

# Corruption & Purity

*Susan Rose-Ackerman*

*Abstract: Corruption is a complex and contested concept that raises difficult ethical and legal issues at the borderline between individuals' public and private roles. What is appropriate or required in one role may be inappropriate or even illegal in another. Based on these concepts of role and responsibility, I begin this essay by analyzing three cases that fit comfortably into the "illegal corruption" category: so-called grand and petty corruption and electoral fraud. These categories express widely accepted boundaries at the interface between public power and private wealth. I then discuss more ambiguous cases, such as lobbying and campaign finance, that demand nuanced legal and policy solutions. Responses to both types of behavior must go beyond law enforcement to include the reorganization of government institutions and their relationship to the private sector.*

SUSAN ROSE-ACKERMAN is the Henry R. Luce Professor of Jurisprudence (Law and Political Science) at Yale University. She is the author of *Corruption and Government: Causes, Consequences, and Reform* (1999; second edition with Bonnie Palifka, 2016), *Due Process of Law-making: The United States, South Africa, Germany, and the European Union* (with Stefanie Egidy and James Fowkes, 2015), *From Elections to Democracy: Building Accountable Government in Hungary and Poland* (2005), and *Corruption: A Study in Political Economy* (1978).

The term "corruption" is often used to condemn behavior that violates the speaker's values. It evokes notions of putrefaction, rot, and decay; corrupt acts undermine a pure ideal. But if not everyone shares the same values, the term can imply an overbearing insistence on one's own view of what is right and good. This produces much conceptual confusion. Many commentators enshrine specific values and assert that deviations from those values are corrupt. These scholars conflate the mechanisms that produce the harm with the harm itself.

If one takes majority rule as the gold standard for public action, then deviations from that voting mechanism are corrupt. If one places the competitive market on a pedestal, then monopoly power is corrupt. If expertise sets the standard, then efforts to undermine science are corrupt. If, as Bo Rothstein has argued, the state ought to treat everyone impartially, then favoritism is corrupt.<sup>1</sup> In the same spirit, Alina Mungiu-Pippidi has asserted that corruption constitutes deviations from ethical universalism, a view also held, with some modifications, by Robert Rotberg.<sup>2</sup> Payoffs can undermine each of these

values, but departures from any particular value system do not constitute corruption *per se*. Rather, under my definition, corruption occurs when an official charged with a public responsibility operates in his or her own interest in a way that undermines the program's aims, whatever they may be. Officials who administer public programs without gaining personal benefits are not corrupt, in my view, even if the programs' values are abhorrent and immoral.

Conversely, if a law openly violates one's favored norm, paying a bribe to undermine that law is still corrupt, even if one finds such behavior justifiable in context. Suppose, for example, a society operates with a rigid caste system that limits the human potential of those at the bottom of the hierarchy. The system itself clearly violates ethical universalism. Yet if a lower-caste person bribes his or her way up the ladder, the payments are corrupt in that they violate the terms of the society's established framework. The behavior itself is justifiable in its defiance of an immoral system, but remains identifiably corrupt. In fact, widespread payoffs of, for example, the police, medical doctors, or prison guards are often evidence that the programs they administer do not operate impartially. However, the payoffs remain bribes in terms of the existing government structure.

In a world with contested views of the right and the good, one ought to debate the principles behind normative claims about corruption, ask how states and the private sector fall short, and assess which actions constitute "corruption" and which reflect other structural or individual failings. Corruption is one aspect of the tension between private wealth and public power, and it highlights the limits of self-interest as a model of behavior. However, conflating that tension with corruption ignores the complexity of the relationship.

Even if everyone agreed on the public good, treating any shortfall from the ideal

as corruption fails to accommodate the reality of human weakness and the inevitable trade-offs of daily life. The pervasiveness of trade-offs makes clear the limits of moral absolutism as a framework for policy-making or governance. Law reform will generally be counterproductive if statutes impose rigid, unrealistic standards of behavior combined with harsh sentences. Such legal regimes may push the outlawed behavior underground or encourage the payment of bribes to those who enforce the law. Conversely, a set of harsh legal rules that go unenforced breeds contempt for the law.

Corruption is both a moral and a legal category. In my analytic framework, corruption comprises the mechanisms that undermine the goals of public programs, whatever those goals may be.<sup>3</sup> The corrupt seek to obtain personal material benefit at the expense of programmatic aims or institutional goals. However, those goals need not themselves be "virtuous"; corruption itself can advance either nefarious or noble aims. I distinguish corruption that violates the rules of the game through payoffs from unethical actions that may or may not be consistent with state policy. Thus, with Rothstein, Mungiu-Pippidi, and Rotberg, I applaud polities that espouse ethical universalism and impartiality, but I do not claim that deviations from those values are "corrupt."

Many institutional and personal failures – for example, waste, poor administration, technical mistakes, and violence – are not corrupt. Furthermore, such failures are often not illegal, and calling them "corrupt" does not help illuminate a path to reforms that require the cooperation of officials and citizens. Conflating outright bribery with other forms of maladministration and self-seeking is likely to antagonize rather than motivate officials and citizens. However, the study of corruption ought to go beyond the assessment of laws against bribery, extortion, and fraud to cov-

er analogous forms of self-seeking. If some questionable behavior is legal or widely tolerated, one needs to ask whether and how it should be outlawed or punished. Simply calling it “corrupt” does not answer these questions.

Applying the “corruption” label is not always controversial. Difficulties arise at the margins where values conflict and ideals must accommodate a messy reality. I concentrate on politics that differentiate roles and responsibilities. Difficult ethical and legal issues arise at the borderlines between roles. Those who hold government or political positions as legislators, ministers, party functionaries, judges, presidents, prime ministers, or civil servants also have other roles as devoted family members, businessmen, tribal elders, religious leaders, or even members of organized crime groups. Individuals change roles over days, weeks, or years. What is appropriate or required in one role may be inappropriate or even illegal in others. As Rothstein and Mungiu-Pippidi have argued, public roles require a level of objectivity, evenhandedness, and transparency not imposed on one’s personal life, where favoring one’s family is the norm.

Based on the concepts of role and responsibility, I begin with three cases that fit comfortably into the “illegal corruption” category: so-called grand and petty corruption and electoral fraud. These categories may overlap with each other, but each expresses widely accepted boundaries at the interface between the public and private spheres. I then discuss the more ambiguous cases of campaign finance, lobbying, and conflicts of interest, which demand more nuanced legal and policy responses. I emphasize responses that go beyond law enforcement, particularly policies that reorganize government institutions and their relationship to the private sector.

**D**irect monetary payoffs to secure government contracts, purchase state-owned

enterprises, and obtain concessions for resource extraction are corrupt by almost any definition. The explicit *quid pro quo* distorts government choices and imposes costs on citizens. Government officials may seek bids for contracts that fit poorly with the needs of the country and instead maximize the rents to be shared between public officials and private firms. Corrupt deals can limit competition even for otherwise valid purchases, driving up prices. For privatizations and concessions, lack of competition drives down prices, undermining social benefits. A corrupt firm might influence bidding specifications in order to become the only qualified bidder, making the formal bidding process look clean because the illicit behavior took place earlier.

Corrupt deals may also permit infrastructure contracts that violate laws pertaining to the environment, pay and working conditions, or treatment of local communities. Firms that obtain concessions through payoffs are also vulnerable to extortion, and those threats may affect project timelines, leading investors to speed up resource extraction or to use production processes that are easy to shut down or move away on short notice. The benefits to a country’s citizens are lower than they would be under an honest system, sometimes by a great deal. Even if the winning firm turns out to be the most efficient, the gains of the transaction are shared between the corrupt official and the firm and lost to the population. Monopoly power on its own may be as costly as corruption; competitive pressures are essential to produce contracts that operate in citizens’ best interests.

Recipients of kickbacks are corrupt so long as the law distinguishes between the personal interests of officials and those of the state.<sup>4</sup> For example, a ruler who chooses projects to maximize bribes could by chance end up supporting projects that are superior to those he or she would otherwise select. The deals remain corrupt,

however, because of the bribe-maximizing selection method. To assess the impact of corruption, behaviors and methods must be separated from outcomes.

If accepting kickbacks for major contracts, privatizations, or concessions is unambiguously corrupt, what about the firms that make such payments? Firms excuse payoffs by claiming that they cannot otherwise do business in a country where corruption is the norm. This excuse is often a non-starter under the law: in international contracts, such behaviors might be prohibited by the laws of the host country, a corporation's home country, or both. Legal instruments outlawing corruption in international business deals include the U.S. Foreign Corrupt Practices Act (FCPA) and the Organisation for Economic Co-operation and Development (OECD) Anticorruption Convention. Even bribes paid to finalize deals in deeply corrupt environments fall under these legal strictures. Nevertheless, some see these payoffs as "necessary payments" (*notwendigen Ausgaben*, the term once used by German firms to account for such payments in their financial records). No one disputes that a system of kickbacks imposes higher costs to host countries' citizens compared with an honest system, but parties to these contracts argue that the only alternative is no investment at all. The United States has been an aggressive enforcer of the FCPA under the umbrella of the OECD Convention. As a result, some U.S. businesses claim that enforcing the FCPA harms America's economic interests. That claim is deeply misleading; it overstates the case and denies the importance of ethical business dealings. First, the FCPA applies not only to U.S. companies but also to all companies that are listed on U.S. capital markets or are otherwise linked to the U.S. economy. Second, most international companies are subject to anticorruption regimes in their home countries if those jurisdictions have ratified the OECD Convention – meaning

that the competition often faces the same ethical and legal obstructions as U.S. firms. Finally, even if a kickback helps win an individual deal, systemic corruption introduces inefficiencies and reduces competitiveness and private-sector development. This, in turn, hampers economic growth and limits opportunities for investment and trade that arise from better economic conditions.

Corruption can initiate downward spirals of bribery, extortion, and escalating bureaucratic demands.<sup>5</sup> Abetting corrupt officials in their search for private gain will encourage them to ramp up their extortionate behavior going forward. The long-term losses for global business and for the citizens of kleptocratic states will arguably cancel out the short-term gain from individual contracts.

Consider next so-called petty corruption, wherein bribes to low-level officials induce them to override regulatory rules, reduce taxes, limit fines, and allocate scarce public benefits in ways that advantage the briber. The label "petty" is not intended to imply that the backhanders are unimportant or tolerable, but rather to highlight the difference in scale between the corruption of large deals and situations in which a large proportion of those demanding a service or avoiding a cost make payoffs. These bribes distort the allocation of benefits and costs, and they signal underlying weaknesses in public programs.

Apologists for small bribes see them as the grease that makes the operations of private businesses and the administration of public programs run. For them, the ideal of unfettered market trades and sale of public goods to the highest bidder ought to trump legal rules. Anything that furthers that ideal is not corrupt, but rules that are inconsistent with the free-market ideal are. Note the arrogance of this view. The commentator asserts the right to evaluate the rules in the light of his or her own values, privileging

quid pro quo transfers and labeling behavior that seeks to restrict them as corrupt. To assert that some payoffs are acceptable *because* they mimic the free market, or that some rules are illegitimate because they do not, closes the door to genuine debate about how to regulate market failures, preserve individual rights, and deal with social and economic inequities.

The evaluation of petty corruption begins with distinctions between licit and illicit behavior. What can be legally bought and sold? What trades are illegal and subject to punishment? Has that boundary been set appropriately? Should the law permit more or fewer trades? Should governments redesign programs to change financial incentives or to influence choices? I focus on three reform measures against petty corruption: legalizing payments, reforming programs to limit incentives for payments, and eliminating programs infiltrated with self-seeking.

The first solution is to legalize payments. Legal market trades would then allocate goods and services to purchasers who value them the most in material terms. High earners could thus satisfy more of their needs and desires than those with low income and wealth. Is such an allocation acceptable for a particular public program? The answer depends upon its underlying justification. The easy cases for legalization of payments are regulatory initiatives that attempt to enhance efficiency. For example, a government may decide to limit the import of capital goods through a quota. Legally selling these quotas in auction to the highest bidders would minimize their economic costs.

Bribe payments can undermine public goals, which is why reducing incentives for payments is also an important second option. An initiative may target the needy or the worthy. The goal may be Rothstein's impartiality, but scarce resources imply that not everyone can obtain the benefit. If

officials allocate the program's benefits according to payoffs received, their behavior violates the underlying purposes of these programs. Payoffs, even if "petty," distort official criteria and are thus corrupt.

Corruption also undermines public purposes if bribes become substitutes for qualifications for access to benefits. If the qualifications relate to the underlying purpose of the program (for example, if a program is reserved for the neediest candidates), payoffs distort the programs, directing benefits away from the intended recipients. One can make similar arguments about government-imposed costs to citizens in the form of taxes, customs duties, fines, regulatory shutdowns, and criminal arrests: those who pay bribes to avoid such costs undermine the legal framework that keeps the government functioning.

Finally, if, in practice, the administration of a public program is arbitrary and unfair, it is likely that the laws themselves are discriminatory or their administration is faulty, meaning that the programs themselves may need to be modified or eliminated. In that case, legalizing or overlooking private payments would only give officials incentive to impose arbitrary red tape or threaten citizens to generate more payoffs. Reform must limit the cause of the bribes, whether it is self-seeking behavior or citizens' frustration with a discriminatory system. Bribes paid to convince authorities to overlook rule violations or permit access to services without the required qualifications are also corrupt. These cases involve dysfunctional bureaucrats who either do little work without payoffs or actively extort them.

Although one may sympathize with citizens facing extortionate demands, few would hesitate to label such systems corrupt. Payoffs contribute to societal dysfunction, even if those who pay bribes are better off in the short term than those who do not. If the state tolerates "petty" bribes, a

vicious cycle can develop that may escalate and undermine all public programs. However, cracking down on payoffs is insufficient and may be unfair to those caught in a web of petty corruption. The state must reform the programs to limit corrupt incentives facing both those who pay and those who receive payoffs or, in the extreme case, to cancel dysfunctional programs. Reforms might, for example, increase the supply of scarce public services, set clearer qualification standards, add transparency about beneficiaries, or streamline bureaucratic processing of applications. Admittedly, such reforms require reform-minded officials in positions of power; implementing them is not always possible where bureaucratic corruption is pervasive.<sup>6</sup>

The third type of unambiguously corrupt behavior I will examine is election fraud, including vote buying and electoral manipulation. In such scenarios, politicians and political parties pay individual voters for their support. Voters may not object because they benefit from candidates' largesse. In some cases, the distribution of state resources and patronage jobs creates webs of obligation such that voters may overlook or even encourage illegal contributions from the wealthy if some benefits flow to them. These personalized benefits can make it difficult for credible opposition candidates to arise. The government becomes a site for a mutual exchange of favors that ultimately benefits those with the most resources and political power.

Even in elections with secret ballots, vote buying can occur. In especially blatant cases, political operatives mark ballots for voters. Politicians may employ other techniques, such as paying election officials and monitors to manipulate voter registration rolls, miscount or misreport votes, "lose" ballot boxes, limit the opening times of polling stations in contested voting jurisdictions, or fail to publicize balloting loca-

tions. Sometimes partisan electoral officials misuse their positions to fraudulently elect favored candidates. Incentives for vote buying and electoral fraud are stronger the more competitive the election.<sup>7</sup> If a party or candidate is certain to win or lose, fraud is unnecessary; hence, the absence of voter fraud does not necessarily imply stronger democratic institutions. Reform requires political parties and leaders to espouse honest elections, support election monitors (perhaps from outside the country), and encourage the creation of independent domestic institutions to organize and monitor elections. Concerned citizens can provide decentralized oversight.

Not all corruption fits within these three categories; in some cases "corruption" is a problematic or ambiguous label. I reject an expansive notion of corruption that covers all cases in which private wealth affects public choices, either directly or indirectly. That is an impossibly broad definition, especially if we operate under the understanding that corrupt acts should be illegal. Few commentators advocate this approach, but why label an action "corrupt" if not to call for its sanctioning under criminal or civil law? If calling something "corrupt" is merely a way of signaling its immorality, why not just criticize it as such and engage in public debate about what the standard of behavior ought to be? "Political corruption" is an especially ambiguous category that can refer both to explicit quid pro quos and to broader pathways through which private wealth affects elections and policy choices. Campaign finance, lobbying, favoritism, and conflicts of interest – all behaviors that under some circumstances and for some commentators have been deemed corrupt – illustrate the conceptual and policy difficulties of this term.

I will first discuss campaign finance. Democratic political systems must finance politi-

cal campaigns without encouraging the sale of politicians to contributors. Well-funded candidates may be more likely to win elections, after which they can pursue the donors' favored policies. Politicians may base their policy positions around the goal of obtaining more funding, creating a feedback loop of ever-increasing devotion to donor interests. However, the simple act of donating to those with similar policy positions is not obviously corrupt. Election donations are, as the U.S. Supreme Court argues, a form of "speech."<sup>8</sup> Even if biased in favor of the wealthy or well-organized interest groups, donations support and provide data to candidates and incumbents.

Governments have drawn the line between legal and illegal gifts in quite different ways, and laws vary with respect to the limits placed on quid pro quo deals by politicians. Even though the U.S. Supreme Court has struck down many campaign-finance regulations as unconstitutional limits on free speech, the justices still accept corruption (or its appearance) as a constitutional justification for regulation.<sup>9</sup>

Groups that donate to elected officials often expect special consideration in legislative or administrative processes or assistance in obtaining contracts and concessions. The interests of wealthy groups or individuals can easily conflict with those of the general public. In an ideal democracy, the electoral process disciplines politicians to represent the interests of their constituents, with voters able to penalize candidates who are beholden to special interests. But voters cannot act unless they know both how their representatives behave and who has given them money. Legal gifts can have a corrupting effect, especially if the quid pro quo is not obvious to voters.

Sometimes expectations of a quid pro quo are quite straightforward. In other cases the effects of the exchange are subtle and difficult to document. Some contributions are long-term investments in de-

veloping relationships of mutual trust designed to get sympathetic candidates into office. In practice, it is difficult to distinguish between politicians who modify their positions to favor contributors and those who simply share their contributors' points of view. Private contributions influence who runs for office, as well as how politicians behave once elected. Even if donations only buy access, they can influence legislative outcomes.

Although empirical research has not conclusively determined the impact of campaign donations on electoral success, politicians and contributors behave as if money matters. Incumbents have a fundraising advantage, and those in powerful positions in the legislature are especially favored for reelection. A study of roll-call votes in the U.S. Congress found no statistically significant relationship between votes and contributions, but other routes to influence are more subtle.<sup>10</sup> Although the evidence that donations influence behavior is mostly anecdotal, the link between campaign funds and influence remains a persistent concern of critics worldwide.

The difficulty of articulating a legal definition of corruption that is applicable to elected politicians and those seeking influence is illustrated by *McDonnell v. U.S.*, a 2016 Supreme Court decision interpreting the federal bribery statute.<sup>11</sup> The opinion overturned the corruption conviction of then-Virginia governor Robert McDonnell, who had arranged meetings between state officials and a donor seeking economic advantages. The Court held that the governor's efforts were part of the routine actions expected of elected officials, even if some of those actions were "distasteful." Unlike the earlier *Citizens United* case, freedom of speech was not at issue, because the case targeted the governor, not the businessman. The Court also heard *Caper-ton v. A. T. Massey Coal Co., Inc.*, in which an elected state judge had received large do-

nations from one of the parties in the case: gifts that could have had a “significant and disproportionate influence” on his objectivity. The Supreme Court required the state judge to recuse himself from the case because of the high “probability of actual bias.”<sup>12</sup> As lawyer Joel Ramirez argues, this decision provides an opening for campaign-finance regulations directed at candidates rather than donors, avoiding both First Amendment challenges and bribery prosecutions.<sup>13</sup>

If *McDonnell* implies that prosecutors must prove an explicit quid pro quo to secure a bribery conviction, that would raise the bar for conviction. *Caperton*, however, holds that circumstantial evidence can be sufficient to limit the effect of private wealth on public choices. Because links between donations and favors can undermine electoral democracy, campaign funding should be regulated directly, not as a subset of antibribery law. State statutes could theoretically outlaw both giving and accepting substantial gifts, even if these actions do not violate the federal bribery law.<sup>14</sup>

Reform proposals for election law range from strict proposals employing a broad legal definition of corruption to more permissive ones that rely on disclosure to increase transparency. Neither extreme seems appropriate. In a highly competitive system with informed voters who do not expect personal favors, prompt and complete disclosure might be sufficient. Politicians who rely too heavily on special interest money – and voted accordingly – would be defeated. More direct restrictions should hold if the system is not competitive and if voters are poorly informed; without spending limits, politicians can favor large contributors and gifts can be used to mislead voters regarding candidates’ positions and behavior.

Campaign-finance reform must avoid laws that are so strict as to encourage illegality. Although laws in many countries

are overly permissive, in others the regulations practically require off-the-books transfers for candidates to fund their campaigns. Strict legal limits can also encourage unreported corrupt transfers. Scandals point to the importance of both clear rules governing the solicitation of private money and sufficient legal sources of funds. Furthermore, the impact of corporate gifts depends on politicians’ abilities to provide individualized favors to firms. If such favors are not outlawed or controlled, the distinction between bribes and legal campaign contributions will be blurred and will depend upon reporting requirements and the reaction of voters.

Societies must reach a consensus about the degree to which a democratic government can or should interfere with its citizens’ wishes to express their political interests through donations to political parties or individual candidates. Once a polity has agreed on a norm of behavior, solutions can be pursued along four dimensions. First, the costs of political campaigns can be reduced by limiting campaign length and restricting the range of acceptable fundraising methods. Second, stronger disclosure rules can be implemented. Third, laws can limit individual donations or candidates’ spending. In the United States, although the Supreme Court has limited the regulation of campaign spending, the justices have so far accepted existing restrictions on direct contributions to candidates and parties. Fourth, public budgets can provide alternative sources of funds. Many proposals for more extensive public funding in the United States have been advanced; however, opponents worry that public funding and spending limits will protect incumbents and unduly disadvantage minority parties. Public funding formulas could overcome the incumbency advantage, but finding a workable system may be difficult in the United States given the



Supreme Court's aggressive stance against efforts to level the playing field.

Alternatively, candidates who demonstrate substantial public support could obtain funding, for example, through government-funded vouchers (called "democracy dollars" when implemented by the Seattle government) given to voters to support the candidates of their choice. One plan would combine a voucher program with anonymous private donations, resulting in "a secret donation booth."<sup>15</sup> In promoting democratic values, a voucher plan would reduce the influence of wealthy interests. If not well-monitored, however, it could increase illegal corruption; candidates might bribe voters in exchange for assigning vouchers to them; and the wealthy might finance independent campaigns to influence the voucher system.

The law should require disclosure of the relations between politicians and wealthy interests. Restrictions on outside earnings and lobbying by retired politicians – such as "cooling-off periods" in which former legislators or officials are barred from lobbying the offices in which they worked – are more controversial, but will be important in political systems in which the electorate is poorly informed or less educated. The more the electorate demands accountability, the less restrictive legal rules need to be.

**L**obbying is another ambiguous form of influence. Legislators, presidents, and other public officials need information from outside experts and need to gauge the opinions and policy preferences of both ordinary citizens and organized groups. Proactive efforts by private individuals and organizations to influence public choices – what we call lobbying – are sometimes criticized as being inherently corrupt. But one should avoid easily equating lobbying with corruption. Lobbying gives wealthy interests clout; however, well-organized civil societies groups in such fields as environmental

policy, consumer protection, and education, as well as labor unions and associations of beneficiaries (like pensioners and veterans), also lobby. Lobbying is a necessary aspect of the relationship between lawmakers and the public, but it is fraught with the potential to facilitate corrupt deals. Often, lobbyists cultivate long-term relationships of mutual assistance, meaning that individual donations may not have immediately visible consequences. This affects the integrity of democratic politics. However, entirely outlawing lobbying – a multibillion-dollar industry in the United States alone – is not a plausible response. If a state tried to bar all contacts with lobbyists, it would likely drive the practice underground, transforming it into outright corruption. Today, although they are not "corrupt" per se, lobbying and political pressure challenge the egalitarian values of democracy. Particularly troublesome are situations in which lobbying and campaign finance complement each other, as is arguably the case in the United States.<sup>16</sup> But the answer is some form of campaign finance reform, not a wholesale ban on lobbying.

The routes to political influence in a given society depend upon its underlying levels of both corruption and political competition. If personal connections matter and major shake-ups in elite power are uncommon, those seeking political influence will curry favor with incumbents. They may stay within the law or pay politicians off outright, depending upon local conditions. However, these connections can backfire if powerful politicians extort firms and appropriate their profits, shifting monopoly rents to politicians and generating a long-run negative impact on private investment. In contrast, if a polity enjoys competitive elections and alternations in power, strategic actors are more likely to seek routes to influence that are independent of the partisan composition of government at a particular point in time.<sup>17</sup>

In either case, corrupt payoffs are less necessary in states with better rule of law and other routes to influence via lobbying and connections. These states are also likely to have strong conflict-of-interest laws prohibiting certain kinds of explicit business/political connections. As a result, political connections are more necessary in states that are not riddled with outright bribery, such as the United States. Although personal ties theoretically make it easier to arrange illegal quid pro quo arrangements, they often also make them less necessary, as individuals respond to interpersonal rather than monetary obligations. Furthermore, lobbyists do play a significant role in educating politicians about policy issues and about constituencies' needs: evidence from the United States finds that lobbyists' contacts and expertise matter to members of the U.S. Congress. Thus, even if most public officials do not take kickbacks and do not use their power to extort private firms, they may favor firms that actively lobby them.<sup>18</sup>

Lobbyists seek to benefit their clients and will concentrate their efforts on politicians capable of affecting outcomes. My model of lobbying identifies four stylized possibilities: 1) lobbyists' access to politicians is heavily rationed and skews toward wealthy interests, and lobbyists provide personal or campaign-linked benefits to politicians; 2) access is similarly skewed toward lobbyists representing wealthy and powerful clients, but the lobbyists provide information and expertise that favor the interests of their clients; 3) access is open regardless of moneyed interests but the benefits to politicians are personal or campaign-related; and 4) access is open and lobbyists provide information and expertise on all sides of the issue. The fourth vision of lobbying is obviously most consistent with the view that lobbying enhances democratic accountability and improves the quality of statutes, while the first is very close to outright corruption. In most democracies, the real-

ity falls somewhere in the middle. Policies should encourage the fourth model (that is, open access and objective expertise) by lowering barriers to those seeking to provide information and by requiring influence-seekers to register and report publicly on their activities.

Conflicts of interest, the third issue I will discuss, are a related but distinct question. They arise when an official mixes public and private roles, furthering, say, the interests of her family or business when acting as a bureaucrat, judge, or politician.<sup>19</sup> In the most extreme cases, the same elite actors control both the state and the economy. Explicit payoffs are unnecessary because public officials advance their own private financial interests with no need for an intermediary. Illegal corruption and fraud are a subset of this concept, but not all conflicts are corrupt. The challenge for policy-makers is twofold. First, they need to consider whether some conflicts are so inherently harmful that they ought to be outlawed, even if they do not constitute corruption or fraud. Second, the state may need to adjust its mixture of ex-ante prohibitions and ex-post penalties for conflict-of-interest scenarios. Requirements for financial disclosure, divestiture, and recusal may be too lax or too stringent. Do they discourage otherwise qualified people from taking public positions, thus limiting the pool of talent? Are they too easy for politicians to circumvent by, for example, transferring assets to their children or moving assets abroad? Do the rules favor wealthy private interests without the need for outright payoffs?

Most mature democracies seek to limit the influence of private economic interests on elected politicians or, at the very least, require them to report their financial interests. Elected officials are generally regulated less stringently than other public officials, presumably because they write the rules that apply to them. Especially in new

democracies, revealing conflicts of interest and maintaining financial transparency have not been high priorities. Yet if uncontrolled, politicians with widespread business interests can undermine governmental legitimacy as surely as do those who serve the interests of large contributors. At a minimum, disclosure of politicians' financial interests and those of their families seems necessary for democratic accountability. Once lobbying is added to the mix, the benefits of openness to outside sources of information must be balanced against the risk of improper influence, leading to difficult trade-offs. However, simply labeling all conflicts of interest as corruption conflates too many different types of public-private interactions.

Private wealth distorts the exercise of public power, directing it away from majoritarian preferences and values. But to label all such distortions "corrupt" sets an idealized standard of purity, implying that virtually all politicians and officials are guilty of corruption. A rigid and uncompromising stance would likely discourage almost everyone from seeking public office, leaving the field to zealots and ideologues.

But even if the corruption is not in doubt, the best remedy may not be a law-enforcement crackdown. If bribes are endemic to a dysfunctional system, efforts to combat them should focus on institutional reforms. The goal should be to change the expectations of both officials and of citizens and businesses, and to avoid vicious cycles where the corruption of some encourages more and more to turn corrupt over time as they observe the actions of others. Reformers need to distinguish between clearly unacceptable practices such as grand corruption, petty corruption, and vote buying, on the one hand, and more ambiguous cases such as lobbying, conflicts of interest, and campaign finance, on the other.

As Bonnie J. Palifka and I discuss in our recent book *Corruption and Government: Causes, Consequences, and Reform*, reformers need to ascertain which vulnerabilities in their society have the greatest impact on citizens and businesses.<sup>20</sup> This can be done through surveys of the public and targeted research into sectors subject to grand corruption or organized crime influence. With such a road map in place, reforms can take several forms.

First, reforms should modify the incentives motivating both those who pay and those who accept or solicit bribes. To counter grand corruption, reforms should increase the competitiveness and transparency of bidding processes for government contracts and favor purchases of products sold in the private market over tailor-made products suitable only for government use. Such reforms can limit both monopoly power and corruption. Convictions for corruption should be possible on the evidence of payoffs alone. To limit low-level kickbacks, public programs should streamline and clarify rules and application processes. Some public programs may need to be redesigned to limit discretion and reduce scarcity. Civil servants must be adequately trained and compensated, including rewards for competent service.

Campaign-finance laws need to prevent the de facto "sale" of votes and political support. At the same time, voter fraud can be reduced through improved voting technology in conjunction with better internal and external monitoring.

Second, reformers may need to change criminal law so that its coverage and penalties are sufficient both to deter corruption and encourage honest and competent enforcement. The use of independent anti-corruption agencies has a mixed record because they often either lack sufficient power or are not truly independent. Recent examples, such as that of Brazil, suggest that good models do exist. Even so, strong law

enforcement is never sufficient if the underlying institutions of government are riddled with payoff incentives. This may make it tempting for reformers simply to shrink government, but this is not the answer. Rules that are only “red tape” can encourage corruption, as we have seen, and should be repealed. But anticorruption efforts should recognize the positive role of regulations that serve the public interest. Privatizing public programs may create private monopolies that earn excess profits without the need for payoffs; smaller government is not necessarily better government.

Third, civil society must be engaged in the anticorruption effort. Civil-society groups can be an important source of support, helping citizens resist corrupt demands and push for systemic reform. Social media, too, can serve as a platform for reformers and concerned citizens and provide a means to encourage whistleblowing and investigative journalism. Institutions of public oversight, from competitive elections to specialized institutions such as ombudsmen and whistleblower protections, can empower anticorruption movements that operate outside of government.

Fourth, cross-border responses need to regulate financial flows and confront organized crime. The international community must take concerted action to stem money laundering and to limit the reach of organized crime and the impunity of corrupt multinationals. The United States is at the forefront of enforcing the OECD

Anticorruption Convention, which targets corrupt overseas investments. However, all international financial centers need to strengthen laws that mandate documentation of the beneficial owners of shell companies, as well as legislation making it difficult to hide corrupt proceeds in fixed assets, such as real estate.<sup>21</sup>

The ambiguous cases of campaign donations, lobbying, favoritism, and conflicts of interest present serious challenges, but calling them uniformly corrupt simply fuels public cynicism. Citizens need to debate the relative benefits and costs of the available options, not shut down debate with broad labels. There are several ways to increase government transparency and public accountability. Most obvious is the disclosure of budgets, contracts, and government rules and ordinances. Provisions for public input into policy, followed by public statements laying out the reasons for reforms, can help lend legitimacy to executive actions. Freedom of information laws can encourage honest and competent administration by requiring public access to government documents.

None of these reform proposals is a panacea, and all require civil-society pressure and leaders committed to reform. Leadership is necessary but is never sufficient on its own. Reformers must understand how corruption and other forms of self-dealing work at an institutional level in order to construct reforms with some chance of success.

## ENDNOTES

<sup>1</sup> Bo Rothstein and Jan Teorell, “What is Quality of Government? A Theory of Impartial Government Institutions,” *Governance* 21 (2008): 165–190.

<sup>2</sup> Alina Mungiu-Pippidi, *The Quest for Good Governance: How Societies Develop Control of Corruption* (Cambridge: Cambridge University Press, 2015), 14–17, 27–30, 57–82; and Robert I. Rotberg, *The Corruption Cure: How Citizens & Leaders Can Combat Graft* (Princeton, N.J.: Princeton University Press, 2017), 196–222.

- <sup>3</sup> Susan Rose-Ackerman and Bonnie J. Palifka, *Corruption and Government: Causes, Consequences and Reform*, 2nd ed. (Cambridge: Cambridge University Press, 2016), 3–11; and Susan Rose-Ackerman, *Corruption; A Study in Political Economy* (New York: Academic Press, 1978), 1–14.
- <sup>4</sup> Officials pursuing their self-interest with complete impunity resemble something like Michael Johnston's "Official Moguls" corruption syndrome, outlined in Michael Johnston, *Syndromes of Corruption: Wealth, Power and Democracy* (Cambridge: Cambridge University Press, 2005), 155–185; and Michael Johnston, *Corruption, Contention and Reform: The Power of Deep Democratization* (Cambridge: Cambridge University Press, 2014), 16–28, 86–118.
- <sup>5</sup> Susan Rose-Ackerman and Sinéad Hunt, "Transparency and Business Advantage: The Impact of International Anti-Corruption Policies on the United States National Interest," *New York University Law School Annual Survey of American Law* 3 (67) (2012): 433–466.
- <sup>6</sup> In his essay in this volume, Bo Rothstein stresses the vicious cycles that perpetuate corruption. He recommends an indirect approach focusing "on reciprocity, changing perceptions about 'the rules of the game,' and breaking a corrupt equilibrium." Bo Rothstein, "Fighting Systemic Corruption: The Indirect Strategy," *Dædalus* 147 (3) (Summer 2018): 43.
- <sup>7</sup> Fabrice Lehoucq, "Electoral Fraud: Causes, Types and Consequences," *Annual Review of Political Science* 6 (2003): 233–256.
- <sup>8</sup> *Buckley v. Valeo*, 424 U.S. 1 (1976).
- <sup>9</sup> See *Citizens United v. Federal Election Commission*, 130 S. Ct. 876 (2010). On legal corruption, see Lawrence Lessig, *Republic, Lost: How Money Corrupts Congress – and a Plan to Stop It* (New York: Grand Central Publishing, 2011), 226–247; and Zephyr Teachout, *Corruption in America: From Benjamin Franklin's Snuffbox to Citizens United* (Cambridge, Mass.: Harvard University Press, 2014), 46–50, 251–253.
- <sup>10</sup> Stephen Ansolabehere, John M. Figueiredo, and James M. Snyder, Jr., "Why is There So Little Money in U.S. Politics?" *Journal of Economic Perspectives* 17 (2003): 105–130.
- <sup>11</sup> *McDonnell v. U.S.*, 136 S. Ct. 2355 (2016).
- <sup>12</sup> *Caperton v. A. T. Massey Coal Co., Inc.* 556 U.S. 868 (2009).
- <sup>13</sup> Joel J. Ramirez, "Beyond Quid Pro Quo: *Caperton* and Anticorruption by Anti-Transparency," supervised analytic writing paper (New Haven, Conn.: Yale Law School, May 2017).
- <sup>14</sup> Virginia has taken modest steps toward capping gifts from lobbyists to state lawmakers. See Jim Nolan and Marcus Schmidt, "Legislature Approves Ethics Bill with \$100 Aggregate Gift Cap," *Richmond Times-Dispatch*, April 17, 2015, [http://www.richmond.com/news/virginia/government-politics/legislature-approves-ethics-bill-with-aggregate-gift-cap/article\\_1d1225c8-3929-5099-8ce5-eace700186c9.html](http://www.richmond.com/news/virginia/government-politics/legislature-approves-ethics-bill-with-aggregate-gift-cap/article_1d1225c8-3929-5099-8ce5-eace700186c9.html).
- <sup>15</sup> Bruce Ackerman and Ian Ayres, *Voting with Dollars: A New Paradigm for Campaign Finance* (New Haven, Conn.: Yale University Press, 2012).
- <sup>16</sup> Richard Hasen, "Lobbying, Rent-Seeking, and the Constitution," *Stanford Law Review* 64 (2012): 191–253.
- <sup>17</sup> Raymond J. Fisman, "Political Connections and Commerce – A Global Perspective," in *Greed, Corruption, and the Modern State: Essays in Political Economy*, ed. Susan Rose-Ackerman and Paul Lagunes (Northampton, Mass.: Edward Elgar, 2015), 71–91.
- <sup>18</sup> Marianne Bertrand, Matilde Bombardini, and Francesco Trebbi, "Is It Whom You Know or What You Know? An Empirical Assessment of the Lobbying Process," *Quarterly Journal of Economics* 122 (4) (2014): 1639–1676.
- <sup>19</sup> Susan Rose-Ackerman, "Corruption and Conflicts of Interest," in *Corruption and Conflicts of Interest: A Comparative Law Approach*, ed. Jean-Bernard Auby, Emmanuel Breen, and Thomas Perroud (Cheltenham, United Kingdom: Edward Elgar, 2014), 3–11.
- <sup>20</sup> Rose-Ackerman and Palifka, *Corruption and Government*, 3–11.
- <sup>21</sup> *Ibid.*, 294–315, 446–519.