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### Author

Bernstein, Jonathan

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**Jonathan Bernstein  
Institute of Governmental Studies  
University of California, Berkeley**

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Jonathan Bernstein  
Institute of Governmental Studies  
University of California, Berkeley

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**Goo Goo Terror**

**Jonathan Bernstein**  
**October 12, 1995**

## Goo Goo Terror<sup>1</sup>

Talk of corruption is pervasive in the language of current American politics. Definitions of corruption are scarce. Satisfying definitions are non-existent.<sup>2</sup> The search for such a definition may seem, at first glance, not particularly important: if pressed, the Supreme Court, public interest lobbies, partisan opportunists, and rogue Presidential candidates would undoubtedly claim to know it when they see it. In a sense, that answer would be correct, although imprecise. The truth is that practically everything done by anybody can fall under the general label of corruption -- and that we know it not when we see it, but when we look for it. The fight against corruption in current American politics is a Terror: like any Terror, it moves along a destructive and self-destructive, but also in a sense completely random, path. This paper is an attempt to understand "Goo Goo Terror" -- the fight against corruption in the name of Good Government -- and to consider what "corruption" tells us and could tell us about democracy in America.

### Part I. Goo Goo Terror: What is it and Why is it so scary?

Recent American history supplies numerous examples of people disqualified from future participation in politics, or at least who suffer darkened reputations, after being accused of corruption. An easy example is the furor surrounding new House Speaker Newt Gingrich in 1995. Gingrich was widely criticized, upon becoming Speaker, for a book deal with a publisher. Gingrich sought to defend himself by comparing his arrangement with Vice President Al Gore's similar book deal. However, no one (or at least not the press)

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<sup>1</sup>I wish to thank Nelson W. Polsby, Hanna Fenichel Pitkin, Laura Stoker, Ron Schmidt, Christine Trost, Tom Burke, Kateri Carmola, Alyson Cole, Paul Edwards, and Torrey Shanks for their helpful comments on earlier drafts of this paper. I would also like to thank Oz Frankel for his suggestions on research on republicanism, and Bruce Cain for sparking a critical approach to the topic of corruption.

<sup>2</sup>Or, as Lewis Anthony Dexter puts it: "Normally, it is easy enough to identify the particular behavior that is regarded as corrupt. It is much more difficult to locate the general notion which supposedly justifies the use of the term "corruption." See Dexter (1993) for a generally good statement of the problem.

seemed to find it necessary even to explain any differences between the two deals, differences which might shed light on why one was corrupt but the other unremarkable. Gingrich thought he could defend himself by citing a standard (he also reported that House rules allowed this sort of behavior), but journalists didn't respond by examining Gingrich's claim: they ignored it. Does such a standard exist?

Gingrich was a victim, I argue, of a recurring phenomenon in recent American politics. He joins Bert Lance, Richard Allen, Zoe Baird, the politicians caught in ABSCAM, the Keating Five and many others in exposure to accusations which apparently allow no counter-argument, and which strike seemingly at random. The standard he attempted to raise, which on the surface appears quite logical, is in fact unavailable to those accused. "I didn't do it" may be a valid defense against such accusations. "I did it, because it is fully appropriate" is not, however, a valid defense, no matter how many examples the accused may find of similar, perfectly acceptable behavior. Therefore, Goo Goo Terror haunts politicians and all public figures, because each has done something which could successfully be challenged as "corrupt."

One of the great wonders in the fight against corruption in American politics has been an odd habit journalists have acquired; they attack it and condemn the fight in practically the same breath. Thus journalists do not expose, and then question whether or not exposure was correct; instead, they simultaneously expose and condemn (not question) the exposure. The result is both highly amusing -- since the journalists fall all over themselves apologizing and offending simultaneously -- but also potentially destructive, since it is obvious they are thoroughly baffled by what standards apply in cases of corruption other than an imperative to continue exposing "-gates".<sup>3</sup> As The New

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<sup>3</sup>During the 1992 Presidential campaign, CNN's "Reliable Sources", a weekly show covering the press coverage of the campaign, regularly chased its tail as follows: panelists would discuss whether some scandal -- say, George Bush's rumored infidelity -- should have been covered by the press -- only to then point out to their own alarm and amazement that they themselves were doing precisely that. While I have not studied the issue carefully, it certainly seemed in 1987 as if there are almost as many stories about the media coverage of Gary Hart's behavior as there were of the behavior itself. For remorse (or, better, ambivalence) at the Washington Post even as that newspaper helped

York Times [4/10/94] has put it, "There is a kind of tidal rhythm to the attitude of the press...First come the revelations. Then follows a period of full media mobilization, with reporters scurrying everywhere. Then arrives the backlash...The "so whats?"...Journalists themselves begin to worry that a "feeding frenzy" could lead to the ritual destruction of yet another Presidency."

In this particular case, the Times -- in its twenty-first editorial over a four month period on what it calls the "Whitewater Mess" -- defends feeding frenzies, arguing "every time the press lays off a story, for whatever reason...it has been the wrong thing to do." On the face of it, this is an odd claim; certainly, one can propose very good reasons for ignoring "unanswered questions" ranging from an absence of evidence of wrongdoing to irrelevance of the basic story. Editors are in the business of making choices of which stories to pursue and which to ignore, which stories to publish and which to hold.<sup>4</sup> Apparently, certain kinds of accusations are so important that they override these kinds of judgements, or at least for the Times it makes sense to talk as if this was the case.

Why? What is it that needs so desperately to be cleansed that the ostensible necessity of doing so overwhelms common sense, and trumps every other piece of public business, to the extent that "the ritual destruction" (as the Times put it) of politicians is the likely outcome?

A second example, also from the "Whitewater mess." A key issue in the first round of Congressional hearings on Whitewater was the decision of one Clinton administration official, Roger Altman, to recuse himself from involvement in Whitewater matters.<sup>5</sup> The

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to end Hart's campaign, see Cramer (1993: 431-475).

<sup>4</sup>Ignoring the latter possibility as well as the former, the Times claims "It is also true that any investigative exercise produces stories that are provocative but incomplete." Again, an alternative journalistic norm might demand "provocative but incomplete" stories wait for publication until at least some standard of completion has been reached.

<sup>5</sup>Altman, the Deputy Treasury Secretary, was also acting leader of the Resolution Trust Corp. (RBC), and might therefore have had a conflict of interest as both a regulator and a Clinton loyalist when the RBC considered action against Clinton's former business partners.

White House counsel, Bernard Nussbaum, explained to a Senate committee that he opposed recusal in this case, since the appropriate ethics advisor had determined that Altman had no "legal or ethical" reason to do so; Nussbaum, who stressed that this opinion included the possibility of an "appearance" of impropriety, was particularly upset that Altman recused himself after a New York Times editorial writer threatened Altman with a scathing editorial. Nussbaum's claim was vigorously disputed, producing rare bipartisan agreement among the Senators, who argued Altman eventually did the right thing and that the Times' threat was evidence that recusal was correct (Senate Banking 1994).

It is a little difficult, however, to see the problem with Nussbaum's argument. Surely, ethics offices exist to give opinions on ethical (or legal) standards. And the standard used appears generous; neither impropriety nor the appearance of impropriety was threatened, according to the ethics office. Yet the Times was eager to cry "foul", and Senators strongly agreed. The Senators could not explain their reasoning to Nussbaum; they claimed his was, in Senator Richard Bryan's words, an "over-legalistic mechanistic approach" to the issue (Senate Banking). Nussbaum, Senator Bryan continued, had adopted an "ivory tower approach" to ethics, one which ignored public expectations of ethical behavior. As Nussbaum noted, his inability to see the Senate's (and the Times') logic cost him his job. What did the politically savvy Senators know about appearances that escaped Nussbaum? Why was his "ritual destruction", a destruction that a dissenting Senator, Chris Dodd worried held a "danger of tyranny" (Senate Banking), demanded?

"Corruption" in twentieth century America is a word generally associated with the Good Government (Goo Goo) tradition, stretching from the anti-party, anti-spoils efforts of the Progressives to the crusade for ethics and campaign finance reforms today. This is not to say that exposing "corruption" is the only, or even the central, important legacy of the Progressives, but only that the efforts of the late nineteenth century muckrakers seem to echo in calls heard today against the "corruption" of, say, a campaign



finance system.<sup>6</sup> So, just as Progressives reformed the Senate to drive out the Trusts, Jerry Brown's "We the People" claims that "Political corruption in America is a cancer destroying both parties" because "the corporate PAC executives and the wealthy -- who purchase elections -- carve up the spoils" (We the People 1993).<sup>7</sup> This "corruption", in accusations such as Brown's or that of Elizabeth Drew (1993), who complains of "legalized corruption" in campaign finance, is unfortunately difficult to define. That is, the war against "corruption" sometimes seems to be an attack on all private interests in politics; sometimes on certain of those ("special") interests; sometimes on money in politics; sometimes on politics itself; sometimes on "conflicts" of interest; and sometimes on a wide range of other perceived problems.

Certainly, at least in some sense, these uses of "corruption" are legacies of the Good Government tradition, which in turn was part of the Progressive program -- and therefore, understanding how Progressives understood "corruption" as part of the answer to the puzzle. But no original, root Progressive idea of "corruption" can account for all that is done now under the name of fighting corruption. In fact, the rhetoric of anti-corruption in recent politics is so muddled that it is impossible to understand the complaint literally.

Academic efforts to clear the fog have been generally unsuccessful. As Thompson (1993) points out, perhaps the best example of this problem were two pieces appearing back to back in the 1978 American Political Science Review (Dobel, 1978; Peters and Welch, 1978). Dobel discusses theories of corruption with practically no reference to the American situation, while Peters and Welch try to categorize things Americans may currently think are corrupt without attempting to understand what would make some

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<sup>6</sup>Indeed, I will attempt to recognize such a distinction by restricting the use of "Goo Goo" to a very particular form of fighting "corruption." Whether Progressivism, or Good Government politics as a whole, can be separated from the Goo Goo ideas discussed here is a much more complex question. For the origins of "Goo Goo" as a label for Good Government reformers, see Safire (1978: 177-178, 603-605).

<sup>7</sup>For the consistency in rhetoric over the century, compare Wilson (1913), especially 30, 47-58 and Perot (1992b), especially 21-33, 111-116.

practices, but not others, corrupt.<sup>8</sup> Thompson insists correctly on the necessity of considering both democratic theory and contemporary usage in understanding episodes such as the "Keating Five" Senators, who were accused of corruption after they accepted campaign contributions from, and lobbied for, the owner of a Savings and Loans. But Thompson does not realize just how difficult it may be to characterize current usage.

Examples are instructive. Campaign finance laws since the 1970s have followed two tracks. The first demands disclosure of contributions and expenditures, on the assumption that voters have a need to know the fact of such transactions, and are entitled to make what they will of such information. This has generally been the preference of those who believe interest-group politics is at least an important part of a properly functioning American democracy.<sup>9</sup> The second track of reform, which might be associated with, for example, Common Cause, has been to eliminate any "special interest" involvement at all; this has generally taken the form of a fight for public financing.<sup>10</sup> Public financing, however, turns out not to have been the only or even the purest Goo Goo position; that position was best enunciated by Ross Perot, who came out against both private and public financing of elections, with the sole exception the financing of elections by Ross Perot himself (Perot 1992a).<sup>11</sup> Far from being one man's egocentric fantasy, this in fact is the logical compromise in a Goo Goo world between Republicans, who oppose most campaign finance sources other than small "bundled" contributions, and Democrats, who oppose that

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<sup>8</sup>Dobel does, in fact, refer in passing to the obsession with corruption of the American Founders and seems I believe to be interested in America, but his analysis does not at all take into account Madison's (and the entire Constitution generation's) difficulties with applying ideas of corruption to a modern democratic republic (see below, The Breakdown of Classical Corruption).

<sup>9</sup>But see Admany and Agree (1975: 103-115) for a discussion of the limits of disclosure, summed up by their section headings: "Too Much Information?", and "Is Anybody Listening?"

<sup>10</sup>These are what Thompson calls the "competitive politics" and the "pervasive corruption" models.

<sup>11</sup>Granted, Perot does not put it so boldly, but in the course of at least this speech he opposes public financing and private contributions, while praising self-funding.

source.<sup>12</sup> The only difference between the parties and Perot is that for the parties, Perot's money is also corrupt. One begins to understand a pattern: any source of campaign funds appears to be more or less equally open to a charge of corruption.

The point is not so much that money is inherently corrupt, although that too turns out to be true, but that any part of the political process which happens to come under scrutiny turns out to be corrupt. If it is corrupt to have an Attorney General who admits to have broken a law, and therefore it is necessary for Zoe Baird to step aside, it soon turns out that it is just as corrupt to have an Attorney General who has not broken the law. If it is at first peculiar to the office of Attorney General that laws, and especially immigration laws, must not be broken<sup>13</sup> it soon becomes necessary to expose and attack the reputation of anyone in public life who has broken immigration or vaguely related laws. To persecute only one or some offenders is to be guilty of applying a double standard.

Corruption, from Abscam to Zoe Baird: At no time in any such episode does the meaning of the accusation -- "Corruption!" -- ever become explicit. What, exactly, could it mean?

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<sup>12</sup>The Supreme Court anticipates Perot in Buckley: "Indeed, the use of personal funds reduces the candidate's dependence on outside contributions and thereby counteracts the coercive pressures and attendant risks of abuse to which the Act's contribution limits are directed." One need only add the possibility of "Government" as a special interest to conclude with Perot that only personal finances are not corrupt. Indeed, Perot is not alone. Ellen Malcolm of Emily's List, seeking to "increase the participation of individuals who give money because they want to elect good candidates, not because they want to gain power in the legislative process" opposes PACs but supports bundling, which happens to be how Emily's List operates (to be fair, unlike Perot, Malcolm does support public financing) (Malcolm 1993; see also Perot 1992b).

<sup>13</sup>Since the Attorney General is in some ways the nation's number one law enforcer, and specifically oversees the Immigration and Naturalization Service. Baird was President Clinton's first nominee for Attorney General, and her nomination was withdrawn after it was revealed that she had illegally hired a Peruvian woman for child care, and had not paid the proper taxes on her wages. Kimba Wood, who was reported to have been Clinton's next choice, was not nominated after reports that she had legally hired a non-citizen and paid the proper taxes (Congressional Quarterly Almanac 1983: 304-305).

## II. Defining "corruption."<sup>14</sup>

Generally, a reasonable move at this point is to suppose the problem involves slightly more than occasional sloppy use of the word "corruption." A look at the legal histories of two areas, bribery and campaign finance law, in which corruption plays a major role, tends at first to reinforce the idea that there may be "correct" and "sloppy" uses of corruption. If the problem is that legislatures and courts sometimes use "corruption" badly, then the solution for those concerned that corruption is an overused accusation is to examine usage, find a core definition, and urge courts and Congress to stick to that definition.<sup>15</sup> At least, if such a core concept can be deduced, other uses can be ignored (or studied).<sup>16</sup>

But the search for a definition is futile.

Bribery, for example, as a federal crime, is defined as the instance in which someone "directly or indirectly, corruptly gives, offers or promises anything of value to any public official..." with intent to influence that official (18 U.S.C. s. 201 subsection (b) (1)). Acceptance of a bribe, correspondingly, is what happens when "a public official...directly or indirectly, corruptly demands, seeks, receives, accepts or

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<sup>14</sup>This and the following section draw from Bruce Cain's course on Representation, and from three unpublished papers: Burke (1991), Edwards (1990), Schmidt (1992).

<sup>15</sup>For example, if a politician is accused he or she could then cite examples of what has been and has not been called corruption, and compare his or her situation to those examples.

<sup>16</sup>Thompson's suggestion, while in some ways promising, is quite odd: despite his understanding that any definition must depend on ideas of democratic theory, he is willing to postpone such a definition but to move ahead anyway with distinctions between different kinds of corruption (mediated as opposed to conventional). The problem with Thompson's ideas are twofold: first, he is suggesting a distinction not found in the current debate on (what to do about) corruption going on outside academic circles; and second, it is not at all clear that "conventional" corruption is "unmediated" by the political process or that it is not thought to be destructive of that process. The problem is precisely that some, but not all critics believe campaign contributions are just as corrupting as "pure" bribes, and that those who do not find them equal have not been able to make that case successfully. Ultimately, then, his suggestion to postpone a definition of corruption does not meet his goal of practicality.

agrees to receive or accept anything of value personally or for any other person or entity, in return for..." influence over official actions (subsection (b)(2)). Bribery, then, is defined as corruption. And in United States v. Brewster, corruption is defined as venality: "To do an act corruptly means to do it voluntarily and with a bad or evil purpose to accomplish an unlawful result" (1974: 79).<sup>17</sup>

Brewster involves the legal differences between a "bribe" and an "illegal gratuity." Those differences boil down to statutory language identifying bribery with corrupt intent. But corrupt intent, apparently, is more or less identical to bad or evil intent. If Brewster is to give us anything resembling a core definition of corruption, that core is that to act corruptly is to act with "bad" intent.

The Supreme Court has had similar problems in a long string of campaign finance cases, most notably Buckley v. Valeo (1976).<sup>18</sup> In United States v. UAW-CIO (1957), the Court recites an extended history of campaign finance legislation, which it traces to "the concentration of wealth consequent upon the industrial expansion in the post-Civil war era" leading to the "popular feeling that aggregated capital unduly influenced politics, an influence not stopping short of corruption" (570; emphasis added). Thus the Court, following legislative history, adopted a "definition" of corruption which referred to "undue" influence, or "the corroding effect of money employed in elections by aggregated power" (582) whether that power was of corporations, unions, or other groups.<sup>19</sup> Of course, even while deciding the 1957 case on the basis of "undue influence," the Court

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<sup>17</sup>This definition is given in the trial judge instructions to the jury, and is uncontested by the appellate decision criticizing those instructions. The instructions continued, "Whether defendant Brewster did in fact undertake the acts for which the bribe was given is immaterial."

<sup>18</sup>See for example in addition to those discussed here First National Bank of Boston v. Bellotti (1978); Citizens Against Rent Control v. Berkeley (1980); California Medical Association v. F.E.C. (1982); and F.E.C. v. National Right to Work Committee (1982).

<sup>19</sup>For example, the Court quotes Congressional testimony by Samuel Gompers: "If the interests of any people are threatened by corruption...surely it must be by those...whom we for convenience term the wageworkers" (574). Senator Bankhead is cited as saying on the Senate floor, "We all know that money is the chief source of corruption. We all know that large contributions to political campaigns not only put the political party under obligation to the large contributors..." (577-578).

makes no effort to define this phrase. The Court notes a "popular feeling" that wealth threatened democracy, and cites historians' concerns about the "power of wealth", but does not discuss what line would divide encouraged participation from corrupt influence. The exercise, once again, is entirely circular: corruption is all about undue influence, which is a problem because it is corrupt.<sup>20</sup>

No better solution was found in Buckley v. Valeo; that case added the "pernicious practices" of "large contributions [that] are given to secure political quid pro quo's from current and potential office holders" to the familiar "undue influence."<sup>21</sup> Exactly why candidates should not be responsive to (that is, influenced by) their supporters is ignored; no attempt is made to distinguish corrupt, "improper" quid pro quo arrangements from presumably proper agreement between candidates and contributors. Even more interesting and confusing is the Buckley Court's repeated formula of "corruption or the appearance of corruption" (with slight variation: 25-28, 33, 45, 46, 48, 53, 67, 78, 81) with the assertion that "Of almost equal concern as the danger of actual quid pro quo arrangements is the impact of the appearance of corruption stemming from public awareness of the opportunities for abuse" (27).<sup>22</sup> At no time does the Court draw any line between "the actuality and appearance" (26). Thus in FEC v. NRWC (1982) Justice Rehnquist repeats that Buckley "affirmed the importance of preventing both the actual corruption and...the appearance of corruption" (208; see 209, 210). Once again, however, the Court cannot bring itself to pin down just what it wants to prevent: the "actuality and appearance" of what?

In FEC v. NCPAC (1985), Justice Rehnquist, apparently in reaction to these floating

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<sup>20</sup>At least, in this case the Court holds out the possibility that one might know what "due" influence would be, although certainly no clue emerges from this decision. See "Purity", below, for the difficulties of following this lead.

<sup>21</sup>The Buckley court also refers to "improper influence" (29, 30, 96) and "money for improper purposes" (67), as well as "improper commitments from the candidate" (47). The reader may judge whether "undue" is more or less vague than "improper" influence.

<sup>22</sup>Or: "Congress was justified in concluding that the interest in safeguarding against the appearance of impropriety requires..." (30).

concepts, makes a serious attempt at nailing down something resembling a definition:

Corruption is a subversion of the political process. Elected officials are influenced to act contrary to their obligations of office by the prospect of financial gain to themselves or infusions of money into their campaigns. The hallmark of corruption is the financial quid pro quo: dollars for political favors...

But then, in the next paragraph, discussing the facts of the case:

...But precisely what the "corruption" [sic] may consist of we are never told with assurance. The fact that candidates and elected officials may alter or reaffirm their own positions on issues in response to political messages paid for by the PACs can hardly be called corruption, for one of the essential features of democracy is the presentation to the electorate of varying points of view...<sup>23</sup>

So corruption is wrong, because influence subverts the democratic process -- except that influence is an essential feature of democracy. Still no notion of what is behind the words "undue," "improper," "pernicious," and still no definition of corruption.

Not to mention the appearance of corruption (or "corruption").

### III. Purity.

Contrary to expectation, we cannot understand corruption by directly studying use of the word. "Corruption" appears to be rarely and vaguely defined and, once brought into play, a moving target. And the examples above are all from the legal system; if the courts have no precision in their use of the word, imagine what could be found in Time or Newsweek.

This is not sufficient evidence yet, however, to conclude that any recent use of

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<sup>23</sup>p. 599. We might say Rehnquist is here on both sides of Thompson's division; he tries on one hand to recognize the necessity of bargaining, while on the other hand acknowledging that those bargains are often called corrupt.

the concept of "corruption" in American politics is essentially meaningless -- by which I mean, that the word is only a stand-in for some sort of distaste for an infinite variety of unrelated things which one does not like.<sup>24</sup> The temptation is strong to believe there must be some sort of root definition of corruption in American politics; maybe, we might think, this definition is only itself corrupted when we persecute the "appearance of corruption" or otherwise move into seemingly random witch hunts.

If the attempt to find common usage is unsuccessful, a second and logical step is an effort to find some pure state of American politics.<sup>25</sup> If corruption, that is, implies some idea of "falling away from" or "failure to maintain" a kind of purity, then a coherent definition of corruption might be found by examining not corruption but purity or perfection itself. This step assumes the Court, or anyone using the word "corruption," is working backwards from an unstated concept of purity. "Corruption" under this assumption only appears to be undefined because that silent contrast is not made explicit, just as in the sentence "She won the race because she ran quickly" the word "quickly" might appear to be defined circularly as "faster than the other contestants," unless we know that she ran quickly compared to some generally acknowledged standard. Hypothetically, if we can determine from the Court's opinions a belief in, say, Maizian democracy, and if we can find in the collected works of Maize a strong abhorrence of influences on representatives by anyone other than constituents, then we could conclude that "undue" influence could be reasonably defined as influence by those outside of a Member of Congress' district.

This is the approach attempted by Edwards (1990), Schmidt (1991), and Burke (1992); as Edwards, discussing the Court's failure to clearly define corruption in campaign finance cases, puts it, "[a] concern for distortion or corrosion presumes a baseline of

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<sup>24</sup>Remember: the specific citations above were restricted to campaign finance, and thus a fairly narrow selection of the sorts of things one might find bad and call corrupt.

<sup>25</sup>Again, this is the step Thompson avoids; he assumes that by making corruption more manageable such a step will then be easier.



undistorted and structurally sound elections. What does that baseline look like?" (2).<sup>26</sup> Edwards argues that the Austin Court has moved towards a Rawlsian liberalism for that baseline; similarly, Schmidt points out that the Buckley line of cases is problematic if the "baseline" is closer to Madisonian democracy.

The trouble with this approach is that it tends to assume away the problem. Since the working hypothesis assumes the Court is using, at least some of the time, some understandable standard, the problem becomes one of finding a model of democracy<sup>27</sup> which fits the Court's uses of corruption. So cases are carefully parsed, precedents considered for "paradigm shifts" from one idea of democracy to another, and aberrant instances are explained away; Burke talks about how "the Court in its more thoughtful moments has defined corruption in [a] broader way" (18). The search for a baseline when none exists can be useful in suggesting a new course for the court, but it cannot show what is going on now.

For example, Burke believes the Court has used three general ideas of corruption in campaign finance cases. In quid pro quo corruption, legislators trade votes specifically for campaign contributions. "Distortion", the second idea, involves a much different standard, which seems to be simply that large amounts of wealth may produce political results unrelated to public opinion. Burke prefers a "middle" ground, "monetary influence" corruption, which holds that it is corrupt for campaign contributions to influence candidates in general, directly or indirectly. Burke refers to an "ideal...system in which public officials are completely uninfluenced by money" (18) although he holds that ideal would have to be balanced by First Amendment free speech principles. Yet Burke certainly is not claiming that the Court has defined corruption as a failure to achieve such a system: he only finds evidence that some Justices in some opinions may write as if they agreed on this point. At best, then, Burke finds three

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<sup>26</sup>Compare Schmidt: "For political corruption to take place, some 'pure' model of politics has to have degenerated" (1).

<sup>27</sup>Or politics, or something else -- it is not always clear what is supposed to be pure.

"pure" forms of democracy in campaign finance decisions.

So "baselines" seem less steady than we might hope; that is, attempts to find a context within democratic theory for the Court's use of "corruption" do not work, in part because the Court does not seem to apply any consistent theory of democracy and in part because even when we find certain principles of democratic theory, uses of "corruption" are not confined to violations of those principles. Attempts to find definitions for corruption by working back from "purity" leave us with little idea of what the Court (or anyone else) might mean by "corruption." And remember, Burke's three categories from the campaign finance cases (like Edwards' shift to Rawls) are more his construction than the Court's; in real cases, the Court's use of "corruption" could not be pinned down to just three types (even in campaign finance alone!) and we find phantoms such as the "appearance of corruption" given practically equal weight with anything potentially more specific.

#### IV. Republican corruption.

There is another, older sense of corruption in America which is very different from the examples discussed above and which was not at all vague. Gordon S. Wood (1969) discusses the American Founders' concerns about corruption at length in The Creation of the American Republic, 1776-1787.<sup>28</sup> The starting point for distinguishing between this republican idea of corruption and current uses of "corruption" is that while the latter are concerned with corrupt people, republican, or classical, corruption focused on corrupt peoples.<sup>29</sup> Thus revolutionary writings discussed the corrupt state of Britain and the importance of separating from it in order to avoid ruining America as well, rather than

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<sup>28</sup>See especially Chapter I, section 4; Chapter III, section 4; and Chapter X, although corruption plays a prominent part all through the work. See also Wood (1991), Bailyn (1992). Wood and Bailyn are both working with ideas -- public virtue, corruption, -- others have subsequently incorporated in theories of republicanism; for an overview, see Rodgers (1992).

<sup>29</sup>Republican corruption is "classical" not only because it borrows from ancient sources, but primarily in that it was specifically concerned with the fall of Rome as Rome became corrupt.

singling out individuals as particularly corrupt and planning to expel them from government.

For the Founders, corruption involved a turning away from virtue, and was closely linked to luxury. "Empires carry in them their own bane, and proceed, in fatal round, from virtuous industry and valour, to wealth and conquest; next to luxury, then to foul corruption and bloated morals; and, last of all, to sloth, anarchy, slavery and political death."<sup>30</sup> Similarly, "liberty will maintain her empire till a dissoluteness of morals, luxury, and venality" will lead to "the bribes, and the smiles of corruption."<sup>31</sup> Roman history was the key. "From a People accustomed to the Toils of War, and Agriculture, they became a People who no longer piqued themselves on any other Merit than a pretended fine Taste for all the Refinements of a voluptuous Life...[obsessed with] Grandeur and Magnificence in Buildings, of Sumptuousness and Delicacy in their Tables, of Richness and Pomp in their Dress, of Variety and Singularity in their Furniture."<sup>32</sup> This is no indictment of any particular king or government; it is generally a disease (see Wood, 110) which infects an entire people: "Others may, if they please, treat the corruption of our nature as a chimera: for my part, I see it everywhere and I feel it every day."<sup>33</sup>

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<sup>30</sup>Pinkney's Wmsbg. Va. Gazette, June 15, 1775, as quoted in Wood, 35.

<sup>31</sup>Charles Carroll of Carrollton to Mr. Bradshaw, November 21, 1765, Maryland Historical Magazine 10 (1915), p. 97 as quoted in Bailyn (1992: 91). For the connection between luxury and corruption, see also 83, 86-87, 90-91, 131, 134-140; and Wood (1969) 34-37, 47, 52, 65, 98, 105, 107-114, 123, 415-425, 429.

<sup>32</sup>Phila Pa. Packet, May 29, 1775, quoted in Wood (1968: 35); see also 36, 52, 425; Bailyn (1992: 25-26, 133). Corruption is also "Asiatic": Wood (1969): 35; Bailyn: 134-135.

<sup>33</sup>John Witherspoon, Dominion of Providence, in Works of Witherspoon III, 21, quoted by Wood (115). Indeed, although individuals or governments are sometimes singled out as corrupt, the general context is of a corrupt conspiracy which eventually encompassed an entire society; see generally Bailyn, especially Section IV.

This fear of conspiracy brings out the close relationship between corruption and dependency, on the one hand, and virtue and autonomy, on the other hand. One notion of republican corruption (at least as used by the Founders) worth noting in this context is its gendered use. Virtue, Wood finds, embodied the "virile martial qualities" while corruption is possible when luxury leaves the nation "soft and effeminate" (52). Commerce can "emasculate the body...and in fact corrupt every true republican and manly principle" according to Lee, "A Sketch of a Plan for the Formation of a Military Colony" (quoted in Wood, 53; see also 100, 110, 418). Compare Pitkin (1984: particularly 109-169) for ideas

As the Revolution continued, and concern moved from English to American corruption, the idea of corruption began to undergo a transformation. No longer was corruption a problem simply because of the effects of (or a response to) wealth, although that was certainly still important. Now, along with the warnings that "The great body of the people, smote by the charms and blandishments of a life of ease and pleasure, fall easy victims to its fascinations"<sup>34</sup> (Wood, 416), was a second concern about striving for those charms.

At one time public spirit had been "the governing principle and distinguishing characteristic of brave Americans. But where is it now? Directly the reverse. We daily see the busy multitude engaged in accumulating what they fondly call riches, by forestalling, extortioning and imposing upon each other." Men returning from abroad in the early eighties found "the sentiments of the people of this country...surprisingly altered" since they had left. "They were no longer governed by that pure, disinterested patriotism, which distinguished the Infancy of the Contest." Everywhere "Private Interest seemed to predominate over every Consideration that regarded the public weal" (415-416).<sup>35</sup>

Corruption focusing on acquisition was not a new invention, but the shift in emphasis was important. The shift accompanied the realization, as republicanism changed from an opposition theory to the guiding idea of a new polity, of the incredibly central role of public virtue and the difficulty in achieving it. In 1776, the possibility of a new nation devoted to public virtue seemed within reach. A few years later, those

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concerning sex and dependency in Machiavelli's republican thought. If autonomy and dependency are a primary problem in republicanism, it may not be surprising that the Founders followed Machiavelli's difficulties in this area.

<sup>34</sup>Thomas Welsh, "An Oration, Delivered March 5, 1783" quoted in Wood (1968: 416).

<sup>35</sup>Wood (1968: 415-416) quoting Boston Independent Chronicle, August 31, 1786; John Brooks, An Oration Delivered to the Society of the Cincinnati in the Commonwealth of Massachusetts, July 4th 1787, 8; Phila. Pa. Gazette, March 31, 1779; and William Bingham to John Jay, July 1, 1780. In general, Wood does not make this distinction between competing ideas of corruption, although he certainly makes the point that concern about corruption is central to the entire Revolutionary period.

thought to have the capacity for public virtue had disappeared, and the "new men" who replaced them appeared to actually value luxury (Wood, 471-499). So while Americans were bemoaning the "torrent of corruption" and feared the new nation had "like an untimely birth, suffered an abortion before it was in maturity fit to come into the world", the concept of corruption started moving away from the concern about "a nation that was more luxurious, more indolent, and more extravagant, than any other people on the face of the earth."<sup>36</sup> (Wood, 424). For us, accustomed to seeing corruption more in the acquisition of wealth than in the possession of it, this is understandable. Yet it posed a severe problem for the Founders: could greatness in private, commercial activity be reconciled with greatness in politics? (Could a nation live by both The Wealth of Nations and the Declaration?)

The tension between pursuing public and private success becomes the subject of James Madison's valiant attempt at reconciliation in Federalist 10.<sup>37</sup> Madison forces the issue: despite his awareness that "factions" can spring from any number of causes, in Federalist 10 he puts private economic gain first and foremost.<sup>38</sup> In doing so, he doubles the weight placed on the essay. Not only does he propose (that is, defend) an extended republic as the solution to factions, but he also sees the Constitution as a solution that will allow the public sphere to flourish precisely because the private sector is so vigorous. Madison wants to reclaim corruption -- the corruption of luxury -- in that he agrees that the loss of public happiness would be tragic; at the same time, however, he acknowledges he now lives in a nation in which luxury will be found (and searched for) everywhere. Thus, he addresses "friends...of public and personal liberty" who are

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<sup>36</sup>Boston Independent Chronicle, June 3, 1779; Phila. Pa. Packet, Aug. 20 1778; Burke, Considerations on the Cincinnati, 28, all quoted in Wood (1968: 424).

<sup>37</sup>For the concerns about corruption shared by Madison and the other Constitution writers, see Savage (1994). For a similar discussion, although one not mediated by the tension involved in "corruption", see Arendt (1963: 126-129); she discusses the ambiguity in the "pursuit of happiness" of the Declaration.

<sup>38</sup>In other, private, formulations of the problem of factions, Madison (following Hume) assigned economic self-interest a much more modest position. See Miller (1992) 161-2 and generally Chapter 2, especially 27-30.

alarmed about both "private rights" and "that prevailing and increasing distrust of public engagements" (42-43).

Madison: "No man is allowed to be a judge in his own cause; because his interest would certainly bias his judgement, and, not improbably, corrupt his integrity" (44). His subsequent discussion concerns only the first half of this formula; he gives examples of biased judgement. But "bias his judgement" is not equivalent, for Madison, to "corrupt his integrity." The former is a certainty, and presents a mechanical problem of government which the remainder of Federalist 10 addresses. But the latter is more complicated. Corruption is "not improbable." Having an interest, then, is not inherently corrupting; already Madison is on very different ground than our current ideas of both interests and corruption. But interest is a problem. Concern for private interests in a public context threatens the chance of maintaining the public happiness Madison and all the Revolutionaries had achieved. For Madison, private gain is no longer inherently an evil. Instead, it has two potentially evil effects: vigorous private activity may, like luxury, promote indifference to politics; and, even when it does not leave a citizen indifferent, it may make the public sphere somehow less accessible because citizens will only use public resources for private demands.

Madison's solution is to invite people into the public sphere as advocates for economic (and other) causes; to make simple advocacy insufficient (because a majority will not advocate the same interest in an extended republic); and then to hope that citizens in the public sphere will find public spirit -- that is, will discover politics. It would certainly corrupt one's integrity -- that is, one's capacity for public integrity -- if private demands on the public could be fulfilled easily. Under the Constitution, however, that is supposed to be impossible; no citizen can merely organize all those in agreement and find himself or herself in a majority. No majorities exist in the extended republic. Something more would be necessary, whether it be bargaining and compromising or, possibly, deliberating and reasoning with others, who might (before entering the political situation) be opposed or, more likely, indifferent. As Madison says, the process can "refine and enlarge the public views" by exposing them to those who understand public

happiness -- those who have "patriotism and love of justice" (46-47).<sup>39</sup> Under these circumstances, maybe, a healthy politics might possibly thrive even as private ambition remains unchecked: the Constitution can be a model for the world "in favor of private rights and public happiness" (67).<sup>40</sup>

## V. Goo Goo Terror.

The Founders feared corruption because it threatened the public sphere. This supports Hannah Arendt's (1963) view that they believed strongly in politics. Political action for them was important in and of itself, not simply as a means to any particular

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<sup>39</sup>Madison distinguishes between three types of actors: those who are motivated by private interests, those who "love justice," and those who have "sinister designs" (46-48). The advantage of an extended republic is that it would thwart those who were simply dishonorable (47-48; any other outcome would be "corruption"), but those merely self-interested would be represented at least by those who valued political life. Presumably, this would influence them to understand, value, and experience public happiness as well, since they could not otherwise understand the actions of their own representatives. While he does not explicitly entertain that idea (indeed, it might not have been a good selling job to tell the people that they needed to be educated), Madison does stress the danger of a corrupt representative corrupting the people (207, 292, 323).

<sup>40</sup>Madison's use of "corruption" is hardly consistent; outside of the two uses in Federalist 10, he simply seems to adopt the classical use of "corruption" (85). While this does not contradict the argument above, neither does it (I believe) add to it. Madison uses the words "corrupt", "corruption", or "corrupted" in Federalists 18, 38, 40, 41, 43, 55, 57, 62, and 63, or in about one-third of his contributions (85, 186, 199, 207, 219, 224, 283-284, 292, 315, 320, 323). What is unusual and interesting about the second use of "corruption" in Federalist 10 is that it is concerned with "a man," rather than a polity ("the absurdity of subjecting the fate of 12 States, to the perverseness or corruption of a thirteenth"; 199; see also 207, 224, 292, 320, 322) or an assembly ("...requiring the concurrence of two distinct bodies in schemes of usurpation or perfidy, where the ambition or corruption of one, would otherwise be sufficient" 315; see also 283-284, 322). Generally, Madison uses "corruption" in these instances to refer to an unspecified evil, although it is somewhat safe to say that such evil generally involves (or at least is compatible with) an abandonment of public spirit. Thus we need not worry about two year terms for Representatives, since the civic virtue of Americans will prevent any usurpation of power; after all, even the thoroughly corrupted British manage with several years between elections (207).

While Madison still certainly believed in the importance of public virtue, and tried to resolve the difficulties created by the new emphasis on private success after the Revolution, some Federalists went farther to actually embrace luxury. See Bailyn 321-381 and especially 371-372. For the continuing importance of republican ideas, particularly for Madison, through the constitution period, see Savage (1994).

end; they believed, it seems, in living political lives because that alone was somehow fulfilling. The Revolution, if Arendt is right, is among other things importantly a means to create the possibility of "doing" politics. "Corruption" -- whether thought of with luxury or acquisition -- was all about the fear that possibility might vanish.

The central concern for politics contrasts sharply, as Arendt and others have pointed out, with the French Revolution. In France, the Revolution may have begun in a desire for participation in politics, but it became a war against poverty; that is, as Arendt says, the "absolute dictate of necessity":

...for this was the multitude of the poor. When they appeared on the scene of politics, necessity appeared with them, and the result was that the power of the old regime became impotent and the new republic was stillborn; freedom had to be surrendered to necessity, to the urgency of the life process itself (1963:60).

The important distinction becomes the apparent absence of poverty in America (that is, the absence of poverty among those allowed to be citizens) and the fact of poverty in France.

The result in France was Terror. Arendt traces two parallel paths to the Reign of Terror; the first is a theoretical path, through Rousseau, and the other is the historical record of the French Revolution. Rousseau's problem in developing the notion of a general will is (as Arendt sees it) "to detect a common enemy outside the range of foreign affairs, and his solution was that such an enemy existed within the breast of each citizen, namely, in his particular will and interest; the point of the matter was that this hidden, particular enemy could rise to the rank of a common enemy -- unifying the nation from within -- if one only added up all particular wills and interests" (78). This leads to the "innermost" conviction" for the (French) revolutionary that "the value of a policy may be gauged by the extent to which it will contradict all particular interests, and that the value of a man may be judged by the extent to which he acts against his own interest and against his own will" (79).

This is immediately recognizable, in our context, in the focus on a contrast



between private and public interest which is common in the current American notion of corruption. In the definition, for example, Justice Rehnquist (in FEC v. NCPAC) would like the Court to follow, corruption is quid pro quo: someone gets something, private interests are being advanced, and therefore we suspect that some "general will" is being subverted.

The American Revolution was not about the general will, and this idea of corruption was not the concern of the Founders. The Progressives, however, were very interested in distinguishing between private and public interests, between individual wills and the general will. The quid pro quo version of corruption is central to the ideas of the Progressive President, Woodrow Wilson.

Wilson, like the Revolutionaries, sees the events of 1776 as a step in escaping English corruption before it affected America (1902: 724-725). But to Wilson, the Founders were foolish to trust in the Constitution, "dream[ing]...that by ceremonial cleanliness we may lift our lives above corruption" (727). Wilson's corruption is not a retreat from virtue.<sup>41</sup> Instead, it seems to mean being on the wrong side, and for Wilson there are only two sides: the public interest and special interests.

Wilson's problem of special interests contrasts sharply with the Founders' dislike of luxury. For the Founders, it was imperative for the success of a Republic that virtuous citizens turn their attentions to the common good. Luxury was a danger not primarily because men might use public office to seek private goals, but because those seeking private happiness might not be interested in public office at all. For Wilson, fear of that sort of danger seems naive. He assumes that every citizen will make demands on the government, but that only some of those demands will be heard, and that therefore the chief role of government is to deny such demands (special interests) in favor of the general interest (1913: 57; see also 30, 49, 51, 53, 165).<sup>42</sup> Despite his denials (49-50),

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<sup>41</sup>Instead, the opposite of corruption for him is either cleanliness (see above) or innocence (1913: 57).

<sup>42</sup>This is true of foreign affairs as well, except the special interests in that case are governments with "selfish ambitions" (Presidential Messages: 497-501).

it seems clear that the general interest is best divined by asking one Woodrow Wilson. Thus when he posits that "no interested campaign contributions can be tolerated for a moment, -- save those of the millions of citizens who thus support the doctrines they believe and the men whom they recognized as their spokesmen" (57) little doubt is left as to who that spokesman would be.<sup>43</sup> Deliberation is no longer necessary (1924: 855; see also 1913: 49); for Wilson, Jefferson's letter to Adams in which he expresses his wish to "meet there again, in Congress, with our antient Colleagues" (Arendt 1963: 131) would at best be a selfish, anti-social, whimsical dream, totally unrelated to the best interests of the nation.

Wilson's general interest is still not a Terror, but it is not the American Revolution, either, nor is it the Federalist Papers. No longer is politics a source of public happiness. Furthermore, Madison's goal in Federalist 10 has been lost if entering politics in pursuit of self-interest is per se judged "corrupt." And losing Madison seems especially sad because it is by no means clear that his hope -- that private-minded citizens who enter politics will be enriched and changed by the experience -- was based merely on wishful thinking.

Why has America (or at least, Americans who talk about corruption) belatedly followed the French example? Not for theoretical reasons; no "great" American theorist has pushed us along the path of Rousseau and Robespierre. But we are no longer without necessity. Poverty -- or, following Arendt, misery -- once it appeared on the American scene, at first gradually and then increasingly so by the end of the nineteenth century, introduced necessity into American politics; with necessity, compassion, and attention

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<sup>43</sup>See also President Wilson's address at Pueblo (Messages: 1113-1130), his final speech in support of the League before illness overtook him, in which Wilson at first is "trying to express the public sentiment" by getting "real personal contact" with his audience. (1113). By the mid-point in the text, however, he is no longer the spokesman of his audience, but of "the children; my clients are the next generation" (1127). Of course, the position on campaign contributions matches perfectly with those discussed above (5).

to demands to be fed, housed, and clothed.<sup>44</sup> That is, politically "visible" misery makes possible (and probably makes likely) the assumption that what must be done is to alleviate suffering, and that any deviation from that imperative could only be caused by self-interest. It no longer makes sense to accuse "the people" of corruption; corruption, if it is anything, must be the reason government is not in accord with the general will, and it makes sense to look for the individuals responsible for that discord. Corruption becomes a crime committed by individuals rather than a condition of peoples.

The Court agrees with the timing, if not the cause, of this shift in the long discussion of corruption in United States v. UAW-CIO (1957, especially at 570-571). As we have seen, in that decision the Court took the "concentration of wealth consequent upon the industrial expansion in the post-Civil War era" to be the crucial fact that "influenced politics, an influence not stopping short of corruption." But both wealth and poverty were new in post-Civil War America; that is, concentration of wealth in corporations and concentration of visible poverty (poor voters!) in cities and rural areas. At the very least, the cry of the needy furnished proof that the rich must have too much influence, and therefore must be corrupt, and that those whose public policy suggestions do not address need must also be corrupt.

We might say, then, that to the extent that "corruption" becomes self-interest in politics -- to the extent that we adopt something like quid pro quo corruption -- we have shifted from Madison to Rousseau, from the American Founders to Robespierre.<sup>45</sup> And Wilson,

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<sup>44</sup>The important point Arendt makes is that while poverty has always been a part of every human community, poverty only appears on the political scene when the needy are admitted to the political realm; before that, no matter how we (who find it difficult to conceive of a polity which excludes the poor as a matter of principle) may object that poverty is a violation of justice, extreme need is in a sense invisible to those involved in politics. Thus Toqueville could tour slaveholding America and fail to find any poverty. See Arendt, 66-73.

<sup>45</sup>Again, it is important to understand the limits of this claim. Politically visible poverty is the issue. Something like full adult suffrage is a requirement for all poverty in a particular polity to become visible in this sense; at the very least, the universal white male suffrage achieved by the Jacksonians would be needed. Furthermore, both Arendt might suggest that urban poverty is more "visible" in this sense than rural poverty. One might speculate that technological change (communications, transportation) might have been needed to eventually make possible politically visible rural poverty in post-Civil War America; consider the

distinguishing between "special" and general interests, is certainly evidence of that shift.<sup>46</sup>

Yet if that was the whole story, we would have no difficulty finding a definition for corruption. At the very least, the "purity" approach would work: accepting a Wilsonian idea of democracy, "undue" influence would probably have some stable meaning, something about influencing legislators to ignore the public interest. We might still argue whether Wilsonian "democracy" was very democratic, but corruption itself would not be a puzzle.

In fact, however, corruption is not used by the Supreme Court in a consistently Wilsonian way: corruption is not simply someone gets something in return for something else. And in fact, it is still difficult to see why "the appearance of corruption" would be particularly troubling to Wilson's successors. One piece remains: hypocrisy.

For Arendt, Terror is the result of introducing compassion into politics, because compassion as the ultimate justification for political decisions implies the need for purity of motivation and therefore "a suspicion we constantly feel we must raise against ourselves, against our innermost motives."<sup>47</sup> Thus the "momentous role that hypocrisy and the passion for its unmasking" played in the French Revolution; once motivations are central, "the reign of virtue was bound to be at worst the rule of hypocrisy, and at best the never-ending fight to ferret out the hypocrites." And that fight produced Terror because it was "boundless", since "the hunt for hypocrites is boundless by nature" (Arendt, 97-100). The needy are those without hypocrisy:

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visible role of the Dust Bowl and Appalachia in the New Deal.

<sup>46</sup>A further tie between the Progressive era and the new corruption is the publications of Charles Beard's Economic Interpretation of the Constitution of the United States in 1913.

<sup>47</sup>Arendt actually is most concerned about pity, which she considers the "perversion of compassion"; the "alternative" to pity "is solidarity" (88; see generally 79-92, especially the discussion of Billy Budd and "The Grand Inquisitor"). However, she generally refers to this problem as "the role of compassion in revolutions" (73) and seems, I believe, to assume that compassion in the realm of human affairs generally takes the form of pity.

When the malheureux appeared on the streets of Paris it must have seemed as if Rousseau's "natural man" with his "real wants" in his "original state" had suddenly materialized...For the people who now appeared were not "artificially" hidden behind any mask, since they stood just as much outside the body politic as they stood outside society. No hypocrisy distorted their faces and no legal personality protected them...From then on, the "real wants" determined the course of the Revolution...For the masses, once they had discovered that a constitution was not a panacea for poverty, turned against the Constituent Assembly as they had turned against the Court of Louis XVI, and they saw in the deliberations of the delegates no less a play of make-believe, hypocrisy, and bad faith, than in the cabals of the monarch (100-101).

I quote here at such length because this idea of hypocrisy invading politics seems such an apt description of claims against the American political system leading to charges of corruption. "They saw in the deliberations of the delegates...a play of make-believe, hypocrisy, and bad faith" -- substitute "Members of Congress" for delegates, and we have any of Wilson's successors, whether it is Jerry Brown's "We the People" campaign or Ross Perot's "United We Stand." Note the elasticity of charges of hypocrisy: Brown accuses Congress of failing to solve poverty, while Perot is more concerned with middle class Americans; Brown's enemy is the rich, while Perot focuses on foreigners and American "traitors" who secretly allow foreigners to "buy" them. But certainly, at least for current American standards of corruption, "hypocrisy is the vice through which corruption becomes manifest" (104).<sup>48</sup>

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<sup>48</sup>In fact, Arendt equates hypocrisy with corruption throughout her discussion of the social question. Unfortunately, Arendt too refuses to define corruption, uses it with respect to many different contexts, and implies that corruption is similar (and similarly related to hypocrisy) in each of these contexts. Following Pitkin (1990), I think Arendt does this so that she can equate the "corruption" of French "Society" -- that is, the High Society of Court life -- with the "corruption" of the government of the French monarchy, and finally with the "corruption" of allowing motives to matter in (Revolutionary) politics once the needy are involved. Hypocrisy, it seems to me, is a reasonably straightforward idea, but corruption is useless without definitions appropriate to context.

If it is based on hypocrisy, "corruption" can never be defined with anything resembling the precision attempted by Rehnquist, for example, or anyone attempting to match it to a pure "baseline." Indeed, the most accurate "definition" may simply be: "corruption or the appearance of corruption." Corruption, as we have seen, usually tends to have something to do with self-interest -- or possibly, any kind of interest. But the appearance of corruption, taken seriously as an equally important standard, implies that any action claiming to be in the public interest, or involving anything other than explicit self-interest, is just as suspect as those actions justified by a claim of self-interest. The standard of hypocrisy demands nothing less. So Goo Goo corruption, defined as "corruption or the appearance of corruption", effectively claims that every political action (and every private action by a public figure) is potentially tainted and that no reliable or consistent grounds for justification are available. A quick example: the revelation of Hillary Rodham Clinton's success in the commodities market is taken, at the very least, as "evidence" that President Bill Clinton is not the public-spirited man he claims to be.<sup>49</sup> Elasticity is the key; the usage is similar in the broadsides of Brown and Perot or in the responsible statesmanship of the New York Times or the Court. "The hunt for hypocrites is boundless by nature."

Goo Goo Terror is not Terror; independent counsels are not the guillotine. Goo Goo Terror, one might say, demands unmasking, but not beheading. But Goo Goo Terror, like the Terror of the French Revolution, strikes randomly and allows no counter-argument, and thus may eliminate from politics both apparently innocent individuals and otherwise viable policy options. If the New York Times decides that party contributions are "sewer money", rather than the presumably legitimate strengthening of political parties which FECA amendments sought to encourage, no argument is readily available to claim "not corrupt." If a claim is made that large sums of money in politics are corrupt then it must be so;

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<sup>49</sup>See Risen (1994) for the argument that the cattle futures success raised the "spectre of hypocrisy." For the position that undue influence was involved, see Glassman (1994). And for the "conventional wisdom" that either was more or less equally damning, see Reliable Sources (1994). That is, if Governor Clinton was influenced by private gain, he was corrupt; but if Hillary's money-making scheme was perfectly legal and ethical, then the President is "proven" to be self-interested -- he wanted to make money, didn't he?

what is there, after all, to distinguish one source of money from another? Since these lines are by definition shifting -- because all political activity is potentially either corruption or the appearance of corruption -- the Times (or anyone who uses corruption as a standard, once corruption becomes "corruption or the appearance of corruption") can always argue that there is no difference in principle between any (legal) activity and another (prohibited) one. A result: as charges of corruption were being leveled at Bert Lance in 1977, Senator John C. Danforth believed a "nightmare" was underway and worried, "I think we're eating ourselves alive" (Quoted in Schudson 1992: 163). Not the Terror of the French Revolution, but a still quite destructive Goo Goo Terror.

#### VI. The Social Question and Madison.

Three challenges have been raised to the idea of an inclusive republic, in which even the needy have full political rights and responsibilities but also in which enough citizens actually exercise those rights that a "healthy" politics can thrive. The first is the very old problem for democracy of majorities and minorities, and the proposed solution is Madison's extended sphere and institutional constraints. The second is the surprise the American Founders confronted -- a lack of interest in political life; the solution, I have argued, was for Madison also the extended sphere and institutional constraints, which he hoped would more or less force citizens into active involvement in politics. This challenge corresponds to the Founders' concerns about corruption. The challenge which remains is Arendt's concern, the intrusion of the social question into the political sphere; it is this problem, I have further argued, which is at the root of current concerns about corruption, defined properly as "corruption or the appearance of corruption."

Arendt, while eloquently arguing against unmasking hypocrisy in On Revolution, leaves an unsolved puzzle. If the "social question" -- that is, the needs of the needy -- cannot be solved by politics; if in fact "every attempt to solve the social question with political means leads into terror", then "it can hardly be denied that to avoid this fatal

mistake is almost impossible when a revolution breaks out under conditions of mass poverty" (112).

For Arendt, the fact that we pose economic questions as an issue of "political economy" is revealing, since it shows we have mixed things which had previously belonged to two separate and distinct areas.<sup>50</sup> So while her concern for the "lost treasure" of revolutions extends to all revolutions, the American Revolution is a special case for her; here, too, she sees a failure to institutionalize republican principles, but unlike all other cases, necessity is missing and therefore some other explanation is needed.

What if, however, we drop the strict separation between politics and economics? Can it be done without inviting Terror? Or is Arendt correct, and any such attempt is based on wishful thinking that ignores empirical evidence and theoretical logic. After all, evidence she presents seems strong: each European Revolution has failed precisely as necessity made politics impossible and unmasking inevitable.

Demystifying Arendt's social question requires asking directly: why are bodily needs so unusually destructive to politics? One could easily imagine other "issues" which might destroy politics -- religion, for example. If politics involves people acting together in public to solve mutual public problems or to attempt public achievements, then any unsolvable problem might be threatening if members of the polity are unable to accept failure. This could be restated as a variation of the intensity problem discussed by Dahl. He argues that when a case of severe disagreement in which "each side is large and each regards the victory of the other as a fundamental threat to some very highly ranked values" (1956: 98) exists in a polity, democratic government is more or less impossible. Yet what is hunger but a situation in which a large group is threatened with defeat in a "very highly ranked value"; that is, life itself? In situations in which a ruling group

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<sup>50</sup>And only one of those realms, the household, involved "needs" (1958: 30). See generally Arendt (1958, especially 28-47). Arendt believes the Greeks, at least, held "sacred the boundaries" separating public and private (29), and she calls "society" a "curiously hybrid realm" (35) and discusses the "rise" of society and its "victory" (45) as defeats, presumably, for men and women. She does not dispute, then, that economics "works"; that is, that "the laws of statistics are perfectly valid when we deal with large numbers" (43), but instead insists that asking questions about human affairs in ways that can be answered using such methods precludes the possibility of action.



or class controls both wealth and political power, we might expect the poor to choose the rulers as an enemy. However, after a successful democratic revolution, the poor suddenly achieve (or may believe they have achieved) the status of co-equal rulers. The old enemy no longer exists: Pogo's discovery seems to apply. Either allies and enemies is no longer a good way to think about politics, or the search for enemies eventually leads back to the hidden enemy within.

What seems to be distinctive about need in democratic societies, then, is the form of dissolution of the polity caused by the problem. Fundamental disagreements about religion, race, property, or other "values" may lead, as Dahl points out, to "revolution, secession, [or] withdrawal of legitimacy" from the government. But the "social question", if it destroys a democratic polity, does so through questions about motivation, charges of hypocrisy, revelations of corruption, and Terror. If this is true, Arendt is wrong to claim that economic need is uniquely destructive; need is not uniquely destructive, but only destructive in a unique way.<sup>51</sup> To generalize, we only need to amend Dahl to argue that all intensely and widely held positions are dangerous to democracies if unresolved, whether the reason is opposing (minority) group preferences (Dahl's concern) or simply that the demand is in some way impossible to accommodate.

This, still, does not solve our puzzle: it merely restates it. Dahl suggests that "social conditions" determine whether democratic politics will be possible; if this is so, then Arendt is right that politics cannot solve the social question, and her only fault is in assuming that this is somehow a unique case. It is more likely, however, that the difficulty here is in Dahl's limited idea of politics in his discussion of the "intensity" problem. Surely, at the very least, the problem is more two sided; it is only in the context of a particular political situation that a "demand" or an "issue position" becomes more important than the political system itself. For Dahl, the American Civil War is the paradigm of underlying "social conditions" which no constitutional system could

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<sup>51</sup>Or at least a different way. This is not to say, of course, that nothing other than the social question can generate this type of destructiveness; other "Terrors" are certainly prominent in American history.

overcome.<sup>52</sup> But, of course, the Civil War "social condition" must be at least somewhat also a political condition; it is at least equally plausible to interpret the secession of the southern states as the consequence of political choices, beginning with the Constitutional Convention and continuing through the election of Lincoln.

None of this is particularly revealing; indeed, Arendt accepts that it is only under the political condition of revolutionary democracy that necessity becomes important. So we can say, then, for example, that religious intolerance is not particularly destructive in America in part because Americans found a political solution to a potentially difficult "social condition."<sup>53</sup> But if necessity is one of a number of potentially divisive issues, then it too should in principle be open to a political solution which would, at the very least, prevent a dissolution of the polity. Here, Arendt makes no argument; she asks us to recognize, understand, and sympathize with Revolutionaries suddenly faced with unsolvable Necessity, but refuses to consider the possibility that they simply made poor choices (or, maybe, failed to make brilliant choices) when confronted with that admittedly terrible dilemma. Ironically, Arendt makes the same mistake she criticizes; just as the French failed by turning from politics in the face of necessity, Arendt seems to claim that politics is powerless in the face of economics.<sup>54</sup>

Giving up on political solutions to serious problems is particularly tragic because it is almost certainly wrong by definition, if we follow Arendt's definition of politics. Again, Arendt seems to believe politics involves people acting together in public to solve mutual public problems or to attempt public achievements. Certainly, after the French

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<sup>52</sup>See also Dahl (1967), Part Three, especially Chapter 10 (260-281).

<sup>53</sup>That is, a social condition in Dahl's language, as opposed to Arendt's concern about the social question.

<sup>54</sup>This is not precise. Power, for Arendt, is the product of action, and therefore political (1958: 200-206, and generally section V., Action, 175-247) in origin. But as humans become homo faber, they lose the "potentiality which springs up between people when they come together in action and speech" (209) and substitute "'power of exchange' (Adam Smith).'" Thus power fades when men and women conceive of themselves as producers, not actors, and when they conceive of solutions to their problems which ignore their potential for action, as opposed to production.

Revolution, necessity is a public problem -- but Arendt does not really call for political solutions. It is almost as if fear of the consequences of political failure becomes the overriding consideration; Arendt fears the power of politics unleashed and frustrated, and instead presents us with hopelessness.

Pitkin, criticizing Arendt's retreat, points out that for Arendt (and Aristotle) "What distinguishes politics...is action -- the possibility of a shared, collective, deliberate, active intervention in our fate, in what would otherwise be the by-product of private decisions. (1981: 344). For Pitkin, the essence is precisely in the movement back and forth between private and public, and especially the first step into the public realm -- politicization.

In ... these patterns of transition we discover connections to others and learn to care about those connections, learn how what we already cared about is embedded in social relationships. And so we discover the value to us of our public institutions, of justice and principle, of mutuality and political action. In the process we learn that we are different than we had thought, that our interests are different than we supposed. We discover the way our membership helps to define us, and the pleasure of becoming active in relation to it together with others (348).

Pitkin recognizes that any retreat from politics prevents "the transformation of social conditions into political issues" (346) and therefore prevents any solution. This means accepting James Madison's challenge and allowing, encouraging, private interest as an original motive for political involvement.<sup>55</sup>

Corruption-based "politics" -- Goo Goo Terror -- ignores the possibility of successful political action, hoping to settle instead for a "clean" process. The consequence is a sterile "politics" that forfeits both public happiness and the potential

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<sup>55</sup>Without, as Goo Goos would demand, constantly proclaiming that interest so loudly that one's entire political identity is defined by that interest. When hypocrisy is raised to a central position, no "transition" from private to public can be tolerated, because any change in motives may merely mask "real" interests.

to solve problems.<sup>56</sup> The first step is to remove "corruption"'s central place in our political culture, even at the price of occasionally ignoring activities we might not normally embrace. In practical terms, this means resisting the urge to unearth motives and punish hypocrisy; it means acting in public as if one's opponent was well-intentioned.

Arendt, who understands and criticizes the loss of public happiness, still forgets, as Pitkin points out, that politics is also the means by which we "take charge of the history in which we are all constantly engaged by drift and inadvertence" (345).

Corruption based on hypocrisy is one danger which comes from attempting to solve the "social problem" through political action, but all action involves risk. The American experience, indeed, shows that fear of motivations, as destructive as it has been, does not invariably lead to heads (literally) rolling. It seems to us that it is asking a lot of desperately poor people surrounded by wealth -- or, more realistically, those acting (or claiming to act) on their behalf -- to ignore the motives of those who oppose their efforts within the political system to put food on the table, and even to accept that feeding the hungry cannot be an absolute because politics admits to no absolutes. In fact, it is probably asking a lot of any group, even any individual, to accept the possibility that obviously important claims will occasionally be ignored, and even more often result in compromise or just plain loss. We have no choice, however, if it is only within a thriving politics that solutions are really possible; that is, we accept the possibility of losing because otherwise winning is inconceivable. And asking for someone to make everything the subject of deliberation is not asking that person to lose or to accept defeat lightly, nor does it mean accepting proposals which one might initially

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<sup>56</sup>What is cleansed, in fact, by the assumption of a general interest which everyone shares, is the first condition of politics -- plurality. So Wilson:

...I have been trying my best to speak your thought. When I sample myself I think I find that I am a typical American, and if I sample deep enough and get down to what probably is the true stuff of the men, then I have hope that is is part of the stuff that is like the other fellow's at home. And, therefore, probing deep in my heart and trying to see things that are right without regard to the things that may be debated as expedient, I feel that I am interpreting the purpose and the thought of America... (Messages: 646-647; see also 17, 582).

Again, the fight is within each of us to dig deep enough to overcome our own interests -- ourselves -- and to realize Wilson speaks as us, not merely for us.

oppose. It means, however, fighting on grounds other than hypocrisy and hidden motivation  
-- without Goo Goo Terror.

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