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THE COSTS AND BENEFITS OF ETHICS LAWS

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ABSTRACT: *This article assesses the impact of ethics laws at the state level in the U.S., focusing on laws that apply specifically to one category of public officials: legislators. I first discuss the positive contribution of ethics laws to the functioning of democratic government. I then turn to the costs of the laws, which are often subtle and counterintuitive. The discussion of the costs of ethics laws draws on a growing body of empirical evidence, and highlights the ways that legislation can have unintended and undesirable consequences.*

Over the last half century, the American states have enacted numerous statutes known as ethics laws that limit the activities of a wide range of public officials, both elected and appointed. These laws address potential conflicts between officials' private interests and their public duties, specifically in regard to behavior that lies outside the clear boundary of bribery. For example, ethics laws restrict the receipt of gifts and honoraria, limit post-government employment, ban state employees from providing compensated legal representation before state agencies, and require disclosure of various financial interests. These laws are generally part of the civil rather than the criminal statutes (or in the case of lawmakers, they are often part of ethics rules that govern each legislative chamber).[1] While many of these ethics laws were enacted in the aftermath of Watergate, others predate that landmark event. New York enacted the first generalized state conflict of interest law for public officials in 1954, setting the standard that other states have followed over the last fifty years.

Ethics laws have been the subject of considerable controversy. In recent years, an increasing amount of scholarship has emerged that questions the wisdom and efficacy of these laws. While some works note important benefits of the laws, others have suggested that the laws have unintended and detrimental consequences that need to be taken more seriously (Anechiarico and Jacobs 1996; Garment 1991; Mackenzie 2002; Maletz and Herbel 2000; Neely 1989; Rosenthal 1996; Tolchin and Tolchin 2001; Rosenson 2004a, 2004b).

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Some states, such as Kentucky, California, South Carolina, and New Jersey, have extensive laws regulating legislators' behavior. These ethics laws include provisions for significant limits on gifts, limits on legislators becoming lobbyists after leaving office, and extensive financial disclosure requirements. Other states, such as Wyoming, Vermont, and North Carolina, have relatively weak legislative ethics laws that lack substantive restrictions on behavior (Rosenson 2005). Approximately half the states, including Massachusetts, Florida, and Connecticut, have set up independent commissions in addition to legislative ethics committees to enforce their legislative ethics laws, while New York, Ohio, and other states rely solely on committees composed of legislators themselves (Rosenson 2003a). A number of scholars, and public interest advocates from groups such as Common Cause, argue in favor of more ethics regulation and stronger enforcement: weak laws should be strengthened (Fain 2002; Herrick 2003; Thompson 1995; Weber 1999). However, as will be detailed below, an increasing number of analysts of ethics laws argue that caution should be exercised when considering expanding the scope of ethics laws, since the enterprise of ethics regulation contains important challenges, inherent limitations, and often poorly understood costs.

THE VALUE OF LEGISLATIVE ETHICS LAWS: WHY THEY ARE NEEDED AND THE FUNCTIONS THEY SERVE

In *Ethics in Congress: From Individual to Institutional Corruption* (1995), Dennis Thompson outlines three basic principles of legislative ethics, aimed at guiding legislative behavior in ways that "promote the integrity of legislators and the legislative process"(19). The principles are (1) independence (making decisions based on the merits of the case), (2) fairness (playing by the rules of the legislative institution), and (3) accountability (acting so as to create and maintain public confidence in the actions of individual legislators and in the legislative process). Ethics laws can make a particular contribution to promoting the first and third principles: independence and accountability. By placing limits on legislative behavior in order to discourage lawmakers from acting primarily out of concern for private financial gain, gift restrictions, financial disclosure requirements and other ethics regulations should promote decision making on the merits. Rebekah Herrick (2003) concludes that the congressional ethics laws and rules passed since the 1970s have had this effect. She argues that by limiting members' ability to supplement their incomes from interest groups, businesses, and private individuals, the laws "limited the potential for members to base decisions on these interests instead of the merits of policy"(110).

By exposing and reducing the potential influence of private economic concerns on legislators' decisions, conflict of interest laws should also promote accountability and public trust in government. At least this is a critical rationale behind the enactment of these laws. I will later address the counterargument: that ethics laws actually decrease public trust by generating a sense that all lawmakers are fundamentally untrustworthy and strongly motivated by the pursuit of private gain from public office.

In practice, ethics laws cannot eliminate legislators' private financial interests (nor should they) or remove the influence of lobbyists on decision making. However, ethics and financial disclosure laws do help make such interests public and do circumscribe

the influence of lobbyists. The fundamental value of ethics laws is that they set clear standards of conduct, defining boundaries which separate the acceptable from the unacceptable. As of 2002, for example, twenty-three of the fifty states prohibited legislators from receiving honoraria (fees for speechmaking). Twenty-seven states had revolving door laws that restricted legislators from becoming lobbyists after leaving office for up to two years. With regard to gifts, nine states had zero tolerance policies, or no cup of coffee laws, which barred legislators from receiving any gifts from lobbyists; an additional twenty-three states placed limits on the value of gifts (National Conference of State Legislatures 2002, 35-37, 48-51, 56-58). Such laws place straightforward limits on acceptable activities and interactions between legislators and other parties, specifically interest groups.

Ethics laws make clear that legislators must abide by certain guidelines, beyond the criminal statutes' prohibition on quid pro quo bribery. One scholar has argued that in state capitals where lobbyists once paid the tab for all sorts of entertainment--generating a sense of indebtedness that clouded lawmakers' judgment--public life has benefited from the passage of conflict of interest laws (Rosenthal 1996). Florida, South Carolina, and Kentucky are states that Alan Rosenthal argues have gained by the reshaping of capital cultures via the enactment of ethics laws, generally in response to major scandals (213). A similar rationale for the positive impact of good-government reform is often advanced with regard to campaign finance regulations. In April 2004, the New Jersey State Assembly began to look at a 25-point plan to reform state campaign finance laws, in order to change what one assemblyman called a "culture of corruption that had enveloped both of our parties."[2]

The existence of ethics statutes in general forces legislators to be sensitive to ethically challenging situations and to think about what kind of conduct is acceptable in ways that they might not otherwise do, i.e., if they simply followed their own moral compass. A perennial criticism of ethics laws is that you can't legislate morality--ethics must come from the heart. This criticism is overly naïve, since the foundation of all law is not to legislate behavior but to proscribe certain activities and attach penalties to their commission. Benefits accrue from defining what is ethically acceptable for practitioners of a given profession, whether it is medicine, law, engineering, or legislating. Because of the complex roles involved in legislating and the myriad pressures that are placed upon lawmakers, they--and the public--do benefit from the outlining of clear standards of conduct, from the enunciation of straightforward 'should nots.' As Frank Anechiarico and James Jacobs (1996, 57) suggest, the behavior of two categories of public officials in particular are likely to be influenced by laws that restrict outside activities: (1) those who previously lived by the credo that everything is permissible except that which is clearly prohibited, and (2) those who did not previously realize that there was anything wrong with benefiting personally from economic opportunities that arise in the course of public employment.

Ethics laws set clear boundaries on what is acceptable in terms of reaping private benefits from public office. A law that limits gifts to $250 in the aggregate per year from a lobbyist, as exists in California (or Louisiana's $0 gift threshold) does not leave much room for an individual lawmaker to use his or her own discretion. Such laws universalize what is acceptable. To the extent that value is derived from the laying down of universal standards, the laws are beneficial. The counterargument, which I

address later, is that removing all discretion is undesirable in the area of ethics because it is demeaning to lawmakers and ultimately harmful to their public image.

Ethics in public life is something no state legislator (or member of the U.S. Congress) today can avoid thinking about, since they generally face a myriad of laws with which they must comply. Over forty states include ethics training in their new member orientation programs, while nine offer continuing education programs. The majority of these programs simply include instruction on ethics statutes and rules, but some states go further and provide a forum for discussion of general ethical principles. At least eleven states in 2002 had programs which incorporated principle-based discussions on topics such as honesty, integrity, and value conflicts. In most states such ethics programs are voluntary. However, in thirteen states in 2002 it was a statutory mandate that legislators attend such programs. In some states these trainings are conducted by ethics commissions; in others, the legislature itself conducts the sessions. An increasing number of states are also providing ethics training for legislative staff, lobbyists, and other public officials (National Conference of State Legislatures 2002, 23-33).

Legislators are not always enthusiastic about the time they must devote to understanding the laws of their particular state. Despite this displeasure, having such laws on the books and requiring legislators to invest some time in understanding what the laws demand--and in some states giving them the opportunity to explore what a broader conception of ethics might require--is a good thing when compared to not having such laws or training. However, ethics laws or no ethics laws are not the only alternatives. The argument of an increasing number of analysts is that the legislative ethics laws that do exist have numerous flaws. The key criticisms, which I address in more detail below, are 1) the laws are poorly designed, largely because they often represent hasty responses to scandals; 2) they violate legislators' privacy; 3) related to the violation of privacy and also to the limits they place on outside income opportunities, the laws deter some would-be legislators from running from office; 4) the laws not only hinder recruitment but also drive some lawmakers out early by creating a politicized and unpleasant environment; 5) they contribute to a negative public conception of legislators because laws inevitably lead to publicized allegations of violations, and even if these allegations are later proven unfounded, the stigma lingers; and, 6) they trivialize the concept of political ethics. It is to these criticisms that I now turn.

HOW THE PROCESS OF ETHICS REFORM MAKES A DIFFERENCE

Numerous scholars have noted that political reform generally follows scandals (Hoogenboom 1978; Katz 1981; Link and McCormick 1983; Mackenzie 2002; Rosenson 2003a; Rosenthal 1996; Saint-Martin 2003; Stewart 1994). Watergate is the most well-known example. It helped catalyze the passage of campaign finance reform, the 1977 congressional ethics codes, and the 1978 Ethics in Government Act. But there are many less well-known examples, particularly at the state level. For example, beginning in the late 1980s and through the mid-1990s, the Federal Bureau of Investigation and the U.S. Department of Justice conducted a series of controversial sting operations, aimed at catching state lawmakers in the act of taking bribes, in

California, Kentucky, South Carolina, and Louisiana. Similar operations were conducted by local law enforcement authorities and federal prosecutors in New Mexico and Arizona in the early 1990s.[3] Each of these stings, which led to the indictments and convictions of numerous legislators on corruption charges, sparked the enactment of new ethics laws. In Kentucky and South Carolina, where the stings yielded the largest number of convictions, so many new restrictions were placed on legislators' behavior in areas such as gifts and honoraria that the states vaulted to numbers one and two in terms of the stringency of their ethics laws (Rosenson 2005). Smaller-scale scandals led to ethics reform in states such as Massachusetts in 1978, New York in 1987, and Ohio in 1994. In Illinois in 2003, following the indictment of Democratic Governor George Ryan on corruption charges, the state's gift laws and its ethics enforcement mechanisms were strengthened (see "Illinois House Oks Overhaul of Ethics Standards," reported by Kevin McDermott in the *St. Louis Post-Dispatch*, 21 November 2003, and also http://www.ilcampaign.org/issues/ethics/ethicsPropsal.asp for details on the 2003 law [accessed 11 February 2004]).

These laws were not only and not always (indeed, not often) direct responses to the unethical behavior highlighted by the particular scandals that they followed. In many states, the new laws addressed a wide range of behavior, going beyond the activities involved in a given scandal. For example, federal prosecution of state legislators on bribery, mail fraud, and other charges led to the passage of laws banning honoraria and gifts, to post-government and representation employment limits, and to mandatory financial disclosure. The sting operations that exposed state legislators taking bribes could have led simply to stronger bribery laws. Instead, they catalyzed a broad range of conflict of interest laws. There are parallels in this regard to Watergate. As Calvin Mackenzie (2002, 44) suggests, "Watergate was about burglary, cover-ups, lying, and campaign irregularities. [Yet] (n)othing in the Ethics in Government Act (passed in its wake) would have added new deterrents to, or punishments for, those behaviors." As with Watergate, reformers seized the opportunity presented by scandal to push for a variety of new restrictions, many unrelated to the behavior exposed by the scandal. Since 1954 and the passage of the first general ethics law by New York State, good-government advocates outside and inside state legislatures have used the window of opportunity created by scandals to press for the passage of reform proposals that had often languished for years in committee, failing to generate the impetus for a vote. Eager to stem the flow of negative media attention, legislators generally pass many--though by no means all--of these proposals by wide margins (Rosenson 2005).

The scandal-driven nature of ethics reform has important implications. Scandal-motivated legislation has several negative features. As suggested above, laws enacted in response to scandal are often not well thought out and they are not narrowly tailored to existing problems. In addition, they generally lack deep support from legislators. In Dobel's (1999) terminology, the laws do not constitute excellent political achievement because they are not based on genuine consensus and commitment among elites regarding their value. They are therefore unlikely to endure in the long term, a point I return to in the next section. Scrambling to respond to media criticism, legislators enact laws about which they themselves are highly skeptical. As Rosenthal (1996) points out, ethics laws that lack the support of those who must abide by them are unlikely to succeed. In only about half the states do independent ethics commissions enforce

legislative ethics laws, and even then they do so in conjunction with ethics committees composed of legislators. In the remaining states, legislative ethics committees have sole jurisdiction over the enforcement of ethics laws pertaining to legislators. This means that the support of lawmakers is a critical intervening variable in explaining how, and whether, the laws are firmly enforced. If lawmakers do not believe in the laws, it is unlikely that legislative ethics committees will come down hard on those found guilty of violating them. And it is likely that lawmakers will use a range of mechanisms at their disposal to hobble the independent ethics agencies that they create, from the power of the purse to amendatory legislation designed to remove various powers from the commissions (Rosenson 2005). Legislators' dislike of ethics laws leads them to implement weak enforcement mechanisms.

REMOVING DISCRETION AND LEGISLATIVE BACKLASH

Another important criticism of ethics laws is that their universality is a vice, not a virtue. This is because they remove discretion from the individual legislator regarding what types of gifts or other things of value may corrupt judgment. In effect, the laws say legislators should not determine for themselves how small a gift is small enough or what types of gifts represent an unacceptable threat to legislative judgment. Many lawmakers find this demeaning and offensive. The result is that the laws often lead to a backlash from the legislators who enacted them under pressure, once the scandals that catalyzed them fade into the background.

For example, in Iowa there is a $3 limit on gifts from lobbyists, enacted in 1994 in the wake of a scandal involving the senate president and his ties to a state investment fund. As of January 2003, the Iowa House Ethics Committee was working on rewriting this law. As Mike Glover reported in his article "Key Lawmakers Agree to Revisit Gift Law" in the *Associated Press State & Local Wire* on 30 January 2003, one representative told reporters that it was absurd and insulting to suggest that a legislator can be influenced by a meal or drink, and that the law had stifled social life at the State House. "It's got to be changed," said Rep. John Connors (D-Des Moines).

The ongoing hostility of legislators to existing ethics laws and to proposals to expand existing laws can also be seen in Maryland. In January 2004, the General Assembly was resisting pressure by the state Common Cause chapter to enact a bill placing their financial disclosure forms online. The aim of this proposal, according to Common Cause, is to make it easier for those who want to obtain that information but now have to visit the legislative ethics committee offices and sign in. Legislators can also request to be notified whenever their records are pulled, which advocates say has a chilling effect on the public's access to public records. One lawmaker, John Arnick (D-Baltimore County) explained his opposition to the proposal, "I don't want (my information) out there for every kook to read" (see Susan Levine's article, "Legislative Ethics Data Find Outlet on Internet" in the *Washington Post*, 13 January 2004, and Bart Jansen's article, "Complaints About Ethics Bill Threaten Its Toughest Provisions," in the *Associated Press State & Local Wire*, 17 February 1999). Even in the wake of recent scandals involving revelations of lobbyist influence over legislators in Maryland, lawmakers were holding the line with regard to this particular ethics reform proposal, citing their interest in maintaining some degree of privacy.

RECRUITMENT, RETENTION, AND THE POLITICIZATION OF ETHICS CHARGES

Concerns about the invasion of privacy connect to another important claim of the critics of modern ethics laws, namely that the laws hinder recruitment and retention of legislators and other public officials (Anechiarico and Jacobs 1996; Neely 1989; Mackenzie 2002; Rosenthal 1996; Rosenson 2004a). The drafters of ethics laws are highly sensitive to the potential for the laws to deter some individuals from entering public service. The preambles of many state laws explicitly note the balancing act inherent in creating clear standards of conduct, on the one hand, and avoiding a situation in which public service is undesirable due to excessive limits on outside income opportunities or requirements for disclosure of financial interests, on the other. One such example is the preamble to the 1971 Maine ethics code, which stated, "The public interest will suffer if unduly stringent requirements deprive government of the 'services of all but princes and paupers'" (Maine Code, §146: 19-371, Public Laws 1971). Louisiana's 1964 ethics code similarly reflected, "Legal safeguards against conflicts of interest must be so designed as not unnecessarily or unreasonably to impede the recruitment and retention by the government of those men and women who are best qualified to serve it" (Louisiana Code, Title 42, Chap. 15, Sec. 1101).

Although the drafters of ethics laws have generally been careful to avoid making ethics laws overly onerous, there is still evidence that these laws deter some individuals from running for office. For example, I found in my research using multiple regression analysis that financial disclosure laws reduced the number of candidates who ran for open seats in state legislative primaries (Rosenson 2004a). The study examined 1,510 primary races across 25 states in the years 1994 and 1996. The stronger a state's financial disclosure requirements, the fewer the number of candidates who ran for any seat that came open. I also found that the passage of representation limits for lawyer-legislators (laws limiting representation before state agencies for pay) contributed to a decline in the number of lawyer-legislators serving in 46 states between 1976 and 1986. Finally, I found that stronger financial disclosure requirements contributed to a decline in the number of business owners serving in the 46 state legislatures during the same time period.

Some may feel it is a good thing to have fewer attorneys and fewer business owners serving in state legislatures. These are still among the most popular occupations for state legislators, so a decline in these categories actually enhances occupational diversity. What is problematic is that ethics laws may be deterring highly qualified individuals from these occupations from serving. The official financial rewards of state legislative service are limited. For example, as of 1998, only eight state legislatures paid salaries above $100,000 per year (Council of State Governments 1998). Attorneys in states such as Kentucky and South Carolina, which pay relatively low or unprofessional salaries, may decline to run for office because of the limits placed on their capacity to supplement their official salaries by representing clients before state agencies. In states with extensive financial disclosure requirements, such as New York, some business owners are reluctant to publicize their financial interests, choosing to keep them private at the cost of declining to run for office.

While I found evidence of this deterrent effect only for one of the two ten-year periods I examined (no statistically significant effect was found for the years 1986-1995), the fact that I found any deterrent effect must be considered as a downside of ethics laws. One could argue that the individuals who do not run are people who should not serve, due to conflicts of interest. However, it is plausible that at least some could contribute to public life, but do not get to do so because they cannot afford to lose outside income or wish to avoid public exposure of their financial interests. We cannot be sure that only the bad attorneys and business owners are deterred.

In addition to the impact of ethics and financial disclosure laws on attorneys and businessmen, individuals of no particular profession may be hesitant to run for office or serve in appointive positions when they witness the media circus that often attends the accusations of ethics violations. As Suzanne Garment (1991) notes, public servants can face large legal costs, their reputations can be destroyed, their children may suffer fallout, and their spouses may be hounded by reporters. This is an unintended consequence and not an inherent flaw of ethics laws, and the media bears significant responsibility. Again, however, the deterrent effect must be reckoned as a cost.

Similar findings about the deterrent effect of financial disclosure laws on public service have been suggested by Mackenzie (2002) with regard to the national executive branch. Mackenzie draws his conclusions from the writings of former personnel officers for Presidents Nixon, Carter, Reagan, and George H.W. Bush, who suggested that financial disclosure requirements had been pushed too far and were one of the deterrents to getting people in (to serve as presidential appointees), particularly those from outside Washington from the business community who had the types of financial interests that would have to be made public (127). The former director of personnel for George H.W. Bush added that not only financial disclosure, but also the divestiture requirement and post-government employment restrictions, had harmed recruitment efforts.

In addition to the deterrent effects of ethics laws on recruitment, it is argued that ethics laws may lead to lower retention of legislators by making legislatures into less desirable places to serve (Rosenthal 1996; Tolchin and Tolchin 2001). More broadly, the politicization of ethics laws is seen as a serious problem for American democracy (Ginsberg and Shefter 1990). Susan and Martin Tolchin (2001) discuss the ethics wars in the U.S. Congress. In one chapter they focus on former Republican Speaker of the House Newt Gingrich, whose ethics crusade involved accusing the previous Democratic Speaker, James Wright, of sixty-nine ethics violations. These included improperly taking gifts from a real estate developer and using a book he wrote to enrich himself in violation of the House rules' prohibitions on outside income. Wright was convicted of using sales of his book to evade the House restrictions on honoraria, and he resigned from office.

The ethics process had political overtones well before Gingrich was elected in 1978, but he took it to new heights (Tolchin and Tolchin 2001, 2). Gingrich viewed the process of making ethics charges as a legitimate political weapon. He argued that members of Congress should be held to the highest ethical standards, and that they fell far short. He was especially appalled by the long-time practice of allowing convicted felons to enjoy the full privileges of the House, such as voting, while their cases were being appealed (ibid.).

However, Gingrich's use of the ethics process to bring down the Democratic Speaker would come back to haunt him. He unleashed the process only to find it turned against him. Immediately after becoming Speaker himself in 1994, he was charged with unethical behavior for taking a book advance of $4.5 million from publisher Rupert Murdoch. Gingrich gave up the advance and agreed to accept earned royalties in its place. Over 500 additional charges were filed with the House Ethics Committee involving a political action committee (PAC) run by Gingrich to raise money for Republican candidates. He was accused of diverting funds from the PAC to finance two college courses he taught in Georgia. Democrats called it a tax-scam. The charges came primarily from House Democratic Whip John Bonior, Democratic Rep. John Lewis of Georgia, Democratic Rep. George Miller of California, and Democratic Rep. Pat Schroeder of Colorado. Schroeder suggested that Gingrich was no more ethical or law-abiding than the Democrats he had criticized for years: "We might as well rip up all the laws, rip up all the rule books, if the guy at the head can thumb his nose at them" (Tolchin and Tolchin 2001, 6).

Gingrich admitted to failing to get advice from a tax lawyer before teaching the course, and to filing inaccurate information to the House Ethics Committee, although he said it was unintentional. In early 1997, the House voted 395-28 to reprimand him. He was also fined $300,000 by the House Ethics Committee, a fine agreed upon by leaders of both parties. Though Gingrich said the charges against him were 99 percent partisan, he nevertheless paid the fine (Tolchin and Tolchin 2001, 6). The congressional charges touched off a three-year IRS investigation that concluded he had acted within the law. Like former Speaker Wright, who said it cost $500,000 in legal fees to defend himself against the ethics charges he faced, Gingrich paid a heavy price in both financial and reputational terms. And both parties arguably suffered from the falls of their leaders.

More recently, House Majority Leader Tom DeLay (R-Texas) has been the target of investigation by the House Ethics Committee. In October 2004 the committee officially admonished DeLay for pressuring another House member to change his vote on a health care bill; for intervening with federal authorities to chase Texas state lawmakers who had fled their state to avoid voting on a redistricting plan aimed at benefiting the Republican party; and for appearing to link political contributions to support for legislation. (DeLay had also been chastised previously by the ethics committee for pressuring trade groups to hire Republican officials.) But in November 2004 the committee also sent a letter to one of DeLay's accusers, Democratic Rep. Chris Bell, saying that the congressman had engaged in exaggeration and innuendo in filing his charges against DeLay. For example, the committee concluded that while Bell had accused DeLay of soliciting a bribe from a Texas energy company, the facts did not come even close to supporting this extremely serious claim. DeLay asserted that he had been vindicated by this letter, despite the committee's admonishment of him, and referred to Bell as a "partisan stalker" (see David Stout's article, "DeLay Hails Ethics Panel's Rebuke of His Accuser," in *The New York Times*, 19 November 2004, and Carl Hulse's article, "House Ethics Panel Says DeLay Tried to Trade Favor for a Vote," in *The New York Times*, 1 October 2004).

Acknowledging that members of Congress should abide by the laws and rules of their institution, the bigger concern raised by the DeLay, Gingrich, and Wright cases is the potential for the politicization of ethics charges. Russell Williams (1996), studying

the Florida Ethics Commission, found that ethics charges rose in election years and fell in nonelection years, suggesting some degree of political motivation. As parties and candidates trade accusations about ethics violations, this contributes to what Rosenthal calls a breakdown of trust among members that has dire consequences (1996, 12). Put simply, it becomes harder to build consensus needed to make public policy.

Given the increasing ideological polarization between the two major parties at the national and state levels, when ethics is added into the mix it becomes even more difficult to get legislators to work together in a bipartisan fashion. I make the assumption here that bipartisanship is necessary or beneficial in at least some cases, e.g., where neither party has a large majority in the lower or upper house, or there is divided government. Accepting this assumption as legitimate, the potential for ethics laws to be used as a political weapon by partisans becomes a potentially serious issue from the standpoint of the government's ability to govern, since the flinging of ethics accusations can introduce new incentives to policymaking gridlock. Herrick states, "The use of ethics is likely to increase acrimony and partisanship in the chamber, decreasing the ability of Congress to pass new legislation" (2003, 10). Assuming that new legislation is needed under some circumstances, this is a serious problem.

The broader claim about politicization of ethics processes has also been made about the special prosecutor statute, later called the independent counsel statute. This law was enacted in 1978 in response to Watergate, when the attorney general fired Special Prosecutor Archibald Cox on the order of President Nixon. The aim was to prevent the president from encroaching on the independence of special prosecutors appointed to investigate executive branch officials (Saint-Martin 2003). Mackenzie (2002) and Garment (1991) criticize the independent counsel statute for unduly destroying political careers. Even if someone is later proven innocent, the damage has been done and the financial and emotional costs are tremendous, while the benefits to the public are debatable. A prime example of this is Ray Donovan, secretary of labor under President Reagan, who was ultimately acquitted but paid a huge cost monetarily and in reputational terms (Garment 1991).

Mackenzie and Garment also point to the cost of independent counsels. The twenty investigations between 1979 and 2000 spent nearly $200 million in taxpayer money in the pursuit of detecting and sanctioning public corruption. The percolating backlash to the independent counsel statute among both Democrats and Republicans, who felt it was used in partisan ways, came to a full boil after the investigation of President Bill Clinton. While it can be argued that Kenneth Starr's investigation was legitimate and defensible since the president should not be above any laws, the investigation was criticized by many as a costly political witch hunt. Congress evidently bought many of the criticisms, declining to reauthorize the statute in 1999.

Returning to the impact of ethics laws on the decision of legislators to leave office earlier than they otherwise might, I did not find strong ethics laws to be associated with higher voluntary retirements, at least in lower houses of state legislatures (Rosenson 2003b). The study looked at the retirement decisions of legislators in forty-seven states between 1998 and 2002. However, anecdotal evidence suggests that the passage of ethics laws--such as financial disclosure requirements and post-government employment limits--does lead to some resignations (Anechiarico and Jacobs 1996, 61).[4]

Anechiarico and Jacobs (1996) make an even more subtle argument that ethics laws negatively affect morale and the way that public servants do their jobs. Because many public employees and elected officials view comprehensive ethics laws as presuming their venality and guilt, it would "hardly be surprising if (those) who feel this way were unenthusiastic and ineffective in carrying out their responsibilities" (61). This claim is hard to assess, however, in the absence of more empirical evidence, such as interviews with public officials to determine whether ethics laws have had a demoralizing effect on them and their enthusiasm and commitment to their jobs.

ETHICS LAWS, PUBLIC TRUST, AND THE MEDIA

One of the key rationales for the enactment of substantive ethics restrictions, financial disclosure requirements, and other sunshine laws that aim to promote transparency in government, is that they will increase public trust. This goal is particularly significant in the post-Watergate period, which has witnessed a decline in public trust. However, good government laws may have the perverse and unintentional effect of decreasing public trust. Jeff Milyo and David Primo (2003), for example, found that stronger campaign finance laws in the states were actually associated with lower trust. This may occur because such laws generate constant suspicion of public officials' motives. Mackenzie, for example, criticizes the ethics culture--with its myriad of rules and regulations designed to fend off potential conflicts of interest--as one "rooted in distrust, in the notion that every public official and every candidate . . . is suspect" (2002, 177). He points to national survey data that shows fluctuations in public trust in the national government have not corresponded to the passage of new ethics laws at the national level.

Herrick (2003) similarly suggests that "the advent of institutional rules related to ethical behavior provided a cache of information about unethical behavior and has perhaps contributed to Americans' low regard for Congress" (9). The media rarely reports on members who are abiding by the ethics laws, since that would not be considered newsworthy. Instead, reporters naturally seize on violations of the laws, even minor ones such as the failure to file financial disclosure forms on time. This increased media attention to ethical lapses--as defined by the possible failure to comply with existing law--may be an important factor in explaining the widespread belief that public officials are corrupt. I have found that in states with strong ethics laws, there is a greater perception of state corruption than in states with weak ethics laws (Rosenson 2004b).[5] My work examines perceptions (by State House reporters) of political corruption in forty-seven states in 1999.

The critical factor which links ethics laws and lower public trust is the media. Although some scholars of legislative ethics have concluded that legislators today are probably less corrupt than they used to be (Mackenzie 2002; Rosenthal 1996; Thompson 1995), the media does not view or present issues of legislative ethics through this broad, historical lens. Rather, the imperatives of news gathering and media competition impel reporters to focus on current ethical misdeeds--to be the first to report them, or to report them from new angles. With regard to Congress, the number of stories dealing with scandals as opposed to public policy has grown over the years (Lichter and Amundson 1994).

The existence of ethics laws provides an important clue as to why. Laws lead to allegations that there have been violations of the laws. These make for stories that are interesting and newsworthy from the journalist's perspective; this is especially true for anti-corruption laws, given the media's interest in political scandals and corruption. The media often emphasizes scandals and corruption, while stories about policymaking or other legislative achievements receive short shrift (Graber 2002). This is true even though the public does not necessarily want as much scandal coverage of candidates and public officials as it receives (Just et al. 1996). Consider the revelations about U.S. Rep. Gary Condit (D-California) and his affair with a woman who became a missing person in 2001. Condit became the most recognizable face in Congress, while congressional news about other members and the conducting of institutional business (committee meetings, floor votes, hearings, etc.) was drowned out. One study of network news reporting on Congress in 1989 concluded that two-thirds of the coverage concerned three episodes of scandal (Ornstein 1989).

Part of the media's emphasis on scandal is due to the long-term impact of Watergate on journalistic culture, but part is an outgrowth of ethics laws that provide easy fodder for journalists' natural interest. Many individuals in the media also may feel a sense of obligation to cover alleged ethics violations in order to fulfill the role of watchdog and expose governmental wrongdoing. If laws define what is wrong, and they appear to have been violated, journalists can justify writing about it by saying they are serving the classic watchdog function, responding to ethical criteria that government has set for itself but officials may have failed to live up to. The media is arguably too aggressive in its pursuit of stories that appear to involve character lapses, acting more as a junkyard dog than a watchdog (Sabato 1991). The point here, however, is that ethics laws provide a jumping-off point, an objective standard, for reporters' actions and the stories they file. Covering ethics charges is not the same as covering unsubstantiated rumors about political officials. There is a certain objective basis to the former type of coverage that makes it more justifiable than the latter: public officials appear to be violating standards they have set for themselves, rather than standards that journalists choose to apply. The filing of ethics charges is part of an officially sanctioned process; thus, journalists are not merely imposing their own judgments about right and wrong in political life when they write about cases that come before ethics committees and independent commissions.

ETHICS LAWS AND THE TRIVIALIZATION OF POLITICAL ETHICS

Perhaps the most significant criticism of ethics laws is that they aim too low and diminish the concept of what it means to act ethically in political life. Donald Maletz and Jerry Herbel (2000, 20) present this criticism eloquently when they suggest that the requirements of laws such as the Ethics in Government Act of 1978--such as its gift limits and mandated financial disclosure--lead to a certain trivialization of ethics. The modern ethics reform movement, they argue, suffers from the absence of an ethics of aspiration or excellence (37). A growing literature in the field of public administration, of which these authors are a part, has focused on a much broader view of political ethics, one which goes beyond avoiding financial conflicts of interest and emphasizes characteristics such as courage, integrity, and leadership across a wide range of

demanding situations that arise in public service (Cooper and Wright 1992; Dobel 1999; Hart 1992; Pffifner 2003). The content of modern ethics laws, which consists mainly of delineating situations that public officials should avoid rather than providing positive guidelines for action, does not speak to such broader conceptions of political ethics.

This is because ethics laws are deliberately minimalist in nature (Thompson 1987). They proscribe a small area of conduct, focusing on the domain of financial conflicts of interest. They purposely circumscribe the scope of ethics. This circumscribing has its virtues in a pluralist political system where legislators are likely to disagree on fundamental political and moral values and in which broader agreement on what constitutes ethical behavior is difficult, if not impossible, to achieve. But the narrow focus on financial conflicts of interest fails to address many aspects of the questions: What does it mean to act as an ethical legislator, or as an ethical public servant more generally? What does it mean for a legislator to exercise judgment well? As Thompson states, "many kinds of influence can erode legislative judgment" (98). As an example, he suggests that legislators who "always use their office zealously to pursue the . . . goals of single-interest groups with which they are associated may be distorting legislative judgment no less than those who accept (things of financial value) from special-interest groups" (ibid.). The personal financial motives of lawmakers can be an important factor that influences and harms legislative judgment, but it is not the only factor. By focusing exclusively on one factor, ethics laws indeed aim low and must be viewed as possessing important limitations in terms of their ability to promote exemplary moral behavior by public servants.

Another problem raised by the nature of ethics laws is that they focus attention--of the legislators who must abide by them, of the media who looks for occasions on which they are violated, and of the public who considers possible violations presented by the media--on individual corruption rather than on a broader conception of corruption. Thompson (1995) makes the useful distinction between individual corruption and institutional corruption. Individual corruption involves personal financial enrichment from public office. Receiving a bribe is a classic example. Institutional corruption involves political gain rather than personal financial gain. Campaign finance contributions, which are of use in the political process rather than in private life, can be the basis of institutional corruption. Institutional corruption is problematic because it damages the legislative process in a democracy, not because it corrupts individual legislators who may be dismissed as bad apples in the bunch. The Keating Five case is a good example of institutional as opposed to individual corruption. In this case, five U.S. senators called, met with, and importantly, pressured state and federal regulators on behalf of a savings and loan operator whose activities were under investigation. The banker, Charles Keating, was also a major contributor to their campaigns. The senators were ultimately sanctioned by the Senate Ethics Committee (four were rebuked and one was reprimanded) (40).

This conduct, arguably inappropriate and undesirable, does not fit into the narrow category of personal financial gain from office. But it still raises important issues, from the standpoint of legislative ethics, that are worth considering. The senators interfered with quasi-adjudicatory processes, and did so in a way that went against the principle of transparency in government. Ethics laws do not speak to the harm to democracy and to the functioning of the legislative institution that was caused by their actions. In a sense,

the exclusive focus on ethics laws on financial conflicts of interest can be used by those accused of unethical behavior to exonerate themselves from charges of acting improperly if their actions do not fit into the neat template of improper financial gain.

This is not to say that minimalist ethics is of no value. As suggested earlier, the delineation of clear standards of conduct, specifically the prohibition of activities such as receiving fees for speechmaking, provides some clear benefits. It is certainly better than the alternative of no ethics laws and leaving decisions about what kinds of behavior are acceptable to the full discretion of legislators. What this article has suggested is that ethics laws contain hidden costs. These costs can be found in their impact on recruitment, in their potential to be used as political weapons by candidates and officeholders, which can lead legislators to leave office earlier than they otherwise might; in their abuse by the media; and in the paradoxical impact they may have in contributing to diminished public trust. More broadly, ethics laws do not speak to the need for a broader vision of ethics in political life and the importance of virtues such as courage and leadership.

NOTES

1. Most ethics and financial disclosure laws carry noncriminal penalties, such as fines or some sort of sanction by an ethics committee, as punishment for violation. For example, Rhode Island's ethics commission can fine violators of the state's ethics laws up to $25,000, Florida's commission can fine up to $10,000, and Connecticut's can fine up to $2,000 per violation. Ethics committees can generally recommend--and the full chamber of each house of the legislature can vote to endorse--sanctions that include rebukes, reprimands, censures, or even expulsion. However, some ethics laws do carry criminal penalties, i.e., jail time.

2. The proposal called for strengthening the powers of the State Election Law

Enforcement Commission, increasing campaign finance reporting requirements, increasing penalties for reporting violations, and requiring political fund-raisers to register annually and file reports on their activities. See "NJ Lawmakers to Change 'Corruption Culture,'" 27 April 2004, available on the Internet at http://1010wins.com/topstoriese/winstopstories_story_118071802.html.

3. See Rosenson (2005, chap. 5) for a discussion of the broader trend involving the shift in the priorities of federal prosecutors toward fighting corruption at the state and local levels after 1976.

4. One anecdotal example is the 1978 Massachusetts ethics law, which among other things created an independent ethics commission, placed a numerical limit on gifts from lobbyists to legislators, and increased significantly the financial disclosure requirements for lawmakers. Bradbury (1996) argues that the passage of this law led to resignations, e.g., of one wealthy legislator who did not want to make his financial profile public.

5. This study, based on a multiple regression analysis that controls for other factors that may influence perceptions of corruption, takes into account what is known as the endogeneity problem. In other words, the model used accounts for the possibility that an independent or explanatory variable--in this case ethics laws--may be influenced by the dependent variable or the outcome to be explained, in this case perceptions of corruption. This modeling issue is addressed through an instrumental variables technique.

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