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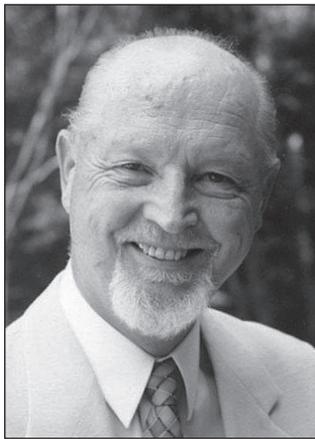
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Interest Groups and Morality in the Public Square



by Jack R. Van Der Slik

Our concerns as American citizens are preoccupied at present by interest in political candidates for high office, particularly the presidency. Despite its flaws, our American system of democratic elections does give us, as citizens, our say in determining who will assume and exercise the God-given

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authority of government as it is invested in particular offices. No one can gainsay the significance and consequentiality of those candidate determinations. Campaigns and elections count for a great deal in the American Republic. Nevertheless, even with the “right” people in office, policy determinations—the essential substance of governing—remain contingent upon, well, contingencies.

An aphorism that passes for wisdom regarding politics says, “A government cannot legislate morality.” That, of course, is a silly absolute, not more true than the opposite absolute, “a government does legislate morality.” But let me elaborate on the original notion a bit. Keep in mind that the oft-cited proof from the American experience for that statement is the temperance movement that brought about the 18th Amendment (1919) to prohibit intoxicants. Unsuccessful as a public policy, Prohibition was repealed with the 21st Amendment (1933). That proof is frequently cited in discussions about why abortion should be legally banned or why it should not be legally banned.

The truth of the matter is that social reality is much more complex than the aphorisms above. On the positive side we know that the law draws specific lines between what should be done and what should not: what is legal and what is not. Well administered, the law teaches good behavior. Not only does the policeman use the law as a teaching instrument; so also do parents, counselors, pastors, schoolteachers, and all manner of positive authority figures, backed up by prosecutors, judges, and penal authorities. In the public realm lawmakers

and executives have a responsibility to articulate why the laws they enact and enforce are good, appropriate, and worthy of implementation. On the other hand, it is relevant to say that control of behavior through law mostly depends upon voluntary compliance. A law that is routinely violated by many offenders is not going to be preserved by the thin blue line of the American police. Laws need public support. Thus, the legislative process is intended to be responsive to demands for limits on offensive behavior. Note, for example, the remarkable change that has taken place gradually and incrementally regarding smoking. It began with the legal requirement to print health warnings on tobacco products. Now vast areas of public space are

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“smoke free” by law and with public support.

The morality God demands of humankind is beyond our sinful nature to obey fully. Despite our fallenness as individuals and as a nation, is it not interesting that nearly all the commandments about relationships between humans are widely specified in state and national laws? Everything from honoring parents to forbidding false testimony is covered in substantial ways. Only coveting is ignored, perhaps out of deference to our capitalistic economic system. Even for those who do not acknowledge the moral law as God’s gift to humankind, there is a sense that right conduct is a moral obligation and that those in our legislative institutions should be wise enough to positively assert legal standards to protect and encourage right conduct. So then, does government legislate morality? Of course, but perhaps it is more accurate to say that morality prompts legislation. Conventional morality, less demanding than God’s standards, arises from hu-

man reasoning. Then it is articulated and debated in our legislative institutions, which are designed to represent the ordinary people of our nation and states and their morality. You and I have stakes in those political processes both as Americans and as citizens in the kingdom of God. I intend to illuminate aspects of that process which are bound up in the legal and moral relationship.

The political context in which our elected authorities—a president and vice president, 100 senators, and 435 representatives—make authoritative decisions is exceedingly intricate. Not only is government large and multifaceted, but there is a press of external forces and people who seek to direct and move policy determinations in their desired directions. My purpose is to address the presence, significance, and motivations of a category of continuing, often long-term players in the American political process. They are widely misunderstood but nevertheless consequential to the matter of Christians having their say in the public square. The entities for scrutiny are the interest groups, and the players to be better understood are the lobbyists.

Reformed Christians bring a distinctive worldview to the scrutiny of political affairs. Those affairs take place in a fallen world, and that fallenness imposes hurtfully upon all of us, both the redeemed and those who are not. Yet we are not without hope. Through Christ’s redemptive work our world can be made better. We strive for improvement as we anticipate the full restoration of God’s creation to its original goodness. The politics of our society is subject to that sanctification and is, therefore, properly a concern for Reformed Christians to address. Can we increase our understanding in ways that will lead to a Godly restoration? Consider my analysis as an attempt in that direction.

One other preliminary point about Reformed perspective is in order. It bears on the relevance of interest groups and lobbying in the political process. A presuppositional point, it expresses a Reformed view of the individual person in relation to the God-given authority of government. We expect government to respect the “sovereignty of the individual person,” to put it in Kuyper’s phrase. Kuyper took pride in saying that “the free expres-

sion of thought, by the spoken and printed word, has first achieved its victory in the Calvinistic Netherlands.... And thus the logical development of what was enshrined in the liberty of conscience, as well as that liberty itself, first blessed the world from the side of Calvinism.”²¹ Accountable to God for how we exercise our liberty of conscience, we can and should put to work that liberty of conscience in our democratic society. A fair and appropriate object of our concern is the articulation of policy interests in the legislative process. We should be agents of redemption in the politics of our country. It is both our right and duty to engage in advocacy, arising out of our individual sovereignty, in the public square.

The context in which interest groups and lobbyists engage is the political process. The working definition of politics I use defines politics as *the processes for developing and resolving public issues with the authority of government*. Some of the words in the definition bear some elaboration. What is a public issue? I would say a public issue is any problem or concern that gets continuing public attention and that some people insistently demand government to address. The matter of “resolving” may mean coming up with a solution to the issue. Alternatively, resolution may be accomplished by imposing a negative choice: “no, this is not a problem for government to solve at this time.” A very central piece of the political process lies in “developing” public issues. Giving urgency to particular concerns so that they cannot be ignored is an art form among political practitioners. Think, for example, of Jesse Jackson, who skillfully uses the moral argument for racial justice to elaborate and promote a variety of social and community action projects for public funding.

Our political process is remarkably open to the development of issues in order to use them as sticks to beat upon the politicians for governmental solutions. Consider for a moment the sort of matters that have in recent years become issues. These matters were not conspicuous and not public issues some years ago: gay rights, global warming, multiculturalism, fair trade (in contrast to free trade), sanctions upon illegal immigrants, gentrification of urban places, homelessness. Skilled wordsmiths and image-makers plied their craft by enlarging

and embroidering upon specific concerns in order to enlarge the scope of conflict about them. Thus, these concerns could obtain the attention necessary to arrive on the agenda of public issues, getting consideration in the political arena.

Richard John Neuhaus recently reminded his readers that politics is moral argument about how we ought to order our lives together in our political communities. He said, “[E]verybody enters the process of debate, deliberation, and decision equipped only with the powers of persuasion.” But then he added this cautionary note: “Obviously, not everybody enters on equal terms, since powers of persuasion, access to the means of persuasion, and the audiences inclined to be persuaded to a particular position are far from equal.”²² Yes, democracy is plagued by the inequality problem.

Help in understanding politics comes from Harvard’s conservative political theorist, Harvey Mansfield. He identified what he called the central political question: “Politics is about who deserves to be more important: which leader from which party with which ideas. Politics assumes that the contest for importance is itself important. In a grander sense, politics assumes that human beings are important.”²³ Yes, the contests are of crucial importance, and so is the fact that they take place again and again. Mansfield goes on to say this about the contests: “[T]he good...is not as independent as it seems to be. If the good is to become actual, it must be established in society. This requires a political effort to win a contest against an opposing notion of the good in the status quo. In politics you never start from nothing but always in the face of the good you find inadequate. To defeat this dominant good, you have to espouse the good that you see and make it your own.” Achieving our sense of the moral good, derived from our liberty of conscience, will regularly require a willingness to contest for it in the public square, hardly a minor commitment.

What is the constitutional ground for the interest group contestants under scrutiny? It begins with citizenship, of course, and extends from there to the privileges and immunities under our Constitution. Focus upon the great First Amendment. For now, we will not linger over the depth of meaning in the first 16 words – the religion clauses. We will not

even pause over the profound importance of freedom of speech and the press. The words relevant here are the ones that set forth “the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.” All citizens have standing to ask for the good they wish to be dominant and authoritative.

Upon this pillar a towering industry of political advocacy has grown to maturity in a plethora of interest groups. A 2005 report in the *Washington Post* put the number of registered lobbyists at nearly 35,000, sufficient precision for present purposes.⁴ Why do so many interest groups and lobbyists engage in politics? Because the laws of the land can help or hurt their interests—the good that they have in view.

But why so many groups? Let me briefly offer four partial explanations, the fourth of which is of particular interest for this discussion. First is the proliferation thesis. As society and its economy grow in complexity, groups and interests multiply. For just one example of many that might be specified, the telephone industry used to be Ma Bell. But now it is Verizon, Qwest, SBC Communications, BellSouth, Vonage, Joy Communications, and many more. With distinct views of the good, these specific interests compete not only in the marketplace but also in the public square about what shall be the rules of governmental regulation.

The disequilibrium thesis suggests that groups sometimes form in waves, responding to a particular shock in the society. When Hurricane Katrina struck the Gulf Coast and, especially, New Orleans, one consequence was the formation of groups to battle with insurance companies and governments at local, state, and national levels for help in ameliorating damage. Environmental issues evoked new groups to become demanders for change. New groups and players emerged to resist proposed changes and to reassert the status quo ante.

Then there is an exchange theory. A particular agitator may rise to a problem, working as an organizer to form an interest group. The classic example of a generation ago was the union organizer. Sent by the national labor union to a textile mill town in the South, the organizer stated his appeal thus: “you join my union, and in return I will

negotiate for you better wages and working conditions.” Exemplary agitators, such as civil rights leader Reverend Martin Luther King, claimed lofty moral grounds, but the notion of exchange was implicit: “Support me with rallies, marches and even civil disobedience. I will deliver you voting rights, civil liberties, and equal opportunity hiring laws.” Other agitators successful at group formation include Al Sharpton, Ralph Nader, and Jerry Falwell. What did the followers receive? Whether the payoffs were economic or simply a feeling of the longing for or a sense of satisfaction in fighting for a principle of justice, the follower gained benefits.

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I want to expound a fourth thesis in more detail to explain the formation of groups under the notion of marginal legality. Hold this thought: *the political activity of a group is proportional to its stake in the marginal definition of legality.*

Let me return to the relationship of law and morality. “Thou shalt not steal” is certainly well elaborated in the statutes of the land and supported by a solid consensus among the citizenry. Thus, despite the plethora of interest groups noted earlier, there is no Association of American Jewelry Thieves, supported by membership dues and engaged in lobbying efforts to improve prospects for success by persons engaged in that chosen profession. Why not?

Imagine the legal/moral dimension as a continuum extending broadly from left to right. Divide it into thirds. On the left put the label “Legal/Moral.” On the right goes the label “Illegal/Immoral.” The middle section extends from

“Marginally Legal/Moral” to “Marginally Illegal/Immoral.”

Selling gold jewelry is clearly legal and moral. To be in the jewelry business is a matter not near the marginal line. The underground set of people who are jewelry thieves is way over on the right, not even close to being marginally legal and moral. Any effort to legalize their “profession” does not stand a chance, so no such organization will form. Neither of the contrasting sets of individuals has need for interest group efforts in its behalf.

Consider activities in the “Legal/Moral” zone that are close to the margin. Smoking used to be clearly legal and moral, along with being fashionable and popular. But in a steady progression over the past 25 years, it has become morally dubious and increasingly illegal. By contrast, alcohol, for a time not only morally reprehensible but constitutionally illegal, now is well into the “Legal/Moral” zone. Still, it lies rather close to the marginally “Legal/Moral” intersection. Unlike the jewelry business, the liquor business is regulated by laws that regulate how many liquor stores there may be. Liquor products are burdened with excise (sin) taxes. There are restrictions on the places and even the hours when those products can be sold and served.

Consider activities that used to be in the “Illegal/Immoral” zone but now are somewhere in the murky marginal space. The matter of illegal drugs is in that part of the continuum. Importing and selling hard drugs is clearly illegal/immoral. Buying the drugs on the street is illegal but commonplace, and enforcement of laws about drugs is selective and discretionary. Rights of privacy almost legally protect using the drugs privately and inconspicuously. You can elaborate other examples in your own thinking. Does not society differentiate so-called “soft pornography” from the hard core? Do lesbians and gays have distinctive “rights”? Should they? Gambling has become “gaming” and is publicly praised for improving education funding in nearly every state as well as for addressing the welfare needs of Native Americans.

Interest groups have proliferated to advance or resist marginal changes in the legal/moral status of activities and enterprises. At great expense the to-

bacco companies unsuccessfully resisted the regulation of smoking. Alcohol industries have been largely successful in the other direction, easing and overcoming legal limitations upon their products and advertising. So have those seeking legality for “soft pornography” in various forms, certainly including movies and increasingly in television productions. The conquest to keep legal or delegalize abortion is one of epic proportions. Note that moves in matters of the law from the right side of the continuum toward the left often are hugely profitable for those who are economic, social, and political stakeholders.

Having grasped the notion that lobbying is intended to move the authoritative line of public policy about some activity toward or away from the zone of marginal legality/morality, we can get more from the explanatory power of the marginality idea. There is a whole host of actual or potential public policy questions that are not much about morality but very much about legality. Consider examples relevant in the auto industry, which is subject to a great many detailed regulations: crash safety requirements; regulations to reduce fuel consumption, thereby increasing miles per gallon and saving energy; accounting rules about how quickly under the tax laws the companies can depreciate their capital investments in machines and factories. We have all viewed demonstrations of crash-testing on television. Whatever level of safety those crash dummies must satisfy, will it be at a test speed of 25 mph or 30 mph? That is not much of a moral distinction, but it is a substantial technical distinction for the automakers. If the test speed is 30 mph instead of 25, the safe car will be substantially more expensive to build. It is no surprise, then, that industry lobbyists will fight for a regulatory line at 25 rather than 30.

With these illustrations in mind, reconsider the generalization offered earlier. *The political activity of a group is proportional to its stake in the marginal definition of legality.* Whether closely associated with moral standards or not, a vast number of lines of legality are subject to possible movement. Then there are the loopholes to be created or closed – an exception to this law, a delay before putting that one into force. Much of the business of lobbying is about economic and social interests defending them-

selves and the status quo against laws they would consider intrusions by government into their view of the good.

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What are the competencies of the lobbyists, the men and women who directly interact with policymakers in behalf of particular interest groups? Essentially the lobbyist is a group's agent to push for or oppose public policy proposals, doing so with professional knowledge and skill. The scope of the lobbying job is broad and, typically, full time. Policy advocacy takes many forms and requires alert attention to events and people. Consider a few of the musts for Washington lobbyists:

- Understand the U. S. Code, particularly in the details of aspects that apply to one's assigned interests.
- Constantly monitor newly introduced bills and amendments to current bills.
- Know the policy players as personally as feasible – legislators, relevant staff, including White House staff, and other lobbyists. Understand their orientations toward one's own interests.
- Have a plan of action to pass/defeat legislation. Know which chamber, committees, and subcommittees will be the arenas of action.
- Intensify one's personal contact and familiarity with the lawmakers and staff, especial-

ly the workhorses and leaders, when one's issues are under consideration.

- Actively attend to all public sessions. Testify when necessary. Solicit access for expert testimony from relevant specialists about one's interest.
- Assist the bill sponsors or opponents, knowing the bill better than the legislators who are the sponsors or opponents. Have ready the ideas and language for amendments and compromises.
- Be able to move from one chamber to the other. Senators and representatives have limited prerogatives in "the other chamber."
- Know the White House staff and how to use their help to gain or prevent a presidential veto.
- Actively seek out and join coalitions with other interests, including those that may at other times be opponents regarding subjects not connected with the current contest at hand.

Lobbying is a socially intensive job that requires one to be in the Capitol environment on a continuing basis to cultivate lawmakers, staffers, other lobbyists, executive liaisons, people from the bureaucracies, and media reporters. Lobbyists must build familiarity with all the relevant players in order to achieve and develop their trust.

Contrary to popular thought, lobbyists must be scrupulously honest, knowing and even telling lawmakers the arguments against or weaknesses in their own bills and interests. Their purpose is to inoculate the potential supporters from hearing about such weaknesses for the first time from the opposition. An effective lobbyist arms his allies with efficacious counterarguments about those weaknesses. Such candor is essential to build confidence in the lobbyist's word. Lobbyists do not claim victories. They attribute victories to their lawmaker allies.

Where do these lobbyist professionals come from, and what is their preparation? There are no degree programs for lobbyists, and newcomers are

rarely fresh from college or graduate school. Like the lawmakers they lobby, they usually come to the job in mid-career. Backgrounds vary, but there are two general types. Type One is the “political” professional. This is someone whose pre-lobbyist career has been in the political process. It is common for former lawmakers and congressional staffers to become lobbyists. They know the players and the process. In lobbying, they exercise their expertise in behalf of selected interests about which they must learn in substantive detail.

Type Two is the “interest” professional. This person has experience, for example, in universities as a professor and/or administrator. Good at spontaneous advocacy, such a person may be tapped to represent and advocate on behalf of higher education in Washington. Solidly prepared with intimate knowledge of the interest in order to become effective in the political realm, this person must master the details of the policy process and the people in it.

My point is certainly not to denigrate the political process for allowing access to interest groups and allowing lobbyists to have their say in the policy process. Indeed, openness to them is a hallmark of democracy in action. Nor am I overly concerned about the imagined power of the interest groups, despite the apparently threatening presence of 35,000 lobbyists swarming around the policy process. Not only does the slender reed of integrity among our policymakers defend us, but also, more importantly, we are protected by the plurality of voices and interests that engage in the public square. The best check upon the power of lobbyists is the power of rival lobbyists. A famous illustration is the liability for medical malpractice, which evokes contest after contest in Congress and the courts (as well as in the various states) between the medical professionals and the trial lawyers.

Consider another constraint in the political process. I happen to reside in the district of the former incumbent congressman, Mark Foley, who, in a very brief and public flame-out, resigned his office and his candidacy for reelection due to suspicious relationships with House pages shortly before the election campaign of 2006. Suddenly the election contest was between a nearly unknown Democratic candidate who had held no previous

office and a hastily recruited Republican from the state legislature. Of course, we constituents could expect pretty clear differences in political representation, depending upon which party prevailed in the election (Democrat Mahoney won the office). Nevertheless, realize the following. Regardless of which candidate won, the new representative will pay great regard to the view of public good espoused by the AARP. Why? Because retirees heavily populate this district. He will support restoration of the Florida Everglades, an ecological concern to most residents. The winner must respectfully consider the interests of a nationally small but prominent interest here—the sports fishermen. A few particular agriculture interests are conspicuous and vocal: the citrus industry, cattle ranchers, and big sugar. Real estate interests, lenders, developers, and building industries will be stroked and cared for, whichever side holds the district. On the other hand, our congressperson can safely ignore the tobacco interests as well as commodity producers like steel, aluminum, and mining industries. He or she need not be much concerned with manufacturers related to the auto industry. Yes, congress men and women do cultivate the grass roots, protecting the interests of the people and organizations in their districts in ways that depart from simple partisanship. Canny lobbyists are fully sensitive to the particularities in the constituencies of the lawmakers they must persuade.

The political process is what it is. Kuyper encouraged political participation to express the morally informed sovereignty of the individual. As Neuhaus says, politics is moral argument. Unfortunately, those who know the moral arguments best do not always enter the political debate on equal terms with other contestants. As Mansfield explains, “In politics you never start from nothing but always in the face of the good you find inadequate. To defeat this dominant good, you have to espouse the good you see and make it your own.” These are the essential reasons that it is important for the various Christian communities in our society to create and maintain organized extensions that take part in the policy processes of our Republic. It is ineffective to stand at a distance to criticize or merely wring hands, weeping about sad directions visible in the public policy. It is ap-

appropriate to say about politicizing matters of faith that the institutional church should not assert itself regarding political subjects. That is not its competence. Without a respect for healthy secularity, churches might accomplish less for justice and the poor than they do now. But those from the church communities, those nurtured in Christian morality and wisdom, need to be in, of, and through the organizations that speak truth to power. Our Reformed perspective calls upon us to redeem fallenness in the public-policy process. Our advocates need not and, I submit, ought not claim to speak for particular institutional churches. However, our associations and action organizations need to enlarge their vision about advocacy in the public square. Voices from the church communities need to be gainfully present in the political interest groups that articulate and defend the moral principles that can and should underlie the laws of our land. We who care about morality in society ought to support and sponsor advocacy groups and skilled professionals who will take our perspectives about the good into the arenas of politics.

Yes, it may be presumptuous, even impolitic, to go in the name of the Moral Majority, but the Christian communities do have to be vigorously and conspicuously present in the public square, articulating the connections between good policies and their moral foundations. If our spokespersons are not present in that fashion, the contests will

proceed anyway on unequal terms to the detriment of our moral insight. The advocates who would make the immoralities of our day legal and acceptable have stunning economic incentives to advocate their causes. They should be powerfully and professionally confronted in the political institutions where legalities are settled. The spokespersons for the good need not wear the collar of the Church, but like the Apostle Paul before Caesar, they should be clad in “the full armor of God” in order to stand against the devil’s schemes (Ephesians 6:11).

Endnotes:

1. See Abraham Kuyper, “Calvinism and Politics,” in *Lectures on Calvinism* (1898) (Grand Rapids: William B. Eerdmans Publishing Company, 1931), 78-109, especially 107-109.
2. Richard John Neuhaus, “The Politics of Bioethics,” *First Things*, No. 177 (November 2007), 23-28; quotation at p.26.
3. Harvey Mansfield, “How to Understand Politics,” *First Things*, No.175 (August/September), 41 - 47; quotation at p.41.
4. Jeffrey H. Birnbaum, “The Road to Riches is Called K Street,” *Washington Post*, June 22, 2005, p. A01. Access at www.washingtonpost.com/wp-dyn/content/article/2005/06/21/AR2005062101632_pf.html