Chapter 7

Why We Fail to Fix Our Corrupted Institutions

One of the most obvious means of saving human lives would be to eliminate deaths caused by tobacco.[1] Tobacco killed about 100 million people in the twentieth century and is projected to kill as many as a billion people in the twenty-first century.[2] Yet despite the brave efforts of those who have stood up to the tobacco industry over the last sixty years, our society, and specifically the U.S. government, has done and continues to do shockingly little to avoid these deaths. Our elected officials have been corrupted into inaction, but the vast majority of us fail to notice or complain.

Across a variety of domains, including regulation of the tobacco industry, regulation of the auditing industry, and management of climate change, for-profit organizations, not-for-profit organizations, and the U.S. government have repeatedly failed to act to maximize the interests of society. In each case, corporations intentionally have acted to distort how citizens and legislators understand the issue and to prevent not-for-profit organizations and the government from intervening on citizens' behalf. However, our interest is not in the illegal behaviors of some of these industries or the legal but corrupting influences of their disinformation campaigns.[3] Nor will we repeat the important argument that government policies are distorted by the unique ability of special-interest group to harness their resources to influence policy (in other words, the argument that it is easier for several tobacco companies to agree on a policy preference and combine resources than it is for 300 million citizens to do so). Rather, using the perspective of behavioral ethics, we will focus primarily on the failure of politicians and other professionals to notice, confront, and overcome these corrupting influences and on the failure of citizens to hold elected officials accountable for suboptimal policies. In Chapter 5, we explored the common failure to notice the unethical actions of others; this chapter examines how we fail to notice and act on the corruption of government policy.

A fundamental goal of any government should be to enlarge the pie of resources that society has at its disposal. Yet when government decisions are crafted to benefit small groups of constituents, valuable public resources—ranging from tax dollars to fisheries to the global climate—are often misused and ignored, and the pie of available resources shrinks. We will explore the intersection between psychological processes and political systems to understand why citizens and legislators allow this phenomenon to occur.

When the pot of resources is as large as it can be without making others worse off, economists consider it to be "Pareto-optimal." A Pareto-optimal change is one that provides greater benefits for some and makes no one worse off. At the national and international level, Pareto-optimal changes are nonexistent, since any change will cause harm to someone, somewhere. The Nobel Prize–winning economist Joseph Stiglitz argues that some trade-offs are "near-Pareto improvements."[4] These policies create large benefits for many people while

imposing comparatively small losses upon others, such as a special-interest group that may have already manipulated the political system to its advantage. Stiglitz argues that "if everyone except a narrowly defined special-interest group could be shown to benefit, surely the change should be made."[5] Unfortunately, society often fails to make such near-Pareto policy improvements.

Ideally, changes to government policy should entail wise trade-offs— trades in which gains significantly exceed losses for most citizens.[6] Thus, for a new tobacco policy to be wise, its expected value to society, in terms of lives saved and disease prevented, should be larger than the costs to tobacco companies and citizens (such as shareholder value and loss of enjoyment from smoking). When virtually everyone but a narrowly defined special-interest group is expected to benefit from a policy, that policy is a wise one.[7]

Why does the U.S. government so often fail to enact such wise policies? To understand why, we will explore the failure of the government to act to reduce the corruption of policy in three industries: tobacco, auditing, and energy. Of course, many other issues—such as U.S. government subsidies and the U.S. educational policy—fit into the same pattern of dysfunction, but we chose three issues where the record of corrupted institutions is quite clear. For each case, we will briefly describe the barriers to wise policy created by the interplay between political systems, the interests of a small number of actors who benefit from contorting policy to their own narrow goals, and the psychological processes of the citizens who bear the brunt of the policy outcomes. Our main focus will concern our failure as a society to end this destructive corruption.

Big Tobacco

According to archaeological evidence, Mayans smoked tobacco as early as the first century b.c.[8] Although tobacco was native to the Americas, Christopher Columbus's exposure to the plant led to the early diffusion of smoking in other parts of the world. Tobacco was banned in China as early as 1612 and then in Berlin in 1723. The big boom in smoking came with the branding of cigarettes in the middle to late 1800s, and specifically with the 1880 invention of the Bonsack cigarette-rolling machine, which could produce 100,000 cigarettes per day.[9]

The first suspicions about a link between tobacco and cancer date back to 1761. By 1858, extremely strong correlational evidence emerged between pipe smoking and cancer of the mouth. Over the next one hundred years, evidence of a connection between smoking and cancer accumulated. A link to lung cancer had been suggested by 1912, and such theories became common by the 1920s. The first quantitative analysis connecting cigarettes and lung cancer appeared in 1929; it showed that lung cancer victims were much more likely to be smokers than nonsmokers were.[10]

A critical question remained: Did cigarettes cause cancer, or did some other determinant of cancer create a correlation between smoking and cancer? For example, if people who lived in

environmental conditions that caused cancer also smoked more than those in other areas, then it would be conceptually possible for a correlation between smoking and cancer to exist without pinpointing smoking as the agent that caused the cancer.

Significant research to determine whether smoking actually caused cancer followed the 1929 study. By the early 1950s, many quantifiable studies existed, and causal studies with nonhuman animals had been conducted. In 1957, the British Medical Research Council formally blamed tobacco for the growth of lung cancer throughout society. The London Royal College of Physicians concluded in 1962 that steps were needed to curb the rising consumption of tobacco. Finally, in 1964, the U.S. surgeon general publicly concluded that smoking was causally related to lung cancer.[11] By then, it was apparent that smokers were approximately twenty times as likely to contract lung disease as nonsmokers.

What should we have known by when? Medical historians who haven't been paid for their opinions by the tobacco industry generally argue that a clear consensus emerged among scientists on the causal role of tobacco on lung cancer by the early 1950s.[12] But this information remained hidden from the public, thanks to the cigarette industry's advertising and lobbying efforts. During this time, the tobacco industry not only continued to produce an addictive product, it hid its own research on the causal connection between cigarettes and lung cancer, actively targeted underage smokers in its ad campaigns, and did a fantastic job of keeping Congress from creating laws and regulations that would impede sale of tobacco products.

Why did the U.S. public fail to push legislators on initiatives such as opposing the marketing of cigarettes to underage smokers? In large part it was because the tobacco companies conducted a very effective disinformation campaign to create doubt in the public's mind about the causal effect of tobacco on lung diseases. Historian Robert Proctor coined the term "agnotology" to describe the cultural production of ignorance (as opposed to knowledge) and cited the actions of the tobacco industry as a prime example of corporate interests conspiring to create agnotology. Specifically, the tobacco industry consistently told the public that there was no conclusive proof of a link between smoking and cancer, that there were many other potential causes of cancer, and that further research was needed. Tobacco company executives counted on the fact that it would be nearly impossible to determine whether smoking was the agent that caused cancer. In addition, as is usually the case after a scientific consensus emerges on a controversial topic, "experts" were paid to offer their skeptical opinions. For all of these reasons, until the surgeon general weighed in on the matter on 1964, it was reasonable for the public to be confused about the health risks of tobacco products.

These tactics were successful in part because they played on the psychological processes of the leaders of the American Medical Association and other doctors. Throughout the research developments that occurred from 1929 through the 1950s, and even after the surgeon general's report was released in 1964, Big Tobacco found a strong ally in organized medicine, the community that understood medical science far better than most other citizens. At the time the surgeon general's report was released and in the years that immediately followed, the American Medical Association (AMA) was concerned about pending legislation to create

Medicare and Medicaid, which it perceived as a threat to doctors' fees. The AMA wanted to avoid alienating legislators from tobacco-growing states, as they would soon be voting on these and other important health-care reform issues of the 1960s. Thus, the AMA refused to take a position on the harms of tobacco and even followed the tobacco industry's lead in calling for more research on the matter—research that all parties involved knew was unnecessary to reach a clear conclusion. Perhaps as a result of ethical fading, the AMA viewed the tobacco issue through a business lens rather than an ethical lens; the health of citizens remained out of focus when the group made its decisions. Journalists Drew Pearson and Jack Anderson later described the coalition between the medical and tobacco industries as "the weirdest lobbying alliance in legislative history."[13]

What about individual doctors? What would prevent them from accepting the powerful evidence that was available about the causal connection between cigarettes and lung cancer? In an example of the motivated blindness phenomenon we described in Chapter 5, perhaps it was doctors' own cigarette habits that limited them from seeing the clearly available evidence. Harvard historian Allan Brandt documents that in 1954, 52 percent of physicians reported being regular smokers; 30 percent reported smoking at least a pack of cigarettes a day. In 1959, as the science connecting tobacco to lung cancer continued to develop, 39 percent of doctors remained regular smokers, with 18 percent smoking at least a pack a day.[14] Evarts Graham, a prominent surgeon who transformed himself from a skeptic to a leading figure in the antismoking movement, argued this point about the link between cigarette smoking and lung cancer as early as 1954:

> [The link] has not been universally accepted and there are still many cigarette addicts among the medical profession who demand absolute proof. The obstinacy of many of them in refusing to accept the existing evidence compels me to conclude that it is their own addiction to this drug habit which blinds them. They have eyes to see but they see not because of their unwillingness or inability to give up smoking. . . . I have never encountered any non-smoker who makes light of the evidence or is skeptical of the association between excessive smoking and lung cancer.[15]

Thus, at the same time that the tobacco industry spent millions of dollars actively and effectively lobbying Congress and supplying misinformation to the public, a community that should have been protecting us from these efforts, the medical establishment, had been effectively corrupted, probably without the key actors recognizing the harm they were perpetuating.[16]

Tobacco products currently kill about 500,000 Americans per year and about five million people worldwide, a figure that is growing. Had the medical community taken the responsible position of emphasizing the causal role between tobacco and lung cancer, citizens would have been less confused by the tactics of the tobacco industry, and millions of lives might have been saved. Are we saying that the AMA and individual doctors intentionally killed their patients? No. Rather, their ability to see the clear evidence was affected by their focus on defeating Medicare and Medicaid, their own addiction, and their lack of insight into how these

preferences blinded them to the evidence. As a result, millions of people have died and will die terrible, premature deaths.

The Auditing Industry

> The future of the [accounting] profession is bright and will remain bright—as long as the Commission does not force us into an outdated role trapped in the old economy. Unfortunately, the proposed rule [on auditor independence] threatens to do exactly that. A broad scope of practice is critical to enable us to keep up with the new business environment, attract, motivate and keep top talent, and thereby provide high quality audits in the future.
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> —Joseph Berardino, managing partner, Arthur Andersen, in written testimony provided for the SEC's hearing on auditor independence, July 26, 2000

In Chapter 5, we discussed the collapse of Enron and its auditor, Arthur Andersen, in light of Andersen's failure to act on the shocking level of corruption that occurred at Enron. Here we turn to the question of why our society allowed—and still allows—a corrupt auditing system to exist in its current form.

The Securities and Exchange Act of 1934 established mandatory independent audits of publicly traded companies in order to give third parties confidence that the companies' books could be trusted. Unfortunately, fatal flaws were built into the act. From the start, the accounting firms that were hired to conduct audits had an incentive to curry favor with the same companies whose books they were supposed to examine without bias. The act failed to include measures that were needed to create truly independent audits: (1) required assignment rotation of auditors, such that auditors would not be biased toward retaining a client; (2) prohibition of auditors from selling consulting and other services to their clients; and (3) prohibition of auditors from taking jobs with the firms they audited.[17]

At the same time, independence was largely viewed as central to the institution of auditing. Chief Justice Warren Burger wrote in a unanimous Supreme Court ruling in the case of the *United States v. Arthur Young & Co.* (1984):

> By certifying the public reports that collectively depict a corporation's financial status, the independent auditor assumes a public responsibility transcending any employment relationship with the client. The independent public accountant performing this special function owes ultimate allegiance to the corporation's creditors and stockholders, as well as to the investing public. This "public watchdog" function demands that the accountant maintain total independence from the client at all times and requires complete fidelity to the public trust.

Nonetheless, by the 1980s, accounting firms had begun to supplement the relatively low

margins of their competitively priced audits with more profitable tax, management, and technology consulting contracts. With auditing partners under increasing pressure to sell consulting services to their audit clients, an atmosphere developed in which accountants were increasingly dependent on their clients for approval. "Part of the [annual salary] evaluation was how well you generated new business," said former SEC chief accountant Lynn Turner of his days as an auditor at Coopers & Lybrand in the 1990s. "If someone brought in $25 million in consulting fees, they were a hero." In a 1996 report, the Government Accounting Office commented that the expansion of consulting services posed a risk to auditors' independence.

In the late 1990s, SEC chairman Arthur Levitt became concerned about auditors' independence as a result of a series of scandals. In the summer of 1998, for example, the SEC learned that executives at Price Waterhouse (now PricewaterhouseCoopers) had been investing in companies their firm was auditing, in direct violation of SEC rules; more than 8,000 violations were uncovered within the firm. The SEC fined Price Waterhouse $2.5 million, and Levitt made auditor independence his top priority as SEC chairman. Given the lack of accountability and the potential for a huge disaster, the solution, Levitt believed, was a clean break between auditing and consulting duties. But Levitt was shaken by a joint meeting he held with executives from three of the largest accounting firms—KPMG, Deloitte & Touche, and Arthur Andersen. Levitt later paraphrased the executives: "We're going to war with you. This will kill our business. We're going to fight you tooth and nail. And we'll fight you in the Congress and we'll fight you in the courts."[18]

The accounting firms engaged no fewer than seven lobbying firms to fight the auditor independence proposal. Levitt received many dozens of letters in support of the accounting industry's stance from corporate executives and congressmen; in particular, Representative Billy Tauzin of Louisiana "badgered me relentlessly," Levitt said.[19] In a letter to Levitt dated September 20, 2000, Enron chairman Kenneth Lay attested to the benefits his energy-trading company had received from one-stop shopping with Arthur Andersen: "Enron has found its 'integrated audit' arrangement to be more efficient and cost-effective than the more traditional roles of separate internal and external auditing functions."[20] In fact, it later emerged that David Duncan, the Andersen partner in charge of Enron's audits, had cowritten Lay's letter with help from Andersen's Washington lobbying firm.[21] During this period, Enron was Andersen's second-largest client, providing not only its annual audit, but also tax, business-consulting, and internal audit services.[22] In 2000, the year of Levitt's battle, accounting firms donated more than $10 million to national political campaigns and spent another $12.6 million on federal lobbying, according to the Center for Responsive Politics.[23]

In 2000 Levitt also welcomed expert witnesses from government, corporations, accounting firms, and academia to Washington to testify in SEC hearings on the issue of auditor independence. Max and his colleague George F. Loewenstein, the Herbert Simon Professor of Economics and Psychology at Carnegie Mellon University, were among those who presented their opinions on auditor independence to the SEC. In a 1997 *Sloan Management Review* article with Kimberly P. Morgan entitled "The Impossibility of Auditor Independence," we argued that focusing solely on auditors' neglect and corruption when evaluating the

repercussions of accounting scandals was a mistake. Auditor bias arises at the unconscious stage where decisions are made, long before auditors report their judgments. For this reason, we declared that audit failures are a natural by-product of the auditor-client relationship and that the current U.S. audit system makes it "psychologically impossible," because of motivated blindness, for even the most honest auditors to make objective judgments; "cases of audit failure are inevitable," we wrote.[24]

In our written SEC testimony in 2000, we backed measures to separate the auditing and consulting functions of accounting firms, but also stressed that unbiased audits would be unlikely as long as auditors continued to be hired and fired by the companies they audit. With our colleague Don Moore, a professor at the Haas School of Business at the University of California at Berkeley, we have since argued that, to create both the appearance and reality of true auditor independence, the following reforms are needed:

1. Auditing firms should only provide auditing services to their clients.
2. Auditing contracts should be of a limited duration, during which time the client should not be allowed to fire the auditor.
3. Companies should be prohibited from hiring accountants who have audited their books.[25]

As we noted earlier, these three issues were overlooked by the Securities and Exchange Act of 1934. Levitt was convinced of the potential danger of auditors' conflicts of interest. His goal for the SEC hearings was to convince Congress to listen to us and other witnesses instead of to the accounting industry lobbyists. At the hearings, Arthur Andersen managing partner Joseph Berardino, KPMG vice president J. Terry Strange, and Deloitte & Touche partner Robert Garland demanded the SEC provide evidence of past instances of audit fraud caused by auditing firms' consulting business. "Given what is at stake," Garland testified, "and the fact that there is no demonstrated problem, it would be irresponsible to take on the considerable risks surrounding the proposed rule."[26] According to Strange, "Nonaudit services improve audit effectiveness."[27] "In our opinion, we do think [the proposal] will harm audit quality," said Berardino. "The more the auditors know about their client the better the audit is," he argued further. "If you or I were a CEO and wanted to perpetrate a fraud or cook the books, I think we'd want to keep the auditors in the dark. I don't think we'd be hiring them to help us implement our [information technology] systems. I don't think we'd be helping them to look at our complex transactions.[28]

After the hearings, key legislators sided with the auditing firms. According to Levitt, Representative Tauzin "knew what the accountants were doing before I did. He was working very closely with them. I don't mean to sound cynical, but is it because he loves accountants?"[29] As it turns out, Tauzin received more than $280,000 in campaign contributions from the accounting industry in the 1990s, though he had never faced a serious challenger for his House seat.[30] Even worse, Levitt learned that House Appropriations Committee member Henry Bonilla was ready to slash the SEC's budget by attaching a rider to the commission's

appropriations budget if Levitt didn't back down on the issue of auditor independence.[31]

Reluctantly, Levitt gave up the fight—a decision he later called his biggest mistake as SEC chief.[32] Convinced he would eventually be defeated by Congress, he allowed accounting firms to continue to perform consulting work for their audit clients. The firms made just one concession: they agreed to disclose the details of these relationships to their investors. Notably, research that we reviewed in an earlier chapter shows that disclosure can actually *exacerbate* bias.[33] Levitt understood that disclosure was an inadequate solution to the problem of auditors' conflict of interest, but he believed it was the only measure Congress would pass.

We all know what happened next. Enron crashed as a result of its spectacular misdeeds, which had gone unreported by its auditor, Arthur Andersen. Andersen, blamed for turning a blind eye to Enron's corruption because of its reliance on the company for hefty consulting contracts, soon went bankrupt as well. Subsequent accounting scandals in the first half of 2002 were connected to the failures at WorldCom, Adelphia, Global Crossing, Xerox, and Tyco.

In response to these scandals, President George W. Bush signed the Sarbanes-Oxley Act into law on July 3, 2002. Sarbanes-Oxley imposed a variety of reporting requirements on public companies that many senior executives viewed as excessive government regulation. By contrast, left-leaning critics considered the new regulations to be insufficient.

From our own point of view, Sarbanes-Oxley utterly failed to respond to the key flaws of the auditing industry. Sarbanes-Oxley prohibited auditors from providing some consulting services, but allowed other audit services to continue. Sarbanes-Oxley required rotation of the accountant who leads an audit after seven years, but not rotation of the audit firm itself (a last-minute changed lobbied for by the "Final Four" accounting firms). In addition, auditors are still permitted to take jobs with the firms they audit. Lest we worry about the profitability of the Final Four firms in the post-Sarbanes-Oxley era, they ironically are making up some of their lost opportunities by providing Sarbanes-Oxley compliance services. These firms succeeded at lobbying Congress to avoid meaningful, promising reforms that would affect their profitability. Fueled by the egocentrism described in Chapter 3, legislators acted unethically by focusing on how reforms would affect their own campaign contributions, rather than on the costs incurred by a very significant societal problem. In addition, because the impact of this institutionalized corruption felt distant to citizens, the media and average citizens gave the issue too little attention, contributing to an environment ripe for future disasters.

It is noteworthy that the larger corporate world hasn't been particularly interested in improving auditors' independence. Honest corporations make many decisions that depend on the integrity of the financial statements of other firms. Thus, honest corporations would benefit from more accurate and forthright accounting. But these corporations are also subject to audits, and in some cases, they benefit from "flexible" auditing and from having their own auditors provide consulting and other services. Consistent with our argument in Chapter 3 about discounting the future, many corporate leaders don't want to interrupt their current one-stop shopping relationship with accounting firms in exchange for the longer-term benefits of being able to trust the books of other firms. So they keep quiet and ignore the long-term implications of inaction for their corporations and society at large.

In late 2009, reflecting on the past decade, economist and *New York Times* columnist Paul Krugman highlighted the importance of having an honest auditing system by quoting from a speech that Lawrence Summers gave in 1999 as the deputy Treasury secretary under President Clinton (as of 2010, Summers is the Obama administration's top economist).[34] "If you ask why the American financial system succeeds," Summers said, "at least my reading of the history would be that there is no innovation more important than that of generally accepted accounting principles: it means that every investor gets to see information presented on a comparable basis; that there is discipline on company managements in the way they report and monitor their activities." It is now clear that we, as a society, failed in our ethical obligation to create and maintain the type of ethical system of accounting that Summers believed in and praised. And in March 2010, with Big Four accounting firm Ernst & Young facing blame in the collapse of Lehman Brothers, it appears that the U.S. auditing system continues to fail us.[35]

The Energy Industry

Global climate change was identified as an emerging problem in the 1930s, after a long period of warm weather. Interest in the issue dissipated when cooler temperatures returned. Decades later, scientists provided clear evidence of melting glaciers and other massive environmental change that indicated widespread climate change. As a scientific consensus emerged, the issue of climate change became almost impossible to ignore.

Most of the rare scientific skeptics who do remain are paid for their views by the oil, coal, and automotive industries. ExxonMobil has emerged as the most prominent and generous funder of research designed to discredit climate-change claims.[36] A 2007 report released by the Union of Concerned Scientists documented that, between 1998 and 2005, ExxonMobil funneled about $16 million to a network of ideological and advocacy groups that work to stir up false uncertainty on the climate-change issue. The organizations supported by the oil company publish non-peerreviewed work by a small group of "scientific spokespeople." The Union of Concerned Scientists report accuses ExxonMobil of "actively propping up discredited studies and misleading information that would otherwise never thrive in the scientific marketplace of ideas."[37] As an example, physicist Frederick Seitz earned more than $585,000 in the 1970s and 1980s as a paid consultant to R. J. Reynolds Tobacco Company and became an outspoken climate-change skeptic in the 1990s. Seitz has been paid by several organizations hostile to climate-change regulation, including the George C. Marshall Institute, which received $630,000 from ExxonMobil between 1998 and 2005.[38] Yet in an interview with PBS's show *Frontline*, Seitz insisted that the money he received from both the oil and tobacco industries did not influence his scientific findings.

During the same period it was supporting known climate-change skeptics, ExxonMobil also funded more established research institutions that seek to better understand climate change through true scientific methods, most notably through a $100 million grant to help Stanford

University's Global Climate and Energy Project study new energy technologies aimed at lowering greenhouse gas emissions. The Union of Concerned Scientists report notes:

> This seemingly inconsistent activity makes sense when looked at through a broader lens. Like the tobacco companies in previous decades, this strategy provides a positive "pro-science" public stance for ExxonMobil that masks their activity to delay meaningful action on global warming and helps keep the public debate stalled on the science rather than focused on policy options to address the problem.[39]

In 2006, the American Enterprise Institute (AEI), a think tank that had received more than $1.6 million from ExxonMobil, offered scientists and economists $10,000 each for articles that would undermine an impending report from the UN's Intergovernmental Panel on Climate Change (IPCC).[40] The most comprehensive review of climate change to date, the IPCC report predicted that global average temperatures would continue to rise over the next century and stated that there was a 90 percent likelihood that human action was to blame. After the report was released, ExxonMobil did an about-face; CEO Rex W. Tillerson joined competitors BP and Shell in acknowledging that greenhouse gases from automotive and industrial exhausts contribute to global warming. In addition, the AEI reportedly pulled back on its plan to pay scientists for articles critical of the report.[41] The IPCC received the 2007 Nobel Peace Prize for its report. Yet researchers supported by the energy industry continue to dispute the well-established data that climate change is ongoing and perpetuated by humans.

"There isn't any scientific principle according to which all alarming possibilities prove to be benign upon further investigation," wrote Nobel Prize–winning economist Thomas Schelling in 1984. Yet despite the widespread consensus on the issue and the alarming predictions, a surprising number of politicians and voters, both in the United States and in other industrialized and developing countries, largely ignore the climate change problem, insist it is not real, or make only symbolic or costless moves to address it. This is due in part to the fact that the costs of addressing climate change are significant. Developing economies, such as China and India, would suffer massive economic loss if they were required to reduce their reliance on fossil fuels. Many employees would lose jobs, and many more would need to change their lifestyles.

Despite these considerable costs, the current scientific consensus is that they are likely to be far lower than the eventual catastrophic costs of inaction.[42] Ocean levels and weather patterns are predicted to dramatically change the climate of some areas. Glaciers will melt, oceans will rise, and disastrous consequences are in store for coastal areas and low-lying countries such as Bangladesh. Islands and coastlines across the globe are expected to become uninhabitable, and dikes will have to be built to protect cities and agricultural land. Millions of people likely will be forced to relocate, while others may have to reorganize their systems of farming. Net food production is expected to decrease.[43]

Many nations signed on to the 1997 Kyoto Protocol, which called for the return of greenhouse emissions to 1990 levels by the year 2010; the United States, however, did not. The protocol did not achieve its stated objectives and may never be fully implemented. In 2009,

despite high hopes, the United Nations climate change negotiations in Copenhagen failed to secure the critical commitments necessary to appropriately address the climate-change challenge. The original goals of the Copenhagen talks were to reach a binding treaty that would mandate concrete, verifiable global action on climate change. But, marred by protests and power struggles, the talks only produced short-term, nonbinding promises. The participating nations merely agreed to "take note" of a three-page pact that promised financing for developing nations and created a reporting and monitoring system of the greenhouse gas emissions of wealthier nations. At Copenhagen, Secretary of State Hillary Clinton announced that the United States would contribute its share of the annual $100 billion in long-term financing needed to help poor nations adapt to climate change, but this promise is conditioned upon congressional approval—hardly a sure thing.[44]

A legislator who supports measures aimed at reducing climate change can expect little support from his constituents, especially if the cost of doing so includes new taxes on SUVs, gasoline, electricity, and so on. As we argued in Chapter 6, reward systems within organizations direct employees' attention toward achieving particular goals, thus causing them to ignore other important goals. The rewards offered under our political system create similar problems. The goal of many politicians is reelection. The general public's tendency to discount the future and avoid even minor inconveniences hinders us from endorsing the actions of politicians who accept the need to inflict small costs in the present to avoid future catastrophe. If the constituents who are most influential in a politician's reelection (such as deep-pocketed campaign donors) fight policies aimed at confronting climate change, politicians have an incentive to side with them and to subvert the public interest.

Overall, the failure to respond effectively to climate change can be viewed as a massive pattern of unethical behavior committed not only by our elected officials, but by us ordinary citizens. This failure can be attributed not only to the costs of addressing the issue, but also to the cognitive biases we discussed in Chapter 3. More specifically, as Max wrote in a 2006 article, cognitive biases lead us to (1) have positive illusions that reduce our tendency to focus on problems, such as climate change, that loom in the distant future, (2) interpret events such as climate change in a self-serving manner and to view others, rather than ourselves, as responsible for the problem, (3) try desperately to maintain the status quo and refuse to accept any costs, even when those costs would bring about a greater good and prevent future harm, and (4) fail to invest in preventing problems, such as climate change, that we have not personally experienced or witnessed through vivid data.[45]

Different Problems, Similar Strategies

Institutional corruption is a condition that exists when our institutions (governments, corporations, and not-for-profits) formalize a set of policies and practices that weaken the effectiveness of society and the public's trust in these institutions, even if no law is broken.

according to Larry Lessig, the director of the Safra Center for Ethics at Harvard University. Society institutionalizes corruption by enacting laws and regulatory systems that can be predicted to fail to maximize societal interests. As a prime example, corrupted institutions exist when we and our elected officials allow special-interest groups to distort public policy for their own benefit through disinformation campaigns.[46]

Responsibility rests at least partially on those of us who unknowingly allow corrupt institutions to perpetuate. To halt their unethical behaviors, we need to replace our ignorance with informed understanding. Throughout this book, we have used the lens of behavioral ethics to document the psychological processes that lead to unethical actions and, using the three examples in this chapter, have linked those processes to the behavior of those in our political system. The next step is to uncover the tactics that political and corporate actors use so that their force can be mitigated.

Many of these tactics, which we will describe below, play on the status quo bias, or the common preference for maintaining an established behavior or condition rather than changing it.[47] Psychologists have long known that, when contemplating a potential change, we tend to be more concerned about the risk of change than about the risk of failing to change. Imagine, for instance, that you receive an offer for a job that is much better than your current job on some dimensions (pay, responsibility, etc.) and marginally worse on others (location, health insurance, etc.). A rational analysis would imply that if the evident gains exceed the expected losses, you should accept the new job. However, the psychological tendency to pay more attention to losses than to gains will lead many to turn down the job, preserve the status quo, and forgo a net gain.[48] Because losses loom larger than gains, the status quo creates inertia that is a barrier to wise action.[49]

In Chapter 1, we attributed the *Challenger* disaster to a failure of NASA and Morton Thiokol engineers to look outside the bounds of the data available to them in the room the night before the launch. A secondary explanation for this disaster can be traced to NASA manager Larry Mulloy's successful argument that no change to the decision to launch the next day should be made without strong scientific evidence. In this manner, he implanted the decision to launch as the status quo in the minds of those present. This framing went against the more appropriate standard of choosing not to launch until safety was reasonably assured. Mulloy's positioning helped move the decision in the boundedly unethical direction of launching the shuttle.

The powerful desire to maintain the status quo is partly responsible for the continued existence of corrupt institutional processes. Moreover, those who are the most harmed by current systems are sometimes the most vocal advocates of these systems, note psychologists John Jost and Mahzarin Banaji.[50] Smokers are often slow to complain about the tactics of the tobacco industry, corporations that are damaged by the corrupted annual reports of other firms remain silent, and the poor—who are least able to adapt to climate change—may rank this issue low on their list of priorities. By justifying existing systems, we perpetuate a harmful status quo, often unwittingly.

The status quo bias interacts with a set of tactics used again and again by special-interest groups opposed to wise policy change. Specifically, those who oppose action on the issues we

have identified—tobacco, auditing, and climate change—systematically rely on three techniques: (1) obfuscation and the encouragement of reasonable doubt, (2) the claimed need to search for a smoking gun, and (3) shifting views of the facts. Whenever the U.S. government has been on the verge of making a significant change in these realms, these techniques effectively increased the impact of the status quo on its decisions.

Obfuscation and the Encouragement of Reasonable Doubt

Corporations that want to delay governmental response on an issue important to them use a key tool that has worked for decades: obfuscation, or the practice of communicating in a deliberately confusing or ambiguous manner with the intention of misleading the listener. The main goal of obfuscation is to create reasonable doubt about change in the minds of citizens and policymakers and thus to encourage the status quo to prevail.

The U.S. tobacco industry knew far more about the hazards of cigarette smoking than the public health community did.[51] In addition, Big Tobacco maintained an explicit strategy of creating doubt in the mind of smokers about the health effects of cigarettes long after there was scientific clarity about the causal role of cigarettes in lung cancer. This strategy of promoting reasonable doubt in the minds of consumers lasted for forty years, from the 1950s to the 1990s.[52] To avoid or slow down antismoking measures, the tobacco industry has also stirred up confusion about the known deleterious effects of secondhand smoke. As early as 1981, convincing evidence existed that secondhand smoke was related to lung cancer. A Japanese study found that wives of smokers and ex-smokers were much more likely to get lung cancer than were wives of nonsmokers, and that the risk was significantly related to the amount of smoking by their husbands.[53] Yet the tobacco industry fostered doubt about this research in the minds of the public, long after a scientific consensus emerged on the ill effects of secondhand smoke.

Similarly, the auditing industry argued that its high ethical standards answered concerns about the structure of the U.S. auditing system. In response to strong evidence from SEC chairman Arthur Levitt and others that consulting services compromised the independence of audits, the major auditing firms, like the credit-rating agencies in the 2008 financial crisis, claimed their integrity protected them, thereby creating reasonable doubt in the minds of politicians and the public about the need for change.

Finally, the coal, oil, and automotive industries have engaged in obfuscation concerning the existence of climate change and the role of humans in creating the problem. Even after a clear consensus existed among scientists who were not being paid for the views, the oil and coal industries spent enormous amounts of time and money communicating to the public that some experts doubted the existence of climate change and, if it did exist, the role that humans played in perpetuating it.

All three groups were well aware that obfuscation creates uncertainty. Their carefully planted seeds of doubt have made it difficult for politicians to act and for citizens to mobilize

in support of reform. After all, who wants to pay the costs if change isn't really needed?

The Search for a Smoking Gun

Which of the following proposals do you think is more likely to lead to an independent auditing system?[54]

1. To achieve auditor independence, prohibit auditors from establishing durable long-term cooperative partnerships with their clients, from providing nonaudit services to their clients, and from taking jobs with their clients.
2. Begin with a variety of incentives that motivate auditors to want to please their clients. Next, try to identify a complex set of legislative and professional incentives to counteract the corrupting influences created by the desire to please the client.

We think the answer to this question is pretty clear. Obviously, it makes more sense to begin with a truly independent system than to add patches to an existing, corrupt system. Yet the auditing industry argued in public SEC hearings that there was no clear evidence that auditors' conflicts of interest were a problem, and that without a smoking gun, no change was warranted.

Have we convinced you that auditors should not be rehired by their auditing clients, that auditors should not be allowed to provide other services to firms they audit, and that auditors should not be allowed to take jobs with their clients? Unfortunately, Max and his colleague George Loewenstein did not convince the SEC when they testified in 2000. Its commissioners wanted to know if we could identify a "smoking gun"—a specific audit that was clearly biased because the auditing firm had provided other services to its client. The SEC commissioners were looking for an e-mail message or memo that would provide clear evidence of knowing and intentional corruption. We could not provide such evidence. Furthermore, in their testimony, the CEOs of three of the big accounting firms noted that there was no evidence of a single audit being tainted as a result of the auditing-consulting relationship. While such evidence may sometimes emerge (as it did later in 2000, in a case involving Arthur Andersen and Waste Management), proving that a particular case of audit fraud was caused by nonaudit services is as challenging as proving that a particular smoker's lung cancer is caused by smoking or that a particular heat wave is caused by climate change; any single case is complicated by numerous confounding factors.

A smoking gun should not be needed to reach the conclusion that massive changes were, and still are, needed to create true auditor independence, optimal regulation of smoking, and an effective response to climate change. When we wait for a smoking gun, we typically wait too long and fail in our duty to enact better policies for society. When the institutions that guide the behavior of key actors are corrupted, we should act long before a disaster occurs.

Expressing Shifting Views of the Facts

The forces that oppose wise reforms typically present their own distorted view of the "facts." When their positions become untenable and maintaining the status quo is impossible, these groups simply change their position and deny their past connection to claims that they now acknowledge, in the face of overwhelming evidence, to be clearly false. For decades, the tobacco industry held fast to the view that cigarettes caused no harm, and indeed might even help smokers achieve positive health benefits, such as weight control, improved digestion, and relaxation. As the scientific connection between lung cancer and cigarettes mounted, the industry grudgingly acknowledged that cigarettes might be one of many possible causes of lung cancer, but, clinging to the status quo as long as they could, insisted that no specific cancer could be traced to cigarettes and that the causal path was unclear. To manage its changing story, soon after seven tobacco CEOs testified to Congress in 1994 that cigarettes caused cancer, the industry quickly replaced all seven CEOs. After finally admitting that cigarette smoking caused lung cancer, in a breathtaking about-face, Big Tobacco argued that smokers who contract lung cancer should not be allowed to sue the industry for damages, since it was public knowledge that tobacco might be harmful—this, despite the industry's well-funded disinformation campaigns across the decades and its persistent attempts to turn teenagers into addicts.

In a similar manner, the U.S. auditing industry transitioned from the view that its sterling reputation protected it from conflicts of interest to the view that, if a problem existed, disclosure would be an effective response. When it became clear that disclosure had failed and that regulatory changes appeared feasible, the auditors changed their views again. Now they focused on whether solving the theoretical problem of independence would be worth the cost. Of course, this argument ignored the basic point that if audits are not independent, they have no reason to exist in the first place.

As for the issue of climate change, after years of obfuscation, the oil, coal, and automotive industries have made a relatively rapid shift in recent years: from insisting that manmade global warming did not exist, to claiming that global warming is not caused by human actions, to arguing that it would not be worth the enormous costs to fix the problem.[55] By maintaining the most reactionary view that is defensible and shifting their positions only out of necessity, the enemies of wise policies succeed in delaying change and profit during the delay.

What Can We Do?

Psychologists tend to study the individual, while political scientists generally study political institutions. In our earlier chapters, drawing on behavioral ethics theory and research, we focused on the biases that create bounded ethicality at an individual level. Identifying these biases is the first step toward reducing our bounded ethicality. In this chapter, we have tried to highlight the interplay between these two forces—the personal and the political—by

highlighting how they lead to outcomes that, if we could remove our blind spots, we would deem to be unacceptable for society. In the next chapter, we move toward a broader consideration of how the behavioral ethics perspective can helps us achieve a more ethical society.