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Brindisi to the Brindisians, graffiti in Brindisi, Italy. Photo by A. M. Pusceddu.

In/formalization

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Informality within government agencies tasked with controlling informal economic practices

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Informality within government agencies tasked with controlling informal economic practices

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ABSTRACT: The trend to dualism in the study of in/formality means that we usually neglect informality within government, usually seen as the locus of formality, but in practice usually relying on informal practices to get things done. This commentary uses archival documents on colonial Hong Kong to challenge this duality.

At its most basic, informality is not following the formal procedures demanded in a specific domain of practice (Smart, Zerilli 2014). Yet, distinguishing between formal and informal ways of doing things has important consequences, as Max Weber clearly recognized in his work on bureaucracy. I stress only one of these, how a dualistic account in which government is the institution which forges and enforces formal regulations to govern economy and society obscures informality within government itself. Corruption is an exception, but is characteristically explained away by references to individual “bad apples”, the inappropriate intrusion of private interests into public concerns, or persistence of “traditional” habits that need to be “modernized” through rational bureaucracy. Even in its exceptions, recognition of governmental informality reinforces identification of formality with government and law. The solution to corruption, then, is to thoroughly impose the rule of law on government itself.

This kind of symbolic system, where formal and governmental are equated and seen as the polar opposite of informal and societal (formal:informal / government:society), not only serves as a “distinction” that elevates government above society, but also obscures the inescapable interpenetration of the informal into the formal and the formal into the informal. The situation resembles Bruno Latour’s account of “the moderns” who conceived culture and nature as absolute opposites, making possible rapid development of sci-

ence, which in turn continually produces hybrids which confuse the boundaries between culture and nature. Just as Latour argues that we have “never been modern”, I would suggest that we have never been formal. The more effort that is made into “purification” through formalizing procedures, the more inevitable it seems to be that informality creeps back in, as a fix for rigidity and conflicts between diverse formal regulations. Modernity itself can be seen as the rise of formality, progressively displacing the personalism and venial alliances of monarchical courts by rational rules and procedures that theoretically apply to all citizens. The growth of formality, however, is not complete and arguably could never be complete, as research into colonial Hong Kong reveals.

Before the 1970s, bribe-taking was widespread in Hong Kong’s government, particularly among street-level officials. They had to deal with a Chinese population distant from a government they had no formal influence over, including refugees who brought expectations from Republican China that dealing with government was best avoided and if necessary required bribes. Many had to break laws to survive, so opportunities for squeezing squatters, hawkers and unlicensed factory operators abounded. Observers thought the problem emerged because colonial rules «concerning corruption were incongruent with Chinese “folk norms”; what the law regarded as corrupt, ordinary Chinese people often saw as a normal part of life» (Hampton 2012: 228). The danger of orientalism in corruption discussions pointed out by Gupta (2012: 81) is visible here, but dubious stereotypes clearly have empirical consequences, legitimating Europeans taking bribes.

Regulation creates opportunities for profits by those with discretion over control of the activity. Domains where government tolerated illegal practices were particularly prone to corruption. Unlicensed street vendors «were perhaps the most vulnerable» (Hampton 2012: 228). The police had «ready opportunities» for corruption because they were responsible for issuing licenses to «massage parlours, dancing schools, public dance halls, billiard room and money changers» (Jones, Vagg 2007: 358). Corruption syndicates operated among the police, so that regular payments from illegal gambling establishments, for example, were distributed among officers.

Hong Kong has been seen as the world’s best example of «successful transformation from widespread corruption in the 1960s to clean government in the 1970s» (Manion 2004: 2). A key element in this success was precise demarcation between legal practices and illegal corruption. For example, to avoid being punishable as bribery, acceptable gifts to government officials were limited by value. Administration, at least in Weberian forms, requires sharp boundaries between acceptable and unacceptable practices.

It was thought crucial to limit official discretion among officers that worked at street level. In 1960, Governor Robert Black wrote that «the exercise of discretionary power by junior officers is inevitably open to abuse. When we begin a revision of the laws ... it is intended to pay particular attention to those laws which give discretion to junior officers¹». Anti-corruption is often thought to be best achieved through reducing opportunities for corruption. Setting out clear procedures for how governmental work should be done reduces discretion. A report of the Advisory Committee on Corruption stated that a key response to corruption problems was that «licensing procedures have been simplified, accelerated and clarified». Licensing should be closely examined and reformed because «procedural delays could cause corruption in some form or other. The Organizational Survey Unit is also continually seeking ways of improving procedures, forms, etc». Corruption is thus seen to result from informality of governmental practice, particularly when government officials are in regular contact with the public.

Discretion by government agents has often been seen as a source of differential justice discriminating in favor of the majority or the powerful and against minorities and stigmatized groups. It is also sometimes seen as unavoidable if street level bureaucrats are to be able to effectively perform their jobs. Formalizing rules for state officers does not necessarily end discretion, but may instead tend to displace it to less regulated fields or practices. The outcomes of administrative efforts to reduce discretion by street-level bureaucrats vary greatly by the specific nature of the position, and the practical power of those officials to control information, among other variables.

Ironically, clear definitions of legal process may have detrimental outcomes as well as benefits. Turning grey areas into sharp divisions between legal and illegal may foster unscrupulous but mostly legal behaviors of collusion. Precisely formulated procedures can reduce the risks involved in profiting from public office, in ways that are often seen by the public as illicit even when formally legal. Those with power can cross the line more easily with less risk. Ending illegal corruption may encourage legal forms of collusion. Opportunistic rent-seekers may find it easier to skirt closer to legal limits while still being safely on the legal side when that side is explicitly inscribed. In such circumstances they can adhere only to the letter of the law, without concern for its “spirit”. Exact formalization of what counts as corrupt may make things worse for ordinary people, or anyone who cannot afford lawyers. Sharp boundaries between legal and illegal may offer more impunity for those trying to game the system. The rich and powerful have access to resources that help them manipulate technicalities.

1. Quotes without citations are all from archival documents accessed at the Hong Kong Public Records Office.

Even when no formal rules are broken, there are many ways in which government and business can (and do) cooperate in ways seen by many members of the public as immoral or illicit. I refer here to forms of collusion that are technically legal but meet widespread public disapproval. Anger at government has soared in the United States and elsewhere. Yet, interactions mediated through what Janine Wedel (2009) calls the «shadow elite» have so much influence as to make public disapproval usually ineffective.

No government can operate without discretion. Administrators, like judges, must operate on the basis of judgements about what is best to do when there is no obvious choice presenting itself. What is possible, however, is to move the locus of discretion farther up the bureaucratic hierarchy, as happened in Hong Kong after 1972. It clearly had many positive outcomes, reducing the weight of petty extortion on Hong Kong's people, helping to restore a degree of public trust in the colonial government, and creating a reputation for reliable rule of law that helped to make Hong Kong one of the world's most important financial centres.

The particular kinds of anti-corruption interventions may have set the scene for spectacular corruption scandals at the very top of the government hierarchy, such as the conviction in 2014 of Rafael Hui, the chief secretary for administration from 2005 to 2007, the second highest ranking position in the government, for taking bribes from a property company. His boss, Donald Tsang, was convicted of misconduct in public office in 2017. My argument is not that stopping the petty corruption at the bottom of the bureaucracy pushed it upwards, like squeezing a balloon. Rather it is that the cost/benefit calculations put in place by anti-corruption meant that if you are going to take a chance by engaging in corrupt behavior, it better be well worth it, and the reduction of discretion at the bottom of the ranks means that they do not usually have such opportunities. However, the more fundamental problem besetting contemporary Hong Kong is not illegal corruption so much as (mostly) legal collusion, which has emerged for a complicated set of reasons related to the complex post-1997 processes of governance (Fong 2013).

Equating informality with society, and its regulation with government, obscures all of these processes, at best individualizing corrupt acts and emphasizing “more of the same” in applying more formality within governmental procedures. Only by recognizing that governmental informality is pervasive and deserving of analysis in the same terms as societal informality can we move forward in understanding both formalization and informalization.

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