

**The Supreme Court is considering whether ‘corruption’ can refer to a system as well as individuals. The definition makes all the difference when it comes reforming Washington.**

Fourteen years ago, there was an incredible debate on the floor of the United States Senate. It was John McCain who inspired the debate—and won it, in my opinion—yet fifteen years later, his victory seems all but forgotten.

The issue was “corruption.” McCain had just launched his presidential campaign in New Hampshire. Again and again in that campaign, he had called the institution that he served “corrupt.” As McCain said in [an important speech in Bedford, NH](#), “the enormous sums of money given to both parties by just about every special interest in the country, corrupts our political ideals, whether it comes from big business or from labor bosses and trial lawyers. ... All of our ideals are sacrificed. We are all corrupted. I know this is a harsh judgment but it is ... a fair one.”

Needless to say, not everyone in Congress was pleased with Senator McCain’s description. So on October 14, 1999, the leader of the displeased, Kentucky Senator Mitch McConnell, challenged

McCain to defend his charges. “For there to be corruption,” McConnell insisted, “someone must be corrupt.” So who, McConnell asked McCain, was corrupt here? Name names. “I just ask my friend from Arizona what he has in mind here?”

McCain took the floor to answer McConnell’s question: His claim, McCain insisted, wasn’t personal. It wasn’t about particular people doing particularly corrupt things. (“I refuse to ... say that any individual or person is guilty of corruption in a specific way.”)

Instead, McCain’s focus was on the corruption of the system itself. “There is a pernicious effect of money on the legislative process,” he argued. And it was “this system,” that was the target of his attacks. (“I am attacking a system. I am attacking a system that has to be fixed.”) “This system,” he insisted, “makes good people do bad things.” Which people in particular? “All of us,” McCain argued, “are corrupted by it because money buys access and access is influence.”

McConnell’s response to McCain signaled that he was either constitutionally obtuse or stuck in a sophomore debating club. “How,” he asked, “can it be corruption if no one is corrupt? That is like saying the gang is corrupt but none of the gangsters are. If there is corruption, someone must be

corrupt.”

McCain disagreed. “That is not right. It is a system. It is a system that has violated the process and has therefore caused the American people to lose confidence and trust in the Government.” It was the system that had become corrupted, not the individuals within it.

This debate about the meaning of the term “corruption”—whether it can apply to a “system” as well as individuals—is fundamental, and continues to this day. The Supreme Court has before it a critically important “campaign finance case” ([McCutcheon v. F.E.C.](#)) that turns upon the meaning of the term “corruption.” If “corruption” is only individual—to echo Senator McConnell, “if there is corruption, someone must be corrupt”—then aggregate limits on campaign contribution are likely to fall. But if “corruption” can refer to “a system,” in McCain’s words, or to an institution—what we at the EJ Safra Center for Ethics call “[institutional corruption](#)”—then even if none of the “gangsters” are corrupt, the institution still could well be. The complaint then is not about bad people doing bad things. The complaint is against a bad system, which drives good people to behave in ways that defeat the objectives of the system as a whole.

This battle between individual corruption and institutional corruption is not limited to the apologists for the current system. Indeed, it flourishes even among the current system's strongest critics.

[Represent.US](#) is an activist organization fighting corruption in Washington. It has created (with the help of [Trevor Potter](#), a Republican, and former Chairman of the FEC, [Jack Abramoff](#), a Republican and former lobbyist, and me, a former Republican, with the word “former” strongly emphasized) the [American Anti-Corruption Act](#), perhaps the most ambitious reform proposal to address the “corruption” in Washington in a hundred years.

But what is the “corruption” that the AA Act means to reform? Though at times, [Represent.US](#) has followed the McCain line—attacking the system of corruption that has evolved within DC—in its most recent work, the group has become positively McConnell-esque—except that unlike McConnell, [Represent.US](#) actually believes there is widespread corruption in the quid pro quo sense, while McConnell (and I for that matter) believe there is not.

Congressman [Jim Himes](#) (D-CT) is [Represent.US](#)'s latest target. This former Goldman Sachs partner

has frustrated many progressives by working hard to deregulate Wall Street. In a [completely tasteless online ad](#) sponsored by Represent.US, a fake lobbyist approaches Himes at an event carrying a bag full of cash. He opens his conversation by thanking Himes for “taking the lead” on the Wall Street deregulation bills. Himes responds that “Well, I don’t hear that often.” But then the fake lobbyist “accidentally” spills wads of cash onto the floor. Himes, appropriately enough, walks away from the fake lobbyist without saying a word. Security quickly escorts the fake lobbyist out of the event.

This ad is wrong, because its conception of corruption is wrong. Jim Himes is not “corrupt” in the sense that McConnell means. He works within a corrupt system, in the sense that McCain tried to explain. Within that system, members must fund their campaigns in ways that certainly destroys the integrity of the system. But this isn’t the cash-for-favors culture of the Gilded Age. The “system,” as McCain had explained, certainly destroys the “integrity” of Congress. Quoting Webster’s, McCain rightly argues that “corruption” means “the impairment of integrity, virtue or moral principle.” But you don’t need to allege quid pro quo bribery to prove that the “integrity” of Congress has been impaired. What you need are a pair of eyes, or a paycheck that doesn’t depend upon the survival of

the existing system.

The strategy is also wrong for a more fundamental reason: It can't work. If you're going to successfully call members of Congress "criminals," they actually need to be criminals. But Members of Congress are not criminals. They may well be responsible for the loss of trust that their institution has suffered, and no doubt they are pathetically weak for doing nothing about it. But there is a difference between Randy "Duke" Cunningham (the disgraced former congressman and "TOPGUN" pilot convicted of bribery) and Jim Himes—one is the exception, the other is the rule. And so when ordinary people, even those (like me) furious about "the corruption of DC" see people wrongly called criminal, it weakens their willingness to use the perfectly correct language of Senator McCain: "corruption." If even anti-corruption activists can't distinguish between the corruption McCain described and the corruption McConnell denied, then this fight is really lost.

Americans are not stupid. If we do the hard work to explain the sense in which Congress really is corrupt, it's not as if Americans will then say, "oh that's ok. I have no problem with that." Instead, as McCain saw in 2000, and as Obama saw in 2008, focusing America not upon criminals but upon the good souls who have allowed "the system" to be

corrupted is a perfectly effective way to rally support for change.

Then all we would need is a “reformer” willing to carry through.