

The weakened state of the modern state: corruption in times of economic and institutional crisis

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*Not only our future economic soundness
but the very soundness of our democratic
institutions depends on the determination of our
Government to give employment to idle men.*

Franklin D. Roosevelt

Introduction

Financial insecurity is often linked to institutional instability, as Franklin Roosevelt made clear in his 'Fireside Chat' of 14 April 1938.¹ Unemployed citizens who struggle in poverty tend to doubt not only the abilities but, in fact, the very legitimacy of their governments. They blame the democratic institutions for failing to secure safe financial conditions for everyone and protest that they do not recognise them as 'their own'. A similar distrust towards these institutions is very com-

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¹ Electronically available at <http://www.presidency.ucsb.edu/ws/?pid=15628>

mon in societies where corruption is rampant. The institutions that represent the core functions of the democratic states (for example, the independent administration of justice is a necessary component of the separation of powers) come under particularly critical scrutiny because they are commonly seen as watchdogs that keep corruption at bay. This is more than a collective intuition: it is true that when these institutions are advanced and secure, the levels of corruption are significantly lower.²

In this essay, I will discuss how corruption creates and reinforces the conditions that favour the rise of corruption. I will argue that a democratic state that fails to tackle or tolerates corruption is a state whose institutions are weak and compromised not only in the minds of its citizens but in the proper socio-political understanding of the concept. Before presenting these points, however, I will briefly attempt to characterise corruption, one of the most elusive notions in modern criminology.

Corruption

1. A puzzling notion

The fact that many people seem to detect a close connection between corruption and financial crime is not surprising. The most notorious cases of corruption often result in impressive profits for the offenders, with the embezzlement of large sums from the public treasury making the news with more frequency and intensity than any other case. Furthermore, many of those who appear to play the most decisive roles in these cases match, at least *prima facie*, the profile of a 'white collar criminal'.³ They are people 'of the upper socioeconomic class' (defined 'not only by its wealth but by its respectability and prestige in the

² Daniel Lederman, Norman Loayza & Rodrigo Reis Soares, 'Accountability and corruption: political institutions matter' (2001), *The World Bank Policy Research Working Paper* 2708.

³ Edwin Sutherland, 'White collar criminality' (1940), *American Sociological Review*, 5, 4.

general society'), who violate the criminal law 'in the course of [their] occupational activities'.⁴ It only takes a small step to conclude from these observations that corruption is another type of financial crime. After all, corruption often undermines the smooth operation of the economy (think of a large corporation that bribes government officials in order to secure a public procurement contract, injuring both the national economy and the interests of law-abiding businesses) and this is the safest criterion for the distinction between financial and common crime.⁵

In this section, I will argue that corruption does not necessarily undermine the smooth operation of the economy. In fact, those who engage in corruption do not always have financial profits in mind. Those, for example, who strive to become part of the 'old boy network' are often in the pursuit of prestige and power rather than money. Even more clearly, the parents who use their connections in the military to ensure that their conscripted son receives preferential treatment do not promise money in exchange for the favour they ask. In cases like these there may be the faint hope for some kind of financial gain in the distant future but this is certainly not the kind of gain required to categorise a crime as 'financial' or 'economic'. They look more like exchanges of favours and/or promises between people who are in position to provide specific services. Interestingly, the resentment of those who are wronged by a well-connected recruit does not differ dramatically from the feelings of those who lose a contract to a rival who bribed a government official. Both feel that their peers have an unfair advantage that is not consistent with the equal standing we should all enjoy in public service or commercial competition and that those who are responsible for maintaining this equal standing have failed to do their duty. This is true regardless of whether the wrongdoers seek financial

⁴ Edwin Sutherland, 'Crime and business' (1941), *Annals of the American Academy of Political and Social Science*, 112.

⁵ See Nestor Courakis, 'The notion and definition of financial crime', in N. Courakis (ed.) (with D. Ziouvas), *Financial Crimes* (Athens, Sakkoulas: 2007), pp. 37 ff (in Greek).

gain or influence.⁶ In fact, it is true even when the conduct in question is not illegal.

2. *A characterization of corruption*

Most legal systems have wisely chosen to tackle corruption without introducing a distinct crime that would bear the name of corruption. Those who have ventured in the opposite direction reinforced the conviction that describing corruption in a language suitable for criminal legislation is a Sisyphean task. Consider Article 161 of the Indian Criminal Code:

A public servant, [who] accepts or attempts to obtain any gratification whatever, other than legal remuneration, for doing or forbearing to do any official act or for showing favour or disfavour to any person, or for rendering any service or disservice to any person [...] is guilty of corruption.⁷

The problem with this description is that it relies on terms and notions we would be well advised to avoid in criminal legislation. Terms like 'gratification', 'favour' and 'disfavour' leave too much room for interpretation. Admittedly, in many ways, the Indian Criminal Code's description is accurate: it draws a picture of a dishonest exchange between a government official and a citizen. But to receive 'any gratification' may very well include feelings of gratitude, the reassurance that one is still useful and/or important or even the (perhaps superficial and ill-conceived) pleasure of helping another human being. Showing favour, on the other hand, clearly includes cases in which there is no breach of duty but rather an unwillingness to commit an act of supererogation towards specific individuals (but not others). Are these types of conduct punishable by criminal law? Is this the kind of clarity and

⁶ Daniel Kaufmann & Pedro C. Vicente, 'Legal Corruption', (2005), 2, available at http://siteresources.worldbank.org/INTWBIGOVANTCOR/Resources/Legal_Corruption.pdf, last access 3/9/2016

⁷ In J. B. Monteiro, *Corruption: Control of maladministration* (Bombay: Manaktalas, 1966), p. 17.

certainty required by the *nullum crimen sine lege certa* principle? The answer to these questions cannot be a clear and unconditional 'yes'.

Despite the confirmation that introducing a crime of corruption is a very bad idea, we still need to describe the notion. I have already implied that the concept of corruption seems to include a certain kind of dishonesty or lack of *integrity*. So, corruption could be defined as the breach of a public duty or moral standard in exchange for money, power or prestige. This kind of conduct would always be wrongful but not necessarily illegal.⁸ While this approach satisfies our intuitive need to associate corruption with insufficient integrity and a lacking moral stance, speaking of violating public duties and moral standards is problematic because, again, it includes actions and omissions that are certainly not relevant to corruption. The MP candidate who lies to the members of his constituency in order to secure more votes certainly violates a public (and, perhaps, moral) duty for personal gain but he is not corrupt in the sense discussed here. And what about the omission to prevent the breach of a public duty or moral principle for personal gain? Am I engaging in corruption when I do nothing to stop a corrupt official from offering a service that will indirectly help me in one of my own pursuits? I may be lacking in integrity or violating a moral rule but this is not corruption.

In most discussions of corruption, there seems to be an inherent distinction between the public interest and private gain. Public or political orders place the former above the latter and cannot tolerate the violation of this principle. Those who do violate it engage in corruption by effectively opposing the political order in which they operate for their own personal gain.⁹ This is a tempting approach because it attempts to flesh out the particular kind of integrity that corruption seems to undermine (a duty to place the public/political order before private gain).

⁸ C. Aikin, *Corruption, a Dictionary of the Social Sciences* (1964, Glencoe, NY: Free Press), p. 142.

⁹ A. J. Heidenheimer (ed.) *Political Corruption: Headings in comparative analysis* (1970, New York: Holt, Rinehart and Winston), p. 6. Also see A. Rogow & Lasswell, H. *Power, Corruption and Rectitude* (1963, Englewood Cliffs, NJ: Prentice-Hall).

But is it true that there is always a conflict between public and private in the context of corruption? In most countries it is a crime to bribe a member of the Board of a Société Anonyme in order to secure a certain outcome in a forthcoming Board meeting. The corrupt Board member violates a duty towards the shareholders and the company but does not place her own interests before her allegiance to the public or political order – nor does she harm them, at least directly. At the same time, both the United Nations and the Council of Europe Convention against Corruption make provisions for cases in which officials of a state bribe officials of another state or international organisation. In these cases, there is no private gain and yet they are clear instances of corruption.

This discussion reminds us of two important aspects of corruption: firstly, it is an exchange between two agents – let us name them the corrupter (the person who usually initiates the exchange and requests preferential treatment) and the corruptee; secondly that this exchange is carried out in a context dominated by the common desire of the two parties to be mutually helpful. In a sense, it is a commercial deal: the corruptee, who is normally under duty to safeguard certain interests, makes a deal with the corrupter that includes the violation of the former's duty as per the instructions of the latter.¹⁰ These points entail that the notion I am discussing in this essay is *transactive* rather than *extortive* corruption.¹¹ The latter is properly understood as another instance of extortion given that one of the parties does not participate willingly: a rejection of the 'coercive offer' will result in considerable injury to that party's interests. The motivation to be mutually helpful on certain conditions that are beneficial to both parties is an integral component of the very essence of corruption, as discussed in this context.

So far so good. But an exchange based on the desire/decision to be mutually helpful is not presumptively blamable. On the contrary, it is often the most effective method of resolving conflicts of interest be-

¹⁰ E. C. Banfield, 'Corruption as a feature of governmental organizations' (1975), *Journal of Law and Economics*, 18, 587-588.

¹¹ S. Alatas, *Corruption: Its nature, causes, and functions* (1991, Kuala Lumpur: S. Abdul Majeed), p. 3.

tween peers. Colleagues, housemates and partners opt for this method daily and, in some cases, someone's interests suffer – namely, the interests of those who are not part of the exchange. As we saw, to speak of corruption we also need another condition met: there must be a breach of a duty involved. The abuse of public office is an obvious candidate in this context, especially since corrupt officials seem to turn their office into a private business.¹² But this path is already closed: we know that corruption does not necessarily require that the corruptee is a government official. Nor is it true that corruption is always harmful to the public interest, at least in the strict sense of the term. The Board member of the Société Anonyme who receives a bribe, the engineer who signs a certificate for the right 'fee', the doctor of a private hospital who accepts extra payment in order to operate on a patient sooner are clearly 'corruptees'. But they hold no public office and they cause no damage to the public purse.

They do, however, have something in common. They discharge duties that can be properly understood as *quasi public*. A duty is quasi public when and only when a) it is part of an *institution* with particular significance for the citizens and society in general and b) it is not discharged properly unless it satisfies the principles of *fairness* and *impartiality*. The first point reminds us that the institutions we care to protect from corruption are not necessarily public or 'all public' but do contain a strong element of public service; the second point explains why we intuitively believe that corruption is related to a lack of *integrity*. So, this would be a complete description of corruption: it is an exchange between two or more individuals motivated by a desire to be mutually helpful that involves an abuse of public or quasi public office in a manner that exhibits a lack of integrity (i.e. fairness and impartiality).

¹² J. Van Klaveren, *Corruption as an Historical Phenomenon*, Political Corruption Readings in Comparative Analysis (1978, New Brunswick, NJ: Transaction Publishers); A. J. Heidenheimer (ed.), *Political Corruption: Headings in comparative analysis* (1970, New York: Holt, Rinehart and Winston), p. 5 ff.

Corruption vs. Democracy: the Institutional Crisis

The claim that high levels of corruption (especially *high-level* corruption¹³) must have negative consequences for a democratic polity sounds rather uncontroversial. Before anything else, corruption exemplifies the type of criminal activity that seriously undermines the rule of law. In the most typical cases, powerful citizens bribe corrupt officials in order to make large profits or gain power and influence. This is not acceptable in a society governed by democratically enacted laws. In fact, this is the most important aspect of making sure everyone is subject to the law, since it is the most powerful that commonly escape the consequences of their illegal actions.

Interestingly, however, political theorists do not seem particularly interested in the correlation between democracy and corruption. The discussion is often limited to the phenomenon of dysfunctional democracies, with corruption being approached both as a symptom and as a cause.¹⁴ At the same time, corruption enjoys some positive publicity, especially when the focus is on its contribution to the faster processing of profitable deals in democratic systems with excessive bureaucracy.¹⁵ In the remaining of this section, I want to briefly touch upon two of the most regrettable injuries suffered by a democracy in the grip of corruption: the undermining of representative government and the marginalisation of democratic culture.

¹³ That is corruption that involves economically, socially and politically powerful people, as well as high-ranking officials. A police officer who accepts a bribe from a driver engages in low-level corruption.

¹⁴ See, for example, Jon Elster, *The Cement of Society: A study of social order* (1989, Cambridge: Cambridge University Press); Susan Rose-Ackerman, *Corruption and Government: Causes, consequences, and reform* (1999, Cambridge: Cambridge University Press); Dennis F Thompson, *Ethics in Congress: From individual to institutional corruption* (1995, Washington: The Brookings Institution).

¹⁵ See Frank Anechiarico & James B. Jacobs, *The Pursuit of Absolute Integrity: How corruption control makes government ineffective* (1996, Chicago, IL: University of Chicago Press); Colin Leys, 'What is the problem about corruption?' (1965), *Journal of Modern African Studies* 3(2), 215-30.

Representation is democracy's most dominant feature and, arguably, its most compelling advantage in comparison with other systems of government. It is not for this essay to provide a complete account of the significance of representative government for political legitimacy and the subjection of the individual to the rule of another. My starting point is rather uncontroversial: people trust their democratic leaders when there is a clear connection between the former's convictions, values and interests and the latter's actions and policies. Corruption casts doubt on the ability and willingness of those in charge of the public or quasi public order to honour this principle. This explains our intuitive conclusion that 'something is rotten' in a state that allows corruption (again: especially high-level corruption) to dominate politics, sports or the business world. The fact that corruption takes place behind closed doors reinforces our feeling that our views and values are not adequately represented in government and, generally, in politics.¹⁶ This feeling often leads to a denial of the democratic institutions that appear to have failed in their mission to protect the public treasury, the dominant political values and the rule of law. The justice system, the legislature, even the representative nature of the government become weak in our eyes. And when these feelings become dominant, democracy itself becomes weak.

While modern democracies heavily depend on their institutions, they also benefit from the development and maintenance of a *democratic culture*.¹⁷ In terms of their survival and flourishing, much depends on the genuine endorsement of democratic values and institutions by the citizens. Corruption strikes at the very heart of these institutions. Corrupt ministers, MPs, judges or high-ranking officials cannot be seen as 'ordinary criminals'. They are often considered 'traitors' who rip the benefits of their wrongful behaviour safe from prosecution or public condemnation. When enough cases of corruption are reported to create

¹⁶ Mark E. Warren, 'What does corruption mean in a democracy?' (2004), *American Journal of Political Science*, 48(2), 328.

¹⁷ *Ibid.*

the impression that they are the rule rather than the exception, people lose their faith in the democratic institutions. In the absence of this faith, the institutions collapse and democracy needs to re-establish its domination over competing systems of government.

Corruption in the Face of Financial Crises

This is not an essay about the economic consequences of corruption. My discussion focuses on how corruption manifests itself in times of institutional and financial crises and any causal links between the two. So, in this section, I am not going to discuss what corruption does to the economy but rather how corruption thrives in times of institutional crisis with further negative effects in the economic realm. The obvious point to be made here is that corruption costs money and makes dysfunctional economies even more inefficient. Although it is still possible to make the best possible deal with a little help from corruption, more often than not corruption favours the least able, honest and civic-minded. In an environment where corruption is the norm, people will only focus on their own self-interest. The deal will be the best possible *for them* but, most likely, not the most useful and productive under the circumstances.¹⁸ This is why countries with an established parliamentary system and one central government are more likely to efficiently tackle corruption.¹⁹

But there is more to be said about the link between democracy, corruption and financial crises. Firstly, democracy seems to be good at keeping external debt under control. In normal circumstances, a solid system of democratic checks and balances is a guarantee that a country is safe from bankruptcy.²⁰ Conversely, when a country finds itself in a serious debt crisis, this is a good indication (but by no means proof)

¹⁸ Andrei Shleifer & Robert W. Vishny, 'Corruption' (1993), *The Quarterly Journal of Economics*, 108(3), 616.

¹⁹ John Gerring & Strom C. Thacker, 'Political institutions and corruption: the role of unitarism and parliamentarism' (2004), *B. J. Pol. S.* 34, 295-330.

²⁰ Caroline Van Rijckeghem & Beatrice Weder, 'Political institutions and debt crises' (2009), *Public Choice* 138: 387-408.

that its democratic institutions are not strong enough. There is no old-fashioned causality to be analysed here but merely an observation, albeit with clear political significance. A debt crisis is *by definition* an indication that a state has done something wrong – one plausible explanation is that it has not adequately supported its democratic institutions. Since we know that corruption undermines these institutions as well as the people's faith in them, we have good reasons to further explore this sequence from corruption to weak institutions to economic crisis. But this is a topic beyond the scope of this essay.

On final point: weak governments that are unable to control corruption are not likely to attract investors. On the contrary, they drive them away, because, as already mentioned, they are also unable to control the corrupt officials who act in their own personal interest instead of the public interest. An otherwise profitable investment that relies on the good will of several corrupt officials can quickly become a perilous and unwise pursuit.²¹ In this sense, corruption contributes to the emergence of financial crises and stands in the way of any effort to move forward.

Concluding Remarks

In this essay, I have merely provided a sketchy account of the correlation between corruption on the one hand and institutional and financial crises on the other. I have not offered arguments that support a clear path of causality between them but rather discussed the context in which this discussion should take place. My first concern, however, was with the concept of corruption itself. Unless we understand corruption as a criminal conduct with the characteristics described in this essay, discussing its effects on democracy and the economy would be putting the cart before the horse. The point, however, cannot be overlooked: in times of institutional and financial crisis, there is indeed a growing public sentiment that corruption has undermined the democratic institutions and damaged the economy more than any other fac-

²¹ Shleifer & Vishny, 615.

tor. This intuitive approach, shared by many citizens who live in these times, can result either in resentment and alienation from the democratic polity or in an increased level of awareness. In terms of public policy, this discussion reinforces the view that corruption thrives in the absence of a strong central government and a clear legislative framework. To remember Tacitus, in a state where corruption abounds, laws must be very numerous.

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