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Two Concepts of Corruption

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Abstract

To combat institutional corruption, we need to distinguish it clearly from individual corruption. Individual corruption occurs when an institution or its officials receive a benefit that does not serve the institution and provides a service through relationships external to the institution under conditions that reveal a quid pro quo motive. Institutional corruption occurs when an institution or its officials receive a benefit that is directly useful to performing an institutional purpose, and systematically provides a service to the benefactor under conditions that tend to undermine procedures that support the primary purposes of the institution. Institutional corruption does not receive the attention it deserves partly because it is so closely (and often unavoidably) related to conduct that is part of the job of a responsible official, the perpetrators are often seen as (and are) respectable officials just trying to do their job, and the legal system and public opinion are more comfortable with condemning wrongdoing that has a corrupt motive. Yet institutional corruption, which is usually built into the routines and practices of organizations, is usually more damaging to the institution and society than individual corruption, which in advanced societies typically consists of isolated acts of misconduct with effects limited in time and scope.

Note: This paper is partly based on substantially modified excerpts from Thompson's *Ethics in Congress: From Individual to Institutional Corruption* (Washington: Brookings Institution, 1995). The paper was prepared for discussion in the Safra Center for Ethics at Harvard in October 2010, and revised in July 2013.

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Introduction

The pollution of the public by the private—that is the core of the traditional idea of political corruption.¹ The forms that the pollution was thought to take depended on the type of the regime. In regimes of a more popular cast, such as republics and democracies, the pollution showed itself as illicit private interests. Its agents were greedy individuals, contentious factions, and mass movements that sought to control collective authority for their own purposes.

In modern democracies the private interests may be even more varied, and the public purposes still more contested. Yet this core meaning of corruption remains relevant. We can preserve that meaning by understanding political corruption as a condition in which private interests distort public purposes by influencing the government in disregard of the democratic process. If private interests are subjected to the rigors of a robust democratic process, they may earn a legitimate place on the public agenda, and may be ultimately transformed into public purposes.² But if those interests are promoted in ways that bypass or short-circuit the democratic process, they become agents of corruption.³

¹ See especially Baron de Montesquieu, *De l'Esprit des Lois*, in Roger Caillois, ed., *Montesquieu: Oeuvres Complètes* (Gallimard, 1949-1951), vol. 2, book 11, chap. 6, and more generally, vol. 2, book 8 ("The Corruption of Principle in the Three Governments"), pp. 349-366. For the discussions of Montesquieu and other traditional political theorists' views of corruption, see J. Patrick Dobel, "The Corruption of a State," *American Political Science Review* 72.3 (1978): 958-973; and J. Peter Euben, "Corruption," in Terrence Ball, James Farr and Russell L. Hanson, eds., *Political Innovation and Conceptual Change* (Cambridge University Press, 1989), 220-245.

² It is a mistake, though one with a long tradition, to try to determine in advance whether interests are private or public and create rules that block private interests. For a modern example, see Beth Nolan, "Public Interest, Private Income: Conflicts and Control Limits on the Outside Income of Government Officials," *Northwestern University Law Review*, 87.1 (1992): 73-77. Nolan recognizes that interests can be mixed, but like many writers she does not sufficiently emphasize that their public significance is legitimated only through the political process.

³ The idea that corruption involves bypassing the democratic process is not partial to any particular conception of democracy, or any specific rules and procedures. It is also consistent with a wide variety of definitions of corruption in the social science and reform literature. However, further specification beyond this level of generality becomes controversial. The most important recent contribution (Lawrence Lessig, *Republic, Lost: How Money Corrupts Congress—and a Plan to Stop It* (Twelve, 2011)) does not emphasize the democratic process in the way that I do here. I consider the gross inequality in the campaign finance system that Lessig highlights with his story about Lesterland and the scenario between unions and corporations to be a type of distortion of the process, considered broadly. A more significant (though still relatively minor) difference concerns the question of whether dependency is the central characteristic of institutional corruption. See note 8, below. For a sample of various other approaches, see Michael Johnston, *Public Sector Corruption*, (Sage, 2011); Michael Johnston, *Syndromes of Corruption: Wealth, Power, and Democracy* (Cambridge University Press, 2006); Arnold J. Heidenheimer, Michael Johnston, and Victor T. LeVine, eds., *Political Corruption: A Handbook*, 3rd ed. (Transaction, 2001), 7-14; Susan Rose-Ackerman, *Corruption and Government: Causes, Consequences, and Reform* (Cambridge University Press, 1999); Peter deLeon, *Thinking about Political Corruption* (M. E. Sharpe, 1993); and John G. Peters and Susan Welch, "Political Corruption in America: A Search for Definitions and a Theory," *American Political Science Review* 72.3 (1978): 974-984.

To generalize this understanding of corruption so that it can be applied to other institutions beyond government, we can replace “public purposes” with “institutional purposes,” and “democratic process” with “legitimate institutional procedures.”⁴ As in the case of government, the purposes express the core values of the institution. In medical institutions, for example, the purposes include conducting trustworthy research, providing effective patient care and protecting the public health.⁵

Legitimate institutional procedures are those that are necessary for the institution to serve its primary purposes effectively and credibly.⁶ Institutional procedures should not be considered legitimate just because they happen to be in place even if they are widely accepted. They are legitimate only if they are necessary to protect the institution against interests that would undermine its effectiveness in pursuing its primary purposes, and the confidence of the relevant publics that it is doing so.

Why not describe corruption more directly in terms of institutional purposes—simply as conduct that undermines the effectiveness and confidence necessary to carry out those purposes? First, the purposes of government (and many other public institutions) are multiple and contestable, and therefore cannot be fully specified and endorsed independently of a legitimate collective decision making process. Second, especially with regard to institutional corruption, the procedures are necessary to distinguish conduct that is permitted from that which is corrupt. Whether a campaign contribution is corrupt depends on a complex set of rules that are neither natural nor obvious. A large part of the project of combating institutional corruption consists in formulating rules and procedures that actually

⁴ Instead of “officials” we can refer to officers, executives or professionals in the institution. In addition to “citizens,” we can include clients, patients, students, and other professionals.

⁵ The framework can also be extended to private sector institutions such as corporations (though with somewhat greater modifications of the key terms). In the case of a corporation, the “institutional purpose” refers primarily to the interests of the stakeholders, and in that sense is usually regarded as private. But this institutional purpose may be corrupted by other interests that are still more private relative to the (private) institutional interest, such as the personal gain of the executives. The concept of corruption still preserves the distinction between interests that serve the larger purpose of the institution and interests that undermine that purpose. In effect, the public/private distinction turns into a distinction between the stakeholder interests and extraneous interests. It is of course possible that a corporation can serve its stakeholders’ interest while subverting the public interest. If this subversion is regarded as corruption (viewed as pollution of the public by the private), it should be distinguished from the institutional corruption analyzed here. It is not corruption of the institution but corruption by the institution.

⁶ Conflict of interest policies illustrate these dual aims of corruption control—effectiveness and credibility (or public confidence). For an application in the medical field, see Dennis Thompson, “The Challenge of Conflict of Interest in Medicine,” *Zeitschrift fuer Evidenz, Fortbildung und Qualitaet im Gesundheitswesen*, 103 (2009): 136-140.

determine what is to count as corruption, not merely preventing conduct that is already known to be corrupt. In this sense, institutional corruption is politically constructed.

The procedures in many public or quasi-public institutions must satisfy some of the same requirements we impose on government, such as transparency and accountability, but the degree and extent of the requirements vary with the purposes of the institution. For example, in medical institutions transparency may be limited in order to protect patient confidentiality; accountability may be owed to other professionals and the governing board rather than directly to the public. Medical institutions, like others that rely on professional expertise (including universities), are not properly governed by a full-blown democratic process, but insofar as they can be considered to be public institutions, they should be at least indirectly accountable to public authorities.

In what follows, I focus mostly on political institutions in order to keep the exposition from becoming unwieldy. But the basic framework and much of the analysis can be applied to other institutions if the terms are generalized along the lines just suggested.

Distorting the Democratic Process

We can make progress in developing an account of political corruption for modern society if we distinguish two ways in which the democratic process can be bypassed or short-circuited by private interests. The ways of distorting the process suggest two different concepts of corruption.

The first and more familiar concept is individual corruption: personal gain or benefit by a public official in exchange for promoting private interests. The second—institutional corruption—is common enough in practice but is often run together with the first, and is therefore often neglected. It involves political gain or benefit by a public official under conditions that in general tend to promote private interests. In both cases, the corruption occurs not simply because private interests are promoted, but because they are promoted without due regard for the rules of a legitimate process. In both cases, private interests influence the public purposes improperly, but what makes the influence improper differs in each case.

When an official takes a bribe in return for a political favor, the personal benefit is not part of the salary, and providing the favor is not part of the official's job description. The exchange (and whatever influence it may have) serves no valid institutional purpose. This is straightforward individual corruption. But when a legislator accepts a campaign contribution, even while doing a favor for the contributor, the political benefit (and any influence it may have) may or may not be corrupt. 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 (as indicated by the violation of legitimate procedures), and thereby frustrates the primary purposes of the institution.⁷

Recognizing institutional corruption is not always easy, because it is so closely related to conduct that is a perfectly acceptable part of political life. The individual official's contribution to the corruption is filtered through institutional practices that are otherwise legitimate and may even be duties of office. Legislators are required to solicit campaign contributions, and they are expected to help constituents with their problems with government. Executives may appoint officials who share their political ideology or who have supported their campaigns. Judges who stand for election have to raise funds and make campaign statements. Judges who are appointed may need to attend conferences and other educational forums often sponsored by private groups with an interest in cases that the judges may have to decide.

These and other practices that are connected with performing the duties of office also create the potential for abuse. If we come to believe that the risk of abuse is

⁷ "Improper dependency" certainly characterizes some types of corrupting influences and captures an important part of what is wrong with corruption (see Lawrence Lessig's works, "So Damn Obvious: Two Conceptions of 'Corruption'," paper presented to the Edmond J. Safra Lab, Cambridge, Massachusetts, September 2010; "Democracy After Citizens United," *Boston Review*, September/October 2010; and *Republic, Lost*). Indeed, one of the three principles of legislative ethics I present below affirms the value of independence. 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. 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.

great, we are justified in restricting or prohibiting what would otherwise be legitimate practices. We may decide that judges should not be chosen in elections at all. Or that we should much more strictly limit contributions, provided we could establish an effective system of public financing of campaigns.

It is important to notice that a charge of institutional corruption does not mean that only the institution is at fault. (This is a common misapplication of the idea, as will be indicated below.) We should recognize that it is still individuals who are the agents of institutional corruption, and individuals who are to be held accountable for it. But their actions implicate the institution in a way that the actions of the agents of individual corruption do not. In this respect, the idea of institutional corruption joins the structural concerns of traditional political theory with the individualist modes of modern political science.⁸

Institutional corruption can be distinguished systematically from individual corruption by examining the three key elements of the relationship between officials and citizens: the benefit to a public official, the service to a private citizen, and the improper connection between the benefit and the service.⁹ Corruption is institutional insofar as the benefit an official receives is political rather than personal, the service the official provides is systematic rather than episodic, and the connection between the benefit and the service manifests a tendency that

⁸ This approach also raises the difficult problem of the relation of individual to institutional morality, specifically the question of “how conclusions about institutions lead to conclusions about what individuals ought or ought not to do.” T. M. Scanlon, “Individual Morality and the Morality of Institutions” Edmond J. Safra Center, 2010-2011 Lecture Series, Cambridge, Massachusetts, September 23, 2010. <http://link.brightcove.com/services/player/bcpid59085832001?bclid=58806604001&bctid=636440606001>

⁹ Institutional corruption, like individual corruption, assumes that there is a substantial connection to private interests. Abuses of office (official misfeasance, contempt of congress, many constitutional transgressions) that are not in the service of outside interests or values do not count as corruption in the traditional (and most familiar) sense. The essential feature of pollution of the public by the private is missing. Thus, in the case of the Keating Five (whose misadventures are recounted in chapter 2 of my book *Ethics in Congress: From Individual to Institutional Corruption*, (Brookings Institution Press, 1995)), the fact that the five senators were promoting the private interests of Charles Keating is a necessary condition for bringing their conduct under the concept of corruption in the first place. Their acceptance of campaign contributions and their use of office to provide services is part of what makes it institutional.

It would of course be possible to broaden the concept of corruption to encompass kinds of institutional failure that do not involve the influence of private interests. (Lessig’s example of a Congress that violates judicial independence illustrates this broader concept. See “So Damn Obvious”). I resist adopting this broader concept because doing so risks diverting attention from the central problems of institutional corruption as understood here, especially the influence of money from private interests. Using the broader concept expands the scope of inquiry too far. It brings in a wide and diverse range of institutional dysfunctions (such as problems involving separation of powers, bureaucratic politics, executive privilege, among others). Under the influence of such an expansive concept, we are less likely to target criticism and tailor reform to the specific and distinctive features of each kind of institutional failure. What is needed to protect the judiciary from Congress is quite different from what is required to protect Congress from plutocracy.

disregards the democratic process. To generalize the concept: institutional corruption occurs when an institution or its agent receives a benefit that is directly useful to performing an institutional function, and systematically provides a service to the benefactor under conditions that tend to undermine legitimate procedures of the institution.

Benefit by Officials

When a public official accepts a bribe, it is not compensation for doing the job. Neither are gifts, foreign trips, sexual favors, or employment for the official's family members. Whether proper or not, these are all instances of personal gain or benefit. They 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. Some personal gain is of course perfectly acceptable: any that falls within the limits of conventional or reasonable standards of compensation. Officials who go beyond those limits, who use public office to enrich themselves or their families, raise suspicions and invite accusations of ethical if not criminal transgression. Improper personal gain typically signals the presence of individual corruption.

Contrast this kind of gain with the political kind that characterizes institutional corruption. Political gain 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. When legislators accept a campaign contribution, even if they do a favor for the contributor, the political benefit may or may not be corrupt. Whether it is corrupt depends in part on whether it undermines or promotes the legislative process or the democratic process more generally. Unlike personal gain, the more (fairly gained) political gain the better. As citizens, we not only tolerate legitimate political gain; we encourage it.

The distinction is obscured by people who are in the grip of a doctrine that reduces all action to self-interest, and also by political cynics who believe that all politicians are motivated only by selfish interests. The formerly corrupt who have become anti-corruption reformers are especially prone to denying any difference between personal and political gain. Here is Jack Abramoff, the former lobbyist convicted of conspiracy, fraud and tax evasion related to his political activities, responding to the suggestion that there might be a difference between campaign contributions

and personal bribes: “Well, no . . . the fact is, these members are not asking for contributions to something they’re disinterested in . . . very few are altruistically raising money for, you know, the Goodwill Industries out there. They’re raising money for things that they are involved in. So it’s not directly into their bank account, but it might as well be, really.”¹⁰

The distinction between personal and institutional gain is important because in the American political system (and any democracy based on elections) the pursuit of political profit is a necessary element in the structure of incentives in a way that the pursuit of personal profit is not. The system depends on politicians’ seeking political advantage: we count on their wanting to be elected or reelected. Among the political advantages they must seek are campaign contributions. Public financing in any form that is likely to be adopted would not completely eliminate the need to raise money. It is necessary for securing other politically appropriate advantages, such as endorsements, organizational support, leadership positions, legislative victories, and even some patronage appointments. As long as politicians acquire those advantages in ways that do not undermine the democratic process, they are simply doing their job.

There is another reason the distinction between personal and institutional gain is so important. It affects what reforms we choose to focus on. With personal gain like bribes, the aim is simply to prevent the gain, to stop the flow of cash as much as we can. But in the case of institutional gains, we should want not to stop the flow, but to just change its sources, and check its abuses. We should try to find different ways of providing the support, or better ways to control the way the gain is used. It is not enough to rail against the influence of money in politics or research. It is also necessary to look for alternative ways to provide for the institution’s needs.

When the pursuit of political gain undermines the very process the money is supposed to support, politicians not only fail to do their job, they disgrace it. They betray the public trust in a more insidious way than when they use their office for personal gain, which is after all incidental to their role. When they pursue political gain improperly, they betray their duty while doing it.

¹⁰ Jack Abramoff (interviewed by Lawrence Lessig), “In the Dock: Jack Abramoff,” Edmond J. Safra Center for Ethics 2011-2012 Lecture Series, Cambridge, Massachusetts, December 2011. <http://link.brightcove.com/services/player/bcpid59085832001?bclid=58806604001&bctid=1323738976001>

Service to Citizens

In both individual and institutional corruption, individuals or groups receive a service they believe they would not have received had they not given something of value to officials. The service may even be deserved, as when an inspector is bribed to approve a building that actually meets requisite standards, or when a congressman accepts a contribution intended to influence him to vote in favor of a bill that happens to be meritorious.¹¹

The distinguishing feature of institutional corruption with respect to service is that it is systematic in this sense: the service is provided through a persistent pattern of relationships, rather than in episodic or one-time interactions. (The particular relationships do not themselves have to be ongoing: a recurrent set of one-time interactions by the same politician with different recipients could create a similar pattern.)

The systematic element is part of what makes institutional corruption so destructive. A one-time favor may produce serious injustice. In some cases, as in selling offices, it could corrupt the institution. But as long as providing the service is isolated and limited to particular individuals, it is not likely to significantly undermine the procedures or purposes of the institution. It is a breach that can be checked simply by catching the culprits. Once apprehended and removed, they leave little trace. Get rid of the rotten apples, and the barrel is wholesome again.

But when the service is provided in a continuing relationship or regular practice, especially when the recipient itself is an institution, habits and routines are established, expectations generated, and a culture of influence developed. This makes it much harder to stop the corruption, or even to see the practices as corrupt. When the recipients are organized as lobbyists (or more generally when they are financially dependent on powerful economic interests in society), the corruption becomes embedded in the routines of government.

¹¹ In cases of extortion, the member denies or threatens to deny a citizen a service that the citizen often deserves. For an analysis showing how the offenses of bribery and extortion overlap, see James Lindgren, "The Elusive Distinction between Bribery and Extortion: From the Common Law to the Hobbs Act," *UCLA Law Review* 35.5 (1988): 815-909. Many campaign contributions probably should be regarded more like extortion than bribery: contributors often complain that they give only because of the implicit threat that a legislator might favor their rivals who are contributing, or might otherwise act against their special interests.

The Connection between the Benefit and the Service

In individual corruption, the link between the benefit and the service is a motive in the mind of the official or the citizen, or both. To establish the 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. The paradigm is bribery.

In institutional corruption, the link is an institutional tendency. 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. When legislators routinely combine fundraising and constituent service (for example, using the same staff legislators to perform both), they act in circumstances that give rise to institutional corruption. Similarly, when they travel with lobbyists, providing easy and routine access denied to ordinary citizens, they are likely to be participating in institutional corruption.

There are many different ways in which the connection—the institutional tendencies—can damage the legislature and the democratic process. A chief task of legal and ethical regulation is to identify the principles and the accompanying procedures that discourage such tendencies. The most general principle (which applies to both individual and institutional corruption) is that officials should make decisions on the basis of considerations that are relevant to promoting the purposes of the institution. Or to put it negatively, in making decisions officials should not give decisive weight to considerations that are less relevant, or not relevant at all, to promoting those purposes.

In the case of Congress, I have proposed three principles of legislative ethics which could guide the regulation of institutional corruption: independence (deciding on the merits), fairness (playing by the rules), and accountability (sustaining public confidence).¹² Together, the principles imply that a connection is more likely to generate institutional corruption the less closely the contribution is connected to the merits of conduct it is intended to influence, the less fairly distributed the services are, and the less accessible the connection is to the public.

¹² *Ethics in Congress*, 19-24.

These principles (and others like them) can be important guides in regulation but they are obviously not sufficient. They must be supplemented by specific rules and procedures. These will vary depending on the institution, because they must be tailored to the particular practices and structures of the enterprise. For example, what should be done about a conflict of interest in politics may differ from what should be done in medicine: campaign contributions probably cannot be completely prohibited, while drug company gifts to medical students and teachers can and should be. But the rationale for regulating conflicts in both cases is similar: to protect the processes and purposes that are integral to the core mission of the institution in question.

In the case of institutional corruption, the protection must reach beyond preventing decisions that are actually motivated by inappropriate considerations. Even when legislators do not knowingly provide a service because of a benefit, their actions may create other connections between the benefit and service that cause institutional damage. The appearance of impropriety displays this kind of connection. So does the special access gained by corporations and lobbyists who provide legislators with travel and entertainment. It is not the motives of legislators but the cumulative impact, the patterns of influence in the legislature or the government more generally, that constitute the problematic connection.

In both individual and institutional corruption, the connection between the benefit and service may take the form of improper influence; and in both, certain institutional conditions may be relevant to showing that the influence is improper. But in the case of institutional corruption, the fact that an official acts under conditions that tend to create improper influence is sufficient to establish corruption, whatever the official's motive. A legislator who solicits contributions from a lobbyist while discussing legislation in which the lobbyist is interested is engaging in institutional corruption, whatever the legislator or the lobbyist intend. Action under these conditions is not merely evidence of corruption, it constitutes the corruption. That is why violating conflict of interest rules is corrupt even in the absence of a corrupt motive or any other corrupt act.

Furthermore, a legislator who does favors for contributors without regard to the reasonable reactions of the public engages in institutional corruption, whether or not the legislator has succumbed to improper influence. In the circumstances of modern government, citizens must judge their representative at a distance, and

they are justified in believing that contributors are improperly influencing a representative who acts without due attention to public perceptions. The belief itself is likely to lessen confidence in government, and may encourage further individual and institutional corruption. The circumstances to which institutional corruption refers include those conditions under which citizens judge (assessing officials at a distance, for example), as well as those under which officials act (combining fundraising with constituent service).

This way of understanding the connection between benefit and service has an implication that might at first seem puzzling. The implication is that in some situations there is no significant difference in the type of connection that exists between personal gain and service and the type that exists between political gain and service. It does not make any difference, as far as the *connection* is concerned, whether a legislator receives a valuable gift for personal use or a large contribution for a political campaign, if they both come from groups for whom the legislator routinely does big favors. The same kind of institutional conditions justifies a finding of improper influence in either case. Thus, there are instances in which the gain is personal but the connection is institutional. In such cases, is the corruption individual or institutional? The answer is that it is both. The element of gain is characteristic of individual corruption, while the institutional tendency is typical of institutional corruption.

That a single act can simultaneously exhibit elements of both individual and institutional corruption does not undercut the importance of the distinction between them. On the contrary, it makes the distinction all the more useful. Because corruption consists of more than one element, any adequate distinction between kinds of corruption should allow for impure cases. A purely individual instance occurs when the benefit is personal, the service episodic, and the connection based on an individual motive. In purely institutional corruption the benefit is political, the service systematic, and the connection based on institutional tendencies. Impure examples combine elements of both kinds of corruption. A case is impure when, for example, the benefit is political and the service systematic, but the connection is based on an individual motive. Even in such a situation, however, the transgression could be said to be more institutional than individual because two of its three elements are institutional.

To give institutional corruption its due, we need to move beyond the focus on individual corruption that has preoccupied social scientists, political reformers, and ethics committees, and attend to the institutional corruption they have neglected. We have to turn from the stark land of bribery, extortion, and simple personal gain and enter into the shadowy world of implicit understandings, ambiguous favors, and political advantage.

The Interaction between Individual and Institutional Corruption

According to that venerable authority on corruption, George Washington Plunkitt, dishonest graft consists in the “blackmailin’ [of] gamblers, saloonkeepers, disorderly people.”¹³ Plunkitt did not approve of this and other familiar forms of extortion and bribery, but mainly because no one makes big fortunes that way. Honest graft was a different matter, however. Plunkitt saw nothing wrong with using inside information to make a personal profit on a sale of land to the city. “I might sum up the whole thing by sayin’: ‘I seen my opportunities and took ‘em.’” An authoritative political dictionary assures us that honest graft is “no longer considered permissible.”¹⁴ Certainly the conduct that Plunkitt commended would be illegal at any level of government today. But the essential distinction between honest graft and dishonest graft, redefined for modern sensibilities, is alive and well. It survives as a distinction between legal and illegal corruption, embodied in the difference between a campaign contribution and an outright bribe. Taking money from wealthy contributors who expect a legislator to use his power for their service looks a lot like accepting a bribe, and may have much the same effect. That is why some critics of the American system of campaign finance regard it as a form of corruption. But unlike bribery, the practice of accepting contributions and doing

¹³ “Everybody is talkin’ these days about ... graft, but nobody thinks of drawin’ the distinction between honest graft and dishonest graft. There’s all the difference in the world between the two.” William L. Riordan, *Plunkitt of Tammany Hall* (E. P. Dutton, 1963), 3.

¹⁴ William Safire, *Safire’s New Political Dictionary* (Random House, 1993), 334. The author of an informative journalistic account of campaign finance acknowledges his debt to William Riordan’s chronicle of Plunkitt’s “political philosophy”: Brooks Jackson, *Honest Graft: Big Money and the American Political Process* (Knopf, 1988), 322. In his modernization of Plunkitt, James Q. Wilson takes a more tolerant view of honest graft, which in his view includes some personal as well as political gain. See Wilson’s “Corruption Is Not Always Scandalous,” in John A. Gardiner and David J. Olson, eds., *Theft of the City: Readings on Corruption in Urban America* (Indiana University Press, 1974), 29-32.

favors is an accepted, even cherished, part of the American political system. Politicians and their supporters see their opportunities and take them.

In this way, the customs of campaign finance and constituent service are ripe for transmuting into habits of institutional corruption. They are part of the job description of a politician in the American political system; yet *under certain conditions* they constitute corruption. (Specifying what those conditions are is a primary task of regulation and reform.) Although the customs of campaign and legislative life may be morally no better—and are sometimes worse—than forms of individual corruption, they so closely resemble practices that are an integral part of legitimate political life that we are reluctant to criticize politicians who follow them. The honest graft of Plunkitt’s day has become the institutional corruption of ours.

The interaction between individual and institutional corruption gives rise to a phenomenon that may be called “corruption conversion,” a tendency of agents to try to turn each type of corruption into the other. Violations of one tend to be assimilated to the other, and vice versa. In both cases, the conversion leads to overlooking or obscuring the significance of institutional corruption. This is clear enough in the first case—the tendency to individualize misconduct. The charges are brought against the few “bad apples” who misbehaved, even if the conduct in less egregious form is widespread and cultivated by the institution. To the extent that the accusers succeed in this individualizing strategy, the wrongdoing is contained, and the institution and its other officials are exonerated.

The second tendency—to institutionalize misconduct—might seem to be the opposite of individualizing it. But institutionalizing misconduct has the same effect of discounting the importance of institutional corruption. Only its agents are different: accused officials and their defenders are the ones typically disposed to emphasize the institutional aspects of alleged misconduct. Either they try to excuse the conduct as an institutional fault (it is not so bad because most of their colleagues do it) or they try to justify the conduct as an institutional privilege (it is not wrong at all because their colleagues endorse it). To the extent that the accused officials are successful in their defense, they manage to show not only that their own conduct but also the institutional practices in question are less corrupt than they seemed at first. Both of these tendencies of conversion thus reinforce the belief that institutional corruption is not as serious a wrong as individual corruption.

Yet the harm that institutional corruption causes to the democratic process is often greater than that caused by individual corruption. Intertwined with the duties of office, institutional corruption by its nature strikes at the core of the institution, threatening its central purposes. It is also more systematic and more pervasive than individual corruption, which typically consists of isolated acts of misconduct with effects limited in time and scope.

Even reformers who recognize that institutional corruption is more serious fall prey to a variation of the tendency to institutionalize misconduct. Consider this comment by Charles “Buddy” Roemer, a former Congressman and Governor, speaking in the Edmond J. Safra Center lectures series, “It’s the system that’s corrupt. It’s the system. And members are slave to it. . . . People within the system can’t imagine the system functioning any other way.”¹⁵

One of the great advantages of the idea of institutional corruption is that it directs our attention to the whole institution, and to the system in which the institution operates. It tells us to look for patterns and interconnected effects, and therefore to look for reforms that change structures and incentives rather than increase punishments and denunciations of individuals. But Roemer’s comment illustrates how this advantage can be pressed too far. It too often leads to the conclusion that the problem is *only* the system. No individual is to blame, or—what comes to the same thing—every individual is to blame. The implication is that everyone in the system is corrupt, or at least too compromised to do anything about the institutional corruption.

But just “blaming the system” lets too many individuals in the system off the moral hook. It ignores the need to pin some responsibility for making changes (or failing to make changes) on some people in the institution. And it neglects the possibilities for making less radical but important reforms within the system. There can be degrees of institutional corruption, and degrees of individual responsibility for it, even within the system. There are better and worse ways of working inside a corrupt institution.

¹⁵ Charles “Buddy” Roemer, “Fixing Congress: A Republican View,” Edmond J. Safra Center for Ethics 2010-2011 Lecture Series, Cambridge, Massachusetts, March 2011.
<http://link.brightcove.com/services/player/bcpid59085832001?bclid=58806604001&bctid=870620966001>

The Neglect of Institutional Corruption

Institutional corruption is not new, but it is newly prospering. It thrives in a political world where private greed mixes insidiously with the public good, where the difference between serving all citizens and serving supporters blurs, where public officials can evade responsibility for institutional failure. In the United States, the executive branch has provided fertile territory for this kind of corruption. Many of the major government scandals of recent years have involved a large measure of institutional corruption—most notably, the failure of regulatory agencies in the financial crisis and the Gulf oil spill, and the improper awarding of contracts in the Iraq war to corporations such as Blackwater and Haliburton. Institutional corruption infected the corporations themselves. In cases such as those involving Enron and British Petroleum, the executives failed to protect the processes and purposes of their own institutions (quite apart from any concern about the public interest). Even those executives who were well motivated still failed to ensure that procedures (such as oversight mechanisms) were in place to discourage corruption, and failed to act in face of signs that corruption was occurring.¹⁶

But it is in legislatures, especially the U.S. Congress, that the problem has become most perplexing, because the conditions that nourish institutional corruption are built into the very role of the representatives.¹⁷ To do their job, legislators must seek the support of private interests, provide service for constituents on whom they depend for campaign contributions, and defend their record to voters who care more about what they have done for the district or state than what they have done for Congress or the country.

These demands conspire with the growing complexity of the legislative environment to promote institutional corruption. As the job of the legislator becomes more complicated, opportunities for—and suspicions of—institutional corruption multiply. Acting from perfectly proper motives and simply trying to do their job, legislators increasingly find themselves in ethical difficulties. Sometimes they are unfairly accused, sometimes unfairly excused. In the mists of ambiguity that

¹⁶ Dennis F. Thompson, *Restoring Responsibility* (Cambridge University Press, 2005), 245-266.

¹⁷ Members of parliaments in Europe and the U.K. do not depend on campaign contributions in the same way or to the same extent. But although they are not subject to “improper dependency,” they may still provide access and other advantages to private interests, and therefore participate in institutional corruption. (This is another reason not to base the analysis of institutional corruption entirely on the idea of dependency.)

surround judgments about institutional corruption, some critics are too eager to make charges, some colleagues too ready to make excuses. Both take advantage of the gray areas of ethics, to the disadvantage of the integrity of the institution and ultimately the democratic process.

Despite its growing importance, institutional corruption has not received the attention it deserves. There are several reasons for this neglect. First, because it is so closely related to conduct that is part of the job of the modern representative, legislators take institutional corruption less seriously than its harms warrant. Internal monitors such as ethics committees are more comfortable condemning colleagues for isolated and intentional wrongs. That kind of misconduct is less likely to raise questions about the institutional practices in which colleagues themselves may also participate.

To some extent this hesitancy is understandable. An overly zealous campaign against institutional corruption could have a chilling effect on many perfectly legitimate practices that promote healthy political competition: making deals to win political support, helping citizens fight bureaucratic abuses, taking stands against the party or the chamber leadership. Yet it is precisely the danger of this chilling effect that should lead officials to pay more attention to institutional corruption, and to define its boundaries more carefully.

A curious convergence of defenses and criticisms of institutional corruption is a second source of its neglect. The claim that other politicians do what the accused did, though invoked for different purposes by their critics and defenders, leads to the same conclusion: there is nothing to be done about this kind of conduct. That it is so pervasive must mean either that it is excusable, perhaps even justifiable, or that it results from deep structural flaws in the system for which no individual is responsible. (Recall Roemer's comment.) Despite the different attitudes toward the conduct (one sees healthy competition while the other sees debilitating corruption), both defenders and critics encourage the same undifferentiated approach toward it. Because from both perspectives it is—ethically speaking—all the same, there is no point in trying to devise ethical standards and institutional reforms that would discriminate among the individual actions that produce the conduct.

Another reason that institutional corruption does not get the attention it deserves is the dominance of the criminal law model in the process of holding officials

accountable. Despite the repeated statements by ethics committees and testimony by others emphasizing the differences between ethical standards and criminal laws, even a senator as thoughtful as Richard Lugar can still propose that ethics charges against members of Congress should be handled by prosecutors and the courts. Especially in the U.S. government that is heavily populated by lawyers and a political culture deeply imbued with legalism, the pressure to force all cases into a criminal mold is almost irresistible. But the requirements of a criminal process—the need to find guilty minds, corrupt motives, proof beyond a reasonable doubt—militate against discovering, let alone condemning, corruption that takes the institutional form. Furthermore, the problem that needs to be addressed is not only the individual case, but also the institutional context, which is likely to require political action and structural reform.

Yet another source of the neglect of institutional corruption is public opinion itself. The complexity of institutional corruption does not make for the kind of stories that the press or the public savor. In reporting on government, the media concentrate more on the drama of personal scandal than the analysis of institutional practices. Citizens naturally attribute the problem of corruption to failures of individual officials rather than to any defects of the political system. The more closely misconduct fits the model of individual corruption, the worse most people think it is.

Some may say that this is the bright side of the neglect of institutional corruption. If citizens ignore institutional corruption, its growing prevalence cannot directly undermine public confidence in government.¹⁸ That might seem an ironic but happy consequence for political ethics, because one of its aims is to maintain public confidence. Indeed, for precisely this reason friends of democracy might even be tempted to urge that citizens and the press remain focused on individual corruption. Many democratic governments are already in disrepute, and they hardly need to give citizens yet another reason to distrust their officials.

¹⁸ A similar point is sometimes made about conflicts of interest in medical research. Studies are cited that show that patients do not decline to participate in clinical trials or seek another physician when informed that their physician has a conflict of interest. See, Institute of Medicine, Committee on Conflict of Interest in Medical Research, Education and Practice, Bernard Lo and Marilyn J. Field, eds., *Conflict of Interest in Medical Research, Education and Practice* (National Academies Press, 2009), 77-78 and 368-369. But here as in politics, we should be concerned not only by the loss of confidence that patients or constituents may experience, but also about the distrust on the part of opinion leaders and other influential figures who in the long term have a substantial effect on the availability of support the institutions need to flourish.

This temptation should be resisted. It represents a shortsighted view of what is necessary to maintain public confidence in a democracy. The kind of confidence that political ethics seeks to create is founded on accurate information and understanding of the conduct of officials and the practices of government. The public will not ignore the effects of institutional corruption, but will simply view them in a different and ultimately more destructive light. The best hope for sustaining public confidence is to encourage citizens as well as public officials to develop a better informed and more discriminating understanding of the nature of corruption, institutional as well as individual.



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