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Chapter 1: Political Corruption and the Abuse of Executive Privilege


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   Warren Burger
   The special prosecutor in the investigation of the Watergate burglaries has the right to see relevant evidence; the president cannot withhold such evidence on the basis of separation of powers or the need for secrecy.

2. Effective Government Requires That Cabinet Conversations Remain Confidential 29
   Richard M. Nixon
   The security of the United States depends on the ability of executive branch officers to have candid, private conversations. This has been recognized in the Constitution and American tradition.

3. President Nixon’s Abuses Endangered the Legitimate Use of Executive Privilege 34
   Mark J. Rozell
   Executive privilege is necessary for effective policy making, but Congress must be vigilant in watching for abuses. Nixon’s manipulation of this privilege has damaged its image and its function for future presidents.
4. The Battle over Executive Privilege Is Rooted in American History

*Michael C. Dorf*

From George Washington, who refused to comply with Congress’s request that he hand over documents related to treaty negotiations, to Dick Cheney, who tried to keep records of discussions of the national energy policy secret, the clash between Congress and the White House over executive privilege is deeply rooted in American history.

5. Watergate Era Reforms Have Been Eroded Since 9/11

*Matt Welch*

Pressure for increased national security after the September 11, 2001, World Trade Center attacks has led to a renewed emphasis on executive privilege. Some of those who fought against limiting executive privilege in the 1970s are leading the movement to repeal reforms in the post-9/11 era.

**Chapter 2: The Independent Counsel as a Tool Against Corruption**


1. Majority Opinion: Congress Has the Right to Appoint Special Prosecutors to Investigate Corruption

*William Rehnquist*

The Constitution makes it clear that Congress has the power to create positions inside the executive branch. Special prosecutors tasked with investigating corruption fall into this category.

2. Dissenting Opinion: The Independent Counsel Law Violates the Principle of Separation of Powers

*Antonin Scalia*

The separation of powers is at the heart of the American democratic system. Allowing Congress to order investigations of presidential appointees due to political disputes endangers that separation.
3. Separation of Powers Must Be Balanced with Protection Against Corruption

Kyriakos P. Marudas

While separation of powers is an important concept in constitutional law, Congress must have the power to investigate presidential corruption. The *Morrison* decision properly balances both concerns.

4. The Separation of Powers Doctrine Must Be Flexible

Katy J. Harriger

The majority opinion in *Morrison v. Olson* marks a turning point as the Court moves toward a more flexible approach to the Constitution and its separation of powers.

5. Despite the *Morrison* Decision the Independent Counsel Law Has Lost Favor

Dan Carney

While the independent counsel law was ruled constitutional in *Morrison v. Olson*, it lost political support after several investigations were perceived to have gone beyond proper bounds.

Chapter 3: Fighting Corruption by Limiting Campaign Spending and Contributions


1. Majority Opinion: Limiting “Soft Money” Campaign Contributions Is Constitutional

John Paul Stevens and Sandra Day O’Connor

The McCain-Feingold campaign finance law is in line with a long-standing tradition in America, the attempt to restrict the pernicious influence of wealth on politics.
2. Dissenting Opinion: The Court’s Ruling Abandons Its Duty to Protect Political Free Speech

_D Clarence Thomas_

The Court’s opinion in _McConnell_ imposes restrictions on the Constitution’s guaranteed freedom of speech in a way that may encourage and enable the expansion of those restrictions, stifling the democratic exchange of political ideas.

3. Dissenting Opinion: Limiting Campaign Expenditures Increases Incumbents’ Hold on Power

_D Antonin Scalia_

Despite its pretense of treating sitting elected officials and challengers equally, campaign finance reform actually severely limits those groups most able to broadcast effective anti-incumbent messages.

4. Large Campaign Contributors Buy Access to Politicians

_D Mark Green_

The access to lawmakers granted to wealthy campaign contributors corrupts our politics. The spending limits set by the McCain-Feingold legislation must be coupled with free or low-cost media and public financing of campaigns to eliminate this disparity.

5. Campaign Finance Law Should Not Target Advocacy Groups

_D Jonathan Rauch_

Attempts to balance free speech rights with anticorruption measures such as limitations on campaign donations have only created new ways of working around the law. Congress should stop passing new laws and give the campaign system some time to adapt.

**Chapter 4: Expanding the Federal Government’s Right to Prosecute Local Corruption**

1. The Circuit Court’s Dissenting Opinion: Federal Government Prosecution of Local Corruption Is Improper
   
   Kermit Bye
   American federalism requires that corrupt officials be subject to federal prosecution only when actual federal funds are involved. An official who merely distributes federal moneys in areas unrelated to the corrupt acts must be prosecuted locally, not by the federal government.

   
   David Souter
   The spending clause of the Constitution expressly gives Congress the power to oversee any unit of government that accepts federal funds. Federal prosecutors need not prove that actual federal dollars were involved in the corrupt activities.

3. Concurring Opinion: The Sabri Decision Represents an Unwarranted Expansion of the “Necessary and Proper” Clause
   
   Clarence Thomas
   The Court’s current interpretation of the spending clause vastly expands the power of the federal government to meddle in local affairs, but until the Court revisits that interpretation, it can pursue bribery cases at the local level for any organization that accepts federal funds.

4. Sabri Shows the Supreme Court’s Concern with Corruption
   
   George D. Brown
   The Supreme Court has put an increasing emphasis on fighting corruption in politics in order to build public confidence in the democratic process.
5. Suggestions to Safeguard Local Control from Sabri's Effects

Philip M. Schreiber

The principles of federalism require that state and local officials have proper safeguards against the power of Congress. In Sabri, the Court has interpreted the spending clause of the Constitution in such a way as to destroy those safeguards.

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