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ORIGINAL ARTICLE

Regulating legislative lobbying in Switzerland: superfluous or overdue?

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Abstract

Compared to global lobbying hubs like the USA and the European Union and to its neighboring countries, Switzerland hardly regulates legislative lobbying, i.e., lobbying that targets the legislative branch. Only three types of legal provisions apply to lobbying in the Swiss legislature: First, legislators must disclose their ties to interest groups. Second, access to the parliamentary building is limited and granted at the discretion of each legislator, who may give an entry pass to two individuals of his or her choice. Third, legislative lobbying is illegal if it violates the criminal law provisions on bribery. Proposals to enact more comprehensive regulation have failed, often after several years of legislative debate. Pursuant to the classification proposed by Chari et al. (Regulating Lobbying: A Global Comparison, 2nd ed., Manchester University Press, Manchester, 2019), the Swiss legal framework governing legislative lobbying qualifies as a 'low-robustness' regime at best. Yet, Switzerland ranks high in Transparency International's Corruption Perceptions Index (6/180 in 2023). Is more extensive regulation superfluous or overdue in Switzerland? While the Swiss legal and political order is exceptional in some respects, these characteristics do not justify 'Swiss exceptionalism' with regard to the regulation of legislative lobbying, as some of these specificities pose distinctive threats that the law needs to tackle.

Keywords Exceptionalism · Integrity · Legislature · Militia parliament · Semi-direct democracy · Switzerland

Introduction

In February 2024, an overwhelming majority of the National Council, the Swiss federal legislature's lower house, rejected a bill that aimed to restrict tobacco advertising targeting children. A few months earlier, the upper house, the Council of States,

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had already weakened the Federal Council's original bill (Swiss Federal Assembly 2024). Both moves showed the reluctance of the Swiss legislature to implement a constitutional initiative aiming to protect children and young adults from tobacco advertising, despite the public support expressed by the Swiss people in a popular vote two years earlier, in February 2022. These moves can also be seen as a manifestation of the strong influence that the tobacco lobby holds on the Swiss legislature: In 2022, at least 41 of 246 Swiss legislators (i.e., 17%) had direct or indirect ties to the tobacco industry (Watson 2022). Switzerland is the seat of several major tobacco multinationals, and in 2023, it was the country where the tobacco industry had the second-highest influence worldwide, just after the Dominican Republic (Swiss Association for Tobacco Control 2023). Switzerland has the second-weakest tobacco regulation in Europe, right after Bosnia and Herzegovina (Tobacco Control Scale 2021). Despite being a host State for the World Health Organization, it is one of the few States in Europe (with Monaco and Liechtenstein) that have not ratified the 2003 WHO Framework Convention on Tobacco Control.

Swiss tobacco regulation is a particularly striking—and, given the harmfulness of nicotine, controversial—example of lobbying influence. Still, regardless of the regulatory field, Switzerland is an interesting case study that deserves the attention of those who focus on lobbying, be they scholars, international organizations, or specialized NGOs.

For one thing, Switzerland is a semi-direct democracy: It combines processes of representative democracy, on the one hand, and instruments of direct democracy, on the other (on the complex interactions between representative and direct democracy, see Martenet 2021). Direct democratic instruments give the people a say in (some forms of) lawmaking. One question that arises in this context is whether strong popular rights result in strong lobbying regulation.

For another thing, Switzerland can be expected to be an important lobbying hotspot, including because major multinational companies have their seat there. Besides the tobacco sector, one may think of the pharmaceutical industry or of the food and beverage sector.

Another striking characteristic of Switzerland is its hands-off approach to lobbying regulation. While lobbying laws have been on the rise around the globe since the turn of the twenty-first century (Chari et al. 2019), the Swiss legislature has not followed this trend. Unlike what is sometimes assumed, Switzerland hardly regulates lobbying. In this respect, it differs from other global lobbying hubs, like the USA and the European Union, and from some of its neighbors, like Germany and France, all of which have adopted (more or less robust) lobbying regulation.

Following an exceptionalist line of argument, one could argue that because of the distinctive ('exceptional') features of the Swiss legal order, regulating lobbying is superfluous and unnecessary in Switzerland. However, as this article will seek to demonstrate, regulation is necessary *precisely* because of these features, to the extent that they threaten the institutional independence of the legislature.

This article first provides an overview of the main legal provisions that apply to legislative lobbying in Switzerland. It then highlights several distinctive features of the Swiss legal order that condition the practice and regulation of lobbying. As the article argues, these features do not justify a hands-off regulatory approach, as

many of them can threaten the legislature's constitutional mandate. The last section provides general recommendations on how the law could effectively address these threats.

The present article aims to make a legal contribution to interest groups studies (for other contributions by legal scholars, see, e.g., Solaiman 2017 and Korkea-aho 2022; for Switzerland, see Uhlmann and Wohlwend 2013, Wyss 2013, and Wyss 2015). It thus seeks to complement existing lobbying scholarship, which, as the editors of this special issue of *Interest Groups & Advocacy* note, is 'a field traditionally dominated by American political science,'[1]especially by quantitative studies. Making such a contribution is particularly necessary in the case of Switzerland, which has generated little scholarship to date. Most of the available literature stems from the field of political science (e.g., Mach 2015; Eichenberger et al. 2016; Gava et al. 2017; Sager and Pleger 2018; Sager et al. 2022; Sciarini 2023), while the contribution of Swiss legal scholars has been much more modest. While the political science literature is helpful and even indispensable to understand the trends that characterize the practice of lobbying, it is also necessary to approach the topic from a legal perspective and to shed light on the legal framework that conditions and binds this practice.

Building on Lester Milbrath's canonical political science definition of lobbying (Milbrath 1963), but adjusting it to the characteristics of legal analysis, this contribution defines lobbying as the attempt by natural or legal persons who lack legal authority in the lawmaking process, except for citizens acting on their own behalf, to influence the lawmaking activity of those holding such authority (on this definition, see also Ammann 2025). In terms of scope, this article focuses on legislative lobbying, i.e., on attempts to influence the legislature, and on inside lobbying, which concerns direct communications between lobbyists and lawmakers (see, e.g., Weiler and Brändli 2015). It analyzes lobbying in the Swiss federal legislature, to the exclusion of cantonal legislatures. The ambition of the present article is not merely to describe the current state of the law: It also pursues a normative goal by providing an evaluation of the existing legal framework, as well as concrete recommendations for lawmakers in light of the applicable constitutional framework.

Provisions of Swiss law governing legislative lobbying

In Switzerland, the regulation of legislative lobbying currently consists of three types of legal provisions: Provisions requiring legislators to disclose (some of) their ties to interest groups, provisions governing access to the parliamentary building, and, finally, provisions belonging to the criminal law of bribery. As will be explained below, pursuant to the classification by Chari et al. 2019, this regime qualifies as a low-robustness regime at best.

For reasons of scope, this section brackets the law that governs political financing, including the funding of political campaigns and political parties (on recent

[1] https://www.palgrave.com/gp/journal/41309/authors/aims-scope.

developments in this area, see, e.g., Aeschimann and Schaub 2023). While there is no doubt that this area of the law is closely related to lobbying regulation (especially in the USA, see Briffault 2008; Gerken and Tausanovitch 2014) and that it can make lobbying more transparent, it pertains to the financing of political activities, more than to lobbying as such.

Legislators' duty to disclose (some of) their ties to interest groups

The first type of legal requirement that applies to legislative lobbying is legislators' duty to disclose some of their ties to interest groups. The source of this duty can be found in art. 161(2) of the Swiss Federal Constitution, which provides that 'Members [of the Federal Assembly] must disclose their links to interest groups.' This requirement is further specified by art. 11 of the Federal Parliament Act.[2] Both provisions are a manifestation of the disclosure-oriented model of lobbying regulation that has dominated lobbying regulation all over the world. Under Swiss law, legislators are not prohibited from having close ties to interest groups, but they must disclose (some of) them in a publicly available register (art. 11(2)). Disclosure is required for professional ties, including when a legislator is employed by an interest group (art. 11(1)(a)), as well as for what the law refers to as management, supervisory, advisory, and consultancy activities (art. 11(1)(b) and (d)). For some of these ties (art. 11(b)-(e)), an additional piece of information is required, namely 'whether the activity is voluntary or paid' (art. 11(1^{bis})). This makes it easier to assess the strength of these ties. Moreover, in legislative debates (be it in the committees or in the plenary), members making a statement must disclose personal interests that are directly affected by the issue at hand (art. 11(3)).

Like any transparency scheme, the Swiss parliament's two public registers of interest ties (one per chamber) are an important step toward regulating lobbying, but

[2] The provision reads as follows:

Art. 11 Duties of disclosure.

[1] On assuming office and at the start of every year, each assembly member must inform his or her office in writing about his or her:

a. professional activities; if the assembly member is an employee, they must give information about their position and their employer;

b. further activities on management or supervisory committees as well as advisory committees and similar bodies of Swiss and foreign business undertakings, institutions and foundations under private and public law;

c. activities as a consultant or as a specialist adviser to federal agencies;

d. permanent management or consultancy activities on behalf of Swiss or foreign interest groups;

e. participation in committees or other organs of the Confederation.

[1bis] In the case of activities listed in paragraph 1 letters b – e, the assembly member shall declare whether the activity is voluntary or paid. The reimbursement of expenses is not regarded as payment for an activity.

[2] The Parliamentary Services maintain a public register containing the information provided by assembly members.

[3] Assembly members whose personal interests are directly affected by any matter being considered must indicate their personal interest when making a statement in the council or in a committee.

[4] Professional secrecy in terms of the Swiss Criminal Code is reserved.

this regime also suffers from shortcomings. First, disclosure is selective: Only some interest ties must be disclosed. To mention a few examples, only *permanent* management or consultancy activities must be made transparent (art. 11(1)(d)), and legislators are not required to disclose regular membership in interest groups. Moreover, the concept of directly affected personal interest (art. 11(3)) is interpreted narrowly (e.g., Thurnherr 2015, but see Nussbaumer 2014) and excludes ties already disclosed in the assemblies' public registers. Second, the intensity of these ties remains difficult to assess, given that legislators are required to disclose neither the income generated by these activities, nor relevant interest ties of staff members or close relatives (see also Cassani 2019). Third, the Parliamentary Services do not verify whether the information that legislators disclose is accurate. Accordingly, both monitoring and enforcement remain weak. Fourth, the scheme established by art. 11 of the Federal Parliament Act illustrates the problem of legislating in one's own cause (on this difficulty, see Lang 2007; see also Hilti 2023). Given that in Switzerland, pursuing ancillary activities is important to legislators' economic subsistence, the legislature has limited incentives to adopt extensive disclosure obligations and, more generally, stricter lobbying regulation.

Provisions governing access to the parliamentary building

A second category of legal provisions are those that regulate physical access to the parliamentary premises. As regards lobbyists' access to the parliament, the main source of rights and obligations is found in art. 69(2) of the Federal Parliament Act, which states that '[e]ach assembly member may have an entry pass issued for a specified period to any two persons who wish to have access to the parts of the Parliament Building that are not accessible to the public'; '[t]he details of these persons and their functions must be recorded in a register that is available for public inspection.'

Both legislative chambers have further specified the modalities of access in their Standing Orders. The National Council, the lower house, regulates access in art. 61 of its Standing Orders, stating that during the parliamentary sessions, access to the chambers and antechambers is granted to 'accredited journalists and the persons holding an entry pass in accordance with Article 69 ParlA,' among others (art. 61(2)). A nearly identical provision is found in art. 47(2) of the Standing Orders of the upper house, the Council of States.

Just like disclosure obligations pertaining to legislators' interest ties, the provisions governing access to the parliamentary premises are governed by the objective of transparency, which currently dominates lobbying regulation. Yet, while transparency is undoubtedly necessary, its implementation remains deficient. First, the information provided to the public about permanent entry pass holders is limited to their name and function, which makes it difficult, if not impossible to identify the interests that these pass holders represent. Some of them are simply listed as 'guests,' which obscures the nature of these interests. Second, just like with the register of interest ties, there is no robust monitoring and enforcement mechanism in connection with the registers of permanent pass holders. Besides incomplete transparency,

another problem is the discretionary way in which entry passes are distributed by legislators. An accreditation system—as already exists for journalists—would be more egalitarian, but the legislature rejected a proposal to introduce such a system in 2020 (for the original proposal, see Berberat 2015).

The criminal law of bribery

Finally, legislative lobbying must also comply with the criminal law of bribery. The relevant provisions can be found in art. 322ter and following of the Swiss Criminal Code. The prohibition of active and passive bribery of public officials, which also applies to legislators (art. 322ter and art. 322^{quater}), pertains to cases where the official is led to act in a way that is 'contrary to his duty or dependent on his discretion.' By contrast, the criminal offense of granting or accepting an advantage (art. 322^{quinquies} and art. 322^{sexies}) pertains to cases where the official simply carries out his or her official duties. Such an advantage does not aim to influence a particular act and is hence not part of a *quid pro quo* relationship or *do ut des*: Rather, it seeks to ensure favorable treatment in the future (Cassani 2019). Art. 322^{decies}, which applies to both bribery and granting or accepting an advantage, exempts 'advantages permitted under public employment law or contractually approved by a third party' and 'negligible advantages that are common social practice' (two cumulative conditions) from the scope of these provisions.

The criminal law of bribery is an important facet of lobbying regulation, but can be expected to capture only a small subsection of lobbying practices (Ammann 2020; see also Borghi and De Rossa 2020; de Preux 2020). Moreover, criminal law does not pursue the same objective as the two aforementioned categories of provisions, which belong to the realm of public law. Criminal law focuses on personal gain generated by corrupt practices and on the conduct of individual perpetrators. By contrast, public law addresses more systemic concerns by regulating the functioning of the legislature qua institution. Viewing lobbying regulation solely through the prism of criminal law is insufficient, as this neglects the institutional reforms that are necessary to ensure that lobbying remains at the service of democratic lawmaking and of the public interest (see also Cassani 2019; on these areas for reform, see *infra*).

Can Swiss exceptionalism justify the absence of robust lobbying regulation?

As the previous section has shown, Switzerland does not have robust lobbying regulation. Under the classification system of lobbying laws used by Chari et al. 2019, robustness designates 'the level of transparency and accountability a lobbying law can guarantee.' High robustness is characterized by demanding registration and disclosure requirements, such as the duty to submit periodic reports, and by strong enforcement mechanisms. Medium robustness corresponds to less demanding requirements and less effective enforcement measures. The Swiss regulatory

approach corresponds to a 'low robustness' regime: Registration and disclosure requirements are limited, as is the provision of relevant information to the public, and enforcement remains modest. In recent years, several proposals to enact stricter legislative lobbying regulation have failed, sometimes after years of debate (see especially Berberat 2015; for other recent proposals, see Rieder 2019; Mazzone 2022).

In public debates pertaining to the (stricter) regulation of the lawmaking process and, more generally, of politics, a frequent argument voiced by those who oppose such regulation is Swiss exceptionalism (see, e.g., the legislative debates in connection with Berberat 2015, Rieder 2019, and Mazzone 2022; see also, regarding the regulation of campaign finance, Ammann 2021). Arguably, Swiss exceptionalism—i.e., the distinct characteristics of the Swiss legal and political order, which have allegedly demonstrated their strength—makes more far-reaching lobbying regulation superfluous. Switzerland's high ranking in Transparency International's Corruption Perceptions Index (CPI) provides an additional argument against such regulatory proposals.

The present section highlights four distinctive features of the Swiss legal and political order that could justify a minimalist regulatory framework in the area of lobbying: Semi-direct democracy, the militia system, neo-corporatism, and consociationalism (on these and further characteristics, see Ammann 2025; see also Sager et al. 2022). However, as will be shown in the next section these specificities do not justify a light-touch regulatory framework, as some of them can pose threats to the legislature's institutional independence.

Semi-direct democracy

A first specificity of the Swiss legal and political order is that Switzerland is a semi-direct democracy, as opposed to a purely representative democracy. Indeed, some of its legal norms are adopted (or defeated) by citizens themselves. These direct democratic instruments complement representative mechanisms (hence the term 'semi-direct democracy'; see, e.g., Sager et al. 2022). Two direct democratic instruments exist at the federal level, namely the popular initiative and the referendum. The popular initiative operates at the constitutional level and enables Swiss citizens to request a total or partial amendment of the Federal Constitution (art. 138 and 139 of the Federal Constitution). As to the referendum, it can be either mandatory or optional (art. 140 and 141 of the Federal Constitution). The latter is particularly relevant for our purposes, as it enables Swiss voters to defeat federal acts after their adoption.

One could argue that the availability of direct democratic instruments justifies the limited regulation of lobbying in Switzerland: Citizens exercise significant control over the legislature and the lawmaking process, which can hence be expected to be responsive to their interests. Arguably, a semi-direct democracy offers strong mechanisms to counter the influence of lobbies.

Things are not that simple, however. Direct democratic instruments are not just available to citizens: They can also be harnessed by lobbies. Launching an initiative

or a referendum requires significant economic and political resources, which are unequally distributed. Direct democratic instruments are hence more likely to be used successfully by well-organized groups with significant resources than by regular citizens (see, e.g., Braun Binder et al. 2020; Eichenberger et al. 2022). These instruments can thus strengthen the position of already influential lobbies in the legal and political system. They offer lobbies additional levers of influence that do not exist in purely representative democracies. Especially the risk that an optional referendum could defeat a given bill incentivizes the federal administration and legislature to consult with powerful groups during the lawmaking process. Democratic instruments are also attractive for lobbies because they help them to mobilize their political base. In short, the existence of direct democratic instruments does not, as such, justify the absence of robust lobbying regulation.

The militia system

A second peculiarity of Swiss lawmaking is that the legislative branch is a so-called militia parliament, i.e., a non- or, to be more precise, *semi*-professional legislature (see, e.g., Bütikofer 2014; Sciarini 2023). In highly professionalized legislatures, legislators spend a limited amount of time, if any, on other activities and sources of income. By contrast, in legislatures with a lower degree of professionalization, members spend more time on ancillary occupations and sources of revenue. The Swiss legislature's degree of professionalization is low in international comparison (see already Z'graggen and Linder 2004), e.g., if compared to the US Congress, the European Parliament, or the French and German legislatures. Swiss federal legislators' base annual salary only amounts to 26,000 CHF per year. The parliamentary groups to which they belong 'receive a subsidy to cover the costs of their secretariats' (art. 62(5) of the Federal Parliament Act), and legislators are entitled to various allowances, e.g., for participating in meetings or to cover the costs of meals, accommodation, and travel (the relevant legal provisions can be found in art. 3 ff. of the Federal Parliamentary Resources Act). Still, their total annual income remains relatively low, especially compared to well-remunerated private sector jobs. Legislators only receive 33,000 CHF per year to pay for staff *and* other material expenses (art. 3a of the Federal Parliamentary Resources Act); in 2004, Z'graggen and Linder reported that on average, a federal legislator employed 0.6 personal staff. Legislators' epistemic resources, such as research assistance or access to specialized staff, are also limited. In 2014, the Parliamentary Services encompassed 17.5 positions dedicated to documentation, and 26 to committee services (Graf 2014).

One could argue that the militia system requires a hands-off approach to lobbying regulation because it constitutes an institutionalization of lobbying. Besides the limited resources available to legislators, the militia system manifests itself through the liberal regime governing legislators' interest ties, conflicts of interest, and incompatibilities. One could also point out that this institutionalization is a deliberate choice. As Ainsworth 1997 explains, legislators are not just passive recipients of lobbying efforts: They play an active role in structuring their relationship to interest groups, as they usually have the competence to adopt (more or less stringent) lobbying

regulation. Legislators benefit from their interactions with lobbyists and provide valuable resources to them in return (see also Bouwen 2002). They hence play an important role in interest representation.

The militia system undoubtedly has strengths. It goes back to the republican ideal of self-government and the view that citizens should contribute to the accomplishment of public tasks on a voluntary basis (Wiesli 1999). In the context of public debates about lobbying in Switzerland, it is often argued that the militia system helps to ensure that legislators do not become disconnected from those they represent.

However, a low level of professionalization creates institutional vulnerabilities. The main problem is that the legislature's scarce internal resources starkly increase its dependency on external resources, including those offered by lobbyists. This is precisely why some scholars call lobbying a 'legislative subsidy' (Hall and Deardorff 2006). Of course, and as already mentioned, lobbyists also benefit from these interactions, which is why the relationship between legislators and lobbyists can be conceptualized as 'an exchange relation between two groups of interdependent organizations' (Bouwen 2002; on exchange relationships between organizations, see also Levine and White 1961). The aforementioned scarcity of legislative resources is problematic because it increases the risk of financial, material, and epistemic dependencies (on resource asymmetries and dependencies between different organizations, see Jacobs 1974). Another issue is that the militia system leads to an overrepresentation of some socioeconomic groups in the legislature, such as self-employed and well-remunerated individuals (Pilotti 2017; Riklin and Möckli 1991). Thus, interest ties that correspond to these socioeconomic profiles are likely to dominate the legislature at the expense of others. Last but not least, the heavy workload of Swiss legislators shows that the militia system is nearing its limits: Today, the median occupation rate is 71 percent in the Council of States and 87 percent in the National Council (Sciarini et al. 2017). The ideal of the militia system hence seems increasingly out of touch with reality. It is worth noting that the aforementioned figures do not include legislators' main job, nor side jobs provided by interest groups: On average, members of the Council of States have 9 of such external mandates, and members of the National Council have 6.4 (Turuban 2020). This high number of side jobs—a direct consequence of the militia system—inevitably reduces the amount of time that legislators can dedicate to legislative work.

To conclude, the militia system can accentuate some of the problematic aspects of lobbying, such as State capture and unequal representation. While this system offers some advantages, it does not, as such, justify the absence of robust lobbying regulation.

Neo-corporatism

A third characteristic pertains to Switzerland's system of interest intermediation, i.e., to the State's relationship with interest groups. Switzerland has a neo-corporatist system: The State actively shapes its relationship with interest groups, on which it relies to identify relevant interests. In neo-corporatist jurisdictions, the State usually interacts with some interest groups in priority and seeks to include them in

lawmaking processes (Schmitter 2011). By contrast, in pluralist ones (e.g., in the USA), the State is less involved and lets interest groups compete against each other. In recent years, and like in other States, the Swiss system of interest intermediation has become more pluralistic as more interest groups have gained access to lawmaking processes (e.g., Mach 2014; Eichenberger 2020; see even Sager et al. 2022, who qualify Switzerland as pluralistic).

In Switzerland, neo-corporatism manifests itself through various institutional arrangements and practices. One of them is the institutionalized practice of holding consultations at the pre-parliamentary stage of the legislative process (art. 147 of the Federal Constitution). These consultations, which are led by the federal administration, are open to all, but some categories of participants—the cantons, political parties, and 'interested groups'[3]—are systematically invited to share their views. Neo-corporatism is also reflected in the extra-parliamentary committees that assist the public administration and that include interest group representatives (see especially art. 57e(2) of the Federal Government and Administration Organisation Act[4]), and in working groups and roundtables formed by the executive branch (e.g., Keller 2008). Finally, it also expresses itself through the fact that legislative committees invite some lobbies to participate in hearings, which are usually confidential (see art. 47 of the Federal Parliament Act).

One could argue that neo-corporatism goes along with light-touch lobbying regulation because interest groups are already included in lawmaking. Similarly to the militia system, neo-corporatist arrangements can be viewed as an institutionalization of lobbying processes and facilitate some interest groups' access to lawmakers. To the contrary, it could be argued that neo-corporatism calls for stricter lobbying regulation, in line with the State's tendency to actively structure its relationship with interest groups (e.g., Venice Commission 2013). Moreover, lobbying is usually viewed less favorably in neo-corporatist systems than in pluralist ones (on pluralism as a lobbying-friendly environment, see, e.g., Olson 1971).

Be that as it may, neo-corporatism creates some difficulties that call for sufficiently robust lobbying regulation. Indeed, it tends to give some interest groups—such as umbrella associations and other well-established or otherwise resourceful organizations—a special place in the lawmaking process. Neo-corporatism is hence not necessarily more egalitarian than pluralism, as some lobbies can easily dominate lawmaking. Further measures may thus be necessary to equalize interest groups' access to lawmakers. Another difficulty is that (again, like the militia system), neo-corporatism contributes to the institutionalization and, therefore, potential invisibilization of lobbying. This means that some of its problematic aspects (such as opacity, but also unequal representation and institutional dependencies) may not be sufficiently regulated.

[3] The unofficial English translation refers to 'interest groups,' while the three official linguistic versions use related terms (*die interessierten Kreise*; *les milieux intéressés*; *gli ambienti interessati*).

[4] This provision requires that such committees maintain 'a balance between the sexes, languages, regions, age groups *and interest groups*, with due consideration of the committee's tasks' (emphasis added).

Consociationalism

Contrary to majoritarian political systems which, as the term suggests, are based on majority rule, consociational systems prioritize consensus building and power sharing (Lijphart 1999; Linder and Mueller 2021). Consociationalism overlaps with, but is broader than, neo-corporatism: Neo-corporatism is one possible expression of consociationalism, as are proportional representation, federalism, or a directorial system of government.

In Switzerland, consociationalism must be viewed in the context of semi-direct democracy and in relation to the existence of direct democratic instruments, especially the optional referendum. As already mentioned, to prevent laws from being defeated in a popular vote, the federal authorities strive to include affected entities and groups early on in the lawmaking process. Consociationalism is also connected to Switzerland's directorial system of government: The federal government is a collegial authority composed of seven members, who represent the political parties with the most seats in the federal parliament. The bills drafted by the executive branch hence reflect a compromise between different ideological positions. Finally, the fact that Switzerland is a federal State is yet another driver of consociationalism. In Switzerland, where power is shared between the federal State and the federal subunits, the federal lawmaking process takes the interests of these subunits into account (art. 45, 55, and 147 of the Federal Constitution). This responsiveness to political minority interests may make it easier for such minorities to lobby in federal States than in unitary ones.

It could be claimed that in consociational systems, regulating lobbying is less essential because lobbies are already involved in lawmaking processes. The argument is hence similar to the one that can be made in relation to the militia system and to neo-corporatism. It has also been pointed out that corruption is less prevalent in consociational systems (Wyss 2015).

However, consociationalism should not be idealized. Because of their ability to launch a referendum, some lobby groups have more leverage and hence exert more influence on the lawmaking process. Because the State is likely to prioritize these more powerful interests to prevent a referendum, consociationalism can place less influential interests at a disadvantage. Thus, consociationalism does not, as such, provide a compelling reason not to regulate legislative lobbying.

Distinctive threats calling for more robust lobbying regulation

The previous section has highlighted the main specificities of the Swiss legal and political order from the perspective of legislative lobbying, and it has shown that these specificities do not provide compelling reasons to justify a hands-off approach to lobbying regulation. Yet, despite its minimalist lobbying regulation, Switzerland usually ranks high in Transparency International's Corruption Perceptions Index (6/180 in 2023), as those who oppose stricter lobbying regulation often emphasize. Meanwhile, some Swiss criminal law scholars point out that this high ranking can be explained by the 'very flexible character of Swiss law' with regard to corruption

compared to other domestic regimes (Cassani 2019). Moreover, international organizations like the Council of Europe's Group of States against Corruption (GRECO) and non-governmental organizations like Transparency International have stressed that the Swiss regulatory regime suffers from significant blind spots, including as far as the regulation of legislative lobbying is concerned (GRECO 2016; Transparency International Switzerland 2019).

Where do these contradictory assessments leave us, and is there still a case to be made for a Swiss exception in the field of lobbying regulation? To answer this question, this section briefly examines the legislature's constitutional mandate and highlights its implications for legislative lobbying. It then shows that due to the specificities of the Swiss legal and political order, legislative lobbying can pose distinctive threats to this constitutional mandate and to the institutional independence of the legislature, and that the law needs to adequately address these threats.

Lobbying and the constitutional mandate of the legislature

An important starting point to determine whether legislative lobbying requires further regulation is the constitutional mandate of the legislature (for further details, see Ammann 2025, which builds on Thompson 1995, Teachout 2014, Lessig 2015, and Solaiman 2017, among others). This mandate provides a binding normative benchmark to distinguish between problematic and unproblematic interactions between legislators and lobbyists. Given that it is determined by constitutional law, the content of this mandate varies from one jurisdiction to another.

In Switzerland, several provisions of the Federal Constitution clarify the contours of the legislature's mandate. The preamble identifies 'the Swiss People and the Cantons' as the authors of the Constitution. Art. 2 provides that the 'aims' of the Swiss Confederation include 'protect[ing] the liberty and rights of the people' (art. 2(1)) and 'promot[ing] the common welfare' (art. 2(2)). Pursuant to art. 5, which is devoted to the principle of the rule of law, 'State activities must be conducted in the public interest' (art. 5(2)). While constitutional scholars admit that the concept of the public interest is fuzzy, they consider that it rules out 'special' or 'private' interests (for further references, see Ammann 2025; for a helpful typology of the different conceptions of the public interest and their implications for lobbying, see Bitonti 2020). The concept of the public interest also appears in relation to fundamental rights restrictions which, to be justified, require, among other conditions, a corresponding public interest (art. 36(2)).

Relevant requirements can also be found in the constitutional provisions that pertain to the federal authorities. Art. 144 provides that '[n]o member of the National Council, of the Council of States, of the Federal Council or judge of the Federal Supreme Court may at the same time be a member of any other of these bodies' (art. 144(1)), and that '[t]he law may provide for further forms of incompatibility' (art. 144(3)). Pursuant to art. 145, '[t]he members of the National Council (…) are elected for a term of office of four years'; the terms of the members of the Council of States are governed by cantonal law. Art. 148 declares that, '[s]ubject to the rights of the People and the Cantons, the Federal Assembly is the supreme authority of the

Confederation' (art. 148(1)). Art. 158 requires that '[m]eetings of the Councils' (the upper and lower house) 'are held in public.' Importantly, art. 161 states that '[n]o member of the Federal Assembly may vote on the instructions of another person' (art. 161(1)) and, as already mentioned, that '[m]embers must disclose their links to interest groups' (art. 161(2)). Pursuant to art. 162, legislators 'may not be held liable for statements that they make in the Assembly or in its organs' (art. 162(1)); '[t]he law may provide for further forms of immunity' (art. 162(2)). Art. 163–173 specify the competences of the Federal Assembly and, notably, its competence to adopt federal acts (art. 163 and 164), i.e., legislation.

What, then, is the constitutional mandate of the Swiss federal legislature? To summarize, and as explained in more detail in Ammann 2025, the legislative powers granted by the sovereign—the people and the cantons—to the legislature are constrained, but also protected, by various constitutional requirements. This includes the requirement that the legislature act in the public interest, as well as incompatibilities, term limits, publicity requirements, the prohibition of instructions, the duty of legislators to disclose their ties to interest groups, and legislative immunities.

Based on these various provisions, one can conclude that the constitutional mandate of the legislature has three main dimensions. First, the legislature receives its legal authority from the sovereign, or *pouvoir constituant*. In Switzerland, the sovereign is the people and the cantons, both of which have 'adopt[ed] the (…) Constitution,' as stated in its preamble. The cantons exist not for their own sake, but for the sake of their peoples, which exercise cantonal sovereignty, and to which the cantons hence owe their legal authority. Accordingly, the Council of States (the upper legislative house) represents the cantonal *peoples* and not the cantons as such (Biaggini 2017), even if art. 150(1) of the Federal Constitution refers to the 'representatives of the Cantons.' In other words, the people are the ultimate holders of sovereignty.

Second, the people have transferred some of their lawmaking powers to the legislature. Such a division of labor is necessary considering citizens' limited political resources. Even in Switzerland, where citizens have extensive direct democratic instruments at their disposal, doing without representative institutions would not be realistic. The people must be able to rely on the legislature, which represents them through legislation, i.e., by adopting general and abstract legal norms.

This leads us to the third component of the legislature's constitutional mandate: As already mentioned, the legislature, like any State authority, must act in the public interest, which refers to the interests of the ultimate holders of sovereignty, i.e., the people.

In a nutshell, the Swiss legislature, which owes its legal authority to the people, must be 'dependent on the people alone,' a phrase that is borrowed from the Federalist No. 52 (Hamilton et al. 2015 [1787–1788]; Lessig 2015), but that also applies outside the USA. This means that the legislature must avoid any improper dependencies, i.e., dependencies on third parties other than the people, including dependencies on lobbyists. As Vincent Martenet writes, '[f]rom a functional and operational perspective, institutional independence requires, among other conditions, that the institution is able to fulfill its functions without being subject to undue external pressures, and that is has some autonomy to determine how to reach that goal' (Martenet 2016). As will be shown in the next subsection, the distinctive features of the Swiss

legal and political order can create such problematic institutional dependencies, which hence need to be adequately addressed by the law.

Potential threats created by legislative lobbying in the Swiss legal and political order

As this article has already made clear, the characteristics of the Swiss legal and political order could be used to defend the absence of robust lobbying regulation. Yet, from the perspective of the constitutional mandate of the legislature, some of these characteristics can be problematic. This holds especially true for the militia system, which can generate improper dependencies, and which hence forms the focus of the present subsection. This focus on the militia system should not detract from the fact that problematic dependencies can also arise due to other features of the legal and political order, including direct democratic rights, neo-corporatist arrangements, and consociationalist processes (see also the drawbacks mentioned in subSects. "Semi-direct democracy", "Neo-corporatism", and "Consociationalism", *supra*).

It is important to stress at the outset that from the perspective of the legislature's constitutional mandate, legislative lobbying is not necessarily bad. Rather, it is ambivalent. On the one hand, lobbying provides additional channels of communication between citizens and their political representatives and facilitates the identification, bundling, and articulation of interests. It can also help marginalized interests to get heard. Finally, lobbying represents an important epistemic resource for lawmakers and can hence support them in the identification of the public interest. However, lobbying can also distort the process of identifying the public interest, especially when it leads to improper dependencies. Dependencies arise when the legislature lacks specific political resources and needs to rely on third parties, including lobbyists, to obtain them. This risk of dependency exists with regard to financial and material resources, on the one hand, and epistemic ones, on the other (see Ammann 2024, 2025).

First, legislators need various financial and material resources to carry out their mandate, including campaign donations, a salary, staff, and infrastructure. In a militia—i.e., semiprofessional—parliament, such resources are, by definition, limited. To obtain additional resources, legislators typically accept mandates from various interest groups. As already mentioned, under Swiss law, such interest ties are not prohibited as long as they are transparent (art. 161(2) of the Federal Constitution). However, these ties become problematic if they do not leave legislators enough time for their legislative work. Another issue is that interest ties may restrict legislators' freedom, be it *de jure* or (and especially) *de facto*. Only *de jure* instructions (typically, instructions agreed upon in a legally binding contract) are considered to violate the constitutional prohibition of giving instructions to legislators (art. 161(1) of the Federal Constitution). By contrast, *de facto* instructions, e.g., due to a member's financial dependency on an interest group, are deemed unproblematic. So far, attempts to regulate such dependencies have remained unsuccessful (see Rieder 2019).

Second, legislators need epistemic resources, i.e., access to knowledge. Again, in a militia parliament, such resources are scarce. Legislators hence try to obtain them via other means, including through their interactions with lobby groups. In this context, various problems arise. For one thing, the views of powerful interest groups can be expected to be given more weight. This especially applies to interest groups that have the power to launch a referendum. For another thing, the input provided by these groups is not neutral: Lobbyists are interest representatives, not independent advisors. Accordingly, legislators should be able to obtain expertise from other, independent sources.

In short, the militia system has many advantages. However, it may lead to financial, material, and epistemic dependencies, which are problematic from the perspective of the constitutional mandate of the legislature to be 'dependent on the people alone' and to legislate in their interest.

Recommendations and conclusion

Swiss criminal lawyer Ursula Cassani observes that '[t]raditionally, Switzerland has been very tolerant of situations that carry the risk of blurring the boundaries between private and collective interests' (Cassani 2019). This risk can and must be avoided. Regulating lobbying to protect the institutional independence of the legislature is not a partisan issue, but a constitutional requirement.

As this article has shown, some features of the Swiss legal and political order, especially its semiprofessional ('militia') legislature, can exacerbate the problematic aspects of legislative lobbying and even pose threats to the legislature's constitutional mandate. This does not mean that these features need to be fundamentally reformed or that the militia system, which is at the source of many potential dependencies, needs to be abolished. Instead, appropriate measures need to be taken to prevent and address improper dependencies. Scope precludes establishing an exhaustive list of measures that can achieve this ambitious goal (for further details, see Ammann 2025). Instead, this section provides general recommendations with regard to two aspects: Reforming the existing legal framework that applies to legislative lobbying and preventing dependencies arising from the militia system.

Reforming the existing legal framework

For one thing, the existing legal framework that governs legislative lobbying needs to be improved, especially by protecting the legislature's institutional independence. As regards legislators' constitutional duty to disclose their interest ties, transparency needs to be increased. This requires that disclosure obligations be effectively monitored and enforced. Moreover, Swiss law currently provides limited transparency. What is needed is a legal framework that ensures that legislators' contacts with lobby groups are actually transparent, i.e., intelligible (Ammann 2021). Transparency should not be viewed as an end in itself: Instead, it should be at the service of the legislature's constitutional mandate and facilitate

the disclosure of financial, material, and epistemic dependencies of the legislature on lobbyists.

As regards financial dependencies, legislators should provide information not only about relevant ties to lobby groups, but also about the characteristics and intensity of these ties. Legislators should hence be required to disclose any incomes generated by side jobs and to specify the nature of this work. They should also be required to disclose relevant assets, debts, gifts, and similar benefits. When appropriate from the perspective of the legislature's institutional independence and the right to privacy, such disclosure obligations should extend to legislative staff and family members. Moreover, disclosure also needs to happen in the context of parliamentary debates. Campaign finance law can further help to shed light on potential financial dependencies. Since art. 76b ff. of the Federal Act on Political Rights went into force in 2022, new disclosure obligations apply to the political parties represented in the federal legislature, as well as in the context of elections and popular votes.

To provide more transparency on potential material dependencies, legislators should be asked to declare relevant support services received from lobby groups (such as fundraising, campaigning, or other forms of material support), but also information about their staff (including their interest ties).

Last but not least, legislators should also provide information about potential epistemic dependencies. One important step in this regard would be to make legislative committee hearings more transparent. As the GRECO has pointed out, the general confidentiality of these hearings may 'conceal conflicts of interest or even influence by third parties' (GRECO 2016). While some confidentiality may be necessary to protect legislators' free opinion formation and ability to reach compromises, it seems important to provide more information about the individuals and groups invited to participate in these hearings. Another measure would be to ask legislators to disclose interest groups' influence in relation to concrete legislative proposals, for instance by introducing a legislative footprint, i.e., 'a comprehensive public record of private parties' influence on a piece of regulation' (OECD 2021).

As far as physical access to the parliamentary premises is concerned, the current scheme of limited, discretionary access incentivizes lobbies to win legislators' favor through problematic *quid pro quos*. With the establishment of an accreditation system, lobby groups would no longer depend on individual legislators to obtain access. Moreover, the register of interest ties (or of accredited lobbyists) needs to provide relevant and intelligible information about the interests that these lobbyists represent.

Finally, the criminal law of bribery needs to clarify the boundary between legally problematic and unproblematic lobbying practices and, when doing so, be guided by the legislature's constitutional mandate. It is especially important to clarify the meaning of 'negligible advantages that are common social practice' (art. 322^{decies} of the Swiss Criminal Code). Indeed, this legal concept leaves room for indeterminacy and can have the effect of protecting practices that threaten the legislature's institutional independence.

Preventing dependencies arising from the militia system

Transparency is not the end of the story when it comes to lobbying regulation (for other scholars who recommend going beyond transparency, see Bitonti and Mariotti 2023; Avril and Korkea-aho 2024; Solaiman 2023; on how to evaluate lobbying transparency, see Laboutková and Vymětal 2023). Indeed, from the perspective of the legislature's constitutional mandate, it is important not only to detect, but also to address, the aforementioned potential sources of dependencies, especially financial, material, and epistemic ones. The legislature needs to rethink how it regulates conflicts of interests. For instance, currently, there is no cooling-off period for legislators and legislative staff (see also GRECO 2016). Importantly, the scarce financial, material, and epistemic resources of the Swiss federal legislature create institutional vulnerabilities. While the Swiss 'militia' system has its advantages, it can threaten the legislature's institutional independence. Reforms and especially additional internal resources appear necessary to ensure that it can effectively fulfill its constitutional role. Another way to safeguard its independence would be to strengthen and diversify its access to external financial, material, and epistemic resources, including citizens (acting on their own behalf, see the definition of lobbying *supra*) and academic research institutions (Drutman 2015). To some extent, the legislature could also rely on the executive branch, especially when it comes to epistemic resources. However, in this context as well, dependencies need to be avoided, in order to safeguard the legislature's constitutional mandate.

Another important point is that lobbying regulation should also be driven by egalitarian concerns, as the OECD and Transparency International have long made clear. Equality is an integral part of the legislature's constitutional mandate, given that it represents citizens, which have equal political rights (see also Ammann 2025). One important way to take egalitarian considerations into account in the context of lobbying regulation is to make access to lawmakers more equal, e.g., in the context of legislative committee hearings, or by replacing the current discretionary badge system with an egalitarian accreditation system. Another important measure would be to provide financial, material, and/or epistemic assistance to interest groups with fewer resources.

Finally, protecting the constitutional mandate of the legislature also requires reinforcing the chain of representation that connects citizens with legislators. While Switzerland's direct democratic instruments are remarkable, additional communication channels could help citizens communicate their wishes in the context of the legislative process. The online platform 'Crowd Lobbying' is a step in this direction, as it enables citizens to share their views on specific topics with their representatives.[5] Many other measures could be envisaged, including by drawing on insights generated by political theorists working on democratic innovations (e.g., Elstub and Escobar 2019). The effectiveness of such proposals requires the willingness of both political science and legal scholars to bridge the gap between their two disciplines,

[5] Crowdlobbying, https://crowdlobbying.ch. Examples of issues include lowering the voting age limit to 16 and introducing a digital ID. See https://16.crowdlobbying.ch/de and https://e-id.crowdlobbying.ch/de.

to ensure that democratic innovations can be integrated into the existing constitutional framework.

To conclude, in Switzerland, the regulation of legislative lobbying is by no means superfluous but, to the contrary, overdue. However, such reforms require the willingness of the legislature to regulate itself. The failure of recent proposals shows that this political will has not yet materialized (Berberat 2015; Rieder 2019; Mazzone 2022). Legislators are unlikely to act unless their electorate pressures them to do so. This is where, once again, the characteristics of the Swiss legal and political order come into play. Indeed, provided that popular awareness about legislative lobbying increases, Switzerland's direct democratic instruments could cease to be an obstacle to change by providing reasons for clinging to the *status quo*. Instead, these instruments, and especially the constitutional initiative, could become a powerful driver of legal change by forcing Swiss legislators to be more responsive to citizens' interests and to finally adopt robust lobbying regulation.

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