“If men were angels . . .”
A RESPONSE TO “SERVICE IS ITS OWN REWARD? THE REVOLVING DOOR FROM LAWMAKER TO LOBBYIST”

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“If men were angels, no government would be necessary.
If angels were to govern men, neither external nor internal con-trols on government would be necessary.”¹

So said James Madison as this new nation debated the experiment known as the Constitution of the United States. He understood Aristotle’s ideal of individuals motivated by the “anxious . . . performance of virtuous actions”² and hoped that leaders would, on their own accord, fulfill this ideal in their service to the people. Being a realist however, he also understood that “controls . . . would be necessary” — even essential — to safeguard against those who might seek to gain personal advantage from their position in government.

Madison’s suspicion of Congressional propriety may be surprising, thinking that the “gentleman politicians” of his day were a world apart from politicians of our day. However, cynicism is not confined just to the present generation. It was Mark Twain who, over 150 years ago, wisecracked, “Suppose you were an idiot. And suppose you were a member of Congress. But, then, I repeat myself.”³

Many today would agree that public service should be motivated by the Aristotelian model — the opportunity to build and strengthen society’s future through service to the people. But as some lawmakers leave office to the lure of huge salaries as lobbyists, one might wonder if the ideal of public service as its own reward has changed, somehow, to public service as a vehicle to wealth.

This is the root ethical issue discussed by Kirk Jowers and Luke Peterson in their Case Study entitled “Service is its Own Reward? The Revolving Door from Lawmaker to Lobbyist.”
In approaching this Case Study, we must first ask whether lobbying, *prima facie*, is ethical? Is it appropriate for individuals or groups to present — lobby — their case before representatives of the people? Is it appropriate for such individuals and groups to have professional assistance, if desired, to help them present — lobby — their case? Since meaningful “representative” government requires “the people” to effectively address and explain their individual or group concerns to their representatives, then lobbying is not only appropriate and ethical, it could be considered necessary.

The Founding Fathers understood this concept — recalling their own inability to address their concerns with the British Crown — and established a system whereby citizens had the right to “petition the government for a redress of grievances.” Under this system, lobbyists (especially former lawmakers) could, in principle, act to support and strengthen representative government by helping groups inform and educate representatives regarding the often very nuanced and complex legislative issues surrounding their interests.

But, the Founding Fathers also understood Burke, that “ambition could creep as well as soar” and Washington, that “few men have virtue to withstand the highest bidder.” Madison provided clarity, again, with his proposition that, “The aim of every political Constitution is or ought to be first to obtain for rulers, men who possess most wisdom to discern; and most virtue to pursue the common good of the society; and in the next place, to take the most effectual precautions for keeping them virtuous, whilst they continue to hold their public trust.”

Applying this Madisonian doctrine of public service, it would follow that the highest goal of any public servant must be the preservation of the “public trust” by his or her discerning and virtuous pursuit of “the common good of society.”

If we agree that the act of lobbying is ethical on its face, is there an “ethical line,” the crossing of which violates the “public trust” and changes certain lobbying activities from being ethical to being unethical? If one group, in lobbying its interest, provides some benefit to a representative, does that change the ethical nature of the lobbying effort by introducing a “quid pro quo expectation” that the representative will then, because of the benefit, support the group’s interests? Does it matter if the “benefit” is a dinner or a one hundred thousand dollar PAC contribution? Clearly, the potential for conflict raised by any perceived “quid pro quo expectation” compromises public trust by calling into question the ability of the representative to act fairly and in an unbiased fashion in
representing all of his or her constituents equally. This potential conflict provides, in my opinion, the “ethical line” beyond which the actions of lobbyists and lawmakers could be rightfully suspect of being unethical.

If, as a society, we concur with Madison’s doctrine of preservation of the “public trust,” then “effectual precautions” for lobbying are necessary to “keeping (representatives and lobbyists) virtuous” and preserving the integrity of the government institution. These regulations should clearly define when the “quid pro quo expectation” crosses the ethical line, and should provide the greatest amount of transparency possible in order for citizens to be assured that legislators and lobbyists have not crossed that line. Public servants whose genuine interest is the maintenance of the public trust and the integrity of the institution will not balk at such regulations. To the contrary, they will actively try to identify the best way in which to preserve integrity and trust by putting the best (even if strict) regulations and transparency in place.

This background provides us an ethical basis upon which we can respond to Jowers’ and Peterson’s Study.

Now to Jowers and Peterson who ask, “In the absence or presence of strong regulations, is it desirable for a former lawmaker to profit from his or her legislative connections and expertise?” Jowers and Peterson, referencing the Campaign Legal Center, suggest the need to “effectively stop the revolving door,” implying that regulations should discourage or disallow legislators from becoming lobbyists after their term of service. But this addresses the symptom without addressing the fundamental ethics issue. If we believe that lobbying is essentially ethical and that former lawmakers have, in many cases, a better understanding of legislative issues than most citizens, then it would follow that not allowing former lawmakers to lobby might adversely affect the ability of “the people” to most effectively seek redress. So the act alone of legislators becoming lobbyists is not the problem.

Similarly, is it desirable that a former legislator-turned-lobbyist be allowed to receive payment for his or her lobbying services? Again, if we believe that lobbying is essentially ethical and that former lawmakers can provide a valuable service because of their knowledge and experience, then remuneration for such services is subject to private negotiation between the former lawmaker and his or her client — not unlike salaries paid to CEOs are a subject for the CEO and a Board of Directors — and not unethical. We may view the huge amounts of money paid to lobbyists as immoral and we may rightfully question what happened to a lawmaker’s balancing of public interest versus self-interest, but these are
different arguments. The act alone of receiving remuneration for services is not the problem.

The “problem” generating the fundamental ethics issue arises not because of the revolving door of lawmakers becoming lobbyists or because of their receiving remuneration. It arises, as previously stated, when lawmakers and lobbyists — whether they are former lawmakers or not — compromise the public trust through certain interactions with one another that could be perceived as introducing a quid pro quo expectation. Regulation consisting of a clear, strict definition of the “ethical line,” full and easily accessible disclosure and stiff penalties for violations are the only guard against such compromise.

While federal and state governments have attempted to address the ethical line and preservation of public trust by setting in place laws regarding various aspects of contributions, gifts and other benefits that a legislator might receive from lobbyists, the public perception still persists that lobbyists and legislators are a bad ethical combination. Apparently, more definition and regulation of lobbying are required.

Jowers and Peterson discuss, very effectively, possible additional regulations including an increased “cooling off” period for legislators once their service is concluded, as well as the possibility of federally funded elections to negate the potential compromises that result from the requirement for candidates to raise astronomical campaign war chests. Another area worthy of consideration for additional regulation is legislative earmark and “plus-up” proposals by members of Congress. These proposals, at times proverbially referred to as “pork,” can be a way for lawmakers to dispense “favors” on behalf of lobbyists and contributors. These proposals must be fully disclosed (presently not done) during committee hearings and in final legislation with accompanying explanations of how they meet public policy objectives.

Critical to any reform will be mandatory disclosure through electronic and internet filing of all benefits, of all types, received by legislators from all sources, including lobbyists and corporations. Lobbyists should also have mandatory requirements to disclose, through similar electronic and internet reporting, certain interactions with legislators, including all campaign, PAC or charitable contributions — whether contributed or solicited by the lobbyist — as well as all types of travel, gifts and entertainment given to legislators or staff.

Credibility will not be restored until there is full and transparent accountability combined with very strict internal and external enforce-
ment. This would include an Independent Congressional Ethics Commission to provide unbiased, objective review of and recommendations for lobbying restrictions and to investigate or dismiss charges against sitting legislative members. A strengthened Office of Public Integrity could work with the Commission to provide staff continuity for ongoing reporting and disclosure efforts for both legislators and lobbyists, to assist existing legislative ethics committees — presently “emasculated”18 — to investigate charges and to advise members and staff on appropriate behavior when questions arise.19 Each of these ideas was proposed during the 2006 reform debate.

While some present and former legislators consider lobbying restrictions at least unnecessary and at most a violation of free speech, most publicly support general efforts to curb abuses. Given, however, the response to the 2006 reform attempts described by the Washington Post as “a watered down sham that would provide little in the way of accountability or transparency,”20 we are a long way from Congress producing reforms that would lead to its regaining credibility. Aggravating this trend are lobbyists who seem intent on finding loopholes in any new regulations.21 Will future reforms meet with the same outcome?

Finally, Jowers and Peterson ask whether lawmakers, lobbyists and lawmakers-turned-lobbyists can be regulated into behaving ethically.22 Some would argue that existing regulations solve the problem and that lobbyists and lawmakers who do not behave ethically represent a small fraction of the large ethical majority.23 Madison’s doctrine might suggest that the effectiveness of regulations in encouraging ethical focus can be gauged by the public perception of the lawmakers who create such regulations and commit to follow them. If this is a correct assessment, Jowers’ and Peterson’s answer comes from current public opinion telling us that present regulations, alone, do not motivate lawmakers toward ethical behavior (See Note 12). Whether this generalization is fair to the whole institution or not, the reality is that the unethical behavior of one individual directly affects the publicly perceived behavior of the whole. Would stricter regulations and enforcement change behavior? Would they change public perception? Maybe not, but it is worth Congress making a serious, significant attempt.

Ultimately, the best regulation of ethical behavior will be that a majority of citizens can vote out of office an offending representative. But cynicism, breeding apathy toward participation in elections, contributes to low voter turn out where a minority then decides the effective value of ethics reform. This has, at times, been disastrous as evidenced by
elections where even lawmakers convicted of ethical missteps are returned to office.24

The discussion proposed by Jowers and Peterson must be ongoing. Legislators, present and former, and, especially, legislative leadership of both parties, must set aside partisanship and personal ambition making a return to credibility and “public trust” their highest goal — no matter what it takes. Sadly, the 2006 ethics reform debate has done little to improve public confidence in Congress’ stated desire to make meaningful changes.25 The partisan wrangling that already characterized the 2006 mid-term election cycle, with both parties claiming for themselves the ethical high ground26 against the so-called “culture of corruption,” will only deepen the frustration of the public as we move toward the 2008 presidential race.

Madison was right — men are not angels. Neither are lobbyists or legislators. Both lobbyists and legislators need to emulate one of their predecessors, John Adams, who served, it is said, “because he was a good citizen. He had grown up in a community where people helped each other . . . . And he did it for another reason. As a leader, he knew he ought to set an example.”27 Such will be the role of those whom we elect as our lawmakers.

Our role as citizens will be to fight the battle against cynicism and apathy and actively engage to bring about change through the political process. If we lose that battle, it is questionable if even the angels can then save us.

NOTES

1 James Madison, Federalist No. 51.

2 Aristotle, Ethics of Aristotle, Bk. 1, ch. 9, p. 59.

3 Albert Bigelow Paine, Mark Twain: A Biography, Bk. 2, p. 175.


5 The American League of Lobbyists’ Code of Ethics provides an interesting review of the “constitutionally guaranteed” right to lobby and of the ethical role of lobbyists in government.

6 Edmund Burke, Letters on a Regicide Peace, letter #3 (compiled 1797).

7 George Washington, Letter dated August 17, 1779, (quoted in Maxims of Washington -1942).
8 James Madison, *Federalist* 57.


10 Ibid., p. 5 – See especially Note 20.


12 A *Wall Street Journal/NBC News* Poll (Conducted by the polling organizations of Peter Hart (D) and Bill McInturff (R), June 9-12, 2006) indicates that 93% consider that this Congress has the same or greater ethical problems than those of the past. http://www.pollingreport.com (Accessed June 22, 2006).

13 Jowers and Peterson, p. 4.

14 Jowers and Peterson, p. 5 – Another interesting idea regarding federal funding for campaigns forwarded by a group titled “Just $6” has gained significant bipartisan political support. Former congressional luminaries including Bill Bradley (D-NY), Bob Kerry (D-NE), Warren Rudman (R-NH) and Alan Simpson (R-WY) serve as honorary co-chairpersons. The group claims that elections could be completely funded for “just $6” per citizen per year and that “wealthy special interests and their hired lobbyists would no longer have a commanding influence over our politics and government.” [Online] http://www.just6dollars.org (Accessed May 23, 2006).


16 Ibid.

17 Ibid.

18 Thomas Mann, p. 2. See also an editorial in the *Orlando Sentinel*, dated Thursday, June 15, 2006, similarly referring to the House Ethics Committee as “famously feckless.”

19 Ibid, p. 2.


22 Jowers and Peterson, p. 5.

An example of such an ethically challenged politic culture is reported by Elizabeth Kolbert, “The Big Sleazy – How Huey Long Took Louisiana,” *The New Yorker*, June 12, 2006, p. 146. Former Louisiana governor Earl Long is quoted, “Someday Louisiana is going to get ‘good government.’ And when they do, they ain’t going to like it.”

Jeffrey H. Birnbaum, “Senate Passes Lobbying Bill,” *The Washington Post*, (March 30, 2006, p. A01). Birnbaum reports Susan Collins (R-ME) as saying “the bill goes a long way toward restoring ‘the bonds of trust with our constituents [that have been] frayed.” On the other hand, Birnbaum reports that John McCain (R-AZ) laughed, “The good news is there will be more indictments, and we will be revisiting this issue.”
