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Determines Constitutional Law

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PERCEPTIONS OF CORRUPTION AND CAMPAIGN
FINANCE: WHEN PUBLIC OPINION DETERMINES
CONSTITUTIONAL LAW

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This study tests the empirical assumptions about American public opinion found in the Supreme Court's opinions concerning campaign finance reform. The area of campaign finance is a unique one in First Amendment law because the Court has allowed the mere appearance of a problem (in this case, "corruption") to justify the curtailment of recognized First Amendment rights of speech and association. Since Buckley v. Valeo, defendants in campaign finance cases have proffered various types of evidence to support the notion that the public perceives a great deal of corruption produced by the campaign finance system. Most recently, in McConnell v. FEC, in which the Court upheld the McCain-Feingold campaign finance law, both the Department of Justice and the plaintiffs conducted and submitted into evidence public opinion polls measuring the public's perception of corruption. This article examines the data presented in that case, but also examines forty years of survey data of public attitudes toward corruption in government. We argue that trends in public perception of corruption may have little to do with the campaign finance system. The share of the population describing government as corrupt went down even as soft money contributions skyrocketed. Moreover, the survey data suggest that an individual's perception of corruption derives to some extent from that person's (1) position in society (race, income, education level); (2) opinion of the incumbent President and performance of the economy over the previous year; (3) attitudes concerning taxation and "big government"; and (4) propensity to trust other people, in general. Although we conclude

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that, indeed, a large majority of Americans believe that the campaign finance system contributes to corruption in government, the data do not suggest that campaign finance reform will have an effect on these attitudes.

When government lawyers make arguments seeking to justify a state's infringement of a constitutional right, they tend not to say something like "most people think a problem exists, so the state has a compelling interest in allaying their fears." Yet in the context of campaign finance, government lawyers not only make such an argument, but such reasoning and evidence have become almost mandatory as courts have struggled to follow the line of cases from *Buckley v. Valeo*¹ to *McConnell v. FEC*.² Among the unique exceptions to general First Amendment law made in the context of campaign finance regulation, those cases have established that the mere appearance of a problem (in this case, "corruption") is sufficient to justify infringements on recognized First Amendment rights (in this case, the rights of association and expression). Most recently, to support this argument, lawyers have offered and judges have accepted public opinion polls demonstrating that Americans perceive a great deal of corruption arising from large contributions to candidates and political parties or from certain types of expenditures on behalf of those parties and candidates. To date, very little has been written on public perception of corruption in general, or on the data that link such perceptions to problems in the campaign finance system.³ This Article attempts to do both.

We begin in Part I by briefly sketching the evolution of the appearance-of-corruption rationale for campaign finance regulation.

¹ 424 U.S. 1 (1976) (per curiam).

² 540 U.S. 93, 124 S. Ct. 619 (2003).

³ The one exception is the work of David Primo. See generally Jeffrey Milyo, David Primo & Timothy Groseclose, *Corporate PAC Campaign Contributions in Perspective*, 2 BUS. & POL. 75 (2000) (discussing the disproportionate amount of attention paid to corporate PAC campaign contributions relative to their importance in policy-making process); David M. Primo, *Campaign Contributions, the Appearance of Corruption, and Trust in Government*, in INSIDE THE CAMPAIGN FINANCE BATTLE: COURT TESTIMONY ON THE NEW REFORMS 285 (Anthony Corrado et al. eds., 2003) (rebutting claims that there are links among campaign finance law, the appearance of corruption, and trust in government); David M. Primo, *Public Opinion and Campaign Finance*, in THE ENCYCLOPEDIA OF PUBLIC OPINION (forthcoming 2004) (illustrating that campaign finance reform is not a policy priority for most Americans, that the public generally favors reform, and that most Americans believe that reforms will not change politics significantly); David M. Primo, *Public Opinion and Campaign Finance: Reformers Versus Reality*, 7 INDEP. REV. 207 (2002) (reviewing public opinion data which illustrates that while the public generally favors campaign finance reform, it does not consider it a priority, and that trust in government is not linked to campaign spending).

We argue that the Court's invocation of this novel state interest has less to do with the importance of removing unsavory appearances and more to do with the difficulty of proving actual corruption. Reliance on combating the appearance or perception of impropriety serves as a fallback state interest in the likely event that one cannot make the difficult showing that campaign contributions have actually influenced a representative's vote or official conduct.

In Part II we present data used in *McConnell v. FEC* to make the strongest argument in favor of the notion that the public perceives a great deal of corruption arising from campaign contributions. Although we are critical of the way public opinion polls have been deployed in that case, among others, we admit the obvious: the American public believes that contributors exert undue influence over the decisions of members of Congress. We should even concede up front that we too believe that representatives have been influenced by campaign contributions: money buys access and in some cases, may buy votes.

In Part III, we present data not previously employed in campaign finance litigation. We suggest that the share of the population viewing government as corrupt rises and falls with the popularity of the incumbent President: declining during successful wars and periods of economic growth and surging during periods of recession and malaise. We also splice the public opinion data according to several different demographic and political variables to get a sense of which subsections of the American population are more likely to perceive corruption and why. Our analysis reveals that, to a limited extent, those with lower socioeconomic status are more likely to perceive corruption. More significantly, general antigovernment feelings, specific anti-incumbent attitudes, and opinion as to the performance of the economy also seem to correlate strongly with feelings about corruption in government. Finally, for some individuals, belief that government is corrupt is a natural outgrowth of their psychological predisposition to mistrust people in general. Cynics believe people are selfish and corrupt, so it should come as no surprise that they consider government corrupt as well.

In Part IV we present our conclusions. As we note there, this Article has a little something for everyone in the campaign finance debate. For defenders of recent reforms, we validate their gut reaction that the public sees large campaign contributions as unduly influencing the official behavior of members of Congress. Indeed, such perceptions of corruption extend not only to givers of the large con-

tributions banned by the Bipartisan Campaign Reform Act (BCRA) and earlier reforms⁴ but also to contributions made within the law's limits. It seems a fair inference to us that Americans perceive campaign contributions of almost any size as leading to undue influence of the contributor over the recipient. Opponents of the reforms might find solace in the latter finding and in the finding that trends in general attitudes of corruption seem unrelated to anything happening in the campaign finance system (e.g., a rise in contributions or the introduction of a particular reform). For those less interested in campaign finance, we analyze survey data concerning public perceptions of government corruption more generally. We try to explain which subsets of the population perceive the government as crooked or unduly influenced, as well as how and why such perceptions have changed over time. In the end, we discourage the use of any such data in litigation: if courts continue to hold that campaign finance is one of those areas of the law where, in effect, "appearances do matter,"⁵ we hope judges will not base their decisions on a headcount of the American people.

We present in this article an ambitious argument with limited goals. It is ambitious given the scope and time frame of the data we analyze and the case law we canvass. However, our goals are limited in that we are working within the current framework of campaign finance law to suggest that one type of evidence, namely public opinion polls, should not be used to support arguments as to the state's interest in combating the appearance of corruption. We should admit two drawbacks to our approach. First, by operating within the current framework, we fall into the same trap that has snared the current Court and those who have analyzed the campaign finance decisions: namely, the alternating tendencies of the word "corruption" to mean everything and nothing. For purposes of this article we accept the prevailing notion in the case law that corruption, in this context, refers to "undue influence on an officeholder's judgment"⁶ as manifested in "the broader threat from politicians too compliant with the

⁴ Bipartisan Campaign Reform Act of 2002 (BCRA), Pub. L. No. 107-155, 116 Stat. 81 (codified in scattered sections of 2, 18, 28, 36, 47 U.S.C.); *see also* Federal Election Campaign Act of 1971 (FECA), Pub. L. No. 92-225, 86 Stat. 3 (1972) (codified as amended at 2 U.S.C. §§ 431-55 and 18 U.S.C. §§ 591-610 (2000)).

⁵ *Cf. Shaw v. Reno*, 509 U.S. 630, 647 (1993) (ruling that bizarrely shaped congressional districts may trigger strict scrutiny under the Fourteenth Amendment).

⁶ *FEC v. Colo. Republican Fed. Campaign Comm.*, 533 U.S. 431, 441 (2001).

wishes of large contributors.”⁷ While buying into this definition of corruption, we do not mean either to advocate for it or to suggest that corruption should continue to eclipse other potential state interests that could justify campaign finance regulation. Simply put, we recognize that the concept of corruption can mean more and less than the Supreme Court has said it does, and we recognize that other state interests, such as leveling the electoral playing field or allowing officeholders to concentrate on their jobs instead of fundraising, may provide better justifications for campaign finance reform.

Second, we also acknowledge the limits of the data and the methodology we use to test our various hypotheses. Although we believe that public perception of corruption has almost nothing to do with activity actually taking place in the campaign finance system, and we are convinced that campaign finance reform will have no effect on public perception of corruption, we cannot *prove* either argument. We admit that the available long-term survey data, which measures perceptions of “crookedness” and whether “government is run by a few big interests,” do not precisely answer the more relevant constitutional questions concerning the perception of corruption arising from large campaign contributions. Moreover, insofar as the long-term survey data or the sporadic campaign finance-specific polls we analyze suggest an answer to those more relevant questions, we acknowledge that the inability of the campaign finance system to affect such perceptions might be a product of the constraints placed by the jurisprudence itself or by what has heretofore remained politically possible. In other words, we cannot dispel the good-government notion that campaign finance reform would have an effect on such attitudes if only the state were able to begin clamping down on campaign expenditures (a path the case law now closes off) or if the state were able to enact a generous public funding system that might make other contributions less relevant (a path closed off by political realities).

Finally, at several times we note the irony that the share of the population perceiving corruption declined even as soft money skyrocketed and that the share increased after passage of the soft money ban. Although we find that perverse outcome to be quite important, we cannot eliminate the possibilities that fewer people would have viewed government as corrupt had soft money always been banned, or that even more people today might view government as corrupt had

⁷ Nixon v. Shrink Mo. Gov’t PAC, 528 U.S. 377, 389 (2000) (citing Buckley v. Valeo, 424 U.S. 1, 28 (1976) (per curiam)).

Congress not banned soft money. In the end, we hope that this empirical claim, like the others in this article, serves to undercut what we consider to be the prevailing wisdom in the jurisprudence, even if we cannot disprove all alternative theories that might link campaign finance activity with individual or aggregate perceptions of corruption.

I. THE UNIQUE PLACE OF PUBLIC OPINION IN CAMPAIGN FINANCE LAW

It is worth noting at the outset the extraordinary nature of the state's interest in preventing *appearances* of corruption in the context of First Amendment law.⁸ In general, when core First Amendment rights of political speech and association are at stake, courts apply strict scrutiny, requiring a compelling state interest and means that are narrowly tailored to address that interest.⁹ Catering to irrational fears never constitutes a compelling state interest. In fact, in Equal Protection jurisprudence, irrational fear is often listed as one of the few bases insufficient to justify laws to which courts apply the lowest level of scrutiny, aptly termed *rational* basis review.¹⁰

In general, the state has a compelling interest only in addressing problems that are both real and significant.

“[W]hen the Government defends a regulation on speech as a means to . . . prevent anticipated harms, it must do more than simply posit the existence of the disease sought to be cured. . . . It must demonstrate that the recited harms are real, not merely conjectural, and that the regulation will in fact alleviate these harms in a direct and material way.”¹¹

⁸ For a more developed exploration of the source of this argument, see D. Bruce La Pierre, *Campaign Contribution Limits: Pandering to Public Fears About “Big Money” and Protecting Incumbents*, 52 ADMIN. L. REV. 687, 713-14 (2000).

⁹ See *McIntyre v. Ohio Elections Comm’n*, 514 U.S. 334, 347 (1995) (“When a law burdens core political speech, we apply ‘exacting scrutiny’ and we uphold the restriction only if it is narrowly tailored to serve an overriding state interest.”).

¹⁰ See, e.g., *Romer v. Evans*, 517 U.S. 620, 632 (1996) (finding a state constitutional amendment to be motivated by “animus toward the class it affects [and thus] . . . lack[ing] a rational relationship to legitimate state interests”); *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 474 (1985) (striking down a local ordinance that was based on the “vague, undifferentiated fears of ignorant or frightened residents” (internal quotations and citation omitted)).

¹¹ *United States v. Nat’l Treasury Employees Union*, 513 U.S. 454, 475 (1995) (quoting *Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 664 (1994) (Kennedy, J., plurality opinion) (internal quotations omitted)). The Court specifically rejected the application of this standard for the campaign finance context in *Nixon*, 528 U.S. at 377.

Government cannot squelch speech, let alone political speech, based upon a guess as to the speech's bad consequences. This is not to say that the obvious needs to be proven: people need not be trampled before the government outlaws the shouting of "Fire!" in a crowded (non-burning) theater. However, when the scale and nature of the harm is not obvious, evidence as to its existence is usually a necessary predicate to such speech being regulated under constitutional law.

As the case law discussed in this Part illustrates, campaign finance is one area in constitutional law where reality and appearances stand on an equal footing. The prevention of actual *or* apparent corruption exists as a compelling state interest, indeed the only state interest, which can justify regulation of campaign contributions or, with respect to corporate and union treasury money, even independent campaign expenditures.¹² In the first two subparts, we provide the Court's rationale for this exception to the general rule of *reality* in First Amendment law. In the third subpart we attempt to provide what we think are more powerful reasons for making appearances matter in campaign finance.

A. *Buckley v. Valeo's Emphasis on Appearances*

In *Buckley v. Valeo*,¹³ the Supreme Court held that a compelling interest in preventing actual and apparent corruption underlay Congress's passage of the Federal Election Campaign Act Amendments of 1974.¹⁴ The Court found these interests to be significant enough to justify curtailing the rights of expression and association implicated in restrictions on the amount of money a contributor could give to a candidate.¹⁵ Unlike restrictions on individual expenditures, which implicate core political speech and therefore trigger strict scrutiny,

¹² See SAMUEL ISSACHAROFF, PAMELA S. KARLAN & RICHARD H. PILDES, *THE LAW OF DEMOCRACY: LEGAL STRUCTURE OF THE POLITICAL PROCESS* 449-545 (reviewing the Supreme Court caselaw on campaign finance); DANIEL HAYS LOWENSTEIN & RICHARD L. HASEN, *ELECTION LAW: CASES AND MATERIALS* 705-817 (2d. ed. 2001) (same).

¹³ 424 U.S. 1 (1976) (per curiam).

¹⁴ *Id.* at 26.

¹⁵ *Buckley* accorded a lower level of scrutiny to campaign contributions than to campaign expenditures. The former were seen as less protected because they implicated association more than speech. To the degree contributions were speech, they were largely speech by proxy and the expression entailed in the mere giving of a contribution was not magnified by the amount of the contribution. Limits on individuals' expenditures, on the other hand, restrict core political speech and therefore cannot be limited. *Id.* at 51-59.

contribution restrictions are subject to less-than-strict scrutiny¹⁶ (sometimes called “*Buckley* scrutiny”). For the purposes of this Article, however, the significant aspect of the scrutiny the Court brings to bear on campaign contribution restrictions is the need for the state to justify such laws based on their prevention of actual corruption or the appearance of corruption.

Although a precise definition of corruption may be elusive, few would doubt the state’s interest in combating or preventing corruption. The *Buckley* Court analogized large campaign contributions to bribes: “To the extent that large contributions are given to secure a political *quid pro quo* from current and potential office holders, the integrity of our system of representative democracy is undermined.”¹⁷ Corruption by way of campaign contributions is tantamount to corruption by way of payoffs for the recipient’s personal gain. In each case the donor acquires undue influence merely because of the money that changes hands and inures to the candidate’s benefit. True, in the case of bribery the money is for the governing official’s personal benefit, while campaign contributions can only be used for activities relating to the pursuit of office. Nevertheless, the problem such regulations address is the same: to prevent the economically powerful from using their financial position to buy political favors.

Of course, corruption means different things to different people or, for that matter, to different Justices on the Supreme Court. *Buckley* clarified that corruption extends beyond bribery to “undue influence on an officeholder’s judgment”¹⁸ as manifested in “the broader threat from politicians too compliant with the wishes of large contributors.”¹⁹ In other cases, the Court has described corruption more generally as “a subversion of the political process. Elected officials are influenced to act contrary to their obligations of office by the prospect of financial gain to themselves or infusions of money into their campaigns.”²⁰ The *McConnell* Court took up this theme of legitimate and illegitimate influences on an officeholder’s judgment: “Just as troubling to a functioning democracy as classic *quid pro quo* corruption is the danger that

¹⁶ Specifically, such scrutiny translates into the following: burdens on contributions “may be sustained if the State demonstrates a sufficiently important interest [namely, preventing corruption or its appearance] and employs means closely drawn to avoid unnecessary abridgement of associational freedoms.” *Id.* at 25.

¹⁷ *Id.* at 26-27.

¹⁸ *FEC v. Colo. Republican Fed. Campaign Comm.*, 533 U.S. 431, 441 (2001).

¹⁹ *Nixon v. Shrink Mo. Gov’t PAC*, 528 U.S. 377, 388 (2000) (quoting *Buckley*, 424 U.S. at 28).

²⁰ *FEC v. Nat’l Conservative Political Action Comm.*, 470 U.S. 480, 497 (1985).

officeholders will decide issues not on the merits or the desires of their constituencies, but according to the wishes of those who have made large financial contributions valued by the officeholder.”²¹ Finally, the definition of corruption varies across campaign finance contexts. In the special case of corporate expenditures, corruption has expanded to include “the corrosive and distorting effects of immense aggregations of wealth that are accumulated with the help of the corporate form and that have little or no correlation to the public’s support for the corporation’s political ideas.”²²

We have little to add to the many comprehensive discussions and critiques of these varied and often contradictory notions of corruption.²³ Previewing the empirical study we present later, we should simply point out, as others do, that the notions of “undue influence” or “corrosive and distorting effects” assume a baseline as to what constitutes “due” influence or the proper effect one’s actions or contributions should have on a legislator’s judgment. Such a baseline is inherently elusive, and as we describe later, people tend to view their opponents or disfavored candidates as overly influential or unduly influenced, and their friends or favored candidates as having purer motives for their political actions. Moreover, as should be obvious, corruption in common and legal parlance extends to actions beyond those captured by the concepts of undue influence or bribery. It includes conflicts of interest, graft, extortion, nepotism, cronyism, or patronage, and for the person on the street it may encompass incompetent governance, lying, excessive partisanship, or abuse of power.

In any event, courts have considered the state’s interest in preventing the *appearance* of corruption as arising from the desire to create a system in which quid pro quos do not appear to be taking place or big donors do not appear to have undue influence.²⁴ In the *Buckley*

²¹ *McConnell v. FEC*, 124 S. Ct. 619, 666 (2003).

²² *Austin v. Mich. State Chamber of Commerce*, 494 U.S. 652, 660 (1990).

²³ See generally Thomas F. Burke, *The Concept of Corruption in Campaign Finance Law*, 14 CONST. COMMENT. 127 (1997) (discussing both the possibilities and the limits of understanding campaign finance as an issue of corruption); Bruce E. Cain, *Moralism and Realism in Campaign Finance Reform*, 1995 U. CHI. LEGAL F. 111 (critiquing the moralist/idealist approach and linking the “real” interests of campaign finance reform to the principles of a procedural democracy); Samuel Issacharoff & Pamela S. Karlan, *The Hydraulics of Campaign Finance Reform*, 77 TEX. L. REV. 1705, 1719-26 (1999) (outlining the effects of, and proposed solutions to, the problem of perceived corruption in campaign finance).

²⁴ See *Nixon*, 528 U.S. at 389 (summarizing the state’s interest in combating corruption as extending to “improper influence” and “the broader threat from politicians too compliant with the wishes of large contributors”).

Court's words: "Of almost equal concern as the danger of actual *quid pro quo* arrangements is the impact of the appearance of corruption stemming from public awareness of the opportunities for abuse inherent in a regime of large individual financial contributions."²⁵ Thus, the state has an interest in avoiding these ugly appearances because "public awareness" of the mere opportunity for influence could erode public trust in representatives and representative institutions. "Congress could legitimately conclude that the avoidance of the appearance of improper influence 'is also critical . . . if confidence in the system of representative [g]overnment is not to be eroded to a disastrous extent.'"²⁶

The state has an interest in combating the appearance of corruption, then, not because such appearances are inherently bad, but because such appearances result in second-order effects: public cynicism, alienation, lack of trust, and lack of confidence in government. If government seems to be for sale to the highest bidder, the argument goes, the American people become disenchanted with politics, lose faith in their democracy, and believe that their votes do not make a difference. Under this view, the government loses legitimacy when the public perceives campaign contributions as having a greater effect than do constituent preferences or a representative's conscience on a representative's behavior.

B. *Proving the Appearance of Corruption from Buckley to McConnell*

From the time *Buckley* laid down this unique state interest grounded on combating appearances,²⁷ courts have found various ways of demonstrating that such appearances exist. On its face, the appearance of corruption standard does not necessarily require sophisticated empirical studies of any sort, let alone public opinion polls. Either contributions or expenditures at a given amount appear to corrupt (that is, appear to give the contributor or spender too much influence) or they do not. One might be able to answer the question in the abstract even without a factual showing in the traditional sense: does a person who gives *X* dollars to a candidate or party, for example, appear to gain undue influence as a result of the contribution? Nevertheless, courts have relied on the following cate-

²⁵ *Buckley v. Valeo*, 424 U.S. 1, 27 (1976) (per curiam).

²⁶ *Id.* (quoting *United States Civil Serv. Comm'n v. Nat'l Ass'n of Letter Carriers*, 413 U.S. 548, 565 (1973)).

²⁷ *Buckley*, 424 U.S. at 27.

gories of evidence to demonstrate that such appearances exist: newspaper accounts, testimony from politicians, experts and other witnesses, referendum results, and public opinion polls.

Such evidence can support an inference of an appearance of corruption in several ways. If such evidence demonstrates actual corruption, then it ineluctably demonstrates an appearance of corruption. In other words, if the fact finder can discern from the evidence presented that an actual quid pro quo took place, then by definition the contribution appears (at least to the fact-finder, if no one else) to corrupt as well. Second, these different forms of evidence may offer opinions as to what an individual perceives. The government will offer evidence that amounts to a declaration that “the system appears corrupt to me”—where the “me” could be an expert, politician, poll respondent, or editorial board, who feel that certain practices amount to corruption. Finally, such evidence could consist of opinions as to what others think. For example, a pollster or other expert might attest to the public’s view that certain practices appear corrupt, or a newspaper editorial could suggest that the public believes a certain politician is corrupt. Such evidence amounts to a witness’s declaration that, whatever the truth of the matter or whatever her personal opinion, it appears to some people that something fishy is going on.

Newspaper stories and editorials provide a rich source of evidence of appearance of corruption.²⁸ Defendants will submit news clippings that report on campaign finance incidents and seeming abuses, as well as opinion pieces that attest to the appearance of corruption in the current system. The evidence submitted and accepted by the court in *Daggett v. Commission on Governmental Ethics & Election Practices*,²⁹ which upheld a Maine law limiting contributions,³⁰ is both typical and typically vacuous:

²⁸ See, e.g., *Nixon*, 528 U.S. at 391-392 (finding that newspaper accounts of large contributions supported inferences of impropriety); *Daggett v. Comm’n on Governmental Ethics & Election Practices*, 205 F.3d 445, 457 (1st Cir. 2000) (surveying some of the “abundant file of press clippings” which included “both news stories and editorial comment”); *State v. Alaska Civil Liberties Union*, 978 P.2d 597, 618 (Alaska 1999) (citing newspaper articles supporting the assertion that lobbyists’ contributions are “especially susceptible to creating an appearance of corruption”); *State v. Dodd*, 561 So. 2d 263, 266-67 (Fla. 1990) (disagreeing with cited newspaper editorials labeling the trial court’s order a “victory for corruption”).

²⁹ 205 F.3d at 445.

³⁰ *Id.* at 471-72 (upholding ME. REV. STAT. ANN. tit. 21-A, § 1015(1) (West 1999) (limiting contributions from individuals to candidates for state legislature) and tit. 21-A, §§ 1015(2), 1056(1) (West 1999) (limiting contributions from groups and associates to candidates for state legislature)).

One story states that “[r]anking lawmakers and their committees pulled in close to \$400,000 in big gifts from special interests, almost all of which lobby the Legislature.” Paul Carrier, *Contributions Give Special Interests Political ‘Box Seats,’* Maine Sunday Telegram, Jan. 3, 1999, at 1A. One column declared, “There is nothing illegal about tobacco companies bankrolling political campaigns—only suspicious. We can debate the influence of campaign contributions till the cows come home, but one fact remains: The money is given on the expectation that it will influence policy.” Editorial, *Taking the Money*, Maine Times, May 15, 1997. This sentiment has been oft-repeated: “A group with a certain point of view can buy influence during a political campaign with a campaign donation. Politicians routinely deny that influence is being bought; evidence is often to the contrary.” Editorial, *A Stain-Guard for State Government*, Lewiston Sun-J., May 7, 1997. . . .

The fundraising practices of Maine legislators have drawn much criticism. One article reported negatively on a fundraising breakfast that an organization hosted for legislators who served on a committee handling bills affecting the organization, emphasizing the absence of average citizens. See Bill Nemitz, *Dough Rises for Political Pancakes*, Portland Press Herald, Mar. 8, 1996, at 1B. Another questioned the propriety of an industry hosting a fundraiser for a legislator the day before a hearing on an important bill affecting the industry. See Editorial, *Gravel Industry Didn’t Expect Anything for Lord Fund-Raiser?*, Portland Press Herald, Mar. 26, 1996, at 6A. An editorial criticizing such fundraisers commented, “The whiff of too-close connections between influential lawmakers and interests with big money on the line added an acrid aroma to legislating in both the House and the Senate this session.” Nancy Grape, *Let’s Change the Pockets Instead of Pocketing the Change*, Portland Press Herald, Apr. 7, 1996, at 5C.³¹

Editorials and opinion pieces swim alongside news reports of shady deals and influence peddling, with each journalist’s account or editorial board’s outrage used to build a case of apparent corruption. The editorials signify that someone is perceiving corruption: namely, the editorial boards. The journalistic accounts serve to imply, if not directly prove, that campaign contributors often get privileged access and influence.

The Supreme Court gave its blessing to the use of journalistic accounts in *Nixon v. Shrink Missouri Government PAC*.³² There the Court held, quite importantly for our purposes, that the amount of proof required to demonstrate corruption or its appearance will “vary up or down with the novelty and plausibility of the justification raised.”³³ In

³¹ *Id.* at 457.

³² 528 U.S. at 391-92.

³³ *Id.* at 391.

other words, because the notion that campaign contributors have significant, if not “undue,” influence hardly represents new thinking or improbable logic, the evidence required to show such a relationship may only need to pass the laugh test. Among other pieces of evidence discussed later, the defendants in *Nixon* pointed to a newspaper editorial discussing the state treasurer’s receipt of a \$20,000 campaign contribution from the same bank he later decided to use for the state’s official business,³⁴ and to an article discussing large contributions from a brewery and a bank to a candidate for state auditor.³⁵ Although editorials and journalists’ accounts do not persuade every court,³⁶ after *Nixon*, if not before, defenders of campaign finance reform would do well to pad their briefs with such easy-to-find vignettes from the newspapers.

If the newspapers are found wanting, however, defendants can turn to the sponsors of a campaign finance bill or other politicians to submit their own testimony as to the appearance of corruption. This type of evidence appeared to be the most significant for the Supreme Court in *McConnell v. FEC*,³⁷ which quotes extensively from testimony submitted by former and sitting Senators.³⁸ In *Nixon*, the Court credited an affidavit of a state senator who merely said, “large contribu-

³⁴ *Id.* at 393 (citing Editorial, *The Central Issue Is Trust*, ST. LOUIS POST-DISPATCH, Dec. 31, 1993, at 6C).

³⁵ *Id.* (citing Jo Mannies, *Auditor Race May Get Too Noisy to Be Ignored*, ST. LOUIS POST-DISPATCH, Sept. 11, 1994, at 4B).

³⁶ *See, e.g.*, *Ariz. Right to Life Political Action Comm. v. Bayless*, 320 F.3d 1002, 1010 n.8 (9th Cir. 2003) (finding that newspaper articles expressing dismay over the level of negative campaigning in recent elections were insufficient as proof of the appearance of corruption necessary to justify regulation of PACs); *Russell v. Burris*, 146 F.3d 563, 569 (8th Cir. 1998) (finding that the public’s view of corruption was not “objectively reasonable” and pointing to a newspaper article in which one legislator explained that his vote on a tobacco bill was based on substance, not the contributions he received from the tobacco industry); *Democratic Party of the United States v. Nat’l Conservative Political Action Comm.*, 578 F. Supp. 797, 829-30 & n.47 (E.D. Pa. 1983) (applying a “reasonable person standard in evaluating whether press reports can give rise to a belief that corruption exists,” rejecting some stories as hearsay, and ultimately striking down the law as not justified by the corruption interest), *aff’d in part sub nom. FEC v. Nat’l Conservative Political Action Comm.*, 470 U.S. 480 (1985); *State v. Dodd*, 561 So. 2d 263, 266-67 (Fla. 1990) (striking down a ban on contributions during the legislative session despite journalist accounts that showed a “crisis of confidence” in state government).

³⁷ 124 S. Ct. 619 (2003).

³⁸ *See id.* at 663-65 (quoting testimony of Senators Warren Rudman, John McCain, Alan Simpson, and Paul Simon).

tions have ‘the real potential to buy votes.’”³⁹ Of course, such testimony is only one species of testimony by experts, contributors, and others involved in the campaign finance system, who attest to the power, access, and influence contributors enjoy. Indeed, an entire book has been published of the expert reports submitted in *McConnell*.⁴⁰ Political scientists, party officials, campaign consultants, contributors, and politicians (both current and former) submitted affidavits attesting to the undue influence of large contributions on the political process.⁴¹ As with newspaper stories, defendants offer such testimony to support claims of actual corruption, or of the affiant’s or public’s perception of corruption.

Referendum results and public opinion polls serve principally to demonstrate that the public, rather than the witness submitting the results of the poll, sees a corruption problem and supports the given solution. Although the Court in *Nixon* was quick to point out that “majority votes do not, as such, defeat First Amendment protections,” it found the referendum vote on the campaign finance restriction there significant.⁴² According to the Court, “the statewide vote . . . certainly attested to the perception relied upon here: ‘An overwhelming 74 percent of the voters of Missouri determined that contribution limits are necessary to combat corruption and the appearance thereof.’”⁴³ Of course, support for a campaign finance reform proposal does not necessarily mean the public perceives corruption or that the interest behind the law is constitutionally legitimate: some might support reforms because of a feeling that they will equalize the electoral playing field, reduce the total amount of money in politics, give government officials more time to dedicate to official business, or reduce the number of negative attack ads. Nevertheless, widespread public support for reform as expressed through direct democracy, especially if the campaign surrounding the initiative focused on the corrupting

³⁹ *Nixon v. Shrink Mo. Gov’t PAC*, 528 U.S. 377, 393 (2000) (quoting the affidavit of State Senator Wayne Goode, co-chair of the state legislature’s Interim Joint Committee on Campaign Finance Reform at the time the contribution limits in question were enacted).

⁴⁰ See generally INSIDE THE CAMPAIGN FINANCE BATTLE, *supra* note 3 (excerpting expert witness reports utilized in the *McConnell* litigation).

⁴¹ *Id.*

⁴² *Nixon*, 528 U.S. at 394.

⁴³ *Id.* (quoting *Carver v. Nixon*, 882 F. Supp. 901, 905 (W.D. Mo.), *rev’d*, 72 F.3d 633 (8th Cir. 1995)).

potential of contributions, can serve as one indicator of public perception of corruption.⁴⁴

We spend much of the next Part examining public opinion polls concerning corruption and campaign finance, so only a brief discussion is warranted here. Suffice it to say that public opinion polls have become a regular part of the state's offer of proof of the appearance of corruption in campaign finance cases. In *Daggett*, the court noted that 70% of survey respondents "believed that large campaign contributions were a major source of political corruption" and that new limits on contributions would bolster faith in the democratic process.⁴⁵ In *Montana Right to Life Ass'n v. Eddleman*,⁴⁶ the court accepted polls showing that 78% of Montana voters thought money was "synonymous with power" and that 69% of Montanans believed "elected officials g[a]ve special treatment" to large contributors.⁴⁷ In *Homans v. City of Albuquerque*,⁴⁸ the district court, while striking down spending limits as unconstitutional under *Buckley*, accepted a public opinion poll of city voters who believed that federal elections, which had no spending limits, were more susceptible to special interest influence than local elections, which were governed by spending limits.⁴⁹ Furthermore, in the district court decision in *McConnell*, Judge Kollar-Kotelly's opinion provided a near-catalogue of the public opinion data offered by the defendants with respect to the overwhelming majorities who viewed soft money contributors as having undue influence.⁵⁰

Courts have differed as to whether such polls by themselves prove an appearance of corruption⁵¹ or save an otherwise unconstitutional

⁴⁴ See *Daggett v. Comm'n on Governmental Ethics & Election Practices*, 205 F.3d 445, 458 (1st Cir. 2000) ("[W]e take note, as did the Court in *Shrink Missouri PAC*, of the fact that Maine voters approved the referendum imposing reduced contribution limits as indicative of their perception of corruption."); *State v. Alaska Civil Liberties Union*, 978 P.2d 597, 602 (Alaska 1999) (noting that "over 30,000 people signed the petition" for a proposed campaign finance ballot initiative, and crediting a former state House member who personally gathered signatures for the initiative and who testified that a "constant refrain" of citizens was that "the Legislature was owned by special interests").

⁴⁵ *Daggett*, 205 F.3d at 457.

⁴⁶ 343 F.3d 1085 (9th Cir. 2003), *cert. denied*, 2004 U.S. LEXIS 5563 (U.S. Oct. 4, 2004).

⁴⁷ *Id.* at 1093.

⁴⁸ 217 F. Supp. 2d 1197 (D.N.M. 2002), *cert. denied*, 366 F.3d 900 (10th Cir. 2004).

⁴⁹ *Id.* at 1201.

⁵⁰ *McConnell v. FEC*, 251 F. Supp. 2d 176, 512-15 (D.D.C.) (opinion of Kollar-Kotelly, J.), *aff'd in part*, 124 S. Ct. 619 (2003).

⁵¹ Some courts will delve into the survey design and results to determine whether they actually demonstrate a public perception of corruption. See, e.g., *Suster v. Mar-*

law.⁵² However, such polls attempt to provide concrete evidence as to whether the Supreme Court's concerns in *Buckley* regarding the erosion of public confidence in government have come to fruition. The other types of evidence entail an observation by elites (judges, journalists, politicians, experts) as to whether the campaign finance regime appears corrupt. The public opinion polls likewise attest to how the system appears, but they also have the potential to add information as to how many people perceive corruption and whether second order effects of this apparent corruption (widespread alienation, lack of confidence, distrust, etc.) have emerged. With that said, one point of this Article is to make the argument that such polls do not actually tap into the second order effects that form the justification for the Supreme Court's inclusion of "appearances" as a unique state interest here. Moreover, we argue that an individual's perception of corruption often has little to do with events in the campaign finance system.

C. *What Is the Emphasis on Appearances Really About?*

Even assuming few measurable deleterious consequences result from negative public opinion about government, most would prefer a political state of affairs in which citizens do not consider their government corrupt. Nor do we doubt the importance—in an abstract,

shall, 149 F.3d 523, 532 (6th Cir. 1998) (rejecting relevance of poll showing that 56% of respondents believed spending limits in judicial elections would be helpful in limiting the influence of contributions); *Republican Party of Minn. v. Pauly*, 63 F. Supp. 2d 1008, 1017-18 (D. Minn. 1999) (rejecting survey concerning party expenditures and perception of corruption as self-serving and flawed); *Democratic Party of the United States v. Nat'l Conservative Political Action Comm.*, 578 F. Supp. 797, 825-827 (E.D. Pa. 1983) (picking apart a poll that attempted to prove that PAC spending gave rise to an appearance of corruption), *aff'd in part sub nom. FEC v. Nat'l Conservative Political Action Comm.*, 470 U.S. 480 (1985).

⁵² In *Kruse v. City of Cincinnati*, 142 F.3d 907, 911, 918 (6th Cir. 1998), the court struck down an expenditure limit despite the existence of a poll which found that an overwhelming majority of residents believe that large contributors wield undue influence on the political system as a whole; that ordinary voters are unable to participate on equal footing in the process; that wealthy candidates unfairly drown out candidates with fewer resources; that the high costs of elections discourage qualified individuals from running for office, which deprives voters of a full choice of candidates; and that overall, money is undermining the fairness and integrity of the political system and causing them to lose faith in the democratic process.

See also *Mont. Chamber of Commerce v. Argenbright*, 28 F. Supp. 2d 593, 598 (D. Mont. 1998) (mentioning a poll showing displeasure among Montana citizens due to the "perception of excessive corporate spending during ballot issue campaigns," but finding a segregated fund requirement for corporate initiative spending unconstitutional).

philosophical, or even practical sense—of public opinion about whether government is being properly influenced. However, the unique position of “appearance of corruption” in the campaign finance jurisprudence has more to do with the difficulties of proving actual corruption, we think, than the importance of the state interest in combating such negative perceptions.

Were the Supreme Court to exorcise the “appearance of corruption” state interest from the campaign finance jurisprudence, few campaign finance regulations would pass constitutional scrutiny. Antireformists might greet this development with cheer, but without the fallback on appearances and perceptions, defenders of campaign finance reforms would be left with the difficult job of proving that (1) campaign contributions have actually corrupted representatives, and (2) antibribery laws are insufficient to combat actual corruption. The existence of the fallback state interest of preventing appearances allows judges to say that, while they think examples of actual corruption justify the given reform, the existence of widespread appearances of corruption removes all doubt.

Proving actual corruption is very difficult. Few systematic empirical studies of campaign finance have arrived at any firm conclusions demonstrating that campaign finance contributions or expenditures lead to concrete policy changes.⁵³ This difficult empirical problem arises, in part, from the nature of the counterfactual that needs to be proven: to demonstrate that campaign finance contributions affect policy outcomes, one must know what the policy outcomes would have

⁵³ See DAVID B. MAGLEBY & CANDICE J. NELSON, *THE MONEY CHASE: CONGRESSIONAL CAMPAIGN FINANCE REFORM* 78 (1990) (observing that “[w]hen studies have found a relationship between campaign contributions and congressional voting, the issues under deliberation tended to be low-visibility, nonpartisan ones”); FRANK J. SORAUF, *INSIDE CAMPAIGN FINANCE: MYTHS AND REALITIES* 169 (1992) (describing the finding that money buys a legislator’s time, although it does not necessarily buy her vote); Donald Green, *The Need for Federal Regulation of State Party Activity*, in *INSIDE THE CAMPAIGN FINANCE BATTLE*, *supra* note 3, at 97, 105 (acknowledging the lack of direct evidence that campaign contributions affect legislators); Richard L. Hall & Frank W. Wayman, *Buying Time: Moneyed Interests and the Mobilization of Bias in Congressional Committees*, 84 *AM. POL. SCI. REV.* 797, 798 (1990) (“[T]he scientific evidence that political money matters in legislative decision making is surprisingly weak.”); Bradley A. Smith, *Faulty Assumptions and Undemocratic Consequences of Campaign Finance Reform*, 105 *YALE L.J.* 1049, 1068 (1996) (explaining that “a substantial majority of those who have studied voting patterns on a systematic basis agree that campaign contributions affect very few votes in the legislature”); Bradley A. Smith, *Money Talks: Speech, Corruption, Equality, and Campaign Finance*, 86 *GEO. L.J.* 45, 58 (1997) (arguing that, although anecdotal evidence and common sense support a connection between contributions and corruption, it is not supported by any systematic studies of voting records).

been in the absence of a given contribution. In other words, representatives can always say that they would have voted for a bill anyway, even if supporters of the bill had not contributed large sums to their campaigns. Moreover, contributors can always say that they direct their money toward the election of politicians who already support their causes, and not toward politicians whose minds they hope to change. Very few smoking guns exist in the campaign finance world—that is, examples where a politician publicly declares a position at time t , receives a contribution at time $t + 1$, and then changes his position at time $t + 2$.

Take, for example, the Marc Rich pardon scandal.⁵⁴ No one doubts that Marc Rich's ex-wife gave considerable amounts of money to the Democratic Party and the election campaigns of President Clinton.⁵⁵ However, how can one disprove the argument made by President Clinton that the pardon was based on the merits of the case rather than the influence of the campaign contributions?⁵⁶ Of course, the question could be settled by discovery of a letter from Denise Rich to President Clinton that said: "I will give X number of dollars to your campaign and the Democratic Party if you grant a pardon to my ex-husband." But such letters are almost never written and even more rarely discovered.⁵⁷ In any event, such quid pro quos are tantamount to bribes and prohibited by the criminal law irrespective of the campaign finance nature of the gift.⁵⁸

Examples of such activity present an appearance of impropriety, however, even if they do not dispositively prove actual corruption.

⁵⁴ This scandal is reported in Alison Leigh Cowan, *Rich Pardon Reportedly Followed Pledge to Charity of Former Wife*, N.Y. TIMES, May 1, 2001, at A19; David Johnston & Marc Lacey, *Aides Say Clinton Ignored Pardon Advice*, N.Y. TIMES, Mar. 2, 2001, at A1.

⁵⁵ See Johnston & Lacey, *supra* note 54, at A19 (reporting President Clinton's statement that his decision to pardon Rich was on the merits and not influenced by contributions).

⁵⁶ See *id.* (mentioning Ms. Rich's \$450,000 donation to the Clinton presidential library).

⁵⁷ In *Montana Right to Life Ass'n v. Eddleman*, 343 F.3d 1085, 1093 (9th Cir. 2003), the court cited a letter from one state senator to his colleagues stating the following: Please destroy this letter after reading. Why? Because the Life Underwriters Association in Montana is one of the larger Political Action Committees in the state, and I don't want the demos to know about it! In the last election they gave \$8000 to state candidates. . . . Of this \$8,000—Republicans got \$7000—you probably got something from them. This bill is important to the underwriters and I have been able to keep the contributions coming our way. In 1983, the PAC will be \$15,000. Let's keep it in our camp.

⁵⁸ See 18 U.S.C. § 201 (2003) (criminalizing the act of promising anything of value to a public official in order to influence any official act).

The reasonable observer would think that official decisions in line with the desires of campaign contributors arise because of, rather than despite, their campaign contributions. Emphasizing appearances does not implicitly exonerate the recipient or the “system” from a charge of actual corruption or undue influence. Rather, such an emphasis admits the difficulty of proof and relies on an assumed consensus that certain correlated events are often causally related. The challenge in proving appearances, then, should be to substantiate the *likely* effects of an expenditure or contribution on an officeholder’s judgment. That mode of analysis is a familiar one for judges, who often must decide whether a given relationship presents an appearance of impropriety or gives rise to a conflict of interest.⁵⁹

To set forth our argument succinctly, we take the position that the appearance-of-corruption inquiry (if it is to be retained as a relevant constitutional inquiry) should shift away from an analysis of popular perceptions and toward an investigation of whether the regulated contribution or expenditure is likely to present undue influence on an officeholder’s judgment or behavior. This move derives both from our assessment that the appearance inquiry serves principally as a means to get around the difficult evidentiary problems posed by proving actual corruption, and from a conviction suggested in the next two sections that mass perceptions of corruption derive principally from attitudes unrelated to the problem of undue influence central to the case law. While urging this shift in emphasis, we nevertheless must admit that the state has a compelling interest in ensuring that campaign finance regulations or any set of laws prevent erosion of confidence in the system of representative government. As pointed out earlier, we too would prefer a state of affairs in which more Americans trust their government rather than one in which most do not. However, we believe the available evidence casts doubt both on the notion that actions in the campaign finance system are related to that erosion of confidence and on the argument that various recent reforms are properly tailored toward restoring that confidence.

⁵⁹ See generally ANDREW STARK, *CONFLICT OF INTEREST IN AMERICAN PUBLIC LIFE* (2000) (cataloguing the many instances in American law where courts engage in a conflict-of-interest inquiry).

II. THE LINK BETWEEN CAMPAIGN FINANCE AND CORRUPTION IN THE PUBLIC MIND

Although this Article, in large part, criticizes the use of polls in litigation to prove public perception of corruption, one must admit that such perceptions are widespread and that most Americans view campaign contributions and expenditures as corrupting. Indeed, as the data presented in this Part suggest, Americans believe that campaign contributions, at any level, have too much influence over legislators, and a large majority of survey respondents will support virtually any campaign finance reform proposal suggested to them. To support these contentions, we present the data from *McConnell v. FEC*⁶⁰ here because the polls conducted for that case use the most recent data, but comparable polls in other campaign finance cases would provide nearly identical results.

We should note at the outset the disjuncture between public opinion and the jurisprudence on campaign finance. One should not be surprised to learn that the nuances in the case law escape most respondents to public opinion surveys concerning campaign finance.⁶¹ Unlike the Supreme Court, for example, the public does not make a distinction between campaign expenditures and contributions: both are seen as corrupting or leading to undue influence. Nor can one find in public opinion the Court's fine distinctions among various political actors with respect to their potential for corruption. Although public attitudes toward corporations are routinely less favorable than toward other actors in the political system, the public does not distinguish between contributions from corporate treasuries, for example, and those from corporate PACs. Indeed, few respondents probably know exactly what a PAC is. The low salience that campaign finance reform has in most Americans' political calculations and most Americans' lack of understanding about this complicated topic necessarily create challenges in tapping opinions on these issues. In one poll that asked voters five questions to tap their knowledge of campaign finance law, less than 1% answered all five questions correctly and 88% an-

⁶⁰ 124 S. Ct. 619 (2003).

⁶¹ See Declaration of Q. Whitfield Ayres at paras. 8-9, *McConnell v. FEC*, 251 F. Supp. 2d 176 (D.D.C. 2003) (No. 02-874) ("Substantial evidence supports the contention that public opinion about campaign finance regulations is shallow and poorly informed."); Rebuttal Declaration of Q. Whitfield Ayres at para. 4a, *McConnell v. FEC*, 251 F. Supp. 2d 176 (D.D.C. 2003) (No. 02-874) ("[T]he public has no clue about the distinction between 'soft' and 'hard' money contributions.").

swered two or fewer of the questions correctly.⁶² And while polls repeatedly show a large number of people are dissatisfied with the political system, concerns about campaign finance are rarely voiced (without prompting) as the source of that dissatisfaction.⁶³

Whereas public opinion may not reflect the Court's nuanced treatment of certain campaign finance questions, the sources of confusion in the case law cause similar confusion when placed in a public opinion survey. Thus, a word like "corruption," which has bedeviled the various Justices who have struggled with *Buckley* and its progeny, may also evoke different definitions and attitudes from survey respondents who are confronted with it. Therefore, surveys attempt to measure "corruption" or "undue influence" in different ways—sometimes using the buzzwords familiar to the case law, and other times trying to get at similar or related concepts such as political efficacy or trust in government.

Despite these shortcomings and qualifications, however, it is clear from the available survey data that a large majority of Americans believes that campaign contributors exert substantial influence over office holders. As part of its defense of BCRA in *McConnell v. FEC*, the Department of Justice submitted an expert report from Robert Shapiro, a professor of political science at Columbia University, who canvassed hundreds of polls from news organizations, polling firms, and foundations to present findings concerning public opinion related to corruption and campaign finance reform.⁶⁴ The Department of Justice also commissioned its own survey from two polling firms, The Mellman Group, Inc. and Wirthlin Worldwide, Inc., which conducted

⁶² Princeton Survey Research Associates, Money And Politics Survey (Apr. 1-24, 1997), at questions 22-24, available at <http://www.opensecrets.org/pubs/survey/s3.htm> (last accessed Oct. 13, 2004).

⁶³ For example, one survey that found that 57% of Americans are dissatisfied with "the way this country's political system is working" found that only 9% of those who felt dissatisfied said it was because of "'Sleaze'/'Politics' of the system itself/tendency towards corruption" and only 5% said it was because "special interest groups are running things." *Id.* at questions 2, 3B.

⁶⁴ See generally Robert Shapiro, Public Opinion & Campaign Finance (Sept. 18, 2002) (analyzing a series of opinion polls and surveys) (unpublished expert report) (on file with University of Pennsylvania Law Review). Many of the polls referenced in the footnotes to this Article come from the wonderful compilation provided in the Appendix to Shapiro's report.

a telephone poll of 1300 Americans.⁶⁵ The pollsters asked a variety of questions concerning the influence of donations to political parties.⁶⁶

The first question, and perhaps the point of departure for the Mellman-Wirthlin poll, was: “How much impact do you think big contributions to political parties have on decisions made by the federal government in Washington, D.C. . . . a great deal of impact, some, not too much, or none at all, or don’t you have an opinion on this?” The responses were as follows:

55% Great deal;
23% Some;
5% Not too much;
1% None at all;
16% Don’t have an opinion.⁶⁷

The survey evoked similar patterns of response for several questions attempting to tap the perceptions of campaign contributors’ influence. For example, 68% of respondents agreed that “big contributors to political parties sometimes block decisions by the federal government . . . that could improve people’s everyday lives.”⁶⁸ And 84% agreed (51% “strongly” and 33% “somewhat”) that “Members of Congress will be more likely to listen to those who give money to their political party in response to solicitations for large donations.”⁶⁹

The survey also included a battery of questions specifically tailored to the provisions of the Bipartisan Campaign Reform Act.⁷⁰ Interviewers asked: “If an individual, issue group, corporation, or labor union donated 50,000 dollars or more to the political party of a Member of Congress, how likely would a Member of Congress be to give the contributor’s opinion special consideration because of the contribution . . . ?” The responses were:

⁶⁵ Mark Mellman & Richard Wirthlin, Research Findings of a Telephone Study Among 1300 Adult Americans (Sept. 23, 2002) (unpublished survey results) (on file with University of Pennsylvania Law Review).

⁶⁶ *Id.* at 6-38.

⁶⁷ *Id.* at 6.

⁶⁸ *Id.* at 9.

⁶⁹ *Id.* at 8.

⁷⁰ Bipartisan Campaign Reform Act of 2002 (BCRA), Pub. L. No. 107-155, 116 Stat. 81 (codified in scattered sections of 2, 18, 28, 36, 47 U.S.C.).

41% Very likely;
41% Somewhat likely;
6% Somewhat unlikely;
3% Very unlikely.⁷¹

The survey garnered similar responses when the question was rephrased to substitute “paid for 50,000 dollars or more worth of *political ads* on the radio or TV that benefited a Member of Congress” in place of “donated 50,000 dollars or more to the political party of a Member of Congress.”⁷²

To rebut these findings, the plaintiffs challenging the constitutionality of BCRA commissioned their own study from Q. Whitfield Ayres.⁷³ Ayres did not dispute the results of the Mellman-Wirthlin survey per se—that is, he did not disagree that many Americans believe “big” contributors to political parties gain influence over legislators. Rather, he proved that the same patterns of response arose when one substituted the hard money limits allowed by BCRA for the soft money limits prohibited by them. In other words, he found that an overwhelming majority of Americans considered a \$25,000 individual contribution to a party (allowed by BCRA) to be a “big” contribution that could influence the vote or opinions of a member of Congress.⁷⁴ These results supported the conclusion, he argued, that BCRA “will not reduce the appearance of corruption in American politics.”⁷⁵

There are some important distinctions between the surveys submitted by the opposing sides in *McConnell v. FEC*. For example, the plaintiffs’ survey only asked about contributions by individuals and did not include questions about corporations and unions.⁷⁶ The Mellman and Wirthlin study, as mentioned above, combined individuals, issue groups, corporations and unions for several questions.⁷⁷ However, the point of the plaintiffs’ rebuttal survey was to demonstrate that the

⁷¹ Mellman & Wirthlin, *supra* note 65, at 9.

⁷² *Id.* at 10 (emphasis added).

⁷³ See generally Rebuttal Declaration of Q. Whitfield Ayres, *McConnell v. FEC*, 251 F. Supp. 2d 176 (D.D.C. 2003) (No. 02-874) (responding to the Wirthlin-Mellman survey by conducting a similar survey using the same methodology) (on file with University of Pennsylvania Law Review).

⁷⁴ *Id.* at para. (3)(e)(iii).

⁷⁵ *Id.* at para. (3)(f).

⁷⁶ *Id.* at para. (3)(e)(iii).

⁷⁷ Mellman & Wirthlin, *supra* note 65, at 9-11, 14-16, 19.

same proportion of Americans consider activity BCRA permits as posing the same corruption threat as activity BCRA prohibits. So while it may be the case that a large majority of Americans view the current system as fostering corruption, they will continue to do so even in the world of the new reforms.

To reframe the controversy between the *McConnell* experts in the language of constitutional law: the state may have demonstrated the existence of a compelling interest, but it failed to show that the chosen means were appropriately tailored to address that interest. For purposes of adjudicating the constitutionality of BCRA, though, these arguments may pass each other like ships in the night. The Court has emphasized that campaign reforms need not be “scalpel-like” in their precision when they seek to further the state interests in combating corruption or its appearance.⁷⁸ Perhaps Americans believe that contributions both beyond and within the limits of BCRA threaten to corrupt parties and candidates. The failure of Congress to set lower limits, however, can hardly be used to condemn the rationale justifying the implementation of a less restrictive law. Indeed, by this logic, Congress could not ban billion-dollar contributions so long as the public was equally disturbed by million-dollar contributions.

Below the surface of this debate concerning BCRA’s underinclusiveness lurked a more serious criticism as to the nature of mass opinion concerning the influence of campaign contributors. The problem with respect to perceptions of corruption may not be one of degree—that Congress has failed to set limits low enough to address people’s corruption fears. Rather, it might arise from a difference in kind—that people register objections to campaign contributions, but their underlying concern is that some groups/institutions/individuals simply have more influence than others do. Additional survey evidence sheds light on this quandary. Between 1998 and 2002, a series of Gallup polls asked the following question seeking to tap people’s resignation to special interest influence:

Some people say major changes to the laws governing campaign finance could succeed in reducing the power of special interests in Washington. Other people say no matter what new laws are passed, special interests

⁷⁸ See *Nixon v. Shrink Missouri Gov’t PAC*, 528 U.S. 377, 391-392 (2000) (finding that the state had sufficient evidence to justify the limitation imposed).

will always find a way to maintain their power in Washington. Which comes closer to your point of view?⁷⁹

The results appear in Table A.

Table A: Results from Gallup Poll Asking Whether Campaign Finance Reform Could Succeed in Reducing Special Interest Influence

Date of Poll	Major changes could succeed in reducing power	Special interests will maintain power	Neither/Other	No opinion
Feb. 8-10, 2002	28%	67%	1%	4%
Oct. 6-9, 2000	28%	64%	2%	6%
Mar. 20-22, 1998	31%	63%	2%	4%

About two-thirds of Americans consistently believe that “special interests” will maintain their power regardless of campaign finance regulation.⁸⁰ Of course, this resignation to the influence of special interests, even in the face of more restrictive campaign finance laws, does not dampen enthusiasm for reform (indeed, any reform). Between 65% and 75% of Americans consistently favor new laws governing campaign finance, with 40% saying such laws would be good for democracy, 36% saying they would not make much difference, and 13% saying they would be bad for democracy.⁸¹

A mixed picture thus emerges from the campaign finance-specific polls that have been conducted. No one can dispute that the public perceives a great deal of corruption and undue influence arising from campaign contributions. Large majorities of Americans view cam-

⁷⁹ *USA Today/CNN/Gallup Poll Results*, USA TODAY, Feb. 11, 2002, at question 14, available at <http://www.usatoday.com/news/2002-02-11-poll.htm> (last accessed Oct. 13, 2004).

⁸⁰ Polls that do not include the option of “special interests will maintain their power” reveal substantial majorities that say campaign finance reform will be effective at reducing special interest influence. For example, the ABC News-Washington Post Poll asked: “Do you think stricter campaign finance laws would reduce the influence of money in politics, or not? [If yes, ask:] Would it reduce it a lot or a just somewhat?” Shapiro, *supra* note 64, at app. E, tbl.1.41. About 25% of respondents said such laws would reduce it a lot, 38% said somewhat, 33% said it would not reduce influence, and 4% had no opinion. *Id.*

⁸¹ Gallup Org., *Campaign Finance* (2004), at <http://www.gallup.com/content/default.aspx?ci=1585> (last accessed Oct. 13, 2004).

paigned contributors as exercising undue influence over public policy and the decision making of officeholders. They favor all forms of campaign finance reform and believe such reforms would make government work better. However, equally large majorities believe that contributions within the limits of BCRA will give their contributors undue influence, and that special interests will maintain their power regardless of new restrictions on campaign finance. Thus, for a court adjudicating a challenge to a campaign finance regulation, ample evidence exists to suggest that contributions and independent expenditures on behalf of a candidate appear corrupt in the mind of a substantial majority of Americans. In other words, if we take the state interest requirement of *Buckley* to mean that the state need only prove that an appearance of corruption exists and the population perceives it, then polls that indicate such an interest would probably be satisfied for almost any restriction on contributions or expenditures.

The strongest counterargument to the reform position is not that the public fails to perceive corruption, nor is it that the state has no interest in combating those appearances. Rather, opponents of reform can point to evidence suggesting that these perceptions of undue influence are largely independent of anything occurring in the campaign finance system. Thus, campaign finance reform, as it has been envisioned to date, is unlikely to prevent erosion of “confidence in the system of representative Government.”⁸² This argument undermines reformist claims of solvency or amelioration—in other words, “tailoring” of the means to effectuate the state interest. The question still remains, though, if perceptions of corruption are detached from events and regulations in the campaign finance system, from where do these perceptions arise? Why do some people view government officials as corrupt, and how can we explain these shifts in aggregate public opinion over time?

III. EXPLAINING AND MEASURING PUBLIC ATTITUDES OF CORRUPTION

In public opinion, the notion of corruption is at least as multifaceted or open to different interpretations as it is for judges who hear campaign finance cases. As a result, measuring feelings of corruption may be as rich (or pointless) an enterprise as measuring people’s “happiness,” “optimism” or “satisfaction.” Nevertheless, while recognizing the difficulties in defining corruption and measuring opinion

⁸² *Buckley v. Valeo*, 424 U.S. 1, 27 (1976) (per curiam) (quoting *United States Civil Serv. Comm’n v. Nat’l Ass’n of Letter Carriers*, 413 U.S. 548, 565 (1973)).

concerning it, we should not thereby assume that nothing meaningful can be said about why some people view government as corrupt and why larger shares of the population hold such a view at particular times. Interesting and sometimes unexpected patterns emerge—patterns that may be relevant to the campaign finance debate in the event courts want to consider seriously whether certain reforms will have measurable effects on aggregate public opinion about government.

We need to reiterate the caveats that began this Article, however. Nothing in the foregoing analysis casts doubt on the basic finding that Americans view the campaign finance system as corrupt, or on the legitimacy of the state's interest in trying to address such perceptions. Nor can the data we analyze support the inference we had hoped to make: namely, that campaign finance reform has little effect on either individual perceptions of government corruption or shifts in the share of the population that perceive such corruption. We are also hamstrung by the questions that are included in surveys we analyze, which do not include questions concerning campaign finance, and we recognize that our model, such as it is, does not explain why many Americans view government as corrupt. Nevertheless, we found several unexpected and interesting relationships between certain variables and perceptions of corruption. Those variables form a pattern that suggests support for several alternative hypotheses that we think cut away at the notions that activity in the campaign finance system is a major contributor to Americans' perception of government corruption, or that campaign finance reform will affect such perceptions.

A. *How to Measure Attitudes of Corruption*

The National Election Study (NES) has included three questions in its survey that come close to tapping public opinion about corruption in government.⁸³ None of these questions actually use the word corruption, but this difference in wording may allow for more specific conclusions as to trends in particular attitudes or components of the vague concept of corruption. These three questions attempt to measure the public's trust in government, the "crookedness" of people running the government, and the influence of "big" interests:

⁸³ See, e.g., Nat'l Election Studies, *NES 2002 Post Election Survey Questions* (2002), at ftp://ftp.nes.isr.umich.edu/ftp/nes/study/pages/2002prepost/2002prepost_qnaire_post.htm (surveying approximately one thousand Americans on their political attitudes).

Dis trust: People have different ideas about the government in Washington. These ideas don't refer to Democrats or Republicans in particular, but just to the government in general. We want to see how you feel about these ideas. . . . How much of the time do you think you can trust the government in Washington to do what is right—just about always, most of the time, or only some of the time?⁸⁴

Crooked: Do you think that quite a few of the people running the government are crooked, not very many are, or do you think hardly any of them are crooked?⁸⁵

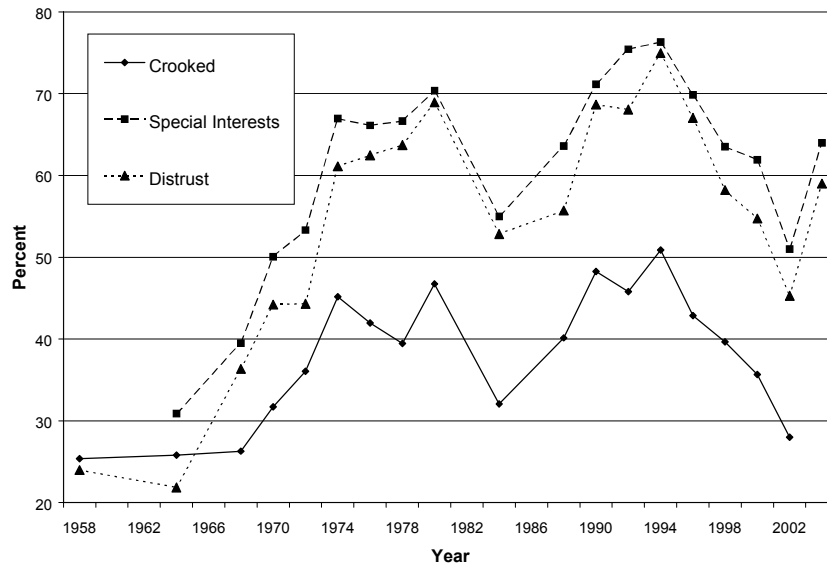
Special Interests: Would you say the government is pretty much run by a few big interests looking out for themselves or that it is run for the benefit of all the people?⁸⁶

Figure 1 depicts the trends in responses to these questions since 1958. For the “crooked” question, the line represents those respondents who say “quite a few of the people running the government are crooked.” For the “dis trust” question, the line represents the percent of respondents who say they can trust government “only some of the time.” For the “special interests” question, the line represents those respondents who say “government is pretty much run by a few big interests.” Although the questions may attempt to tap different attitudes, the lines rise and fall together, for the most part. As more people distrust government, more people also view government officials as “crooked” and more people see government as run by a “few big interests.” To be sure, levels of distrust of government “to do what is right” may reflect a lack of confidence in government efficiency or ability to solve any problems. And beliefs in the crookedness of government officials may have more to do with government lying or Watergate-style nefariousness than with bribery or undue influence by particular groups. And respondents who see government as “pretty much run by a few big interests” may hold that belief because the alternative—“for the benefit of all”—seems unrealistic and utopian.

⁸⁴ *Id.* at questions Q3, Q3a (emphasis omitted).

⁸⁵ *Id.* at question Q6 (emphasis omitted).

⁸⁶ *Id.* at question Q5 (emphasis omitted).

Figure 1: Trends in Public Opinion of Government (1958-2002)⁸⁷

With these caveats in mind, we can see, nevertheless, that public opinion, as measured by these questions, has shifted significantly over time and certain historical events or trends appear to accompany these shifts. The percent of Americans who distrust government most of the time has varied from a low of about 22% in 1964 to a high of 75% in 1994. The percent who see government as run by a “few big interests” has varied from a low of 31% in 1964 to 76% in 1994. The percent of Americans who think “quite a few people running the government are crooked” has varied from a low of 25% in 1958 to a high of 51% in 1994. All three measures of public attitudes of corruption rose in the late sixties and early seventies, dropped between 1980 and 1984, rose relatively steadily between 1984 and 1994, and have been dropping ever since.

B. Explaining Trends in Public Perception of Corruption

Some seat-of-the-pants explanations for these trends jump out from the data.⁸⁸ With the Vietnam War, the struggle for civil rights,

⁸⁷ This data is compiled from Nat'l Election Studies, NES TIME-SERIES DATA (2002) [hereinafter NES DATASET], available at <http://www.umich.edu/~nes/studyres/download/nesdatacenter.htm> (last accessed Oct. 13, 2004).

⁸⁸ The most recent Pew Center study of trust in government makes many of these arguments. See *How Americans View Government: Deconstructing Distrust*, Pew Research

and the general tumult of the late sixties, it is unsurprising to see a jump in the share of people with low regard for government according to these measures. The steep climb at the time of Watergate is dramatic but also unsurprising. Afterwards, the trend line plateaus or even recedes a bit during the early years of the Carter administration, but with stagflation and the Iran hostage crisis in 1980 came a rise in the lines to the highest point until that time. The economic recovery during the first Reagan years correlated with a decline in feelings of distrust, crookedness, and undue special interest influence, but such feelings began to ascend once again during the Iran-Contra affair and through the first two years of the first Bush administration. Feelings of distrust and crookedness drop briefly during the time of the first Iraq war, but they reach their highest point two years into the Clinton administration, at the time of the 1994 Republican Revolution. However, the share of the population registering these antigovernment feelings had been dropping steadily since 1994—that is, until Congress passed BCRA. In the first polls taken since BCRA’s passage the share of the population that distrusts government climbed thirteen points to 59% and the share of the population that views government as run by a “few big interests” rose thirteen points to 64%.⁸⁹

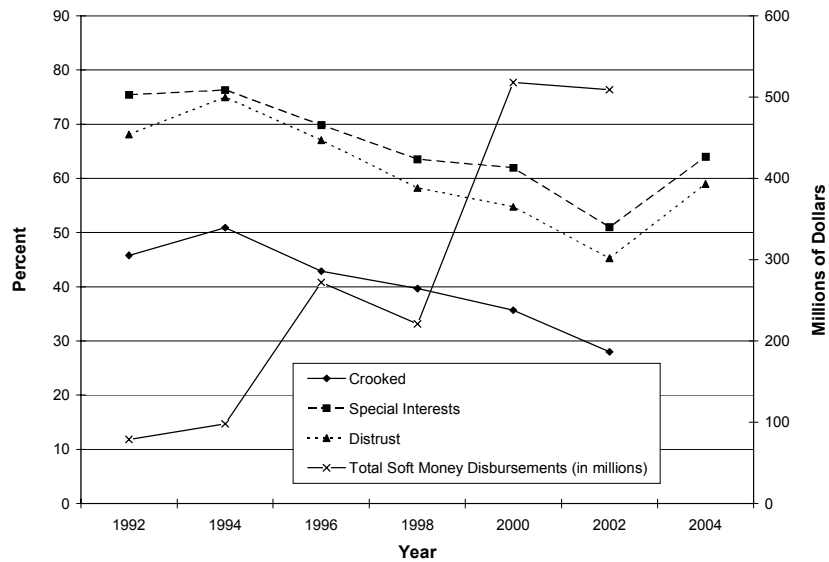
As Figure 2 points out, the steady decline until 2002 occurred despite the explosion of soft money over the same period. The share of the population registering feelings of distrust declined thirty points, from 77% in 1994 to 46% in 2002, the share registering feelings of special interest influence dropped from 76% in 1994 to 51% in 2002, and the share believing quite a few government officials were crooked declined from 51% in 1994 to 28% in 2002. Over the same period, soft money contributions went up fivefold—from about \$100 million to over \$500 million. Ironically, the elimination of soft money has been followed by a marked increase in the two available measures of opinions concerning government corruption. The share of the population that distrusts government and the share of the population that thinks government is run by a “few big interests” has climbed by thirteen percentage points between 2002 and 2004. Of course, we would

Ctr. for the People & the Press (Mar. 10, 1998) (concluding that distrust of government is connected to how people feel about the country generally), *available at* <http://people-press.org/reports/display.php3?ReportID=95> (last accessed Oct. 13, 2004).

⁸⁹ *Views of the Parties*, CBS News/N.Y. Times Poll (July 11-15, 2004), at questions q30-q31, *available at* http://www.cbsnews.com/htdocs/CBSNews_polls/parties_views.pdf (last accessed Oct. 13, 2004).

not be so bold as to suggest that passage of BCRA *caused* an increase in perceptions of corruption. (Indeed, we suspect the Iraq war and a sluggish economy were the principal contributors to that trend.) However, we cannot help noting that the trends in these measures are exactly the opposite of what reformers might expect.⁹⁰

Figure 2: The Rise of Soft Money and the Drop in Perception of Corruption (1992-2002)⁹¹



C. Does Corruption Lie in the Eye of the Beholder?: The Demographic, Political and Attitudinal Correlates to Perception of Corruption

Arguments as to why aggregate opinion has shifted over time do not necessarily help explain why some individuals are more likely than

⁹⁰ We had hoped to develop a regression model with the share of the population perceiving corruption as the dependent variable. However, presidential approval and these measures of corruption are so highly correlated that it cannot be included in the regression. As with the individual level variables we describe later, the share of the population that believes the economy has gotten worse over the previous year is a statistically significant predictor of the share of the population perceiving corruption. However, the high correlation between presidential approval and aggregate feelings of corruption supports the narrative in the text. Events such as the Vietnam War, the wars in Iraq, economic recessions and recoveries, and scandals, such as Watergate and Iran-Contra, affect the overall share of the American people who deem government corrupt.

⁹¹ NES DATASET, *supra* note 87.

others to perceive government as corrupt. However, in many respects, this may be the more interesting and answerable question: why are some types of people more likely to say that “quite a few people running the government are crooked” or that “government is pretty much run by a few big interests looking out for themselves?”⁹²

We begin with several hypotheses that we hope will explain some of the variation among people in their responses to these questions. The unifying argument behind these hypotheses is the following: respondents who are unhappy with their position in society, with the incumbents who run the government, or with government or people in general are more likely to deem government corrupt. Expressions of antigovernment feeling—that those running the government are crooked or unduly influenced—are often rooted in multiple sources of personal and political dissatisfaction. For the most part, these sources of dissatisfaction are either intractable or reactive to macro-political trends, such as the state of the economy or the performance of the incumbent President. We categorize these sources of dissatisfaction into three rough groupings: demography (race, income, education, age), opinions as to the current state of affairs (presidential approval, opinion of the economy), and social-psychological predispositions (opinions concerning big business, government waste, tax rate fairness, and interpersonal trust).

The first hypothesis might be described as the “out-group” hypothesis: we expect individuals of lower socioeconomic status and individuals who feel that the political system has given them a raw deal

⁹² We do not analyze distrust because others have ably done so, and we think the question fails to tap the particular issue of undue influence that frames the campaign finance debate. See generally CRITICAL CITIZENS: GLOBAL SUPPORT FOR DEMOCRATIC GOVERNMENT (Pippa Norris ed., 1999) (surveying trends in international support for representative democracy); WHY PEOPLE DON'T TRUST GOVERNMENT (Joseph S. Nye, Jr. et al. eds., 1997) (collecting ten essays addressing the recent decline in popular confidence in government); Jack Citrin & Donald Philip Green, *Presidential Leadership and the Resurgence of Trust in Government*, 16 BRIT. J. POL. SCI. 431 (1986) (explaining a perceived resurgence in public trust in government); Jack Citrin & Christopher Muste, *Trust in Government*, in MEASURES OF POLITICAL ATTITUDES (John P. Robinson et al. eds., 1999) (reviewing the measures of trust in government that have been applied); Jack Citrin, Comment, *The Political Relevance of Trust in Government*, 68 AM. POL. SCI. REV. 973 (1974) (discussing the need for empirical data on the effect of public distrust on the effectiveness of government); Primo, *Public Opinion and Campaign Finance: Reformers Versus Reality*, *supra* note 3, at 213-17 (examining the link between campaign contributions and trust in government). For an excellent review of the literature on trust in government, see Margaret Levi & Laura Stoker, *Political Trust and Trustworthiness*, 3 ANN. REV. POL. SCI. 475, 476-85 (2000) (reviewing survey data both in the United States and in other countries).

to blame government, in part, for their position, and therefore deem it corrupt. Naturally, we would expect those groups with less political power to be somewhat more antigovernment than those with power, and that these feelings of powerlessness would translate into expressions of opinion that those running the government are crooked or unduly influenced by a few big interests.

Derived from the respondents' opinions as to the current state of affairs, the second hypothesis might be described as the "sour grapes" hypothesis: we expect to find that those who have lost out in the political system or who are otherwise unhappy with incumbent performance will express their dissatisfaction by deeming government corrupt. As with out-groups whose relative position in the socioeconomic hierarchy may translate into antigovernment attitudes expressed through perceptions of corruption, those who already hold negative opinions as to the state of the nation will similarly express their dissatisfaction and blame those in charge. Therefore, we expect presidential disapproval and poor retrospective evaluations of the economy to correlate with the perception of corruption.

The third hypothesis, the "libertarian-populist" hypothesis, suggests that individuals who are suspicious of government, in general, tend to believe that the government—at any given time—is corrupt. We try to tap into this political predisposition by analyzing opinions concerning government waste, tax rate fairness and big business. We expect to find that some people are simply against "big government" and believe that government is almost by nature corrupt. Unlike the previous set of variables, these opinions, we surmise, are more resistant to change. In other words, some people will believe government is corrupt no matter how well government performs. Such respondents adhere to the belief that all politicians are crooks, no matter which crooks happen to be in power at the time, or whether they are doing a good job or not.

Finally, we test whether those who view government as corrupt also view people as corrupt. If true, this adds some support to a "cynicism hypothesis": people who are naturally mistrusting of others will be more likely to mistrust government and call it corrupt. By analyzing questions that tap into interpersonal trust, we examine the contention that cynics who inevitably question people's motives or regard people as generally selfish may be more likely to view government as crooked or unduly influenced by a few interests. Just as some people may be of the opinion that all politicians are crooks, some may believe that most people are crooked. Therefore, perception of government

corruption may be merely one manifestation of a cynical worldview that people, in general, cannot be trusted to act in public spirited or other-regarding ways.

For defenders of current reform efforts, we may be leaving out the most important potential explanation for perceptions of corruption. After all, the “good government” hypothesis suggests that some phenomenon in the political system—either in the form of apparent undue influence of campaign contributors or perhaps outright bribery—translates into public perception of corruption. We set forth the alternative hypotheses here, however, to chip away at the “good government” hypothesis: they offer a different source for people’s beliefs in government corruption. That said, we should reiterate that nothing in the graphs, tables, or regressions that follow undermines the basic conclusion of the polls discussed earlier in this Article. We do not disprove the contention that Americans view politicians as corrupted by campaign contributions or that Americans view the campaign finance system as “corrupt.” Rather, we suggest that Americans’ “confidence in the system of representative government”⁹³—specifically, their beliefs that government officials are not “crooked” and that government is “run for the benefit of all”—is, to a large extent, related to their position in society, their general tendency to trust others, their philosophy as to what government should do, and their ideological or philosophical disagreement with the policies of those in charge.

We present graphs here that are most illustrative of our argument. We alternate between graphs for the “crooked” question and the “few big interests” question while noting in the text instances where the same relationship does not exist for both questions. We have provided in the Appendix multivariate analyses for all the variables discussed here for both the “crooked” and “few big interest” questions.⁹⁴ For the most part, the models for the two questions are similar. We have presented the regressions in two formats in the Appendix: first, as a model derived from the entire NES Dataset since 1964⁹⁵ and second, as separate regressions for each year in the survey.⁹⁶

⁹³ *Buckley v. Valeo*, 424 U.S. 1, 26-27 (1976) (per curiam) (quoting *United States Civil Serv. Comm’n v. Nat’l Ass’n of Letter Carriers*, 413 U.S. 548, 565 (1973)).

⁹⁴ See *infra* apps. A-D (providing the coefficients produced from logistic regression of the NES Dataset results concerning “crookedness” and special interest influence).

⁹⁵ See *infra* apps. A, B.

⁹⁶ See *infra* apps. C, D.

1. The Demography of Corruption Attitudes

If the “out-group” hypothesis is true, then we should expect individuals of certain demographic characteristics to be more likely than others to express the view that government is corrupt. When we break down the survey universe according to race, income, education, and age, we find limited support for this contention. With respect to race, we find that African Americans are more likely than whites to believe government officials are crooked and, all else equal, to view government as run by a few big interests. Figure 3, which breaks down the “crooked” question according to race, shows that the racial difference was most pronounced during the Nixon and Ford administrations. In 1972, before the Watergate scandal, the difference was the greatest with 65% of African Americans, but only 35% of Whites, deeming government officials crooked. (The trends are not as stark for the “few big interests” question.) Since then, a larger share of the African American population has consistently viewed government officials as crooked, but the difference has shrunk to almost nothing in recent years. As displayed in the Appendix, in multivariate analysis of the combined NES Dataset for all years where the questions were asked, race is statistically significant for the “crooked” question, but that may be due largely to the gap between blacks and whites in the 1970s. The aggregate regressions for the “few interests” question demonstrate that race is not statistically significant once we control for presidential disapproval.

Education and income exhibit a similar relationship to perceptions of corruption. The share of college graduates who view government officials as crooked is consistently lower than the share of non-college graduates. The difference was the greatest in 1996 when 57% of those without a college education viewed government officials as crooked, while only 34% of college grads responded as such, as Figure 4 depicts. The difference is less stark, once again, for the “few big interests” question, in which education is statistically insignificant in the aggregate regressions.

Figure 3: Race and Perceptions of “Crookedness” of Government (1958-2002)⁹⁷

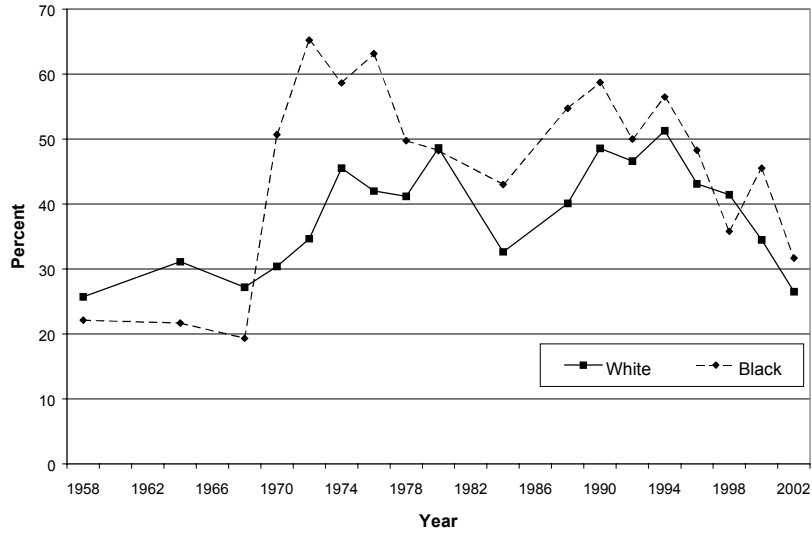
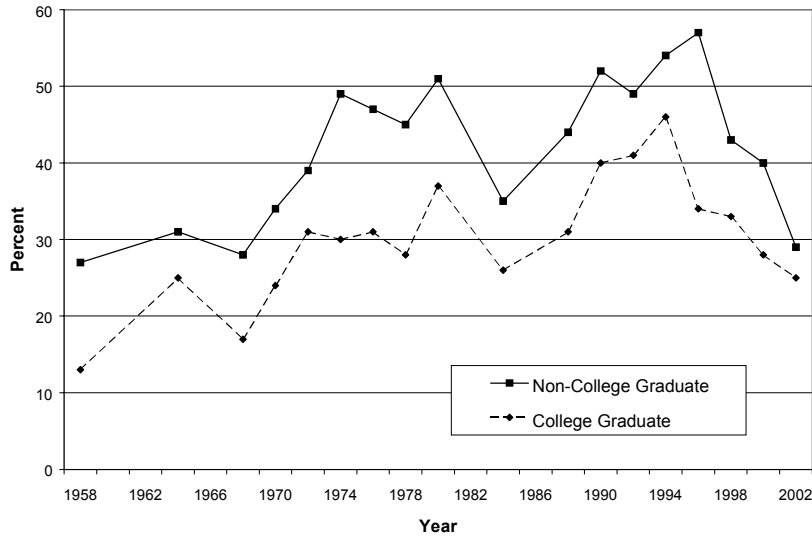


Figure 4: Education and Perceptions of “Crookedness” of Government (1958-2002)⁹⁸

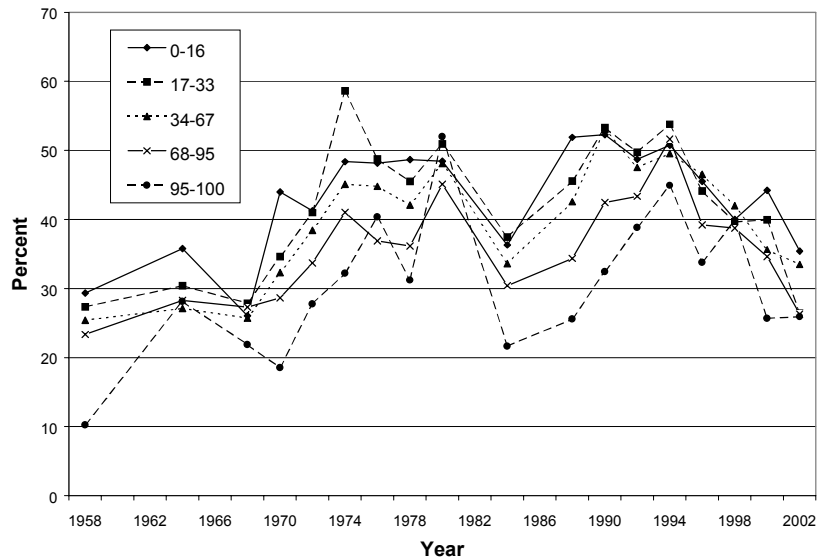


⁹⁷ NES DATASET, *supra* note 87.

⁹⁸ *Id.*

A similar pattern emerges with respect to income. As Figure 5 demonstrates, a smaller share of the richest third of Americans has consistently claimed government was crooked and the same pattern holds for the “few big interests” question. The lines on the graphs indicate the respondents’ income percentiles. The line at the bottom of the graphs—indicating a lower share who believe government is crooked or run by a few interests—for most of the history of the question represents respondents within the top five income percentiles. Income is also significant in the aggregate regressions for both questions: the richer you are (all else being equal) the less likely you are to view government as corrupt.

Figure 5: Income and Perceptions of “Crookedness” of Government (1958-2002)⁹⁹



Age appears to be a bit trickier. For some reason, age is significant in aggregate regressions for both questions but the signs go in opposite directions. In other words, the older you are, the less likely you are to view government as crooked, but the more likely you are to view government as run by a few big interests. We found the same pattern for cohort groups, although we do not present the data here. Earlier generations are less likely than more recent generations to view government as crooked, but more likely to view it as run by a few

⁹⁹ *Id.* The line in Figure 5 designates the income percentile of respondents.

interests. It may be that earlier cohorts are less likely to cast an aspersions at government officials by calling them “crooked”—a word that some might even view as unpatriotic—but are more likely to have resigned themselves to the reality that government will be controlled by a few interests.

There seems to be some support for the “out-group” hypothesis: African Americans, the poor, and the less educated are more likely to view government as corrupt. In fact, we were surprised not to find more of an effect from these demographic factors. Nevertheless, the relationship between these variables and our measures of corruption perceptions are consistent with a theory grounded in the predispositions of the perceiver, rather than changes in what is perceived. Some groups of people, because of their position in the socioeconomic hierarchy, are somewhat more likely to view government as corrupt.

2. The Politics of Corruption Attitudes

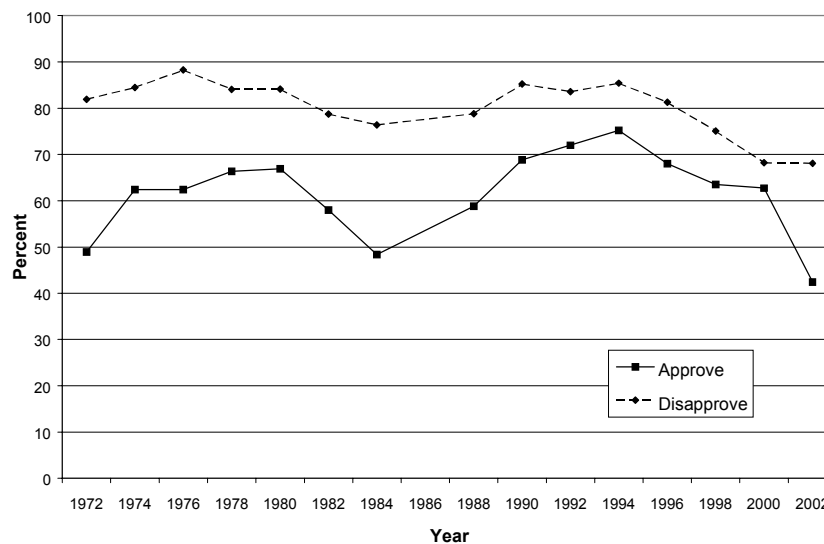
Although we find some support for the “out-group” hypothesis, a person’s political attitudes are often a more powerful predictor of whether she views government as corrupt. Consistent with the theme that dislike of those in power translates into perceptions of corruption, we would expect political opponents of those in power to view government as corrupt. We find some support for the “sour grapes” hypothesis in the data when we examine the correlation between perceptions of corruption and respondents’ partisanship, opinion of the sitting President, and opinion concerning the performance of the economy over the previous year.

Opinion of the sitting President is one of the best predictors of perceptions of corruption. As Figure 6 illustrates, those who disapprove of the way the President is handling his job are more likely than those who approve to view government as corrupt. Here we display the results for the “few big interests” question, but the results are equally robust for the “crooked” question. The variable remains significant in multivariate analysis as well, although as the Appendix indicates the NES survey only began including the presidential approval question in 1972.¹⁰⁰ Nevertheless, the consistent trend since 1972 is

¹⁰⁰ See *infra* apps. C, D. We should make clear one point that is obscured by these graphs and several of the others in this subsection: the lines do not take into account the relative sizes of the populations who approve and who disapprove of the way the President is handling his job. In other words, a doubling of the number of people who disapprove of the President will not be revealed on these graphs; the graphs only indi-

clear: those who approve of the way the President is handling his job are less likely to consider government as crooked or run by a few big interests. The gap was greatest on the crooked question in 1972, when 57% of those who disapproved of the President considered government officials crooked, while only 31% of those who approved of the President registered the same response.¹⁰¹ While it has never reached that great a disparity since 1972, there is a consistent ten-point difference on the “crooked” question between those who approve and those who disapprove of the job the President is doing. As Figure 6 depicts, the difference between “approvers” and “disapprovers” on the “few interests” question is even more stark. In 1972, 1984, and 2002—elections in which the incumbent Republican President was incredibly popular but disliked by his opponents—the margins between those who disapproved and those who approved of the President were 33, 28, and 26 percentage points respectively.

Figure 6: Presidential Job Approval and Perceptions of Special Interest Influence (1972-2002)¹⁰²



cate the *share* of “approvers” or “disapprovers” that believe government is crooked or run by a few big interests.

¹⁰¹ NES DATASET, *supra* note 87.

¹⁰² *Id.* Respondents were asked if they approved or disapproved of the way that [the current President] was handling his job as President.

Of course, it is possible that respondents disapprove of the President's job performance precisely because they believe he is crooked or beholden to a few big interests. Even if the causal arrow moves in that direction, however, we learn from these graphs how views of the President, individually, affect questions about government corruption generally. Keep in mind that the questions ask whether "quite a few of the people running the government are crooked" and whether "government is pretty much run by a few big interests."¹⁰³ Even if all we learn from these graphs is that one's opinion of the President shapes one's views concerning government corruption more generally, then we have still learned that public perception of corruption may be unrelated to the sum total of corruption in government more generally (for example, in the Congress or in the states). Even granting that some respondents' low approval of the President in certain years may derive from feelings that he is corrupt, it is somewhat surprising to see such a strong and consistent relationship over various years. This is especially true for the "few big interests" question, as noted in Appendix D, wherein presidential approval is always statistically significant, except in 1994, 1996, and 2000. Even if the relationship between these two opinions is mutually reinforcing, such a relationship still adds support to our general argument that attitudes about incumbent job performance and about government corruption are one and the same. With that said, the other variables we analyze add credence to the story that those who disapprove of the job the President is doing register their dissatisfaction by painting government with the broad brush of "crookedness" or undue influence.

The relationship between the respondents' partisan affiliation and perception of corruption bolsters the argument that individuals are predisposed to see corruption in those whom they already dislike. As Figure 7 depicts, a greater share of those identifying themselves as "Strong Democrats" believe "government is run by a few big interests" when Republicans hold the Presidency than when Democrats do, and self-described "Strong Republicans" register the opposite pattern of opinion. During the Nixon, Ford, Reagan, G.H.W. Bush, and G.W. Bush administrations, a greater percentage of Democrats than Republicans considered quite a few government officials "crooked" and government as run by a "few big interests."¹⁰⁴ Conversely, during the

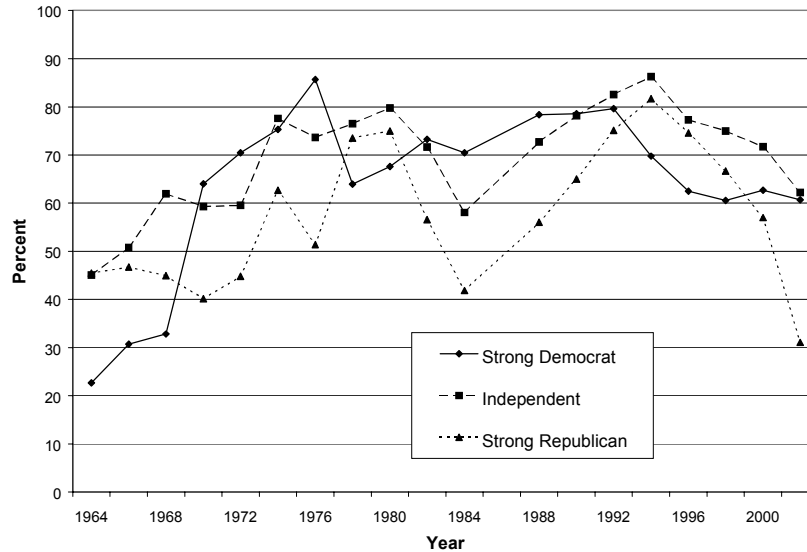
¹⁰³ NES 2002 Post Election Survey Questions, *supra* note 83, at questions Q5, Q6 (emphasis omitted).

¹⁰⁴ NES DATASET, *supra* note 87.

Johson, Carter, and Clinton administrations, a greater share of Republicans than Democrats viewed government officials as “crooked” and government as run by a “few big interests.” Although the relationship is most stark among strong partisans,¹⁰⁵ membership in the President’s party is negatively correlated with perceptions of corruption according to our two measures. However, once we include presidential approval in the model, the party affiliation variable loses statistical significance for the crooked question, both in the aggregate regression and regression by years. It remains statistically significant in the aggregate regressions for the “few big interests” question and for the yearly regressions for 1976 and 1984, but it is not statistically significant for any other year once presidential approval data is added. In other words, respondents’ partisanship is generally a good predictor of whether they perceive corruption, but the statistical significance of partisanship is subsumed by presidential approval.

¹⁰⁵ While the strongest partisans (that is, those who identify themselves as Strong Democrats and Strong Republicans) usually differ in their perceptions of corruption according to expectations, we did not find that the strength of party identification is directly related to one’s propensity to perceive corruption. In other words, as one gets more Republican—moving from Strong Democrat to Weak Democrat to Independent Democrat to Pure Independent to Independent Republican to Weak Republican to Strong Republican—one does not necessarily become more likely to perceive corruption in government while a Democratic president is running the country. In the 1990s, for example, sometimes the share of Independents who viewed government as corrupt was greater than the share of Democrats or Republicans who viewed government that way. From this, one might expect that strength of party identification has some relationship to perceptions of corruption. In other words, perhaps partisans feel a greater stake in the system and therefore are less likely to malign it with charges of corruption, while independents are alienated and more likely to charge any party controlling the government with corruption. However, we did not find any support for this hypothesis when party strength was added to the regressions.

Figure 7: Extreme Partisanship and Perceptions of Special Interest Influence (1964-2002)¹⁰⁶



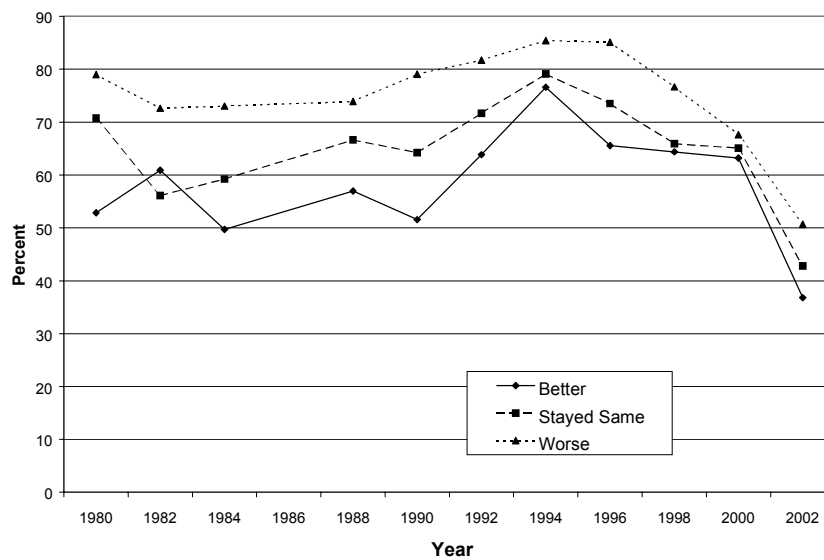
To add credence to this theory that perception of corruption may have little to do with perceptions of undue influence and more to do with dissatisfaction with the state of the world, we can examine the results of a question that does not mention government at all. Since 1980, the NES survey has asked people to evaluate the performance of the economy over the previous year: “[W]ould you say that over the past year the nation’s economy has gotten better, stayed about the same, or gotten worse?”¹⁰⁷ Figure 8 presents data for the “few big interests” question, but comparable trends appear with respect to the “crooked” question. Consistently, those who view the economy as having gotten worse are more likely to consider government corrupt according to both questions, even though, as in recent years, the margin is sometimes not terribly great. Why might this be? Well, the “good government” hypothesizers might suggest that those who view the economy unfavorably attribute it to government corruption, but that idea seems implausible. Rather, the more likely explanation is that those who are unhappy with the performance of the economy some-

¹⁰⁶ NES DATASET, *supra* note 87.

¹⁰⁷ Nat’l Election Studies, *NES 2002 Pre Election Survey Questions* (2002), at question H1, at ftp://ftp.nes.isr.umich.edu/ftp/nes/studypages/2002prepost/2002prepost_qnaire_pre.htm.

times vent their displeasure and displace their anger onto the government, deeming officials crooked or as unduly influenced. In 1990, for example, 79% of those who viewed the economy as having gotten worse over the previous year said government is run by a few big interests, whereas only 52% of those who viewed the economy as having gotten better voiced the same response. In other years, however, the gap was much smaller, perhaps because performance of the economy was not a particularly salient or divisive issue, although the order of the lines from top to bottom maintains the same pattern. In the aggregate regressions, evaluations of the economy remain statistically significant even when presidential approval and partisanship are added.

Figure 8: Evaluation of the Performance of the Economy over the Previous Year and Perceptions of Special Interest Influence (1980-2002)¹⁰⁸



Presidential approval, partisanship, and opinions on economic performance are correlated with each other, but the relationship of each of these variables to our dependent variables supports the argument that perspectives on incumbents translate into attitudes about government corruption. In other words, we tend to see corruption in

¹⁰⁸ NES DATASET, *supra* note 87. Respondents were asked, "Would you say that over the past year the nation's economy has gotten better, stayed about the same or gotten worse?"

those whom we are predisposed to dislike or oppose, and when we are displeased with the current state of affairs, we tend to lash out by saying government is corrupt. Like the “out-group” hypothesis, the “sour grapes” hypothesis is predicated on a notion that individuals translate a generalized negative affect toward those running the government into a particularized expression describing government as corrupt.

3. Attitudes Toward “Big Government” and Perception of Corruption

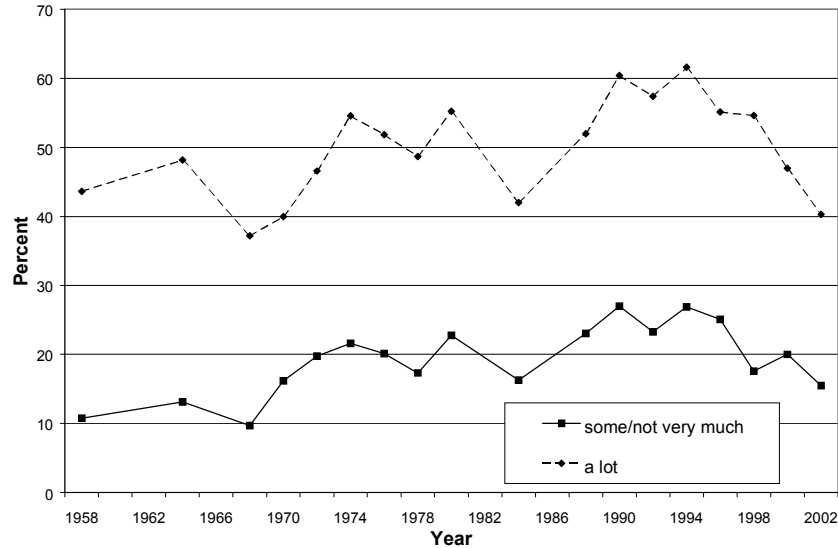
Thus far, we have found some support for the notion that those who have lost out in the political system, either historically or temporarily, are more likely to view government as corrupt. Yet the “libertarian-populist” hypothesis suggests that something more than victimization or sour grapes explains Americans’ perceptions of government corruption. For some, government, almost by definition, may be corrupt, and the “bigger” government gets the more corrupt it becomes.

One question that suggests some support for this idea is: “Do you think that people in government waste a lot of the money we pay in taxes, waste some of it, or don’t waste very much of it?”¹⁰⁹ As Figure 9 suggests, views of government waste correlate strongly with perceptions of corruption.¹¹⁰ Roughly 40% to 60% of those who think government wastes a lot of money that we pay in taxes answer that quite a few people running the government are crooked, while only 10% to 30% of those who see little waste answer similarly. A similar twenty to thirty percentage-point gap exists for the “few interests” question.

¹⁰⁹ *NES 2002 Post Election Survey Questions*, *supra* note 83, at question Q4 (emphasis omitted).

¹¹⁰ Indeed, this variable is the most predictive of all that we analyzed.

Figure 9: Perceptions of Government Waste and Perceptions of “Crookedness” of Government (1958-2002)¹¹¹



A series of recent questions on taxation provides additional evidence that feelings about government, in general, correlate with perceptions of corruption, in particular. The 2002 NES Survey asked respondents whether they paid too much, too little, or just the right amount in taxes.¹¹² It also asked respondents for their opinion as to whether the rich and the poor paid too much, too little or just the right amount in taxes.¹¹³ As Table B below demonstrates, consistent with the “libertarian-populist” hypothesis, respondents who believe they pay “more than they should” in taxes are more likely to believe that quite a few people running the government are crooked and that government is run by a few big interests.¹¹⁴ About 35% of those who say they pay more than they should in taxes believe that quite a few people running the government are crooked, whereas only 20% of those who think they pay the right amount say quite a few are crooked. The findings are similar for the few interests questions: 58%

¹¹¹ NES DATASET, *supra* note 87. Respondents were asked if people in the government waste a lot of money paid in taxes, waste some of it, or don’t waste very much of it.

¹¹² NES 2002 Post Election Survey Questions, *supra* note 83, at question M9a.

¹¹³ *Id.* at questions M9b, M9c.

¹¹⁴ The numerical data displayed in Table B, *infra*, is contained within the NES DATASET, *supra* note 87.

of those who say they pay too much in taxes, but only 44% of those who say they pay the right amount, respond that government is run by a “few big interests.”

Table B: Opinion on Tax Rate Fairness and Perception of Corruption

	Percent responding that “Quite a few people running the government are crooked” (N)	Percent responding that “Not many or hardly any people running the government are crooked” (N)	Percent responding that “Government is run by a few big interests looking out for themselves” (N)	Percent responding that “Government is run for the benefit of all” (N)
Respondent pays more than s/he should	35.4 (211)	64.6 (385)	58.1 (334)	41.9 (241)
Respondent pays just the right amount in taxes	19.6 (133)	80.4 (545)	43.6 (286)	56.4 (370)
Respondent pays less than s/he should	48.6 (17)	51.4 (18)	50.0 (16)	50.0 (16)
The rich pay more than they should	28.5 (51)	71.5 (128)	45.8 (76)	54.2 (90)
The rich pay just the right amount	20.0 (92)	80.0 (369)	42.1 (185)	58.0 (256)
The rich pay less than they should	32.4 (215)	67.6 (448)	58.1 (379)	41.9 (273)
The poor pay more than they should	33.3 (185)	66.7 (371)	60.1 (325)	39.9 (216)
The poor pay just the right amount	21.1 (134)	78.9 (500)	42.3 (257)	57.7 (350)
The poor pay less than they should	35.1 (34)	64.9 (63)	48.5 (47)	51.5 (50)

These feelings concerning tax policy are not limited to one’s perception of one’s own tax rate, however. Those who believe the rich pay too little in taxes or the poor pay too much are also more likely to view government as corrupt according to the two measures. Thirty-

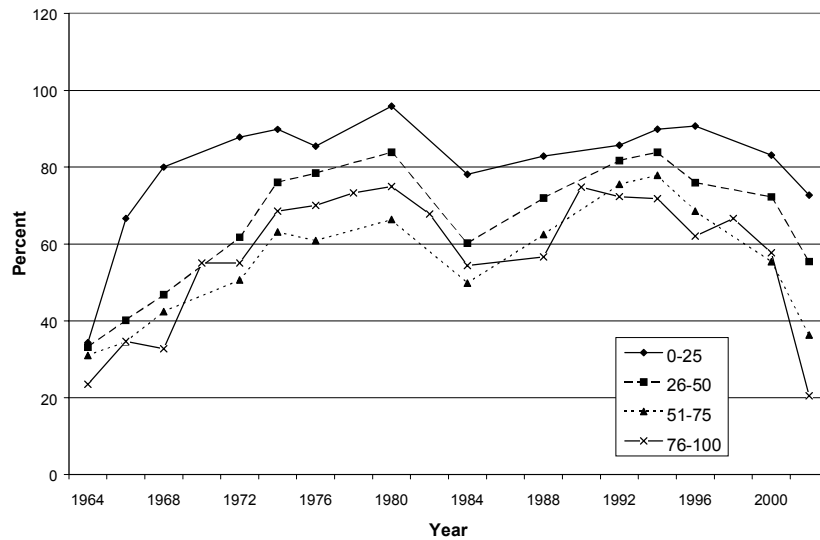
two percent of those who say the rich pay less than they should in taxes, as compared to 20% of those who say the rich pay just the right amount, say quite a few people running government are crooked. Roughly 58% of those who say the rich pay less than they should in taxes, as compared to 42% of those who say the rich pay just the right amount, say government is run by a few big interests. In other words, those who believe the rich are not paying their fair share are somewhat more likely to believe that government is crooked or run by a few big interests. In contrast, those who see the poor as paying more than they should in taxes are more likely to view government as corrupt. About 33% of those who say the poor pay more than they should believe quite a few government officials are crooked, as compared to 21% of those who say the poor pay the right amount. The difference is similar for the “few big interests” question: 60%, as compared to 42%, believe government is run by a “few big interests.”

Of course, adherents to the “good government” hypothesis might offer the explanation that respondents view corruption as causing government waste of tax dollars. In other words, campaign contributors, lobbyists, or bribers may exact concessions from the government in the form of wasteful, pork-barrel spending. A corrupt government, under this view, naturally wastes money as it pays off those who unduly influence it. For similar reasons, one might expect attitudes toward taxation to be correlated with perceptions of corruption: respondents may think their taxes and the taxes of the poor are too high especially because those tax dollars go to a corrupt government. Likewise, under this view, respondents may perceive the rich as paying too little in taxes precisely because they have successfully (and unduly) influenced government to get lower tax rates. We cannot disprove these alternative, complicated explanations; all we can say is that our findings are consistent with a theory that posits that a person’s perception of government corruption often correlates with her feelings as to how government raises and spends its money.

The “libertarian-populist” might not only be suspicious of government, but of other large and powerful institutions as well. We find, for example, that respondents’ opinions about big business also correlate with their responses to the questions attempting to tap opinions of government corruption. Those who consider quite a few government officials corrupt or view government as run by a few big interests

give a lower “feeling thermometer”¹¹⁵ rating to “big business.” Figure 10 separates respondents according to their “feeling thermometer” rating of “big business.” Those who feel “warm” toward “big business” are less likely to view government as corrupt. The differences in the 2002 survey are dramatic, as Figure 10 depicts. For example, only 21% of those who give a “feeling thermometer” rating for big business between 76 and 100 degrees view government as run by a “few big interests,” whereas 72% of those who give “big business” a rating between 0 and 25 degrees believe government is run by a “few big interests.” Similar results are found for the crookedness question.¹¹⁶ Perhaps those who see government as corrupt do so because they fear power more generally. However, in fairness to the “good government” hypothesizer, respondents who believe “big business” is bribing the government will probably have a low opinion of both government and “big business.”

Figure 10: Perceptions of Big Business and Perceptions of Special Interest Influence (1964-2002)¹¹⁷



¹¹⁵ The “feeling thermometer” question asks respondents how warm they feel toward a particular group with 100 degrees being the warmest and most favorable and zero being the coldest and least favorable. *NES 2002 Post Election Survey Questions*, *supra* note 83, at questions D1, D2K.

¹¹⁶ NES DATASET, *supra* note 87.

¹¹⁷ NES DATASET, *supra* note 87. The line in this figure refers to respondents’ rating of big business on a feeling thermometer (0=cool; 100=warm).

As a final piece of support for the hypothesis that one's political philosophy affects specific opinions about government corruption, we have included "feeling thermometer" ratings for "the poor" and "people on welfare."¹¹⁸ The magnitude of the effect of these variables is slight, though often statistically significant. The fascinating result from these two variables, however, is that "warm" feelings toward the "poor" and "warm" feelings toward "people on welfare" correlate differently with attitudes of corruption. The warmer respondents feel toward the poor, the more likely they are to perceive government as corrupt. However, the warmer they feel toward "people on welfare," the *less* likely they are to view government as corrupt. How can we explain this? On the one hand, those who support or express positive feelings toward an out-group (that is, the poor) tend to view government as corrupt. On the other hand, when respondents are primed to think about the poor in terms of a government program or subsidy (that is, as people on welfare), the "libertarian-populist" streak presents itself. Those voters who are in favor of such big government programs view government as less corrupt, but those who are against welfare view government as more corrupt. Again, the magnitude of the effect is tiny, but the differences between the two variables add credence to our theory that one's attitudes about government corruption can be a function of one's feeling about "big government," as opposed to undue influence.¹¹⁹

¹¹⁸ These values can be found in the aggregate regressions by individual years, *infra* apps. C, D.

¹¹⁹ As this article went to press we discovered some other variables from the NES Survey that bolster the libertarian-populist hypothesis and that are statistically significant in regressions for the "few big interests" question. The NES has asked: "Some people feel the government in Washington should see to it that every person has a job and a good standard of living. . . . Others think the government should just let each person get ahead on their own. . . . Where would you place yourself on this scale . . . ?" Nat'l Election Studies, *NES 2004 Pre-Election Survey Questionnaire* (Sept. 8, 2004) at question N5, N5a (emphasis omitted), at ftp://ftp.nes.isr.umich.edu/ftp/nes/studypages/2004prepost/2004prepost_qnaire_post.htm. The NES has also asked: "Some people think the government should provide fewer services even in areas such as health and education in order to reduce spending. . . . Other people feel that it is important for the government to provide many more services even if it means an increase in spending. . . . Where would you place yourself on this scale . . . ?" *Id.* at questions N1, N1a (emphasis omitted). Those who believe government should "just let each person get ahead on his/her own" and those who believe the government should "provide fewer services" are more likely to believe government is run by a "few big interests." NES DATASET, *supra* note 87. The same can be said for those who are against military spending. The NES has asked: "Some people believe that our armed forces are already powerful enough and that we should spend less money for defense. Others feel that military spending should at least continue at the present level. How do you

4. Perception of Government Corruption as a Species of Interpersonal Distrust

That fear and distrust of government translate into perceptions of corruption is less surprising than the correlation between distrust of people and such perceptions. If we can demonstrate that those who believe people are corrupt also tend to view government as corrupt, then we have come a long way toward an explanation that perceptions of government corruption arise more from the predispositions of the perceiver than from what exactly she is perceiving. Moreover, if perceptions of government corruption have such deep psychological roots, then changes in government campaign finance policy are unlikely to have much of an effect on the subclass of people who are almost hard-wired to see the worst in others, including those running the government.

In selected years, the NES has asked questions attempting to tap respondents' perception of the trustworthiness of other people. As presented in Table C for the 2002 survey and in the regressions in the Appendix for selected years, we find a strong and consistent relationship between individuals' responses to these questions concerning interpersonal trust and the likelihood that an individual will believe that quite a few people running the government are crooked or government is run by a few big interests. The three NES questions appear below, followed by Table C, which presents the 2002 data:¹²⁰

1. Generally speaking, would you say that most people can be trusted, or that you can't be too careful in dealing with people?¹²¹
2. Would you say that most of the time people try to be helpful, or that they are just looking out for themselves?¹²²
3. Do you think most people would try to take advantage of you if they got the chance or would they try to be fair?¹²³

feel?" Nat'l Elections Studies, *The NES Guide to Public Opinion and Electoral Behavior: Military Spending (1) 1972-1976*, at http://www.umich.edu/~nes/nesguide/toptable/tab4d_3a.htm (last accessed Oct. 13, 2004). Those who are against military spending also tend to believe government is run by a "few big interests." NES DATASET, *supra* note 87.

¹²⁰ The data in Table C, *infra*, is available at the NES DATASET, *supra* note 87.

¹²¹ NES 2002 Post Election Survey Questions, *supra* note 83, at question K2 (emphasis omitted).

¹²² *Id.* at question K5 (emphasis omitted).

¹²³ *Id.* at question K4 (emphasis omitted).

Table C: Trust in People and Perception of Government Corruption (2002)

	Percent responding that "Quite a few people running the government are crooked" (N)	Percent responding that "Not many or hardly any people running the government are crooked" (N)	Percent responding that "Government is run by a few big interests looking out for themselves" (N)	Percent responding that "Government is run for the benefit of all" (N)
"Most people can be trusted"	19.4 (142)	80.6 (591)	46.0 (323)	54.0 (379)
"Can't be too careful in dealing with people"	37.7 (219)	62.3 (362)	56.5 (320)	43.5 (246)
"Most of the time people try to be helpful"	21.0 (100)	79.0 (376)	43.8 (204)	56.2 (262)
"They are mostly looking out for themselves"	50.5 (94)	49.5 (92)	65.2 (118)	34.8 (63)
"Most people would try to be fair"	20.4 (101)	79.6 (393)	49.6 (234)	50.4 (238)
"Most people would try to take advantage of you if they got a chance"	41.9 (67)	58.1 (93)	57.8 (89)	42.2 (65)

As with Table B, here we compare the propensity of cynics and non-cynics to respond that government is corrupt. For each question, we find that the percentage of cynics who view government as corrupt is greater than the percentage of non-cynics who view government as corrupt. For example, only 19% of those who say "most people can be trusted" believe quite a few people running the government are crooked, while 38% of those who say that "you can't be too careful in dealing with people" believe quite a few people running the government are crooked—an eighteen-point gap. Similar relationships exist for the few interests question. About 44% of those who say "most of the time people try to be helpful" believe that government is run by a few big interests, whereas 65% of those who say people "are just looking out for themselves" believe government is run by a few big interests—a twenty-one point gap.

As the regressions in the appendices depict, one of the most consistent and reliable predictors of respondents' propensity to answer

“crooked” and “few big interests” is their answer to the question: “Do you think most people would try to take advantage of you if they got the chance or would they try to be fair?”¹²⁴ Someone who answers that “most people would try to take advantage of you” is twice as likely as one who says “they would try to be fair” to say that “quite a few people running the government are crooked,” or “government is run by a few big interests.” This relationship is as true today as it was when the question was first asked in the 1960s. Respondents who are suspicious of other people’s motives, who tend to see the worst in people, and who view others as selfish, are more likely to think that government also is a repository of greedy, self-interested forces.

Even more than opinions about the proper place of government in people’s lives, these feelings of interpersonal mistrust are not the types of attitudes that government policy, let alone policy surrounding campaign finance, is likely to change. Put simply, if you are a trusting person, you also tend to trust government.

D. *Trust in Government in Comparative Perspective*

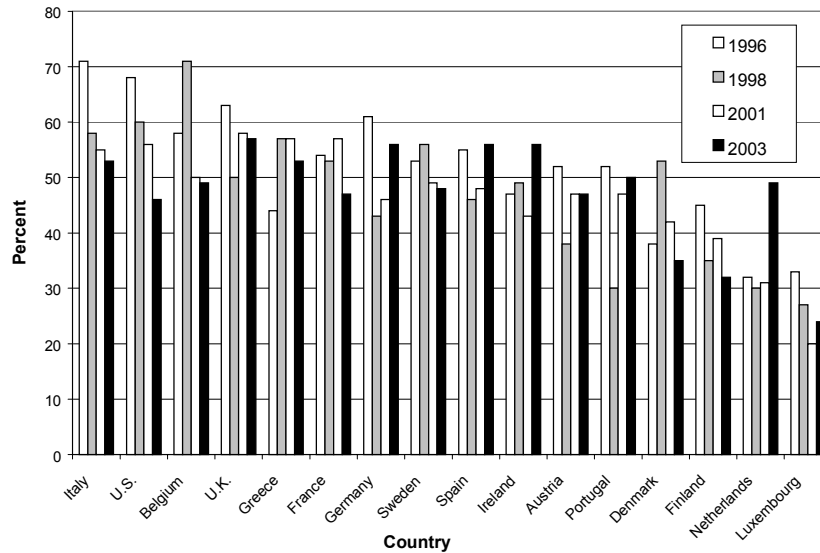
By examining the shared characteristics of the groups of people who perceive corruption, we hope to cast some doubt on the popular (and perhaps constitutionally relevant) notion that such perceptions relate to activity in the campaign finance system. One other method we could use to see if something distinct in the American political system is fostering these perceptions would be to compare American public opinion with that of other countries. If levels of public perception of corruption were comparable between the United States and other countries with more restrictive campaign finance regimes, then we would have an additional piece of evidence casting doubt on the importance of the campaign finance system in shaping public opinion about government. Unfortunately, we do not have a cross-national poll that specifically measures perception of corruption, but the Eurobarometer poll of fifteen European countries has asked a question concerning trust in government similar to that asked in the NES poll: “[P]lease tell me if you tend to trust or tend not to trust . . . [your] (national[]) government?”¹²⁵ When we compare the cross-

¹²⁴ NES 2002 Post Election Survey Questions, *supra* note 83, at question K4 (emphasis omitted).

¹²⁵ EUROPEAN OPINION RESEARCH GROUP EEIG, EUROBAROMETER 59: PUBLIC OPINION IN THE EUROPEAN UNION 137 (Spring 2003), *available at* http://europa.eu.int/comm/public_opinion/archives/eb/eb59/eb59_rapport_finalen.pdf. The NES Survey con-

national data, we find that the United States does not do too well, but that several other countries, with very different campaign finance regimes, have populations equally distrustful of their government.¹²⁶

Figure 11: Distrust of Government in Comparative Perspective (1996, 1999, 2001, 2003)¹²⁷

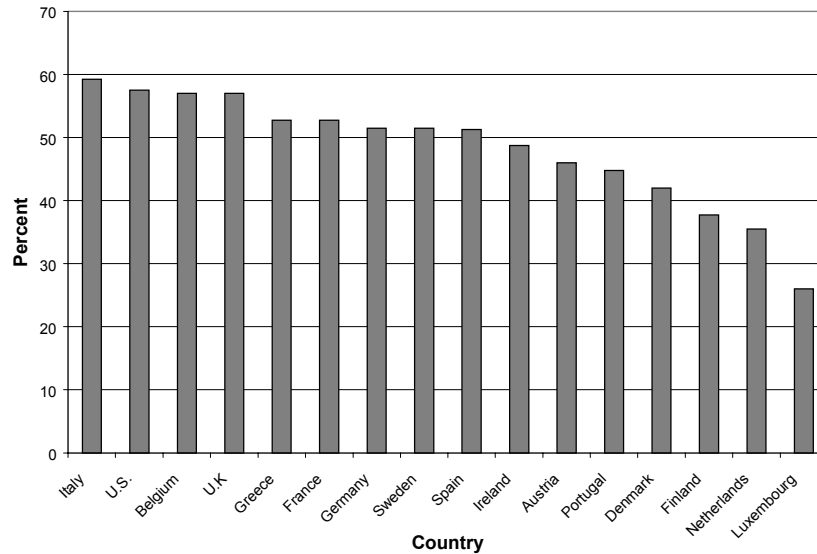


tains a similar question. *NES 2002 Post Election Survey Questions*, *supra* note 83, at question Q3a.

¹²⁶ Eurobarometer asks respondents if they tend to trust their national government, while the U.S. question asks respondents how much of the time they can trust the government in Washington to do what is right. Data for the United States are available from the NES DATASET, *supra* note 87. The European data are available from the EUROBAROMETER reports, *available at* http://europa.eu.int/comm/public_opinion/standard_en.htm (last accessed Oct. 13, 2004).

¹²⁷ Charting results from the EUROBAROMETER reports, *supra* note 126, and the NES DATASET, *supra* note 87.

**Figure 12: Distrust of Government in Comparative Perspective
(Average of 1996, 1999, 2001, 2003)¹²⁸**



As Figures 11 and 12 illustrate, comfortable majorities in several countries say they tend not to trust their government. In at least one of the polls over the last eight years, a majority in thirteen of the sixteen countries said they tend not to trust the government, and in nine countries, a majority, on average, tends not to trust the government. Seventy-one percent of Italians in 1996 and Belgians in 1999 distrusted their respective governments—the highest percentages in any country throughout the last seven years. The United States, the United Kingdom, and Germany approached those results in 1996, when 68%, 63%, and 61%, respectively, distrusted their government. On average over this time period, 58% of Americans distrusted their government, placing the United States just behind Italy (59%) and alongside Belgium and the United Kingdom (57%). As of 2003, however, the United States ranked thirteenth out of sixteen countries in the share of its population that distrusted the government: only Finland, Denmark, and Luxembourg had populations that trusted their govern-

¹²⁸ Charting results from the EUROBAROMETER reports, *supra* note 126, and the NES DATASET, *supra* note 87.

ment more. In short, Americans are quite distrustful of their government, but we are not alone.

We do not mean to overstate the significance of this comparative analysis. Idiosyncratic factors, such as the Belgian pedophilia scandal in 1999, or cultural differences that might make respondents less likely to say they distrust their government, may explain much of the differences between countries. Moreover, as suggested earlier when we omitted the “trust-in-government” question from our analysis of the NES data, we do not believe this question is the most relevant when it comes to evaluating perceptions of corruption or undue influence, *per se*. And, in any event, we agree that the relatively high average level of Americans’ distrust should be a cause for concern.

With all of those caveats, the fact still remains that countries with very different political systems, most of which have public funding of elections, nevertheless have large sections of their populations that distrust their government. And while we can always aspire to achieve the status of Luxembourg or Finland, purging the American mind of its unique fear of big government (let alone making American society similarly tiny and homogeneous) may be more than any government program could achieve.

CONCLUSION

We began this Article with an assessment and an explanation of the Supreme Court’s unique emphasis on the appearance of corruption in campaign finance cases. This exception to general First Amendment rules, we think, arises less from a genuine fear of the implications of such bad appearances for democratic values than from an admission that proving actual corruption is very difficult. With that said, we have real concerns about the misuse of public opinion polls to prove public perception of corruption.

There can be no doubt that the American people perceive the campaign finance system to be corrupt and, in large numbers, will support almost any restriction on expenditures and contributions. While believing that campaign contributions corrupt parties and candidates and that campaign finance reform is desirable, a majority of Americans also agree that special interests will continue to have undue influence even once such reforms are passed. Moreover, available survey data suggest that Americans’ perceptions of corruption are related to their views about their position in society, the incumbents in office, or their attitudes about how government ought to tax and spend.

We find some support for several alternative hypotheses to the theory that improper influences on government generate Americans' perceptions of corruption. First, we found some support for the hypothesis that certain "out-groups," such as African Americans, the poor, and the less educated, are more likely to believe government is corrupt. Second, we found some support for the hypothesis that those who disapprove of the job the President is doing, who believe the economy has gotten worse, or who belong to a political party different from the President are more likely to believe that government is corrupt. We also found some support for a "libertarian-populist" hypothesis: people who simply dislike government are more likely to believe it is corrupt, as evidenced by the relationship between perceptions of corruption and opinions of government waste and tax rate fairness. Finally, perception of government corruption may be a subspecies of a broader psychological phenomenon: distrust of others. Cynics who are predisposed to see the worst in people also tend to see the worst in government.

In the end, we must admit that large shares of the American population distrust their government and believe the campaign finance system is a source of undue influence. However, as surveys from other countries indicate, Americans are not alone in their distrust of government, and countries with radically different campaign finance regimes also have populations registering a high level of government distrust. For those who would look to campaign finance reform to restore "confidence in the system of representative [g]overnment,"¹²⁹ they may be disappointed by the intractability and psychological roots of that lack of confidence.

¹²⁹ *Buckley v. Valeo*, 424 U.S. 1, 27 (1976) (per curiam) (quoting *United States Civil Serv. Comm'n v. Nat'l Ass'n of Letter Carriers*, 413 U.S. 548, 565 (1973)).

APPENDIX

The tables on the following pages present logistic regressions for the variables described and coded below. The editors of the *Law Review* have requested that we provide some basic explanation for reading the regressions. The tables attempt to display the relationship between certain questions in the NES survey and the likelihood that the respondent answers that “quite a few people running the government are crooked” (for Appendices A and C) or that “government is pretty much run by a few big interests.” (for Appendices B and D). Cell entries greater than 1 suggest that the variable in that column increases the odds that individuals exhibiting that characteristic will answer that “quite a few people running the government are crooked” or that “government is pretty much run by a few big interests.” Cell entries less than 1 suggest a negative odds ratio. The size of the R^2 indicates how well the model as a whole predicts the respondent’s answer to the crooked or few interests question. As mentioned in the text, we recognize that the proposed models do not allow us to provide a comprehensive explanation that can predict definitively which respondents will perceive corruption according to these two measures. Their chief value, however, is in identifying statistically significant factors that add credence to the alternative hypotheses suggested in the text.

*Description of Variables:***“Crooked”**

Do you think that quite a few of the people running the government are crooked, not very many are, or do you think hardly any of them are crooked?

0=not many, hardly any; 1= quite a few are crooked

“Few Big Interests”

Would you say the government is pretty much run by a few big interests looking out for themselves or that it is run for the benefit of all the people?

0= benefit of all; 1= few big interests

“Race”

In addition to being American, what do you consider your main ethnic group or nationality group?

1= White; 2= Black

“Income”

I am going to read you a list of income categories. Please tell me which category best describes the total income of all members of your family living in your house in 1999 before taxes. This figure should include salaries, wages, pensions, dividends, interest, and all other income.

Income was coded into percentiles:

1= 0-16%; 2= 17-33%; 3= 34-67%; 4= 68-95%; 5= 96-100%

“Education”

What is highest grade of school or year of college you have completed?

1= grade school or less; 2= high school; 3= some college; 4= college or advanced degree

“Age”

What is respondent's age (calculated from year of birth)?

Coded 17-99

“Presidential Disapproval”

Presidential Disapproval prior to 1980: Do you approve or disapprove of the way that [the President] is handling his job as President?

1 = Approve; 2= Disapprove

Presidential Disapproval after 1980: Do you approve or disapprove of the way [name of President] is handling his job as President? Do you [approve/disapprove] strongly or not strongly?

1= Approve, strongly; 2= Approve, not strongly; 3= Disapprove, not strongly; 4= Disapprove, strongly

“Member of President's Party”

Generally speaking, do you usually think of yourself as a republican, a democrat, an independent, or what? [We have recoded the variable to reflect whether the respondent is a member of the same party as the sitting President.]

0= No; 1= Yes

“Government Wastes Tax Money”

Do you think that people in the government waste a lot of money we pay in taxes, waste some of it, or don't waste very much of it?

0= Some/not very much; 1= A lot

“Economy Last Year”

Would you say that over the past year the nation’s economy has gotten better, stayed the same or gotten worse?

0= Better; 1= Got Worse/Stayed the same

“Can’t Be Too Careful”

Generally speaking, would you say that most people can be trusted, or that you can’t be too careful in dealing with people?

1= Can’t be too careful; 2= Most people can be trusted

“People take Advantage”

Do you think most people would try to take advantage of you if they got a chance, or would they try to be fair?

1= Would take advantage; 2= Would try to be fair

“Big Business Therm”, “Poor Therm” and “Welfare Therm”

I’d like to get your feelings toward some people in the news these days. I’ll read the name of a person and I’ll ask you to rate that person on a thermometer that runs from 0 to 100 degrees. Rating above 50 means that you feel favorable and warm toward the person. Rating below 50 means that you feel unfavorable and cool toward the person. Rating right at the 50 degree mark means you don’t feel particularly warm or cold. You may use any number from 0 to 100 to tell me how favorable or unfavorable your feelings are. If we come to a person whose name you don’t recognize, just tell me and we’ll move on to the next one. . . Still using the thermometer, how would you rate: [Big Business, Poor People, People on Welfare]

0-100

Appendix A: Coefficients for Logistic Regression Model of the Log Odds of Believing Quite a Few in Government Are Crooked

Race	1.533 ³	1.460 ³	1.319 ³	1.091
Income	0.893 ³	0.911 ³	0.918 ³	0.979
Education	0.858 ³	0.808 ³	0.808 ³	0.798 ³
Age	0.993 ³	0.993 ³	0.990 ³	0.981 ³
Presidential Disapproval	(not included)	1.513 ³	1.236 ³	1.345 ²
Member of President's Party	0.781 ³	0.947	0.965	1.112
Gov't Wastes Tax Money	4.575 ³	4.176 ³	4.337 ³	4.649 ³
Economy Last Year	(not included)	(not included)	1.087 ³	1.045
People Would Take Advantage of You	(not included)	(not included)	(not included)	0.512 ³
Constant	0.426 ³	0.315 ³	0.404 ³	2.013 ¹
R ²	0.108	0.111	0.119	0.161
N	22971	16955	11644	3241

¹ p < 0.05 ² p < 0.01 ³ p < 0.001

Appendix B: Coefficients for Logistic Regression Model of the Log Odds of Believing Government Is Run by a Few Big Interests

Race	1.217 ³	1.060	1.061	0.852
Income	0.890 ³	0.927 ³	0.947 ²	0.983
Education	1.074 ³	0.993	1.004	0.981
Age	1.005 ³	1.004 ³	1.005 ³	1.003
Presidential Disapproval	(not included)	2.293 ³	1.815 ³	1.161
Member of President's Party	0.600 ³	0.841 ³	0.854 ³	0.871
Gov't Wastes Tax Money	4.487 ³	4.082 ³	3.893 ³	3.652 ³
Economy Last Year	(not included)	(not included)	1.130 ³	1.055
People Would Take Advantage of You	(not included)	(not included)	(not included)	0.482 ³
Constant	0.676 ³	0.344 ³	0.289 ³	3.335 ³
R ²	0.119	0.123	0.122	0.116
N	23147	17387	12299	3145

¹ p < 0.05 ² p < 0.01 ³ p < 0.001

Appendix C: Coefficients for Logistic Regression Models of the Log Odds of Believing Quite a Few in Government are Crooked by Year

Year	Race	Income	Educa- tion	Age	Presi- dential Disap- proval	Mem- ber Pres's Party	Gov't Wastes Tax Money	Econ Last Year	Big Busi- ness Therm	Poor Therm	Welfare Therm	Can't be Too Careful	People Take Advan- tage	Con- stant	R ²	N
1964	0.469 ²	0.871 ¹	0.935	0.992	---	0.749 ¹	5.892 ³	---	0.993 ¹	---	---	0.818	0.446 ³	8.091 ³	0.188	1226
1968	0.658	1.082	0.862	0.995	---	0.871	5.376 ³	---	0.997	---	---	0.410 ³	0.603 ³	2.736	0.158	1150
1970	2.226 ³	0.830 ²	0.844 ¹	0.991 ¹	---	0.682 ¹	4.048 ³	---	---	---	---	---	---	0.284 ²	0.099	1357
1972	2.036 ³	1.053	0.879	1.005	+++	0.706 ¹	3.250 ³	---	0.986 ³	0.999	---	0.637 ³	0.515 ³	1.443	0.159	1677
1974	0.949	0.975	0.794 ²	1.000	1.800 ³	1.073	3.324 ³	---	0.984 ³	1.006	---	0.569 ³	0.534 ³	2.231	0.182	998
1976	2.290 ²	1.077	0.792 ²	1.004	1.510 ²	1.091	3.851 ³	---	0.988 ³	1.010 ¹	0.994	0.541 ³	0.509 ³	0.585	0.192	1214
1978	1.459	0.830 ³	0.851 ³	0.997	1.734 ³	0.898	4.403 ³	---	---	---	---	---	---	0.194 ³	0.098	1577
1980	1.402	1.032	0.646 ³	0.989 ²	1.209 ²	0.760	3.876 ³	1.010	0.989 ³	+++	+++	---	---	1.017	0.114	988
1984	1.372	0.947	0.810 ²	0.994	1.003	0.841	4.198 ³	1.077	0.998	1.008 ¹	0.991 ²	---	---	0.284 ¹	0.101	1333
1988	1.678 ¹	0.873 ¹	0.742 ³	1.002	1.100	0.891	3.347 ³	1.102 ³	0.994 ¹	1.007	0.989 ²	---	---	0.477	0.135	1222
1990	1.360	0.870 ¹	0.811 ²	0.996	1.326 ³	1.075	3.695 ³	1.146 ³	---	1.007 ¹	0.993 ¹	---	---	0.192 ³	0.137	1353
1992	1.150	0.886 ¹	0.893	0.996	0.988	0.965	4.356 ³	1.188 ³	0.990 ³	1.008 ¹	0.989 ³	0.676 ³	---	0.880	0.141	1619
1994	1.630 ¹	0.944	0.921	0.988 ³	1.138 ³	1.029	4.527 ³	1.075	0.993 ¹	1.011 ²	0.988 ³	---	---	0.338 ³	0.138	1251
1996	1.490	0.883	0.885	0.985 ³	1.228 ¹	0.918	3.623 ³	1.029	0.986 ³	1.009 ¹	0.987 ³	0.606 ³	0.651 ²	5.579 ²	0.180	1125
1998	0.714	1.0\41	0.878	0.980 ³	1.042	1.189	6.716 ³	1.086	---	1.002	---	0.759	0.652 ¹	1.701	0.189	934
2000	1.104	0.941	0.809 ³	0.975 ³	1.077	1.247	4.412 ³	1.023	0.995	1.011 ¹	0.992 ¹	0.803	0.495 ³	4.430 ¹	0.183	958
2002	0.900	0.870	1.079	0.988	0.992	0.703	3.906 ³	0.939	0.978 ³	1.009	1.006	0.627	0.488 ³	2.977	0.155	505

¹ p < 0.05 ² p < 0.01 ³ p < 0.001

--- indicates question was not asked in that particular year

+++ indicates sample size is too small for analysis

Appendix D: Coefficients for Logistic Regression Models of the Log Odds of Believing the Government is Run by a Few Big Interests By Year

Year	Race	Income	Educa- tion	Age	Presi- dential Disap- proval	Mem- ber Pres's Party	Gov't Wastes Tax Money	Econ Last Year	Big Busi- ness Therm	Poor Therm	Welfare Therm	Can't be Too Careful	People Take Advan- tage	Con- stant	R ²	N
1964	0.825	0.842 ¹	1.072	1.009	---	0.535 ⁵	4.706 ⁵	---	0.986 ⁵	---	---	0.660 ¹	0.384 ⁵	6.518 ⁵	0.210	1174
1966	0.465 ⁵	0.962	1.012	1.013 ⁵	---	0.510 ⁵	---	---	0.988 ⁵	---	---	0.368 ⁵	---	10.381 ³	0.103	1026
1968	0.511 ¹	1.025	0.818 ¹	1.010 ¹	---	0.614 ⁵	3.791 ³	---	0.981 ³	---	---	0.519 ⁵	0.677 ¹	13.368 ³	0.185	1092
1970	1.4179	0.821 ²	0.983	1.012 ²	---	0.568 ⁵	4.598 ⁵	---	---	---	---	---	---	0.439	0.146	1277
1972	1.187	0.907	0.937	1.005	+++	0.790	3.999 ⁵	---	0.979 ⁵	1.001	---	0.690 ⁵	0.503 ⁵	9.947 ⁵	0.188	1598
1974	1.148	0.904	1.029	1.013 ¹	2.331 ³	1.080	4.097 ⁵	---	0.974 ⁵	0.998	---	0.402 ⁵	0.647 ¹	7.082 ¹	0.217	957
1976	1.114	1.057	0.965	1.013 ⁵	2.611 ³	0.700 ¹	2.780 ⁵	---	0.973 ⁵	1.005	0.988 ⁵	0.602 ⁵	0.588 ⁵	5.358 ¹	0.183	1153
1978	0.700	0.827 ²	1.113	1.001	2.089 ⁵	0.881	5.578 ⁵	---	---	---	---	---	---	0.611	0.130	1532
1980	0.713	0.966	0.782 ¹	1.009	1.425 ⁵	0.896	3.361 ³	1.139	0.981 ³	+++	+++	---	---	1.788	0.126	944
1982	0.848	0.931	1.101	1.000	1.570 ⁵	0.816	3.693 ³	1.083	---	---	---	---	---	0.279 ¹	0.133	993
1984	1.101	1.106	1.017	1.005	1.481 ³	0.731 ¹	3.248 ⁵	1.092	0.985 ⁵	1.007	0.993 ¹	---	---	0.275 ¹	0.171	1298
1988	1.239	0.833 ⁵	0.855	1.002	1.355 ⁵	0.797	3.644 ⁵	1.033	0.986 ⁵	1.000	0.996	---	---	2.401	0.160	1203
1990	0.964	1.066	1.155	1.020 ⁵	1.557 ⁵	0.820	4.605 ⁵	1.244 ⁵	---	1.010 ¹	0.990 ⁵	---	---	0.043 ⁵	0.173	1325
1992	1.079	1.028	1.082	1.020 ⁵	1.257 ⁵	0.836	4.254 ⁵	1.162 ¹	0.989 ⁵	0.997	0.997	---	---	0.419	0.124	1594
1994	1.059	0.906	0.935	0.990 ¹	1.156	0.855	4.710 ⁵	1.102	0.978 ⁵	1.007	0.991 ¹	---	---	6.244 ²	0.134	1217
1996	0.904	1.002	0.984	1.002	1.217 ¹	0.722	3.696 ⁵	1.134 ¹	0.972 ⁵	1.017 ²	0.999	0.706 ¹	0.465 ⁵	8.102 ²	0.170	1009
1998	1.079	1.102	1.026	1.005	1.135	0.943	3.216 ⁵	1.084	---	1.000	---	0.877	0.519 ⁵	1.306	0.109	904
2000	0.836	0.911	1.044	1.007	0.991	0.774	3.419 ⁵	0.952	0.978 ⁵	1.004	0.996	0.521 ³	0.765	17.786 ³	0.152	935
2002	1.820	0.902	1.174	0.999	1.599 ⁵	0.625	4.615 ⁵	1.123	0.982 ⁵	1.005	0.991	0.998	0.835	0.170	0.239	492

¹ p < 0.05 ² p < 0.01 ³ p < 0.001

--- indicates question was not asked in that particular year

+++ indicates sample size is too small for analysis