



Lobbying as a vehicle of democracy

Using the BskyB take-over bid as a case study, this paper will investigate the role of lobbying within the media policy process in the UK.

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Word Count: 7,997
2012 – 2013

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'I declare that this dissertation is all my own work and the sources of information and the material I have used (including the internet) have been fully identified and properly acknowledged.'

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Abstract: This paper examines the role of lobbying within the formation process of UK media policy. Firstly, an analysis of contemporary lobbying practices is carried out. Secondly, this paper analyses the written evidence taken during The Leveson Inquiry. A case study of News Corporation's failed takeover bid of BskyB is carried out, to highlight and examine the imbalance and possible dominance of corporate media giants within media policy. The case study concludes that the power of News Corporation is magnified disproportionately by the underhand, and aggressive lobbying tactics they deploy to ultimately serve their overarching business goal. The latter half of the paper considers the relationship between lobbying and democracy in the UK. It concludes by proposing that within the British neoliberal state, the lobbying industry cannot serve democratically, due to its self-regulatory nature. In the final section, recommendations are suggested for a mandatory regulatory framework, which could be introduced in the UK.

Keywords: Lobbying, democracy, BskyB, media policy, neoliberalism, power theory.

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INTRODUCTION

'The only reliable, durable and perpetual guarantor of independence is profit.'

(Murdoch, 2009, p.19).

The Thatcher governments of 1979 - 1990 actively promoted global capital mobility, with the intention of exposing the economy as much as possible to increasingly global market forces (Leys, 2001). Britain was taken through a phase of competitive deregulation in order to attract investment. State institutions were dramatically restructured with three main aims; to make the state serve more effectively the interests of business, to remodel its internal operations on business lines, and to reduce the governments exposure to political pressures from the electorate (Leys, 2001). Combined, these factors merged to form the foundations of neoliberal state in which we currently live today.

This paper concentrates on the relational aspects of lobbying, neoliberalism, corporate power and democracy within the formation of contemporary media policy. Against the backdrop of our neoliberal state, this paper focuses on the lobbying activity of News Corporation (News Corp) on the UK Government for corporate gain. Levels of activity, specific features and relationships are explored, and theoretical constructs proposed for the development of measures and regulation that can be forged in the UK to ensure that democracy is upheld throughout the lobbying industry.

Media policy is defined by Freedman (2008, p.5) as

'public policy that responds to the distinctive characteristics of, and unique problems posed by mass-mediated communications'. The media industry within the UK is

responsible for an increasingly large amount of domestic and global trade, and is important to society both culturally and economically. The UK is home to the largest 'creative industry' in Europe – contributing to 6 per cent of gross domestic product, employing over two million people, and exporting over £16 billion annually (CBI, 2013). In addition to this, it is heralded as 'a powerful symbol of an open and free society' (Miller MP, 2013). The current Conservative – Liberal Democrat coalition government have spoken openly of their support for these industries through 'financial incentives, promotion at home and abroad, and reducing unnecessary regulations' (Miller MP, 2013).

In previous decades, media systems and markets were primarily national entities. However, through the advent of the Internet and the digital broadcasting it has facilitated, the media industry has become a thoroughly globalised market. A global oligopoly (McChesney, 2001) has emerged, bringing with them convergence and consolidation. Specific media industries are becoming increasingly concentrated, allowing the dominant players in each industry to become 'subsidiaries of huge global media conglomerates' (McChesney, 2001). The concentration of companies brings with it financial might that benefits the many international markets they operate within. This financial wealth, brings with it huge power and clout, that is inevitably used as a tool to secure the formation of favourable policies. Farnsworth (2004) has noted that the investigation of the area of corporate political power within public policy has been underdeveloped – therefore highlighting the need for the direct research of this area.

On 29 November 2012, Lord Justice Leveson published his findings after a yearlong investigation of the culture and ethics of contemporary press practices. During his lengthy research, the proposed News Corporation bid to take over the remaining 61 per cent of BskyB not already in their possession received a public airing. This not only exposed the aggressive forms of lobbying employed by News Corp, but also raised

important questions surrounding the democratic process within the policy formation process in the UK. This report will investigate whether the UK lobbying industry can serve democracy within a neoliberal society, and questions the democratic underpinning of the self-regulatory nature of the profession.

CONTEMPORARY LOBBYING WITHIN THE UK

A profile

In the UK, lobbying is a very difficult to examine accurately, because by its very nature, it is a relatively quiet and discreet profession (Harris, 1999).

Much like the practice of PR, no industry-wide definition of lobbying has been agreed upon. Zetter (2008, p.3), a respected lobbying practitioner, offers a definition as 'the process of seeking to influence government and its institutions by performing the public policy agenda.' Lobbyists themselves tend to emphasise the importance of the role they play as sources of information and facilitators of discussion. They argue, that due to the complex and broad manner of issues the British Parliamentary democracy entrusts to elected politicians, it is the duty of lobbyists to provide necessary access to information in order to aid responsible policymaking decisions (Parvin, 2007). Miller (1990, p.156) builds on this notion, and speaks of the need Government has for a two-way flow of information, in order to avoid 'policies formulated in a vacuum'. Karr (2007 p.46) further supports that lobbyists and interest groups are an integral part of our democratic system; 'Today, the integration of interest groups into the political system, in theory and practice, has become the norm'.

A collection of MP's agree with this viewpoint, as evidenced by The House of Commons Select Committee on Modernisation (2005-06, p.3) calling for a revision of 'its procedures so that it is easier for . . . lobby groups, representative organisations and other stakeholders to influence Parliament's consideration of Bills.'

Lobbying to serve public interest

A recent example of lobbying acting as a platform for influencing the policymaking process in favour of public interest is the campaigning and subsequent formation of Sarah's Law. This law was named after Sarah Payne, an 8 year-old girl who was murdered in 2000 by a known sex offender living in her neighbourhood. Sarah's Law entitles parents in the UK with children under 18 to know of the presence of convicted sex offenders in their locality.

In the aftermath of the discovery of Sarah's body, reporters from the national press flocked to the Payne family with offers of paid interviews – turning these down, Sara suggested to Robert Kellaway from *News of the World* that he should start looking into Megan's law,ⁱ telling him that 'If [you] have any ideas about how we might start this in Britain, then get back to me' (Payne, 2004, p.92). Within 24 hours, Rebekah Wade, then editor of *News of the World* (Hinds and Daly 2001, p.257) had put together a proposal for a 'For Sarah' campaign, which would lobby for legislation aimed at protecting young children from sex offenders living in their locality. The public response was extensive and opinion polls indicated widespread support for 'Sarah's Law' (Payne, 2004, p.97). Home Secretary of the day, Jack Straw was initially 'opposed to the 'Sarah's Law' campaign, but under public pressure, (Nash and Williams, 2010) changed direction and stated that it should be 'urgently considered' (Hinds and Daly, 2001, p.258). After a series of localised pilots, a national pilot scheme of 'Sarah's Law' was rolled out in August 2010. Following the general election the new coalition government expressed support for the scheme, originally established by its predecessor and announced plans to continue with the nationwide rollout, stating that '...this scheme is an important step forward for child protection in this country' (Home Office, 2010). This example shows that the practice of

lobbying in it's simplest form, exerting influence, can be used to achieve outcomes that are beneficial for society as a whole.

However, for every argument, there is of course the counter argument; there are countless examples of cases where lobbying has been used as a tool to pass legislation that favours corporate gain, without considering, or taking public interest into account. Woll, (2007, p.2) states that a crucial element of democratic theory is 'the power of private actors and the balance between individual interests and the public good'. Throughout the dramatic phase of deregulation Britain was subjected to under the Thatcher governments of 1979 - 1990, state institutions were dramatically restructured to make the state serve the interests of business more effectively. This is why, in a neoliberal state, those acting for business often seem to win this balancing act in their favour.

Lobbying for corporate gain

The recent 'Monsanto Protection Act' passed in the US on the 26 March 2013 (Salon, 2013) is a prime example of the overwhelming political clout large businesses can wieldⁱⁱ. The passing of the bill was controversial in many ways, not least because of its function, which protects the manufacturers of genetically modified seeds from litigation in the face of any potential health risks they may cause. Within the American farm biotech industry, there exists a revolving door, which allows corporate chiefs to 'switch to top posts in the Food and Drug Administration (FDA) and other agencies' (The Guardian, 2013). Since the passing of the act, one million people (OpenSecrets.org, 2012) have signed a petition opposing the content, and crucially, the formation process behind the new piece of legislation. Passed through Congress without appropriate review by either the Agricultural or Judiciary Committees, the legislation was highly controversial. This new law has come as the result of an intense lobbying campaign, directed at the U.S. Department of Agriculture, the FDA, and the Environmental Working Group, all fuelled by

heavy Monsanto investment. An Environmental Working group spokesman stated that: 'Monsanto comes armed with some of the deepest pockets and a bench of influential lobbyists, which makes the coalitions efforts over GMO labelling on behalf of consumers a very tough fight indeed'.

This example of corporate power shows how easily the interests of the public can be unintentionally neglected, or deliberately pushed aside in order to adhere to the political demands of large, wealthy, and therefore powerful corporations.

Lobbying within a neoliberal state

Defined by Harvey (2005, cover) as

'the doctrine that market exchange is an ethic itself, capable of acting as a guide for all human action' neoliberalism has recently emerged as a dominant framework, through which to view the structural inequalities in power and available resources (Freedman, 2008). Larner (2003, p.509) supports this by describing neoliberalism as '*the* explanatory term for contemporary forms of economic restructuring', as well as for current media and communications policies. Notable scholars in the field (Hesmondhalgh, 2005; McChesney, 2001; and Harvey, 2005) identify neoliberal urges as a key feature of the contemporary media landscape – responsible for the shaping of everything from the state, to the character of the content produced (Freedman, 2008).

The rise of neoliberalism in the last 30 years has occurred in tandem with a rise of activity within the British lobbying industry. Miller and Mooney (2011) contend that this is most likely, because neoliberal concepts are responsible for the changing rules of the game in liberal democratic regimes. Lobbying has not just been instrumental in influencing political decision-making in 'ordinary' politics and in taking advantage of neoliberal reforms, but has crucially been engaged in the 'reshaping of the architecture of the political system in the UK' (Miller and Mooney, 2011, p.6).

The doctrine of neoliberalism favours deregulation. Currently in the UK, there is no formal statutory body that oversees the practice of lobbying. This means that the only form of regulation is self-initiated and managed, which does little to hold the industry to account. In a neoliberal state, the interests of business are placed very highly in policy. Within the policy-making context, power equals volume - with such large media conglomerates present in the media policy formation process, it is inevitable that the plurality of arguments and objectives is lost.

Power Theory within Corporate Lobbying

An omnipresent force in all exchanges between business and government, power must be a central component of any study on corporate lobbying and political activities. The scope of this research paper extends as far as political/corporate power. On a theoretical level, the question of power and influence is not solely its operationalisation, but more so, its conceptualisation (Woll, 2007, p.2). It would be overly simplistic to state that business is all-powerful within the lobbying industry; its influence, and therefore success, hugely depends on the receptiveness of the government it interacts with. Weber (1947, p.152) defined power as: 'the probability that one actor within a social relationship will be in a position to carry out his own will despite resistance, regardless of the basis on which this probability rests'.

Hart (1976) builds on this definition further, by focusing not only on the concentration of power, but also on the control over resources. The seminal model of power within lobbying comes from Walter Korpi (1985), in the shape of his intentional explanation model, which details how actors focus on strategic options and form interdependent choices based on their perception of the resources held by the counterpart. This model draws parallels with Michel Foucault's (1980) writings, for whom, power is carried in the practices of everyday human interactions. Power is

subsequently manifested or relinquished as people anticipate each other's use and grasp of resources. Arguably, however, the interactions based on the anticipated use of resources in Foucault's writing are even less intentional than in Korpi's model (Woll, 2007).

The very nature of power is exploitative; it must be in some fashion, if the behaviour of others is to be altered. The means or instruments of such exploitation are numerous. Within the lobbying industry, these can involve threats or promises to employ actions that may be harmful, either financially through investment, or reputationally for government (Dahl, 1961). Power is of course, intangible; except in the instance that one assumes power equals material resources. Within the lobbying industry, power is revealed in policy outcomes only if we can trace the conflicts of interest involved in a particular issue; by making clear what the arguments are, the winner is revealed. It is a certainty that those 'actors who cannot even enter into an exchange relationship are powerless' (Woll, 2007, p.59).

Media policymaking in the UK

This section focuses on the increasingly intrinsic role that lobbying now plays across the media policy landscape (Miller and Mooney, 2011). Freedman (2006) states that media policy-making has rarely been confined to a single location within government, and is open to a variety of stakeholders. In recent years, media policymaking has grown in both scale and scope. Freedman (2006) has attributed this change to a combination of factors including the increasingly global nature of media business and the increased importance placed on content and creative industries. As a result, the public sector has opened up and exposed key areas of government and the civil service to the market or 'market like' processes. These new processes have resulted in very marked changes in the content and practice of policy-making (Miller and Mooney, 2011). Some believe it has led

to the policymaking sphere becoming fragmented, due to the number of increased interests. However, Freedman (2006, p.7) states that the ‘explosion of stakeholders’ within the policymaking sphere is less indicative of the level of influence held. He argues that it is much more likely to be related to the expansion of the media industries than it is to their ability to change the balance of power in a decision-making scenario.

The public remains a largely ‘passive’ (Freedman, 2006, p.1) voice in the policymaking sphere. There are a plethora of surveys and interviews used to justify the public opinion of a matter prior to policy formation, but there are few opportunities for individual members of the public to directly contact or influence those involved in the core policymaking process. This is exaggerated within the current framework of lobbying – with the lack of transparency prevalent in contemporary lobbying, opportunities to participate are only reduced.

UNDUE INFLUENCE AND LOBBYING

In this second section, the dynamics of the lobbying practices used by News Corporation in their proposed takeover bid for BskyB will be analysed. Specific focus will be given to the relationships forged, and tactics used to realise corporate gain. First, a timeline of key events will be outlined, to provide clarity and understanding of a complex and shifting process; an analysis of the events will follow.

‘There can be no doubt that within these relationships...there have been exchanges of influence on matters of public policy which have given rise to legitimate questions about the confidence the public can have that they have been conducted scrupulously in the public interest’ (Lord Justice Leveson, 2012).

Case Study: News Corporation's failed BskyB bid

This section of the paper analyses the lobbying activities used to launch News Corporation's (News Corp) attempted takeover bid of BskyB. It was originally proposed in 2010 and later withdrawn in July 2011 as a result of the highly damaging *News of the World* phone hacking scandal. This section argues that News Corp has the ability, within the UK, to influence the media policymaking decision process. It is put forward that the democratic process is undermined through aggressive lobbying, undue influence and inappropriately close relationships between News Corp senior executives and politicians. The operational tactics and dynamics of Rupert Murdoch (KRM) and James Murdoch (JRM) and News Corp are analysed in order to demonstrate how News Corp infiltrated the media policymaking landscape within the Department of Media, Culture and Sport (DCMS) to ultimately serve their overarching business goals. Focus will be paid to the lack of impartiality provided by Jeremy Hunt, the crowding out of opposing interests, and the creation and use of undue influence.

This case study argues that the power of the Murdoch's and their media empire is magnified disproportionately and undemocratically by the underhand and aggressive lobbying tactics they deploy. For the purpose of this analysis, the research method selected will be the case study approach; chosen as it facilitates the investigation of a contemporary phenomenon within its real-life context. Multiple sources of evidence can, and will be used. (Yin, 1989).

Hailed as the 'media's demon king' (Farhi, 1997), Rupert Murdoch (KRM), managing director, and majority shareholder of News Corp, is recognised globally as one of the largest media magnates of our time. In the instance of this case study, his power will be measured by his ability to influence the media policy agenda in the service of his ultimate goal – the financial strengthening of News Corp. During the late 1980's, Rupert Murdoch gambled his vast fortune on the start-up of a multi-channel TV network, Sky. Due

to its damaging costs however, Murdoch was forced to merge with their main competitor, British Satellite Broadcasting, to form British Sky Broadcasting (BskyB), in which News Corp would hold a 39 per cent stake. Fast forward to 2009, and Sky had become a hugely successful company, with sales of £5.3 billion in the year to June 2009 (Watson and Hickman, 2012). That same year, News Corp unfurled a plan to secure the vast BskyB profits exclusively; through a takeover of the remaining 61 per cent of shares they did not already own. This takeover would result in unparalleled dominance of UK newspaper ownership through the planned integration of News International's newspapers with Sky TV packages. With the funds readily available to News Corp, all that stood in their way was support from the UK government and Ofcom, who would have to approve whether or not the takeover would breach media plurality regulations in the UK.

Vince Cable, Secretary of State for Business, Innovation and Skills (BIS) was initially appointed as the quasi-judicial supervisor of the plurality review. This position requires the judge to have had no previous meaningful contact with the parties involved in the litigation, and should have no predisposed views on the outcome of the case in advance of receiving it. This review consisted of five steps, and must be carried out by regulators, not politicians. The first step considers whether regulators should be called to consider the question of plurality. Secondly, after receiving a report from the regulators, the judge must consider whether to accept the offer. Thirdly, if the report recommends further inquiry, the judge must contact the most adversely affected party in order to ascertain whether a solution could be reached without further inquiry. Fourthly, if such a remedy did not present itself, judging whether to submit the bid forward for deeper inquiry. And finally, judging whether to accept the subsequent verdict of the deeper inquiry.

For the first step of this process, the only advice available to Cable must come from within his own department – the regulators would only be involved if he requested them to be, thereafter regulatory advice would be available freely. Within 24 hours of News Corp formally submitting their bid to the EU authorities, Cable acted as he saw fit, and referred the case to Ofcom on the grounds of an issue concerning plurality of ownership. It was later revealed in an article in *The Telegraph* (2012), that Cable had privately ‘declared war on Mr Murdoch’. In light of these comments, Cable was stripped of his quasi-judicial role, as they raised serious questions about fairness and due process. The role of judge was passed onto Jeremy Hunt, Secretary of State for the Department of Culture, Media and Sport (DCMS) who oversaw the subsequent steps two through four, now led by Ofcom. This decision was met with surprise, and raised questions regarding the fact that Cable’s hostility warranted his removal from the process, yet Hunt’s public, and private, enthusiasm for the bid did not disqualify him on the same grounds of lack of impartiality. All subsequent meetings between Hunt and News Corp were fully minuted. In March 2011, as a way of evading plurality concerns raised by Cable’s referral to Ofcom, News Corp listed Sky News as a separate company, in order to bypass the need for a Competition Commission Inquiry. At the beginning of July 2011, opponents of the deal are given a week to raise any objections they may have, and Hunt was expected to confirm the acceptance of the bid before July 19, when the parliamentary summer recess began. It seemed that News Corp had secured the majority share of BskyB despite its controversial nature and the initial opposition they faced.

However, between 6 - 12 July, the *News of the World* was closed down, and other papers owned by News International became embroiled in allegations of widespread phone hacking and misconduct within journalistic practices. In a subsequent statement, Ofcom declared that it has ‘a duty to be satisfied on an on-going basis that the holder of a broadcasting licence is ‘fit and proper’” (*The Telegraph*, 2012). This statement, along with

the growing intensity of the phone hacking scandal resulted in News Corp withdrawing their BskyB bid on 13 July 2011.

Over the following year, a report was commissioned and implemented by the government intending to deal with mounting public and industry concerns surrounding the culture and ethics within contemporary press practices. As such a large presence within the UK press, News Corp was heavily involved in the investigation, and was the subjected to much examining of both their culture and practices. As part of this wider investigation into allegations that politicians had become too close to the press in recent years (Leveson.org, 2012), the process by which News Corp had proposed their BskyB bid came into the limelight – it was revealed than an intense and persistent lobbying campaign and raised important questions surrounding agendas in the policy making process in the UK.

Lack of Impartiality

Revealed through the questioning of James Murdoch (JRM) on the 24 April 2012, emails between himself and Frédéric Michel, Senior Vice President of Government Affairs and Public Policy for News Corp. These emails plainly give insight to the extent to which the News Corp agenda was considered within the DCMS decision-making process behind the BskyB bid. In total, there are 163 pages of correspondence between Michel and JRM between 2010 and 2011 submitted as evidence towards the inquiry. The most obvious detail that these emails show is that the requirement of an impartial, quasi-judicial supervisor was not met from the outset of Hunt taking over the role. On the 23 November 2010 before Hunt was formally appointed his role as judge, Michel wrote to James Murdoch that ‘Jeremy has also asked me to send him relevant documents privately’ (Exhibit KRM18, 2012, p.33). This clearly gives an insight to the favourable ways of working Hunt adopted for Michel, despite it being a breach of his role as an impartial

judge. One month after this, Michel informs JRM that Jeremy Hunt ‘was very happy for me to be the point of contact with him/Adam [Smith, Hunt’s special advisor] on behalf of JRM going forward’(Exhibit KRM18, 2012, p.42). During the same time frame, Hunt made no similar offer to opponents of the deal – Michel enjoyed unprecedented access to Hunt. Indeed, the regularity of conversation between Hunt and Michel reaches to the extent that Hunt appears to be briefing Michel on his confidential negotiations with Ofcom – indeed on the 24 January, an email from Michel to JRM states that he has ‘managed to get some infos on the plans for tomorrow [although absolutely illegal..>!]’ (Exhibit KRM18, 2012, p.54). This is unquestionable evidence that Hunt played outside the lines of due process in order to help Michel secure as favourable position as possible for News Corp in the policymaking process.

What became apparent from the evidence collected throughout the year long Leveson Inquiry, was the level of contact between Michel and Adam Smith, Hunt’s special advisor. It transpired that Michel had made contact with Smith via text, email and calls almost 1,000 times over a six month period. Smith admitted that the tone of his texts with Michel had occasionally become inappropriately friendly, hence his resignation upon the publishing of the details. It is relevant to note that not one recorded meeting took place between Hunt and parties opposed to the deal. Additionally, the week before Hunt planned to pass through the bid, opponents of the deal were given seven days to object. This can hardly be accepted as a fair window of opportunity for any serious opposing interests – in addition to this, the frame in which any opponent could change the course of the bid process has long passed.

Customisation of policy

The correspondence between Michel and JRM in the run up to Hunt’s statement due to be released on the 25 January 2011 is particularly telling of Michel’s influence within the DCMS. The statement, released to ‘provide an update on the timeline and

process that he [Hunt] has followed in his consideration of the relevant public interest in this proposed merger' (Gov UK, 2011). On 23 January 2011, an email from Michel to JRM, he comments that Hunt is 'keen for me to work with his team on the statement during the course of tomorrow and offer some possible language' (Exhibit KRM18, 2012, p.52). In the context that this email was sent, this reveals that News Corp lobbyists were invited to write certain elements of the statement released by government on the progress of the BskyB bid. This speaks volumes of the level of power that Michel and News Corp held within the decision-making framework. This opportunity for News Corp to actually draft legislation they will be affected by, is unprecedented and inherently undemocratic. As outlined in the power section of this paper, those actors that are not invited to participate in the information exchange are powerless – in this context, there is no plurality of argument.

On the same day, Michel also mentions that Hunt has told him 'He very specifically said that he was keen to get the same outcome and wanted JRM to understand he needs to build some political cover on the process' he goes on further to say that 'if he were to follow [News Corp's] Option 1 and not provide any details on the Ofcom report, he would be accused of putting a deal together behind closed doors and it would get in a much more difficult place. The more this gets out now, the better it will be as the opposition will lose arguments.' (Exhibit KRM18, 2012, p.51).

Michel mentions that Hunt 'said we would get there in the end and he shared our objectives' (Exhibit KRM18, 2012, p.51) this statement from Hunt makes clear his attitude of inevitability and support for the favourable outcome of the deal. As a quasi-judicial supervisor of the bid, Hunt has the duty, through his elected position to honour the rules of his position. Far from working towards a common goal with News Corp, Hunt should take a step back and let Ofcom steer the process accordingly.

Undue Influence

What became apparent from the evidence collected throughout the year long Leveson Inquiry, was the level of contact between Michel and Adam Smith, Hunt's special advisor. It transpired that Michel had made contact with Smith via text, email and calls almost 1,000 times over a six-month period. Smith admitted that the tone of his texts with Michel had occasionally become inappropriately friendly, hence his resignation upon the publishing of the details. However, what is important to note in light of this evidence, is the fact that Michel and News Corp were *allowed* and *able* to make contact with the DCMS to this extensive degree. The fact that not one meeting is recorded between Hunt or Smith and opponents of the deal suggests that perhaps this access was not enjoyed equally.

The tools through which News Corp were able to achieve this influence are also an important component the fuller picture. With News Corp investing so heavily in the UK every year, the British economy benefits significantly from the presence of News Corp subsidiaries such as Sky. When the bid was still in its infancy, JRM provided David Cameron with a clear warning that if his Government were to block the take-over deal, News Corp could focus their future investments overseas – he made it known that if his bid was not looked upon favourably, the government may well risk 'jeopardising an £8 billion investment in the UK (The Telegraph, 2012). This tactic played by JRM reveals the motives and strategies used to manipulate policy-makers decision processes. It also highlights the disparity of resource available to specific interests. Unless through regulation, how else can influence be portioned equally to allow the interests at stake to be the subject matter, rather than the financial backing they carry.

Conclusion

In his concluding remarks, Lord Justice Leveson stated that he was concerned by the methods, and the particular kind of lobbying News Corp had relied upon. Conducted away from the public eye, through the relationships of policymakers and those in the media who stand to lose or gain directly from the policy under consideration. The use of these methods, gives rise to the understandable perception that the power of the press can affect political decisions, by taking into account political fortunes.

The shared ideologies of JRM and Hunt become a component within the decision making process of the BskyB bid. 'Bonfire of regulations'

As Hunt is elected, he has the duty to serve in the interests of public policy. Through aggressive lobbying campaigns, the needs and wants of business have driven this out. Hunt has allowed the voice of profit to speak loudest, and democracy has been deafened. What is shown throughout this case study is the aggressive nature of the lobbying tactics News Corp undertakes – whilst admittedly the relationship between Michel and Smith was that of friendship, it is clear that this was only the case to further the News Corp agenda.

In light of the timing of the unexpected phone hacking scandal, the question must be asked: would the BskyB bid have been passed if the scandal had not arisen when it did? Although this is something that cannot be answered with full certainty, the evidence suggests that Hunt was poised to 'wave through' the bid.

REPRESENTATION AND REGULATION

Corporation Interests versus public interests

This section will draw upon the definition of lobbying coined in Grossman and Helpman's (1994) seminal model of lobbying; namely the practice as the transfer of resources from lobbyists to politicians.

The landscape of the British policymaking process is vast, fragmented and open to a wide range of influences from organisations hoping to mould policy decisions in favour of a variety of agendas. The size and shape of the contemporary lobbying industry has been greatly influenced by 'wider social and political change, changes within government and Parliament, and the growth of supranational institutions which have affected the locus of decision-making' (Parvin, 2007, p.9). The focus of this paper is on the large private sector of lobbyists working for corporations. Owing to the fact that there is no official register of those lobbying within the private sector, the size of the industry is hard to grasp accurately. Increased globalisation of international markets coupled with the fore mentioned fragmentation of the policymaking process has opened up the decision and policymaking process to large corporations (Parvin, 2007). With such large and wealthy players within the policymaking sphere, commercial might often overpowers the balance of corporation interests versus public interests. This dominance of large business on both the national, and international stage has meant that conventional democratic institutions are being overpowered (Parvin, 2007). Hailed as the 'corporate takeover' by Monbiot (cited in John and Thompson, 2003, p.169) who has observed that those lobbying on behalf of large corporations are 'seizing powers previously invested in government and using them to distort public life to suit their own needs'. Indeed, Leys has noted how

policy in every area of UK public life, has been adapted to suit 'the interests of corporations' (2001 p.56).

Lobbying represented within the media

This chapter will examine the reporting of lobbying within the UK media. Given the opacity of the UK lobbying industry, this is important – as the media is the main source of information for the public to draw up opinions of the role lobbying plays within UK policy formation.

In the media, the term 'lobbying' is often synonymous with the term corruption. Zetter (2008) offers that this is because journalists often frame their comments in a negative fashion. Since the term lobbyist has been saddled with such negative connotations by the media, in-house practitioners have adopted alternative job descriptions – including public affairs executive to government relations officer. Both lobbying and corruption have the same objective of ultimately influencing public officials (Giovanonni & Campos, 2008). However, this paper recognises that there is a firm distinction between lobbying and corruption. Giovanonni & Campos (2008), opine that this differentiation lies in the object of attention; defining lobbying as all practices seeking to influence policy-makers, but contrastingly state that corruption is more likely to be directed at influencing policy-enforcers. By pointing out that lobbying is a more expensive, but more 'permanent' form of influence, Harstad and Svensson (2008) argue that lobbying should be more prevalent at higher levels of development.

The media can also be used to alter public-perception of an issue, thus indirectly influencing politicians and party officials who either want to be elected, or stay elected (Zetter, 2008). Although there is regular public concern on the ethics of public officials, members of parliament, and lobbyists in the UK (Nolan, 1995; Neill, 1998) there does not

seem to be the move towards making political lobbying a registered activity, and thus completely open to all aspects of public scrutiny and accountability (Harris, 1999). Indeed, despite the assurance in the 2010 coalition manifesto that a register of lobbyists would be implemented, there was no mention of any legislation surrounding lobbying during the Queen's Speech delivered on the 8 May 2013.

Lobbying and democracy

To the extent that lobbying facilitates popular rule, it aids democracy. But equally, to the extent that it allows vested interests to gain special favours, it undermines democracy. This section identifies two flaws in the lobbying process that restrict the democratic process; the unequal distribution of power and resource within the lobbying process, and the lack of regulation and transparency which exaggerate disproportionately the imbalance of influence.

In theory, democracy means the rule of the people. In the multicultural society such as the UK, democracy is classically described as 'participative' and 'inclusive' (Kiwani, 2007). Publicly, lobbying has a somewhat negative reputation – perceived as an elitist practice which allows large businesses to control the democratic process:

"We all know how it works. The lunches, the hospitality, the quiet word in your ear... It arouses people's worst fears and suspicions about how our political system works... a cosy club at the top making decisions in their own interest." David Cameron, (*Open Democracy*, 2012)

This section will strive to answer the question surrounding whether it is the practice of lobbying that is intrinsically problematic, or the framework in which it operates.

Lobbying serves democracy

Karr (2007, p.73) notes that 'the existence and meaningful participation of interest groups in decision making processes is seen as a sign of a functioning democracy'. There are many arguments from notable scholars [Cohen-Eliya & Hammer, 2011; Waldron, 1999] that lobbying aids the democratic process. Karr (2007) contends that the practice of lobbying supports effective and efficient policymaking processes, whilst acting as a source of information for rounded policy proposals. Cohen-Eliya & Hammer (2011) have widely explored the relationship between lobbying and democracy. They note that democracy facilitates the grasp of two values. First, the expanding of the notion of individual autonomy within the sphere of 'collective decision making', (p.272) and secondly, the embodiment of the value of equality among individuals. Manifesting these values within the lobbying industry, Cohen-Eliya & Hammer (2011) put forward the idea that the practice of lobbying is a means through which citizens are entitled to exert influence, in addition to their right to vote.

Lobbying undermines democracy

However, as previously mentioned – for every argument, there is the counter argument. There is a wealth of material (Buchanan and Tullock, 1965; Frickey and Farber, 1999) produced on the notion that the practice of lobbying is inherently undemocratic through implementation. (Karr, 2007) notes that the practice of lobbying can act as a threat to the effectiveness and democracy of the policy making process - through placing a large amount of influence with non-elected decision makers, and working in a largely opaque way. Miller and Mooney (2001, p.463) conclude that lobbying 'does not, indeed could not, flourish in systems operating on the principles of direct democracy, where all (or most significant) decisions are taken by the populace or through local systems of decision making.' This a very simple statement, which defines lobbying, in it's purest form

as an attempt to exert direct influence on decision makers as opposed to through formal democratic mechanisms.

Barriers to serving democracy

Whilst there are strong arguments to support the lobbying *practice* as a democratic function, it is important to consider the characteristics of the industry or framework that lobbying operates within.

It cannot be ignored that the notion of lobbying as a democratic function assumes a fair competition exists between interests groups seeking to influence. Relating back to the corporate power theory discussed in the former part of this paper, it is recognised that power and resource equate to volume within the influence landscape. Those with financial might to support and further their interest will always carry more clout in an environment that is not regulated to allow the even distribution of influence.

Since the objective of true democracy is to do what is good for as many as possible, there are inevitable barriers concerned with trying to reach this ideal. This section looks at how these barriers are manifested within the Lobbying industry. Lobbyists are of course, non-elected individuals – therefore they have no duty to work within the public interest; in an industry that has such minimal regulation, there is the risk that the public interest is lost or neglected. Due to the lack of transparency within the lobbying industry – there are few opportunities for citizens to become involved in the influencing process, therefore the plurality and diversity of argument suffers. Cohen-Eliya & Hammer (2011) reason that the representation of the interests of the masses suffers because it is easier to appeal to organise and motivate a smaller number of people. Due to their superior ability to organise and their great financial resource, businesses dominate lobbying activities for this reason.

Overcoming barriers

There has been a resurgence of interest in lobbying regulation, not only in the UK but across the globe, though there are significant differences in practices between political cultures (Chari *et al*, 2010). Currently in the UK, the broad trend is to hold the lobbying industry to account through voluntary means. This section will review the effectiveness of the self-regulatory process currently in place today.

Currently, there is no statutory register of those lobbying in the UK. Although professional bodies such as the UK Public Affairs Council (UKPAC) have registers that can be joined, there is no legislation requiring lobbyists to do so. This leads to a prominent lack of transparency surrounding who is lobbying whom, and to what end.

Only legislation can require all lobbyists within the UK to reveal their behaviour and agendas to public and media scrutiny. Without this transparency and scrutiny, the process cannot be democratic, as it prevents people from simply participating. Increasing the transparency of the process, will naturally allow for greater participation, and will therefore create a healthy plurality of competing interests.

Whilst there is no formal regulation of the practice, the power and influence will always settle with those who have access to resource. This imbalance of power works as a further barrier to the democratic process.

CONCLUSION

'We always need to ask the question – 'Why this policy in this form now? And in whose interest is it designed?' Neither policies or their formation, should ever be taken at face value' (Garnham cited in Briggs and Copley 1998, p.210).

This paper recognises lobbying as an important instrument of, and vehicle to active participation within the democratic process – it is the framework and landscape that the lobbying process works within that has failed the democratic process. The case study detailed within this paper highlights a policy debate that is dominated by powerful corporate, political and governmental interests. Freedman (2008) argues that the landscape of media policy should be one that is open to resource-poor groups with a plurality of voices and competing objectives. The process that is currently in place in the UK is one that ultimately favours, and is dominated by those with the most extensive financial, ideological and political resources who are best able to mobilise their interests against rivals. As highlighted through the earlier analysis of power, 'those that cannot enter into an exchange relationship are powerless' (Woll, 2007, p.59). In the context of the UK lobbying industry, the framework in place, formed by our neoliberal society, dictates that those actors unable to enter into the exchange, for lack of resource and opportunity, are those that do not possess the financial might to secure influence or attention. Through the earlier analysis of the BskyB bid, the access and subsequent levels of influence created by News Corp was realised through belligerent lobbying practices, which undermined the democratic process in a number of ways. Firstly, through

However, when evaluating a case study, it is important to take note of any limitations and factors that have obstructed or skewed the results and opinions consequently formulated. The precise working relationships formed between senior politicians and News Corp's senior executives will never be known – an assessment can be

made over the course of the investigation, but this relies on a high level of interpretation, which can differ dramatically between individuals. Another limitation is the sheer scope of evidence gathered throughout the full Leveson Inquiry; the final report spans over 2,000 pages over four separate volumes. Although a thorough investigation was employed, it is possible that some crucial element was overlooked.

To conclude, when positioning the practice of lobbying within the 'participatory' (Diwan, 2007) democratic process prevalent in the UK, this paper concludes that lobbying should be seen as a vehicle through which democratic decision-making is achieved. In order to realise this ideal, this paper puts forward the notion that regulation of the practice is fundamental. Detailed below, in the final section, are suggested factors a possible regulatory model in the UK may encompass.

RECOMMENDATIONS

This section of the paper puts forward recommendations to address the failures of the lobbying industry to uphold and act within the democratic process. There is a desperate need to intervene in the lobbying process to regulate the levels of influence, and guarantee competition more equally. The lobbying process should not simply allow for competition among interest groups, but guarantee competition fairly.

Detailed below are requirements that this paper believes should be included in any regulatory model used for the UK lobbying industry.

First and foremost a workable definition of the lobbying activity must be agreed upon, this must capture both direct and indirect forms. Secondly, there should be strict thresholds set for the registration of any practices, which equate to, or fall within, the agreed definition. This process should become a statutory requirement, so as to introduce a level of transparency and accountability to the process. This statutory element is also crucial, because even if lobbyists nationally are happy to comply with any new regulatory framework, there must be some guarantee that all lobbyists are working under the same concrete rules and definitions of practice. The statutory portion of the regulation will come into effect in order to rigorously impose any agreed parameters. Throughout this framework, it is also important to record the interests of officials in the policymaking process; the suggested regime must acknowledge the lobbying process as a two way flow of information (Miller, 1990), and recognise the role of the person who is being lobbied. Furthermore, characteristics of any new regulation formed should include measures to prevent barriers to participation based upon access to, and organisation of resource.

Looking to the role lobbyists themselves would have in the formation of any new regime, Miller and Dinan (2009, p.191) state that 'crucially, for such a system to attract confidence, it must be independent of lobbyists'. This paper fully supports this statement, as it has been highlighted through numerous examples, that public trusts of the current

self-regulatory model is low – if a new regime were to be implemented, it must not follow suit and be managed by the very party that are the object of regulation.

Future Research

Over forty years ago, the first in depth study of British lobbying proclaimed the need for ‘Light! More Light!’ (Finer, 1958, p.133) to be shone among the profession – as long as there is the lack of transparency within lobbying, there will be the need for more research into how this can be realised. The relationship between lobbying, democracy and policy formation examined throughout this paper is complex, and can be connected in a multitude of ways. Whilst the research and analysis carried out in this paper has reached a certain level of depth and breadth, subsequently answering many questions, there are still further questions borne from the conclusions reached. This paper has demonstrated the need for further study to be carried out in the area of how the balance of influence and power can be more equally distributed – is regulation the only solution? There are additional questions surrounding the failure of the current coalition to honour their initial commitment to shine ‘the light of transparency on lobbying in our country’? What are the motivations and decisions forming the change in direction of commitment? This raises significant questions surrounding the precise value and role of lobbying within legislation. Findings that take into account the questions raised in this section could make a valuable contribution toward a regulatory regime, should one ever be achieved within the UK lobbying industry.

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End Notes:

ⁱ Megan's Law was introduced across many states in the USA following the murder of seven-year-old Megan Kanka in New Jersey, in 1994. The focus of a campaign, formed by Megan's parents was 'to change the law to allow people to be informed of the presence of known sex offenders in their localities' (Nash and Williams, 2010, p439).

ⁱⁱ The 'Monsanto Protection Act' is Section 735 of the Agricultural Appropriations Bill (H.R. 933). The full text can be read here: <http://www.govtrack.us/congress/bills/113/hr933/text>