Corruption as Injustice

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Abstract

Although the general public sees corruption as a problem of social justice, the academic literature has explored it as a problem of development, usually in a narrow sense of economic development. This paper attempts to develop a normative theory of corruption as a form of injustice.

I define corruption as abuse of power that is a breach of "formal justice" and a violation of "obligations of fairness" by individuals for their private gain, which involves betrayal of public trust. Corruption can be justified only when the gain in substantive justice is large enough to clearly outweigh the loss in formal justice and other alternatives are unavailable. Unjust rules, in terms of substantive principles of justice or in terms of implementability and observability, give partial justification for corruption as self-defense. Hence, unjust rules and institutions tend to breed institutional corruption. Any gains in efficiency from corruption are accompanied by negative externalities such as losses for honest competitors and erosion of social trust. Hence, corruption is not functional for economic efficiency as well as for human development in the long run.

I argue that the private sector as well as the public sector is prone to corruption, that market failures as well as government failures produce incentives for corruption, and that principal-principal relations as well as principal-agent relations are prone to corruption. Formal justice such as control of corruption and substantive justice such as democracy (procedural justice) and income equality (distributive justice) tend to mutually reinforce each other.

I. Introduction

Is corruption a problem because it is unjust or because it is harmful for development? Most people will probably say that they hate corruption because it is unjust. Most of the academic literature on corruption, however, has seen it as a problem of development rather than as a problem of social justice. Philosophical literature on justice has shunned the topic of corruption.

Much of the academic debate on corruption has been devoted to the function and dysfunction of corruption in terms of efficiency, or economic development. Those who argue for the dysfunctionality of corruption (Myrdal, 1968; Wraith and Simpkins, 1963; Andreski, 1968) implicitly argue that corruption is bad. Those who argue for the functionality of corruption (Leff, 1964; Bayley, 1966; Huntington, 1968) implicitly argue that corruption can be good or morally neutral. Although the former group has been frequently labelled as "moralists" and the latter as "revisionists" or "functionalists," even those labelled as moralists have relied less on moral arguments than on pragmatic arguments that corruption produces harmful effect on development. This raises a question: "Is corruption good or morally justifiable if it contributes to economic development?"

Although many ordinary people will say that corruption is bad whether it is helpful or harmful for economic development, they may distinguish between moral judgment and practical or utilitarian judgment about corruption. In addition, moral judgment may be affected by practical judgment, because it could be argued that a small sacrifice of justice may be justified by a large gain in efficiency. In a society in which economic efficiency is highly valued by many people, this kind of practical judgment can outweigh moral judgment, although those who believe in the "priority of justice over efficiency" will disagree.

This paper attempts to present a new perspective on corruption by discussing corruption as a problem of justice. This is the first attempt to systematically explore the nature of corruption as a form of social injustice, to my knowledge. I will use some concepts such as "formal justice" and "substantive justice" from Rawls' *A Theory of Justice* (1971) in order to clarify the definition of corruption and better understand it. I will address a number of questions, such as the conditions under which corruption can be justified and whether corruption can be ever justified by its functional role for efficiency. I will also examine the effect of corruption on development, apart from its implications for justice.

The paper will be organized as follows. Section 2 discusses problems surrounding the definition of corruption. In section 3, I argue that the concept of "formal justice" is useful in defining and understanding corruption more precisely. Section 4 explores the conditions under

which corruption can be justifiable and examines the concept of institutional corruption. Section 5 discusses whether abuse of *private* power can be part of corruption. In section 6, I discuss the question about functionality of corruption, paying special attention to the role of social trust. Section 7 will explore a mutually reinforcing relationship between formal justice (i.e., the control of corruption) and substantive justice (i.e., equal distribution of income and democracy). Section 8 will conclude the paper.

II. Definition of corruption

Corruption is a complex and multifaceted phenomenon and takes on various forms in different contexts. Consequently various definitions have been used from "moral decay" to "misuse of public power for private profit" to strict legal definitions of corruption as an "act of bribery" involving a public servant and a transfer of tangible resources (Andvig et al. 2000). Other definitions like "betrayal of public trust" and "violation of established rules for personal gain"(Sen 1999) have also been used. The various definitions used in the literature, however, are either too broad or too narrow, and there is still much confusion about what is corruption and what is not corruption.

It must be noted that the word corruption has a moral implication. The Oxford English Dictionary gives corruption nine meanings and categorizes them as follows: (1) Physical: the destruction or spoiling of anything, especially by disintegration or by decomposition with its attendant unwholesomeness and loathsomeness, (2) Moral: moral deterioration or decay; perversion or destruction of integrity in the discharge of public duties by bribery or favor, (3) The perversion of anything from an original state of purity (recited from Heidenheimer et al. 1989). Clearly, corruption that is relevant to our discussion falls into the second category. Thus, if we discuss corruption excluding its moral dimension, our conception will be flawed and incomplete, giving us only a partial understanding.

The definition of corruption as "abuse" (or misuse) of "public power" (public office, public role, or public duties and resources) for "private gain" (personal gain, private profit, or private benefit) has been most frequently used among scholars. Although this succinct definition reveals much of the fundamental characteristics of corruption, each of the three core elements of the definition causes confusion and misunderstanding.

The first important confusion arises because *abuse* (or misuse) of public power for private gain is too broad a term. There are many kinds of *abuse* of public power for private gain that cannot be called corruption. Unjust war and oppression of basic human rights that are for the benefit of the dictator are such examples. What kinds of misuse of power for private gain, then,

can be defined as corruption? Bribery is too narrow. Embezzlement, extortion, fraud, favoritism and nepotism can be other forms of corruption (Andvig et al. 2000). What are the common characteristics among these various forms of corruption?

Abuse or misuse of power means unjust use of power. Although corruption is an injustice, not all injustices are corruption. Corruption is a subset of injustice, as it is a subset of "abuse of (public) power" or "unjust use of (public) power." How, then, is corruption distinguished from other kinds of injustice and what relationships exist between corruption and other kinds of injustice? In this regard, I find that Rawls' concept of "formal justice," as distinct from "substantive justice," is useful for developing a theory of corruption as injustice.

Another point of contention regarding the definition of corruption is whether to include some kinds of misbehaviors from the private sector. Frequently corruption has been understood as a phenomenon in the public sector or at the intersection of public sector and private sector. Most social scientists have excluded corruption in the private sector from their definition of corruption. Nye (1967) defined corruption as "behavior which deviates from the formal duties of a *public role* because of private-regarding pecuniary or status gains." Johnston (1986) defined corruption as "abuse of *public roles and resources* for private benefit." Indeed, corruption in the private sector has been rarely studied by social scientists.[1] Although ordinary people as well as mass media commonly use words like "corporate corruption," scholars have usually used terms like "business ethics," thus avoiding the word "corruption" in the private sector.

Thus, abuse of "private power" has been often excluded from the definition of corruption. This interpretation can be misleading, because, for a corrupt transaction between a public official and a client, only the public official is regarded as corrupt, while the client who has used private resources like money is not regarded as corrupt.

The exclusion of corruption in the private sector from the definition of corruption is not consistent with the common sense understanding of the word corruption. We call certain kinds of misbehaviors corrupt not only in the public sector but also in the private and non-profit sectors. There is corruption in the university, the corporation, the labour union, the media, the banks, and the church (Meyer 1975).

When an academic definition of a term is different from the common usage of the term, there should be clear reason. Those definitions that excluded corruption in the private sector, however, were usually taken for granted or assumed without providing any reasons for the exclusion. What are the similarities and differences between private sector corruption and public sector

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[1] Rose-Ackerman's chapter on "corruption in the private sector" in *Corruption: A Study of Political Economy* (1978) is a rare exception.

corruption? Are there any fundamental differences between them? Does corruption have some public characteristics? These are some of the questions that are important but have not been addressed by the literature.

Another important element in the definition of corruption is "*for private gain* (profit, or benefit)." Abuse of public power that is not for private gain but for public interest is not regarded as corruption. The problem of "dirty hands" concerns the political leader who, for the sake of public purposes and not out of greed, the desire for power, or loyalty to family and friends, violates moral principles (Thompson 1987). Thus, the problem of "dirty hands" is quite different from the problem of corruption, and the leader who committed the former could be honored although she or he could be punished.[2]

What are the criteria for "private gain" as a core element of corruption, especially when private interests are threatened or invaded by unjust laws and unfair administration of laws? There has been general consensus about the need to interpret the term "private" broadly so that it may include one's family, relatives, friends, political party, and those with some connections (such as a friend of a relative) as well as the need to interpret the term "gain" (benefit, or profit) broadly so that it may include not only monetary gain but also power, prestige, and any kind of favor or benefit. Thus, favoritism and nepotism are usually regarded as part of corruption.

The question of how we should view corruption as self-defense from the infringements of self-interest by unjust laws or unfair administration, however, has seldom been discussed. This poses a question as to the conditions under which corruption can be justified. I will show that these questions have significant implications on the lives of many people and that unjust systems breed "institutional corruption" beyond individual corruption.

III. Corruption as breach of "formal justice"

Rawls' theory of justice is mostly about "substantive justice" and presents "equal liberties," "fair equality of opportunity," and the "difference principle" as its basic principles.[3] He defines "formal justice" as "impartial and consistent administration of laws and institutions," whatever their substantive principles are. An institution is a public system of rules that define offices and

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[2] For example, the historic summit between South Korea's President Kim Dae-Jung and North Korean Leader, Kim Jong-Il, in 2000 was made possible because South Korean government secretly provided monetary aid to the North just before the summit. The ministers and presidential secretaries involved were prosecuted and convicted later. The US Secretary of State Cyrus Vance resigned after the abortive raid to rescue the Iranian hostages in 1980, partly because he had deceived allies to keep the raid plan secret (Thompson 1987).

[3] Rawls' difference principle, which is at the core of his theory of justice, states that socio-economic inequalities are unjust unless they are to the benefit of the least advantaged.

positions with their rights and duties, powers and immunities, and the like. Substantive justice is about the rules of an institution, while formal justice is about the actions of the individuals who are taking the offices of the institution, according to Rawls.

Formal justice, or justice as regularity, limits discretion and arbitrary decision-making to ensure equality before the law. It requires that, in their administration, laws and institutions should apply equally. Thus, the conception of formal justice becomes the rule of law when applied to the legal system. If an institution is reasonably just, then it is of great importance that the authorities should be impartial and not influenced by personal, monetary, or other irrelevant considerations in their handling of particular cases.

Although Rawls argued that substantive justice is about rules, I argue that substantive justice is also about the outcomes. For example, lottery as a procedural rule for distribution of certain resources may be just. The resulting distribution from the lottery, however, may be unjust.[4] Thus, fair and consistent administration of just rules does not always guarantee substantively just outcomes, although it is generally likely to produce just outcomes as Cell 1 in Figure 1 indicates.

If substantively just rules are unfairly and inconsistently administered (or formal justice is violated), the outcomes will be substantively unjust (Cell 3 in Figure 1). It is possible, however, that laws and institutions are equally executed and yet unjust. For example, a law discriminating against women may be fairly and equally applied to all women. Thus, impartial and fair administration (or adherence to formal justice) of substantively unjust rules will produce substantively unjust outcomes (Cell 2 in Figure 1).

Figure 1. Outcomes of substantive justice/injustice and formal justice/injustice

		Substantively	
		just rules	unjust rules
	just implementation	(1) Substantively just outcome likely	(2) Substantively unjust outcome certain
Formally	unjust implementation	(3) Substantively unjust outcome certain	(4) Substantively unjust outcome very likely

The two cases (Cell 2 and Cell 3) described above both produce substantive injustice, but corruption was involved in only one case, in which substantively just rules were irregularly implemented, or formal justice was violated (Cell 3). We see that corruption is not about

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[4] The jubilee year that was observed by ancient Jews can be understood as a way of correcting the resulting unjust distribution every fifty years, during which Jewish slaves were freed, alienated lands were restored to the original owners, and debts were cancelled.

substantive justice, but about formal justice. A rule or a law can be unjust, but we do not call a rule or a law corrupt. Corruption occurs when the rule or law is not regularly and fairly administered, whether the rule or law is just or not. Thus, corruption requires actions of the individuals. When we call an institution, or a society as a whole, corrupt, we mean that rules of the institution, or the whole society overall, are arbitrarily and inconsistently administered. When we call an official corrupt, we mean that he or she administers rules unfairly or irregularly for his or her own interest. Thus, corruption involves the violation of formal justice for private gain and produces substantive injustice.

Rawls argues that even where laws and institutions are unjust, it is "often" better that they should be consistently applied. In this way those subject to them at least know what is demanded and then they can try to protect themselves accordingly, whereas there is even greater injustice if those already disadvantaged are also arbitrarily treated in particular cases, as Cell 4 in Figure 1 indicates. For example, if a law discriminating against women is not fairly and equally applied to all women and further discrimination occurs during the implementation process, many women will suffer from double discrimination.

On the other hand, it might be still better in particular cases to alleviate the plight of those unjustly treated by departures from the existing rules. For example, if the officials who implement the law discriminating against women do not equally apply it to all women but treat as many women as possible without discrimination using their discretion benevolently, the violation of formal justice will actually produce substantively less unjust outcome than sticking to formal justice would. The officials could use their discretion in such a benevolent way either honestly or in exchange with some payoffs. Thus, violation of formal justice does not necessarily involve corruption. Only the "violation of formal justice for private gain" is regarded as corruption.

The concept of formal justice can be applied not only to law-implementing processes but also to law-making processes. We know that the process of enacting laws and rules can be unfair and irregular, too. An unjust law can be enacted through fair process. A just law can be enacted through unfair process. If a law prohibiting discrimination against some minority group, which is presumably just, were enacted because the minority group bribed lawmakers, we would call the process corrupt while the legislative outcome is substantively just. According to Rawls, legislative process is part of the political process governed by the constitution. Thus, formal justice in legislative process means impartial and consistent application of the constitution, whose provisions guarantee equal liberties and equal participation.

Substantive justice consists of "procedural justice" and "distributive justice." For Rawls, the key principles of procedural justice are equal liberties and fair equality of opportunity. The

highest levels of procedural rules are contained in the constitution. The core principle of distributive justice is the difference principle, which advocates equal distribution of economic and social resources unless the inequalities are to the benefit of the least advantaged. There are procedural laws such as election laws and distributive laws such as tax laws, and many laws contain both procedural and distributive rules.

Formal justice should not be confused with procedural justice.[5] Formal justice requires impartial, consistent administration of both procedural rules and distributive rules. Formal justice, as the rule of law, requires that like cases must be treated alike, that *ought* implies *can*, that rules should be general, clear, consistent, public, and prospective, and that there is no crime without a law (Rawls 1971; Perelman 1963; Lyons 1973; Sullivan 1975; Heller 1987; Miguel 1987; Esquith 1999).[6] The requirement that *ought* implies *can* has a very significant implication with regard to corruption, which I will discuss in the next section. Table 1 summarizes principles of substantive justice and formal justice.

Table 1. Principles of substantive justice and formal justice

Substantive justice (Justice as fairness)	**Formal justice** (Justice as regularity)
Procedural justice:	Impartial and consistent application of rules
equal liberties	by administrators and judges:
equal participation	**Requirements of Rule of law**:
"fair equality of opportunity"	Like cases must be treated alike.
Distributive justice:	Ought implies can. (implementability and
"difference principle" (equal distribution of	observability)
social, economic resources unless the	There is no crime without a law.

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[5] According to this definition of procedural justice, corruption is not a breach of procedural justice. However, if we define procedural justice so as to include both procedural rules and implementation processes as Rothstein (1998) does, then corruption will be a violation of procedural justice. There is also a lot of social-psychological research on procedural justice and distributive justice, which sees procedural justice as including both procedural rules and implementation processes. The social psychology of procedural justice emphasizes that procedural justice significantly influences people's perception of justice on the distributive outcomes (Lind and Tyler 1988).

[6] The concept of formal justice originates from Max Weber's formal legal rationality. Weber's formal legal rationality is based on general rules internal to the legal code itself and is independent of all substantive and external determinations, while substantive legal rationality is guided by the general principles of an ideological or normative system other than that of law itself, for example, political, religious, economic or ethical values, or substantive notions of equity, fairness or justice (Lyons 1973).

inequalities are to the benefit of the least advantaged)	Laws should be general, clear, consistent, public, and prospective (not retroactive).

Table 2 shows how formal justice is involved in electoral, legislative, administrative, and judicial processes and how it is related to substantive justice in terms of rules and outcomes. Thus, we see that there can be corruption as a breach of formal justice in each of these implementation processes: electoral corruption, legislative corruption, bureaucratic corruption, and judicial corruption.[7]

Table 2. Formal justice in electoral, legislative, administrative, and judicial processes

Rules (substantive justice)	Implementation processes (formal justice)	Outcomes (substantive justice)
Constitution (procedural justice: equal liberties and participation)	Political process governed by the constitution (electoral, legislative process)	Body of enacted legislation (procedural, distributive laws)
Procedural/Distributive laws, rules, and regulations	Application of rules by administrators and judges (administrative, judicial processes) Following of rules by citizens	Distributive outcomes equal/unequal liberties equal/unequal participation equal/unequal opportunity equal/unequal income, wealth, health care, etc.

Rawls presented three principles for individuals: 1) obligations of fairness and fidelity, 2) natural duties to uphold justice, mutual aid, mutual respect, not to injure, and not to harm the innocent, and 3) supererogatory virtues such as beneficence, courage, and mercy. The principle of fairness accounts for all requirements that are obligations as distinct from natural duties. A person is required to do his or her part as defined by the rules of an institution (1) if the institution is just, and (2) one has voluntarily accepted the benefits of the arrangement. Obligations of fairness and fidelity arise as a result of our voluntary acts, whereas natural duties apply to us without regard to our voluntary acts. The most important natural duty is to support and to further just institutions. Thus, we have a natural duty to comply with the constitution or with the basic

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[7] Political corruption usually refers to both electoral corruption and legislative corruption.

laws regulating property (assuming them to be just), whereas we have an obligation to carry out the duties of an office that we have succeeded in winning, or to follow the rules of associations or activities that we have joined.

Formal justice is violated when the relevant individuals such as politicians, bureaucrats, and judges do not follow the principle of fairness. Corruption is a breach of formal justice that occurs when the relevant individuals violate the obligations of fairness for private gain.

Rawls' idea of political obligation needs to be expanded. While he thought that political obligation applies only to those who hold office and that there is no political obligation for citizens generally, the citizens who voluntarily participate in the process of electing officials (through voting and campaigning), lawmaking (say, through petitioning and lobbying) as well as in the administering of the laws and regulations (through active participation in various administrative procedures) must have political obligations too.[8] The citizens who seek special favor through bribery or connection would be equally as unjust and corrupt as the officials who favor or disfavor their clients because of bribery or nepotism. The citizens who sell their votes as well as the candidates who buy their votes are both violating the obligations of fairness. Thus citizens have political obligations of fairness whenever they exert political influence by voluntarily participating in the political processes as well as natural duties to follow the laws as far as they are reasonably just.[9]

IV. Private gain vs. self-defense: Justification of corruption and institutional corruption

I have noted that the term "private gain" needs to be broadly interpreted so as to include personal power and prestige as well as monetary gain that benefits oneself, one's friends, relatives, and political party, and so on. Thus, if an official favors someone to whom he or she is personally tied in administering a rule, he or she is violating formal justice and obligation of fairness for his or her private gain. Suppose, however, that an official favors a welfare applicant when the applicant is really poor but not eligible by formal standards. The official is then violating formal

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[8] For example, the American Administrative Procedures Act gives individuals and groups a variety of opportunities to intervene in the executive rulemaking process. Agencies must give notice of their intent to issue a regulation and accept testimony from a broad range of individuals and groups (Rose-Ackerman 2004).

[9] Klosko (1994) argues that the strong political duties of citizens to follow the laws cannot be explained as natural duties and that citizens' political obligations arise from the benefits of essential public goods provided by the state regardless of voluntary acceptance of the schemes. Thus, citizens have political obligations based on the principle of fairness. However, Carter (2001) argues against Klosko's idea of political obligations based on essential public goods. I do not intervene in this debate, but argue that citizens also have political obligations based on the principle of fairness at least when they voluntarily participate in political processes.

justice to enhance substantive justice, and it is not for his or her own private gain. In such a case, we will not call the official corrupt.

While corruption always involves the violation of formal justice, violation of formal justice that is not for private gain is not corruption. The case of dirty hands was such an example. More serious problems arise when the rules and institutions are substantively unjust. If a regime, a law, a rule, or a contract is extremely unjust, adherence to formal justice will not be morally binding and violation of formal justice can bring a much greater substantive justice. As Rawls argues, obligation of fairness for an individual applies only when the institution, the benefits of which the individual voluntarily has accepted, is reasonably just. Citizens' natural duty to comply with the constitution and laws is not binding if the constitution or laws are extremely unjust.

I will examine the situations in which rules and institutions are grossly unjust or in which rules are reasonably just but the officials administer them extremely arbitrarily and unfairly. The fundamental question raised here is under what conditions and to what extent corruption can be justified for public officials and citizens as self-defense from the denial of basic liberties or from unacceptable infringements of self-interest.

Rawls discussed the duty to comply with an unjust law and the justification of "civil disobedience" and "conscientious refusal" in a considerable detail, but did not discuss corruption in relation to an unjust law. Rawls argued that, when the basic structure of society is reasonably just, we are to recognize unjust laws as binding provided that they do not exceed certain limits of injustice. Our natural duty to uphold just institutions binds us to comply with unjust laws and policies or at least not to oppose them by "illegal means" as long as they do not exceed certain limits of injustice. Thus, the objects of civil disobedience should be limited to instances of substantial and clear injustice such as "serious" infringements of the principle of equal liberty and "blatant" violations of the principle of fair equality of opportunity, according to Rawls.[10]

There are circumstances, however, in which certain laws are extremely unjust but civil disobedience is not practically possible, and corruption is thus the last resort to defend oneself. Let us take Rose-Ackerman's (1978) example: "One cannot condemn a Jew who bribes his way out of a concentration camp." The Jew has violated formal justice for his own private interest. Although the Jew's duty to comply with the extremely unjust rules of the concentration camp is

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[10] Rawls defines civil disobedience as a public, nonviolent, conscientious yet political act contrary to law usually done with the aim of bringing about a change in the law or policies of the government. Civil disobedience is different from the militant action and resistance for overturning an unjust and corrupt system. Rawls notes that in certain circumstances militant action and revolutionary change can be justified. The justification of conscientious refusal requires more complicated discussion, because it may be founded on religious or other principles as well as political principles that are at variance with the constitutional order.

not binding, he has employed illegal means of bribing. He has not had legal ways of solving the problem such as appealing to the court, however, while his basic liberty and even his life was being denied and threatened by the unjust system. Although bribing is a violation of formal justice, the Jew's act is justified because the sacrifice of formal justice is not comparable to the large gain in substantive justice.

The official who took the bribe from the Jew would be still corrupt if he or she could help the Jew escape without accepting the bribe. If the official, however, had to take the bribe to deliver it to another official whose assistance was necessary in order to help the Jew to escape the concentration camp, then the former official would be justified while the latter official might not be. Here, the greater problem is the injustice of the system rather than individuals' acts.[11]

The above example was an extreme case. We may generalize that when rules are extremely unjust so as to seriously infringe basic liberties and civil disobedience or other alternative solutions are unavailable, corruption may be justified as a last resort. But if an unjust law inflicts serious losses to individuals' interests and clearly contradicts to the principle of distributive justice (such as the "difference principle"), but falls short of "serious infringements of the principle of equal liberty or blatant violations of the principle of fair equality of opportunity," can corruption be justified as self-defense? This kind of situation does not give sufficient justification for civil disobedience, according to Rawls' criteria. Hence, we may decide that natural duty binds us to comply with this kind of unjust rule and that corruption cannot be justified as self-defense. In reality, however, it is very hard to determine the borderlines of "seriousness" of infringements of equal liberty or "blatantness" of violations of fair equality of opportunity. We can expect that this kind of unjust rules will breed corruption and that those individuals who committed corruption would try to justify their acts as a kind of self-defense of their interests.

Unjust rules will also give greater motivations and opportunities for corruption to the public officials who are in charge of administering them. They might justify the violation of formal justice as a way of helping their clients to circumvent unjust rules, and the payoff as a reward for taking risks for them. Although much of the corruption literature described the corruption of public officials purely in terms of expected cost-benefit calculation incorporating the probability of being caught and punished, their behaviors may be strongly affected by their perception of the legitimacy of the institution and the rules as well. In terms of a cost-benefit analysis, unjust rules will reduce the moral and psychological cost, and probably increase the psychological benefit by

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[11] In the Jew's example, I have argued that the fundamental problem is the injustice of the system. But, one can argue, it is more than that. The Jew is not a member of the system, and has no obligations to it at all. That is quite different from an unjust system from which one benefits and in which one participates as a member. Dennis Thompson helped me to recognize this point.

interpreting the corrupt act as a kind of charity.

Thus, we can expect that grossly unjust rules will cause many officials and citizens to engage in corruption and that it may lead to an "institutional corruption" beyond the level of individual corruption. In such a situation, corruption becomes common knowledge and an informal rule of game, although each corrupt transaction is secretly done.

Another situation to consider is one in which laws and rules are reasonably just but the officials are corrupt and administer them arbitrarily. Suppose some welfare applicants are really poor and eligible by formal standards but their applications are denied by corrupt officials. In this case, the law itself is substantively just, but the violation of formal justice by corrupt officials results in substantive injustice to the welfare applicants: the applicants must bribe to receive the welfare. In such a situation, their bribing might be justified, because the denial of welfare would cause serious problems in maintaining their minimum standard of living.

Another important situation is one in which laws and rules are reasonably just in principle, but cannot be implemented in reality as they are supposed to be. This problem arises when the principle of "ought implies can" is violated. For example, a law that says that everyone has a right to a lawyer but still does not provide for a public defense system is an empty law. If there are public defenders but the supply is much less than the demand, formally just implementation of the law, say, through lottery, does not bring about substantive justice. Indeed, this kind of situation is a breeding ground for corruption. Because the officials can use their discretion in allocating public defenders, there exists a great opportunity for corrupt transactions. The likely result is that relatively well-off defendants who are willing to bribe will get public defenders, while the least well-off defendants who cannot afford bribing and the honest defendants who do not want to bribe will not benefit from the public defender system. When a law is just in principle but "not implementable" correctly, it may be in reality unjust.

In the previous example of welfare applicants who were formally eligible but their applications were denied, it may not only be that the officials were corrupt but the welfare budget was far short of providing welfare to all eligible applicants. When the selection is at the discretion of officials, their informal selection criteria may depend on the kickbacks, and corruption is likely to be institutionalized. When government services are supposed to be universal but selective in reality, or when government services are selective and the budget does not cover all the eligible applicants, institutional corruption can develop. Rothstein (1998) advocated "universal" welfare state vis-à-vis "selective" welfare state, partly because selective programs are prone to bureaucratic abuse of power as well as fraud on the part of citizens.

In the above examples, the principle of "ought implies can" was violated because the relevant

government institutions could not correctly implement the rules. This principle can also be violated because citizens cannot follow certain rules, in the areas of various regulations in particular. When citizens, small businesses, or a certain group of people are required by a law to observe certain regulations that look just in principle but are practically impossible or prohibitively expensive to properly observe correctly, impartial and consistent implementation of the law will produce substantive injustice. Although most literature on corruption considered excessive regulations "inefficient," they are "unjust" as well and violate the requirement of the rule of law.

Civil disobedience could be a right response of the affected citizens in such a situation. It is, however, hard to organize civil disobedience, not only because a collective action problem exists but also because the law appears just in principle. Hence, citizens are more likely to employ corruption individually than to organize collective action to change the law. The public officials will also find it hard to strictly enforce the regulations, and may use it as an opportunity for making money or favoring those with personal ties. Thus, a law that is just in principle but "unobservable" is likely to breed institutional corruption.

Can corruption be justified in such a situation? Corruption of the officials will not be justified, although violation of formal justice in an uncorrupt way—especially in a benevolent way—may be justified, because correct application of the law is practically impossible. For the citizens, it is difficult to tell. If the injustice imposed onto the individuals by the regulations is tremendous and there is no other practical alternative way of solving the problem, their corrupt acts may be justified as self-defense. It is never easy to tell, however, how much the regulations are unjust or difficult to observe. Moreover, some of the citizens may try to gain more advantage by corrupt means beyond just overcoming the unjust disadvantage.

Suppose an environmental regulation requires a firm to spend $10 million for pollution control, which will force the firm to shut down. Further suppose a reasonable regulation would have imposed a cost of $5 million to the firm, under which the firm would be still profitable and the goal of the environmental regulation would be sufficiently achieved. If the firm pays $1 million for bribe and spends $5 million for pollution control, we may view it as an excusable action. However, when a firm engages in corruption, it is more likely to try to minimize its combined costs of bribe and pollution control, say by paying $2 million for bribe and spending only $1 million for pollution control. Thus, the firm is likely to go beyond the justifiable self-defense and to take an unjustifiable advantage, which will reduce the firm's cost while the goal of environmental protection will not be achieved.

Institutional corruption can also develop when the rules of an institution are impossible to

observe for the public officials or give them inherent incentives for corruption. When the public servants are given too low a salary to make a decent living, the low salary becomes an excuse for the officials to engage in corruption. Once the officials begin to take bribes as a way of making a living, it is hard to imagine that they will stop doing so at the point where their combined earnings of the official salary and the bribe reach their minimum living wage. When elected officials such as Congressmen are legally allowed and encouraged to raise funds by receiving campaign contributions, it gives inherent incentives to favor large donators in their legislative activities. In such a circumstance, institutional corruption can develop, even though most Congressmen do not literally violate the laws, as Thompson noted in *Ethics in Congress* (1995).

When institutional corruption develops, we see both the tendency to institutionalize misconduct and the tendency to individualize the misconduct. Accused individuals tend to hide behind the institution, justifying on the grounds of institutional practice. When an institution is accused of being corrupt as a whole, the leadership of the institution often blames individuals as "bad apples" so that the institution and other members are exonerated (Thompson 1995).

In summary, corruption as a breach of formal justice for private gain cannot be justified unless it is necessary in order to avoid an even greater injustice. Corruption can be justified only when the gain in substantive justice is large enough to clearly outweigh the loss in formal justice and other alternatives are unavailable. When rules and institutions are unjust either in substantive principles or because of unimplementability or unobservability, it is very hard to draw a borderline between justifiable or excusable corruption and unjustifiable corruption. Corruption tends be institutionalized when corruption can be partly justified as self-defense or when the rules and the institutions provide inherent incentives for corruption, as Cell 4 in Table 3 shows.

In order to prevent widespread corruption, then, it is very important to design rules and institutions such that they are substantively just, correctly implementable, and not too hard or costly to observe. Although corruption is about actions of the individuals, we need to understand that unjust systems breed institutional corruption and that anti-corruption reform should include reform of rules and institutions and not be limited to punishment and/or reform of individuals. The reform should not be narrowly restricted to establishing the rule of law, but aim to shape social conditions and institutions so that people behave honestly because they believe the basic structure of their society is just (Elster 1987).

Table 3. Combinations of different actions of officials and citizens under just rules and unjust rules

	Just rules	Unjust rules
Officials	(1) Formally just administration (obligations of fairness: binding)	(2) Formally just administration (obligations of fairness: not binding)
Citizens	Follow the rules (natural duty) Violate the rules (individual corruption)	Follow the rules (obedience) Violate the rules (civil disobedience; conscientious refusal; individual corruption)
Officials	(3) Formally unjust administration (individual corruption)	(4) Formally unjust administration (institutional corruption) (can be used to minimize injustice)
Citizens	Follow the rules (obedience) Violate the rules (individual corruption) Make a complaint	Follow the rules (obedience) Violate the rules (civil disobedience; conscientious refusal; institutional corruption)

V. Is abuse of *private* power not corruption? When does fraud become corruption?

(1) Abuse of private power as a violation of the principle of fairness:

Although the literature on corruption has focused mainly on the abuse of public power rather than private power, most corrupt transactions occur between public officials and private actors. Corruption is typically exchange of public power such as legislative or discretionary power and private power such as monetary resources. Frequently, corrupt transactions are initiated by private actors. As some corruption takes place purely within the public sector without the involvement of the private sector such as embezzlement and corrupt deals between high-level officials and low-level officials surrounding promotion, some corporate corruption takes place purely within the private sector without the involvement of public officials such as false accounting reports made by a corporate CEO that aims to maximize the compensation for the CEO at the expense of shareholders.

There are reasons why we are more concerned about corruption of public officials than that of private actors. One reason is that public officials are supposed to act for public interest and not for private interest, while private actors are supposed to seek private interest. Another reason is that the impact of corruption of public officials are generally large compared to that of private actors.

Private actors are supposed to pursue their private interests with just means, however, and not with unjust means such as bribing. As I noted earlier, the obligations of fairness apply to the private actors as well when they exert influence on any public decision-making processes or implementation processes. Moreover, the impact of corruption of private actors such as corporate CEOs is often no less large than that of public officials.

Formal justice can be extended to private relations, where the principle of fidelity applies to the individuals. We assume obligations when we marry as well as when we accept positions of authority. We acquire obligations by promising and by tacit understandings, and even when we join a game, namely, the obligation to play by the rules and to be a good sport. The principle of fidelity is but a special case of the principle of fairness applied to social practice of promising (or entering into covenants). A promise, or contract, between private individuals, if it is reasonably just, should be kept faithfully. Breach of formal justice can occur in private relations as well.

Yet we usually call the breaking of a promise in private relations for private gain "fraud" and not "corruption." When does fraud become corruption? Why do we call certain kinds of fraud committed by corporate CEOs corruption? I think that a critical distinction lies on whether the breach of formal justice affects the private individuals alone or the broader public and whether it involves betrayal of public trust. Many private institutions—such as corporations, schools, churches, and labor unions—have great impact on their constituents as well as the public. The suppliers are supposed to honestly supply goods and services to consumers. Hence, if a corporation sells an adulterated juice that was made from fraudulent chemical cocktail to earn more profit, the CEO is committing not just fraud but corruption because it affects a large number of consumers and it involves betrayal of public trust.

As I earlier noted, some scholars define corruption as "betrayal of public trust." This definition is too broad. When the government, a politician, or someone, who is expected to keep his or her promise, has failed to keep earlier promise, it can be "betrayal of trust," but not necessarily corruption. However, it tells about a crucially important aspect of corruption.

As Rawls stated, the principle of fairness is based on the expectations founded in good faith on current institutions; the obligation of fairness is nothing but honoring of legitimate expectations or trust of others. Public officials are expected to treat people equally and fairly. Even if an official does not violate laws literally, his or her use of discretion can be arbitrary or unfair, against the reasonable expectations and confidence of citizens. Suppliers are expected to honestly and correctly inform consumers about the quality and quantity of their products. Markets cannot work without basic trust among market participants. The public has legitimate expectations for schools, banks, media, and churches. When the individuals who are taking the offices of theses

private institutions act against the reasonable expectations and trust of the public for their private gain, we usually call them corrupt. The private citizens who attempt to influence the officials of the private institutions with unjust means are also called corrupt.

The principle of fidelity is based on mutual trust, while the principle of fairness is based on public trust. Promising (or entering into covenants) is used to initiate and to stabilize forms of cooperation. Without mutual trust and confidence in one another, we cannot initiate, maintain, or extend the scope and value of mutually advantageous schemes of cooperation. Society can operate only on some basic presumption of social trust (Sen 1999).

I argue that corruption is a violation of the principle (obligations) of fairness, which involves betrayal of public trust, irrespective of whether it occurs in the private sector, non-profit sector, or the public sector. The violations of the principle of fidelity between private individuals such as spouses and friends—violations which involve betrayal of mutual trust—are not called corruption even if they are committed by public officials. Unlike Rawls, I argue that the principle of fairness is applied not only to public officials but also to the officials of the private institutions that operates based on some kind of public trust and expectations and to the private citizens who attempt to exert influence on the officials of the private and public institutions.

Thus, corruption has some public characteristics. Too narrow an interpretation of corruption as abuse of "public power," however, can be misleading. The power of private institutions can affect the public, and purely private power such as monetary resources owned by private actors can be used to buy power that affects the public. We can define corruption as abuse of power for private gain that is a breach of formal justice by public officials and private actors such as unfair and arbitrary administration of rules and institutions and that involves violation of obligations of fairness and betrayal of public trust.

(2) The limits of the principal-agent model of corruption:

The reason why mutual trust or public trust is vulnerable to betrayal comes from the power asymmetry, which often comes from information asymmetry. Since the unequal power relations are likely to be already reflected in the social institutions or private contracts, the additional discretionary power that comes from information asymmetry often plays a key role in the violation of formal justice. The principal-agent or principal-agent-client model of corruption emphasizes the problem of information asymmetry. Since agents usually have an informational advantage, they can exert some discretionary power against the interest of the principal. Thus a CEO (agent) of a company may make a false accounting report, using her informational advantage to increase her compensation at the expense of shareholders (principal). A public

official (agent) may collude with a business (client) to make corrupt transactions, using her informational advantage, at the expense of the principal (her superior or the public at large). Thus, the corrupt agent betrays her principal's trust and ignores her obligation of fairness by violating formal justice for private gain.

Principal-agent or principal-agent-client model is very useful for explaining corruption in large organizations, whether they belong to public or private sector, because agents in a large organization typically have some information that their principal does not have. Here, corruption is an exchange between the agent and the client, which is typically an exchange of the discretionary power of the agent that benefits the client and the material power of the client that benefits the agent. The corrupt exchange benefits both the agent and the client, but usually at the expense of the principal. The corrupt agent is betraying the trust of the principal, exploiting her informational advantage.

The principal-agent model has focused on explaining the opportunistic and corrupt behavior of agents as betrayal of "trust of the principal," assuming the principal is not corrupt and the rules of the organization are just. Corruption of an agent, however, is also betrayal of "public trust." The corrupt client is also violating the principle of fairness and betraying the trust and expectations of other clients and the public, because it is expected that any client is not to bribe and to act fairly according to the rules and the procedures. Moreover, the rules of an institution or organization may be unjust.

Furthermore, principals may be corrupt, too. Suppose a newspaper reporter receives a bribe from a company that has violated environmental regulation in return for not reporting it. This would be a typical principal-agent problem, assuming the president (principal) of the newspaper expected the reporter (agent) to behave honestly. An agent and a client colluded, and the agent betrayed the trust of the principal. The client also betrayed the public trust. If the president took the bribe and cancelled the reporter's article, however, then the corruption would not be explained by the principal-agent model. The president (principal) of the newspaper and a company (another principal) have colluded and betrayed the trust and expectations of the subscribers of the newspaper (another principal) and the general public.

Many corrupt transactions within the private sector occur in principal-principal relations. The exclusive use of the principal-agent model and lack of awareness about corruption in principal-principal relations is probably due to focusing on public corruption and neglecting corruption in the private sector. Corruption that involves the public sector can be usually interpreted with the principal-agent model, because most elected or appointed public officials can be regarded as agents to their superior or the general public. The electoral corruption of vote-buying and vote-

selling is an exception, where citizens abuse their voting power for private gain. Voter-candidate relations cannot be interpreted with the principal-agent model because both are principals.

Thus, the principal-agent model's exclusive focus on the behavior of the agent is based on very problematic assumptions that the principal is not corrupt and that the rules of the institution or organization are just. Consequently, the proposed remedies are concentrated on reducing the discretion of the agent and strengthening the monitoring of the behavior of the agent. This model, however, fails to see the importance of "unjust rules" and "corrupt principals."

(3) Market failures produce incentives for corruption:

I have earlier noted that the literature has almost exclusively focused on corruption in the public sector.[12] Frequently, government institutions have been described as inherently prone to corruption, while markets have been described as generally free from corrupt incentives. Public officials have been often described as rent-seeking animals, while businesses that bribe them have been regard as victims of corruption.[13] Hence, deregulation, privatization, and minimization of discretion of public officials have been proposed as remedies. Also, it was often argued that big sizes of government create high levels of corruption, and the minimalist government was advocated (Krueger, 1974; La Palombara, 1994; Goel and Nelson, 1998; Shleifer and Vishny, 1998). We often hear, "If you want to cut corruption, cut government"(Gary Becker 1995).

Yet we see that Scandinavian countries with the largest sizes of public sector are perceived as least corrupt[14] and that privatization and market reforms in transition countries in Eastern Europe have often contributed to increasing corruption rather than curbing it (Black et al. 2000). We also hear calls for stricter regulation of corporate governance when corporate scandals occur. Recent empirical studies have found that larger sizes of government are associated with lower levels of corruption across countries, contrary to the conventional wisdom (La Porta et al. 1999; Friedman et al. 2000).

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[12] Recent corporate scandals in the United States such as Enron and World Com evoked renewed interest in corruption in private sector. Corruption in private sector was one of the major topics discussed in the 11th International Anti-Corruption Conference in Seoul, May 2003.

[13] Although businesses were frequently described as victims of corruption, and Western businesses complained about unfair competition in the third world countries because of rampant corrupt practices, many third world intellectuals accused Western businesses of feeding corruption in third world countries (Myrdal 1968).

[14] According to Transparency International (TI)'s Corruption Perception Index (CPI) published in 2002, Finland was ranked the first, Sweden the fifth, and Norway the twelfth. Denmark and Iceland ranked the second and the fourth, respectively.

Do public sector employees and elected officials have inherently different motives and incentives from private sector employees? Do public officials have corrupt motivations while corporate officers do not? There are no inherent differences in the motives and incentives for officials and employees in the public sector and the private sector. If we regard people as utility maximizers, it is wrong to assume that public officials are just income maximizers whether the income comes from legal earnings or from bribery or embezzlement while private sector employees are not. It would be more reasonable to assume that sources of income matter and different (legal and illegal) sources of income give different levels of utility for most people including public officials. Some people may have lexicographic utility so that they value justice over any material gain.[15] Indeed, there are reasons to assume that public officials value justice or public interest more, and at least not less, on average than private sector employees, because those people who value public interest and social justice highly are more likely to choose to work in the public sector than those people who value private material gain highly.

As Rose-Ackerman (1978) noted, market failures produce incentives for corruption.[16] If all inputs and outputs were in perfect competition, and firms were operating with zero economic profit, then there would not be corruption in the markets. Market failures such as market power (monopoly and oligopoly), information asymmetry, and externalities, however, can cause corruption. For example, information provided at minimal cost by journalists, disc jockeys, and television reporters to the general public often imposes substantial private benefits and costs on a small number of firms or individuals. And some industries are peculiarly dependent upon free publicity to advertise their products. For example, the record industry heavily relies on the record-playing decisions of radio stations to promote its new releases. Thus, record companies have incentives to use gifts or money to influence radio station employees (Rose-Ackerman, 1978).

(4) Privatization, deregulation, and minimal discretion as remedies for corruption:

Although perfect competition in all input markets and output markets would produce no

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[15] Lexicographic utility means that you choose any option that gives you more A (justice, in this case) regardless of the amount or degree of B (material gain, in this case), as any word that starts with A comes earlier than any word that starts with B in the dictionary.

[16] Rose-Ackerman (1978) shows that scale economies, products which are heterogeneous and technically difficult to evaluate, production or consumption externalities, as well as government regulations can all produce corrupt incentives.

corrupt incentives, enhancing competition in certain circumstances can create more corruption, not less corruption, as the "theory of second best" suggests.[17] Privatization typically does not lead to perfect competition but partial, imperfect competition, which may produce more incentives and opportunities for corruption than monopoly by the state-owned enterprise.

One important function of the state is to prevent and punish breach of private contracts and to curb corruption in the private sector. Lack of appropriate regulations of corporate governance will increase corporate corruption, [18] while excessive regulation will increase government corruption. Thus, there may be trade-offs between public sector corruption and private sector corruption depending on the scope of regulation, and the real problem may lie less on the quantity of regulation than on the kind and quality of regulation.[19] Regulations that violate the substantive principles of procedural and distributive justice and the requirements of rule of law such as implementability, observability, and being general, clear, consistent, and prospective will produce great incentives for corruption, while regulations that satisfy these principles and requirements may produce relatively few incentives for corruption.

In addition to deregulation, minimization of discretion has been often advocated by the literature. For example, Klitgaard (1988) presented a corruption equation, "Corruption = Monopoly + Discretion – Accountability." Since his analysis of corruption heavily relied on the principal-agent model, discretion of the agent was the most important problem. As Rothstein (1998) favors universal welfare programs over selective welfare programs, universal programs that minimize discretion will produce less incentive for corruption. However, this kind of choice of programs that give radically different degrees of discretion is not always available.

The fact that deregulation and minimization of discretion are often contradictory has not been given much attention. In order to reduce the discretion of officials, more and more laws and regulations are often necessary. Part of the solution to the overwhelming mass of centralized,

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[17] A simple example of the theory of second best is that in an industry that has negative externality such as environmental pollution monopoly might be socially more efficient than perfect competition. Since the monopolist produces less output than the competitive industry would, the former would produce less pollution and hence socially more efficient outcome. If the government intervention makes the industry competitive without fixing the problem of externality, then it would make things worse, not better. This kind of analysis can be applied to the examples of privatization. Since privatization typically does not lead to perfect competition but partial, imperfect competition, it may produce more incentives and opportunities for corruption than monopoly by the state-owned enterprise.

[18] The recent corporate scandals in the US show the importance of adequate regulation on corporate governance and stock markets. Thus, deregulation is not always desirable and sometimes more regulation, not less regulation, is needed to curb corruption.

[19] Rose-Ackerman (1978) also argues that deregulation may simply mean the substitution of a corrupt private official for a corrupt public one.

prescriptive regulations might be to give regulators greater latitude and discretion. Indeed, "Law can't think, and so law must be entrusted to humans, and they must take responsibility for their interpretation of it" (Howard 1994, recited from Sparrow 2000).

Thus, it is not always desirable to reduce or minimize discretion. Discretion can be used well to enhance effectiveness and efficiency of government services, although it can also be misused for private gain. Too little discretion based on uniformity and centralized control produces legalistic, nitpicky behavior that lacks local responsiveness, while too much discretion creates opportunities for corruption and discrimination and opens a regulatory agency to capture by the regulated community (Sparrow 2000). Thus there is often a trade-off between effectiveness and incentives for corruption. It is also possible, however, that excessive emphasis on reducing discretion may have adverse impact on corruption, because officials may lose pride and self-esteem for their job and, as a result, they may become more interested in finding opportunities for making extra income in the absence of self-esteem.

In addition, there may be a trade-off between political corruption and bureaucratic corruption depending on the scope of discretion of public officials. Reducing discretion of public servants by tighter legislative control may increase the opportunities for corruption during the law-making processes (political corruption), whereas increasing flexibility and local responsiveness of administration may increase the opportunities of corruption in the law-implementing processes (bureaucratic corruption).

VI. Corruption and efficiency

(1) Can we justify corruption on the grounds of efficiency?

If a corrupt act, or a violation of formal justice more generally, can be justified on the grounds of substantive justice in certain circumstances, can it be also justified on the grounds of efficiency? Suppose a law imposes very cumbersome and time-consuming procedures or very expensive regulations for companies, which are not substantively unjust or unobservable but socially inefficient. If companies bribe to reduce the cost due to inefficient regulations and, as a result, contribute to enhance efficiency, can it be justified?

Indeed, Rawls admits that efficiency is an important virtue, although he argues for the priority of justice over efficiency. He even accepts some sacrifice of equality in exchange with efficiency, provided that inequality is to the greatest benefit of the least advantaged. Thus, inequality can have a functional role up to a certain limit under certain conditions. So, one might argue that corruption can be justified by its functional role under certain conditions.

It is obvious that corruption cannot be justified whenever it increases efficiency, because efficiency gain is not always just. Efficiency gain due to corruption is not justified if it is not to the advantage of the least favored. Efficiency gain may justify corruption only when it is beneficial to the least advantaged, according to Rawls's difference principle.

In the case of inefficient regulations and procedures that are applied to all equally, those clients who bribe the officials will do so for their own benefit but not for the benefit of others. Hence, efficiency gain will be limited to those who bribe and those who do not bribe will not be benefited and probably even more disadvantaged. So it is hard to imagine having efficiency gain that is beneficial to the least advantaged through corruption, unless everyone engages in corruption and benefits from it.[20] Efficiency gain that is just is more likely to come when honest officials administer the inefficient laws in a way that minimizes the inefficiency and benefits all the clients including the least advantaged through the benevolent use of their discretion.[21]

If we accept the "priority of justice over efficiency," corruption as a way of overcoming inefficient regulations will not be justified. We can expect, however, that inefficient regulations as well as unjust regulations will breed corruption. In addition, inefficient rules and regulations are often unjust too, because they often violate the requirements of rule of law such as implementability, observability, and being clear and consistent.

(2) Is corruption functional for economic efficiency?

Even if corruption as a way of overcoming the inefficient regulations is not just, corruption might enhance efficiency in general and be functional for economic development, in particular in developing countries with so many inefficient regulations. The argument for functionality of corruption has emphasized the inefficiency of the rules and institutions in developing countries and suggested that corruption is a way of overcoming inefficient regulations and enhancing efficiency and promoting economic development (Leff 1964; Bayley 1966; Huntington 1968). Corruption has been often regarded as a cost of commerce, where the benefit is greater than the cost.

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[20] If the inefficient regulations are imposed on a particular group, say women or a minority group, then it is substantively unjust, and the bribing of the discriminated to overcome their disadvantage might be justified on the ground of both efficiency and substantive justice. Even in this case, the lobbying or bribing should be to the benefit of the all those discriminated. Individual bribing for their own advantage that leaves others discriminated is not justified.

[21] Recall that I earlier gave an example that benevolent use of discretion by honest officials can produce outcomes that are both just and efficient.

The functionality argument can be misleading, however. First, some firms may pay bribes in order to overcome overly demanding and socially inefficient regulations, but others may do so in order to circumvent socially necessary and efficient regulations or to get unjustifiably huge benefit at the expense of general public and competitors. Under socially efficient regulations, corruption will clearly produce inefficiency (See Appendix).

Second, although individuals and individual firms will incur the cost of corruption only when the expected benefit is greater than the cost, they do not consider costs that are imposed upon honest competitors and the general public. Payment of "speed money" will help only those firms and individuals that pay it at the expense of other firms and individuals that do not, since the latter are likely to get further delay because the former will be served first. In addition, corrupt officials may be encouraged to further delay the procedures in the absence of the payment of speed money. The negative externality imposed on honest competitors and clients such as further delay may be larger than efficiency gain for corrupt individuals and firms, and hence the total effect may not be socially efficient. Thus, under socially inefficient regulations, the total effect of corruption on efficiency is ambiguous (See Appendix). It depends on the relative magnitude of the efficiency gain for corrupt firms and individuals and the efficiency loss for honest firms and individuals.

The negative externalities of corruption can take various forms besides the artificial delay for honest clients in the above example. Public officials may have incentives to further create inefficient regulations. More generally, corruption is a conservative form of influence that helps to maintain existing inefficiencies and injustices by inhibiting institutional changes (Johnston 1989). In the absence of corruption, it would be easier to organize some kind of collective voice to change the inefficient regulations. The spread of corrupt practices makes it impossible to challenge them.

The negative externality is also imposed upon the next generation through destruction of social trust (You 2005a) and the perpetuation of corrupt practices (Tirole 1996),[22] and any short-term efficiency gain may be outweighed by the long-term efficiency loss. Corruption, as betrayal of public trust, destroys the basis of social trust.[23] The erosion of social trust will induce more

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[22] In an intergenerational collective reputations model, Tirole (1996) argued that younger generations might inherit the reputation of their elders with the consequence that they might have no incentive to be honest themselves.

[23] Although corrupt transactions require trust between corrupt actors, it is not "generalized trust" but "particularized trust" based on exchange of benefits at the expense of other honest players betraying trust of general public placed on them.

and more people to choose defection instead of cooperation, and economic transactions will increasingly face higher transaction costs.

The Prisoners' Dilemma explains the reason why interpersonal trust is important. Frequently defection is more beneficial for individuals than cooperation, although cooperation is mutually beneficial. Without mutual trust, each individual is likely to choose to defect and the result is worse for everyone. Thus, social trust makes it possible for people to cooperate. Government is the most extensive scheme of social cooperation, but private institutions and private contracts are also forms of cooperation which are based on mutual trust. Transaction costs will be very high in the absence of social trust.

Corruption is a way of defection that deviates from the rules and norms of social cooperation, and for those individuals who participate in a corrupt act or transaction corruption pays more than faithful cooperation while faithful cooperation of all relevant people will be most beneficial for them all. Game theory tells that once a player defects, all the other players have incentives to defect. It is a typical collective action problem to overcome inefficient and unjust regulations, and corruption is institutionalized when the collective action problem is not solved. Once a firm or individual takes advantage of corruption, other firms will follow and the corrupt practices will spread and perpetuate. Laurin (1986, recited from Rothstein 1998) found that tax compliance (and cheating) depends more on beliefs about the behavior of other citizens than the probability of being caught. Thus, the contagion effect of corruption is also an important form of negative externality.

In summary, the overall effect of corruption on economic efficiency is not clear. If existing regulations were all efficient, any corruption would harm the efficiency. If existing regulations were generally inefficient, the initial overall effect of corruption on efficiency is ambiguous because the corrupt actors' gains are usually accompanied by the honest actors' losses. Even if the short-run net effect is positive, the long-run effect is likely to be negative considering the increasing transaction costs due to the erosion of social trust as well as the contagion effect of corrupt practices. Hence, theoretical arguments are not sufficient to judge the overall effect of corruption on efficiency and empirical testing is necessary.

In this regard, recent econometric studies have largely proved that corruption has a negative effect on economic development. Corruption has negative effects on investment (Mauro 1995; Keefer and Knack 1995; Elliot 1997), economic growth (Mauro 1995 and 1997; Leite and Weidman 1999; Mo 2001), and per capita income (Kaufmann et. al. 1999; Mo 2001). Thus, the functional argument for corruption has lost the empirical ground. This suggests that the negative externalities imposed on honest players and the adverse effect on social trust as well as the

contaminating effect of corruption have significant negative effects on economic efficiency in the long run.

(3) The effect of corruption on human development:

The previous discussion about the function and dysfunction of corruption needs to be expanded to a broader meaning of "human development" from the narrow sense of economic development. Human development encompasses social development such as education and health care, environmental protection, and political development such as democracy (UNDP 2002).

Sen's (1999) concept of "development as freedom," which gave philosophical foundation to the concept of human development, is worth examining in this regard. He defines development as "expansion of human freedom or capabilities" to choose a life one has reason to value. The capability of a person means substantive freedom to achieve various functionings such as being adequately nourished, being in good health, and achieving self-respect.

Sen suggests that corruption as a lack of transparency guarantees can be an "unfreedom."[24] He lists "transparency guarantees" (openness; including the right to disclosure) as one of five instrumental freedoms together with "political freedoms" (democracy), "economic facilities" (income, wealth, and their distribution), "social opportunities" (education and health care), and "protective security" (social safety net), which directly enhance the capabilities of people.

These instrumental freedoms tend to contribute to the general capability of a person to live more freely. He further argues that these instrumental freedoms supplement and reinforce one another. For example, economic growth can help not only to raise private incomes but also to make it possible for the state to finance social insurance and the provision of social services. Similarly, the creation of social opportunities, through such services as public education, health care, and the development of a free press, can contribute both to economic development and to significant reductions in mortality rates.

Our primary interest is whether and how freedom from corruption (transparency guarantees) supplements and reinforces other instrumental freedoms. Corrupt public officials will be more interested in large projects that provide more opportunities for payoff than in education, health care, and environmental protection. Social trust is also crucial in environmental protection. Although environmental protection is in everyone's long-term interest, each one's short-term

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[24] According to Sen(1999), transparency guarantees deal with the need for openness that people can expect: the freedom to deal with one another under guarantees of disclosure and lucidity. When that trust is seriously violated, the lives of many people-both direct parties and third parties- may be adversely affected by the lack of openness. Corruption is understood as a consequence of lack of transparency guarantees.

interest can be maximized by exploiting environment. Recent empirical studies have shown that corruption is generally harmful for social development as well as economic development. There is evidence that corruption lowers expenditures on education (Mauro 1997). Kaufmann et al. (1999) and Gupta et al. (2001) show that a high level of corruption has adverse consequences for a country's child and infant mortality rates, percentage of low-birthweight babies in total births, adult literacy rate, and dropout rates in primary schools. Indeed, the level of freedom from corruption (TI's CPI) and the comprehensive index of human development (UNDP's HDI) are closely correlated (Figure 2).

Transparency International (TI)'s Corruption Perception Index (CPI) is a measure of perceived freedom from corruption across countries. CPI ranges from zero to ten and a higher value represents a cleaner society. UNDP's Human Development Index (HDI) is a composite index that captures income (per capita GDP), education (adult literacy and combined enrolment rate), and health (life expectancy at birth). HDI ranges from zero to one, and a higher value represents a higher level of human development. Although HDI does not include measures of environment, social safety net, and gender development as well as political development or democracy, it is still the most comprehensive index of human development that is available.

Figure 2. Control of corruption (CPI 2000) and human development (HDI 2000)
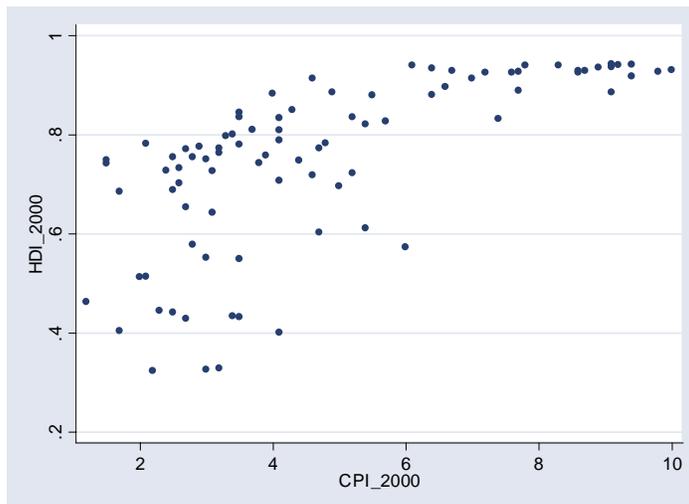
VII. Mutually reinforcing relationship between "control of corruption" and substantive justice

Rawls suggested that formal justice and substantive justice tend to go together. Fuller (1964) argued that grossly unjust institutions are never, or any rate rarely, impartially and consistently

administered. I argued earlier that substantively unjust rules tend to breed institutional corruption. Thus, a substantively more unjust society is likely to have more corruption as well as more civil disobedience.

In a society in which rules and institutions do not guarantee equal liberties, equal distribution of income, and equal access to social opportunities, the powerful and the rich will have means and resources to make the rules and institutions favorable to them as well as to further advance their own interests through circumventing the rules and institutions even beyond the point where the already favorable rules and institutions formally allow. The powerless and the poor will lack the resources and influence to monitor the powerful and the rich and to hold them accountable. Moreover, they may find it necessary to engage in petty corruption to secure even basic social services such as education and health care to which they are legally entitled. Thus, in a politically and socio-economically unequal society, both grand corruption and petty corruption are likely to develop.

Conversely, corruption will adversely affect the equal distribution of income as well as equal liberties and participation. Corruption will increase income inequality in two ways; by facilitating the unequal appropriation of wealth and privilege, and by inhibiting institutional changes that could threaten existing advantages (Johnston 1989). Corruption will also increase the inequality of participation by allowing unduly large influence of corrupt individuals in political processes.

Previous empirical studies on causes and consequences of corruption partially support the mutually reinforcing relationship between freedom from corruption and substantive justice such as income equality and democracy. Gupta, Davoodi, and Alonso-Terme (2002) and Li, Xu, and Zou (2000) found empirical evidence that corruption increases income inequality across countries. Mo (2001) found that corruption is harmful for stable democracy. On the other hand, Treisman (2000) and Montinola and Jackman (2002) found empirical evidence that democracy has a positive effect on controlling corruption, at least in the long run. You and Khagram (2005), through their cross-national quantitative analysis, found evidence that income inequality increases corruption, and You (2005b) demonstrated that different levels of inequality caused by success and failure of land reform and different industrial policies produced different levels of corruption in South Korea, Taiwan, and the Philippines.

VIII. Conclusion

Corruption produces victims, as any act of injustice creates victims. The problem with injustice lies not only in the unjust acts of unjust persons or unjust institutions, but also, more importantly, in the fact that injustices produce victims. It is, however, often difficult to identify the victim and to distinguish injustice from misfortune (Shklar 1990). It is especially hard to identify the victim of corruption.

It was often suggested that the public officials who misuse public power are offenders and that the clients including businesses and citizens who have been forced to bribe are victims of corruption. As I earlier suggested, it is not so simple. Clients might have initiated the corrupt deals, or it could be ambiguous whether they are victims or accomplices. Indeed, in most cases, the true victim of corruption includes the competitors and the general public, and even the next generation. It could be even argued that corrupt officials and clients all belong to the victim of the unjust and corrupt system in which officials cannot make a decent living without engaging in corruption and clients cannot get things done without resorting to corruption.

A theory of corruption as injustice requires both governments and citizens to actively combat corruption. As Justice Brennan stated, "Inaction can be every bit as abusive of power as action" (recited from Shklar 1990).

Combating corruption should not be reduced to combating corrupt individuals. To cut corruption is not to cut government either. We should struggle to reform unjust rules and institutions that breed institutional corruption, and construct more just society. Anti-corruption reform should aim not only at establishing the rule of law, but also at shaping social conditions and institutions so that people behave honestly because they believe the basic structure of their society is just (Elster 1987).

Appendix: The Effect of Corruption on Economic Efficiency under Inefficient and Efficient Regulations

1) Inefficient regulations and corruption:

Let us consider a case of inefficient regulation that imposes additional cost to firms in a particular industry. Let us further assume the industry is perfectly competitive and firms are identical so that the price of the product is determined at the point where marginal cost equals average cost in the long run. Without the inefficient regulation, marginal cost and the average cost as well as the long-run equilibrium price would be lower than those under the inefficient regulation.

$P_R = MC_R = AC_R > P_X = MC_X = AC_X,$

where P, MC, and AC represent the long-run equilibrium price, marginal cost, and average cost of the product, and the subscripts $_R$ and $_X$ represent the situation under the inefficient regulation and the situation without the inefficient regulation, respectively.

Since $P_R > P_X$, the consumer surplus as well as social surplus will be lower under the inefficient regulation. Note that, under the perfect competition, firms have zero profit.

Suppose some firms bribe to avoid the inefficient regulation and the resulting additional cost. The new marginal cost and average cost to the bribing firms will be lower than those to the honest firms, because the benefit of bribe must be greater than the cost to each bribing firm. Otherwise, any firm will not bribe. The marginal cost and the average cost to the bribing firms will be higher than those without the inefficient regulation, because the cost of bribe would not have existed without the regulation.

$MC_X < MC_B < MC_H = MC_R$, and $AC_X < AC_B < AC_H = AC_R,$

where the subscript $_B$ and $_H$ represent the bribing firms and the honest firms under the inefficient regulation, respectively.

In the short run, the bribing firms will have positive profit and the honest firms will have negative profit. However, in the long run, other firms will follow the example of bribing firms and honest firms will have to shut down. New equilibrium price will be set such that $P_B = MC_B = AC_B$, which is lower than the price under the inefficient regulation without corruption but would be higher than the price without the inefficient regulation ($P_X < P_B < P_R$). Eventually there will be no honest firms and the bribing firms will have zero profit again. All the honest firms will have exited the market, while new firms that are willing to bribe have entered the market. Here we see that this is clearly unjust however efficiency gain is large, because the efficiency gain is not to the

What about the consumer surplus as well as social surplus? Since $P_B < P_R$, the consumer surplus under the bribing industry will be higher than without corruption and corrupt officials will have earned some rents. Hence total social surplus will be higher under the bribing industry than under the honest industry. However, social surplus under the bribing industry will be generally lower and can never be higher than that without the inefficient regulation. If the bribe removed the inefficient regulation perfectly, then the social surplus under the bribing industry would be the same as that without the regulation, because the cost to the bribing companies and the benefit to the corrupt officials would be the same assuming there was no transaction cost to corruption.

Thus, in the case of inefficient regulation, corruption may increase the efficiency in purely economic terms, although it is unjust because owners and employees of honest firms will incur loss. However, the prevalence of the corrupt firms and corrupt officials and the unfortunate fate of the honest firms will inflict other social costs. The spread of corrupt practices will probably be extended to avoid the socially efficient regulations and thus reducing efficiency even in economic terms. The destruction of social trust due to the spread of corrupt practices will increase the general transaction costs and make many economic activities and contracts more costly or impossible, and hence overall economic efficiency will be increasingly damaged.

2) Efficient regulations and corruption:

Let us consider an efficient environmental regulation such as a Pigouvian tax that exactly equals the negative externality of environmental pollution. Let us again assume perfect competition. Without the regulation, the marginal cost to the firms (PMC or private marginal cost) is not equal to the social marginal cost (SMC) because of negative externality of environmental pollution.

PMC < SMC

We assume there is no positive or negative externality on the consumption side such that PMB (private marginal benefit) = SMB (social marginal benefit). The market price is determined where P = PMC = PMB, and hence SMB = PMB = PMC < SMC.

Since social marginal cost is higher than the social marginal benefit at the market equilibrium, it is inefficient. The product is being overproduced, because the firms do not take into account of the negative externality of environmental pollution.

In this situation, an environmental regulation like Pigouvian tax can be efficient. If the government set the tax (t) such that t = SMC – PMC = negative externality, then the resulting

market equilibrium will be P = PMC + t = PMB, and hence SMC = SMB. Thus, the regulation will produce a socially efficient outcome.

Suppose some firms bribe to avoid the regulation; i.e. not to pay the tax. The amount of the bribe (b) will be smaller than the amount of the tax (t). $PMC_B = PMC_H + b < PMC_H + t$. In the short run, the bribing firms will earn positive profit, while the honest firms will have negative profit. In the long run, however, other firms will also bribe and the honest firms will have to shut down and leave the market. The long-run equilibrium price will be such that $P = PMC_B = PMC_H + b = AC_B = PMB = SMB < PMC_H + t = SMC$. Social marginal cost is greater than the social marginal benefit, and it is socially inefficient.[25]

Thus, in the case of efficient regulation, corruption will decrease the efficiency even in purely economic terms. Moreover, the prevalence of the corrupt firms and corrupt officials and the unfortunate fate of the honest firms will further inflict other social costs.

3) Overall effect of corruption on efficiency:

I examined the two extreme cases of inefficient and efficient regulations. However, most regulations will probably lie somewhere in between. They were introduced because of some social demand, which means the regulated economic activity can inflict some social cost in the absence of regulation. At the same time, they may not be very efficient in many cases. The regulations might be too excessive or too weak. They might have been designed in an economically inefficient way. If existing regulations were all efficient, any corruption would harm the efficiency. If existing regulations were generally inefficient, the initial effect of corruption on efficiency might be positive but the long-run effect is likely to be negative considering the increasing transaction costs due to the erosion of social trust as well as the contaminating effect of corrupt practices.

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[25] In this case, both consumer surplus and producer surplus will rise and the negative externality of environmental pollution will increase, as the new equilibrium price goes down and the output increases. The government will lose the tax revenue, while the corrupt officials will gain. In sum, however, there will be some efficiency loss (dead weight loss) because SMC is greater than SMB. Although we assumed that bribing firms are totally exempt from the tax for simplicity, it is not realistic. More realistically, the tax of the bribing firms will be reduced to a certain degree that is greater than the amount of bribe but not as much as the total amount of the tax so that government will still have some tax revenue. However, the basic ideas of the analysis above are still valid.

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