

# **Political Corruption in a World in Transition**

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**Series in Politics**



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# **Introduction: Political Corruption in a World in Transition**

Jonathan Mendilow, Eric Phélippeau

The misuse of authority by officeholders seeking illicit gain at the expense of their subjects is among the oldest and most persistent themes in history. cursory illustrations from different periods and parts of the world could include the Biblical story of King David, Bathsheba, and Uriah the Hittite, or the medieval lore (probably originating in the late fourteen century) about Robin Hood's struggle on behalf of the downtrodden against the greedy Sheriff of Nottingham. Such stories illustrate the fact that what is at issue is a cross-temporal, cross-national and cross-cultural phenomena.<sup>1</sup> Attempts to forestall or punish corruption are likewise not new. At the close of the 18th century, for instance, this became central to the efforts of James Madison and the American institution builders (e.g., Teachout 2008-09: 17-80) on one side of the Atlantic, and Edmund Burke (e.g., Smith, 2008) on the other. The former sought to prevent misuse of power in a new order governed by a wealthy landowning elite; the latter attempted to impeach Warren Hastings, the governor general of Bengal, for heading an administration where money and power became interwoven. Similarly, in 17th century China, statesmen

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<sup>1</sup> The history of corruption and the struggles to eradicate it are intimately related to the development of the state. As Pierre Bourdieu notes (2012: 467-81), as political systems and state centers became progressively differentiated, there has been an unprecedented concentration of resources whose control became the concern of delegated authority holders rather than single persons, such as emperors or kings. This gave rise to opportunities for leakage, that is, the extortion of the public resources for private use. In many cases (see P-E. Will (1989), for the example of the Qing empire in China, some four centuries ago), lower officials could only rely on the diversions of levies necessary for their survival and operation). And until the mid-19th century, senior English tax officials could regard part of their constituency's taxes as their own remuneration (Hilton, 1987).

invented new rules – such as “avoidance laws” – prohibiting the appointment of civil servants in their places of origin so as to avoid corruption.

And yet, the systematic academic study of corruption is a relatively new addition to the social sciences. With only few exceptions, it rose in tandem with the wholesale dissolution of empires and the interest in the new states that emerged in the late 1950s and 1960s. These studies tended to neglect the performance of colonial governments (see, e.g., Bertrand, 2007) and focus instead on the new authorities that had succeeded them. To this day, the definition accepted by most students of corruption is Joseph Nye’s (1967: 419) “behavior that deviates from the formal duties of a public role because of private regarding (personal, close family, private clique) pecuniary or status gains”, or some variation of it, as for instance the World Bank’s “misuse of entrusted power for private gains”. Alternative definitions abound. Public office based definitions concentrate on the sidestepping for private gain of the set limits of public office; market-based definitions put emphasize the treatment of public office as a personal asset to be rented to the highest bidders; and public interest definitions consider the hallmark of corruption the disregard of the common good. An additional form of definition is the legally based one, which takes off from the assumption that codes of law are clearer and better adapted to particular circumstances, and can therefore serve as an inventory of behaviors considered corrupt at the specific time and place. Such ethical codes may end up being voluminous (the US House of Representatives Ethics Manual has, for example, 443 pages: see [https://ethics.house.gov/sites/ethics.house.gov/files/documents/2008\\_House\\_Ethics\\_Manual.pdf](https://ethics.house.gov/sites/ethics.house.gov/files/documents/2008_House_Ethics_Manual.pdf)). Finally, there are applications of the concept to specific settings, especially of democracies.<sup>2</sup> Yet, regardless of the differences between these definitions, a virtually unanimous postulation concerns what characterizes the unsullied order, and hence what corrupts it. Good governance is based on the clear distinction between the private and the public. The citizenry are considered the rightful ‘owners’ of public functions, while office holders (when they act in their capacity) should be regarded merely as employees. The virtuous political order requires therefore explicit set limits to the authority of office-holders, and requires them to bear responsibility before the citizenry. It also allows for procedures to remove officers who abuse their power, or who simply do not fulfill expectations, as well as periodic general consultations about the agenda and fitness of current

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<sup>2</sup> Heidenheimer catalogs the myriad definitions of corruption into public office centered, market centered, and public interest centered definitions (See Heidenheimer and Johnston, 2011: xxiv-xxiv-xxvi).

and prospective officers. The assumption is that all specification of responsibilities and limits of office are embedded in a 'contract', the clauses of which are and known and serve to guide all sides.

Our aim is not to analyze the myriad definitions, or to point out the problems they raise. Other studies have, moreover, perfectly demonstrated the partly futile nature of such an exercise by highlighting the highly circumstantial and socio-historical nature of practices likely to be qualified in a given society as corrupt or as undermining probity (Johnston). What exactly is the dividing line between private and public interests? Can we neatly differentiate between office holders and the office they hold (e.g., between Trump and the Trump administration)? What are the boundaries of office where, as Theda Skocpol (1982) already showed some 35 years ago, public officials are expected to act creatively and to redirect society to meet shifting needs?<sup>3</sup> And what are the limits of public authority holders, given the expanding 'gray zones' established by the outsourcing of government functions to NGOs and private firms? This is only a sample of questions that have been dealt with extensively in the literature. And the same holds for the debates and mutual criticisms launched by advocates of the various definitions. We also do not aim to inquire whether the different definitions could profitably be viewed as subsets of a single, multifaceted meaning of corruption. Instead, we seek to highlight the fact that the identifiers of the 'pure' order mentioned add up to what Max Weber called 'rational-legal authority'. This, in turn, has two often tacit derivatives: one is that corruption does not exist where rational legal principles are inapplicable, and is uncommon where the rational legal principles describe what is rather than serve as directives for the realization of what should be. Thus, a newly contacted tribe in the Amazon can hardly be led by corrupt chiefs, while stable and broadly based institutions, legal clarity, and ability of citizens to "kick the rascals out" ensure that corruption will be rare in established democracies. The second derivative relates to the understanding of corruption as a behavior that strays from the norm. If we imagine the two situations noted above as poles of a continuum, it is the movement of systems along it that is conducive to corruption. This explains the initial interest in "third world" situations of incomplete democratization: hazardous stages on the road to full democracy, in which the old ways have been legally eclipsed,

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<sup>3</sup> Teachout suggests that as part of the effort, the constitution itself requires office holders to act solely in pursuit of the common good. "A corrupt political actor will either purposely ignore, or forget, the public good as he uses the reins of power". The suggestion, therefore is that such behavior is anti-constitutional (Teachout 2008-09: 342 and 374).

but the patterns of the new order are not yet established, and citizens struggle to comprehend and master the rules of the emerging new game. At the same time, the hidden assumption is that the steady movement towards democracy will result in gradual relief from corruption and greater trust in government as newly independent and democratizing states look more and more alike veteran democracies.

Such optimistic expectations can hardly be sustained nowadays. The number of transitory regimes has significantly increased following the end of World War II, and later the dissolution of the Soviet empire. One can certainly hope that the long-term march towards democracy will resume. And yet, even should we consider the downturn of democracies in the 1930s as a unique aberration, it is difficult to ignore current setbacks. These occurred not only in newly democratic states like Turkey, the Philippines, or Brazil, but also in established democracies such as the USA. The 'either/or' approach is highly problematic and obscures such trends. The rise of popularly supported authoritarian leaders and parties in Hungary, Poland, France, Germany, Denmark, Sweden and other established democracies raises questions over the linear assumptions, while the US elections of 2016 is an illustration of public support that legitimates behaviors that had hitherto been considered outright corruption.

The latter example lends weight to doubts concerning the premise of inverse relation between the extent of democracy and extent of corruption. Undeniably, the supposition had proved correct insofar as 'petty corruption' is concerned. It is not certain that the relationships between local government officials and service providers with whom they contract under public tenders are not conducive to the development of extortion processes. However, citizens in Western-type regimes hardly encounter demands for cash bribery when stopped by the police for traffic violations, or by municipal officers in return for swifter approval of licenses and certifications. Nevertheless, the outbreak of massive corruption scandals in countries such as Germany or the USA in the 1980s and early 1990s brought home the realization that democracies are not exempt from corruption (see, among others, Kroeze 2016). As Johnston (2005) argues, democracies have their own distinctive varieties of corruption, and these may actually be "the most worrisome syndromes" because they are illusive. "It can be difficult to say just which practices are corrupt, which merely have unfortunate consequences, and which are the skillful exploitation of legitimate opportunities" (2005a: 186). What is more, where economic development and workable economic institutions are outstandingly uneven, democracy can render some varieties of corruption worse also in absolute terms (Sun and Johnston, 2009: 2). It is telling that much of the research into corruption in democratic setting tended



to focus on the local levels, where corruption is easier to hide, especially where contracts of technical nature are involved (see, e.g., Johnston, 2012).

Johnston's *Corruption, Contention and Reform, the Power of Deep Democratization* (2014) completes the move away from the optimistic unidirectional vision of earlier corruption scholars by shifting the accent from the approximation to the 'telos' of democracy to processes of intra-societal conflicts and their outcomes. Anticorruption reforms, Johnston argues, curtail the clout of elites by restricting the acceptable pursuit and use of power. Such limits come into being not because they were ideologically justifiable but because "someone demanded them – most likely, because they had a significant stake" (Johnston, 2014: 31-32). Anticorruption reforms, then, are the products of a political process "by which impartiality can be sought as a working principle. It is not 'democracy' but rather a democratization in a simpler sense – broadening the range of groups and outlooks shaping basic rules of power" (Ibid, 36). Because they are grounded in the support of people who have the capacity to defend their interests, such conflict settlements persist to become standards for the operation of government power. The fight against corruption more generally involves struggles that structure the political field. For some political actors, an anti-corruption moral crusade is a device to drive political opponents off the scene.<sup>4</sup> Come what may, however, anticorruption reforms are the products of a political process "by which impartiality can be sought as a working principle. It is not "democracy" but rather democratization in the simpler sense of broadening the range of groups and outlooks shaping basic rules of power" (Ibid, 36). Because they are

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<sup>4</sup> Garrigou (1992) demonstrated how, in the second half of the nineteenth century, newcomers lacking the resources available to their opponents, sought to overcome the prodigality of their opponents by imposing new ways of making politics – e.g. *isoloir*, adopted in 1914 to symbolically cut voters off from the pressure, influence and domination of the great political leaders. Measures to combat corruption were also carried out by political entrepreneurs often positioned on the left of the political spectrum. Briquet (2009) showed, for example, how the Italian political class was partially renewed in the early 1990s thanks to the entry into the parliamentary electoral competition of newcomers from social groups usually excluded from these clashes and largely foreign to the political world. A survey of "political cleansing" operations in 25 states with a less "democratic" level of political development in the Middle East and North Africa between 1970 and 1986 similarly revealed the extent to which political elites are regularly tempted to use these policies as an instrument. Their implementation reflects a political environment and context, and refers to directly political objectives: delegitimizing a regime or opponents, getting rid of opponents, manipulating the political agenda (Gillepsie and Okruhlik, 1991).

grounded in the support of people who have the capacity to defend their interests, such conflict settlements persist to become standards for the operation of government power.

The point of departure for this book is the premise that societal and political conflicts discussed above are not permanent of the political landscape that burst out to the open when triggered by shifting conditions. Nor do they spring *de novo* from ideological claims. Social and political orders are anchored in specific circumstances and offer collective responses to problems that are imbedded in them. Conflicts are likely to be the upshots of widespread feelings that social and political arrangements are ill-equipped to contend with developments that change conditions, and fears of the future that such forebodings give rise to. These could originate in a precipitating event (economic breakdown, war of choice, or the like). It could also be the result of the accumulation of changes and needs that the current system seems inadequate to deal with. The term “transition” is frequently employed to characterize periods in which the established setup and ways of doing things are widely felt to be no longer valid, yet the patterns of the new are not yet clear. The predicament was famously expressed by Matthew Arnold’s Stanzas from the Grande Chartreuse: “Wandering between two worlds, one dead the other powerless to be born”. The claim that we are experiencing such a transition and its attendant disorientations in our own time is a cliché. This is not the place to elaborate on the causes, be them long term developments such as globalization, climate change, and the advances in communication technologies, or more immediate factors such as economic polarization and mass migration. Suffice it to point to tensions that permeate societies and that received expression in such phenomena as Brexit, the rise of Trump, or the threatening success of the Austrian Freedom Party, the French National Front (now named *Rassemblement national*), and Alternative for Germany.

Several clarifications are warranted. One is that prolonged, dramatic, world-girdling periods of transition such as the Industrial Revolution or our own times are not the only possible periods of transition. These may well be country-specific, as for instance the adoption of democratic forms by erstwhile colonies that was mentioned above, or limited to specific spheres. Another observation is that what we referred to as “precipitating events” and “periods of transition” should not be viewed as binary alternatives. Precipitating events could well occur within periods of transition, and the latter could actually set the scene for them and serve as triggers. The reverse order is equally possible, and one can also imagine the situation where the two are unconnected but occur in proximity.

In any of the situations mentioned above, social conflict is not inevitable or immediate. Again it had become a cliché to point out that Brexit, or the rise of xenophobic authoritarian leaders and parties, could serve as an outlet for those who feel left out by globalism and threatened by immigration. Acts of rage and movements of protest of this sort could propel political systems from partisanship into what Mann and Ornstein already identified (2012) as “tribalism” a vehement style of politics in the USA that deepens national division and is not open to settlements or compromise.<sup>5</sup> As Donald Trump illustrates, tribalism of this sort could be led by leaders who themselves belong to the socio-economic (and often also the political) elites. Especially where the response to change and unmet needs does not fuel demands for the government to ‘behave itself’, what could ensue is a change in the calculations that underlie corruption. Johnston discussed the impact of “deep democratization” on anticorruption reform. Here we would like to focus on the “flip side”, that is, a possible positive relationship between the widespread sense of transition and corruption.

In her report on Controlling Corruption in the European Union, Alina Mungiu-Pippidi (2016)<sup>6</sup> offered an explanatory model of corruption based on the interaction between opportunities (resources) for corruption and deterrents (constraints) imposed by the state and society. Because our interest is not in clarifying what contributes to control of corruption but in situations that magnify its resources, we can invert the formula she used (*ibid*, 25-26) to read:

Factors predisposing public officers to engage in corruption = Opportunities for corruption (Power discretion + Material resources) – Constraints of corruption (Legal + Normative).

Opportunities include “privileged access to public resources under power arrangements other than monopoly or oligopoly” (*ibid*, 26), poor regulation that encourage administrative discretion, and lack of transparency that turns information into a resource to be utilized by the power holder and those whom s/he seeks to illicitly benefit. Material resources refer to the supply side of the corrupt transaction. Such resources could include discretionary budget spending, public possessions, licenses, and all other assets that can be “turned into spoils or generate rents” (*ibid*). On the constraints side of the equation, Mungiu-Pippidi included legal barriers. These combine effective

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<sup>5</sup> The term gained wide currency. Amy Chua, for instance, views the world we live in as “a tribal world” where “group identity is all” and points to the “variants of intolerant tribal populism [that are] erupting all across Europe” (Chua, 2018: 33).

<sup>6</sup> For an analysis of Mungiu-Pippidi’s formula see Jimenez and Villoria (2018: 8-9). We would like to thank the authors for pointing us to the report.

and comprehensive laws “covering conflict of interest and enforcing a clear public-private separation” (ibid) and an autonomous, accountable and effective judiciary able to enforce it. And finally, she included normative constraints: societal norms that “endorse public integrity and partiality, and... effectively monitor deviations... through public opinion, media, civil society, and a critical electorate” (ibid).

Transitions in the sense discussed above may affect both these sets of factors. Lack of clear public knowledge as to “what is going on” allows public officers wide discretion. When coupled with widespread anxieties, this is also likely to enhance their conception as “experts”. As noted above, comparative historical studies point to wide state autonomy, especially where policies had extensive distributive effects (in addition to Skocpol 1982, see, among others, Skocpol and Finegold 1986). In times of economic tribulation, this enabled public officers to redirect and restructure society and politics (Skocpol, Finegold and Goldfield 1990). Such discretionary power may well find local historical equivalences. The political machine, for instance, is among the well-known phenomena in the history of the United States. Politicians were able to dispense a hierarchy of rewards and patronage that enabled poor immigrants to integrate into the society they knew little of and commercial interests to succeed under shifting conditions, in return for permanent loyalty and vote of the former and the material support of the latter (Clifford, 1975). Such machines, writes Rauch (2016), “may not have been pretty”, but “at their best they did their job so well that the country forgot why it needed them”. A more recent, and different phenomenon that belongs to the same general genre are the clientilistic parties that appeared in the Czech Republic and Slovakia, serving non-transparent business interests (some of them suspected of connections with organized crime) against the backdrop of anxieties produced by the economic downturn in the USA and Europe. In disquieting times they act within the framework of the democratic order as middlemen, exchanging electoral support for material benefits to specific interests on the one hand and voters on the other (Klima and Mendilow, 2016).

Much of what we mentioned above applies with due modifications to the side of the constraints in the factors predisposing corruption equation. The discretion of public officers is required if they are to adapt to unexpected circumstances, especially in times of rapid change and uncertainty. To prevent illicit practices, however, such discursion should be circumscribed by legal arrangements that set commonly accepted ethical parameters. Put in different words, government statutory and legislative stipulations should steer an optimal course between efficiency and restraint. When they sway in overly narrow direction, they are liable to motivate corrupt processes because they do not allow for concrete responses to real situations. When they sway in

the overly broad direction they are liable to motivate corrupt acts since the main barrier to demand for corruption becomes the values of officers who unexpectedly find themselves in command of new resources. The hope, of course, is that a sense of deep responsibility, backed by a vigilant media, will aid newly empowered public officers overcome temptations on either side. And yet, rapidly shifting circumstances are likely to erode criteria of appropriateness. Standards of behavior in office might likewise lose relevance, while replacements are not yet deep-seated. Among the few studies of such lulls, the examination of what happened in Austria in the early years of the second decade of the 21st century is highly suggestive (Franz and Pfeffer, 2014). The transition from the neo-corporate system to a neoliberal socioeconomic order was followed by bout of political corruption, the direct cost of which was estimated to reach 16 billion euro in 2011, and 17 billion in each of the two following years. Divided by the number of citizens, this meant an average of about 2000 euro, or some US \$ 2,740 per capita (ibid: 133-134).

In the current volume, Fernando Sanchez and Monica Quesada's chapter on the attempts to persuade public officials to engage in corruption points to several repeated themes used by would be clients. Among them, the argument that "everybody does it", that "nobody will know", and that the proceedings of corruption could benefit goals that are more meaningful in the new conditions are direct derivatives of the loss of moral and behavioral compass referred to. Yet, this is not a necessary consequence. Also in this volume, the chapter by Alix Meyer and Eric Phélippeau points to the possibility that the reaction to transition could be the effort to tighten ethics laws and regulations and thereby shore up the integrity of the system.

A different (though related) type of behavior is what we mean by the seemingly paradoxical term "legal corruption" (Mendilow 2016). As with corruption itself, this is liable to take place anytime and in any political system, but very much more so under conditions of rapid, profound change. We have alluded to the problem of defining corruption even in "normal times", and it seems abundantly clear that the problem gains in complexity in a world in transition. At first glance, could be circumscribed by the avoidance of general definitions, and the adoption of a "legal definition", according to which corruption is what the law defines it to be. The assumption is that codes of law are likely to vary across countries and time, but this simply means that there are nuances that mark regimes from each other, and that these must be brought into consideration if the concept is to have a meaning that is not restricted to specific systems or periods. In considering such differences, we need to beware of conflating "content of an action" with "the type of action". To be able to detect variations in the former, we must possess a prior notion of the latter. Thus, what counts as corruption may shift

geographically and temporarily, but this only confirms the basic understanding of the core meaning of corruption (Gambetta, 2002:35).

Such a strategy is fraught with several difficulties. One is the possibility that the law may itself be the outcome of corruption. In this case, does the product of corruption cease to be corruption? Another is that laws are passed by the powerful. The use of legal criteria alone would therefore mean the endorsement of “the authority of the strong rather than the just” – a modern version of Thrasymachus’ statement that justice is the interest of the stronger. But even more germane to this volume is the fact that transitions involve profound change, whereas the law involves essential stability. Some interval is always likely, but transitions are likely to lead to the constant need to adjust laws that become non-viable. Under such conditions, there are real possibilities that the law may be silent on or even legitimate “conduct that is widely perceived by political actors, the media and the public to be corrupt” (Williams, 1999: 505). The chapter on “Fixed Legal Definitions in the Context of Transition” in this volume points to the consequences in Brazil. The rapid changes that were ignited by the “carwash” rolling scandal brought about the general disregard of the law by the population and the sense that there is no accountability that had led just a few months after the chapter had been written to the October 2018 earthquake of the election of Mr. Bosonaro as president.

As Mungiu-Pippidi notes (26), all the elements in her model “are dependent on... structural development factors, such as education or income”. As noted above, transitions are not exclusive to any specific regime type, geographical region, or period. To give point to the argument, the chapters in this book will focus on the link between ethical standards and transitions in settings other than those of emerging democracies or authoritarian states. But, then, this requires us to offer an understanding of corruption that does not hinge on the proximity to the telos of rational-legal standards. For this purpose, we rely on an interpretation of a concept that emerges from the writings of Edmund Burke (Mendilow, Peleg, 2016: 7-14). This had roots in earlier addresses where his subject was corruption in England, but reached its full development during in the final years of his career, when he accused Warren Hastings of corruption in Bengal. The difference between the two societies, coupled with Burke’s warning that success in corrupt enterprises abroad is liable to set an example and be emulated in the mother country by returning power holders, explain his effort to express a conception that would apply to all forms of regime and all cultural areas.

The argument was based on the assertion that precisely because forms of power tend to impinge upon one another, intricate and large societies must adhere to widely accepted limits of the gray zones between political authority and other forms of power. This need not be the case in the family or similar

small groups, where limits could be based on mutual altruism, but the same is difficult to imagine in larger societies. In these, the alternative would be the constant struggle to acquire various powers by the use of others, ending in the nightmare that Hobbes called “state of nature”. Whether the standards are said to originate in a divine or any other source, they are enshrined in legal codes and social conventions, religious beliefs and historical traditions. The processes of change that affect the realities within which they are embedded necessitate the continuous fine-tuning of both boundaries and means by which they are expressed. And yet, the operation of society and the legitimacy that it requires depend on the stability that no single person or group should be able to disrupt at will. Corruption is the use of public office to undermine the standards delineating the boundaries separating social and economic power from political authority in order to advance individual, group or institutional benefits.

The use of such a concept releases us from the need to assume that democratic societies are relatively immune to corruption or that societies that are based on alternative forms of legitimacy (e.g., what Max Weber called ‘patrimonialism’) are necessarily defined by corruption. This explains our decision to focus on democratic regimes, whether in established democracies such as the USA and France, or newly democratized states such as Brazil and the Czech Republic.

The first part of the book offers a set of reflections on corruption based on the consideration of forms of transitions that can be observed at the local (national), non-governmental, and international (supranational) levels and at the intersection of these two-dimensional scales. The first chapter considers the legal consequences of the prolonged ‘car wash’ crisis in Brazil. It argues that political transition itself – even if it involves ‘deep democratization’ and the adoption of standards that require greater accountability – may lead to the eruption of corruption scandals. The condition for the success of the effort to bring about a more stable, inclusive, and less corrupt form of national politics, is consolidation: the emergence of a stable order and succession of rapid and penetrating political change. But even in more established democratic regimes, we may find diverse understandings of the community and the duties of officeholders that may lead to, and justify, behaviors that could be defined as corrupt. Two relatively neglected sources of authority, whose importance and role are on the ascent in a world in transition, are Non-Government Organizations (NGOs) that deliver services to vulnerable sectors of society, and international foreign aid organizations that deliver relief the disenfranchised beyond the national borders. Both pursue poverty alleviation, mitigation of hunger and homelessness, the delivery of health amenities, and a variety of similar endeavors. NGOs thereby form a “gray zone” between governments and civil society, blurring the difference between

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