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Institutional Corruptions

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Institutional corruption: the consequence of an influence within an economy of influence that illegitimately weakens the effectiveness of an institution especially by weakening the public trust of the institution.

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Institutional Corruptions

There's something simple, almost pleasurable for its simplicity, in the idea of "corruption." Dennis Thompson denies us that simple pleasure. What could be easier, or for those of us into normative-talk, than to speak, as Laura Underkuffler does, of being "Captured by Evil." What could be more fun than to be able to write sentences like these:

"Corruption is ... a status. A person, when corrupt, has changed. Evil has captured her being, her essence, her soul. It is a searing indictment, somehow not only of A's act but of A's character. It is a statement not only of what A has done, but of what A has become."

To even utter such a thought is to confirm that they can't be us. The words are almost Cartesian in their effect: it is, therefore I'm not.

But Thompson's work – at least his work about "corruption," or at least his work about "institutional corruption," or at least "institutional corruption" and Congress – doesn't admit of any such simplicity. We see "institutional corruption" not as we see evil – as in, directly. We see "institutional corruption" in relation. If corruption is a bullet fired straight into the heart of an innocent, "institutional corruption" is a bullet fired into the trees: it may hit someone, and if it does, it is wrong, maybe even evil. But we can't see whether it is wrong simply by seeing the bullet fired. It all depends upon how it affects a practice in general. What is its tendency? What is its ordinary effect? Not the sort of stuff you'd schedule for prime time at a political convention. Not the sort of wrong likely to trigger a revolution.

Consider just a single example: a legislator accepting a campaign contribution, while doing a favor for the contributor. We live in a time when good souls yearn for an easy way to condemn such an act. Three fourths of us (Americans) believe "money buys results in Congress." The vast majority of us render that belief as "corruption." Gallup says the second most important issue that Americans want

the next President to address is that “corruption.”¹ Surely, if there’s trouble here, then campaign contributions are at its core.

Yet Thompson denies us this simple pleasure. A contribution to a legislator, he tells us, “even while doing a favor for the contributor,” “may or may not be corrupt.” One must know more before condemning. One must look further. To which the response in the *lingua franca* of our day is this: total buzz kill. If we can’t even condemn this, then what good is the field of political ethics?

I share Thompson’s asceticism. I too want to deny simple pleasures. Not all pleasure. Or not all self-righteous pleasure. But the simple, self-righteous pleasure of an Underkuffler. The self-righteous pleasure that knows evil when it sees it. That believes something as important as “institutional corruption” can simply be shown.

But in this short essay, I want to see if in at least some contexts, we can make this problem simpler than Thompson sees it. Simple, as in less contingent. Institutional corruption certainly is, as Thompson defines it, about tendencies. But can we short-circuit the complex reckoning of “tendencies” to see why at least our Congress, in the context of our tradition, is obviously institutionally corrupt.

I believe that we can. I believe that our system has reached a point at which “institutional corruption” is much simpler to detect. And seeing this will – counterintuitively – throw into relief yet another dimension to the complex question of whether “institution X is corrupt.” Counterintuitively, because though I believe it simple to say that our Congress is corrupt, I still believe that the contours of “institutional corruption” are even more complex than even simple-pleasure-denying Thompson believes.

Thompson on “Institutional Corruption”

As explained in his book, *Ethics in Congress: From Individual to Institutional Corruption* (1995), and as developed in a series of articles that extend and refine the idea, “institutional corruption” is defined in contrast by “individual corruption.”

¹ See Gallup, Americans Want Next President to Prioritize Jobs, Corruption, July 30, 2012, available at <http://bit.ly/SUKmiw>.

“Individual corruption,” Thompson explains, is the “personal gain or benefit by a public official in exchange for promoting private interests.” “Institutional corruption,” by contrast, is “political gain or benefit by a public official under conditions that in general tend to promote private interests.”² The difference is subtle and important, and rich with implications. But we can see it best if we start by standing one against the other.

“Individual corruption” is:	“Institutional corruption” is:
Personal	Political
gain or benefit by a public official	gain or benefit by a public official
in exchange for promoting private interests	under conditions that in general tend to promote private interests

The distinction thus thrown into relief between individual corruption and institutional corruption is the difference, first, between “personal” and “political” “gain or benefit,” and, second, between “in exchange for promoting” and “under conditions that in general tend to promote.”

The first difference – personal gain versus political gain – is the simpler to track.

“Personal gain or benefit” “are goods that are useable in pursuit of one’s own interest but are not necessary for performing one’s political role, and are not essential by-products of performing the duties of that role.” They include, of course, the good of cash, but also “gifts, foreign trips, sexual favors, or employment for the official’s family legislators.” Of course, not all “personal gain or benefit” is problematic. “Some personal gain is of course perfectly acceptable: any that falls within the limits of conventional standards of compensation, which should be approximately equal for all officials in similar circumstances.” The vice is “personal gain or benefit” beyond conventional compensation – at least if that gain is “in exchange for promoting private interests.”

² Dennis F. Thompson, *Ethics in Congress: From Individual to Institutional Corruption* (The Brookings Institution, 1995), 30.

“Political gain or benefit” is different. It “involves goods that are useable primarily in the political process and are necessary for doing a job or are essential by-products of doing it.” So, for example, political support, campaign contributions, publicity, endorsements: these are the stuff politicians try to maximize, yet unlike with personal gain, there’s no inherent maximum to that maximization. As Thompson puts it, “unlike personal gain, the more (fairly gained) political gain the better. As citizens, we not only tolerate legitimate political gain; we encourage it.”³ “The system depends,” as Thompson writes, “on politicians’ seeking political advantage: we count on their wanting to be elected or reelected. As long as they acquire those advantages in ways that do not undermine the democratic process, they are simply doing their job.”⁴

So the gains are different between individual and institutional corruption. So too are the means by which those gains are secured. Corrupt “personal gain” is a gain “in exchange for promoting private interests.” Corrupt “political gain” is a gain received “under conditions that in general tend to promote private interests.” To establish the first, one must establish a motive. To establish the second, one must establish a regularity. As Thompson puts it, “to establish [individual] corruption on the part of officials, we have to show that they knew or should have known that the benefit was provided in exchange for the service or that they solicited the benefit in exchange for the service.” But to establish “institutional corruption,” we must simply show a tendency. Again, Thompson:

*We have to show only that the official accepted the benefit and provided the service under institutional conditions that tend to cause such services to be provided in exchange for benefits, or give rise to a reasonable belief that such an exchange has taken place.*⁵

But Thompson cannot stop here. For if some political gain in exchange for some benefit is appropriate, then some “institutional conditions that tend to cause such services in exchange for benefits” must also be appropriate. Put differently, the important issue on Thompson’s account is not just the relationship between the

³ Dennis Thompson, *Two Concepts of Corruption*, Working Paper, Edmond J. Safra Lab, Nov. 2010, 1.

⁴ Thompson, *Ethics*, 30.

⁵ Thompson, *Two Concepts*, 4.

benefit and the service. It is also the relationship between that relationship and the legislative or democratic process. To establish institutional corruption, it is not enough to establish “a tendency.” We must also establish that that tendency weakens the legislative or democratic process.

This ultimate test is repeated by Thompson throughout his work. As he writes:

We can [understand] political corruption as a condition in which private interests distort public purposes by influencing the government in the disregard of the democratic process.⁶

If those interests are promoted in ways that by-pass or short-circuit the democratic process, they become agents of corruption.⁷

[T]he corruption occurs not simply because private interests are promoted but because they are promoted without due regard for the rules of a legitimate process.⁸

It is not corrupt if the practice promotes (or at least does not damage) political competition, citizen representation, or other core processes of the institution. But it is corrupt if it is of a type that tends to undermine such processes and thereby frustrate the primary purposes of the institution.⁹

But within this notion of “democratic processes” that these “tendencies” are not to weaken, there is a substantive view about the democracy. We can throw that substantive view into relief by contrasting two different scenarios.

In the first, imagine a large union with a very large membership, and a very specific set of issues that it cares about. Imagine further that the union regularly and reliably turns out its membership to vote for candidates who achieve at least a 90% rating on the union’s score card. Imagine finally a politician who votes in a way to assure that she receives 90% or more on the union’s score card.

⁶ Id.

⁷ Id.

⁸ Id. at 2.

⁹ Id.

In the second, imagine a large association of businesses representing a very large pool of wealth, and a very specific set of issues that it cares about. Imagine further that the association regularly and reliably directs a large amount of campaign funding to candidates who achieve at least a 90% rating on the association's score card. Imagine finally a politician who votes in a way to assure that she receives 90% or more on the association's score card.

In both of these cases, the action of the private entity is a "political benefit." In both cases, the service of the politician could well be, given the nature of her district and the size of the entities, an example of providing a "service under institutional conditions that tend to cause such services to be provided in exchange for benefits, or give rise to a reasonable belief that such an exchange has taken place." So in both cases, what more must we know before we can say that each "tendency" is an instance of "institutional corruption?" Or if it is not in both cases, then in which case, and why?

To answer this question, we must add more substance to the idea of "damag[ing] the legislative and democratic process."¹⁰ For to know what "damage" is, we must know something about the baseline: what is the appropriate process that the suspect influences or tendencies might be said to harm?

Thompson has one clear baseline in view. Summarizing a career's work, he maps that baseline through three principles of legislative ethics: "independence (deciding on the merits), fairness (playing by the rules), and accountability (sustaining public confidence)."¹¹

Assume that in both scenarios, the principles of fairness and accountability are satisfied. How then might the principle of "independence" help us see whether the two tendencies identified in the two scenarios are indeed instances of institutional corruption?

"Independence" for Thompson, at least in the context of legislative ethics, has a specific meaning. Drawing upon a wide range of earlier work, Thompson argues that a legislative body is "independent" to the extent its deliberations are "on the

¹⁰ Id. at 5.

¹¹ Id.

merits.” Who knows what the “public good” is. But whatever it is, a legislative body is to deliberate in light of its view of the public good. It is to use that view to resolve questions that it confronts. It is to rely upon that view to resolve those questions in a way that reflects the merits of one side versus the other.

In the contexts of Thompson’s essays, this understanding is by assertion. But Thompson’s earlier work sustains the heavy burden necessary to defend these assertions. It is a rich, and possibly obvious, conception of deliberative ethics to conceive of the “independence” of a legislature to be a dependence upon what’s right.

But however compelling, this conception of independence feels unsatisfying when used to guide the adjudication between these two hypothetical scenarios. For both of them seem guilty or not, and for the same reason. In both cases, the tendency of the influence is to tempt a legislator towards tracking the particular interest rather than tracking “the merits.” Of course, “the merits” need not necessarily diverge from these particular interests (though if “the merits” in a particular case track one, they are not likely to track the other). But the reasonable soul, unable to peer into the deliberative process of an ordinary legislator, would be justified in believing that it was the power that each represented – rather than a fair reading of “the merits” – that was guiding the legislator’s behavior.

This uncertainty then begs a more fundamental question: is there another conception of “independence” that might more directly resolve these scenarios? Is there a frame that better shows why each is corrupting, or each is not corrupting, or why one is, while the other is not?

Lesterland

Imagine a place called “Lesterland.” In almost every respect, Lesterland looks just like the United States today. It has fifty states. It has a President, and a Congress. It produces insanely great music and film and technology. It is filled with extraordinary people, decent and honest, if a bit clumsy about their diet. And like the United States, there are about 145,000 Lesters in Lesterland. That means, just about .05% of Lesterland is comprised of Lesters.

But Lesterland has an odd rule that governs its democracy. Rather than a single election for selecting its leaders, Lesterland has two elections. In the first election,

only Lesters get to vote.¹² In the second, all citizens (who are over 18, and who register, and in some states, who remember to bring their ID) get to vote. But here's the rub: for a candidate to run in the second election – the “general election” – she must do extremely well in the first election – the “Lester election.” “Do extremely well” does not necessarily mean win. You don't have to end up first in your district in the Lester election to have the right to compete in the general election. But you must have done very well. The vast majority of the winners of the general election also won the Lester election. That fact is not a secret to anyone.

There are at least four things that we could say about democracy in Lesterland.

1) First, as the Supreme Court said of elections in the United States in *Citizens United*, “the people [of Lesterland] have the ultimate influence over elected officials.” Everyone can participate in the ultimate election. Everyone in this sense thus has “ultimate influence” in that election.

But the significance of that “ultimate influence” is also obviously weakened by two other things that we might also say about this democracy. First, it is obvious that this structure of elections creates an incentive: this dependence upon the “Lesters” creates a strong incentive for candidates to bend to the will of the Lesters. That bending can't be too obvious, for a transparent vassal will be less attractive in the general election than a more subtle or camouflaged one. But if a candidate is to do well in the Lester election, she has a strong reason to give the Lesters a reason to like her. That reason could be her better access to wise judgment about “the merits.” Or it could be her better ability to satisfy the particular needs of the Lesters.

2) Second, and equally obviously, there would be a strong incentive in Lesterland not to oppose the system that gives the Lesters this power. Of course it's conceivable that after a Lester election, the selected candidates might conspire to abolish the Lester-election next time around. But that strategy is obviously

¹² Or named “Lester” as of January 1, 1999, the year before “Lesterland” was founded. And to deal with the sad fact that Lester's die, each family with a parent named Lester can qualify one of its children, male or female, as a Lester, with all the privileges that Lesterdom entails. By “directly related,” Lesterland limits the franchise to people named Lester, married to people named Lester, the children (over 18) of people named Lester, and the parents of a person named Lester. Assume on average, the total number of people “directly related” to a Lester is four. So while Lesters make up only .05% of the population of Lesterland, those entitled to vote in the Lester election constitute about .25% of the total population.

dangerous. The safer bet is to simply avoid the issues that might threaten the Lesters.

3) Finally, it is clear that legislators are dependent upon two publics. In the general election, they are dependent upon “the People.” In the Lester election, they are dependent upon “the Lesters.” The significance of that dual dependency can’t be described in the abstract. Suffice it that we can’t say of the legislators in Lesterland that they are “dependent upon the People alone.”

Now using this hypothetical Lesterland, there are three claims about the United States that I want to make. First:

i) The United States is Lesterland.

As in Lesterland, there are two elections in the United States. As in Lesterland, only a tiny fraction of the population gets to participate in both. As in Lesterland, in the second election, the general election, all citizens (over 18, etc.) get to participate. But as in Lesterland, in the first election, the “money election,” only about .05% of the population gets to participate.¹³ And finally, as in Lesterland, to run in the general election, you must do extremely well in the money election. Not necessarily win, but do extremely well. For only those who succeed in persuading a significant enough proportion of the .05% to fund them find themselves in a position to compete effectively.

As in Lesterland, we can also say four things about the democracy of the United States.

First, as the Supreme Court remarked in *Citizens United*, in the United States the people “have the ultimate influence over elected officials.” Everyone participates in the ultimate election. Everyone in this sense thus has “ultimate influence” in that election.

¹³ Admittedly, .05% is an arbitrary estimate, but not far from a fair one. In 2010, .26% of Americans gave more than \$200 in any congressional campaign. .05% gave the maximum amount to any congressional candidate. .01% gave more than \$10,000 in an election cycle. And in the current election, as Politico calculates, “the top 0.07 percent of donors are more valuable than the bottom 86 percent.” See Election 2012: The Myth of the Small Donor, <http://politi.co/SUKLBp>, and Revealed: Why the Pundits are Wrong about Big Money and the 2012 Election, <http://bit.ly/V9Q7cT>

But as in Lesterland, the significance of that “ultimate influence” is obviously weakened by the two other things that we might also say about this democracy. First, it is obvious that this structure of elections creates an incentive: this dependence upon “the Funders” creates a strong incentive for candidates to bend to the will of “the Funders.” That bending can’t be too obvious, for a transparent tool will be less attractive in the general election than a more subtle or camouflaged one. But if a candidate is to do well in “the money election,” she has a strong reason to give “the Funders” a reason to like her. That reason could be her better access to wise judgment about “the merits.” Or it could be her better ability to satisfy the particular needs of “the Funders.”

Second, and just as obvious, there would be strong incentive in this democracy not to oppose the system that gives the Funders this power. Of course it’s conceivable that after an election, the selected candidates might conspire to abolish the power of “the Funders” the next time around. But that strategy is obviously dangerous. The safer bet is to simply avoid the issues that might threaten the power of “the Funders.”

Finally, as in Lesterland, we can observe that in the United States too, legislators are dependent upon two publics: in the general election, they are dependent upon “the People.” In the money election, they are dependent upon “the Funders.” Again, the significance of that dualism can’t be described in the abstract. Suffice it that we can’t say of the legislators in the United States that they are “dependent upon the People alone.”

So that’s the first point: the United States is Lesterland. Here’s the second:

ii) The United States is worse than Lesterland.

In Lesterland, we could imagine that at least some Lesters would adopt an aristocratic attitude about their democracy. As in the United States, we can imagine that the Lesters come from every class. There’s no obvious set of interests that the Lesters could be said to stand for. Thus while there is an incentive among candidates to pander, the opportunities for pandering are weaker. And that weakness could at least conceivably lead a significant proportion of the Lesters to think beyond themselves. “I’ve been given an important role in this democracy,” our modal Lester might think. “Given that role, I should only support candidates who I believe will truly act in the public’s interest.”

But in the United States, unlike Lesterland, the Funders (aka, our Lesters) are not fixed. Instead, the Funders are a shifting coalition of interests who coalesce in a particular election to assure that a particular set of issues gets resolved in one way versus another. Thus in one election, those issues might be related to global warming. In another, they might be related to health care. The point is that the issues change, and thus the population of our Lesters (the Funders) changes. And thus, the opportunity for our Lesters to evolve to embrace a public view is limited. No doubt some will. But the likelihood in the United States is far less than the likelihood in Lesterland. The United States is thus worse than Lesterland.

That point leads to the final claim:

iii) The model of Lesterland demonstrates how the United States is “institutionally corrupt.”

Representatives in the United States, like Representatives in Lesterland, have at least two dependencies. But whatever we can say about Lesterland, it is clear that these two dependencies in the United States conflict. There is no way to view “the Funders” as either representative of “the People” or aligned with the interests of “the People.” Instead, a dependency upon them is different and it conflicts with a dependency upon “the People.”

This conflict is important because it throws into relief one way to understand the “institutional corruption” of our government that complements the approach that Thompson describes. For the Framers were also exercised about “independence.” But in a Jane Austen like manner, they understood “independence” to be a function of the proper dependence. An “independent judiciary,” for example, was not a judiciary free to do whatever it wants. Instead, an “independent judiciary” was a judiciary “dependent upon the law.” Dependence in this sense can be productive, if it binds the incentives of a person or an institution to the right sort of focus, and stanches that person or institution against the wrong sort of focus.

It’s my view that the Framers’ sense of legislative “independence” was also tied to their sense of a proper legislative dependence. *Federalist* 52 speaks of Congress as having a branch “dependent upon the People alone.” The “alone” is quite important, for only by assuring that “the People” are the exclusive dependence can constitution designers ensure that the Congress is responsive to them alone.

But our Congress is not. The current system of funding elections assures that Representatives are dependent upon the tiniest slice of the 1% to fund their elections – the Lesters – as well as upon “the People.” That dual dependency is literally a corruption of the intended dependency. We could call it “dependence corruption.”

This “dependence corruption” is a type of “institutional corruption.” Like institutional corruption, the claim rests upon a “tendency” that evolves within the institution of Congress. A reasonable person recognizing that conflicting dependence would reasonably believe that the conflicting dependence would weaken the effect of the intended dependence. Congress was meant to be “dependent upon the People alone.” Permitting it also to become dependent upon the Funders is certain to produce results that are different from the results it would otherwise produce. Or at least, and again, a reasonable person could so conclude. That difference is the consequence of this corruption.

But obviously, though a subset of the cases of “institutional corruption,” “dependence corruption” is not necessarily exclusive to “institutional corruption.” The most extreme instances of “dependence corruption” are plainly individual: think of a drug addict, selling his vote for access to illegal narcotics. Thus the relationship between these different types of corruption might be drawn like this:

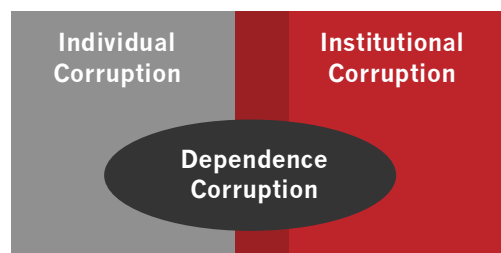


Figure 1

In this diagram, individual corruption is on the left. Institutional corruption is on the right. Because some cases could be both, the two overlap. And then layered across both is “dependence corruption.”

For our purposes here, we can narrow the domain of “dependence corruption” to the subset on the right of the diagram. So understood, “dependence corruption” would be limited to “political gain.” Assuming an intended dependence was

intended for the relevant institution because it tended to promote the institution's interest, "dependence corruption" would concern gain that "in general tend[s] to promote private interests" – or more precisely, the interests of the separate and conflicting dependency.

But what's distinctive about "dependence corruption" is that one can't identify it simply by looking at the behavior of a particular representative in isolation from the rest. "Dependence corruption" is predicated of the system. It is the institution as a whole that has developed a conflicting dependence. And once that conflicting dependence is identified, even perfectly benign behavior within it is part of this corruption.

That's not to deny individual responsibility within such a system. It's just to shift that responsibility from changing individual behavior within the system to the responsibility for changing the system itself. So specifically, the sin of a Congressman within such a system is not that she raises campaign money. It is that she doesn't work to change the corruption that this dependence upon a small set of funders has produced.

So understood, "dependence corruption" complements Thompson's analysis. It is an easy case in a context of many hard cases. Yet Thompson himself has resisted the term "dependence corruption." As he writes,

But improper dependency does not seem either sufficient or necessary for distinguishing institutional from individual corruption. It does not seem sufficient because many instances of improper dependency look very much like familiar individual corruption. A politician may come to depend on receiving a retainer, a special deal on his mortgage or rental housing, or a job for his wife or child. Whether or not he returns the favor, the dependency creates the potential for a quid pro quo exchange. Improper dependency does not seem necessary because other relationships can give rise to institutional corruption. A politician may not depend on the lobbyists he travels or parties with (they may not even contribute to his campaign), but they get greater access and thereby more opportunities for influence than other citizens.¹⁴

¹⁴ Thompson, *Two Concepts*, 12.

Both claims are true. As I describe above, “dependence corruption” overlaps individual and institutional corruption. But that it overlaps individual corruption doesn’t mean it can’t help us see institutional corruption. Likewise, “dependence corruption” is a subset of the domain of “institutional corruption.” That means there are cases of institutional corruption that are not also cases of dependence corruption. But again, that fact doesn’t negate the claim that every instance of dependence corruption touching political gain is an instance of institutional corruption. What is not true, however, is Thompson’s next claim about “dependence corruption.”

More generally, to determine whether a dependency is improper we usually have to refer to the procedures necessary for the institution to fulfill its purposes.

Understanding those procedures and purposes is where the critical work is to be done, and focusing attention there is likely to be more constructive.¹⁵

This is not correct, as Lesterland should demonstrate, because we can see, in at least some cases, instances of “dependence corruption” without knowing anything about the “procedures necessary for the institution to fulfill its purposes.” Or put differently, regardless of those procedures, we should see that a Lesterland-like dynamic renders our Congress “dependence corrupt.”

But then what marks a “Lesterland-like dynamic”? How can we tell? What are the conditions necessary to mark a conflicting dependency?

It is here that the two scenarios that I set out above are most helpful. For as I said, it wasn’t completely clear from Thompson’s perspective how to reckon whether either or both of these “tendencies” were instances of institutional corruption. It may be that both are instances of corruption. It may be that neither is. But it’s not clear how one could be, but the other not. And if we imagine a political culture in which conceptions of the good are deeply and richly plural – yielding an extremely thin conception of the public good on “the merits” – the collinearity of the two is even clearer. If the political culture gives us no clear guidance about the “public good,” then all that’s left for adjudication is power. And from this perspective, the

¹⁵ Id.

“political gain” from more votes seems very much like the “political gain” from money that helps secure more votes.

From the perspective of “dependence corruption,” however, the question about these two hypotheticals is much simpler – even though getting to that simple resolution will require a couple more steps.

To say that a branch of government should be “dependent upon the People alone” is not yet to say anything about the theory of representation that a government should embrace.¹⁶ Instead, what a theory of “dependence corruption” says is that regardless of the theory of representation, permitting a separate dependence to evolve corrupts the design that “the People” were to be the exclusive dependence.

At least, this is the case as long as one assumes that the competing dependence is not itself representative of “the People.” The Framers were aficionados of virtual representation theories. In principle, one could imagine a Lester-like system setting up a dual dependency, but with each plausibly representative of “the People.” Thus, for example, if a democracy first filtered candidates for Congress through a Fishkinesque deliberative poll, it would be possible to view that competing dependence as not yet a conflicting one.¹⁷

But there is no plausible theory under which the Lesters in America are “representative” of “the People.” Not demographically, not ideologically, not experientially, not at all. So the critical finding necessary to support “dependence corruption” is simply that the competing dependence is conflicting.

But how much work must we do to know this? Do we have to demonstrate a gap in attitudes? Political alignment?

In my view, a sufficient test (though not necessarily necessary) is possibility: is it possible for any member of “the People” to also be a Lester? Could anyone, if any so chose?

¹⁶ In particular, exclusive dependence upon the People does not select between a “selection model” of political representation or a “sanctions model.” No doubt, exclusive dependence implies that the people have the power. But they could well be Mansbridgean in their mode of exercising that power. See Jane Mansbridge, A “Selection Model” of Political Representation, 17 *J. of Pol. Phil.* 369 (2009).

¹⁷ See James S. Fishkin, *When The People Speak: Deliberative Democracy and Public Consultation* (Oxford, 2009).

And here the difference between the union scenario and the funding from the business alliance becomes so salient. For the economic reality of America today is that not all Americans could in any sense choose to become one of the relevant “Funders,” for the simple fact that the vast majority of Americans haven’t the economic means to become one of “the Funders.”

Thus from the perspective of dependence corruption, we can see a clear difference between the benefit the union gives, and the benefit the business alliance gives.

The union is giving a benefit that is the common currency of citizenship. Every citizen (of the proper age, etc.) is entitled to that currency. Every citizen is entitled to deploy it.

The business alliance, by contrast, is not giving a benefit from the common currency of citizenship. Its benefit is simply currency. That difference permits the business to participate in creating a dependency that conflicts with the dependency of this common currency. That conflict is the corruption.

And there are more differences, as well.

If these two scenarios were imagined today, then there’s another obvious difference between the two instances of unequal power. It is plausible to imagine “the Funders” qualifying as Lesters in my framework. It is not plausible to imagine union members as Lesters. No doubt, unions have power in some parts of the nation. They may be essential allies in some districts. And hence, in those districts, one might well call them “Lesters.”

But it isn’t even remotely plausible that at the level of the nation as a whole, it is necessary to “do extremely well” with unions to be permitted to run in the general election. Yet that is certainly the case with “the Funders.” There may be a few districts where the support of “the Funders” is toxic. I don’t know of any, but they may well exist. But no one could believe that “the Funders” are as irrelevant as “the Unions” are in setting or conditioning national policy.¹⁸

¹⁸ For a complimentary treatment see Lawrence Lessig, A Reply to Professor Hasen, 126 Harv. L. Rev. 67 (2012).

Finally, nothing in the analysis of “dependence corruption” says that the story couldn’t be reversed. It is certainly possible to imagine a democracy where “the Lesters” are “the Unions.” My only claim is that it is not possible to imagine that as true about this democracy, at this time. In this democracy, it is not difficult to identify the Lesters. It is not difficult to recognize the dependency they produce. It is not difficult to see how that dependence conflicts with a dependence upon “the People alone.” And hence, it is not difficult to see why “institutional corruption” so plainly predicates of this democracy.

CONCLUSION

No one has more effectively shown us the distinctive character of “institutional corruption” than Dennis Thompson. His work powerfully illuminates the nature of this corrupting tendency, and the complexity in identifying and remedying it.

But in this essay, I have offered one more way to see how an institution might be institutionally corrupt. In some cases, that alternative could be easier to analyze. In particular, in a democracy in which the shared conception of the good is thin, and in which the intended dependency of the democratic branch is clear, identifying “institutional corruption” by identifying a conflicting dependency may be simpler than establishing a weakening of “democratic processes.” That’s not to say that the conflicting dependency itself is not a weakening of the democratic processes. It is simply to say that it is easier to prove.

To make this case, however, requires a view not just of the behavior of a particular legislator, but instead, of legislators in general. Such a view must track the pattern of dependency of the system generally. That itself could be more difficult than the method Thompson advances. Sometimes it is easier. And it is my suggestion that, when considering the patterns of dependency that have evolved in the American republic, it is quite easy.



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