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IT'S YOUR TURN

Commentary

Viewing Political Corruption More Broadly

By Lee H. Hamilton

Earlier this year, veteran political writer Thomas Edsall reported an eyebrow-raising fact about Americans' views toward government. Polling by Gallup, he noted, found that the proportion of Americans who believed that corruption is "widespread" in government had risen from 59 percent in 2006 to 79 percent in 2013.

"In other words," Edsall wrote, "we were cynical already, but now we're in overdrive."

Given the blanket coverage devoted to public officials charged with selling their influence, this shouldn't be surprising. Former Virginia Gov. Bob McDonnell and his wife were convicted in September of violating public corruption laws. Former mayors Ray Nagin of New Orleans and Kwame Kilpatrick of Detroit were good for months of headlines. So were Republican Rep. Rick Renzi, convicted last year on influence-peddling charges, and Democratic Rep. Jesse Jackson Jr., who pled guilty to charges of misusing campaign funds.

If you add state and local officials who cross the line, it might seem that we're awash in corruption. Yet as political scientist Larry Sabato told The New York Times, that's more perception than reality. "I've studied American political corruption throughout the 19th and 20th centuries," he said, "and, if anything, corruption was much more common in much of those centuries than today."

Nor have the numbers over the past couple of decades risen. In 1994, according to the Justice Department's Public Integrity Section, 1,165 people were charged and 969 were convicted in public-corruption cases. Last year, 1,134 were charged, of whom 1,037 were convicted.

Corruption is hardly a negligible issue. Americans rightly have very little tolerance for public officials who are on the take. Officials who violate the law in this regard should face criminal prosecution and incarceration.

But what's notable about our corruption laws is how narrow they've become. This point is driven home by Fordham Law School Professor Zephyr Teachout in her new book, "Corruption in America."

"As a matter of federal constitutional law," she writes, "corruption now means only 'quid pro quo' corruption." Prosecutors today have to prove an intentional exchange between "briber" and public official, in which the official receives a benefit for taking action.

Teachout argues that our Founders were quite resistant to public behavior promoting private interest. She quotes George Mason, for instance, arguing against giving the president the power to appoint key officials: "By the sole power of appointing the increased officers of government," Mason insisted, "corruption pervades every town and village in the kingdom."

As late as the second half of the 1800s, American society was alarmed by the notion that private individuals might seek to influence government on their own or others' behalf. "If any of the great corporations of the country were to hire adventurers ... to procure the passage of a general law with a view to the promotion of their private interests, the moral sense of every right-minded man would instinctively denounce the employer and the employed as steeped in corruption," the Supreme Court declared in 1874.

We have another word for "adventurers" these days. We call them lobbyists.

Americans remain uncomfortable with "corruption" as our forebears viewed it. A hefty majority believes that government is run on behalf of a few big interests. And Congress, whose ethics committees have not been rigorous in looking for misconduct that brings discredit on their chambers, has contributed to that view.

I would hardly contend that all who seek to promote their private interests are corrupt. But I do think the Founders had a valuable insight when they saw that a focus on private concerns could lead to neglect of the common good.

I have the uneasy feeling that too many politicians are self-absorbed, failing to put the country first and using their office to promote their private interests. Our Founders had very firm ideas about the importance to the nation of "virtue" in a public official – and they were thinking expansively about the basic standards of public accountability.

Maybe it's time we looked to them for guidance, and not think of corruption only in the narrow sense of violations of specific laws or precepts, but more broadly in terms of failing to pursue the common good.

Lee Hamilton is Director of the Center on Congress at Indiana University. He was a member of the U.S. House of Representatives for 34 years.

COURTESY DORN'S CLASSIC IMAGES

Two River Moment

Dating back to 1717, the Colts Neck Inn in Colts Neck was a Revolutionary War site that functioned as a tavern and stagecoach stop on the Burlington Path. Today the landmark building serves as a restaurant called the Colts Neck Inn Steak & Chop House.

Developments in Family Law

By John P. Paone, Jr., Esq. and Megan S. Murray, Esq.

For over 30 years, New Jersey courts recognized the right of an unmarried individual, living in a marital type relationship, to seek financial relief from his or her significant other upon the dissolution of the relationship. This claim is called "palimony" and is based on a promise by one party to support the other party for life. In most cases, the promise for support is in consideration for services performed by the other party, whether it be in the form of providing emotional support; taking care of the household; caring for children; or some other service performed for the benefit of the relationship.

In 2010, New Jersey enacted a new law that requires all promises for support between unmarried cohabitants be in writing and reviewed by independent counsel for both parties. In other words, verbal promises for support between unmarried couples are unenforceable. This change went largely unnoticed by the public, but what it did was essentially spell the end to palimony claims unless couples put their agreement into writing.

The question not addressed by the new law is whether it would apply to couples who were already living together. These parties, who in some cases have been living together for over 20 years without the benefit of a writing of any kind, were without guidance as to how the 2010 law affected their legal rights.

Recently, the Supreme Court answered this question in the decision of Maeker v. Ross, decided on September 25, 2014. In Maeker, the parties began a romantic relationship in 1998, and Ms. Maeker moved into Mr. Ross' home the following year. The parties resided in a relationship akin to marriage until 2011, during which time Mr. Ross supported Ms. Maeker – paying for 100 percent of her living expenses – in exchange for Ms. Maeker performing all duties asked of her, including cooking, cleaning, companionship, and taking care of the household. During the parties 13 year relationship, Mr. Ross repeatedly promised to support Ms. Maeker for life. But nothing was put in writing. In 2011, Mr. Ross ended his relationship with Ms. Maeker, cut off all ties with her and stopped contributing to her financial support in any way. Ms. Maeker thereafter filed a complaint in the family court seeking palimony from Mr. Ross based on his oral promise to support her for life.

The trial court held that Ms. Maeker had a valid claim for palimony based on the oral promise for support, as the promise for support was made prior to the 2010 law requiring promises for support to be in writing. The appellate court disagreed, holding that the new law invalidated oral promises for support, whether made before or after the passage of the state. The Supreme Court was called upon to settle the dispute. It did so, making clear that that oral promises by one party to provide support to the other party before 2010 are not invalidated as a result of the passage of the 2010 law. Rather, only oral promises for support made after the new law was passed are unenforceable unless thereafter memorialized in writing. Under the circumstances, the Supreme Court held that Ms. Maeker – who was promised support for life by Mr. Ross prior to the passage of the new law – could pursue her claim for palimony.

The Maeker case will allow individuals involved in long-term relationships prior to the passage of the new law to seek palimony based on an oral promise for support. Individuals who commenced living together after the 2010 palimony law without the benefit of marriage, need to memorialize their agreements in writing, reviewed by independent counsel, for those agreements to be enforceable. Individuals in a marital-type relationship or who were involved in a marital-type relationship where an enforceable right to palimony is at issue should discuss their case with their attorney for advice as to how the Maeker decision may impact upon a potential palimony claim in their case.

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