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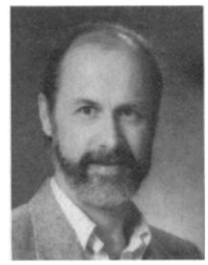

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Thoughts on Legislative Ethics Reform and Representation

Charlene Wear Simmons, *California Assembly Select Committee on Ethics*

This article explores the complex and contradictory nature of representative government and its impact on elected officials seeking to balance the public interest with their own private concerns. "Ethics in government" controversies occupy a gray area of public-private overlap which is particularly uncertain today as the press and the public's expectations of acceptable official behavior appear to be changing.[1] Popular pejoratives directed at elected officials include "conflict of interest," "special interest," and "undue influence" in contrast to the "public interest." These terms encompass key representational functions whose precise meaning is unclear.

The uncertainty lies in our inadequate understanding of the nature of representation, that complex interaction between governmental institutions and individual behavior. As Heinz Eulau contends, ". . . none of the traditional formulations of representation are relevant to the solution of the representational problems which the modern polity faces."[2] These conceptual limitations hamper our ability to craft "ethics" laws defining appropriate legislative behavior without distorting essential representative functions and responsibilities.

The following discussion explores two contradictory notions of representation: the "trustee" and the "delegate." Each model inherently favors particular decision-making biases and creates potential conflicts of interest. Important trade-offs are implicit in promoting one model over the other. The analysis also implies that rational and ethical decision-making can result from institutional processes which are designed to check and balance self-interested individual representative behavior.

Recent political scandals generally suggest a pervasive pattern of biased representational behavior rather than outright corruption. For example, questions of access were a prominent feature of the "Keating Five" investigation in the U.S. Senate[3] and the federal trial of former California Senator Paul Carpenter.[4] The alleged influence of "special interest" money on democratic political processes at all stages (campaign contributions, honoraria or speaking fees, gifts, post-employment lobbying) may have distorted, and in some instances corrupted, governmental decision-making. The financial advantages of incumbency restrict new alternatives.[5] As a consequence, many commentators believe that changes in current representational practices are required.

Both Congress and the California Legislature, as well as other state legislatures, are now in the midst of an important period of legislative reform, in which the rules defining acceptable institutional conduct are being substantially re-defined. Other democracies (e.g. Japan) are also groping with ethical crises and reform movements.

Unfortunately, our ability to understand and predict the ultimate outcome and effectiveness of institutional reform is limited. It's risky to change the rules of the game without understanding how and why they impact behavior and policy outcomes. As Aaron Wildavsky argues in a recent book review, ". . . we cannot alter or maintain moral standards unless we understand the institutional matrix in which they are shaped."[6] Without this understanding, debate over "ethics in government" can and has become mired in a mechanistic and legalistic quagmire. Will limiting legislators' terms,[7] their ability to introduce and vote on legislation,[8] earn outside income, or serve as an ombudsman for constituents, ensure the supremacy of the public interest over "special interests?" Most importantly and problematically, will better public policy result from these "reform" proposals?

The "unintended" side effects of past reforms suggest the cost of ignoring the problematical interaction between institutional structure and individual behavior. Consider the following examples. Limitations on individual campaign contributions have shifted power to organized groups and required elected officials and candidates to devote more time to fund-raising. Regulations enforcing California's Political Reform Act require candidates to have three bank accounts, a treasurer and a lawyer before filing for office, a daunting prospect for the average citizen which may discourage electoral competition. Reformers of Democratic Party delegate-selection rules over the last two decades have found that the unintended consequences of changing representational rules have

sometimes outweighed the intended benefits. Even Common Cause now wants to eliminate the Federal Election Commission.

Unfortunately, the discipline of political science does not offer sufficient guidance to the framer of legislative rules or the outside reformer. Perhaps this is because, as March and Olsen assert, political scientists have concentrated excessively on individual behavior by voters, legislators, lobbyists, and have ignored the institutional context in which that behavior takes place. March and Olsen argue that:

> Political democracy depends not only on economic and social conditions but also on the design of political institutions. Bureaucratic agencies, legislative committees, and appellate courts are arenas for contending social forces, but they are also collections of standard operating procedures and structures that define and defend values, norms, interests, identities, and beliefs.[9]

Both reformers and political insiders understand that substantial political change results from altering governmental institutions and the rules of the political process. Governmental institutions are not a neutral black box through which policy flows but rather are structures which actively facilitate certain types of outcomes. Aaron Wildavsky is correct when he contends that ". . . rules for decisions are part and parcel of institutions that guide and constrain behavior."[10]

Both reformers and political insiders understand that substantial political change results from altering governmental institutions and the rules of the political process.

Do contemporary proposals for institutional reform address the right problems or advance the correct solutions? Analysis indicates that some are just as likely to weaken representative institutions as to strengthen them. What happens to the balance between public and private interests when laws defining legislative conflict of interest are significantly changed? What is the effect of establishing a regulatory commission which has important powers over the political process and representative decision-making? How do incumbents, candidates, and parties react to changes in campaign financing? What institutional changes enhance and encourage voter participation? What impact do term limits have on institutional effectiveness? How does limited official access affect public policy? Political reform poses an important challenge to political scientists as academics and practitioners.

Historical Background

Tinkering with institutions is very much in the American tradition. The constitutional debates demonstrate a keen appreciation of human nature as it is shaped and molded by the mechanisms of government.[11] James Madison summarizes one of the key dilemmas in *The Federalist, #51*: "In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself."[12]

The writers of the Constitution sought to create a clockwork government controlled by mechanistic principles which "guide and constrain" human behavior: checks and balances, republicanism and federalism, direct and indirect representation. Madison explains that ". . . the constant aim is to divide and arrange the several offices in such a manner as that each may be a check on the other—that the private interest of every individual may be a sentinel over the public rights."[13] However, a century and a half later, the journalist muckraker Lincoln Steffans observed the practical difficulties of balancing public and private interests to achieve that control and concluded that: ". . . the organized society which we call the State is, like a ship at sea, forever straining to right itself and . . . it takes, and gets, as much force to keep it off the wind and wrong as we reformers think it takes, and does not get, to sail it straight."[14]

The constant tension between public and private interests, between democracy and capitalism, is a continuing problematical theme in American political history. Cyclical reform movements and institutional tinkering have only partially and imperfectly solved the problems which they were intended to address. Results often haven't met expectations in part because reformers tend to exaggerate their goals in order to gain support for their proposals. Unanticipated and unintended effects lead to later institutional changes.

For example, recent reforms have sought to strengthen state legislatures by improving their status and effectiveness (pay, staffing, length of term). Now, after two decades of a full time, well-staffed California Legislature, some commentators contend that the part-time, "citizen" legislator was preferable to an allegedly self-interested class of officeholders.[15] Some progressive reforms, such as at-large elections, have been successfully challenged in the courts as discriminatory. Others, such as institutionally weak mayors and non-partisan local government, have been accused of contributing to ineffective city government.[16] Open meeting ("sunshine") requirements increase staff influence over preliminary negotiations at the expense of elected public officials. The initiative process, intended to facilitate direct democracy, has become a tool of special interests in California.[17]

Former Senator Paul Douglas (D-Ill.), who chaired the U.S. Senate Subcommittee on the Establishment of a Commission on Ethics in Government, investigated a familiar litany of ethical scandals in the early 1950s. The reforms he subsequently proposed have a contemporary sound: legislators shouldn't accept costly gifts and entertainment, vote for measures in which they have an appreciable and direct private interest, nor exploit experience and friendships after leaving office. He recommended restricting total campaign expenditures, generating moderate community support out of taxes, encouraging greater support by small contributors, and granting free

air time to major parties and their candidates. His advice to legislators dealing with administrative agencies should have been read by the "Keating Five:" make an independent evaluation before approaching the bureaucracy, don't accept money for representing clients before government departments, don't bully officials, and stay out of criminal and tax cases.[18]

Douglas' proposals for legislative and campaign finance reform still dominate the agenda today. Why has it taken so long to frame and enact them? The answer lies partly in the self-interest of incumbent government officials and partly in the very real difficulty of crafting and enacting effective institutional reform measures. Many sincere legislators have strong and contradictory opinions about the importance, validity, and necessity of the sort of proposals suggested by Senator Douglas. More than self-interest is at issue. These reform proposals touch the heart of the representative process which defines American government.

Representation and Conflict of Interest

American government is "democracy by the people," as Abraham Lincoln characterized it, only in a symbolic sense, since several hundred million people cannot directly govern themselves. The appropriate definition comes from Jefferson: "government by the consent of the governed."[19] Walter Lippman describes the boundaries of popular power in a representative government:

> . . . the people are able to give and withhold their consent to being governed. . . . They can elect the government. They can remove it. They can approve or disapprove its performance. But they cannot administer the government . . . They cannot normally initiate and propose the necessary legislation.[20]

Representation is a mechanistic concept, requiring voters, candidates, elections, competition, accountability, and responsibility. However, as Hannah Pitkin points out, representation may also be symbolic, charismatic, authorize authority, imply a mandate or a trustee relationship, or echo the composition of the represented, a "quite amazing selection of rival, mutually incompatible definitions."[21]

The unclear, contradictory meanings of representation create practical obstacles to resolving legislative conflict of interest problems. To talk about a conflict of interest presupposes a separateness of interest, a dichotomy between what is a private interest and what is a governmental one. A conflict of interest: " . . . denotes a situation in which an official's conduct of his office conflicts with his private economic affairs . . . a public official should not act for the Government where his private economic interests are involved."[22]

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However, many analysts and officials deny the existence of a clear separation between a representative's interests and his or her constituents' interests. Walter Lippman argued that: "The representative is in some very considerable degree a delegate or agent . . . in the general run of mundane business which comes before the assembly, he is entitled, indeed he is in duty bound, to keep close to the interest and sentiments of his constituents, and, within reasonable limits, to do what he can to support them."[23] Former Senator Kerr (D-OK) emphasized this congruence: "They (the voters) don't want to send a man here who has no community of interest with them, because he wouldn't be worth a nickel to them."[24] Indeed, legislators may best "represent" their constituents precisely because they share the same social and economic backgrounds and interests.[25]

Many contemporary reformers and journalists view the concept of a "delegate" representative with suspicion, apparently assuming that an official's personal interest will supersede the public interest when the two become intertwined. Robert Fellmuth, Executive Director of the Center for Public Interest Law, testified that California legislators should eschew all non-family gifts and all outside income.[26] A California initiative's definition of illegal legislative conflict of interest prohibited a farmer from introducing farm legislation.[27] Recently enacted legislation prohibits California legislators from introducing or voting on "special" or "nongeneral" legislation in which they have a financial interest.[28]

A California initiative's definition of illegal legislative conflict of interest prohibits a farmer from introducing farm legislation.

In contrast to the "delegate," the "trustee" represents his or her constituents by relying on independent judgment, unbiased by narrow interests. Edmund Burke, the famous proponent of this concept, argued that: "Your representative owes you not his industry only, but his judgment; and he betrays, instead of serving you, if he sacrifices it to your opinion."[29]

Since "trustees" are distinguished by independent judgment, theoretically their decisions cannot be biased by "undue influence." This goal underlies many governmental "ethics" reforms. For example, federal conflict of interest regulations require public officials to place their private economic holdings in blind trusts, to give up many sources of outside income, and to disqualify themselves from participating in governmental decisions in which they have a financial interest. In California, local officials must disqualify themselves from voting on any decision which directly or indirectly affects personal financial interests.

Do rules and laws removing officials from the daily economic concerns of the average voter ensure

better governmental decisions? Well-educated "trustees" with professional middle class backgrounds may confuse the interests of their position and class with those of the public at large. This is why community power advocates and proponents of affirmative action argue that such "trustees" cannot represent the entire community. "Trustee" used in this sense can become a code word for unrepresentative government in the "delegate" sense. Alexis de Tocqueville observed that:

> It is no doubt of importance to the welfare of nations that they should be governed by men of talents and virtue; but it is perhaps still more important for them that the interests of those men should not differ from the interests of the community at large; for if such were the case, their virtues might become almost useless and their talents might be turned to a bad account.[30]

Well-educated "trustees" with professional middle class backgrounds may confuse the interests of their position and class with those of the public at large.

Contemporary reformers tend to be upper middle class professionals who favor the "trustee" model of representation.[31] They advocate organizational schemes facilitating professional regulation of the political process. Similar to earlier Progressive city reforms, current proposals give appointed commissions important authority over elected representative institutions. California's Fair Political Practices Commission and the Federal Election Commission regulate the electoral process. The recent Mayor's Commission to Draft an Ethics Code successfully proposed creating a Los Angeles Ethics Commission with authority over elected city officials. A series of California initiatives have unsuccessfully offered appointed commissions as "solutions" to legislative reapportionment.

Today's reform proposals advance during a period of time when the composition of California's electorate is changing rapidly. No one ethnic group will compose a majority of the electorate. "Trustee" restrictions on partisan representation and outside income may discourage low-income citizens from participating in politics, thereby actually impeding a representative ("delegate") legislature. The high cost of campaigning and complex regulatory requirements already pose daunting, and perhaps insurmountable, hurdles to low-income candidates.

Neither the "delegate" nor the "trustee" concept of representation intrinsically avoids the conflict of interest problems associated with self-interest. Representation inherently involves a mix of public and private interests and of "trustee" and "delegate" roles. Any realistic attempt to legislate conflict of interest standards must take this into consideration and must attempt to create a careful balance between the two. Robert Getz, in his book on "Congressional Ethics," aptly observes that ". . . the nature of the representative function and the unique character of legislative employment create serious, practical obstacles to the solution of congressional conflict issues."[32]

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Representation and the Public Interest

Efforts to reform governmental institutions and change official behavior respond to the continuing challenge of ensuring that governmental officials responsibly serve the public interest. However, the concept of "public interest" is exceedingly vague and dependent upon the perspective of the observer. E. E. Schattschneider contends that ". . . the public interest refers to general or common interests shared by all or by substantially all members of the community." Special interests, in contrast, ". . . are interests shared by only a few people or a fraction of the community; they *exclude* others and may be *adverse* to them."[33] Commonalty and inclusion, as opposed to particularity and exclusion, broadly distinguish between public and private interest. Beyond that, however, specific applications of those differences are unclear.

The U.S. Constitution establishes an institutional process which, according to *The Federalist,* should generally result in policy outcomes benefiting the general good: "In the extended republic of the United States, and among the great variety of interests, parties, and sects which it embraces, a coalition of a majority of the whole society could seldom take place on any other principle than those of justice and the general good. . . ."[34] If the mechanics work, then the process of representation should ensure the public interest. Yet something is clearly amiss, as indicated by a poll finding that Californians agree by a 2.5 to 1 ratio that " 'state government is pretty much run by a few big interests' rather than 'for the benefit of all the people.' "[35]

Part of the problem lies in defining exactly what is the public interest. Is it found in the latest poll, in editorial columns, or in the longer view of historians? Does it require an absence of self-interest? According to Walter Lippman, the ". . . public interest may be presumed to be what men would choose if they saw clearly, thought rationally, acted disinterestedly and benevolently."[36] Accordingly, perhaps only a "trustee" can identify and advance the public interest.

Alternatively, the public interest may be that which is defined by duly elected representatives after evaluating and compromising the necessary tradeoffs between social values and goods. As "delegates," representatives trade and choose between a multitude of interests to frame a decision in the public interest. Such a process-driven, brokered conception

may be necessary in a pluralistic, multicultural society. However, its validity is distorted by the fact that many Americans do not participate in the political process, limiting the range of viewpoints and options at the institutional bargaining table.[37]

There is a clear expectation, frequently stated, that the public interest is something beyond the daily policy choices made by our elected officials. If that is so, how do we find it, and what does it tell us about the nature of representation?

This dilemma was poignantly summarized during a lengthy debate at California's Fair Political Practices Commission (FPPC) January, 1990 meeting. The City of Signal Hill, like many small California cities, has found it difficult to function under the FPPC's regulatory definition of conflict of interest. In fact, the majority of the City Council is unable to vote on a significant land development because most council members live within the 300-foot distance from the development's boundaries which the FPPC has determined creates a conflict of interest requiring disqualification from voting.

At the FPPC hearing, the Mayor Pro Tempore of Signal Hill presented a petition signed by his neighbors asking that he be able to represent them on this important land use decision in spite of the location of his residence. In denying Signal Hill's petition, an appointed FPPC Commissioner asserted that the Commission couldn't change its regulatory standards because it, the Commission, represents the public interest—implying that elected local officials do not.[38]

Is there a public interest apart from that arrived at through the electoral process and, if so, can it best be discovered and articulated by appointed regulators? Do public officials comprise a separate class from the public, motivated by self-interest, incapable of discerning and advancing the public good: ". . . who, having grown accustomed to office and campaign perks, are more interested in self-preservation than in the city's future."?[39] If the will of "the people" is a distinct entity, articulated outside the governmental system, then elected representatives can not be relied upon to discern or advance the public interest. Institutional arrangements which promote "direct" democracy, such as the initiative and recall, thereby attain a higher level of legitimacy as unfiltered expressions of the popular will.[40] The fact that the initiative process in California has been largely appropriated by "special interests" has not diminished the appeal of this argument.

Is there a public interest apart from that arrived at through the electoral process and, if so, can it best be discovered and articulated by appointed regulators?

Political effectiveness depends heavily on ethical governmental decision-making. When elected officials enjoy public trust, they can afford to exercise the necessary leadership to advocate unpopular but needed policy initiatives. On the other hand, leadership is difficult and the narrow goals of special interests thrive when public apathy and cynicism weaken the political system. Successful institutional reform efforts may be extremely important to restoring this trust.

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The Process of Reform

Judging from the slow pace of governmental "ethics" reforms, policy which seeks to alter institutional procedures is among the most difficult to formulate and enact. Institutional reforms challenge existing methods of doing business and potentially alter important political relationships by re-allocating power. Governing officials understandably do not like to have the rules of the game changed when they are in the midst of it. They have successfully won public office and gained power by mastering existing practices and laws. They worry that changes will negatively impact their ability to compete and win in the future. "Unintended" consequences are a major concern.

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The intensely personal nature of legislative "ethics" reforms and their uncertain and uneven impact are major impediments to their enactment. Private debates over "ethics" reforms among elected officials reveal intense concern and insecurity over the reforms' uncertain personal and political impact. Legislators frequently pose technical personal questions rather than debate the larger policy issues; the personal outweighs the political. Financial insecurity and loss of power are reoccurring themes.

Elected officials who rely on their salary for income, thereby reducing the potential for outside financial conflicts of interest, may paradoxically be dependent on large campaign contributions and/or supplemental income in the form of honoraria or speaking fees. From their perspective, reform measures prohibiting or limiting campaign contributions and honoraria make political office a rich man's occupation. Post-employment lobbying limits also disproportionately impact this group; financial insecurity may require reliance on special interest contacts after leaving office. Thus officials who often support reformers on other issues may oppose "ethics" reforms.

Legislators debating "ethics" issues lack the usual decision-making cues which generally guide and influence policy-making in controversial policy arenas. Political parties do not provide clear directions to their members on governmental "ethics" issues. In fact, most reform and public interest groups carefully nur-

ture a non-partisan stance. Whichever party is in power is likely to perceive institutional reforms as a biased threat to an established power base. California reapportionment initiatives in the last decade illustrate this fact, since they have been principally supported by the minority Republican party.

Supporters and opponents of internal legislative reforms often do not share other ideological positions, impeding coalition-building. For example, a major 1987 proposal amending the federal Ethics in Government Act was sponsored by partisan and ideological opponents Senators Thurmond (R-SC) and Metzenbaum (D-Ohio). A liberal Democrat is as likely to support or oppose legislative reform proposals as is a conservative Republican. Thus the usual partisan means by which policy alternatives are organized, debated, and discussed by public officials do not provide guidance in debates over governmental ethics, leaving a political vacuum.

History indicates that bipartisan, committed institutional leadership is critical to enacting legislative reforms. House Speakers O'Neill and Foley provided essential leadership for passage of the 1977 and 1989 governmental "ethics" reform bills. However, there are significant internal disincentives to achieving such leadership. Legislative leaders succeed in part because of their ability to please the members who elect them. Handing out "perks" is an important mechanism for solidifying internal control. Ethics reforms, in contrast, cut back on legislators' lifestyles by decreasing gifts, meals, travel, etc. The important informal folkways within legislative bodies which define and validate relationships are created by custom and leadership practices and are resistant to change.

It is more satisfying, and less personally threatening, for legislative leaders and members to address "real" social problems than to advocate unpopular internal reforms. Thus a Member of the California Assembly asserted in floor debate that legislative "ethics" issues are of minor importance compared to problems such as drug abuse, poor public education, violent crime.[41] In response, advocates for internal reform argued that the legislature's inability to address these "real" problems is intimately connected to its need for institutional reform.

Legislative leaders frequently have responsibility for funding and managing legislative political campaigns and are thus particularly susceptible to conflict of interest charges. The same interests which contribute to campaigns also may have important interests in legislation. Increasingly, the public has come to feel that its interest is second to that of wealthy contributors. Brooks Jackson argues that: "The rising tide of special-interest money (is) changing the balance of power between voters and donors."[42] Despite this concern, efforts to reform the campaign financing system have not been successful.[43]

The dominance of "special interest" campaign funding weakens support for institutional reform. Power becomes decentralized when representatives can claim substantial independent funding bases, diluting the impact of central partisan control and legislative leadership. The private pressure system of organized interests has a definite economic bias: "The business or upper-class bias of the pressure system shows up everywhere."[44] In contrast, political parties must gather the support of broad coalitions of people in order to win elections.

Concerns about potential conflicts of interest resulting from large campaign contributions have been exacerbated by the savings and loan scandal. The fall-out is apparently affecting the manner in which many legislators fulfill their constituency service or ombudsman role (vis-a-vis the bureaucracy), perhaps for the better. Rep. Dennis E. Eckart (D-Ohio) told the *Washington Post:* "If some guy writes and says, 'I'm being audited by the IRS, can you help?' I'll write back, 'Too bad. Get a lawyer and call me from the penitentiary.' "[45]

A traditional argument against the imposition of new legislative standards of conduct is that legislators' periodic accountability to their constituents at election time is a sufficient check on ethical impropriety. This view dominated American legislatures until the 1950s and is still strong today. Congressional ethics committees were not established until after the scandals of the 1960s, and their procedures are still being developed.[46] Most state ethics committees and regulatory commissions have been created in the last fifteen years. Some legislators even argue that recent disclosure and regulatory requirements have contributed to the public's declining opinion of elected officials.

Do today's historically high re-election rates for incumbents indicate public approval for legislative institutions? Public opinion polls generally indicate that the reverse is true. Most people like their own representative but have a low opinion of legislators in general. Paradoxically, this situation may make it more difficult to enact institutional reforms, as each incumbent feels that his or her constituents approve of the job which he or she is doing. Institutional legitimacy and voter participation have declined while incumbency re-election rates have reached all time highs—political stagflation.

Conclusion

Questions about the nature of representation, the public interest, and conflict of interest lie at the heart of much of today's sometimes bitter debate over governmental ethics. Participants seriously disagree about the nature and shape of our representative institutions. Yet there is little recognition of this fact. Instead, discussion frequently centers on such trivial questions as: at what dollar level does a gift become corrupting ($50, $100, $250) and does it depend on who gives it? Without an understanding of the larger institutional context, "reform" proposals such as legislative term limitations and broad conflict of interest restrictions do not receive the scrutiny they require.

Both key legislators and reformers understand the importance of changing the rules of the political process. However, both groups may misunderstand the actual effect of various institutional reform proposals. Insiders are often convinced that the imposition of new rules will destroy their ability to function effectively and they may confuse self-interest with the public interest. On the other hand, reformers do not

adequately understand the institutional impact of their proposals, which may actually weaken the representative institutions which they seek to strengthen.

Reformers do not adequately understand the institutional impact of their proposals, which may actually weaken the representative institutions which they seek to strengthen.

The lack of an institutional context may help to explain why some previous reform efforts have eventually led to increased public disillusionment, press cynicism, and institutional malaise. Fifteen years after passage of Proposition 9, which extensively regulated California's political system, and twelve years after the Council of State Governments designated California's Legislature as the best in the nation, that Legislature's public standing is extremely low. A majority of the public apparently believes that California state legislators are corrupt.[47] Congress has experienced a similar roller coaster. Seventy five percent of the respondents in a June 1989 poll agreed that Members of Congress care more about special interests than about the public, 57% said that most representatives make money improperly using their office, and 66% opined that representatives care more about holding office than about the nation's interests.[48]

Were the regulatory reforms of the 1970s misguided or insufficient? Bruce Jennings contends that U.S. Senate "ethics" reforms have ". . . not successfully eliminated either conceptual vagueness or procedural controversy." He attributes this failure to partial reforms undertaken in response to scandals, instead of comprehensive, proactive reform. Jennings concludes that ". . . the politics of ethics reform contains an inherent dilemma: the same pressures that make reform politically possible also work to make that reform a reactive, piecemeal process, undertaken defensively and subject to erosion once the external pressures abate."[49]

Institutional arrangements clearly do matter tremendously. Otherwise powerful and astute political leaders would be more responsive to obvious public concern. The chasm today between the perspectives of some important public officials, the public, and reform groups in California is alarming. Los Angeles City Council President John Ferraro responded to reform proposals from the Mayor's Commission on Ethics by saying that, "We might as well quit and all plead guilty now . . . [and] Councilman Hal Bernson howled . . . We are not criminals."[50] A Member of the California Assembly angrily responded to the poll showing widespread distrust of state legislators: "I don't think there's anything we can do to deal with that kind of lie, and it's an absolute unadulterated lie."[51]

How has this chasm been created and why does it persist, particularly given what we think we know about incumbent behavior and self-interest? Widespread public concern with the responsiveness and accountability of public officials is evidenced in a number of initiative proposals seeking to limit terms, curtail conflict of interest, and reduce candidates' dependence on private campaign financing. The startling gulf between current elected political leadership and public opinion affirms, perhaps more than anything else, the complex and contradictory nature of representation and the importance of institutions in molding moral standards.

It's possible to become jaded and cynical, as have some commentators, from the constantly repeating theme of institutional corruption and reform in American political history. In the broadest sense, this repeating pattern probably is a natural outgrowth of the inherent tension between democratic government and private economic ownership. The ethics of democratic politics, which are to promote the common good and justice (according to Madison), necessarily conflict with the ethics of private enrichment promoted in a capitalist economic system. The balance between the two is always tenuous and at times becomes distorted.

To work in the area of governmental ethics is to agree with Hannah Pitkin when she contends that:

> Like many of the concepts that concern human social relations, representation embodies a persistent tension between ideal and actual practice, between intention and institutionalization, between substance and form . . . What is needed, and what is possible, is a continuing effort to create institutions and to train men, to revise institutions and to criticize men, in terms of our idea of representation.[52]

Ethical scandals and the reform movements which they spawn are natural and healthy mechanisms of institutional growth and renewal. The danger is that today's scandals will merely reinforce public cynicism, distrust, and apathy instead of challenging us to participate in creating a better and more representative democratic government.

Notes

1. Frank Sorauf opines that ". . . the public now expects politicians to behave better. . . . A lot of these kinds of things would have passed muster a generation ago, and they're not passing muster now." *Wall Street Journal,* January 30, 1990. p. 4.

2. Heinz Eulau and John C. Walhke, *The Politics of Representation.* Sage Publications, Beverly Hills, CA., 1978, p. 18. The authors assert that analysts must bridge the gap between individual behavior and institutional macrolevel construction in order to understand legislatures as representative institutions.

3. Senators Cranston, McCain, DeConcini, Glenn, and Riegle, who have been investigated by the U.S. Senate Ethics Committee for their intervention in the regulatory process involving the failed Lincoln Savings and Loan.

4. Assistant U.S. Attorney John Panneton contended in his closing argument at former Senator Carpenter's bribery trial that "Who to meet, who to talk to is an official act." " 'Sting' case heads to jury," *Sacramento Bee.* September 13, 1990, pp. A3, A4.

5. Brooks Jackson contends that, "The psychological, even subconscious, effect of money is to chill initiatives that donors don't want. As a practical matter, the outcome is the same as if votes had been sold outright." Brooks Jackson, *Honest Graft.* Alfred A. Knopf, New York, 1988, p. 109.

6. Aaron Wildavsky, "If Institutions Have Consequences, Why Don't We Hear About Them from Moral Philosophers,?" *American*

Political Science Review. Volume 83, no. 4, p. 1345.

7. Two initiatives establishing term limitations for elected California state officials were on the November 1990 ballot. Proposition 140 successfully imposed lifetime term limits of 6 and 8 years; Proposition 131 proposed 12-year term limits.

8. See Proposition 131 on the November 1990 California ballot.

9. James G. March and Johan P. Olsen, *Rediscovering Institutions.* The Free Press, New York, 1989, pp. 3, 17.

10. Aaron Wildavsky, op. cit., p. 1343.

11. See *Formation of the Union of the American States,* Government Printing Office, Washington, D.C., 1927.

12. Alexander Hamilton, John Jay, James Madison, *The Federalist.* Appleton-Century-Crofts, New York, 1949, p. 86.

13. Ibid., *Federalist* #57.

14. Lincoln Steffans, *Autobiography of Lincoln Steffans.* Harcourt, Brace and Company, New York, 1931, p. 567.

15. See, for example, numerous columns by *Sacramento Bee* columnist Dan Walters.

16. H. Eric Schockman, "Nonpartisan City Elections Produce a Leaderless Ship," *Los Angeles Times* February 4, 1990, p. M5.

17. See Eugene C. Lee, "Hiram Johnson's Great Reform Is an Idea Whose Time Has Passed," and Preble Stolz, "Initiatives Sap Courts and Threaten Reform," *Public Affairs Report.* Institute of Governmental Studies, Berkeley, CA, Vol. 31, No. 4, July 1990.

18. Paul H. Douglas, *Ethics in Government.* Harvard University Press, Cambridge, Mass., 1953, pp. 10, 61-64.

19. Cited in E. E. Schattschneider, *Two 100 Million Americans In Search of a Government.* Dryden Press, Hinsdale, Ill., p. 64.

20. Walter Lippman, *The Public Philosophy.* Mentor Books, New York, 1955, p. 19.

21. Hannah Pitkin, *Representation.* Atherton Press, New York, 1969, p. 7.

22. Robert S. Getz, *Congressional Ethics.* D. Van Nostrand Company, Inc., Princeton, NJ, 1966, pp. 3, 9.

23. Walter Lippman, op. cit., p. 48.

24. Robert S. Getz, op. cit., p. 58.

25. Hannah Pitkin defines this concept of representation as ". . . standing for something absent," in which political representation ". . . seems to depend on a descriptive likeness between representatives and those for whom they stand." She notes that arguments in support of proportional representation and mathematical sampling build on this concept of "accurate resemblance." (Arguments in favor of affirmative action also rely, to some extent, on this concept of representation). See Hannah Pitkin, op. cit., pp. 10, 11.

26. Assembly Select Committee on Ethics, April 5, 1989 hearing.

27. Proposition 131 on the California November 1990 ballot was defeated.

28. California Statutes of 1990, Chapter 84. "Financial interest" includes earned income and gifts over $250, investments in real property and business entities of over $1,000, or participation as an employee or director of a business entity (Government Code Section 87103).

29. Edmund Burke, cited in Hannah Pitkin, op. cit., p. 175.

30. Alexis de Tocqueville, as quoted in Marvin Zetterbaum, *Tocqueville and the Problem of Democracy.* Stanford University Press, Stanford, CA., 1967, p. 32.

31. California Progressive leaders were young, Protestant, college-educated professionals of north European background who shared conservative Republican political orientations. George E. Mowry, *The California Progressives.* Quadrangle Books, Chicago, 1963, p. 87-104.

Common Cause, today's principal institutional reform advocacy group, has a predominantly upper middle class membership. Andrew S. McFarland, *Common Cause.* Chatham House Publishers, Inc., Chatham, New Jersey, 1984, p. 28.

32. Robert Getz, op. cit., p. 2.

33. E. E. Schattschneider, *The Semi-sovereign People.* Holt, Rinehart and Winston, New York, 1960, p. 23, 24.

34. *The Federalist,* op. cit., p. 89.

35. *Los Angeles Times,* January 3, 1990, pp. A1, A15.

36. Walter Lippman, op. cit., p. 40.

37. See Peter Bachrach, *The Theory of Democratic Elites.* Boston: Little, Brown and Company, 1967.

38. California Fair Political Practices Commission, "Hearing to Adopt Regulation 18703.1 (Public Generally: Personal Residence in Small Jurisdiction), California Fair Political Practices Commission, January 9, 1990.

39. Barbara Blinderman and David Diaz, "Twice Should be the Charm for Politicians," *Los Angeles Times.* February 6, 1990, p. B5.

40. Hannah Pitkin examines the theoretical basis of this argument: "For Rousseau, representation could achieve freedom or self-government only if there could be some guarantee that the representative's will would always coincide with the actual will of the represented. But of course that is impossible." Hannah Pitkin, op. cit., pp. 9-10.

41. September 15, 1989 floor debate in the Assembly on SCA 32 (later Proposition 112 on the June 1990 California ballot).

42. Brooks Jackson, op. cit., p. 106.

43. See Bruce Cain and Daniel Lowenstein, "Can Campaign Finance Reform Create A More Ethical Political Process?" *Public Affairs Report.* Institute of Government Affairs, University of California, Berkeley, Vol. 31, No. 1, January 1990, p. 3.

44. E. E. Schattschneider, op. cit., p. 31.

45. Sara Fritz and Paul Houston, "With the New Accent on Ethics, Most Senators Tread Cautiously," *Los Angeles Times.* February 11, 1990, p. A19.

46. The Senate Select Committee on Ethics was established in response to the Bobby Baker case in 1964, while the House Committee on Standards of Official Conduct was created in 1968 after scandals involving Rep. Adam Clayton Powell and others. HR 3660, enacted in late 1989, institutes major procedural changes in the rules of both houses.

47. *Los Angeles Times,* op. cit.

48. Derived from *Editor and Publisher,* 6-10-89, as cited in *Ethics, Easier Said Than Done,* Vol. 2, No. 2, p. 6.

49. Bruce Jennings, "The Institutionalization of Ethics in the U.S. Senate," *The Hastings Center Report.* Special Supplement, February 1981, p. 6.

50. Jane Fritsch, "Ethics Bill: How a Compromise Unraveled," *Los Angeles Times.* February 12, 1990, p. B1.

51. *Los Angeles Times.* January 4, 1990, pp. A3, A27.

52. Hannah Pitkin, op. cit., pp. 21-23.

About the Author

Charlene Wear Simmons has worked on ethics oversight and reform issues for committees in the U.S. House and Senate and the California legislature. She was senior consultant to the California Assembly Select Committee on Ethics, which successfully enacted comprehensive legislative reforms. The Committee was eliminated this year under a 40% budget cut imposed by a term-limit initiative, Proposition 140.