying actually covers in the civil society, providing as much as possible a clear definition of what lobbying does and does not represent, in order to clarify its role within the advocacy field and public relations dynamics.

In the second one, the dissertation focuses on the legal framework and system of values which can be detected through the analysis of the theoretical approaches which have been developed in Political Science for the study of the



lobbying phenomenon, paying particular attention to the relation between Global Justice and Government Ethics within the groups' actions framework. This chapter has been written down with the idea of connecting what lobbying has to do with ethics, with the ethical dilemmas that lobbying presents, which is the main issue characterizing the second part of the dissertation: the ethic discussion.

The last chapter analyses the importance of values such as fairness, transparency, integrity and openness in the management of representation and influence of pressure groups, highlighting the essential condition of ethically acceptable procedures in lobbying practices, which performance must safeguard the integrity of the public decision-making process, contributing to develop – or even build – trust in institutions and in politics more in general.

The ethical perspective is the driving force of this degree thesis, focusing on the efforts on the implementation of a regulative and normative legal framework of the phenomenon, which would be in first place able to give to the lobbyist' profession an axiological basis, filled with transparency and respect of the recognition of law, with the aim of avoiding dubious practices such as bribing, manipulation or worst-case scenario, corruption.

The central purpose is to contribute to the idea of civic responsibility, providing an argument on the role that the representation of individuals' instances has in supporting the attainment of the common good, considering the potential of the democratic concept of political participation.

## **CHAPTER 1 WHAT IS LOBBYING?**

The origins of the interest representation field in politics can be found even in pre-model political systems, where royal courts provided incidental opportunities for figures with specific functions to deal with the government, indeed the word “lobbying” in its literal sense signals the act of moving within the lobby, meant as the rooms of the decision-making headquarters, as the word itself derives from the Latin *lobia*, which indicates a sort of doorway or lodge<sup>1</sup>. In the present-day cultural context, the lobbying activity corresponds to the practice of groups of pressure which represent corporate interests within the institutions, which aim is to influence political decisions and policy-making procedures.

The players of this activity work with the aim of meeting the two aspects of the dichotomy pluralism of particular interests versus determination of collective interest and in doing so, they activate a process of communication with the decision-makers aimed at persuading the latter ones to put in place policy measures in accordance to specific goals consistence with advantages in first place for the groups themselves and more in general for the common good<sup>2</sup>. The matter arises at the time when the willingness of the group prevails over the weightiness of other institutional actors or enters in a conflict of interest with the most desirable outcomes for the citizens and the society.

It is important to note that the origins of groups have been developed in those realities where the economics are strongly intermediated by means of public intervention and for this reason they lie in capitalist societies, with recognized right of assembly and an institutional system that provides facilities for the participation of citizens to the political process and their organization into units reflecting certain political directions. Therefore, within the historical background of the 18<sup>th</sup> century, with the growth of the market economy in its modern sense and of the rights of freedom, the individuals start to organize themselves into significant groups. Nonetheless there are evidences of groups of interests even in areas without economies

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<sup>1</sup> Cf. BALDASSARRE A., *Introduction*, in MAZZEI G. (ed. by), *Lobby della trasparenza. Manuale di relazioni istituzionali*, Roma, Centro di documentazione giornalistica, 2<sup>o</sup>ed., (2009), p. 11; GRAZIANO L. *Lobbying, pluralismo, democrazia*, Roma, Nis, (1995)

<sup>2</sup>.Cf. MILBRATH L.W., *Lobbying*, in *International encyclopedia of the social sciences*, vol. IX, London-New York (1968), p. 442

based on competitiveness, such as collectivist systems, where entrepreneurs are not free to express their own interests through intermediaries to the authorities, but despite of this it is definitely inside the system of representation of industrialized societies that the groups of interests are predominant. It is sufficient to think about the time on which the North American lobbyism is considered to be born, 1789, the year of the enactment of the first Customs Act, which aim was to have the chance of influencing the American Congress; consequently, it is since the very beginning of 19<sup>th</sup> century that the activity of the groups towards the importance of particular interests start to grow and the historian Freiberg made considerations on the parallelism between the expansion of lobbying in USA and the building of the railway<sup>3</sup> through the country, showing how such a big occasion of policy-making practice attracted the interests of many groups intent on standing up for their own prerogatives and rights connected with the consequences of this public choice.

In Great Britain, the start of the groups' activity in the modern meaning, according to Finer can be considered the withdrawal of the Trade Union Act in 1825<sup>4</sup>, as the normative prohibited the workers' associations and it was substitute with a less restrictive one. In Germany, it was at the turn of 19<sup>th</sup> and 20<sup>th</sup> centuries, under the reign of Emperor William II, when the interests of the industrial businessmen started to be represented within the institutions and the decision-making public authorities<sup>5</sup>.

Based on this premise, in order to avoid falling victim to over-generalization but rather investigate why ethics and morals involved with lobbying are somewhat complicated and so often misunderstood, it is necessary first to define the phenomenon by clarifying the main aspects of the process under consideration.

To achieve this goal, in the following chapter, the lobbying practice will be studied through the analysis of five different perspectives, which are: the subjects who influence the actions, decisions or even the policies of institutional representatives, as legislators or members of government agencies and regulatory bodies; the nature of the phenomenon itself examined in all its different shades and expressions in practice;

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<sup>3</sup> A. FREIBERG, *Quadro storico e legislativo del lobbismo negli USA*, in *Industria e sindacato*, 1990, XXXII, 11, pp. 8-11

<sup>4</sup> FINER S.E, *Interest groups and the political process in Great Britain*, in H.W. EHRMANN (EDS), *Interest groups on four continents*, Pittsburg, Pa., (1958), p. 125

<sup>5</sup> Cf. VON BEYME K., *Interessengruppen in der Demokratie*, München (1969), pp. 20-25.

the tools used for implementing the purposes of the subjects making lobbying - in other words how do the professionals of this activity play and which are the rules to follow in influencing legislation or more in general government decisions and policies - in the interest of a specific group; by implication, an initial analysis of the methods in which the groups' interests are regulated in democratic regimes will be already taken into consideration in this first chapter of the dissertation, where the attention will be focused on the regulation attempts achieved and in progress; finally, with the aim of explaining why these matters are crucial for the public affairs of our communities, the last section of the chapter will examine the role that lobbying covers within contemporary societies.

### **1.1 SUBJECTS: THE ACTORS OF THE GAME**

In order to determine not only the impact, but also the relevance that lobbying has in our society nowadays, the first step to take is to understand the real meaning of this phenomenon, with the purpose of isolate it from other frameworks of social action - which can include lobbying but not determine it - and of not mistake it with different means of social stratification.

Albeit with some necessary distinctions between different politics traditions, as the ones existing between the European and the American ones, it could be useful to begin from the analysis of the role and the influence that pressure groups play in pluralistic democracies. Indeed, to qualify the representation of held interests, we can start from the definition given by La Palombara, who retains that interest groups represent the most typical and potentially most effective manner of intervention from the outside into the political process<sup>6</sup> and who uses this idea of groups as collective subjects of political participation, in order to describe the several aspects of the political decision-making process. Indeed, following this point of view, this aggregation of individuals called group expresses a personal and “authoritative allocation of values” (idem, p.24), which moves to a particular direction.

Furthermore, this approach can be connected with the idea of Meynaud, who retains that a group recognize itself in the willingness to influence the policy maker and in doing so, to affect the governmental and legislative processes, so that whereas

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<sup>6</sup> Cf. LA PALOMBARA J., *Interest groups in Italian politics*, Princeton, N. J., 1964 (tr. it. Clientela e parentela: studio sui gruppi di interesse in Italia, Milano 1967)

this will, this determination occurs, the group can be qualified as a pressure one<sup>7</sup>, and even if La Palombara does not assume this aspect as a constitutive one in the *raison d'être* of a collective subject related with politics, this analysis takes also into account this particular feature given in the Meynaud studies for the definition of lobbying groups.

At any rate, for the comprehension of social phenomena, including political identities, the analysis of pressure groups appears very useful since contemporary societies present the co-existence of different and relatively autonomous spheres of action (political – also split into the traditional dichotomy State versus civil society -, economic, cultural) where carriers of several interests play in multiple directions, intervening on the identity of every single citizen.

On the basis of this premise and of the assumption of Meynaud according to which the pressure groups are considered as subjects “capable of struggle in order to make the decisions of public authorities consistent with the interests and the ideas of any social group” (idem, p.5), the lobbying activity can also be correlated with a sort of penalty, or better threat of the application of a punishment, which cannot be determined at the juridical level, but that can assume proper value on the social, electoral politics and financial plan, if the object of the request claimed by the group does not find acceptance<sup>8</sup>. From this perspective, the pressure group may be considered as a political agency with the purpose of obtaining legislative decisions taken by third parties by means of behaviours which refer to the application of a sanction.

Furthermore, when we speak about “pressure groups”, at processing the position given to the role they might assume in the social context, we should distinguish between the different political traditions which have assigned them a specific role in the institutional system. From the doctrine considered by Antonucci<sup>9</sup>, it is shown in her studies how on one hand, in the European political science, the public dimension of pressure groups as subjects of political involvement is marginal and in

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<sup>7</sup> MEYNAUD J, *Les groupes de pression*, Presses Universitaires de France Paris 1960

<sup>8</sup> Cf. FINER S.E., *Interest groups and the political process in Great Britain*, in H.W. EHRMANN (EDS), *Interest groups on four continents*, Pittsburg, Pa., 1958

<sup>9</sup> ANTONUCCI, M.C. *Rappresentanza degli interessi oggi. Il lobbying nelle istituzioni politiche europee e italiane*, Roma: Carocci Editore 2011, p.17

any case less relevant if compared with the role given to party politics, the real players in implementing the political activity, which connect the institutional dimension with the collectivity, acting as a bridge between the two parties. In contrast, on the other side we can observe the American pattern of political frameworks, where great importance is given to the different forms of association and action driven by interest groups and collective movements, certainly because these phenomena are more diffused and frequent overseas, but also for some more elaborate reason.

It is within the American political science that the role played and the function assigned to the groups pertains to the definition and the evolution of the lobbying profession: the very same origins of the impact that the practices of the interest groups have in governmental and decision-making dynamics “can be tracked back to the American Constitution which recognizes “the right of the people... to petition the government for a redress of grievances” (U.S. Constitution, Amend. I)”<sup>10</sup>. Subsequently, the word lobby started to be used in connection with the word petitioners, it is deemed even since 1837<sup>11</sup>, because of the interactions with government officials made in accordance with the Constitution in order to build the influence towards the relevance of their own interests, but also to inform and interact more in general. By the way, the use of the term as signifying the profession of “lobbyist” is due to the frequent use made in this sense by the President Ulysses S. Grant<sup>12</sup>, who made popular the correlation of meaning between the activities made by the petitioners, assumed as representatives of pressure groups, and the practices referable as lobbying.

Already from the considerations of Tocqueville in *De La Démocratie en Amérique* (1835), the American system appears as the one where the interest groups build a sense of belonging among the people, making the members of the community aware about their participation in political business<sup>13</sup>, whilst the political parties are not invested with the purpose of association<sup>14</sup>.

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<sup>10</sup> FERNANDES A.N., *Ethical Considerations of the Public-Sector Lobbyist*, 41 *McGeorge L. Rev.*, (2009), p. 185

<sup>11</sup> Cf. MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 683 (10th ed. 1999), which dates the origin of the term back to this year.

<sup>12</sup> Cf. FERNANDES, *op. cit.* (2009)

<sup>13</sup> DE TOCQUEVILLE A., *La democrazia in America*, Rizzoli Milano, 1994, p. 94

<sup>14</sup> Cf. PASQUINO, *Istituzioni partiti lobbies*, Laterza Bari (1988) in Antonucci, *op. cit.* (2011)

In reverse, within the European system, including the Italian political context, the lobbies are marginalized by the political parties, which assume themselves the role of representatives of the community, not only in politics, but also in the social and cultural frameworks<sup>15</sup>. This perspective would also explain why with the recent the crisis of the traditional forms of sovereignty and of the feature of representation typical of our party system, the pressure groups started to be looked as the new actors and power structures of the state system. Hence, the importance of dedicate more attention to the trends assumed by the interest groups as influential subjects of the public sphere: it seems that inside the ever-changing framework of the globalization, the pressure groups are the best units in order to manage the new challenges concerning politics functions and structures. This point of view also reflects the idea that groups do not act against the political system – meant as institutions and parties -, but simply as the expression of the organized civil society; therefore, they perform moving as part of a different reference frame<sup>16</sup>, where what is taken into consideration as the main priority is the dimension of influence specific issues can obtain towards the policy making process.

Still, it is in contexts where the civil society possesses the chance to take advantage of a major scope for action that the specific interests can be better developed and aggregated<sup>17</sup>, exactly as occurs in political systems as the American one, where its liberal democratic nature makes slower the faculty of intervention of politics subjects into the economic and social spheres. Considering the lobbying phenomenon as the open market of organized pressure groups, which are in pure and perfect competition with the aim of obtaining the acceptance, by public decision-makers, of the interests they represent, it appears clearer how a minimal presence of the state and a higher organized civil society are conducive to the development of this process within the framework of politics. On the other hand, different representative models of interests where the State is proactively involved in regulating ethically economics or the social dynamics - which are also less developed than the political ones-, as in the European

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<sup>15</sup> Cf. ANTONUCCI, op. cit. (2011), p.18

<sup>16</sup> Cf. idem p.20

<sup>17</sup> GRAZIANO L., *Pluralism and Democracy*, Palgrave Macmillan, (2001)

systems characterized by neo corporatism expression, the pressure groups are less and more limited in influencing public policies and their makers<sup>18</sup>.

Anyhow, the systems of values behind the theoretical approaches to the groups' activities will be better discussed in the next chapter, whereas reached this point of the issue, some additional specifications need to be made on the use and the meaning of the term pressure. Starting with the definition of the concept "Group of pressure" worded by Fisichella as "each voluntary or natural aggregate which is placed between the individual and global society, if speaking mainly in social terms, or between the individual and the main political organization (usually the State in the modern world), if speaking prevalently in a political light"<sup>19</sup>, a further distinction between "interest group" and "pressure group" can also be done.

Given the above, a group becomes a "pressure group" when it is settled into the politics field and acts like a political actor, whilst until it acts within a social dimension, or even a cultural or an economic one, it remains an "interest group". This means that a group of pressure is always an interest one – which is a social player and has the function of coordinating the different involvements into several frameworks - , but not vice versa. Consequence of this is that any aggregated conjunction of individuals, which purpose is not exclusively profit or general earnings, can be categorized as "interest group".

Therefore, all the groups of interest which can also operate as groups of pressure are associations of various type, professional, cultural or social development ones, but even NGOs, charity organizations, public institutions. Indeed, the latter ones can act as groups when for example local authorities apply a sort of pressure on institutions in order to benefit from decisions brought on by the legislative and executive processes. While, the interest groups which are pressure groups by definition are the expressions of the mobilization of the society through politics and institutional frameworks in their organizational aspects and in their procedures of mobilization, with particular care for trade unions and social movements, which are frequently on the edge between pressure and interest on the grounds of their activity.

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<sup>18</sup> Cf. Idem.

<sup>19</sup> FISICHELLA D., *Gruppo di pressione*, in Treccani.it – Enciclopedia delle Scienze Sociali, 1994, chapter 3 (personal translation from italian)



Furthermore, regarding the “pressure” category, it is possible to observe at least two main expressions of it: direct and indirect pressure. The former is exercised directly upon decision-making bodies, as the Government, public administration or the Parliament, or even the political parties in their role inside the institutions as representatives in the policy making process. On the other hand, the indirect pressure is supposed to be about the activities not immediately pursued upon these institutional structures, but through the society. Additionally, the framework where the group of pressure puts in place its own negotiations depends on the model of bargaining it wants to pursue and for which reasons: if for example it will retain that the interest it carries out stands on the public opinion consent, it will use this latter to achieve the aims of socially appreciable issues; if instead, the topic to develop does not take advantage from the mobilization of the audience, the group will set the process of negotiation turning to official bodies. In other words, the difference between “interest” and “pressure” group is to be found not only in the purpose of the group, but also in towards those who its role is practiced: the interest group represents the task of issues held in the society; the pressure group works inside the political framework, where the mode of action covers the institutions and the legislative process.

Doing lobbying is one of the principal ways through which the group operates and interacts<sup>20</sup>: this activity shall be read, from the perspective of the groups, as the research of forms of representation in the decision-making process, the mobilization of the public for chosen specific purposes – like it happens in the campaigning context for example, with the sponsorship of elected nominations for public offices -, working for the inclusion of the group in a stable environment of political relations, which makes provisions to some large and strong unit - as for example a party – and even in some connection with the representatives of the opposition inside the institutions, also with the involvement in consultancy practices<sup>21</sup>.

Depending on this, it is also possible to divide the several groups by the definition of their areas of interests, since the interest encouraged can be material, as for trade associations, which sponsor economic ones, or ideal (and in this case the promoting group will be a sort of association with political purposes and not economic

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<sup>20</sup> Cf SALISBURY R. H., *Interest Groups*, in F.I. GREENSTEIN, N.W. POLSBY (eds), *Handbook of Political Science*, Reading MA Addison-Wesley, vol. 4, 1975

<sup>21</sup> *Idem*, p.206

or social ones, but at the same time not related to parties) and even religious, humanitarian and cultural. Following the classification given by von Beyme in Fisichella<sup>22</sup> between attitude and promotional groups, where the latter do not necessarily match with the public interest groups, but where the interests pursued do not affect directly the members of the group itself. Promotional groups of interest are the ones which do not exclusively act in order to lead benefits only for their insiders<sup>23</sup> - in these terms even an organization as Amnesty International, for example, is a group of interest - and for this reason can be included into the actors which play the role of enhancing advocacy function, phenomenon whose definition will be largely discussed in the next paragraph and that can be enclosed into the concept addressed by Graziano as the process of “making a case which starts from the perceived violation of the standard of right, fairness or civility”<sup>24</sup>.

But to ensure that the lobbying process takes action, the members of the group of pressure must be united by the same rightful interests, as well as the same aim of influence and of address this purpose in the same direction at the decision-making level. Following the research made by Della Luna Maggio, it can therefore be a further distinction within groups between the lobby profit and the lobby no profit<sup>25</sup>, where the former possesses acts with the aim of influencing public decisions only to gain exclusively economic advantages. On the opposite side, the interests are social, humanitarian, with the aim of acting in the name of the public interest and of the community, as it happens for example in cases of sponsorship of petitions, awareness campaigns, studies and researches conducted in order to be submitted to legislators with the aim of improving the common good. Again, NGOs, social movements, volunteering bodies belong to this category, which have become increasingly involved in the creation of contact networks in the political dialogue and no longer only in the more general social framework, with a more immediate, direct and participative approach towards the institutions during the policy making.

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<sup>22</sup> Cf VON BEYME K., *Classificazione dei gruppi*, in FISICHELLA “*Partiti e gruppi di pressione*”, Il Mulino, Bologna 1972, p.143

<sup>23</sup> Cf GRAZIANO L., *Lobbying, pluralismo, democrazia*, La Nuova Italia Scientifica (Carocci), Roma, 1995

<sup>24</sup> Idem, p.249 (personal translation from Italian)

<sup>25</sup> DELLA LUNA MAGGIO L., *Le lobbies nell’ordinamento italiano: quale regolamentazione possibile?*, (2015), p.4

From this first dissertation, it appears a new perspective around the figure of the lobbyist, who is actually the expression of one of the essential tools of representation in parliamentary proceedings, a point of view far from the outdated and misinformed consideration of this profession as synonymous of corruption and ill repute for personal profits from the political and economic scenarios.

In spite of preconceptions, the lobbyist intervenes where the collectivity cannot, acting in its place, as the active interlocutor who brings issues and problems which stand outside the political agenda, to the attention of the institutions. In these modern terms, the lobbying activity through decision-making bodies is not just comparable to the promotion of interests, but it is a structural element for the need of participation inside a democratic system. From this perspective, in Public Decisions, the lobbyist can be a skilful mediator able to enter in the legislative process, trying to edit the contents if retained inappropriate in relation to the interests that he/she represents. But this activity can be successful for the benefit of the community only if performed through transparency, accountability and commitment towards the general interest, in a normative context provided with a strong and moral integrity. Only in this manner, it would be possible to discuss the improvement of the representation of general welfare and the guarantee of the participation of all the social actors – and of their legitimate interests - involved, directly and by extension, in the process of legislation.

## **1.2 THE NATURE OF THE PHENOMENON**

Having clarified the identity of the actors who decide to pursue public purposes through their aggregation into specific groups, it is now time to examine the activity itself commonly referred to as lobbying. Of course, given the basis about the groups assumed in last paragraph, it is not hard to understand why the necessary precondition for lobbying activity is a political framework where the subjects representing interests that have been analyzed are legitimated to do proficient actions for their purposes, when these are not expressively prohibited by law<sup>26</sup>. Indeed, lobbying, meant as the activity pursued by that “system of representation of social interests organized in groups and associations towards a public decision-maker”<sup>27</sup>, is developed within those

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<sup>26</sup> Cf ANTONUCCI, op. cit., (2011), p. 21

<sup>27</sup> Ibid.

political systems which can be considered as democratic ones for the area of freedom left to social groups, which are intermediate between the State and the individuals.

The word “lobby” started to be used in Anglo-Saxon countries, from the XVII century to indicate the big hall in the House of Commons of London, open to the audience, where journalists, parliamentarians and stakeholders had conversations<sup>28</sup>, whilst the American tradition refers to lobbying in functional terms, as the persuasion and influence of policy makers, a practice which was hold in the halls of hotels, namely the lobbies<sup>29</sup>, but the various shadows that this idea of the phenomenon has arisen only focuses on the techniques aimed at guaranteeing political representation to organized interests<sup>30</sup>. But, if on one side the lobbying activity is assumed to include communication, influence or persuasion practices and expressions of interests towards institutions, when these have to decide, regulate or apply normative basis about the collective interest, on the other it has to be considered as a specific field and communication technique of institutional relations. Furthermore, the legal status of lobbying creates a tension around the profession when combined with moral criticism, but it can even be considered a sort of “institution” itself, under the terms of interrelation of the agencies activities.

In order to provide a kind of universal definition of lobbying, this dissertation will consider the one given by Graziano, who retained that lobbying represents the political face of groups of interests, once they decide to pursue public aims, becoming groups designed to political action and no more private associations; in this practice, the goal to achieve is to influence on the decisions of the government through the provision of information and the deployment of political wills<sup>31</sup>. In these terms, the phenomenon is seen as intelligence, but this definition also includes the pressure and persuasion practices to promote particular instances within policy makers; still, this interpretation must not be understood as an assimilation of the lobbyists figure with a corrupter, on the contrary, the role represents the moral duty of providing the necessary information – which is transformed into influence - to make possible a more correct

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<sup>28</sup> Cf. PETRILLO P.L., *Democrazie sotto pressione: parlamenti e lobby nel diritto pubblico*, Milano, Giuffrè (2011), p.47

<sup>29</sup> Cf. Ibidem

<sup>30</sup> Cf. GRAZIANO, op. cit. (1995), p.13

<sup>31</sup> Cf. Ibidem

decision-making process, which takes into account all the factors and knowledges needed to make the most fair choice involving public welfare issues.

In defining lobbying as the set of strategies put in place by the groups within the institutional context for coming into contact with public decision-makers, four typologies of action pursued as lobbying practices can be described as the attempts to influence politics on specific issues. They are: direct lobbying – the so-called face to face -, grassroots lobbying, coalitions, party funding<sup>32</sup>.

Direct lobbying is represented by any attempt to influence new or even existing legislation communicating with a representative of legislative bodies; it is the simplest way to inform a public decider and corresponds to the most traditional form of lobbyism, concerning the report of the necessary expertise to make the institutions aware of the purposes or requests of a group<sup>33</sup>. Rather, grassroots lobbying is that form of influence, similar to campaigning, which operates as a pure form of persuasion by asking to general audiences to contact the legislator or mobilize the public around a legislative issue: in this case not only citizens may be involved, but even media and it can be defined as each attempt of influence on the legislation with tools aimed at influencing the public opinion or a part of it<sup>34</sup>. The third manifestation of lobbying techniques consists in the chance of associate multiple interests and organized structures of them, with the aim of create a stronger influence for the achievement of one common goal, through the representation of various groups, following dynamics attributable to a pluralist system of values. Lastly the practice of party funding, which possesses a range of tools, mechanisms, initiatives and processes that introduce the chance of influencing public policies with the use of financial contributes to influence the issues pursued by bodies belonging to political system: the unclear boundaries between this form of lobbying and the campaigning process intended as actions, events and practices aimed at achieving changes or raising awareness on specific political programmes, created such doubtful opinions about the ethical standards which are involved in this particular form of lobbying and contributed to overstate the negative perception of the phenomenon. Once again, there is clear evidence of how much the

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<sup>32</sup> Cf PETRILLO, op.cit. (2011).

<sup>33</sup> Cf GRAZIANO, op. cit. (1995), p. 73

<sup>34</sup> Cf. Definition given by the Internal Revenue Service, IRS, in *Final Regulations Issued on Lobbying by Public Charities and Private Foundations*, se. 56.49II-2, in “IRS Documents”, 31-8-1990

utmost transparency of the practices is a basic condition in the adequate performance of lobbying practices for avoiding conflict of interests and degenerations into undue influence or even corruption.

At this point, it moves forward the necessity to define not only what lobbying is, but also what it is not. Often the word “lobbying” is used to indicate the whole set of measures which aim to change attitudes, policies and practices through the use of a process of influence, implemented by specific actors. But in some cases, there is the tendency to erroneously mistake the practices of lobbying with the wider advocacy phenomenon. This latter is similar in the aims of lobbying, but the processes of its manifestation are different: advocacy can be defined as the set of action of raising awareness or providing information in favour of a cause, influencing public policies by providing to individuals a space within the institutional framework and connecting with policy makers; in other words, advocacy is the process used by stakeholders to make their voices heard and to help institutions to find specific solutions to issues influencing decision within political, economic and social systems. It can be recognized in the aim at educating about the needs required to solve specific and persistent public affair matters. In its effective manifestations, advocacy identifies the audience, increasing public attention on the achievements which must be pursued for relating with a certain kind of policy and including special perspective to the solution needed. In these terms, even no profits can do advocacy to achieve their goals explaining a persuasive message and sharing information about the work they do<sup>35</sup>. This kind of non-profit advocacy is aimed at the education and the promotion of services, more than at making particular legislative changes and this particular feature outlines the difference between the advocacy field and one kind of it, lobbying, which goal of persuading policy makers and political leaders involves attempts to influence specific legislations.

The key difference stands in the fact that “all lobbying is advocacy, but not all advocacy is lobbying”<sup>36</sup>, as the latter practices activities that are in direct action of influence, support or opposition to a specific piece of introduced legislation: it is a

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<sup>35</sup> FRITZ J., *The difference between Nonprofit Advocacy and Lobbying, which is the best strategy?*, in The balancesmall business website, 18/3/2019, available at <https://www.thebalancesmb.com/nonprofit-advocacy-vs-lobbying-which-is-the-best-strategy-4177308>

<sup>36</sup>Cf. web reference: <https://www.amplifi.ca/all-lobbying-is-advocacy-but-not-all-advocacy-is-lobbying/>

form of advocacy where the approach used only includes addressing activities that ask policymakers to take a specific position referring to a specific policy outcome or legislation and reflecting the particular point of view of an organized group, whilst advocacy, in its broadest sense, encompasses any activity undertaken to influence policies<sup>37</sup>, including educating legislators, providing technical assistance or advice or communicating with a legislative body regarding matters which might affect the existence itself of an organization in its powers and duties.

### **1.3 THE TOOLS TO MANAGE LOBBYING PRACTICES**

The legal tools of lobbying involve the objective of ensuring that the activities related to this field do not deprive other interests from the opportunity of being represented, avoiding distortions of the political power in interrelations. On one hand, there are legal prohibitions identify which practices are impermissible, at all or beyond specific boundaries, in order to forbid “false statements, limit gifts to public officials or employees, restricting the scope or frequency of revolving-door employment and bar lobbyists from collecting contingent fees or exacting economic reprisals against legislators”<sup>38</sup>. On the other, disclosure requirements do not prohibit particular practices, but expose information to make insights and data available to the public, but these kinds of requirements are hard to implement, since it is not simple to determine the level of accuracy within the information reported and as a result, some disclosure schemes lack of ethical clarity and efficacy, which may be provided simpler by rules connected to the first kind of legal tools.

### **1.4 THE REGULATION OF LOBBYING: GOALS AND BOUNDARIES**

By the way, the experience suggests that lobbying regulation can be considered effective, if based on a definition of lobbying activities and of the role of the lobbyist figure not unclear and ambiguous, but rather it provides pertinent information on key aspects such as the objectives, the funding sources, the targets and the beneficiaries of

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<sup>37</sup>Cf. NP ACTION, *Lobbying Versus Advocacy: legal definitions*, 2-04-2010, available at: <https://web.archive.org/web/20100402225054/http://www.npaction.org/article/articleview/76/1/248>

<sup>38</sup> JOHNSON V.R., *Regulating Lobbyists: Law, Ethics, and Public Policy*," Cornell Journal of Law and Public Policy: Vol. 16: Iss. 1, Article 1, (2006), p.17  
Available at: <http://scholarship.law.cornell.edu/cjlp/vol16/iss1/1>

the procedures concerning the phenomenon<sup>39</sup>. Further, the procedures for securing compliance have to be framed “in a coherent spectrum of strategies and mechanisms, including monitoring and enforcement”<sup>40</sup> and in doing so, it is needed that the standard guidelines of rules avoid misuse of confidential information and conflicts of interest, for this reason a culture of transparency and integrity in daily practices has to be promoted “through regular disclosure and auditing to ensure compliance”<sup>41</sup>.

## **1.5 THE IMPORTANCE OF DEMOCRATIC LOBBYING ACTIVITY FOR SOCIETY**

In popular imagination, the lobbies working as pressure groups on institutional backgrounds act in the shadow, manifesting themselves in an operating zone between the legal and the illegal, to favour unclear interests, connected with companies, banks, financial groups. As previously outlined, in this dissertation the lobbying activity is assumed not to be an off stage unlawful practice, but rather an essential contribution to the political decision-making process, through tangible facts and information, implemented by professionals of the field, who are supposed to implement a transparent process of public policy choices with the ultimate goal of protecting the preservation of the State values.

As already mentioned, the lobbying activity originated from the necessity of establishing representatives of interests allowed from the political sphere to put in place activities in support of civil society’s expressions, developing further and further a fundamental role in public dynamics concerning not only social and political issues, but also economic ones, due to the increasing interdependence of these several areas, one of the consequences of living in a globalized world. The history of this activity, as seen, is strictly connected with democratic values and liberal market principles, but even more, it influences and consequently determinates the safety of democratic institutions, because of its connections with the relations elapsing between State, market and civil society. Of course, this prerogative of lobbying is possible when and

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<sup>39</sup> Cf. OECD website, *Principles for Transparency and Integrity in Lobbying*, (2013), available at <https://www.oecd.org/gov/ethics/lobbyists-governments-and-public-trust-volume-1-9789264073371-en.htm>

<sup>40</sup> Ibid.

<sup>41</sup> Ibid.



only if the activities concerning it are pursued with transparency, within a coherently regulated framework, favouring the decision-making process and intervening through allowed negotiations concerning interests, even if between opposing ones. Furthermore, lobbying guarantees to organized groups the right to be represented in the institutional sphere at each level (national, regional, local). Indeed, contrary to what the public opinion may think about the relation between lobbying and illegitimate practices implemented by the representation of interests, there is no lobbying meant in its physiological sense of organized a representation of interests and legally recognised through a legal entity, when there is the predominance of corruption, but only quid pro quo practices, disposed to bribing, attributable to votes, funds and political favours more in general.

In the effort to regulate the sector, it must be taken into account the assumption for which lobbying and democracy, which means lobbying and State security, have to be considered as two indivisible parts of the same mainstay<sup>42</sup>. The difficulties of being in agreement with this idea arise from the failure in providing a cohesive regulation of the field, because of the assimilation of lobbying with public relations activities, especially in political contexts, as the Italian one, where frequently there is no transparency in pursuing specific interests within the institutional framework. This serious issue derives in its turn from the unawareness of the lobbyist's role, from the absence of a sectorial system of law which may recognise the distinctiveness, the ethics, the prerogatives, the rights and the duties of the actors achieving lobbying goals.

The lobbying action, in its aim of exercising the political significance of interests, creates a mutual acceptance of the role of the public official which is informed on the specific issue presented by the lobbyists, who operates with the institution, in aid of the client's purpose (an association, a business company or even a private entity) but this process is not conducted against the law, attempting to bypass even using illegitimate or corrupting tools: in these terms, it is possible to describe the lobbying action as a preserving one of the integrity of the institution involved in the management of the issue in question, since it brings new reserves of knowledge, skills

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<sup>42</sup> Cf. CARRION G., *Il lobbying democratico come fattore di sicurezza*, Gnosis website, (2/2015) available at: <http://www.lobbyingitalia.com/2005/02/il-lobbying-democratico-come-fattore-di-sicurezza/>

and experience to the political framework and in doing this is also represents social groups<sup>43</sup>.

In a democratic and pluralist regime, the lobbying activity cannot be discarded, since it represents the bridge between private and public interests sphere, but it must be bound into strict transparency requirements, in order to be able to rely on a concrete distinction between allowed practices and immoral behaviours. Provide a regulative framework to lobbying means ensure the respect of democratic rules and more in general to the security of the State itself: the access to legislative information, transparent political action, the respect of the rule of law are part of the State security and the lobbies must honor them through the representation of those who cannot give direct expression to their own preferences and interests.

The pressure power of lobbies is about giving support to questions of actuarial expertise and this chance of easily achieving reliable information represents an added benefit for politics professionals, called on to participate to decisional moments taking into account the safeguard of organized interests. But these practices necessitate of specific codes of ethics and regulative normative, or they would qualify as border-line initiatives from the legislation<sup>44</sup>.

Indeed, the legislators' aim should have the purpose of uncovering the true content of lobbying activity, in order to make transparency be a deterrent for illegal operations, since in democratic systems, the State security goes along with it.

## **CHAPTER 2 WHAT DOES LOBBYING HAVE TO DO WITH ETHICS?**

Once the issue of the definition of this challenging and in progress topic has been addressed and the importance of its necessary presence and essential activities inside the political system have been brought to the attention of the dissertation, it is necessary at this point of the matter to mention the theoretical approaches that stand behind the legal context and the system of values by which the groups are activated in their lobbying purposes. In doing so, through the analysis of the general conceptual framework where the phenomenon is set, it is possible to understand the political and

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<sup>43</sup> Cf. Idem.

<sup>44</sup> Cf. Idem

social criteria for the different interpretations, thoughts and observations affecting the lobbying field in its “business ethics” evolutions, so that it would be possible to interface the ultimate purpose of this graduate work - which is intended to suggest a workable solution to the ethical dilemmas behind the lobbying activity – also from a philosophical perspective.

In the following chapter, the dissertation will proceed in four stages: first of all, the analysis will require the comprehension of the Government Ethics subject in its key points, which will also clarify why the ethical theory and debate behind the lobbying issue can be considered a problem of Global Justice, as it identifies who might have responsibilities in providing a normative view<sup>45</sup> which argues about what agents – in collective, as for the groups of pressure and of interest more in general, or individual, as for the leading figure between the representatives of particular interests, like a lobbyist acting from inside the institutions, sense – ought to do in connection for developing an ideal (from the ethic point of view) method to match the moral standards in democratic societies.

Then, the strict Political Science pattern will take root through the two most theoretical approaches to lobbying and their models for the political adjustment features to other areas such as economics, but also sociology and law: the first one is based on the group theory of politics, according to whom “a democratic society must use a group process to make political decisions”<sup>46</sup>. In these terms, the approach reveals once again “the importance of the role of interest groups in the decision-making processes”<sup>47</sup> and of their interactions, as the organization of the groups into active entities with specific methods of interest promoting and advocating desirable goals for the community<sup>48</sup> involves the citizens in a larger awareness of their own needs and of their power of influencing the decision-makers using the representatives to assert their rights and interest in the institutional framework.

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<sup>45</sup> Cf. BROCK G., “Global Justice”, *The Stanford Encyclopedia of Philosophy*, (Spring 2017 Edition), ZALTA E.N. (ed), available at: <https://plato.stanford.edu/archives/spr2017/entries/justice-global/>

<sup>46</sup> EPACA European Public Affairs Consultancies’ Association website, available at: <https://epaca.org/about-lobbying/>

<sup>47</sup> LABOUTKOVÁ M., ZÁK M., *Transparency of Lobbying: A theoretical approach*, (2016/09/14), available at: [https://www.researchgate.net/publication/312026905\\_Transparency\\_of\\_Lobbying\\_a\\_Theoretical\\_Approach](https://www.researchgate.net/publication/312026905_Transparency_of_Lobbying_a_Theoretical_Approach), p.2

<sup>48</sup> Idem

What is fundamental to extract from this approach, in order to understand where it leads within our ethical dissertation, is that - following the notation about the activation of the groups - the lobbying process towards the political system can be defined here as the “effort to influence decision-making”, but not only in the emergence, promotion, function and consequences of the special interests which rise during the practice, but also “in the use of a variety of practices”<sup>49</sup>, which are considered legal and legitimate as well as a democratic rule. In this context, it must be remembered that “information is a basic means of exchange in negotiations” and also that “it is a commodity traded between politicians and voters under special conditions influenced by individual interests and their promotion”<sup>50</sup>.

Within this first theoretical background, it lies a further debate between two main approaches to the role played by the groups: the pluralism pursued through the mediation of a variety of several interests, which are in competition but coexist in mutual tolerance, belonging to different individuals who take part in different groups<sup>51</sup>; the other one is neo-corporatism, which retains, on the contrary, that there is inequality between multiple interests and their incidence inside the political context and that attributes to the institutions the power to select which of them are the ones that must be promoted within policies<sup>52</sup>. These two schools of thought will be described also in the context where they have been elaborated and enhanced, in order to understand the reasons behind their particular features in connection with the civil society where they have been applied and evolved.

The second theoretical approach, which is the one that has been chosen by the European institutions’ perspective, such as the European Commission, is the one which retains that lobbying regards “all the activities carried out with the objective of influencing the policy formulation and decision-making processes of the EU”<sup>53</sup> and more in general of the policy framework where it is implemented. In this sense, the Commission believes that lobbying, meant as the attempt to influence others and “originally based on the right to be heard”, takes legitimately part into the dynamics

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<sup>49</sup> Idem, p.2

<sup>50</sup> Ibid.

<sup>51</sup> Cf. ANTONUCCI, op. cit., (2011) p.27

<sup>52</sup> Cf. ibid.

<sup>53</sup> EPACA, European Public Affairs Consultancies’ Association website, available at <https://epaca.org/about-lobbying/>

of democracies and of their derivations, even special ones such as the European Union, “regardless of whether it is carried out by individual citizens or companies, civil society organizations and other interest groups or firms working on behalf of third parties (public affairs professionals, think-tanks and lawyers)” (cf. *idem*). As a consequence of this approach, the Commission retains that all those agents involved in the policy making within the EU framework exercise lobby to each other, with the aim of obtaining support for specific projects or influencing the draft of proposals and the negotiation or modification of amendments, or even to coordinate similar position around the public policy process.

In the previous chapter, the regulatory achievements concerning the activities of the groups within legislative frameworks have already been mentioned and described, but in the final part of this second section, the different advocacy – and more specifically lobbying – methods will be analysed within the ethical frame through the potential preparedness of three different models, corresponding to three different schools of thought. These models are going to be investigated with the aim of providing further and more effective regulatory proposals, taking into account that an extreme schematization is not possible in all respects, since the criteria used for the various proposals for legislation made over the years and reflected in the approaches to the issue are responsive not only to one single model, but involve aspects which refer to all three.

## **2.1 THE RELATION BETWEEN GLOBAL JUSTICE AND GOVERNMENT ETHICS WITHIN THE LOBBYING FRAMEWORK**

In the governmental framework, some ethical dilemmas are unavoidable, but they can be easier to address if public servants treat their obligations fairly and develop them with transparency “in a range of domains, including over distributive and recognitional matters”<sup>54</sup>. The Government Ethics field of study deals with these issues, with the purpose of making considerations about an analysis of the matters for solving these dilemmas and providing positions which can be useful in practical policy making situations.

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<sup>54</sup> BROCK G., “Global Justice”, *The Stanford Encyclopedia of Philosophy*, (Spring 2017 Edition), ZALTA E.N. (ed), available at: <https://plato.stanford.edu/archives/spr2017/entries/justice-global/>

This field encompasses three general categories: process, policy, politics<sup>55</sup>. The first covers “the set of duties and obligations that a person assumes when he or she enters public service”<sup>56</sup>, as in democratic regimes, people delegate their sovereignty with the thought that public authorities will act taking into account the trust put in the leadership they impersonate; so, in these terms, there is the presence of a “duty of loyalty, which deals with conflicts of interest”<sup>57</sup>, as the representatives of institutions have to enforce the common good and not their personal priorities, with the absence of favouritism towards a party or specific constituencies. There are also duties of fairness, of impartiality, of care and of accountability: the absence of preferential treatments, the equality with which all constituents must be treated, the competences in acting, obeying all the laws and govern the public treasury responsibly, all these conditions are necessary in order to achieved the set goals serving the citizen. The public servants must show transparency in their actions, administering public resources at best and the process section of Government Ethics provides the theoretical approach to reach this objective.

Then, in the policy field, the ethics arise in substantive decision-making decisions and the decisions also depend on the values of the society, on the idea of justice which is applied in distributive or retributive matters, on the parties involved in the obligations to create and to enforce in order to implement the “constant and perpetual will to render to each his due”, which is the definition of justice itself given by the Institutes of Justinian, a codification of Roman Law from the 6<sup>th</sup> century AD<sup>58</sup>.

In its third element, politics, the Government Ethics area involved is the dilemma coming from “the personal pursuit of running for office”<sup>59</sup>, which is the issue that leads to the evolution of the ethical campaigns practices, in order create

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<sup>55</sup> Cf CALLAGHAN H., “*What is Government Ethics?*” in Markkula Center for Applied Ethics at Santa Clara University website, available at: <https://www.scu.edu/government-ethics/resources/what-is-government-ethics/>

<sup>56</sup> Idem.

<sup>57</sup> Idem.

<sup>58</sup> Cf. MILLER D., “Justice”, *The Stanford Encyclopedia of Philosophy* (Fall 2017 Edition), ZALTA E.N. (ed.), available at: <https://plato.stanford.edu/archives/fall2017/entries/justice/>

<sup>59</sup> Cf. CALLAGHAN, op. cit.

a political message which responds to the standards of fairness, integrity and truthfulness. The aim to reach in these specific ethical dynamics is to provide an educational process, not only for the society, but also for public officials and government employees, who have democratic responsibilities before forms and regulations, and above all, before the society.

In our dissertation, the ethics of government embraces the ethical standards behind the activities of the groups within the institutional environments, as long as democratic ethical questions arise from specific rules and procedures administered by policy-makers and governmental bodies. In these terms, the ethical purposes of the government are theoretically expressed through those forms and regulations to which public servants are accountable before the people and the governance structures of the country itself; for this reason, the purpose of ethics standard can be considered a matter of Global Justice, as its main business should be what is called “education in democracy”<sup>60</sup>, since the players of legislative and executive bodies are first of all accountable to citizens, who come before administrative structures, judiciary units and even their own consciences.

But to understand through and through why these kinds of dilemmas can be assessed as Global Justice issues, first we need to return to a set of theoretical assumptions and principles. Indeed, a problem is often considered a Global Justice one when it affects agents who are located in more than one single country and/or the issue cannot be solved without their cooperation across different states<sup>61</sup>. Still, one of the advantage of this field, which also distinguishes it from International Justice, is that it is not mandatory to consider the states as the only entities meant as the main subjects at stake, which promote several courses of actions in order to promote justice: in the case of Global Justice, the enquiry on which claims are focused is on what kind of justice should be pursued among individuals and societies. Consequently, the real players in these matters are human beings and the

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<sup>60</sup> THOMPSON D. F., *Paradoxes of Government Ethics*, Public Administration Review, Vol. 52, No. 3, (May - Jun., 1992), available at:

[https://www.jstor.org/stable/976923?seq=1#metadata\\_info\\_tab\\_contents](https://www.jstor.org/stable/976923?seq=1#metadata_info_tab_contents)

p. 255

<sup>61</sup> BROCK G., “Global Justice”, *The Stanford Encyclopedia of Philosophy*, (Spring 2017 Edition), ZALTA E.N. (ed), available at: <https://plato.stanford.edu/archives/spr2017/entries/justice-global/>

primary goal is “to give an account of what fairness among such agents involves” (idem). Therefore, the kind of interactions analysed in such issues are not limited to the range of actions connected to states or nations only, but affect different relationships, roles and skills which are relevant in conceptualize global responsibilities. The latter ones are the items of Global Justice theories, which identify what duties of justice should guide the behaviours of agents in matters assumed as global justice ones, which include: actions stemming from an agent, institution, practice or activity which affects negatively some of these units also outside the country wherein they have been raised. By now, given “the wide – ranging impact of globalization on human existence”<sup>62</sup> and considered the relevance of the global civil society as a new political subject noticed by Magatti<sup>63</sup>, where the various interest groups expand, pursuing their influence and aims, it is clear how the Government Ethics has not to be fulfilled and implemented only within the national political framework, but also over a larger global scenario. Consequently, the political philosophy and practical politics concerning all the elements which connect the governmental ethics field with the role played by the groups of interest within the establishments of policy making bodies, including the questions related to their regulation and action, have to be considered nowadays as part of Global Justice matters, since they include for definition also those scenarios where “institutions, practices, policies, activities (and so on) in one (or more) states could bring about a benefit or reduction in harm to those resident in another state”<sup>64</sup>. Furthermore, given the capacity of groups of activating particular interests derived from specific categories or sections of society within the political and institutional context, also outside the domestic country – as for example in the case of the members of the European Union - the assumption under which, in Global Justice, normative considerations require agents in one state to take certain actions towards

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<sup>62</sup> SCHEUERMAN W., “Globalization”, *The Stanford Encyclopedia of Philosophy*, (Winter 2018 Edition), ZALTA E.N. (ed), available at: <https://plato.stanford.edu/archives/win2018/entries/globalization/>

<sup>63</sup> MAGATTI M., *Globalizzazione e politica*, in “Manuale di sociologia politica”, COSTABILE A., FANTOZZI P., TURI P. (edited by), Carocci Roma, (2006), p. 318

<sup>64</sup> BROCK G., “Global Justice”, *The Stanford Encyclopedia of Philosophy*, (Spring 2017 Edition), ZALTA E.N. (ed), available at: <https://plato.stanford.edu/archives/spr2017/entries/justice-global/>



other to bring benefits or reduction in harm (through institutions, policies or norms, practices and activities) highlights once again the correlation that can be developed between the two fields.

In this perspective, it can be said that Global Justice uses the tools provided by Government Ethics principles, in order to solve public policies issues, which affect many states and several institutional frameworks at the same time, like the ones brought to light by such matters as justice, rights or the common good problem. The necessity of developing an upgraded and successfully regulated model of lobbying practices, enforceable worldwide – with the appropriate contextual differences - to the current new expressions of collective participation and significant for addressing the challenges of the globalization context, this need of highlighting the involvement of groups in decision making, their numerical dimension and ability of representation of the interests, can be considered a Global Justice problem of nowadays.

Still, ethics is erroneously considered mainly instrumental to government and not as a part of the reasons why the government is established and maintained<sup>65</sup>. It is not seen as a primary goal like economics, public welfare or national defence, which are intrinsic to government, but the making of good policies is directly dependent on the values of ethics, which purposes are more important than every single policy goals, as these values represent the preconditions for their implementation. In other words, the priority of Government Ethics is a sort of paradox for the field itself: “because other issues are more important than ethics, ethics is more important than any issue”<sup>66</sup>.

Thanks to Government Ethics, the agents within the institutions are able to make decisions on the basis of merits of issues and not to find a profit from the outcomes of the policies they work to implement, as the rules in question are designed with the aim of improving the tendency to overcome personal benefits. The private gain must not in any way lead to unfairness and partiality, which means that conflicts of interest must be avoided in every possible way as far as they jeopardize the real aims of the decision-making process. According to Thompson,

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<sup>65</sup> Cf. THOMPSON, *op. cit.* (1992), p.254

<sup>66</sup> Cf. *ibid.*

“the main point of rules against private gain should be to prevent the corruption of official judgment”<sup>67</sup>, since the ultimate goal of political agents should be the management of the issues affecting the citizens, who, for their part, must be led to preserve and develop their trust and confidence in the government apparatus; the ethics field is meant to do this too, giving people some assurance that the institutions are doing what they are supposed to, following a sort of code of practice, which rules guarantee the merits of decisions and the substantive qualifications of the decision-makers<sup>68</sup>. In other words, without these clear ethics rules on the government’s activities, the priorities of the public sector may be distorted and the attention may be focused on other dynamics, putting the discussion on public policies in the background and in this sense a further part of the mentioned paradox comes out: again, Thompson retains that “attention needs to be paid to ethics precisely so that ethical controversy does not distract from matters that would otherwise be important”<sup>69</sup> and this point of view confirms why ethics is the most important issue within democratic governments’ matters.

Still according Thompson, another paradox concerning the Government Ethics – that describes the principal tasks of this field too - can be identified in the difference between it and personal ethics: if the education in democracy is concerned as the major challenge for government representatives, what governmental ethics should be aiming to do is making clear the distinction between personal morality and the political one in their features and purposes. The first one has evolved among relations among people, and its aim is to regulate the morality of individuals in their behaviors, whilst political ethics “arise from the need to set standards for impersonal relations among people who may never meet”<sup>70</sup>. Nonetheless, some wrong personal ethics practices may affect the accountability of public policy makers, since they private immorality undermine the trust people put in his/her leadership, ruining the reputation of the figures citizens looked at to play a role as the public one, because after such immoralities came to the surface

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<sup>67</sup> Ibid.

<sup>68</sup> Cf. THOMPSON, op. cit. (1992), p. 256

<sup>69</sup> Cf. THOMPSON, op. cit. (1992), p.256

<sup>70</sup> Ibid.

people no longer consider the elected officials as the ones who deserve the rightness of the public charge they were supposed to honor. In other words, unrighteous dealings in personal affairs get into trouble the perception that people have of the respect for the governmental ethics standards that the elected representatives are supposed to put in their practices within the institutional framework.

This peculiarity just outlined highlights some key points of our dissertation in the measure that it brings into focus the question why should the two ethics versions - in the meaning of the distinction between the private and the public virtue – should find a common ground within the need for a legitimation of activities such as the ones pursued by groups of interests. In other words, why should private agents, in the name of economic or social and intellectual interests, be allowed to deal with those who directly or indirectly (respectively, the elected representatives and the public institutions) represent the common interest and people's sovereignty?<sup>71</sup>. From the answer to this question, the various models for regulation of this distinctive activity can be traced mainly into two types: there are systems which work in order to restrain the tendency of the government to invade the citizen's rights sphere, as for example in the American model, where the rules are conceived to protect the right to petition within a common ground of collaboration between interests and public decisions, in such a manner that decision-makers and groups' representatives are required to act on behalf of reciprocal transparency and fairness ; besides, there are systems which aim is to safeguard the supremacy of public authorities and in this case the rules established are designed to provide to particular interests adequate opportunities for the dialogue, but always without a defined commitment to transparency and formalizing procedures, because, by doing so, the encroachment of potential restrictions on state sovereignty can be avoided<sup>72</sup>. Therefore, more the system of law regulating the institutions within a democratic regime is devoted to fight against corruption and to respect Government Ethics

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<sup>71</sup> Cf MAZZEI G. in Research Unit Law and Economic Studies Università Commerciale Luigi Bocconi, *Lobby. La rappresentanza di interessi*, paper n.13 (2014), p. 5

<sup>72</sup> Cf. *ibid.*

practices, more the model of regulation on the lobbying issue will be rigid and meticulous.

But if the democratic idea is a regulative one, the lobbyist does not act only in the light of profit or no profit interests, but in the first place should focus the attention of decision makers on problems that too often are marginalized within the political agenda of the institutions, participating to the decision-making process from the creation of legislative acts to the introduction of incentives to the representation of certain interests and at the same time of proposals with the aim of improving the quality of laws and regulations. In these terms, the lobbying activity meets the legitimacy of Government Ethics, as it is intended as a moment of democratic participation where the players not only foster legitimate private interests, but rather assume public responsibilities acting as social agents who expand the participation rate to politics for citizens. The latter ones indeed should be more involved in collective decisions through the activity of lobbyists, which operate has to be framed into the will of a representation of interest aimed at making politics perform better and in a more efficient way; still, to mean lobbying as an action of democratic participation, it must have a crucial and flawless regulative system, imposing that transparency and reciprocal fairness so emphasized in governmental ethics against corruption and constraint or subjugation of decision makers. But in doing this, another important goal to achieve is making possible the meaningful dialogue between lobbyists and decision makers, in order to build a virtuous circle between the groups of interests and institutions.

Furthermore, as nowadays politics are expected to become more and more complex, largely because of the interdependences developed within the globalization scenery, the ethical standards “necessary to assure citizens that those who must cope with this complexity are serving with honour”<sup>73</sup> are going to become more complex too. From this perspective, the urgency of solving the lobbying issue becomes even more necessary and the educational responsibility of Government Ethics is useful in this, since “any effort to regulate lobbyists must begin by placing their conduct in context”<sup>74</sup>, the communication practices with public representatives and their

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<sup>73</sup> THOMPSON, op.cit. (1992), p.257

<sup>74</sup> JOHNSON V.R., *Regulating Lobbyists: Law, Ethics, and Public Policy*, Cornell Journal of Law and Public Policy: Vol. 16: Iss. 1, Article 1, (2006), p.4  
Available at: <http://scholarship.law.cornell.edu/cjlp/vol16/iss1/1>

functional role can be truly governed only if they are taken into consideration along with the circumstances under which the institutions operate. Starting from this statement, it is quite clear that if, for example, public officials accept favors from a group of pressure or, more in general, of interest, citizens will consider such action as improper and the circumstances in which it had taken place as irregular; this means that the institutional arrangements have to be considered also by the Government Ethics point of view, in order to “craft a legal regime to effectively minimize the risk that lobbying will distort official decision making”<sup>75</sup>. The examination of the ethical standards that lobbying must adhere to, will be broadly addressed in the third chapter of this thesis, with the aim of finding the most effective lobbying practices to contribute positively to the public good, an issue of our time considered here as a threat to the common good – in domestic and global sense -, since we have seen how many ethical dilemmas can arise within societies from lobbying, when unmonitored behaviours undermine the fairness and the transparency required to the institutional decision-making process.

## **2.2 THE PLURALISM THEORY**

The roots of the theoretical analysis about the lobbying activity, meant as the performance of groups of interests, are plotted along the evolution of the liberal democracy tradition, as early as the theorization by John Locke of the cleavage between the civil society and the State intended to be the law-making and administrative apparatus of the political collectiveness, division that started the polarization of the private and the public, the two complementary faces of community life. The players within the groups of interests - and in particular of pressure -, who impersonate the role of intermediaries between the government’s actions and the citizens, find their basis of existence as part of the civil society, where they are the representatives of those forms of association which guarantee the plurality of power centers, plurality of interests within decision-making bodies, plurality of values and cultural identities.

The pluralism theory is associated with the groups’ activity because it expresses the need of a practical representation able to overcome the limitations of the electoral and the institutional ones; in these terms, the pluralism theory recognizes in the representation expressed by the groups the remedy given to citizens to reclaim their

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<sup>75</sup> Ibid.

affiliation to politics<sup>76</sup>, remedy which lies into specific issues and particular stakes which are the reasons why people associate and not only becoming part of a political party. Indeed, the expansion of the groups within the civil society is also a consequence of the failure at the hands of the parties to represent private concerns and to take charge of them in their policy proposals. Under such circumstances, the actors of the civil society will present themselves as the reference entities of certain matters of interest.

Since from the analysis made by Tocqueville at the beginning of the 19<sup>th</sup> century about the specific features of democracy in the United States, it is possible to detect the distinctive role played by the organized groups inside the civil society, orbiting a specific question which can be invoked towards institutions. Tocqueville noticed that the voluntary associations arise with a non-confrontational aim, but rather an interim one before the institutions when in a democratic society, appearing with their own identity within the public arena<sup>77</sup>. The existence of several interests, which may also be in opposition to one another, must be considered as a common feature of an open representational regime, where the solution of the issues they report has to be researched into the regulation of the actions pursued by the groups in the cause of the interests themselves.

The idea of lobbying in the pluralism theory is based on four conditions<sup>78</sup>: the equal access for each different group of pressure to items of topical political interest; the fragmentation of civil society, organized in several interests; the existence of a free and democratic competition between lobbies, with the aim of achieving the most favourable feedback from the institutions to the matters posed; the absolute neutrality of the decision-maker and the guarantee to the groups to be listened on the same basis of equality. These conceptions have found a “particular breeding ground in the American civil society”<sup>79</sup>, where the pluralism is the guideline for politics and foremost the cultural model of society, full of subjects that operate as part of the social body; that is why in this unique context, lobbies are able to present themselves as belonging effectively to mass voluntary associations or to a system of referential

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<sup>76</sup> GRAZIANO L., *Lobbying, pluralismo, democrazia*, La Nuova Italia Scientifica – Carocci Roma (1995) p.157

<sup>77</sup> DE TOCQUEVILLE A., *La democrazia in America* (1835-40), Rizzoli Milano, (1994 Edition), p. 202

<sup>78</sup> Cf. ANTONUCCI M.C., op. cit. (2011), p.29

<sup>79</sup> Ibid.

categories and special groups. In view of this, it appears clearer the perspective about the groups, in terms of forms of association, expressed by Tocqueville, who saw in the safeguarding of interests within the American system, the inevitable affirmation of a kind of society with an egalitarian inclination, encouraging the widespread of matters of (not only) political significance within several levels of society.

De facto the pluralist political theory of lobbying under the label of “group theory” starts since the beginning of the 20<sup>th</sup> century, with the studies of authors like Arthur F. Bentley and David Truman, who detected the role of groups in pluralist democracies during the particular moment in history that saw the growth of the group realities as part of the American capitalist system and the civil society organized itself into sectors of enterprise and professional associations, injecting further evidence to the considerations made by Tocqueville of the structured organization of various interests inside the democratic system.

The two above-mentioned authors provided an analytical view of the rise of groups, which states that politics emerges from the natural and dynamic interaction between the interests represented by the groups, so largest is the number of the claims looking for representation before the institutions and the political framework, largest will be the level of democracy in that specific political system<sup>80</sup>. In particular, Truman retained that, within the democratic process, the interest groups interact in the policy making procedure<sup>81</sup>, whilst Bentley referred to the “group” as a “grassroots activity” and also as a “temporary and specific model of interaction”<sup>82</sup>. Furthermore, Bentley considered the strict connection between the identity of the groups and the political ideals, public opinions and social issues, which create themselves other groups and so on... and is through the affiliation to the groups that the citizens determine their own identities and even their primary interests. Nonetheless, Bentley did not put in place just a pure ideological vision of the groups, but rather aimed at rebuilding the Political Science considerations towards groups basing on them a new kind of analysis, able to capture the community features and taking into account the assumption that the different civil society spheres (politics, economics, ethics) do not act as single entities,

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<sup>80</sup> Cf *ibid.*

<sup>81</sup> Cf TRUMAN D., *The Governmental Process. Political Interests and Public Opinion*, Alfred A. Knopf, New York 1959 (1st edition 1951), p. 235

<sup>82</sup> Cf BENTLEY A. F., *The process of Government* (1908) Belknap Press of Harvard University Press, Cambridge (1967), p. 211-213

since they operate as part of interdependent activities, inside which a series of interconnected attitudes give shape to legitimate interests.

Truman in turn, - considering the influence that the structured groups of interest play in the American social framework - worked on the relationship between the group theory and the stability of the democratic system, believing that the first strengthen the latter, since the presence of the groups can even operate as an ombudsman aimed at reconciling conflicting views and tension and at incorporating the different priorities of the various stakeholders and institutions. Indeed, Truman reported the channeling function of the lobbies consistent in pursuing the social debate around democratic issues within politics. This democratic role assumed by the groups is even more substantiated by Truman through two basic concepts: the “overlapping membership”, assumption which starts from the idea that even if the group is a model of relations, a single group cannot incorporate all the preferences of a single individual, which identity cannot, in his turn, found its ownership exclusively within one group of interest; and then, the presence of interests which have not been organized yet into specific units<sup>83</sup>, that Truman retained to be the potential basis for a shared membership between many individuals. However, despite this democratic tendency within groups theorized by Truman, there are also examples of disregarded egalitarian practices, replaced by oligarchic and vertical relations inside the forms of association, because of the weakness of the mechanisms by means of which the groups of interests should make their instances in the name of the individuals they represent, asserting them inside the politics field<sup>84</sup>. Unfortunately, the problem lies in a particular feature of the existing policy making process: the failed appeasement between the power of the institutions of the State and the legitimacy of the practices developed by the groups within the pluralist democracy; in this sense, it appears clear why one of the black spots in the group theory is the evaluation of the forms of organization and of the practices they provide.

Nevertheless, pluralism assumes that, in response to a plurality of competing interests, the decision maker must be able to find a balancing resolution between the requests in contraposition and that also the system of multiple memberships to several groups of the individuals is able to enable a peaceful acceptance of the decisions taken

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<sup>83</sup> Cf TRUMAN D., *op. cit.*, (1959) pp. 508-513

<sup>84</sup> Cf GRAZIANO L., *Lobbying, pluralismo, democrazia*, (1995) *op.cit.*, p.195



and the mutual tolerance of the policy outcomes arising from the decision-making process<sup>85</sup>. Actually, according to pluralism, the role of lobbies in their encouragement of citizens to participate to the civil society activities is allowed not through the elections, but rather using the associations themselves, considered the social tool for influencing the shaping of the legislation and to guarantee to the citizens an active role before the institutions not only by the use of the elective political tool. Still, this scenario is less practicable across European societies, where the ability of groups to aggregate and activate the citizens towards specific matters is affected because of the limitations imposed by the monopoly of political parties as representatives of civil society's requests, compared with the role they assume within the American context.

The pluralist approach looks at the performance of groups of pressure as a social one with influence on politics, by implication, in this theory, lobbying is considered as a form of social aggregation which operates through politics, but which is not depleted in it<sup>86</sup>: according to pluralism, democracy is developed not only across the institutions and inside the State, but rather it is expressed over the social components such as the groups of interests and of pressure. The self-government feature which characterized the civil society is the central assumption of the pluralism theory, in contrast with the exclusive domain of the State in the institutional dimension; bearing in mind the point of view developed in the last chapter about the close link between the new Global Justice challenges and the issues related to lobbying from an ethical and social perspective, it is possible to draw a common thread in this pluralist conception which connects the new tendencies of the civil society – such as the reorganization of the governance's structures or the relocation of politics within new scopes for action for the groups – with the exhibition of new requests of independence by intermediate social bodies from the traditional politics subjects (parties, public administration, executive and legislative institutions).

In view of this, the liberal version of pluralism - where the willingness of the State is considered as the ultimate outcome of the willpowers of the winning groups of pressure within the decision-making process - can be assumed to be the most effective stream of thought of the theory to provide possible solutions to the necessities arising from the globalization, such the above mentioned about the relation between

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<sup>85</sup> Cf ANTONUCCI M.C., *op. cit.*, (2011) p.29

<sup>86</sup> Cf *idem*, p. 30

the civil society participation to politics and the lobbying matter. It is under this specific trend of the pluralist approach that authors such as Bentley or Truman can be listed as some of the main thinkers of the Contemporary Pluralism, but also other ones as Harold J. Laski and Robert A. Dahl deserve to be mentioned in this dissertation, with the aim of considering the potential level of consensus that lobbies are able to achieve from the effective competition of interests.

If Bentley theorized a liberal pluralism which can be defined as an analytical one and Truman tended to focus on the way pluralism can combine the several requests of the groups through democratic values, Laski described a different approach which can be called a “normative pluralism”<sup>87</sup> and which is based on the assumption that within the civic society the associative entities multiply depending on the number of function the civic society itself is called to play. His idea of group is different from the others authors’ ones, since Laski did not consider it as an abstract subject, but rather as a “fellowship, with its own ethos, moral unity and historical memory”<sup>88</sup> and moreover, he refused the supreme sovereignty of the State, to which the individual is subordinated in his social relations; Laski did not consider the authority of the State above the other forms of associations, but rather he treated it with the same attention reserved to the other political, economic or even religious groups of interest. In his essay “Authority in the Modern State” he describes two opposite notions of sovereignty, which is not only absolute - in the meaning that we cannot evade from it -, but also and at the same time fostered by the consensus of the public opinion: in other words, the action pursued by groups is intended as a form of resistance to the struggle between obedience and consensus to the State’s authority<sup>89</sup>; besides, Laski openly declares that the State is just one of the associations to which the individual belongs and in which he identifies himself<sup>90</sup> and in doing so, he also intends to propose an alternative solution to the perception that many sections of the society have of the crisis of representation, issue that the institutions are often not able to address. Through a new social model for the participation of all citizens to the decision taken within

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<sup>87</sup> Cf LASKI H., *Studies in the problem of sovereignty*, Yale University Press, New Haven (1917) in ANTONUCCI, op. cit., (2011), p.31

<sup>88</sup> Cf GRAZIANO, op. cit., p. 199 (personal translation)

<sup>89</sup> Cf idem, p. 202

<sup>90</sup> Cf LASKI H., *Authority in the Modern State*, Yale University Press, New Haven, (1919), p. 19

politics, Laski retained that the political power can be transformed by the action of the groups into a responsible and active one, as every single interest can be represented thanks to the groups' performance.

Ultimately, the polyarchy theory coined by Dahl represents the most detailed attempt to achieve an effective model of participation and pursuit of the interests in the latest research. Indeed, in this approach it is possible to create a theoretical basis for the groups' attitude in influencing the political system, since Dahl has made possible to show the compatibility between the performances of the groups in a democratic regime. With this aim, he theorized a new democracy model, called precisely "polyarchy" which corresponds to the theorization of the groups' democracy, in other words a government of minorities, where it is not the will of the majority that must be followed (as for example in the typical democratic regime of the tradition developed from Rousseau), but rather it is the protection and preservation of particular thoughts and interests that is guaranteed within this expression of the pluralism. In this perspective, the groups possess democratic legitimacy in front of the institutions and it is recognized their ability to interact continuously among them and with the institutions in order to represent particular interests, to influence the political agenda and – through lobbying – also the policy making process, but in doing this, the groups are concerned as means for the participation of the civic society, as tools to promote and enforce the goals of a pluralist democracy. In "A Preface to Democratic Theory"<sup>91</sup> written in 1956, Dahl identified the aggregative function of these realities and considered it as a chance to expand the entry of the citizens to the issues of politics, giving rise to alternative forms of intermediaries between the institutional and the social frameworks compared with the political parties.

Polyarchy is characterized by a plural articulation of the society, where the intermediate bodies - recognized in the groups – represent its interests in political equality. For Dahl, the democratic regime needs three conditions to operate in the most effective manner: the government must be able to satisfy the citizens' preferences and it must have the assent of them too, but above all it must be predisposed to accept the critics and the requests of its citizens; this last feature is what distinguishes a government ethically democratic and an only seeming one. The thing that has to be

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<sup>91</sup> DAHL R. A., *A Preface to Democratic Theory*, University of Chicago Press, Chicago, 1956, Italian translation edited by Edizioni di Comunità, Milano, 1994.

noticed within this perspective, for the aims of our dissertation, is that what makes the difference is the political equality condition, which for its part makes possible the existence of institutional mechanisms for guaranteeing the inclusion of the members of the various groups within the political system.

However, Dahl did not deny the risks associated with a government driven by particular interests, which loses the meaning itself of democracy and underlined the necessity of a system of monitored rules, as the groups must perform within the boundaries of consensus put in place by the law and the values of the institutional system<sup>92</sup>. The duty that citizens must claim from the government officials is to respect the ethics of a democratic regime where the needs expressed by the society through the tools of the representation, of which the groups of interest are considered part, must be taken into account and fulfilled in the long term or at least put into question within the decisional process. The reason why this theory particularly fix within the American system is because the groups possess a higher power of access to the decision-making process, making the American democracy an effective model of strengthening the consensus by encouraging the values of minorities too<sup>93</sup>.

Therefore, taken into consideration all the points of view of the mentioned authors, it should appear clearer now why the presence of lobbies within democratic systems is so essential to guarantee the values of political equality in decision-making. Only within a democratic framework where lobbies are multiple, competitors of each other, but also provided of the same potential before public decision makers, every single group can truly look for the public welfare and not for its own advantages towards particular interests. In order to do this, what is necessary is the impartial and neutral presence of public decision-makers and the liberal pluralism represents the tolerant and conciliatory political framework where the pursuit of the general public good can be carried on also thanks to the “cross-cutting and overlapping membership”<sup>94</sup> of the individuals engaged into the groups. Still, even if the theory recognizes the presence of the groups for democratic regimes as essential, this approach has been criticized for its vagueness on the assumptions about the capacity of several interests of being included in the decision-making process with the same

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<sup>92</sup> Cf DAHL R. A., *op. cit.*,(1994), p.132

<sup>93</sup> Cf *idem*, p.172

<sup>94</sup> Cf ANTONUCCI, *op.cit.*, (2011), p.32

chances of influence and on equal basis; furthermore, it also too subtle the description of the actual chances of implementing a model of public decision-maker totally impartial and fair minded facing the requests of the strongest – for status, membership or even access to financial resources – groups<sup>95</sup>, a sensitive issue which is also one of the dilemmas aiming the ethical discussion driving this dissertation. On those grounds, it is worth to give attention also to another dimension of the theoretical study of lobbyism, which focuses on the relationship between the pressure groups and the State - analysing in particular the public policies outcomes produced by the latter one – and which will be discussed in the next paragraph.

### **2.3 THE NEO-CORPORATISM THEORY**

If the theoretical pluralist model could be related to the role that the pressure groups possess within the liberal American political system, the theoretical framework associable to the European continental political theory would be the neo-corporatism approach, elaborated from the seventies since the development of welfare states<sup>96</sup>.

This approach attributes to institutions the expertise to select those interests which can be supported legitimately in the implementation of particular policies and for this reason it seems to affirm theoretically the attitude of European groups of pressure, as for the cases of Germany and Italy, consensual democracies where politics has pre-eminence over the potential self-organization of interests within the civil society.

In the pluralist model, typical of the American paradigm, it was possible to notice that the representation of interests is characterized by a significant number of sector-specific associations, as a result the system is barely coordinated and centralized and the process of policy making has to face a high competition among the organizations influencing public decisions through lobbying; for their part, the political subjects part of the institutional framework need to compete for winning the support of the groups of interests. On the other hand, the neo corporatism model presents a selected number of big groups gathering the interests of large social fields among the citizens. In this context, the organization of lobbies is more centralized, internally coordinated and in poor competition, with the aim of interacting with the

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<sup>95</sup> Cf *ibid.*

<sup>96</sup> Cf ANTONUCCI, *op. cit.* (2011), p.27

public decision-makers in the implementation of economic, social and employment policies, following an advisory attitude. Furthermore, the widely centralization of the representative power means higher decision-making autonomy for the politics officials and for their manifestation within organized structures (as political parties or the institutions themselves) compared to the power reserved to intermediate bodies as the groups of interests. This implies a strict empirical connection between this approach and – with the proper variations – the dominant inclination of European countries in regulating the relations among State and organized groups.

The model states that just some of the organizations caring for specific interests inside the civil society are able to define the decisions processed by the State concerning public policies, through action and consulting procedures. In other words, the State determines deliberately which groups should be legitimized before the institutions: this feature represents an important difference from pluralism, as the social groups do not compete openly, rather they tend to monopolize the representation of certain interests and to reach agreements on them; furthermore, the State is not considered one of groups at all, it possesses a relatively independent power of decision, with which faces the groups' disputes holding the appropriate expertise for requiring integration mechanisms among the several interests, in order to guarantee the system's stability.

In short, the approach assumes the existence of a system of interests' representation based on limited forms of organization, but functionally differentiated, not in competition among them, which are recognized by the State, the only authority holding the power to legitimate them<sup>97</sup>. Through the role reserved to the groups by the national authority, the neo-corporativism system realizes a co-governance option on collective decision, based on collaboration and concerted action among the public institutions and the major organizations carrying the interests of the civil society, by providing them the exclusive monopoly for the representation in their respective social and professional categories, in return for total support in the implementation of those public policies requested to the government.

For these reasons, authors such as Claus Offe described the attitude of politics towards lobbies like selective for the purpose of identifying the appropriate stakeholders and counterparts in the policy-making activity, disengaging them from

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<sup>97</sup> Cf "Neocorporativism" in *Enciclopedia Treccani*, available at <http://www.treccani.it/enciclopedia/neocorporativismo/> (personal translation)

the competition with the others, a rather fundamental feature in the pluralist view of civil society<sup>98</sup>. Also, others like Gerhard Lehmbruch retains that the neo-corporatist model provides an inclusive version of the public policies' implementation process, characterized by the institutionalized representation of certain interests recognized by the State through the absorption of the groups as part of the decision-making and the administrative systems<sup>99</sup>. This proves, once again, the distance between this approach and the pluralist one, where the State was neutral in respect of lobbies' competition, totally cast aside in this case, as it is precisely the collaboration between the State and the major groups of interests that gives *raison d'être* to the corporatization of the groups into the political decision-making. Moreover, this exchange between the governance and the groups has the advantage of directing the potential strength of the groups in favour of the decisions taken by the government and not against them.

The tendency toward the use of the consultation method in order to govern with the groups' consensus is common within those welfare states where the attitude of groups is underpowered and prevalently confined into trade unions or business associations<sup>100</sup>; Lehmbruch retains that such systems can be found into various European countries, where the neo-corporatism is valued as a system of political resolutions, which are determined by the state machine also including the preferences of the principal interest's groups.

Nonetheless, nowadays the civil society is experiencing a new wave of independence from politics, not only in subsidiary participation, but also into the exercise of public functions within the institutional framework, thus this theory seems not to fit anymore with the necessities of the State and of groups<sup>101</sup>; this assumption can find its foundation also in the crisis that the traditional welfare state model and the big government contexts are undergoing in this day and age, because of the new challenges that the globalization brought not only at an economic level, but also at a political and ethical ones, resulting from the emerge of new powerful economic players who do not need to structure their interests in a corporate manner, combined with the

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<sup>98</sup> Cf OFFE C., *The attribution of public status to interest groups: observations on the West German case* (1980), pp. 45-79, (11 August 2019 Edition), available at [https://link.springer.com/chapter/10.1007%2F978-3-658-22265-9\\_3](https://link.springer.com/chapter/10.1007%2F978-3-658-22265-9_3)

<sup>99</sup> Cf ANTONUCCI M.C., *op. cit* (2011), p.33

<sup>100</sup> Cf *Idem*, p. 34

<sup>101</sup> Cf *ibidem*

decline of state sovereignty and the success of new power centers, as mentioned at the beginning of this chapter.

Anyhow, this approach remains particularly efficient for the study of the relations between State and pressure groups within European countries as it has been the first model of analysis for the connection between lobbies and the administrative bodies of the European Community<sup>102</sup>. Despite this, the need of adopting a new model of interests' participation within the European Union policy making, in the name of transparency and fairness in representation, issued again the downfall of the neo corporatism theory.

## **2.4 EVALUATION OF THE GROUPS' ACTION AND CRITICS TO THE GROUPS' THEORY**

Now that the overview of both main approaches of the group theory has been examined, it is possible to stress certain common aspects of the two theoretical perspectives, since both are aimed at identifying in the civil society the background where to find those interests worthy of attention from public decision-makers. It is indeed within the ideological framework of the civil society that the role of lobbies and the political significance of the groups of pressure are placed. For both approaches, those forms of association, such as the groups of pressure, are the ones which deserve to be allowed to enter in the political scenario, in order to find the point of encounter between the needs of the society – directly expressed by the groups – and the integrity of the public good considered as the main aim to pursue by politics; but it is precisely in the modalities with which this bridge between particular interests and institutions should be developed that the two theories differ.

If we should briefly resume the various features of the doctrines, we would find the first difference in the number of groups present within the society: in pluralism, the representation of interests must benefit of the largest number of groups possible, since the autonomy from and the attention of the various political actors depend on the coexistence within the civil society of a set of organized interests, which can guarantee democracy in the public policies making process; only in this way, it is possible for politics to take decisions with respect for the balance of interests in competition. On the other hand, there is a limited number of groups allowed to organize themselves with the aim of influencing the decisional process and for this reason they do not

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<sup>102</sup> Cf ANTONUCCI, *op.cit.*, (2011), p.35



compose themselves on a voluntary basis, but rather they are categorized and selected by the State, the real decider about the validity of the interests to represent<sup>103</sup>, thus this foundation is decided directly by politics and not by the competition between the interests themselves, as in the pluralist model in its wider liberal meaning. It follows that, from the pluralist side there is a non-hierarchical, self-determined competition, whilst on the neo-corporatist one, the groups need the identification of the State's central and regulative power, which assumes in all respects the society's leadership role, with the aim of identifying only those interests required for the purposes of the collective good at the cost of the freedom of association for organized interests.

Nevertheless, some critics on both versions of the theory of groups have been made about the assumed coincidence between the reasons for individuals to participate to the groups and the final purposes of the membership, in particular for those groups which final goal is achieving the public good, which advantages not only the group's members, but the all society. But there are differences in the operating of large compared with small groups: scholars as Olson argue that little groups are more efficient compared with larger ones and that they are also split into even more close groups, referred to as "privileged groups" - effectively mobilized, which acts are fundamental for the achievement of the common good, due to their capacity to bear the cost of the task - and limited size "intermediate groups". Conversely, the large groups are assumed to be more limited and less powerful, which potential can be realized though, with the help of selective incentives<sup>104</sup>. This implies that the will for union to the groups depend on the collective nature of the interest in question, which will bring equal advantages to all members, independently on their participation in the achievement process of the public good, this may also cause a rational free-riding effect and still the individuals are moved by incentives, as privileges and power of social or economic power.

There are still many blanks in the consistency of profiling models for assessing the nature and action of the lobbies present in nowadays political systems, influenced by globalization's phenomena. Both the theoretical approaches analysed present only partial answers to the regulation of groups' action within institutional systems, for this

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<sup>103</sup> Cf ANTONUCCI, *op. cit.* (2011), p. 37

<sup>104</sup> Cf. OLSON M., *The logic of Collective Action. Public Goods and the Theory of Groups*, Harvard University Press, Cambridge (1965), Italian edition Feltrinelli, Milano, (1983), p. 65

reason it is necessary to focus also on other theories and models for the legitimation of the practices implemented by the representatives of interests.

## **2.5 ALTERNATIVE HYPOTHESIS OF REGULATION OF THE GROUPS' PERFORMANCE AND PRACTICAL EXAMPLES**

Throughout the entire chapter, the analysis of the several approaches concerning the groups' activities by a theoretical point of view has been done taking always into account the ethics issue involving not only the lobbying practices exercised by the groups themselves, but also the influence of this social aggregation process on the public decision makers' formulations and policy predictions.

Because of the high variability across the regulation of the lobbying phenomenon among several institutional contexts, the practices awarded to groups are affected by a highly complex normative environment, but still it is a common issue within contemporary systems to find alternative arrangements to deal with interests, different from the ones usually practiced in the political and administrative accountability frame, especially in case of the presence of economic interests.

But if transparency and the respect for ethic rules remain the critical points to be addressed for improving the management of the legal-political decision-making processes for the accounting of the lobbying profession<sup>105</sup>, on the contrary the settlement on aspects as the duty towards accountability, the real entities who must comply with the fairness and transparency obligations, the effective features concerning sanctions and the conditions required for being allowed to put in place lobbying practices, all these points are still matter for discussion.

As seen, the attention to the subjective dimension of political authorities' relation with the interests expresses the need of the definition of a code of conduct with the aim of guaranteeing the prosecution of public interest, but it is also possible to notice "a sort of relationship of inverse proportionality between the political and democratic appointment of public officials and the attention to the provided duties aimed at ensuring a balanced collaboration with the interests"<sup>106</sup>. For public officials,

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<sup>105</sup> SGUEO G., in Research Unit Law and Economic Studies Università Commerciale Luigi Bocconi, *Lobby. La rappresentanza di interessi*, paper n.13 (2014), pag. 29

<sup>106</sup> CARLONI E., *Interessi organizzati, lobbying e decisione pubblica*, in R. CAVALLO PERIN, F. MERLONI (edited by), *Al servizio della Nazione. Etica e statuto del funzionario pubblico*, Milano, Franco Angeli, 2009, p. 130 [collana Diritto e società; ISBN 88-568-1593-1 available at [http://www.giurisprudenza.unipg.it/files/generale/IMPORT/univali\\_unipg/materiali/Carloni\\_2009.pdf](http://www.giurisprudenza.unipg.it/files/generale/IMPORT/univali_unipg/materiali/Carloni_2009.pdf)

the ethic code represents a constitutional obligation in terms of defending the aims of a correct relation between the appropriate treatments towards the general welfare and the impartiality in the attention dedicated to special interests.

In other words, there is a framework of duties for the government officials, which is respected only if the actions pursued are driven by the exclusive care of the public interest, but “the limited effectiveness, the excessive extension of the interested parties, the weak accountability machinery and the insufficient application of sanctions concerning ethic code’s infringements”<sup>107</sup>, all these elements do not permit the adequate implementation of a regulative impartial system of the lobbying profession.

At this point, it becomes also necessary to focus the attention on the variables which compose the responsiveness of the political staff, which is not only juridical but precisely political and that is related not only to the fairness of behaviors, but also to the system of shared values in range of institutions and political parties, to citizens’ power of judging, awarding or penalizing the practices and actions of officials, everything taking into account the public interest of the society.

For these reasons, the widespread and strong demand for a common regulatory framework gave birth in our legal system to two main schools of thought, which deserve a digression in this analysis as the debate in turn gave rise to three alternative hypothesis equivalents to three models of application and also because it helps to understand the way in which this current issue has been tried to be addressed in our social and political context through years, by an ethical point of view too. If some retains that rules on the issue were already present in the Italian legal system, but that they are dispersed and unclear, without a logical coherent scheme, so that supporters of this way of thinking consider as necessary only a reorganization of the regulatory substance, on the other hand many others promote a complete legislative action for the regulation of the phenomenon from the outset and it is exactly from the question “which and what kind of rules?” that the mentioned worthy models have been drawn up. These models are the incentives one, the cage one and the inclusion one<sup>108</sup>.

The first has a meritocratic basis, which priority is to reward who exercises the lobbyist profession following predetermined rules. The model starts from the assumption of the presence of a register for the representatives of interests, with

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<sup>107</sup> Idem p.131

<sup>108</sup> Cf. SGUEO G., op. cit., (2014), p.30 (personal translation)

optional membership, but which operates as a guarantee of advantages for the lobbyist who register himself compared to the one not signed up: for example, he possesses a priority access to institutions, which works exactly as an incentive on the condition that transparency and accountability duties are respected in the light of an ethical code<sup>109</sup>. The critical point of this approach is that the obligations as well as the advantages are reserved only to the subjects who registered, with the serious risk of not being to control the activity of those who are voluntarily not taking part in the registry. Examples of this model can be the decrees Santagata and Nencini, drafted respectively in 2007 and 2013.

The first one, known in the Italian legal system as the DDL Santagata (a.S.1866), because of the name of the Minister who designed it under the XV legislative term, defined the practices concerning the representation of interests as each activity not requested by public decision-makers, with the aim of pursuing relevant and permissible general interests. In doing so, it also obliged to the enrolment in a public register, to report a yearly relation on the practices and the financial resources used during that time, but recognizing the right to present proposals, analysis, documents, advices and claims to the institutions<sup>110</sup>. It is about an application of the model in question as it represents the first governmental involvement of the groups of interests.

The second example is represented by the more recent DDL Nencini (a.S. 643), which bears the name of the senator, leader of the Socialist Party, who presented it during the XVII legislative term<sup>111</sup>. It concerned the participation of all those subjects from civil society and corporate sector, who represent particular interests to the decision-making process, through the registration and the fulfilment of the obligations laid down the ethical code of reference. It is based on three cornerstones: “transparency, rule of law, administrative smooth running”<sup>112</sup>, without overloading the institutional processes and saving costs as much as possible. The missed inscription in

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<sup>109</sup> Ibid.

<sup>110</sup> PETRILLO P.L., *Scheda riassuntiva dei DDL per la regolamentazione dell'attività di lobbying presentati dal 1976 ad oggi*, in *Materiali Didattici Teoria e tecniche del Lobbying*, LUISS University, (2018), available at <http://docenti.luiss.it/lobbying-petrillo/teoria-e-tecniche-del-lobbying/materiali/> (personal translation)

<sup>111</sup> Idem

<sup>112</sup> SGUEO G., *op. cit.* (2014), p.33 (personal translation)

the register does not mean the exclusion from participative processes, but the active legitimation to the exercise of the pressure practices typical of the groups within the institutions is not guaranteed, but rather hindered and not economically suitable.

• TABLE I: INCENTIVES MODEL<sup>113</sup>

| GOALS TO ACHIEVE | KEY POINTS                   | EXAMPLES      |
|------------------|------------------------------|---------------|
| a) Transparency  | Optional registration        | DDL Santagata |
| b) Participation | Benefits and handicap system | DDL Nencini   |

The second model, stricter and less flexible, provides the mandatory registration of groups supposed to practice lobbying activities, compulsorily preventing the participation to the decision-making process to those who are not enrolled in the Register; through this detailed rule, the model aims at harshly regulating questionable practices, which risk to invalidate the lobbyist system itself. The ultimate purpose of the model is then to prohibit that the representation of special interests affects the interest of the general public. The main difference between the two models is exactly this: if the first deters but does not prevent to exercise the lobbying profession outside the transparency and accountability regime, the “cage” model requests the mandatory registering of lobbyists and does not admit the representative option of private interests within the institutional framework without the preventive membership to the rule of the registration<sup>114</sup>.

It is possible to outline a perfect example of this model in the decree called Bruno, presented by the senator Donato Bruno – from here the name of the DDL – in June 2011 (a. S. 2792) during the XVI legislative term - not casually, in a time that was distinguished by a series of cases involving episodes of corruption and ill repute within firms and leaders of the political elite -, which defined the stakeholders as “those employers who maintain an employer-employee relationship with the representatives of interests”<sup>115</sup> and that provided the exclusion from the activity of

<sup>113</sup> Personal elaboration based on: SGUEO G., in Research Unit Law and Economic Studies Università Commerciale Luigi Bocconi, *Lobby. La rappresentanza di interessi*, paper n.13 (2014), p. 34

<sup>114</sup> SGUEO G., op. cit. (2014), p.31

<sup>115</sup> Cf. PETRILLO P.L., op. cit., (2018)

representation of interests for those who transgress the rule of law and also the application of strict sanctions, up to the censorship and the deletion from the register. Moreover, it also contains a proposal for system of professional accreditation, requiring a basic formation, consisting of a degree in legal sciences and a long experience (at least five years) in the interests' representation field, in order to possess the credentials for being considered an effective lobbyist.

Even more responsive to the features of the model is the regulation proposal within the law about the illicit trade of influences, to the point where there was the risk to consider each possible lobbying activity as illegal<sup>116</sup>. For this reason, the final text of the normative regulation approved by the Parliament (art. 346-bis) has been made more flexible, in such a way that super-strict sanctions would have been followed only in the case of unlawful mediations providing monetary remunerations for those public officials involved in the bribing practice.

- TABLE II: CAGE MODEL<sup>117</sup>

| GOALS TO ACHIEVE | KEY POINTS             | EXAMPLES                 |
|------------------|------------------------|--------------------------|
| a) Control       | Obligated registration | DDL Bruno                |
| b) Transparency  | Sanctions system       | Illicit influences trade |

The third and last model of “inclusion” meets two main needs: safeguarding the activity of representation of private interests' professionals and sharing objectives and substance of public policies with the civil society. In doing so, the model aims at involving the largest possible number of subjects, not only to supervise their actions, but especially to achieve maximum participation and involvement of lobbyists within deliberative processes. The model reflects the need for public administrators to improve the reputation of the institutions using the involvement of the citizens and pressure groups into the formulation of political decisions<sup>118</sup>. In other words, the participation of professional lobbyists into legislative procedures is assumed to stand

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<sup>116</sup> SGUEO G., op. cit (2014), p.35

<sup>117</sup> Personal elaboration based on: SGUEO G., in Research Unit Law and Economic Studies Università Commerciale Luigi Bocconi, *Lobby. La rappresentanza di interessi*, paper n.13 (2014), p. 36

<sup>118</sup> SGUEO G., op. cit., (2014), p.31

for transparency and fairness of the entire institutional process and through this perspective, the model also aims at operating for a wider acceptance of lobbying within the community. Still, it represents a quite risky merging of many interests and goals even pretty different between them in the same context; this can cause the predominance of the interaction between stronger units of representation over others, putting aside the ethics concerning democratic participation and consequently this issue can even favor the birth of “submerged” dynamics, at the edge of traditional and admitted interactions, with the aim of bypassing their legitimate limits<sup>119</sup>. It may then happen that part of the interests are managed in accordance with official rules and others (especially the economic or industrial ones) are rerouted in an unofficial system of interactions, additional to the former.

However, despite of its weakness in the lack of traceability of relations between administrations and representatives of interests, in more restricted territories it has found full application and paradoxically, even if between the three options it is the least appropriate model to regulate the mentioned interaction<sup>120</sup>, it is possible to see its successful practical operation, as for example in the case of the Tuscany regional law n.5 of January 2002, for the transparency of the political and administrative activity of the regional council of Tuscany, which pursued the aim of guaranteeing the access and the participation of several social subjects to political life, ensuring the pluralism and the cultural, social and economic role of the groups present in the territorial area. This application of the model, even if considered overcome at present, has represented a reference point, not only at a regional, but also at a national level for the regulation of the representation of interests, in accordance with the ethical code which should be taken into account in lobbying profession.

- TABLE III: INCLUSION MODEL<sup>121</sup>

| GOALS TO ACHIEVE | KEY POINTS         | EXAMPLES           |
|------------------|--------------------|--------------------|
| a) Participation | Equal access level | Tuscany Law 5/2002 |

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<sup>119</sup> Cf. Idem, p.32

<sup>120</sup> Cf. Idem, p.37

<sup>121</sup> Personal elaboration based on: SGUEO G., in Research Unit Law and Economic Studies Università Commerciale Luigi Bocconi, *Lobby. La rappresentanza di interessi*, paper n.13 (2014), p. 38

|                           |                              |                    |
|---------------------------|------------------------------|--------------------|
| b) Legitimacy             | Transparency of negotiations | Tuscany Law 5/2002 |
| c) Cost containment       | Transparency of negotiations | Tuscany Law 5/2002 |
| d) Small impact influence | Transparency of negotiations | Tuscany Law 5/2002 |

By now, it may be useful to sum up all the main features of these alternative interpretations of the ethics involving lobbying by a practical point of view, in order to understand the convergences and the differences about the debate on the regulation of lobbying, whose ethical dilemmas and desirable possible resolutions will be discussed and analyzed in the next chapter and last chapter of the dissertation.

• TABLE IV: COMPARISON BETWEEN MODELS OF REGULATION<sup>122</sup>

| Model      | Table of contents |                                   |                                   |                                   |                                   |                   |
|------------|-------------------|-----------------------------------|-----------------------------------|-----------------------------------|-----------------------------------|-------------------|
|            | Register          | Reporting obligation              | Inconsistency                     | Ethical code to follow            | Benefits                          | Sanctions         |
| INCENTIVES | Facultative       | Yes, only for registered subjects | Yes, only for registered subjects | Yes, only for registered subjects | Yes, only for registered subjects | Yes, for everyone |
| CAGE       | Obliged           | Yes, for everyone                 | Yes, for everyone                 | Yes, for everyone                 | No                                | Yes, for everyone |
| INCLUSION  | Optional          | /                                 | /                                 | /                                 | Yes, for everyone                 | /                 |

The first point to make is about the perspective with which the lobbyist figure is conceived: in all the three cases, he/she is seen as “enabler”<sup>123</sup>, a figure which helps

<sup>122</sup> Personal elaboration based on: SGUEO G., in Research Unit Law and Economic Studies Università Commerciale Luigi Bocconi, *Lobby. La rappresentanza di interessi*, paper n.13 (2014), p. 32

<sup>123</sup> Cf SGUEO G., op. cit. (2014), p.38



the institutions in recognizing the space needed by the private interests. Secondly, it must be noticed that if the three models recognize the role of the lobbyist as a mediator one into the decisional processes, they also tend to consider the private interests' representation as a positive one for final decision, when practiced in respect of ethics and law: for this reason, transparent and professional representation is needed.

The third common element concerns the issue about who is responsible for monitoring the lobbyist activities and each model assign this function to specific institutional bodies, such as the executive or bodies of constitutional significance with an advisory role – in the Italian legal system, this is represented by CNEL, the national Council for labour and economy – and this can also be translated in a further aspect of a convergent direction in the discussion about the regulation of lobbying, since, even if with appropriate variations, the most meaningful key points of the issue leave space for chances of creating an hybrid system of regulation, potentially able to sum distinct elements from several models into a single legislative set of rules<sup>124</sup>. Still, it must be always taken into account the fact that the hypothesis of convergence and hybridism may bring to light pros and cons: on one hand, the uniformity means the loss of some peculiar and important features – the obligation of being effectively part of the register -, on the other, the limited effectiveness of the norms for professionalism may affect the fight against corruption and the transparency achievements.

This range of ethical considerations, about the theoretical constructions involving the political systems, has been useful in the examination of the lobbyist condition within social frameworks devoid of some solid and matching regulations, trying to understand the relation between the doctrine of Political Science and lobbying; in the next section, the effort will consist in attempting to answer the question “when is the lobbying activity no more corresponding to the legitimate fostering of interests?”, with the aim of looking for the morality behind the practices, searching an acceptable ethical standards match within the practices of the lobbying framework.

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<sup>124</sup> SGUEO G, op. cit., p.39

### **CHAPTER 3 WHAT ETHICAL DILEMMAS DOES LOBBYING PRESENT?**

The representation of interests gives rise to practical problems in so far as various behaviours by lobbyists and lawmakers may undermine the fairness and the transparency of the decision-making process, not contributing to the common good, but, on the contrary, providing exclusive space to particular requests within the institutional framework, no matter what consequences these have on the ethical integrity of the public debate.

In order to detect the ethical dilemmas presented by lobbying, the first step to take is to dwell on the distinction between special and public interests, considering that the “public interest” concept pursued by the groups taken into account hitherto does not match in all respects with the “common good” one, because even if the representation of a public interest, will not provide direct and exclusive advantages to the individuals associated with it, but to the entire civil society, the interest in its pure meaning is distinct and not general at any rate, although it is aimed at addressing issues which may laid on the society as a whole. On the other hand, the groups can be seen as corporation representing only partially the society<sup>125</sup>, acting as such within a competitive mechanism of representation, where each specific issue of the disputes may generate further public interest priorities at stake.

The role of lobbying, if capable of respecting the ethical mentioned value of integrity, should be performing as the ombudsman of the multitude of the interests within the same social body, where their compatibility cannot only be solved through the harmonisation of prerogatives, but has to be guaranteed by the regulative forms and methods which do not allow any interest to be in the potential condition of prevaricate other ones, damaging them. The guarantee is represented by the democratic pluralism within the institutional framework, where the public interest does not gain from side-lining particular interests, since, in order to protect all of the prerogatives, the dangerous instances for the common good which can be found in each of the interest, must be cast aside; only in this way it will be possible to obtain the real public interest, made by individual interests enabled to cohabit without jeopardise themselves.

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<sup>125</sup> Cf. GRAZIANO L., *op. cit.* (1995), p. 223

The obligation between interest and representation, for which the former cannot find place in the public debate without the use of the latter, can be found in the observation made by Benjamin Constant, who retained that general representation is nothing but the representation of all partial interests which must find an agreement on their common aims<sup>126</sup>, in order to enforce them within the decision-making process's outcomes.

As already mentioned, representation of interests guarantees political freedom in those society where individual freedom is considered a priority, since the representation of individual rights within politics leads the instances of those subject not directly present within this framework, inside the public debate. But the representation of interests operated by the groups through the lobbying process can be considered respectful of the democratic pluralism of values only if it is conducted through the principles of participation and equality for all the instances implemented; further, without these criteria, there is no chance of application of a responsive and democratic representation of interests.

Responsiveness will be the key element in the following discussion on the ethics problems affecting the lobbying activities, in relation with bargaining practices. In order to detect the morality behind the procedures with which lobbying can be validated by an affordable ethical perspective, the paragraph will provide space for the analysis of the tricky degeneration of those practices used in the influencing process - starting from the study of institutions' attitude towards fairness in the decision-making process involving common good issues - with the aim of understanding when lobbying activity is no more corresponding to the legitimate fostering of interest. Some inputs will be also given about the possibility of making lobbying a fairer practice, in respect of transparency and integrity, attempting to balance the instances of particular interests with the need for management of common good issues. In doing so, it will be also conducted an analysis of the path testing of a methodology for lobbying profession which ethical base is built within the claim of such values as accountability, dialogue and open communication, truth and transparency, reliability, civic responsibility and loyalty, trust.

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<sup>126</sup> Cf. CONSTANT B., *Interesse generale e interessi particolari*, in FISICHELLA (ed. by) La rappresentanza politica, Giuffr  Editore, Milano (1983), p.107

### **3.1 THE RELATION BETWEEN HONEST LEADERSHIP AND OPEN GOVERNMENT: POLITICAL EQUALITY IN FAIRNESS ISSUES**

The most not only unethical but also illegal practice associated to lobbying is the unrespect of the fairness principle, for example through the corruption of policy makers to turn them in favour to the interests represented; further, fairness questions rise when between lobbyists there is not the same access to institutions or there is the presence of collegiality relations. “One way to improve the fairness of the lobbying process is to make sure that possible sources of influence are visible to the public”<sup>127</sup> and in these terms, the role of the lobbyists in playing the advocates role in the legislative arena can be compared with the one of lawyers in the judicial, because of the fact that they provide different possible points of view on public policy issues to policymakers, such as lawyers provide legal facts to judge or jury.

Still, “an ethical approach to lobbying must ensure that someone stands up for the common good”<sup>128</sup> and there must be guarantees of obligation to respect fairness for the lobbyist who is representing interests in the public sphere. To achieve this purpose there must be political equality within the popular wills that affect the decision-making process and to identify them, in order to offer these instances, the same chances of access and representation within policy making, a social decision procedure has to be adopted, even if there is disagreement on the perspectives to solve the issue. Taking into account the idea for which fairness can be considered such as a compromise<sup>129</sup>, lobbying becomes a threat for democratic values, which even risks becoming an unfair democracy practice, in so far as it basically provides a fragmented imagine of civil society, where inequality may be enforced with the consequence of questioning fairness, since it is assumed to derive from equal relations between preferences and interests.

The approach followed by Charles Beitz on fairness within the representation process is based on the assumption that the actors in policy making are all better off when an agreement is reached and precisely in these terms fairness can be considered

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<sup>127</sup> NADLER J., SCHULMAN M., *Lobbying Ethics*, in Markkula Center for Applied Ethics at Santa Clara University website, (Jun 1, 2006) available at: <https://www.scu.edu/government-ethics/resources/what-is-government-ethics/lobbying-ethics/>

<sup>128</sup> Ibid.

<sup>129</sup> Cf. BEITZ C., *Political equality, An Essay in Democratic Theory*, Princeton University Press, (1989), p.79

a compromise where there is acceptance for making concessions from the initial requests and it is a fair one as each part involved in the agreement renounce to something. But this result is quite hard to reach because of the moral weight of the initial requests made by the parties, which can even be symmetrically opposite and the issue at stake can be affected by unfairness through the lobbying system of representation.

For this reason, Beitz mentions another idea of fairness, which is associated with impartiality, because of a strategic agreement which can be reached with an allowed procedure acceptable for everyone, but which must be fair in including even the weakest interest positions. However, in this perspective, the distribution of political interests throughout the community is not present and social parties are not aware of their potential, so that they would not be motivated to create struggles within the political agenda<sup>130</sup>, further assuming the absence of represented preferences from minorities within policy making, the procedural principles have more chances of being accepted without the appearance of individual instances. Lamentably, following this understanding, policy makers and citizens would not be aware of the urgency of the issues which should be aimed at achieving public welfare through practices respectful of political equality. That is why according to Beitz, this interpretation of fairness is not worthy of implementation: the content in which the fairness has to be charge counts and in the perspective described, the procedure of representation would not be impartial, as it would be affected by differences in urgency and it would not be able to incorporate ethical factors since, in this instance, the procedure does not guarantee to all the parts who aim at being represented, the satisfaction of their needs.

Without the knowledge of the preferences of each group of interest through lobbying in the institutional framework, minority groups would lose the opportunity to present political struggles and the fairness condition in representation would be removed, leading to the missed fulfilment of ethical requirements of neutral integrity, responsiveness and openness of the government towards the representation of interests. Using the fairness concept as standing for impartiality is not acceptable as it would lead to a sort of simple majority rule<sup>131</sup>, since the fair procedure would not guarantee the adequate moral weight on political equality condition.

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<sup>130</sup> Cf. *idem*, p. 88

<sup>131</sup> Cf. *idem*, pp. 84-88

To investigate the fairness of lobbying in light of political equality, the focus must be led also to the relation between fairness and justice, since any idea “in Western civilization has been more consistently linked to ethics and morality than the idea of justice”<sup>132</sup>. If justice should be identified in a concrete definition, the most plausible one would be that given by the Institutes of Justinian, a codification of Roman Law from the VI century AD, which speaks about justice as “the constant and perpetual will to render to each his due”<sup>133</sup> and this implies not only conflicting individual claims, but also claims made even against the actor dispensing justice, whether a person or an institution and this also leads to the obligation for the agent dispensing justice to create enforceable tools to safeguard the respect of the value.

The terms justice and fairness are often overlapped, but while justice is referenced to rightness standards, fairness is linked to the ability to judge without a reference to individual interests, to the ability of making specific and concrete judgments<sup>134</sup>. Nowadays, many questions of justice and fairness arise with the conflict of interests created when people differ about the redistribution of common goods and services with scarce resources available, so that decisions have to be made on the benefits and burdens to distribute among a group of people. But how can be fairly determined what people fairly deserve and what criteria and principles should be used in order to identify what is due to someone?<sup>135</sup>

To answer to this question, it is needed to refer to the egalitarian statement for which “equals should be treated equally and unequals unequally”, defined by Aristotle himself<sup>136</sup>. But there are anyway differences between individuals, which can be relevant for the situation in which they are involved, differences which can be seen as justifiable criteria for treating people not the same, in other words, that justify differential treatments. These criteria must not be recognized in sex, race, age,

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<sup>132</sup> VELASQUEZ M., ANDRE C., SHANKS T., MEYER M.J., *Justice and Fairness*, in Markkula Center for Applied Ethics at Santa Clara University website, (Aug 1, 2014) available at: <https://www.scu.edu/ethics/ethics-resources/ethical-decision-making/justice-and-fairness/>

<sup>133</sup> MILLER D, "Justice", *The Stanford Encyclopedia of Philosophy* (Fall 2017 Edition), Edward N. Zalta (ed.), available at: <https://plato.stanford.edu/archives/fall2017/entries/justice/>

<sup>134</sup> Cf. idem.

<sup>135</sup> Cf. idem.

<sup>136</sup> Idem.

religious or political differences. This means that it would be unfair to treat the representation of interests only by the social weight of the members associated with them.

Furthermore, different kinds of justice exist and from these differences some contrasts arise between the various declinations of it<sup>137</sup>. If retributive or corrective justice refers to the fairness of punishments, involving a wrongdoer assuming personal responsibility and a wronged, the distributive justice refers “to the extent to which society’s institutions ensure that benefits and burdens are distributed among society’s members”<sup>138</sup> and it is required when there is presumption that the way in which institutions distribute benefits and burdens may be potentially unfair. Moreover, the compensatory justice refers to the extent to which people are fairly compensated for people’ injuries, proportional to the loss inflicted on those who have been injured by them<sup>139</sup>.

Taking into account of the various kinds of justice in evaluating any moral decision, the basis of justice within the ethics framework involving the lobbying practices should be referred to the principles of interdependence, equitable treatment of the interests and social stability involved in the instances presented to the policy making process. But the clash comes at the point when the mutual recognition of each other’s basic rights and social welfare is overridden and some categories of groups within the civil society feel subject to unequal treatment and the fairness judgments based on the normative content are no more seen as priority in the pursue of the interest in question. In this case, problems arise in the influence exercised towards institutional figures by the lobbying activities, which may engage alternative practices to achieve greater results than those possible, violating deepest constraints of morality, bypassing the simple use of the ethics of persuasion, but using dubious practices, such as pressure, coercion, bribing... But in this case another paradox may arise in the lobbying frame: as lobbyists would facilitate the possibility of influence, weaker groups would have less influence on political decisions and consequently, diminished recognition of their instances within policy making outcomes. Impartial and fair

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<sup>137</sup> MILLER D, "Justice", *The Stanford Encyclopedia of Philosophy* (Fall 2017 Edition), Edward N. Zalta (ed.), available at: <https://plato.stanford.edu/archives/fall2017/entries/justice/>

<sup>138</sup> VELASQUEZ M., ANDRE C., SHANKS T., MEYER M.J., *Justice and Fairness*, in Markkula Center for Applied Ethics at Santa Clara University website, (Aug 1, 2014) available at: <https://www.scu.edu/ethics/ethics-resources/ethical-decision-making/justice-and-fairness/>

<sup>139</sup> Cf. idem.

representation of interest would fail in this case, since the equitable treatment of preferences would not be respected and the lobbying methodologies would not respect equally the civil society members. This is what creates objections against lobbying in public opinion and this is why lobbying may be considered harmful, increasing inequalities within the society.

For this reason, it is urgent to detect the roots of the dubious practices, which may put in place conflicts of interests between groups' representation and institutions, in order to understand how to eradicate them from the lobbying process, replacing them for morally acceptable procedures, which put in the first place, transparency and integrity in their codes of action.

### **3.2 CONFLICTS OF INTEREST IN GOVERNMENT: DUBIOUS PRACTICES**

Elected officials represent the citizens and for this reason are responsible for setting the priorities of the decision-making process and as public representatives they are required to put the public's interest before their own, but at the same time they inherently possess many different interests and sometimes these ones may compete.

Since public service always requires public trust and the respect and protection of the common good, the public official must not take unfair advantage from the representation of particular interests within the institutional framework, benefiting some at the expense of others; indeed, this would create a conflict of interest, where "the basic ethical principle of fairness-treating everyone the same" would be unobserved<sup>140</sup>. In public affairs, the common good goal should always be achieved as a matter of priority, avoiding the predominance of any other personal, financial or political benefit from a decision depending on public debate.

If on one hand it is a duty of authorities to exercise their power within ethical standards boundaries, without loosen up the integrity of their role, on the other it is lobbyists' responsibility not to use unlawful tools in obtaining the desired results to enforce the interests they are called to represent. Indeed, "a lobbyist should conduct

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<sup>140</sup> NADLER J., SCHULMAN M., *Conflicts of Interest in Government*, in Markkula Center for Applied Ethics at Santa Clara University website, (Jun 1, 2006) available at: <https://www.scu.edu/government-ethics/resources/what-is-government-ethics/>



lobbying activities with honesty and integrity”<sup>141</sup> and there must be commitment to be truthful to clients, political institutions, media and civil society, as “interest representatives are expected to behave in line with the principles of openness, transparency, honesty and integrity, as expected of them by the citizens in a democratic system”<sup>142</sup>.

In other words, conflicts of interest within lobbying may happen if the personal interest of a public representative is in contrary to the one represented by the lobbyist’s client, or when the interests of the clients are incompatible. The negative effects of conflicts of interest may be reduced by monitoring appropriate behaviours within such situations and by avoiding any financial link between lobbyists and decision-makers and forbidding professional activities with performing functions in public authorities and institutions: “lobbyists must very clearly separate their professional activity from political involvement” and in doing so they should stop continuing orders that may lead to such conflicts, informing the clients about the situation, meeting formal conditions and respecting “the obligation to comply with applicable rules and confidentiality requirements”.<sup>143</sup>

### **3.2.1 FAVORITISM, CRONYISM AND NEPOTISM**

It has been analysed that one of the most important elements in constructing an ethical framework providing moral standards for lobbying behaviours is fairness. But some forms of extraneous feature-membership in groups may affect this fundamental condition: favouritism, cronyism and nepotism dynamics “all interfere with fairness, because they give undue advantage to someone who does not necessarily merit this treatment”<sup>144</sup>.

Favoritism literally means favoring a person not because of what he/she does, which is supposed to be the best outcome possible, but rather because of personal likes,

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<sup>141</sup> LEWICKA-STRZALECKA, *Ethical model of lobbying: An analysis of the codes regulating lobbying activity*. *Annales, Etyka w Życiu Gospodarczym.*, 20(8), (2017), available at: <https://doi.org/10.18778/1899-2226.20.8.07>, p. 77

<sup>142</sup> Cf. *ibid.*

<sup>143</sup> LEWICKA-STRZALECKA, *op. cit.* (2017), p. 80

<sup>144</sup> NADLER J., SCHULMAN M., *Favoritism, Cronyism and Nepotism*, in Markkula Center for Applied Ethics at Santa Clara University website, (23/10/2015) available at: <https://www.scu.edu/government-ethics/resources/what-is-government-ethics/favoritism-cronyism-and-nepotism/>

which are showed in honoring, hiring etc. Giving public service to those who may have helped in campaigning, for example, is a form of it. Cronyism is a more specific form of the phenomenon, where partiality is directly associated to friends and associates in government services and it occurs within a network of insiders, conferring favors on one another<sup>145</sup>. Nepotism covers favoritism to members of family and it is often implied in the recruitment of candidates for public offices made by political parties<sup>146</sup>.

In the public sphere these three dubious practices may undermine the reach of the common good, undercutting transparency in contracting and even lobbying practices, since when someone grants public positions not because of his/her expertise, experience and credentials, but rather thanks to personal relations, the service provided may be inferior, affecting the public interest. The biggest problem with these dynamics is that their presence in the decision-making and institutional frameworks is underestimated, but competence should be one of the values on which the representation of interest should be based, in order to achieve the best results possible. Furthermore, “public officials should also note that dilemmas involving favoritism extend beyond hiring and contracting practices to the more general problem of influence and appearance of unfairness”<sup>147</sup>.

However, the avoidance of these negative outcomes is something lobbying should manage not only abiding by the rules, but also through self-initiatives, respecting moral procedures of representation; such attempts in fighting degeneration of the cure of public relations will be analyzed in the next paragraphs.

### **3.2.2 BRIBERY**

If gift is something of value given without the expectation of return, the bribe is different from it exactly for the hope of having back benefits or the success of the influence exercised on a certain matter. For example, giving money in order to influence a person’s behavior is a form of bribery of bourse, as the recipient would otherwise not offer it. It is essentially the offer of doing something for the expressed

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<sup>145</sup> Cf. idem

<sup>146</sup> Cf. idem

<sup>147</sup> Idem

purpose of receiving something in exchange, and the Black's Law Dictionary precisely defines it as "the offering, giving, receiving or soliciting of any item of value to influence the actions of an official or other person in charge of a public or legal duty"<sup>148</sup>.

### **3.3 THE MORALITY BEHIND THE PRACTICES: THE IMPORTANCE OF THE PROCEDURE**

As discussed, one of the main concerns over lobbying is represented by the demands for transparency in the practices involving such activities in public decision-making, because of the risks of undue influence and unfair competition which can be brought in the political and policy arena, disadvantaging the pursuit of the public interest and the effectiveness of public policies. Within the full dissertation, lobbying has been concerned as a democratic right, which allows the civil society to present their views on public decisions, through the report of interests to institutional structures. On the other hand, it has also been stressed how much the public opinion associates lobbying with unfair advantages for vested interests and secrecy, which damages - rather than promoting - the public interest in the negotiation process.

To strengthen transparency and safeguard integrity in public affairs, it has been attempted to draft a list of principles providing guidance on how to respect the accountability expectations of the civil society in the decision-making process, with the aim of building a fairer and clearer method of lobbying operation.

One of the main inputs to this effort has been given by the Organisation for Economic Co-operation and Development, which worked for anti-corruption and integrity in the public sector trying to enhance and promote transparency through a list of ten principles with the aim of "building an effective and fair framework for openness and access"<sup>149</sup>, but also fostering a culture of integrity introducing mechanisms for effective implementation, compliance and review of the role of professional lobbies.

Indeed, despite of the general perception that the lobbying industry itself prefers to exercise from the shadows, the OECD investigated the views of lobbyists

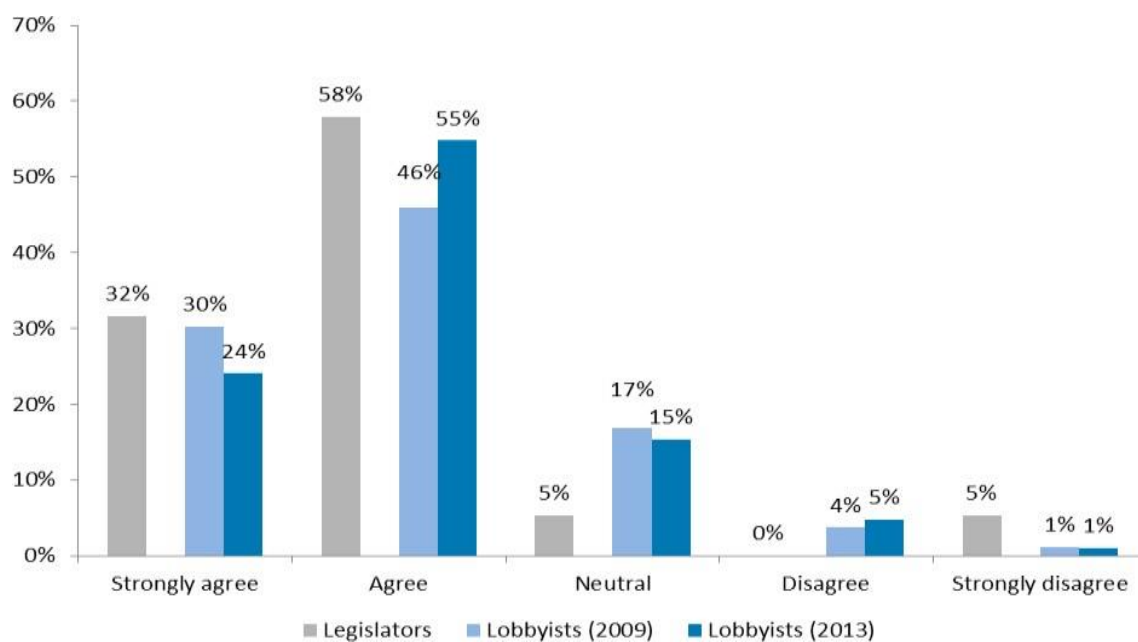
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<sup>148</sup> BLACK'S LAW DICTIONARY, *What is bribery?*, available in Wikipedia from the original on October 1, 2015, at [https://en.wikipedia.org/wiki/Bribery#cite\\_note-1](https://en.wikipedia.org/wiki/Bribery#cite_note-1)

<sup>149</sup> Cf. OECD website, *Principles for Transparency and Integrity in Lobbying*, (2013), available at <https://www.oecd.org/gov/ethics/lobbyists-governments-and-public-trust-volume-1-9789264073371-en.htm>

and legislators about their support for mandatory disclosure of information and reported that there is a shared consensus among both categories, “that transparency of lobbying would help alleviate actual or perceived problems of inappropriate influence peddling by lobbyists”<sup>150</sup>: the survey conducted by OECD in 2013 divided on a scale from “strongly agree” to “strongly disagree” the answers of legislators, and lobbyists to the latter mentioned assumption and the result was the preference for supporting mandatory transparency of lobbying activities, ensuring efficiency of disclosure tools and mechanisms used. This outcome has been also confirmed by the second survey conducted within stakeholders on the same issue.

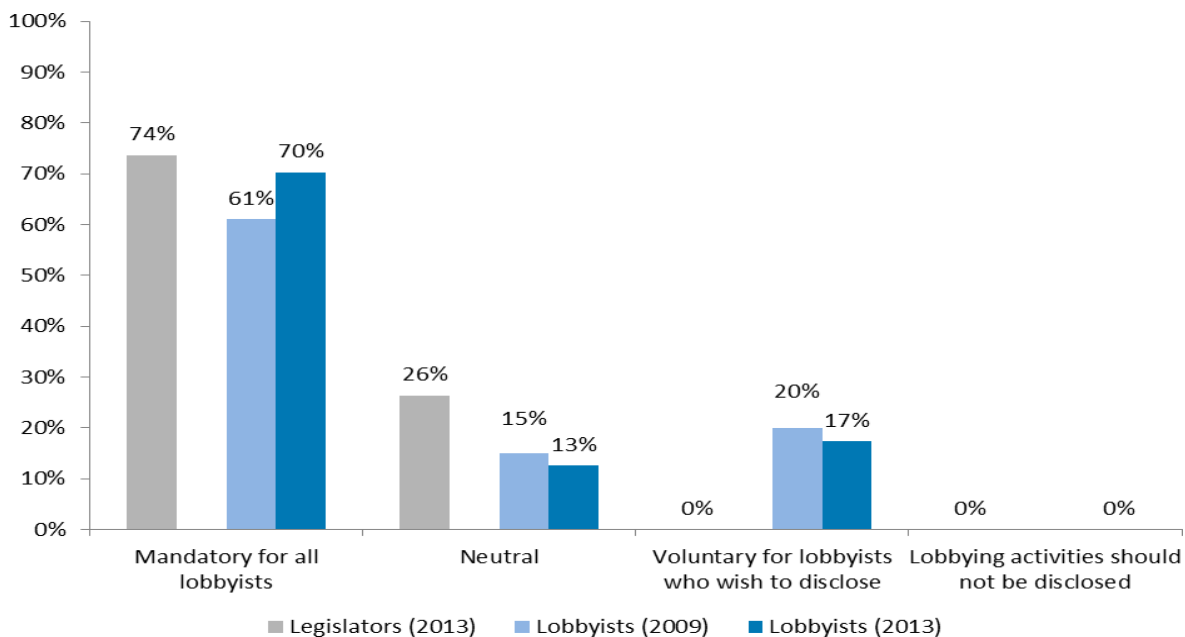
- FIGURE I: Survey conducted by OECD on the question “Transparency of lobbying activities would help alleviate actual or perceived problems of inappropriate influence peddling by lobbyists”<sup>151</sup>



<sup>150</sup> Idem

<sup>151</sup> Personal elaboration based on the following sources: OECD 2013 Survey on Lobbying for Lobbyists, OECD 2013 Survey on Lobbying for Legislators, OECD 2009 Survey on Lobbying for Lobbyists.

- FIGURE II: Survey conducted by OECD on the question “Stakeholders believe that transparency of lobbying activities should be mandatory for all lobbyists”<sup>152</sup>



Going back to the listed principles, they can be grouped into three main areas: in detail, the ones aimed at “building an effective and fair framework for openness and access, enhancing transparency, fostering a culture of integrity”<sup>153</sup>; moreover, the last two of the ten principles can be assimilated to those mechanisms designed to put in place effective implementation, compliance and review of the lobbying practices.

The first four assumptions for guaranteeing transparency and integrity in lobbying primarily concern the idea that public officials should provide fair and equitable access to all stakeholders to facilitate the public engagement and the participation to the policy debate and the formulation of effective policies. Next, the OECD considered that “the rules and guidelines on lobbying should address the governance concerns related to lobbying practices and respect the socio-political and administrative contexts”<sup>154</sup>. This leads directly to the third principle which consists in the statement that “effective rules and guidelines should be an integral part of the wider policy and regulatory framework that sets the standards for good public

<sup>152</sup> Personal elaboration based on the following sources: see previous footnote.

<sup>153</sup> Cf. OECD website, *Principles for Transparency and Integrity in Lobbying*, (2013), available at <https://www.oecd.org/gov/ethics/lobbyists-governments-and-public-trust-volume-1-9789264073371-en.htm>

<sup>154</sup> *Idem*

governance”<sup>155</sup>: indeed, when countries address appropriate solutions for the professionalism of lobbying practices, they have not to replicate the jurisdiction of other contexts, but only taking into account the needs and the constitutional principles of the democratic society which they want to support. This goal includes the improvement of those mechanisms which keep authorities responsive and accountable in their regulatory and supervisory functions. Lastly, in this first group of assumptions, the fourth refers directly to a specific definition of “lobbying” and “lobbyist” within countries, which must avoid misinterpretation in order to clarify the scope of lobbying activities and not to confuse the diversity of lobbying entities<sup>156</sup>; for this reason, the rules should in first place target the capacities and resources for enhancing transparency.

To obtain this, countries are supposed to ensure that institutions would be able to collect sufficient information on lobbying activities (V principle), to enable public scrutiny for stakeholders, including making information accessible to the general public of civil society (VI principle). Furthermore, by providing clear rules and guidelines of conduct and procedures for public officials, public officials should promote a culture of integrity (VII principle) and avoid conflict of interest, setting impartiality and professionalism in the decision-making process and inhibiting the misuse of confidential information; in doing so, former officials should impose when necessary “a cooling off period, that temporarily restricts former public officials from lobbying their past organizations”<sup>157</sup>.

The OECD retains that one of the main key points of the transparency achievements is the role of the governments and legislators in their responsibility to establish clear standards of conduct for public officials who are lobbied (principle VII): in such a manner, to maintain trust in politics sphere and good governance, lobbyists should foster their integrity and honesty in the relations with both their clients and public officials, for example “not representing competing interests or avoiding exercising illicit influence”<sup>158</sup>, but rather complying with professional standards.

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<sup>155</sup> Idem

<sup>156</sup> Cf. idem

<sup>157</sup> Cf. OECD website, *Principles for Transparency and Integrity in Lobbying*, (2013), available at <https://www.oecd.org/gov/ethics/lobbyists-governments-and-public-trust-volume-1-9789264073371-en.htm>

<sup>158</sup> Idem

Finally, within the study made by OECD on the transparency in lobbying issue, countries are assumed to “involve key actors in implementing a coherent spectrum of strategies and practices to achieve compliance”<sup>159</sup> (IX principle) to raise the awareness of expected rules and standards. In order to do this, the institutional structure of each domestic context should encourage openness to reporting practices and the involvement of all representatives of lobbying, public officials and civil society in the establishment of rules and standards, with the aim of creating a common reading of allowed lobbying practices. The tenth principle refers exactly this: the task of countries of reviewing the functional methods of rules and guidelines on a periodic basis and making necessary adjustments due to the experience about understanding which factors and actors influence compliance<sup>160</sup>.

Consequence of all these concepts resulting from the attempt of drawing up an ideal framework for transparency and integrity within the lobbying procedure, the implementation of these values appears extremely crucial when it is developed as part of the political and administrative processes, because of the fact that the nature of policy issues is challenging characterized by multiple and complex dimensions along which interest groups mobilize<sup>161</sup> and changing the status quo of the structure of policy communities is anything but simple.

The quality of information within decision-making process when involving lobbying communities in their relations with political realities can be found in the stability of the expertise. Still, interest groups cannot individually achieve policy change, hence that is why one of the most important strategies to overcome the partiality in policy-making is believed to be persuasion by the expert policy community of their proposals and in society as the American one – where the role of the groups has been previously analyzed by theoretical perspective in ethics within the democratic structure of the civil society – this particular feature in communication

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<sup>159</sup> Idem

<sup>160</sup> Idem

<sup>161</sup> Cf. BRAUN-POPPELAARS C., *Lobbying and policy change. Who wins, who loses and why*, by Frank. R. Baumgartner, Jeffrey M. Berry, Marie Hojnacki, David C. Kimball and Beth L. Leech. *Public Administration.*, 88(3), 896-898, (2010), p. 896 available at <https://doi.org/10.1111/j.1467-9299.2010.01859.8.x>

between politics and citizens is fundamental for estimating the real capacity of the system of representation through policy-making.

Starting from the assumption that this dissertation investigates the reasons why the development of a desirable process of decision-making including accountable lobbying practices - which must be transparent and tolerable from the ethics perspective – represents such a crucial issue in nowadays public relations concerning policies and societies, the evaluation of the ethical criteria embraced by lobbyists in their professional activities appears as an indispensable step for the analysis conducted so far. But first, in order to do this, it is necessary to clarify the already reported<sup>162</sup> differences and connections between lobbying, advocacy and public relations. Considering lobbying as a profession of public relations to aid informed public debate consists in focusing the attention on questioning the ethics associated with lobbying practices, with the purpose of developing an ethically desirable function of public relations through lobbying for the entire advocacy sector too.

With the aim of collecting the key points of the analysis made by Tusinski Berg<sup>163</sup> for indicating the factors used in lobbying professional activities, who in her turn gathered information from the Edgett's model for ethically desirable framework for advocacy in public relations, this paragraph will be referred to advocacy as “a central function of both public relations and lobbying”<sup>164</sup>, since the latter one can be considered a form of influence, within the advocacy field, aimed at public policies making process and allocation of resources with a direct approach towards legislators under the institutional context. In these terms, advocacy is seen as a core value itself of public relations, providing ideas, facts and informed viewpoints, hence, to address responsible representations of interests “individual accountability, informed decision making, multicultural understanding, relationship building, open communication, dialogue, truth and transparency and integrity”<sup>165</sup> must be unquestionably taken into account.

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<sup>162</sup> Cf 2<sup>nd</sup> Paragraph, Chapter I “What is lobbying?”.

<sup>163</sup> TUSINSKI BERG K., “*The Ethics of Lobbying: Testing an Ethical Framework for Advocacy in Public Relations*”, *Journal of Mass Media Ethics*, Vol. 27, No. 2: 97-114 (2012) Available at: <https://www.tandfonline.com/doi/abs/10.1080/08900523.2012.694276>

<sup>164</sup> *Idem*, p.2

<sup>165</sup> *Idem*, p.3



According to Edgett, in applying influence to targeted audiences through the act of publicly representing an individual, an organization or an idea, public relations practitioners, to manage the ethically desirable method of advocacy in lobbying, should measure how much remedial work needs to be done to improve ethical standards when meeting a list of ten unavoidable criteria<sup>166</sup>.

These criteria can be considered the main conditions for making the efforts of representatives of interests as ethical ones and are described by Edgett as the following: evaluation of the issue-client-organization relation, priority of the client's interest in the public debate, sensitivity to balance client priority with social responsibility, confidentiality and morally justified secrecy for protecting the client's or organization's rights, veracity to guarantee trustworthiness in all matters, reversibility, validity and visibility of information and in all communication concerning the issue of the public debate, respect of different viewpoints and willingness in promoting dialogue and participation to informed choices and decisions, ultimately, the consent by all the parties involved in the process of being part of the debate<sup>167</sup>.

But, more to the point, Tusinski Berg investigates how often the various criterion for ethically correct lobbying activities are considered in the representation of interests. In doing so, she measures the lobbyists' view on the evaluation of the service they have to take; on the priority of the interests represented, which are supposed to be the driving force in the decision-making process when following the ethical criteria; on the sensitivity in considering the effects on other interests; on the protection to legitimately confidential information in the relation with the clients; on the information included in the debate for strategic purposes; on the way they rely with those they are representing before making lobbying decisions; on the way they provide information to legislators to influence their decisions<sup>168</sup>. In other words, she works on the application of the criteria mentioned by Edgett as the variables to measure the ethical considerations made in lobbying activities, relating them under seven different

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<sup>166</sup> Cf. *idem*, p.6

<sup>167</sup> EDGETT R., *Toward an ethical framework for advocacy in public relations*, (2002) in TUSINSKI BERG, *op. cit.* (2012), p.5-6

<sup>168</sup> Cf. TUSINSKI BERG, *op. cit.* (2012), p. 7-9

dimensions, which are: situation, strategy, procedure, nature of lobbying, argument, accuracy and priority.

Starting from the first factor, the situation in which the issue is evaluated, it immediately appears how much the aim of maintaining responsible professionalism - considering the effects on other interests and also making the subject represented aware of these potential effects - depends on the condition for which the process of evaluation has to be assessed before accepting the client issue itself. The evaluation process needs professional engagement to provide an action strategy, which respects the criteria of including opposite points of view in a respectful way, identifying strategic purposes: in this second dimension, it is possible to incur in high levels of ethical considerations because of the involvement of reversibility, visibility and respect<sup>169</sup>. Once the action programme has been elected, the procedure followed for making decisions and consulting those who lobbying professionals must represent, the order in which decisions are made is important to fit in the model of professional-client relationship.

Consequence of this is that, to address the conditions of conduct between policy makers and lobbyists, namely the macro environment in which lobbyists will perform, it is necessary to target the nature of lobbying, as it lends itself to certain behaviors which can allow the protection of the confidentiality criterion, or, on the contrary, disrespect it. Then, to address the validity of the arguments, the use of reasoning and facts and the reliance on emotional appeals are used in combination by lobbyists to gain support from targeted audiences, basically supporting the Aristotle's trio pathos/logos/ethos<sup>170</sup>. In assuming this concept, Tusinski Berg enters into struggle with Edgett's assertion about the need for sound reasoning in arguments presented in public relations, as emotional arguments create difficulties for the decision-making process, which could be affected and limited by the ability of lobbyists in manipulating audiences through their influence. "Still, emotional appeals are not inherently unethical"<sup>171</sup>, they become such manipulative when the true objective of the message is hidden to let rhetorical techniques prevail over the real validity of the argument itself. But as long as the conditions of consent are respected, providing full disclosure,

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<sup>169</sup> Cf. idem, p. 13

<sup>170</sup> Cf. idem, p.14

<sup>171</sup> Idem, p.15

accurate and complete information, the way in which lobbyists interact with legislators can be considered ethically permissible, even if the facts presented in favor of their viewpoints are in combination with emotional arguments. In these terms, what is important is to safeguard the veracity criterion in the submission process of issues to the attention of decision-makers. Despite of what is believed by the public opinion, Tusinski Berg illustrates that lobbyists “understand the ramifications of providing inaccurate or incomplete information to legislators”<sup>172</sup>, since they are aware that misconstruing the truthfulness of matters would damage their professionalism and affect negatively public policy evaluations.

Finally, the high consideration of the interests of those who are represented must be the driving force for the lobbying action within decision-making, in order to apply constantly the criterion of priority but without setting aside morality in practices. Thus, micro factors such as situation, strategy, argument and the macro ones, nature of lobbying, information and priority, are connected to the procedure applied in the process, working as a bridge between the issues.

What emerges from the study conducted by Tusinski Berg is the importance of the context where the ideas from ethical theories must be incorporated and respected:” the results indicate that even though lobbyists perceive policymakers as means to successful lobbying campaigns, this attitude is not inherently unethical because legislators have a vested interest in their relationships with lobbyists and willingly volunteer to the conditions of participation”<sup>173</sup>. Furthermore, professionalism meets ethics when the lobbying process responds to transparency and accuracy in providing information to legislators and to ensure that this happens, three characteristics are required for professional status: extensive training, significant intellectual component, important service to society<sup>174</sup>; further, there are secondary features necessary to enable ethical practices in decision-making when influenced by lobbying concerns, such as credentialing, professional organization and autonomy, so that the framework provided to approach the ethics can be developed from a contextual perspective too.

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<sup>172</sup> Idem, p.16

<sup>173</sup> Idem, p.17

<sup>174</sup> BALES M.D., *Professional ethics*, (1989) in TUSINSKI BERG, op. cit. (2012), p.19

- TABLE V: data on the response rate used for the analysis developed with the aim of testing an ethical framework for lobbying; respondent profile, demographics (N = 222)<sup>175</sup>

| Variables                                   | Percentage of Respondents |
|---|---------------------------|
| <b>Sex of Respondent</b>                    |                           |
| Male  | 66.2%                     |
| Female                                      | 33.8                      |
| <b>Age of Respondent (on last birthday)</b> |                           |
| 20 – 29 years old                           | 5.0%                      |
| 30 – 39 years old                           | 18.9                      |
| 40 – 49 years old                           | 19.4                      |
| 50 – 59 years old                           | 41.4                      |
| 60 – 69 years old                           | 11.7                      |
| 70 years old or older                       | 3.6                       |
| <b>Race/Ethnicity of Respondent</b>         |                           |
| White/Anglo                                 | 93.7%                     |
| Black/African-American                      | 1.0                       |
| Hispanic/Latino                             | 1.8                       |
| American Indian/Native American             | 0.0                       |
| Asian/Pacific Islander                      | 1.3                       |
| Other                                       | 1.0                       |
| Prefer Not to Answer                        | 1.2                       |
| <b>Education Level</b>                      |                           |
| High School                                 | 0.4%                      |
| Some College                                | 8.6                       |
| Bachelor's Degree                           | 39.2                      |
| Master's Degree                             | 25.2                      |
| Ph.D., M.D., or J.D.                        | 26.6                      |

<sup>175</sup> Personal elaboration based on: TUSINSKI BERG, op.cit. (2012), p.22

- TABLE VI: data on the response rate used for the analysis developed with the aim of testing an ethical framework for lobbying; respondent profile, occupation (N= 222)<sup>176</sup>

| Variables                                       | Percentage of Respondents |
|---|---------------------------|
| <b>Organizational Setting</b>                   |                           |
| Corporation                                     | 10.8%                     |
| Non Profit Organization                         | 31.1                      |
| Public Affairs Agency                           | 3.6                       |
| Public Sector                                   | 23.0                      |
| University                                      | 4.5                       |
| Public Relations Agency                         | 1.4                       |
| Lobbying Firm                                   | 13.5                      |
| Other   | 10.8                      |
| No Response                                     | 1.3                       |
| <b>Current Job Title</b>                        |                           |
| Public Affairs                                  | 19.0%                     |
| Public Relations                                | 5.0                       |
| Contract Lobbyist                               | 20.3                      |
| Other   | 55.7                      |
| <b>Membership in Professional Organizations</b> |                           |
| American Bar Association                        | 5.4%                      |
| American League of Lobbyists                    | 0.4                       |
| American Marketing                              | 0.9                       |
| Capitol Club, Inc.                              | 60.0                      |
| Public Relations Society of America             | 4.0                       |
| Other   | 17.0                      |
| <b>Formal Ethics Training</b>                   |                           |
| Yes   | 64%                       |
| No  | 35%                       |
| No Response                                     | 1.0                       |
| <b>Registered as Lobbyist</b>                   |                           |
|   | <u>Number of Years</u>    |
| Highest   | 47                        |
| Lowest  | 1                         |
| Average   | 10.7                      |

<sup>176</sup> Personal elaboration based on: TUSINSKI BERG, op. cit. (2012), p.23

- TABLE VII: variables involved in the research question “what ethical criteria lobbyists consider in their day to day professional activities?”<sup>177</sup>

*Factor Analysis of Ethical Criteria*

| Ethical Criteria  | Mean | Factor Loading |              |              |             |             |             |              |
|---|------|----------------|--------------|--------------|-------------|-------------|-------------|--------------|
|   |      | 1              | 2            | 3            | 4           | 5           | 6           | 7            |
| <i>Situation</i>  |      |                |              |              |             |             |             |              |
| When determining whether to take on a new client or issue, how often do you evaluate the issue, client, or organization to decide if it merits your service?  | 5.74 | <b>.583</b>    | .203         | .129         | -.158       | -.233       | .110        | -.014        |
| Assuming your first loyalty is to those you represent, do you consider the effects on others?   | 5.62 | <b>.768</b>    | .139         | .070         | .266        | .098        | .077        | .136         |
| How often do you make clients aware of these effects?   | 5.97 | <b>.783</b>    | .270         | .006         | .345        | .099        | .319        | .081         |
| <i>Strategy</i>   |      |                |              |              |             |             |             |              |
| When lobbying, how often do you provide the opposing point of view to the issue you are supporting as part of your pitch?   | 5.12 | .511           | <b>.603</b>  | .068         | .457        | .084        | .179        | .111         |
| How often is such information included for strategic purposes?  | 5.44 | .318           | <b>.755</b>  | .067         | .202        | -.057       | .171        | .266         |
| How often do you feel obligated to include such information out of respect for the person you are lobbying?   | 5.22 | .330           | <b>.641</b>  | .040         | .328        | .235        | .909        | -.133        |
| When lobbying, do you conceal the identity of the group(s) you represent for certain communications?  | 6.69 | .130           | <b>-.489</b> | -.239        | .212        | .169        | -.007       | .017         |
| <i>Procedure</i>  |      |                |              |              |             |             |             |              |
| Do you make lobbying decisions for the group(s) you represent on your own?  | 3.63 | .071           | .295         | <b>.806</b>  | .095        | -.032       | .025        | -.107        |
| Do you consult those you represent before making lobbying decisions?  | 5.71 | -.025          | .063         | <b>-.808</b> | .269        | .107        | .095        | -.071        |
| <i>Nature of Lobbying</i>   |      |                |              |              |             |             |             |              |
| As a lobbyist, how often do you enact a practitioner-client privilege in which you promise protection of legitimately confidential information (such as employee records, trade secrets, and matters of national security)? | 4.31 | .065           | .345         | -.100        | <b>.625</b> | -.202       | -.060       | -.105        |
| As a lobbyist, when you interact with policymakers are there understood conditions of conduct?  | 6.52 | .244           | .015         | -.075        | <b>.779</b> | .215        | .173        | .159         |
| <i>Argument</i>   |      |                |              |              |             |             |             |              |
| When communicating on behalf of those you represent, do you present arguments based on reasoning and facts alone?   | 5.46 | -.010          | .129         | .162         | .043        | <b>.756</b> | .224        | -.020        |
| When communicating on behalf of those you represent, do you rely on emotional appeals to gain audience support?   | 4.65 | .039           | -.140        | -.252        | .085        | <b>.783</b> | .046        | -.108        |
| <i>Accuracy</i>   |      |                |              |              |             |             |             |              |
| How often do you provide policymakers with full disclosure?   | 6.15 | .505           | .138         | .141         | .338        | .181        | <b>.634</b> | -.032        |
| How often have you purposefully provided legislators with inaccurate information to influence their decisions?  | 6.96 | -.275          | .074         | -.141        | -.132       | .078        | <b>.619</b> | .010         |
| How often have you purposefully provided legislators with incomplete information to influence their decisions?  | 6.50 | .461           | .072         | -.018        | .251        | .155        | <b>.752</b> | -.071        |
| <i>Priority</i>   |      |                |              |              |             |             |             |              |
| In your day-to-day professional activities, do you consider the interests of those you represent the driving force in your decision making?   | 6.27 | .300           | -.057        | .174         | -.045       | -.183       | -.021       | <b>.745</b>  |
| When working with policymakers, how often do you see them as means to a successful lobbying campaign?   | 2.45 | .086           | -.294        | .234         | -.241       | -.086       | .019        | <b>-.707</b> |

<sup>177</sup> Personal elaboration based on: TUSINSKI BERG, op. cit. (2012) p.24

### 3.4 HOW TO MAKE LOBBYING A FAIRER PRACTICE?

Since every profession possesses specific responsibilities towards the population it serves, what should be taken into account when judging the ethicality of lobbyists behaviours is that ethical standards and obligations may vary within professions based on the different clients being served<sup>178</sup>. Thus, the ethical standards for lobbyists appear in various expressions within the codes of conduct, since, the requirements concerning lobbyists' legal and ethical regulations are for the most part dominated by the discussions on the role of money in politics, like for example the use of public funds in campaigning or in the implementation of policies strongly willed by the clients represented in the lobbying procedure; but still, the perceptions of the lobbying profession too often improperly dictate which ethical standards should be applied in the methods of representation of interests.

In order to make lobbying a fairer practice, it must become more transparent and accessible even for the weakest groups' expressions, who should be sustained in their attempt to influence legislators towards issues which involve special interests' concerns.

Regulations initiatives have been undertaken in several countries and all of them consider the key element of an ethical code including "a postulated model of lobbying activities, a specific pattern of ethical standards of lobbying"<sup>179</sup>. However, lobbying regulations should not be seen by discouraging meanings for the exercise of the right to petition or from taking advantage of this right, rather lobbying rules should be meant to address at least five democratic concerns, which are: ensuring that all the individuals have the fair opportunity of being heard within the institutional system, making sure that the latter joins citizens' trust knowing how the government operates and that the decisions taken are based on accurate information, with the idea that the ultimate purpose corresponds to the performance of public business benefits from the wisdom of the community<sup>180</sup>. By the preservation of public confidence in political

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<sup>178</sup> Cf FERNANDES A.N., op. cit. (2009), p. 198

<sup>179</sup> LEWICKA-STRZALECKA, op. cit. (2017), p. 75

<sup>180</sup> Cf. JOHNSON V.R., "Regulating Lobbyists: Law, Ethics, and Public Policy," Cornell Journal of Law and Public Policy: Vol. 16: Iss. 1, Article 1, (2006), p.13-14  
Available at: <http://scholarship.law.cornell.edu/cjlp/vol16/iss1/1>

institutions through the regulation of lobbying, it is possible to ensure that the decision-making process not only appears fair, but it provides equitable treatment even in operation, avoiding perceived corruption; that is why lobbying rules should avoid – or at least restrict - those practices which create may an “appearance of impropriety, such as business transactions between legislators and lobbyists”<sup>181</sup>. Still, lobbying rules should not prevent the representatives of interests and their client themselves from contributing to the issue’s resolution.

### **3.4.1 NORMATIVE BASIS FOR ETHICAL REGULATION OF LOBBYING**

Taking into account the variety of the ethical considerations present in norms codes regulating the lobbyist-client relationships - which must be based on mutual respect, expected to behave in line with openness and honesty - such as the ones presented in USA, Poland, UK, EU and Germany<sup>182</sup>, it is possible to reconstruct an axiological basis of the values involved within the lobbying profession. Honesty, integrity, frankness, trust, civic responsibility, trust, reliability, transparency, clarity, respect, openness, kindness are some of them. Further, it is assumed that the pursuit of lobbying must take into account the common good, since influencing the decision making of public policies, the responsibilities associated with such practices are different from simply advocate purely private controversies, involving the influence towards the policymakers which decisions have political consequences. That is why in the application of ethical standards, lobbyists should “weight the implication of their efforts for the well-being of the country as a whole”<sup>183</sup>. Moreover, the lobbyists have a personal responsibility in the policymaking process, as it is the representative of citizens with the duty of enforcing its effectiveness but also its integrity and fairness.

For all these assumptions, a common feature for an ethical regulation of

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<sup>181</sup> JOHNSON V.R., *"Regulating Lobbyists: Law, Ethics, and Public Policy,"* Cornell Journal of Law and Public Policy: Vol. 16: Iss. 1, Article 1, (2006), p.15  
Available at: <http://scholarship.law.cornell.edu/cjlp/vol16/iss1/1>

<sup>182</sup> Cf. LEWICKA-STRZALECKA, op. cit. (2017), p. 76; the codes taken into account are: Principles for the Ethical Conduct of lobbying (draft code -2002), Code of Professional Ethics of the Association of Professional Lobbyists in Poland (2006), Code of Conduct-The Association of Professional Political Consultants, Code of Conduct – The American League of Lobbyists, Code of Conduct – The Society of European Affairs Professionals, Code of Conduct – CLAN Public Affairs, Code of Conduct for Interest Representatives – European Commission, Code of Conduct- German Association of Political Consultants.

<sup>183</sup> Extract from the code Principles for the Ethical Conduct of lobbying, (2002), p. 84, in LEWICKA-STRZALECKA, op. cit. (2017), p. 78



lobbying must be the recognition of the law as an ethical minimum<sup>184</sup>: legalism, compliance with the law in all circumstances is the first requirement to lobbying, prohibiting not only any violation of it, but also condemning the violations put in place by those who hold public functions. Immediately afterwards, the transparency of action is a fundamental condition, in order to avoid corruption and all those activities which may affect negatively the image of professionals or degrade their dignity<sup>185</sup>. Indeed, compliance with ethical standards creates a positive image of the lobbying process, making public trust in political participation stronger and avoiding conflicts of interest too.

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<sup>184</sup> Cf. LEWICKA-STRZALECKA, op. cit. (2017), pp. 78-79

<sup>185</sup> Cf. idem, p.79

## **CONCLUSION**

The dissertation had the aim of developing an analysis of the ethical issue connected with lobbying phenomenon in terms of practices and procedures involved in the definition of the activities linked to this underestimated tool of security of the State. By the study of the subjects involved in this process of representation of interests, the already existing regulations, the dubious practices and the theoretical approaches to this field, the topic of detecting which ethical dilemmas lobbying presents has been addressed with the aim of provide possible recommendations and solutions through the fundamental values of transparency, integrity and equitable treatment.

Transparency has been assumed to be the keystone to manage the issues covered by the activities in which lobbying has been spread in its own evolution and it has been also analyzed in which measure the moral duties connected with this value, weigh in on lobbyists and public decision-makers in the policy-making and representation of clients' instances processes. Furthermore, transparency has to be implemented in a larger system of values led by integrity, which is aimed not only at mitigating possible conflicts of interest, but also at restoring the trust of public opinion in politics and in lobbying itself.

All the measure which are pursued to achieve ethical standards in the field are fundamental to regulate the relations between individuals, lobbyists and institutions, but the crucial factor to guarantee pluralist and democratic participation of civil society to politics is the enforcement of rules which assure equal conditions for access to decisional processes. For this reason, attempts have been made to provide an ethical acceptable framework of lobbying, in which the procedure used to defend and enforce the rights would not only meet normative requirements, but also moral ones.

The ultimate goal of this dissertation was the comprehension of this particular topic through the application of responsive deliberation and fairness, in order to understand how lobbying should improve to be more ethically acceptable.

In the light of what has been analyzed trough the classification of the phenomenon in its main features and through the study of the legal framework and of the system of values behind the theoretical approaches to the groups' activities, it has been possible to determine some inputs and incentives not only to lobbyists professionals and organizations, but also to legislators in order to make the lobbying activity correspond to the legitimate fostering of interests.

These kinds of recommendations may be resumed as: supplying accurate information about the main activities and practices used; encouraging openness and transparency among lobbyists; providing correct and respectful moral practices within lobbying organizations themselves, also drawing up the boundaries how actions that are and are not considered fair and the potential consequences of them; increasing the knowledge about this field, as the civil society should be aware of the contribute individuals not directly represented in the institutional framework may give in solving public welfare issues; adopting rules about the practices of lobbying and providing transparency as much as possible in the treatment of potential conflicts of interest; using the media to understand the real influence which lobbyism exercise on politics and stimulating the citizens to do the same.

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## **SUMMARY**

The influence of the decision-making process operated by particular groups within the institutional framework is an unavoidable feature of democratic systems of our time. The phenomenon which puts in place this dynamic is called lobbying and it contributes to reduce the gap between politics and civil societies, providing data and insights to policy makers and guaranteeing the access of stakeholders in the developing and implementation processes of public policies. However, from an ethical and practical perspective, it is possible to achieve the praiseworthy of this aim only when lobbying is implemented along with adequate regulation and virtuous demeanour of the subjects involved in the procedures of representation of community's instances. Otherwise, the lobbying activity risks to overturn into unfair competition, undue influence and endangerment of the effectiveness of public policies and the safeguard of public interest.

The basic issue is to identify the value system and the legal framework which defines the relation between public decision-makers and interest groups – pressure ones in particular – with the aim of avoiding degenerations and threats to the integrity of public officials and to improve transparency within the public decision-making process. In doing so, both lobbyists and institutions must practice responsiveness and accountability, strengthening the implementation of tools for guaranteeing transparency also with the aim of measuring the costs, identifying the benefits, monitoring the performances of the influence process through regulation and addressing the concerns related to tricky practices.

This dissertation springs from the desire to answer to questions such as “why the treatment of vested interests related to the common welfare, has such fundamental implications in common good issues?” or “why is the analysis of these particular matters necessary and crucial for the well-being of community?” and it investigates the urgency of achieving not only a coherent and enforceable regulation of the practices, but also the need for an ethical framework of lobbying, providing an analysis of valuable perspectives where the fairness, the transparency and political equality are respected and correctly applied to the representation of interests. In other words, the ultimate purpose of this argument is the development of an ideal process – ethically speaking – of making lobbying, in compliance with the achievement of successful and positive validation of particular interests originating from society, within the politics sphere.

On all the work, it has been assumed to treat the topic as a Global Justice issue, as it affects not only states' frameworks or national contexts, but rather the different roles and relations involved in social responsibilities, which duties have become further and further dependent on international realities, since the actions stemming from the representation of groups in a country, may affect some of the units abroad. Consequently, the role played by the groups of interest within policy making bodies has been considered as part of Global Justice matters, taking into account the crucial factor of the relation between the actors who define the rules, influencing the social contexts and the structure of the socio-economic environment where rules and influence are developed.

With the globalization, the competition between countries is no more only a matter of markets and economics, since competitiveness is present even in the legislative and social systems, through the struggle of ethical standards, which level of integrity must be safeguarded. That is why it has been retained that what is needed is also a "globalization" of the rules and the codes of rivalry, a strong definition of the allowed and not permitted behaviors of the actors, with the aim of presenting a united front of the regulatory frameworks adjusting expressions of political participation and interests' representation, such as lobbying.

In order to serve the mentioned purposes, the dissertation has been drafted in two parts, where the former one is dedicated to the description of lobbying from an analytical point of view, primarily focusing the attention on the classification of the phenomenon and the relationship that ties ethical concepts to it.

Based on this premise, in order to avoid falling victim to over-generalization but rather investigate why ethics and morals involved with lobbying are somewhat complicated and so often misunderstood, it is necessary first to define the phenomenon by clarifying the main aspects of the process under consideration.

In order to determine not only the impact, but also the relevance that lobbying has in our society nowadays, the first step to take is to understand the real meaning of this phenomenon, with the purpose of isolate it from other frameworks of social action - which can include lobbying but not determine it - and of not mistake it with different means of social stratification.

To achieve this goal, in this dissertation the lobbying practice has been studied through the analysis of five different perspectives, which are: the subjects who influence the actions, decisions or even the policies of institutional

representatives, as legislators or members of government agencies and regulatory bodies; the nature of the phenomenon itself examined in all its different shades and expressions in practice; the tools used for implementing the purposes of the subjects making lobbying - in other words how do the professionals of this activity play and which are the rules to follow in influencing legislation or more in general government decisions and policies - in the interest of a specific group; by implication, an initial analysis of the methods in which the groups' interests are regulated in democratic regimes will be already taken into consideration in this first chapter of the dissertation, where the attention will be focused on the regulation attempts achieved and in progress; finally, with the aim of explaining why these matters are crucial for the public affairs of our communities, the last section of the first chapter will examine the role that lobbying covers within contemporary societies.

Once the issue of the definition of this challenging and in progress topic has been addressed and the importance of its necessary presence and essential activities inside the political system have been brought to the attention of the dissertation, it has been necessary to work on the theoretical approaches that stand behind the legal context and the system of values by which the groups are activated in their lobbying purposes. In doing so, through the analysis of the general conceptual framework where the phenomenon is set, it is possible to understand the political and social criteria for the different interpretations, thoughts and observations affecting the lobbying field in its "business ethics" evolutions, so that it would be possible to interface the ultimate purpose of this graduate work - which is intended to suggest a workable solution to the ethical dilemmas behind the lobbying activity – also from a philosophical perspective.

Thus, the dissertation proceeded in four stages: first of all, the analysis required the comprehension of the Government Ethics subject in its key points, which will also clarify why the ethical theory and debate behind the lobbying issue can be considered a problem of Global Justice, ought to do in connection for developing an ideal (from the ethic point of view) method to match the moral standards in democratic societies.

Then, the strict Political Science pattern was developed through the two most theoretical approaches to lobbying and their models for the political adjustment

features to other areas such as economics, but also sociology and law: the first one is based on the group theory of politics, according to whom a democratic society must use a group process to make political decisions. In these terms, the approach reveals once again the importance of the interactions of interest groups in the decision-making processes, as the organization of the groups into active entities with specific methods of interest promoting and advocating desirable goals for the community involves the citizens in a larger awareness of their own needs and of their power of influencing the decision-makers using the representatives to assert their rights and interest in the institutional framework.

What is fundamental to extract from this approach, in order to understand where it leads within our ethical dissertation, is that the lobbying process towards the political system can be defined here as an attempt to influence decision-making, but not only in the emergence, promotion, function and consequences of the special interests which rise during the practice, but also in the use of practices which are considered legal as well as the democratic rule. In this context, it must be remembered that within this framework, information means of exchange in negotiations. Taking into consideration this theoretical background, it has been investigated in depth the further debate between two main approaches to the role played by the groups: the pluralism pursued through the mediation of a variety of several interests, which are in competition but coexist in mutual tolerance, belonging to different individuals who take part in different groups and the neo-corporatism, which retains, on the contrary, that there is inequality between multiple interests and their incidence inside the political context and that attributes to the institutions the power to select which of them are the ones that must be promoted within policies. These two schools of thought have been described in detail also in the context where they have been elaborated and enhanced, in order to understand the reasons behind their particular features in connection with the civil society where they have been applied and evolved.

The second theoretical approach, which is the one that has been chosen by the European institutions' perspective, such as the European Commission, is the one which retains that lobbying regards the activities carried out with the ultimate purpose of influencing the policy formulation and decision-making processes of the policy framework where it is implemented. In this sense, the European

Commission retains that lobbying, meant as the attempt to influence others and “originally based on the right to be heard”, takes legitimately part into the dynamics of democracies and of their derivations, even special ones such as the European Union.

However, the main issue around which the entire dissertation focuses is the study of the ethical dilemmas which lobbying brings to light. Indeed, the representation of interests gives rise to practical problems in so far as various behaviours by lobbyists and lawmakers may undermine the fairness and the transparency of the decision-making process, not contributing to the common good, but, on the contrary, providing exclusive space to particular requests within the institutional framework, no matter what consequences these have on the ethical integrity of the public debate. First of all, it has been dwelled the distinction between special and public interests, considering that the “public interest” concept pursued by the groups taken into account hitherto does not match in all respects with the “common good” one, because even if the representation of a public interest, will not provide direct and exclusive advantages to the individuals associated with it, but to the entire civil society, the interest in its pure meaning is distinct and not general at any rate, although it is aimed at addressing issues which may laid on the society as a whole. The role of lobbying, if capable of respecting the ethical mentioned value of integrity, should be performing as the ombudsman of the multitude of the interests within the same social body, where their compatibility cannot only be solved through the harmonization of prerogatives, but has to be guaranteed by the regulative forms and methods which do not allow any interest to be in the potential condition of prevaricate other ones, damaging them. The guarantee is represented by the democratic pluralism within the institutional framework, where the public interest does not gain from side-lining particular interests, since, in order to protect all of the prerogatives, the dangerous instances for the common good which can be found in each of the interest, must be cast aside; only in this way it will be possible to obtain the real public interest, made by individual interests enabled to cohabit without jeopardizing themselves.

The obligation between interest and representation, for which the former cannot find place in the public debate without the use of the latter, can be found in the fact that representation of interests guarantees political freedom in those society

where individual freedom is considered a priority, since the representation of individual rights within politics leads the instances of those subject not directly present within this framework, inside the public debate. But the representation of interests operated by the groups through the lobbying process can be considered respectful of the democratic pluralism of values only if it is conducted through the principles of participation and equality for all the instances implemented; further, without these criteria, there is no chance of application of a responsive and democratic representation of interests.

Responsiveness has been the key element in this discussion on the ethics problems affecting the lobbying activities, in relation with bargaining practices. In order to detect the morality behind the procedures with which lobbying can be validated by an affordable ethical perspective, the dissertation wanted to provide space for the analysis of the tricky degeneration of those practices used in the influencing process - starting from the study of institutions' attitude towards fairness in the decision-making process involving common good issues - with the aim of understanding when lobbying activity is no more corresponding to the legitimate fostering of interest. Some inputs have been also given about the possibility of making lobbying a fairer practice, in respect of transparency and integrity, attempting to balance the instances of particular interests with the need for management of common good issues. In doing so, it will be also conducted an analysis of the path testing of a methodology for lobbying profession which ethical base is built within the claim of such values as accountability, dialogue and open communication, truth and transparency, reliability, civic responsibility and loyalty, trust.

Consequence of all these concepts resulting from the attempt of drawing up an ideal framework for transparency and integrity within the lobbying procedure, the implementation of these values appeared extremely crucial when it is developed as part of the political and administrative processes. Furthermore, professionalism meets ethics when the lobbying process responds to transparency and accuracy in providing information to legislators and to ensure that this happens, three characteristics are required for professional status: extensive training, significant intellectual component, important service to society.

In order to make lobbying a fairer practice, it must become more transparent and accessible even for the weakest groups' expressions, who should be sustained in their attempt to influence legislators towards issues which involve special interests' concerns. For all these assumptions, a common feature for an ethical regulation of lobbying must be the recognition of the law as an ethical minimum legalism, compliance with the law in all circumstances is the first requirement to lobbying, prohibiting not only any violation of it, but also condemning the violations put in place by those who hold public functions. Immediately afterwards, the transparency of action is a fundamental condition, in order to avoid corruption. Indeed, compliance with ethical standards creates a positive image of the lobbying process, making public trust in political participation stronger and avoiding conflicts of interest too.

The lobbying action, in its aim of exercising the political significance of interests, creates a mutual acceptance of the role of the public official which is informed on the specific issue presented by the lobbyists, who operates with the institution, in aid of the client's purpose (an association, a business company or even a private entity) but this process is not conducted against the law, attempting to bypass even using illegitimate or corrupting tools: in these terms, it is possible to describe the lobbying action as a preserving one of the integrity of the institution authority itself and it cannot be discarded, since it represents the bridge between private and public interests sphere. Nonetheless, it must be bound into strict transparency requirements, in order to be able to rely on a concrete distinction between allowed practices and immoral behaviours. Provide a regulative framework to lobbying means ensure the respect of democratic rules and more in general to the security of the State itself: the access to legislative information, transparent political action, the respect of the rule of law are part of the State security and the lobbies must honor them through the representation of those who cannot give direct expression to their own preferences and interests. The pressure power of lobbies is about giving support to questions of actuarial expertise and this chance of easily achieving reliable information represents an added benefit for politics professionals, called on to participate to decisional moments taking into account the safeguard of organized interests. But these practices necessitate of specific codes of ethics and regulative normative, or they would qualify as border-line initiatives from the legislation.

The dissertation had the aim of developing an analysis of the ethical issue connected with lobbying phenomenon in terms of practices and procedures involved in the definition of the activities linked to this underestimated tool of security of the State. By the study of the subjects involved in this process of representation of interests, the already existing regulations, the dubious practices and the theoretical approaches to this field, the topic of detecting which ethical dilemmas lobbying presents has been addressed with the aim of provide possible recommendations and solutions through the fundamental values of transparency, integrity and equitable treatment.

Transparency has been assumed to be the keystone to manage the issues covered by the activities in which lobbying has been spread in its own evolution and it has been also analyzed in which measure the moral duties connected with this value, weigh in on lobbyists and public decision-makers in the policy-making and representation of clients' instances processes. Furthermore, transparency has to be implemented in a larger system of values led by integrity, which is aimed not only at mitigating possible conflicts of interest, but also at restoring the trust of public opinion in politics and in lobbying itself.

All the measure which are pursued to achieve ethical standards in the field are fundamental to regulate the relations between individuals, lobbyists and institutions, but the crucial factor to guarantee pluralist and democratic participation of civil society to politics is the enforcement of rules which assure equal conditions for access to decisional processes. For this reason, attempts have been made to provide an ethical acceptable framework of lobbying, in which the procedure used to defend and enforce the rights would not only meet normative requirements, but also moral ones.

The ultimate goal of this dissertation was the comprehension of this particular topic through the application of responsive deliberation and fairness, in order to understand how lobbying should improve to be more ethically acceptable.

In the light of what has been analyzed trough the classification of the phenomenon in its main features and through the study of the legal framework and of the system of values behind the theoretical approaches to the groups' activities, it has been possible to determine some inputs and incentives not only to lobbyists professionals and organizations, but also to legislators in order to make the lobbying activity correspond to the legitimate fostering of interests.

These kinds of recommendations may be resumed as: supplying accurate information about the main activities and practices used; encouraging openness and



transparency among lobbyists; providing correct and respectful moral practices within lobbying organizations themselves, also drawing up the boundaries how actions that are and are not considered fair and the potential consequences of them; increasing the knowledge about this field, as the civil society should be aware of the contribute individuals not directly represented in the institutional framework may give in solving public welfare issues; adopting rules about the practices of lobbying and providing transparency as much as possible in the treatment of potential conflicts of interest; using the media to understand the real influence which lobbyism exercise on politics and stimulating the citizens to do the same.

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