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Strengthening the Theory of Institutional Corruptions

Broadening, Clarifying, and Measuring

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Edmond J. Safra Working Papers, No. 2
http://www.ethics.harvard.edu/lab

20th March, 2013

Electronic copy available at: http://ssrn.com/abstract=2236391

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.

Strengthening the Theory of Institutional Corruptions: Broadening, Clarifying, and Measuring

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Strengthening Institutional Corruptions

Institutional corruption (IC) is a powerful concept, developed by Dennis Thompson and Lawrence Lessig, that highlights legal, systemic, and structural forms of corruption often not recognized by those involved.[1,2] It contrasts with many individual, often illegal, forms of corruption and points to the need for different, institutional remedies. For example, Seamus Miller, in the Stanford Encyclopedia of Philosophy, approaches institutional corruption largely in terms of individual actors, actions, and effects that corrupt the processes or purposes of an institution.[3] Thompson and Lessig have developed the concept of IC around Congress and the dependency of Congressmen on raising funds from major donors or special interests for elections and staying in office. This distracts the attention of Congressmen and shifts their priorities from serving the electorate to serving major funders and their agents. Good people, trapped in a corrupt structure, become corrupted as they do their best within the given economic, legal, institutional structure.

This essay suggests ways to broaden the concept of IC so that it can more effectively apply to more institutional settings that do not involve elections or political institutions by drawing on the work of Malcolm Salter on IC in corporations and other non-elected bodies or domains, and by redefining what are now dichotomies (good-evil, corrupt-not corrupt) as the ends of continua. Second, the case is made for drawing on empirical research to develop a matrix measuring the extent, types and degrees of corruption or corrupting behavior, so that IC theory matures from illustrative examples to results from qualitative and quantitative research. This is rapidly being achieved by fellows at the Center. Third, the institutional corruption of language, knowledge, and constructions of reality is a special focus, which complements studies of institutions themselves that greatly affects policy and chances for reform.

My own interest is in applying IC to an industry and its leading companies: namely, to the ways in which researchers, universities, journals of medical science, medical knowledge, physicians, and patients have become dependent on those corporate practices of the pharmaceutical industry that result in distorted medical knowledge and an epidemic of harmful side effects from drugs which usually have few clinical

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advantages to offset their risks.[4,5] One in five new drugs approved as "safe and effective" causes enough serious harm to receive the most severe warning of regulators or be withdrawn altogether.[6] Among priority drugs, reviewed quickly to get them to patients, the probability is one in three.

Broadly conceived, both the institutional corruption of a democratic body like Congress and the institutional corruption of a company or industry like the pharmaceutical industry consist of deviations from their societally relevant mission and ethical foundation. In the case of an elected body like Congress, representatives are to be "dependent upon the People alone."[2:18] As Lessig explains, the founding fathers went to considerable lengths to try to eliminate various forms of corruption in the 18th century in order to create an institution dependent on and responsive to voters and the public alone. A dependency on the small number of major contributors, however, to whom Congressmen must turn in order fund election campaigns and their work, corrupts the institutional dependence on the people and the intended mission of Congress to represent them.

Dependency on a concentrated minority of wealthy and special interests corrupts the democratic process by definition, but also creates the condition for a range of corrupt behaviors and outcomes. These are mentioned throughout *Republic, Lost*, starting with the famous quote, "The single most salient feature of the government that we evolved is not that it discriminates in favor of one side and against another... [but] against all sides in favor of itself... an engine of influence that seeks simply to make those most connected rich."[7:7] The final word, the outcome, is "rich." Many chapters later, Lessig writes that "dependency corruption is an enabler for both venal and systematic corruption" (pg 237). Dependency corruption "plainly infects the political system for the same reasons that quid pro quo corruption does" (pg 242). Lessig's examples portray an elaborate set of institutional arrangements to disguise how deeply the democratic process and mission are compromised by representatives seeking, and funders packaging, large "contributions" so that they do not appear to be payments for favors or influence. One Congressman refers the "hairline's difference [that] separates bribes from contributions." Exacerbating the situation, major funders "are a shifting coalition of interests who coalesce in a particular election to assure a particular set of issues gets resolved in one way versus another."[2:17]

Measuring Institutional Corruption and its Consequences

The common dichotomization between quid pro quoism and dependency corruption reflects a legal distinction more than an empirical one. Lessig addresses this issue by arguing that "dependency corruption is not the aggregate of many similar cases of quid pro quo corruption."[7:231] True, but the point is that dependency corruption embodies continuous episodes of quid pro quoism. As Lessig puts it, dependency corruption "builds a platform upon which both venal and systemic corruption can emerge without having to believe that individuals acting on that platform had a motive remotely evil..." (pg 235). Regarding dependency corruption as continuous quid pro quoism, Professor Appiah observed in a conversation during his visit to Harvard to honor Dennis Thompson that pointing out how dependency on unlimited donations results in continuous quid pro quoism might provide the basis for recasting the Supreme Court's decision from allowing donors "free speech" to allowing them to set up systemic, continuous quid pro quo corruption just a hairline short of being illegal.

These examples and characterization point to recognizing and measuring a continuum that ranges from altruistic gifts by contributors, who believe in what a candidate is doing or believes, to special interests giving selectively to influence behavior and outcomes concerning a certain area or issue. Responses range from advocating for publicly funded elections to Congressmen creating ways to increase donations from a given industry.

If dependence on the rich and on special interests inherently corrupts the mission of a democratically elected legislature to represent its electorate alone, then three factors are involved: (1) the size and scope of the institutional dependence, (2) the responses of the dependent trapped within this structure, and (3) the actions of funders. It would advance the field of IC studies to measure each of these. Decisions about measurement will themselves lead to a fuller understanding of IC than selected examples do now.

The size and scope of dependency varies considerably from one institution to another. For example, institutional financial dependence is large, wide, and deep for Congress. By contrast, dependency for the public museum that Gray and Kendzia studied appears to be much smaller and more narrow.[8] Public museums receive income from the government, members, visitors, sales, and other sources besides corporate gifts. Many donors to the museum probably give without aiming

to affect the exhibitions with the force and focus that the mining company tried to do in the featured case. They may give for good will or brand identification, like sponsors of the Olympics.

These are only two examples of how the degree of financial dependency varies by institution, from being deeply and continuously dependent at one end to being somewhat and intermittently dependent in the middle, to not being dependent at the other end but *choosing* to become dependent in order to gain wealth and influence. A familiar example of the latter, with various distortions that affect millions of patients, are specialty medical societies that have made themselves financially richer by becoming "dependent" on drug and device manufacturers. Historically, these institutions did excellent work without corporate contributions for decades. Now they "can't live without them," and this self-corrupting perspective affects how patients get diagnosed and treated, as well as how payments and regulations get distorted – the subject of the Center project by Cosgrove and Whitaker. This could be called *self-induced institutional corruption* and can occur on either the individual or institutional level. Both can lead to institutionalized practices, rules, laws, and constructions of reality that corrupt the societal mission of the organization. For example, the commercial distortion of professional guidelines, key concepts or criteria, and training, which many professions do without commercial support, constitute institutionalized forms of corruption.

Institutional corruption takes place along a number of dimensions that need to be identified and measured. For example, Lessig writes about how such corruption distracts Congressmen from attending to their constituents and distorts their priorities. But what kinds of distractions occur? How prevalent are they? How do they corrupt either democratic procedures or legislative outcomes? Better evidence would strengthen the theory and enable greater specification. Corruptions of institutional procedures, established to assure fair and informed decision-making, is another important area emphasized by Thompson.[1] In order to broaden the concept so that it can include other institutions like museums, other dimensions

must be identified. Further work on this issue could lead to developing *benchmarks of corruption* - like the benchmarks of fairness developed by Daniels, Light and Caplan - which identify key dimensions and measure the extent to which a given practice or proposed reform meets criteria.[9 1]

A related question that has not been addressed is how widely one should define the range of people or organizations within a given domain of institutional corruption – the boundaries of IC. To take the case of Congress, should consultants and lobbyists be regarded as trapped, like Congressmen? One could argue that they too must constantly raise funds and serve their paymasters to make a living. But so must those in many other callings, such as contract plumbers, portrait artists, and architects. It seems to me that consultants and lobbyists are not part of Congressional IC because working for their clients does not distract them from another fundamental mission and dependency as it does elected representatives. Their "mission" is to serve the ends of their clients or employers. But lobbyists vary greatly in whom they represent, from true grassroots people to synthetic astroturf groups, and from nonprofit or public institutions to major corporations. They have their own ethics, too, so that measuring the continuum of behaviors and structural relationships to funding would be valuable. Beyond lobbyists, the boundaries of a given institutional corruption need to be defined, and there may be ambiguous cases.

To summarize, we need to define the boundaries of IC and the continuum of corrupt behavior. We need to measure its size and scope. The range of responses by those dependent needs to be measured, as well as the degree of dependency.

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[1] Developing benchmarks has several advantages. First, it leads to identifying dimensions or areas of fairness, or corruption, or best practices. Second, criteria can be developed to measure the degree of progress or attainment in each area. These can be developed and modified with stakeholders to reflect changes in techniques, technology, and criteria. Third, organizations or institutions can be compared. Finally, changes can be tracked across time. Thus a set of benchmarks can be comparative, longitudinal, and adjustable. The World Health Organization (WHO) has used these benchmarks and adapted them to developing countries for planning and budgeting.

The Symbiotic Nature of Public Trust

Another aspect of defining, researching, and measuring the kinds and degrees of institutional corruption concerns the symbiotic, and sometimes paradoxical, nature of public trust. A loss of trust may indicate something seriously wrong about an institution, company or industry. Yet public trust can drop precipitously from a scandal of an otherwise trustworthy institution, full of integrity and worthy achievement. Conversely, public trust may be high for an untrustworthy institution or company that seriously harms many people and society. Such institutions or companies often work hard to promote an image of trustworthiness; by distorting language, symbols, facts and accounts to head off suspicions, deflect or dismiss damaging evidence, or by invoking a higher order of trust, such as science or medicine, to cover up what they are doing. This institutional corruption of communication, facts, and language is discussed in another section.

Once distrust sets in, whether justified or not, it generates a widening gyre of distrust that can profoundly damage an institution or company. People become cynical. Lessig and others worry that Congress has lost so much trust that democracy itself is losing credibility. Distrust of the banking or pharmaceutical industries seems to have reached corrosive levels.

> *Things fall apart; the centre cannot hold;*
> *Mere anarchy is loosed upon the world,*
> *The blood-dimmed tide is loosed, and everywhere*
> *The ceremony of innocence is drowned;*
> *The best lack all conviction, while the worst*
> *Are full of passionate intensity.*
>
> W B Yeats *The Second Coming* 1919

In this context of low public trust, institutional corruption research has a dual effect. On one hand, by naming, explaining, and documenting IC, it aims to alert both those involved and the public to the deep, institutional nature of the problem. This may increase distrust, cynicism, and disengagement. People who hear and believe in Lessig's account of Lesterland, for example, may be less likely to vote or care, concluding that "democracy" is a rigged sham. Before the 2012 elections, *The Atlantic* featured a wounded bald eagle and large letters saying, **YOU CALL THIS**

AN ELECTION? Yet this same work is necessary to galvanize support for de-corrupting the institution through structural change, and it provides the uncorrupted account and proposals for doing so. "...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."[2:20-21] Deepening the distrust lays the groundwork for institutional reform, which can then restore trustworthiness and thus trust.

Measuring the Responses of Those Within

Identifying and measuring the responses of the dependent parties, persons, programs, or organizations would be equally valuable and insightful. They have a fair amount of choice, as reflected in how much they distort the legislative process and to what ends. At one extreme are Congressmen who exploit their dependency to gain resources that enhance their power and influence, or enrich their lifestyle or future prospects, as illustrated by the K Street Project.[7:Ch.14] One ironic passage quotes Congressman Hollings from South Carolina complaining how he had to "collect $30,000 a week, each and every week, for six years. I could have raised $3 million in South Carolina. But to get $8.5 million I had to travel..." (pg 138) A year's fund-raising of $30,000 a week, however, would total $1.5 million a year, not $3.0 million, much less $8.5 million. Is this a case of a "good soul" exploiting dependency for all it's worth?

Congressmen also vary in the extent to which they deviate from serving their constituents. A representative from West Virginia might really care about her constituents and represent their concerns but recognize that in one or two areas of concentrated wealth and contributions she has to compromise. She is trapped in institutional financial dependency but maintains as much integrity as she can while still staying in office. Another representative by contrast might work the system. Dependency corruption is evident in both, but they differ in character, scope and degree. The interesting types lie in between and wait to be researched. Doty's careful choreography of "the compromise trap" shows how people make one compromise, which then leads to others.[10] It offers valuable insights into the process of corruption, as does Gray and Kendzia's account of self-censorship.[8] One effect they found that is not often discussed is how those within the dependency structure (the curators in this case) educate and persuade the funder to take a wider perspective.

Differences in the kinds and range of responses by people trapped in a structurally corrupt institution move us beyond the simple dichotomy of bad souls and good souls or "the good German." Congressmen, elected judges, professors, or researchers have considerable discretion in how they handle their institutional dependencies. Thus, depicting them as "good people behaving badly" because of institutionally corrupt norms and practices makes an important point, but does not address the range of ways to behave within their dependency. One needs an organizational analysis in terms of power, access, levers, and prerogatives residing in different positions.

Measuring the Behavior and Strategies of Major Funders

When Lessig writes that funders build a platform of dependency corruption "upon which both venal and systemic corruption can emerge," such corruption does not just emerge, as plants emerge if one builds a garden platform of soil and walks away. It would strengthen the concept of IC to research the kinds of platforms that funders build in order to shape the behavior and priorities of Congressmen. Funders use their access and lobbyists to provide Congressmen with suggestions, information, think tank studies, and tactics to promote their interests. In fact, Congressmen know that major funders track what they do, what they promote, or block, table, or bury, and base future contributions on it. Dependency corruption refers to a structural relationship of resources, with corruptors and the corrupted in different role sets and tied to different reference groups and norms. Documenting the main types and degrees could lead to *benchmarks of funder corruption* and provide valuable information for how to reduce it. Funders vary in a) how closely they hue to the hairline separating contribution from bribery, b) the use of other techniques or strategies, and c) how far they deviate from the public interest. These are at least three dimensions along which benchmarks of funder corruption could be developed.

Corruption of language, facts, and accounts

An important dimension of institutional corruption consists of ways in which special interests, and also recipients, manipulate facts, accounts, and language to give their publics misimpressions about a given issue, need, or solution. These manipulations include organized forms of ignorance, nondisclosure, cover-up, denial, obfuscation, and biased research, as well as promotional or planted news stories and ghost authorship by trustworthy experts.[11] These greatly affect what the

public, as well as special publics, know as facts and think about them, thus altering "the will of the people." Insights into other aspects of institutional corruption would be gained by researchers gathering examples of such manipulations in order to develop a *typology of corrupted communication*.

Institutional Corruption in the Private Sector

Malcolm Salter holds that institutional corruption in the private sector consists of an institution violating or betraying its long-term goals and contributions to society through behaviors that are institutionally supported. Rogue individual behaviors, such as lone traders who gamble and lose millions for their firms, are not forms institutional corruption. Behaviors must be institutionally sanctioned or at least tolerated. This stipulation restricts instances of IC compared to Miller's focus on individuals who corrupt an institution's processes or purposes, without indicating whether the institution sanctions or tolerates the results.[3] Looking at IC widely, Salter holds that corporate betrayal of an industry's societal mission and positive contribution to the economy can lead to a loss of public trust that affects its ability to do business, attract and retain talented employees, borrow money, negotiate with other businesses, or work effectively with government.[12,13]

For example, the plastics industry aims to take highly toxic materials and create a variety of forms that are chemically stable and safe under normal circumstances so that they can be used to create lightweight, strong, and flexible products. But if a company or companies manufacture some plastics that cause subtle, long-term damage in order to increase sales and profits, and if they promote them as safe, one could say they have become institutionally corrupt. They have violated their declared and societal mission to produce safe, beneficial products. If they use the dependency corruption of Congress to make sure that safety regulations allow these plastics to be used, and if they provide "evidence" through industry-sponsored research to demonstrate they are not harmful, they corrupt their own institutional mission, create biased or corrupted science, and corrupt legislators from representing the best interests of the public. Lessig illustrates this case with BPA in plastics – legal in the United States but banned for products used by children in many other countries.[7:22-25] While 86 percent of independently funded scientific studies found evidence of harmful effects of BPA, not one industry-funded study did. Companies and the industry most likely also hired science writers to get

published articles "proving" that BPA is safe and discrediting independent studies showing it was harmful. The case illustrates how corporate institutional corruption can exploit the dependency corruption of Congress, and corrupt science, researchers, and scientific knowledge in the process.

A different kind of corruption in the private sector is corporate short-termism. A principle of corporate governance holds that "managing for the long term is the only way to create durable economic value for shareholders."[13:2] Over recent decades, however, investor-owned companies have increasingly become preoccupied with beating analysts' expectations by even a penny so as to increase share price. This undermines planning and leadership for long-term growth. Heavy use of stock options and other rewards for short-term performance leads executives to a kind of institutional corruption and forms of unethical behavior such as gaming the rules or cheating.

Salter focuses on large investment banks, and especially Citigroup, which sold customers toxic financial instruments for highly profitable fees and even bet against the instruments they sold. He has a chart showing that the compensation packages for the top executives at five major investment banks totaled twice the companies' entire pretax income! Weak accountability for long-term adverse consequences contributes to short-termism. As a form of institutional, self-induced corruption, short-termism seems different and probably varies by company and by industry. For example, in the computer/software industry, Apple's CEO, Timothy Cook is paid $4.2 million in cash plus a huge stock package vested over a 10-year period. "If you want to create success for the company, you want to create it based on the long-term success of the company," said a compensation analyst.[14] CEOs of competing companies may have much more short-term packages. To measure how corrupting short-term compensation is of long-term company growth and quality, one again needs research to develop comparative measures and tracking. Across industries, some are inherently shorter-term, like fast-food chains that thrive by quickly responding to changing customer tastes, and others are inherently longer-term, so one must consider the degree to which investment objectives match or distort corporate objectives.

A third example of institutional corruption is Enron, a highly innovative energy company whose leaders became so greedy for profits that they compromised reliable power to their customers and created elaborate fraudulent accounting to

raise stock price.[15] In order to widen its scope of fraud, Enron hired more than 100 lobbyists and retained others in a large-scale effort to soften or remove regulations put in place during the 1930s to end abuses by electrical holding companies.[12] This, and other examples of Congress creating regulatory bodies and laws, indicates that corporate institutional corruption was and is common in many industries besides energy and plastics, like the banking and insurance industries. Together with heavy contributions to Congressmen, Enron's lobbying efforts led to changes from gas and electrical regulations, plus waivers for just Enron, that involved misleading arguments and lies. Again, corporate institutional corruption as a funder interacted with the dependence corruption of Congress.

Salter emphasizes two aspects this interaction, rule-making and rule-following. Enron and similar companies use money and political influence to make illegal actions legal so that criminal manipulations become legally open to exploitation, and also to make rules in ways that contain loopholes they can exploit through gaming. Thus, corporate gaming involves the dual practices of rule-making to facilitate gaming and then rule-following to game the loopholes in those rules. "In the business world, gaming society's 'rules of the game' refers to subverting the intent of socially mandated or legislated rules for private gain without resorting to blatantly illegal acts."[12:3] Gaming involves "the use of technically legal means to subvert the intent of society's rules in order to gain advantage over rivals, maximize earnings, maintain high credit ratings, preserve access to capital on favorable terms, and reap personal rewards" (pg 2). Gaming has a corrosive effect on public trust, both of the companies and of Congress, which the public expects to protect it from the covert manipulations of gaming. By detailing how corporate and other funders influence Congress, forms of gaming rule-making and rule-following make important contributions to Lessig's theory.

Besides gaming the rules of law and society, Salter identifies three other forms of institutional corruption. Violating norms of fairness, the first form, is illustrated by unfairly exploiting homeowners holding subprime mortgages with costly terms they did not understand. The second, tolerating conflicts of interest, occurs when other interests corrupt a company's ability to pursue such goals as providing safe, effective goods or services to society that result in more growth, profits and jobs. Finally, Salter's third form, exploiting cronyism – personal connections used for self-dealing – can play a significant role in legal institutional corruption as well as

exacerbating the dependence corruption of legislators. In sum, gaming, violating rules of fairness, tolerating conflicts of interest, and exploiting cronyism are four kinds of legal but corrosive behaviors that characterize corporate institutional corruption and flesh out forms of dependency corruption.

One indirect form of corporate institutional corruption that preempts legislative bodies and their dependency corruption consists of the international commissions or deliberative bodies that are assembled by leading corporations in an industry to set standards or terms for national legislatures in the name of greater efficiency, harmony, and world trade.[16] By degrees, these organizations exercise global network governance that supplants civil servants and legislative committees in state governments by establishing trans-national standards that favor a given industry. Particularly interesting is the creation of a commission of regulators and industry advocates – a non-elective body of non-elective national institutions – that sets trans-national, legal terms. National differences in values and political history are characterized as "regulatory confusion" that create "inefficiencies." Harmonization tends towards the strongest protections (patents) or weakest regulations (safety standards in clinical trials) for the global stakeholders.[17-19]

Besides being funders of dependency corruption, large corporations or whole industries may in some cases create their own kind of dependency corruption. For example, the societal mission of the practice of medicine and the development of medicines is to make people as healthy as they can be and to relieve suffering. Physicians and patients depend heavily on intellectual property (IP)-based pharmaceutical companies to develop clinically better drugs. Research teams, who must constantly raise money to fund their labs and research in ways analogous to Congressmen having to constantly raise funds, must bend to the priorities of these companies. Although companies too espouse a commitment to developing life-saving and breakthrough new drugs, evidence indicates a hidden business model to develop scores of drugs with few or no clinical advantages over existing ones in order to exploit the broad and long monopoly protections from free-market competition; protections that Congress and society have granted them to support breakthrough research, not market-driven minor variations.[20] Related corruptions of medical research include biased randomized clinical trials designed to minimize evidence of safety problems and to maximize evidence of benefits, further bias in how trial results are analyzed by company-paid researchers, and still further

evidence that company-paid science writers, statisticians, and editors add, omit or alter findings when results are written up for publication in leading journals of medical science that become the basis for clinical guidelines and prescribing decisions.[21-23] Dependency on companies by the Food and Drug Administration (FDA) to pay for reviewing their drug applications by criteria that do not usually consider how much better new drugs are than existing ones rewards the development of many minor innovations. While about 1 in every 9 new drugs proves to be clinically superior, 8/9ths do not, and 80 percent of new expenditures on drugs go to patented new products with few or no advantages.[24] The under-testing of harmful side effects, plus further under-reporting of those effects, and aggressive promotion have resulted in prescription drugs being the 4th leading cause of death and a major cause of hospitalizations.[25]

Reflections on the Baseline for Identifying Institutional Corruption

Corporate institutional self-corruption seems less profoundly *per se* than dependency corruption because those in charge – senior executives and board members – know and can control the behaviors of their organizations, such as Citigroup or Enron. They may act as if they are "trapped" by investors who demand ever-higher profits by any means, but if we scaled and measured degrees of corrupt or corrupting behavior, we would find that companies in the industry vary significantly, with exemplars of institutional integrity at the other end of the continuum. This finding would discredit claims that "investor pressure made me do it" and lead to investigating more specific causes for a continuum of responses. Pharmaceutical executives have talked for years about the "enormous pressure from shareholders" to do anything to keep up their large profit margins, without addressing how few new medicines improve patients' health and how widespread are harmful side effects.[25] Salter has put his finger on the real reason behind executives claiming they are being forced by a kind of dependency corruption: how much the executives' compensation depends on the performance of their equity-weighted compensation packages. The baseline question is what is being corrupted, and how good is the evidence?

Another baseline issue, particularly in electoral politics, concerns determining what "the people" want and whether it serves society well. While a structural

arrangement that forces elected representatives away from attending solely to the needs of voters is a clear case of institutional corruption, it does not follow that a government dependent upon voters would not be capable of making terrible decisions. Nor does it mean that elected officials should always follow the will of the people. Often "the will of the people" is divided and conflicted. And often voters do not think about many issues that their representatives must address, so there is "will of the people" to follow. Measures of popular sentiment are also highly subject to how an issue or question is worded in one poll versus another, and the public will can be manipulated. At times, "the people" want something that is short-sighted, socially destructive, or morally wrong. If the people at a given time want lynchings as a populist expression of rage, do we want their representatives merely to reflect their will? If a Senator McCarthy whips up popular rage against "Communist infiltrators" and justifies widespread actions against rumored Commies, like my 3rd grade teacher who was stripped of her livelihood without evidence, don't we want a Senator Tydings to challenge that will rather than faithfully reflect it? In the Red Scare, systemic corruption did not consist of the few alien radicals portrayed by political leaders as a "plot against America" but rather of the trusted U.S. Department of Justice, later found to have systematically violated the 4th, 5th, 6th, and 8th Amendments to the Constitution. In short, how reliable is "the will of the people" as a baseline?

Loss of public trust may indicate that an institution has become corrupted, or it may not. Trust can be inversely related to the trustworthiness of an institution. For example, given the extensive and detailed evidence that the FDA approves many drugs that seriously harm patients (about 1 in 5 for small molecules and 1 in 3 for biologicals), and given that most of those drugs do not offer substantial offsetting clinical benefits (about 9 in 10), should the public trust the FDA as much as it does?[6,26] Conversely, when a good company or university suddenly loses public trust from one bad model or flaw or incident that is not well handled, should we go along with this excessive wave of distrust and claim it is evidence of institutional corruption? For these reasons, using public trust as a baseline of corruption is problematic.

The baseline of mission is clearest when a societal institution has founding documents of principles or a moral mission, as medicine does. There is no Constitution, but the societal goal of medicine is to use sound medical science to

help people get or be as healthy as possible, even when they have a debilitating chronic disease or they are declining towards death. In other cases, there are conflicting missions or baselines, especially in corporate institutional corruption, where maximizing share value may conflict with honest marketing of good products or services. To take the plastics industry as an example, full disclosure of harmful effects may reduce sales and profits, while promoting subtly harmful but profitable plastics may increase them. The common claim that companies have a moral obligation to maximize shareholder value, as if that ends all discussion about the moral baseline of business, is seriously insufficient. Companies operate within a wider and richer moral order and set of obligations.

The baseline for professions seems to differ. For example, auditors have a societal mission to certify for all the veracity and integrity of an organization's numbers and financial condition; but do law firms have a societal mission beyond representing, within the law, the interests of their clients? The legal profession has an extensive set of rules for professional conduct with clients, the courts, colleagues, and the public, including honesty, ensuring that claims made are meritorious, and being fair to opposing parties of counsel, but non-judicial members do not play a societal role comparable to auditors.[27] Further discussion is needed.

Sometimes the baseline for judging corruption only becomes clear after that baseline is violated. The recent evidence of sexual abuse of Boy Scouts by scoutmasters is an example. There is no mission or rule, "Thou shalt not sexually abuse scouts" – it is taken for granted as a fundamental moral baseline that applies to all adults who care for or are responsible for children. Yet reports document systematic cover-ups, failure to inform, and other appallingly harmful actions by the Boy Scouts of America, not unlike years of sexual abuse by priests in the Catholic Church. Yet most scouters and priests are caring, responsible adults; only a minority of them had dark urges they did not control. Does this case fit the concept of institutional corruption? These acts do not reflect the modest financial dependency from dues, and yet the practices, the protection of abusers, and the cover-up would lead many to say that the Boy Scouts are "institutionally corrupt." Lessig suggests a test: ask oneself whether an institution could justify a given behavior in light of its primary mission. If not, then allowing the behavior is *prima facie* evidence of institutional corruption.

Daniel Wikler has written about the moral content of institutional corruption. It shifts the moral debate to a "focus on the corruption of the institution, first and foremost, as opposed to the corruption of the individuals within in it. Not that the corruption of individuals is not of interest. But the corruption of the institution is important also, and independently, and perhaps most urgently."[28] Critics who blame those in a corrupted institution and call for their replacement fail to see how the problem is systemic and structural. Furthermore, there are many good, conscientious people in these institutions who are doing their best under the circumstances. But the concept of corruption is normative and one cannot define it without a moral basis outside the concept. Adding a moral foundation would also help define and defend concepts of institutional integrity as the basis for reform.[29]

Challenges of reform

Dependency corruption is structural, and requires structural change, like reforms to fund elections publicly or by rewarding a focus on millions of small donations. The question is, how can IC policy research most effectively advance structural change? Shedding sunlight on covert forms of structural corruption seems important. Yet transparency, as Lessig and social psychologists have pointed out, may backfire.[30] It may normalize and legitimate corrupting behaviors that before were considered too offensive to reveal. Still, transparency can help by increasing doubt and distrust among those dependent on information or action. For example, if disclosures lead physicians to know that the authors of a well-designed scientific article measuring the risks and benefits of a drug are paid by its sponsoring corporation, what are they to do about it? One response would be to doubt its conclusions even though it was well-designed. A recent study funded by the Center found that they are inclined to do so. The Editor-in-Chief of *The New England Journal of Medicine* urged them not to.[31,32] Yet careful comparisons of independent and sponsored trials have found that the industry-supported articles are 3-4 times more likely to conclude in favor of the sponsor's drug, often in ways that physicians and even the editors of top journals cannot detect.[33,34] Even well-designed trials can be biased in what information they record, how they code it, and how the statistical analysis is done. Published articles based on them often do not include negative trials or results. Further, journals profit from favoring such articles,[35] and editors attend meetings of commercial science writers in an effort to attract more submissions.[36] This and other evidence supports physicians' suspicions that

company-sponsored research articles are biased, even if they look fine. That is why teams of medical editors, statisticians, and writers are paid so well to put them together.

In trying to reform both those controlling the resources and those dependent on them in a corrupt institution, one needs to take into account the ethical blind spots and breakdowns that Max Bazerman and Ann Tenbrunsel have researched.[37,38] Framing that excludes consideration of corrupting effects, overvaluing outcomes, overlooking the slippery slope of compromising behavior, not attending to how behaviors or incentives affect third parties, and benefiting from ignoring corrupting behavior are common practices that reformers need to address. Incentives to achieve an end may actually reward unethical or corrupt behaviors. The authors discuss the tragic decision by Ford executives to allow production of a Pinto with a gas tank that would explode in rear-end accidents. They were not evil, or intent on hurting people. But their narrow focus on costs and adding a bit more to profits led them to think of allowing the tank as a matter of cost per person immolated versus increased profit per car sold, an example of commercializing safety so that money crowds out avoiding harm.[39] Insights from research like this both imply the importance of structural reforms and indicate how best to succeed. If elections were publicly funded tomorrow, Congressmen would still have blind spots and ethical breakdowns, only within a much less corrupted structure.

A further obstacle to reform that several fellows at the Center are investigating concerns the ways in which people who do corrupting things deny, dismiss, deflect, or defend them in order to see themselves as "good souls," even as they are critical of others and attribute self-interest to them.[8] Paradoxically, acting morally and having a strengthened moral self-image can give "good people" some license to act less morally, as if they have moral credit they could spend.[40] Psychological dynamics like this further complicate any distinction between good souls and bad souls, and they also complicate strategies of reform that appeal to the former. Persistent and clear evidence that harm is taking place may be effective in making such self-justifications more difficult to retain and in shifting public opinion against those who defend current arrangements and practices. It might be profitable to study how the suffragette movement or the prohibition movement overcame and transformed deeply held values, practices, and economic interests to bring about structural change. As one thoughtful review of how to end corruption concludes,

"Those social actors intent on reforming corruption function as institutional entrepreneurs, and their success depends on articulating an anticorruption institutional logic that incorporates corruption-disabling identities cognitive schemas, and practices..."[41:750]

Looking Forward

As institutional corruption is being applied to a range of settings, the concept needs to be framed accordingly. This essay attempts to draw together the theory and examples developed by Malcolm Salter with those of Larry Lessig in order to indicate ways in which a broader framework might be developed that identifies different kinds of institutional corruptions. It also emphasizes the need to regard dichotomies as ends of continua, and the need to measure the types and degrees of corrupting behaviors, the type and degrees of responses by those affected, and the like, so that empirical work being done can contribute to a set of scales that might be called benchmarks of corruption. Two further suggestions have been to anchor the concept in moral philosophy and to recognize the institutional corruption of language, facts, and accounts as a powerful obstacle to reform, but also a powerful tool for reform. Many non-electoral kinds of corruption, from cases like Enron to regulatory bodies like the Environmental Protection Agency (EPA) or the FDA, interact with the corruption of Congress and other bodies, suggesting an ecosystem of corruption. It might be fruitful to pursue analogies with ecosystem dynamics. Institutional corruptions also take place within the context of countervailing powers that organize and push back in eco-dynamic ways.[42] One such countervailing power is the Edmond J. Safra Center itself, other centers that take inspiration from its work, and its growing network of fellows.

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Acknowledgements

I am indebted to helpful and challenging discussions of earlier drafts with Mark Somos, Larry Lessig, Malcolm Salter, Daniel Wikler, Eric Beerbohm, William English, and Elizabeth Doty. Naturally, none bears responsibility for the results.

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