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CORRUPTION, ACCOUNTABILITY AND DISCRETION

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INTRODUCTION

Cara E. Rabe-Hemp and Nancy S. Lind

The corruption of public officials in the United States (U.S.) and its corrosive impact on public policy, political stability, and democratic institutions earns it a spot among the most current public crises. In the past decade, the public has been barraged with stories of political corruption, including Illinois governor Rod Blagojevich's attempt to sell Barack Obama's vacant Senate seat and lobbyist Jack Abramoff's conviction for conspiracy and fraud for his pay-for-play racket in the nation's capital. Not surprising then is the public's perception that political corruption is getting worse. In a recent U.S. poll, 60% of people said that corruption has increased over the last two years. This perception has devastating consequences for governance, as faith in the government and its accompanying interactions is quickly turning to political apathy. This collection of chapters provides the key elements needed to understand the nature and prevalence of corruption in public governance, as well as the devastating public policy consequences. This text explores the implications of public governance corruption on political stability, public trust, and policymaking, as well as recommendations for how to establish controls on discretion and stricter regulations to increase accountability and corruption control in public governance.

NATURE AND PREVALENCE

In 2015, Chapman University released a report entitled *Survey of American Fears*. Of the 89 potential fears that the survey queried, the majority of Americans reported being either "afraid" or "very afraid" of federal government corruption ([Rappell, 2015](#)). Why is the public so afraid? One explanation for increased public fear is that the public is simply more aware of corruption. Today, stories of corruption are a prominent feature of public

life. The media plays an important role in defining for the American people which political issues are important, as well as holding public officials accountable for their corrupt behavior. This is an imperfect system, resulting at times in a “punishing avalanche of negative publicity,” and in other cases a total ignorance of corruption and incompetence (Entman, 2012, p. 1).

Bolstering this explanation are official statistics that suggest little change in corruption in the past decade. For example, the annual “Corruption Perceptions Index” produced by Transparency International, which provides yearly information on how U.S. citizens view their government and how it compares to other nations globally, shows the rates of U.S. corruption largely unchanged from previous years. In comparison to other countries, the U.S. and other democracies are less corrupt than emerging economies, such as Asia, Africa, and Latin America as well as formerly communist economies such as Russia. Prosecutions for corrupt behavior show similar trends. In their 2016 article, Cordis and Milyo reported that contrary to conventional wisdom, corruption convictions of public officials are not increasing. Instead, convictions are consistent over time and mostly involve low-ranking federal and local officials. These official statistics illustrate that while the U.S. is not one of the most corrupt countries, corruption exists in America. With statistics of corruption largely unchanged in the past decade, how do we explain an increased perception of corruption by the America people? Richard White provides a possible answer in his 2013 article, “What counts as corruption,” arguing that the definition of corruption is what has changed, revolving around the concepts of self-interest and undue influence.

In defining corruption, the Founding Fathers spent considerable time and energy discussing the discretionary power of public officials and the best methods to hold them accountable for their actions. In the framer’s view, corruption is the opposite of public virtue. A republican form of government requires that public officials act as *citizens*, concerned for the public good, and not merely as private, self-interested individuals. Through this lens, corruption is defined as self-interest placed above public interest. For example, in New York in the 1800s, Tammany Hall secured votes in exchange for jobs and aid and then used their political powers to gain graft from their position. In another example, Albert Fall, the Secretary of the Interior (1921–1923) accepted a bribe to secretly lease federal oil reserves, infamously called the Teapot Dome Scandal. To combat corruption, the Founding Fathers set up structural provisions designed to encourage public virtue and reduce the temptation to lord private interests over the public good, including a ban on gift-giving from foreign sovereigns without congressional approval and limits on the additional positions that members of Congress could simultaneously

hold. Their assumption that public officials would hold a concern for the public good, over private interest, was important to combatting corruption.

By comparison, corruption currently equates to outright bribery or quid-pro-quo exchanges. Gone is the more nuanced approach of how undue influence permeates governance. This is because today influencing the government is defined as a First Amendment right, rather than as a risk for corruption. It is how we, as a public, influence our government and let our public officials know what we value as they represent us (Teachout, 2014). However, there is a fine line between our ability as a public to influence governmental leaders and corruption. After all, at the heart of corruption is the discretionary power of public officials to make decisions. Amundsen (1999) reminds us that the basis of corruption is that the official misuses public power for *private* benefit.

PUBLIC POLICY CONSEQUENCES

Has the corrupting influence of money in the American political process rendered officials incapable of governing the American people? When we look at campaigns, the measure of a successful campaign revolves around money, rather than votes. For this reason, the money associated with campaign funding, where it comes from, how it influences political decisions, and so on, are increasingly concerning for many Americans. The groundbreaking 2010 Supreme Court ruling in *Citizens United v. Federal Election Commission*, that freedom of speech prohibited the government from restricting independent political expenditures by nonprofit corporations, for-profit corporations, labor unions and other associations, only exacerbated this issue. In his State of the Union address in 2010, President Barack Obama criticized the *Citizens United* ruling,

With all due deference to separation of powers, last week the Supreme Court reversed a century of law that I believe will open the floodgates for special interests – including foreign corporations – to spend without limit in our elections. I don't think American elections should be bankrolled by America's most powerful interests, or worse, by foreign entities. They should be decided by the American people.

To give the reader a sense of how this works, let's look at fundraising for the 2014 Congressional elections. In 2014, 5.4 million Americans donated to congressional campaigns, political parties, or political action committees. However, this number is misleading as the top 100 individuals and organizations gave almost as much as the bottom 4.75 million contributors did.

In other words, “100 individuals and organizations gave 60% of the money contributed” (Lessig, 2015, p. 15). The power of the dollar in elections have led many to argue that the way campaigns are funded in the U.S. means that citizens do not have equal representation. Instead, the corrupting ability of the few to influence elected officials makes candidates open to their influence. This leaves Americans increasingly convinced that the game of government is rigged in favor of the elite and the powerful. Charles Lewis, founder of the Center for Public Integrity, succinctly described the situation: “Our political process has increasingly become an accepted system of legal corruption” (Edsall, 2014, n.p.).

Of course, campaigns are not the only potential for corruption. The [Federal Bureau of Investigation \(2017\)](#) cautions Americans that corruption “can affect everything from how well our borders are secured and our neighborhoods protected to how verdicts are handed down in courts to how public infrastructure such as roads and schools are built” (n.p.). This is because part of the responsibility of public officials is to allocate rights over public resources in the name of the state or the government. When the government awards contracts based on inappropriate and fraudulent criteria, they not only mishandle taxpayer dollars, they also deprive honest companies an opportunity for lucrative business. There are recent examples including, contractor spending during wartime, sexual harassment in local governance, and the undue influence of lobbyists and the corporations that employ them illustrating how all sectors of public governance, municipal, state and federal may be vulnerable to corruption.

IMPLICATIONS FOR GOVERNANCE

Because of persistent reports of corruption in American politics, public confidence in governance is waning. In a 2015 Gallup poll, only 11% of Americans reported a great deal or quite a lot of confidence in Congress, compared to 33% for the President, and 32% for the U.S. Supreme Court ([Gallup, 2015](#)). The democratic idea of a federal republic, that a group of elected officials represents the interests of a larger group of people, is at risk. Public distrust in the form of low voter turnout and a lack of public participation suggests that political apathy has largely taken hold of American politics. While distrust of government is nothing new, it can lead to negative consequences, including being more bureaucratic, less effective, and less capable of responding to the public’s needs. The continued lack of confidence in governmental officials weakens the authority of the state. To understand this, we must

acknowledge how governance differs from government. Frank Weil provided an excellent description in his 2015 Blog in the *Huffington Post* when he stated, “Government is only ONE arm of modern society and it derives its legitimacy and powers from its taxes, spending, laws, and regulations (n.p.).” Governance, on the other hand, which is the focus of this book, includes the relationships between the constitutional branches of government, including the agencies as well as relationships with the media. Governance is a broader term than government. Corruption leads to an inability to carry out the basic role of governance, jeopardizing the framework for our social order (Bok, 2001). In the words of Transparency International (2017), “corruption is one of the greatest challenges of the contemporary world. It undermines good government, fundamentally distorts public policy, leads to the misallocation of resources, harms the private sector and private sector development and particularly hurts the poor (p. 1).” Corruption of public governance not only undermines the effectiveness of the political system, it also results in corrupt public policymaking on the most pressing issues facing Americans today, such as the management of war, health care, crime, and banking. These policies influence the provision of public services to the American people. Finally, corruption hits our pocketbooks by siphoning off tax dollars. The Federal Bureau of Investigation estimates that public corruption costs the U.S. government and the public billions of dollars each year (FBI, 2017). Worldwide estimates show that the cost of corruption equals more than five percent of the global Gross Domestic Product (2.6 trillion dollars), with over 1 trillion dollars paid in bribes each year (World Economic Forum, 2017). This translates to increasing business costs, waste and inefficiency in public resources, and destabilization of the rule of law.

These risks warrant a careful look at the nature and etiology of corruption with an eye toward drafting controls on discretion and rules for accountability. Accountability is defined by its ability to reduce the opportunities for corruption, maladministration, or legal impropriety that come to people in positions of power (Castiglione, 2017). Historically, strict regulation and oversight mechanisms have been designed to encourage ethical decision-making and punish violators. However, in *Corruption in America*, Zephyr Teachout argues that these efforts have been largely unsuccessful, as regulating corruption has bedeviled lawyers, politicians, and political philosophers. Instead, the future of accountability may lie in solutions that allow for greater transparency and accountability in governance. For example, the expanded access that citizens and the media have to influence governance could be a vehicle to mobilize accountability in governance by restraining the discretion of public officials to utilize their office for personal gain. Future solutions

to combatting corruption may involve strengthening protections for whistle-blowers, a careful look at the power of judicial review in accountability, and greater transparency in the election process.

ORGANIZATION OF THE BOOK

The book is divided into four parts, Part I: Etiology; Part II: Permeation of Corruption in Governance; Part III: Policy Issues; and Part IV: Oversight and Accountability. The first two chapters comprising Part I are concerned with the etiology of corruption in public governance. In Chapter 1, *Measuring Corruption: Transparency International's "Corruption Perceptions Index"*, April K. Clark captures the complexity of why it is hard to measure corruption. She provides a comprehensive overview of the various definitional challenges and tools used for measuring and analyzing corruption including the widely used "Corruption Perceptions Index" produced by Transparency International. Clark examines the perceived severity of political corruption in the U.S. and how it influences the regulation of political corruption. She concludes that corruption hinders the government's ability to act and is a powerful determinant of political support across widely varying political, cultural, and economic contexts.

Chapter 2, *The Price of Corruption in Congress*, written by Michael J. Pomante II and Scot Schraufnagel, reviews five major scandals that have rocked Congress since the 1970s, Korea-gate, ABSCAM, Keating 5, House Banking Scandal, and Abramoff/DeLay Lobbying Scandal. Bolstered by this review and their analysis of the American National Election Study data, they assert that scandal definitely influences congressional disapproval and public trust in government. Specifically, Pomante and Schraufnagel uncover an important increase in congressional disapproval and an eroding of trust in the national government associated with congressional scandals, leading to a less effective Congress when disapproval grows and trust shrinks.

Part II of the text presents the influence of corruption, discretion, and accountability on public governance at the different levels of government. Chapter 3, *Legislative Scandals in the United States*, presents the state of corruption in the American legislative system, a decade after the infamous scandal surrounding powerful lobbyist Jack Abramoff who claimed to have "bought" influence in nearly half of all United States congressional offices. Kerri Milita and Jaclyn Bunch review the notorious scandal that culminated in the arrest of Bob Ney (R-OH), chairperson of the powerful House Administration Committee, which oversees federal elections, the resignation

of then-House Majority Leader Tom DeLay (R-TX), and the incarceration of Abramoff himself. Milita and Bunch argue that today in Congress, it is business as usual, with lobbyists influencing Congress through the same old avenues: the revolving door, whereby former members of Congress or congressional staff leave public service to work for lobbying firms and lobby former colleagues for campaign contributions and gift giving. In sum, a decade after the Abramoff scandal, Congress is still vulnerable to corruption.

Chapter 4, *Campaign Contributions and Vote Buying* by Renee Prunty and Mandy Swartzendruber examines whether campaign contributions equate with vote buying in U.S. Presidential campaigns. This chapter reviews the intricacies of campaign finance with special attention directed to how the decision in *Citizens United* contributed to a drastic increase in campaign spending resulting in the perception of citizens that influence is bought. The authors conclude that while there is no direct evidence that those contributing more money to campaigns have a greater influence on policy, the public may find it hard to believe.

Chapter 5, *Do Contributions to Judicial Campaigns Create the Appearance of Corruption*, written by Thomas E. McClure, presents the relationship between integrity ratings of Illinois trial judges and campaign contributions through the Illinois State Bar Association's judicial poll integrity scores of 253 elected judges. McClure's results suggest that judge's integrity scores decline as the amount of attorney contributions increases, the number of reported attorney contributors enlarges, and the number of large attorney contributors grows. The author concludes with a radical solution to corruption in judicial campaigns: abolishing judicial elections.

Finally, in the last chapter of Part 2, Chapter 6, *Media Coverage of Corruption and Scandal in the 2016 Presidential Election: Fantasy Themes of Crooked Hillary and Corrupt Businessman Trump*, John P. McHale illustrates how media coverage of corruption can uniquely affect voter attitudes and public policy formulation and implementation. By tracing the competing narratives offered in media coverage of the 2016 Presidential election, the dramatic characters, Crooked Hillary and Corrupt Businessman Trump, are constructed, resulting in a very nasty electoral process. McHale argues that in 2016, our nation may have hit a new low in Presidential campaigns.

Part III of the text, Policy Issues, starts with Chapter 7, *Crime, Injustice and Politics* written by Cara E. Rabe-Hemp, Philip Mulvey, and Morgan Foster. The authors examine the role of crime, politics, and media imagery in electoral politics, arguing that crime is one of the most enduring political issues of this century and that, in turn, politicians have played a fundamental role in constructing criminal justice policies. Rabe-Hemp, Mulvey, and Foster

present the history of the “get tough” rhetoric, increasingly popular with politicians that led to the War on Drugs, zero-tolerance policing, and mandatory sentencing. These criminal justice policies have produced the highest incarceration rate in the world, vastly overcrowded prisons, and increased police militarization, but no resulting decrease in crime. Today these strategies are associated with the reduced legitimacy of public officials and disproportionate consequences for poor and minority communities. The authors argue that while no politician is going to argue that we need more crime, given that politicians can shape the scope, explanations, and consequences of crime, they need to use their discretion to be honest about the reality of crime.

Sex scandals have rocked American politics since Alexander Hamilton paid for silence regarding his affair with another man’s wife in 1791. In Chapter 8, Eric E. Otenyo and Earlene A. Smith analyze the accountability of a very specific form of sex scandal – sexual harassment in police agencies. *Mayors’ and Citizen Attitudes toward Sexual Harassment in Police Departments* analyzes public and mayoral reactions to reported cases of sexual harassment and misconduct in police departments. Through the lens of agenda setting, this chapter explores case studies of sexual harassment within police agencies, concluding that currently these issues are largely obscured from the public, as they have not been problematized as a crisis that would trigger political action. The authors define several implications for policymaking including, stricter reprimands for sexual harassment, the increased empowerment of female officers, and the increased awareness of the public to mobilize accountability.

In Chapter 9, *Wars in Iraq and Afghanistan: Contractor Corruption and Election Campaigns*, Eric E. Otenyo and Parwez Besmel examine the extent to which reports of contractor corruption in the leadership of the Iraq and Afghan wars influenced the political agendas of Presidential candidates. The authors argue that while accounts of corruption following the invasions of Iraq and Afghanistan have been widely reported, they have not become a core campaign and governance issue in election cycles. This finding suggests that the framing of corruption needs to be targeted to generate concerned voters and a reduction in corruption. The authors argue that the public should be outraged because the opportunity costs of corruption are colossal and undermine democratic institutions, which in the end will lower the quality of administrative practices and policy implementation.

Part IV, Oversight and Accountability, explores recommendations for how to establish controls on discretion and strict regulation to increase accountability and corruption in public governance. Chapter 10, *Citizens United and Political Accountability*, by Benjamin Bricker, examines the role that the 2010 case, *Citizens United v. FEC* has played in curbing corruption in campaign

spending in U.S. elections. Bricker argues that the Court's decision serves to redirect the focus of accountability away from those who seek to sway election outcomes through massive election spending and toward efforts by the government to regulate that type of spending. The practical result has been to allow for the creation of new organizations that can take in unlimited amounts of money while also effectively hiding the source of funds from disclosure. Instead, the author encourages solutions that embody greater disclosure and accountability in government.

Chapter 11, *Judicial Review*, by Elizabeth Erin Wheat provides a historical look at judicial review and its power to maintain separation of powers in the U.S. political system. Specifically, through laws passed by Congress or regulations enacted by federal agencies, these branches of government draft policies with the expectation that the judicial branch will enforce them. The courts, however, were designed to uphold the Constitution and rule on the constitutionality of the laws and regulations. In other words, while judicial opinions can have the effect of creating policy, this is a different purpose than the Founding Fathers intended. Judicial review gives the courts the authority to review Congress, the President, federal agencies, and itself, promoting legal and effective public policy. This makes it an increasingly important tool for accountability.

Chapter 12, *National Security Whistleblowers and the Journalists Who Tell Their Stories: A Dangerous Policy Dance of Truth-finding, Truth-telling, and Consequence*, written by Maria A. Moore, John Huxford, and Jennifer B. Bethmann acknowledges the whistleblower as a crucial resource in journalism's attempts to make accountable those who wield power and misuse it through corruption. The media have increasingly become modern mechanisms for enforcing accountability. By examining case studies of those who have braved the government's anger, this chapter examines not only the circumstances of these breaches but also their political and legal repercussions. The authors establish the importance of stronger policy protections for National Security whistleblowers, resulting in positive conclusions for both the public and those who disclosed the information as a means of controlling political corruption.

In sum, this text provides a modern look at the corruption of public officials in the United States, including its devastating impact on governance in the form of public policy and political stability. What the reader will find is that many themes cut across the multiple levels of government represented in this book – namely the pervasiveness of corruption in American governance and their impact on the public institutions and citizens that public officials are sworn to serve. Viewing the similarities of corruption across all levels of government informs solutions to make accountable those public officials who

misuse their discretionary power. Modern mechanisms for enforcing accountability highlight the power and responsibility of the people to identify and combat corruption in governance.

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