

## Contribution and Corruption

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A common sentiment (which I share): Insofar as disparities in wealth lead to disparities of influence over political decisions, they threaten what is valuable about democracy.

- Democracy is (instrumentally) valuable, in part, insofar as it leads to *better* political decisions. When rich have greater influence than poor, decisions tend to be worse.
- Democracy is (intrinsically) valuable, and this intrinsic value depends on *equal opportunity to influence* political decisions. (Many different views about intrinsic value may agree on this.) Violated straightaway when rich have greater influence.

Open questions:

- Which disparities in wealth, if any, lead to disparities of influence, and to what extent?
- Which responses (e.g., public funding of elections, restrictions on campaign finance), if any, would do more good than harm (e.g., entrenching incumbents)?

My interest in these remarks is to understand better another view that's in the air: "If there's a problem with money in politics, it's instead corruption." Reflected in...

- U.S. Supreme Court, more or less, since *Buckley v. Valeo*.
- recently, progressives otherwise critical of the Court's reasoning (e.g., Teachout).

*My question is:* Why care about corruption, if *not* because of bad results or unequal influence?

What may nourish this view is a commonsensical thought: "Surely we agree that *pure corruption* is morally objectionable in a way in which *pure contribution* is not.

- *Pure corruption*: Someone flat-out bribes a legislator in order to advance a certain piece of legislation (i.e., the stuff of Thomas Nast cartoons).
- *Pure contribution*: Someone exerts the *same influence* on that *same legislation* by contributing to a campaign for a referendum, or a candidate who is known to be, independently of the contribution, a reliable supporter of that legislation (e.g. contributor = candidate).

This is not because pure corruption leads to *worse results*:

- Results held constant.
- Suppose pure corruption leads to good results. Still, not much of a defense that one was bribed to do the right thing.

This is not because pure corruption leads to *a greater imbalance in influence*:

- Influence held constant.
- Grant that pure contribution exerts less influence. Still, do we want to say that it's the same as bribery, just not as effective?"

*So to reformulate my question:* Why is pure corruption objectionable in a way in which pure contribution is not?

*First qualification:* It might be said that, ultimately, the problem of corruption is just a problem of bad results or political inequality. Nonetheless, there is a distinction between pure contribution and pure corruption: namely, a *legal regime* that permits pure corruption will be much worse *over the long run*, in terms of results or equality, than a regime that permits only pure contribution. Offhand this seems plausible (although it's worth thinking through why). I assume, however, that the view in the air goes beyond this, inviting us to compare episodes of

pure corruption and pure contribution, in which exactly the same degree of influence is exerted to bring about exactly the same outcome.

*Second qualification:* Set aside an (admittedly important) intermediate case: “corruption by contribution” = pure corruption, except that what’s in the bag (money, labor, publicity) can only be used for campaigning. (As David Strauss pointed out in a 1994 paper, the line between corruption by contribution and pure contribution is very hard to draw, even conceptually.

Consider the following stances I might take as a contributor:

- a. I don’t support candidate C because I don’t believe that he will support the legislation I favor (or to hold him accountable for not supporting it in the past).
- b. I inform (warn) C of this in advance.
- c. I inform (threaten) C of this in advance in order to get C to act otherwise.
- d. I adopt this conditional intention to do what I do in a. in order to get C to act otherwise.

At what point do I cross the line from pure contribution into corruption by contribution?)

*Possible answers:*

1. A bribe is wrong if and because it induces an official to *do something that would be wrong even if it wasn’t done for a bribe.*
  - a. But the bribe in pure corruption is to do something that lies within official’s discretion: namely, to support a piece of legislation.
  - b. Now, a philosopher, pushing his spectacles back up his nose, might say: “Actually, strictly speaking, it is wrong to support a piece of legislation that is, in fact, worse for the public good than some alternative.” So: Imagine that the legislator supports what is, in fact, best for the country.
2. “Pure corruption is in *private interests, not the public interest.*” What does this mean?  
Not: pure corruption leads to worse legislation. What *motivates* pure corruption?
  - a. But, for all we’ve said, pure *contribution* might be motivated by *private* interest pure *corruption* by *public* interest.

*Reply:*

- First, presumably at least *one* of the parties involved in pure corruption (i.e., the legislator taking the bribe) is motivated by private interest.
  - Second, grant that where pure contribution is motivated by private interests, it is just as objectionable as pure corruption. The real objection is *to anyone influencing legislation from private motives.*
- b. That’s a consistent position. But it seems to me morally precious, of a piece with anxiety about presidential marital fidelity. Why care what motivates the sausage makers? I want Barbara Lee to speak for me. But so long as she does that, I don’t care what gears and levers are at work in her soul.
  - c. There’s also the difficulty that while there is a world of difference between what’s *in fact* in the public interest and what’s in fact in private interests, it’s less clear how much difference there is between what a person *believes* to be in the public interest and what he believes to be in his private interest. It’s not so much that

I'm sanguine about public spiritedness as that I'm pessimistic about resistance to self-justification. Group think, cognitive dissonance, a tendency to generalize from one's own experience, the desire to be in the right...

3. Pure contribution takes place in the open, whereas pure corruption takes place behind closed doors.
  - a. Suggests that pure contribution *in the absence of disclosure requirements* is equivalent to pure corruption.
  - b. In any event, bribes could have disclosure requirements too. (*Reply*: "But then no one would dare to accept a bribe!" True enough, but doesn't explain what we are trying to explain: *Why* are bribes seen as so much worse than contributions?)
4. Pure contribution, but not pure corruption, is an exercise of freedom of speech.
  - a. Is contribution (as opposed to expenditure) speech?
  - b. Many think that pure corruption is more objectionable for some further reason. For they think that the end of combatting pure corruption has greater power to justify infringements of speech than the ends that might be served by restrictions on contribution.
5. Even if the same influence is exerted by pure contribution, it takes a different causal route. It has to pass through the political judgment of other voters. Once the contribution is made, they get the final say.
  - a. Why does this matter, if not better results or equal influence?
6. Pure corruption violates trust, disappoints expectations, breaks promises
  - a. But pure corruption disappoints expectations only if we expect legislators to avoid it. Does the problem go away if we expect them to take bribes?
  - b. "No, the point is what we are *entitled* to expect them to do!" OK, but why are we entitled to expect that they won't take bribes, but not that they won't take contributions? That's what we're trying to explain.

So is there anything to the commonsense distinction? There may be, but, first, it's fairly subtle. And, second, it may pale in importance to the concerns about good results and equal influence.

7. Unjustified discretionary powers:
  - Rough idea: I wrong you when I exercise an "unjustified discretionary power": to make choices that (significantly) affect your life, when there is no adequate justification for my having that power.
  - Such wrongs are puzzling, because my exercising such a power can *benefit* you.
  - Conjecture:
    - My exercise is wrong because, if it *weren't* wrong, then I *would* have the power.
    - I *shouldn't* have power over you.
    - Therefore, my exercise of it is wrong.
    - Is this reasoning legitimate? I'm not sure.
  - These powers are individuated not only by *what* I choose, but also by my *reasons* for so choosing.

- Legislators have certain powers over us, to make decisions that affect our lives, on certain grounds: announced platform, party line, conscience, etc.
- What justifies their having these powers? The full answer would be a justification of representative government.
- But even in advance of a full answer, it seems clear that certain considerations *don't* justify their having these powers: in particular, that if they were to have such powers, they would be able to profit personally from them.
- So they wrong us if they vote a certain way *because they have been paid off*. In so doing, they exercise a power that there is no adequate justification for them to have. This is so even though, as we are imagining, *they benefit us by voting in that way*.
- This is what the legislator in the pure corruption case, but not (necessarily) the pure contribution case, is doing.
- Compare *blackmail*: If I've committed a crime, then, fine, you're within your rights to report me to the cops. There's a perfectly good justification for your having that power. But you do wrong me, guilty though I am, if you try to squeeze me for hush money. There's no good justification for your having the power to do *that*.
- Compare *workplace harassment*: If I've been slacking off, then, fine, you're within your rights to fire me. There's a perfectly good justification for your having that power. But you do wrong me if you threaten to fire me, slacker though I am, unless I wax your car. There's no good justification for your having the power to do *that*.
- Compare *vote buying in referenda* (assuming equality, no worse results): For you to have a vote is for you have a power over the rest of us. Various things might justify that. But not that it gives you a way to siphon money from us. There's no justification for your having the power to *sell* your vote.

*Question:* How much does this concern about unjustified discretionary powers matter? Good results and equality of influence seem much more important issues. They, at very least in principle, tell against pure contribution as much as against pure corruption (let alone corruption by contribution).