FOREWORD

"Institutional Corruption" Defined

Lawrence Lessig

Kindergarten ethics sees the world in black and white. There are good people. There are bad people. Good comes from the former, bad from the latter.

But to grow up is to recognize that such simple links simply do not hold. There is bad produced by bad souls – there are people who forge data or who lie on grant applications. But not all bad comes from the bad acts of bad souls. Indeed, sometimes perfectly decent souls intending the very best for all nonetheless produce harm. How a society or legal system reckons and avoids such harm is the difficult work of any system of institutional ethics.

The field of "institutional corruption" was launched to help ethics grow up. As ethicists, we needed to think about the ways in which systems of incentives, or economies of influence, might advance or deter a collective objective. Or the ways in which a person with the very best intentions might behave within a system that nonetheless defeats what that person understands the institution's goal to be.

One metaphor for this type of corruption is the idea of magnetic deviation. Think of a compass whose arrow is pointing towards magnetic north, then imagine a magnet drawn close to the compass. The magnet draws the arrow away from the direction in which it was designed to point.

That deviation in a literal sense is a kind of corruption. And if we translate that sense of corruption to institutions, a working definition of "institutional corruption" might be this:

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Institutional corruption is manifest when there is a systemic and strategic influence which is legal, or even currently ethical, that undermines the institution's effectiveness by diverting it from its purpose or weakening its ability to achieve its purpose, including, to the extent relevant to its purpose, weakening either the public's trust in that institution or the institution's inherent trustworthiness.

There are a number of subtleties in this definition that it is useful to highlight.

- **"systemic and strategic influence":** There are plenty of influences that weaken an institution's effectiveness or performance. Laziness, for example. But we are not interested in every source of inefficiency. Our focus is upon a subset of those inefficiencies: influences that are systematic – meaning regular and predictable – and strategic – meaning used by others to achieve the deviation identified. The most common of such influences is money, but that is not the only one. Ideology within a judiciary could be a form of institutional corruption, even without money changing hands.
- **"which is legal, or even currently ethical":** The aim is to distinguish institutional corruption from other more familiar forms of corruption. This definition therefore excludes those more familiar forms. And "currently" signals that, as the institution is currently regulated, the influence may well be permitted, but that recognition of this kind of corruption might bring about a change in regulation.
- **"undermines the institution's effectiveness":** The definition is consequentialist: the touchstone of institutional corruption is an effect that the corrupt behaviors have.

- **"by diverting it from its purpose":** One possible consequence of institutional corruption is that the institution is incapable of achieving its purpose. But the definition does not purport to specify the institution's purpose or even to presume that any particular institution has a purpose. If an institution does not have a purpose, then it cannot be corrupted in this sense. If it does, then corruption is manifested relative to that purpose.
- **"or weakening its ability to achieve its purpose":** This specifies a weaker type of deviation by which the influence makes it more difficult for the institution to achieve its purpose. This, in turn, suggests that the institution might sometimes deviate from its purpose, due to the corrupting influence, and sometimes not. Consider again a judiciary that had been corrupted by ideology: many cases will not involve ideological questions and for those, there would be no deviation. But for cases that do involve ideology, there would be deviation relative to the ideals of a judiciary.
- **"including, to the extent relevant to its purpose":** Some cases of institutional corruption will involve the public's trust in an institution. This part of the definition is therefore technically redundant, but is provided to guide a research program to focus explicitly on ways in which the trust in – or trustworthiness of – an institution is reckoned.
- **"weakening the public's trust":** Some institutions, such as the institution of public health, require that the public trust its recommendations. Influences that make it more difficult to trust the recommendations of the institution are therefore corruptions of it.
- **"or the institution's inherent trustworthiness":** Trustworthiness points to the independent indicia of trust in an institution, which operate to give people reason to trust it. Institutional corruption can operate on these, too.

There are also a few features of the definition as a whole that it is useful to identify explicitly.

First, the definition is institution-agnostic: one could as well describe the institutional corruption of the Church as of the Mafia. The definition itself doesn't purport to say which corruption is worse, even though ordinary moral notions would suggest that the corruption of the Church is a bad thing while the corruption of the Mafia is not.

Second, the definition does not purport to make an "overall" judgment: to say that an influence corrupts an institution does not on its own say whether that influence should be stopped or regulated. First, the benefits of such "corruption" could well outweigh the costs. Similarly, the costs of reforming such "corruption" could outweigh the benefits. The definition does not purport to resolve whether either condition is true and, in either case, a consequentialist would see little reason to intervene.

Third, though an influence may "corrupt" an institution, that corruption may well serve a legitimate end. The *Washington Post* "corrupted" the Nixon presidency. That is, the newspaper's reporting weakened the effectiveness of that administration and undermined the public's trust in it. But few (save perhaps Nixon) would condemn such a corruption. It was fully justified by the larger ends of democracy.

These examples highlight a repeated reservation about using the term "corruption" to describe the deviation, or misaligned incentives, that we are focused upon: If it's not obvious that an influence identified as corrupting should be stopped, or should even be condemned, why deem it "corrupt"? Why not reserve the term "corruption" for unambiguously wrong influences by building into the definition the normative conditions that would distinguish bad corruption from good corruption?

But this returns us to the point that opened this essay. While the field of ethics helps arbitrate between good and bad, it does not follow that the analytical tools we use must embed that normative judgment. Demand and supply curves help explain criminal as well as ethical behavior. Nothing in ethics should ban

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a tool merely because it does not try to separate good demand or supply from bad.

Keeping a broader focus, moreover, permits the development of a more robust analysis. Perhaps there is something to learn about the corruption of auditing by understanding better the corruption of the Mafia. There is no guarantee of such a benefit, but in my view, the possibility should be kept open. If we are successful, then the tools we develop will make it easier to identify and remedy strategic influences intended to deflect an institution from its objective. And I am quite confident that those tools will be used where the corruption at issue is the sort a decent society would want to end. But developing the necessary analytic tools to identify "institutional corruption" does not require us to limit the population of instances of "corruption" to that subset we want to remedy. The analytic work is distinct from the normative work. My aim here is the former.

The essays collected in this volume are a first contribution applying this methodology to the pharmaceutical industry. Every author in this collection writes from the perspective of institutional corruption. Not every author accepts the definition that I have offered here, or at least, not completely. But a field does not begin with a definition. It begins with examples and with analysis of those examples. And the collection offered here is a rich and valuable intervention into a field that is increasingly the focus of regulators and the public.

My hope is that this collection might inspire a similar examination elsewhere. For however familiar are the views of some that the pharmaceutical industry's influence on medical practice and public health is an example of institutional corruption, I am convinced there are many other examples even more significant to the public good. Seeing the dynamic of institutional corruption in both a context familiar to the reader as well as unfamiliar is essential to understanding it completely. It is also essential to developing a full range of useful remedies wherever institutional corruption is encountered.