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### A Realpolitik Defense of Social Rights

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Perceptions of Corruption and Campaign Finance: When  
Public Opinion Determines Constitutional Law

Nathaniel Persily & Kelli Lammie

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## **Perceptions of Corruption and Campaign Finance: When Public Opinion**

### **Determines Constitutional Law**

**By**

**Nathaniel Persily\* & Kelli Lammie\*\***

*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 perception 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 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 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 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.*

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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*<sup>1</sup> to *McConnell v. FEC*.<sup>2</sup> 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 their behalf. 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.<sup>3</sup> This Article attempts to do both.

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<sup>1</sup> 424 U.S. 1 (1976).

<sup>2</sup> 124 S. Ct. 619 (2003).

<sup>3</sup> The one exception is the work of David Primo. See David Primo, *Campaign Finance and Public Opinion*, in THE ENCYCLOPEDIA OF PUBLIC OPINION (forthcoming 2004); David Primo, *Campaign Contributions, the Appearance of Corruption, and Trust in Government*, in INSIDE THE CAMPAIGN FINANCE BATTLE: COURT TESTIMONY ON THE NEW REFORMS, 285-296 (Anthony Corrado et al., eds., 2003); David Primo, *Public Opinion and Campaign Finance: Reformers Versus Reality*, 7 THE INDEPENDENT REVIEW 207-219 (Fall 2002); David Primo et al., *Corporate PAC Campaign Contributions in Perspective*, 2 BUSINESS AND POLITICS 75 (April 2000).

We begin in Part I by briefly sketching the evolution of the appearance-of-corruption rationale for campaign finance regulation. We argue that the Court's startling 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 fall-back state interest in the likely event that one cannot make the difficult showing that campaign contributions have actually influenced a representative's vote on a bill or other change in official behavior.

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: that 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: that money buys access and in some cases, may buy votes.

In Part III, we present data not previously employed in campaign finance litigation. We attempt to demonstrate that aggregate perceptions of corruption have little to do with anything happening in the campaign finance regime and more to do with Americans' opinions about government generally, incumbent officeholders, and the state of the economy, in particular. 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. In general, those

with lower socioeconomic status are more likely to perceive corruption. Moreover, general anti-government feelings, specific anti-incumbent attitudes and opinion as to the performance of the economy also seem to contribute strongly to 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 feel government is 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 contributions banned by the Bipartisan Campaign Reform Act and earlier reforms but also to contributions made within the laws' 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 that latter finding and in the finding that trends in general attitudes of corruption seem unrelated to anything happening in the campaign finance system (*i.e.*, a rise in contributions or the introduction of a particular reform). For those disinterested 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,”<sup>4</sup> we hope judges will not base their decisions on a headcount of the American people.

## 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.<sup>5</sup> 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. Catering to irrational fears never constitutes a compelling state interest. In fact, 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.<sup>6</sup>

In general, the state has a compelling interest only in addressing problems that are both *real* and significant. “When 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.”<sup>7</sup> Government cannot squelch speech, let alone political speech,

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<sup>4</sup> Cf. *Shaw v. Reno*, 509 U.S. 630, 648 (1993) (ruling that bizarrely shaped congressional districts may trigger strict scrutiny under the Fourteenth Amendment).

<sup>5</sup> For a more developed exploration of this argument from which much written here is drawn, see D. Bruce La Pierre, *Campaign Contribution Limits: Pandering to Public Fears About “Big Money” & Protecting Incumbents*, 52 ADMIN. L. REV. 687 (2000).

<sup>6</sup> See *Cleburne v. Cleburne Living Center*, 473 U.S. 432 (1985); *Romer v. Evans*, 517 U.S. 620 (1996).

<sup>7</sup> *United States v. National Treasury Employees Union*, 513 U.S. 454, 475 (1995) (quoting *Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 664 (1994) (plurality opinion of Kennedy, J.)) (internal citation omitted).

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 non-obvious, evidence as to its existence is usually a necessary predicate to regulation of constitutional rights.

As the caselaw 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 interests, which can justify regulation of campaign contributions or, with respect to corporate and union treasury money, even independent campaign expenditures. 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<sup>8</sup> Emphasis on Appearances

In *Buckley v. Valeo*, 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. 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.<sup>9</sup> Unlike

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The Court specifically rejected the application of this standard for the campaign finance context in *Nixon v. Shrink Mo. Gov't PAC*, 528 U.S. 377 (2000).

<sup>8</sup> 424 U.S. 1 (1976).

<sup>9</sup> *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'



restrictions on individual expenditures, which implicate core political speech and therefore trigger strict scrutiny, contribution restrictions are subject to less-than-strict scrutiny (sometimes called “*Buckley* scrutiny”<sup>10</sup>). For 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 debate is joined when campaign contributions are analogized to bribes. As the *Buckley* Court drew the connection, “[t]o the extent that large contributions are given to secure political quid pro quo’s from current and potential office holders, the integrity of our system of representative democracy is undermined.”<sup>11</sup> 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.

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expenditures, on the other hand, restrict core political speech and therefore cannot be limited. *Buckley*, 424 U.S. at 51-59.

<sup>10</sup> Specifically, such scrutiny translates into the following: “Burdens on contributions may only 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.” *Buckley*, 424 U.S. at 25.

<sup>11</sup> *Buckley*, 424 U.S. at 26.

The state’s interest in preventing the appearance of corruption, therefore, arises 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.<sup>12</sup> In the *Buckley* 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.”<sup>13</sup> 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.’”<sup>14</sup>

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. The government loses legitimacy, under this view, when the public perceives campaign contributions as having a greater effect than do constituent preferences or conscience on a representative’s behavior.

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

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<sup>12</sup> See *Nixon v. Shrink Missouri Government PAC*, 528 U.S. 377, 389 (2000) (summarizing the state’s interest in combating corruption as extending to “undue influence” and “the broader threat from politicians too compliant with the wishes of large contributors”).

<sup>13</sup> *Buckley*, 424 U.S. at 27.

From the time *Buckley* laid down this unique state interest grounded on combating appearances, 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? In any event, courts have relied on the following categories 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 judge can discern from the evidence presented that an actual quid pro quo took place, then by definition the contribution appears to corrupt as well. Second, these different forms of evidence may offer opinions as to what an individual perceives. Defendants 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

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<sup>14</sup> *Buckley*, 424 U.S. at 26-27 (quoting *Civil Service Comm’n v. Letter Carriers*, 413 U.S. 548, 565 (1973)).

politician is corrupt. Such evidence amounts to a witness's declaration that, whatever the truth of the matter, 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.<sup>15</sup> 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. Comm'n on Governmental Ethics & Election Practices*, which upheld a Maine law limiting contributions, is both typical and typically vacuous:

“Ranking 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.

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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.

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<sup>15</sup> *Nixon v. Shrink Missouri Government PAC*, 528 U.S. 377, 391-392 (2000); *Daggett v. Comm'n on Governmental Ethics & Election Practices*, 205 F.3d 445, 457 (1st Cir. 2000); *State v. Alaska Civil Liberties Union*, 978 P.2d 597, 618 (Ak. 1999); *State v. Dodd*, 561 So.2d 263, 266-267 (Fl. 1990).

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.<sup>16</sup>

Editorials and opinion pieces swim alongside news reports of shady deals and influence peddling in the briefs and opinions that seek to use this type of evidence to demonstrate an appearance of 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*.<sup>17</sup> 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."<sup>18</sup> In 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 a bank, which he decided to use for the state's official business, and to an article

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<sup>16</sup> *Daggett*, 205 F. 3d at 457.

<sup>17</sup> *Nixon*, 528 U.S. at 391, 392 (2000).

discussing large contributions from a brewery and bank to a candidate for state auditor. Although editorials and journalist's accounts do not persuade every court,<sup>19</sup> 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*, which quotes extensively from testimony submitted by former and sitting Senators.<sup>20</sup> In *Nixon*, the Court credited an affidavit of a state senator who merely said, “large contributions have ‘the real potential to buy votes.’”<sup>21</sup> 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*.<sup>22</sup> 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. As with

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<sup>18</sup> 528 U.S. at 392.

<sup>19</sup> See, e.g., *Florida v. Dodd*, 561 So.2d 263 (Fla. 1990) (despite journalist accounts that showed a “crisis of confidence” in state government, court struck down ban on contributions during legislative session); *Ariz. Right to Life v. Bayless*, 320 F.3d 1002, 1010 n.8 (9th Cir. 2003) (finding submitted newspaper articles insufficient as proof of appearance of corruption justifying regulation of PACs); *Democratic Party of the U.S. v. National Conservative Political Action Committee*, 578 F.Supp. 797, 830 (E.D.P.A. 1983), *aff’d in part sub nom.*, *FEC v. NCPAC*, 470 U.S. 480 (1985) (applying “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 corruption interest); *Russell v. Burris*, 146 F.3d 563 (8th Cir. 1998) (finding that public’s views of corruption were not “objectively reasonable” and pointing to newspaper op ed of one legislator explaining why his vote on a tobacco bill was based on substance, not the contributions he received from the tobacco industry).

<sup>20</sup> See *McConnell v. FEC*, 520 U.S. at \_\_\_, slip op. at 36-42 (quoting testimony of Senators Warren Rudman, John McCain, Alan Simpson, and Paul Simon).

<sup>21</sup> *Nixon*, 528 U.S. at 392.

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. “[T]he statewide vote . . . certainly attested to the perception relied upon here: ‘[A]n overwhelming 74 percent of the voters of Missouri determined that contribution limits are necessary to combat corruption and the appearance thereof.’”<sup>23</sup> 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 playing field, 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 potential of contributions, can serve as one indicator of public perception of corruption.<sup>24</sup>

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<sup>22</sup> See INSIDE THE CAMPAIGN FINANCE BATTLE: COURT TESTIMONY ON THE NEW REFORMS, 285-296 (Anthony Corrado et al., eds., 2003).

<sup>23</sup> *Nixon*, 528 U.S. at 392 (quoting *Carver v. Nixon*, 882 F.Supp. 901, 905 (W.D. Mo.), *rev'd*, 72 F. 3d 633 (8th Cir. 1995)).

<sup>24</sup> See *Daggett*, 205 F.3d at 458 (“[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.”); *Alaska v. Alaska Civil Liberties Union*, 978 P.2d 597, 602 (Alaska 1999) (noting that 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 testified that a “constant refrain” of citizens was that “the Legislature was owned by special interests”).

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 percent 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.<sup>25</sup> In *Montana Right to Life v. Eddleman*, the court accepted polls showing that 78 percent of Montana voters think money is "synonymous with power" and that 69 percent of Montanans believe elected officials give "special treatment" to large contributors.<sup>26</sup> In *Homans v. Albuquerque*, 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.<sup>27</sup> And in the District Court in *McConnell*, Judge Kollar-Kottelly's opinion provided a near-catalogue of the public opinion data offered by the defendants with respect to the overwhelming majorities who view soft money contributors as having undue influence.<sup>28</sup>

Courts have differed as to whether such polls by themselves prove an appearance of corruption<sup>29</sup> or save an otherwise unconstitutional law.<sup>30</sup> However, such polls attempt

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<sup>25</sup> 205 F.3d at 457.

<sup>26</sup> 343 F.3d at 1093.

<sup>27</sup> 217 F.Supp.2d 1197, 1201-02 (D.N.M. 2002).

<sup>28</sup> *McConnell v. FEC*, 251 F.Supp.2d 176 (D.D.C. 2003) (opinion of Kollar-Kottelly, J.).

<sup>29</sup> Some courts will delve into the survey design and results to determine whether they actually demonstrate a public perception of corruption. See, e.g., *NCPAC*, 578 F.Supp. 797, 825-826 (picking apart poll that attempted to prove PAC spending gave rise to an appearance of corruption); *Republican Party of Minnesota v. Pauly*, 63 F.Supp.2d 1008, 1017-18 (D.C. Minn. 1999) (rejecting survey concerning party expenditures and perception of corruption as self-serving and flawed); *Suster v. Marshall*, 149 F.3d 523, 529-32 (6th Cir.



to provide concrete evidence as to whether the Supreme Court’s concerns in *Buckley* regarding the erosion of public confidence in government may 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 if few measurable deleterious consequences result from negative public opinion about government, however, 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, philosophical or even practical sense – of public opinion

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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).

<sup>30</sup> See, e.g., *Montana Chamber of Commerce v. Argenbright*, 28 F. Supp.2d at 598 (mentioning poll but finding segregated fund requirement for corporate initiative spending unconstitutional); *Kruse v. Cincinnati*, 142 F.3d 907, 911, 918 (6th Cir. 1998) (striking down expenditure limit despite poll finding “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.”).

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. Anti-reformists might greet this development with cheers, but without the fallback on appearances and perceptions, defenders of campaign finance reforms would be left with the difficult job of proving (1) campaign contributions have actually corrupted representatives, and (2) that anti-bribery 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, in any event 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 examples of policy changes.<sup>31</sup> 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 been in the absence of a

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<sup>31</sup> See Donald Green, *The Need for Federal Regulation of State Party Activity*, in *INSIDE THE CAMPAIGN FINANCE BATTLE: COURT TESTIMONY ON THE NEW REFORMS* 51 (Anthony Corrado et al., eds., 2003); FRANK SORAUF, *INSIDE CAMPAIGN FINANCE* 169 (1992); Richard Hall & Frank Wayman, *Buying Time: Moneyed Interests and the Mobilization of Bias in Congressional Committees*, 84 *AM. POL. SCI. REV.* 797 (1990); D. MAGLEBY & C. NELSON, *THE MONEY CHASE* 78 (1990). *But see* Bradley Smith, *Money Talks: Speech, Corruption, Equality, and Campaign Finance*, 86 *Geo. L.J.* 45, 58 (1997); Bradley Smith, *Faulty*

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, 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 Mark Rich pardon scandal. No one doubts that Mark Rich's wife gave considerable amounts of money to the Democratic Party and the election campaigns of President Clinton. 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? Of course, the question could be settled by discovery of a letter from Louise 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.<sup>32</sup> 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.<sup>33</sup>

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*Assumptions and Undemocratic Consequences of Campaign Finance Reform*, 105 YALE L.J. 1049, 1067-1068 (1995).

<sup>32</sup> *But see* Montana Right to Life v. Eddleman, 343 F.3d 1085, 1093 (9th Cir. 2003), which cited a letter 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.

<sup>33</sup> *See* 18 U.S.C. § 201 (2003).

Examples of such activity present an appearance of impropriety, however, even if they do not dispositively prove actual corruption. The reasonable observer would think that official decisions in line with the desires of campaign contributors arise because of, rather than in spite of, 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, is to substantiate, through polling data or otherwise, the assertion that such a consensus exists.

Emphasis on appearances becomes controversial, however, when such a consensus is irrational or the product of systematic biases. As demonstrated in the next section, if the relevant evidentiary question with respect to appearances is whether a contribution at some level gives the contributor more political influence than a similarly situated non-contributor, then campaign contributions themselves of whatever size can be said to give rise to an appearance of corruption. Put differently, the move from actual corruption to appearances does not rid the analysis of the slipperiness of the concept of corruption.<sup>34</sup> If campaign contributors (at any level of giving) appear to have more influence than non-contributors, then the relevant question becomes whether the apparent increase in their influence because of their contribution is “undue.”

## II. The Link Between Campaign Finance and Corruption in the Public Mind

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<sup>34</sup> For a discussion of the malleability of the concept of corruption in campaign finance law, see Thomas F. Burke, *The Concept of Corruption in Campaign Finance Law*, 14 CONST. COMM. 127 (1997); Bruce E. Cain, *Moralism and Realism in Campaign Finance Reform*, 1995 U. CHI. L. FOR. 111; Samuel Issacharoff & Pamela S. Karlan, *The Hydraulics of Campaign Finance Reform*, 77 TEX. L. REV. 1705 (1999).

Although this Article, in large part, criticizes the use of polls 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, if the only constitutional barrier to enacting campaign finance reform of any sort is public recognition that campaign contributions or expenditures corrupt, then all campaign finance reform is constitutional. We present the data from *McConnell v. FEC* here because the poll conducted for the case uses 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 caselaw escape most respondents to public opinion surveys concerning campaign finance. 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.

Whereas public opinion may not reflect the Court's nuanced treatment of certain campaign finance questions, the sources of confusion in the caselaw 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, also may 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 caselaw, 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 believe that campaign contributors exert substantial influence over office holders. As part of its defense of the BCRA in *McConnell v. FEC*, the Department of Justice submitted an expert report from Columbia Political Scientist Robert Shapiro, 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.<sup>35</sup> DOJ also commissioned its own survey from two polling firms, The Mellman Group and Wirthlin Worldwide, Inc., which conducted a telephone poll of 1300 Americans.<sup>36</sup> The pollsters asked a variety of questions concerning the influence of donations to political parties.

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:

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<sup>35</sup> See Robert Shapiro, Public Opinion and Campaign Finance, Sept. 18, 2002 (declaration submitted for the defendants in *McConnell v. FEC*) (unpublished, 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.

55% Great deal  
23% Some  
5% Not too much  
1% None at all  
16% Don't have an opinion<sup>37</sup>

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 sometimes block decisions by the federal government in Washington, D.C. that could improve people's everyday lives." 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."<sup>38</sup>

The survey also included a battery of questions specifically tailored to the provisions of the Bipartisan Campaign Reform Act. Interviewers asked: "If an individual, issue group, corporation, or labor union donated \$50,000 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?"

41% Very likely  
41% Somewhat likely  
6% Somewhat unlikely  
3% Very unlikely<sup>39</sup>

The survey garnered similar responses when the question was rephrased to substitute "paid for \$50,000 or more of *political ads* on the radio or TV that benefited a Member of

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<sup>36</sup> Mark Mellman & Richard Wirthlin, *Research Findings of a Telephone Study Among 1300 Adult Americans*, Sept. 23, 2002 (unpublished, on file with *University of Pennsylvania Law Review*).

<sup>37</sup> *Id.*, at 6.

<sup>38</sup> *Id.*, at 8.

<sup>39</sup> *Id.*, at 9.

Congress” in place of “donated \$50,000 or more to the political party of a Member of Congress.”<sup>40</sup>

To rebut these findings, the plaintiffs challenging the constitutionality of the BCRA commissioned their own study from Q. Whitfield Ayres.<sup>41</sup> He did not dispute the results, per se, of the Mellman-Wirthlin survey—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 the 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 the BCRA) to be a “big” contribution that could influence the vote or opinions of a Member of Congress. These results supported the conclusion, he argued, that the BCRA “will not reduce the appearance of corruption in American politics.”<sup>42</sup>

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. (The Mellman and Withlin study, as mentioned above, combined individuals, issue groups, corporations and unions for several questions.) However, the point of the plaintiffs’ rebuttal survey was to demonstrate that the same proportion of Americans consider activity the BCRA permits as posing the same corruption threat as activity the BCRA prohibits. So while it may be the case that a large majority of Americans view the

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<sup>40</sup> Id., at 10.

<sup>41</sup> See Rebuttal Declaration of Q. Whitfield Ayres, *McConnell v. FEC*, Oct. 7, 2002 (on file with *University of Pennsylvania Law Review*).

<sup>42</sup> Id., at 8.



current system as allowing 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 the chosen means were narrowly tailored to address that interest. For purposes of adjudicating the constitutionality of the 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.<sup>43</sup> Perhaps Americans believe that contributions both beyond and within the limits of the 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 the 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—in other words, 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, three Gallup polls asked the following question seeking to tap people’s resignation to special

interest influence: “Some people say major changes in 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 will always find a way to maintain their power in Washington. Which comes closer to your point of view?” The results appear in Table A.

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

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

About two-thirds of Americans consistently believe that “special interests” will maintain their power regardless of campaign finance regulation.<sup>44</sup> Of course, this resignation to special interest influence even in the face of more restrictive campaign finance laws does not dampen enthusiasm for reform (indeed, any reform). Between sixty-five and seventy-five percent of Americans consistently favor new laws governing campaign finance, with forty percent saying such laws would be good for democracy, thirty-six percent saying

<sup>43</sup> See *Nixon v. Shrink Missouri Gov’t PAC*, 528 U.S. 377, 391-392 (2000).

<sup>44</sup> 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 has 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?” 25% say such laws will reduce it a lot, 38% say somewhat, 33% say it will not, and 4% have no opinion. See Shapiro, *supra*, at Appendix.

they would not make much difference, and thirteen percent saying they would be bad for democracy.<sup>45</sup>

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 campaign 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 the BCRA will give their contributors undue influence, and more importantly, 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 private 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 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 or 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 is unlikely to prevent erosion of “confidence in

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<sup>45</sup> See Gallup Poll at <http://www.gallup.com/content/default.aspx?ci=1585>.

the system of representative Government.”<sup>46</sup> This argument, as mentioned above, 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 come? 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

Corruption is a word that means different things to different people. Indeed, different definitions of corruption in the campaign finance caselaw since *Buckley* have come from different Justices and even different Court majorities. Corruption can refer to quid pro quo arrangements, “undue influence on an officeholder’s judgment,”<sup>47</sup> and even “the corrosive and distorting effect of [corporate] wealth”<sup>48</sup> on the electoral system more generally. 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.”

While recognizing the difficulties in defining corruption and measuring attitudes of corruption, 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

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<sup>46</sup> *Buckley*, 424 U.S. at 26-27 (quoting *Civil Service Comm’n v. Letter Carriers*, 413 U.S. 548, 565 (1973)).

<sup>47</sup> *Federal Election Comm’n v. Colorado Republican Federal Campaign Comm.*, 533 U.S. 431 (2001) (*Colorado Republican II*).

<sup>48</sup> *Austin v. Michigan Chamber of Commerce*, 494 U.S. 652, 660 (1990).

hold these views 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 take seriously the question whether certain reforms will have measurable effects on aggregate public opinion about government.

#### A. How to Measure Attitudes of Corruption

The National Election Study has included three questions in its survey that come close to tapping public opinion about corruption in government. 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 trust in government, crookedness of people running the government, and influence of big interests:

**Distrust:** People have different ideas about the government in Washington. These ideas don't refer to Democrats or Republicans in particular, but just to 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?

**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?

**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?<sup>49</sup>

Figure 1 depicts the trends in responses to these questions from 1958 to 2002. For the “crooked” question, the line represents those respondents who say “quite a few of the

people running the government are crooked.” For the “distrust” question, the line represents the percent of respondents who say they can trust government only some of the time. 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.

With these caveats in mind, we can nevertheless see that public opinion measured by these questions has shifted significantly over time and certain historical events or trends appear to explain these shifts. The percent of Americans who distrust government most of the time has varied from a low of about 24% in 1958 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.

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<sup>49</sup> See National Election Studies, 2002 Questionnaire, *available at* [ftp://ftp.nes.isr.umich.edu/ftp/nes/studypages/2002prepost/2002prepost\\_qnaire\\_post.htm](ftp://ftp.nes.isr.umich.edu/ftp/nes/studypages/2002prepost/2002prepost_qnaire_post.htm)

## B. Explaining Trends in Public Perception of Corruption

Some seat-of-the-pants explanations for these trends jump out from the data. With the Vietnam War, civil rights struggle and 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 and also unsurprising. Afterwards, the trend 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, they have been dropping steadily ever since.<sup>50</sup>

Indeed, as Figure 2 points out, this steady decline has occurred despite the explosion of soft money over the same period. The share of the population registering feelings of distrust and special interest influence declined thirty points, from seventy-seven percent in 1994 to forty-six percent in 2002, and the percent of the population believing quite a few government officials were crooked declined from 51 percent in 1994 to 28 percent in 2002. Over the same period, soft money contributions went up fivefold – from about one hundred million dollars to over five hundred million dollars.

Of course, there is some parlor-trickiness to this graph – one set of lines is expressed as percentages, while the other is expressed in dollars, and all types of contributions always increase over time. However, the graph still drives home the point: the share of the population perceiving corruption went down even as soft money skyrocketed.

### C. Who Sees Corruption?: 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 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”? (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.<sup>51</sup>)

We begin 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,

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<sup>50</sup> The most recent Pew Center study of trust in government makes many of these arguments. See Pew Research Center for the People and the Press, *Deconstructing Distrust: How Americans View Government* (1997), available at <http://people-press.org/reports/display.php3?ReportID=95>.

<sup>51</sup> See David Primo, *Public Opinion and Campaign Finance: Reformers Versus Reality*, 7 THE INDEPENDENT REVIEW 207-219 (Fall 2002); Jack Citrin, *Comment: The Political Relevance of Trust in Government*, 68 AMER. POL. SCI. REV. 973-88 (1974); Joseph S. Nye, Philip D. Zelikow, David C. King eds., *Why People Don't Trust Government* (1997); John P. Robinson ed., MEASURES OF POLITICAL ATTITUDES (1999); Pippa Norris ed., CRITICAL CITIZENS: GLOBAL SUPPORT FOR DEMOCRATIC GOVERNMENT (1999); Jack Citrin & Donald Green, *Presidential Leadership and the Resurgence of Political Trust*, 16 BRIT. J. POL. SCI. 431-53 (1986). 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 (2000).



with the incumbents who run the government, or with government or people in general are more likely to deem government corrupt. Expressions of anti-government feeling – that those running the government are crooked or unduly influenced – are 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 party 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 socio-economic status and individuals who feel that the political system has given them a raw deal 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 “anti-government” than those with power, and these feelings of powerlessness translate into expressions of opinion that those running the government are crooked or unduly influenced by a few big interests.

Derived from the respondent’s 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 unhappy with incumbent performance or with the state of the economy will express their dissatisfaction by deeming government corrupt. The psychological mechanism for this dissatisfaction is similar to that for “out-groups,” though naturally these opinions change more easily than does one’s socioeconomic position, age or race.

We expect those with a low approval rating of the incumbent President and those unhappy with the direction of the country more generally, such as those who view the economy as worsening over the previous year, to express their dissatisfaction by describing those running the government as crooked or unduly influenced by a few big interests.

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 these political predispositions 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 recalcitrant 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 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 is 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 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”<sup>52</sup> – specifically, their beliefs that government officials are not “crooked” and that government is “run for the benefit of all” – is 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 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 “special interest” questions. 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 1964 with dummy variables for statistically significant years, and second, as separate regressions for each year in the survey.

### 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 some 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 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, but that may be due largely to the gap between blacks and whites in the early years.

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<sup>52</sup> 424 U.S. at 26-27 (quoting *Civil Service Comm’n v. Letter Carriers*, 413 U.S. 548, 565 (1973)).

Education, however, is a relatively strong predictor of people’s perception of crookedness and (to a lesser degree) undue influence. 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 interests” question, but for both questions education is significant when placed in the regression for the entire NES dataset.

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 interests question. The lines on the graphs indicate the respondent’s income percentile. 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 the top 5 percentiles of income.

Age appears to be a bit trickier. For some reason, age is significant in 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 interests. We found the same pattern for cohort groups: 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 interests. It may be that earlier cohorts are less likely to cast an aspersion 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.

In any event, there seems to be some support for the “outgroup” hypothesis: African-Americans, the poor, and the less educated are more likely to view government as corrupt. There is no reason to believe that these groups are more likely to observe corruption or have information unavailable to other groups. Rather, as groups with less influence, they naturally view those with power to be improperly influenced by members of the in-groups. By deeming government corrupt, their survey responses express their dissatisfaction with political leaders, the government, and how it is run.

## 2. The Politics of Corruption Attitudes

Although we find some support for the outgroup hypothesis, a person’s political attitudes is often a more powerful predictor of whether they view government as corrupt. Consistent with the theme that those who lose in the political process would deem the victors corrupt, 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. 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. 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 indicate the *share* of “approvers” or “disapprovers” that believe government is crooked or run by a few big interests. Nevertheless, the consistent trend is clear: those who approve of the president 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: 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. 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.

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, the questions ask whether “quite a few people running the government . . . are crooked” and whether “government is pretty much run by a few special interests.” Even if all we learn from these graphs is that 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). Yet we think a better and more complete explanation for this relationship exists, one that is consistent with the other data already presented: People who disapprove of the President vent their disapproval by calling government corrupt. Their feeling that the President might be unduly influenced by particular groups or even bribed is not the source of their unhappiness. Rather, they register their dissatisfaction with the President by painting government with a broad brush, labeling it with any negative descriptor offered to them.

Given that dissatisfaction with the incumbent President appears to correlate with perceptions of corruption, we might also expect partisanship to factor into an individual’s assessment of government corruption. After all, if the sour grapes hypothesis is true, then Democrats should view the government as corrupt when Republicans control the country and vice versa. We find some support for this contention. As the regressions in the Appendix make clear, membership in the party of the sitting President is negatively correlated with attitudes concerning government corruption. Unsurprisingly, a President’s fellow partisans are less likely to view government as corrupt under his watch, but because partisanship is so highly correlated with (and subsumed by) presidential approval, it drops out for most of the regressions by years. For the special



interest question, Figure 7 depicts the attitudes of self-identified “strong” Republicans and Democrats and “pure” Independents, although the indicated trends are similar, if not as dramatic, for party identification on a three point scale (Democrats, Republicans or Independents). 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. Whereas, during the Carter and Clinton administrations, a greater share of Republicans than Democrats viewed government officials as corrupt and government as run by a few big interests. 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, the strength of Party ID is not 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 view government as corrupt is greater than the share of Democrats or Republicans who view government as corrupt. From this, one might expect that strength of Party ID 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.

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: has it gotten better, gotten worse, or remained the same? 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. (See Figure 8.) 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 sometimes vent their displeasure and displace their anger onto the government, deeming officials crooked or as unduly influenced. In 1990, for example, 79 percent 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 percent of those who viewed the economy as having gotten better voiced the same response. In other years, however, the gap is 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.

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 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 the “system” into a particularized expression describing government as corrupt. Authentic political disagreements, let alone intractable feelings about one’s political opponents, are not the kinds of attitudes that campaign finance reform, or even any government policy, is likely to counteract.

### 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’ perception of government corruption. For some, government, almost by definition, may be corrupt, and the “bigger” government gets the more corrupt it becomes.

Unfortunately, the NES survey does not have a battery of questions that test this hypothesis. 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?” As Figure 9 suggests, views of government waste correlate strongly with perceptions of corruption. (Indeed, this variable is the most predictive of all that we analyzed.) 40 to 60 percent of those who think government wastes a lot of money we pay in taxes answer that quite a few people running the government are

crooked, while only ten to thirty percent of those who see little waste answer similarly. A similar twenty to thirty percentage point gap exists for the “few interests” question.

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. 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. 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. 35.4 percent 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 19.6 percent of those who think they pay the right amount say quite a few are crooked. The findings are similar for the few interests questions: 58.1 percent of those who say they pay too much in taxes, but only 43.6 percent 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 “Government is run by a few big interests looking out for themselves” (N)
Respondent pays more than s/he should	35.4 (211)	58.1 (334)
Respondent pays just the right amount in taxes	19.6 (133)	43.6 (286)
Respondent pays less than s/he should	48.6 (17)	50.0 (16)
The rich pay more than they	28.5 (51)	45.8 (76)

should		
The rich pay just the right amount	20.0 (92)	42.1 (185)
The rich pay less than they should	32.4 (215)	58.1 (379)
The poor pay more than they should	33.3 (185)	60.1 (325)
The poor pay just the right amount	21.1 (134)	42.3 (257)
The poor pay less than they should	35.1 (34)	48.5 (47)

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. 32.4 percent of those who say the rich pay less than they should in taxes, as compared to 20.0 percent of those who say the rich pay just the right amount, say quite a few people running the government are crooked. 58.1 percent of those who say the rich pay less than they should in taxes, as compared to 42.1 percent 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. 33.3 percent of those who say the poor pay more than they should believe quite a few government officials are crooked, as compared to 21.1 percent of those who say the poor pay the right amount. The difference is similar for the "few interests" question: 60.1 percent as compared to 42.3 percent

Of course, adherents to the good government hypothesis might offer the explanation that respondents view corruption as causing government waste. 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 one's 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' opinion about big business also correlates with their responses to the questions attempting to tap governmental 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 rating to "big business." (The feeling thermometer question asks respondents how warm they feel toward a particular group with 100 being the warmest and most favorable and 0 being the coldest and least favorable.) Figure 10 separates respondents according to their feeling thermometer rating of big business. Those who feel warmly toward big business are less likely to view government as corrupt. The differences in the 2002 survey are dramatic. For example, only 20.5 percent 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. percent of those who give big business a rating between 0 and 25 believe government is run by a few big interests. Similar results are found for the crookedness question. 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.

As a piece of final support for the hypothesis that one's political philosophy affects specific opinions about government corruption, we have included in the aggregate regressions by individual years found in the Appendix feeling thermometer ratings for "the poor" and "people on welfare". 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, 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 and 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 attitudes about

government corruption can be a function of one's feelings about "big government," as opposed to undue influence.

#### 4. Distrust of Government 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 he or she is perceiving. Moreover, if perceptions of government corruption have such deep psychological roots, then changes in governmental policy are unlikely to have much of an effect on 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. We find a strong and consistent relationship – as presented in Table C for the 2002 survey and in the regressions in the Appendix for selected years – between individuals' response to these questions concerning interpersonal trust and the likelihood that an individual will believe quite a few people running the government are crooked or that government is run by a few big interests. The three NES questions appear below, followed by Table C, which presents the 2002 data:

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



2. Would you say that most of the time people try to be helpful, or that they are just looking out for themselves?
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?

**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 “Government is run by a few big interests looking out for themselves” (N)
“Most people can be trusted”	19.4 (142)	46.0 (323)
“Can’t be too careful in dealing with people”	37.7 (219)	56.5 (320)
“Most of the time people try to be helpful”	21.0 (100)	43.8 (204)
“They are mostly looking out for themselves”	50.5 (94)	65.2 (118)
“Most people would try to be Fair”	20.4 (101)	49.6 (234)
“Most people would try to take advantage of you if they got a chance”	79.6 (393)	57.8 (89)

As with Table B, here we compare the propensity of cynics and noncynics 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 noncynics who view government as corrupt. For example, only 19.4 percent of those who say “most people can be trusted” believe quite a few people running the government are crooked, while 37.7 percent 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. 43.8 percent of those who say “most of the time people try to be helpful” believe that government is run by a few big

interests, whereas only 65.2 percent 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 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?” 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. Restricting the sources and amounts of campaign contributions will not change one’s basic psychological predispositions that feed into one’s perspective on whether those running the government are crooked.

#### D. Trust in Government in Comparative Perspective

By examining the shared characteristics of the groups of people who perceive corruption we hope to have cast some doubt on the popular (and perhaps legal) 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 is 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 their government. Unfortunately, we do not have a cross-national poll that specifically measures corruption, but the Eurobarometer poll of 15 European countries has asked a question concerning trust in government similar to that asked in the NES poll: “Do you tend to trust or tend not to trust your national government?” When we compare the cross-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.

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 mistrusted their government – the highest percentages in any country throughout the last seven years. The United States, the United Kingdom and Germany come closely behind in

1996, when sixty-eight, sixty-three, and sixty-one percent, respectively, distrusted their government. On average over this time period, 57.50 percent of Americans distrusted their government, placing us just behind Italy (59.25 percent) and alongside Belgium and the United Kingdom (57.00 percent). 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 government 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 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 population that distrust their government. For those who would turn to campaign finance reform to restore Americans' trust in government, these cross-national data suggest their efforts might not produce the anticipated results. And while we can always aspire to achieving 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.

#### IV. Conclusions

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 the 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 as 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 less related to phenomena occurring in the campaign finance system or public policy more generally, than they are to Americans' 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 hypotheses that undermine 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 than 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 opinions of government waste and taxes and perceptions of corruption. Finally, perception of government corruption may be a subspecies of a broader psychological phenomenon, distrust of people in general. Cynics who are predisposed to seeing 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 government,”<sup>53</sup> they may be disappointed by the intractability and psychological roots of that lack of confidence.

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<sup>53</sup> *Buckley*, 424 U.S. at 26-27 (quoting *Civil Service Comm’n v. Letter Carriers*, 413 U.S. 548, 565 (1973)).

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

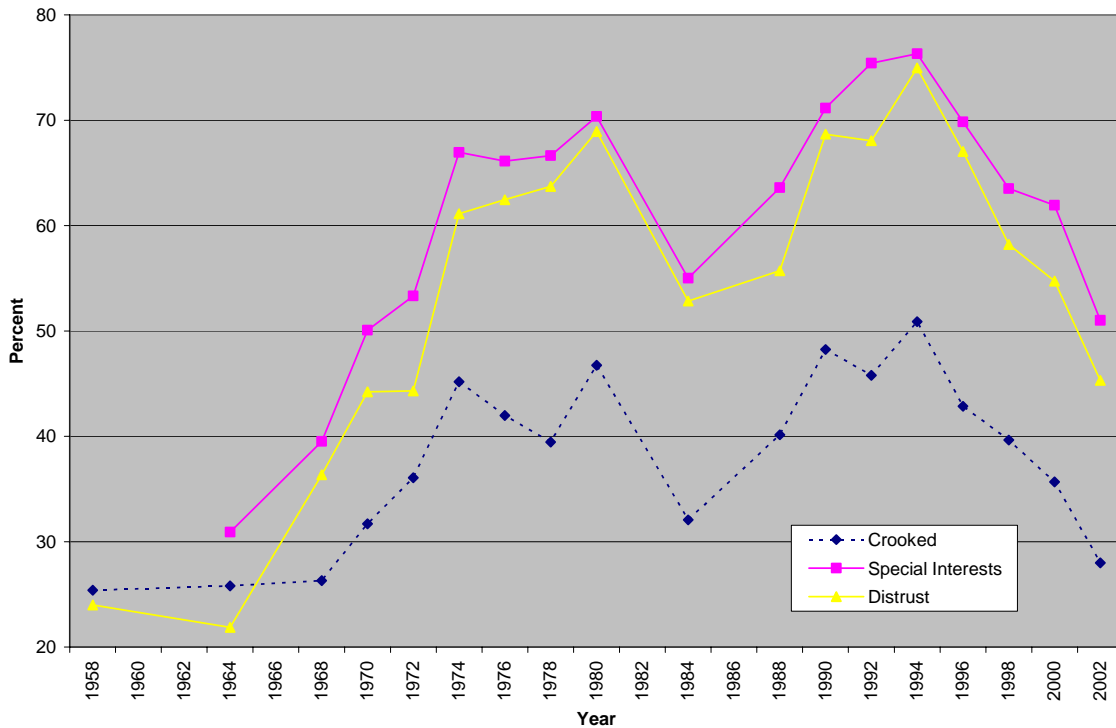
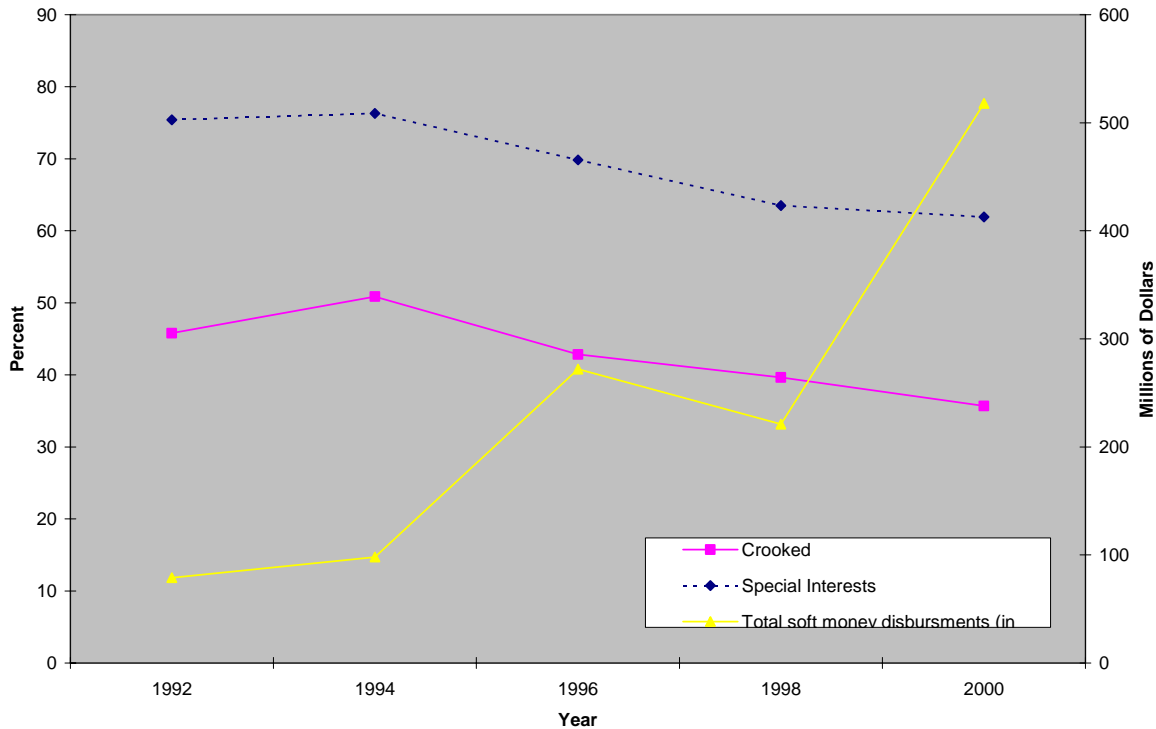
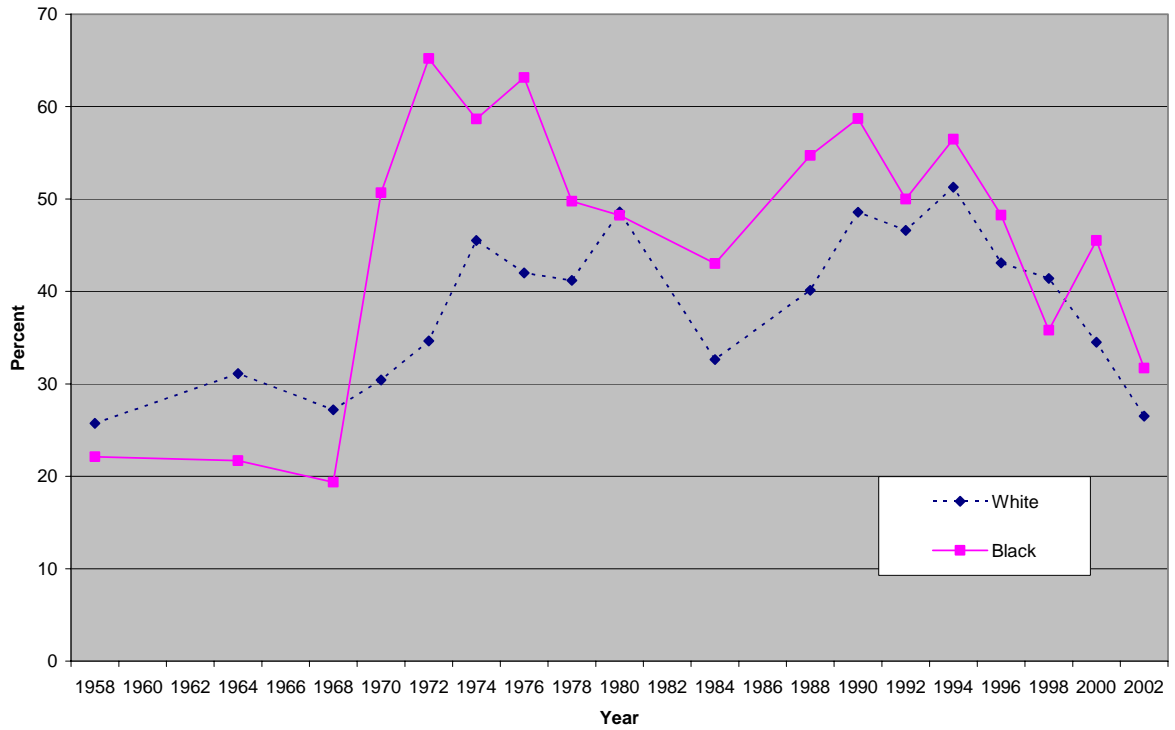


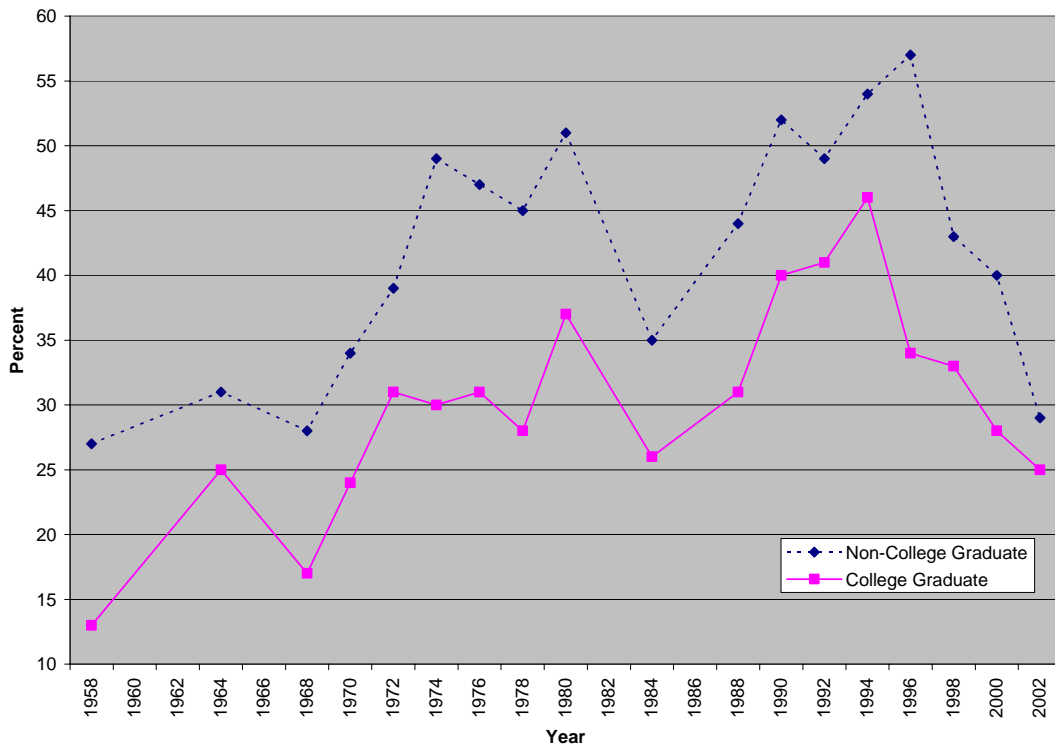
Figure 2 - The Rise of Soft Money and the Drop in Perception of Corruption (1992-2000)



**Figure 3 - Race and Perceptions of "Crookedness" of Government (1958-2002)**

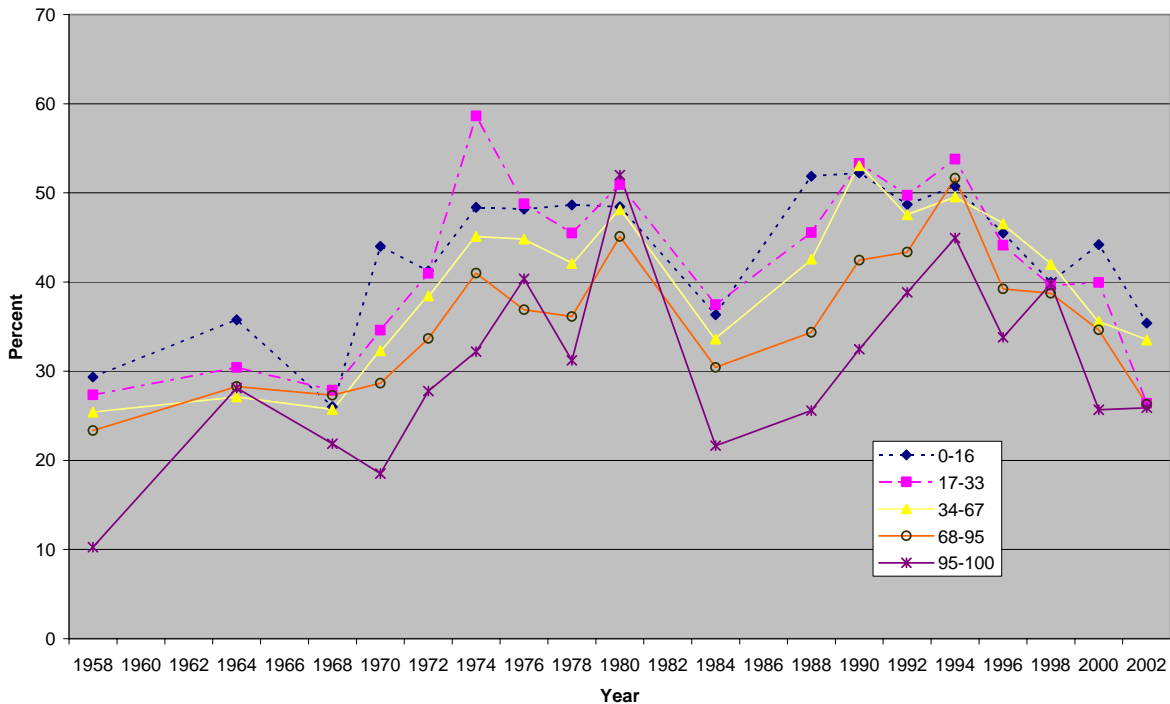


**Figure 4 - Education and Perceptions of "Crookedness" of Government (1958-2002)**



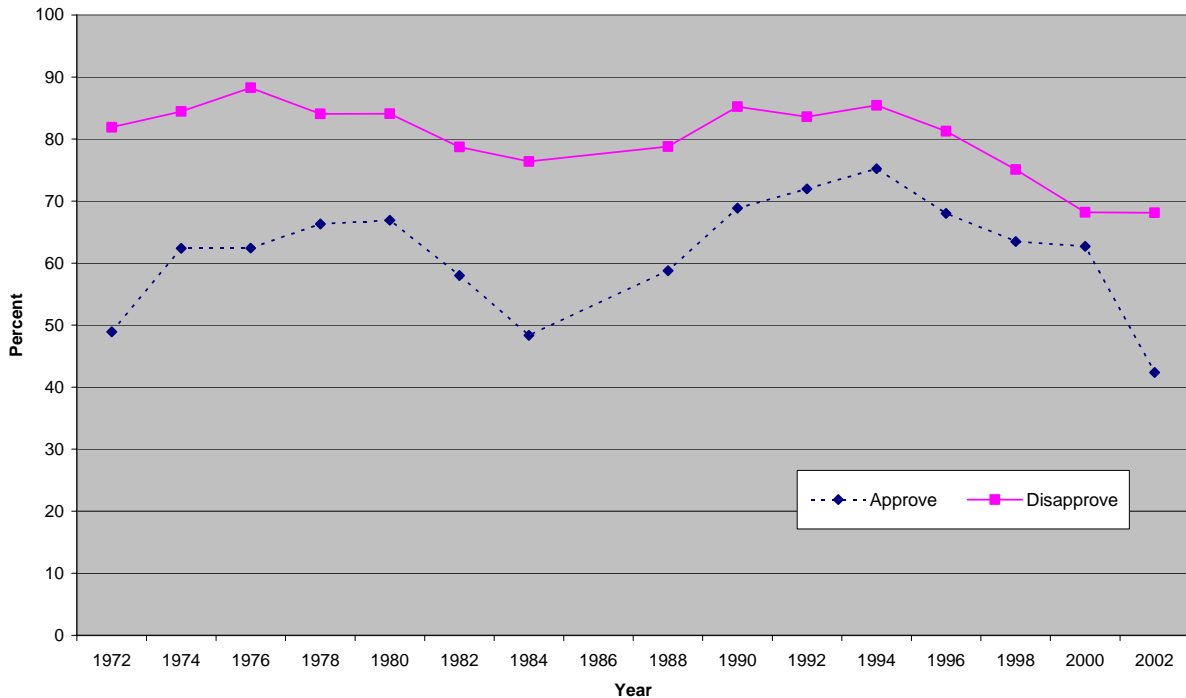


**Figure 5 - Income and Perceptions of "Crookedness" of Government (1958-2002)**



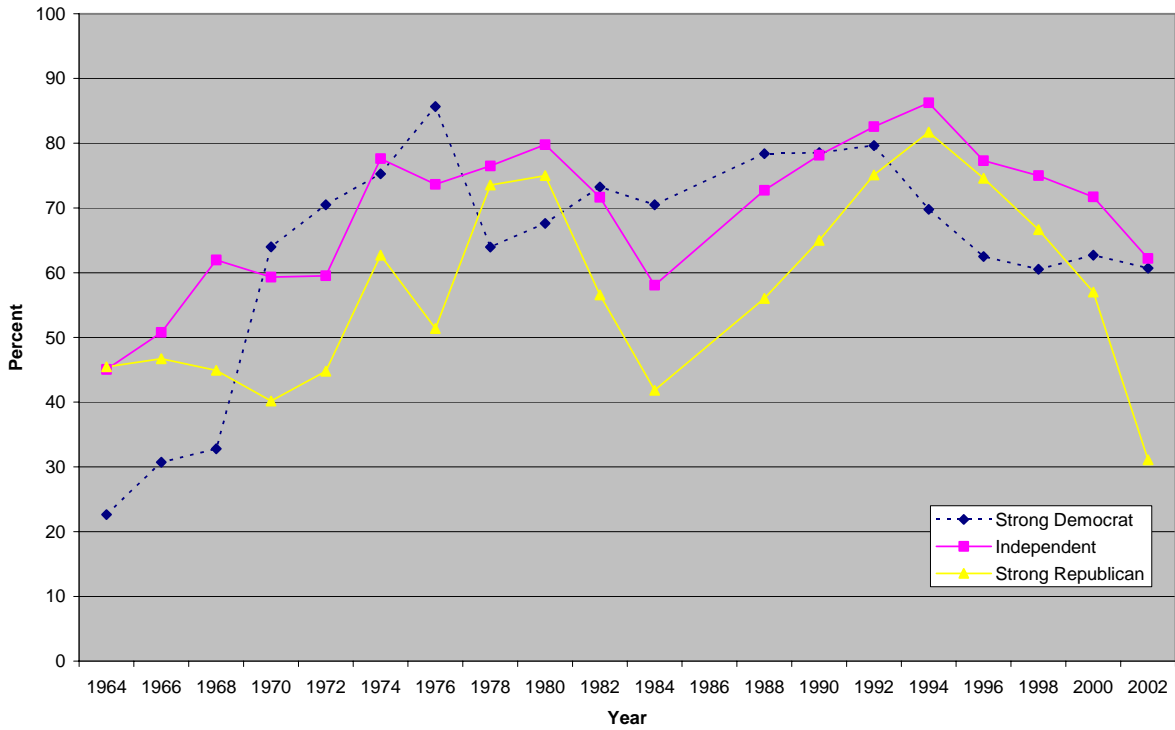
\* Line designates income percentile of respondent.

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

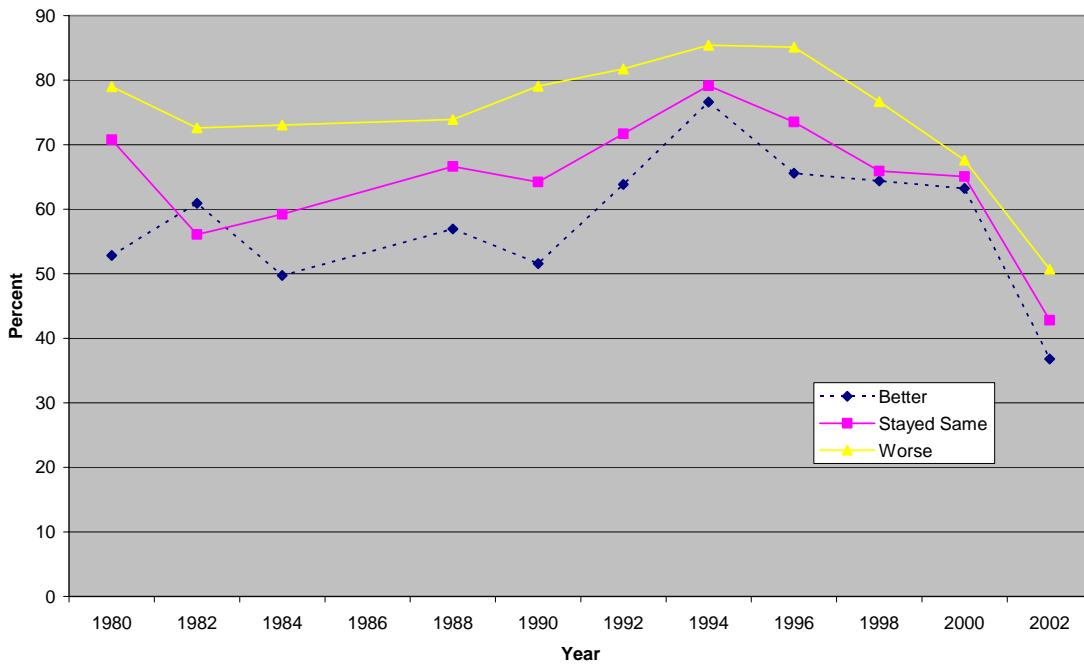


\* Question asks respondents if they approve or disapprove of the way that <name> is handling his job as President.

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

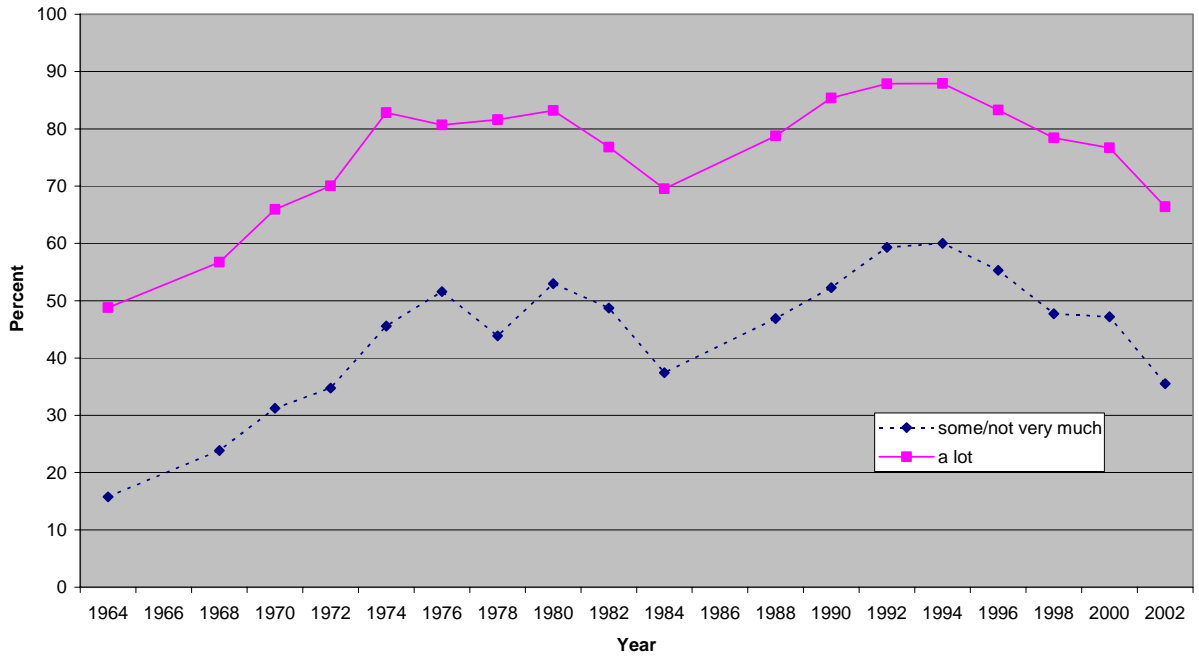


**Figure 8 - Evaluation of the Performance of the Economy over the Previous Year and Perceptions of Special Interest Influence (1980-2002)\***



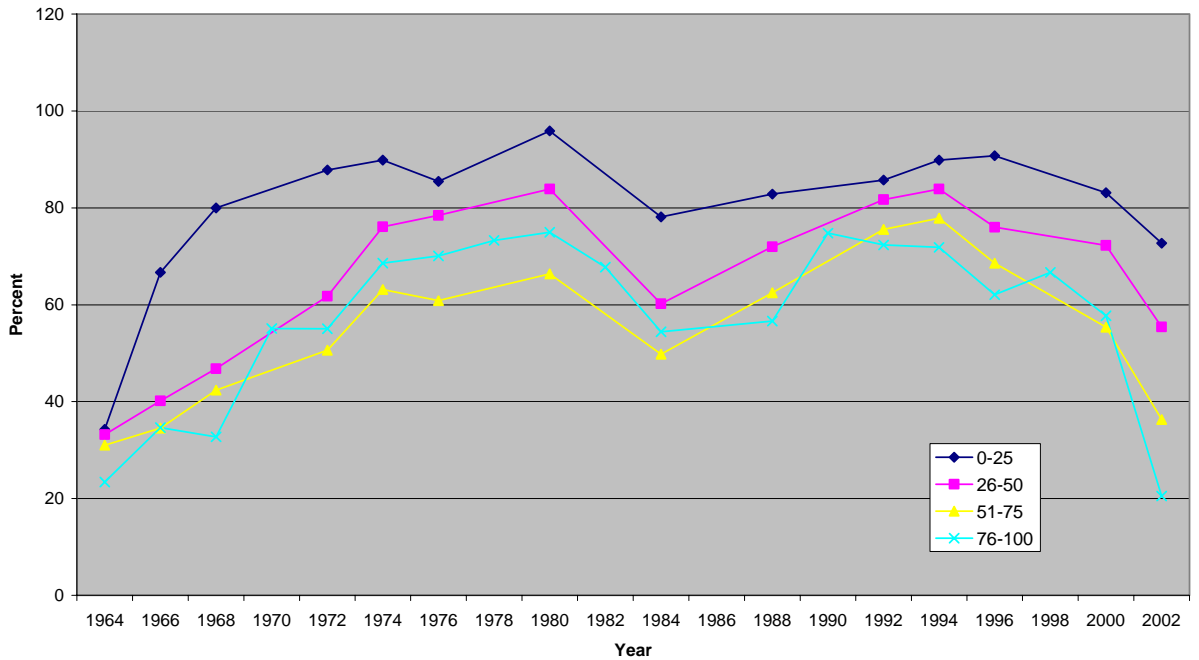
\* Question asks respondents if over the past year the nation's economy has gotten better, stayed the same or gotten worse.

**Figure 9 - Perceptions of Waste of Tax Money and Perceptions of Special Interest Influence (1964-2002)\***



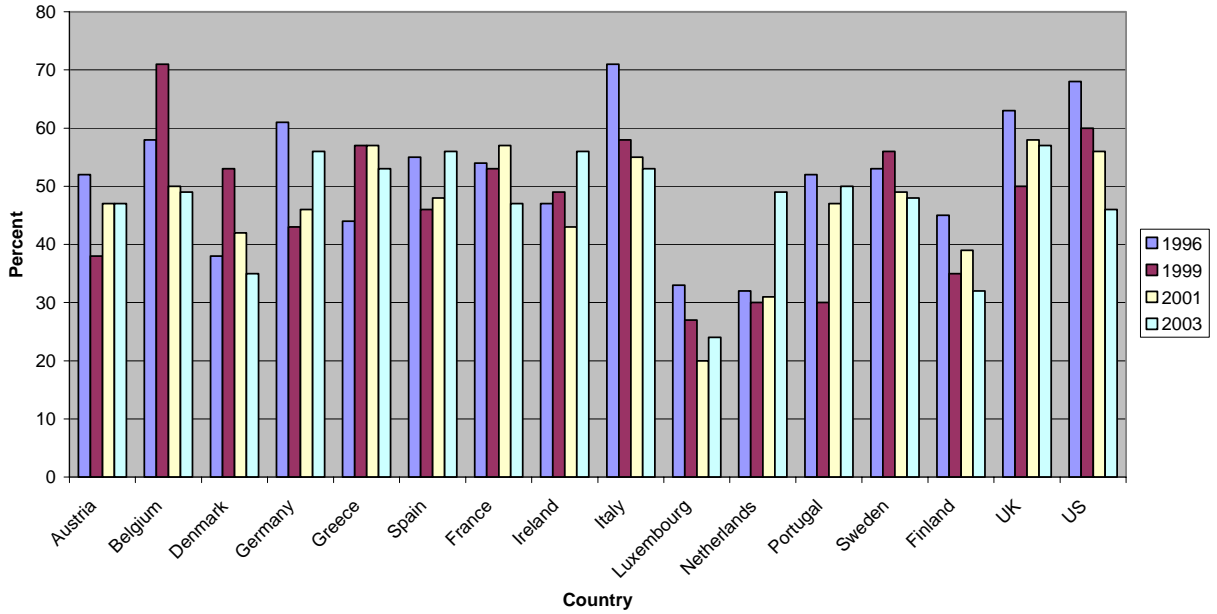
\* Question asks respondents if people in the government waste a lot of money paid in taxes, waste some of it, or don't waste very much of it.

**Figure 10 - Perceptions of Big Business and Perceptions of Special Interest Influence (1964-2002)\***



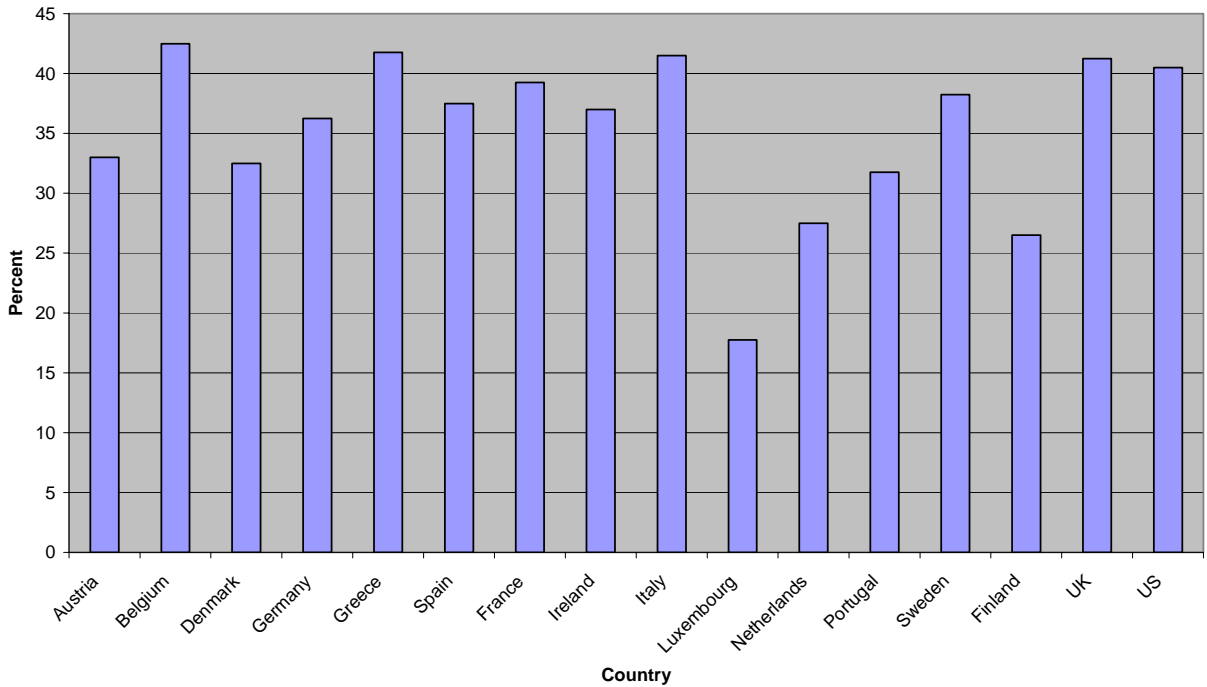
\* Line refers to respondents rating of big business on a feeling thermometer (0=cool; 100=warm).

**Figure 11 - Distrust of Government in Comparative Perspective (1996, 1999, 2001, 2003)\***



\* Eurobarometer asks respondents if they tend to trust or tend not to trust their national government while the U.S. question (asked by the NES in 1996, 1998, 2000, and 2002) asks respondents "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?" The graph depicts the percent in the Eurobarometer survey that say "they tend not to trust" and the percent in the NES survey that say they trust "only some of the time."

**Figure 12 - Distrust of Government in Comparative Perspective (average 1996,1999,2001,2003)\***



## APPENDIX

**Appendix A. Coefficients for Logistic Regression Model of the Log Odds of Believing Quite a Few in Government are Crooked**

Race	1.550***	1.487***	1.315***	1.148
Income	0.821***	0.828***	0.821***	1.092
Education	0.628***	0.600***	0.649***	0.642***
Age	0.904***	0.889***	0.826***	0.676***
Presidential Disapproval	(not included)	1.484***	1.208***	1.201
Member of President's Party	0.787***	0.929	0.930	1.082
Government Wastes Tax Money	4.516***	4.260***	4.208***	4.626***
Economy Last Year People Would Take Advantage of you	(not included)	(not included)	1.092***	1.052
	(not included)	(not included)	(not included)	0.466***
1964	(Omitted)	---	---	---
1968	0.675***	---	---	---
1970	0.779**	---	---	---
1972	1.018	---	---	---
1974	1.349***	(Omitted)	---	---
1976	1.200*	1.006	---	---
1978	1.092	0.888	---	---
1980	1.443***	1.116	(Omitted)	---
1984	0.861	0.733***	0.764*	---
1988	1.354***	1.120	1.030	---
1990	1.756***	1.539***	1.368***	---
1992	1.627***	1.275***	1.145	---
1994	1.925***	1.547***	1.682***	---
1996	1.733***	1.480***	1.468***	(omitted)
1998	1.411***	1.232*	1.260	0.820
2000	1.211*	1.038	1.064	0.744*
Constant	0.179***	0.134***	0.186***	1.519
<i>N</i>	22960	16944	7817	1865

\* p <0.05. \*\* p <0.01. \*\*\* p <0.001

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

	Race	Income	Education	Age	Presidential Disapproval	Member Pres's Party	Gov't Wastes Tax	Econ Last Year	Big Business Therm	Poor Therm	Welfare Therm	Can't be too careful	People Take Advantage	Constant	N
1964	0.542*	0.878	0.807	0.946	---	0.780	5.527***	---	0.890	---	---	0.770	0.445***	3.286*	1212
1968	0.731	1.233	0.648	0.908	---	0.923	5.374***	---	0.969	---	---	0.427***	0.567***	1.935	1150
1970	2.521***	0.783	0.704	0.905	---	0.655**	3.968***	---	---	---	---	---	---	0.095	1357
1972	2.037***	1.069	0.864	1.200*	+++	0.648***	3.148***	---	0.816**	0.933	---	0.605***	0.482***	1.218	1785
1974	1.039	0.898	0.633*	0.994	1.743***	1.018	3.573***	---	0.786**	1.112	---	0.531***	0.553***	1.067	979
1976	2.198**	1.021	0.547**	1.041	1.404*	1.089	3.945***	---	0.883	1.172	0.960	0.510***	0.572***	0.387	1260
1978	1.578*	0.706**	0.508***	0.967	1.739***	0.904	4.299***	---	---	---	---	---	---	0.082***	1577
1980	1.308	0.937	0.508***	0.821*	1.453**	0.873	3.753***	0.671	0.876	+++	+++	---	---	0.498	1149
1984	1.378	0.904	0.678*	0.852	0.990	0.792	4.501***	1.105*	0.976	1.301*	0.778*	---	---	0.128***	930
1988	1.462	0.496***	0.704	0.941	1.152	1.087	3.335***	1.183***	1.059	1.102	0.684**	---	---	0.210*	617
1990	1.624*	0.635***	0.647**	0.993	1.423*	0.948	4.223***	1.101	---	1.207*	0.878	---	---	0.084***	1123
1992	1.058	0.890	0.919	0.976	0.890	0.842	3.844***	1.238**	0.846*	1.185	0.848	0.593***	---	0.480	1288
1994	1.284	0.924	0.867	0.722**	1.190	1.014	4.728***	1.110*	0.879	1.474***	0.766**	---	---	0.244*	820
1996	2.149**	0.880	0.614*	0.695**	1.330	0.945	3.718***	1.051	0.650***	1.045	0.736*	0.697	0.599*	4.932*	648
1998	0.573	1.177	0.730	0.694**	1.062	1.081	6.198***	1.080	---	1.197	---	0.733	0.583*	1.348	605
2000	1.322	1.518	0.669	0.626***	1.215	1.405	4.552***	1.004	0.926	1.342*	0.875	1.120	0.412***	0.670	582
2002	0.742	0.735	1.203	0.762	1.123	0.949	2.981***	0.356	0.982**	1.007	0.999	0.813***	0.769***	2.603	354

\* p < 0.05. \*\* p < 0.01. \*\*\* p < 0.001

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

+++ indicates sample size is too small for analysis

**Appendix C. Coefficients for Logistic Regression Model of the Log Odds of Believing Government is Run by a Few Big Interests**

Race	1.148**	1.019	1.029	0.753
Income	0.780***	0.824***	0.844**	0.803
Education	0.904*	0.882**	0.932	0.931
Age	1.105***	1.069**	1.106**	1.034
Presidential Disapproval	(not included)	2.229***	2.015***	1.242
Member of President's Party	0.630***	0.815***	0.909	1.031
Government Wastes Tax Money	4.389***	4.184***	4.000***	3.573***
Economy Last Year People Would Take Advantage of you	(not included)	(not included)	1.112***	1.070*
	(not included)	(not included)	(not included)	0.517***
1966	(Omitted)	---	---	---
1968	1.443***	---	---	---
1970	1.912***	---	---	---
1972	2.343***	---	---	---
1974	4.242***	(Omitted)	---	---
1976	4.271***	1.339***	---	---
1978	4.680***	1.435***	---	---
1980	5.191***	1.392***	(Omitted)	---
1982	3.760***	1.142	0.973	---
1984	2.402***	0.761***	0.651***	---
1988	3.937***	1.220*	0.960	---
1990	5.764***	1.884***	1.482***	---
1992	7.833***	2.159***	1.570***	---
1994	6.943***	2.059***	1.799***	---
1996	5.817***	1.904***	1.822***	(omitted)
1998	4.438***	1.500***	1.430**	0.802
2000	3.995***	1.301**	1.201	0.716*
Constant	0.196***	0.240***	0.212***	3.700**
<i>N</i>	23137	17377	8408	1817

\* p < 0.05. \*\* p < 0.01. \*\*\* p < 0.001



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

	Race	Income	Education	Age	Presidential Approval	Member Pres's Party	Gov't Wastes Tax	Econ Last Year	Big Business Therm	Poor Therm	Welfare Therm	Can't be too careful	People Take Advantage	Constant	N
1964	0.887	0.729	1.139	1.280*	---	0.561***	4.712***	---	0.741***	---	---	0.687*	0.373***	3.772*	1160
1966	0.439***	0.805	0.898	1.345**	---	0.515***	---	---	0.886	---	---	0.363***	---	7.220***	1016
1968	0.487**	0.895	0.870	1.218*	---	0.686**	3.738***	---	0.677***	---	---	0.505***	0.646**	10.414***	1092
1970	1.500	0.577***	1.089	1.327***	---	0.555***	4.549***	---	---	---	---	---	---	0.208***	1277
1972	1.239	0.822	0.946	1.189*	+++	0.734*	3.941***	---	0.688***	1.017	---	0.606***	0.520***	5.729***	1699
1974	0.988	0.834	1.439	1.307*	2.512***	1.041	4.315***	---	0.608***	1.022	---	0.407***	0.651*	3.806	935
1976	0.881	1.064	0.963	1.188	2.815***	0.697*	3.214***	---	0.604***	1.024	0.872	0.594**	0.576**	6.580**	1196
1978	0.751	0.739*	0.987	1.020	2.080***	0.860	5.419***	---	---	---	---	---	---	0.481*	1532
1980	0.754	0.848	0.581*	1.231*	2.358***	1.066	3.803***	1.177	0.680***	+++	+++	---	---	0.461	964
1982	0.954	0.902	0.925	0.877	2.726***	0.815	3.556***	1.047	---	---	---	---	---	0.328*	824
1984	1.068	0.996	1.087	1.040	2.572***	0.749	3.499***	1.104	0.865	1.263*	0.891	---	---	0.105***	901
1988	1.798	0.561**	1.049	0.972	2.971***	1.105	4.433***	1.026	0.684**	1.122	0.888	---	---	0.278	598
1990	1.036	0.957	1.032	1.580***	2.242***	0.823	5.112***	1.346***	---	1.178	1.003	---	---	0.026***	1094
1992	1.031	0.987	1.378	1.530***	1.703**	0.756	4.133***	1.185*	0.833	0.951	0.943	---	---	0.319	1264
1994	0.935	0.954	0.770	0.908	1.495	0.954	4.619***	1.132*	0.621***	1.152	0.798	---	---	3.400	795
1996	0.542	0.965	0.838	0.845	2.023*	1.096	3.244***	1.172*	0.565***	1.497**	0.871	0.794	0.468**	11.665**	635
1998	0.941	0.772	1.052	1.283	1.213	0.979	3.315***	1.118	---	1.135	---	0.964	0.552**	0.893	584
2000	0.768	0.805	0.983	0.955	0.988	0.859	3.788***	0.949	0.729*	1.144	0.955	1.840**	0.679	2.316	569
2002	0.911	0.953	1.979**	1.102	1.195**	0.956	2.681***	0.577	0.975***	1.006	1.002	0.870*	0.807***	2.079	352

\* p < 0.05. \*\* p < 0.01. \*\*\* p < 0.001

--- indicates question was not asked in that particular year    +++ indicates sample size is too small for analysis

## **Perceptions of Corruption and Campaign Finance: When Public Opinion**

### **Determines Constitutional Law**

**By**

**Nathaniel Persily & Kelli Lammie**

*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 perception 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 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 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 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.*