Paper presented at the
EUSA Ninth Biennial International Conference, Austin, Texas
Panel 01D "Interest Groups and Lobbying in Comparative Perspective"
March 31 – April 2, 2005

Lobbying in a transatlantic comparison

Opportunity structures and lobbying content in the US and the EU

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Abstract

Despite vast literatures on interest representation in the United States (US) and the European Union (EU), few studies have tried to compare lobbying across the two cases. Those who do are interested primarily in the existence of different lobbying styles and distinguish between an aggressive pressure group approach in the US and a more consensus oriented informational lobbying in the EU. However, the origins of these differences have received little attention and references most often point to different political "cultures" and lobbying traditions. This paper takes issue with this cultural explanation and links the observed lobbying styles with differences in the design of the political institutions that private actors have to interact with. It argues that divided policy authority in the US allows for interest group bargaining while shared policy competencies in the EU constrain not only policy-makers but also lobbyists to adopt a more consensus-oriented approach. The effect of political institutions on the form of lobbying, in turn, can have important implications for the comparison of different policy areas across countries, because the policy stances of private actors cannot always be assumed to be exogenous to the policy process in which they are active.

1 Introduction

The participation of private interests has been at the heart of policy analyses for almost a century. In terms of geography, both the United States (US) and Europe have been extensively studied, but the vast literatures for each area are rarely put into comparison (cf. Thomas 2004). This is all the more surprising in the context of the recent EU studies of lobbying, which have repeatedly underlined that lobbying in Brussels is distinctly different from lobbying in Washington D.C. (e.g. Cowles 1996; Coen 1998). In contrasts to the aggressive lobbying methods that one can observe in the US, lobbying in the EU is supposedly much more consensual and essentially based on mutually beneficial exchanges of information. In order to underline this opposition, some authors have even gone so far as to describe the groups that engage in the US process as "pressure groups" while the ones active in the EU are best labeled "interest groups" only (e.g. Jacomet 2000).

What explains this difference between lobbying in the US and the EU?[1] Some surveys of lobbying styles exists (Milbrath 1963; Rosenthal 1993; Van Schendelen 1993; Van Schendelen 2002), but so far, few authors have tried to compare lobbying methods in the US and the EU.[2] Moreover, those that do have concentrated on the transfer of styles rather than on reasons for the observed differences (Coen 1999; Thomas/Hrebenar 2000; Thomas 2002). Instead of investigating them directly, the origins of US-EU differences are often implicit in the texts. Interviews with policy actors and other primary accounts point to the existence of specific political cultures as explanations for divergent behavior, but differences in political institutions also seem to play a role.[3] However, neither one of the two intuitively appealing arguments has been thoroughly specified. With respect to cultural differences, McGrath (2002) insists that both "systems have particular cultural norms and values which can shape lobbying practices" but fails to give an explanation of how this might be the case. Are

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[1] By concentrating on "lobbying" rather than "interest groups" more generally, I propose to work on the activities by which non-governmental actors seek to influence the political process rather than the ways in which they organize or the system of private-public relationships that may exist in a particular country. For extensive discussion of this terminology, see Baumgartner and Leech (1998: 22-43).

[2] For an exception, see McGrath (2002).

[3] Thomas (2002) juxtaposes these two explanations most explicitly (see also Thomas/Hrebenar 2000), but others use similar terminology.

Europeans just more discreet, issue-specific and consensus-loving than their less bashful American counterparts? In turn, if institutions constitute a more observable factor weighing on lobbying, what exactly should we look at? So far, the institutional variable has been considerably underspecified, which makes it hard to analytically distinguish the effects of political culture and institutions.

The purpose of this paper is to provide an explanation for existing differences between lobbying in Washington, D.C. and Brussels from an institutional perspective rather than a cultural one. Differences in the division of policy-making authority in the US and the EU, I argue, have important consequences for the ways in which political institutions can work with and benefit from interaction with private actors. Based on Fritz Scharpf's (1988) analysis of a joint decision trap that may arise in EU policy-making, the paper elaborates why the European Commission is constraint into consensus-building, whereas the political system in the US allows for bargaining between different stakeholders. In the EU, the access of private actors to supranational institutions depends on their contribution to the creation of problem-solving policy approaches. Lobbying that frames a policy problem in terms of a zero-sum game, by contrast, will be less successful at the supranational level than it might be in the US. It is thus the institutional design, not political culture, that imposes the observed need for lobbyists to be consensus-oriented, to construct a particular kind of "European credibility" (Coen 1999; Coen 2002).

The paper divides into three parts. A first section summarizes the literature of lobbying in the US and the EU, in order to identify the principal differences that exist between the two. A second section turns to potential explanations for these differences and develops an institutional argument. A concluding section then spells out the implications of the two institutional logics with respect to a select number of policy areas.

2 Lobbying in a transatlantic comparison

Lobbying defines the political activities of non-governmental actors that aim at influencing the choices of public officials and governmental decision-makers in their favor (cf. Milbrath 1963: 8). The tactics that can be employed for this end include a myriad of instruments from financial contributions, personal contacts, written statements to grassroots strategies.

Nonetheless, it is possible to identify distinct traditions in different countries, and in the US and the EU in particular – two places where lobbying is common. What are the ways in which private actors lobby their government in Washington, D.C. and Brussels? An overview of the two cases helps to clarify the principal differences that have been identified in the literature.

2.1 US lobbying: lawyers and money?

The US is generally considered the birthplace of lobbying as a political phenomenon, and the wealth of studies testifies to the fact that it has become a ubiquitous part of US politics at all levels of decision-making. With the exception of several well designed surveys (e.g. Milbrath 1963; Heinz et al. 1993), a large part of the writing on lobbying activities concentrates on providing descriptive overviews (e.g. Mack 1997; Herrnson/Shaiko/Wilcox 1998; Rozell/Wilcox 1999; Cigler/Loomis 2002).

In practice, the participation of private actors in politics is not in and of itself suspect, even though a normative discussion on the desirability of lobbying exists. In fact, the right to communicate special interests is firmly anchored in the US constitution, where the First Amendment protects the right of the people to 'petition the government for redress of grievances.' Lobbying is considered part of such political participation and therefore constitutes an element of free speech. Despite the mistrust of special interest that dates back to Madison's Federalist Papers, lobbying is an accepted or endured political tradition in American politics.

> It allows competing points of view to be heard and provides information to those making decisions. It is how the wronged and the needy, as well as the greedy, call attention to their cause (Tarr/O'Connor 1999: 283).

Framed in such a way, lobbying has traditionally been difficult to regulate, because rules might collide with principal of free speech. Rules on lobbying were considered in every Congress after 1911 but were not approved until 1946. The 1946 law aimed at disclosure, making lobbyists register their name and spending. In 1995, Congress approved a number of changes to the 1946 law, most notably broadening the definition of lobbying and tightening lobbying from foreign interests.

Associations representing special interests predate direct representation and their number grew remarkably in the last fifty years. In 1955, there were about 5 000 national associations; in 1975, there were 13 000; today there are more than 23 000 national associations – along with more than 64 000 regional, state and local associations. A large number of these associations represent economic interests. Nonetheless, companies increasingly choose to have a direct representation as well: between the 1920s and today, their number of firms that have permanent offices in Washington D.C. has climbed from 1 to over 600 (Herrnson/Shaiko/Wilcox 1998: 7-9).

Since the maintenance of government affairs offices is costly, the vast majority of US companies do not maintain offices in Washington, but instead chose to hire a representative from a lobbying firm or a law firm specialized in public affairs. This practice is very common in the US and almost gained mythical status through literature and films.[4] However, unlike popular impressions, employing a "hired gun" is only common for companies that do little lobbying on a regular basis or companies that want to tackle a particularly difficult legal matter. Companies that interact regularly with the US government tend to have internal representatives, even though they might employ both (Heinz/Laumann/Nelson/Salisbury 1993: 65).

Another much noted aspect of US lobbying are financial contributions, which can be divided into three categories: gifts, "soft money" and campaign financing. While gifts, dinners, theatre trips, and vacations used to be common, honoraria for lawmakers have been abolished and all but nominal gifts are prohibited.[5] "Soft money" refers to donations made to political parties, not to the candidates, supposed to be used only for party-building activities, not for direct campaign support. Of all forms of financial contributions, campaign financing has received the most attention. Unlike individuals, companies and labor unions cannot make direct contributions, but are required to form Political Action Committees (PACs) through which they can contribute (Herrnson 1998; Rozell/Wilcox 1999). Both hard and soft financial contributions are well-documented. Not only do PACs need to register according to

[4] The latest of these is a TV series about the daily life of Washington lawyers named after the street were most legal consulting firms are located: "K-Street".

[5] Private meals with lobbyists are also forbidden unless the legislator pays out of his pocket.

issues and contributions, there are also several encyclopedias and web-sites who collect and publish this information.[6]

If money and legal affairs are the most noted aspects of lobbying in Washington, D.C., a survey of the allocation of time of government affairs representatives reveals that the most amount of daily work is spent elsewhere.[7] A government affairs official spends about 30 % of their time on organization duties, which include informing the company about activities in the capital and organizing working groups or other activities. 60% of time is actually spent on federal policy issues, but most often, this refers to maintaining the contact with government official, going to meetings, following hearings or the work of subcommittees of Congress (Heinz/Laumann/Nelson/Salisbury 1993: 87-104). The daily work of Washington lobbyists thus seems much less glamorous than one might expect.

2.2 EU lobbying: expert knowledge and multi-level representation

Although interest groups have been at the heart of early studies on the European project, the bulk of writing on EU lobbying followed the relaunch of integration in the mid-1980s. With the simultaneous growth of interest group participation at the supranational level, the most extensive number of studies of lobbying has revolved around new and old forms of lobbying in the EU (Kirchner 1981; Greenwood/Grote/Ronit 1993; Van Schendelen 1993; Bindi 1994; Pedler/Van Schendelen 1994; Aspinwall/Greenwood 1998; Claeys et al. 1998). Systematic studies of lobbying are most often used as a means of understanding the new political structure that emerges and the system of governance it creates (Streeck/Schmitter 1991; Mazey/Richardson 1993; Kohler-Koch/Eising 1999; Balme/Chabanet/Wright 2002).

In contrast to the US, political activities of private actors have traditionally been much more suspect in Europe. Especially in France and the Southern European countries, interest groups do not fit a political category and seem to represent "a deviation of the proper functioning of the State and the political system" (Offerle 1994; Basso 1997: 39). The representation of economic interests is carried out by associations and peak associations, who have a much

[6] See for example Ness (2000). The website www.opensecrets.org offers a complete list of publications and the figures of money collected in the last 15 years.

[7] This does, of course, not apply to hired legal consultants, who do spend the majority of their time on legal affairs (Heinz/Laumann/Nelson/Salisbury 1993: 88).

more central standing in the political system of their home countries than their American counterparts.

The Commission estimates that more than 3 000 interest groups are active in the mid-1990, of which 1674 represented economic interests (Coen 2002: 258). In the course of the last twenty-five years, economic interest representation evolved from associational representation only to include direct firm representation, most notably at the European level (Cowles 1998; Coen 1999). Between 1985 and 1997, more than 350 businesses decide to establish government affairs offices in Brussels and national peak associations increase the number of employees working on European affairs.

Despite this rise of direct lobbying based on personal contacts, lobbying in the EU remains different from lobbying in the US. Most importantly, nothing comparable to the American campaign or party financing possibilities exists in Brussels. Even with respect to the daily lobbying activities, most scholars note a "European style" or "European strategies" of lobbying that is made up of at least two elements. First, this European style is marked by a less aggressive and more consensual approach to political participation. Cowles (1996:345-6; 1997: 128) illustrates this difference well in her account of the US reaction to a social directive proposed by the European Commission.

> [The directive] provoked a great deal of anxiety among American [multinational companies] with no Brussels based representatives and little prior contact with the EU. Instead of calling on the EU Committee to represent their concerns, these US firms took matters in their own hands. Armed with a plane full of Washington lawyers, the companies descended upon Brussels to confront the Eurocrats. […] The Washington approach was a public relations disaster. Appropriate for the confrontational style of lobbying common in the US, but inappropriate for the subtle Brussels approach. From 1981, the EU Committee undertook a great effort to re-establish the image of American businesses in Brussels.

Instead of confronting public officials, European lobbyist gain access through expert consultations. Advising the European Commission on technical policy matters has proven to be the most common and most successful mode of participation of societal actors of all kinds (Radaelli 1995; Bouwen 2002; Saurugger 2002). While representatives have a chance to express their views on policy proposals, Commission officials, but also Members of the European Parliament, benefit from the technical expertise these actors can provide. The symbiosis between public officials and private interests in Europe thus hinges on the latter's constructive and informed participation.

Just like their American colleagues, European lobbyists also encounter difficulties when they change into a more aggressive mode of lobbying. An illustration is the lobbying campaign undertaken by the European oil refinery representation EUROPIA around the Auto-Oil Program of the EU. When the Commission first started working on a proposal to reduce pollution through motor vehicles in 1993, Europia was able to develop a productive working relationship with the Commission to agree on the most cost effective way to reduce pollution (Corporate Europe Observatory 1999). Once the European Parliament and later the Council rejected the Commission proposal, precisely because it seemed to be biased towards the interests of the oil industry, EUROPIA started a massive lobbying effort on the European Parliament who sought to tighten the standards to a higher level, arguing that the measure would lead to the end of oil refineries in Europe, which would ultimately costs the Members of the European Parliament (MEPs) their job. In the debates, MEPs repeatedly refused to be bullied and suggested "getting a hat and collecting money for the poor oil industry".[8] Ironically, the lobbying efforts might therefore even explain the consensus of the European Parliament to tighten auto emission standards.[9] For both the Commission and the European Parliament, a constructive approach is more important than arguments based on threats and pressure.

Another element of European lobbying is the multi-level approach lobbyists need to adopt to press for their cause. The competency division between the European Institutions and the difference between high politics – decided by the Council of Ministers or even the heads of government – and low politics – the less politicized, bureaucratic work of the European Commission and amended by the European Parliament – require that interest representation employs a multitude of channels on any one particular issue.[10] Most scholars have noted the complex web of representation and the superposition of regional, national and European levels of interest organization (Greenwood/Grote/Ronit 1993; Teuber 2001: 150; Eising 2004). On any particular issue, the multitude of channels of representation may include

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[8] The efforts, led by a large number of lobbyists who contacted every single MEP working on the issue, were so massive that MEPs from every party federation complained on the debate floor of being "besieged" by lobbyists who "wished to blame Parliament for the structural problems there might consequently be in this sector of industry". Kronberger (NI) and Hautala (V) "Motor vehicle emissions" *Debates of the European Parliament*, Sitting of Tuesday, 15 September 1998; and Lange (PSE), „Air pollution by motor vehicles" *Debates of the European Parliament*, Sitting of Tuesday, 17 February 1998, available at www.europarl.eu.int/plenary/default_en.htm.

[9] I thank Nils F. Ringe for bringing this incident to my attention.

[10] On the distinction between high and low politics, see Peterson/Bromberg (1999).

direct representation, national peak associations, sectoral association, European umbrella organizations or other thematic European or transnational groups. The acknowledgement of a multi-level approach of interest representation is the most general conclusion of the studies of European lobbying. While this has been of considerable inspiration to theories of European governance (Kohler-Koch/Eising 1999; Marks/Hooghe 2001), little has been done to evaluate the implications of this approach for the impact of groups on political decisions (for an exception, see Grande 1996).

2.3 Comparing US and EU lobbying

The country-specific literature highlights several similarities and differences in the lobbying of companies from the US and the EU. Lobbying on both sides of the Atlantic has experienced a considerable boom in the last fifty year, which corresponded to the increase in the governmental activity in Washington, D.C. and Brussels. Direct representation of companies co-exists with associational representation in both cases, even though peak association play a greater role in Europe and the multitude of channels is somewhat more complex in the EU, where several policy levels are often important for the same issue. Financial contribution and legal tactics, in turn, are an important part of US lobbying.

However, financial and legal tactics, attributes of the more aggressive lobbying style of so-called "pressure group" lobbying, are most useful for interactions with Congress, where Members are sensible to the demands of their constituents or negative media coverage. Lobbying directed at the agenda-setter, in contrast, requires contacts based in consultation in both the US and the EU. In other words, for the formulation of objectives and the policy design, lobbyists need to rely on informational lobbying (Potters/Van Winden 1990; Bennedsen/Feldmann 2002). In both cases, government representatives of associations or firms also have a dual role of trying to influence the policy process and simply monitoring it to inform the group they work for.[11]

A first comparison thus reveals two points. First, the instruments available to lobbyists in the US and the EU are indeed different. Campaign financing is not possible in EU politics and

[11] Schmitter and Streeck (1999) have termed the reasons for this dual role "logic of influence" and "logic of membership". See also Ainsworth and Sened (1993).

the use of lawyers is much less common for advocacy work in Brussels than it is in the US. However, the every day practice of lobbying in both cases is rather comparable, especially when it is directed at the policy formulation rather than the actual decision. Both US and EU lobbyists spend the most important part of their political activities trying to maintain in contact with policy-makers in order to provide information and to respond to consultation procedures.

Yet, a more nuanced analysis indicates that even in the context of informational lobbying, lobbying styles are somewhat different in Washington, D.C. and Brussels. While US groups and lobbyists defend what is directly in their immediate interest, EU representatives often seem to be less determined and more careful in their approach.

Coen (1998; 1999) indicates that these two approaches correspond to the different role trust plays in the relationship between private interests and public officials. EU lobbying is much more rooted in long-term relationships and trust than is the case in the US. As Vogel (1996a: 11) points out for the case of business lobbyists, the relationship among firms trying to affect the government in the US is characterized by an "adversary culture". In the absence of cross-industry or "peak associations" comparable to European organizations, the political market encourages short-term thinking and fragmented, often competing political activities of individual actors. This contrast is something that many practitioners underline when they are asked about differences in work of lobbyists on both sides of the Atlantic. To cite an example, this British lobbyist tries to explain why lobbying plays a greater role in the US than they do in Brussels or London (McGrath 2002):

> In Washington, lobbying […] is very specialized […]. Therefore, if they are specialists it is much more natural that they should be putting the case. I think it might also simply have to do with the natural characteristics, for here people tend to very reserved, polite, discreet, while Americans seem to be very brash and in your face.

Despite all similarities in lobbying tactics, there thus seems to be a difference in lobbying "styles".[12] Put differently, it is not what you do, it is how you do it. "No one expects the 'full on' US style lobbying tactics to work in Europe; rather, we can expect an increasingly subtle style […]," suggests Coen (1999: 41) in his analysis. To him, the European style is characterized by a "low public profile" and being "sophisticated", compared to the "aggressive lobbying of Washington firms". Thomas and Hrebenar (2000) underline that

[12] An overview of all differences of lobbying in the US and the EU can be found in the Annex.

"unlike the situation in the US where "defensive lobbying" is a widely used tactic, it is not in the nature of EU lobbying to stop something, to kill it." These characteristics are especially visible to practitioners and policy-makers, who repeatedly underline differences like a member of the European Parliament who deplores the "gangster style of American lobbyists" or an EU lobbyist who explains that "in Brussels, you must learn to speak softly, softly," (Gardner 191: 63). Somehow, all analysts seem to agree that EU lobbying is less confrontational and consensus-oriented than US lobbying.

3 Political culture or political institutions?

How can we explain these different lobbying styles? In most analyses, scholars point to political cultures and political institutions, but the arguments remain underspecified. After a brief discussion of the political culture argument, this section turns to the institutional perspective and tries to work out the concrete mechanisms through which the design of a political system can affect the work of lobbyists.

3.1 Lobbying traditions as a manifestation of different political cultures

Despite the heuristic power of the concept, political culture as an explanatory factor for policy developments has come under attack for a number of reasons.[13] Closest to our investigation, one critique points to the relationship between culture and political institutions and questions whether culture is a cause or effect of institutions. To some degree, this is a chicken and egg problem, but this does not make political culture a moot point. Certainly, political institutions are the result of societal norms and values, of political culture in the most general sense. The quite particular "lobbying traditions" that one can find in the US and the EU, however, are better understood as a consequence of institutions and not simply a natural extension of political predispositions of citizens in both systems, as I will argue. In any case, it is not necessary to oppose political culture to political institutions as a fully developed alternative explanation, because the literature does not really develop a

[13] Developing these arguments in details would be beyond the scope of this paper. For an overview of the discussion on political culture, see Dalton (1996).

systematic interrogation about the origins of lobbying behavior, but rather indicatively suggests that culture and traditions must be important.

The most explicit link is made in the writing of Thomas (2002), who speaks of "American and European lobbying cultures" and seemingly equates 'lobbying styles' with 'cultural norms' when he asks "to what extent has the success and failure of American groups in the EU been achieved by using American-style techniques […] or depended on adjusting to European cultural norms?" Similarly, he refers to the use of "hired guns" and aggressive techniques as American "cultural traits". In her analysis of the work of the American Chamber of Commerce's work in Europe, Cowles (1994: 285) explains that the success of the group depended on adapting their lobbying tactic to being "critical but constructive". As a member of the groups puts it, the goal was to combine the "more technical input typical of American lobbying with the culture and experience of Europe." McGrath (2002) underlines the "legal/cultural" roots of lobbying differences between the US and Europe and cites a British lobbyist:

> Until very recently, we didn't have the right to do anything. We were told what we weren't allowed to do, and that just characterized your approach […]. That's why lobbying [in Britain] always had a dirty feel about it.

According to this account, it seems that the role of interest groups in Europe is constrained not only by their actual legal rights, but also by the political traditions and normative perspectives on the role of private actors.

To some extent, the cultural argument seems to rest on an imprecision in the use of culture as an analytical concept. In many instances, 'political cultures' is employed to cover all forms of procedures and ways of doing things that are specific to a given country or region. Quite often, the word 'culture' is helpful less for the academic who wrote the comparative studies, but for the practitioners he or she interviewed, as the citations above highlight. From the perspective of a lobbyist working in either Brussels or Washington, D.C., the concept permits to categorize all patterns of behavior that are different and country-specific.

It would be overzealous to criticize these authors for an argument about political culture that they have never really made explicitly. Even Thomas and Hrebenar (2000), who ask what role culture plays in shaping lobbying traditions, never really answer their question, but instead conclude that "cultural and institutional factors overlap and in some ways may be inseparable." Most often, the origins of divergent lobbying behavior simply are not the

problem the comparative studies have been trying to address. However, the reoccurring references to divergent traditions and political cultures are misleading to scholars interested in comparing the policy process of the US and the EU, because they posit that the ways by which private actors participate in their political systems are exogenously given. In contrast, I argue that lobbying styles are a function of the design of the political system and do not evolve independently from it. In the following sections, I will review develop an argument that provides a counter hypothesis to the assumption of preexisting lobbying cultures.

3.2 Institutional constraints and opportunities for lobbying

Understanding how institutions can affect lobbying styles requires elaborating the constraints and opportunities for private actors' participation that are inherent in the opportunity structure in the US and the EU.[14] Concentrating on the principal differences between the US and the EU policy process, this section elaborates four elements of the institutional argument: (1) Since policy authority is shared in the EU and not divided as in the US, policy-making in Europe is bound by a *de facto* consensus requirement. (2) Failure to reach consensus may lead to blockage, so that the European Institutions and to some extent even member states have a strong incentive to achieve problem-solving rather than bargaining style policy negotiations. (3) In their search for expert advice, the European Institutions will privilege those interest representatives that contribute the creation of a problem-solving situation. (4) Firms value access to the political process. They therefore have an incentive to formulate their demands in constructive terms that do not inhibit problem-solving situations. The consensus-oriented lobbying style at the supranational level that many authors have observed in the EU is thus a response to the institutional constraints weighing on the European Commission. The US system, in contrast, allows for bargaining, which creates a highly competitive political market that puts individual policy actors in a defensive position.

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[14] The term political opportunity structure refers to specific configurations of resources, institutional arrangements and historical precedents that facilitate or constrain the political participation of non-governmental actors. For an elaboration of the concept, see Eisinger (1973) and Kitschelt (1986). Cf. also Lehmbruch (1991) who proposes a "developmental model of policy networks", which is constituted by state structures, administrative strategies and interpretations of social reality guiding strategic choices.

(1) Drawing on his research on German federalism, Scharpf (1988) has argued that the US and the EU resemble two quite distinct models of federalism. While US scholars tended to classify federal systems according to the relative weight of independent authority of central and constituent spheres of government, Scharpf underlines that authority in the political systems of Germany and the EU is in fact shared by the different levels of government. In both the divided and the shared authority model, the powers of the central government are limited by the exercise of political authority of the constituent governments (the 'states' in the US, the *Länder* in Germany, and the member states of the EU) whose governing powers are legitimated by democratic elections. In the American model, however, both the President and the two houses of Congress are elected directly and the political decisions of the federal government are formally independent of the constituent governments. Whatever sharing of functions is going on is voluntarily granted and can be withdrawn by the federal government.

In the EU, the different spheres of policy authority – the supranational institutions and the national governments – are not independent. The European Commission, the executive body of the EU, is not elected directly nor put into place by the directly elected European Parliament. Decision-making authority is in the hands of the member states governments, either through the Council of Ministers or through the summit meetings of the European Council. In both bodies, most important matters are decided through unanimous agreement, but even in areas of qualified majority voting, consensus decisions prevail (Heisenberg 2005). Furthermore, the European institutions depend on the member states for the implementation of its policies in most policy areas.

A central feature of shared authority or joint-decision systems is the quasi veto-power of constituent governments, which effectively inserts a separate level of interest representation into the policy-process: the interest of the constituent governments. While US senators ideally represent the interests of the constituency only, the *Bundesrat* or the Council represents the institutional self-interest of its subunits as well. In Scharpf's (1988: 254) words, "the policy output of joint-decision systems, when compared with unitary governments or the American model of federalism, will be less responsive to constituency interests and more oriented towards the institutional self-interests of governments and their 'bureaucratic convenience'."

(2) Continuing his analysis, Scharpf has underlined that the implication of joint decision-making is the risk of deadlock when the different interests of the lower level governments are opposed to each other in a bargaining situation. Joint-decision governments therefore have to adopt a "problem-solving" approach to policy-making instead of a bargaining approach in order to be effective.[15] The failure to do so can lead to a series of frustrations and stagnation that has marked the EU during the 1970s.

Adrienne Héritier (1999) suggests that the threat of deadlock in EU policy-making has led actors to develop informal strategies among which she lists the Commission's tendency to build "co-operative relations with sub-national and private actors *before* embarking upon new policy activities." With those and similar methods, the Commission has to prevent direct confrontation between opposing interests, since it has no instrument at its disposal to resolve such conflicts. Continuing stagnation in EU policy-making is highly undesirable for the European Commission, not only for the sake of policy production, but also because the legitimacy of the Commission depends on policy outputs (Scharpf 1999). For these reasons, the Commission has a strong institutional interest in achieving problem-solving situations rather than bargaining.

(3) This constraint has important implications for the lobbying strategies of private actors seeking access to the European Commission. Since the Commission functions under the constraint to achieve problem-solving policy negotiations, it is most likely to grant access to private interest when they permit to obtain such a situation. This does not mean that interests need to be harmonious to be represented, but they should not aggravate zero-sum national bargaining situations that might produce on particular policy issues (Mazey/Richardson 2003: 223-4; Radaelli 2003).[16] Grande (1996: 328) has argued with reference to Robert Putnam's two-level games that preferences "outside the win set of joint negotiations have no chance of being recognized". This mirrors a fundamental proposition Scharpf (1976: 41) has made about the systems of joint decision-making: „in the case of

[15] The distinction between situations marked by "problem-solving" and "bargaining" reflects a distinction in the French literature between political "forums" and "arenas", where the former is characterized by deliberation and the latter by bargaining (Jobert 1994; Fouilleux 2000). It also echoes the distinction drawn between arguing and bargaining in the literature of international relations.

[16] This also explains the ranking of goods demanded by the European Commission in Bouwen's theory of access (cf. Bouwen 2002: table 3).

interest conflicts between general and special interests, we should expect a neglect of special interests for institutional reasons."[17]

In terms of EU decision-making, domestic interests with a purely national perspective risk aggravating the conflict lines within Europe. This constraint is the most important determinant of the political opportunity structure in Europe. Several analysts of lobbying have already underlined that the central tool for gaining access to the EU Commission is the provision of expertise (Bouwen 2002) and that the Commission's decision over the choice of expertise is highly political (Saurugger 2002). While the precise content of the expertise is seemingly under little constraint, the political constraints weighing on the government indicate that expertise relevant to the construction of a problem-solving situation will be privileged.

How is this different from lobbying conditions in the US? In both the US and the EU, there are more lobbyists offering information than the public officials can possibly work with. However, access is restraint according to different logics. As Coen (1999: 38) points out for the EU, "Commission officials have had to start to restrict access to those interests that it perceives to be its natural 'issue partners' and that exhibit positive European credentials". In the US, in turn, access restriction seemingly creates increased competition for the 'better' or 'effective product' (Vogel 1996b): lobbyists have to be better trained, more informed, louder and more insistent than their competitors.

Like the European Commission, the US administration has to prepare an agreement and has to avoid pure confrontation. Instead of trying to shape the final outcome actively, however, the US administration can let the private stake-holder barter over solutions. In the terminology of Richardson (1982), out of the three decision modes – 'problem solving', 'bargaining' and 'confrontation' – the Commission opts for problem-solving, while the US administration relies on bargaining. Of the three, bargaining is the least demanding exercise, because the solution follows from the intensity of the individual self-interests of the participants. Disagreement, however, is an acceptable outcome (Scharpf 1988: 312). Since the Commission is committed to achieving common goals, it therefore has to ensure problem-solving instead. Its capacity to do so is facilitated precisely by the constraints of the multi-level decision-making process, which the Commission can refer to in order to insulate itself

[17] Author's translation from German.

from direct private interest demands. As Grande (1996: 329) highlights, the Commission is in a "much more favorable position to refuse unwanted or unrealizable claims made by companies and interest groups than autonomous decision-making bodies."

(4) With this discretion on the part of the political institutions, private actors cannot always hope to obtain their immediate policy goals by simply asking for it. Their best option is therefore getting a chance to participate in the policy-making process in order to orient the development in their favor. Since private actors value access to the policy-making process, the consensus constraint weighing on the European institutions affects the lobbying efforts of these actors at the supranational level.

Indeed, there is empiric evidence that "economic interests and businesses attempt to create favored access for themselves by creating issue identities," (Coen 1998). More generally speaking, lobbyists and associations have a strong incentive to formulate their policy demands in constructive terms, making reference to pan-European goals and principles rather than their most immediate interests. Since the Commission can select information and grant access, private actors have to integrate the need for consensus-building into their daily activities.

Does this mean that interest groups lobby for something they don't really want? No, but they have to make concessions. Informational lobbying is the result of a demand for expertise by the policy-maker and a supply provided by the lobbyists in order to advance reasons for choosing a specific policy. As Broscheid and Coen (2003: 167) underline, lobbyists face a trade-off between lobbying for their most preferred policy and giving full and complete information desired by the policy-maker. In order to obtain the best possible information, the policy-maker therefore has to provide selective benefits to those who provide information beyond the concrete policy they favor. Such incentives can include privileged access to information, fora and networks, for example. With this exchange conception of lobbying, we should expect lobbyists to adjust the information they provide as far as is acceptable to them to the demands of the Commission.

Interest groups thus have to integrate the consensus requirement weighing on European institutions into their daily activities in order to maintain their access to the policy-making process. This explains why particular lobbying styles 'just won't work' in the supranational context in the EU. The pressure lobbying common in the US is not transferable to Brussels, since it would block access to policy deliberation.

4 Conclusion: implications for policy studies

Abstractly speaking, joint decision-making in the EU implies that lobbyists trying to influence supranational institutions have strong incentives to formulate their demands in terms of general principles and pan-European goals. This reformulation requirement is part of an exchange logic. Lobbyists would certainly prefer pushing for their more immediate goals, because lobbying for principles contains the risk of not getting exactly what they want.[18] However, they have an incentive to do so nonetheless, because they would not gain access to the supranational policy elaboration otherwise. The choice lobbyists have is thus to abstain from working with the European Commission or to reformulate their immediate preferences in terms of more comprehensive policy ideas. In the US, there is no need to reformulate immediate preferences, because selection of information by the administration is made on the basis of competition, not complementarity with the institutional self-interest of the public officials. Since the US administration is an autonomous body accountable to all constituency interests, the most effective procedure for them is to select on the basis of preference intensity: winners and losers of information lobbying in the US will be determined through the process of bargaining among private actors.

The resources actors employ in the two cases are therefore necessarily different. US lobbyists need to be 'stronger' or 'better' than their competitors; EU lobbyists need to be 'persuasive'. The techniques and resources considered 'typically American' all aim to ensure a good bargaining performance: lawyers, technical expertise, media attention and financial resources. In Brussels, what counts most is persuasion and constructive propositions: information and technical expertise is certainly important, but also more immaterial resources such as the representation of specific issue identities. As with all classifications, these two lobbying types are ideal types and we should expect to see some variation depending on the type of issue, the phase of the policy process and the constellation of actors involved.[19] The persistent divergence of US and EU lobbying, however, should continue as long as the particular division of policy authority continues to differ in the two political systems.

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[18] In an interview with the author, one government affairs representative of a large European service company called this phenomenon "not wanting to give birth to Frankenstein".

[19] When lobbying on emergent policy issues, US lobbyists might also rely on persuasion, while EU lobbyists can employ more aggressive approaches such as media campaigns in the final stages of policy debate.

Before concluding, it is helpful to give some indications on how these differences will play out in EU policy-making in different policy areas. In order words, what does it mean concretely to expect EU lobbyists to be more principle-oriented than their US counterparts? Since lobbyists will not defend something that is too remote from their immediate preferences, it indicates when supranational lobbying is possible and when not. Let us consider the examples of trade policy and agricultural policy.

In trade policy, the European Commission has the competence to negotiate trade agreements for the EU. For private actors such as affected firms, lobbying on trade policy will be most successful if it does not aggravate the conflict lines between member states, since this will undermine the negotiating mandate of the Commission. In order to continue working with the Commission, lobbyists need to formulate their demands in terms of pan-European solutions: both pan-European protectionism or trade liberalization are options, but national forms of protectionism are not. Individual firms will therefore find it very difficult to lobby for the continuation of the status quo. In his analysis of trade policy lobbying Shaffer (2003: 103-107) underlines how US market access approach is much more aggressive than the European one. Because of the different ways groups can appeal to policy-makers, "Europe is more likely to take a 'package approach' to trade negotiations, as opposed to a 'sectoral one'." Following our discussion, we should indeed expect lobbyists in the US to file specific demands, while EU lobbyists should either frame their policy statement in terms of more general objectives or abstain from lobbying at the supranational level. This hypothesis would help us to explain why European firms often seem rather passive in the context of trade policy, compared with their US counterparts.

Yet there are different ways to abstain from supranational lobbying: not to lobby at all, or to lobby elsewhere. Agricultural policy is a case in point. As one of the most highly integrated policy area in the EU, we would expect agricultural the same behavior: either lobbying in terms of pan-European principles or abstinence. What we observe in reality is intense lobbying, but mainly in national contexts and less so in the forums of the European Commission (Saurugger 2003). Abstaining from lobbying at the supranational level thus does not mean that private actors are necessarily passive. In the case of agricultural policy, lobbyists prefer working with their national governments, who then press their cause in the Council of Ministers. This behavior should occur when the individual preferences of different private actors are so divergent that no win-set exists between the different preferences and the institutional self-interest of the European Commission. Depending on

the national political institutions, lobbying through individual member states might then not necessarily be very different from lobbying in the US, even in a highly integrated policy area.

In summary, this paper has set out to specify an institutional hypothesis about different lobbying behavior in the Washington, D.C. and Brussels, particularly in the context of informational lobbying. If policy authority is shared between different levels of decision-making – i.e. if the central government is bound by a consensus requirement and can select constituency interests with reference to its own constraints – then lobbyists will have a strong incentive to behave in a constructive way, which permits the central government to create a problem-solving policy approach. If they fail to do so, they risk being excluded from the policy process. If policy authority is divided and the central government is directly accountable to constituency interests, we should expect access restriction to operate through a logic of bargaining, which creates direct competition between different interests. Only once the institutional conditions are held constant is it useful to examine continuing differences in behavior and to speculate that the reasons for this behavior is the existence of an American or European lobbying culture.

Annex

Table 1: Differences in US and EU lobbying

	United States	**European Union**
Organization of interest representation: How do individual actors organize?	direct representation, issue-specific coalitions, which may take the form of long-standing associations	national and sectoral peak organization, which tend to form European platform, recently also direct representation
Instruments: What methods and resources are available?	financial contributions, legal representation, formal and informal consultation, media and grassroots tactics	mainly consultation, both formal and informal, some legal advice
Policy process target: Where and when do they decide to lobby?	from contributing to the formulation, affecting revisions to blocking decision	concentrating on formulation and revision at supranational level, concerning decisions at national level
Characteristics of consultative lobbying: What kind of relationships develop between public and private actors?	competitive, fragmented, often short-term	long-term and trust based, multi-level strategies
Style of consultative lobbying: How do lobbyists express their demands?	defensive, direct, focusing on immediate interests	constructive, careful, consensus-oriented

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