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Legal corruption?

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Abstract

"Legal corruption" may strike many scholars as a contradiction in terms, but in fact the concept can be essential if we are to understand the sources and consequences of corruption issues in politics. The analytical definition of corruption, as such, is not settled. Legal standards likely are preferred to those based on social values, public opinion, or notions of the public interest. But those conceptions of corruption omit many kinds of activities that, while legal (or not clearly illegal), capitalize on abuses of public trust and official powers to produce outcomes regarded widely as unjust. Those sorts of activities help explain the recent rise of "populism" and its links to diffuse, but intense and broadly shared, senses of unfairness and elite excess. "Legal corruption" as a category has definitional problems of its own, but recent data show that it is worth close study and refinement because it offers critical insights into political issues that—while they may not fit traditional conceptions of corruption—nonetheless increasingly are important aspects of contemporary politics.

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1 On square circles and honest graft

In the last years of the nineteenth century, George Washington Plunkitt, a New York State Senator and Tammany Hall wheel horse, would sit on the bootblack's stand in New York City's Tweed Courthouse and hold forth on what he called "practical politics". One of his most memorable notions, recorded along with many others by journalist W. L. Riordon for his book *Plunkitt of Tammany Hall*, was "honest graft":

> There's an honest graft, and I'm an example of how it works. I might sum up the whole thing by sayin': "I seen my opportunities and I took'em."

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Just let me explain by examples. My party's in power in the city, and it's goin' to undertake a lot of public improvements. Well, I'm tipped off, say, that they're going to lay out a new park at a certain place.

I see my opportunity and I take it. I go to that place and I buy up all the land I can in the neighborhood. Then the board of this or that makes its plan public, and there is a rush to get my land, which nobody cared particular for before.

Ain't it perfectly honest to charge a good price and make a profit on my investment and foresight? Of course, it is. Well, that's honest graft. Or supposin' it's a new bridge they're goin' to build. I get tipped off and I buy as much property as I can that has to be taken for approaches. I sell at my own price later on and drop some more money in the bank.

Wouldn't you? It's just like lookin' ahead in Wall Street or in the coffee or cotton market. It's honest graft, and I'm lookin' for it every day in the year. I will tell you frankly that I've got a good lot of it, too (Riordon 1995, pp. 3–6).

A century and more later, the term "honest graft" has an ironic ring to it at best and Plunkitt's defense would not get him very far in court. Even at the time, his soliloquy would have been accepted only by a few, thanks to the efforts of Thomas Nast, the prosecutors of the Tweed Ring, and the powerful urban reform coalition that developed out of abolitionism and other reform movements after the American Civil War. But Plunkitt's meditations do raise some important analytical questions. Just what is it that makes corruption corrupt? Is all corruption necessarily illegal? In an age when market-style incentives routinely are baked into public policy, and when privatization still has many advocates and defenders, what are we to make of Plunkitt's assertion that his self-serving land deals are no different from speculation in commodities or the stock market?

1.1 I know it when I see it…I think – ? The slippery concept of corruption

The most widely applied academic definitions of corruption (for examples of a long-running debate, see Nye 1967; Heidenheimer 1970; Scott 1972; Philp 2002) have rested long on the law or other formal standards governing the actions of public officials and those with whom they deal. But Plunkitt gives us an enduring example of the ways in which meanings of corruption can be contested, negotiable, quite congenial to some and unsatisfying for others. That continues to be true today: at times legal anti-corruption provisions, such as some financial disclosure and conflict-of-interest rules, strike some observers as arbitrary and needlessly intrusive (Anechiarico and Jacobs 1996). In many more cases, legal standards seem insufficient: in an age known for political "dark money" (Mayer 2016), the overwhelming majority of political campaign contributions and expenditures in the United States are made and disclosed within the law, and yet solid majorities see campaign financing as profoundly corrupting (recent data are reported in Johnston 2019). Judicial rulings can challenge popular understandings of what "corruption" means: former Virginia Governor Robert McDonnell's corruption conviction was overturned in 2016 by the Supreme Court,[1] which held that hosting executive mansion events and contacting other officials in aid of a businessman who had given the governor and his family expensive gifts did not constitute "official acts" (Johnston 2016a, b).

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[1] *McDonnell v. United States*, 579 U.S. ___ (2016).

Do we, then, need to add "legal corruption" to our conceptual repertoire? Clearly, circumstances can be found in which law-based conceptions of corruption seem insufficient: do political ethics—or the more technocratic notion of "good governance"—mean simply not breaking the law? Few would dispute Susan Rose-Ackerman's well-known argument that some plainly corrupt actions might be acceptable: "One does not condemn a Jew for bribing his way out of a concentration camp" (Rose-Ackerman, 1978, p. 9). Nichols (2015) has provided an excellent analysis of the notion of "good bribes". Are there, conversely, fully legal connections among wealth, power, and influence—or at least, some not clearly illegal—that should be seen as corrupt, or as corrupting? Would doing so aid our understanding of some significant issue—or, would it stretch essential concepts so far as to make them meaningless?

"Corruption" is an old and perennially contested political and analytical concept. Far from having a fixed and natural interpretation, the idea has gone through a variety of meanings and reinterpretations. In an etymological sense, the term connotes some valuable thing or state of affairs that has deteriorated or been debased. From there forward it is but a short step to the notion that corruption embodies a similar decline in the quality of government, leadership, institutions and, possibly, citizenship—that when it comes to the way in which society is governed and by whom, things are not as good as they once were (even though we rarely are told just when and where that more enlightened political world held sway).

At times corruption has been seen, not as an action by a particular individual or group, but as a collective state of being. Tyranny and oligarchy were two of Aristotle's "wrong' or corrupted constitutions or regimes; so, too, was democracy (Aristotle 1981, Bk. 1). Dobel (1978) proposes Pericles's Athens as an example of the corruption of a state, in the sense that the leadership had lost its claim on the loyalty of the people. While that state of affairs might have resulted from specific deeds of the leadership—in that case, the invasion of the island nation of Melos—Thucydides saw the entire system of order as having fallen into a state of corruption.

More recently, we have come to regard society as an arena within which people and groups are entitled—within limits—to make choices reflecting their own needs and desires, rather than as an organic whole with any sort of collective moral standing, with corruption seen as an individual or group transgression of some set of standards taken as defending or embodying relatively specific conceptions of the public good. The 19th-century reformer Andrew D. White had a simple diagnosis for the corrupt and wasteful American city governments of his era:

> [W]e are attempting to govern our cities upon a theory which has never been found to work practically in any part of the world.… What is this evil theory? It is simply that the city is a political body; that its interior affairs have to do with national political parties and questions. My fundamental contention is that a city is a corporation; that as a city it has nothing whatever to do with general political interests; that party political names and duties are utterly out of place there…. (White 1890, pp. 357–358).

White's reform allies generally agreed with that narrow, service-oriented conception of local government; many of them held that "There is no Republican or Democratic way to pave a street."

More recent debates, such as that over the proper role of private contributions to election campaigns, have been marked by a number of contending viewpoints, usually expressed in terms of laws and their application, but leading in quite different directions. Some advocates wish to insulate government from political influence as much as possible; others see a legitimate role for private interests and their contributions, but are concerned

with "fairness" conceived in various ways; others celebrate private influence over government as a way of keeping public power within strict limits; and yet another view has it that political money literally *is* speech in itself, with any attempt to limit its uses calling (in the American case) for strict First Amendment scrutiny. Transparency International, by contrast, avoids anchoring its definition of corruption in terms of specific laws—a wise move given the organization's scope—and instead targets "the abuse of entrusted power for private gain" (Transparency International 2019). That is an attractive notion in many respects, but remains ill-suited to many struggling, and extensively corrupt, societies wherein power has been bought, seized, inherited, or maintained by sheer coercion, rather than having been "entrusted" by anyone.

2 Rules? What rules?

The debate over how best to define corruption never has reached a clear-cut resolution and is unlikely ever to do so. The reasons for that conclusion include divergent outlooks on the proper role for government, on how the public's wishes ought to factor into such processes, and on whether good government is a matter of procedures or outcomes. Such differences ultimately reflect the contentious origins of the basic idea of corruption itself (Johnston 2014). But another enduring issue gets closer to the main point of the present paper: conventional definitions of corruption involve some notion of transgression—that is, that standards of personal or institutional behavior that matter to others, or to society at large, are being broken. What are those standards?

Generally, that debate has taken place among three camps. One advocates the use of social standards (typically public opinion or, in longer-term but more diffuse ways, "cultural" standards; or, in Hayek's view, "customary practices"). A second would rely on the public interest to identify corrupt dealings. The third seeks to apply the law and other formal standards bearing the force of law (an enduring discussion of the alternatives appears in Scott 1972, Chap. 1). In the first instance, let the people decide what is corrupt: the argument has a certain democratic appeal and, after all, citizens themselves often are harmed seriously by corruption. But public opinion can be vague, changeable, contradictory, or so divided that no one viewpoint represents "the public". It is open to persuasion, enlightened and otherwise, and on a wide range of issues no public opinion may be detectable at all. At other times, the public's majority or modal preferences may be clear-cut, yet not reflect principles of enlightened or effective government. In any event, analytical definitions should not be judged by whether they are popular.

Relying on the public interest as our operative standard has at least equal appeal, for corruption often comes at the expense of the general public. But which "public(s)" do we mean, and who is to say what is in its or their best interests? How do we factor in the possibility that—as with various kinds of political patronage—corruption can provide a significant fraction of the public with small but short-lived benefits, while depriving them of political choices in the longer term? Do long-term and/or intangible consequences of corruption contradict, and override, short-term effects? Indeed, *does* corruption always harm, and never benefit, the public—and, if so, compared to what? How do we know what would have happened in corruption's absence and should we compare it to ideal processes and outcomes, or to the sorts of second- or fifth-best alternatives that might seem more likely? A final point is that a definition ordinarily should tell us what something *is*, not what its effects are.

That consideration leaves us with the law as our basic set of standards and in that category the most widely accepted definition comes from Joseph Nye (1967, p. 419):

> Corruption is behavior which deviates from the formal duties of a public role because of private-regarding (personal, close family, private clique) pecuniary or status gains; or violates rules against the exercise of certain types of private-regarding influence.[2]

Note that Nye is not arguing that all illegal actions are corrupt; rather, his focus is on the special standards and responsibilities embodied in "the formal duties of a public role" and "rules against the exercise of certain types of private-regarding influence."

If our choices were restricted to public opinion, public interest, or legal standards, the latter would be the best, if still an imperfect, choice. Laws usually are more precise than the alternatives, are written and recognized publicly, and (at least ideally) are consistent, and applied consistently, over time. A great many actions and transactions popularly viewed as corrupt are in fact illegal. In most (but far from all) societies, the law (imperfectly) embodies and shapes dominant social standards and exists in large part in order to protect the public and its interests. Generally, we regard "the rule of law" as a key component of a just and accountable political order, and the everyday meaning of that phrase—that no individual is above the law—links directly to corruption as a public concern.

But that conclusion scarcely ends the matter. Laws can be vague, contradictory, or poorly enforced—a concern that informs the effective day-to-day definition of corruption. At times, their content and enforcement may be manipulated politically or promulgated in a ruler's self-serving decree. Laws may be revised or written de novo in such a way as to treat once-acceptable actions as corrupt, or vice versa; even when that is done for *bona fide* reasons, identifying corruption may be complicated as we compare the old rules to the new. Scott (1972, pp. 36–55) attempts to resolve that problem by terming actions acceptable at one time, but corrupt at a later date, as "proto-corruption"—an approach that puts a name on a category of actions, but obscures more than it reveals about how the actions eventually come to be seen as corrupt. The other side of change is that in rapidly evolving societies and economic arenas, legal standards of corruption are likely to lag well behind the emergence of new modes of behavior and exchange—and be hidden behind new ways to conceal them.

The foregoing overview of definitions of corruption and of the standards used to identify it is intended to underline two important points. The first is that the notion of corruption itself is inherently complicated, contingent, and contested. We, in the current era, often have recourse to time-honored categories—bribery, kickbacks, nepotism, and conflicts of interest, as a few examples—that are by now so familiar as to seem natural. But often the very idea of corruption, and the specific values and standards we apply, arise out of contention and conflict when those who are exploited assert their own interests against the powerful. Such contention may in time lead to settlements, or at least useful stalemates, that evolve into standards and boundaries that survive because they work tolerably well for most of those concerned. But nothing is inevitable or final about that process. If we still want a bright-line delineation of what constitutes a corrupt act, we are likely to be searching in vain (these ideas are discussed at length in Johnston 2014, Chap. 1, 2).

The second point is that while categorizing specific actions as corrupt or acceptable may seem a natural approach to defining corruption, it has not always been seen that way.

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[2] Nye adds, in a footnote (p. 419), that "[t]he second part of the definition is taken from Edward C. Banfield, *Political Influence* (Glencoe, Ill.: Free Press, 1961), p. 315".

Historical notions of corruption as a collective state of being represent another, as noted—one that does not even attempt to specify a category of behavior as the heart of the corruption problem. Lest it seem that those ideas are dead and buried, consider the widespread perception in the United States that political contributions made, disclosed, and spent within the law are corrupt (Johnston 2019)—pushing citizens out of their expected roles in a democracy and eroding trust among citizens, leaders, and institutions. It does not take much imagination to recognize a conception of a corruption problem that rests less on specific actions and more on lasting systemic links and tensions between wealth, power, and justice.

3 There oughta be a law…?

Perhaps the most common complaint against legalistic conceptions of corruption has to do with their perceived incompleteness. Things are done involving wealth and power that are completely legal—or at least, not illegal—yet strike many people as wrong. As noted above, campaign contributions and lobbying are legal in the United States—indeed, they enjoy constitutional protection under the First Amendment—and yet many see them as corrupting (the following polling data are discussed in more depth in Johnston 2019). In a 2015 Rutgers-Eagleton New Jersey poll[3] of 843 adult respondents, 54.8% strongly agreed, and 24.3% somewhat agreed, with the statement, "When it comes to politics, people like me get overruled by the big campaign contributors." In a May 2015, *New York Times* poll,[4] 31% said that "all Americans have an equal chance to influence the elections process", but 66% (55% of Republicans) said that "wealthy Americans have more of a chance." In the same survey, 55% agreed that "candidates who win public office promote policies that directly help the people and groups who donated money to their campaigns" ("most of the time") and 30% responded "sometimes"; only nine percent said "rarely" and four percent chose "never". Eighty-four percent said that "money has too much influence" in American campaigns, while just 5% chose "too little influence". In a 2013 survey (Kopan 2013),[5] lobbyists ranked dead last on a list of 22 professions in terms of honesty, with only six percent of respondents crediting them with "high" or "very high" ethical standards.

That sense that legal activities might be seen widely as corrupt spills over into more generalized concerns as well. In the New Jersey Poll mentioned above, 56.7% strongly agreed, and 19.6% said "somewhat agree," in response to the statement: "More and more there is one set of rules for the rich, and another for the rest of us." In response to the statement "Today's economy offers most people a fair chance to get ahead", 24.9% somewhat disagreed and 32.9% strongly disagreed. Among those agreeing strongly that "people like me get overruled by the big campaign contributors", 42.1% strongly disagreed with the statement that "today's economy offers most people a fair chance"; another 23.2% disagreed somewhat. Such issues of fairness and of the right to have a say in decisions affecting

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[3] Rutgers-Eagleton Poll of 843 New Jersey adults, conducted by telephone between 30 November and 6 December 2015. Margin of error (95% confidence interval) for the weighted adult sample is ±3.8 points.

[4] "The nationwide telephone poll was conducted on landlines and cellphones May 28–31 [2015] with 1022 adults and has a margin of sampling error of plus or minus three percentage points." *New York Times*, 2 June 2015.

[5] "Gallup surveyed 1031 adults from December 5–8 [2013] for the poll, which has an error margin of plus or minus 4 percentage points".

their lives are central to American conceptions of citizenship: few see the main purpose of the political system as providing them with material things,[6] and most take dim views of others who seem to do so. Nearly all, by contrast, feel entitled to have a voice, to be treated fairly, and to have their opinions and values respected.

The data summarized above refer only to the United States, and it might well be that Americans have a particularly acute sense of grievance when it comes to fairness, particularly in light of the spectacular rise of inequality the country has seen over the past two generations. Still, if we consider the rise of so-called "populism" in democracies around the world, we can see that perceptions and resentment of the powers and perquisites of the wealthy and well-connected are among the sources of discontent—not only with the policies and governments of the day, but also with credibility and effectiveness of democratic processes.

3.1 But is it really corruption?

It is not news that democracy is passing through a time of discontent, nor that perceptions that shady deals and floods of money have undermined key processes and guarantees are widespread. But are these any more serious than the routine complaints than animate ordinary democratic competition?

Grounds exist for arguing that legal corruption is a genuine analytical and political issue. Over the last 5 years, we surveyed news reporters who cover state politics and investigative reporters who cover issues related to corruption, finding widespread perceptions of legal corruption, defined as:

> …the political gains in the form of campaign contributions or endorsements by a government official, in exchange for providing specific benefits to private individuals or groups, be it by explicit or implicit understanding. (Dincer and Johnston 2017, p. 144).

Boylan and Long (2003) make a compelling argument regarding why we should survey reporters, instead of other professionals, such as trial lawyers or small business owners, to measure corruption. Reporters have better knowledge of state governments and spend a great deal of time observing and interacting with governmental officials. We asked reporters how common legal corruption is in the legislative, executive, and judicial branches of the government of the state they covered in their reporting. The five-point response scale ranged from "not at all common" to "extremely common". We assigned a score of 1 for "not at all common", 2 for "slightly common", and so on. A score of 5 means that the reporter responding to the survey perceived corruption to be "extremely common" in a particular branch of state government. We then calculated a score for each state as the median of these individual scores. Legislative and executive branches scored 3 or higher in a large majority of states. In ten states, legal corruption in the judicial branch was perceived to be "moderately common"; in Arkansas and Louisiana, it was perceived to be "very common". In more than one-third of the states, both legislative and executive branches scored

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[6] That is not to say that Americans do not receive or welcome taxpayer-financed benefits—indeed, well over 80% of us do, depending on what we count as a benefit (Thompson 2012; Morin et al. 2012). Typically, however, such benefits are seen as returns on taxes paid or—as in the case of Social Security—on hard work.

4 or higher and in New Jersey they scored 5.[7] Across the board, legal corruption was perceived by the reporters as more common than illegal varieties of it, such as bribery, and embezzlement.

Legal or not, those sorts of deals and connections qualify as corruption in a democratic system for reasons made clear by Mark Warren:

> …the robust conceptual link between democratic theory and corruption can be found in the fact that corruption is always a form of duplicitous and harmful exclusion of those who have a claim to inclusion in collective decisions and actions. Corruption involves a specific kind of unjustifiable disempowerment. (Warren 2004, p. 329)

That sense of exclusion—of being cut off from our representatives and of being relegated to the bottom of the policy agenda by influential contributors—is apparent in the survey data discussed above.

Even when exercised by legal means, such influence impairs the effectiveness of, and undermines public trust in, public institutions and the broader political system. Lessig (2013, p. 2) makes that sort of argument in his analysis of "institutional corruption":

> Institutional corruption is manifest when there is a systemic and strategic influence which is legal, or even currently ethical, that undermines the institution's effectiveness by diverting it from its purpose or weakening its ability to achieve its purpose, including, to the extent relevant to its purpose, weakening either the public's trust in that institution or the institution's inherent trustworthiness.

Candidates and officials might accept legal funding only, yet still be "deflected" systematically in favor of contributors (Lessig 2011). Regulatory bodies, for example, can be captured by the industries they supposedly supervise by legal contributions to legislators who define agencies' powers, set their budgets, and approve top nominees.

But the notion of "legal corruption" can seem confusing or contradictory, in part because the processes by which it operates are complex and, in some respect, ambiguous. Thompson (2018, p. 486), in his comparison of competing theories of institutional corruption, notes that

> First, it is equivocal: The corruption benefits the institution while undermining it. The corruption exploits legitimate institutional practices that provide benefits that even an uncorrupted institution needs, and for which alternatives must be found if the institution is to function well. Unlike the practice of bribery, for example, campaign fundraising serves a legitimate function. Second, institutional corruption is impersonal: The individual agents of corruption act in institutional roles and do not have the corrupt motives that characterize agents who participate in quid pro quo exchanges. Politicians who accept campaign contributions and do favors for their constituents act partly in their own political interest but also promote the competitive and other values of the democratic process. Third, the corruption is generalizable: It is found not only in government but in many other kinds of institutions.

Some activities that can become integral to institutional corruption, such as lobbying and contributing to campaigns, are not only legal, but also in many ways praiseworthy. Calling them "corrupt" or corrupting may not seem logical for those reasons, but beyond some

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[7] For detailed information regarding the survey see the Institute for Corruption Studies website (greasethewheels.org).

point that must be identified, more by politics than by the law, they undermine democratic institutions in the ways Lessig outlines above.

Because of the wide range of people, institutions, activities, and interactions that can qualify as institutional or legal corruption, key aspects of the concept are conceived of in broader terms. Indeed, as Thompson (2018, p. 503) points out, institutional corruption can have points in common with the "individual corruption" highlighted by mainstream definitions:

> Corruption is more institutional than individual insofar as (*a*) the gain an official receives is more institutional than personal, (*b*) the advantage the official provides takes the form of access more than action, and (*c*) the connection between the gain and the advantage manifests a tendency to subvert legitimate procedures of the institution, regardless of whether an improper motive is present. In actual cases, these elements are present to various degrees and in various combinations, and as a result many instances of corruption are appropriately described as more or less institutional, or more or less individual. An advantage of the three-element conception of institutional corruption as presented here is that it allows for hybrid cases of this kind, which are often neglected. An analysis that disaggregates the elements can help better identify the specific character of the corruption in actual cases.

Lest a conception of corruption resting on "access more than action" seem to broaden the notion of corruption unduly, it is worth remembering that access is precisely what is denied by Warren's (2004) "duplicitous exclusion"; it is what is bought and sold in "influence market" corruption (Johnston 2014).

In that way of looking at things, "corruption" does not reduce to the simple breaking of rules (be they legal or otherwise), to undermining or defying the public good for one's own personal benefit, or to a problem experienced only in the public sector. At issue, instead, is a threat to fair, open, and democratic politics, as well as a more elusive and embedded process of undermining core values—values that, as Thompson points out, may differ from one institutional corruption theory to another. A neat, concise definition of institutional or legal corruption will be far from simple to devise for it applies to a political and economic world of ambiguities in which things are by no means necessarily what they seem to be (see, for an excellent analysis, Wedel 2012). Lessig (2013) above will do as well as any other.

4 Legal corruption as an analytical concept

In several respects, taking the idea of legal corruption seriously seems to be a useful and timely choice. In an analytical sense, legal standards may still seem unduly restrictive; the distinctions they draw can be vague, shifting, and contested. Some proposed definitions of corruption (Johnston 2014) attempt to emphasize the sources of disagreement, treating corruption as a conflicted societal issue having to do with acceptable or unacceptable uses of power and wealth, but that approach has not attracted widespread support. Fairness is a concern in many discussions of corruption; Rothstein (2011) has developed a sophisticated analysis of impartiality as a principle of government, but at times fairness may seem to require more effort or conflate other principles. In any event, fairness should not be reduced to a box-checking exercise of carrying out processes. Other reasons to think carefully about what we treat as corruption might include the growth of inequality and the public concerns

it raises (Frank 2011); the rise of populist leaders and movements, and the resentments they mobilize; widely shared senses of exclusion, and the erosion of political trust that accompany such movements; and the sense that a wave of money has overwhelmed democratic accountability—a perception that may be an ironic consequence of financial transparency requirements. Whether or not those grievances and apprehensions are grounded in fact—and sometimes, they are not—they raise precisely the sorts of "duplicitous exclusion" issues that Warren (2004) has highlighted.

Longer-term and more fundamental issues add to the dilemmas. Public–private sector boundaries never have been fixed and precise, but neoliberal economics and "structural adjustment" policies intended to roll back the frontiers and powers of the public sector over the past few decades have produced an environment in which public–private boundaries, and the standards applying within and between those sectors, have become shifting, negotiable, and open to legal manipulation. The growing political power, cultural influence,[8] and seeming impunity of private business have produced a rush to take advantage of emerging rent-seeking opportunities as well as misgivings about the broader implications of such developments. Four decades of efforts to restrain the power of government—in the process, Fukuyama (2013) argues, giving too little thought to how that power should be used—have helped create an environment in which the accountability of business becomes weaker and weaker while that of government has generally not become stronger. Global and regional integration of business has intensified such trends, giving rise to the proliferating offshore financial dealings of some wealthy individuals as revealed in the Panama and Paradise Papers[9] and to businesses that seem to operate everywhere while being held accountable nowhere. Such trends, and of the abuses of public trust and institutions that can accompany them, suggest the need for a broader-gauged view of corruption. A perceptive analysis of legal corruption can help us understand why neo-liberalization, privatization, and the like—centerpieces of a reform philosophy that emphasizes getting government and bureaucrats out of the economic loop—have done little to overcome corruption as a social issue. Finally, concepts of legal corruption can clarify what the major international corruption indices miss and help explain why affluent market democracies receive rankings on such lists that are higher than numerous critics, and at least some of their citizens, believe they deserve.

4.1 Problems remain…

But does the idea of legal corruption disentangle all of that? In some respects, the concept may be both too broad and too limited. In the former sense, we should ask what "legal corruption" *excludes*, particularly in terms of private-sector activities and processes of democratic advocacy. Clearly, a concept that equates to "things done in politics and the economy

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[8] Those who doubt the assertion might do well to take a long look at LinkedIn website (www.linkedin.com), widely popular among young aspiring professionals, wherein the business values and motivational jargon on display sometimes seem to be taken right out of George F. Babbitt's fondest dreams.

[9] The "Panama Papers" refers to the estimated 11.5 million documents obtained by an anonymouse source from a prominent international law firm dealing in offshore financial matters, and leaked to a German newspaper in 2016 (Harding 2016). https://www.theguardian.com/news/2016/apr/03/what-you-need-to-know-about-the-panama-papers. The "Paradise Papers" are an even larger (about 13.4 million) documents similarly leaked from corporate services firms in Bermuda, and elsewhere in the Caribbean, to a German newspaper about a year later (BBC 2017). https://www.bbc.com/news/world-41880153.

that I don't like" is far too general. Similarly, practices that reflect and perpetuate inequality would seem to connect with legal corruption in many cases, but again the idea must be applied carefully so as not to include too much. Lessig's notion of abusing the public trust is essential in that connection (but for a contrasting argument suggesting that excessive trust in government can lead to government that is untrustworthy, see Lee and Clark 2001), and yet trust and the forces affecting it can be quite diffuse, and the causal connections among them difficult to trace out.

Political issues and resentments that plausibly could be linked to legal corruption can reflect many more possible causes as well. A sense of being excluded from decisions affecting one's life might indeed stem from, say, the perceived influence of large political contributors, but it likewise could reflect one's social class; gender, race, religion, or ethnicity; region of residence; mass media intake; or the vast and complex economic forces creating and exacerbating inequality. Is the rubric of "corruption", however we conceive of it, commensurate with the scale of such problems—or should it be thought of as just one of a great many influences? Might it assume far too much in terms of the quality of political life we might experience without such influences?

A danger arises from relying on legal or institutional corruption ideas to explain too much, thereby diverting our attention from important related problems. Legal corruption overlaps with, and may be difficult to distinguish from, deteriorating public trust, for example, and the devaluing of institutions—ideas and processes that usually should be kept distinct in our schemes. The concept also may depend for its application on the existence of public–private distinctions, and aspects of public trust and social censure, that turn out to be considerably less clear-cut in fact than in theory. Thompson is quite right in pointing out that institutional corruption often both harms ("throws sand in the wheels of") and aids ("greases the wheels of") governmental processes, but are we still really talking about an identifiable variety of corruption? While many may object to growing inequality, and to its economic causes and political consequences, others defend it as embodying incentives essential to a modern economy. It is very difficult to imagine any conception of legal corruption that would be shared by all. Our argument would be that a definition of legal corruption that emphasizes clashing values and that embraces rather than attempts to resolve the problematical relationships among wealth, power and fairness that are on view in a great many settings, will be more productive than an effort to define a clear-cut category of behavior. In those respects, Thompson's analysis may both clarify the fundamental idea of institutional or legal corruption and complicate further the task of deciding what, if anything, to do about it.

For some observers, just combining the terms "legal" and "corruption" may be to mix quite different ideas in too imprecise a way. Data and measurement likely are to be problematical as well; survey methods, and particularly expert surveys, such as the data from statehouse reporters mentioned above, may well be the most promising approaches. Still, the many limitations of perception-based corruption measures, or with those that depend on people to report specific corrupt events, provide well-known cautionary tales. And, as noted above, what are we to do in response to such problems and abuses? Many mainstream anti-corruption strategies emphasize laws and their enforcement, but here we are discussinf activities that are, by definition, legal—or at least not clearly illegal. Other control measures can be imagined—those based on incentives of various sorts, or limits and sanctions imposed by civil society, business and professional organizations, and the like, but will they be fair, effective and consistent—and, how would we know? Acting on the more far-reaching consequences and injustices that arguably would be linked to legal corruption would require, first, what Rose-Ackerman (1978, p. 9) has called a standard of goodness:

in that context, what kind of economy, legal system, corporate governance, and the like *do* we want? The resulting legislative proposals would in many cases be quite ambitious, and likely to encounter the same political and legal barriers that other broad-based reforms proposals would meet. In many cases, too, they would lack the sorts of compelling ethical justifications that more conventional anti-corruption proposals generally possess.

5 Conclusion

There is "something" to the idea of legal corruption, but what it is, and what analytical work it does for us, are daunting questions. We have yet to define *illegal* (or transgressive, depending upon the standards we use) corruption in broadly satisfying ways, much less come up with convincing reforms. When we venture into the realm of legal, but unacceptable practices and relationships, we may well meet ourselves coming and going, again and again. Still, the effort to explore legal or institutional corruption issues will be worthwhile. In the process of working out the concept, we may well rediscover some venerable old ideas. Dobel's (1978) analysis of corruption as the forfeiture of citizens' loyalty resonates with the ways so many people living under democracies around the world today perceive their political systems as corrupt. Even though it can be hard to say specifically who or what qualifies as corrupting, degraded credibility and trust in democratic politics and key institutions are on view for all to see.

At present, anti-corruption thought and activities seem to be falling into a "compliance" trap, emphasizing rule-following rather than the aspects of justice that might be essential to building vigorous and sustainable demands for better government. Rules, laws, compliance and enforcement undoubtedly are of critical importance, but they scarcely are the whole story. Moreover, if the notion of legal corruption holds any validity, we are unlikely to have solved all of our corruption problems even if, one day, all laws were obeyed, and all rules complied with. A critical social dimension would remain—do we treat each other fairly, do citizens *believe* that they have a voice in decisions affecting their lives, and can we govern ourselves according to the shared values we actively support—not just by rules that must be obeyed? Those are among the most fundamental questions of government and politics, and if notions of corruption anchored in broader values and not just the law were to do little else but re-focus attention upon to those issues, they will have proven to have real value.

Any argument about legal corruption will, of necessity, require that we find our way through a thicket of opinions, perceptions and expectations; navigating that path will entail significant problems of recognition, measurement, and assessment. The papers gathered together in this symposium issue are selected from the papers presented in the Institute for Corruption Studies' 2nd Workshop on Corruption which was held in Chicago in May 2019. They address those sorts of dilemmas from a variety of starting points and consider several different kinds of evidence. They do not—at this point, they cannot—resolve definitively the question of whether legal corruption is a valuable analytical concept. They do, however, serve as a useful introduction to the complexities involved in beginning to sort out those issues.

Alexander et al. (2019) point out critical ways in which perceptions of, and reactions to, dubious (or worse) conduct by political figures are affected by more general aspects of the political setting, and by the ways in which those factors interact with voters' values and preferences. The article uses an exit-voice-loyalty framework to analyze gender differences in voters' reactions to a corruption scandal in one's preferred party—that is, whether

women differ from men in terms of turnout (exit) and, given that they vote, whether they prefer a clean alternative party (voice) or whether they continue to vote for their preferred party (loyalty) involved in the scandal. Women, the evidence suggests, generally are less tolerant than men of corruption, but the effect is decidedly conditional: where social service spending is more widespread, female respondents are more likely to vote for an alternative party (because they have more to lose from corrupt practices), while the odds of exit increase among women when social service spending is lower.

Finocchiaro Castro and Guccio (2019) show that voters' responses to corruption, broadly defined, likewise are complex and shaped by contextual factors—particularly, those relating to social capital. Electoral districts in Italy that have both weak social norms and low trust in institutions also are prone to adverse political selection and low levels of electoral punishment of corrupt politicians, because politicians choose more or less favorable districts in which to run. The authors use an innovative measure of social capital based on data on teachers' cheating when administering a nationwide standardized test in primary schools. They find that teachers' cheating is correlated strongly with both the malfeasance of local representatives and to low levels of electoral punishment.

Foresta (2020) considers the Italian case from another angle. Perceived corruption, often involving abuses of power and privilege that well may be quite legal—or not clearly *illegal*—is often cited as contributing to the rise of populist parties, candidates, and political resentments. Foresta studies the impact of a major series of corruption scandals on the rise of the Northern League, using a novel set of electoral data at the municipal level and, as a measure of corruption scandals, articles and press releases. The key finding is a direct link between corruption scandals and the rising success of the Northern League. To disentangle the (potential) challenger effect from the effect of populism, the main regression is estimated using as dependent variables the votes shares of all challenger parties. The results confirm the presence of a challenger effect, but also reveal strong influence of the populist component, a finding that is robust with respect to a number of other influences and with respect to a different definition of populism.

Chang (2019) not only shifts the focus to emerging Asian democracies, but also considers how the structure of corrupt transactions themselves—an important-yet-underexplored form of informal institutions—shapes voters' electoral behavior regarding corruption. When voters have a clear idea of whom to bribe to secure desired services and how much they need to offer—that is, when corruption takes the form of relatively predictable transactions rather than arbitrary and unpredictable exploitation of citizens, are they less likely to engage in corruption voting and hold corrupt incumbents accountable electorally? Chang reports empirical evidence that an institutionalized corruption structure promotes greater tolerance for corruption and electoral acceptance of corrupt politicians.

Dell'Anno (2019) helps sort out the many subtleties and contingencies highlighted in the articles summarized above by applying partial least squares—structural equation modeling (PLS-SEM) to estimate an index of perceived corruption around the world (S-CPI). That methodology provides estimates of corruption as a multidimensional latent variable involving complex cause-effect relationships between observed and/or unobserved variables. From a positive viewpoint, it estimates comparable scores for 165 countries from 1995 to 2016, using five indicators and a model specification based on existing theory and evidence on the causes and consequences of corruption to suggest the most effective channels for fighting corruption.

Finally, Escresa and Picci (2019) remind us that corruption within nation-states is just one face of the global corruption challenge, and that understanding cross-national corruption entails understanding not just differences in institutions and economic systems, but

also different social interactions. Unlike previous studies that rely on perception or survey-based data alone, Excresa and Picci employ a new dataset of observed cases of cross-border graft: cases in which a firm headquartered in one country bribe public officials in another. They find that economic development and a small population are associated with lower levels of such corruption, as are freedom of the press, political rights, the presence of established democratic institutions, the salience of women's roles in society, and small exports of natural resources, such as oil. The data illuminate important "relational aspects" of corruption that come to the fore when bribers and bribees reside in different countries. The evidence suggests that such relational factors affect cross-border corruption in ways that extend beyond their effects on bilateral trade.

The articles published herein introduce us in a variety of ways to the questions and problems we will encounter when we move beyond thinking of corruption as specific actions transgressing legal or institutional boundaries in an official context, and instead consider corrupt dealings as people perceive and react to them. They do not, as noted, reach a unified set of conclusions or even spell out a common research agenda. What they do, however, is to help us understand corruption and the issues it raises in a much more fully rounded and contextual fashion, and identify some of the dimensions that are likely to prove important in such explorations.

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