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# Theories of Institutional Corruption

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## INTRODUCTION

The study of institutional corruption has taken a new turn in recent years as theorists have developed a conception that differs from that of conventional corruption in both its individual and structural forms ([Thompson 1995](#); [Warren 2004](#); [Miller 2010, 2017](#); [Lessig 2011](#)).

Institutional corruption is not the individual corruption exemplified by bribery and similar illegal offenses ([Rose-Ackerman & Palifka 2016](#), pp. 7–11), and it is not simply the structural corruption prominent in the work on developing societies ([Acemoglu & Robinson 2010](#)). The theorists who have taken this turn call attention not simply to the corruption of institutions but to distinctive ways in which institutions can be corrupted.

For these theorists—who may be called normative institutionalists—corruption is distinctively integral to an institution in three ways. First, it is equivocal: The corruption benefits the institution while undermining it. The corruption exploits legitimate institutional practices that provide benefits that even an uncorrupted institution needs, and for which alternatives must be found if the institution is to function well. Unlike the practice of bribery, for example, campaign fundraising serves a legitimate function. Second, institutional corruption is impersonal: The individual agents of corruption act in institutional roles and do not have the corrupt motives that characterize agents who participate in quid pro quo exchanges. Politicians who accept campaign contributions and do favors for their constituents act partly in their own political interest but also promote the competitive and other values of the democratic process. Third, the corruption is generalizable: It is found not only in government but in many other kinds of institutions.

Although most of the institutionalists focus on political institutions, all suggest that their theories can be extended. The general approach has stimulated other scholars to examine institutional corruption in a wide variety of contexts, including the pharmaceutical industry, the mass media, universities, hospitals, think tanks, banks, community development authorities, the arms industry, and sports associations ([Safra Research Lab](#) ).

This approach to institutional corruption revives the spirit of the traditional concept of corruption, which referred to a property of institutions rather than individuals, and was often metaphorically expressed as a disease of the body politic ([Montesquieu 1949–1951](#); [Dobel 1978](#); [Euben 1989](#)). A polity is corrupted by extraneous influences that distort its decision-making process and thereby impair its capacity to function in accordance with its fundamental values. The institutionalists develop their own interpretation of this general concept, which may be called a conception [adopting Rawls’s ([2005](#), p. 14) distinction between a concept and a conception]. The three ways in which the corruption is integral to the institution (listed above) help distinguish the institutionalists’ approach from others that also focus on institutions but for a specification of the conceptions we have to examine the elements of the conception as presented by each of the theorists discussed below.

The normative institutionalists’ conception is formally consistent with common contemporary definitions of corruption, such as the “abuse of public office for private gain” ([Bussell 2015](#), p. 22; [Rose-Ackerman & Palifka 2016](#), p.9; ; [Philp 1997](#), p. 42; [Philp 2015](#)p. 21). But the institutionalists would interpret the terms in substantively different ways. They would substitute “institutional office” for “public office” and would extend “private” to include other interests and agents outside the institution. They would not require that the gain an official receives be private. Most importantly, they would take “abuse” to refer to practices that undermine the basic functions or values of an institution in specific ways. They do not believe that the abuse can be reduced to the disregard of impartiality, as some scholars propose ([Kurer 2015](#); [Rothstein & Varraich 2017](#), pp. 97–100, 135–43). They doubt that there can be a complete set of necessary and sufficient conditions that would define all conceptions of corruption ([Miller 2011](#),pp. 7-25; [Miller et al. 2005](#), pp. 8, 20–21).

A conception does not refer to a single distinct phenomenon that can be fully defined independently of the choices actually made in particular systems. The theorist must justify the choice of any interpretation of a concept—the conception—by showing why it is useful for a particular project of understanding or changing a political system. That justification in turn depends on an appeal to normative standards based on a model of an uncorrupted process ([Thompson 1995](#), p. 29; [Hellman 2012–2013](#), pp. 1391–96; [Ceva & Ferretti 2014](#), p. 127; [Philp 2015](#), p. 30). Even social science conceptions of corruption, which sometimes purport to be value neutral, presuppose normative standards in this way.

Why do the institutionalists believe it important to give greater attention to the institutional conception? First, the conception brings out more clearly how corruption is related to the theory and practice of the institutions in which it is embedded. In the case of political institutions, institutionalists connect the corruption to principles of democratic theory. They emphasize that, while developed democracies may have reduced the incidence of conventional corruption, they are prone to their own kind of corruption, which may be more insidious. Second, their conception supports efforts to broaden the reach of legal and ethical regulation. It is used to challenge the view, currently held by the US Supreme Court, that corruption refers only to quid pro quo exchanges, and to revive the more expansive view held by the Founders and earlier legal thinkers ([Teachout 2014](#), pp. 32–55, 227–45). The institutional conception also clarifies and reinforces the rationale for regulating appearances of corruption and conflicts of interest. Third, the conception enables more appropriate and more precise targeting of reforms. It shifts the focus from deterring and removing corrupt individuals (acting alone or systematically) to changing the rules and procedures of the institution and the incentives for individuals who may not be corrupt. It calls attention to the need to find alternative sources of support (campaign contributions and analogous resources for other institutions) that are implicated in institutional corruption. Finally, with the institutionalist conception, we can better explain why corruption that is not individual is so hard to identify and acknowledge. Because it is so closely connected to the legitimate procedures and practices of the institution, its agents often are not seen, and do not see themselves, as participating in corruption at all.

This review explores the similarities and differences among four leading theories of institutional corruption and examines the most important criticisms of their general approach. In light of this survey, a revised framework for analyzing the elements of institutional corruption is proposed. Finally, it is suggested that in future research, normative institutionalists could benefit from giving greater attention to the work on conventional corruption in developing societies. Much of that work focuses on bribery and related offenses (and thus should still be regarded as individual corruption as defined here) but because it emphasizes corruption that is systematic and pervasive in the institutions of a society, it has implications that may be relevant for the normative institutionalists.

## VARIETIES OF INSTITUTIONAL CORRUPTION

Despite their agreement on most of the basic characteristics of institutional corruption, the institutionalists differ about which values are most significantly threatened by it. Specifying the values institutional corruption subverts, they emphasize different normative principles and different elements of the conception. The theories discussed below appeal to the democratic process, equality, individual autonomy, and the US Constitution, all broadly understood. They are grounded on evaluative principles and thus should not to be confused with the approach, sometimes called normative institutionalism, which studies norms only empirically ([Peters 2016](#)).

### **Corruption of the Democratic Process: Thompson<sup>1</sup>**

In their wide-ranging survey of approaches to political corruption [Philp & Dávid-Barrett](#) (2015, p. 398) state that the “pioneering work on ‘institutional corruption’ was undertaken by Dennis F. Thompson in the early 1990s” (also see [Newhouse 2014](#)). Thompson “saw the need for a conception of corruption that weakened the insistence on individual gain” and that “identified the harm... in the impact of conduct on the working of institutions and processes.” Although Thompson suggests that his conception can be applied broadly to a wide variety of institutions of government and society, his early work focuses almost exclusively on the US Congress, and more on the internal procedures than on the campaign finance system ([Thompson 1995](#)). [ED: I changed this and what follows all to present tense. OK? See my response to your query at p. 15] His paradigm is the case of the Keating Five, five senators who improperly intervened in a regulatory process on behalf of Charles Keating, a savings-and-loan entrepreneur who had contributed to their campaigns ([Thompson 1993](#)). At least some of the senators did not seem to have the motives typical of corrupt politicians. Legislators are supposed to accept campaign contributions and do favors for constituents. Yet their actions in this and similar cases can cause as much damage to the democratic process as conventional corruption, if not more.

To capture the distinctive character of this kind of corruption, Thompson develops the conception of institutional corruption in contrast to the conventional conception, which he calls individual corruption. (When applying the distinction to constitutional law, he narrows its scope,

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1. The third-person form is adopted here to indicate that the author, the Thompson writing in 2017, does not now accept all of the views of the earlier Thompson.

using “governmental” for individual corruption and “electoral” for institutional corruption ([Thompson 2005a](#).) Corruption is institutional insofar as the gain a legislator receives is political rather than personal, the service a legislator provides is procedurally improper rather than merely undeserved, and the connection between the gain and the service is an institutional tendency to damage the democratic process rather than a result of a corrupt motive in the mind of the legislator (Thompson [1995](#), pp. 28–33). Unlike bribes, which exemplify the personal gain found in individual corruption, political gain involves goods that are useable primarily in the political process and are either necessary for doing the job or essential by-products of doing it.

The other two elements of the conception—procedural impropriety and institutional damage—are determined by applying three principles of legislative ethics (Thompson [1995](#), pp. 19–25): independence (deciding on the merits), fairness (playing by the rules), and accountability (sustaining public confidence). Institutional corruption short-circuits the democratic process by enabling private interests to gain influence in government without being subjected to procedures that respect these principles.

Thompson, like most of the other institutionalists, takes care to show that even when corruption is purely institutional, individuals can still be held responsible for trying to eliminate it, or at least to moderate its harmful consequences ([Thompson 2013](#), p. 17; also [Lessig 2013a](#), p. 15, p. 15; [Amit et al. 2017](#), pp. 459–65). Miller argues that responsibility for electoral corruption in the United States is collective but individuals are at least partially responsible (jointly with others) for their contributions ([2017](#), pp. 302–3). However, [Ferretti \(2018\)](#) believes that the institutionalists do not go far enough; she argues that “institutional corruption can be always traced back to the culpable corrupt behavior of individual agents” (p. 1) and that “only individuals can be held accountable for corruption” (p. 3).

Thompson’s conception of institutional corruption broadens the study of corruption “by explaining why motive and intention need not be necessary criteria for wrongdoing and by suggesting that the violation of the appearance standard could in itself be a distinct wrong in public office” ([Philp & Dávid-Barrett 2015](#), pp. 389–90). The conception encourages students of corruption to conduct normative and empirical analysis of the patterns of access to institutions, conflicts of interest, the organization of staff, and the relations between legislators and bureaucrats. It supports reforms that would establish independent oversight of legislative ethics. Later work in political theory was also informed by Thompson’s analysis ([Philp & Dávid-Barrett](#)

[2015](#), p. 390), including some of the work reviewed below.

Thompson claims that his conception is “compatible with a wide range of views about both the process and substance of contemporary politics” ([1995](#), p. 29), but some aspects of his approach are more attuned to deliberative than other theories of democracy. The independence requirement that members should “act on reasons relevant to the merits of public policies... or to advancing a process that encourages acting on such reasons” ([Thompson 1995](#), p. 20; also [Thompson 2005b](#)) has led several scholars to associate his conception of institutional corruption with deliberative theory ([Lessig 2013b](#), [Newhouse 2014](#)). Unless the conception can be shown to accommodate other theories and other institutions, its application will be more limited than Thompson intended. The revised framework of the elements proposed below does not presuppose any particular theory of democracy, though it does require reference to some normative theory or set of values.

### **Corruption of Equality: Warren**

For many of the normative institutionalists, a chief objection to institutional corruption is that it violates a principle of equality. The most sustained theoretical analysis from this perspective is by Mark Warren, who in a series of articles develops an institutional conception of corruption as “duplicitous exclusion” ([Warren 2004](#); [2006a,b](#); [2015](#)). More explicitly than most institutionalists, Warren links his conception to democratic theory. Like Thompson, he is concerned about the distortion of representation, but he grounds his view on a particular principle of democratic equality. Corruption violates the norm of equal inclusion: “every individual potentially affected by a collective decision should have an opportunity to affect the decision proportional to his or her stake in the outcome” ([Warren 2004](#), p. 333; [2006b](#), p. 804; [2015](#), pp. 47–48). Not all unjustified exclusion is corrupt, only that in which the agents of corruption claim to accept the norm of inclusion but at the same time violate it. That is what makes it duplicitous. The link between citizens and their representatives is broken when the “representatives’ decisions are... the result of the whispered voices of those who have bought access through their campaign contributions” ([2004](#), p. 337). Warren adds a further condition: The corruption must also benefit those who are included and harm those who are excluded, or if the excluded also benefit, they do not benefit proportionately. This condition is not unique to institutional corruption, however, as it also characterizes individual corruption.

Warren claims several advantages for his approach compared to the individualist

conception—what he calls the “office-based” or “modern” conception of corruption ([2004](#), pp. 329–32; [2006b](#), pp. 803–4; [2015](#), pp. 46–47). The most important is that instead of focusing on static rules and predetermined public purposes, as he believes the individualist approach does, the institutional conception emphasizes the contestable nature of the rules and the purposes. Two implications follow: The primary site of corruption is the process in which the rules and purposes are contested rather than the outcomes, and the rules that define corruption can themselves be changed in this process (Warren 2004, p. 331, citing [Thompson 1995](#), pp. 3–6). Finally, Warren shows how the conception can and should be extended beyond government to civil society and the market, though with substantial modifications ([2004](#), pp. 339–41; [2015](#), pp. 52–53).

Warren’s discussion of these advantages of his conception illuminate important features of institutional corruption, and much of his approach could be accepted by other institutionalists. But one major feature is problematic because it risks making the conception more individualist than institutionalists should accept and than Warren himself may intend. Despite his criticism of the individualists for focusing on personal character, his condition of duplicity tilts the conception in that direction. He asserts that the agents of corruption are hypocrites, who profess to believe in equality even while violating it ([2004](#), p. 333; [2006b](#), p. 804; [2015](#), p. 48). This makes possible an immanent critique (using the corrupt agents’ own principles against them), but it also focuses the criticism on the character and motives of individuals. This focus misses the vast range of corruption in which the agents are well intentioned, as in campaign practices. The agents may not have corrupt motives, but they operate in a corrupt institution. Warren’s focus also assumes that the corruption must typically be kept secret (so as not to expose the hypocrisy), whereas much institutional corruption takes place in the open. Warren captures important features of corruption, but the duplicity condition, if taken as necessary, unduly limits the scope of institutional corruption and obscures its differences from individual corruption.

### **Corruption of Autonomy: Miller**

Seumas Miller provides the most philosophically grounded conception of institutional corruption. He bases the conception on his own teleological theory of social institutions, which holds that social institutions should serve collective ends that in turn protect individual autonomy, specifically certain basic needs and fundamental rights (Miller [2010](#) pp. 154-79; [2011](#); [2017](#), pp. 23–46). These are plural and therefore so are the possible ends of institutions. An act or practice counts as institutional corruption if and only if (*a*) it tends to undermine this



collective purpose or the shared processes of the institution, or despoils the character of an occupant of a role in the institution, or both; and (b) the occupant either intended or foresaw these effects, or could have avoided contributing to them (2010, pp. 19–20; 2017, p. 82).

Like the other institutionalists, Miller rejects approaches that limit corruption to illegal practices, economic self-interest, or partial motivations (2011, pp. 2–6; 2017, p. 70). Also like the others, he distinguishes institutional from individual corruption, but he defines the latter more narrowly as quid pro quo corruption in personal relations or purely private transactions, where individuals hold no institutional role. He allows for the possibility that institutional corruption can benefit the institution—a central element for Thompson and Lessig—but he describes this as “noble cause corruption” and regards it as a “nonstandard case” (Miller 2011, pp. 25–28; 2017, pp. 89–105). Finally, he extends the conception to cover a wide range of institutions beyond politics and shows in constructive detail how it applies to cases such as the financial markets and police departments (Miller 2016; 2017, pp. 251–89).

The major difference from Thompson and most other institutionalists is that Miller holds that institutional corruption typically requires a corrupt individual agent. The agents must either know or should know that their actions are corrupt, or at least are in a position to avoid the effects of the corrupt actions (Miller 2011, pp. 99–20). (Legal theorist Underkuffler (2013) insists even more categorically that institutional corruption requires corrupt individuals.) An advantage of this requirement is that Miller’s conception remains closer to one aspect of the popular understanding of corruption, which commonly assumes that where there is corruption there must be corrupt individuals.

Another difference from the other institutionalists is that Miller counts as institutional what others treat as individual corruption, such as institutionalized bribery. Miller does not draw a sharp line between that kind of individual corruption and his institutional corruption, presumably because his main aim is to show how both differ from other kinds of moral wrongs and other kinds of damages to the institution. Both undermine the ends of the institution and despoil the character of the agents.

However, Miller’s emphasis on the corruption of persons and their autonomy (even more explicit than Warren’s) neglects what other theorists argue is one of the most distinctive advantages of adopting the conception of institutional corruption in the first place. They are most concerned with the kind of widespread, structural corruption that arises and persists without

anyone acting on corrupt motives. When there is no corrupt intention or motive, then the practice is better described as “corrosion,” according to Miller ([2011](#), pp. 8–9; [2017](#), p. 66). His chief example is reduced funding for a court system that over several decades leads to declining quality of service, of which no one may be aware, and for which no one can be held responsible.

However, the institutional corruption the other theorists highlight does not necessarily involve a gradual corrosion over time, but rather manifests a structural practice that has contemporaneous effects, of which the agents may be aware but which they have reason to regard as part of a legitimate (though flawed) process. Miller places the theorists’ paradigm—the corruption of the campaign finance system in the United States—in the same category as corruption motivated by personal gain, such as the abuse of power by Italian prime minister Silvio Berlusconi ([Miller 2017](#), pp. 301–3). He holds that even otherwise honest individuals caught up in a corrupt finance system should be considered corrupt if they jointly could change the system but do not. But as a result, he obscures part of what Thompson and Lessig believe makes institutional corruption especially difficult to eliminate. In the absence of collective action, individuals in a corrupt institution may still be motivated to serve the institution as best they can and may be following practices (such as raising funds and serving constituents) that under a general description are legitimate parts of the democratic process. They may be what Lessig ([2011](#), p. 17) calls “good souls.”

### **Corruption of the Constitution: Lessig**

No one has done more to bring attention to institutional corruption than Lawrence Lessig. In a major book, several articles, and his institutional corruption lab, he has refined the theoretical components of the conception and shown its practical relevance in an activist campaign ([Lessig 2011](#); [2013a,b](#)). The campaign finance system in the United States is his prime example of institutional corruption and the target of his notable reform efforts. But, as mentioned above, his conception goes beyond political corruption, and his lab has produced work that covers a broad range of institutions.

His definition is intended to apply to almost any kind of institution with a recognized purpose: “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” (Lessig [2013a](#), p. 553). But it does not seem that being legal or currently ethical is a necessary condition. Lessig

insists that his definition is normatively neutral and applies even to criminal organizations such as the Mafia ([2013a](#), p. 554). His point must be that, unlike individual corruption, institutional corruption need not involve illegal or currently unethical conduct. His “good souls”—a species that includes politicians merely trying to win reelection—can create a system of influence that creates and sustains institutional corruption. That helps explain, he suggests, why many citizens condemn Congress but not their own representatives as corrupt ([2011](#), pp. 17, 235, 238). The popular understanding of corruption evidently is ambiguous enough to encompass Lessig’s interpretation and Miller’s claim that corruption involves corrupt individuals.

Although some commentators suggest that Lessig “largely follows” Thompson ([Philp & Dávid-Barrett 2015](#), p. 309), Lessig’s conception differs in some significant respects. The most important difference is that he focuses on a subset of cases of institutional corruption, which he calls “dependence corruption”—and defines as “the state of an institution or an individual that has developed a dependence different from a, or the, dependence intended or desired” (Lessig [2012](#), p. 65; see also [2013a](#)). In the case of political dependence, corruption occurs when officials have to depend on support from persons other than those to whom they owe exclusive allegiance. Congress is supposed to be dependent on the people alone, a constitutional relationship that is undermined when members become dependent on the small minority of supporters who contribute to their campaigns. The dependence may also violate principles of equality such as Warren’s inclusionary ideal, but contrary to some of Lessig’s critics ([Hasen 2013](#)), it is a distinct violation because it could exist even in a more egalitarian political system (Lessig [2012](#), pp. 66–67). Lessig ([2014](#)) also maintains that dependence corruption has a republican pedigree that should appeal to constitutional originalists, who typically are not egalitarians. This kind of institutional corruption, he argues, is what the Founders had in mind (also see [Teachout 2014](#)). Improper dependence is corruption of the Constitution, properly interpreted.

The principle of independence Lessig deploys is not the same as Thompson’s, which requires making decisions on the merits (as in deliberative democracy). Lessig’s independence is essentially the absence of constraints that divert officials from the intended purposes of the institution. He argues that his conception has the advantage of simplicity because Thompson’s ([2013](#)) requires reference to democratic or other legitimate procedures. Lessig ([2011](#), pp. 131–66) criticizes the distortions of the process that Thompson also identifies—misallocation of

legislative time, biased access, skewed agenda, and reduced trust—but he believes that dependence corruption can be identified separately from these consequences. With his conception, Lessig believes that we can see the corruption directly in the dependence itself without any elaborate examination of the democratic process.

The relative simplicity of Lessig’s dependence corruption is a definite advantage in any effort to target defects in campaign practices in the US system. The existence of the dependence (as distinct from its consequences) can be easily established, and the relevance of reforms (as distinct from their feasibility) can be clearly seen. The dependence is manifest in the pattern of campaign contributions and can be attacked by reforms that would eliminate the problematic contributions or at least broaden their sources (Lessig [2011](#), pp. 273–307).

However, the price of the simplicity is that the conception is not helpful in dealing with many other practices that are putatively corrupt in similar ways. {ED: shift to criticism should be marked somehow. Why not “but”?} To what extent should contacts with lobbyists be regulated? A politician may not depend on the lobbyists he travels or socializes with (they may not even contribute to his campaign), but they get greater access and thereby more opportunities for influence than other citizens. In what ways should the conflict-of-interest rules for the executive branch differ from those for the legislative branch? To whom and for what reasons are legislators justified in providing services, and what kinds of services? These and other similar questions about activities that potentially involve institutional corruption are not adequately addressed by a dependence conception.

## **ELEMENTS OF INSTITUTIONAL CORRUPTION**

Drawing on the points of agreement among the normative institutionalists and trying to avoid their missteps, we can construct a tripartite conception that could be extended to any institution in which officials (or other agents) are authorized to act for the institution and are expected to follow its legitimate procedures. As in the work of most of the institutionalists, political corruption can be used as the paradigm. The distinctive character of institutional corruption can be brought out more clearly by comparing it with individual corruption with respect to each of the three elements of a system of corrupt interactions: gain, advantage, and the connection between the two.

Corruption is more institutional than individual insofar as (*a*) the gain an official receives is

more institutional than personal, (b) the advantage the official provides takes the form of access more than action, and (c) the connection between the gain and the advantage manifests a tendency to subvert legitimate procedures of the institution, regardless of whether an improper motive is present. In actual cases, these elements are present to various degrees and in various combinations, and as a result many instances of corruption are appropriately described as more or less institutional, or more or less individual. An advantage of the three-element conception of institutional corruption as presented here is that it allows for hybrid cases of this kind, which are often neglected. An analysis that disaggregates the elements can help better identify the specific character of the corruption in actual cases.

### **Institutional Gain**

When an official accepts a bribe in return for a favor, the personal gain is not a legitimate part of the salary, and providing the favor is not a permissible part of the official's job description. The exchange serves no valid function in a well-constituted institution. In contrast, institutional gain involves goods that are useable primarily in an institutional role and are necessary for, or essential by-products of, performing the role. Institutional gain may be no less self-interested than personal gain, but it serves a valid institutional function. It is necessary and under certain conditions desirable even in a properly functioning institution. In a democracy, 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.

Institutional corruption should be distinguished from the corruption that some political scientists once argued is functional and justified if a political system is so inefficient and defective that the only way to get anything done is to “grease the wheels” of government. The view came out of what might be called the Harvard school of corruption because so many of its proponents held appointments there ([Huntington 1968](#), pp. 59–71; [Friedrich 1972](#); [Wilson 1974](#), pp. 29–32; also see [Nye 2007, who sees corruption as beneficial but only under very limited conditions](#)). The broad version of this view has been discredited by later research ([Rose-Ackerman & Palifka 2016](#), pp. 32–33, 525). When public officials are paid so poorly that they depend on bribes to survive, as in some developing societies, the corruption might be said to be necessary for the system, but usually only in the short run, and even then is not seen as serving any other legitimate function ([Le et al. 2013](#)).

All the institutionalists insist on something like the distinction between personal and political

(or institutional) gain, but they do not always emphasize one of its most important implications. Unlike efforts to restrain the personal gain in individual corruption, reforms to control institutional gain must seek alternative ways to supply it. Even public financing of campaigns, in any form that is likely to be adopted, would not completely eliminate the need to raise money, which is necessary to obtain other politically appropriate benefits, such as organizational support and leadership positions. The political gain must come from somewhere. However, as most of the institutionalists recognize, there are better and worse ways to seek it, and there are better and worse ways to monitor it if some has to come from conventional sources.

This point can be generalized to other institutions. Drug research requires funding, but it does not have to come directly from drug companies ([Institute of Medicine 2009](#), pp. 97–120). Doctors may serve their communities while owning outpatient diagnostic and treatment centers, but their profits should not depend on referring their own patients there ([Institute of Medicine 2009](#), pp. 173–74). An auditing firm should not rely exclusively on fees from a company they audit ([Moore et al. 2006](#)). Corporations that pay “expediting fees” to get foreign contracts damage their own organization and should (and can) find other ways to do business abroad ([Serafeim 2014](#); [PricewaterhouseCooper 2008](#)). Media organizations may need access to influential elites and support from wealthy investors to do their job, but they can gain access and maintain support in ways that do not undermine their independence ([White 2015](#)). Universities need funds to sustain athletic programs, but they do not have to become big-time sports enterprises that rely on extravagant television deals, exploit student athletes, and compromise academic standards ([Shulman & Bowen 2002](#)).

### **Institutional Advantage**

Both individual and institutional corruption involve providing an advantage to a private citizen or organization typically outside the institution. Thompson ([1995](#)) calls this advantage a service, alluding to the constituent service that featured prominently in the Keating Five case. He specifies that in institutional corruption the impropriety of an advantage is due to the manner in which it is provided rather than the merit of its claim. But whether an advantage is provided improperly should depend on how it is connected to the gain, not simply on how it is provided. The distinctive form that an advantage takes in institutional corruption in politics is better specified as access to an official, as distinct from action by the official. The advantage sought or received is not necessarily a specific benefit such as a job or tax break, as individual corruption

usually requires, but rather a greater opportunity to exercise influence than most other citizens enjoy. The institutional advantage does not have to be unfair or undeserved, and it does not have to lead to the action that typifies individual corruption. Whether it is corrupt depends on the nature of its connection to the institutional gain.

The distinction between access and action is empirically relevant because, while studies have generally not found significant correlations between contributions and roll call votes, they have shown that big contributors gain more access and therefore presumably more potential influence of various kinds. Lessig ([2011](#), pp. 125–66) relies on these studies to show the undesirable effects of improper dependence. The influence usually does not involve members’ changing their minds. Most contributors give to politicians who already support their positions. Sometimes they even give to politicians on both sides of the aisle (or both sides of an issue). The “ideological incongruity” in that practice is a reliable sign that the advantage sought is access for a more indirect kind of influence than seen in conventional corruption ([Thompson 1993](#), p. 376).

Analogous forms of advantage can be seen in research when funders recruit scientists to give lectures for their events or serve on their advisory groups; in business when corporations enjoy close relationships with their auditors (as when they share offices); in journalism when organizations benefit from having reporters as speakers and advisers, or when public figures socialize with editors and reporters who may be covering them; in academia when donors receive special attention in the admissions process; and in museum administration when curators give greater prominence to the donors’ gifts and exhibition preferences than they might otherwise receive.

### **The Connection Between the Gain and the Advantage**

In individual corruption, the link between the gain and the advantage is a motive in the mind of the official or the citizen, or both. To establish individual corruption on the part of officials, we have to show that they knew or should have known that the gain was provided in exchange for the advantage or that they solicited the gain in exchange for the advantage. Typical cases are bribery and extortion.

In institutional corruption, the required link is an institutional tendency, not an individual motive. We have to show only that the official accepted the gain and provided the advantage under institutional conditions that tend to subvert the legitimate procedures of the institution. Requiring a corrupt motive (as Miller does and Warren comes close to doing) would not capture



conduct in which agents are not trying to enrich themselves, are acting openly, and reasonably believe they are merely doing their job, but nevertheless engage in practices that undermine the institution. The tendency test more sharply focuses the diagnosis and treatment of institutional corruption on its distinctive disorders, which need to be directed in part toward conduct that is not intentionally corrupt.

The tendency test also underscores the importance of rules, such as those that proscribe the appearance of corruption and that regulate conflicts of interest ([Thompson 1995](#), pp. 55–60, 124–30; [Stark 1995, 2004](#); [Warren 2006a](#)). Like the test, these rules refer to the circumstances of corruption, not to the motives of the individuals who act in those circumstances. They are sometimes described as applying prophylactics, but they are more like practicing abstinence. They tell officials to avoid the circumstances that have in the past led to corruption, not simply to take measures to avoid corruption while acting in those circumstances. These methods can be seen not only as regulating institutional corruption but as proscribing certain forms of engaging in it. Violations of the rules can constitute corruption itself. The violations subvert the legitimate procedures, and undermine confidence in the integrity of the institution.

Some institutionalists include in their conceptions the requirement that the practices tend to undermine the purpose of an institution, not only its processes ([Lessig 2013a](#), p. 553; [Miller 2017](#), pp. 82–88; also indirectly [Thompson 2013](#), pp. 5–6). Institutional corruption usually does thwart the purposes of an institution by weakening its effectiveness and public confidence in its integrity. One of the most important contributions of institutionalists is to show how institutional corruption can cause loss of trust even in the absence of corrupt individuals (Thompson [1995](#), pp. 23–24; [2013](#), pp. 13–14, 20–21; [Warren 2004](#), pp. 335–40; [Lessig 2011](#), pp. 166–70; [Amit et al. 2017](#), pp. 455–59). But the weakening of effectiveness and trust are better treated as consequences of institutional corruption than as necessary conditions of it. [Néron \(2014\)](#) sees the emphasis on purpose as a form of essentialism, which he argues neglects the possibility of institutions' having dynamic goals. The purposes of government (and of many other institutions) are multiple and contestable ([Amit et al. 2017](#), pp. 449–53), and therefore cannot be fully specified and endorsed independently of a legitimate collective decision-making process. If that process is corrupted, the institutional purposes cannot be legitimately determined. For that reason, a procedural focus is more fundamental. Nevertheless, there could still be different views about what makes the process corrupt. [Ceva & Ferretti \(2018; 2017\)](#) argue that, at least in



liberal democratic polities, the corruption is not mainly in the defects of institutions (as they believe the other institutionalists claim) but in the pursuit of an agenda that cannot be publicly justified in accordance with “the mandate for which the power associated with that specific office ought to be exercised” (2018).

## CRITICISMS

In addition to the criticisms already mentioned that are mostly specific to particular institutionalists, several others have been raised that apply to the institutional conception more generally.

Some critics object to including reference to the democratic process in the conception of political corruption because there is reasonable disagreement about what should count as legitimate democratic procedures. “Who decides on the norms...?” asks [Kurer \(2015\)](#), p. 35), and which norms ([Philp 2015, p. 20](#))—those of “of democracy *tout court*... democracy in the U.S.A... or constitutional democracies or representative political systems”? (Presumably, the critics would raise similar questions about the procedures in other kinds of institutions.) Lessig’s answer ([2014](#)) is clear: his dependence corruption appeals to the US Constitution, at least what he assumes is a widely shared interpretation of it. Warren relies on a version of the principle of equality that he believes is normatively grounded. Thompson ([1995; 2005b](#)), as noted above, seems to base the procedures on deliberative democracy, which he justifies in other writings ([Gutmann & Thompson 1996](#)).

But institutionalists do not have to commit themselves to a particular set of procedures or a particular form of democracy. One of the virtues of their approach is its modular character: it can be installed into a wide variety of theories of democracy (and other institutional forms of governance). Furthermore, institutionalists can accept the possibility that what counts as a legitimate institutional process can be challenged. To sustain that kind of challenge, however, we have to stand outside an existing process and appeal to principles that are arguably located in the culture and history of the society, or in a philosophical ideal that could be accepted by reasonable persons. This is a challenge that goes beyond the purview of corruption theory.

In practice, the challenge is not so sweeping. The institutionalists can find enough components of the process that are uncontroversially legitimate to allow the decision making and institutional reform to go forward. The institutionalists agree on certain basic, commonly

accepted principles, which in the case of political democracy include fair opportunity for citizens to participate in making decisions and holding representatives accountable; or in the case of institutions that do not purport to be democratic, the opportunity for members to be consulted and to have their interests fairly considered.

Some critics may still object that even a legitimate process may produce disagreement about what counts as corruption. This would seem to go against the plausible claim that there is a core idea of corruption, which is generally regarded as wrong ([Rothstein & Varraich 2017](#), pp. 46–52; [Svallfors 2013](#), pp. 363–80).. However, to allow for multiple interpretations is not to deny that the underlying concept may have a universal core. Disagreement about how to interpret the core (a form of distortion of institutional processes by extraneous forces) is to be expected. The shifts in the definition of corruption in US constitutional law mentioned above offer a prime example. Critics continue to argue that the Court was wrong to limit corruption to quid pro quo exchanges. As theorists and analysts, we can participate in the debate and point out that there are better and worse arguments in play. Theorists can look for the fundamental moral principles that make all forms of corruption wrong. Ceva ([2018](#)) argues that both individual and institutional corruption should be “understood as a form of political injustice in which someone has violated the logic of mutual accountability that undergirds all relations of justice in rights-based systems.” Social scientists can still take widely accepted standards as working definitions for comparative study. But we should not expect to find a completely settled definition or single set of uncontested standards that can be observed or measured in advance ([Miller 2011](#), p. 28-29).

Sometimes we can reach a consensus on standards that could be regarded as normatively justifiable. But even here, a complete definition would be difficult to construct in advance, and in any case would be too variable or complex to serve analytic purposes. Conflict-of-interest rules illustrate the problem. Suppose that we agree that it is corrupt for public officials to own substantial amounts of stock in companies affected by their decisions. Still, what is substantial, what affected means, and how to take account of the difference between the roles of the legislator and executive are all matters that have to be specified in detail. Actual and ideal rules of conflict of interest define a form of institutional corruption, and within a wide and complex range of possibilities, any set of rules may be justified if enacted in a legitimate process. Once the rules are in place, violating them counts as corruption.

A large part of the project of combating institutional corruption consists in formulating rules

that determine what counts as corruption, not merely preventing conduct that is already determined to be corrupt. In this sense, institutional corruption is politically constructed. To the extent that it is, institutionalists can accept the “realist” view that a conception of corruption involves a “political ordering, forged through power, manipulation, rhetoric, argument, and incentives” ([Philp & Dávid-Barrett 2015](#), p. 388).

Other critics object that the conception of institutional corruption is too broad. It would seem to proscribe “legitimate political mobilization”—for example, a union movement’s giving money to a party, which in turn enacts legislation that helps unions recruit and retain members ([Rothstein & Varraich 2017](#), pp. 14–15). If these kinds of exchanges are considered to support or at least not damage the democratic process (as they plausibly could be so considered), they would not count as institutional corruption. But an advantage of the conception of institutional corruption is that it keeps open the possibility that the legislature could decide that similar exchanges should be proscribed—for example, if the contribution comes from a secret union fund not approved by members. By the same token, the legislature could decide to prohibit some corporate contributions—for example, those that come from a corporation’s general treasury and their use for this purpose is not endorsed by shareholders. The reason that it may be “difficult to find a clear and precise demarcation line” ([Rothstein & Varraich 2017](#), p. 15) between legitimate and illegitimate influence in this “gray area” is that the line is not found but has to be drawn by rules created by citizens and their representatives.

Another version of the criticism that the conception is too broad comes from critics who are sympathetic to the institutionalists’ aims but worry that they risk turning their conception into a general theory of institutional failure ([Néron 2014](#), [Newhouse 2014](#)). Such a broad theory, they argue, would lead to misdiagnoses of the institutional failures and would obscure the distinctive contributions of institutionalists. Lessig’s dependence corruption embraces a wide and diverse range of institutional dysfunctions, such as problems involving judicial independence, separation of powers, bureaucratic politics, and executive privilege (e.g., [2011](#), pp. 228–30). Néron ([2014](#), pp. 115–16) suggests that some conceptions of institutional corruption would include, for example, corporate actions that cause pollution but result in lower prices for consumers. These actions, he believes, are better described and targeted as instances of market failure or more broadly distributive injustice. That seems right, but the revised criteria for institutional corruption described above would exclude cases of market failure. Warren ([2004](#), pp. 340–41) shows that

market forces may play a role in institutional corruption but indirectly—by influencing political institutions. Miller (2017, p. 303) argues that dependency should count as corrupt only if it undermines institutional purposes or persons in institutional roles.

Néron (2014, p. 115) argues that Lessig (2013a) limits the scope of his conception to systemic influences of money on institutions and the actors connected with them, and this limitation has the effect of making institutional corruption look like individual corruption. Lessig's conception is broader than Néron's interpretation suggests, but in any case Lessig acknowledges that some instances of dependence corruption can also be instances of individual corruption. He in effect recognizes that the analysis of institutional corruption, as indicated above, should allow for mixed cases, which include elements of both individual and institutional corruption in varying proportions. How to limit the scope of institutional corruption is a reasonable question to pose to the institutionalists, but it need not be answered by going to the opposite extreme, as Miller seems to do—by relegating institutional failures that lack individual motives to the completely different category of “institutional corrosion” (2011, pp. 8–9; 2017, p. 66).

A more promising approach would retrieve the core of the traditional idea of corruption mentioned above—a form of distortion of public (or institutional) processes by extraneous forces. It would then emphasize the distinctive elements of the institutional conception— that the actions serve the institution while undermining it and exploit practices that are integral to it. We should also stress that institutional corruption involves an official or agent who has responsibility to citizens or members of the institution. This kind of responsibility is predominant in Newhouse's (2014) fiduciary theory of institutional corruption. She argues that her approach avoids the excessive broadening she finds in the work of some institutionalists, yet maintains the distinctive character of institutional corruption that the theorists wish to emphasize.

## **FURTHER RESEARCH: LEARNING FROM DEVELOPING SOCIETIES**

The leading theorists have been more interested in conceptual analysis, institutional design, and practical reform than empirical research, but they generally also try to show how their theories are consistent with recent work in the social sciences (e.g., Lessig 2011, pp. 125–66). Some of the most recent institutionalist work is substantially empirical. Important contributions have studied differences in public attitudes toward legal and illegal corruption (Dincer & Johnston

[2015](#)); the effectiveness of “blinding” (practices that deny decision makers certain kinds of information) to reduce institutional corruption in law, medicine, and politics ([Robertson & Kesselheim 2016](#)); the negative effects of industry funding on physicians’ judgment of the quality of published research ([Kesselheim et al. 2012](#)); and the harmful effects of pharmaceutical industry support of the psychiatry profession ([Whitaker & Cosgrove 2015](#)).

However, both empirical and normative institutionalists have neglected the mainstream literature on corruption (ED: I’m trying to avoid repeating “literature”), which is chiefly concerned with developing societies and largely focuses on individual corruption in its structural forms (as indicated above). In their effort to highlight the differences between institutional and individual corruption, the institutionalists may have distanced themselves too much from this literature. The study of institutional corruption could benefit from closer links with the work on individual corruption in developing societies.

A key question in that literature is why the corruption has been so resistant to even the most concerted programs of reform. A leading scholar of corruption concludes his overview by observing that a “generation of reform effort has produced mixed results at best” ([Johnston 2014](#), pp. 9–10; see also [Persson et al. 2012](#)). A prominent explanation sees the persistence of corruption as a collective action problem ([Rothstein 2011a](#); [Rothstein 2011b](#), pp. 98–119; [Mungiu-Pippidi 2013](#)). Everyone may believe that corruption is wrong, and even want to eliminate it, but because it is so widespread, it acquires what may be seen as a reluctant legitimacy. Everyone also believes that everyone else will continue to act corruptly no matter what any individual or group tries to do. The corruption is a self-reinforcing phenomenon ([Aidt et al. 2003](#), [Uslaner 2008](#)).

This collective action approach, suitably modified and extended, can be applied to institutional corruption. Even if many citizens and reformers see the corruption and want to get rid of it, they do not believe that they have enough support to sustain a successful campaign against it. Any individual politician who would try to avoid institutional corruption would be at a competitive disadvantage. Any individual politician who would try to break out of the fundraising race or deny special access to big contributors would be less likely to win reelection. Furthermore, the leaders who are in a position to lead political reform benefit from the existing system. The potential agents of change are the actual agents of corruption.

Analysts who emphasize the persistence of corruption in developing societies argue that if

reform is to succeed it must be radical—what one leading scholar calls the “big bang approach” ([Rothstein 2011a](#)). Drawing on the example of reform in Sweden in the nineteenth century, Rothstein shows that the changes were concentrated in a relatively short period of time and affected not only governmental institutions but a wide range of informal organizations in civil society ([Rothstein 2011a](#); also [Mungiu-Pippidi 2006](#)). Only when a critical mass of leaders and citizens came to believe that they could trust others to act honestly were the reforms likely to take hold and endure.

A lesson for theorists of institutional corruption, then, is that to initiate and sustain major reform, they need to look beyond the established leaders and existing institutions. Some students of corruption in developing societies look to internal leadership—not in the existing regime, but from an independent force in the society. A version of this approach, called “deep democratization,” calls for “a continuing process of building workable rules and accountability by bringing more voices and interests into the governing process” ([Johnston 2014](#); also [Rose-Ackerman & Palifka 2016](#), pp. 446–90). Some of Lessig’s ([2011](#), pp. 264–306) own reform efforts could be seen as beginning such a process.

Another lesson is that reform efforts need to aim at more than one institution and more than the formal rules and procedures. The changes must be extensive enough to enable a critical mass of leaders to believe that others will join them and that their institutions are not the only ones plagued by the problem. Congress is not the only source of institutional corruption, and government is not its only site. Corporations, universities, media organizations, healthcare providers, foundations, sports leagues, and other institutions should not escape scrutiny.

By attending to the literature on developing democracies, we can also see some anticorruption measures already familiar in developed democracies in a different light. For example, transparency has often been disparaged as a method in developed democracies, and by itself may even be counterproductive ([Lessig 2011](#), pp. 251–60; [Thompson 1995](#), pp. 137–40). But a survey of the experience in developing countries suggests that the benefits of transparency may show up only in the long term. It seems to be one of the few anticorruption reforms that reverse the usual pattern of short-term improvement followed by long-term recurrence. The prospect of greater disclosure not only motivates politicians to “perform better” but more significantly also encourages “high-talent individuals to enter politics” ([Olken & Pande 2012](#), p. 506). Also, the transparency rules should require not only publicity about individual officials’

finances but also about the distribution of public funds ([Olken & Pande 2012](#), pp. 502–4). Finally, simply submitting Freedom of Information Act requests, regardless of whether they are fulfilled or acted on, can sometimes “frighten public officials into action” ([Peisakhin & Pinto 2010](#), pp. 278, 275; [Peisakhin 2012](#), p. 148).

Experience in developing societies also shows that transparency must be coupled with accountability—what some scholars of individual corruption call “clarity of responsibility” ([Potter & Tavits 2011](#)). A system has more clarity to the extent that the government has a strong majority, the turnover of the cabinet is low, and the opposition party cannot easily block legislation, among other features. When clarity of responsibility is high, the voters can more readily identify the decision makers, and politicians find it harder to shift the blame. Under these conditions, corruption is less common ([Treisman 2007](#), pp. 57–59). This basic strategy could be applied to reducing institutional corruption even in systems, such as the US government, that are not notable for their clarity of responsibility. To enhance this clarity, independent oversight bodies could be created and charged with investigating and identifying the individual officials who fail to take action to reduce institutional corruption ([Thompson 2017](#), pp. 38-39).

Revolving-door rules, which regulate post-government employment, are already used to prevent both individual and institutional corruption ([Transparency International 2010](#)). Examining corruption in developing societies shows that such rules can have a broader function than preventing corruption by officials in a particular institution. In many of those societies, the boundary between institutional roles and private life is often porous. Officials may leave office but still continue to influence those who remain, and share their interest in preserving the opportunities for privileged access. Breaking some of these connections, or at least reducing their influence, as these rules seek to do, could mitigate the resistance to reform that comes from entrenched interests.

Noticing the porous boundaries in developing societies should help the institutionalists recognize a parallel phenomenon in developed societies. As more of the functions of modern government have been contracted out, and more officials move back and forth between public office and private organizations in developed societies, the likelihood that governmental decisions are influenced by extraneous factors increases. Perhaps even more significant is that these decisions are increasingly made in the “shadow government” ([Wedel 2012](#), pp. 487–88). In this world of “shadow elites and shadow lobbyists,” the corruption is “far more subtle and



difficult to detect than the bribe paid to the bureaucrat or customs official.” For this reason, the study of political corruption cannot be studied apart from institutional corruption more generally.

## CONCLUSION

The study of corruption has been enriched by theories of institutional corruption. They have drawn attention to phenomena that share characteristics of the traditional concept of corruption but manifest relatively neglected forms that are prevalent in developed democracies. The theories help identify and sharpen the targets for reform and criticism of this form of corruption, and show the relationships between political corruption and corruption in other institutions in society. The tripartite framework presented here is intended to capture the essential elements of the conception as they are currently best understood. Critics of the institutionalists have raised important challenges, some of which remain unresolved. The theorists and those inspired by them have pursued some significant empirical research, but they have not generally engaged with the work on conventional corruption. The understanding of institutional corruption in developed democracies could profit from greater attention to the work on individual corruption in developing societies.

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