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When it comes to politics, corruption is subtler than you think

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In the now infamous case of *Citizens United v. FEC*, the Supreme Court corrected a 20-year-old mistake that, if allowed to continue, threatened to consume the First Amendment. The mistake was made in *Austin v. Michigan Chamber of Commerce* in 1990, when the Supreme Court upheld a Michigan restriction on corporate spending to independently run ads supporting or opposing a candidates for state office.

In *Austin*, the court endorsed a stunningly broad theory of corruption. In the words of Justice Thurgood Marshall, corruption was expanded to include “the corrosive and distorting effects of immense aggregations of wealth that are accumulated with the help of the corporate form and that have little or no correlation to the public’s support for the corporation’s political ideas.”

To Marshall, there was apparently something natural or proper about the level of “public support” for a given political idea at a given time. “Corruption” entered when corporations use “immense aggregations of wealth” to try to get people to deviate from that baseline. If not a lot of people already agree with something, then corporations shouldn’t be allowed to speak too much about it. Presumably, however, it would be okay for a corporation to use its wealth to speak about subjects that already enjoyed broad support.

But Marshall didn’t mean that *all* corporations should be restricted. There are several corporations that have been given special permission by the government to “corrupt,” in Marshall’s definition, the marketplace of ideas: The New York Times, the Wall Street Journal, NBC, ABC and all other news corporations, as well as corporations like Michael Moore’s “Dog Eat Dog” films. Moore’s films are, of course, designed to change how people think and to build support for ideas. In other words, they’re designed to “corrupt.”

Marshall’s broad theory of corruption knows few limits and produces many bizarre idiosyncrasies. Yet many people want not only to return to that theory, but also to expand it even further. In the name of eliminating “corruption,” they hope to give the government terrifyingly broad powers to determine who can speak, how loud they can speak and what they can say. Ultimately, corporations aren’t allowed to speak — or at least, *some* corporations aren’t allowed to speak — because you might believe them.

This type of anti-democratic paternalism cannot be allowed to consume the First Amendment. Democrats and others pushing for “campaign finance reform” are prone to asking “what’s the

matter with Kansas?” They’ve tried to persuade regular Americans to vote for policies in their “self-interest” — i.e. Democratic policies — but they continually vote otherwise. Thus the minds of some Americans (e.g. Republicans, libertarians and probably some Hillary Clinton supporters) must be “corrupted.” By what? Corporations, of course. The solution? Shut the corporations up. After all, it’s for those citizens’ own good.

From this perspective, corruption is often a personal concept based on anecdotal reasoning and personal biases. Why hasn’t America passed single-payer health care? Corruption. Why haven’t we fixed public schools? Corruption. It’s quite self-gratifying to believe that no honest, uncorrupted person can disagree with us, but these personal biases can become weapons against free speech if broad theories of corruption like Marshall’s are allowed to return.

A functional legal theory of corruption must protect our First Amendment rights and prevent rampant misuse, by voters or politicians. For the purposes of much campaign finance regulation, the “quid pro quo” test, which confines corruption to the actual trading of money for favors, should suffice. Courts must continue to heavily scrutinize finance regulation laws that are not related to preventing quid pro quo corruption.

If we seek to rein in corruption in Washington, we shouldn’t confine our focus exclusively to campaign finance law. Much of the corruption in D.C. is subtle, more insidious but less invidious: It’s two old friends — one from the Securities and Exchange Commission and one from the Hill — having drinks and making a deal; it’s a former member of Congress, now at a lobbying firm, reaching out to his connections and old friends to influence policy; it’s lobbying firms being used as a de facto research arm of Congress.

Some of these things can be moderated. We can raise the pay for members of Congress so they are less likely to leave to earn more lobbying. We can raise the pay and increase the size of congressional staff. Staff members are underpaid and overworked, and they are expected to have some amount of expertise in too many subjects. Thus, when a bill comes up that subtly changes how concrete is regulated, whom do they call to get up to speed? The only people who are already up to speed: those in the relevant industry.

Finally, we should liberalize existing campaign finance rules. Ever since the Federal Election Campaign Act was amended in 1974 to limit contributions to federal candidates and political parties, it has become harder to dethrone incumbents. Challenging incumbents takes money, and current laws make acquiring money difficult, especially money a candidate can control. In 2014, about 95 percent of congressional incumbents were reelected.

By raising contribution limits, we’ll cut down on “outside” spending by super PACs and other groups to be redirected to candidates; we’ll lower the amount of time candidates spend fundraising; and, most important, hopefully kick some incumbents out of office. If sitting politicians were really in favor of “fair” elections, they would triple the contribution limits for challengers — but I won’t hold my breath.

A static political class is inherently corrupting. When our representatives don’t fear losing their jobs, all types of mischief can result. Long-term, reciprocal back-scratching relationships form, and more corruption happens at the bar or at dinner parties.

Democracy is messy, but theories of corruption like Marshall's try to fix corruption by undermining democracy. Trust people to make honest, respectable choices even in the face of political ads. Distrust politicians who believe you're incapable of doing that.

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