

# Defining Political Corruption

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## I

In New South Wales in 1988, after more than 10 years of Labour Party rule, the Liberal–National Party coalition won a majority in the Legislative Assembly following a campaign which stressed the corrupt character of Labour's conduct of political office. In the first legislative session the new Premier, Nick Greiner, created the Independent Commission Against Corruption (ICAC), designed to prevent a range of corrupt practices, including the exercise of illicit political patronage. A further election in 1991, intended to increase the Government's majority, resulted in a swing to Labour and the election of four independent MPs. The Liberals remained in power, with 49 seats, facing a Labour opposition with 46 seats. One of the four Independents generally supported the Government, allowing Greiner to remain Premier. In October 1991 the other three independent members reached an understanding with the Government. At the same time, a Liberal MP, Tony Metherall (having resigned as a Minister in July following tax offences), resigned from the Party, remaining in Parliament as an independent. In January 1992, the Government's majority was further reduced after a by-election. The Greiner administration, in consequence, could rely on there being 47 votes for the government, and 47 against, with the balance lying with the five Independents of whom two (including Metherall) usually voted with the government.

In April 1992, after behind the scenes negotiation with the Greiner administration, Metherall resigned from Parliament. On the same day he was appointed to a well-paid position in the New South Wales public service. Following a public outcry, the ICAC investigated the matter and found that, pursuant to Section 8 of the ICAC act, Greiner and others had acted in a way which involved the partial exercise of official functions, and constituted a breach of trust, where this was sufficient to give (under section 9c of the Act) reasonable grounds for dismissing a public servant.<sup>2</sup>

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<sup>2</sup> Section 8(1) identifies criteria of necessary conditions for conduct being corrupt (such as, adversely affecting the honest or impartial exercise of official functions, involving a breach of public trust, or the misuse of information of material acquired in the course of official functions). But these conditions do not constitute sufficient conditions for conduct being corrupt unless (under Section 9(1)) the conduct would constitute or involve, a criminal offence, a disciplinary offence, or reasonable grounds for dispensing with the services of a public official. The Commission, in effect, found that Greiner and the Minister for the Environment, Moore, had met the criterion of partiality under section 8 and that of reasonable grounds for dismissal in section 9.

Greiner and Moore commenced proceedings in the Supreme Court, but resigned before the hearings began because of Parliamentary censure. In August 1992 the Court of Appeal agreed that conduct fell within Section 8 of the Act, but, by a majority of 2 to 1, found that this conduct did not constitute reasonable grounds for dismissal under section 9. The initial report of the Commission was declared to be 'without or in excess of jurisdiction, and is a nullity'.<sup>3</sup>

In responding to the censure motion in the Legislative Assembly on 28 April 1992, Greiner argued:

Ultimately, if what was done was against the law, then all honourable members need to understand that it is, for practical purposes, the death of politics in this State. (...) What the Opposition and media have opened up here is the very nature of politics itself – that is, the conflict between the demands of politics and the demands of public office. Under the English common law very serious obligations to act in the public interest are placed on those elected to public office, and yet our highest public officials are at the same time part of a political system which is about what is in many ways a largely private interest in terms of winning or holding a seat. (...) I am prepared to accept that community attitudes have changed, and that what is tolerated at one time is not acceptable at another. But every member needs to understand that the standards that are implied in this censure of me today are entirely new standards ... (and) I am not sure, when honourable members have considered them calmly in the bright light of day, that those standards are going to produce a workable system of democracy in our State ...<sup>4</sup>

The ICAC responded with a report which again raised the question of how corruption should be defined and whether the existing act had failed to draw a necessary distinction between corrupt and improper conduct – with the former requiring that conduct either be knowingly corrupt, or involve some direct personal benefit to the public official involved. In its third report, the Commission recommended the implementation of selection criteria for public sector recruitment based solely on merit.<sup>5</sup> Recommendations made in the wake of the Metherall case had still not been acted on by the end of 1996.

The Metherall case is only one among many throughout the world demonstrating the extent to which the investigation, prevention and prosecution of corruption is profoundly influenced not simply by how corruption is defined but, more deeply, by how we are to understand the character of politics. Similar questions have been raised, albeit with fewer results and declining interest, by the Nolan Commission in Britain; while, in America parallel concerns have been

<sup>3</sup> See, the three ICAC reports, written by Ian Temby, the Commissioner: *Report on Investigation into the Metherall Resignation and Appointment* (ICAC, Sydney, June 1992); *Second Report on Investigation into the Metherall Resignation and Appointment* (ICAC, Sydney, September 1992); *Integrity in Public Sector Recruitment* (ICAC, Sydney, March, 1993).

<sup>4</sup> ICAC, *Report on Investigation into ... Metherall*, pp.92–3.

<sup>5</sup> See also the Discussion Paper, *Recruitment of Former Members of Parliament to the Public Service and Related Issues* (ICAC, Sydney, October 1992) and Ian Temby's 'Making government accountable: the New South Wales experience', unpublished paper to Edith Cowan University, W.A., 4.11.1994.

evident in the investigation of the Keating Five and a number of other cases.<sup>6</sup> Few other countries are without similar problems. Nonetheless, the Metherall case has raised publicly the issue of what understanding of the rules for the conduct of public office, with its related understanding of political corruption, is compatible with the realities of political life. Greiner's motives may be suspect, but there is no doubt that he was right in his claim that an intimate connection exists between how we understand corruption and how we understand politics. My aim in this paper is to show both how deep this connection is, and how our acknowledgement of it must result in substantial revision to the way we define and understand political corruption.

## II

The Metherall case is complex. The ICAC judgement that a case of political corruption existed was contentious, as the Court of Appeal decision demonstrated. In the course of the first and second reports several criteria were appealed to as relevant to the judgement. The statutory provisions of the Independent Commission Against Corruption Act 1988, and sections 8 and 9 in particular, were critical to a finding of corrupt behaviour. Nonetheless, the interpretation of such clauses in section 8 as 'the honest and impartial exercise of official functions' (S.8.1.a.), 'dishonest or partial exercise' (S.8.1.b), and 'conduct . . . that constitutes or involves a breach of public trust' (S.8.1.c), is extremely difficult. So is the interpretation of Section 9.1.c, where the conduct is judged to constitute 'reasonable grounds for dismissing, dispensing with the services of or otherwise terminating the services of a public official'.<sup>7</sup> Moreover, the Commission found Greiner to have contravened the Act despite the fact that he did not knowingly engage in wrongful conduct, that he made no clear private and personal gain from the transaction, and that he could make a case for his behaviour being a normal part of the political process within the traditions of New South Wales' political culture. Each of these three elements raises serious issues in the definition of political corruption.

In responding to criticisms about the definition of corruption extending beyond knowingly wrong conduct the second ICAC report claimed that:

The whole point of the legislation was to combat a corrupt culture, a culture that regards nothing wrong with things like jobs for the boys, or giving a Government contract to a mate, and accepts corruption as part of the way things are done. To let through the net those who are sufficiently amoral

<sup>6</sup> Cf., *Standards in Public Life: First report of the Committee on Standards in Public Life*, Chairman Lord Nolan (HMSO, Cm 2850 I and II, May 1995), especially I, p. 14; and Dennis F. Thompson, 'Mediated corruption: the case of the Keating Five', *American Political Science Review*, 87(2), 1993, 369–81, and his *Ethics in Congress: from Individual to Institutional Corruption* (Washington DC, Brookings, 1995). In the Keating Five case, five members of Congress were accused of improperly assisting a major campaign contributor. However, they were not levying an income from Keating, and their lobbying in his favour was in many respects indistinguishable from the kind of lobbying which takes place throughout the American political process. Nonetheless, they were acting corruptly – a judgement based on a finely nuanced conception of what kinds of services a politician can perform for someone without undermining or side-stepping the democratic process as understood in contemporary America. In this, as in the Metherall case, it is not a requirement that the person acting in ways deemed corrupt was aware in advance that he or she was so doing.

<sup>7</sup> Cf., ICAC, *Second Report . . . Metherall . . .*, p. 3.

that they do not recognize wholly unacceptable behaviour would be to abrogate the central charter the Commission tries to fulfil.<sup>8</sup>

The suggestion that the appropriate standard to take is the law, rather than knowledge and intention, or existing cultural norms, was also rejected by ICAC on the grounds that they had already had to investigate cases in which public officials had been able to abuse their position for personal gain in ways on which the law was currently silent but which constituted a clear breach of trust.

The fact that Greiner sought no private gain from the transaction was discussed in the second ICAC report in terms of whether a distinction could be sustained between improper and corrupt conduct. Although the Commission did not seek to resolve the issue it commented that ‘partial, dishonest or wrongful exercise of public office can be equally dangerous and harmful to the community, irrespective of whether the public official concerned gets a kick-back’. In Dennis F. Thompson’s terminology, Greiner’s conduct looks like institutional corruption:

Legislative corruption is *institutional* insofar as the *gain* a member receives is political rather than personal, the *service* the member provides is procedurally improper, and the *connection* between the gain and the service has a tendency to damage the legislature or the democratic process ... Recognizing institutional corruption is not always easy because it is so closely related to conduct that is a perfectly acceptable part of political life.<sup>9</sup>

But institutional corruption is a deeply contestable concept which implies a clear set of criteria for identifying the borderline between politically proper and improper conduct. On what resources and criteria are such judgements to draw – prevailing mores, legal rules, institutional norms, or publicly endorsed standards? In the midst of this uncertainty one thing which did seem clear to the Commission was that to insist that corruption must involve direct and personal gain would be unacceptably restrictive. Yet, their reluctance to do so was precisely what prompted Greiner’s complaint about the death of politics.

Greiner’s speech raises a further problem in defining corruption when he points both to the changes that can take place in community attitudes, and to the way that the historical traditions of a political culture shape its current institutional mores and practices. On *his* understanding of the character of politics in the political culture of New South Wales, what he did was no more than what needed to be done – given the implicit rules of the game. The public outcry it provoked is dismissed as arising from the machinations of the Opposition and media. But, even though Greiner might be said to have been proved wrong about the character of that culture, he could have been right. And if he had been right, then we seem committed to saying that there was nothing wrong with his conduct. Indeed, the ICAC itself seems committed to that proposition:

It must be said that what is ‘corrupt’, i.e. the wrongful exercise of public duty in any community, will depend on what the correct duty is determined to be. That will be influenced by cultural issues and accepted behavioural standards within the community. There may be behaviour that is ‘right’ in

<sup>8</sup> ICAC, *Second Report ... Metherall ...*, p. 13.

<sup>9</sup> Thompson, *Ethics in Congress*, p. 7.

one country, and 'wrong' in another. The very first step must always be to determine and clearly signpost the standards of behaviour that are required to be observed by public officials.<sup>10</sup>

Can progress be made on the definition of corruption, given these difficulties? The three most commonly cited definitions are public office-centred, public interest-centred, and market definitions. (Public opinion and legal norms have also been cited, but they can be subsumed under the other cases). In the two works which have dominated the study of corruption over the last twenty-five years, Heidenheimer's *Political Corruption* (1970), and its successor volume edited by Heidenheimer, Johnston and LeVine (1989), these three definitions are proposed as different ways of identifying the scope of the concept of political corruption. The public office conception of corruption is exemplified by Nye:

Corruption is behavior which deviates from the formal duties of a public role because of private regarding (personal, close family, private clique) pecuniary or status gains; or violates rules against the exercise of certain types of private regarding influence. This includes such behaviour as bribery (use of reward to pervert the judgement of a person in a position of trust); nepotism (bestowal of patronage by reason of ascriptive relationship rather than merit); and misappropriation (illegal appropriation of public resources for private-regarding uses).<sup>11</sup>

Nye explicitly excludes considerations of the public interest so as to avoid confusing the phenomenon with its effects. Others, however, have sought to define political corruption precisely in terms of a conception of the public interest. Carl Friedrich, for example argues that:

... corruption can be said to exist whenever a power-holder who is charged with doing certain things, i.e., who is a responsible functionary or office holder, is by monetary or other rewards not legally provided for, induced to take actions which favour whoever provides the rewards *and thereby does damage to the public and its interests*.<sup>12</sup>

Although there is an issue about confusing the phenomenon with its consequences, the view that corruption involves the subversion of the public interest or common good by private interests is one with an impeccable historical pedigree: Machiavelli is hardly alone in understanding corruption as the decay of the capacity of the citizens and officials of a state to subordinate the pursuit of private interests to the demands of the common good or public interest. Indeed, even Nye's public office account, in which corruption deviates from the formal duties of the public role, implicitly recognizes the public interest dimension by insisting that the deviation must be for private regarding gains – thereby covertly introducing a public interest component.

<sup>10</sup> ICAC, *Defending the Fundamental Political Values of the Commonwealth Against Corruption* (report for the Consideration of Commonwealth Law Ministers, Mauritius, November 1993), p. 3. Interestingly, no attempt is made to explain, or resolve, the inverted commas around 'right' and 'wrong'.

<sup>11</sup> J. S. Nye, 'Political Corruption: a Cost-Benefit Analysis', in A. J. Heidenheimer, M. Johnston and V. LeVine (eds), *Political Corruption: a Handbook* (New Brunswick NJ, Transaction, 1989), p. 966.

<sup>12</sup> Heidenheimer *et al.*, *Political Corruption*, p. 10, emphasis added.

Both public office and public interest definitions of corruption must show which view of the character and scope of public office or public interest should be accepted. It is not immediately obvious which norms should flesh out these subsidiary concepts. The potential sources are manifold but they share the difficulties which can be identified with the three main candidates: public opinion, legal norms, and standards derived from modern western democratic systems.

Public opinion is an important element in the identification and understanding of political corruption but, as the Metherall case shows, it raises a number of difficulties. To whose opinion do we give most weight? The norms of a local community may differ from those insisted on by a central authority or a political élite and they may differ between sections of the local population (either vertically [e.g., between different classes] or horizontally [different ethnic groups or segmented communities] or both). More damagingly, we need to recognize that opinion may be disjointed from behaviour – that is, people may say one thing and do another. Moreover, relying on public opinion means that we risk omitting cases where the casualty of corruption is the capacity of the citizenry to recognize a distinct set of public norms or a conception of the public interest. Something like this worry is conveyed by the ICAC's sense of its mission as being 'to combat a corrupt culture'.

Appeal to the law is equally fraught with problems. In few states does the law define a category of acts as 'political corruption' – focusing instead on the definition of various sub-sets – such as bribery, fraud, or electoral malpractice. But even here, the law is an inadequate guide – not only because it may not cover cases which are widely perceived as corrupt (such as receiving cash payments or favours for asking Parliamentary questions), but also because the law can itself originate in corrupt practices: that an act is legal does not always mean that it is not corrupt. Moreover, laws regulating political conduct rest on prior assumptions about the character of political office. At best, laws express such principles, and it is this normative or principled structure which must be regarded as the baseline from which we should work to flesh out definitions of public office or public interest, although these principles are open to very similar objections to those raised against norms. The final objection to using law as the determining standard for conduct is that the actions of those engaged in politics cannot be exhaustively settled by systems of rules. There is inevitable indeterminacy in politics, both for bureaucrats in the conduct of their administrative offices, and for politicians in the conduct of their political ones – and many public scandals are prompted by cases where, although the law does not prohibit an action, the action violates the public's sense of appropriate conduct for public officials.

Because the identification of the norms and principles which give a determinate content to the concept of the public interest, or which govern the exercise of public office, is fraught with difficulty, many political scientists in the 1960s and 1970s came to the view that there was no alternative but to plump for a definition which was clear and could be applied with a degree of objectivity – even if it meant they had to fall back on assumptions about politics and its corruption which rested heavily on western views of the central values of democratic societies. More recently, many political analysts have sought to avoid imposing the cultural prejudices of western democratic systems by arguing that what counts as a wrongful exercise of public duty must have some reference

to accepted standards of behaviour within a community. The net result is that the analysis of political corruption is left caught between the equally repugnant options of stipulative definition following western norms, or a relativist appeal to local norms or standards.

The relativism which we risk is not simply moral relativism; that might seem like a price worth paying to avoid western stipulation. But the danger of this move is that the damage to one's analysis spreads beyond moral relativism to a conceptual relativism.

Consider the case of bribery. In most western cultures bribery is defined in terms similar to Nye's – 'the use of reward to pervert the judgement of a person in a position of trust'. In different western cultures, different understandings will exist as to when something meets these criteria: what counts as rewards, what sorts of influence are held to pervert judgement, what defines positions of trust, and how far other components of an individual's life are held to be constrained by the responsibilities associated with that trust. But, while such differences are tolerable, it would be another matter entirely if a culture claimed to have the concept of bribery without believing that there was anything wrong with it. On the modern view, if it is bribery, then there is something wrong with it. To believe otherwise verges on incoherence. It has been claimed that 'The (ancient) Greeks did not have a word for bribes because all gifts are bribes. All gifts are given by way of reciprocation for favours past or to come'.<sup>13</sup> The Greeks did have terms (*dōron*, *lemma*, *chresmasi peithein*) for bribes although they were terms which also meant gift-giving or receiving, or persuasion. That there are a number of neutral terms for giving, receiving and persuading in ancient Greek literature implies a tolerance for much that we would now regard as bribery. But do these terms recognizably denote bribery? They do not imply that someone's judgement has been perverted, even where they recognize that it has been influenced; and since it is not perverted, but influenced, it is difficult to see them as indicating that a trust has been betrayed. If these were the only terms for bribery in the Ancient Greek world we would have to take the view that there is a basic untranslatability of the terms between us and them – that they not only failed to distinguish gifts and bribes, but that they also had no real concept of public office or trust.

In fact, although there were a number of terms for bribery which were essentially neutral, there were also powerfully negative terms, such as *diaptheirein*, which implied the destruction of a person's independent judgement and action.<sup>14</sup> There is also ample evidence that the Greeks could recognize both the concept of a public trust, and the use of gifts to subvert the ends of that trust. There was a general law in Athens concerning bribery which laid down penalties for giving or taking bribes to the detriment of the interests of the people, and 'cata-political bribery' was accorded the most powerful condemnatory adjective in Greek, namely *aischorn*, or shameful.<sup>15</sup> Although this means that there are common elements between modern and ancient understandings of bribery, we should recognize the implication of the thought

<sup>13</sup> A claim cited and refuted by J. T. Noonan, *Bribes* (Berkeley CA, University of California Press, 1984), and commented on by Jon Elster, *The Cement of Society* (Cambridge, Cambridge University Press, 1989), p. 267.

<sup>14</sup> David Harvey, 'Dona Ferentes: some aspects of bribery in Greek politics', *History of Political Thought*, VI (1/2), 1985, 76–117, p. 86.

<sup>15</sup> Harvey, 'Dona Ferentes', pp. 111 and 109.

that there might not have been. If we rely wholly on local norms we end up risking a fundamental incommensurability between ourselves and the local normative and conceptual vocabulary.

The use of local norms and judgements must, then, be handled with care – they have a role in identifying what types of activity are understood as corrupt, but they cannot be accepted as the only criteria, since this would be to embrace a conceptual relativism which renders any cross-cultural analysis of corruption incoherent. Consider, for example, the entry for 20 August 1664, in Samuel Pepys's Diary in which he reports that he went to his office 'where I took in with me Bagwell's wife; and there I caressed her, and find her every day more and more coming, with good words and promise of getting her husband a place, which I will do'. Mrs Bagwell makes frequent appearances in the Diary in pursuit of a career for her husband, which lies in Pepys's disposal – an objective she failed to achieve despite Pepys raping her in her own home. Pepys does occasionally show qualms about his treatment of Mrs Bagwell, but it is unclear how far this arises from a sense that he is exploiting her, and how far from residual guilt about his adultery.

It is certainly not difficult to find Pepys's behaviour abhorrent (although scholars have been astonishingly tolerant towards him), and although some part of this reaction arises from Pepys's transgression of norms of sexual conduct which it may be anachronistic to apply to the late seventeenth century, there remains a sense that he was exploiting a position of power and influence for personal gain. The same must be said of the way Pepys gleaned a fortune from back-handers and gifts from provisioners of the navy. His use of his office was not especially remiss compared to that made by others, and there was clearly some partly shared understanding that certain types of public office were a form of property which could be used to generate financial or other forms of personal gain. As such, Pepys was simply exacting an 'income' from his office. But in both cases Pepys was fully aware that his conduct could not withstand public scrutiny. Even if we believe that Pepys did not think there was anything corrupt about his conduct, and even if many of his contemporaries would have agreed, this does not mean we have to endorse that judgement in full. While local norms provide evidence about what people accept and reject, they should not be permitted to impinge upon the deeper sense of corruption, which Pepys and his contemporaries certainly recognized, involving the violation of the norms of public office for private and personal gain. Indeed, Pepys himself believed that corruption was an evil and was full of praise for the 1618 commission on the provisioning of the Navy which sought to reduce corruption in the earlier Stuart reign.<sup>16</sup> Where they differ from us is not on what it is about corruption which makes it corrupt, but on what particular activities are identified as corrupting.<sup>17</sup>

Market-centred definitions have sometimes offered themselves as a morally neutral way of avoiding the kind of complexities involved in this delicate balancing of objective or universalist components with local and relative standards. The term 'market-centred' is not entirely felicitous. What such definitions broadly share is the application of social or public choice methods to the analysis of corruption – or, more crudely, the use of economic methods and

<sup>16</sup> Cf., Linda Levy Peck, *Court Patronage and Corruption in Early Stuart England* (Routledge, London, 1993), p. 111.

<sup>17</sup> Pepys is a very complex case – see Noonan, *Bribes*, pp. 366–91.



models for the analysis of politics. Not all theorists who use rational choice methods claim a distinctive rational choice definition of political corruption,<sup>18</sup> but many do. Consider, for example, the definition offered by Leff:

Corruption is an extralegal institution used by individuals or groups to gain influence over the actions of the bureaucracy. As such the existence of corruption *per se* indicates only that these groups participate in the decision making process to a greater extent than would otherwise be the case.<sup>19</sup>

Van Klaveren is also cited as advancing a market-centred conception:

... corruption means that a civil servant abuses his authority in order to obtain an extra income from the public ... Thus we will conceive of corruption in terms of a civil servant who regards his office as a business, the income of which he will ... seek to maximize. The office then becomes a 'maximizing unit'.<sup>20</sup>

Although such accounts seem dedicated to the task of conceptual clarification, the view that they can offer an alternative definition of political corruption is itself conceptually muddled. Market-centred definitions are certainly one way of *understanding* corruption; they may also provide a fruitful model for the explanation of the incidence of corruption, but they are not a way of defining it. Indeed, Van Klaveren's analysis starts from the view that the occurrence of corruption is contingent on the development of a system in which the people are subject to the control of officials, where there exists a 'regulating principle which gives to the officials and other intermediary groups a public existence with a purpose of their own'.<sup>21</sup> Thus, what defines an act as corrupt is not that it is income maximizing, but that it is income maximizing in a context where prior conceptions of public office and the principles for its conduct define it as such. Which means that Van Klaveren, at least, cannot be identified with a market-centred definition.

Leff is similarly vulnerable. Despite his impressive commitment to nominalism in the identification of corruption, Leff's account is also predicated on a prior conception of public office and the norms for its exercise. The very identification of the extra-legal character of corruption introduces into the definition a conception of public office and its principles of conduct which acts as the standard from which corruption deviates. Both Leff and Van Klaveren are implicitly appealing to public-office conceptions of corruption in defining corruption, even if their subsequent accounts of the conditions for its emergence and persistence might differ substantially from other public-office centred accounts.

<sup>18</sup> See, e.g., Susan Rose-Ackerman, *Corruption* (New York, Academic, 1978), p. 7, Jens Chr. Andvig, 'The economics of corruption', *Studi economici*, 43, 1 (1991), 57–94 and, with Karl Ove Moene, 'How corruption may corrupt', *Journal of Economic Behaviour and Organisation*, 13 (1990), 63–76. See also Francis T. Lui, 'A dynamic model of corruption deterrence', *Journal of Public Economics*, 31 (1986) 215–36, and Oliver Cadot, 'Corruption as a gamble', *Journal of Public Economics*, 33 (1987) 223–44.

<sup>19</sup> Nathaniel Leff, 'Economic Development through Corruption', in Heidenheimer *et al.*, *Political Corruption*, p. 389.

<sup>20</sup> Jacob van Klaveren, 'The Concept of Corruption', in Heidenheimer *et al.*, *Political Corruption*, pp. 25–6.

<sup>21</sup> Jacob van Klaveren, 'Corruption as a historical phenomenon', in Heidenheimer *et al.*, *Political Corruption*, p. 75.

This conclusion is of more general applicability to economic definitions of corruption, and can be generalized also to accounts which rely upon modelling public office in principal-agent terms or in terms of rent seeking.<sup>22</sup> To ask if a civil servant or politician is acting corruptly when s/he acts in an income or interest-maximizing way, or when s/he sacrifices her principal's interest to her own,<sup>23</sup> we have to show what makes this use of office a member of a distinct set of cases identifiable as corrupt, as opposed to non-corrupt. Not all cases of income or interest maximizing need be corrupt (witness cases where office is understood as a certain type of property). To be able to point to those cases of interest/income maximizing which are also politically corrupt, one has to appeal to constructions of public office and the public-interest which draw on norms and values which are external to the market model – that is, to the set of normative constraints on income or interest maximizing which picks out the full set of politically corrupt acts. Market-based accounts might well show under what conditions it becomes more or less likely that people will break those constraints, but it has to take those constraints as a given – and it is these which distinguish corrupt from non-corrupt behaviour.

On this account, we are reduced to the alternatives of public-office and public-interest definitions of political corruption. There is, however, some pressure towards further reduction. There are two major sources of this pressure. The first comes from the recognition of the open-ended character of much public office. Some civil servants have tightly defined and constrained activities, but many do not. Similarly, politicians do not act simply as functionaries to fulfil promises made to an electorate fully cognisant of its interests. Rather, politics is partly about the contestation and projection of conceptions of the public interest. Part of the conception of the role of leaders is to lead, not to act as wholly impartial mechanisms for the adjudication of interests and the production of the social optimum. Public office and public interest are, then, intimately connected. The open character of much public office is structured by principles and expectations that demand office holders be guided by considerations of the public interest. To ask whether a politician acts corruptly we must be aware that the characterization of public office will inevitably point beyond the compliance with rules to the principles underlying those rules – principles which come into play to cover cases on which formal rules are silent.

The second pressure comes from the recognition that definitional disputes have obscured the basic point that the term 'corruption' is not in itself problematic: it is rooted in the sense of a thing being changed from its naturally sound condition, into something unsound, impure, debased, infected, tainted, adulterated, depraved, perverted, etcetera. The problem arises in the application of this to politics. Definitional problems are legion because there is hardly a general consensus on the 'naturally sound condition of politics'. The contest between public office and public interest definitions is not over what corruption is, so much as over how to derive the standard for identifying the naturally sound condition from which corrupt politicians deviate.

<sup>22</sup> Edward Banfield, 'Corruption as a feature of governmental organisation', *Journal of Law and Economics*, 18 (1975), 587–605, and Andrei Shleifer and Robert W. Vishny 'Corruption', *Quarterly Journal of Economics*, August (1993), 599–617 use principal-agent terminology to explore corruption. On 'rent-seeking', see Gordon Tullock, *Rent-Seeking* (Aldershot, The Locke Institute, Edward Elgar, 1993).

<sup>23</sup> Banfield, 'Corruption as a feature of governmental organisation', p. 587–8.

We should not mistake the nature of this pressure towards reduction. It does not allow us further to refine and delimit the definition of political corruption so as to pick out a core conception. On the contrary, we are forced to accept that to identify political corruption we must make commitments to conceptions of the nature of the political and the form of the public interest. One line definitions of political corruption are inherently misleading because they obscure the extent to which the concept is rooted in ways of thinking about politics – that is, of there being some ‘naturally sound condition’ (variously described) from which corrupt acts deviate.

There should be little surprising in this. Few if any concepts in social and political science or theory can claim a wholly factual content, and given the core meaning of the term ‘corruption’ it should not be surprising to find that identifying its political form will implicate us in a range of commitments about the nature and ends of the political domain. Moreover, this recognition must also be tied to an acknowledgement that the perspective on politics from which we generate our conception of corruption will play a major role in shaping the explanations we offer. The philosophical and practical upshot of all this is that while the original trinity of definitions collapses under a little pressure to a single core set of concerns, these concerns in turn generate a wide range of views as to the nature and causes of political corruption.

### III

I have argued that definitional disputes about political corruption are linked directly to arguments about the nature of the healthy or normal condition of politics. Greiner’s comments about what the Commission’s judgement implied for the continuation of politics epitomize this conclusion: their clash is appropriately understood as one between contrasting conceptions of the nature of parliamentary and party politics. Nor is it a clash between a view in which anything goes and one which is more restrictive. After all, Greiner founded the Commission with an apparently genuine wish to clear up some of the more egregious practices of the previous administration. Nor, more generally, is the debate over different definitions of political corruption best understood as running along a continuum from the less to the more restrictive. On the contrary, debates on the ‘naturally sound condition of politics’ often draw on such dramatically divergent social, economic, anthropological and philosophical theories that their differences cannot be ranged along a single axis.

Faced with these definitional difficulties it is not surprising to find political scientists willing to forego the niceties of philosophical and methodological disputes by stipulatively defining a class of events for study as politically corrupt. This is a prudent move, with considerable utility for studies of phenomena within a single culture or political system. But even studies with such moderate ambitions will find it difficult to avoid moving from identification of cases of rule infraction to more general questions about what such infractions mean within that political culture – and, thereafter to questions about the character of politics. Small questions have a way of leading to big ones and the broader questions almost inevitably raise deeper normative and ethical issues.

I say ‘almost inevitably’ because there are frameworks for the analysis of politics which can avoid such commitments. They do so by denying any degree of autonomy to politics as a sphere of activity. If politics can be reductively

analysed in terms of some more basic intentional or causal feature of the context, then it is possible to reject the view that there is some naturally sound condition of politics.

In at least two versions of public choice accounts of democratic politics the analysis is unable to give any account of what a naturally sound condition of politics might look like. This is because the models assume that 'the preferences of citizens are exogenous and fixed, and equilibrium is reached instantaneously. Hence there is neither need nor place for any kind of a process: preferences will not be altered and the outcome is known directly from preferences and constraints'.<sup>24</sup> As Przeworski shows, in both the Chicago and Virginia public choice schools politics is, at best, 'noise' – serving to distort the processes of equilibrium formation. Politics must always be inferior to the market because of its imperfections. On this view, then, politics is already corrupt – but it is so because the naturally sound condition is seen as a non-political state of spontaneous market equilibrium. The only acceptable form of politics is one which prevents the corruption of that more natural state of equilibrium.<sup>25</sup> A basic difficulty with such accounts is that once we allow that politics is in part a process which shapes and guides preference formation, then the concept of a unique social optimum disappears, and arguments about the rankings of alternative stable optima must rely, not on the quantitative account of aggregate preference satisfaction, but on an alternative account of preferableness – one which appeals to some conception of real interests or the good.<sup>26</sup> Of course, public choice accounts can adopt a public office or legal definition of corruption, but doing so without acknowledging the deeper definitional questions leads to tension between the definition and the methods. Asking how individuals in public office can best maximize their interests tends to favour an analysis based on incentive structures. The tendency is to discount norms and values, relegating them either to the side of costs, or to the side of preferences. Yet, this model of agency simply rides rough-shod over the way that public office and its associated culture can shape and direct people's conception of the ends of their activity. Indeed, it assumes a tactical attitude to law-keeping/breaking which, on republican theories of politics (and others), would itself be seen as an indication of corruption. Given such assumptions, it is not surprising that these accounts find little reason for optimism about the stability of political and legal orders and favour a shift from politics to the market so as to make fewer demands on self-restraint. A new generation of political theorists, attracted to the rigour of rational choice methods, have begun to produce more subtle accounts of the micro-processes of corruption in recent years, but there remains a basic problem in characterizing how politics is to be distinguished from other spheres of action. If it is not distinguished, the political disappears; but if it is distinguished only by reference to formal structures and rules, which agents must negotiate, corrupt intent is seen as ubiquitous and differences in levels of corruption are largely a function of differences in opportunities.

<sup>24</sup> Adam Przeworski, *The State and Economy under Capitalism: Fundamentals of Pure and Applied Economics* (New York, Harwood Academic, 1990), p. 23.

<sup>25</sup> E.g., William C. Mitchell and Randy T. Simmons, *Beyond Politics: Markets, Welfare, and the Failure of Bureaucracy* (Boulder CO, Westview, 1994), p. 66.

<sup>26</sup> Although see James S. Coleman, *Foundations of Social Theory* (Cambridge MA, Harvard, 1990), who suggests that maximum aggregate satisfaction can only be identified with a constitutional distribution of control over actions among agents.

A similar problem occurs with historicist or materialist accounts which see politics as epiphenomenal to economic or social forces. Without some distinction between politics and economics – indeed, without some recognition of politics as an autonomous sphere – it is impossible to make any sense of the idea of a naturally sound condition of politics. The more reductionist the account of politics (for example, in Marxism's account of the determining character of economic interests), or the more scientific in aspiration the theory is, the more marginal to the theory does the concept of political corruption become. One index of its marginality in modern political science is the extent to which political corruption is most frequently analysed in terms of individual motivation and pathology, and has lost the sense of its systemic character which marked the republican model of politics in the seventeenth and eighteenth centuries.<sup>27</sup>

#### IV

Once we have seen that problems in defining political corruption revolve around competing conceptions of the nature of politics we have to recognize that our earlier concern about falling prey to either Occidental arrogance or cultural relativism militates against agreement on the nature of politics in exactly the same way that it undercuts the ground for agreement on public office or public interest theories. We are left with the problem of knowing what norms or standards of politics we should accept.

In this and the final section of this paper, I sketch a number of features of political rule which seem to be more or less constant, and a range of theories in which these features are seen as resolving certain types of conflict or problem. Each theory works with a broadly similar understanding of the character of political rule, but has a different view as to what is required to maintain such rule (and as to why this maintenance is desirable) together with a sense of the forces which threaten it. Each understands the natural condition of politics differently, and each consequently sees political corruption in a distinct light. I make no attempt to argue for one or other of these theories – nor do I present these theories as competing foundational philosophical anthropologies. Rather, I suggest that they are better understood as partly empirical theories whose explanatory and normative force depends to some extent on the culture under examination. My aim in sketching their features in broad terms is to provide a richer theoretical context for the understanding of what political corruption involves and why, and to what extent, it should be condemned.

A necessary first step is to distinguish politics from other spheres and types of allocation, exchange and decision making. One way of doing so is to see politics as involving a distinct type of relation, distinguishable from, for example, communal, market, patron-client or kinship relations. Although boundaries between these different relations are not easily drawn, we can contrast them in the following, ideal-typical, terms.

Communal relations give rise to spontaneous solidarity rooted in familial and group relationships. These relationships are ascriptive in character – belonging

<sup>27</sup> See J. G. A. Pocock, *The Machiavellian Moment* (Princeton NJ, Princeton University Press, 1975) and my 'Liberalism and republicanism: on leadership and political order', *Democratization* 3 (4) (1996).

is not a question of will but of 'nature'. Exchange within such relationships is often heavily symbolic in character and freighted with issues of esteem, trust and status. To violate the norms of exchange, or those governing relations between members of the group is to act shamefully, and so invoke penalties or demands for ritual cleansing. Members of such groups seek respect, which is won by conformity and leadership appeals to tradition and status.

Market relations involve dispersed competition, between firms or individuals, who are formally equal, and who enter relations to maximize profit. Relationships within the market are wholly instrumental; individuals' motives are straightforwardly interest-maximizing. Economic exchanges, ideally, produce benefits which are calculable and one-off, involving no commitment for future transactions and giving rise to no permanent relationship. In a situation of pure market exchange, familial or other communal relations would be valued only so far as doing so maximized the individual's advantage. Leadership has no place within such a system, since no collective action is sought, and prices achieve all desired coordination.

Gellner outlines the features of patron-client relations as follows:

Patronage is unsymmetrical, involving inequality of power; it tends to form an extended system; to be long term, or at least not restricted to a single isolated transaction; to possess a distinctive ethos; and whilst not always illegal or immoral, to stand outside the officially proclaimed formal morality of the society in question . . . What makes a patronage society is not the sheer presence of this syndrome, but its prominent or dominant position, to the detriment of other principles of social organization.<sup>28</sup>

Patron-client systems are favoured where we find an incompletely centralized state, a defective bureaucracy or a defective market. The patron acts as a means of access to goods and services which the client requires but which cannot be provided by either the state or the market; the client pays for the services his patron delivers usually by a willingness to perform some service for the patron when requested. The exchange is not symmetrical, since the patron has considerable power and influence and the client has little or none; but the patron gains in status and often more tangibly as well by having his clients in a position of dependence and indebtedness.

Politics concerns the craft of rule. Political relations are neither communal nor market in character – although they have similarities to both. Like communal relations, they involve a form of hierarchical ordering and the creation of patterns of authority; unlike them, their legitimacy does not rely solely on tradition and solidaristic norms. The justification for political authority involves a broader claim for legitimacy. Politics is unlike the market in that, although it may invoke consent as a part of the claim for legitimacy, the consent is not individuated to particular acts of the state but is taken as generating a *prima facie* right to rule which may legitimately exercise coercion. So those who rule expect those whom they rule to comply, not because so doing is interest-maximizing but because they claim a right to rule, and some recognition of this right on the part of citizens. True political authority rests not on the threat of punishment, nor on persuasion through argument, but on the citizen conceding

<sup>28</sup> Ernest Gellner and John Waterbury (eds), *Patrons and Clients in Mediterranean Societies* (London, Duckworth, 1975), p. 4.

to the commander a right to rule.<sup>29</sup> Moreover, strictly political authority is neither solely instinctive nor habitual but grounds its claim to rule on some principled basis – most commonly, by appeals to consent, public utility or welfare, or the common good. Although claims may also draw on the history of the society or on tradition or founding acts, in each case a distinction is acknowledged between the office and the individual occupant of the office. The relation of commander to complier is one mediated by a claim to the authority which derives from his/her office, and, implicitly, by an appeal to the general and public ends the office serves.

The view that political relations are authority relations which involve a claim of the right to rule, where this claim is grounded in a general, public-regarding justification, is essentially a development of an older distinction, at least as old as Aristotle, between personal and political forms of rule. The rule of a despot or tyrant is personal. He treats his state as his personal property for disposal as he sees fit. How far tyrants in fact behaved in so unconstrained a way is another question, but the theoretical construction of this type of rule as a limit case was important in developing a contrasting set of norms and claims distinctive of political forms of rule. Inroads into this personal form of rule were made historically at times when the ruler found himself subject to countervailing forces within his state which had to be conciliated to preserve his position; but these constraints took a more permanent and public form when a distinction developed in the public language of rule between the king qua person and the king qua sovereign. In this process of development from rule as a private activity to rule as a public function, we can recognize an expansion of the criteria of legitimacy from the will of the individual ruler through to a collective and public sense of the appropriateness of the action and its end. The force of the requirement that rule be referenced to the public is that it imposes a different character of discourse on its participants than does civil society or the household. Justification within the public realm appeals not to the force and strength of personal preferences but to more generalizable principles of right and the common good. A crucial distinction between political authority and other forms of relation or exchange is that it necessarily appeals to public standards of justification and appropriateness. In asking both who rules and in whose interests, or in distinguishing the king from the crown, political argument emerges as a field of legitimation and justification where claims must be couched with reference to the distinctive rights and responsibilities of the political body and of those subject to it or citizens of it.

However, political relations do not necessarily determine the basic structure of a society or its institutional form, nor do they necessarily trump other principles of exchange. We can notionally identify a threshold of politics, above which political norms are sufficiently powerful either to order, or at least to resist being ordered by, the social, ethnic, patrimonial and other exchange relations of a community, but below which political norms operate in relatively circumscribed areas of jurisdiction, in which they may be trumped by other norms. This raises the question of at what point, under what conditions, and to

<sup>29</sup> ‘The authoritarian relation rests neither on common reason nor on the power of the one who commands; what they have in common is the hierarchy itself, whose rightness and legitimacy both recognize and where both have their predetermined place. Hannah Arendt, *Between Past and Future: Six Exercises in Political Thought* (Harmondsworth, Penguin, 1992), p. 93.

what extent, political relations and norms become autonomous (as a sphere from other spheres) or dominant (as a sphere over other spheres of activity) as a mode of order and exchange within a community.

What distinguishes politics from other forms of relation and systems of exchange is the type of general, public-orientated justification used to legitimate its claims – something which also gives it, however tentatively, a conception of the state as an entity, and its people as a unity. For us to be able to say that political rule exists, it must be practically sustainable in the face of competition from these other forms. This does not mean that it will be differentiated from these other forms consistently across all cultures. In some systems it may not be seen as incompatible with the ends of politics for public offices to be filled by patronage, favouritism or nepotism, or for those holding office to make large personal fortunes; in others, anything less than a perfect meritocracy and an absolute scrupulousness about financial matters may be deemed corrupt. But what is required is that the ends which a political system recognizes, and which are acknowledged in its creation of public office, are able to curtail the scope of other principles of exchange when these encroach on the political domain.

How far this is possible raises two types of counter-factual question. The first asks how far, with, for example, a different system of appointment to office or with a different type of office or set of ends, the political system would act more effectively; the second asks, how far things could in fact be other than they are. The first relies on a richer conception of the ends of politics to be discussed in the next section. The second is an empirical question about how far there is, within the social and political culture of a society, the resources to support that richer conception. Indeed, this second question may also take the form, where there is a consistent disjunction between the official norms and rules of a political culture and its practices, of asking, counterfactually, how far the norms and rules of the political sphere are viable given the social, economic, and cultural conditions in which they must operate. It does not take a great deal of imagination (nor a particularly extensive knowledge of life in post-Soviet Russia), to recognize that political norms for the conduct of office can become inoperable under certain socio-economic conditions. The kind of benefits generated by a political system – security, the rule of law, citizenship, and so on – are not easily quantified or weighed against other types of good, and they are invariably long-term in character. As a result, their achievement requires a relatively integrated and stable political culture. When these benefits are threatened by political chaos, or social or economic disruption, there comes a point at which it is irrational not to seek other gains or more partial, less general forms of political goods – for example, by seeking profit that can be turned into hard currency, by building a following (or seeking a patron) so as to provide some of the benefits of a stable political system, albeit in a less general form, or by falling back on kinship or other types of communal relations for the delivery of goods and services. To think of these activities as corrupt requires that there be some other way people could act – and where it requires a degree of saintliness or heroism to take the moral high road, we must discount that as a relevant counter-factual. The still more difficult judgement to make in this case is whether we are dealing with a non-political system, or whether we should recognize the state as itself corrupt. That judgement requires a still more complex assessment of the forces which have brought the state to this point.



On this view, the study of political corruption cannot be wholly straightforward – as we have seen, we cannot rely uncritically on official norms or laws. We have to recognize that ‘ought implies can’, and that in some circumstances properly political rule becomes impossible, while in others what can be achieved may fall far short of the objectives formally proclaimed by the political system. We need to ask of states, not whether they have political rule, but to what extent they have it and under what conditions. To answer these questions we need to recognize the causal conditions under which certain types of political authority become capable of consolidation, and thereby able to constrain the operation of other principles of allocation and exchange, as well as the conditions under which politics ceases to be possible because it can deliver too little in terms of its control of other spheres;<sup>30</sup> or where, by demanding too much of politics, it becomes incapable of supplying the minimum (as the breakdown of the communist regimes of eastern Europe and the Soviet Union might indicate).

Political rule is not a once-and-for-all achievement. A stable political culture can be efficiently self-reproducing and yet can be destabilized and destroyed by forces beyond its control – such as economic crisis or war. Moreover, states in which political relations are systematically subverted by other forms of exchange are not necessarily corrupt. Indeed, we might state categorically that they are not corrupt unless, counterfactually, they could be otherwise than they are – were it not for the way that political norms and rules are being ignored or bent by a faction, group or individual to maintain their dominance and secure their interests over and against the political and broader cultural norms of the community. It is difficult to establish these counterfactuals, but not impossible.

In his defence of his wheeling and dealing with Metherall, Greiner implies that the Commission’s view of public office is one which is apolitical – where the political system is understood as being about ‘what is (in Greiner’s view) in many ways a largely private interest in terms of winning or holding a seat . . .’. Nothing I have said thus far challenges Greiner’s view of politics (although I have placed more emphasis than he does on the consequent obligations of those who achieve public office). There is a difference between the rules which structure public offices and those which govern how they are to be filled. Thus, political appointments to the House of Lords, or to certain positions in the US Federal Service, are seen as compatible with sustaining a recognition of the responsibilities of public office. Nonetheless, such appointments, or Greiner’s view that achieving political office is a private interest, clearly could undermine the impartiality with which public office is exercised, and where it does so, the understanding of politics advanced here would require that the concern to sustain the character of public office must delimit the range of acceptable practices determining appointment to such office.

## V

What is so good about political rule? Political theorists range from those who seem willing to deny that politics ever has sufficient ethical pull to trump the individual’s other commitments, to those who emphasize the morally superior

<sup>30</sup> Judith Chubb, *Patronage, Power and Poverty in Southern Italy* (Cambridge, Cambridge University Press, 1982), for example, suggests the Christian Democrats in the north effectively surrendered control of the party in the south to opportunists with Mafia connections.

character of agency under political rule. Moreover, history is discomfitingly generous with cases in which political rule has imposed horrific costs upon domestic and foreign populations, whereas clean, beneficial and humanitarian political orders have been rather less in evidence. Clearly, we cannot on every occasion assume the ethical superiority of political rule. Rather, we should recognize that political rule is attractive as a solution in certain circumstances.

We can distinguish four views of the necessity for political rule:<sup>31</sup> one which sees it as offering a constitutional solution to the civil war that arises from the socially heterogeneous character of the polity; one for which it offers a quasi-judicial device which substitutes the sovereignty of the state (with its creation and protection of individual rights and liberties) for a war of all against all; one in which it provides a way of organizing the public powers so as to avoid conflict between those entrusted with public power and those subject to it; and one in which its defining moment involves the successful assertion of sovereignty against other sovereign units or groups claiming sovereignty.

From each perspective, the short answer to the question of what it is that gives moral precedence to political rule over other forms of exchange is 'war'. Politics takes normative precedence because it orders otherwise irresolvable forms of social and interpersonal conflict, and the form of political rule and the character of its concerns about corruption, is a function of how it understands these conflicts. This claim about the ethical necessity of political rule, however, presumes that authority is exercised appropriately. It is impossible not to recognize that political authority can be exercised cruelly, violently, or vindictively, or that those who rule may do so incompetently. In each case, these activities will damage the capacity of that authority to secure a stable order of rule capable of resolving conflict. But political corruption is distinctive as a form of dereliction: if political authority is desirable because it orders fundamental conflicts between interests, the suborning of that authority to serve one particular set of interests covertly reinstitutes the domination which that authority is designed to avoid. Other activity does so incidentally, through incompetence, or bad luck; but corruption strikes at the root.

Each of these views sees politics as a response to potential disorder, but understands the sources of this disorder in a different way. Moreover, since corruption involves the perversion, decay or destruction of the natural condition of politics, and these accounts offer different understandings of that condition, each also differs in its identification of those activities which most fundamentally threaten politics and its understanding of the forces which lie behind those activities. The emphasis on the socially heterogeneous composition of the body politic, common to republican accounts, sees the predominant risk as one of factional strife, or *stasis*, and sees the political order as enabling the collective pursuit of the common good. That pursuit is framed by a constitutional structure, in the form of mixed government, which contains the threat of domination of one class and its interests, and is coupled with a variety of mechanisms to promote civic virtue and the pursuit of the common good. On this model the sources of corruption are manifold – luxury, commercial

<sup>31</sup> Drawing on Pasquale Pasquino. 'Political theory of war and peace: Foucault and the history of modern political theory', *Economy and Society*, 22 (1) (1993), pp. 77–88; and Carl Schmitt (G. Schwab, trans.), *The Concept of the Political* (New Brunswick NJ, Rutgers University Press, 1976). Although these accounts draw on concerns found in European and Anglo-American political thought, they are certainly not exclusive to these traditions.

activity, foreign subversion, extremes of inequality, failures to recognize the services of leading politicians, and the constant tendency for civic *moeurs* to be undermined by ambition, pride and the more destructive human passions. In each case it is manifested in the erosion of the collective capacity to pursue the common good. For republicans, political corruption has less to do with individual rule infraction, and more to do with the systematic decay of the political culture. Moreover, there is no conception within republican thought of a social order without politics. As a result, corruption unleashes an internal war which, if not stemmed, results in the complete breakdown of order. Hence the tendency to associate corruption with the decline of the state.<sup>32</sup>

The Hobbesian repugnance for the war of all against all results in an insistence on the resignation of individual sovereignty to a common power which enforces a common law and set of procedures. Hobbes has little room for political activity, which he sees as for the most part destabilizing; rather, he embodies political rule in the exercise of the sovereign power – and by implication sees corruption as whatever tends to the weakening of that power. Indeed, Hobbesians so fear the triumph of individualism over the formal order of the state that they embrace a version of nominalism: corruption is simply what people accuse each other of when they see them acting against their interests in some way – it has no moral content. What distances Hobbes from outright political realists is his belief that the ultimate end of this sovereignty is the public good. If Hobbes's commitment to absolute sovereignty distances him from our third, liberal, model, his commitment to the contractarian principle that the ultimate justification for sovereignty is its ability to allow us peaceably to pursue our interests distances him from the more decisionist realism of our final perspective drawn from Schmitt.

The liberal model of politics shifts the emphasis from a concern with the destructive tensions inherent in the social order to a concern with how the powers of the state can be exercised in ways inimical to the liberty and security of its subjects. The emphasis on constitutional order and the separation of powers is not concerned with tensions in the entire social body, but instead focuses on ways of ordering the structures of rule so that those entrusted with political power will act in the interests of those whom the state was founded to protect and will not usurp that power for their own ends – although liberals are, after 1789, also much concerned with popular encroachments on the orderly exercise of political power. The liberal model sees corruption in terms of the weakening of ethical constraints on individual conduct in public office and consequent abuse of political power for individual gain. Liberals have more or less demanding views as to the conditions which are necessary to ensure that the occupants of political office are devoted solely to the public interest. It is possible to insist that all appointments be made on the basis of merit; equally, less rigorous criteria may be tolerated on the grounds that effective government relies on a degree of coordination which can only be brought about by allowing some partisan interest within political institutions. Moreover, where some liberals have been wholly concerned with mechanisms for ensuring that public

<sup>32</sup> See Patrick Dobel, 'The corruption of a state', *American Political Science Review*, 72 (1978), 958–73; J. Peter Euben, 'Corruption', in Terence Ball, James Farrar and Russell Hanson (eds), *Political Innovation and Conceptual Change* (Cambridge, Cambridge University Press, 1989); and Hannah Arendt, *The Human Condition* (Chicago, University of Chicago Press, 1958).

servants do not act beyond their powers (those, for example, who follow the separation of powers principle) there are others (not least Montesquieu) for whom political rule must be understood in relation to the society and culture of which it is a part and who remain sceptical about simple formulae for ensuring uncorrupt and stable political rule.<sup>33</sup>

The decisionist conception of the state, as expounded by Schmitt, sees the exercise of state sovereignty in determining the line between friend and foe as essential to avoid the subordination of the state to other states or to other groups willing to make and enforce that distinction. Schmitt owes a good deal to Hobbes, but he differs in the existential character of his thought. The emphasis he gives to the friend/foe distinction is a function of the utterly arbitrary character of such divisions: 'The high points of politics are simultaneously the moments in which the enemy is, in concrete clarity, recognized as the enemy'.<sup>34</sup> Schmitt's approach takes it as axiomatic that it is the political decision as to whether or not another entity poses a threat to one's own way of life which dominates all other relations in the state. In Slagstad's apt phrase, 'the *Machstaat* overrides the *Rechtsstaat*'.<sup>35</sup> Without this moment of absolute and norm-creating sovereignty the state would fall prey to an internalization of the political: 'If one wants to speak of politics in the context of the primacy of internal politics, then this conflict no longer refers to war between organized nations but to civil war'.<sup>36</sup>

Schmitt's account is deeply pessimistic. It is decisionist because all that matters is that the decisive distinctions can be drawn and sustained by sovereign entities – there is no right or wrong in any particular state's decision. But the underlying normative project in Schmitt's account is the existential view that it is only through the identification of friend and foe that life becomes endowed with meaning and purpose.<sup>37</sup> *The Concept of the Political* is in large part an attack on de-politicization, particularly in the form of pacifism and liberalism, both of which threaten to eradicate the political, to evade 'political responsibility and visibility' and thereby to eliminate the most serious and central concerns of human life.<sup>38</sup> This account rests on two presumptions. The first is that the political is threatened when its realm of action becomes displaced or obscured by systems of exchange or by pretensions to shared ethical principles which deny its decisive content. The resulting state of peace and security rests on a refusal to recognize that there are fundamental disagreements

<sup>33</sup> See, for example, the intense debates within French liberal circles in the early nineteenth century, G. A. Kelly, *The Humane Comedy: Constant, Tocqueville and French Liberalism* (Cambridge, Cambridge University Press, 1992).

<sup>34</sup> Schmitt, *The Concept of the Political*, p. 67.

<sup>35</sup> Cited by Rune Slagstad, 'Liberal Constitutionalism and its Critics', in Jon Elster and Rune Slagstad (eds), *Constitutionalism and Democracy* (Cambridge, Cambridge University Press, 1988), p. 116.

<sup>36</sup> Schmitt, *The Concept of the Political*, p. 32.

<sup>37</sup> See Leo Strauss 'Comments on Carl Schmitt's *Der Begriff Des Politischen*' given as an appendix to Schwab's translation of *The Concept of the Political*, pp. 98–9.

<sup>38</sup> Schmitt's conception of the centrality and inevitability of the political is captured in his discussion of theories which suggest the eventual displacement of politics by economic exchange. 'A domination of men based on pure economics must appear a terrible deception if, by remaining nonpolitical, it thereby evades political responsibility and visibility. Exchange by no means precludes the possibility that one of the contractors experiences a disadvantage and that a system of mutual contracts finally deteriorates into a system of the worst exploitation and repression.' *The Concept of the Political*, p. 77.

over the proper ends of life and no such refusal can be stable, since its inevitably partial disposing of differential costs and benefits must eventually generate attempts at resistance. The second is his view that: 'all genuine political theories presuppose man to be evil, i.e., by no means an unproblematic but a dangerous and dynamic being'.<sup>39</sup> Or, put less objectionably: 'Political thinkers such as Machiavelli, Hobbes, and often Fichte presuppose with their pessimism only the reality or possibility of the distinction of friend and enemy'. And included in this presupposition is the view that what it is to make this distinction is to recognize 'the ever present possibility of conflict'.<sup>40</sup>

Where Hobbes saw the major threat to sovereignty as arising from the tendency for the nobility and the political élite to usurp sovereignty,<sup>41</sup> Schmitt, responding to a more democratic era, sees state unity as supremely expressed in the rejection of forces inimical to its sovereignty both within and outside the state. Consequently, corruption involves the weakening of the state's ability to draw this line, either through the introduction of conflict into the institutions of the state, or through its subversion by or subordination to foreign powers, or in the failure to achieve a shared political will behind this distinction: 'everywhere in political history, in foreign as well as in domestic politics, the incapacity or the unwillingness to make this distinction (friend/foe) is a symptom of the political end'.<sup>42</sup> Indeed, it is not difficult to find in Schmitt the view that liberalism is the ultimate form of corruption – 'liberal concepts typically move between ethics ... and economics ... From this polarity they attempt to annihilate the political as a domain of conquering power and repression'.<sup>43</sup>

These four positions are certainly not exhaustive of possible accounts of the ethical value of political rule. Nonetheless, they help us to recognize a threshold for politics: a theory which sees no lines of conflict between social groups, no threat from individual self-government, no distinct conception of the state the powers of which can be subject to abuse, and no sense of the potential subversion of sovereignty, will see no need for political rule and will have no standard by which to assess its corruption. Where we recognize one or more of these fundamental forms of social conflict, political rule has normative weight because it offers a way to resolve conflict in a way which is not simply a case of one side winning. Even if we want to build more ambitious accounts of the possibilities of politics, this basic solution can be valued independently because by ordering conflict it offers a degree of security and freedom from fear and domination, thereby ensuring (within inevitable limits) the avoidance of radical harm or evil. On this account, then, politics exerts ethical pull only under certain conditions, or certain characterizations of the 'human condition'. Politics, then, turns conflict into order – albeit perspectives differ on what balance of *Recht* and *Macht* are required to achieve this. But even where, as with Schmitt, *Macht* is predominant, its purpose is to define an arena which is subsequently relatively free of the need for it. Moreover, for all these positions, what makes political corruption an evil is that it undercuts the ability of politics to provide such a solution. Of course, there are many more appealing accounts of this 'pull', but

<sup>39</sup> Schmitt, *The Concept of the Political*, p. 61.

<sup>40</sup> Schmitt, *The Concept of the Political*, pp. 65 and 32.

<sup>41</sup> Deborah Baumgold, *Hobbes's Political Philosophy* (Cambridge, Cambridge University Press, 1988).

<sup>42</sup> Schmitt, *The Concept of the Political*, p. 68.

<sup>43</sup> Schmitt, *The Concept of the Political*, p. 71.

their scope of application is usually far more restricted and, prosaic though my suggestion is, it is likely to serve most of our purposes.<sup>44</sup>

## VI

I have sketched in very broad terms four possible ways of understanding the ethical appeal of politics. It should be clear that each position (and others) offers only a background set of assumptions against which more detailed debate about the practices of a state must take place. Views as to which institutional structures and political practices, what social and economic preconditions, and what balance between political and other forms of exchange, must be in place for politics effectively to order the identified area of conflict, will vary greatly. On Hobbesian and republican grounds it is possible to believe that an absolute sovereign or a dictator is necessary – but it is also possible for an essentially similar understanding of politics to generate much more moderate models of the state. Moreover, the scope of the political is not fixed by these four positions, since political theorists will disagree about how far political rule can resolve certain types of conflict. Pepys's nasty proclivities with respect to Mrs Bagwell can be seen as being of marginal significance in a view of politics which is concerned with welding together different interests and classes within a polity divided between court and country, and which sees the civil service largely as an adjunct to a patronage machine. But, in a view in which the fundamental political problem is securing freedom from domination,<sup>45</sup> Pepys's activities could be condemned as a deeply corrupt extension of political power into the private sphere – corrupt because self-serving and violating the injunction against arbitrary power.

More modern concerns that the personal be recognized as political, in many cases, involve the recognition that apparently consensual arrangements are often sustained by the insidious, illicit and exploitative exercise of power by one group over others. In these accounts, activities which might otherwise be thought of as irrelevant to the political process can fundamentally challenge its legitimacy.<sup>46</sup> Furthermore, because each account perceives the need for political rule differently, what one account will see as resolving conflict, another will see as corrupt. Thus, where a state takes draconian action against an internal faction in the name of sustaining its sovereignty, it is open to challenge from an interpretation driven by a distrust of those exercising power. While Machiavelli

<sup>44</sup> This has to be understood as a first move in the argument. There are accounts of the political, such as the Aristotelian, which ground its ethical value in the particular way of life it offers its participants. But it should be recognized that Aristotle's account assumed that slaves and mechanics were incapable of political life. We thus risk a trade-off between the force of the ethical pull which a theory delivers and its inclusiveness. Taking the view I have adopted here seems closer to one central feature of the western liberal tradition (which Judith Shklar described as 'The liberalism of fear', in Nancy Rosenblum, *Liberalism and Morality* (Cambridge MA, Harvard University Press, 1989), pp. 21–38) than does the Aristotelian account, but it does leave open the question of how stable a political culture can be in which 'satisficing' on the avoidance of radical harm is the predominant motivation of citizens.

<sup>45</sup> Philip Pettit, *Republicanism: a Theory of Freedom and Government* (Oxford, Oxford University Press, 1997).

<sup>46</sup> See, for example, Toni Morrison (ed.), *Race-ing Justice, En-gendering Power: Essays on Anita Hill, Clarence Thomas, and the Construction of Social Reality* (London, Chatto and Windus, 1993).

can celebrate Borgia's skill in dealing with Romerrio de Orca,<sup>47</sup> or Schmitt *might* have recognized that it was necessary for Hitler to 'execute' Ernst Rohm, liberals, concerned with the way that political power quickly becomes arbitrary and self-serving, would see both as threatening to corrupt the character of true political authority. This does not mean that we are dealing with a core set of concepts – politics, authority, corruption – which are theory dependent and thereby essentially contestable.<sup>48</sup> On the contrary, through the use of counterfactual speculation, detailed historical research, and careful theoretical construction, the student of politics can construct a case by identifying the type of imperatives these states really faced, the extent to which the political authority they sought to exercise was (or could have been) directed to resolving these imperatives, and the degree to which the actions of those in power came to be subverted by a range of aspirations and motives which imposed avoidable costs on those subject to them. It is extremely difficult to construct such arguments – not least in an academic culture increasingly dedicated more to publishing than to thinking – but it is in principle possible so to do. To resign oneself to the essential contestability of politics and its corruption is to deny one's intellectual responsibility to establish the best possible case.

In conclusion I want briefly to address three problems in the study of political corruption to see how far our understanding of them can be advanced by the arguments developed here. The first concerns how we draw a distinction between corruption and incompetence; the second asks how far we can admit the view that political corruption may be functional; and the third re-opens the debate on how we should analyse the Metherall case.

Most commonly, political corruption involves substituting rule in the interests of an individual or group for those publicly endorsed practices which effect an ordered resolution to conflicting individual or group interests. Understood in this way it is easy to see the normative appeal of the political, and equally easy to see that a distinction can and should be drawn between corruption and, say, incompetence. Incompetence can be directly harmful, it can contribute to delegitimation, and it can undermine the efficacy of political solutions to conflict. But it differs from corruption, not because corruption involves intentional wrong-doing (since, as in the Greiner case, that intentionality may be doubtful), but because corrupt action directly subverts the distinction between the interests of the individual or group and the responsibilities of the office, and thereby erodes the very distinction upon which the domain of politics relies for its capacity to resolve conflict. Greiner may not have intended to act corruptly but, in believing that he had the right to appoint public officials so as to shore up his party's control of parliament he was denying that a distinction should be drawn between political appointees and employees in the public service. The Commission clearly believed that that distinction was central to sustaining the legitimacy of parliamentary and administrative activity.<sup>49</sup>

<sup>47</sup> Machiavelli, *The Prince*, ch. VII.

<sup>48</sup> Cf. William Connolly, *The Terms of Political Discourse* (Lexington MA, Heath, 1974), ch. 1.

<sup>49</sup> The Court of Appeal majority judgement was that the Commissioner went beyond his jurisdiction in finding Greiner's behaviour 'reasonable grounds for dismissal' because the grounds for such a judgement must be legal and objective. The dissenting opinion was that the conduct could constitute reasonable grounds for dismissal. So the disagreement was not over whether the distinction should be drawn, nor over whether Greiner's conduct violated that distinction, but over whether the appropriate standards for judging reasonable grounds must be objective legal standards or can be more subjective and intuitive in character.

Superficially, because it can have similar results, incompetence may seem like a type of corruption, but it does not put into question this distinction – it may lead to open conflict, but it does not declare it in the heart of the political system. As we have seen, what is taken to be central to sustaining that distinction will vary, and may be vigorously contested, in political systems. Moreover, a great many activities enjoined by law, or not prohibited by it, may lead to the erosion of that distinction and the outbreak of conflict, so we need to distinguish a core set of cases of corruption, in which intentionality, illegality, and the substitution of private for public interests are all present, and a set of penumbra cases where more complex judgements have to be made about whether and to what extent these different criteria are met. But this broader analysis has to be informed by the recognition that what distinguishes corruption from other forms of destructive political behaviour is that it works by eroding the distinction between private and public concerns and interests. Extreme incompetence may lead to the collapse of political authority, but it does so because of its consequences, not because the actions of public officials actively suborn that authority so as to pursue interests in a manner which that order is expressly designed to resist. This is why terrorist movements, although they introduce war, are not corrupt – because, while they deny the validity of the existing political system, they implicitly project a conception of a political solution in which the distinction between the public and their private concerns is sustained. Similarly, authoritarian regimes, such as Hitler's Fascist state, may come to pursue goals which are so grandiose, and so appalling in their consequences, that we may be tempted to describe them as corrupt. But, while many individuals within such states are deeply corrupt, not all are, and for many there remains a clear sense that in accepting office they were accepting certain public responsibilities. It is, however, another issue as to whether these men and women, by refusing to ask questions about what was happening elsewhere in the state, by putting their self-protection above a broader sense of public responsibility, or, by allowing themselves unreflectingly to indulge their prejudices and passions, increasingly sacrificed the integrity which public office requires, resulting in the eventual corruption of the entire political order. We need to distinguish carefully between the question as to whether or not a type of political authority (with an associated conception of public office) is being preserved, and the question of whether there is any ethical standing left attached to that authority. Many things may erode the ethical force of political authority, without that authority being corrupt.

The view that corruption can be functional is one which has caused a good deal of contention. In his brief but elegant discussion of the thesis, Jon Elster identifies two premises upon which the objection to the arguments for the functionality of corruption can be founded: that corruption is only useful when there is not too much of it, and that corruption feeds upon itself.<sup>50</sup> If both hold, as seems plausible, then what initially looks like the best solution, moderate levels of corruption, begins to seem unfeasible. The two stable equilibria are limited corruption and heavy corruption – moderate corruption is not an equilibrium position. Or, as Elster puts it: 'Beyond a certain threshold, the whole fabric of society may unravel'.

<sup>50</sup> Jon Elster, *The Cement of Society*, pp. 268–72.



Elster's argument is, within limits, persuasive. Moderate corruption can only be functional if it does not encourage heavy corruption; but where it is tolerated it inevitably produces widespread corruption, and where it is systematically penalized it tends to limited corruption. Nonetheless, the suggestion that corruption can be functional is not necessarily incompatible with the argument advanced here. The most common claims for functionality are made with respect to economic development. The account I have given has assumed that the political order of a state is roughly appropriate for the conditions of that state. Obviously, this is not always the case. State-socialist societies in eastern Europe were, for the most part, very inefficient and deeply riven with corruption – necessarily so because people were often unable to meet targets and deliver services without systematically breaking the rules.<sup>51</sup> Under these circumstances, corruption was clearly functional both to the economy and to continuing political stability – albeit in the short to medium term. But, in such cases, there is such a divergence between the official and the unofficial culture that it is clear that the political system of authoritative allocation is for the most part a sham and could only be implemented by the state declaring war on its society. Short of this, something like a take-over occurs of various areas of political allocation by covert marketization or, more commonly, by some form of patrimonial or patron-client type exchange, and this subversion can result in economic progress, and may also force political changes.<sup>52</sup> However, this process is not costless: although open conflict may not result, covert patterns of domination by some groups or individuals over others do tend to emerge, and there is a danger that the corrupt but functional activity becomes so widespread that it makes it extremely difficult to re-establish the political order on a new footing.

Moreover, claims for functional corruption remain troubling wherever the official culture continues to command lip-service and where, consequently, discovery of covert activity can result in costs. Under these conditions, even where there seems no alternative but to engage in bribery, black-marketeering etc., the result is rarely pure marketization of exchange. On the contrary, exchanges come with hooks on them – one's willingness to engage in certain activities means that others have information which you would prefer them not to use, which means it has a price. In that respect it differs markedly from legitimate forms of market exchange. The residue of the transaction is a price which is paid by the transaction remaining open ended – with the participants remaining exposed to others and to potential future costs. This is less of a problem the more equal the two participants are in their attitude to the political order. Two equally unwilling rule violators pay equivalent prices in their exchange. But where one violator has behind him a syndicate for organized crime, while the other seeks a one-off exchange outside a system of rules to which he remains committed in principle, the real prices paid may be radically different. Under the pressures of circumstance, people may engage in activities in which they effectively attach little cost to potential future consequences but,

<sup>51</sup> As clearly did happen in certain areas in Russia once the communist system began to fall apart – see Leslie Holmes, *The End of Communist Power: Anti-corruption Campaigns and Legitimation Crisis* (Carleton, Melbourne, Melbourne University Press, 1993).

<sup>52</sup> This does not mean that the scope of politics is fixed. What was appropriate in the civil war in the USSR after the revolution was not necessarily appropriate later – the boundaries between, e.g., politics and economics are not set in stone.

while such transactions may be functional to economic development or unfreezing a politically strangled economy, they can set in place relations in which some groups are able systematically to shape the behaviour of others in the future. Shedding one's tainted past is not easily done. In effect, moderate to widespread corruption requires that people make a gamble on future immunity – but that gamble does not always pay off, and they then become prey to those who hold information they want to keep secret. Moreover, it creates incentives for those who have discounted future punishment to block the establishment of any system in which they may be held responsible for their past activities – and this is true not only for those committed to non-political solutions, but also for those who are not so committed but who have an interest in avoiding any political solution in which they may have to bear costs for past activities. Alliances between Mafia gangs and politicians with an interest in avoiding certain types of control mechanism and public accountability can produce very weak forms of political control within a state.

Greiner's characterization of politics (as I understand it) is that it is a process of struggle for the exercise of sovereignty, by groups who have to use the distribution of office and patronage as a way of consolidating their grasp on the powers of the state. To take away those powers of patronage would be to destroy the government's capacity to hold together otherwise atomistic and factional tendencies within its political institutions. One way of characterizing the disagreement between Greiner and the Commission is that the latter was working with a more classically liberal set of concerns about politics serving the public interest and not being exercised in an arbitrary manner. But there is a much deeper issue at play here concerning the balance between the legitimacy of outcomes being guaranteed by procedures and the legitimacy being guaranteed by effects. The more discursive conceptions of politics, in which public deliberation and collective understandings play a substantive role in ensuring the legitimacy of the outcomes of the political procedures are in stark contrast to a more Schmittian realism with respect to the political process as a struggle for the assertion of sovereignty over a territory. The disagreement between Greiner and the Commission, if couched in such contrasting terms, reveals deeply conflicting conceptions of politics. Nothing I have said here denies such conflict. It may be that if we understand the political process in a certain light we will see it as essential that what many liberals would see as 'rules of the game' should be regarded as themselves open to strategic manipulation by the players. But that argument would not involve denying the distinctive character of political authority. Even the insistence that politics must get dirty depends on a particular understanding of the imperatives which face attempts to establish political authority. Political realism bows to what it recognizes as political necessity. And while there are philosophical anthropologies and a range of foundational commitments behind both realism and its alternatives, there are also more empirical issues in play – issues which might, for example, lead us to endorse Schmitt's account as capturing the central feature of politics in the Weimar Republic, or in many European states after 1914, without thinking that the account works across all conditions. As such the case for or against realism is one which we have to recognize as to some extent empirical.

In the case of Greiner, we have to ask whether the political, economic, and cultural conditions of New South Wales were such as to necessitate the politicization of public appointments to the degree Greiner claimed, or whether

he was falling back on political reflexes appropriate to an era in which the grip of the political order over its citizens and the political leadership over its supporters was substantially more fragile. The Commission's judgement clearly challenged the long-standing, partly self-serving, but increasingly contested norms of an élite political culture, and it sought to put an end to the use of public resources by politicians in their struggles for power – struggles which can so blind the participants that they come to confuse their activity with the pursuit of the common good – but it did so not to abolish politics, but to preserve it in a more democratic and accountable form. And in a choice between Greiner's version of politics and the Commission's, the latter seems both to meet the requirement of practical feasibility and to have greatest ethical weight.