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Re-Defining Corruption in a New Zealand Context

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RE-DEFINING CORRUPTION IN A NEW ZEALAND CONTEXT

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Abstract: There is evidence that New Zealand, regarded as a country with high standards of public integrity and low levels of corruption, and long regarded by Transparency International's Corruption Perception Index as one of the six perceived least corrupt countries in the world, is facing a notable rise in domestic and international challenges to its public integrity. Evident in the international media are a series of recent 'corruption' scandals, widely seen as direct threats to New Zealand's anti-corruption record, if not its valuable 'clean and green' image. Most of these incidents involve behaviour commonly, but not necessarily accurately, labelled as 'corruption', but not defined as such under New Zealand law. From 2010, led by the Director of New Zealand's Serious Fraud Office (SFO), there have been official requests to develop a clear definition of corruption in a New Zealand context, one that might allow for legal pursuit.

Against this background our paper examines some of the major works of Rose-Ackerman, Klitgaard and, especially, Johnston, in exploring a more adequate definition of corruption in the context mature market economies that are usually ranked as least corrupt with little high-level bribery, and with strong and legitimate state institutions, but which nevertheless have systemic corruption problems whereby wealthy interests pursue political interest. We examine three recent corruption scandals - the Panama Papers scandal, in which New Zealand's legal foreign trust fund provisions were prominently featured; a 2014 political scandal in which a major intelligence agency cooperated with the government in issuing a misleading report regarding the leader of the political opposition, perhaps leading to his loss of a key election; and the 2014 Saudi Arabian sheep export incident which involved, what was labelled by the New Zealand Government, a significant 'facilitation payment', a legal convention that is distinguished from bribery in New Zealand law. All three of these incidents, technically legal under New Zealand law, yet all have much potential to damage the New Zealand reputation for fair dealing and integrity.

We propose to develop a typology of public integrity violations in New Zealand, particularly as regards the behaviour of public officials in this heretofore grey area. Johnston offers conceptual assistance in more precisely defining public integrity and corruption in this emerging New Zealand context with his category of 'influence markets' corruption, which we propose to explore in application to these three major scandals.

There is evidence that New Zealand, regarded as a country with high standards of public integrity, low levels of corruption, and long regarded by Transparency International's Corruption Perception Index as one of the six perceived least corrupt countries in the world,¹ is facing a notable rise in domestic and international challenges to its public integrity. Evident in the international media are a series of recent 'corruption' scandals, widely seen as direct threats to New Zealand's anti-corruption record, if not its valuable 'clean and green' image. Most of these incidents involve behaviour commonly, but not necessarily accurately, labelled as 'corruption', and not defined as such under New Zealand law. From 2010, led by the Director of New Zealand's Serious Fraud Office (SFO), there have been periodic official requests to develop a clear definition of corruption in a New Zealand context, one that might allow for legal pursuit of occasional egregious moral lapses that are nonetheless defined as legal under current statutes.

Against this background our paper examines some of the major works of Rose-Ackerman (1999, 1997, 1978), Klitgaard (1988) and, especially, Johnston (2005), in exploring a more adequate definition of corruption in the context of globalisation and the development of a more mature market economy in New Zealand. Such economies are usually ranked as low on Transparency International's (TI) Corruption Perception Index (CPI), arguably one of the most reliable measures of national corruption levels, largely because of the relative and even complete absence of high-level bribery, and the establishment of strong and legitimate state institutions. Nevertheless, such countries, including New Zealand, can be found to have systemic corruption problems in an age of globalisation as wealthy internationalised interests have been increasingly encouraged to pursue political influence at the domestic level.

¹ Listed in 2016 as first equal, with Denmark, as perceived least corrupt country in TI's Corruption Perception Index.

Our aim is to expand upon what has been a very narrow, traditional and limited conception of corruption in countries like New Zealand. While New Zealand does consistently rank among the least corrupt countries in the CPI, three recent corruption scandals raise questions about the accuracy of such measures. Specifically, we will examine three varied and relevant cases: the Panama Papers scandal, in which New Zealand's legal foreign trust fund provisions, devoid of even a hint of corrupt practices in the traditional, legal sense, were prominently criticised; a 2014 political scandal in which a major New Zealand intelligence agency appears to have cooperated with the government in issuing a misleading report regarding the leader of the political opposition, perhaps leading to his loss in a key election, again, a situation that would have been deemed inappropriate at worst in traditional New Zealand legal terms; and the now-infamous 2014 Saudi Arabian sheep export incident, which involved what was labelled by the New Zealand Government a necessary if significant 'facilitation payment', a legal provision that is specifically distinguished from bribery in New Zealand law, although with a relative paucity of distinguishing specificity. All three of these incidents, technically legal under New Zealand law, suggest complications stemming from the incursion of globalisation on what has been a very narrow and traditional definition of corruption, and a possibly significant erosion in the quality of governance. We will propose, thereby, the need to consider a wider, more pervasive and global-sensitive re-definition of corruption in a contemporary New Zealand context.

An Erosion of Standards?

New Zealand is regarded as one of the least corrupt, or least *perceived* corrupt, countries in the world. After falling several places in earlier surveys, the 2016 CPI, based upon an algorithm that utilises as many as twelve major international economic surveys, primarily involving business people, ranked New Zealand and Denmark as the perceived least corrupt countries in the world in the latest (2016) iteration. A further indicator of New

Zealand's exalted standing can be found in the World Values Survey, the results of which include cross-country comparisons of social trust. In reporting on these results, Holmberg and Rothstein (2017) observed that New Zealand is one of a handful of countries, alongside the Nordic countries, the Netherlands, Switzerland and Australia, with their highest rating, a 'reasonable' level of social trust. They note that this trust is extended to social and governmental institutions as well.

The background to this ranking, a stellar achievement by most standards, is all the more remarkable because of New Zealand's bi-cultural and multicultural background.² It largely stems from a history of economic egalitarianism and wise bureaucratic planning that has long included popular support of regulation and policing in the interest of fairness, and a highly professional public bureaucracy, one that continues, despite the counter-pressures of 'New Public Management', retaining an ethos built around secure careers and communitarian expectations, even after neo-liberal reforms in the late 1980s and early 1990s introduced transformative changes. Finally, its legal and political structure, stemming from the English metropole,³ included clear, if limited, definitions and protocols regarding corrupt practices, employing social engineering where necessary to maintain order in times of crisis, and a criminal code with strong proscriptions against bribery and influence peddling.

An ethos of honesty came to New Zealand from the British Foreign Service, then, upon which it depended until well into the Twentieth Century. It was apparent in the bureaucracy early on in such areas as the Department of Public Works, established in 1876 and later renamed the Ministry of Works, where such standards were said to have been prevalent from the start. By 1912 and the fall of the long-term Liberal Government, a new Reform Government under William Massey brought an immediate end to the remnants of the 'spoils system' that had persisted in some corners of the New Zealand bureaucracy (Lipson,

² Multicultural settings are generally regarded as more challenging environments for instilling trust.

³ In the early Twentieth Century, the British bureaucracy was regarded as the most honest and accountable bureaucracy in the world.

1948, 2011, p. 398). A royal commission, appointed soon thereafter, recommended that all “back doors” to the public service be closed, and that promotions be made only from within the service. Appointments and promotions should be made, it recommended, taking a page from the writings of Max Weber, only on the basis of merit, and provision should be made for free transfers of officers between departments. “Entry by competitive examination, probation before final admission, promotion by merit, and pensions on retirement”, each of these became the norm (Lipson, 1948, 2011, p. 399).

The commission’s report led to a Public Service Bill that included for the first time in a British dominion the Scandinavian institution of the Ombudsman (Hill, 1976; Gilling, 1998), as well as, eventually, the provision of official information to the public by the early 1980s (Gregory, 1984). Beginning in the 1920s, careers in public service provided secure and generously paid employment as long as the public servants remained honest, even if they were only modestly competent. Such careers were well remunerated, with salaries competitive with those in the private sector (Roberts, 1978). Defining corruption in this local and relatively isolated context tended to be limited to the standard British forms: the personal enrichment of public officials (bribery and influence peddling) and nepotism

As New Zealand has developed into an industrial state, and as globalisation and globalised economic communications have come increasingly to dominate what had been a more isolated agrarian and egalitarian society, Johnston’s (2005) qualifications (especially regarding the category of ‘influence marketing’) has become more immediately relevant. Additions to the more narrow definitions of corruption that had pertained in New Zealand are increasingly necessary. Gregory’s rich observation that the ‘New Public Management’ model, now practiced in the country, has shifted from a prevailing concept of *responsibility* to one of *accountability*, further emphasising the need for such a revitalised re-definition.

The Changing Bureaucratic Context

Robert Gregory (2006) anticipated a deterioration in New Zealand's ability to identify and combat corruption following the introduction of New Public Management policies in the 1990s, and an expectation that things would get worse. He explained these as related to a global trend affecting New Zealand, that of growing economic inequality, and referred to marked increases in the “‘vertical decompression’ of remuneration between lower level government workers and top executives ... [as well as] the gap between the remuneration for top executives in the public and private sectors” (Gregory 2006, p.132). This, he anticipated, was an environment where public sector officials would be

increasingly susceptible to pressures from organised crime operating in a ‘globalised ‘ marketplace. Any continued and increasing attenuation of the old ‘Public Service ethos’ will weaken barriers against the incidence of governmental corruption. Because the old ethos sits uneasily with the public choice zeitgeist underpinning the reforms, which views bureaucrats and politicians as being motivated primarily by egoistic self-interest... New Zealand will be characterised more by the converse side of the concept of social capital... That is, because New Zealand society will be much less egalitarian, politically and economically, even though democratic norms and values will remain strongly institutionalised, bonding rather than bridging social capital will predominate, generalised trust will be low[er] and more groups [especially organised crime] will be able to engage in covert and illegitimate activities (Gregory 2006, p.132).

In this NPM environment, there has been “an exaggerated preoccupation with managerial accountability at the expense of administrative responsibility” (Gregory 1995, p. 65). This could be seen in terms of the depoliticisation of many responsibilities of government. Depoliticisation, as conceptualised by Flinders and Buller (2006), is a term used to capture the way many governing activities were moved to new governing arenas through the creation of newly introduced decision-making institutions and rules, where decisions are made by unelected actors less open to public scrutiny. It refers to ‘the range of tools, mechanisms and institutions through which politicians ... seek to persuade the demos that they can no longer be reasonably held responsible for a certain issue, policy field or specific decision’ (Flinders and Buller 2006, p.295-296). The depoliticisation literature thus draws our attention to new institutional forms, and the creation of new arenas of policy making, which

‘insulate politicians and their choices, immunizing them from responsibility and critique’ (Beveridge 2012, p.54).

The New Zealand case has been described recently, then, as a ‘corruption paradox’ (Edwards, 2014). Its impressive 2016 CPI ranking to the contrary notwithstanding, an international reputation as a corruption-free country must increasingly compete with a growing number of highly publicised ‘incidents’ that can only be characterised as public integrity violations, and what are widely described in the media as corruption scandals. In an earlier paper (Zirker and Barrett 2017), we observed a noticeable increase in the reporting of corruption in media stories and a tendency for corruption to become a part of the language of politics in New Zealand in a way that has not been the case before. We speculated that there had been a proliferation of perceptions of corruption among the New Zealand citizenry, threatening the legitimacy of, if not the trust in, our democratic institutions. The acceleration of this trend now begs a stronger response, and we turn to Rose-Ackerman, Klitgaard and Johnston in an attempt to re-define corruption in a form and outline that might, in some way, assist New Zealand in regaining its distinguished path. A place to begin, however, may be with a broader conceptualisation *à la* Carl Friedrich (1972).

The Case for Initiating a Process of Re-Definition: Access and Equality

The weakening of trust, according to Holmberg and Rothstein (2017) presents a significant threat to the quality of government, and it increases vulnerability to corruption, indeed, it suggests a place to begin a re-definition of ‘corruption’. The importance of trust, they say, is ‘difficult to exaggerate’ (p.1). Social trust is a characteristic of successful societies, it lowers transaction costs and it enhances the ability of societies to establish and protect public goods. Holmberg and Rothstein (2017, p.7) also observe that

the huge variation in social trust that we find between different societies in the world and between groups in different countries should not be explained by some type of cultural or innate differences in the moral standards of the people that happen to live in these societies and groups. Instead, the explanation is that the differences are caused by the quality of the public institutions they happen to live under ...Consequently, if we normatively want high and evenly spread social trust in a society, we

should first and foremost look at the quality and impartiality of public institutions. Falling trust is not primarily a moral or cultural problem. It is an institutional problem solvable through more fair and efficient public administration.

Social and political health become the ‘caused variables’ in this understanding of fair and equitable institutions. Trust remains at the centre of the equation.

Access and equality have increasingly become crucial in determining whether specific conventions, legal or not, represent ‘healthy social attributes’. Citizens’ trust in their ability to access services ultimately rests on some conceptualization of equality. Healthy access would naturally imply equal access to a functional degree. Functional access would, in turn, imply healthy access, that is, access when significantly needed. Inability to access services because of elite monopolization would, in effect, equal gross inefficiency and inequality, or in Holmberg and Rothstein’s terms, unnecessary costs (at the very least, sometime in the future), and a likely breakdown in trust. At pathological levels, such patterns would lead to a ‘decomposition of the body politic’. Friedrich, writing in 1972, argued that traditional usage of the term ‘corruption’ included ‘vastly different meanings’ many of which stemmed originally from such a ‘decomposition of the body politic through moral decay’, and included ‘all kinds of practices which are believed to be dysfunctional and hence morally corrupt’ (pp. 127-128).

Inequality of access, however, which privileges insider relationships between elite interests and political brokers, or which stem from money and private resources, also threaten the body politic. Inequality of access leads to the systematic exclusion of citizens and groups from opportunities to influence the political agenda and decision processes, or gain information about the implications of policies for them. If we take the body politic to be the institutional practices through which democratic governance is conducted, the ‘decomposition of the body politic’ implies the corruption of those practices to the extent that it leads to the weakening or deterioration of those very institutions. Persson, Rothstein and Teorell’s (2017) perspective on corruption as a *collective action problem* offers insights into

understanding the corruption of equal access to influence. Rather than a problem between a principal and an agent, which may result in the development of measures to monitor and punish corrupt actors, the corruption of equal access to influence as a way of ‘doing politics’ is a problem of the wider polity, and far more difficult to address. If this becomes the expected means by which influence is exercised, everyone would be expected to behave corruptly. The motivation to weed out such behaviour would be undermined by common expectations that the benefits in the short term would outweigh the costs (Persson, Rothstein and Teorell 2017).

While levels of social trust, the impartiality of public institutions and the efficiency of the economy can all serve as new global benchmarks against which some forms of corruption might be measured, they each raise important legal and measurement challenges as well. Perhaps even more basic than the concept of trust are that of the composition and the potential ‘decomposition of the body politic’, however.

Friedrich noted that, coming out of a ‘morass of corruption’ in the Seventeenth and Eighteenth Centuries, Britain’s ability to build ‘what is, in the opinion of many, the most thoroughly honest public service ever organized [by the end of the Nineteenth Century] is little short of miraculous’ (p. 136). It was precisely this public service that served as New Zealand’s model in the 1912 legislation establishing its modern public service. Times change, however. What follows is a brief description of three recent corruption scandals that raise questions about New Zealand’s reputation for the absence of corruption, and as a consequence represent threats to trust in public officials and government institutions.

The Three Cases

The first case came to the public’s attention as a political scandal that unfolded prior to the 2011 New Zealand general election. This was focussed on Labour Party leader Phil Goff and was subsequently the subject to an inquiry by the Inspector-General of Intelligence

and Security. The scandal broke in July 2011 and originated in allegations published in the *Southland Times* newspaper regarding Israeli intelligence activity in Christchurch around the time of the February earthquake. In response to the *Southland Times* story, Prime Minister Key publically stated that allegations of suspicious behaviour by Israeli intelligence agents had been fully investigated, and that no espionage activity was found to have occurred. In response, the then-Leader of the Opposition, Phil Goff, criticised the government's handling of the issue, noting that he had not been briefed by the SIS director on the matter, as was required under the New Zealand *Security Intelligence Service Act*. The SIS in its subsequent advice to the Prime Minister's Office, contradicted Goff's public statements, claiming that he had, indeed, been briefed. Although this information was later found to be 'incomplete, inaccurate and misleading', it was released to the media by the Prime Minister. Subsequently, the then-SIS director's notes, upon which the Prime Minister's briefing was based, were leaked to a conservative political blogger allied with the PM, apparently under a pre-disclosed request under the Official Information Act, and these were then released to the media. These notes also gave the impression that Goff had been briefed on the matter. Goff was publicly humiliated. This scandal unfolded in the months leading up to the 2011 general election, and played out in the media such that Goff was publically accused of incompetence and of inappropriately calling into question the integrity of the SIS.

A 2014 inquiry by Cheryl Gwyn, the Inspector General of Intelligence and Security, found, however, that the SIS had colluded with the Prime Minister's Office in making the records of the briefing of Goff by the SIS director public, and that the Prime Minister's senior communications advisor, Jason Eade, had coached an independent blogger, Cameron Slater, as to the existence of the information, and how to gain quick access to the SIS files for the purpose of undermining Goff. The inquiry found that the SIS information released under the Official Information Act was misleading, and Cheryl Gwyn subsequently found that these

errors had evidently resulted in a ‘misplaced criticism’ of Goff.⁴ Goff’s humiliation in this incident was seen by at least some observers as a determinant factor in Labour’s defeat.⁵ The Goff case, and the alleged two-track political communication approaches referred to in Hager’s *Dirty Politics*, indicates a systematic political strategy geared to shape public opinion regarding the credibility and suitability of Phil Goff as a potential Prime Minister.

The second case emerged from the leaking of confidential documents from the Panama-based law firm, Mossack Fonseca, which began to surface in the international media in 2015. The papers pointed to the existence of tax havens, trust schemes, and criminal activities that had been covered up by legal practices, and revealed how Mossack Fonseca had promoted the exploitation of tax policies to enable wealthy individuals to hide assets and avoid paying taxes. These reports included reference to New Zealand as a tax haven, with allegations that New Zealand had facilitated such acts as ‘tax evasion, financing corruption, money laundering, sanctions violation and hiding of assets’ (Shewan 2016, p.8). While any suggestion that New Zealand was a tax haven was strenuously denied by Prime Minister John Key, and described as ‘ridiculous’ by Minister of Revenue Michael Woodhouse, disquieting evidence gradually emerged. The principle focus of charges in the media was in relation to New Zealand’s putative status as a ‘tax haven’ through its foreign-friendly trust fund laws that allowed tax-free and secret ownership of New Zealand trust funds by off shore foreigners, and that these trust funds protected assets and wealth, provided a good degree of banking secrecy, and hence facilitated the avoidance of tax liability in home countries. Central to these allegations were questions regarding the robustness of New Zealand’s trust disclosure rules. Reports from New Zealand-based journalists with access to the Panama Papers uncovered instances of high profile individuals, some of whom were alleged to have

4 Vernon Small and Stacey Kirk, ““Dirty politics” report directs harsh criticism at SIS’. *Stuff* (25 November 2014): <http://www.stuff.co.nz/national/politics/63505210/dirty-politics-report-directs-harsh-criticism-at-sis>, accessed April 10, 2016.

5 Hager, 2014, pp. 37-40.

convictions in other jurisdictions, and who were reported as having interests in intricately constructed New Zealand offshore trust structures that held considerable overseas assets.

The subsequent Shewan (2016, p.10) inquiry into these allegations did not have access to information about the ownership of offshore trusts, and as a consequence reported that ‘it [was] not possible to conclude ... whether funds held through the New Zealand structures [were] illicit, or if there [had] been any failure to pay tax that should have been paid in offshore jurisdictions.’ It did conclude, however, that current disclosure rules were inadequate and it made a series of recommendations around the collection of information from offshore taxpayers and that these be shared across jurisdictions.

On the same day that the Shewan Inquiry was announced, it was also revealed that Prime Minister John Key declared a financial link to a company specialising in foreign trusts, Antipodes Trust Group Limited. Moreover, his own personal lawyer was found to have lobbied the then-Minister for Revenue, Todd McClay, in 2014, apparently opposing the Inland Revenue Department’s (IRD) plan to review the foreign trust laws. Matt Nippert, of the New Zealand Herald, through a Green Party Official Information Act (OIA) request, found that Ken Whitney, the director of the Antipodes Trust Group, had indeed petitioned McClay, given expectations that public officials were about to clamp down on the foreign trust sector. In an email to McClay, he had written that

We are concerned that there appears to be a sudden change of view by the IRD in respect of their previous support for the industry. I have spoken to the Prime Minister about this and he advised that the Government has no plans to change the status of the foreign trust regime. The PM asked me to contact you to arrange a meeting at your convenience with a small group of industry leaders who are keen to engage to explain how the regime works and the benefits to NZ of an industry which has been painstakingly built up over the last 25 years or so (Nippert 2016).

This email, along with other documents that were released, indicates that Inland Revenue officials were intent on tightening the foreign trust regime, but were put off by lobbying from industry insiders, and perhaps by Prime Minister Key’s intervention. The 2014 review was halted. The reason given was ‘wider government priorities’, with

McClay writing to the trust industry that

Owing to wider government priorities, we will not be considering regulatory reform of your industry at this stage...I trust that this provides you and your industry with the certainty needed to continue to do business in New Zealand (Nippert 2016).

The third case involves New Zealand's live-sheep export industry with Saudi Arabia. In this case, there is evidence of large 'facilitation payments' as a part of a strategy to deal with barriers to access to markets. New Zealand has a long history of live sheep exports to Saudi Arabia, for slaughter and consumption. These exports were halted in 2003 following the deaths of a large number of animals while in transit. There was a subsequent investigation into animal health protocols, and there were also discussions about a memorandum of understanding between New Zealand and Saudi Arabia to address animal welfare issues during the export of live sheep. Later in 2007, however, a Customs Export Prohibition Order was made prohibiting live sheep exports unless there was an exemption provided by the Director General of the Ministry and Agriculture and Fisheries. No exemptions have subsequently been approved, and that order remains in place today. The Al Khalaf Group were seeking, however, to develop a MOU on the basis of an expectation that this would provide the grounds for an exemption, but later in 2009 the Minister of Agriculture stated publically that exports were unlikely to resume because of ongoing concerns about animal welfare. There were, therefore, two conflicting messages being sent by the New Zealand government to the Al Khalaf Group – that there was the possibility of a MOU which would provide and way around the export Prohibition Order; and public statements that exports were unlikely to continue. These contradictory messages led to strains in the relationship between New Zealand and Saudi Arabia.

While these events were unfolding in the live sheep export industry sector, New Zealand also began, in 2007, to explore the development of a free trade agreement with Saudi Arabia. Sheik Hmood of the Al Khalaf Group had continued to invest in the

sheep industry in New Zealand in the expectation that a MOU would be achieved, and that an exception to the ban on live sheep exports would be granted. He thus believed he had been unjustly treated in the decision to maintain the ban, and this contributed to diplomatic tensions between New Zealand and Saudi Arabia, and was seen as ‘poisoning’ the prospects for the free-trade negotiations (Auditor General 2016.). The result of this disconnect between issues of animal welfare and a desire to extend trade relations was that the relationship with Saudi Arabia deteriorated.

The response of then-Minister of External Relations Murray McCully and of other New Zealand government officials assigned to address this issue is of interest here. Following their subsequent negotiations with the Al Khalaf Group, they proposed a commercial solution that would involve producing a contract for services with the Al Khalaf Group, for which the New Zealand Government would pay \$4 million, with a further \$6 million being provided by New Zealand companies as a gift to the Al Khalaf Group, these taking the form of goods and services to be installed on Sheik Hmood’s farm in Saudi Arabia (the Agrihub). This proposed solution was put before Cabinet in February 2013, along with the advice that the Al Khalaf Group had been provided with legal counsel, and that it had grounds to sue the New Zealand Government for \$20 to \$30 million. Cabinet was also advised that this solution, the contract for payment to a private business, would smooth the way towards achieving a free trade agreement which, if achieved, would double returns from exports to Saudi Arabia.

On these matters, the Auditor General (Provost 2016) observed that no explanation as to how the figure of \$10 million was derived was provided to the Cabinet, there was no advice on the substance of the claim that there was a legal risk of being sued, and there was no wider analysis of other possible obstacles to achieving a free trade agreement with Saudi Arabia. The proposal of a payment as a solution to the problem

was derived on the basis of poor quality information and what was described by the Auditor General as an inadequate level of analysis of that information. Cabinet, however, did approve the payment, which subsequently rose to a figure of \$11.5 million. This was not a transparent process, and were it not for media scrutiny and the subsequent government inquiry, it would have remained hidden from the public. While the inquiry did not find evidence of legally-defined corruption, it did raise serious questions about the process.

The Goff case involves the employment of underhanded political communication strategies to smear an opposition leader in the run-up to an election. The Panama case seems to be a clear instance of the inappropriate exercise of influence over government policy in a way that favours particular interests. The Saudi case reflects the degree to which the growth of international trade has created situations in which the payment of bribes, or ‘facilitation payments’, as they are legally regarded,⁶ is likely to be a part of ‘just doing business’. Each of these scandals has had an impact on New Zealand’s standards, if not status, as a non-corrupt society. The cases are considerably more than just media scandals. They point to a deeply concerning tendency within government to achieve economic ends without regard for prevailing cultural norms, for due process, or even for basic ethical standards.

In each of these cases there was an inquiry by a leading auditing agency, and in each case there was a finding that no illegal corruption had occurred. Cases such as these, however, do raise questions about how we should define corruption in New Zealand. Thus far there has emerged no consensus about what types of behaviour actually constitute corruption, and what actions can be subsumed under the much broader category of public integrity violations. There has been little or no systematic research conducted into how and why some

⁶ ‘Facilitation payments’ are legal under New Zealand law, ‘the payment of bribes’ is not.

forms of behaviour are widely seen to constitute violations of public integrity, whereas public attitudes regarding other types of behaviour are much more accepting. There is a need, therefore, to develop a more refined lens through which to analyse issues of public integrity in New Zealand. Without such a lens, any analysis will be mainly impressionistic, partial, and fragmentary.

A More Appropriate Lens on Corruption in New Zealand: Influence Marketing

Taking our lead from the three cases presented above, we begin by considering Johnston's identification of corruption as influence trading. Johnston's (2005) categories in the study of corruption, and particularly his category most applicable to New Zealand, *Influence Markets*, is our conceptual starting point. Johnston's view that corruption is not an isolated phenomenon, but rather one that is embedded differentially in varied, changing and adapting contexts, points to the need to gain greater insight by considering how people use illicit means to gain access to wealth and power in different societal contexts. In New Zealand, by Johnston's definition, corruption could be expected to occur where there are strong state institutions and would tend to involve gaining access to influence, with politicians often serving as intermediaries who provide their connections. Mature market democracies of this kind, then, are characterised, according to Johnston, by 'legitimate constitutional frameworks, political competition, free news media, strong civil societies, open economies', and a prevalence of legal corruption in the area of influence markets (Johnston 2005, p.42). Thus, countries in this category that appear to have checked corruption may not have 'solved' the problem so much 'as they have developed states and political systems accommodating to wealth interests, fitting the rules to the society ... [such that] the political influence of wealth follows well established channels' (Johnston 2005, p.42). This influence market corruption, he avers, occurs within the system, and 'revolves around access to, and advantages within, established institutions, rather than deals and connections circumventing

them' (2005, p. 42). Market influence is often, if not usually, legal, as Lessig (2011) observed in a US context. Corruption, then, in the blatant and traditional English common law form (*i.e.*, bribery), picked up in TI's CPI scores, is of course highly unusual in market influence countries. That is not to say, however, that such practices are unproblematic, or that they do not also need attention.

Trading in influence is perhaps more precisely explained by Gluck and Macaulay (2017) as involving activities that include 'lobbying, political party funding, patronage, revolving doors of post-ministerial appointments, misuse of corporate hospitality, gifts and various others' (p.51). The notion of influence markets implies that "influence is essentially a commodity that can be bought or sold (or traded) through different channels, most of which are accepted as a part of the political landscape" (Gluck and Macaulay 2017, p.51). Influence trading occurs in advanced liberal democracies with well-established political institutions that are robust enough to resist and deter "forms of corruption such as blatant bribery. The corruption that does exist within such nations, therefore, happens within the remit of those institutions – political parties and government ministries, for example – and is usually within the bounds of how such institutions are designed to work " (Gluck and Macaulay 2017, p.51).

This implies that corruption of this nature within New Zealand will tend to be unseen or accepted as politics as usual, *i.e.*, the exercise of influence in the political sphere. There are, however, "grey areas: party funding; patronage; perceived nepotism and/or cronyism; unresolved conflicts of interest; misuse of lobbying, etc." (Gluck and Macaulay 2017, p.52).

"Indeed, not only are such activities not regarded as corruption, but they are actually seen as legitimate" (Gluck and Macaulay 2017, p.50). There are, therefore, a number of accepted practices within the political sphere that are open to question. Recent examples of apparent influence peddling that have drawn attention take the form of the Cabinet Club where National Party members pay to attend dinners with cabinet ministers and members of

parliament, the Judith Collins Oravida dinner, and of the appointment of party insiders to directorate roles, boards and other official bodies in the public sphere.

Influence marketing, then, has a bearing on questions of equality of access and impartiality in governing processes. “What is a key problem, and a key reason why trading in influence should be seen as corruption, is that it damages and degrades the trust the public has in these structures” (Gluck and Macaulay 2017, p.51). The issue is one of political exclusivity and capture, where ordinary citizens do not have the same opportunity to participate given ‘insider access’ to influence. The consequence is that citizens lose confidence in their ability to influence such institutions, and that loss of trust is seen as a serious problem. If some people can market social influence, then it breaks down social capital.

Building on Johnston’s Notion of Influence Markets

Corruption, as the many and varied cases in the New Zealand media have suggested over the past two decades, is a broad term that expresses distaste for unethical behaviour more than a specific form of legal or even public interaction. While it may be broadly related to ‘violation of public integrity’, and ‘private gain by public officials at public expense’, it is increasingly the case that major examples, including the three that we discuss herein, do not simply fall into these two basic descriptions. TI has attempted to cast an even broader net with its definition of corruption as ‘misuse of entrusted power for private gain’, although when the law is unable to agree on a clear definition of ‘misuse’, this largely legal term is unhelpful at best. Okogbule (2006, p.94) defined it as ‘a device or strategy usually employed to sway people away from the right course of action, duty or conduct either in the performance of their official duties or in activities relating to economic or political matters’. Friedrich, in his 1972 work, as have Rothstein and Varrach in their 2017 book, attempted to bring together a range of disciplinary understandings of corruption, beginning with a politico-

anthropological view that corruption is comprised of those acts that hasten the ‘decomposition of the body politic through moral decay’ (p. 128). Dion attempting to define a similar ‘space’, refers to ‘the corruption of moral behaviour, the corruption of people, the corruption of organisations and the corruption of state’. Zekos (2004) also ties his conceptualisation of corruption to morality and unethical behaviour. However, as Von Maravic, de Graaf and Wagenaar (2010) suggest, there are many different academic disciplinary values, methodologies and frameworks that attempt to deal with the difficult conceptualisation of ‘corruption’. New Zealand’s unique conditions and unparalleled prominence in this complex and contentious area speaks directly to the necessity of a revised and more insightful definition and taxonomic evaluation of public integrity and corruption.

A focus upon the much broader concept of public integrity clears the way, in many respects, for a helpful redefinition of corruption in a New Zealand context, although it does leave one aspect, the fundamental conceptualisations of *corrupt action*, that is *principal agent vs collective action* (to be addressed below) unresolved for the time being. *Violations of public integrity*, constitute a wide net, and include participation of public officials in both legal and illegal activities, including cartels, collusion, conflicts of interest, bribery and secret commissions, cronyism and nepotism, fraud, gifts and hospitality, lobbying and influence-seeking, money laundering, revolving door employment, abuse of authority, illegal and unauthorised disclosure of information, misuse of IT systems, and electoral fraud or election tampering of various kinds. Additionally, from the standpoint of violations of public integrity, governmental and/or political corruption and private sector or business corruption are closely linked phenomena, given that the ‘boundaries’ between the public and private sectors in advanced democracies like New Zealand have become ever less clearly defined as globalisation advances, especially in the delivery of public goods and services through contracting-out and semi-official agreements.

Principal-agent or Collective-action Problem

While a focus on principal-agent relationships does offer some guidance in defining corruption in New Zealand, Rothstein's argument is that it is better to conceptualise that corruption, particularly in a modern industrial state, as either a principal agent problem or a collective action problem. As a principal-agent problem, there are two parts: first, it can be assumed that a *fundamental conflict* exists between what are referred to as *principals*, those who stand for, or uphold the interests of the public, and those who act as agents, self-interested actors for whom corrupt, that is, personally beneficial, transactions, outweigh their costs. The second part of this reasoning, according to Persson, Rothstein and Teorell, involves an assumption that the individually-motivated agents have more, and more specific, information regarding specifics than do the principals, and this, then results in what the authors refer to, citing Klitgaard (1988), Rose-Ackerman (1978) and Williams (1999) as the condition of *information asymmetry*.⁷ Corruption, in this sense, has taken place when an agent has betrayed a principal's interest in order to further his/her own personal interest, and this is possible because of the information asymmetry (p. 452).

This analysis allows for varying identifications of principals and agents, depending upon the historical and development stages of the political system. Some level of equality and social access seem to be considerations, such that ruling elites can be considered, in many cases, agents, and citizenry, principals (Persson, Rothstein and Teorell 2017; Adserà, Boix, and Payne 2003; Besley 2006; Myerson 1993; Persson and Tabellini 2000) , this assuming that principals are always those tasked, or self-tasked with controlling corruption (Persson, Rothstein and Teorell 2017; Andvig and Fjeldstad 2001; Galtung and Pope 1999;

⁷ As Persson, Rothstein and Teorell put it, 'More specifically, in line with this view, a collective body of actors is assumed to be the principal who delegates the performance of some government task to another collective body of actors, the agents. As in any situation where authority is being delegated, the problem from the perspective of the principal is that the agents may acquire specific information about the task at hand that they are not willing to disclose to the principal, or that they have private motivations other than the goal of performing the delegated task', p.452.

Mungiu-Pippidi 2006; Rauch and Evans 2000).⁸ It is clear, then, that principals in this conceptualisation should be striving to discourage agents' self-motivated behaviour, most effectively it would seem by reducing the degrees of discretionary freedom, or lowering information asymmetry (increasing transparency), and thereby discouraging the monopoly of agents while increasing accountability in the system (Klitgaard 1988). Policies that limit the range and scope of public officials' transactions, while expanding their banking transparency, and the range of penalties for openly corrupt (bribe-taking) behaviour, represent a start. They do not, however, in addressing the principal agent problem alone, represent the slightest inroad into the greater problem in countries like New Zealand of *market influence*.

Discussion and Conclusion

What, then, does this mean for a definition of corruption in a country like New Zealand? Drawing on the insights provided by Johnston's account, as well as the seminal works of Rose-Ackerman and Klitgaard, we have identified the following elements crucial to a re-definition of corruption in a New Zealand context:

First, an emphasis on the admittedly very broad concept of 'public integrity' is vital in today's global environment. The recent Public Integrity project conducted by Transparency International New Zealand stressed the importance of a broad definition. On the other hand, the former Director of New Zealand's Serious Fraud Office, Adam Feely, argued that a clear definition, one that specified concise legal parameters, would be most useful in policing corrupt practices (TINZ AGM, 2010).

Second, legal definitions have long included the following five broad categories, all of which seem indispensable to a current definition: bribery, influence peddling, official fraud/extortion/embezzlement, nepotism, and election tampering. It is difficult to imagine how a redefinition might exist without these categories. However, given the Panama Papers

⁸ Of course, if both of the actors are corrupt, then the model does not function analytically.

scandal, and the apparent lobbying conducted by the Prime Minister's lawyer in favour of retaining a potentially unhealthy and unequal, if legal, foreign-owned trust system, we would turn to Johnston in emphasising the need to add protections against influence marketing. This might well be handled by full conformity to the United Nations Convention against Corruption, to which New Zealand finally became a ratifying member in 2016. By complying with full transparency in the financial matters of major political figures and their families, and minor adjustments in the foreign-owned trust fund legislation, which we understand is already in process, this element would be addressed. All that would remain would be some general legislation that would address the reach of politicians and former politicians and their legal representatives in participating, or influencing the participation in, restricted and elite government sanctioned financial conventions. Trading in influence is not simply unhealthy. It threatens to bankrupt the system.

Third, following from the infamous Saudi sheep deal, the 'facilitation payments' loophole should be closed post haste.

Fourth, flowing from the GCSB intelligence scandal, language strengthening the distance between government departments and their political ministers, the backbone of the 'miraculous' corruption free British civil service from which the New Zealand system derived after 1913, should be enacted at once.

In concluding our attempt to formulate a relevant and vibrant re-definition of corruption in a New Zealand context, we find ourselves drawn to Friedrich's (1972) first characterisation of corruption as the 'decomposition of the body politic through moral decay' (p. 128), a decidedly non-legal definition. New Zealand is well-established as a democracy, with a remarkably egalitarian background and political culture, and a longstanding tradition of equal access to the political system (Lipson 1948). These tried and true institutional

practices underpinned the conduct of politics in New Zealand and contributed to comparatively high levels of social trust. Against this background, the rise of economic and political elitism, even if completely within the bounds of legality, could be expected to represent a threat to, or ‘decomposition of’, if you will, the democratic body politic.

Karl Deutsch, in his pathbreaking work, *the Nerves of Government; Models of Political Communication and Control* (1966), averred that ‘government is communication’. Again, a re-definition of corruption must be sensitive, in this regard, to the capacity for an emergent political elite to reinforce its control over government through an information asymmetry, or a lack of transparency, and reinforce its monopoly over policy-making institutions. This draws attention to the way inequality and unequal political access has enabled an elite to control the national political agenda and how it might govern through ‘communications’. The SIS scandal, a marginally legal ‘miscommunication’ that represented the political undermining of an election opponent while violating the separation of political and ministerial responsibilities, faded rapidly, in part because of the New Public Management emphasis on *accountability* rather than *responsibility* as a deciding factor. Again, this change was a by-product of the introduction of neo-liberal policy settings which have reinforced the emergence of a globalised elite following the economic transformation of the 1980s and 1990s.

Democracy is founded on the overlapping principles of equality and equal access to the political system. In this context, the principals are of necessity the citizenry, and ultimately the political and economic elites become the self-interested agents. When *politics*, generously defined as ‘who gets what, when and how’ (Lasswell 1936), is strategically utilised to further the interests of agents, in such systems it is always at the expense of the principals. *We are thus defining, or re-defining, corruption in a New Zealand context as agent-dominance in determinant political relationships.* There is some background in this

area. Following major cases, including one in Nigeria in the early 1990s, the concept of ‘politically exposed persons’ was conceived as a tool for addressing rampantly corrupt practices. In our redefinition, we would propose to expand the definition of corruption in a New Zealand context to account for the rapid spread of elite influence in politics such that the category of politically exposed persons has now encompassed a political and economic space well beyond the parameters of the past.

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