

## Corruption in our world

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Women in Africa spend about 40 billion hours per year collecting water. The total number of hours worked annually by Australia's entire labour force is about 20 billion hours. Despite the skill of engineers to clean water and move it to where it is needed, and despite billions of dollars in development aid, clean water is a scarce resource in Africa, and the incidence of waterborne illness and the brake on economic development is staggering.

The main reason that women spend so many hours fetching water is corruption.

Imagine if those 40 billion hours were put to more productive and creative use. African nations cluster at the bottom of the Corruption Perception Index (CPI) which was released earlier this month.

When I teach my courses on corruption I start with a discussion about whether poverty causes corruption, or whether corruption causes poverty.

Every day I receive press reports of corrupt activities from all over the world. The list is depressingly long. It seems that when corruption rears its head many in authority look the other way. Corruption exists in both rich and poor countries, but the dynamics are very different.

Globally corruption is big business and big politics. Corruption is estimated to cost 5% of global GDP (about \$2.6 trillion): about \$1 trillion per year is paid in in bribes; the kleptocrats of this world skim about \$40 billion per year. It adds trillions of dollars to the cost of doing business.

In the last few days the Economist (2 Feb 2016) has reported on a \$20 billion hole in the economy of Nigeria, which is afflicted by the resources curse. If Nigeria could have reduced its corruption level to that of neighbouring Ghana, then its economy could be 22% larger, and if it could reduce its corruption to be on par with Malaysia (which has its own special problems) then the economy would be 37% larger.

In the Czech Republic last week the closest adviser to a former Prime Minister was sentenced to 5 years in prison for soliciting €18 million in bribes for government military equipment purchases.

In the Philippines the Ombudsman has reported that large numbers of corrupt officials are spread throughout the bureaucracy and that her office is inundated with complaints about graft, corrupt practices and other administrative violations.

About 13% of Moldova's GDP disappeared from banks last year. This is causing problems for Moldova's attempts to join the EU. A powerful oligarch, Vladimir Plahotniuc, is accused of running the country through bribes and intimidation. Plahotniuc supports the pro-Europe and anti-Russian stance, but the corruption crisis is strengthening pro-Russian sentiment, even though there is massive Russian money laundering through Moldova's banks, and only 6% of the population is ethnically Russian.

In the Ukraine about \$12 billion disappears from the national budget every year, and the CPI ranks Ukraine as Europe's most corrupt country. In some places Ministers resign because they are corrupt, because they have been found out. In Ukraine last week, the economy minister Aivarus Abromavicius resigned in protest at the slow pace of reform in the country. He said he did not want to provide "cover" for widespread government corruption.

These stories are totally foreign to Australia. But we have our examples, and while the scale is different, these are troubling.

Lukas Kamay and Christopher Hill were at uni together. Kamay got a job as a trader with NAB, Hill worked at the ABS. In 2014 they were convicted for corrupt activity. Hill released sensitive ABS data to Kamay before it was publicly released - employment data, new capital expenditure, retail trade data, new building approvals etc. Kamay traded in foreign exchange derivatives and personally made \$7 million. He gave Hill \$20,000. Both ended up in prison, and ABS morale and culture was deeply affected - first time in 115 years that anything like this had happened.

Fadi Dwawhi was employed by the Australian Taxation Office at the Hurstville Tax Office Client Verification Centre, and was responsible for verifying Business Activity Statements lodged by clients of the tax office. The Centre used a risk rating mechanism to assign cases for inspection. Such cases are allocated randomly to officers for investigation.

Against the rules Dawawhi logged into the system and allocated four specific cases to himself. He knew that these companies would be submitting irregular claims, he processed them, and arranged for tax refunds to be paid. These four companies falsely claimed \$857,357. Dawawhi received a kickbacks totalling \$135,000 from the companies and this was paid into his wife's bank account.

While Gordon Nuttall was a minister in the Queensland government he received \$360,000 from two leading business figures. For a period of three years one paid \$8333 each month into his bank account, the other a one-off payment of \$60,000. He did not declare this in his required statements of disclosure and when convicted and sentenced to 14 years he claimed he had done nothing wrong, he was just looking after his family. He abused his position for personal gain

Former Ministers Tripodi and McDonald in NSW stand accused of altering a cabinet document so their mates could benefit substantially.

NSW Railways have had a long history of rorting, misuse of equipment, poor procurement practices, corruption and poor management. There have been many inquiries, each more shocking than the one before. There was an ICAC investigation which reported in 2008, documenting endemic and enduring corruption in RailCorp which involved employees and managers at many levels of the organisation.

The Commission investigated allegations of fraud, bribery, improper allocation of contracts, unauthorised secondary employment, failure to declare conflicts of interest, falsification of time sheets, and the cover-up of a safety breach. In financial terms RailCorp employees were found to have improperly allocated contracts totalling almost \$19 million to companies owned by themselves, their friends or their families, in return for corrupt payments totalling over \$2.5 million.

The ICAC made 96 findings of corrupt conduct against 31 people in relation to this investigation, and recommended that the Director of Public Prosecutions consider prosecution of 33 individuals for a total of 663 criminal offences.

This investigation exposed an extraordinary extent of public sector corruption. Corrupt employees appeared to be confident that they would not be caught or if they were that not much would happen to them.

Before the Fitzgerald commission, the Queensland police were out of control - literally. The Commissioner was a crook. He surrounded himself with and promoted crooks, one of whom later became Commissioner and was sentenced to 14 years. There was misuse of resources and major criminality, opponents were persecuted and fitted up and charged (and convicted). Relentless opposition in Parliament was ignored, and the Premier would hear of no criticism of the police.

Are the Australian examples one-offs and isolated events, or part of something more pervasive? About 40% of Australians think corruption is on the increase. When a politician last year took a helicopter to a party function when she could have been driven, the chorus was "how corrupt is that!"

That's not corruption. It is arrogance, stupidity, a reflection of a politician out of touch with their community and with an inflated sense of their own importance, and all of this against a backdrop of very poor leadership which looked the other way.

Corruption is the trading of entrusted authority, for personal gain, which distorts the making of public policy or the implementation of public policy. It's not a public official getting a bunch of flowers, a box of chocolates, a bottle of wine or a ride in a helicopter. These things are not crimes, and are not corruption. They are code of conduct violations. There is a challenge in knowing where to draw the line, and this is where a culture of ethics and good leadership comes into play. When there is tone at the top, corruption and poor behaviour are minimised.

I have given examples of regimes where everything is corrupt, and the state has been captured, examples of organisations that have been corrupt, and of individuals who have behaved corruptly. My research examines these, but focusses more on corrupt events.

Explaining comes in many shades. Sometimes where you stand on the root causes depends on where you sit. Psychologists will focus on individual behavioural characteristics, and anthropologists will tell us that societies are built around status

and obligation, and gifts and bribes are socially structured. Philosophers will debate exhaustively the principles that underpin ethics, and historians will tell us it was worse in the old days. Political scientists will talk about party political advantage and electoral opportunities; lawyers will talk about deficiencies in laws, and processes of legality and compliance, while economists will talk in algebra and demonstrate with graphs and equations what the root causes might be. Business academics won't necessarily know what I am talking about.

There are many types of corruption - it's not just bribes, but there is extortion, conflict of interest, nepotism, "pay to play". It happens in different activities, such as developing infrastructure, building things, approving development plans, inspecting things, hiring people, issuing licences etc. It happens in different sectors, in local government, in the sporting sector, the health sector, the mining sector, the energy sector, etc, and corruption is different in different places.

My research involves describing, understanding and explaining corruption, within a framework and developing means to prevent and minimise corruption. We must distinguish corruption in the making of public policy and in the implementation of policy.

One of the great challenges is measuring. There is virtually no data, and we can never measure how much corruption there is like we can measure traffic accidents or homicides or year 12 completions or smoking rates. Most corrupt activity is clandestine. It takes place in secret, and what comes to light does not reflect the full extent. The big question is whether what comes to light is just the small tip of a large iceberg, or a fair whack of poor behaviour in the community.

While I have done surveys of perceptions of corruption, most of my research is built on cases that come to light and stories. I tell stories, describe events and cultures, and classify them.

Most of the measures are measures of perception. The Corruption Perception Index is a well regarded measure and ranks Australia very highly. However over the past few years Australia has slipped from a rank of 7<sup>th</sup> to 13<sup>th</sup> (out of about 170 countries). Does this matter? Is it a catastrophe?

Unlike citizens in many countries, Australian can go about their daily life without the fear of being shaken down by public officials, without the fear that they will have to

pay a bribe to receive basic services that should be theirs by right, and without the expectation that money that should be used for services finds its way into the pockets of politicians or officials. Yet in rich countries corruption is seen to be on the increase. It is perceived to be rising, and it is universally agreed that it is unacceptable.

One important question is what is the unit of analysis? We often talk about the nation state. We say Australia is more corrupt than Denmark, but less corrupt than Russia, Cambodia or Zimbabwe.

So what? To me that is not terribly helpful. Because a guy at the ABS made money by releasing data, because an official in the ATO altered some information and got a kickback, because the Queensland police were a nightmare organisation, does that make Australia a corrupt country? It certainly highlights that there are events and cultures that are quite unacceptable.

But standards change over time. What was considered legitimate a generation ago, such as Ministers in Queensland receiving shares from a mining company which they were regulating, would be quickly exposed and disparaged today. There is a lot of focus today on propriety and process, and the public expects a lot more than it did in the past. But we still have some way to go.

Not only do standards change, but we have fewer people now arguing that a bit of corruption is good for the economy as it makes for more efficiency. Likewise fewer people are saying that corruption is OK because it is a victimless crime. Just ask the water bearers of Africa if it is victimless, or ponder the 5.4 million deaths in the Democratic Republic of the Congo that resulted directly from local warlords contracting with businesses for access to the mineral wealth of the country. Closer to home ask the residents of Wollongong in NSW who had their town planning subverted and had high rise apartments built where they should not have been built.

As I said people in Australia do not find that they have to bribe people to get clean water or electricity, access to a job, to see a doctor, to get their child into school, or to pass a course at university. But there are areas in which corruption is evident and present, and which does affect our lives.

I want to turn to three areas that are of significant concern within Australia. They are local, but universal, and affect rich and poor countries alike. They are symptomatic of rich country corruption. Corruption in sport, corruption in local government and corruption in political party donations.

The first of these is **sport**. Some people are passionately interested in sports, but many others couldn't care less. Reports of corruption in sport are now so prevalent and widespread that many have stopped taking notice. The instances of reported corruption generally revolve around illegal or prohibited drug taking to enhance performance, corrupt behaviour by sporting officials, the fixing (or throwing) of matches and other variants such as insider information for illegal betting activities. Increasingly, the reports have a flavour of unethical or illegal commercial gambling operations and associated international criminality. Modern sport involves substantial global media and television coverage, and involves international as well as domestic political activities and encompasses complex economic ventures.

Things have moved on a lot since the fixing by a gangster of the World Series baseball in 1919. Recently nobody could have missed news reports about AFL doping and the Essendon players, allegations of match fixing in tennis at the time of the Australian open last month, the trials and tribulations of FIFA and global football - what a catalogue of events that is, - in athletics in Russia where top athletics officials were banned for life for covering up the positive doping blood test of a top female athlete, and then blackmailing her over it. The allocation of and bidding processes for host venues, such as for the Olympic Games or the FIFA World Cup are full of allegations of bribery and corruption.

It matters, not just because we expect fairness and integrity, and our national and local pride ride on these contests, but because there is huge public money involved. The consequence of this is that public policy now needs to cope with what had previously been largely activities in a private market. There are also regulatory issues at national and international levels across the gambling spectrum, as well as significant issues of drug policy.

The second sphere is **local government**. This is the level of government closest to the people, and one which affects much of our everyday lives. Survey work shows that people believe that there is corruption in local government, but these corrupt events are not reported much to anti-corruption agencies. In Western Australia for

example the Corruption and Crime Commission (CCC) reported in 2015<sup>1</sup> that it had found systemic weaknesses in local government procurement processes, which left that sector particularly vulnerable to fraud and corruption. The CCC found that of 13 investigations into allegations of serious misconduct in local government councils in 2014, eight of the councils had serious flaws in how they supervised the purchase of goods and services. (As at 2011, in metropolitan Perth the 30 councils had almost \$11 billion in assets and more than 9,000 fulltime equivalent staff).

In WA in 2013-2014 the CCC received 13,408 allegations of misconduct, but only 618 related to councils while about 12,000 related to State Government agencies. Is the balance so lopsided?

A lot of the local government corruption is petty, and dealt with internally. But some is major and affects the community significantly. I have just published a paper in which we show that in NSW, while the numbers are small, the most common form of corruption is in issuing of permits and licences, . Of the corrupt people, roughly 10% were elected officials, 30% council employees and 60% private individuals (16% of these were developers). A similar study I did in New York found that corrupt activity was initiated equally by private individuals and council employees.

While there is a lot of juicy reading about big corruption scandals in local government corruption, mostly in NSW - just think Wollongong. Newcastle, Auburn, the real problem is that there is so little data upon which to base policy. There is no standardised units of measurement for corruption, and definitions of fraud and corruption blur.

The States have also adopted differing approaches in dealing with local government complaints. For example in Victoria there is a dedicated Local Government Investigations and Compliance Inspectorate, while other States use combined approaches involving the Offices of the Ombudsman and Auditor-General, as well as the local anti-corruption authority for both fraud and corruption complaints. These factors add to the complexity in carrying out any systematic comparison of corruption prevalence. I have a PhD student examining corruption in local government (in NSW).

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<https://www.ccc.wa.gov.au/sites/default/files/Report%20on%20Misconduct%20Risk%20in%20Local%20Government%2>

One interesting feature in NSW is that legislation was passed to prohibit the making of political donations by developers

This leads into the third point that is very significant on the corruption landscape in Australia. What does a **political donation** buy? Does it buy a favour, a contract, a seat at the table, or is it just a nice thing for an individual or a company to do? In Australia millions of dollars are given to political parties. The Australian Electoral Commission reported last week on the many millions of dollars that political parties received last year.

In the US there are 535 members of Congress. In her book *“Corruption in America”* Zephyr Teachout estimates that in 2012, private interests spent about \$12.5 million on lobbying for **each and every** member of Congress. When I worked in New Jersey “pay to play” was a common phenomenon. Companies could not get state contracts if they did not make political donations.

In a major case in 2010 (in *Citizens United*,<sup>2</sup>) the USA Supreme Court held that the First Amendment protects political speech regardless of the identity of the speaker, and secondly that no sufficiently important countervailing governmental or constitutional goal was served by limiting corporate political advertising. The effect of the USA decisions overall is that unless there is demonstrable **quid pro quo** corruption, there should be no limit on donations. In the majority judgement Kennedy J wrote

*“...independent expenditures, including those made by corporations, do not give rise to corruption or to the appearance of corruption...”*

Happily, Australia has taken a different tack. In 2015, the High Court (In *McCloy’s* case<sup>3</sup>) ruled that the states could legislate to impose caps on donations, and furthermore that one class of persons, property developers, could be prohibited from making political donations. This came about because of allegations of corruption levelled at a property developer who had influenced the Newcastle council and who was a big donor and wheeler and dealer in the NSW Liberal party.

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<sup>2</sup> *Citizens United v FEC* 558 U.S.310 { 2010}

<sup>3</sup> *McCloy v NSW* {2015} HCA 34

Justice Gagelear wrote

*'...the compelling statutory object (of the relevant NSW provisions) is the object of preventing corruption and undue influence in the government of the State.'*

And he went on to say

*"...Corruption is perhaps more readily recognised than defined. One universally recognised form of corruption, however, is for a public official to receive money in a private capacity in circumstances calculated to influence the performance of the official's public duties..."*

Here Australia stands in sharp contrast to the US, but there are still red flags. Parties are desperate for donations and the ALP is absolutely dependent on funds from trade unions. It is important to get a sense of what one buys with one's political donation. Is it just access, or is it more?

One thing that irks me personally is when parties charge very large amounts for stakeholders to have dinners with Ministers. The funds go to the party, not to the Minister personally, but it would seem to me that Ministers are public property, and when acting as a member of the Executive there should be no charge for access to their companionship.

The Australian High Court has over time developed an important basic principle which provides a guarantee for Australian citizens of freedom of communication in governmental and political matters. Whether it can really work in practice is something keen observers will monitor.

### **Tackling corruption and ACAs**

There are a number of ways in which corruption can be tackled. What we don't necessarily want are more laws, more rules and more processes. This will drive everybody nuts, and will give more opportunities for those bent on a path of corruption to circumvent and play around the rules. Taxation policy is an interesting comparison. Taxation legislation in Australia runs to many tens of thousands of pages, and a whole army of very clever and hardworking people are employed to find loopholes and ways of circumventing what is fair what is legislated. Their skills are wasted unproductively, as are those of the water bearers of Africa.

In the architecture of corruption control there are spheres of activity. There are international treaties and conventions, such as the United Nations Convention Against Corruption, that place obligations on signatories. There are carrot and stick approaches such as the World Bank and various aid agencies providing loans and aid, but only if corruption controls are in place. There is an OECD convention that prohibits bribery of foreign officials, and this is backed by very tough British and American law, but applied in a lax manner in most other countries. The Council of Europe and the G20 have put corruption prevention up in lights as have many regional organisations.

The global NGO Transparency International has instituted a series of national integrity system assessments.

In a recent paper Kym Kelly and I argued for a blend of compliance and values measures and these would involve good principles in and good leadership, and an understanding of how integrity enhances public administration.

A pathway to success would involve three key characteristics

- Guidance
- Management
- Control

And I could do a full lecture, and more on each of these.

In a country like Australia does corruption control lie with the individual, with the organisation, or with an overarching body such as an anti-corruption agency?

I want to spend a bit of time on anti-corruption agencies, as there is a strong and continuing call for the Commonwealth to establish a federal Independent Commission against Corruption (ICAC).

The Commonwealth government is very good on fraud control policy and has many excellent mechanisms in place. However it is absolutely floundering on corruption control policy but a Commonwealth ICAC is not the way to go.

In Australia each state has an anti-corruption agency, as well as an Ombudsman, as well as an Auditor General as well as a Public Service Commissioner. There are

other agencies in local government, various inspectors generals and diffuse watchdogs.

The state anti-corruption agencies have a combined budget of about \$153 million and the State Ombudsman Offices have a further \$50 million.

A quick flick through them shows it is not all plain sailing

- The oldest ACA the NSW Independent Commission against Corruption has lost a court case about the extent of its powers and was accused of over-stepping its powers and acting with great arrogance and pursuing people for petty reasons. Its relationship with its oversight bodies is terrible, and there are frequent complaints about it in the media.
- The Western Australian CCC had a bunch of rogue operators violating so many process and procedures, claiming benefits they were not entitled to, manipulating procurement processes, misuse of vehicles and expenses accounts etc
- The Queensland CCC has a new director, and the previous one was accused of partisanship and political favouritism.
- The Tasmanian ACA had a report by its retiring Commissioner saying that the politicians have limited its powers to investigate any irregularities that involve politicians.
- The South Australian Independent Commission against Corruption is accused of great secrecy.
- The Victorian ACA is having its legislation streamlined after only two years, but critics argue that its reform brief is too limited.

Some ACAs deal with police corruption, some don't, some focus on organised crime, some don't, some go for politicians, but for some that is beyond their remit. We do have a commonwealth agency (ACLEI), but that is poorly resourced and deals only with law enforcement type agencies.

There is a loud clamour for a Commonwealth ICAC, but why would you want to set one up, when we don't really know what the problem is, when it would certainly be under resourced, and when any activity would start a massive turf war between overlapping law enforcement agencies.

Also, noting that while Australia lies 13<sup>th</sup> on the global CPI only one of the countries that ranks above Australia has a national ACA, and that is Singapore. The only other country in the top 20 that has a national ACA is Hong Kong.

Reconfiguring administrative responsibilities almost inevitably raises tension in the form of jealousy, hurt feelings and arguments over jurisdiction. Those who are left "outside" might feel less than willing to cooperate with a new independent body, and there could be endless jurisdictional conflicts about who should do what.

Importantly, public expectations could be raised with an overly optimistic impression of the capacity of the new agency to come to grips with corruption in Australian life. Some quick and visible results might come in the first year, but there will inevitably be a backlog, some vexatious and frivolous complaints, and before long there could be a real air of cynicism about progress and results. The scepticism could well extend if resources are not abundant, and cynics might suggest that politicians and players are working behind the scenes in order to ensure that the new agency is in fact hamstrung or politically toothless, so that business can proceed as normal. This scenario has played out with other anti-corruption agencies in Europe and Asia.

I am not saying we should not deal with corruption that falls within the commonwealth jurisdiction. But a broad based commonwealth ACA is not the way to go. I am proposing a different structure, an anti-corruption network that has authority and independence.

What I am proposing is the establishment not of an executive agency, but of an Anti-Corruption Council. Reporting through (perhaps) the Attorney General to an all-party parliamentary committee, this would be expressly a body for discussion and cooperation, and not for the investigation and consideration of individual cases. If cases are brought to the attention of the Council they would be referred to the most suitable agencies.

Several examples of such bodies exist around the world. In Finland, for example there is a cooperative network, which brings together representative of the key governmental agencies (for example police, justice, taxation, social welfare, and commerce) but also the business sector, non-governmental organizations and research.

An Australian Council would work independently and refer cases for investigation to appropriate authorities such as the Australian Federal Police, the Public Service Commissioner, the Australian Taxation Office, the Ombudsman, and these in turn would take matters to the Director of Public Prosecutions, as appropriate.

In addition the Council would

- increase awareness of corruption in society and promote awareness of anti-corruption guidelines in State and local government as well as in the private sector
- monitor how Australia adheres to international conventions and agreements
- devise public information on corruption prevention, and in particular chart potential weaknesses and vulnerabilities in different sectors to corruption, and outline countermeasures

There would be no separate agency or organisation to do this, but a network that would meet a few times per year, and be supported by a (very) small secretariat. It would draw on stakeholder support and academic and NGO research for its evidence base.

Government is about the creation of public value. When there is corruption, public value is trashed.

To create public value the public sector acts in best interests of the collective, and uses public assets for the benefit of all. The use of these assets is guided by fairness, client satisfaction, and transparent processes.

Ethical decision making helps create public value and protects our institutions. The impact on the community is universal. We have to be careful and observant of all

the slippage points, of all the points where perceptions and practice can be undermined.

One of the greatest threats to integrity is denial of responsibility and denial of accountability, as well as silence. We can't look the other way. When Julia Gillard established the Royal Commission into Institutional Responses to Child Sexual Abuse she accused pillars of the establishment of "averting their gaze" Australian of the year David Morrison told his army colleagues "the standard you walk past is the standard you accept"

We do accept things we shouldn't, we do avert our gaze from time to time, but we know not to.

Human beings, who are almost unique in having the ability to learn from the experience of others, are also remarkable for their apparent disinclination to do so.