Daedalus presentation-August 16, 2017

Corruption and Purity

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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 even required in one role may be inappropriate or illegal in another. Based on the concepts of role and responsibility, this essay begins with three cases that fit comfortably into the "illegal corruption" category—"grand corruption", petty corruption, and electoral fraud. They express widely accepted bright lines at the interface between the public power and private wealth. It then discusses ambiguous cases that demand more nuanced legal and policy responses. 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. [123 words]*

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 everyone does not share 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 specify cherished values and assert that deviations from these values are corrupt. These scholars conflate the mechanism that produces the harm with the harm itself.

If one takes majority rule as the gold standard for public action, then deviations are corrupt. If one places the competitive market on a pedestal, then monopoly power is corrupt. If expertise sets the standard, efforts to undermine science are corrupt. If, as Bo Rothstein argues, the state ought to treat everyone impartially, then favoritism is corrupt.[1] In the same spirit, Alina Mungiu-Pippidi argues that corruption constitutes deviations from ethical universalism,[2] a view also held, with some modifications, by Robert Rotberg.[3] Payoffs can undermine each of these values, but departures from any particular value do not constitute corruption *per se*. 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, a bribe paid to undermine that law is still a bribe even if some would praise or even encourage such behavior. Suppose a society operates with a rigid caste system that limits the human potential of those at the bottom. Ethical universalism is clearly violated. Yet, if a lower caste person bribes his or her way up the ladder, the payments are corrupt in terms of the society's established framework. Widespread payoffs of, say, the police, medical doctors, or prison guards are evidence that the underlying programs do not operate impartially. However, the payoffs remain bribes in terms of the existing government structure.

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[1] Bo Rothstein and Jan Teorell, "What Is Quality of Government? A Theory of Impartial Government Institutions" *Governance* 21(2008): 165-190.

[2] Alina Mungiu-Pippidi, *The Quest for Good Governance: How Societies Develop Control of Corruption* (Cambridge UK: Cambridge University Press, 2015) pp. 14-17, 27-30, 57-82.

[3] Robert I. Rotberg, *The Corruption Cure: How Citizens & Leaders Can Combat Graft* (Princeton NJ: Princeton University Press, 2017) pp. 196-222.

In a world with contested views of the right and the good, one ought to debate the principles behind normative claims, 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 its study highlights the limits of self-interest as a model of behavior. However, conflating that tension with corruption misses the complexity of the relationship.

Even if everyone agreed on the public good, treating corruption as any shortfall from the ideal fails to accommodate the reality of human weakness and the inevitable tradeoffs of daily life. The pervasiveness of tradeoffs is an essential counterweight to moral absolutism. Law reform will generally be counter-productive if statutes impose rigid, unrealistic, standards combined with harsh sentences. Such legal regimes may push the outlawed behavior underground or encourage the payment of bribes to individuals charged with enforcing the law. Conversely, a set of harsh legal rules that are unenforced breeds contempt for the law.

Corruption is both a moral and a legal category. In my analytic framework, it concerns mechanisms that undermine the goals of public programs, whatever they may be.[4] The corrupt seek to obtain personal material benefits at the expense of programmatic aims or institutional goals. However, those goals need not themselves be "virtuous". Corruption 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 value judgments are "corrupt".

Many institutional and personal failures are not corrupt—for example, waste, poor administration, technical mistakes, and violence. Such failures are often not illegal, and calling them "corrupt" is not a helpful path to reforms that require the cooperation of officials and citizens. Conflating both outright bribery and other forms of mal-administration 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 cover analogous forms of self-seeking. If some questionable behavior is legal or widely tolerated, one needs to ask if it should be outlawed or punished. Simply calling it "corrupt" does not answer this question.

Of course, applying the corruption label is not always controversial. Difficulties arise at the margins where values conflict and practicalities require accommodation with a messy reality. I concentrate on polities 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. They are devoted family members, businessmen, tribal elders, religious leaders, or even members of organized crime groups. Individuals shift roles over days, weeks, or years. What is appropriate or even required in one role may be inappropriate or illegal in others. As Rothstein and Mungiu-Pippidi argue, public roles require a level of objectivity, even-

[4] Susan Rose-Ackerman and Bonnie J. Palifka, *Corruption and Government: Causes, Consequences and Reform*, 2d edition (Cambridge UK: Cambridge University Press, 2016), pp. 3-11; Susan Rose-Ackerman, *Corruption; A Study in Political Economy* (New York: Academic Press, 1978) pp. 1-14.

handedness, and transparency not imposed on one's private life -- where favoring one's family is expected and widely praised.

Based on these concepts of role and responsibility, I begin with three cases that fit comfortably into the "illegal corruption" category—"grand corruption", petty corruption, and electoral fraud. They may overlap with each other, but they express widely accepted bright lines at the interface between the public and private spheres. I then discuss the more ambiguous cases of campaign finance, lobbying, and conflicts of interest that demand more nuanced legal and policy responses. I emphasize responses that go beyond law enforcement and concentrate on policies to reorganize government institutions and their relationship to the private sector.

Direct monetary payoffs to secure governmental contracts, purchase privatized firms, and obtain concessions for resource extraction are corrupt under almost any definition. The explicit quid pro quo distorts government choices and imposes costs on citizens. The nature and scale of corrupted government contracts may fit poorly with the needs of the country and, instead, reflect efforts to maximize the rents to be shared between public officials and private firms. Corrupt deals can limit competition even for otherwise acceptable purchases—driving up prices. For privatizations and concessions, lack of competition drives down prices—undermining social benefits. A corrupt firm might influence the bidding specifications to become the only qualified bidder. The formal bidding process looks clean because the illicit behavior took place earlier.

Corrupt deals may also permit infra-structure contracts that violate laws dealing with the environment, pay and working conditions, or treatment of local communities. Firms that obtain a concession through a payoff are vulnerable to extortion, and those threats may affect the time path of investment, leading investors to speed up resource extraction or to use production processes that are easy to shut down or move away. The benefits to a country's citizens are lower, sometimes much lower, than under an honest system. Even if the winning firm turns out to be the most efficient provider or purchaser, the gains of the transaction are shared between the corrupt official and the firm and lost to the population. Monopoly power standing alone may be as costly as corruption; competitive pressures are essential.

Recipients of kickbacks are corrupt even if they are heads of state so long as the law distinguishes between the personal interests of the ruler and those of the state.[5] A ruler who chooses projects to maximize bribes could support projects that are superior to the terrible projects he or she would otherwise select. The deals remain corrupt, however, because of the bribe-maximizing selection method. Techniques must be separated from outcomes.

If the acceptance of kickbacks for major contracts, privatizations or concessions falls easily into the corruption category, what about the firms that make such payments? They excuse payoffs by claiming that otherwise they cannot do business in a country. As a legal matter, this excuse is a nonstarter, either in the host country or under home-country laws, such as the US Foreign Corrupt Practices Act [FCPA] and the OECD Anticorruption Convention. The only dispute is over the status of bribes paid to finalize deals in deeply corrupt environments. Some see payoffs

[5] Complete impunity is close to that of "Official Moguls" in Michael Johnston, *Syndromes of Corruption: Wealth, Power and Democracy* (Cambridge UK: Cambridge University Press, 2005) pp. 155-185 and Michael Johnston, *Corruption, Contention and Reform: The Power of Deep Democratization* (Cambridge UK: Cambridge University Press, 2014) pp. 16-28, 86-118.

as "necessary payments" [*notwendigen Ausgaben*]: the term once used by German firms to account for such payments in their financial records. Even those who see kickbacks as "necessary" acknowledge the costs to the host country's citizens compared to an honest system, but they see the alternative as no investment at all. That justification is deeply misleading. The claim that US business is losing out overstates the case and denies the importance of ethical business dealings. First, the FCPA applies not only to US companies but also to all companies listed on US capital markets or that have other links to the US economy. Second, most international companies are subject to anti-corruption regimes in their home countries if those jurisdictions have ratified the OECD Convention. 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 introduce downward spirals of bribery, extortion, and escalating bureaucratic demands.[6] Abetting corrupt officials in their search for private gain will encourage them to increase their extortion going forward. The long-term losses for global business and the citizens of kleptocratic states will arguably cancel out the short-term gain from individual contracts.

Consider next so-called "petty" corruption where bribes to low-level officials induce them to override regulatory rules, reduce taxes, limit fines, and allocate scarce public benefits. If the label "petty" implies that the backhanders are unimportant or tolerable, it is deeply misleading, but it highlights the difference between the corruption of large deals and payoffs made by a high proportion of those demanding a service or avoiding a cost. These bribes distort the allocation of benefits and costs, and they signal underlying weaknesses in public program.

Apologists for small bribes see them as grease payments that smooth the operations of private businesses and the administration of public programs. For them, the ideal of unfettered market trades and sales of public goods to the highest bidders ought to trump legal rules. Anything that furthers that ideal is not "corrupt", and rules that are inconsistent with the free market ideal are corrupt. Notice the arrogance of this view. The commentator asserts the right to evaluate rules in the light of his or her own values that privilege quid pro quo transfers and to label as corrupt behavior that seeks to restrict them. To assert either that some payoffs are acceptable *because* they mimic the 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 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 border been set appropriately? Should the law permit more or fewer trades? Should governments redesign programs to change financial incentives or to influence choices? There are three reform options: legalizing payments, reforming programs to limit incentives for monetary payments, and eliminating programs infiltrated with self-seeking.

[6] 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, 2011*, 67(2012) : 433-466 (2012).

First, legal market trades allocate goods and services to purchasers who value them the most in material terms. High earners can satisfy more of their demands 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 are regulatory initiatives that attempt to enhance efficiency or to achieve another goal with the least possible effect on economic efficiency. For example, a government may decide to limit the import of capital goods through a quota. Legally selling these quotas via an auction to the highest bidders would minimize their economic costs.

Second, bribe payments can undermine public purposes. 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 use payoffs to allocate the benefits, their behavior violates the underlying purposes of these programs. Payoffs, even if "petty", distort official criteria and are corrupt.

Corruption also undermines public purposes if a benefit is legally open only to those who qualify, but where bribes substitute for qualifications. So long as the qualifications relate to the underlying purpose of the program, payoffs distort the benefit away from the intended beneficiaries, be they needy, talented, or hard working. One can make similar arguments about government-imposed costs in the form of taxes, customs duties, fines, regulatory shutdowns, criminal arrests, etc. Those who pay bribes to avoid costs undermine the formal law that keeps a government functioning.

Third, suppose that actual practice is arbitrary and unfair; either the laws themselves are discriminatory or their administration is faulty. Even in that case, legalizing or overlooking private payments would give officials an incentive to impose red tape and to threaten arbitrary actions to generate payoffs. Reform must limit the frustrations and self-seeking behaviors that produce bribes. Payoffs are not functional from a social point of view even if the bribers are better off compared to the alternative. Nevertheless, a crackdown on bribe payers is a poor response; law reform should limit corrupt incentives facing both those who pay and those who receive payoffs. 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.

Payoffs to overlook rule violations or to permit access to services without the required qualifications are corrupt. The disputed cases involve dysfunctional bureaucrats who either do little work without payoffs or actively extort payoffs. Although one may sympathize with those who face extortionate demands, few would hesitate to label such systems corrupt. 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 or, in the extreme, to cancel dysfunctional programs. Such reforms require reform-minded officials in positions of power--not always available if bureaucratic corruption is pervasive.[7]

[7] Bo Rothstein in this contribution, "A Strategy for the War against Corruption"stresses the vicious cycles that perpetuate corruption. He recommends an indirect approach that focuses "on reciprocity and on changing perceptions about 'the rules of the game' and breaking a corrupt 'equilibrium'."

The third type of unproblematic corrupt behavior includes vote buying and election fraud. Politicians and political parties pay individual voters for their support. Voters may not object because they benefit from the largesse of candidates. The distribution of state resources and patronage jobs creates webs of obligation. 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 the mutual exchange of favors benefiting those with the most resources and political power.

Even if a secret ballot exists, vote buying can occur. In especially blatant cases, political operatives mark ballots for voters. Politicians may employ other techniques, such as payoffs to election officials and monitors to manipulate voter registration rolls, miscount or misreport votes, "lose" ballot boxes, limit the opening times of polling stations in hostile areas, and fail to publicize balloting locations. Sometimes partisan electoral officials misuse their positions to fraudulently elect their favored politicians. Incentives for vote buying and electoral fraud are stronger the more competitive the election.[8] If a party or candidate is certain to win or to lose, fraud is unnecessary. The absence of voter fraud does not necessarily imply stronger democratic institutions. Reform requires that political parties and leaders espouse honest elections and support election monitors, perhaps from outside the country, and the creation of independent domestic institutions to organize and monitor elections. Concerned citizens can provide decentralized oversight.

Now consider cases where the "corruption" label is problematic. I reject an expansive notion of corruption to cover all cases where private wealth affects public choices -- either directly or indirectly. That is an impossibly broad standard, especially if it implies that corrupt acts should be illegal. Most commentators do not make that claim, but why label an action "corrupt" if you don't want to sanction it under the criminal or civil law? Why not just view it as morally improper and engage in public debate over the proper standard? "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 illustrate the conceptual and policy difficulties.

Begin with campaign finance. Democratic political systems must finance political campaigns without encouraging the sale of politicians to contributors. Well-funded candidates may be more likely to win elections and can then pursue the donors' favored policies. The hope of obtaining funding can affect politicians' policy positions in a self-reinforcing loop. However, donating to those with similar policy views is not obviously corrupt. They are, as the U.S. Supreme Court argues, a form of "speech".[9] Even if biased in favor of the wealthy or of well-organized interest groups, they do provide information to candidates and incumbents.

Governments have drawn the line between legal and illegal gifts in quite different ways, and laws vary in the limits placed on *quid pro quo* deals by politicians. Even though the US Supreme Court has struck down many campaign finance regulations as unconstitutional limits on free

[8] Fabrice Lehoucq, "Electoral Fraud: Causes, Types and Consequences," *Annual Review of Political Science* 6 (2003): 233-56.
[9] *Buckley v. Valeo*, 424 U.S.1 (1976).

speech, the justices accept "corruption" (or its appearance) as a constitutional justification for regulation.[10]

Groups that donate to elected officials often expect help in the legislative or administrative process or in obtaining contracts and concessions. The interests of wealthy groups or individuals can easily conflict with those of the general public. The electoral process disciplines politicians to represent the interests of their constituents, and voters may 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 exchange is muted and difficult to document. Some contributions are long-term investments in developing relationships of mutual trust designed to get sympathetic candidates into office. In practice, it is difficult to distinguish between politicians who bend their positions to favor contributors and those who share their contributors' points of view. Private contributions influence who runs for office as well as how politicians behave once in office. Even if donations only buy access, they can influence legislative outcomes.

Although empirical work has not conclusively determined the impact of campaign donations on electoral success, politicians and contributors act as if money matters. Incumbents have a fund-raising advantage, and those in powerful positions in the legislature are especially favored. A study of roll-call votes in the U.S. Congress found no statistically significant relationship between votes and contributions,[11] but other routes to influence are more subtle. The evidence that donations influence behaviour is mostly anecdotal. Nevertheless, the link between campaign funds and influence remains a persistent concern of critics worldwide.

The difficulty of articulating a legal definition of corruption to apply to elected politicians and those seeking influence is illustrated in *McDonnell v. U.S.*, a Supreme Court decision interpreting the federal bribery statute.[12] The opinion overturned the corruption conviction of a Virginian governor who had arranged meetings between a donor seeking economic advantages and state officials. The court held that the governor's efforts were part of the routine actions expected of elected officials, even if some of the facts were "distasteful". Unlike the earlier *Citizens United* case, freedom of speech was not at issue because the case targeted the governor, not the businessman. However, the Court left standing *Caperton v. A.T. Massey Coal Co., Inc*., that required an elected state judge to recuse himself from a case because of the high "probability of actual bias".[13] The judge had received large donations from one of the parties in the case, gifts that could have had a "significant and disproportionate influence" on his objectivity. As Joel Ramirez argues, this decision provides an opening for campaign finance regulations directed at

[10] 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) pp. 226-247, and Zephyr Teachout, *Corruption in America: From Benjamin Franklin's Snuffbox to Citizens United* (Cambridge MA: Harvard University Press, 2014) pp. 46-50, 251-253.
[11] 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.
[12] *McDonnell v. U.S.*, 136 S. Ct. 2355 (2016).
[13] *Caperton v. A.T. Massey Coal Co., Inc*. 556 U.S. 868 (2009).

the candidate rather than the donor, avoiding both First Amendment challenges and bribery prosecutions.[14]

If *McDonnell* implies that prosecutors must prove an explicit quid pro quo to secure a bribery conviction, conviction will be harder. *Caperton* holds that circumstantial evidence can be sufficient, not for a bribery conviction, but 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 anti-bribery law. State law could outlaw both giving and the accepting substantial gifts, even if these actions do not violate the federal bribery law.[15]

Reform proposals range from a broad legal definition of corruption to more permissive proposals that rely on disclosure. 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 relied 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 the gifts can be used to mislead voters regarding the candidates' positions and behavior.

Campaign finance reform must avoid restrictions that encourage illegality. Although the laws in many countries are overly permissive, in others the laws practically require off-the-books transfers. Strict legal limits can encourage unreported corrupt transfers. Scandals point to the importance both of clear rules governing the solicitation of private money and of sufficient legal sources of funds. Furthermore, the impact of corporate gifts depends upon the ability of politicians to provide individualized favors to firms. If such favors are not outlawed or controlled, the difference between bribes and legal campaign contributions will be blurred and will depend upon reporting requirements and the reaction of voters.

Solutions can approach the problem along four dimensions. First, the costs of political campaigns can be reduced by limiting the length of campaigns and the acceptable methods. Second, stronger disclosure rules can help. Third, laws can limit individual donations and candidates' spending. Although the U.S. Supreme Court has limited the regulation of campaign spending, the justices accept existing restrictions on direct contributions to candidates and parties. The basic issue is important – to what extent can or should a democratic government interfere with its citizens' wishes to express their political interests through gifts to support political parties or individual candidates? Fourth, alternative sources of funds can be found in the public sector. Many proposals exist for more extensive public funding in the United States. 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 US given the Supreme Court's aggressive stance against efforts to level the playing field.

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[14] Joel J. Ramirez, "Beyond Quid Pro Quo: *Caperton* and Anticorruption by Anti-Transparency", Supervised Analytic Writing Paper, Yale Law School, New Haven CT, May 2017.

[15] Virginia has taken modest steps: http://www.richmond.com/news/virginia/government-politics/legislature-approves-ethics-bill-with-aggregate-gift-cap/article_1d1225c8-3929-5099-8ce5-eace700186c9.html

Alternatively, candidates who demonstrate substantial public support could obtain funding, for example, by giving vouchers to voters to support the candidates of their choice. One plan would combine public funding with an egalitarian system for allocating funds.[16] In promoting democratic values, a voucher plan would reduce the influence of wealthy interests. If not well monitored, however, it might increase illegal corruption, and candidates might bribe voters to assign vouchers to them.

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

Legislators, presidents, and other public officials need information from outside experts, and they 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 are labelled "lobbying" and are sometimes defined as inherently corrupt, but one should the easy equation of lobbying with corruption. Lobbying gives wealthy interests clout. However, well-organized civil society groups exist in such fields as environmental policy, consumer protection, and education; labor unions and associations of beneficiaries, such as pensioners and veterans, also lobby. Lobbying is a necessary aspect of the relationship between lawmakers and the public, but one that can also facilitate corrupt deals. Often, lobbyists cultivate long term relationships of mutual assistance. This affects the integrity of democratic politics, but, outlawing contacts with lobbyists is not a plausible response. If a state tried to bar all such contacts, it would likely drive them underground, turning them into outright corruption. Although they are not per se "corrupt", 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.[17] But the answer is campaign finance reform, not a ban on lobbying.

The routes to influence depend upon the underlying levels of both corruption and political competition. If personal connections matter and alternation in power is uncommon, those seeking political influence will curry favor with incumbents. They may stay within the law or engage in outright payoffs depending upon local conditions. However, connections can backfire if powerful politicians extort firms and appropriate their profits, shifting monopoly rents to the politicians with a long-run negative impact on private investment. In contrast, if there

[16] Bruce Ackerman and Ian Ayres, *Voting with Dollars: A New Paradigm for Campaign Finance* (New Haven: Yale University Press, 2012).
[17] Richard Hasen, "Lobbying, Rent-Seeking, and the Constitution," *Stanford Law Review* 64 (2012): 191-253.

are competitive elections and alternations in power, strategic actors seek routes to influence that are not dependent on the partisan composition of government at a particular point in time. [18]

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 that prohibit certain kinds of explicit business/political connections. As a result, political connections are *more* necessary in states, such as the United States, that are not riddled by high levels of outright bribery. Personal ties can both make it easier to arrange illegal quid pro quos and make them less necessary. Evidence from the US finds that both lobbyists' contacts and their expertise matter to members of the U.S. Congress. 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.[19]

Lobbyists seek to benefit their clients and will concentrate their efforts on those capable of affecting outcomes. There are four stylized possibilities: (1) access to such politicians is heavily rationed and skewed toward wealthy interests, and the benefits provided to those politicians are personal or linked to campaign activities; (2) access is similarly skewed, but the lobbyists provide information and expertise favoring the interests of their clients; (3) access is open, and the benefits are personal or campaign related; and (4) access is open and provides information and expertise on all sides of the issue. If time were not scarce, the fourth possibility is obviously most consistent with the view that lobbying enhances democratic accountability and improves the quality of statutes. The first is very close to outright corruption. In most democracies, the reality is somewhere in the middle. Policies should seek to move the polity toward option (4) by lowering barriers to the provision of information and by requiring those seeking influence to register and to report publicly on their activities.

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Conflicts of interest are a related but distinct issue. They arise when an official mixes public and private roles, furthering, say, the interests of her family or her business when acting as a bureaucrat, judge, or politician.[20] In the extreme, the same elite actors control both the state and the economy. No explicit payoffs are needed because public officials advance their own private financial interests with no need for an intermediary. Illegal corruption and fraud are a sub-set of this concept, but not all conflicts are corrupt. The challenge for policymakers is two-fold. First, they need to ask if some conflicts are so 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. Requirements for financial disclosure, divestiture, and recusal may be too lax or too stringent. Do they discourage otherwise qualified people from taking public positions so that the pool of talent is limited? Are they too easy to circumvent by, for

[18] Raymond J. Fisman, "Political Connections and Commerce—A Global Perspective," in *Greed, Corruption, and Modern State: Essays in Political Economy*, eds. Susan Rose-Ackerman and Paul Lagunes (Northampton MA: Edward Elgar, 2015), 71-91.
[19] 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.
[20] Susan Rose-Ackerman, "Corruption and Conflicts of Interest," in *Corruption and Conflicts of Interest: A Comparative Law Approach*, eds. Jean-Bernard Auby, Emmanuel Breen, and Thomas Perroud (Cheltenham UK: Edward Elgar, 2014) 3-11.

example, transferring assets to one's 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 impact of private economic interests on elected politicians and, 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. In new democracies, conflicts of interest and financial transparency have not been a high priority. Yet if uncontrolled, politicians with widespread business interests can undermine governmental legitimacy as surely as those who do the bidding of large contributors. At a minimum, disclosure of politicians' financial interests and those of their families seems necessary for democratic accountability. Once we add lobbying to the mix, the benefits of openness to outside sources of information must be balanced against improper influence – leading to difficult trade-offs. However, simply labelling all conflicts as corruption conflates too many different types of public/private interactions.

Private wealth distorts the exercise of public power away from majoritarian preferences and values. But to label all such distortions "corrupt" sets an idealized standard of purity, implying that 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 label is not in doubt, the best remedy may not be a law enforcement crackdown. If bribes are an endemic response to a dysfunctional system, reforms should focus on institutional reforms that change expectations and avoid vicious cycles. Reformers need to distinguish between grand corruption, petty corruption, and vote buying, on the one hand, and less clear-cut cases of lobbying, conflicts of interest, and campaign finance, on the other.

As Bonnie J. Palifka and I discuss in our recent book, reformers need to locate the vulnerabilities in their society with the most impact on citizens and businesses.[21] This can be done through surveys of the public and targeted research into sectors subject to grand corruption or organized crime influence. Given such a roadmap, reforms can take several forms.

First, reforms should modify the corrupt incentives facing 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 and favor standardized purchases over tailor-made requests-for-proposals to limit both monopoly power and corruption. Convictions for such corruption should be possible on the evidence of payoffs alone. To limit low-level kickbacks, public programs should simplify and clarify rules and application processes and may need to be redesigned to limit discretions and reduce scarcity. Civil servants must be adequately trained and paid with rewards for competent service. Voter fraud can be reduced through improved voting technology with the addition of better internal and external monitoring.

Second, the criminal law may need reform so that its coverage and penalties are sufficient to deter corruption and that the enforcement is honest and competent. Independent anti-corruption agencies have a mixed record because they are often either not independent, in fact, or lack sufficient power. However, recent examples, such as Brazil, suggest that good models exist.

[21] Rose-Ackerman and Palifka, supra note 4.

Even then, strong law enforcement is never sufficient if the underlying institutions of government are riddled with payoff incentives. However, the response should not be simply to shrink government. True, some rules are only "red tape" and should be repealed, but anti-corruption efforts should recognize the positive role of regulations that serve the public interest. Privatization may create private monopolies that earn excess profits without the need for payoffs. Smaller government is not necessarily better government.

Third, civil society needs to be engaged in the anti-corruption effort. Civil society groups can be an important source of support and help citizens to resist corrupt demands and push for systemic reform. Social media can be a potent platform for reformers and a way to encourage whistleblowing and investigative journalism. Institutions of public oversight from competitive elections to specialized institutions such as ombudsmen and whistleblower protections can empower anti-corruption movements outside of government. Campaign finance laws need to prevent the de facto "sale" of votes and political support.

Fourth, cross-border responses need to regulate financial flows and contain 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 U.S. is at the forefront in enforcing the OECD Anticorruption Convention, which targets corrupt overseas investments. However, all international financial centers need to strengthen laws that trace the beneficial owners of shell companies and that make it difficult to hide corrupt proceeds in fixed assets, such as real estate.[22]

The ambiguous cases of campaign donations, lobbying, favoritism, and conflicts of interest present serious challenges, but calling them all corruption 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 government statements of reasons 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. 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.

[22] Rose-Ackerman and Palifka, supra note 4, 294-315, 446-519.