

Imperfect Principals and Lobbyist Agency Costs

Author : Jack Beermann

Date : October 15, 2010

Matthew Stephenson and Howell Jackson, Essay, [*Lobbyists as Imperfect Agents: Implications for Public Policy in a Pluralist System*](#), 47 **Harv. J. Legis.** 1 (2010).

One of the secrets to scholarly success is picking interesting topics. It also helps if your analysis makes an interesting topic even more interesting. That's exactly what Matthew Stephenson and Howell Jackson have done in their essay *Lobbyists as Imperfect Agents: Implications for Public Policy in a Pluralist System*, 47 **Harv. J. Legis.** 1 (2010). In this well-written and engaging essay, Stephenson and Jackson describe how principal-agent problems manifest themselves in the lobbying context and hypothesize on how these manifestations might affect public policy outcomes.

Wherever there are principals and agents, there are principal-agent problems, but the lobbying context is not one that readily comes to mind as infected by a serious problem. Lamenting that principal-agent problems in the lobbying context have not received the attention they deserve, Stephenson and Jackson demonstrate that lobbyists are far from perfect agents and that the principal-agent slack in the relationship has serious consequences for lobbying's public policy outcomes.

In the first part of the essay, Stephenson and Jackson explain how lobbyists are able to take advantage of their clients and pursue their own interests on the clients' dimes. The pathologies they discuss are similar to the ways in which clients find it difficult to monitor and control the performance of lawyers and other learned professionals. Lobbyists' have substantial expertise, including relationships with politicians and knowledge about how to locate and operate the levers of power. And the business of influencing government decisionmaking is fraught with uncertainty, making it difficult to evaluate the outcome in any particular situation. The lack of a clear measure of successful lobbying makes lobbyists' clients particularly vulnerable to abuses that make it difficult for them to safely rely on the lobbyist as an agent.

Two of the abuses that Stephenson and Jackson discuss are especially noteworthy: (1) as repeat players, lobbyists want to maintain reputations as people that political actors can work with, and (2) lobbyists may have her own political agendas that they pursue at the client's expense while reassuring the client that the outcome is the best that the client can achieve in the current political climate. Because of their expertise and inside knowledge, lobbyists can deceive their clients into shaping their agendas to coincide with that of the lobbyists. This raises difficult agency problems: how can a client tell if the lobbyist is faithfully pursuing the client's interests, or instead using superior knowledge to convince the client to move in ways that, on the margin, are more beneficial to the lobbyist than the client?

Stephenson and Jackson argue that agency problems are worse in some contexts than in others. They claim that "advocacy groups with broad and diffuse membership" struggle with agency issues because of the heterogeneity of the interests of the members and resulting higher monitoring costs. Similarly, they argue that agency costs will be worse for large broad-based trade associations with imperfectly aligned interests. They further argue that contract lobbying presents a more serious agency cost problem than lobbying by employees of the organization because of higher monitoring costs. The first two claims are derived from accepted public choice theory concerning interest group behavior. As

Mancur Olson taught in the *Logic of Collective Action*, large and heterogeneous groups have difficulties not shared by smaller more cohesive entities. The third claim is counter-intuitive and begs analysis, which Stephenson and Jackson provide.

Stephenson and Jackson conclude that agency costs are exacerbated when lobbying services are provided by outside professionals rather than internal employees because internal lobbyists' views are more likely to coincide with those of the organization. This means that monitoring outside lobbyists is likely to be more expensive than monitoring inside ones. Stephenson and Jackson's view is supported by the intuitive notion that a lobbyist working inside an organization for a salary is likely to be more loyal than a lobbyist working outside the organization on contract. While both have alternative sources of potential income, seeking alternative income for the outside lobbyist is likely to be less costly than for the inside lobbyist who would have to replace 100 percent of his or her income. Add to this the lack of a clear measure of success of lobbying and we have a market that is not very good at providing evidence of efficient outside production of lobbying services, increasing the advantage of internal lobbyists even further.

Stephenson and Jackson conclude with four interesting hypotheses about the effects of lobbyist-agency costs. These are that lobbyist-agency costs (1) exacerbate the power asymmetries between concentrated and diffuse interests; (2) lead to excessive focus on symbolic issues, as opposed to important reform; (3) create an excessive incentive to delegate to administrative agencies; and (4) promote excessive opposition to reform of decision-making processes. These hypotheses, which follow logically from Stephenson and Jackson's analysis of the lobbying principal-agent problem, are incredibly interesting and can lead to even greater despair over the likely increase in interest group influence after the *Citizen's United* decision which loosened restraints on campaign-related financing.

The first hypothesis is the logical consequence of the lobbying advantage Stephenson and Jackson find for smaller, more cohesive, interests. The second hypothesis, excessive focus on symbolic issues, is a consequence of the lack of clear measures of success in lobbying- lobbyists will focus their energy, and their clients' attention, on small areas in which they can win and conversely, will attempt to divert attention away from losses or mislead the client into believing that a loss would have been even worse had the lobbyist not worked on their behalf. The third hypothesis, excessive delegation to administrative agencies, results from lobbyists' incentive to work for vague or incomplete statutes so they can claim victory and create demand for more lobbying services when issues go to administrative agencies for final resolution. The final hypothesis, opposition to reform of decision-making processes, results from lobbyists' development of expertise in existing processes. The extreme case would be hiring a lobbyist to lobby in favor of restrictions on lobbying. Stephenson and Jackson's analysis demonstrates how difficult it would be to find an experienced lobbyist to take up that cause.

Does Stephenson and Jackson's analysis leave room for any hope that lobbying is not really even worse than it seems? After all, an open political system in which interests, through lobbyists, compete for the attention of policymakers seems on the surface to be better than a system in which participation is suppressed. Stephenson and Jackson have certainly presented persuasive theoretical reasons to believe that reality is even worse than appearances. Perhaps the only hope is that as lobbying costs increase (they are now estimated at something like \$32 billion per year in the United States), clients will become more educated and take Stephenson and Jackson's advice and put their lobbyists on the payroll where they are likely to do less damage than the lobbying firms that have become so pervasive. One thing I know we need more of is scholarship like this excellent contribution by Stephenson and Jackson.

Cite as: Jack Beermann, *Imperfect Principals and Lobbyist Agency Costs*, JOTWELL (October 15, 2010) (reviewing Matthew Stephenson and Howell Jackson, Essay, *Lobbyists as Imperfect Agents: Implications*

for Public Policy in a Pluralist System, **47 Harv. J. Legis. 1** (2010)),
<https://adlaw.jotwell.com/imperfect-principals-and-lobbyist-agency-costs/>.