BEYOND IDEALISM
Democracy and Ethics Reform

DONALD J. MALETZ
JERRY HERBEL
University of Oklahoma

The effort to oppose corruption has brought in recent decades a heightened emphasis on ethics, the establishment of official ethics codes, the creation of the first government agencies explicitly authorized to enforce ethics, and even the creation of ethics committees in Congress. Dennis Thompson has taken the lead in advocating and analyzing the increased attention to ethics, and yet one of his more recent studies draws attention to some "paradoxes" inherent in the pursuit of ethics in government. We take issue with Thompson's argument that ethics is in some sense the most important of all policies. The hope for "ethics in government" may only be satisfied at a very modest level through the work of the current ethics agencies, the enforcement of ethics in government can impose important costs on the ethics project itself, and the democratic processes of government may limit what we should do to constrain the power of self-interest.

Our purpose in this article is to bring together two quite different elements of the ethics issue and to see what can be learned by considering them jointly. First, we want to draw attention to the reflections of a leading ethics advocate and theorist, Dennis Thompson, on some special difficulties in maintaining ethics as an ongoing governmental project with real effects on the behavior of officials and the perceptions of the public. Thompson has provided important theoretical guidance for those who believe that ethics has a serious place in government and specifically in public administration. Furthermore, he has concerned himself with the practical implementation of ethics rules and, in a recent study of the paradoxes of government ethics, has considered what happens when ethics enforcement programs become standardized and routine. Second, we attempt to take an overview of the programs for ethics enforcement in the administrative arms of the federal and state governments and of the Congress. This review helps to reinforce Thompson's argument that there is a sort of paradox connected with governmental ethics programs. Third, however, the conclusion of our argument takes issue with Thompson's proposed resolution of the paradox and suggests instead a different way of understanding what recent experience teaches us about the limits of ethics reform.

AUTHORS' NOTE: *Opinions expressed in this article are those of the authors and not the Department of Defense or its components.*

AMERICAN REVIEW OF PUBLIC ADMINISTRATION, Vol. 30 No. 1, March 2000 19-45

Two of Thompson's articles, both published in *Public Administration Review*, define the parameters of the issue we want to address. In the first, Thompson (1985) challenged those who would deny the importance of administrative ethics, defending the possibility of ethics in this field against those who preferred to rely on neutral competence or on an impersonal priority of organizational structures. This article was a principled defense of the validity of concern with ethics, working out a careful argument for the legitimacy, practicality, and even public utility of independent acts of ethical judgment by officials within modern public organizations. But this very committed plea for a revival of administrative ethics was followed 7 years later by an article in the same journal titled "Paradoxes of Government Ethics" (Thompson, 1992). The latter article still insists, to be sure, on the value of a heightened emphasis on government ethics. Yet, there is a distinct cautionary note sounded by the title, if for no other reason than that it concedes there is a paradox that requires address. In this second article, Thompson sets out to examine this unanticipated paradox and to rescue government ethics from charges that the practice of enforcing ethics regulations may be undermining the ethics project itself.

The paradox of which Thompson writes is certainly not one of open, blatant ineffectiveness. To the contrary, there has never been a time in our history when ethics has been a more direct object of governmental activity. Not only do we now have an official ethics agency in the federal executive branch, but every state and many cities now maintain agencies or commissions that concern themselves with the ethics of officeholders. When Thompson wrote about the paradoxes in 1992, he reported that the Ethics in Government Act of 1978 had produced an Office of Government Ethics (OGE) with more than 50 support staff. Through its liaisons in executive branch agencies, the designated agency ethics officers, the total number of federal personnel employed on ethics issues full-time had reached 170, while more than 7,100 had part-time responsibilities. The main activity of these ethics officers in OGE and the liaisons in the agencies was "counseling and training on ethics," which he estimated was provided to between 400,000 and 600,000 federal officials annually (Thompson, 1992, p. 254). There has, of course, been modest growth since that time, as we explain below. The movement seeking to promote ethics in government, in short, has apparently been successful beyond what any idealist might have imagined 50 years ago.

Yet, despite this apparent success in passing laws and even building agencies, Thompson sees a "paradox" in the ethics situation today and he is right to do so. At the heart of the problem is a disjunction between the high expectations guiding the ethics reform movement and a certain trivialization of ethics in the result. The extensive government counseling and training effort at the federal level is chiefly devoted to providing instruction about avoiding conflicts of financial interest. The Ethics in Government Act of 1978 requires that federal officials at a certain level fill out forms annually about their financial interests and that they avoid conflicts of interest by refusing all but the most trivial gifts offered to them

by reason of their position. As a result, ethics issues for many federal officials threaten to become synonymous with burdensome and repetitious paperwork and with a climate of small-minded suspicion that seems to presume they are easily corrupted.

We tend to believe, and Thompson certainly argues, that the demand for more concern for ethics originates in a high-minded concern to purify public life, a wish for genuinely disinterested public servants, and a pronounced hostility toward corruption. But to those who are the object of regular OGE attention, ethics may seem a routine reporting requirement at best and a time-consuming distraction from important policy issues at worst. This, then, is one example of a paradox of government ethics, to borrow Thompson's rather strong term; or perhaps it might be better called an example of the conflicting results coming from the ethics reform program. The public has demanded more attention to ethics in government, and both national and state legislatures have responded by instituting programs in pursuit of this goal. The demand has led to public action to codify, supervise, and enforce standards of ethics on a scale unprecedented in our prior historical experience. Yet the officials on the receiving end of these efforts regard them as trivializing, and there seems ample reason to believe these programs have not succeeded in fostering public confidence in the quality or integrity of public officials (Mackey, 1996).[1] This is yet another indicator of results conflicting with our expectations. To borrow Thompson's term again, we need to ask if the paradox of government ethics is one in which our expectations are unrealistic or one in which the implementation of ethics reform has been deficient. Is it a paradox caused by inadequate understanding of the mission on the part of those who fall under the ethics rules or on the part of the public at large?

ETHICS IN THE SERVICE OF DEMOCRACY?

After describing a certain disillusionment about ethics within government circles, Thompson's "paradoxes" argument attempts to develop a framework for dealing with it. In essence, he recommends trying to convey to officials in government a perspective on ethics that will explain why they must learn to accommodate the procedures about which they complain. Ethics as it pertains to public life is, he explains, distinct from ethics in personal face-to-face matters. In personal dealings, we concern ourselves with the expression of moral character and with attempting to "make people morally better." Political ethics, on the other hand, "arises from the need to set standards for impersonal relations among people who may never meet, and it seeks only to make public policy better by making public officials more accountable" (Thompson, 1992, p. 256).

The rules that we need for guidance in these impersonal relationships cannot be simple, cannot be derived directly from personal morality, and are not necessarily congruent with the canons of private virtue. Above all, we need to accept that government ethics is concerned with creating a certain appearance of

probity. It seeks methods to give the public reassurance that government officials are not corrupt. The audience for government ethics is a vast public that has little if any personal connection with the officials who govern and that therefore lacks firsthand knowledge of character. It is more likely than not to be suspicious of those who enter the higher offices. Government ethics, Thompson (1992) argues, aims to foster a belief that

> officials are making decisions based on the merits. If citizens have this assurance, they are less likely to raise questions about the motives of officials, are themselves more likely to concentrate on the merits of decisions and on the substantive qualifications of the officials who are making the decisions. (pp. 255-256)

Creating that appearance is essential to building citizen confidence in government; it "makes democracy safe for debate on the substance of public policy." This view, Thompson concedes, manages to treat ethics not as an end in itself but as a means toward the healthier functioning of democracy. Ethics in this view becomes instrumental to larger public concerns, above all to "the strengthening of the democratic process" (pp. 255-256).

The response that Thompson offers, then, to those in government who find the ethics procedures annoying or trivial is to suggest they see the larger point of the effort. They must understand that the cultivation of the right kind of appearances is the heart of the problem of political ethics. From this point of view, he can go so far as to say that "appearing to do wrong while doing right is really doing wrong." He means that effective democracy can only build civic confidence by means of focusing sustained attention on the explicit cultivation of the appearance of fairness and disinterestedness. The purpose of government programs in support of political ethics should be to foster an awareness that "the rules of government ethics are an integral part of our democratic process"; to object to such rules is to "stand in the way of making government more democratic" (1992, p. 255). Ethics officials should grasp this point as they pursue their duties and should, above all, devote themselves to "education in democracy":

> The main business of government ethics should be what may be called education in democracy. Government ethics should be seen as a way of reminding officials that they are accountable to the public, that they primarily serve not their administrative superiors or even their own consciences but all citizens. (p. 255)

Now Thompson's proposal is in some ways a constructive response to the complaints visited on the ethics regulations. And yet there are features of this argument that are difficult and questionable in their own right. We want to name three and then examine in the following pages whether some of the conflicting results of the ethics reform program do not reflect deeper difficulties with proposals for ethics development than Thompson takes into account.

First, the argument seems to presuppose what it is designed to prove. Thompson supposes that democratic citizens can only trust and respect those officials who commit themselves enthusiastically to ethics. He assumes that we look up only to those with clean hands and irreproachable paperwork and that our concern for the appearance of probity in this sense matters more than other factors in shaping our judgment of officials. But is this the case? Do we know that the prime instigator of civic confidence is the appearance of propriety rather than other factors that citizens might take into account, such as political connections, loyalty based on past service to a party or interest group, charisma, personal background (national, religious, linguistic, gender), or even managerial competence? Do we know that creating the appearance of public virtue is a high priority for those who care about the democratic process? Thompson's argument appears to presuppose that ethics is the first priority of democratic citizens and that inadequate attention to ethics hinders policy making. He then fashions a defense of the ethics movement on the basis of that assumption. Yet there are a number of factors that might bring into question this presupposition, perhaps above all the fact that the choice of persons for public office often does not seem to turn on questions of ethics (Malec, 1993, pp. 22-26).[2]

Second, Thompson asserts that his "appearance standard expresses principles that are at the heart of our Constitution" (1992, p. 257). This seems a highly contestable understanding of the Constitution. That estimable document certainly contains nothing like a reference to political ethics in the sense that Thompson describes. What appears to be at the heart of the Constitution might rather be the separation of powers, concern for the rule of law, the interest in protecting private rights and liberties, the expectation of a genuinely republican political life, and so forth. These core elements of constitutionalism will certainly authorize exposure and punishment of violations of the law, and the language of the document takes note of possible high crimes and misdemeanors that justify impeachment even of the highest official. Yet, there is nothing in the Constitution explicitly authorizing any program of ethics training, indoctrination, or education; there are no references to requirements of good moral character as a prerequisite for public office; there is no provision for an office of ethics or the creation of institutional mechanisms for fostering ethics. It would be hard to show that the founders ever entertained the notion that the constitutional government they designed would be remarkable for its ethical purity.[3] A spirit of realism seems to be closer to the mark. We must concede, argued James Madison in *The Federalist* No. 10 (Wills, 1982), that "enlightened statesmen will not always be at the helm," and we should recognize that "neither moral nor religious motives can be relied on as an adequate control"; and he began a famous argument in *The Federalist* No. 51 with "if men were angels" (Wills, 1982) and proceeded to show that they are not and must never be assumed to be so.[4]

Third, it seems clear that Thompson's thesis about democracy makes empirical claims that invite an examination they have not yet received. He maintains

that democracy works best and most effectively earns citizen confidence when its officials maintain appearances in the sense he proposes. "To reject the appearance standard is to reject the possibility of democratic accountability" (1992, p. 257). Yet do we know that the appearance standard is essential to democratic accountability? Do we know that the high-minded approach at the root of the ethics movement is in fact productive of a better democratic process? Some have seen the sustaining of the appearance of propriety as a means to reassure voters who otherwise lack specific information about the exact motives and agendas of officials; others insist that self-interested behavior and an ethic of reciprocity, bargaining, and deal making is the essential lubricant of the real world of democracy. Thompson presumes the former approach is superior, but does not engage the advocates of the latter view.[5]

In the following pages, we wish to explore these questions more carefully. We provide an overview of the efforts that have been made in the past several decades to clarify the rules of political ethics and above all to enforce these rules. We review the operations of the federal OGE and examine the scope of ethics reform and enforcement in state and local government and in the internal operations of Congress. Our survey will summarize what increasingly seems like a mobilization of significant national resources on behalf of political ethics. Following Thompson's lead, we will ask in each of the following areas: To what extent does this effort produce an enhancement of the democratic process or even a perception of the enhancement of the democratic process? Are there costs as well as benefits to this endeavor? Are the results generally positive in all areas of governmental activity, or is success more likely in some areas than in others?

THE OFFICE OF GOVERNMENT ETHICS

The federal OGE came into being with the passage of the Ethics in Government Act in 1978. Originally a component of the Office of Personnel Management, it gained independent status with the Ethics Reform Act of 1989. Although not an enforcement agency (it refers possible violations of law to the Justice Department), it provides direction and leadership in matters of ethics within the executive branch alone, having been given no authority to deal with the legislature or the judiciary. Its functions and reach tend to be widening. Its annual budget has grown to $8.1 million for fiscal year 1997, and its staff to 84 full-time equivalent for the same fiscal year. OGE's rules and procedures have been more thoroughly refined; it now maintains an extensive information and publishing program (including a relatively elaborate web site),[6] is increasingly consulted by professional bodies, and has even begun to play a role in advising foreign governments, particularly of the emerging democracies, about anticorruption programs (OGE, 1998). As it developed its programs, it has required each federal agency to have a designated agency ethics officer responsible for administering the ethics record-keeping paperwork and for conducting regular

training for employees. Agency training programs are regularly reviewed and evaluated. In 1989, OGE was charged to devise a "single, comprehensive, and clear set of executive branch standards of conduct that shall be objective, reasonable, and enforceable." This mandate led to the "Fourteen Principles of Ethical Conduct for Federal Employees," issued in 1993 (Office of Government Ethics, 1994, pp. 9-10).[7] OGE began sponsoring annual conferences in 1991 and, in 1994, sponsored an "International Conference on Ethics in Government," drawing participants from 49 countries and anticipating the initiation of a worldwide ethics community. Judging from the range of activities, it would seem that the call for ethics in government has produced some definite results.

Yet, when we examine the activities of this agency, we can see that its actual range of operations is far more limited than its title might seem to indicate. The legislation authorizing it has a grand title (the Ethics in Government Act[8]), but the duties of the agency are quite restricted in scope, to the extent that one may doubt whether it is possible for it to engage in the building of a program of education in democracy. For all practical purposes, its mission as actually designed by the Congress is essentially one of attempting to limit conflicts of financial interest. It is useful to differentiate between "compliance ethics" and "integrity ethics" (Hejka-Ekins, 1994, pp. 65-66). The former approach emphasizes the promulgation of detailed rules and regulations and the aggressive pursuit of thorough, consistent compliance. Integrity ethics is oriented toward developing a clear sense of models to imitate, cultivating processes of moral reasoning applicable in complex situations, and fostering an ambition for high standards. It is clear that OGE has been structured to be a compliance agency; its role is effectively limited to the pursuit of compliance with the rules about financial disclosure and conflicts of interest.

Thus, when we take a closer look at the actual functions of OGE, we see they are primarily devoted to tracking financial connections.[9] When someone is appointed, the ethics rules require detailed analysis of the candidate's financial position and relationships. Postemployment opportunities are carefully restricted under the law so that officials are not tempted to structure their decisions to gain an advantage in their career after government service. Furthermore, reporting on personal finances becomes an ongoing process. OGE requires a significant number of high-level officials to fill out on an annual basis a Standard Form (SF) 278 Executive Branch Public Financial Disclosure Form.[10] These forms solicit highly specific information, which is made publicly available on formal written request. All persons nominated by the president for positions requiring Senate confirmation must file the public financial disclosure reports, and usually these reports must be reviewed and approved before the Senate confirmation hearings. In 1996, 138 such reports were reviewed by OGE; in 1997, the number rose to 323; the number has been as high as 415 in 1994 (OGE, 1998). Many others at lower levels are required to fill out annually the SF 450 Confidential Financial Disclosure Report. Although this information is not disclosed publicly, these reports are scrutinized for conflicts.

The purpose of collecting such voluminous data is to produce a picture of an "interrelated whole" that describes "an employee's outside linkages" and in so doing to "reveal actual and potential conflicts of interest" (OGE, 1996, pp. 3-1, 5-1) The result is an analysis that has consequences. Employees may be formally required to divest themselves of significant holdings, put their funds into blind trusts, agree to recusals in certain areas of responsibility, or resign from other positions in external organizations. Of the 323 presidential nominees in 1997, for example, about half (157) were required to enter into formal ethics agreements because of a real or potential conflict of interest. All of the financial disclosure forms, both public and confidential, are reviewed either within the employee's agency or by OGE or in some cases by both to identify problems and specify corrective action. Whereas the OGE reports an education and training mission, the theme of the education and training is only to expand understanding of the conflict-of-interest regulations. In a summary of the role of OGE, the purpose is stated by the agency in terms that fit with Thompson's (1992) thesis and that use integrity language:

> The purpose of the "ethics in government" program is to ensure that executive branch decisions are neither tainted by nor appear to be tainted by any question of conflicts of interest on the part of the employees involved in the decisions. Because the integrity of decision-making is fundamental to every Government program, the head of each agency has primary responsibility for the day-to-day administration of the "ethics in government" program for the employees who carry out the substantive programs of that agency. (OGE, 1996, p. 8)

Yet, the reader who puts this statement into the context of OGE's actual range of activities cannot help but be struck by several kinds of severe limitations in it. First of all, although the word *integrity* appears, its meaning here is in actual practice limited to a kind of financial disinterestedness and incorruptibility or to creating the appearance of these qualities. This no doubt reflects the fact that financial temptations are very common, constituting perhaps the most powerful inducements to misbehavior on the part of government employees or any other persons. Yet the issue of integrity surely has something to do with other dimensions of performance and character: honesty and truthfulness in dealing with others, competence, freedom from inappropriate political entanglements, professionalism, loyalty to the major purposes of the political order, respect for institutions, and so forth. We would not deny that developing the habit of reporting one's financial interests will have a clarifying effect in making officials more aware of the responsibilities of their position. In that respect, such a habit will contribute to a heightened awareness of public expectations connected with government service. Yet the other dimensions of integrity need systematic cultivation, and there is nothing in the OGE mission enabling it to concern itself with these other, perhaps more important, aspects of behavior. In effect, the relentless pursuit of financial clarity may well serve to reduce employee awareness of

ethics to this issue alone, for this issue is the only one made the constant and reiterated object of organizational attention under the rubric of ethics.

The restricted nature of the actual mission can be nicely illustrated by a booklet published by OGE in 1993. Glossy and professional in appearance, the booklet offers an overview of ethics guidelines for federal employees. It is titled *Take the High Road*. The sole theme, however, is financial matters: gifts from outside sources, gifts between employees, conflicting financial interests, issues of partiality to outside organizations in which one has an interest, postemployment issues, misuse of position for private gain, and inappropriate outside activities while in government employment. Although addressed in a booklet about the high road, these issues appear to be exactly the stuff of what Rohr has called with some reason the "low road" approach to ethics: concentrating on the most common form of misbehavior to surround these very ordinary temptations with regulations and constraints. The low road is, he contends, one that "addresses ethical issues almost exclusively in terms of adherence to agency rules." "Ethical behavior is reduced to staying out of trouble," and he warns of the danger of "pharisaism" on the part of those dealing with such rules and attempting to work them out with ever more rigor and detail (Rohr, 1989, pp. 8-9, 60-64). There is in the low-road approach no provision for stimulating aspiration or even reflection about the highest levels of administrative performance in public service, levels where a public official might begin to aspire to genuine distinction or excellence in performance.[11]

Second, the OGE statement of its role appears to assume without question that freedom from financial conflicts of interest is fundamental to the performance of an agency. The assertion has a rhetorical plausibility, but is it in fact credible? If the incorruptibility of employees is truly fundamental, it might then be argued that guarding against corruption ought to be the first priority of an organization. Yet a bit of reflection suggests that it is seldom the first priority. Public organizations have primary substantive missions. There is little doubt that corruption can damage the performance of the mission, but at the same time, there seems little doubt that organizations generally subordinate the elimination of corruption to some or maybe many other tasks that are their actual raison d'être. Freedom from conflict of interest and other forms of inappropriate entanglement or outright corruption can be quite helpful to the operations of an agency and building public confidence in it. But it is hard to see why the achievement of complete disentanglement from inappropriate interests is necessarily more fundamental than other elements of its activity, above all progress toward achieving its substantive mission. In actual practice, of course, ethics matters are usually treated more like a necessary but peripheral issue of record keeping than a matter of fundamental importance. There may be temporary disruptions of this orientation, especially when a scandal arises to occupy public attention. But these tend to be unusual and idiosyncratic moments, not the defining conditions for agency effectiveness in the eyes of citizens.

From this brief survey of the first federal office devoted explicitly to ethics, it would be fair to conclude that ethics in government is in fact something considerably less than a program of education in democracy. It is a modest attempt to bring the financial interests of public officials under scrutiny and to regulate them more closely than in the past.

THE ETHICS PROJECT IN THE STATES

The individual states, similar to the national government, felt the impetus of new public demands for ethics in government in the 1960s and 1970s. The development of more stringent ethics rules and the creation of stronger agencies or commissions in the states even arose independently in some states, not as an imitation of federal legislation such as the Ethics in Government Act of 1978. The first ethics commissions were established in the states of Texas and Ohio in 1965. Hejka-Ekins (1994) reports that all 50 states now maintain some form of ethics agency or commission, with the last in her calculation to create such an entity being Arkansas in 1988.[12] A survey of the states by Menzel (1996) led him to conclude that 36 states had an ethics agency or commission at the time of his inquiry in 1996. His different total appears to reflect a judgment about the strength or authority of such organizations; he sees "about a dozen" states with comprehensive laws and reasonably powerful commissions and a number of other states with ethics commissions possessing "little or no authority" (including in that category Arkansas, Texas, Utah, and Vermont). Menzel also notes that ethics commissions are found in some larger cities, including particularly Los Angeles, New York, and Chicago.[13] Ensign (1996) reports that there were 39 new state ethics commissions or agencies created in the years from 1973 to 1978; thereafter, there were 8 more created in 1979 to 1988 and 12 from 1989 to 1993. His count must include measures that revise or reform previously existing entities because the total adds up to more than 50.

It is abundantly clear that the demand for ethics reform has affected state and local as well as the national government. However, obtaining a clear picture of the scale of state and local efforts and of their successes and failures is far from easy. There is no single source drawing together complete information about state and local ethics legislation and agencies, and there are relatively few detailed studies of the operations of specific agencies or of the laws that they enforce (Bullock, 1993).[14] This fact is, of course, not too surprising, given the diversity of governmental entities to be canvassed and the fact that ethics commissions or agencies with significant powers are relatively new.

The best information developed to date about state efforts indicates that there is a great diversity in the scope of ethics regulations and an equally great diversity in the authority and effectiveness of ethics agencies. Some ethics laws are minimal in scope with many loopholes, whereas others are tighter; some agencies appear to have been kept relatively toothless, whereas others are equipped

with sufficient powers, staff, and budget to perform with reasonable effectiveness. An additional complexity lies in the fact that many state ethics agencies appear to combine three or four tasks that are distinctly separated at the national level. The federal OGE has jurisdiction only over executive branch personnel and therefore has no authority to supervise legislators, legislative staff, or members of the judiciary. Furthermore, it is not empowered to deal with campaign finance and election issues. Last, it has nothing to do with registering or supervising lobbyists. At the state level, by contrast, many ethics commissions or agencies enforce conflict of interest regulations over executive and legislative personnel, keep track of campaign fund-raising and expenditures while trying to enforce rules limiting donors, and register and supervise lobbyists. At the state level, in short, agencies often combine roles assigned separately to the federal OGE, to the Federal Election Commission, to the Ethics Committees of Congress, and to the Clerk of the House and Secretary of the Senate who register lobbyists.

Despite these difficulties, there are some important lessons one can learn from looking at the work of the state commissions, precisely in terms of their ability to contribute to the larger goal that Thompson (1992) indicates—that of furthering the democratic process.

The state agencies, similar to the federal OGE, usually establish rules designed to prohibit conflicts of financial interest. As previously noted, the state commissions also must frequently track campaign and election expenditures, register lobbyists, and receive reports on lobbying expenditures. The Texas Commission is even empowered to issue recommendations on the salaries and per diem rates for major offices of state government.[15] Some of the state agencies are kept very dependent on the legislature and, for that reason, are often weak. An interesting case is that of Kentucky. Mackey (1996) recently examined an ethics reform passed by the Kentucky legislature in 1993 in response to a major scandal. Because the scandal involved legislative corruption, the legislation established an independent ethics commission within the legislative branch charged specifically with overseeing legislative behavior and investigating charges of unethical conduct. Mackey praises this measure as a strong one and recommends that it serve as a model for other states, both because of its general effectiveness and because its placement within the legislative branch helps to safeguard legislative independence. Yet the editor of the *Public Integrity Annual*, in which this article appeared, felt obliged to insert an editor's note reporting that in 1996 the legislature significantly weakened the commission (Mackey, 1996, p. 62). Strategies of this kind are not unknown elsewhere. Partly as a reaction to such maneuvers, some states (e.g., Oklahoma and Texas) have ethics commissions, which were created by a process of constitutional amendment (Maletz & Herbel, 1998). In such cases, the agency obtains an independent stature and permanence from its constitutional status. Yet, even constitutionally established commissions can be severely undermined if denied rule-making or enforcement power, deprived of sufficient budget to carry on investigative

activities, or dominated by appointees with strong loyalties to local satraps rather than to good government idealism.

There are relatively few studies of the performance of these agencies. Hejka-Ekins, who has looked at their in-service training, finds that they generally conform to the pattern of the federal office by emphasizing compliance with rules and regulations designed to inhibit conflicts of interest. But she has made note of a few instances in which more serious kinds of training are attempted, and argues that occasional efforts to implement a more integrated blend of compliance and integrity training, as in the state of Illinois, are "germinal and sporadic but persistent and creative in nature" (Hejka-Ekins, 1994, pp. 73-75). The Florida Commission on Ethics has been the subject of two detailed analyses. After a thorough review of the agency's performance in terms of four main functions, Russell L. Williams contends that the Florida Commission on Ethics tends to be weakest in the area of training, and what efforts it does make to provide education or training are limited to a "reactive, legalistic approach." He reports, furthermore, a complaint of a former ethics commissioner who thinks the agency is vulnerable to being used as "a political weapon in state and county elections." The weapon is, of course, the strategy of filing ethics complaints in the waning days of a campaign, when voters are likely to hear the report of an ethics allegation in the media and are less likely to concern themselves with its substance or validity. On the whole, Williams concludes that the Florida ethics commission has "adapted to its environment rather than adapting the environment to it." It has some effect as a "punitive agent" but little effect as "an agent of constructive change" (Williams, 1996, pp. 67-71). Donald Menzel has examined the same agency's ability to respond to complaints. He concludes that the Florida commission is widely believed to be ineffective and may even be "widening rather than closing the trust deficit" because although "many complaints are filed," "few are judged violations of ethics laws" by the commission (1996, pp. 75-76).

One study attempting a broad overview of state ethics laws was conducted by Goodman, Holp, and Ludwig (1996). Among other interesting features, their work offers a classification of state ethics legislation in terms of overall strength and comprehensiveness. They were able to collect data on ethics rules from 41 states, and concluded that only in 4 cases were they willing to evaluate the strength of ethics rules as high. Eleven states were classified as low on this scale, 15 were moderate, and 6 were moderately high. Perhaps the most interesting result of their study, however, resulted from the attempt to measure whether there was a significant correlation between the type of political culture in a given state and the strength of the ethics rules. They found that there was not. They concluded that the development and intensification of ethics legislation was mainly driven by "the media and public opinion" and that "ethics policy is being developed in a reactive mode driven by legislative scandals" (Goodman et al., 1996, p. 55). From this finding, we might draw the skeptical conclusion that much ethics activity in states and cities is due to a public reaction to a sudden

exposure of examples of corruption. When that happens, the public demands that something be done, and the passage of new laws or the creation of a new agency is often the result. Yet when public reaction cools, the pressure for reform often evaporates as well. The authors of this study do not think we can conclude that any of the states have created a truly anticorruption political culture on which a new era of good government can be built (Goodman et al., 1996).

Curiously, the most intensive study of a state's attempt at ethics regulation is to be found in a book by two critics of the ethics movement. Anechiarico and Jacobs (1996) have described in great detail the anticorruption project, as they call the quest for ethics in government, in the city of New York. Taking a quite critical view of the effort to enforce ethics, they have developed a rich historical and analytical account of efforts in the state of New York during the past century to put an effective lid on corruption. They are able to show that elaborate investigations into governmental corruption and well-intentioned designs to reduce or eliminate corrupt activity go well back into the 19th century. It is doubtful that the history of any other state is as replete with efforts at reform, with prestigious investigative commissions, and with organizational and legal innovation as New York. In this account, however, it continues to be the case that these efforts are almost entirely legal and punitive in character. They aim at ferreting out corruption on the part of municipal personnel. Nevertheless, Anechiarico and Jacobs conclude that it is impossible to measure whether such undertakings have in fact reduced corruption, and in a point to which we shall return, they offer a significant argument that the administrative processes of government have been damaged not only by corruption but by the anticorruption initiatives themselves.

The state ethics agencies, similar to the federal, doubtless contribute something useful to the democratic process. It seems reasonable to expect that efforts to reduce corruption may enhance citizens' respect for and confidence in government—although this point remains a likelihood rather than a conclusion backed up by empirical evidence. Yet, what we can at this stage learn about the ethics effort in the states again suggests that it suffers from the same limitations as the federal effort. The name and the professed missions of the various state boards and agencies suggest a more elevated role than they are as yet equipped to perform. The real activity of these entities appears to be severely restricted in scope to several perhaps necessary but uninspiring tasks: record keeping on matters of financial conflicts of interest, tracking campaign and election expenditures, registering lobbyists, and a few other related duties. On the whole, it would also appear that state ethics agencies are bedeviled more severely than the federal OGE by serious weakness in the ability to enforce the regulations that exist and then to punish violators. They are frequently poorly financed and understaffed. Nevertheless, the enforcement problem aside, the deeper issue seems to be again that these agencies have it in their power to do very little to make democracy work better in any large respect or to inculcate in public officials an aspiration to become deeply educated in democracy.

ETHICS IN CONGRESS

The legislative branch of government is the other venue for an appreciably enhanced attention to ethics in recent decades. Not only is the U.S. Congress covered by the financial disclosure provisions of the Ethics in Government Act, but it merits our attention because it has drawn the scrutiny of Thompson (1995) in a recent book devoted specifically to the topic of legislative ethics titled *Ethics in Congress: From Individual to Institutional Corruption*. Thompson here explores another seeming paradox in government ethics. Although more members of Congress have been investigated and sanctioned in some way in the past 20 years "than in the entire previous history of the institution," members of Congress individually are, he holds, less corrupt now than ever before, because what was once considered normal conduct for elected members is now illegal. Yet, at the same time, the proliferation of laws, rules of conduct, investigations, and ethics committees has been accompanied by a widespread perception of personal and institutional corruption. We have already quoted Norman Ornstein to the effect that an "overwhelming majority of Americans" see politics, and especially Congress, as "morally bankrupt in a fashion worse than at any time in recent memory" (Anechiarico & Jacobs, 1996, p. 9). Thompson (1995) agrees that views such as this reflect widespread public attitudes (p. 1; see also Congressional Quarterly, 1992, pp. 159-161).[16]

The Constitution gave Congress wide latitude in establishing its own rules of conduct, permitting the creation of unique rules and procedures. During the first 170 years of its existence, Congress operated with ad hoc rules of behavior.[17] If forced by public pressure, it would act against a member, but sometimes it resisted taking action until a criminal investigation by the Justice Department was already underway. Usually, press accounts prompted action. The history of congressional discipline can be roughly divided into the pre- and postreform periods, with the Ethics in Government Act as the dividing line between the two. Thompson (1995) sums up the activity of Congress in these two periods as follows:

> From 1789 through 1977 (the year before the Ethics in Government Act) Congress took official notice of charges of ethics violations involving fifty-three members, of whom twenty-one received sanctions from either a committee or the full body, eleven resigned and two served prison terms. From 1978 through 1992 Congress considered charges involving sixty-three members; thirty-one were sanctioned or convicted and sixteen resigned or announced their intention to retire. In the Senate alone the total since 1978 has been lower than it was in the earlier period, although the annual rate of cases has been much higher (1.1 compared to 0.15). (1995, p. 191)

In recent efforts to come to grips with corruption, both houses of Congress have passed explicit ethics rules, constructed permanent ethics committees to interpret them, and given these committees formidable investigatory and enforcement power. Until 1958, there were no official, formal rules of conduct

for Congress members. In that year, reaction to a scandal surrounding President Eisenhower's chief of staff Sherman Adams led to passage by both houses of a Code of Ethics (Congressional Quarterly, 1992, p. 146). The code applied to all government employees and, using rather general language, exhorted them to put the highest moral principles above any loyalties to people, government department, or political parties. But the code had no legal force. The Senate adopted tougher, enforceable standards of conduct in 1964 as part of the investigation of Bobby Baker. This investigation by the Senate Rules and Administration Committee culminated in the adoption of rules regulating the conditions under which campaign funds could be raised and the uses to which they could be put, and limited solicitation or distribution of campaign funds to a few Senate employees and required the filing of confidential financial information with the U.S. comptroller general. House rules became formalized with the passage of the Code of Conduct in 1968 following the highly publicized investigation and attempted exclusion from Congress of Adam Clayton Powell, Jr. (Congressional Quarterly, 1992, pp. 145-147).

Both chambers have established permanent ethics committees in the past 30 years. The Senate established in 1964 the Select Committee on Standards and Conduct, which was renamed the Select Committee on Ethics in 1977. In 1967, the House established the Committee on Standards of Official Conduct. Assignment to these committees today is generally regarded as quite onerous duty, and few members volunteer for it. Part of the reason for this reluctance is that members are often required to put party loyalty aside in judging the actions of their friends and colleagues. They stand to gain little political or electoral benefit in doing so.

The explicitly political character of many congressional ethics issues calls for special consideration in the makeup of the ethics committees. The need to review potentially explosive information and the need for authoritativeness in recommending punishments dictates a requirement for the appearance of strict neutrality. As a result, the ethics committees are the only permanent committees with equal representation from both parties. The members selected are generally regarded as holding moderate views and are normally perceived to be less partisan than their peers. In fact, these committees deliberate in what is often regarded as the most neutral forum of any congressional committee. This fact is further reinforced by the secrecy within which these committees are permitted to work; they are not required, for example, to hold public hearings on any aspect of their investigations or deliberations. Only when cases become highly publicized, as in the case of the Keating Five, do partisan loyalties of committee members seem to taint their judgments. Thompson (1995, p. 148) predicts such publicity may well drive ethics committees to greater partisanship in future years. Whether these committees will indeed follow the trend of rising partisanship in Congress remains to be seen. But if they do, ethics investigations and judgments are likely to be increasingly relegated to the category of political instruments.

Ethics committees follow few specific rules outside the dictates of the Ethics in Government Act and the Ethics Reform Act of 1989. In their routine duties, the ethics committees oversee such statutory requirements as financial disclosure, conflict of interest, gifts, travel reimbursement, and outside income. But because these issues are seldom the sole basis of an ethics complaint, committee work often focuses on charges of corruption brought by other members or occasionally by the press. The inflammatory nature of such charges, independent of a finding of actual corruption, can and often does damage personal reputations in spite of eventual vindication. Both houses now require that members bringing a charge swear to its truth, and House members are required to try to get three other members to sign the statement as well. Still, many of the complaints brought against members are for actions outside the statutory guidelines that fall under very broad chamber standards. House members' conduct "shall reflect creditably on the House," and Senate members can be charged for "improper conduct which may reflect upon the Senate" (Thompson, 1995, pp. 151-153). These broad, catchall phrases reflect the importance of the appearance of ethical behavior and seem to make no clear distinction between personal conduct and conduct that reflects on institutional processes. Thus, congressional standards of ethics permit committees wide latitude not only in interpreting and enforcing the law but also in upholding the integrity of the institution.

Recent reform, especially as embodied in the Ethics Reform Act, centers on financial disclosure.[18] These reports of assets and income, seen as intrusive and trivial by many members, are assumed to have a positive effect on congressional ethics by improving the appearance of individual behavior. It is Thompson's belief that throwing light on members' financial interests also throws light on their motives. But disclosure alone may not be an effective way to shore up flagging public perceptions of Congress. First, if voters are troubled by what is disclosed, they can act decisively on only 1 of 435 members—their own. Second, the reputation of the institution is disproportionately shaped by the deeds of a few members and the reactions of their constituents. Greater reporting requirements may only occasionally eliminate conflicts of interest, whereas sensational reports of the corrupt few continue to dominate the news. Again, the public is often not sure which to trust—either news reports of improper conduct or explanations put forward by their representatives. Finally, disclosure forms do not list assets or income in a form familiar to most voters, making them confusing documents at best. Of course, only a tiny minority of voters see them at all. And because they are not audited, they usually only come up in public debate as part of a wider investigation, making a judgment of financial malfeasance by itself difficult.

But even if disclosure reports were more readily available and the other ethics rules were clearer, would voters turn out of office those implicated in questionable behavior? Does disclosure, in other words, improve electoral accountability? Thompson suggests this would not necessarily be the most common result. Between 1978 and 1982, 39% of members sanctioned in some way were defeated

in reelection or retired, compared to 17% of all members (pp. 140-141). An earlier study of the effects of charges of corruption on voting behavior found that the charges cost 6% to 11% of the vote and that 75% of those charged who made it to the general election won (Peters & Welch, 1980, p. 702). Of course, voters reach their decisions for many reasons, and ethics may not even be the primary one. So long as disclosure remains the primary method of policing behavior, little systematic improvement seems likely.

The rapid decline in the public's perception of congressional ethics almost perfectly coincided with the congressional ethics reform movement. Thompson makes the point that the appearance of so many ethics laws, committees, and investigations may have fueled this trend. He notes that there have been 49 cases of individual corruption in Congress since 1977 for types of misconduct including bribery, conflicts of interest, racketeering, extortion, drug use, sexual misconduct, and perjury (pp. 184-190).[19] It is hard to avoid the suspicion that the appearance created by numerous investigations is highly influential in shaping the public's opinion of Congress, even if the new regulations have in fact succeeded in reducing the actual incidence of outright corruption. It is often said that ethics must be concerned with forestalling not only wrongdoing but even the appearance of wrongdoing. Yet in the world of contemporary democracy, there may be a sense in which the appearances created by disclosing wrongdoing exact some unexpected costs of their own in terms of perceived institutional legitimacy. Ethics investigations may offer partisans some new political weapons, but their contribution to the democratic process is often difficult to discern.

SOME COSTS OF ETHICS REFORM

The concern for ethics in government is an old story in the United States; it is likely as old as its evil twin, corruption. The actions taken to address that concern have become more vigorous in the past several decades, and the creation of laws and institutions to act on matters of ethics could well lead observers to hope for an overall improvement in the ethical quality of public service. The work of Thompson seems to speak for this new invigoration of ethics in government. His early statement on the theme in "The Possibility of Administrative Ethics" (1985) sought to recommend the notion of an engaged, conscientious public servant ready and willing to activate his conscience on matters of policy. This official would consciously repudiate the ethic of neutrality recommended to administrators of an earlier day and would approach his or her duties expecting to be held accountable by a critical public demanding high levels of moral responsibility. As he noted 7 years later in "The Paradoxes of Government Ethics" (1992), these conscientious and responsible officials are now under the reporting requirements of an official ethics in government act. Their ambition to act well is reinforced by a routine of paperwork designed to ferret out indicators of corruption. To their complaints he replies that such are the costs of taking ethics

seriously and that these costs serve a greater goal, enhancement of the democratic process. That goal is more elevated than the mere recommendation to avoid the possibly amoral neutrality that formerly was taught to administrators. It recommends to officials a vision of a governmental process that is carried on by incorruptible persons who are content to document their interests for others to guard against the reality or the appearance of temptation. This goal goes beyond merely activating the conscience of administrators. It aims at a more abstract and also more ambitious target: raising the democratic processes of government to a higher level. If practiced, it might help to heal damaged institutions, as he shows in his study of congressional ethics.

The paradox of government ethics is best stated by Thompson (1992) in this fashion: "Because other issues are more important than ethics, ethics is more important than any issue" (p. 255). In this formulation, it is literally a paradox. If taken less literally, is it also an overstatement that should be rejected? Thompson's point means essentially that the task of addressing the most urgent policy problems requires as a prerequisite measures guaranteeing disinterestedness and noncorruption. Citizens do not normally rank ethics as the first of their concerns, but they do want policy decisions to be made on the merits. They will only think they are made on the merits if they trust the motives of those who make them. The real purpose of government ethics reform is, then, to establish confidence in the motives of those who govern and thus to produce a new purity of the governing process. A hope for this kind of reassurance doubtless contributes to the wave of ethics reforms across the nation that we have just documented. But would those who want these reforms go so far as to claim that "ethics is more important than any issue"?

The ethics reform movement has many attractive features, and it may well have produced some real, if modest, improvements in the behavior of public officials. Yet it is a far more ambiguous phenomenon than Thompson's argument indicates, and there seem to be grounds for fearing that it may cause some significant damage to the processes of democracy as well as benefits. The difficulties lie in three different areas, as follows:

1. The ethics reform measures are in fact, at their best, essentially devices for trying to inhibit and expose conflicts of financial interest and have little effect in establishing the higher components of ethics that proponents desire.
2. There is some evidence that the pursuit of strong limits on corruption may directly or indirectly constrain administrators in other aspects of their role that are essential to effective public management.
3. The goal of creating a corps of public officials who are free of all entangling personal interests and therefore genuinely disinterested (at least in their official capacity) may be in conflict with some important expectations about how governance in a democracy must work, especially in its representing aspects.

Let us address each of these points more fully.

THE LIMITED SCOPE OF ETHICS ENFORCEMENT

First, the ethics reform movement, as we have seen, inevitably creates high expectations. And yet these expectations cannot be fulfilled by the kinds of efforts yet undertaken or foreseeable in the future if the ethics legislation is sustained and developed. *Ethics* is a word of some breadth of meaning. It suggests the basic components of honesty, decency, truthfulness, law-abidingness, uprightness, and similar qualities. It also suggests higher and more comprehensive levels of virtue, excellence of character, and distinction of mind, qualities sometimes captured in broad terms such as *integrity.* Yet, the real world of government ethics action seems to be relentlessly directed toward the simpler elements of ethics. Ethics legislation today is almost entirely devoted to attacks on corruption. It aims to prevent, not to inspire. The ethics laws are directed toward specifying what is prohibited and merely allude to positive models of what is to be recommended. The ethics programs take on in this way a highly legalistic character—in fact, if not in intention. Ethics programs and agencies seek methods to define and expose the public official who takes bribes, maintains financial ties with external persons or firms, makes decisions with the goal of improving opportunities after concluding government employment, and so forth. These are activities whose harm can be explained in simple terms to everyone. They can be exposed by collecting information on the financial resources of employees.

The development of high levels of virtue, character, and mind, on the other hand, is a far more difficult task. Ethics programs seem, to be sure, to take a certain minimal notice of the larger task. OGE, when charged with developing a code of ethics for federal employees, included references to certain kinds of idealism, professionalism, and commitment that, if thought through to a conclusion, certainly demand something from public officials that is more challenging than merely avoiding conflicts of interest. But these words in the federal ethics code are without practical influence in the ongoing work of OGE. Neither at the federal level nor at the state level is there any serious attempt directly to foster a high-level ethics.

How do we explain the absence of an ethics of aspiration or excellence from the ethics reform effort? There are perhaps two main obstacles to any attempt to foster such an ambition. First, the aim itself would conflict with a deeply ingrained preference in liberal societies against governmental attempts to define or promote ends. Built into the framework of liberalism from the beginning was a demand that government confine itself toward defining a basic level of behavior dealing with the most general and common needs. From Thomas Hobbes to John Stuart Mill to the latest proponents of the morally neutral and libertarian state, the dominant strand of liberal democratic thought has feared attempts by government to define the aspirations of the conscience or to direct human beings toward specific qualitative modes of conduct, belief, or aspiration. There have been those who dissent from this view of the relationship between government

and ethics, but they remain a minority. The preference they might have for restoring concern for virtue or character remains today too controversial to become a major direct objective of public policy, although it may have certain kinds of influence indirectly. In this sense, the ethics reform program could be said to have a very reduced and limited objective precisely as a reflection of the dominant political culture.

Second, we can learn from one impressive attempt to consider an ethics of aspiration or excellence that the topic is one of immense complexity that cannot readily be made into a routine government program. Moore and Sparrow (1990) undertook in *Ethics in Government: The Moral Challenge of Public Leadership* the daunting task of careful analysis and evaluation of 10 cases of administrative performance. Their objective in the analysis of these cases is precisely to grasp what are the constituent elements of virtue or excellence in government work. From their very instructive and finely crafted analyses of the cases, one can learn that virtue in significant offices requires a very delicate balancing of often competing goods, highly sensitive awareness of political and social contexts, a sense of distinct and not necessarily harmonious obligations (to colleagues, to subordinates and superiors, to the necessary processes of democratic government), an unusual facility in asserting and maintaining leadership in often quite fluid circumstances, an ability to formulate practicable means for advancing public interests, and a readiness for risk that is uncommon among those trained in ordinary bureaucratic behavior. The ethics of virtue or excellence seems not reducible to rules and incapable of being formulated in legalistic imperatives. An ethics of virtue depends on a high development of insight and character and presupposes a high degree of political and practical sensitivity. It seems difficult to imagine that it could be either enforced by ethics legislation or even inculcated by a government program in any economical fashion to large numbers of people. Moreover, it is far from clear that we know how to foster such qualities reliably even on a small scale. In the present context, we would emphasize chiefly that an ethics in government law or agency will inevitably arouse higher expectations for its work than can be satisfied. At its best, it will be a tool in efforts at rooting out corruption. What citizens want from ethics, however, is not only the reduction of corruption but the much higher set of qualities enabling an official to govern well in the difficult circumstances of day-to-day public business. For these, the ethics movement in its current version has no recipe.[20]

ETHICS CONTROLS VERSUS EFFECTIVE PERFORMANCE

Turning to our second point about the ethics reform movement, it is well worth paying attention to the important thesis developed by Anechiarico and Jacobs (1996) in *The Pursuit of Absolute Integrity.* Anechiarico and Jacobs trace the development of what they call the "anti-corruption project" with particular

reference to New York City, and they pursue the question of whether there might not be some disproportion between the means employed to limit corruption and the actual results achieved. A comprehensive look at anticorruption measures such as they propose takes into account a much wider range of methods than those employed by the federal OGE. The complete panoply includes antipatronage strategies, financial disclosure and conflict of interest laws, special whistle-blower protections, distinct investigative units targeted to administrative misdeeds (New York City's Department of Investigation), the expansion of prosecutorial authority, special contracting procedures, new techniques of auditing and accounting, and so forth.

Anechiarico and Jacobs (1996) draw two major conclusions from this study. They argue, first, that there is no way to measure accurately the extent of corruption. Corruption is only visible when exposed, and therefore, one can measure convictions on corruption charges or number of investigations or the attention given to corruption by the media, but the undetected corruption remains invisible. The result, of course, is that there is no way to ascertain whether the anticorruption project has had the intended result. It is possible, and they suggest as much, that the anticorruption project is at least partly a form of symbolic politics conducted for the benefit of well-meaning elites dedicated to a view of government such as the one we have found implicit in Thompson's arguments for governmental ethics.

Second, Anechiarico and Jacobs (1996) maintain that the anticorruption agenda, when diligently pursued, tends to compromise administrative efficiency: "the anti-corruption project exacerbates fundamental pathologies that have always plagued bureaucracy" (p. 173). By this charge, they do not mean that bureaucracy requires corruption or that there are inevitable inefficiencies built into ethical behavior. Their contention is rather that the vigorous effort to extirpate corruption leads to elaborate strategies of administrative accountability and control that may undercut the other imperatives of effective management. As amply illustrated by their study of the administration of New York City, the pursuit of comprehensive defenses against corruption leads to multiple levels of control and regulation, to meticulous supervision and review of employees, and to defensive management techniques—in short, to the opposite of creative, risk-taking, entrepreneurial methods of public management. They are able to show that the reform effort has forced a weakening of administrative authority to the detriment of decisiveness. A notable result has been to create in New York the rather justifiable impression that public agencies are paralyzed; an excess of accountability may in this case have undermined administrative energy and initiative. As a consequence, public officials are tempted to resort to adaptive strategies (privatization, use of external consultants, creation of special authorities, use of provisional employees, etc.) to circumvent a bureaucracy incapable of effective action. Yet these techniques for moving outside of the bureaucracy themselves attract the attention of reformers, who demand that the new governmental efforts be brought somehow under the umbrella of anti-

corruption controls, raising the prospect of a new expansion of the anticorruption project.[21]

ETHICS AND DEMOCRATIC POLITICS

Finally, it is important to raise a question about the larger political context of the ethics reform movement. For purposes of bringing the issue into view, let us describe two alternatives that one might derive from the preceding. First, if Anechiarico and Jacobs are correct, it would seem to follow that we might recognize corruption to be a common, ineradicable tendency of our political life. One could recognize it as such, anticipate it, and plan measures to fight it without generating the illusion that it will be rooted out. In this perspective, attempts at prevention, investigation, and exposure might be seen as worthwhile within limits but only as long as they are kept in proportion to the more important goal of managing public business effectively. That they can and should be subordinated to such a goal suggests that administration can work well even in the presence of some corruption. This orientation would mean that because other issues are more important than ethics, ethics cannot be treated as more important than all other issues.

An alternative view would be that implied by Thompson's argument. The democratic process is one that must be seen to require citizen trust in the purposes of those who govern, both in the legislature and in the administrative branch. That trust will be compromised and undermined if decision makers are perceived to be affected by interests of their own. They must instead take measures to create a reliable appearance of detachment and disinterestedness. They must subject themselves to the surveillance and supervision of the ethics process as an expression of their dedication to the democratic process. To cite his paradox again: "Because other issues are more important than ethics, ethics is more important than any issue" (1992, p. 255). They must regard ethics as an end in itself, even though it is actually a means. It is an end because it is apparently the means to the goal: Without the appearance of propriety and incorruptibility, citizens in a democracy simply cannot trust their governing institutions.

There is much in our political tradition that speaks in favor of the first view. And there is much in the accumulating experience of the ethics reform program that suggests it is a useful one as well. American constitutional government was never expected to arrive at the point where political decisions presuppose in all cases the appearance of propriety, and mechanisms were not built into the institutions of government to foster such a standard. To reach back to the Founders once again, James Madison stated in a classic way an argument for a certain necessary realism in matters of ethics, an argument still useful today for grasping why pure, disinterested fidelity to rules cannot be our sole concern in matters of government. Madison, of course, recognized the danger of excessive self-interest and the corruption it breeds. But he observed in *The Federalist* No. 51

that it is the interior construction of government upon which we best rely for protection from the worst abuses. Madison taught his readers less to entertain hopes for trust in governmental processes than to expect aggressive and conflicting ambitions and to recognize that although "a dependence on the people" (i.e., democracy) is a primary control on the government, there will always be a necessity for "auxiliary precautions." These auxiliary precautions are not primarily ethics programs. They are well-designed institutions, which create a forum in which "ambition must be made to counteract ambition." To rely on ambition in this manner is, of course, to concede a great deal to the power of self-interest. It indulges the desire to promote one's own desires and fortunes ahead of those of others and appears to recognize this tendency as inexpugnable from political life. Can we see something positive in this view, or is it merely a case of yielding to the weaknesses of human nature?

There is an obvious sense in which self-interest is a source of possible corruption. Yet self-interest has its positive side because it is a source of healthy ambition, and ambition is a necessary motivating force if there are to be persons and institutions willing to exert themselves strenuously on behalf of the struggle against corruption as well as for the other pressing tasks of government. The ambition that checks ambition can be made to serve the cause of republican government, and this would seem to mean that the self-interest that forms ambition is useful, even essential, to a republic. Ambitious self-interest is a source of both good and bad things for a democratic republic. Self-interest rightly understood can become a positive force in popular government, when it is properly harnessed for genuine public service. Self-interest, moreover, is the glue binding representatives to their constituents. Alexander Hamilton noted in *The Federalist* No. 35 (Hamilton, Madison, & Jay, 1982) that representatives must depend for the continuance of their office, their "public honors," on the "dispositions and inclinations" (pp. 164-169) of the people. These dispositions and inclinations, then and now, grow largely from their interests, and the relationship between government and the people depends on a certain active responsiveness to interests. The self-interest of individuals and groups may be more enlightened or less enlightened, but it is difficult to imagine that it could be eliminated from the operations of government, and there might be great dangers in trying. In short, the inventors of the democratic republic saw that success would likely emerge not from an improvement in human nature but from the managed conflict of self-interested individuals and groups. This was a risky proposal in its time, but the institutions developed in that period remain the ones we employ to govern ourselves. The risks of this system are still endemic to public life. They require us to indulge or tolerate some human qualities that we might wish were formed differently. At the same time, the goal of creating and sustaining a successful democratic republic is one that should be at the heart of all projects for improving government ethics in our time. Yet that goal may require a certain moderation in the pursuit of ethics reform to serve more adequately the larger political objective.

NOTES

1. On public confidence in the integrity of government officials, see Mackey (1996, p. 59), who cites a 1995 poll showing only 8% of those questioned had a high degree of confidence in the federal government and only 9% a high degree of confidence in state and local government. He also notes a recent study by the National Conference of State Legislatures that found "citizens hold legislatures in lower esteem today than they did 10 years ago." A recent study of anticorruption measures cites an opinion of Norman Ornstein to the effect that an "overwhelming majority of Americans" see the political process, and especially the Congress, as "morally bankrupt in a fashion worse than at any time in recent memory." In addition, the authors report a 1989 poll finding that the public believes "one out of every three members of Congress is corrupt" (Anechiarico & Jacobs, 1996, pp. 9, 46). See also Malec (1993).

2. Garment (1991) contends that the salience of ethics issues is highly influenced by fluctuations in cultural attitudes and by the degree of attention focused on scandal by the media.

3. For an influential and quite different attempt to identify the normative principles at the heart of the Constitution that are relevant to administrative ethics, see Rohr (1989). His account, which stresses core regime values, identifies these as equality, liberty, and property.

4. For an interpretation of this spirit of realism, see Goldwin (1986).

5. A classic exposition of the centrality of bargaining and deal making to American democracy is Fischer (1948). Wilson (1979) comments explicitly on Fischer's thesis in his "American Politics, Then and Now" and addressed the same problem in a more contemporary vein in "Democracy Needs Pork to Survive" (1997). For a more elaborate and far-reaching account of the place accorded to ethics in the American political system, see Diamond (1986).

6. The Office of Government Ethics (OGE) web site is www.usoge.gov.

7. The mandate derived from Executive Order 12674, which was issued in response to a recommendation of the President's Commission on Federal Ethics Law Reform in 1989. For an overview of the development and value of ethics legislation, see Cooper (1998, pp. 136-153).

8. See also the Ethics Reform Act of 1989. For specific citation of all relevant statutes, see Office of Government Ethics, 1998, pp. 9-11, 17-18, 47-50.

9. Lewis (1993, pp. 143-144) argues that federal conflict of interest statutes go back to the Civil War but that the principle is recognized in the legislation of the first Congress establishing the Treasury Department.

10. The list of those required to file the public form includes: the president and vice president and candidates for those offices, each executive branch employee classified above GS-15, officers in the military at O-7 or above (brigadier general or rear admiral and above), administrative law judges, independent counsels, the postmaster general and deputy, the postal service board of governors, employees in the executive office of the president holding a commission of appointment from the president, and the director of OGE plus all designated agency ethics officials (OGE, 1998).

11. Rohr (1993) has, however, recently softened his views on this point. In the foreword to Frederickson (1993), Rohr concedes that academics have not concerned themselves sufficiently with "conflict of interest, financial disclosure, and the other mundane ethical questions." These are the "negative questions that are of tremendous importance in the careers of practitioners in our field" (pp. xi-xii).

12. Lewis (1993) counts 4 states having ethics codes that predate 1973; 19 adopted codes from 1973 to 1979, and 5 adopted in the period from 1980 to 1988.

13. Menzel (1996) relies on the work of Lewis (1993) for his count; her source, in turn, is the COGEL Blue Book (from 1986-1987 and 1990). See also Menzel (1993). For analysis of the ethics laws in New York City, see Anechiarico and Jacobs (1996, pp. 48-62). Lewis (1993, p. 151) comments specifically on the development of an ethics code and commission in Los Angeles, which gave it "the most comprehensive ethics package of any city in the country."

14. The COGEL Blue Book (Bullock, 1993) is a useful compendium of information on the states (and on the provinces of Canada). It is, however, dependent on the willingness of states to supply information, and not all states participate; the 1993 edition contains data on 47 states.

15. The source of this information is the Texas Ethics Commission web site, http://www.ethics.state.tx.us/pamphlet/whoweare.html.

16. Thompson (1995) also remarks that "half of all Americans say they believe that most members of Congress are corrupt" (p. 1). The appearance of corruption became a central concern of the Keating Five scandal, perhaps the most widely noted of the ethics issues recently affecting Congress along with the Wright and Gingrich affairs. After an extensive inquiry, the Senate ethics committee administered a formal reprimand to one senator but did not recommend more severe punishment for wrongdoing that was tied to appearance alone. A thorough review of this affair is provided by the Congressional Quarterly (1992, pp. 117-144) study.

17. There are some relevant minimal guidelines for Congress in the Constitution. Article I established age, citizenship, and residency requirements. Section 5 of Article I allows each house to judge the "elections, returns and qualifications" of its own members, and such judgments have been made 15 times in the Senate and 35 times in the House. Clause 2 of Section 5 allows each house to make its own specific procedural rules, punish members for disorderly conduct, and upon a two thirds vote, expel a member. The 14th Amendment forbids the election of confederate officers to Congress and from holding any other federal or state office.

18. For details of the restrictions imposed on members of Congress by this law, see Congressional Quarterly (1992, pp. 155-159).

19. Thompson is concerned as well with what he calls "mediated corruption" or "institutional corruption." This is a form of unethical conduct in which an individual in public office receives a political benefit that is not in itself illegitimate but that undermines an important aspect of the democratic process. An example he used in 1993 to illustrate this type of corruption is the conduct of the five senators who aided Charles Keating, head of the Lincoln Savings and Loan bank (Thompson, 1993). In 1995, he replaced the term *mediated corruption* with *institutional corruption*, which refers to conduct that "undermines institutional purposes or damages the democratic process" (Thompson, 1995, pp. 6-9, 19-25).

20. There are, of course, notable efforts to study this problem. Moore and Sparrow (1990) conclude their book of case studies with a proposal for "an ethic of public stewardship and leadership" (pp. 151-161). For Moore's additional work along these lines, see *Creating Public Value* (Moore, 1995) as well as the work of Cooper (1991, 1999) and Rohr (1986, 1989).

21. For a thorough overview of methods for controlling public organizations, including ethics controls, see Van Wart (1996). Van Wart draws a useful distinction between the kinds of controls that serve as disincentives and others that, if properly designed, can serve as incentives for improved performance.

REFERENCES

Anechiarico, F., & Jacobs, J. B. (1996). *The pursuit of absolute integrity: How corruption control makes government ineffective.* Chicago: University of Chicago Press.

Bullock, J. (1993). *Blue book on campaign finance, ethics, lobby law, and judicial conduct* (9th ed.). Lexington, KY: Council of State Governments.

Congressional Quarterly. (1992). *Congressional ethics: History, facts, and controversy.* Washington, DC: Congressional Quarterly, Inc.

Cooper, T. L. (1991). *An ethic of citizenship for public administration*. Englewood Cliffs, NJ: Prentice Hall.

Cooper, T. L. (1998). *The responsible administrator: An approach to ethics for the administrative role* (4th ed.). San Francisco: Jossey-Bass.

Diamond, M. (1986). Ethics and politics: The American way. In R. H. Horwitz (Ed.), *The moral foundations of the American republic* (3rd ed., pp. 75-108). Charlottesville: University of Virginia Press.

Ensign, D. (1996). Reforming public integrity laws in an era of declining trust. *Book of the States* (pp. 477-484). Lexington, KY: Council of State Governments.

Fischer, J. (1948). The unwritten rules of American politics. *Harper's, 197*, 27-36.

Frederickson, H. G. (Ed.) (1993). *Ethics and public administration*. New York: M.E. Sharpe.

Garment, S. (1991). *Scandal: The culture of mistrust in American politics* (Times Books). New York: Random House.

Goldwin, R. A. (1986). Of men and angels: A search for morality in the constitution. In R. H. Horwitz (Ed.), *The moral foundations of the American republic* (3rd ed., pp. 24-41). Charlottesville: University of Virginia Press.

Goodman, M., Holp, T. J., & Ludwig, K. M. (1996). Understanding state legislative ethics reform: The importance of political and institutional culture. In J. Bowman (Ed.), *Public integrity annual* (pp. 51-57). Lexington, KY: Council of State Governments.

Wills, G. (Ed.). (1982). *The federalist papers*. New York: Bantam.

Hejka-Ekins, A. (1994). Ethics in inservice training. In T. L. Cooper (Ed.), *Handbook of administrative ethics*. New York: M. Dekker.

Lewis, C. W. (1993). Ethics codes and ethics agencies: Current practices and emerging trends. In H. G. Frederickson (Ed.), *Ethics and public administration*. New York: M.E. Sharpe.

Mackey, E. S. (1996). Ethics laws and legislative independence. In J. Bowman (Ed.), *Public integrity annual* (pp. 59-63). Lexington, KY: Council of State Governments.

Malec, K. L. (1993). Public attitudes toward corruption: Twenty-five years of research. In H. G. Frederickson (Ed.), *Ethics and public administration* (pp. 13-26). New York: M.E. Sharpe.

Maletz, D. J., & Herbel, J. (1998). The Oklahoma ethics commission. In G. W. Copeland, R. K. Gaddie, & C. A. Williams (Eds.), *The almanac of Oklahoma politics* (pp. 61-66). Stillwater: Oklahoma Political Science Association Press.

Menzel, D. C. (1993). The ethics factor in local government. In H. G. Frederickson (Ed.), *Ethics and public administration* (pp. 191-204). New York: M.E. Sharpe.

Menzel, D. C. (1996). Ethics complaint making and trustworthy government. In J. Bowman (Ed.), *Public integrity annual* (pp. 73-82). Lexington, KY: Council of State Governments.

Moore, M. (1995). *Creating public value: Strategic management in government*. Cambridge, MA: Harvard University Press.

Moore, M. H., & Sparrow, M. K. (1990). *Ethics in government: The moral challenge of public leadership*. Englewood Cliffs, NJ: Prentice Hall.

Office of Government Ethics. (OGE). (1994). *Third biennial report to Congress*. Washington, DC: Government Printing Office.

Office of Government Ethics. (OGE). (1996). *Public financial disclosure: A reviewer's reference*. Washington, DC: Government Printing Office.

Office of Government Ethics. (OGE). (1998). *Fifth biennial report to Congress*. Washington, DC: Government Printing Office.

Peters, J. G., & Welch, S. (1980). The effects of charges of corruption on voting behavior in congressional elections. *American Political Science Review, 75*(3), 687-708.

Rohr, J. A. (1986). *To run a constitution: The legitimacy of the administrative state*. Lawrence: University Press of Kansas.

Rohr, J. A. (1989). *Ethics for bureaucrats: An essay on law and values* (2nd ed.). New York: Marcel Dekker.

Rohr, J. A. (1993). Foreword. In H. G. Frederickson (Ed.), *Ethics and public administration*. New York: M.E. Sharpe.

Thompson, D. F. (1985). The possibility of administrative ethics. *Public Administration Review, 45*(5), 555-561.

Thompson, D. F. (1992). Paradoxes of government ethics. *Public Administration Review, 52*(3), 254-259.

Thompson, D. F. (1993). Mediated corruption: The case of the Keating five. *American Political Science Review, 87*(2), 369-381.

Thompson, D. F. (1995). *Ethics in Congress: From individual to institutional corruption*. Washington, DC: Brookings Institution.

Van Wart, M. (1996). Trends in the types of control of public organizations. In J. S. Bowman (Ed.), *Public integrity annual* (pp. 83-97). Lexington, KY: Council of State Governments.

Williams, R. L. (1996). Controlling ethical practices through laws and rules: Evaluating the Florida commission on ethics. In J. Bowman (Ed.), *Public integrity annual* (pp. 65-72). Lexington, KY: Council of State Governments.

Wilson, J. Q. (1979). American politics, then and now. *Commentary, 67*(2), 39-46.

Wilson, J. Q. (1997, August). Democracy needs pork to survive. *The Wall Street Journal*, p. A12.

Donald J. Maletz is an associate professor in the Department of Political Science at the University of Oklahoma. His work is in the area of political theory and ethics, and his articles have appeared in Polity, Administration & Society, Political Theory, *and other journals.*

Jerry Herbel is a University of Oklahoma Ph.D. candidate completing a dissertation about fairness in American public policy and is coauthor of a study of the Oklahoma Ethics Commission in the Almanac of Oklahoma Politics. *He currently serves as chief of the news division for Headquarters, Air Force Reserve Command, Robins Air Force Base, Georgia.*