

AN INSTITUTIONAL EXPLANATION FOR CORRUPTION OF CRIMINAL JUSTICE OFFICIALS

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Introduction

Even a very limited sampling of headlines from news magazines over the last several years about instances of corruption by police, prosecutors, and judges illustrates the magnitude of corruption among law enforcement officials. For example: "A True Prince of the City: In Chicago, A Cop Goes Underground to Crack a Police Dope Ring" (*Time*, 26 July 1982, p. 17); "Corruption Is Still a Fact of Life" (*U.S. News & World Report*, November 1982, p. 46); "The Trouble with Harry: A Federal Judge Goes on Trial in Nevada on Bribery Charges" (*Time*, 2 April 1984, p. 64); "The Real Miami Vice?" (*Newsweek*, 11 November 1985, p. 32); and "Passing Judgment on the Judges: A Spate of Legal Troubles in the Judiciary" (*Time*, 20 January 1986, p. 66). This list only touches the surface; after all, these are only some of the officials who got caught. Even if a similar number of crimes by public officials were cleared by arrest as crimes in general (roughly 20 percent of reported crimes and perhaps less than 10 percent of all crimes), the total level of corruption would be substantial. But there are several reasons to believe that the crimes that public officials commit are considerably less likely to be reported (exposed) than private sector crime.

Corruption by law enforcement officials is actually a black market for the property rights over which those officials have been given

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discretionary allocative power (Benson 1981a).¹ Rather than assigning rights to reflect political demands, rights are sold to the highest bidder. Police, judges, and prosecutors are not monitored closely, so self-interest may dominate. In order to get some idea of the level of corruption in law enforcement, we must therefore examine the opportunities for corruption and the institutionalized incentives to carry out corrupt acts that face public sector law enforcement officials.

Opportunities for Corruption

Corruption is a consequence of discretionary authority by government officials, and criminal law enforcement officials often have tremendous discretionary power. They have this discretion because of the “commons” problem. Legislatures, courts, and police are like any other public (or commonly held) property. When ownership rights are not assigned to a good or resource and prices are not charged to ration its use, the resource is inefficiently used. Typical examples of the “tragedy of the commons” include the near extinction of the buffalo and the whale as well as the crowding of, littering on, and rapid deterioration of public parks, beaches, roadsides, and waterways. The same incentives apply to law enforcement services (Benson 1988, 1989; Neely 1983).

Blumberg argued that approximately 80 percent of police resources are used up in what he refers to as “social-worker, caretaker, babysitter, errand-boy” activities (1970, p. 185). Many of these activities generate benefits that are concentrated on individuals, but because individuals do not bear the full cost, they tend to overuse the services. Police services are frequently allocated on a first-call, first-served basis. It is doubtful that people would be as quick to call the police to handle minor annoyances if they were responsible for the full cost of the resources (police officers’ time, vehicle use, etc.) used. More significantly, there often can be substantial negative externalities arising from using police services to solve minor problems, because police occupied with such tasks are unavailable for far more valuable uses.

Similar problems arise with public courts. Judge Richard Neely (1982, p. 191) noted, for instance, that “while courts often appear free to the casual observer because the court itself is a public facility, courts are actually very expensive.” He also explained that “because

¹Several of the theoretical issues discussed below were explored in Benson (1981a, 1987, 1988) and Benson and Baden (1985). This paper draws freely from these articles, extends them considerably, and applies the analyses in an examination of corruption specific to the criminal law enforcement process.

the courts are available free of charge they are overused, and the result is justice-defying delays" (p. 164). Such congestion (rationing by waiting) is the typical consequence of common pool resources.

When common pool congestion problems arise, public law enforcement bureaucrats have tremendous discretion in the allocation (rationing) of limited bureau resources among competing demands. As Bent (1974, pp. 3–6) noted:

With upwards of 30,000 federal, state, and local statutes to uphold, the average policeman is faced with a monumental task of applying these laws evenly. . . . Theoretically the multiplicity of laws may be construed as a traditional administrative device to define conditions of illegal or disorderly behavior that the policeman may encounter, thereby precluding any discretionary responsibility on the part of the individual police officer. In actuality, however, the overload of statutes has made impractical the mechanical application of law by police. Instead, this overload invites the influence of prejudices of individual police officers . . . resulting in the law being administered unevenly and selectively. . . .

With such discretion, police can choose which laws to enforce and which not to enforce. According to Neely (1982, p. 131): "[O]ne's chances of police protection [corresponds] closely to one's position in the geography of political power. . . . More time is devoted to investigating a barroom murder at Second Avenue and Sixty-Third Street [in New York] than to a comparable incident in the South Bronx."

Commons problems in the courts generate considerable discretion for prosecutors and judges. Court time is to a large extent rationed by waiting time, but prosecutors can also ration court time by deciding which cases to prosecute and which to plea bargain; judges similarly decide which cases deserve consideration and which do not. "The point is frequently made as a tribute to our society that ours is a government of laws and not of men. Yet the decision regarding . . . the disposition of each case [is] entirely within the discretion of the prosecuting attorney in the first instance and the judge later on" (Neely 1982, p. 91). Such discretion creates opportunities for corruption.

For instance, in cases where government has modified a rights structure to prevent a competitive market allocation of resources and, consequently, has created the potential for rent extraction for anyone willing to develop an illegal market, the potential illegal transaction (rights modification) can often be easily detected (Benson 1981a). Consequently, the high risk to private individuals prevents participation in an underground market unless the transaction can be made

to *appear* legal or unless officials who have the discretionary authority to enforce the law agree not to do so. This may be because the property involved is highly visible, so that a change in use or user can be easily detected. Perhaps the property is durable and immobile (e.g., land subject to zoning or other use restrictions, or building codes, liquor license requirements, or operating hours for bars). Under such circumstances, an illegal property rights modification must be accomplished through the actions of a government official. Public officials are in a position to extract rents from illegal market transactions. As a consequence, for example, land use and building regulations appear to generate considerable opportunities for political corruption (Gardiner and Lyman 1978). Corruption in these cases need not go as far as outright changes in statutes or regulations; public officials may simply be induced to ignore violations or to make it easy for certain individuals (but perhaps not their competition) to ease their way through the red tape. The Knapp Commission to Investigate Alleged Police Corruption in New York City (Knapp 1972, p. 68) discovered that the second largest source of police corruption (organized crime was first) was

legitimate business seeking to ease its way through the maze of City ordinances and regulations. Major offenders are construction contractors and subcontractors, liquor licensees, and managers of businesses like trucking firms and parking lots, which are likely to park large numbers of vehicles illegally. If the police were completely honest, it is likely that members of these groups would seek to corrupt them, since most seem to feel that paying off the police is easier and cheaper than obeying the laws or paying fines and answering summonses when they do violate the laws.

Payoffs came from bars wishing to remain open after hours, from unlicensed liquor establishments, and so on. Judges and prosecutors also have considerable potential in this regard, and unless they are closely monitored, they can drop charges or reach unwarranted verdicts.

There is a closely related opportunity for corruption that has clear and direct applications to criminal law enforcement. In instances where illegal activities in the private sector (e.g., gambling and prostitution) could be prevented or severely limited through relatively inexpensive enforcement efforts, the public officials designated to prevent such activities are given discretion over a very valuable set of property rights that may be sold. These officials can allow certain individuals or groups to operate in the illegal market while preventing other potential participants from entering the market. In other words, they can sell monopoly rights to operate in a private sector underground market and then enforce that rights allocation.

Schelling (1971) argued that organized crime is really monopolized crime, and Rubin (1979) and Anderson (1979) contended that criminal firms possess market power because there are economies of scale in buying corruption from police and other governmental officials. Demsetz (1968), however, explained that economies of scale are not sufficient for such monopoly pricing. Exploiting a monopoly position requires entry restrictions, typically arising from governmental policy. In the case of underground markets, all entry is illegal; but if enforcement is easy, corrupt public officials can sell the right to extract monopoly rents to selected illegal firms. In this instance, an underground market for governmentally controlled property rights may be required for a private sector underground market to operate. It should not be surprising, then, that the Knapp Commission (1972, p. 68) discovered that

organized crime is the single biggest source of police corruption through its control of the City's gambling, narcotics, loansharking, and illegal sex-related enterprises like homosexual afterhours bars and pornography, all of which the Department considers to be mob-run. These endeavors are so highly lucrative that large payments to the police are considered a good investment if they protect the business from undue police interference.

Similarly, Ashman (1973, p. 11) contended that "organized crime cannot function without organized justice." He discussed nine judges shown to be on the payroll of crime organizations between 1958 and 1972 and wondered "how many more are still to be discovered" (p. 12).

The potential for corrupt use of police or judicial discretionary power extends well beyond the acceptance of money offered for protection or other favors. Criminals caught in the act may attempt to bribe or face extortion by a police officer. The Knapp Commission (1972, p. 69) reported "two smaller sources of payments to the police are private citizens, like motorists caught breaking the law, and small time criminals like gypsy fortune tellers, purse-snatchers, and pick pockets who may attempt to buy their freedom from an arresting officer." Police, judges, and other public officials control who is arrested, charged, and convicted, as well as the nature of the punishment. They are, therefore, in a position to sell the right not to be arrested, charged, or convicted, and the right to avoid severe punishment.²

²Public officials in a position to control entry into illegal markets can actually go beyond simply accepting bribes to protect a particular private sector organization. Some may be bold enough to enter the market themselves. Prison officials, for example, are in an

The potential for corruption in law enforcement arises for precisely the same reason that underground private markets can exist. Legal rights modifications prevent a competitive allocation of resources, creating potential rents for those willing to participate in illegal markets that are designed to avoid the laws. Under some circumstances, these illegal markets will have to involve corrupt law enforcement officials in order to exist, particularly when the market requires rights over which public officials have allocative discretion. Thus, those officials can extract part of the rents.

The Incentives for Corruption

Decisions are made on the basis of the information and incentives arising from the institutions within which the decisionmaker operates, and public officials react to their institutions' incentives just as private individuals do. Thus, relatively strong incentives to become corrupt are likely to result in relatively more corruption. The relevant incentives are those that Becker (1968) delineated in his economic theory of crime: the size of expected payoffs relative to a public official's alternatives, the likelihood of being detected and punished, and the severity of the potential punishment.

The Payoffs to Corruption

The attractiveness of the expected payoff to the individual public official from corruption depends on a number of factors. First, it must be emphasized that the potential returns to corruption will be weighed against returns to other activities that may have to be foregone if the official participates in an illegal market. Because they are not residual claimants, law enforcement officials cannot capture profits when they abstain from corruption and concentrate on enhancing efficiency in the production of law enforcement services. Of course, they may be able to move to a better paying public sector job because they perform

especially strong position with regard to the control of illegal markets in correctional institutions. Although there have been virtually no comprehensive studies of corruption by corrections officers, there have been numerous reports of their active participation in the sale of drugs. In like fashion, various judges have been charged with participating in a burglary ring, setting up a protection racket, pimping, extortion, and other "entrepreneurial" offenses beyond accepting bribes and obstructing justice (Ashman 1973). And while corrupt police typically argue

that money was thrown at them as they went about their day. . . . the public demanded corrupt cops, and it offered "clean" money . . . gratuities, favors, tips, gestures of good faith. . . .

Instead [however] the massive government investigations of organized police scandals . . . have been based on illegal, aggressive, police activities in areas of bribery, extortion, conspiracy, and perjury. Cops become bullies, demanding "dirty" money . . . [Brashier 1977, p. x].

their tasks well, but few public officials receive extremely large salaries. Officials may also gain satisfaction from the prestige they have and the power they wield, but their monetary rewards are likely to be small relative to comparable private sector employment. For instance, "some experts note that judicial virtue has been tested more than usual of late by failure of salaries to keep pace with the earnings of private attorneys" (Lacayo 1986, p. 66). Furthermore, many public officials are severely constrained as to how and how much they can *legally* earn above their public salaries. Thus, assuming that public sector employment was chosen because it was an official's best alternative (he or she is not likely to find a more attractive job in the private sector), any reasonably large expected payoff from corruption may be tempting.

The magnitude of the potential payoff from corruption is determined by several factors. The expected rents associated with the rights that the official is able to allocate are a primary determinant. Thus, *the greater the market distortion created by the laws being enforced*, the greater the potential payoff to officials doing the enforcing. Strict building codes or rigorous and geographically expansive zoning laws, for instance, generate the potential for large payoffs to corrupt officials (Gardiner and Lyman, 1978). In addition, when a market is entirely outlawed, the potential payments to public officials for protection of a black market monopoly position are enormous. The 1972 Knapps Commission Report (1972, p. 75) found evidence of payoffs to plainclothes police officers from gambling interests in New York to range from \$400 to \$1,500 *per month for each officer*. But gambling corruption is small time when compared to narcotics-related payoffs, which run into the hundreds of thousands of dollars. As one example, ten Chicago police officers were convicted in 1982 of taking \$250,000 in protection money from narcotics dealers (Anderson 1982, p. 17). A federal prosecutor was recently charged with receiving payments of \$210,000 along with a boat in exchange for tipping off a drug smuggler to the evidence-gathering activities (e.g., wire taps, hidden cameras) of U.S. Drug Enforcement Administration officers and to an upcoming indictment (Press and Starr 1986, p. 68).³

³When public officials go into the black market business themselves (see note 2) the potential payoff can be very large. Eleven Miami police officers were arrested for drug-related offenses in 1985 on charges ranging from cocaine trafficking and racketeering to robbery, aggravated battery, and murder (Anderson and Prout 1985, p. 32). One might wonder why public officials who turn to corruption do not always take over black markets rather than accepting bribes for allowing private markets to function without harassment. There are obviously considerations other than just the potential return that influence both the decision to take an illegal action and the type of action undertaken.

Similarly, if an official has allocative power over a number of different rights, the payoff could be large even though no single right has tremendous value. The Knapp Commission (1972, pp. 2–3) found that “while individual payments to uniformed men were small, mostly under \$20, they were often so numerous as to add substantially to a patrolman’s income.”

When the power to allocate rights is concentrated in the hands of one or a few officials, the corruption payoff to those individuals can be extremely large. Judges, for example, have near monopoly control over the dispensation of cases that come before them. Thus, one of the four judges found guilty as of January 20, 1986 (four others were still under indictment), as a consequence of “Operation Greylord” (a federal undercover operation to detect corruption in the Cook County court system) was convicted of, among other things, accepting bribes totaling \$400,000 in cash as well as eight automobiles (Lacayo 1986, p. 66). A New Jersey judge was convicted in 1982 of taking \$22,000 to release one convict from prison and put another on probation (Gest 1983, p. 42). Investigating officers have similar monopoly powers. If an investigator puts together a case against a particular criminal, he is in position to extort money or accept a bribe. The Knapp Commission (1972, p. 2) found that investigating detectives’ “shakedowns of individual targets of opportunity” frequently “come to several thousand dollars.”

On the other hand, if the power to influence a rights assignment is widely dispersed and, therefore, difficult to coordinate, the payoff to any one official is likely to be relatively small. Organized crime may have to bribe several police officers to ensure the relatively unmoled operation of their underground markets in drugs and prostitution, but this means that the payoff to any one police officer will be relatively small and less acceptable. (The payoff still may be quite attractive, given police salaries and other options, and the “problem” of small payoffs can be partially overcome by organizing the corrupt officials so monopoly power can be exploited.) Similarly, if a buyer of illegally allocated rights has several alternative sources (competitive corruption, if you will), then the return to any one corrupt seller is likely to be small. A pimp may be indifferent as to whether his prostitutes work in one or another of several geographically contiguous political jurisdictions with separate police precincts.

Monopolized corruption can arise because power is highly concentrated or because potentially competitive sources of corruption are able to collude. Organized corruption is not common. For instance, “plain clothes-men, participating in what is known as a ‘pad,’ collected regular bi-weekly or monthly payments amounting to as much

as \$3500 from each of the gambling establishments under their jurisdiction, and divided the take in equal shares" in New York City in the early 1970s. One set of indictments following the Knapp Commission report involved 37 plainclothesmen whose "pad" amounted to \$1,200 a man each (1972, p. 11).

An obvious determinant of the payoff to corruption is the private buyer's willingness to pay for an illegal governmental rights allocation. Naturally, buyers in the underground market for governmentally controlled property rights react to the same kind of incentives that participants in any illegal activity do. Is the potential return relatively large or small? Is the action likely to be detected? How severe might the punishment be if the activity is detected? Given the evidence of police and judicial corruption, a substantial number of private sector individuals obviously find the potential returns from illegal dealings with officials to be sufficiently high relative to the risk.⁴

The Probability of Detection

If there is a high probability that an act of corruption will be detected and that a corrupt official will be identified and prosecuted, then an official is less likely to become corrupt. There are several possible ways to monitor law enforcement activities. Individual citizens in general and taxpayers and voters in particular might make efforts to monitor individual officials. This is far from the major threat to corrupt officials because of rational ignorance and the free-rider problem (Benson and Baden 1985). An individual citizen's share of the benefits derived by eliminating one corrupt official is so small relative to the costs the citizen may bear that he has virtually no economic incentive to act independently as a monitor. Monitoring costs are quite high, because of bureaucratic secrecy (Benson 1989) and the sheer size and complexity of the law enforcement process. Simply learning enough about bureaucracy to be able to identify a corrupt official can take a tremendous investment in time and effort. Thus, for instance, "state's or district attorneys . . . can be tempted to breach the law for money or political favors. They have wide discretion in pressing—or dropping—investigations, and most of the decisions they make are not put on the public record. How common abuses of this power are, no one knows, because prosecutors' decisions are seldom probed" ("Corruption," 1982, p. 46).

Furthermore, the citizen has little incentive to join in a collective effort to monitor law enforcers and incur part of the cost because he can share whatever benefits such a collective action may generate without bearing any of the costs. There are several fairly active

⁴For examples, see (Sherman 1974, 1978).

government watch organizations that may pose some threat to potentially corrupt officials, but it is likely that these collective efforts will be relatively unsuccessful because of the free-rider problem. They simply will not be able to attract sufficient resources (contributions of time and money) to have a substantial effect. These organizations often claim to represent large constituencies, but they actually receive active support from only a small part of those constituencies. Thus, the general citizenry does not constitute a major threat to a corrupt criminal justice official.

The news media are one potential source of monitoring that does not necessarily fit into the preceding discussion. News does have some public good (or, more accurately, externality) characteristics, so there is a potential free-rider problem. But because consumers of news pay for much of what they consume indirectly through advertising, the undersupply of news services is not likely to be a significant problem. Nonetheless, there are reasons to expect that the news media will not be a major threat to most corrupt officials. Few members of the media devote much time to trying to *detect* the corruption of criminal justice officials. Corruption exposed by others is certainly reported, but there are relatively few instances in which news personnel have actively sought out illegal activity. This is partly because newspapers and other media require daily (or weekly) output, and most reporters must concentrate on news that can be obtained easily and quickly. Detecting corrupt officials and proving their guilt are generally difficult and time-consuming. Consequently, such efforts are likely to take place only when the potential payoff is substantial. A reporter might be willing to spend considerable time trying to demonstrate that an important public official is corrupt because the potential payoffs are large (e.g., front-page headlines, recognition by peers and citizens, and greater income opportunities), but he is unlikely to invest much time and effort to detect corruption by a low-level bureaucrat such as a police patrol officer. The resulting news story is simply not sufficiently valuable.⁵

Peers constitute a second source of potential monitoring. Most governmental institutions have established self-monitoring systems

⁵This discussion might imply that either (1) the news media are misallocating resources or (2) the citizenry must not care about political corruption. Neither of these implications should be drawn (Benson and Baden 1985). Some kinds of news (e.g., detection and exposure of political corruption) are very costly to produce relative to other kinds of news. Thus, it is possible that consumers of news have equally strong (or even much stronger) demands for reporters to expose political corruption but that these demands are not met because consumers are not strong enough to generate sufficient revenues to cover the cost of producing such news. In other words, a competitive industry produces what consumers demand as long as that demand is strong enough to cover costs.

and have actually discouraged (and in some cases even prevented) monitoring from external sources. Police departments have internal affairs divisions, and court systems have judicial review boards. Such monitoring is not likely to be very effective, however, and poses little threat to a corrupt official. No matter what the goal of a governmental official might be, any official has strong incentives *not* to expose corruption (or inefficiencies) within his governmental unit. Suppose that a police official derives his satisfaction by working for what he believes is the "public interest" and is convinced that what his bureau is doing is vital. If he reveals that his colleagues are corrupt, the unit's effectiveness may be jeopardized; the corruption may reflect badly on the organization and lead to reductions in the unit's budget and discretionary powers. This is not to say that such a public-spirited individual would condone corruption; he may try to suppress corruption internally. But it seems likely that such an official would prefer not to know about corruption and, therefore, would make only modest monitoring efforts.

The Knapp Commission findings attributed police officers' reluctance to bring evidence against or to effectively investigate fellow officers to "intense group loyalty." This in turn supposedly manifested itself in something like a "public-spirited" concern for the effectiveness and morale of the department, which produced

suspicion and hostility directed at any outside interference with the Department, and an intense desire to be proud of the Department. This mixture of hostility and pride has created what the Commission has found to be the most serious roadblock to a rational attack upon police corruption: a stubborn refusal at all levels of the department to acknowledge that a serious problem exists.

The interaction of stubbornness, hostility and pride has given rise to the so-called "rotten-apple" theory. According to this theory, which bordered on official Department doctrine, any policeman found to be corrupt must promptly be denounced as a rotten apple in an otherwise clean barrel. It must never be admitted that his individual corruption may be symptomatic of underlying disease.

This doctrine was bottomed on two basic premises. First, the morale of the Department requires that there be no official recognition of corruption even though practically all members of the Department know it is in truth extensive; second, the Department's public image and effectiveness require official denial of the truth.

The rotten-apple doctrine has in many ways been a basic obstacle to meaningful reform. To begin with, it reinforced and gave respectability to the code of silence. The official view was that the Department's image and morale forbade public disclosure of the extent of corruption and justified any who preferred to remain silent. The doctrine also made difficult, if not impossible, any meaningful attempt

at managerial reform. A high command unwilling to acknowledge that the problem of corruption is extensive cannot very well argue that drastic changes are necessary to deal with the problem [Knapp 1972, p. 6-7].

The commission wholly rejected the "rotten apple" argument, finding that a "sizable majority" of the department was involved in various corrupt practices (1972, p. 61). It is interesting to note that despite the widespread publicity of the 1972 Knapp Commission report the recent police corruption scandal in Miami has produced the following argument: "Investigators say they believe that only a small percentage of Dade County's police officers are involved in criminal activity. But authorities agree that even a few bad apples are more than enough" (Anderson and Prout 1985, p. 32).

Police are not the only bureaucrats with strong tendencies to shelter their own. Most states have judicial review boards or systems of some kind that typically involve judges monitoring other judges. "Some critics complain, however, that judges cannot be counted upon to act against their own colleagues. . . . [T]he idea of firmly rooting out judicial corruption remains an especially sensitive one . . . [with] worries about 'the manifest danger' of losing public respect" (Lacayo 1986, p. 66). The similarity between justification for not revealing police corruption and justifications for not revealing judicial corruption is obvious. The analogy actually goes even further. A story dealing with "a growing list of judges who have run afoul of a [supposed] national crackdown on corruption and abuse of power," for instance, led off with the claim that "the 'few bad apples' on the bench are feeling the heat" (Gest 1983, p. 42).

It must be emphasized that the kind of incentives and behavior discovered by the Knapp Commission (and many others) can easily be attributed to self-interested motives rather than to the more "public-spirited" objectives emphasized by the commission. A similar implication applies to the public official for whom power and prestige are major sources of satisfaction. Corruption in that official's organization may lead to reductions in budget, discretionary power, and prestige. Finally, an official who is corrupt or who wishes to keep the corruption option open obviously will not want to attract attention to the corruption potential of his position. This explanation is particularly compelling in the Knapp Commission case (and in many others noted in this paper), because corruption was so widespread that it involved a substantial majority of the department. In fact, the commission (Knapp 1972, p. 61) concluded that "police corruption was found to be an extensive, department-wide phenomenon, indulged in to some degree by a sizable majority of those on the force."

It is not very surprising, therefore, to find that in the relatively few instances in which an official has reported the corrupt activities of his colleagues, the official has often been ostracized by both colleagues and superiors, denied promotions, and ultimately forced to resign. When honest officials face such potential costs, it becomes even clearer why corrupt officials probably have little to fear from their peers.⁶ Thus, "with extremely rare exceptions, even those who themselves engage in no corrupt activities are involved in corruption in the sense that they take no steps to prevent what they know or suspect to be going on about them" (Knapp 1972, p. 3).

A third source of potential detection comes from other governmental units. One function of elected representatives is to monitor bureaucracies to see that they are doing what their constituencies want them to do. Such monitoring could conceivably be very effective (assuming that the representatives are not corrupt) if there are relatively few officials to monitor and if there are relatively few rights over which those officials have discretionary allocative powers. Of course, the incentives faced by elected representatives depend on the opportunity cost of monitoring. As more time and resources are spent in monitoring, less is available for such things as determining the nature and strength of constituencies' demands (Benson 1981b), meeting those demands through legislative enactment (since reaching agreement in a legislature consumes time and resources; Ehrlich and Posner 1974), and taking advantage of outside income sources and benefits associated with legislative service (e.g., political junkets; Crain 1979). Even if there were only relatively few officials and rights modifications to be monitored, it would not necessarily follow that legislative oversight would effectively reduce corruption. Clearly, if large numbers of governmental officials have substantial discretion in the allocation of rights arising from the taxing, regulatory, and law enforcement processes, legislative monitoring is likely to be an ineffective deterrent to corruption.

A legislature may choose to delegate the monitoring function to some other governmental unit. Results of the Federal Bureau of Investigation's corruption detection efforts, for example, have been quite visible. "Operation Greylord" produced initial expectations of indictments of 30 court officials, including ten circuit judges on charges of fixing cases, bribery, extortion, mail fraud, and racketeering in the

⁶The threat to honest officials can be even greater; they may become the target for revenge. The first police officer that Frank Serpico approached in 1966 regarding police corruption (a captain and head of the Department of Investigations) warned him that he might well end up "in the East River" and suggested that he should forget about the problems (Knapp 1972, p. 197).

Cook County Court system (Starr and Reese 1983, p. 21). As of January 20, 1986, eight judges had been indicted and four found guilty. But this was the culmination of a three and one-half year undercover investigation. How effective such investigative efforts are depends on how many resources are devoted to them. Law enforcement officers are expected to enforce a wide range of laws with limited budgets, so resources devoted to corruption detection generally should not pose a great threat to the overwhelming majority of corrupt officials. Expensive police efforts appear to involve a few, possibly spectacular arrests, perhaps in the hopes that the visibility of these actions will lead potentially corrupt officials to overestimate the risk of detection (but also because they often follow a highly publicized scandal, which results in a temporary political commitment to provide investigative resources). This may have the desired effect over the short term, but it may not work for long.

In many cases, the incentives of officials to monitor their counterparts in separate government bureaus, while perhaps relatively strong compared to the incentives for internal monitoring, are often quite weak. Prosecutors' offices, for instance, might appear to be in a good position to investigate police corruption, but they typically must rely on police officers to actually conduct an investigation. Perhaps more importantly, "in the case of the District Attorneys, there is the additional problem that they work so closely with policemen that the public tends to look upon them—and indeed they seem to look upon themselves—as allies of the police" (Knapp 1972, p. 14). The Knapp Commission found a general mistrust of the District Attorney's office by citizens because of the close ties between police and prosecutors. In fact, "this distrust is not confined to members of the public. Many policeman came to us [the Commission] with valuable information which they consented to give us only upon our assurance that we would not disclose their identities to the Department or to any District Attorney" (1972, p. 14). One implication of this distrust is that many prosecutors were also corrupt.⁷

When a government official has the authority to enforce a law that may generate a private sector underground market, that official has a valuable right to sell: the right to operate in the underground market without fear of arrest or punishment. The same argument applies when one official has the responsibility of preventing corruption by

⁷The Knapp Commission did not provide evidence of such corruption because its "mandate was limited solely to police," but it pointed out that their findings of widespread police corruption "doesn't mean that the police have a monopoly on corruption. On the contrary, in every area where police corruption exists it is paralleled by corruption in other areas of government" (1972, p. 5).

other officials. The official with the power to enforce laws against corruption also has a potentially valuable right to sell: the right to be corrupt. Furthermore, he faces the same kinds of incentives as officials who are supposed to prevent underground activities in the private sector. Thus, it should not be surprising that public officials pay off police officers in order to practice corruption (Sherman 1978, p. 6). Of course, this means that potentially corrupt officials may be relatively less concerned about detection than they would be otherwise, because there is at least the possibility of bribery to prevent exposure even when they are detected.

Another reason for a corrupt official to be relatively unconcerned with potential detection by other bureaus is that such investigations are costly. "Operation Greylord," which required over three years of undercover work, was described as a "massive, Abscam-type probe in which FBI agents posed as criminals, on-the-take attorneys and bagmen brokering bribes for crooked judges" (Starr and Reese 1983, p. 21). One group of FBI agents who were attorneys, for example, set up a 30-suite law office in the La Salle Street legal district. The cost had to run into the millions of dollars. New York State had a staff of 45 monitoring judges in 1983, at a cost of \$1.5 million a year (Gest 1983, p. 42). But most states, counties, and cities cannot commit such resources to monitor public officials, so they rely on existing law enforcement bureaucrats to monitor themselves and each other—at least until a major scandal erupts. Competing demands for common pool resources, however, provide those bureaucrats with a ready excuse for not actively searching out corruption. For instance,

Although district attorneys are empowered to conduct long-range investigations and initiate cases, Bronx District Attorney Burton Roberts testified in executive session that the current normal case load is so heavy that only limited time and manpower is actually available to conduct long-range investigations. This limitation of manpower forces the district attorneys to restrict their activities with respect to police corruption largely to the prosecution of cases that have originated elsewhere. Their approach remains necessarily case oriented, as they have not had the resources to identify patterns of corruption and take action for long-range control [Knapp 1972, p. 257].

When bureaucrats face excess demand and have substantial discretion over how to allocate their resources, they can frequently justify ignoring corruption, particularly if it is not brought to the public's attention. Whether the public is better served by using those scarce resources in pursuit of corruption or in providing other services does not appear to be a question that is raised.⁸

⁸But the fact that "district attorneys, working as closely as they do with police officers,

There have been numerous instances when a major corruption scandal has been exposed, and a special commission or task force is appointed to investigate the problem. The Knapp Commission followed the *New York Times* publicization of police corruption, which police officers Frank Serpico and David Durk had revealed two years earlier to high-ranking officials in the police department. In fact, “no general evaluation of the problems of corruption in the Department was undertaken until *The New York Times* publicized” Serpico’s charges (Knapp 1972, p. 203), and only then did Mayor John Lindsay form the independent Knapp Commission. A related source of potential corruption detection involves political candidates who run on a “good government” ticket. Such campaigns, however, also typically follow a scandal.

The key point to the “scandal reaction” approach is that any alternative regime that does not address the fundamental institutional issues is unlikely to be successful over the long run. First, those who are corrupt can appeal to a concentrated constituency for campaign funds. Second, and more importantly, without changes in the fundamental institutions the replacements for those who are convicted, forced to resign, or defeated are likely to degenerate into corrupt behavior similar to their predecessors.⁹

The Knapp Commission (1972, p. 61) noted that “the Commission’s findings [of extensive police corruption] were hardly new. As long ago as 1844, when the State legislature created the New York police department in the country, historians record an immediate problem with extortion and other corrupt activities engaged in by police.” The city has since been hit by periodic major corruption scandals, followed by special investigations, revelations of large-scale corruption, official expressions of outrage, and finally “reforms.” But in each case, “the basic pattern of corrupt behavior was never substantially affected and after the heat was off, it was largely back to business as usual” (Knapp 1972, p. 61). A major investigation of police corruption seems to take place about every 20 years in the city.¹⁰

also tend to be sympathetic to the police” (Knapp 1972, p. 256), for example, might affect the answer even if the question were asked.

⁹As Smith (1960, pp. 5–6) reported:

There has been a whole series of police reforms. . . . There are campaigns to “turn the rascal out,” and other campaigns to put them in prison. What has been the net result of all these excursions and alarms? Most of them have proved futile and quite without effect upon the ills which they were intended to cure. As often as not, law enforcement reformers have succeeded only in replacing one set of corrupt or incompetent officials with another set of the same or similar stripe.

¹⁰The Knapp Commission (Knapp 1972, pp. 61–64) revealed the following chronology

Given that New York's last major police scandal was in the early 1970s, the city should be due for another one in the next few years.¹¹ Indeed, a political corruption scandal appears to be breaking in the city at this time. New York is certainly not unique in this regard. A major investigation of police corruption took place in Chicago between 1970 and 1976 (Beigel and Beigel 1977), but the corruption clearly did not end. In July 1982, over 20 Chicago officers were at some stage of investigation (arraignment, indictment, or conviction) for drug-related charges (Anderson 1982, p. 17). Corruption does not end when the "rascals" have been thrown out; they are probably no more "rotten" than any other typical resident of the same city or state. It is the institutional setting that creates the opportunity and the incentives for corruption.¹² Discretion occurs because of the excess demands made on scarce, commonly held resources. People generally react to incentives and take advantage of opportunities. As Ashman (1973, p. 173) noted regarding judicial corruption, "the argument that there are just as many crooked television repairmen or auto mechanics and the like doesn't hold up. No repairman or mechanic or anyone but a judge has unlimited control over the freedom and property of each member of his community."

The Severity of Punishment

One other potential source of disincentives for corruption is the severity of the punishment imposed when the corruption is detected. Corrupt law enforcement officials are occasionally caught, even in

of corruption in New York City: in March 1894, the Lexow Committee found systematic police extortion and payoffs throughout New York City; in 1912, a gambler who reported police corruption to newspapers was murdered, leading to appointment of a special investigative committee by the Board of Aldermen, which found systematic monthly extortion from gambling and prostitution; in January 1932, a legislatively appointed committee found that "the Police Department was deeply involved in extorting large sums from speakeasies, bootleggers and gamblers"; in September 1950, the head of a New York City gambling syndicate, Harry Gross, was arrested, agreed to cooperate with the district attorney, and detailed a payoff system; and in December 1972, the Knapp Commission report was issued.

¹¹Given that the greatest threat to a corrupt official probably arises when some action is so blatant that a public scandal is created, the reason for choosing certain types of illegal activities over others becomes obvious. Accepting bribes to ignore black markets is much less likely to be detected and to create a scandal than active direct participation by a public official in the black market. Thus, the greater potential return is apparently offset by the greater risk in many cases. The probability of detection is a function of the type of corrupt act committed, as well as of the incentives facing potential monitoring groups.

¹²See William Brashler (1977, pp. ix-xii). The incentives and opportunities for corruption, by whatever name ("power," "discretion," "pressures," "temptations," "responsibility"), arise because of the politicized institutions of law enforcement.

the absence of strong incentives to monitor for such behavior, but the effects of punishment are difficult to assess because severity is a subjective concept. An official who obtains satisfaction from a prestigious position may view the embarrassment of public exposure and the loss of a job as severe punishment; another with attractive outside alternatives might view such a response to be a minor inconvenience. The same can be said of punishment as a deterrent to private sector illegal activity, however, so at least some inferences can be drawn from a comparison of the types of punishment that corrupt officials face relative to punishment given criminals in the private sector.

If the incentives of officials who detect corruption in their own organizations are to suppress information and downplay the significance of the corruption in order to avoid embarrassment and the potential loss of discretionary power or prestige, then any internally generated punishment is likely to be relatively mild. Mild punishment should make the corruption appear to be relatively less significant to those outside the organization (e.g., legislators, assuming they are not corrupt, and private sector government-watch groups), thus minimizing the attention that exposure might attract. Judicial-discipline boards hear more than 3,500 complaints of misconduct each year, an average of one for every eight judges in the United States (Gest 1983, p. 42). These complaints include charges of corruption, but the majority involve favoritism (certainly something that could reflect corruption), abusive language, and other forms of overt misbehavior. It must also be recognized that many complaints were unfounded, coming from persons disgruntled over losing a case, but many were valid. Through the 1970s, review boards dismissed virtually every complaint, averaging some action against only about a dozen judges per year (Gest 1983, p. 42). This rate apparently increased during the early 1980s. In 1981, 152 judges were affected by review board investigations (Gest 1983, p. 42). Of those 152, however, only 16 were forcibly removed from office, and 11 were suspended. Another 55 were officially reprimanded, and 70 simply resigned while under investigation and received no official punishment.

Retirement or resignation is frequently the route taken when a corrupt official is exposed (Ashman 1973, p. 202). A May 14, 1970, letter from the Law Department of the City of New York to the mayor (recommending the formation of an independent investigative committee, which became the Knapp Commission) pointed out that

under present law a City employee is required to give 30 days notice before his retirement becomes effective. The Police Department has found that in many instances this time period does not permit a proper investigation and disposition of charges of corruption against

members of the police force, particularly if criminal charges are under investigation. Other city departments have encountered similar problems with regard to allegedly dishonest employees seeking to retire and obtain their pension benefits [Knapp 1972, p. 266].

The ability to retire and avoid punishment that might be meted out by an internal investigation is both a reason why reliance of self-policing is unlikely to be effective and an excuse for not publicizing suspected corruption. Announcing that "the 'bad apple' resigned so there is nothing we can do to him internally and therefore there is no need to pursue the case further" is a convenient escape for bureaucrats wishing to avoid a departmental scandal.

When punishment arises as a consequence of detection by another organization or a private government-watch group, it could be relatively severe as compared to that generated within a corrupt official's governmental organization. In fact, however, public officials (particularly high-ranking officials) seem to receive relatively short prison terms and to be paroled relatively quickly.¹³ As the Knapp Commission reported (Knapp 1972, p. 253): "A dishonest policeman knows that, even if he is caught and convicted, he will probably receive a court reprimand or, at most, a fairly short jail sentence. Considering the vast sums to be made in some plainclothes squads or in narcotics enforcement, the gains from corruption seem far to outweigh the risks."

Increasing Criminalization, Growth of Law Enforcement, and Corruption

If historical trends toward more criminalization and discretion continues, as well as the growth of public enforcement bureaus (see Benson 1988, 1989), one can predict that corruption among law enforcement officials will rise. Such a prediction may appear to be trivial: The growth of law enforcement bureaucracies means more governmental employees, so that if some percentage of public officials are corrupt, corruption should increase. But this prediction goes beyond such an obvious relationship. Based on the preceding explorations of the institutionalized opportunities for and the incentives

¹³During the four and one-half years after the Serpico incident, the five district attorneys' offices in New York City initiated 136 police corruption cases involving 218 officers (Knapp 1972, p. 252). Of the 80 who had been sentenced at the time of the Knapp Commission report, 49 were freed or given suspended sentences and 14 of the 31 who received jail sentences faced terms of less than one year. Interestingly, from 1970 to 1973 there was also a 90 percent turnover in the rank of captain and above, apparently due to retirement, but virtually every criminal charge was brought against ranks of lieutenant or below (Sherman 1978, p. 7). The obvious implication is that punishment for police corruption is likely to be relatively light and is likely to decline as the official's rank increases. Ashman (1973, p. 7) found the same to hold for judges.

to commit corruption, we can anticipate that the number of law enforcement officials involved in corruption will rise at an increasing rate.

The relationship between increasing criminalization and the opportunities for corruption is obvious. Greater criminalization means that more property rights are controlled by governmental officials, so there are greater possibilities for the illegal sale of such rights. Incentives for participation in private sector underground markets increase, so enforcement officials have additional opportunities to accept bribes in return for altering rights structures or for allowing individuals or groups to operate illegally without fear of punishment. Clearly, if the incentives to commit corrupt acts do not change with growth in public sector law enforcement, we would still predict increasing corruption simply because of the expanded opportunities for corruption. But such growth also leads to stronger incentives to become corrupt.

Consider the effects of an expanding criminal justice system's implications for the potential payoff to corruption. This really means that private sector or market activities are increasingly constrained as property rights allocations gravitate toward public officials. The more severe the legal constraints on private markets and private behavior, the more valuable become the rights controlled by public officials. Correspondingly, the payment likely to be offered a corrupt official increases. Furthermore, as public officials acquire the power to make ever-greater numbers of rights allocations, the potential returns to corruption expand even if no single right has tremendous value. Because increasing criminalization leads to greater potential payoffs to corruption, the incentives to be corrupt become stronger as criminalization increases.

The growth in the size of the police, prosecution, and judicial sectors has two implications here. First, an expansion in the number of public officials with some discretionary powers to allocate rights means that monitoring for corruption should become increasingly ineffective. Monitoring efforts must be spread over more and larger agencies. Thus, detection of a corrupt public official becomes less likely, and each official's incentive to avoid corruption is reduced. Of course, if resources devoted to monitoring are expanded *proportionately* to public sector expansion, corruption incentives need not increase. But it is doubtful that this will occur. Relatively fixed legislative resources to monitor corruption must be spread over more and more potentially corrupt governmental employees. In fact, legislators' monitoring efforts are likely to decline in total as well as on a per official basis as its decisionmaking workload increases. The legislature might choose to delegate monitoring responsibilities to

another governmental organization, but I can think of no legislation that delegated power to enforce a new law and at the same time provided resources to monitor for possible corruption. There appears to have been some recent general increase in resources committed to control corruption (Gest 1983, p. 42), but this commitment falls far short of being proportional to the growth in government in general and in law enforcement bureaucracies in particular. At least in a relative sense, monitoring has been reduced. The incentives for private citizens to become involved with government-watch organizations should also increase, so private sector monitoring efforts may expand as government does. The free-rider problem, however, is still likely to stand in the way of any effective monitoring. Thus, detection becomes less likely as government grows and as incentives to become corrupt increase.

Directly related to the relative reduction in monitoring is the second implication of the growth of public enforcement agencies and the fact that detection of corruption becomes less likely. The risk of detection to individuals paying bribes declines concurrent with a reduction of risk to those receiving bribes. Thus, individuals become more willing to enter into underground transactions with public officials, while more opportunities for corruption become available. Furthermore, the reduced risk to bribe-payers is likely to make them willing to pay larger bribes for any right that a corrupt official offers for sale. The payoff to corruption increases, and corruption becomes even more attractive.

Many government officials would probably contend that these arguments are incorrect. They would point out the stepped-up effort and success of law enforcement authorities, particularly at the federal level, in detecting corruption during recent years. The U.S. Department of Justice's public-integrity section has been pursuing charges of corruption since 1976 ("Corruption Is Still a Fact of Life" 1982, p. 46), and the FBI's Abscam and "Operation Greylord" have been very visible success stories. Even state governments have become active in detecting corruption. Since California established the first judicial-conduct board in 1960, every other state has followed suit (Gest 1983, p. 42). A special section in the New York State attorney general's office has successfully prosecuted several hundred police and judicial officers. The official conclusion typically sounds like this: "Most experts believe there is less crookedness in law enforcement today than in the past" ("Corruption," p. 46), or "All in all, misbehavior on the bench stands a better chance today of being corrected than ever before" (Gest 1983, p. 42).

There certainly have been a number of scandals in recent years, but is the surge of judicial and police corruption cases evidence of the success of increased policing, which should imply that less corruption will occur? Or is it evidence of increased corruption? Certainly, if corruption increases as government grows, there is greater likelihood that some official will make a blatant mistake that brings him into the public eye and necessitates an official inquiry.¹⁴ The point is that as corruption increases the likelihood of scandal and politically motivated responses also increases. Thus, governments at all levels will put some additional resources into detecting corruption. These responses will still generally involve case-by-case investigations initiated by scandals, however, with little in the way of long-run changes in institutions and incentives. Ashman (1973, p. 174) explained that "the states have given increased attention to the judicial discipline problem and tried to establish methods for coping with it. But, whatever machinery exists, it is seldom employed. Judges and lawyers are loath to take on other sitting judges." The commitment of additional resources in the public sector does not guarantee that they will be used effectively, for all the same reasons that public sector employees are reluctant to report corrupt acts by their colleagues.

Officials steadfastly cling to the assertion that corruption involves a few "rotten apples" and is not an institutional phenomenon. Louisiana judge Thomas Wicker, in commenting on the large number of charges brought against judges over the last few years, claimed that "most judges are honest and conscientious. The discipline process is taking care of the few bad apples" (Gest 1983, p. 42). This kind of attitude implies that once the scandals die down, the bad apples will be out of the system and the high level of corruption exposure will decline. But the upward trend will continue, regardless of what officials claim. It appears that "except in circumstances where the problem reaches outrageous proportions, nobody monitors the progress of criminal cases to detect abuses of prosecutorial discretion; nobody raises money to support political campaigns of candidates who will eliminate police corruption; nobody watches the sentencing patterns of judges" (Neely 1982, p. 154).

Conclusion

How widespread is corruption among criminal law enforcement officials? If the arguments presented are valid, then it is impossible

¹⁴"Operation Greylord" grew out of widespread public suspicion of cases being fixed in the Chicago court system, which led the state's attorney's office to approach the FBI for help (Starr and Reese 1983, p. 21).

to answer this question, because most corruption is never reported. But Smith (1960, p. 13) believed that one of the features that stood out in his examination of U.S. police systems was "the prevailing influence of corruption." Sherman (1978, p. 7) examined four police scandals that resulted in large-scale investigations—Oakland, California, in 1955; New York City in 1970 (the Serpico/Knapp Commission); Newburgh, New York, in 1972; and "Central City" in 1974. He found that prior to the scandals police corruption was highly organized in all four cities. Most corruption arrangements involved more than one officer, high-ranking officers (including the chief in Newburgh), a range of corruption activities (e.g., vice protection, police burglary, and extortion or theft from arrested citizens), and strong linkages between corrupt politicians and corrupt police.¹⁵

When the scandals were discovered, new police executives were appointed with mandates for reform. There were criminal convictions (23 percent of Newburgh's officers were removed), and pressure was applied to high-level or long-time officers to retire (in New York there was a 90 percent turnover in the rank of captain and above in three years). "Reforms" were put in place and "other 'reforms' of earlier times which, in the current context, were thought to be conducive to corruption" were dismantled (Sherman 1978, p. 8). The deterrent effect of the scandal appeared to be very short-lived, with corruption returning to its pre-scandal level in about two years in "Central City." The strategies employed there did not change significantly from those that had been employed before the scandal. The other three cities did appear to suppress "organized" corruption for awhile, although some apparently had re-emerged by (or persisted through) 1978. And unorganized corruption that is less vulnerable to detection persisted despite the investigations. Sherman (1978, p. 12) concluded that "the low-visibility opportunities for corruption events inherent in police work make police organizations perhaps more likely than other organizations to have a continuing problem of misconduct." Other cities have similar characteristics to the four that Sherman examined, so there seems to be little reason to doubt that corruption among police is widespread. In all probability, "bribery and extortion rings exist in police departments all over the country" (Breshler 1976, p. xii).¹⁶

From some perspectives, of course, corruption may not be all that bad. As Becker and Stigler (1974, p. 6) pointed out, the desirability

¹⁵In fact, "politicians in all the cities but New York were reportedly arranging for police protection of vice operations" (Sherman 1978, p. 6).

¹⁶The same general conclusions hold for judges. See Ashman (1973, p. 5).

of the suppression of corruption “depends on whether laws are passed in the ‘social’ interest or to reward special interest groups. . . . For example, bribes that reduced the effectiveness of many housing codes, of the laws of Nazi Germany against the Jews, or of the laws restricting oil imports, would improve, not harm social welfare (although not as defined by the legislature).” But it is not clear that all corruption is this selective. Furthermore, perhaps we should be concerned with the moral foundation of a society that requires the corruption of public officials to achieve desirable ends.¹⁷

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¹⁷Three years after his appointment to the highest judicial position in England, Sir Francis Bacon was impeached, having accepted at least 28 bribes. He justified his actions by pointing out that “I usually accept bribes from both sides so the tainted money can never influence my decisions” (Ashman 1973, p. 3).

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