Corruption: a baseline definition

Despite the many definitions and contextual uses of corruption, most dictionaries and legal systems agree about its basic meaning. The *Oxford* and *Merriam-Webster* dictionaries begin, respectively, with "[d]ishonest or fraudulent conduct by those in power" and "dishonest or illegal behaviour especially by powerful people". Moving in unison, they then proceed to deeper notions. First comes a transformation from purity to debasement - for example, "a departure from the original or from what is pure or correct" (see *Merriam-Webster*). Second, and relatedly, comes the archaic meaning of "decay", "putrefaction" and "decomposition".

The Latin words "corruptiō" and "corrumpere" are even clearer on what this transformational process of decay signals, as they are often associated with the words "destroy" or "destruction" in English. Hence, deep down, corruption refers to the sort of decay that leads to destruction. This meaning was clear enough in major historical episodes related to corruption, such as the Protestant Reformation's claims about the Catholic Church, particularly its sale of indulgences (i.e. to reduce punishment for sin), and historians' explanations for the decline of the Roman Empire. Take this summation of Ramsay MacMullen's definitive work on the fall of Rome:

Bribery and abuses always occurred, of course. But by the fourth and fifth centuries they had become the norm: no longer abuses of a system, but an alternative system in itself. The cash nexus overrode all other ties. Everything was bought and sold: public office … access to authority on every level, and particularly the emperor. The traditional web of obligations became a marketplace of power, ruled only by naked self-interest. Government's operation was permanently, massively distorted (MacMullen, 1990).

Corruption, therefore, ranges in its manifestations from bribery and fraud to sociopolitical transformations of the greatest magnitude. Corruption, however, does not always lead to collapse. At times, corruption may be better conceived as a suboptimal way of getting things done when ethically superior ways are perceived as being unavailable, flawed, or too costly. Short of collapse, corruption can lead to a tenacious pattern of unethical behaviour that is sustained and replicated over many years. This multiplicity of understandings suggests that corruption is a polyvalent concept. Naturally, it covers a variety of actions by a variety of actors in a variety of contexts. More importantly, from a definitional standpoint, different observers will characterize the same instance of corruption in different ways according to a variety of factors, including their values, assumptions, goals, cultures and skill sets. Accepting that there are different understandings of corruption and rising to this challenge can help us cultivate an integrated and multidisciplinary understanding of corruption. At the same time, it is important to ask: what kind of conduct could be causally associated with everything from dishonesty to the downfall of an empire or a political system?

The law is perhaps the best place to look for concrete definitions of corrupt actions. However, different legal standards also vary in their approach and implementation. Legal standards are known for their technical and complex formulations, and for their susceptibility to multiple interpretations at the hands of lawyers and judges. Domestic

criminal laws articulate a reasonably concrete understanding of corrupt conduct, make that understanding binding on everyone in the national territory, and can impose punishment on offenders (for a discussion of national anti-corruption laws, see Module 13 of the E4J University Module Series on Anti-Corruption). International conventions have taken this further, reflecting a consensus view on what constitutes corrupt behaviour (these conventions are discussed further in Module 12 of the E4J University Module Series on Anti-Corruption). One might think that such a consensus would be elusive, given the variety of histories, cultures and legal systems in the world. But there is in fact a consensus view, expressed by the almost global acceptance of the United Nations Convention against Corruption (UNCAC) - as of June 2019, as many as 186 State parties have joined the Convention. Reviews of their progress in implementing the Convention suggest near universal criminalization of certain acts of corruption that are defined in the Convention.

Interestingly, UNCAC does not define corruption as such. It rather defines specific acts of corruption, and urges States parties to criminalize these acts in their jurisdictions. This decision is in part the outcome of the difficulty of defining corruption. It also derives from the fact that corruption ranges from a single instance of bribery of a low-ranking customs official to the transformation of a democracy into a kleptocracy (i.e. government by corrupt leaders who exploit people and natural resources in order to extend their personal wealth and political power). This has parallels with other international instruments that address global crimes, such as organized crime and terrorism, where the international community did not agree on a definition of the overarching concept but approached this matter by defining specific acts (for a discussion on international instruments that address organized crime and terrorism see the E4J University Module Series on Organized Crime and the E4J University Module Series on Counter-Terrorism).

The illegal actions defined by UNCAC as corruption offences include:

- Bribery in the public and private sectors (articles 15, 16 and 21)
- Embezzlement in the public and private sectors (articles 17 and 22)
- Trading in influence (article 18)
- Abuse of functions (article 19)
- Illicit enrichment (article 20)
- Money-laundering (article 23)
- Concealment (article 24) and Obstruction of justice (article 25) related to the offences listed above

The precise legal articulation of these crimes is complex. For example, UNCAC article 15 defines bribery as "[t]he promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties". UNCAC article 21 applies the same operative language to private sector actors. While this definition can be difficult to digest, the essence of the crime - money or anything else of value exchanged for benefits from political or economic actors - is not difficult to understand. Nor is it difficult to understand the effect of the crime - circumventing lawful procedures by auctioning off political or economic power to the highest bidder. The same goes for embezzlement and misappropriation of property. Beyond the complex legal definition, the bottom line is that someone entrusted with something valuable (such as property, funds or investments) has taken it for him- or herself

or routed it to some third party at the expense of others. It is, essentially, a combination of betrayal and theft. UNCAC article 19 defines the offence of abuse of functions. This offence could apply to situations such as patronage (the use of State resources to reward individuals for their electoral support); nepotism (preferential treatment of relatives); cronyism (awarding jobs and other advantages to friends or trusted colleagues); and sextortion (the demand for sexual favours as a form of payment) - all of which undermine independent or democratically representative decision-making, and fair and competitive processes in the formation or staffing of governments. Like the crimes of bribery and embezzlement, these forms of corruption are highly destructive of transparency, accountability and the rule of law. That is not only their effect; it is also their object and purpose. For a further discussion of the crimes defined by UNCAC and the corollary obligations of States that are party to the Convention, see Module 12 of the E4J University Module Series on Anti-Corruption.

While it is useful to have a clearly defined list of corruption crimes, it seems that the study of corruption may also benefit from a more general definition of corruption. For instance, the World Bank (1997) defines corruption as the "use of public office for private gain". This definition of corruption focuses on corruption in the public sector or corruption that involves public officials, civil servants or politicians. Yet, the private sector is not necessarily excluded, because it often interacts with the public sector, particularly through being awarded contracts. Indeed, persons in private industries often bribe public sector actors and corruption generally occurs where private wealth and public power overlap (Rose-Ackerman and Palifka, 2016). At the same time, the definition of corruption above may exclude cases where the person accepting a bribe works in the private sector (this is sometimes called "private sector corruption" or "private corruption").

Moving away from the public-office-centred definition, the Organisation for Economic Co-operation and Development (OECD) considers corruption as "the abuse of a public or private office for personal gain" and the non-governmental organization (NGO) Transparency International (TI) defines it as "the abuse of entrusted power for private gain". The reference to "private office" and "entrusted power", as opposed to just "public office" or "public power", represent important advances because they cover types of corruption that do not exclusively involve politicians, bureaucrats or public power. For example, investors and boards of directors can entrust power to a company's Chief Executive Officer or Chief Financial Officer, and when such a figure accepts a bribe, embezzles funds, demands sexual favours, or makes harmful decisions based on a conflict of interest, corruption has occurred. It should not matter whether the power that they have abused was technically public or not.

Moreover, the line between public and private has become increasingly blurred over the last forty years. On the one hand, state-owned enterprises (SOEs) play a significant role in the economy, involving the State in business activities, while on the other hand the trend of privatization, deregulation and government austerity has swept the globe. Are privately owned and run prisons, security forces, universities, medical facilities, news corporations, retirement homes or parking enforcement companies really just exercising private power? Are SOEs exercising private or public power? Abuse of "entrusted power" covers all cases of corruption, regardless of whether the person accepting a bribe or engaging in embezzlement works in the public or private sector. It even covers corruption in the private religious sphere - for example, embezzlement of funds from a place of worship by someone entrusted with authority. Turning to the corruption offences defined by UNCAC, while bribery and embezzlement are defined as applying to both the public and private sectors, offences such as trading in influence and abuse of functions apply only when "public officials" are involved. However, UNCAC broadly defines "public official" as including any person who performs a

public function. Thus, trading in influence or abuse of functions are offences that can be committed by persons working in SOEs or private companies that provide services with a public nature.

The literature on defining corruption sometimes refers to the concepts of petty corruption, grand corruption and state capture, although UNCAC does not differentiate among these categories of corruption. "Petty corruption" refers to isolated instances of corruption that do not involve the upper echelons of government leadership or economic power structures. This is often contrasted with large-scale corruption or "grand corruption". Once corruption permeates leadership structures, it can lead to more institutionalized forms such as "state capture", in which social elites (usually economic elites nowadays) co-opt the government for their own purposes against those of the public. In general, a state capture situation arises "where legislation, formally developed and properly passed by the legislature or parliament, grants benefits in a corrupt manner" (Graycar, 2015, p. 88). The term was initially linked to business elites taking advantage of state resources for private gain. Hellman and Kaufmann (2001) defined state capture as "the efforts of firms to shape the laws, policies, and regulations of the state to their own advantage by providing illicit private gains to public officials". Powerful interests from the private sector can influence (or bribe) officials and parliaments to write legislation, for example, giving companies legal access to the exploitation of natural resources. State capture can occur regardless of a country's regime-type, but is more likely to happen in transitional economies where States are in the process of (re-)building institutions. Nevertheless, state capture can also occur in well-developed and mature democracies, especially in cases involving lobbyists that work on behalf of companies or industry associations. When such lobbyists, explains Graycar, "seek to have legislation written to favour their activities or to disadvantage competitors, questions are raised about whether this is part of the democratic process of representation of interests, or whether decisions and regulations is [*sic*] bought" (Graycar, 2015, p. 89).

Scholars who focused on corruption in central and eastern European countries drew attention to the fact that a State can be captured by political elites for their own private gain (Mungiu-Pippidi, 2006; Innes, 2013). Similarly, Fazekas and Toth (2016, p. 320) understand state capture as "a distinct network structure in which corrupt actors cluster around parts of the state allowing them to act collectively in pursuance of their private goals to the detriment of the public good". Levitsky and Ziblatt (2018, p.78) use the analogy of football referees to explain how political elites capture state institutions. The referees - like state institutions - must work in an independent and neutral manner to ensure that all players play fair and respect the rules of the game. However, if some players (in this case, political elites) collude with the referees, they can easily cheat during the game. If this collusion continues in a long-term, the players can even rewrite the rules of the game to secure their advantage and keep winning future games. The same logic applies for state institutions, which, like the referees in the analogy, can become controlled by political elites and no longer serve the public interest. Although in theory the State can be captured by businesses or by political parties, there is in practice no clear boundary between these two forms of state captures. It is noted in this context that Wallis (2006, p. 25) distinguishes between systematic corruption, when politics corrupts economics, and venal corruption, when economics captures politics.