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MEDIATED CORRUPTION: THE CASE OF THE KEATING FIVE

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The Keating Five case exemplifies a form of a political corruption that is increasingly common in contemporary politics but frequently neglected in contemporary political science. I focus on this form by developing a concept of mediated corruption, *which links the acts of individual officials to effects on the democratic process. Unlike conventional corruption, mediated corruption does not require that the public official act with a corrupt motive or that either public officials or citizens receive improper benefits. The concept of mediated corruption provides not only a more coherent account of the case of the Keating Five but also a more fruitful way of reuniting the concepts of systematic corruption in traditional political theory with the concepts of individual corruption in contemporary social science.*

The case of the "Keating Five"—featuring five prominent U.S. Senators and Charles Keating, Jr., a savings-and-loan financier who contributed to their campaigns—has "come to symbolize public distrust of elected officials" and has reinforced the widespread view that many members of Congress and the institution itself are corrupt.[1] The nine months of investigation and seven weeks of hearings conducted by the Senate Ethics Committee that concluded in January 1992 revealed an underside of our system of representation to a depth and in a detail rarely seen before.

The broad shape of this underside is familiar enough: politicians take money from contributors to get elected, then do favors for them. But the deeper significance, theoretical and practical, is to be found in the details and in the relation of those details to principles of democratic representation. Although the case reveals a darker side of our politics, we can still try to recognize degrees of darkness. We should aim for a kind of moral chiaroscuro. More generally, the case can help us better understand a form of political corruption that is becoming increasingly common but has not received the attention it deserves from political scientists or political theorists.

This form of corruption involves the use of public office for private purposes in a manner that subverts the democratic process. It may be called *mediated* corruption because the corrupt acts are mediated by the political process. The public official's contribution to the corruption is filtered through various practices that are otherwise legitimate and may even be duties of office. As a result, both the official and citizens are less likely to recognize that the official has done anything wrong or that any serious harm has been done.

Mediated corruption is still a form of corruption. It includes the three main elements of the general concept of corruption: a public official gains, a private citizen receives a benefit, and the connection between the gain and the benefit is improper.[2] But mediated corruption differs from conventional corruption with respect to each of these three elements: (1) the gain that the politician receives is political, not personal and is not illegitimate in itself, as in conventional corruption; (2) *how* the public official provides the benefit is improper, not necessarily the benefit itself, or the fact that the particular citizen receives the benefit; (3) the connection between the gain and the benefit is improper because it damages the democratic process, not because the public official provides the benefit with a corrupt motive. In each of these elements, the concept of mediated corruption links the acts of individual officials to qualities of the democratic process. In this way, the concept provides a partial synthesis of conventional corruption (familiar in contemporary political science) and systematic corruption (found in traditional political theory).

To show the value of the concept of mediated corruption, I criticize two interpretations of the Keating Five case that assume a conventional concept of corruption. A concept of mediated corruption, I suggest, provides a better characterization of this case and, by implication, of the many similar cases that have occurred and are likely to occur. The characterization is intended to identify more coherently the aspects of actions and practices that we regard, or should regard, as wrong. The concept of mediated corruption helps bring our considered judgments about corruption in particular cases into "reflective equilibrium" with our moral and political principles.[3]

WHAT THE KEATING FIVE GAVE AND WHAT THEY GOT

A brief summary of the events in this case will set the stage for examining the competing interpretations.[4] The senators who are forever joined together by the name the Keating Five had never worked together as a group before, and will (it is safe to assume) never work together again. Four are Democrats—Dennis DeConcini (Arizona), Alan Cranston (California), John Glenn (Ohio), and Donald Riegle (Michigan)—and one is a Republican, John McCain (Arizona).

They were brought together by Charles Keating, Jr., now in prison in California, convicted on charges

of fraud and racketeering. As chairman of a home construction company in Phoenix, he bought Lincoln Savings and Loan in California in 1984 and began to shift its assets from home loans to high-risk projects, violating a wide variety of state and federal regulations in the process. In 1989, Lincoln collapsed, wiping out the savings of twenty-three thousand (mostly elderly) uninsured customers and costing taxpayers over two billion dollars. It was the biggest failure in what came to be the most costly financial scandal in American history. Lincoln came to symbolize the savings-and-loan crisis.

But to many in the financial community during the years before the collapse, Keating was a model of the financial entrepreneur that the Republican administration wished to encourage through its policy of deregulation. His most visible political lobbying was directed against the new rule prohibiting direct investment by savings-and-loans, which many legitimate financial institutions and many members of Congress also opposed. His most prominent and persistent target was Edwin Gray, the head of the three-member bank board that regulated the industry, himself a controversial figure.

The fateful meeting that would forever link the Keating Five took place on April 2, 1987, in the early evening in DeConcini's office. The senators asked Gray why the investigation of Lincoln and their "friend" Keating was taking so long. Gray said later that he was intimidated by this "show of force." Toward the end of the meeting, he suggested that the senators talk directly to the San Francisco examiners who were handling the Lincoln case. And so they did, a week later, in what was to become the most scrutinized meeting in the hearings. The senators told the examiners that they believed that the government was harrassing a constituent. After the regulators reported that they were about to make a "criminal referral" against Lincoln, the senators seemed to back off.

After that meeting, McCain, Riegle, and Glenn had no further dealings of significance with Keating. Glenn arranged a lunch for Keating and House Speaker Jim Wright the following January, but the committee concluded that although this showed "poor judgment," Glenn's actions were not "improper" (U.S. Senate 1991b, 18). McCain had already broken off relations with Keating, who had called him a "wimp" for refusing to put pressure on the bank board. Cranston and DeConcini continued to act on Keating's behalf.

The Keating Five, particularly DeConcini and Cranston, certainly provided this constituent with good service. Since an act of corruption typically involves an exchange of some kind, we have to ask, What did the Senators get in return? The answer is $1.3 million, all within legal limits.[5] But this figure and this fact, handy for headline writers, obscures some important details (especially the timing and uses of the funds) that should affect our assessment of corruption.

In February 1991, the Ethics Committee rebuked four of the Senators—DeConcini and Riegle more severely, McCain and Glenn less so—and said that further action was warranted only against Cranston. Then in November, after much behind-the-scenes political negotiation, the committee reported to the full Senate that Cranston had "violated established norms of behavior in the Senate." To avoid a stronger resolution by the committee (which would have required a Senate vote), Cranston formally accepted the reprimand. In a dramatic speech on the floor, he also claimed that he had done nothing worse than had most of his colleagues in the Senate.

COMPETITION OR CORRUPTION?

Cranston's own defense exemplifies, in a cynical form, one of the two standard interpretations of the conduct of the Keating Five. This interpretation holds that the conduct was part of a normal competitive process, in which all politicians are encouraged by the political system to solicit support and bestow favors in order to win elections. We may call this the *competitive politics* theory.[6] On this view, most politicians are not corrupt, nor is the system—even if some citizens like Keating happen to have corrupt designs. The quest for campaign contributions and the provision of service to influential contributors are necessary features of a healthy competitive politics.

The second interpretation also holds that what the Keating Five did is not significantly different from what other members have done but concludes that it is corrupt. On this view (call it the *pervasive corruption* theory), most politicians are corrupt or (more sympathetically) are forced by the system to act in corrupt ways even if they begin with honest intentions.[7] This interpretation is naturally more popular among the press, the public, and academics than it is among politicians. It is consistent with the views both of those who urge radical reforms in the political system (e.g., abolishing campaign contributions completely) and of those who believe that corruption is unavoidable in government (and either accept it or advocate reducing the scope of government).

These two common interpretations seem to be different. Indeed, they seem to be opposites, since one finds corruption where the other does not. But on closer inspection, their concepts of corruption turn out to be fundamentally similar. We can begin to see the similarity in the fact that they both conclude that the conduct of the Keating Five is not morally distinguishable from that of most other politicians.[8] On both accounts, the Keating Five were simply intervening with administrators on behalf of a campaign contributor, a common practice. The competitive politics theory accepts the practice, the pervasive corruption theory condemns it. But on neither theory do the details of the case (e.g., what kind of intervention) make any difference in the moral assessment.

The reason that both theories take this view is that they agree in their fundamental assumptions. The analysis that follows focuses on three of these assumptions (each corresponding to an element in the

general concept of corruption) and argues that each is mistaken. Understanding why they are mistaken points toward the need for a concept of mediated corruption.

First, both interpretations assume that corruption requires that the public official receive a personal gain, either directly or indirectly in the form of an advantage that is not distinguished from personal gain. They disagree about whether a campaign contribution should count as personal gain in the required sense, but they agree that some such gain or its moral equivalent is necessary. The image of the self-serving politician acting on base motives contrary to the public interest supplies much of the force of the moralistic reactions to corruption, both the defensiveness of the competitive politics view, and the censoriousness of the pervasive corruption view. This is also the image that most public officials themselves evidently have of the corrupt official: the more personal and the larger the payoff and the less the favor seems part of the job, the more likely is the conduct to be regarded as corrupt (Peters and Welch 1978, 980–81). Second, both interpretations assume that corruption requires that the citizen receive a benefit that is not deserved or be threatened with not receiving one that is deserved. More generally, the justice of the constituent's claim is the only aspect of the benefit that is relevant to the determination of corruption. Third, both interpretations assume that corruption requires a corrupt motive. The personal or political gain and the citizen's benefit are *connected* in the mind of the public official. The official knowingly acts for the contributor in exchange for gain to himself or herself.

PERSONAL GAIN: THE AMBIGUITY OF SELF-INTEREST

Is personal gain by an official a necessary element of corruption? Only one of the Keating Five—McCain—ever received anything from Keating for his own personal use, and he (along with Glenn) is generally considered to have been the least guilty of the group. (The McCain family took some vacation trips to Keating's Bahamas home in the early 1980s, for which McCain eventually paid when notified by the company in 1989.) If personal gain is an element of the corruption in the Keating Five case, it must be found in the campaign contributions. Should campaign contributions count as the personal gain that the conventional concept of corruption requires?

This case suggests a negative answer. Cranston received no personal financial benefit, yet his conduct was reasonably regarded as the most flagrant of the Five; he was the only one ultimately reprimanded by the Senate. Most of the $850,000 Keating gave to Cranston went to voter registration groups, which had public-spirited names such as Center for the Participation in Democracy and had the purpose of trying to increase turnout in several different states. One of Cranston's main defenses was that he did not gain personally from these contributions.

But one might say that he did gain politically, or at least he thought he would.[9] Why not count this political advantage as the element of personal gain? This is a tempting move and is commonly made, but it should be avoided. It is a mistake to try to force contributions into the category of personal gain. Doing so obscures a moral difference between personal and political gain. These should be distinguished even if one insists on treating both as forms of self-interest. "Personal gain" refers to goods that are usable generally in pursuit of one's own interest (including that of one's family) and are not necessary by-products of political activity. "Political gain" (which may also be a kind of self-interest) involves goods that are usable primarily in the political process, and are necessary by-products of this process.

The distinction is important because in our political system (and any democracy based on elections) the pursuit of political profit is a necessary element in the structure of incentives in a way that the pursuit of personal profit is not.[10] Our system depends on politicians' seeking political advantage: we count on their wanting to be elected or reelected. Among the advantages that they must seek are campaign contributions. If political gain were part of what makes a contribution corrupt, it would also discredit many other kinds of political support, such as organizational efforts on behalf of a candidate, on which a robust democratic politics depends. This is part of the truth in the competitive politics theory.

Some political scientists would offer a more sophisticated rationale for regarding contributions as just another form of personal gain. They would begin with the methodological assumption that politicians act only on self-interest, seeking to maximize their chances of reelection or in other ways to advance their careers. They could then argue that contributions, to the extent that they help achieve these goals, constitute personal gain no less than other goods that further the self-interest of politicians. The trouble with this expansive concept of personal gain is that it does not help identify which contributions should be permitted and which should not. As far as the personal gain is concerned, all contributions are created equal: they are either all proper or all corrupt. If self-interest is viewed favorably (as in some competitive politics theories), the expansive concept would not require that any contributions be prohibited, even those involving what would normally be considered bribery or extortion. If self-interest is viewed unfavorably (as in some pervasive corruption theories), the concept would imply that no contribution should be permitted, even those serving what would normally be regarded as the public interest. In either case, the self-interest assumption does not itself supply any way to distinguish legitimate from illegitimate pursuit of personal gain.

Neither could we get much help with this difficulty from a more refined model based on principal–agent theory, which is sometimes used to analyze corrup-

tion.[11] On this model, the politician acts as an agent for constituents, the principals. Because of the costs of monitoring and other factors, the principals cannot reliably control the agent's actions. In the absence of other constraints, the resulting "slack" allows the agent to act on his or her own interest contrary to that of the principals. The model could help us see that corruption may be partly the result of the structure of incentives in the system: agent–principal slack creates moral hazards that permit corruption. But the model is neutral between proper and improper behavior. It is applicable to corrupt principals and agents as to honest ones. It could treat the Keating Five as agents of Keating in carrying out corrupt purposes. It does not explain why we should have a system that allows some kinds of incentives (contributions) and not other kinds (bribes). It might be said, of course, that taking bribes has more socially harmful consequences than accepting campaign contributions. But if this is the claim, then what is wrong is no longer the personal gain, but a certain *kind* of personal gain; and it is wrong not because it is a *personal* gain at all but because of its effects on the system.

If the presence of personal gain is not necessary to make a contribution corrupt, neither is its absence sufficient to make a contribution correct. Consider this hypothetical example. Suppose that after meeting with Mother Theresa (which in fact he did), Keating decides in a fit of saintly fervor that a portion of his campaign contributions and those of others he solicits for the Keating Five should go secretly to a government trust fund to support new programs to help the poor. Suppose, further, that the Keating Five, respecting this act of charity by a constituent, work together behind the scenes to establish the Mother Theresa Fund for this purpose. (To add a further touch of irony, let the fund be administered, at Keating's request, by Ed Gray.) None of the senators would have gained personally, and a good cause would have been served.[12] Would there be any grounds for concern about corruption?

There surely would be some. Keating would have managed to promote a private project with the aid of public officials but without the warrant of the democratic process. The cause, however noble, was not one that citizens or their representatives had chosen through legitimate procedures. Acting on principle for higher causes can be no less corrupting—and may be even more dangerous—than acting for personal gain because the perpetrators are more likely to be able to enlist others in their schemes. Oliver North would have not been able to mobilize so much support for his projects in the Iran–Contra affair had he been acting mainly for personal gain.

OFFICIAL FAVORS: THE PERILS OF CONSTITUENT SERVICE

Consider now the second element of corruption, the official favors that the senators provided. The Keating Five claimed that there was nothing improper about the help they gave Keating. The benefits that Keating received were all provided in the name of "constituent service," a normal practice in a political system where representatives have to compete for the support of voters and campaign contributors.

The senators—and even the Ethics Committee at times—seemed to assume that if what a member does is constituent service and breaks no law, it is never improper. If the conduct does not involve bribery, extortion, or an illegal campaign contribution, it is not only acceptable but admirable.[13] This is the competitive politics theory in its purest form. But as the hearings progressed, some of the senators came to accept a slightly more moderate view. In effect, they allowed that otherwise proper constituent service could become improper if it were provided unfairly. It would be wrong (and perhaps evidence of corruption) if it were provided only to big contributors.[14] The senators seemed to accept as a reasonable test the question, Does the member typically intervene in this way for other constituents?

DeConcini made it a major part of his defense to show that he responded to virtually any constituent who asked for help. (He brandished a list of 75,000 constituents who could be called to testify, though to everyone's relief he settled for inviting only three—a social worker for Hispanics, a drug-busting sheriff, and a handicapped veteran.)[15] Despite these heroic efforts, the answer to the question in this case is still probably negative: what the Keating Five provided was not typical constituent service. Five senators meeting in private with regulators on a specific case is unusual. During the hearings, no one could cite a sufficiently close precedent.[16]

But even if we were to accept that the senators would do for other constituents what they did for Keating, we should still be concerned about another feature of this case, what may be called "the problem of too many representatives." Only DeConcini and McCain could claim Keating as a constituent in the conventional (electoral) sense. The other three count as his representatives mainly by virtue of his business interests in their states.[17] It is true that business interests, like other interests, may deserve representation; and geographical districts need not define the limits of representation, even of constituency service. However, we may reasonably criticize multiple representation if, in practice (as this case suggests), the extra representatives tend to go disproportionately to those with greater financial resources. That this tendency is undesirable is part of the truth in the pervasive corruption theory. A fair system of democratic representation does not grant more representatives to some citizens just because they have more financial resources.

So far, these criticisms could be consistent with the concept of conventional corruption, which assesses the benefit only in relation to the justice of the constituent's claims. Mediated corruption goes further and considers the effects on the policymaking process—most importantly, the foreseeable reactions

of other officials (in this case, the regulators, staff, and other members). Instead of asking whether a member would provide this benefit equally for any constituent, mediated corruption asks whether the benefit should be provided in this way at all.

Unmentioned in the Constitution, unimagined by the founders, and until recently unanalyzed by journalists, constituent service has become a major part of the job of most members of Congress (Cain, Ferejohn, and Fiorina 1987, 50–76; and Fenno 1978, 101). It serves some valuable functions, the most important of which, perhaps, is to provide a check on abuse of power by executive agencies in individual cases—in effect, fulfilling the role played by an ombudsman in some other political systems.[18] If administrators are "harrassing a constituent," as some of the senators said they suspected in this case, members may be obligated to intervene not only to protect the constituent but also to correct administrative procedures.

Yet, as recent scholarship has emphasized, constituent service is not a wholly beneficial practice even when legitimately performed (Cain, Ferejohn, and Fiorina 1987, 197–229). Even if the casework done by each individual member is perfectly proper, the collective consequences may not be so beneficial for the system as a whole. One danger is that as constituent service becomes such a prominent part of the job, legislative duties suffer. Voters tend to pay more attention to personalized service than to legislative records, and political responsibility for these records withers. Another danger is that by concentrating on righting wrongs against individual citizens, constituent service can favor particular remedies over general reforms. Ad hoc and local solutions do not necessarily produce changes in procedures or policies that benefit the public as a whole. Yet another danger is that to the extent that incumbents gain electoral advantage through constituent service, new members who might bring fresh policy views or offer new criticisms of government performance are less likely to make their way into the legislature.

Once we accept that constituent service, quite independently of campaign contributions, is a mixed democratic blessing, we can see that to justify any act of constituent service, it is not sufficient to point to the benefit to particular constituents or even to the value of the practice for the system in general. Standards to assess constituent service are best derived from principles of legislative ethics, which identify the general characteristics that a system of representation should have in order to provide conditions for making morally justifiable decisions (Thompson 1987, chap. 4). Three principles—generality, autonomy, and publicity—yield three sets of standards.

Standards of *generality* require that legislative actions be justifiable in terms that apply to all citizens equally. These standards refer most directly to legislation itself, where they favor actions that provide public goods for a broad class of citizens over those that confer private advantage on individual citizens. They also have institutional implications, one of the most important of which is the separation of powers, a chief purpose of which is to maintain the appropriate level of generality by assigning to branches other than the legislative the role of applying the laws. Legislative actions that are appropriate in the process of making laws may not always be appropriate in the process of administering them. Some of the most important standards of legislative ethics, therefore, in various ways prescribe that any legislative intervention should be appropriate to the administrative proceeding in question.

In the Keating case, the senators evidently did not recognize any difference between what would be an appropriate intervention in rule-making proceedings and what would be appropriate in quasi-adjudicatory proceedings (which the Lincoln case resembled). In the latter kind of proceeding, there is generally more procedural protection for constituents and less legitimate scope for disputes about policy.[19] Some political bargaining, of course, is necessary in the administrative process; but at least some of the senators in this case went beyond what we might call the "normal range" of acceptable political pressure. They did more than make status inquiries (which are perfectly proper). To the regulators, their conduct looked more like a threat (specifically, a threat to oppose a pending bill to fund the savings-and-loan bailouts, which was generally believed to be urgently needed).

Standards of *autonomy* prescribe that representatives act on relevant reasons (Thompson 1987, 111–14). They require that any intervention be appropriate to the substantive merits of the constituent's case. Such standards would not prohibit members from acting aggressively on behalf of constituents, but they would clearly direct members to consider the substance of constituents' claims in deciding whether and how to intervene. Members may have a duty to support meritorious claims; but they should not press claims that they have, or should have, reason to believe are without merit. Furthermore, the higher the stakes, the greater the responsibility to investigate the merits of a claim. More generally, simply pressing claims without any regard to their merits is to promote a policymaking process moved more by considerations of power than of purpose.[20]

Many members may not recognize an ethical problem in intervention, because they take their roles to be like a lawyer's, whose duty is assumed to be to press a client's case without regard to merits. They may consider the only alternative to be to play a judge's role, which would allow no scope for partiality toward their constituents. But the role of the representative differs from both, permitting members to give special consideration to their own constituents provided that they take into account the effect on other citizens and on the public generally.

Keating's case, it is now known (and could have been known then) lacked merit. Glenn and McCain made some effort to find out about the case before they went to the meetings with Gray and the regulators. Giving the senators the benefit of the doubt, we might say that under the pressures of time they took all the steps one could reasonably expect before they

intervened with the regulators. The senators did, after all, have some evidence at the time (a letter from Alan Greenspan and a statement from the firm of Arthur Young) that appeared to lend credibility to Keating's complaints. But once the senators heard about the regulators' intention to make a criminal referral, they had adequate notice that his claims were questionable. Although criminal referrals are not unusual and are not clear evidence of wrongdoing, a conscientious senator (indeed, even a prudent one) would have looked more closely into the merits of Keating's case before continuing to assist him. The only two who continued to press his case, DeConcini and Cranston, did not. This is partly why their conduct could be criticized more severely, as the special counsel (and, less clearly, the Ethics Committee) suggested.

Standards of *publicity* require that an intervention take place in ways that could be justified publicly. It is, of course, neither practical nor desirable that all interventions be formally on the record and made public at the time. But the intervention should not be so clandestine that the member and the agency cannot be held accountable should the action later be called into question.[21] This is why some members put in writing their inquiries to administrative agencies and keep a record of other similar contacts.

The interventions for Keating, though not strictly secret, fell short of meeting the publicity principle. The pattern of the interventions—after-hours meetings, the absence of aides, early morning phone calls to regulators at home, the vagueness of records (except for the famous "transcript" of the April 9 meeting)—made it difficult to reconstruct the events. They create a reasonable suspicion that the discussions were never intended to be acessible for public review.

The constituent service that the senators provided Keating, as measured by these standards, did not serve the democratic process well. To this extent—and in varying degrees in the case of each senator—the benefits that Keating received qualify as improperly provided; they count as the second element of mediated corruption. With the concept of mediated corruption, then, we can criticize some forms of constituent service for contributors without rejecting all forms as does the pervasive theory, or accepting all forms as does competitive theory.

CORRUPT CONNECTIONS: THE SIGNIFICANCE OF MIXED MOTIVES

In any form of corruption, there must be an improper connection between the benefit granted and the gain received. Otherwise, there would be only simple bias or simple malfeasance. With conventional corruption, we look for the link in the guilty mind of the public official—a corrupt motive. But the question immediately arises, How can we distinguish corrupt motives from other kinds? We have already seen that personal gain is neither a necessary nor a sufficient condition, nor is the impropriety of the benefit. Therefore, the corruption has to be found partly in the nature of the exchange. The difficulty is that corrupt exchanges do not seem obviously different from many of the other kinds of deals that go on in politics—exchanges of support of various kinds, without which political life could not go on at all. Politics is replete with quid pro quos: you vote for my bill, and I'll support yours; you raise funds for my primary campaign, and I'll endorse you in the next election. What is so corrupt about the exchange of campaign contributions for constituent service? Without an answer to this question, we would be forced either to brand nearly all ordinary politics as corrupt or to excuse much political corruption as just ordinary politics.

The competitive politics theory, fearing a purification of the process that might enervate political life, attempts to contain the concept of corruption. It insists on narrow criteria for what counts as a corrupt link. The connection between the contribution and the service must be close in two senses: proximate in time and explicit in word or deed. In the case of several of the Keating Five, the connection between the contributions and the service were, by these standards, close. The connection was especially close in the case of Cranston, one reason that the committee singled him out for special criticism. He solicited contributions from Keating while he was also working to help Lincoln with its problems. His chief fundraiser combined discussions about regulations and contributions. Favors and contributions were also linked in memos and informal comments. He made the connection explicit in a memorable line delivered at a dinner at the Belair Hotel, where he "came up and patted Mr. Keating on the back and said, 'Ah, the mutual aid society'."[22]

The committee found the contributions and services to be "substantially linked" through an "impermissible pattern of conduct," but they stopped short of finding "corrupt intent" (U.S. Senate 1991b, 36). Why did the committee decline to find corruption here? The connection, it would seem, could hardly be closer. For that matter, we might also ask why the committee did not find the pattern impermissible in the case of Riegle and DeConcini. Part of the answer probably is that "corrupt intent" is the language of the bribery statutes, and the committee did not dare suggest that campaign contributions could be bribes. The line between contributions and bribes must be kept bright.

But *is* the line so bright? "Almost a hair's line difference" separates bribes and contributions, Russell Long once testified (Noonan 1984, 801). Courts have not been able to provide a principled way of distinguishing the two.[23] There is, furthermore, no good reason to believe that connections between contributions and benefits that are proximate and explicit are any more corrupt than connections that are indirect and implicit. The former may be only the

more detectable—not necessarily the more deliberate or damaging—form of corruption.

Are we driven, then, to accept the conclusion of the pervasive corruption theory on this point, that virtually all contributions are corrupt? This theory is right to insist that corruption should be viewed in the context of the political system, that it can work through patterns of conduct, institutional routines, and informal norms. But the theory does not encourage the kinds of distinctions that seem necessary in the kind of politics we actually have and are likely to have in the foreseeable future. It treats, for example, the explicit, proximate bribe the same as the routine thousand-dollar campaign contribution to one's longtime party favorite.

Both the competitive politics and pervasive corruption theories assume the criterion of the corrupt connection to be the actual motives of the citizens and politicians. This assumption is mistaken, because it ignores an important structural feature of representative government. Any electorally based representative system permits—indeed, requires—representatives to act on *mixed* motives. They act for the benefit of particular constituents, for the good of the whole district or state, for the good of the nation, and for their own interest in reelection or future political ambitions. Some of these motives may be more admirable than others; but none is illegitimate in itself, and all are necessary in some measure in our system.

Under the circumstances of mixed motives, it is hard enough for any official, however conscientious, to separate proper from improper motives and, more generally, to find the right balance of motives in making any particular decision (see Douglas 1952, 44, 85–92). It is harder still for citizens—even well-informed and nonpartisan ones—to judge at a distance whether the official has really found that balance. Therefore, in the design of a representative system or in the practice of judging representatives, we cannot in general count on being able to evaluate motives in individual cases.

What we need, instead, is a standard that assesses an individual official's action in the context of the system as whole. The standard should identify systematic tendencies that we know from past experience are likely to lead to corruption. It would then refer to the motives on which any official in the circumstances may be presumed to act, instead of the motives on which this official actually acts. It is just this kind of logic that underlies the so-called appearance standard, at least when properly interpreted.

In a plethora of codes, rules, and statutes that regulate the ethics of government, public officials are now enjoined to avoid the appearance of impropriety (U.S. Senate 1991b, *Additional Views*, 14–16). The term *appearance* is unfortunate, however, as it encourages misinterpretations of the standard.[24] The mere appearance of an ethical wrong is contrasted with a real wrong, and the violation of the appearance standard is taken to be a minor, lesser offense, a sort of pale reflection of the real offense. The standard then comes to be regarded as merely prudential, a piece of political advice, which, if not followed, is seen as grounds for a charge of mistaken judgment, rather than an ethical wrong. Notice that the Ethics Committee found that DeConcini and Riegle, whom they charged with creating an appearance of impropriety, showed only "insensitivity and poor judgment" (U.S. Senate 1991b, 17, 19).

Properly interpreted, the appearance standard identifies a distinct wrong, quite independent of—and potentially no less serious than—the wrong of which it is an appearance. It would be better called a "tendency" standard, since it presumes that under certain conditions, the connection between a contribution and a benefit *tends* to be improper. The standard seeks, first, to reduce the occasions on which the connection is improper in the conventional sense. These are the occasions on which the provision of the benefit is actually motivated primarily by the contribution. But the second, more distinctive, aim of the standard is to decrease the occasions on which the connection is reasonably perceived to be improper. This perception is grounded on our general knowledge of the conditions that tend to produce actual improper connections, but the wrong is based on a different kind of moral failure. When an official accepts large contributions from interested individuals under certain conditions, whether or not the official's judgment is actually influenced, citizens are morally justified in believing the official's judgment has been so influenced and acting on that belief themselves. The official is guilty of failing to take into account the reasonable reactions of citizens.[25]

The justification for this kind of standard should be distinguished from the type of argument (common in discussions of rule utilitarianism) that justifies particular acts by appeals to general rules or policies. In the rule utilitarian argument, an overly broad rule is justified by showing that the costs of deciding each case are greater than the costs of wrongly deciding some cases. The argument for the appearance standard differs in two respects. First, it counts as a cost not simply the risk that a case might be wrongly decided but also the likelihood that the public will perceive the case to have been wrongly decided. Public confidence could be undermined, and misconduct by others encouraged, even if a case were rightly decided but not so perceived. Second, the rationale for the appearance standard rests in part on a publicity principle, which holds that the reasons on which public officials may be assumed to act should be accessible to citizens. Appearances, then, are in these ways valuable beyond their role as evidence for corrupt motives.

Because appearances are often the only window that citizens have on official conduct, rejecting the appearance standard is tantamount to denying democratic accountability. This was dramatically demonstrated in the objections frequently raised during the hearings by several of the senators and their attorneys. Cranston, most notably, kept objecting to the idea that his conduct should be judged by how it

appears to a reasonable person. That is a "mythical person," he said. The only *real* person who can judge is the senator himself. "You were not there. *I* was there. And *I* know that what I knew at the time . . . convinced me that my [actions] were appropriate" (U.S. Senate 1991a, pt. 1, November 16, 1990, pp. 121–22).

The appearance standard, however, does not itself identify the kinds of conditions that would warrant a conclusion of mediated corruption but only points in the right direction—away from actual motives to presumed motives and objective intentions and thereby to the tendencies or conditions that create corrupt connections in democratic systems. We still need some basis on which to distinguish corrupt from noncorrupt contributions.

We can begin to see the basis for such a distinction in the common reaction that there was something peculiar about Keating's lavishing support on senators whose political views he so strongly opposed. Cranston and Keating were an odd couple: an arch-conservative Arizona businessman devoted to the free market and opposed to pornography and abortion teamed up with one of the leading liberals in the Senate, a former candidate for president who had called for a nuclear freeze and higher social spending. The two differed even on government policy toward the financial services industry.

This ideological incongruence is significant not because it exposes cynical or self-interested motives but because it reveals apolitical practices. Specifically, it identifies a type of contribution that serves no public political function. A contribution given without regard to the political positions of the candidate only incidentally provides political support. Its aim is primarily to influence the candidate when in office. In its pure form, it has no function other than to translate the desires of a contributor directly into governmental action. In effect, it short-circuits the democratic process. Contrast this kind of contribution with one given to support a candidate with whom one shares a general political orientation or agrees on issues that one thinks salient.[26] A contribution of this kind directly serves a political function: its aim is to help a candidate get elected, and it works through the political process.[27] Rather than bypassing the process, the contribution animates it.

Neither the pervasive corruption nor the competitive politics view can easily distinguish these types of contributions (though the competitive politics view could recognize an analogous distinction between contributions that further the competitive process and those that do not). The basis of the distinction is the principle that citizens should influence their representatives—and representatives should influence policy—only in ways that can be contested through public discussion in a democratic political process. This principle is consistent with a wide range of conceptions of representation. The problem with the first kind of contribution, the Keating type, is not that it makes a representative an agent of individual constituents but that it makes the representative an apolitical agent. The objection is not only that the contributions come with strings attached but also (even more insidiously) that the strings have no political substance.[28]

Ideological incongruence, which is common enough in current campaign finance (as big contributors hedge their electoral bets), is not itself a necessary or sufficient condition of corruption. Neither does its absence make an otherwise questionable practice acceptable. However, its presence is a strong indication in any particular case that corruption may also be present. More generally, the concept points toward a comprehensive criterion for identifying corrupt connections.

The connection between contributions and benefits is corrupt if it bypasses the democratic process. The corruption here is twofold. It consists, first, in the actual and presumed tendency of certain kinds of contributions to influence the actions of representatives without regard to the substantive merits of issues. This is the corruption of the representative's judgment. The corruption also shows itself in broader effects on the democratic process, namely, in the actual and presumed tendency to undermine substantive political competition and deliberation. This is the corruption of the representative system.

There are, of course, many different ways in which contributions might be regarded as undermining the democratic process; and which ways we build into the concept of corruption will depend on what conceptions of democracy we accept. The principles of legislative ethics invoked earlier to assess forms of constituency service could be used again here to generate some criteria for identifying corrupt connections. We could then hold that a connection is more likely to be corrupt, (1) the more particular the aim of the contributor, (2) the less closely the contribution is connected to the merits of conduct it is intended to influence, and (3) the less accessible the exchange is to publicity. Each of these criteria would have to be specified more fully and translated into enforceable standards before we could conclude that we have a satisfactory test for the corrupt connection in mediated corruption.[29] But it should already be clear that the criteria presuppose an approach that makes the relationship to democratic processes more fundamental than do conventional approaches to corruption.

CONCLUSION

Mediated corruption is not new, but it is newly prospering. It thrives in the world of large, multinational financial institutions that increasingly interact, in closed and complex ways, with governments. Many of the major governmental scandals in recent years have involved a large measure of mediated corruption—the affairs of Iran–Contra, Housing and Urban Development (under Samuel Pierce), the Bank of Credit and Commerce International, and the Banca Nazionale del Lavoro's Atlanta branch, among others. Where private greed mixes easily with the public

good, where the difference between serving citizens and serving supporters blurs, where secret funds lubricate the schemes of public officials, there mediated corruption is likely to flourish.

We can better understand the cunning ways of this growing form of corruption if we keep in mind its distinctive characteristics. The concept of mediated corruption serves this purpose. Each of its three elements, it has been argued here, differs from those of conventional corruption, the kind assumed by the competitive politics and pervasive corruption theories.

First, in mediated corruption a public official typically receives a political gain. But, as the pervasive corruption mistakenly denies and the competitive politics theory rightly implies, there is nothing wrong with this gain itself. Mediated corruption, furthermore, does not require that the public official personally gain or otherwise serve his (narrow) self-interest, as conventional corruption typically assumes. The gain contributes to mediated corruption insofar as it damages the democratic process—for example, by influencing a representative to serve private purposes without regard to their substantive merits.

Second, the public official provides a benefit, typically as an intermediary attempting to influence other officials to serve a constituent's private ends.[30] Contrary to both the competitive politics and the pervasive corruption views, the benefit itself may be deserved and may even be something that the official would provide for any constituent. But if the way in which the official provides the benefit damages the democratic process, it still counts as a contribution to the corruption. The way in which the member presses the constituent's claim, not simply the justice of the claim, is relevant to the assessment of the corruption.

Third, the connection between the gain and the benefit is corrupt if it would lead a reasonable citizen to believe that an exchange has taken place that damages the democratic process in specified ways (typically in ways that bypass the process). Mediated corruption thus adds an appearance standard to the corrupt-motive test of conventional corruption. It goes further, and, like the pervasive corruption theory, relates the corruption in any particular case to corruption of the system as a whole. But the standards for determining whether the connection is corrupt are more fine-grained than that theory allows. They permit some connections that might otherwise seem corrupt (e.g., money is not necessarily corrupting) and condemn some connections that otherwise seem legitimate (money can be corrupting independently of the inequalities it perpetuates). The standards ultimately depend on what kind of democratic process we wish to maintain.

The concept of mediated corruption is consistent with a wide range of theories of democracy but is probably best justified from the perspective of a theory that prescribes that officials act on considerations of moral principle, rather than only on calculations of political power. This is sometimes called the deliberative conception of democracy (see Cohen 1989, 17–34; Larmore 1987, esp. 59–66; Manin 1987).[31] As we have seen, mediated corruption characteristically attempts to translate private interest directly into public policy, bypassing the democratic processes of political discussion and competition. It thereby blocks our considering the moral reasons for and against a policy. Mediated corruption also prevents *deliberately* adopting a policy even without considering moral reasons: it precludes deliberation about whether to deliberate.

If we accept the concept of mediated corruption (as a supplement to the concept of conventional corruption), at least three implications follow. First, cases like the Keating Five would look different in the future. It would be easier to justify making finer distinctions of kind and degree in judging misconduct. The kind of conduct in which McCain and Glenn engaged, for example, would be more clearly distinguishable from that of the other three; and the kind of conduct in which all five engaged would be more clearly set apart from that of most other senators. More generally, we would hear less talk of motives (whether honest or rationalized), fewer appeals to constituent service as if it excused all sins, and fewer attacks on the appearance standard. We would see more concern about the mixing of private profit and public service, more attention to the merits of constituents' claims, and more worry about the effects of practices of individual representatives on the broader process of democratic representation. This shift of attention from the individual to the system (or, more precisely, to the effects of individual behavior on the system) would require not only new ways of thinking but also new standards of ethics.

The practical change most emphasized by the committee and most often mentioned by observers is campaign finance reform. Reducing the importance of money in campaigns (and politics more generally) is certainly desirable and could be seen as one of the implications of the concept of mediated corruption. But since the dominating role of money in politics is objectionable from the perspective of many different theories, it is worth emphasizing an implication that points toward a different dimension of reform. The concept of mediated corruption helps bring out the fact that money is not the only important source of corruption. Some of the kinds of misconduct to which mediated corruption calls attention depend less on money than do the kinds condemned by conventional corruption. As far as *public officials* are concerned, mediated corruption works its wiles less through greed than through ambition and even a misplaced sense of duty. Even some quite radical campaign finance reforms would not completely eliminate some forms of mediated corruption. Recall that political action committees, the bête noire of many progressive reformers, played almost no role in the case of the Keating Five.

A second implication of adopting the concept of mediated corruption concerns the process by which charges of unethical conduct should be heard and

decided. In the Keating Five case, the process was directed by the Ethics Committee of the Senate. Legislatures have traditionally insisted on exclusive authority to discipline their own members, and the ethics committees of both houses have in the past managed to bring some tough judgments against some of their colleagues. But these have almost always been in flagrant cases of wrongdoing, closer to clear violations of rules that resembled the criminal law. It is difficult enough for colleagues who have worked together for years and may have to work together again to bring themselves to judge one another harshly in these cases. It may be almost impossible in cases involving mediated corruption. The less the charge is like conventional corruption, the harder it is to reach a severe judgment. The member implicated in mediated corruption, showing no obvious signs of a guilty mind or especially selfish motives, is often seen as simply doing his job. Under such circumstances, the sympathy of one's colleagues is maximized, their capacity for objectivity, minimized.

Furthermore, the legislature is, in a sense, also judging itself—specifically, its own practices and procedures, through which the corruption is mediated. In these circumstances, we might reasonably wonder whether anybody, including a legislative body, should be a judge in its own case. The clear implication of these considerations, suggested in part by the concept of mediated corruption, is that we should consider establishing an outside body to judge cases of ethics violations. To overcome possible constitutional objections, Congress could ultimately control the body; but it should be established in a way that would have at least the independence and respect of an institution like the Congressional Budget Office.

The third implication is methodological in character and is perhaps the most significant for the study of corruption and democracy. The concept of mediated corruption has the potential to integrate the very different approaches to corruption that prevail in political theory and in social science. The difference was strikingly illustrated some years ago when the *American Political Science Review* published a pair of articles on corruption, one by a political theorist and one by two political scientists (Dobel 1978; Peters and Welch 1978). The editor perhaps intended to take a step toward unifying the discipline by putting the articles together in the same section. Yet the articles had little in common except the common word *corruption* in their titles; the authors might as well have been writing about different subjects.

The political theorist faithfully followed his tradition, invoking Machiavelli, Rousseau, Montesequieu, and Madison (among others), and presented corruption as a characteristic of a political system as whole. He saw it as a sickness of the body politic, a turning away from civic virtue toward private interests. It may afflict individual citizens and their rulers, but it can only be fully understood from the perspective of the whole society.[32] The political scientists described corruption in terms of transactions between individuals. The transactions, of course, take place within a system; and the system may be called corrupt when its structures and incentives encourage corruption. But the basic unit of analysis remains an exchange between individual officials and individual citizens.

Mediated corruption holds the promise of putting back together the structuralist and the individualist conceptions of corruption that these intellectual traditions have split apart. The integrating instrument, it has been suggested here, is the idea of the democratic process. With mediated corruption, we cannot decide whether corruption exists, let alone how serious it is, without paying attention to its effects on the democratic process and therefore without making moral judgments about the kind of democratic process we wish to encourage. The concept of mediated corruption permits a conclusion that corruption is pervasive and the system needs radical reform; but the grounds of the conclusion, as well as the nature of the reform, would be guided by a conception of the democratic process. Mediated corruption also supports judgments about individuals competing within the existing system; these, too, are to be shaped by a view of the democratic process. We cannot assess either patterns of systematic corruption or instances of individual corruption without presupposing a theory of democracy.

Because the concept of mediated corruption is theory-dependent in this way, we should not suppose that we can understand corruption without making value judgments about politics. In this respect, those social scientists who try to justify corruption in some societies as necessary to achieve certain political values (such as efficiency or social integration) are right about the structure of the argument required to assess corruption.[33] Whether certain kinds of conduct should count as corrupt depends in part on its net effects on the political system as a whole. However, in making their calculations, these social scientists tend to give too much weight to outcome values relative to process values, a mistake that the approach of mediated corruption avoids.

The social scientists who find corruption functional also tend to assume that their methods are objective and realistic while the methods of those who criticize corruption are subjective and moralistic. But even if we were to accept certain kinds of corruption as functional, we would still be making a moral judgment. As this search for the meaning of corruption in the case of the Keating Five should make clear, on the subject of corruption, we are all moralists. The only question is what kind of moralists we want to be. Unlike the Keating Five, their apologists, and even most of their critics, we should try to be *democratic* moralists.

Notes

During part of the investigation and hearings in this case, I served as a consultant to the special counsel to the Senate Ethics Committee, Robert S. Bennett. I am grateful to him and

members of his staff, especially Benjamin Klubes, for helpful advice and convenient access to public documents. I have also learned from discussion with Senator Cranston's attorney, William W. Taylor III (though he may believe not enough). I have benefited from valuable comments on various versions of this article from Ted Aaberg, Arthur Applbaum, Charles Beitz, Morris Fiorina, Charles Fried, Amy Gutmann, Sanford Levinson, Thomas Scanlon, Judith Shklar, Alan Wertheimer, David Wilkins, and Kenneth Winston. An earlier version of this article was presented at Princeton University under the auspices of the University Center for Human Values.

1. Berke 1991. Although other factors no doubt contributed to the low public regard for Congress in this period, the percentage of respondents who rated the honesty and ethical standards of senators "very high" or "high" declined by five points between 1990 and 1991; and the rating of Congress itself fell to an all-time low (Hugick 1991; Hugick and Hueber 1991). Other surveys found that a majority of respondents believed that at least half of the members of Congress are "corrupt" and that the institution itself is "corrupt" (CBS News/*New York Times* 1991; NBC News/*Wall Street Journal* 1992). The latter survey found that of the "scandals and controversies that have taken place during the past few years in Washington," the handling of problems with the savings-and-loan industry "most bothered" more respondents than any other.

2. This general concept is meant to be consistent with a wide variety of definitions in the social science literature. However, further specification of the concept beyond this level of generality remains controversial (mostly with regard to what should count as "improper"). (It should be noted that in some forms of conventional corruption, the "public official" and "private citizen" may be the same person.) For a review of various approaches, see Heidenheimer, Johnston, and LeVine 1989, 7–14; Peters and Welch 1978, 974–78.

3. The most influential explanation of reflective equilibrium is Rawls 1971, 48–51. A more recent systematic account is Richardson 1990.

4. No one is likely to mistake this summary for authoritative history. It is intended to serve only as a simplified reminder of some of the highlights of the case. The summary (as well as subsequent comments about the case) relies primarily on the evidence presented during the hearings and in the reports of the special counsel and the Ethics Committee. See U.S. Senate 1991a, 1991b. Two readable accounts of the affair, including some useful background material, are Adams 1990, pt. 4; Pizzo et al. 1989, 263–97.

5. Keating acted often as a broker for others, sometimes as a "bundler," taking "the separate individual contributions and bundling them together, . . . claiming credit for the harvest" (Sorauf 1992, 54). This is yet another way in which the corruption in this case could be regarded as mediated.

6. Examples of this interpretation typical of many public comments on the affair are Yoder 1991 and testimony by Senator Daniel Inouye (U.S. Senate 1991a, pt. 3, December 3, 1990, pp. 2–50). Similar views can also be found in court opinions and in more general discussions of campaign reform (e.g., *McCormick* v. *U.S.* 1991, 1825; Gottlieb 1989). The competitive politics view is also consistent with a number of well-known analyses of corruption (e.g., Banfield 1975; Wilson 1974, 29–38). Although the view might be supported by various democratic theories, the version of pluralist theory (sometimes called the competitive theory of democracy) is its most natural ally. The classic statements are those of Schumpeter (1962) and Downs (1957).

7. Typical examples of this interpretation from public comment on the case are Abramson and Rogers 1991, Etzioni 1990/91, and Wilkinson 1991. Also see the affadavit of Senator Ernest Hollings (U.S. Senate 1991a, Exhibits of Senator DeConcini, 493–95). In the literature on campaign reform and political corruption more generally, the interpretation would find support in several different analyses (e.g., Etzioni 1984; Lowenstein 1985, 826–28; Lowenstein 1989, 301–35; Noonan 1984, 621–51). For discussions of democratic theory that could be used to support this view, see Cohen and Rogers 1983; Dahl 1989, chap.9; Lindblom 1977, pt. 5.

8. This conclusion is evidently widely accepted by the public. Asked in an NBC/*Wall Street Journal* poll whether they thought that the ethical violations of which the Keating Five were accused are "typical" of the behavior of Senators and members of Congress, 71% of the respondents agreed that they were; 19% disagreed.

9. The conventional wisdom that higher turnout helps the Democrats has been challenged. See DeNardo 1980; Tucker, Vedlitz, and DeNardo 1986.

10. Compare Madison's observation in *Federalist* 51: "Ambition must be made to counteract ambition. . . . This policy of supplying, by opposite and rival interests, the defect of better motives, might be traced through the whole system of human affairs" (Hamilton, Madison, and Jay 1961, 349).

11. A pioneering work that exemplifies both the strengths and weaknesses of this approach is Rose-Ackerman 1978, 6–10.

12. A variation on this hypothetical example actually took place. According to the testimony of James Grogan, a Keating aide, Senator DeConcini's wife at times solicited contributions from Keating for her favorite charities in the community (U.S. Senate 1991a, pt. 4, December 14, 1990, pp. 248–49).

13. U.S. Senate 1991b, 14–16; idem 1991a, pt. 1, November 16, 1990, pp. 126–32 and November 19, 1990, pp. 91–92.

14. U.S. Senate 1991a, pt. 1, November 16, 1990, p. 111 and November 19, 1990, p. 23.

15. Ibid., pt. 4, December 10, 1990, pp. 58–94.

16. Lobbying the Defense Department to support Apache helicopters, asking the Customs Service for an exception to trade restrictions, questioning the Justice Department about a potential indictment of a shipyard company (U.S. Senate 1991a, pt. 1, November 19, 1990, pp. 14–17; idem, pt. 4, December 10, 1990, pp. 9–12; idem, pt. 6, January 10, 1991, pp. 137–40)—these examples and all of the others paraded before the committee lacked some critical feature of the Keating case. None involved pressure on independent regulators to give special treatment to a particular company in a quasi-adjudicatory process; and in none did the intervention continue after the member could reasonably have been expected to know that company's intentions were questionable, if not illegal.

17. Admittedly, the three senators not from Arizona could claim that they were acting for the constituents in their own states who would benefit from Keating's businesses. But this ceases to be constituent service and should, like legislative activity, be evaluated from a broader perspective that takes into account all of a representative's constituents. From this perspective, the benefits that these senators were providing to some of their constituents arguably did not serve most others well, specifically taxpayers and depositors.

18. Relying on constituents to call attention to administrative abuses (what has been called "fire alarm" oversight) is said to be more common and more efficient than direct and continuous monitoring by Congress, called "police patrol" oversight (McCubbins and Schwartz 1984). But on the limitations of this and other forms of retrospective monitoring, see McCubbins, Noll, and Weingast 1987.

19. Cf. Kappel 1989; Rosenberg 1990.

20. Consider the standards practiced in Cranston's office, as described in the testimony of his aide, Carolyn Jordan: "Unless you have a complete kook, . . . the number one rule of this game is you never kiss a constituent off. That's the rule in our office. And you never tell them, no, unless they're asking you to do something that is just so far from the beaten path" (U.S. Senate 1991b, *Additional Views*, 84).

21. Many of the opinions in the line of cases interpreting the Administrative Procedures Act (*Pillsbury* and its progeny) are especially critical of secret congressional interventions, even when the courts do not invalidate the agency results. See Kappel 1989, 144–47.

22. U.S. Senate 1991a, pt. 4, December 14, 1990, p. 178.

23. Generally, see Lowenstein 1985, 808–9, esp. n. 86–87; Noonan 1984, 621–51, 687–90, 696–97. See also the opinions of

Justices Brennan and White in *U.S.* v. *Brewster* 1977, 558. In the most recent case dealing with public corruption, the best that the Supreme Court could do to justify sustaining a narrow standard (requiring explicit promises) was to say that a broader standard would "open to prosecution. . . conduct that in a very real sense is unavoidable so long as election campaigns are financed by private contributions or expenditures, as they have been from the beginning of the nation" (*McCormick* v. *U.S.* 1991, 1816).

24. The small academic literature on the subject has tended to be critical of the standard (Morgan 1992; Roberts 1985, 177–89; but see also Kappel 1989, 154–71). A helpful (and rare) discussion of the appearance standard by a contemporary philosopher is Driver 1992.

25. The potential effect on the conduct of others is the principal reason that Thomist ethics has traditionally treated appearing to do wrong under certain conditions as a distinct wrong. The wrong is called "giving scandal" and is defined as providing the "occasion for another's fall." It is considered a sin if one's otherwise permissible action is of the kind that is in itself conducive to sin, and it remains sinful whether or not one intends it to have any effect on others (Aquinas 1972, vol. 35, 109–37).

26. Some further specification of what should count as a general political orientation or a salient issue may be necessary in some circumstances, but it should be clear that agreement on the value of constituent service itself (the principle on which Keating and the Keating Five evidently most strongly agreed) is not sufficient. Constituent service, as has been suggested, may itself undermine the democratic process. Furthermore, in this case it seems plausible to conclude on the basis of his actions that Keating was less interested in constituent service justified as a general practice for all citizens than in the specific services provided for one constituent.

27. Lowenstein proposes a similar distinction between contributions "intended to influence official conduct and accepted with the knowledge that they are so intended" and those "intended solely to help the candidate get elected" (1985, 847). The distinction drawn in the text differs in at least two respects: (1) it takes the function, rather than actual intentions, as the criterion; and (2) it treats elections as only one of the relevant parts of the political process. Noonan also distinguishes contributions from bribes (1984, 696–97); but the two characteristics he regards as critical—size and secrecy—are better interpreted as indicators of the more basic distinction made in the text. If a contribution is small relative not to the total contributions but to other contributions a candidate receives and if it is public (or if the pattern of which it is a part is made public), then the contribution could be more plausibly seen as support for the candidate, rather than an attempt to influence official conduct.

28. This may be part of the rationale underlying the recent Supreme Court decision upholding a law that places limits on the ability of corporations to make independent expenditures on behalf of political candidates (*Austin* v. *Michigan Chamber of Commerce* 1990). Wealth accumulated by a corporation has "little or no correlation to the public's support for the corporation's political ideas" and therefore has "corrosive and distorting" effects on the political process (p. 1397). The idea is presumably that though the corporation is using the money to express substantive political views, the corporation's ability to do so does not derive from any substantive political support; its economic success ought not be translated so directly into political influence. See also Taylor 1991 and, more generally, Stark 1992.

29. An example of such a standard—already followed by some members—would be a rule requiring separation of the fund-raising from other functions in the offices of members (see U.S. Senate 1991b, *Additional Views*, 102).

30. A public official may act more directly than did the senators in this case. For example, when inserting a tax break for a particular company or individual in legislation, a member is more plausibly regarded as the direct agent than is the Internal Revenue Service. However, the corruption may still count as largely mediated because the other elements of corruption (the gain and the gain–benefit connection) continue to be mediated through the political process.

31. For a valuable analysis of the relation of deliberation specifically to problems of political finance, see Beitz 1989, 192–213.

32. Montesquieu, who among traditional political theorists most explicitly discusses corruption in branches of government, writes that a state will "perish when its legislative power becomes more corrupt than its executive" (1949–51, vol. 2, p. 407). More generally, see his "Corruption of Principle in the Three Governments" (vol. 2, 349–66).

33. For criticisms and further citations to the "functionalist" literature, see Rose-Ackerman 1978, 88–92; cf. Friedrich 1972, pt. 3.

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