

## CORRUPTION AND SOCIAL DEVELOPMENT

Edited by  
Ana Birešev, Rada Drezgić, Srđan Prodanović



Institute for Philosophy and Social Theory  
University of Belgrade

---

## conferentia

Conferentia edition will publish contributions from international scientific gatherings organised by the Institute for Philosophy and Social Theory, University of Belgrade. The founders are committed to focused dialogue and unconstrained communication, and they aim to detect and present different orientations that productively reflect contemporary theoretical and political movements.

L'édition Conferentia publie les contributions des réunions scientifiques internationales organisées par l'Institut pour la philosophie et la théorie sociale, Université de Belgrade. Orientés vers le dialogue focalisé et la communication libre d'entraves, ses fondateurs ont l'intention de détecter et de présenter les différentes orientations qui reflètent de manière productive les mouvances théoriques et politiques contemporaines.

## CORRUPTION AND SOCIAL DEVELOPMENT

Edited by

Ana Birešev, Rada Drezgić, Srđan Prodanović

TITLE	Corruption and Social Development
EDITED BY	Ana Birešev, Rada Drezgić, Srđan Prodanović
EDITOR	Institute for Philosophy and Social Theory, University of Belgrade, Serbia
REVIEWERS	Mirko Blagojević, Petar Bajanić
COVER AND BOOK DESIGN	Milica Milojević
LAYOUT	Sanja Tasić
PRINT	Colorgrafx, Belgrade
PLACE AND DATE OF ISSUE	Belgrade, 2013
NUMBER OF COPIES	300
ISBN 978-B6-82417-3B-5	

International Conference *Corruption and Social Development*, held in Belgrade, October 19–21, 2012, was organized thanks to the kind support of Ministry of Education, Science and Technological Development (Serbia), the Balkan Trust for Democracy (Belgrade, Serbia), the Erste Stiftung (Vienna, Austria) and the Netherlands Embassy in Belgrade.

## CORRUPTION AND SOCIAL DEVELOPMENT



- vii    Ana Birešev, Rada Drezgic and Srđan Prodanović  
**Corruption and Social Development**
- 1      Miran Božovič  
**The Self of the Polyp**
- 16     Gregor Kroupa  
**History Gone Wrong: Rousseau on Corruption**
- 35     Sanja Milutinović Bojanić  
**Corruptivity and Female Body**
- 49     Vito Tanzi  
**Corruption and the Economy**
- 81     Ljubomir Madžar  
**Corruption around us: Serbia and the Rest of the World**
- 117    Narcis Tulbure  
**Faces of Corruption: Gossip, Opportunistic Reasoning,  
and Value Creation on Romanian Capital Market**
- 156    Petrus C. van Duyne  
**Serbian Anti-Corruption Policy: welcome to Potemkin  
Village?**
- 197    Marija Zurnić  
**Anti-Corruption Discourse and Institutional Change  
in Serbia: The Money in Cyprus Scandal**
- 217    Peter Damo  
**Social and Legislative Stand Against Corruption**
- 252    Silvia Augeneder  
**A Legal and Ethical Approach To Corruption – Whistle  
Blowing as a Tool For Shifting Responsibility?**
- 274    Aleksandar Fatić  
**Corruption, corporate character-formation  
and ‘value-strategy’**





## Corruption and Social Development

This book represents an outcome of the conference “Corruption and Social Development,” held in the Institute for Philosophy and Social Theory between October 19–21, 2012. The aim of this international interdisciplinary gathering was to highlight various dimensions, social consequences as well as some possible solutions of this rather widespread phenomenon, and as argued by many a scholar a serious social problem. Multidisciplinary approach proved to be stimulating for lively and fruitful discussions and further considerations. All chapters in the book, except for one, are revised versions of the conference presentations. Narcis Tulbure decided to replace his conference presentation by another paper that he has written in the meanwhile and felt it more suitable for the book’s agenda.

The first three chapters (Miran Božovič, Gregor Kroupa and Sanja Milutinović Bojanić) present conceptual, philosophical, considerations on the phenomenon. In his contribution, Božovič presents the mid-eighteenth century debates regarding fascinating regenerative powers of the fresh water polyp whose body appeared to be exempt from the cycle of generation and corruption. The author considers some of the notorious difficulties the eighteenth-century naturalists and philosophers encountered in conceptualizing these incorruptible creatures.

Gregor Kroupa, in the following chapter, deals with Rousseau’s analysis of social and cultural decline. He argues that Rousseau emphasizes the natural causes, mainly unpredictable natural catastrophes, for the emergence of corruption in the social realm. Kroupa rejects the standard nature/culture divide as an accurate description of Rousseau’s doctrine, and proposes an opposition between necessity and contingency to replace it.

Sanja Milutinović Bojanić, connects corruption and sex by referencing Aristotle and the position of the feminine. She starts by presenting Luce Irigaray's remarks on Aristotle's conceptualization of corruption put forward in her book *Speculum of the Other Woman*. Later, she focuses on Flaubert's depiction of Emma Bovary. Bojanić finds traces of Aristotelian comprehension of the process of decline in Flaubert's stigmatization of Emma Bovary's suppleness and tolerance that are viewed as symptoms of the position of the feminine in the process of corruption.

The next two contributions (Vito Tanzi, and Ljubomir Madžar) approach corruption as an obstacle to social and economic growth and explore the most important factors and determinants of corruption. Vito Tanzi in an historical and cross-cultural overview, identifies several factors that can contribute to the creation of an environment conducive to corruption. These are: a lack of regulations, inadequate taxation system, poor management of public financial resources, discretionary decision making of public officials, social status of public employees and inefficiency of the penal policy towards corruption. His chapter explores the economic impact of corruption arguing that it inevitably reduces a country's rate of growth. Analyzing various modalities of corruption both in the public and private sector, the author argues that corruption delegitimizes the working of a market economy, as well as the outcomes of political processes. Ljubomir Madžar, on the other hand, focuses primarily on corruption in the public sector, and examines in a more detail the most important sources of "corruptivity" of the public sector in Serbia.

Corruption, according to Madžar is a universal and easily explained phenomenon. Relying on some standard mathematical models, he identifies principle determinants of corruption in the relationship between legally prescribed fines, the probabilities of corruptive acts being discovered and the expected benefits of corresponding illegal arrangements. In addition to quite strong presence of these determinants in Serbia, argues the author, a number of other features

make her even more vulnerable to corruption. These features include: uncompleted territorial-political organization, wide political heterogeneity leading to weak coalition governments, belated transition, institutional vacua, hastily enacted, low quality and contradictory legislation and lasting effects stemming from corruption deeply rooted and widely spread during the times of international economic sanctions. Madžar believes that the most efficient way to fight corruption in Serbia is to radically reduce *direct* governmental interfering in economic affairs and discretionary decision making.

The following four chapters (Narcis Tulbure, Petrus Van Duyne, Marija Zurnić and Peter Damo) represent case studies which focus on individual countries. While Tulbure and Damo explore some of the most important generators of corruptive practices in the post-socialist context in Romaina, Van Duyne and Zurnić examine anti-corruption policies and politics in Serbia after the year 2000.

Narcis Tulbure examines performances of Romanian capital market drawing on the biography of a prominent financial speculator. He argues that unlike developed capital markets, characterized by an abundance of news about companies, Romanian capital market suffers from the scarcity and non-intelligibility of data, generating, thus, a distinct type of competition for scarce information. The presence of redundant information in Romanian is not produced by the informational noise that is readily available and known by too many people not having any financial value, as is the case in developed capital markets. In Romania, the informational noise consists of rumors and false information (*gulgute*) circulated by key market actors; of the irrelevant data; of the intrigues, or of the numerous irrelevant claims to knowledge advanced by self-made market "experts". Those who thrive in such an environment, argues the author, are often those practicing forms of cognitive and moral opportunism, better attuned to mutating arenas for value production than to the neat bureaucratic procedures taught in financial and legal textbooks.

Petrus Van Duyne in his contribution presents a comprehensive statistical analysis of prosecuted corruption cases for a ten year period (1998–2009). The analysis reveals inconsistency and opaqueness of Serbian anti-corruption policy since both prosecution and sentencing appear to be statistically random. Van Duyne, thus, concludes that law enforcement and judicial institutions in Serbia behave like a random box. A qualitative analysis of the most serious corruption cases demonstrates the all pervasiveness of corruption which penetrates all layers of society. These cases demonstrate how government ignores corruption reports and allegations that are produced and submitted by its own anti-corruption agencies. As a consequence, argues the author, general public does not have much trust in the law enforcement and judicial intuitions – which in turn explains why corruption is seriously underreported offence in Serbia.

By analyzing of one of the first scandals that occurred after the democratic changes in 2000 in Serbia related to the investigation of the illegal financial transfer to Cyprus organised by the Milošević's regime during the 1990s, Marija Zurnić explores how the anti-corruption discourse produced by the political elite at the time influenced the institutional setting. The author applies qualitative discourse analysis and discursive institutionalism as a theoretical framework. She argues that the new government made some important initial steps in investigating illegal money transfers but once the investigation was abruptly stopped it failed to communicate the reasons to the general public generating thus both disappointment with anti-corruption action and mistrust in politicians and democratic institutions.

Peter Damo highlights specific features of mutant capitalism that has emerged in East and Central Europe in the early 1990s. This type of mutant capitalism, argues the author, generates systemic corruption in this part of the world. He examines the links between corruption, political power, crisis and austerity measures, illustrating the mechanisms of corruption as well as its social consequences on numerous

examples from Romania. The author further argues that despite the high-flown rhetoric against corruption and all the regulations corruption has actually been tolerated by national administrations, EU institutions and the international financial institutions. Thus, the struggle against corruption, according to the author, must be comprehensive – its most important ingredients being the political will, appropriate legislation and its consistent implementation and a proactive attitude of citizens and civil society.

The last two chapters (Silvia Augeneder, Aleksandar Fatić) also discuss anti-corruption policy but from a somewhat broader perspective. Silvia Augeneder deals with the issue of whistle blowing as a tool of fighting corruption. She points out that despite its growing importance whistle blowing has not been sufficiently regulated. Thus she develops argumentation in favor of integrating whistle blowing in legal rules and codes of conduct. Legal provisions and ethic codes, claims the author, should encourage employees to blow the whistle, by being clear about what to expect and when and how to blow the whistle. Most importantly, whistle blowing should be legally framed as employee's right not as a duty.

Finally, Aleksandar Fatić warns that unless corruptive practices are seen as unacceptable the usual measures against corruption can hardly have any effect. He argues that a systematic pursuit of socially recognized virtues, both those pertaining to society as a whole and those specific to particular professions and social groups, is the most comprehensive and strategically justified way of pursuing anti-corruption policy. Institutional and penal policies, according to him, can only serve an auxiliary role. Thus the paper suggests a re-examination of the social discourse and the gradual building of a plan to create and solidify specifically designed features of "corporate character" for key sectors of the society. This approach, Fatić believes, can serve as the main long-term strategy to improve the public profile of integrity and reinforce morality in both the public and civil sectors.

This short summary reveals that in putting together the chapters we were guided by hope to contribute to a broader understanding of the phenomenon of corruption. Thus, the book contains a wide scope of themes as well as multiple and sometimes competing perspectives.

With this book we are paying homage to Verica Barać and Stjepan Gredelj who stood out as precious examples of virtue and dedication in their short but fruitful professional lives and in their efforts to eliminate corruption in Serbia.

Ana Birešev  
Rada Drezgić  
Srđan Prodanović

## The Self of the Polyp

### 1 Deux Moi dans le même cerveau

Some of the seventeenth-century philosophers, such as Nicolas Malebranche and Leibniz, seem to have been immensely fascinated by insects and their life cycle, most notably by the metamorphosis of a chrysalis into a butterfly. For example, in Malebranche's *Entretiens sur la métaphysique et sur la religion*, the metamorphosis of a chrysalis into a butterfly was understood as an allegory of the resurrection, while in Leibniz's *Monadologie* it supports the view that the body and soul are, strictly speaking, inseparable; hence, for Leibniz there is no birth or death, no generation or corruption: birth and death are merely mistaken interpretations of transformations of one and the same eternally living body which always preserves the same soul, and so on. The seventeenth-century metaphysics' fascination with the transformation of butterflies seems to stem from Aristotle's description of the metamorphosis of a chrysalis into a butterfly in his *History of Animals*. In Aristotle's eyes, as D'Arcy W. Thompson observes, the chrysalis is a corpse, which is suggested by its Greek name, *nekýdallos*, a word that sounds similar to the word for corpse, *nekýs*; on the other hand, the butterfly that emerges after a certain period is named *psyché*, the soul; thus, what Aristotle seems to have witnessed when observing the butterfly bursting out of the chrysalis, was the soul literally leaving the dead body (Thompson 1940: 62–63). As the perfect embodiment of the real distinction between mind and body, the metamorphosis of a chrysalis into a butterfly came to be understood, in the late seventeenth-century metaphysics, as an argument for the Cartesian spiritualism and dualism.

Just as the seventeenth-century spiritualist philosophers were mesmerized by butterflies and their life cycle, so the mid-eighteenth century materialist

thinkers, for example La Mettrie and Diderot, were transfixed by another "insect," namely by the fresh-water polyp and its remarkable regenerative powers which were first described by Swiss naturalist Abraham Trembley in 1744.

In his *Vénus physique* of 1745, Maupertuis, President of the Berlin Academy of Sciences, gives the following description of the polyp's exceptional regenerative powers:

In order to multiply the polyp, writes Maupertuis, we only need to cut it to pieces: the headpiece will regrow the tail; the tailpiece will regrow the head; the pieces lacking head and tail will regrow both head and tail. This Hydra certainly is more marvelous than the mythological one; we can cut it lengthwise, we can mutilate it any which way we want – everything is soon repaired, each piece is a new animal.

Maupertuis 1980: 107

And in *Considérations sur les corps organisés* by Charles Bonnet, first published in 1762, we find the following observation:

If we cut the polyp in two lengthwise from the head to the center of the body, we obtain a two-headed polyp. ... If we repeat the procedure on each of the two heads we'll make a four-headed hydra, and by repeating it again an eight-headed hydra. Finally, if we slaughter these heads the hydra will grow new ones, and ... each slaughtered head will produce a polyp that could be turned into a new hydra.

Bonnet 1985: 154–155

Here, reality is clearly more fabulous than fiction: in creating the polyp, the nature seems to have surpassed the mythology. The gelatinous creature is by far more wondrous and fantastical than the mythological beasts: whereas the mythic Hydra of Lerna was said to have regrown its severed heads, the polyp not only regrows and replaces the lost or damaged bodily parts, but moreover, each cut off part of the



animal produces a new animal. The polyp is therefore virtually indestructible: the more we dissect it the more the living bodies multiply; each attempt to destroy it only creates new beings.

The fact that a polyp cut into pieces regenerates into as many new polyps as there were cut pieces gave rise to metaphysical questions that were far more complicated and difficult to solve than those raised about half a century before by Antoine Arnauld in his letters to Leibniz: if the soul is indeed indivisible and indestructible, what can be said, then, "about worms which have been cut in two, and each part continues to move as before?"<sup>1</sup> Since the regenerative powers of most worms are not as spectacular as those of the polyps – the earthworm, for example, does not have the ability to produce two individuals when it is cut in half, in most cases it is only the head end that survives and grows a new tail, while the tail end dies away – Leibniz had no difficulty in fielding the question: "It is not necessary for the two parts of an insect cut in half to remain animated, although there may be some movement in them. At very least, the soul of the whole insect will remain only on one side" (Leibniz 1989: 88). Since, according to Leibniz, that part of the insect's body to which the soul has been united since the creation of the world – that is, the part of the insect's body that is "already living" before birth of the insect, and "still alive" even after its death – is always "as small as is necessary for it to be protected from the action of someone tearing or destroying the body of that insect," (Leibniz 1989: 88) it is clearly impossible to divide the soul of an insect by dissecting its body, whereas, by contrast, each incision into the polyp's body seems to split up its soul as well.

In an important chapter entitled *Idées sur le métaphysique des Insectes*, Bonnet observes that the polyp, by its manner of reproduction, could be used to support the Cartesian view that animals are mere mechanical automata. "At the sight of the polyp, Descartes would have triumphed," writes Bonnet; "an animal that is multiplied

---

1 Arnauld to Leibniz, 4 March 1687, quoted according to Leibniz 1998: 121.

by being cut in pieces would provide a nice argument in favor of the ingenious system of this philosopher" (Bonnet 1985: 272). However, the polyp's manner of reproduction also lends itself to materialistic reading: for, does not the fact that a polyp cut into pieces regenerates into as many new polyps as there were cut pieces, suggest the existence of a soul that is divisible along with its body, that is, a soul that is nothing other than bodily organisation?<sup>2</sup> Bonnet himself who was neither a Cartesian nor a materialist offers his own peculiar answer to the above metaphysical questions:

What we call production or reproduction in our species of zoophytes is nothing but the development of small organic wholes [*petits Touts organiques*] that pre-existed in the great whole [*le grand Tout*] whose loses they repair. ... There is never generation in the strict sense but always simple evolution of that which has already been engendered.

Bonnet 1985: 241

The polyp's body is composed of "small organic wholes," the so-called *germes*, germs – created once and for all at the creation of the world – that evolve either into new animals or new bodily parts that replace the lost ones. Thus, according to Bonnet, the power of regeneration of certain organisms is simply a result of God's providence: the Maker of nature has foreseen that certain organisms would be exposed to numerous dangers, so he endowed the most fragile ones, such as polyps, worms and so on, with the means to replace the lost or damaged body parts. And the souls of the newly evolved polyps? Are they produced by dividing *le Moi du Polype* (Bonnet 1985: 273), the *Self* of the polyp, whose body has been cut in pieces? Or, does the Maker of nature, perhaps, create a new soul for each newly evolved body? asks Bonnet, and then goes on to answer:

---

2 On the materialistic reading of the polyp's manner of reproduction, see Aram Vartanian's magisterial article, to which the present paper is heavily indebted (Vartanian 1950).

If there is no new creation of bodies why should we then suppose a new creation of souls? If the Author of nature has judged it proper to include all organized bodies into the germs, isn't it likely that he has also included the souls into them that will one day become the principle of sensation and voluntary movements? Are we to imagine that at each new stroke of the scalpel, God creates a soul for the germ that is to develop? That would surely be hardly philosophical.

Bonnet 1985: 276

If each germ contains its own (dormant) soul, then there are at least as many souls in each polyp as there are pieces of its body that can produce a new complete individual; these souls begin to feel only after the bodies of the newly evolved individuals reach a certain degree of complexity. Bonnet then goes on to discuss various difficulties presented by hydra, that is, the multi-headed polyp produced by incision into its head. Some cases – such as the case of one head of the two-headed hydra devouring the other which was shortly before still a part of it, that is, the case where it seems as if by cutting the head in two we have split the will as well – were relatively easy to solve along the lines of the preformation theory (such hydras, as well as the two-headed worms, were called by Bonnet *les Personnes composées* [Bonnet 1985: 277], the composite persons). But there were also cases, where Bonnet seems to have found himself at a loss for words as, for example, the rare case of fusion of the brains of two polyps into a single brain. While the “insect, which is first a caterpillar, then a chrysalis and, finally, a butterfly, does not take on as many different personalities as it takes on different forms, or more precisely, [while] there are not three *Selves* in the caterpillar [*il n'y a pas trois Moi dans la Chenille*]” – going through different stages in its development, the caterpillar “always preserves the same *individuality*, the same *Self*” (Bonnet 1985: 279) –, in the case of the fusion of the brains of two polyps into a single brain, by contrast, there are *deux Moi dans le même cerveau* (Bonnet 1985: 278), two *Selves* in the same brain. Since it seems “impossible for the two *Selves* to have the same sensation in the same indivisible instant

of time" (Bonnet 1985: 278), that is, since some of the affections of the body are felt by one Self, and some by the other Self, this polyp is the perfect example of the so-called alternating or dual personality: the polyp leads two lives, alternately, with neither of the two Selves having any access to the experiences of the other.

## 2 Les minéraux moins morts que d'autres

The notion that in nature there were no gaps between species, but even and almost imperceptible gradation linking all three kingdoms – that is, minerals, plants and animals – into a single continuous chain was almost a cliché in the eighteenth-century biology.<sup>3</sup>

To see just how strong the obsession with the idea of the so-called "chain" or "scale of natural beings" must have been in this period it is, perhaps, enough to look at its perception in contemporary fiction. For example, Louis Sébastien Mercier's futuristic novel entitled *L'An 2440*, first published in 1771, predicts that this idea will be the central methodological principle of natural history for many a century to come. In the novel, the hero falls asleep one night in 1768 and "wakes up" in his dream in the year 2440, when he is seven hundred years old. While strolling around Paris – the Paris of the future has changed dramatically, it is an enlightened, utilitarian fantasy come true – he enters into a temple where he sees the inscription *Abrégé de l'Univers* above the door. The temple turns out to be a panoptically arranged natural history museum in which "all species of animals, plants and minerals" could be seen *d'un coup d'œil* (Mercier 1999: 194), at a single glance. Immensely fascinated by "the gradual order" reflected in the collection and with "the apparent gaps between the species that were always filled up" (Mercier 1999: 196), the hero comes to realize the truth of *l'échelle des êtres*, the scale of beings, the existence of which has been, as he says, in his time anticipated by some philosophers, but has been mostly disputed:

3 For a fuller account, see: Lovejoy 1936: chp.8.

One could distinctly see that species were contiguous and blending one into another; by the soft and delicate transitions from plant to animal and from animal to man nothing was interrupted.

Mercier 1999: 195

In the future of Mercier's fantasy, several generations have been engaged in filling up the apparent gaps in the scale of beings, hoping that "the chain of ideas and successive labors will one day embrace the universe" (Mercier 1999: 198), that is, hoping that the "chain of ideas" will eventually coincide with the "chain of beings." Although, by the year 2440, the species have been discovered that were "absolutely unknown" (Mercier 1999: 199), before and new ones created by cross-breeding, the scale is far from perfect and there is still a frantic search going on for the missing intermediary beings: in the utilitarian society of the twenty-fifth century, there are still "hermits" who spend their whole lives in the woods "herborizing" (Mercier 1999: 198) that is, collecting and studying plants, called in regularly to the temple to give progress reports on their discoveries.

The resounding success of Trembley's polyp can, perhaps, be best understood against the background of the idea of a chain or scale of beings. There were unmistakable gaps between minerals and plants and between plants and animals. As a perfect zoophyte, the polyp successfully bridged the second of the two gaps, that is, the gap between plants and animals: capable of locomotion, it was categorized as an animal; capable of reproducing *par bouture*, by budding, it was, however, categorized as a plant. Thus, for example, in *Éléments de physiologie* where Diderot is enumerating the examples of beings that embody the passage from the vegetable to the animal kingdom, the polyps are classified as *animaux-plantes* (Diderot 1994-1997: [1] 1264), that is, animal-plants. The polyp's enormous success must have been significantly enhanced by the fact that Leibniz – who, believing that "in nature everything happens by degrees, and nothing by jumps" (Leibniz 1996: 473) in his turn enthused about "the gradual

connexion of species" and the "intermediate creatures" (Leibniz 1996: 307) – had, so to speak, predicted its discovery. In a letter, quoted in Bonnet's *Considérations sur les corps organisés*, Leibniz writes:

Men are linked with the animals, these with the plants and these with the fossils, which in turn merge with those bodies which our senses and our imagination represent to us as absolutely inanimate. And, since the law of continuity requires that when the essential attributes of one being approximate those of another all the properties of the one must likewise gradually approximate those of the other, it is necessary that all the orders of natural beings form but a single chain, in which the various classes, like so many rings, are so closely linked one to another that it is impossible for the senses or the imagination to determine precisely the point at which one ends and the next begins. ... Thus there is nothing monstrous in the existence of zoolytes, or plant-animals; on the contrary, it is wholly in keeping with the order of nature that they should exist. And so great is the force of the principle of continuity, to my thinking, that not only should I not be surprised to hear that such beings had been discovered – creatures which in some of their properties, such as nutrition or reproduction, might pass equally well for animals or for plants, and which thus overturn the current laws based upon the supposition of a perfect and absolute separation of the different orders of coexistent beings which fill the universe – not only, I say, should I not be surprised to hear that they had been discovered, but, in fact, I am convinced that there must be such creatures, and that natural history will perhaps some day become acquainted with them, when it has further studied that infinity of living things whose small size conceals them from ordinary observation and which are hidden in the bowels of the earth and the depths of the sea.<sup>4</sup>

Leibniz's prediction, inspired by his metaphysics, "came true," writes Bonnet; "in the waters the polyp was discovered and the two kingdoms united themselves." While there was indeed an even gradation between beings in nature and while the polyp, by its way of

<sup>4</sup> Quoted in Bonnet 1985: 178; translated in Lovejoy 1936: 145.

reproduction, embodied the passage from the vegetable to the animal kingdom, there was, nevertheless, still a gap remaining between minerals and plants: "here nature seems to make a jump," observes Bonnet, "the gradation is interrupted since the apparent organisation of some minerals and crystals corresponds but very imperfectly to that of plants" (Bonnet 1985: 179). It is, perhaps, the perfect lithophyte – the paradoxical being that would be a mineral and a plant at the same time, or, as Diderot says, a mineral "less dead than the others" (Diderot 1994-1997: [1] 254) – that the hermits in Mercier's fantasy are still looking for so fervently in the twenty-fifth century.

### 3 Le surplus de lumières

For the most part, the idea of the chain or scale of natural beings was embraced by those eighteenth-century philosophers who believed in the existence of only one substance in the universe (i.e., matter), that is, the philosophers in whose eyes soul was not a substance distinct from the body – a being endowed with the immaterial, spiritual soul would introduce an unbridgeable gap into the chain or scale – but rather an effect of the bodily structure or organisation, and it therefore appeared at that end of the chain where bodies reach a certain degree of complexity. Before Diderot, who himself claimed that there was "only one substance in the universe" (Diderot 1966: 160) and that the soul is nothing but *l'organisation et la vie* (Diderot 1994-1997: [1] 1316), the organisation and life of the body itself, such a system was developed by La Mettrie according to whom "there is in the whole universe only one diversely modified substance" (La Mettrie 1996: 39) and "all the soul's faculties depend so much on the specific organisation of the brain and of the whole body that they are clearly nothing but that very organization" (La Mettrie 1996: 26). Thus, in the article "Animal" of *Encyclopédie*, Diderot is discussing the universe as "a single and unique machine in which everything is linked, and in which all the beings ascend above, or descend below, one another by imperceptible degrees, so that there is no gap in the chain" (Diderot 1994-1997: [1] 250) and in *Pensées sur l'interprétation de la nature*,

“the great chain that links all things” (Diderot 1994-1997: [1] 562) while La Mettrie in *L'Homme-plante* contemplates “that ladder which is so imperceptibly graduated that we can see nature passing exactly through all its levels without ever missing out, so to speak, a single rung in all its different productions” (La Mettrie 1996: 86).

Admiring the uniformity of nature in which “everything is perfectly matched” and “nothing out of place” (La Mettrie 1996: 86), and having gone to great lengths in *L'Homme-plante* to develop the analogy between man and plant, that is, the analogy that gave the treatise its title, La Mettrie nevertheless acknowledges that “the differences between man and plant are perhaps even greater than the similarities” (La Mettrie 1996: 85). He classifies the polyps – alongside those still unknown animal-plants which “other favoured Trembleys will discover in time” – as “intermediate or compound beings,” that is, as beings which are the “children of both kingdoms” (La Mettrie 1996: 85), vegetable and animal. Unlike plants, the animal-plants are “beings which begin to be animate” (La Mettrie 1996: 85), that is, their workings already manifest certain discernment. And the animal-plants have the more discernment the more efforts they have to make in order to find food. According to the law which states that the less an organized body has needs the smaller is its share of intelligence, it is the absence of any efforts to find food that in La Mettrie’s eyes constitutes one of the reasons against the souls of vegetals. Higher animals have still more mind because they have to make an effort not only in order to find their food but also their sexual partner. The absence of any effort of this sort in plants is another argument against their souls: despite all the parallels La Mettrie drew between plant and man on the basis of reproduction, it remains a sad fact that, unlike humans, plants “make love without difficulty” (La Mettrie 1996: 83) (reading these passages one gets the impression that it is as if La Mettrie envied the plants their “twofold instrument of procreation,” that is, their ability to “impregnate themselves,” as well as their ability to copulate at a distance). Since the polyps do not have to make any effort to reproduce themselves – any severed part of their bodies will produce a new



complete animal – they have a proportionally weak mind. Thus, in La Mettrie's eyes, the asexual reproduction and the fact that from the polyp cut into pieces there evolve as many new polyps as there were pieces, are not so much an argument for what Bonnet calls "the *Self of the Polyp*," as they are an argument for the inferiority of its mind.

Although man has "the most soul" (La Mettrie 1996: 85) of all known beings and is accordingly placed "at the top of the scale" (La Mettrie 1996: 86) nevertheless, in the scale of beings, as depicted by La Mettrie, man cannot see himself as the epitome of creation. That which the hero of Mercier's novel, who awoke in the future, came to realize on the basis of the scale of beings was that "nature in all her operations actively tended toward the creation of man" who, consequently, represents "the gradual term of its perfection" (Mercier 1999: 195–196). Although La Mettrie's man is a perfect animal, nature certainly did not tend toward his creation: nature must have embodied an infinite number of combinations of matter – accordingly, the early generations must have been very incomplete: "one must have lacked an oesophagus, another a stomach, vulva or intestines," and so on – before reaching the one that could give "a perfect animal" (La Mettrie 1996: 94–95). Such unsuccessful combinations of matter occasionally still occur today: as an example of "a surprising mistake" on the part of nature that he has seen himself, La Mettrie cites a woman who "had neither mound nor clitoris, nor nipples, nor vulva, nor labia majora, nor vagina, nor womb" (La Mettrie 1996: 94), and so on. She was, in short, *animal indéfinissable*, an indefinable animal, or *la femme manquée*, incomplete woman. Thus, as a random result of a series of unsuccessful combinations of matter, La Mettrie's man is nothing other than *un beau monstre*, a complete, perfect, viable monster.

Man may well be "a perfect animal," but his position at the top of the scale is rather precarious: *un rien de plus ou moins dans le Cerveau*, a trifle more or less in the brain is enough for him to fall to the bottom, whereas the position of other animals on the second rung is "more solid and stable" (La Mettrie 1996: 86). Although man has "infinitely

more mind" (La Mettrie 1996: 86) than other animals, his soul is *de la même pâte*, of the same material, and *de la même fabrique*, of the same making. The notorious thesis from *L'Homme-machine*, according to which "all the soul's faculties depend so much on the specific organisation of the brain and of the whole body that they are clearly nothing but that very organisation," (La Mettrie 1996: 26) is further elaborated in *L'Homme-plante* as follows: since "our needs are a necessary consequence of the structure of our organs" and since "our soul is determined directly by our needs," the soul clearly owes all its "strength and wisdom" to the number of needs (La Mettrie 1996: 87). Or, as stated in one of La Mettrie's laws: the more needs an organised body has, the more soul it has, or the greater its share of intelligence. That is to say, the "superior quality" of the human soul and its *surplus de lumières*, excess of enlightenment, result from inadequacy or deficiency of human body. Thus, our having *infiniment plus d'Esprit*, infinitely more spirit than other animals simply means that we have *infiniment plus de besoins*, infinitely more needs (La Mettrie 1996: 87).

By showing that *si grand effet*, such a great effect as the human mind is coming from *si triste Cause*, such a sad cause as our bodily needs – that is, by showing that "our happiness and our dignity" stem from "such a troublesome subordination to all of life's unwelcome necessities, which remind us at every instant of the misery of our origin and condition" (La Mettrie 1996: 87) – La Mettrie has denied us our supposedly privileged place in creation and dealt a severe blow to our self-esteem. This is a blow not unlike the two major ones, described by Freud in his *Introductory Lectures on Psychoanalysis*, that in the course of centuries "the naive self-love of men" has had to submit to at the hands of science (Freud 1991: 326). If between the souls of animated bodies there were no even gradations, if there were thus a gap separating man, the perfect animal, from the rest of creation, man would consider himself to be a "God on earth" and would worship "only himself," whereas on the basis of La Mettrie's scale of beings, "there is no animal, however feeble and mean in appearance, the sight of which does not diminish a philosopher's self-esteem" (La Mettrie 1996: 86).

Although La Mettrie's idea that soul or mind is nothing other than "means" that "an organized body" developed in order to fulfill its own needs, in particular, the need for food and sexual reproduction (La Mettrie 1996: 83–85), may sound fanciful, recent developments in evolutionary psychology offer some support to this view. For example, in his brilliant book *The Mating Mind*, Geoffrey Miller argues that our minds evolved not just as "survival machines," but as "courtship machines": thus, the most distinctive features of human minds' creative intelligence, such as storytelling, poetry, humour, philosophical theorizing, and so on, are simply "courtship tools," evolved to attract sexual partners (Miller 2001). It was, in short, through our ancestors' trying to persuade sexual partners to have sex with them that human minds have become witty, intelligent, creative, articulate, and so forth.

The fact that a polyp cut into pieces regenerates into as many new polyps as there were cut pieces, that is, the fact each new incision into the polyp's body seems to split up its soul as well – and the ensuing difficulties concerning the split of the polyp's Self, its "dual personality" disorder, and so on – only present a problem against the background of spiritualist and dualist ontology. In the eyes of the materialists, by contrast, this same fact shows that the soul is not really distinct from the body but identical to it or its "organization" – and therefore material. Just as the metamorphosis of a chrysalis into a butterfly – where we see, with our own eyes, the soul leaving the dead body, and realize that it is not extinguished together with the body but is immortal – came to be understood as an argument for spiritualism and dualism, so has Trembley's polyp, with its virtually indestructible and, so to speak, immortal body, become an argument for materialism. In *L'Homme-machine*, La Mettrie says:

We do not know nature at all; causes hidden deep within her may have produced everything. Look in your turn at Trembley's polyp! Does it not contain inside it the causes of its own regeneration? Why then would it be absurd to believe that there exist physical causes by which everything was made and to which the whole chain of this vast universe is so necessarily

linked and subordinated that nothing that happens could not have [not] happened [*rien de ce qui arrive, ne pouvoit ne pas arriver*]; that it is our absolutely invincible ignorance of these causes that has made us look to a God...? Thus, destroying chance does not mean proving the existence of a supreme Being, for there may be something else which is neither chance nor God; I mean nature, the study of which can as a result only produce unbelievers, as proved by the manner of thinking of all its most successful observers.

La Mettrie 1996: 24

If the gelatinous creature can contain the causes of its regeneration within itself, argues La Mettrie, then, perhaps, the matter, too, could contain the causes of its activity and organization within itself, and could therefore produce the order manifest in nature *by itself*, that is, without God: "everything" in the universe may well have been produced by the "physical causes," hidden in the heart of nature. Just as an intelligent being may have come from *une Cause aveugle*, a blind cause – "having made eyes which can see without itself being able to see, nature made a machine which can think without itself being able to think" (La Mettrie 1996: 97) – so also the order discovered in nature does not necessarily presuppose *une Cause éclairée*, an enlightened cause. Since nature, in its workings, and matter, in its self-organization, manifest "trials rather than masterstrokes" (La Mettrie 1996: 94); since the matter had to pass through "an infinite number of combinations" before reaching "the only combination which could result in a perfect animal"; and since individual mishappen combinations of matter occasionally still occur, the "disorder of all things" in the universe – despite the unmistakable order revealed by the scale of beings – is still so extreme that, according to La Mettrie, we commit a sort of impiety "if we do *not* attribute everything to nature's blindness" (La Mettrie 1996: 98, emphasis added).

## Bibliography

- Bonnet, Charles (1985), *Considérations sur les corps organisés*, Paris: Fayard.
- Diderot, Denis (1966), *Rameau's Nephew/D'Alembert's Dream*, Harmondsworth: Penguin.
- Diderot, Denis (1994-1997), *Œuvres* (5 vols.), Paris: Robert Laffont.
- Freud, Sigmund (1991), *Introductory Lectures on Psychoanalysis*, Harmondsworth: Penguin.
- La Mettrie, Julien Offray de (1996), *Machine Man and Other Writings*, Cambridge: Cambridge University Press.
- Leibniz, G. W (1996), *New Essays on Human Understanding*, Cambridge: Cambridge University Press.
- Leibniz, G. W. (1989), *Philosophical Essays*, Indianapolis: Hackett.
- Leibniz, G. W. (1998), *Philosophical Texts*, Oxford: Oxford University Press.
- Lovejoy, Arthur (1936), *The Great Chain of Being*, Cambridge, MA.: Harvard University Press.
- Maupertuis (1980), *Vénus physique suivie de Lettre sur le progrès des sciences*, Paris: Aubier-Montaigne.
- Mercier, Louis Sébastien (1999), *L'An 2440, rêve s'il en fut jamais*, Paris: Éditions La Découverte.
- Miller, Geoffrey (2001), *The Mating Mind: How Sexual Choice Shaped the Evolution of Human Nature*, London: Vintage.
- Thompson, D'Arcy W. (1940), *Science and the Classics*, Oxford: Oxford University Press.
- Vartanian, Aram (1950), "Trembley's Polyp, La Mettrie, and Eighteenth-Century French Materialism," *Journal of the History of Ideas* 11(3): 259-286.

## History Gone Wrong: Rousseau on Corruption

### Rousseau and the Enlightenment

Jean-Jacques Rousseau's attitude towards one of the cornerstones of the Enlightenment thought, the idea of progress, had secured him a special place among the philosophers of the eighteenth century. In the time when a group of *philosophes*, gathered around the grand project of the *Encyclopédie*, was paving the way for the French Revolution in the intellectual domain, Rousseau's negative stance on the supposed ever-progressing emancipation of mankind had earned him a reputation of being a maverick of the group, although a very influential one. While being a fierce critic of the current state of affairs in politics and morals, Rousseau did not endorse the historical optimism of those who saw man as finally stepping on the path of reason. A comparison of his views on the progress of civilized societies with some of the more pronounced examples of the confident view of humanity in the 18<sup>th</sup> century – such as the *Tableau philosophique des progrès successifs de l'esprit humain* (1750) by the economist Anne-Robert-Jacques Turgot, or the *Esquisse d'un tableau historique des progrès de l'esprit humain* (1793) by Marquis de Condorcet – would reveal striking differences.

However, Rousseau's writings share one significant feature with the bulk of the theoretical works of his contemporaries, especially in France and Scotland, namely, the utilization of the method of so-called "conjectural history".<sup>1</sup> The term was coined by Dugald Stewart (Stewart 1982: 293) to denote a genre, or rather a general methodological framework in which philosophical and social theories were articulated in the eighteenth century. The approach can be described,

---

1 I have outlined a broad overview of this method, which can be traced back to Descartes' *Discourse on the Method* in: Kroupa 2011.

in short, as employing speculations and hypothetical reasoning in trying to discover the probable historical origins of all things human – from money and government to knowledge and language. While historical facts were utilised where available or appropriate, the intention was not to find truth in the *accuracy* of the description of events, but in the *logical plausibility* of historical narratives, which took historical facts only as auxiliary evidence. All “treatises on the origins” are therefore full of assumptions about the events one had no evidence of whatsoever. Apart from the stadialist views of human progress first proposed by Turgot and Adam Smith, we see conjectural history (*l’histoire raisonné* or *l’histoire philosophique*, as it was sometimes called in France) at work in writings by such thinkers as abbé Condillac, Jean le Rond d’Alembert or David Hume.

In the vivid narrations of the *Discours sur l’origine et les fondements de l’inégalité parmi les hommes* (sometimes referred to as the *Second Discourse*) and the *Essai sur l’origine des langues*, Rousseau is one of the most skilful proponents of this genre. It is therefore not the *method* of the philosophical inquiry that sets him apart from his contemporaries; on the contrary, what Rousseau has in common with them is the very idea that true philosophical enquiry of any present state must unveil the origins of that state in the distant and often undocumented past by way of hypotheses, which are often very questionable historically. Rousseau expresses the incidental character of historical facts frankly in the *Second Discourse*:

For it is no light undertaking to disentangle what is original from what is artificial in Man’s present Nature, and to know accurately a state which no longer exists, which perhaps never did exist, which probably never will exist, and about which it is nevertheless necessary to have exact Notions in order accurately to judge of our present state.

Rousseau 1997: 125/ 1964: 123<sup>2</sup>

2 When citing the works of Rousseau, I use the English translation in Rousseau 1997. I also refer to the standard edition of *Oeuvres complètes* (Rousseau 1964 and 1995 for the *Second Discourse* and the *Essai*, respectively).

To account for our artificial presence, the story of the development of the human mind and civilization must be deduced philosophically from the original state of nature. Here Rousseau was in line with the general spirit of Enlightenment theory in that only the study of the *origins* of any given phenomenon deserved to be called philosophy. However, Rousseau stands out from this crowd in that wherever other thinkers saw gradual progress, he only found progressing degeneration and corruption.

I shall try to explore this image of Rousseau as an irremediable pessimist in the context of his *Essay on the Origin of Languages*, complemented by some relevant passages in the *Discourse on Inequality*. As Jean Starobinski nicely put it, these works can be read as two versions of the same story: while in the *Discourse* the discussion of language is only an episode in the general history of society, in the *Essay* the emergence of societies is treated only as far as it supports his views on the origins of language (Starobinski 1971: 356). It might be said that the former provides a more appropriate terrain for the study of the problem of the progress and corruption of societies (and has therefore more often been studied in this context). However, I believe that the somewhat emphasized naturalistic tone of the latter enables us to see Rousseau's views on corruption in a different perspective. In short, rather than pessimism, I would like to stress the naturalism of Rousseau's doctrine. If it is evident that history has taken some wrong turns, it is not entirely clear that we are to blame.

### Natural causes

A careful reader of the opening paragraphs of the *Essay* will notice that in the heart of its undertaking there seems to be a strange premise, which Rousseau introduces by stating: "since speech is the first social institution, it owes its form to natural causes alone" (Rousseau 1997: 248/ 1995: 375). Given that the opposition between the natural and the social realm is widely understood as occupying a central place in Rousseau's doctrine, the statement may at first seem curious. How



are we to make sense of these two regimes, supposedly radically different or even contrary to one another, if the latter is simply identified as the result of the former? Derrida, a close reader of Rousseau's *Essay*, labels this paradox as "a break in the field of natural causality" whereby nature is playing against herself as it were, to "naturally inaugurate an order radically *heterogeneous* to the natural order" (Derrida 1982: 143). Language, specifically speech, is a privileged example of this conflict, it is a weird amalgam inasmuch as it represents the transition from nature to society, or, from necessity to arbitrariness. It is governed by the arbitrary laws of humans, because it is conventional (Rousseau 1997: 252/ 1995: 379), yet the very existence of speech, or rather its *form*, as Rousseau points out, is enabled by *natural* or necessary causes, and nothing else. Further, the transition from the blind innocence of the natural state to the corrupt civilization, of which speech is the first institution, belongs exclusively to man. But sociality as such does not rest in any special innate faculty he would be endowed with, but is rather a result of an outer force of nature drawing him towards it. The step of man into the realm of arbitrary speech is neither deliberate nor predestined, but something he has been manipulated into. As Rousseau says in an important passage on language in the *Second Discourse*, the departure from the state of nature "would be an Indictment of Nature, not of him whom nature had so constituted" (Rousseau 1997: 150/ 1964: 152).

If nature herself is the one to have given birth to her opposite, that is the arbitrary, artificial or unnatural order, anyone could quickly point out that this polarity must necessarily collapse into one. If the emergence of society through language (or vice versa, as we shall see) had natural causes, does it not make the social conventions only an extension of the necessary laws of nature? Rousseau seems to imply that, instead of being a radically *heterogeneous* order (in Derrida's words), the arbitrary realm of society and language, since it arises from natural causes, can only be a subclass of, and be reduced to, the natural order. The general paradox of the causal relation between nature and society seems to be (I shall explore this using some examples later)

that the social realm is an unnatural effect of a natural cause. Consequently, corruption occurring in society, as it is perceived by Rousseau as some kind of regrettable departure from the original state, turns out to be an unavoidable outcome of natural causes.

I propose to take this sort of naturalism in Rousseau seriously, but in order to do so, we must first make sense of the well-known nature/culture divide. As we shall see, the polarisation of man's goodness by nature and corruption by society and free will is not something that should be taken as a dichotomy. The two realms overlap significantly because there are no two separate sets of attributes belonging exclusively to one or the other. For instance, nature cannot be identified with necessity as opposed to arbitrariness and chance, while, on the other hand, society is not merely conventional as opposed to necessary.

The reading of Rousseau revolving around the divide between nature and culture has been made popular by Claude Lévi-Strauss (e.g., Claude Lévi-Strauss 1964: 99–100 and Claude Lévi-Strauss 1983: 33–43) and consequent Derrida's discussion (Derrida 2001: 351–370) of his views, and is based primarily on the *Discourse on the Origins of Inequality*. In the *Essay on the Origin of Languages*, on the other hand, while still present, this divide is less pronounced, to the point where it cannot be viewed as a strict dichotomy. Let us begin by distinguishing between *the state of nature* (i.e., the time of solitary savage individuals with no permanent social bonds), which was irrecoverably lost once first societies were formed, and *the natural causes*, which of course continue to regulate human affairs even after speech as the first social institution has emerged. While making the step outside of the state of nature, man never escapes the natural forces and causes. While there is a more or less clear distinction between the state of nature and the artificial state of society, natural causes continue to dominate the latter no less than the former. The two states are not governed by two different types of causes, either natural and necessary or arbitrary and contingent, but rather represent two different types of effects. Everything that happened in the original state (populated by solitary

savages) had natural and largely beneficial effects on man. With the gradual emerging of communication and social interactions, however, the effects of natural causality were slowly differentiated into a variety of cultural forms, which were corrupt by definition, since variety always marks a departure from the original universality.

While the *state of nature* is a proper subject of the *Second Discourse*, I think we need to interpret the *Essay* as an exploration primarily of the idea of *natural causes*, in which the role of human freedom and spontaneity is concealed. In fact, Rousseau puts a lot of effort into showing that everything artificial, social and therefore unnatural is a result of natural necessities. In the *Essay*, this is demonstrated in the frequent attempts to underline the natural elements in conventional languages. Before opening his "long digression" on the differences between the languages of the north and the south, for instance, Rousseau explicitly avoids the discussion of the variety of forms of speech in terms of free-will conventions with the words: "Let us try to follow the order of nature itself in our inquiries" (Rousseau 1997: 267/ 1995: 394). What follows is a long explanation of how these differences are a consequence of natural migrations and settlements of people in different climates. It is important to note here that it is not only the emergence of language *as such* which is due to external forces of nature, but also the *variety* or *form* of languages, in other words, that which has always been interpreted in terms of arbitrary culture. Cultural and linguistic differences are thus not arbitrary and spontaneous according to Rousseau, but are guided by local climatic and geographical necessities.

In another passage, Rousseau states that the first language must have been based on the unarticulated cries of nature. The basic claim underlying the whole argument of the *Essay* is that speech has not emerged among people because of their needs, but because of their emotions. "Not hunger nor thirst, but love, hatred, pity, anger wrung their first voices from them" (Rousseau 1997: 253/ 1995: 380). The hypothetical first spoken language must have been therefore onomatopoeic. Either it expressed ideas of things and beings with an imitational sound of

perceived objects themselves and the effects they had on other objects and beings, or with an accent of an accompanying emotion. Because it expressed not only things but also different emotions connected with them, this language must have been rich with synonyms, irregularities, and accentuated vowels expressing the feelings of the heart. It probably had no grammar, abstract words and almost no articulated sounds, since the cries of emotions had little need for consonants. It was very figurative and was sung rather than spoken (Rousseau 1997: 254–256/ 1995: 382–384). Modern languages, on the other hand, are simple and methodical, precise and articulated. They make use of many abstract terms instead of synonyms. Ideas have taken the place of emotions. The changes from primitive speech to modern languages were slow and gradual. As people were becoming more knowledgeable about the world, their speech grew colder, addressing the ideas of the mind rather than the feelings of the heart (Rousseau 1997: 262–266 and 280–281/ 1995: 390–3 and 409–410). There is no need to emphasize that, due to these alterations, modern languages are corrupt according to Rousseau. But what is more important in this context is how this description is concluded. Rousseau explicitly denies that speakers have any responsibility for this corruption: “This progress seems to me entirely natural” (Rousseau 1997: 256/ 1995: 384).<sup>3</sup>

One would be hard-pressed to find any mention of arbitrary conventions even in the case of writing. While commenting on the reasons for our practice of writing from left to right, Rousseau reports that after adopting the direction from right to left from the Phoenicians, the Greeks decided to write in furrows (i.e., continuing, as it were, a single line alternatively from right to left and vice versa), because that facilitated reading. However, in order to enable the spreading of manuscripts, they had eventually learned to write from left to right, since that is a considerably easier way to write by hand. “This progress is altogether natural,” says Rousseau (1997: 259/ 1996: 387).

---

<sup>3</sup> Rousseau even recalls Plato's *Cratylus* at a certain point, noting that the idea of natural language of imitation “is not so ridiculous as it appears to be” (Rousseau 1997: 256/ 1995: 383).

Lastly, after enumerating the effects brought by the invasion of Barbarians into Rome, which was directly responsible for the corrupt state of modern languages and music, Rousseau, again, concludes by saying: "These progresses are neither accidental nor arbitrary, they are due to the vicissitudes of things" (Rousseau 1997: 298/ 1995: 428).

It is clear from these passages that the distinction between the necessity of nature and the arbitrariness of culture cannot be central to Rousseau's discussion of the corruption of language and music in the *Essay*. Rather, I think there are two other oppositions, hinged on one another, on which Rousseau quietly relies to convey arbitrariness into his argument.

### Avoiding theology

We must not forget that Rousseau's references to natural causes serve a double function. They not only reveal that the development of language is largely natural as opposed to conventional, but are also intended to lay forward the ambition to avoid *supernatural* causation, a divine agent. After all, it is much easier to reconcile nature with society than with miracles. Yet this opposition between natural and theological explanations is ultimately resolved on another level: in the opposition between necessary and contingent events. As we shall see, the contingent side of the divide is designed precisely to relieve the project of the burden of various theological hypotheses.

Let us look at how Rousseau deals with the first challenge, that is, how he manages to avoid the theological account of the transition from the state of nature to society, or, more specifically, to language as the first social institution. Rousseau's discussion in the *Discourse* closely follows the problems laid forward by Condillac in the *Essai sur l'origine des connaissances humaines*, although he fully acknowledges the complexity of this issue, apparently puzzled by a series of difficulties that seem to imply a danger of a circular argument.

The first difficulty consists in deciding whether the true originator of language is a mother or her child. If one supposes that the child has a bigger motivation to communicate his (or her) needs to the mother, then the child must have been the first inventor of a few distinct sounds endowed with meaning in the state of nature. This would imply that there would have been as many languages as there were people according to Rousseau, because there was nothing to guarantee the consistency of such a language among different individuals. After all, people led nomadic lives and maintained no permanent social bonds with one another. Alternatively, if we suppose that in this hypothetical situation it was the mother who taught her child how to express basic needs, then this begs the question, because it remains unclear how the mother herself had learned that language (Rousseau 1997: 146–6/ 1964: 147).

Without giving an answer to this problem, Rousseau faces an even bigger and more philosophical difficulty, namely, how can the origin of language be explained when language and thought seem to presuppose one another. Apparently unsatisfied by the explanation provided by Condillac, Rousseau puts forward the following dilemma: “for if men needed speech in order to learn how to think, they needed even more to know how to think in order to find the art of speech” (Rousseau 1997: 146/ 1964: 147).

The last and most important difficulty is developed from the criticism Rousseau had addressed to Condillac a little earlier:

[T]he manner in which this Philosopher resolves the difficulties he himself raises regarding the origins of instituted signs shows that he assumed what I question, namely some sort of society already established among the inventors of language.

Rousseau 1997: 145/ 1964: 146

This is a crucial point for Rousseau. While he has been able to establish that the first and most universal form of speech must have

been a cry of nature, in the *Discourse* he fails to find a satisfying account of the transformation of this unarticulated language into any form of language in the proper sense. Clearly incapable of identifying the principle that would explain how people began communicating their needs and emotions without a stable society, Rousseau raises the seemingly unresolvable question of how language and sociability are connected. It is in this passage that he seems to leave room for theological hypotheses:

As for myself, frightened by the increasing difficulties, and convinced of the almost demonstrated impossibility that Languages could have arisen and been established by purely human means, I leave to anyone who wishes to undertake it the discussion of this difficult Problem: which is the more necessary, the already united Society for the institution of languages, or already invented Languages for the establishment of Society?

Rousseau 1997: 149/ 1964: 151

This last difficulty in the *Discourse* must be read together with the climatological hypothesis in the *Essay*. Rousseau never fully allows for the supernatural cause to enter his chain of explanation, although, even in the *Essay*, he seems to not have denied it completely.<sup>4</sup> In this respect, the following story about “a touch of the finger”, in which he recognizes that the differences in climate must have played a decisive role in human history, is essential for the narrative:

He who willed man to be sociable inclined the globe's axis at an angle to the axis of the universe with a touch of the finger. With this slight motion I see the face of the earth change and the vocation of mankind settled [...]

Rousseau 1997: 273/ 1995: 401

---

4 For example, he sympathetically mentions Father Bernard Lamy and his claim that humans could have never transformed the cries of nature into articulated language, had God himself not taught them how to do so (Rousseau 1997: 255/ 1995: 255).

From here, the whole story of the differences between northern and southern languages unfolds. Rousseau is able to demonstrate that people in the idyllic setting of moderately warm climates, where they hardly had any needs to cooperate, were nevertheless forced to eventually socialize, either because of the rare need to overcome the consequences of some natural disaster, or in the case where they used the same water sources. It was on these occasions, according to Rousseau, that the first agreements, disagreements, love encounters and celebrations took place, spontaneously inducing communication based on the accentuated voices of passions (Rousseau 1997: 274–8/ 1995: 402–7). In the northern climates, on the other hand, where the winters are long and harsh, cooperation is critical for survival and becomes the main motivation of social relations. As Rousseau describes it,

in those regions where the earth yields whatever it yields only after much labor and where the source of life seems to reside more in the hands than in the heart, men, constantly involved in providing for their subsistence, hardly thought about gentler bonds, everything was confined to physical impulsion, opportunity dictated choice, ease dictated preference.

Rousseau 1997: 279/ 1995: 408

Unlike in the south, then, the first words of northern people might have been *aidez-moi* instead of *aimez-moi* (Rousseau 1997: 279/ 1995: 408), which in turn explains the general character of the northern languages: cold, articulated, noisy and unmelodic.

The importance of the story about a slight push of the finger lies less in the fact that it finally determines the missing link between the cries of nature and instituted language and between language and society than in the place it occupies in the general strategy of Rousseau's argument. While in the *Discourse*, Rousseau expresses doubts whether languages could have been established by purely human means, in the *Essay* we are faced with an answer that opens two ways of understand-



ing these doubts. What exactly is outside the "purely human means?" In other words, to whom does the finger belong? An interpretation, which would pursue divine interference in this passage, suggests itself almost naturally. However, I think it is the second distinction between *necessity* and *contingency*, rather than the one between natural and supernatural agency, that provides the key to Rousseau's view on why language is essentially corrupt. Rousseau does not need to decide whether the differences in climates are caused by God's finger of Providence or some accidental idiosyncrasy of nature herself. After all, these two options are not necessarily incompatible. It is rather the opposition between the necessary and therefore predictable laws of nature and a series of contingent and unforeseeable events or breaches in this steady order that structure Rousseau's explanation. The theological hypothesis, should anyone want to recover it, can peacefully reside inside this larger opposition, because from now on contingency takes full responsibility, as it were, for misfortunes of people. The slight push of the finger should be understood as only the first in the series of contingent events in nature, making the possibility of a full-blown theological explanation irrelevant or secondary.

### The contingency of catastrophes

How does contingency intervene? Rousseau's conjectural history, of which his discussion of the origin of languages in the *Essay* is only a part, is full of catastrophes. It is evident that whenever he struggles to deliver an account of events that would pass as natural by his own standards, disasters take place to move things forward. In the *Discourse*, "some fatal accident which, for the sake of the common utility, should never have occurred" (Rousseau 1997: 167/ 1964: 171) ended the happiest period of man in which he resembled the savage men described by the modern discoverers. Rousseau takes the fact that there still are savage societies as an indication of the state we would still be in had the catastrophe not occurred. In the *Essay*, Rousseau identifies floods, volcanic eruptions, earthquakes and lightning fires as prime motivators for primitive alliances of the southern people,

which enabled them to overcome and restore the damages (Rousseau 1997: 274/ 1995: 402). And since it is hard to imagine how people would have come about the idea to look for iron ore and to smelt it properly, "some extraordinary event, such as a Volcano throwing up molten metal" (Rousseau 1997: 168/ 1964: 172), must have occurred to push people towards the supposedly utilitarian and harmless art of metallurgy.

However, the status of these catastrophes is somewhat peculiar, as they are both external and inherent to the order of nature – a fatal conspiracy of providence and an unfortunate combination of natural circumstances. They represent an interruption of the harmonious order of nature by a violent contingency, or as Derrida puts it, an "arbitrary and exterior causality," which also has to "act along natural or quasi-natural lines" (Derrida 1982: 146). The contingent disasters are thus both natural and unnatural, or rather, natural, but presenting themselves as contrary to natural order and the ways it is supposed to take. Contingency, in short, is an eccentricity *in* nature's character, as if incompatible with her usual ways. To repeat the point I have made earlier, a contingent catastrophe is a *natural cause* with potentially *unnatural effects*, such as a passage from the state of silent savages to society of articulated communication.

The *Essay on the Origin of Languages* and the *Discourse on Inequality* (and the *Discourse on the Sciences and Arts*) are concerned primarily with the question of how civilization is only ever bringing corruption and misery to people. In this sense, natural disasters are interpreted as unfortunate accidents diverting the course of human history. However, in the *Essay* Rousseau goes even further in showing that there is a corrupting force in nature herself. It is not enough that natural disasters disturb what could otherwise have been a harmonious life on earth; moreover, men even actively prevent and mitigate nature's self-destructive tendencies. In a remarkable passage of the *Essay*, often neglected by commentators, Rousseau presents an image, which must sound utterly heretic to the ears of any present day ecologist.

According to this passage, the first state of the earth, that is before humans, was one of chaos, frequent revolutions and confusion. Disasters were much more common, as if war between the natural powers had to maintain an equilibrium, bringing about "in a few hours what a hundred thousand human hands now do in a century" (Rousseau 1997: 276/ 1995: 404). Let me quote a brief passage from this fascinating image:

The entire earth would soon have been covered with nothing but trees and ferocious beasts; eventually everything would have perished.

The water cycle which nourishes the earth would little by little have broken down. Mountains get worn down and smaller, rivers silt up, the sea rises and spreads, everything imperceptibly tends toward the same level; the hand of men slows this drift and delays this progress; without them it would proceed faster, and the earth might perhaps already be under water.

Rousseau 1997: 276/ 1995: 404-405

Nature makes no effort to sustain living conditions on earth, and although wars, burnings of cities, mining, cutting down trees, draining or channelling of rivers and other civilized activities bring misery to people, they are by no means corrupting Nature in Rousseau's view. Rather they are counterbalancing her self-corrupting inclinations.

Let us return to the problem of corruption in the social realm and, more specifically, to language and music. As we have seen, it is only a distant ramification of contingent natural events. Jean Starobinski has nicely summarized the causal connection between nature and society in Rousseau: "Social institution is a delayed consequence of a primitive disposition, of which the effects are unfolded very slowly at a distance from the origin and under the influence of exceptional conditions, which have solicited the rise of virtual faculties" (Starobinski 1971: 357). Corruption and progress are not innate to man any more than language or sociability. Rather they are the result of a faculty

Rousseau calls *la perfectibilité*, "perfectibility," or *la faculté de se perfectionner*, "the faculty of perfecting oneself" (Rousseau 1997: 159, 141/1964: 162, 142). This ability to evolve, together with freedom, is what separates the human race from beasts, yet it remains dormant and potential until awoken by some exceptional external impulse, such as a natural disaster. Only through this excited perfectibility has man been able to leave the state of nature, and it is due to this virtual faculty that he "makes progress in good as well as in evil" (Rousseau 1997: 253/ 1995: 379).

How is it that the languages of the south, so full of natural inflections and so harmonic, did not prevail, at least not in Europe? Rousseau's answer is pointing at another catastrophic event, but this time it is not a natural disaster, although it is a distant ramification of the slight movement of the finger. In Chapter VIII, before beginning his climatological digression, Rousseau states that mankind was born in warm countries. From there, people migrated to the cold lands of the north and, after a long period of multiplication, spread back to the south (Rousseau 1997: 266–7/ 1995: 394). This last step of the sketchy account of migrations is in fact Rousseau's description of the invasion of the Barbarians into Rome. The effects this historical event had on Greco-Roman culture bear all of the characteristics that Rousseau found in his analysis of the differences between the north and the south. Europe, invaded by crude and ignorant men, lost its arts and sciences and its perfected and harmonious language. The voice of these men was "harsh and accent-less", "noisy without being sonorous" (Rousseau 1997: 296/ 1995: 425). Their articulations were grating, their voices nasal and dull. Their songs had nothing in common with the melodiousness of the Greeks and the metrics of the Romans. Since their language was born out of need rather than emotion, prose was closer to their spirit than singing or poetry. After they had accustomed the subject people to the noisiness of their speech, the fate of modern languages and music was sealed: melodic songs of inflected voices, which originated from the natural characteristics of the southern languages, were gradually replaced by harmonies, accidentally discovered in

a few chords when the descendants of the barbarians were trying to make their songs more sonorous (Rousseau 1997: 296–7/ 1995: 426). Rousseau devotes the majority of the second part of the *Essay* to the opposition between melody and harmony. He sees the latter as cold, calculated and unfit to imitate emotions, as opposed to the expressive music of the Greeks, for instance, which was full of energy.

By the end of the *Essay*, everything becomes connected with language. The corruption of language brought not only the corruption of music, poetry and drama, but also of eloquence. Modern languages, unsonorous and unmelodic, are not suitable for addressing crowds at public spaces because speech simply cannot be understood at a distance due to lack of melody and measure. That, in turn, has political implications. Rousseau concludes the *Essay* by saying: "I maintain that any language in which it is not possible to make oneself understood by the people assembled is a servile language; it is impossible for a people to remain free and speak that language" (Rousseau 1997: 299/ 1995: 429).

## Conclusion

To conclude, let me add a few points on the notion of corruption in Rousseau. First, as we have seen in the case of the Barbarians, the corruptions happening in the arbitrary order of culture are only distant consequences of natural causes and human perfectibility. We must not forget, however, that the inverse statement also holds, namely, that the natural order itself is not free of arbitrariness. The implication is inevitable: through catastrophic contingencies, the corruption of everything social becomes an intrinsic part of nature. But while the corruption of culture is largely natural as opposed to arbitrary, it is also true that, for Rousseau, the corruption of nature is arbitrary due to the contingency of catastrophes and coincidences. We are left with a position, which is very uncommon for a philosopher of the eighteenth century: corruption is the fate of humanity, it is natural, but it is by no means necessary. Had history not been navigated by a series

of unpredictable and unnecessary disasters, the state of affairs could have been different, perhaps less corrupt. Rousseau's frequent expressions of regret over history that has gone so very wrong are ultimately a critique of nature, rather than man.

Second, an important point about the notion of corruption in Rousseau is that it demonstrates itself as differentiation. Corruption is not simply a transformation from good to evil, but it is in a way always a departure from the pure and unspoiled origin, and this departure always manifests itself as splitting up or falling apart. In the end, the corruption of language and music lies in the fact that they are no longer united. In the beginning, speech, song, poetry and eloquence were all one according to Rousseau (who is following Condillac on this point), and it is in their violent division through various stages in history that they lose their original energy and expressivity.<sup>5</sup> When language was sonorous, melodic and rhythmic, the transition from speech to declamation and chant were imperceptible. Condillac (Condillac 2001: 118) makes a similar statement about the original unity of dance, pantomime and gestures. This view has a long tradition in philosophy, particularly in the debates about language. Until the seventeenth century, the standard account of the problems of linguistic representation had pointed towards the fall of Adam, that is, the event after which he had lost the original unity of ideas and words and was therefore unable to reconstruct the knowledge contained

---

<sup>5</sup> This differentiation closely relates to what Derrida's reading (1997: 165ff) of Rousseau's *Essay* advances in the second part of his *Of Grammatology*, where he extracts a series of oppositions that appear throughout Rousseau's text, such as south/north, melody/harmony, sound/articulation, vowel/consonant, but also passions/reason, and finally, speech/writing. The second half of every such opposition is interpreted by Rousseau as some sort of corruption of the first, as a departure from the pure origin, or, in Derrida's terms, a supplement of the original presence. While Rousseau is arguing that these corruptions are due to causes external to the pure origin (such as catastrophes), Derrida is of course trying to show that what he calls *différance* is always already in the origin, that the origin has always been split, in other words, that there has never been a pure and unspoiled origin.

in the names he had given to things and animals under the supervision of God. Without this unity, thought and speech separate, and the only connection they are able to sustain, is an unsecure bond of representation, which is often deceptive.<sup>6</sup> One should therefore not forget that language and music did not get corrupt simply by change and unspecified degradation, but literally by decay or decomposition. Language was spoiled by losing its musical self and music by losing the melody and rhythm of the original speech. Rousseau's corruption is therefore much less passing away (in the Aristotelian sense) than it is a falling apart.

Lastly, for Rousseau, corruption is not only the opposite of progress in the sense that the majority of the philosophers of the Enlightenment understood it, but is often also disguised as progress. The dominant position of harmony as opposed to melody in modern music, for instance, was seen as a result of the advancement of music (this was defended by Jean-Philippe Rameau, a composer and a theoretician of music, in response to whom Rousseau had written the *Essay*). The same is true about language. Rousseau was convinced that what others understood as an improvement (i.e. that language had come to be governed by the rational rules of grammar, that the semantics of words had been getting ever more precise due to lexicalization, that it had become an object of scientific study etc.) was in fact its degradation, because it had lost its expressive powers. The implication of this Rousseauist viewpoint is an obvious one: if that which is appreciated by everybody as progress is in fact only an illusion of progress and corruption in reality, then the very fact of this camouflage is what is most corrupt about corruption. It prevents the detection of the real nature of corruption and encourages its perpetuation.

---

6 Another catastrophe, which brought obstacles to communication, was found in the story of the Tower of Babel, which is a story of differentiation and loss of unity *par excellence*.

## Bibliography

- de Condillac, Etienne Bonnot (2001), *Essay on the Origin of Human Knowledge*, Cambridge: Cambridge University Press.
- Derrida, Jacques (1982), *Margins of Philosophy*, Chicago: University of Chicago Press.
- Derrida, Jacques (1997), *Of Grammatology*, Baltimore and London: Johns Hopkins University Press.
- Derrida, Jacques (2001), *Writing and Difference*, London and New York: Routledge.
- Kroupa, Gregor (2011), "Domnevna zgodovina: dejstva in fikcija," *Filozofski vestnik* 32(1): 37-50.
- Lévi-Strauss, Claude (1983), *Structural Anthropology*, vol. 2, Chicago: University of Chicago Press.
- Lévi-Strauss, Claude (1964), *Totemism*, London: Merlin Press.
- Rousseau, Jean-Jacques (1964), *Oeuvres complètes*, vol. 3, Paris: Gallimard.
- Rousseau, Jean-Jacques (1995), *Oeuvres complètes*, vol. 5, Paris: Gallimard.
- Rousseau, Jean-Jacques (1997), *The 'Discourses' and Other Early Political Writings*, translated by V. Gourevitch, Cambridge: Cambridge University Press.
- Starobinski, Jean (1971), *Jean-Jacques Rousseau: La transparence et l'obstacle (suivi de Sept essais sur Rousseau)*, Paris: Gallimard.
- Stewart, Dugald (1982), "An Account of the Life and Writings of Adam Smith, LL.D.," in *The Glasgow Edition of the Works and Correspondence of Adam Smith*, vol. 3, W. P. D. Wightman and J. C. Bryce (eds.), Indianapolis: Liberty Fund, pp. 269-332.



## Corruptivity and Female Body

Before corruption, and indeed sex, became fetish words in the media and political speeches, before the clichés and ready phrases full of unsupported affirmations regarding the rooting out of corruption or the perverted ordering of various sexual practices piled up, these two terms were used to describe phenomena integral to any form of life. False witness, rhetorical questions, and manipulative hyperboles became floating signifiers, thinning out the original meanings and loosing purely pragmatic packaged uses. They follow by little in the way real action can protect the public good. Approximations, euphemisms, and poor metaphors in these so-called active struggles against corruption and perverse representations of sex repress the ontological dimensions of both corruption and sex. They reduce them to puritan and hypocritical states that exclude corruption and sex from the context of the basic dynamics of life and death, or to use Aristotle's terms, the processes of coming-to-be and passing-away.

I hardly wish or dare to deny the analysis of corruption in legal, economical, technical or even colloquial meanings today, nor is it my intention to sew further confusion with this presentation in an already shaken order of generally accepted values of the public cause.

However, I think that there can be no improvement of common life in the community, nor protection of the public sphere from personal and selfish interests, unless we precisely stop willfully ignoring and rejecting the ontological status of corruption. Therefore, my intention is to connect corruption and sex by referencing Aristotle and the position of the feminine (that is, not only of the woman as an individual human being, but rather everything that falls within the complementarity and necessity of the male/female opposition). By which I do

not mean either representing Aristotle or being his mouth piece, or saying anything radically new from what Luce Irigaray already wrote in her doctoral thesis *Speculum of the Other Woman*. I just attempt to adapt to the time and select the aspects of her philosophy which have been neglected in favor of her epistemological, ethical, and feminist actions. It was the *Speculum*, a gynecological instrument, that in the seventies of the twentieth century began the examining of metaphysics and peering into the place that allowed the existence of the feminine, or even better, of that *other*, as a subject – for we are concerned not only with the feminine, but with anyone who is different and can be rendered subject, with the goal of improving the community of people (and all other living and non-living). I must repeat that this does not concern the individual woman, but the becoming of subject in a metaphysics that does not tolerate anything that is not understood as one, whole, unified, and intact.

The thirty years which have seen gains in the right to difference for all those whose particularities have been neglected, erased, and suppressed for centuries for the benefit of the one and unified, are no longer. In a perverted and revisionist way, the current struggle against the destruction of trust, bribery, and crime, recommends the return to the discourse of the one, the closed off, the exclusionary. The arguments denying a plurality of voice has been revived and strengthened, since the only solution is only found in conserving of *unaccomplished ideal* values. In the search for scapegoats and the drudging up of old enmities, the newly achieved gains are annulled and fictions that allow for the return to the beginning abound (as if the reversibility of events could be willed into existence). Instead of searching for new forms of resistance to the *status quo* and belonging (in other words, to corruption), the beginning is imagined renewed.

What if corruption cannot be rooted out? And what if its understanding, channeling, guiding were more complete if it were not exclusively tied to legally punishable, legislative, ethical, and deontological values? I answer these questions by stringing them into one seemingly

sequential line: *corruption and woman* (as Anatole France wrote: "Une extrême corruption c'est la corruption féminine générale"), *corruption and immorality*, and *corruption and sex*. As an illustration connection that connects moral tepidity and corporal weakness, tendency towards corruption and bodily indulgence, I use Emma Bovary. Or perhaps I ought to use Flaubert, who as the author described or maybe even created the prototype of the unsatisfied, never fulfilled or completed "feminine" (these quotation marks complicate matters) and romantic nature – the tragic bimbo.

Corruption and sex have always intimately been linked in many a suspicious and immoral practice (even when the practices were based in religious and culturally established authority); For example, when sex was part and parcel of certain service and merchant games of barter and recognition. Or when a sexual relation was a form of compensation where at least one of the parties involved is bribed with money. Clearly these practices illustrate the age old image of woman or any other sexual object as property, which immediately problematizes prostitution, as well as all other forms of measuring/estimating and undervaluing the value of women or object of sexual exchange. I would, however, leave prostitution aside. I want to evoke sex in only one of its segments, when certain sexual practices "weaken the soul," corrupt it, and lead it to a lustful fulfillment of corporeal desire, even though on the other hand, certain other controlled and directed sexual relations encounter no resistance since they ensure genesis or generation. Only sex, it seems, allows for the soul to mingle with the body. For the body is birthed and decays, whereas the soul is supposed to be constant and immutable, as Aristotle explains in his writing on nature. My intention is to return to certain irregularities that appear in that view just after a few words about the understanding of corruption as process.

Differentiating the practical, poetic, and theoretical sciences, and further systematizing them into specific *episteme* (as opposed to the practical sciences, ethics, and politics, divided into disciplines),

Aristotle places corruption, or *phtora* – which he describes coupled with generation, coming to be – firstly in the domain of physics, that is, belonging to the theoretical sciences (he does not define them, since it seems that terms *sophia* and *philosophia* need not even be defined). Upon establishing the subject of *Physics*, which belongs to that contemplative knowledge exploring the existence of becoming, and then the existence of the body, its characteristics, and after defining the nature of the principles of movement in the first two books of *Physics* (Aristotle 1961), in the rest of the books (III to VIII) Aristotle explains movement, and more specifically, he deals with the description of changes in accordance with various categories of becoming and passing away, changing, enlargement and diminution, as well as terms issuing from the changes ... eternity, place, emptiness and time... The last book of *Physics* leads us into metaphysics (that is book *Lambda* of *Metaphysics*) and the descriptions of the first immovable beyond-sensory mover of all existing.

The singular and prime mover of all is thought. *On the Heavens* is classified after *Physics*, dealing with the ether, the eternal circular motion of celestial bodies, establishing the four sub-heavenly elements (earth, water, air, and fire), with *Becoming* and *Passing Away* dealt with after that. *Genesis* and *phtora* are essential properties of sub-heavenly, visible, present bodies. Classifying the knowledge of all known cosmogonies in his age, Aristotle limits his exposition to “simple bodies-*homeomera*” and the combinations of their becoming and passing away. These combinations are reached by mixing (“those things which contain opposites can be mixed”), since Aristotle says that “it is impossible for becoming to be enjoining and breaking apart, for it is precisely through enjoining and breaking apart that corruption appears” (Aristotle 1994-2009: 317a25-30). He wonders: “is there nothing which simply comes to be and passes away of its own accord, but rather always becomes from something and passes away into something” (317b). Many commentators (Bekker, Prantl, Tricot, Joachim, Adler) point out that the difficulty arises when perpetuity of generation needs to be explained, from the point of view of absolute

non-being. For if non-being was non-sensible this difficulty would disappear: there would be neither *ex nihilo* generation, nor *ad nihilum* corruption. A certain simple becoming comes from a specific non-being, while everything else always comes to be and passes away through being. In other words, everything that exists had to become from contacts of protoelements. But if it came into being, it is necessary for something else to have passed away. The problem of all monist theories (Anaxagoras, Empedocles, Leucippus, Democritus), says Aristotle, is the assumption that there is only one form of natural movement, same for everything. Elements are not eternal, and they are necessarily corruptive since they have come to be. Underpinning the complex and extraordinarily sophisticated progression of Aristotle's theses, is the maintaining of his cosmological construction.

It is not my goal to consider this construction in detail, although I do hope to have clarified the extent to which it is impossible to exclude the corruptive movement from becoming, to root it out, especially when we are dealing with the materiality of the world. Of the other relevant details connected to becoming and passing away, we certainly ought to point to the means through which the processes of becoming and passing away unfold in that same determined world. The general assumption is that mutual activity and passivity of elements occurs, and that which is true for activity and passivity is true of movement and change. What can be passive? That, which has its form in matter. That which acts first cannot be passive: it is the cause and beginning of movement. We have said that mixing occurs when opposites meet, and Aristotle thinks that liquids are most conducive to mixing. When speaking of *matter*, Aristotle describes it as *hypokeimenon*, leading to the short circuiting of the whole argument, since matter, as passive and feminine, is seen in opposition to the second element of this pair, the active, and hence, male. It is quite well known that Aristotle got his theme of *hypokeimenon* from his reading of Plato's exposition of *triton genos* in *Timaeus*, and not a few critics disagree with Aristotle's move to reduce the becoming of matter to that which is passive.

Contemporary postmodern discourse renews Plato's disinterestedness and introduces *triton genos* as a methodological solution for the advancement of argumentation, but also as a place from which speaks all that cannot be systematized and is therefore deficient. Indeed, in his wish to classify and out of desire to preserve the *status quo* (for is that not precisely Aristotle's recipe for the reduction of corruption of a given political order?), Aristotle leaves the premises of *genesis* and *phtora* as feminine only. And that exclusively based on the fact that the "feminine" is the passive and pliable birthing reservoir, while the male, in providing the seed (the fastest moving liquid) is the prime mover.

The difficulties with the failed analogy of the seed-mover and reservoir in which the qualitative turns into something new – a new being – continue in Aristotle's practical writings when he analyzes corruption and the mechanisms for its delay or mitigation. These writings examine ways and means in which first the individual, then a household, and finally a given political order (the state) are protected from degeneration and passing away. For example, here is an excerpt from Chapter V of Book I of *Politics*, his *Treatise on Government*:

Every living thing in the first place is composed of soul and body, of these the one is by nature the governor, the other the governed; now if we would know what is natural, we ought to search for it in those subjects in which nature appears most perfect, and not in those which are corrupted; we should therefore examine into a man who is most perfectly formed both in soul and body, in whom this is evident, for in the depraved and vicious the body seems [1254b] to rule rather than the soul, on account of their being corrupt and contrary to nature.

Aristotle 1999: 18

Carefully noticing all the elements of a given way of governing, Aristotle continues to counsel further on how to avoid "a kingdom [decay] into a tyranny, an aristocracy into an oligarchy, and a state into a democracy," and quite correctly points out that "a tyranny is a monarchy

where the good of one man only is the object of government, an oligarchy considers only the rich, and a democracy only the poor; but neither of them have a common good in view." (Aristotle 1999: 82) This fragment alone is sufficient to show difficulties that occur with the differentiation of subjects in which nature is perfect from those in which she is corrupted. Is it possible that after so many sophisticated and careful observations about the possible explanations of natural phenomena and laws that direct man – the human world, the fact that all comes to be and passes away, and that along with it the human becomes and perishes – Aristotle reduces his ethical and political assumptions to a primitive and inimical differing of male/female?

This is the question that Luce Irigaray tempted to answer in her short chapter of *Speculum* "How to Conceive (of) a Girl?," applying above all a different way of thinking and writing. I will only state that using an inverted digressive and associative writing style, she separates herself from the traditional matrix of philosophizing, and with that act alone she marks her difference between herself and her colleagues. On the verge of being a caricature, something not at all missed by many critics and "serious" analytical philosophers, in an unusual mimetic move, she literally follows Aristotle's text phrase by phrase, as if interpreting it to herself and her readers. Each of her comments is straight forward, and one needs only patience and open mind (as with the reading of any text, really) to reach her conclusions. Irigaray begins her commentary with the title itself when she leaves the word "concevoir," just like its English translation "conceive" (carried over from the Latin "*concipere: cum+capere*," to seize, to take hold of, to capture), in its multiplicity of meaning. What is it about?

Understanding? Origins? Conception? Or perhaps imagination? In this way, who births, who creates, who understands etc. a girl becomes the ontological question *par excellence*. The question is what came first: the chicken or the egg? But the question supposes an a priori *hybris* that it is impossible to ask the question of the birth of the chicken or the egg unless we have the means that allow us to even

ask the question. Prior to the act of birthing, says Aristotle, at the very beginning is thought. Even before reaching the subject of thinking, before the metaphysical ascension of the subject has begun (why is the subject in the masculine? It seems Plato was more careful), there is the problematization of the writing on coming to be and passing away that deals with perpetuity of generation from the aspect of absolute non-being. Let me remind you: a certain simple becoming comes from a specific non-being, while everything else always comes to be and passes away through being. Then non-being is not non-sensible and generation does not happen *ex nihilo*, nor is there corruption *ad nihilum*. What is illogical in Aristotle's exposition?

Here is Luce Irigaray's comment: "it is far from obvious that the "first matter" (in other words, the passive and feminine, SMB), "enjoys this ontological privilege since her weakness is perhaps the foundation upon which the supreme elevation (of) God is erected. By her failure to be defined or predicated, she serves as in(de)finite basis for the ontological promotion of each living thing. She is both radically lacking in all power of logos and offers, unawares, an all-powerful soil in which the logos can grow. This lack of awareness pushes deep down to the heaviest, weightiest point, that *still center, undifferentiated* and circular, whose admitted motive force seems to work on the *outer edge of its orbit*" (Irigaray 1987: 162, my italics).

Giving ironic distance to the possibility that "first matter" as the eternal foundation gain ontological status, Irigaray opens up the analysis in which it becomes clear that:

Every utterance, every statement, will thus be developed and affirmed by covering over the fact that being's unseverable relation to mother-matter has been buried. Once being has been constituted a priori, and matter has been sealed over again – as the *hypokeimenon* (sub-jectum) censored out of present existence – then man is free to wax eloquent about the struggles he has with the *hyle* and the *dynamis* though these fights are always already rigged... Somehow the philosophical discourse forgets or denies that its



subject has already been disguised and travestied by a certain speculation. And the less we see and recognize the additional part played in the *physis* by the mirror, the more powerful and insidious is the fiction at work.

Irigaray 1987: 162

Aristotle's dogma requires that:

The Substance of the plant, like that of any (female) being, cannot move, or move beyond the ontological status assigned to it. Once and for all. It is not capable of any less or any more. It must remain in its individuality and its numerical unity... The meanings and directions of Being are always imperious to change, you understand... Any contradiction can only be the result of not knowing this *petitio principii*, which prohibits Being from ever being defined by anything except the whole set of syllogistic premises.

Irigaray 1987: 163

Finally, when we arrive at the crucial moment of determining the mechanism of coming to be and passing away, Irigaray makes an aloof remark that:

In her share of substance, not only is she secondary to man but she may just as well not be as be. Ontological status makes her incomplete and un-completable. She can *never* achieve the *wholeness* of her form. Or perhaps her form has to be seen – paradoxically – as mere *privation*? But this question can never be decided since woman is never resolved by/in being, but remains the simultaneous co-existence of opposites. *She is both one and the other*. She is at once decay (*phthora*) and growth (*genesis*), for example, and this bodes ill for any resemblance she might have with the eternal.

Irigaray 1987: 165, my italics

The woman, for Aristotle, as that which must remain in its individuality and its numerical unity cannot be rendered subject. She lacks the

language of power with which she could determine her own ends. She is left to the accidents of matter, and "she functions – still – as choice, but a choice that has always already been made by "nature" between a male pleasure and her role as vehicle for procreation" (in the French original it is closer to the very meaning of the *genesis*: *son rôle de "véhicule" dans la generation*) (Irigaray 1987: 166).

This is how, then, Aristotle imagines the writing of woman's purpose. As if matter will be controlled easier if it is given "feminine" characteristics and if its entropic elements, under threat of stripping it of all pleasure, connect precisely with its immediate object of desire. Passive, weaker, lacking in form, and accidental, woman fits the unified picture of the world in which she is but complement. Irigaray writes:

But doesn't her whole existence amount to an "accident?" An accident of reproduction? A genetic monstrosity? For a human life takes its form only from its father, or more specifically from the male sperm, since the product of intercourse is not made up of the combination of sperm and ovum.

Irigaray 1987: 167

I do not think the problem now lies in discrepancies and deviations of Aristotle's observations in relation to the physiology with which we are familiar today. Nor do I find fault with his scientific intuitions not supported with facts. However, despite new and proven scientific discoveries, consensus on human rights, it seems that the public opinion, as well as the structure of thought at large – particularly in times of crisis, or, in other words, times of intensified corruption – once again features the same traps in which Aristotle fell. Does not the very fact that woman is the carrier and the crucial if not the only factor in the generative process of renewal of the species, make her the more susceptible, the decay of the body? We could offer an answer to this question indirectly through the analysis of the phenomena which make the body decay, above all, the way in which we accept bodily

secretions (all except semen which gives life [sic!]), various sexual practices, as well as illnesses.

Clearly, however, despite all that has been said, the antique understanding of corruption is far more complete and "humane" when compared to its modern conception, inherited as it is from the normative Christian matrix of the original sin. Not only that, but with the modern age, woman's chances of avoiding stigmatization as a scapegoat of decline/corruption have, it seems, become negligible. Remember Anatole France again: "Une extrême corruption c'est la corruption féminine générale." Combining the pathological metaphors in the construction of the intelligible scheme of moral and political regulations, the modern discourse completely naturalizes every form of behavior that deviates from the normalized and an appropriate punishment is doled out. In the confusing mix of individual guilt and the irrepressible drive for sexual pleasure, the first to blame is woman, and along with her, all who do not fit in. This does not simplify matters one bit.

Did Flaubert then randomly choose to make his character in *Madame Bovary* a village doctor who does not recognize the illness of his wife? What is Emma's illness?

The closing lines of Irigaray's commentary on "conceiving" a girl are as follows.

Admittedly, because she is deprived of everything, 'she' also wants to take everything in possession. And that has to be prevented, since anything she might thus attached to herself will be reduced to a mere reflection, shadow, fantasy, absence, of what it had been in its natural wholeness.

Irigaray 1987: 167

Countless pages have been written about the state of Emma's soul, her moods, and her hopeless unarticulated motives, and it is not my

intention to point out all the clichés that make this book and the character of Emma Bovary a literary classic. As I mentioned in the introduction, through unuttered desires, unexpressed ambitions, through unbridled fantasy, this “tragic bimbo” brings her life, the life of her family, and her daughter’s life into complete disarray.

I would like to illustrate the invisible line of ineradicable corruption. I do not know if Flaubert had this in mind when writing the book (although known as a perfectionist and seeker of the *mot juste*), and I leave it entirely indecisive. I myself, however, could not help but notice the sequence of elements of corruption that travel from one modality of behavior to another, imitating precisely Aristotle’s claim that “everything comes to be and passes away, but always through being,” especially when this motif is in connection with feminine behavior. In that same way, corruption, as the floating signifier, leads Emma, unconsciously but literally by the hand from one man to another. In each she awakens a different behavior and for each she represents an entirely specific time in life. Still I have no intention of drawing any patterns or generalizations. Even as a coincidence, corruption so directed in Flaubert’s book is certainly a result of his literary genius. In order to keep this paper short, I will only quote the English translation, but I assure you that the original too constantly uses the word “corruption.”

*Madame Bovary* begins and ends with Charles Bovary. At the very beginning, Flaubert sketches the quotidian of this village doctor who spends his life in a little town in Normandy. After the short remarks about him, his family origin, and the circumstances in which he meets his second wife, the book begins to focus on Emma. Following the descending line in Emma’s behavior, Charles decides to move to a slightly larger town for the sake of his wife. Despite her brief excitement at having birthed Berthe, melancholy returns to Emma. Her world changes when she meets Léon Dupuis, the first intelligent young man who seems to share with her a taste for the finer things in life. She fears and is ashamed of her own lust, awakening in herself a

maelstrom of paradoxical and chaotic feelings. Emma plays the dutiful wife, secretly consoling herself with her faithfulness. Exasperated by her games, Léon leaves for Paris where he continues his studies.

At the same time, Charles takes care of the servant of a wealthy local man, Rodolphe Boulanger, who upon meeting Emma decides to seduce her. His plan works, and Emma becomes his lover, venturing into romantic fantasies that slowly draw her to doom.

But with that superior critical judgment that belongs to him who, in no matter what circumstance, holds back, Rodolphe saw other delights to be got out of this love. He thought all modesty in the way. He treated her quite *sans façon*. *He made of her something supple and corrupt*. Hers was an idiotic sort of attachment, full of admiration for him, of voluptuousness for her, a beatitude that benumbed her; her soul sank into this drunkenness, shriveled up, drowned in it, like Clarence in his butt of Malmsey.

Flaubert 2003: 215, my italics

Four years upon awaking in her "something supple and corrupt," Rodolphe cruelly discards Emma with a letter he sends her at the bottom of a basket full of apricots. Upon hearing the news, Emma falls ill, and Charles is once again tasked with caring for her and finding a cure. Immediately before recovering completely, Emma and Charles go to Rouen, to the opera. There they encounter Léon. From that moment, pretending to be taking piano lessons, Emma spends her time with her new lover.

He did not question her ideas; he accepted all her tastes; he was rather becoming her mistress than she his. She had tender words and kisses that thrilled his soul. *Where could she have learnt this corruption almost incorporeal in the strength of its profanity and dissimulation?*

Flaubert 2003: 187, my italics

Obviously, the abyss of giving into corporeal desires this time leads Emma into ecstatic excess. Flaubert writes: "he was rather becoming her mistress than she his/ il devenait sa maîtresse plutôt qu'elle n'était la sienne," illustrating Emma's ambivalence, but also an incredible game of sexual difference. At the apparent peak of powers, giving completely into lust, for the untold time Emma manipulates Charles' good intentions and sinks into debt. The creditor and usurer Lheureux hounds her, and when she desperately seeks help from her former lover RB, he rejects her brutally. Emma takes arsenic and dies in agony.

Charles is distraught and his devotion this time is translated into something even more complex:

To please her, as if she were still living, he adopted her predilections, her ideas; he bought patent leather boots and took to wearing white cravats. He put cosmetics on his moustache, and, like her, signed notes of hand. *She corrupted him from beyond the grave/Elle le corrompait par delà le tombeau.*

Flaubert 2003: 282, my italics

## Bibliography

- Aristotle, *On the Generation and Corruption*, The Internet Classics Archive, 1994-2009, (internet) available at [http://classics.mit.edu/Aristotle/gener\\_corr.html](http://classics.mit.edu/Aristotle/gener_corr.html) (viewed 27 November 2012)
- Aristotle, *On the Heavens*, trans. by J. L. Stocks, The Internet Classics Archive, 1994-2009, (internet) available at <http://classics.mit.edu/Aristotle/heavens.html> (viewed 27 November, 2012)
- Aristotle (1961), *Physics*, trans. R. P. Hardie and R. K. Gaye, Nebraska: University of Nebraska Press.
- Aristotle (1999), *Politics*, Kitchener: Batoche Books.
- Irigaray, Luce (1987), *Speculum of the Other Woman*, Ithaca NY: Cornell University Press.
- Flaubert, Gustave (2003), *Madame Bovary*, trans. Geoffrey Wall, London: Penguin Books.

## Corruption and the Economy

### I. Historical background

The Merriam Webster's Collegiate Dictionary of the English language explains that the root of the word corruption comes from the Latin word *rumpere* that means to break. It implies that something is broken, normally, in the case of acts of corruption, a code of conduct or a behavior considered by the relevant community as correct and proper. The connection with a Latin word is appropriate because, according to some students of corruption, it was in the Roman Empire that corruption came to be identified, perhaps for the first time, as a clearly inappropriate behavior; and it was the Roman Empire that, some historians argue, disintegrated because of the corrosive impact that corruption had on its institutions and on its leaders. Corruption weakened or destroyed the moral fabric and the administrative structure of that powerful empire, eventually leading to its collapse.

There have been frequent mentions of corruption through history. A very early and often-mentioned one is in the writings of Kautilya, the prime minister of an Indian Kingdom. Two thousands years ago, in a book called Arthashastra, Kautilya wrote that "as it is impossible not to taste honey placed on one's tongue, so it is impossible for a civil servant not to take advantage of his position." In the millennium after the fall of the Roman Empire, corruption came to be seen as a major sin. For example, the Koran makes several references to it. Dante, the great 13<sup>th</sup> century Italian poet, author of *The Divine Comedy*, placed corrupt people in the deepest levels of Hell. The strictly negative view of corruption continued to prevail through the centuries, until relatively modern times. The American Constitution, for example, explicitly mentions two crimes that can justify the impeachment of a president. These are: treason and bribery (see Noonan Jr. 1984).

In the 19<sup>th</sup> century, attitudes toward corruption became somewhat more relaxed and seemingly more tolerant. There are increasing references to it in literary works and even in some operas. Though these references do not condone corruption, they do not seem to carry the strong moral condemnation that had characterized the attitudes in earlier centuries. See, for example, the references to it in books such as Henry Adams' novel, *Democracy*, and in Puccini's opera, *Manon Lescaux*. Corruption became almost a natural or even expected characteristic of behavior in the new bourgeois society that accompanied the Industrial Revolution when the role of the state in economic activities had started to grow. This more relaxed attitude continued in the 20<sup>th</sup> century, when, at least in some countries, corruption became prevalent and began to create serious difficulties. It reached extreme levels during the Brezhnev era in the Soviet Union, when even gaining access to a morgue for a dead body required the payment of a bribe, and visitors to Brezhnev were expected to bring expensive gifts (see Remnick 1994). Until the 1990s there were relatively few writings on corruption and they were predominantly written by political scientists, rather than by economists. Few economists had paid attention to it, with two significant exceptions: Rose-Ackerman (Rose-Ackerman 1978) and Robert Klitgaard (Klitgaard 1988).

In the 1990s, and especially in the second half of that decade, corruption suddenly became a hot topic, both academically and politically. Several reasons can be mentioned for the increased attention paid to corruption (see Tanzi 1998), including: (a) the end of the cold war; (b) the spread of democratic regimes and the increasing role of the (free) media; (c) increasing globalization and the international contacts that it promoted between individuals from different countries; (d) the growing role of non-governmental organizations and of "civil society;" (e) the increasing attention paid by international institutions and some governments to corruption; and (f) growing concern about the economic distortions and inefficiencies that acts of corruption can generate for market economies. In a globalized world, where the economies of different countries compete against one another,



economic efficiency became a more important objective than it had been especially in the economies that were closed and not market oriented. Finally, major political scandals connected with acts of corruption, in Japan, Italy, France, Germany, Brazil and some other countries, made corruption a front page story in major newspapers.

Another factor that may have contributed to both corruption and to the awareness of it, especially over the later decades of the 20<sup>th</sup> century, was the progressively larger economic roles that governments were assuming, compared with earlier periods. This larger role was played by governments through the use of various instruments, including public spending, taxes, various forms of regulations, certifications and authorizations, and through the assumption of contingent liabilities. Each of these instruments could lend itself to abuses, either by the policymakers themselves, (the "principal"), or by the public bureaucracies, (the "agents"). Some governmental activities carried with them the implicit creation of monopolistic power for the individuals who were charged with carrying out these activities or monitoring them. When this public power given to government employees is accompanied by some power of discretion, over particular decisions, unscrupulous employees are given a tool that they can use to extract bribes or to benefit themselves in other ways.

Attempts to scale down the government role in some countries, through policies of privatization and outsourcing, may also have contributed to corruption or, at least, to the perception of corruption. This happened, for example, in Latin America where, following the guidelines of the so-called "Washington Consensus," many public enterprises were privatized in the decade of the 1990s. The popular reaction to this privatization has been generally negative in part because it led to higher prices (but often for higher quality services), and because of widespread perception that the policymakers, who were charged with pursuing the policies of privatization, got bribes in the process. When a public enterprise is privatized, there is no reference or available market price that can indicate the compensation that the

government should receive for selling the enterprise. This is especially true when the buyers are expected to assume some of the enterprises' liabilities, such as the pension obligations for retired workers, or the retention of unproductive workers. Thus, there is often no way of refuting accusations that the enterprises have been sold at too low a price because of bribes paid to some individuals.

## II. Difficulties in Defining Corruption

Corruption comes in many shapes and forms (see Tanzi 1995). Like elephants, it may be difficult to define, but it ought to be possible to recognize acts of corruption when they occur. Unfortunately, this is not always the case, because the world is complicated and different individuals or different communities may interpret particular actions differently. In the 1990s several international organizations started to discuss the corruption problem in international forums, in order to define it and to attempt to coordinate policies and actions to fight corruption. Countries' representatives and experts from international organizations spent a lot of time and effort in the search for a clear definition that would be precise and especially universally accepted. It did not prove to be an easy enterprise, because there are forms of corruption that are difficult to identify and there are forms that may not be seen as corruption by exponents of particular cultures. Cultural backgrounds often play a large role in these attitudes, especially in actions that involve exchanges of gifts or favors, or the treatment of particular individuals.

The definition of corruption has been generally associated with the absence of *equal* and *fair* treatment for all individuals on the part of public officials, unless where the laws specifically require a differentiated treatment, as for example for disabled individuals. This equality of treatment implies the application of what, in English, is defined as the "arm's length principle." The arm's length principle requires that economic relationships must be characterized by the same objective treatment for everyone, regardless of whether the persons involved

are perfect strangers, friends, family, party members, members of the same ethnic or religious group, and so on. A public official should not take these characteristics into consideration in dealings with citizens. When the public official gives weight to non-official relationships that he has with some citizens, he is abandoning the arm's length principle and he may be engaging in acts of corruption.

It is easy to see how the arm's length principle can conflict with traditions and norms of old cultures, in which one is expected to treat particular individuals, and especially family members and members of the same clan, differently from others. This conflict between modern rules, that are often impersonal and imported from other countries, such as the arm's length principle, and traditional and deep-seated rules, is often at the base of disagreements between representatives of different countries. It also makes it more difficult, especially in some countries, to stamp out all forms of corruption. In some countries gifts are common and expected. They often become hidden bribes.

There are various forms of corruption with different implications for the functioning of the economy of a country. The identification of these forms is useful in identifying the areas that need particular attention and protection from acts of corruption. A full discussion of these forms is beyond the scope of this paper. However, some broad classifications may be useful.

Most literature on corruption commonly assumes that it reflects "the abuse by public officials of their power or position to derive personal benefit." This definition gives excessive but not clearly identified weight to two adjectives, namely public and personal. Before going on to the classification of various forms of corruption, it may be worthwhile to elaborate briefly on the meaning of these two adjectives.

The phenomenon of corruption is often associated with the activities of government officials, so that public has been considered a synonym

for government. However, modern economies have large private establishments and, especially, business corporations that are owned by thousands of shareholders who own shares (and thus own a piece of the corporations) but play no role in running the enterprises. To some extent these shareholders find themselves in the same situation that many citizens find themselves *vis á vis* the state. These corporations are normally run by hired professional managers and employ workers that are unrelated to the owners of the enterprises. Thus, the employees of the enterprises, including the managers, find themselves in positions similar to those of government ministers and public employees. They often have the same capacity or the same space to abuse their public power (within the corporations) for strictly personal advantages, against the interests of the (distant) owners of the enterprises (the shareholders); or occasionally against the interests of the public or some other groups, as, for example, those who have accumulated private pension rights against the corporations. This, for example, happened in Enron, the large American corporation that went bankrupt in 2001, and has happened in several other enterprises. Corporate scandals have become frequent in recent years, because the market economy has been creating "public" spaces within enterprises where acts of corruption have become possible. Therefore, the spotlight for identifying corruption should not be limited to the government activities and to the public employees, but should also cover activities in particular private sector areas. The financial market, the health sector, and professional sports have become clearly part of these sensitive areas. Major acts of corruption have been frequently reported in these sectors of the (private) market.

Moving to the other adjective ("personal") it may be too restrictive to assume that acts of corruption are undertaken for the exclusive benefits of the individuals who engage in them. Often these acts have the objective of helping relatives, members of the same religious or ethnic group, or the political groups to which individuals belong. Thus, the benefit that the individual receives may be linked only indirectly to the acts of corruption. Surveys conducted over the years by the Gallup

Organization (for Transparency International, the leading non-governmental organization that reports on corruption) indicate that political corruption (i.e., corruption to promote political parties) is very common around the world.

The above discussion suggests that we could distinguish between public sector corruption and private sector corruption. As mentioned, over the years the attention has been mostly directed toward public sector corruption. However, in more recent years, and especially in the United States and in some other industrial countries, corrupt activities in different parts of the private sector have become more frequent and have started attracting some attention.

Private sector corruption may in turn be divided into two distinct parts: explicit and clearly illegal corruption, and what could be defined as legal corruption. Legal corruption may sound like a misnomer. It refers to private activities that may not break existing laws or rules but that, in intention or in results, are no different than the explicit acts of corruption. Take, for example, tax accountants that help taxpayers avoid paying taxes by looking for ambiguities in the tax laws and exploiting them to the fullest, to the taxpayer's advantage. Another example may be that of heads of corporations (CEOs) that appoint individuals to the corporate boards knowing that they are likely to authorize very generous, and often nontransparent, and complex compensation packages for the corporate heads. Or, take for instance, individuals who lobby politicians and regulators to get favorable regulatory decisions that may be advantageous to them or to their clients, but that may be damaging to citizens. An area where this has been happening with a certain frequency is in the approval of medicines that may have significant and dangerous side effects. Or take accounting firms that become accomplices to accounting maneuvers, which allow company managers to hide the true financial position of an enterprise. Or take stock analysts who release untrue and biased statements about the true financial condition of particular firms. All these examples are based on real life occurrences and

all lead to results similar to those from explicit acts of corruption by public employees.

An important distinction for corruption within the public sector is that between grand (or political) corruption and bureaucratic (or administrative) corruption. The first is normally associated with the activities and the actions of political leaders or senior public officials. It involves the manipulation of the government apparatus to achieve results that economically benefit particular leaders, their parties, followers, families or similar groups. This grand corruption can take different forms including manipulating the passage of laws that help these leaders, their families, or some associates maintain their power and become rich. This form of "state capture" leads to questions about whether, following the "rule of law," as many advocate is *always* a good thing. In some cases the "rule of law" is respected but the laws may have been specifically designed to benefit particular individuals or groups. This manipulation of the laws may be done while maintaining some semblance of a democratic process.

Bureaucratic or administrative corruption typically receives the most attention by both the public and those who write on the subject perhaps because it is the kind of corruption encountered by most citizens. It is the kind of "detail" or "small change" corruption prevalent in many countries and that is facilitated by many bureaucratic rules. Government regulations and authorizations are often the major ingredient for this form of corruption. The more widespread is the use of permits and authorizations in a country, the more prevalent tends to become this kind of corruption. Public employees that engage in these acts of corruption violate the principal-agent relationship that should exist between them (the agents) and the government (the principal). These employees use the discretion that they have over particular decisions – including the time required to get an answer to a request for a permit, and whether a request will be accepted or not – to elicit bribes that might occasionally be in the form of gifts or favors. This is a very common kind of corruption that, because of its

frequency and the impact on individuals, irritates private citizens. In extreme cases it may become the equivalent of a "bureaucratic cholesterol" that tends to strangle economic activities and that reduces the efficiency of a country's economy.

Another kind of classification is that between coercive and collusive corruption, depending on whether public employees force citizens to pay bribes or whether the two parties spontaneously agree, say, to the payment of a bribe in return for a favorable decision. Of course the initiative may also start with the private citizens. This could involve tax inspectors and taxpayers, regulators and the regulated, or the provider of a public service (say in the health and the educational sectors) and the receiver of the service.

Other distinctions could also be introduced, as for example, that between centralized and decentralized corruption, or between corruption that involves specific payments of bribes and that associated with the exchange of favors. Each of the above distinctions can lead to a different analysis of the problem and may require different corrections. However, in the remainder of the paper we will focus on the general issue of corruption, the factors that contribute to it, and the consequences of corruption for the economy.

### **III. Factors Contributing to Corruption**

Various factors can contribute to a climate that makes corruption prevalent. Examining some of these factors may help in identifying measures or policies that could reduce corruption.

#### **Regulations and Authorizations**

Governments have several instruments for pursuing their economic objectives. Regulations and authorizations are among them. These may give some government employees monopoly power over some

actions or activities, because the employees acquire the power to approve or disapprove requests for particular actions by citizens and by enterprises. Such requests may involve getting a passport for foreign travel, getting a permit to build a house or to make some modification to existing houses, to open a shop or a new enterprise, to keep shops open, to obtain foreign exchange or credit from banks, and so on. When the areas for which these authorizations or licenses are required are wide, as they are in some countries, and especially when particular public employees have discretion in the decisions, corruption tends to grow and economic activity tends to diminish. The more discretion public servants have in these decisions, and the more power they acquire and, in the absence of strict controls on them, the greater will be the probability that they will be tempted by and engage in acts of corruption.

Public employees with the power to approve or deny government permits that cannot be obtained elsewhere can, in these circumstances, elicit payments (i.e., bribes) for speeding up the process or for providing positive answers to the requests. The public employees may also intentionally slow down the approval process, to encourage the offer of a bribe, and may end up approving requests that should be turned down, while rejecting (or delaying the answer to) requests that should have been approved. It is easy to see how this kind of corruption can: increase the cost of engaging in business activities for particular individuals; distort competition; discourage new investments or activities; and even allow activities – such as the construction of unsafe buildings or bridges, the distribution of contaminated food products, or dangerous drugs – that can impose high costs on society.

Regulations do not need budgetary appropriations. Often they do not even need approval by parliaments. Thus, they are easy to introduce and, once they are introduced, they acquire an often perennial or, at least, a long life, because in most countries they do not have “sunset provisions.” There is no process that periodically scrutinizes them and eliminates regulations that are no longer needed. Regulations are



rarely subjected to cost-benefit evaluations. Thus, they can be damaging to economic activities, just like high and random taxes (see Posner 1971 for an early discussion of this issue). It would be beneficial if regulations were subjected to a rigorous process of evaluation and, like the annual budgetary process, if the "regulatory budget" could be assessed periodically, to eliminate damaging regulations and to simplify and make those retained more efficient. Unfortunately this does not occur.

Two aspects related to regulations and authorizations merit specific attention: discretion and complexity. Discretion in their application is the feature that directly contributes the most to corruption. The less discretion is given to the public servants who supervise the regulations, the less corruption is likely to occur. However, discretion cannot and should not be completely eliminated. When regulations are complex, they tend to leave much discretion to civil servants. This discretion can be used by the latter to favor individuals willing to pay bribes over others. The search for transparency in rules and regulations should be an important objective. Furthermore, an efficient appeals process for those who have their requests rejected should exist (a) to remove the monopoly power from the civil servants who make the decisions, and (b) to provide indirect control over them.

Another aspect of regulations that can play a role in corruption is the frequency of contact between inspectors and those inspected, or between controllers and those controlled. Frequent contact fosters familiarity. And familiarity tends to promote exchanges of favors and corrupt behavior. When, in particular activities, such as tax collection, the contact between citizens and public officials become frequent, corruption rises. The same may happen when there are revolving doors in the sense that at times the regulators move to better paying jobs to regulated activities. This has been a problems with regulatory agencies and with tax administrations that occasionally lose their employees to the regulated activities where the knowledge that they have acquired is used to get around regulatory obstacles or around the payment of taxes.

## Tax Systems and Tax Incentives

Taxation is one of the areas often affected by corruption and the quality of the tax system is one of the contributing factors. In some countries, the level of corruption in the tax administration became so high that at times it proved more desirable to close the existing administration (sending home all its employees and starting a new one with new employees) than to reform it. This happened one time in Peru. The ingredients for corruption are: (a) complexity of the tax system; (b) excessive discretion that some tax administrators may have; (c) frequent contact between taxpayers and tax inspectors; and (d) officials disposed to accept bribes, or even to demand them. Low salaries, for tax administrators also contribute to corruption.

Another problem with tax systems is that governments try to achieve too many objectives with them rather, than concentrate on the fundamental objective of raising revenue in a reasonably equitable fashion. As a consequence, tax systems become very complex, which creates a framework for discretionary actions on the part of both taxpayers and tax inspectors. Often the lack of clearly identifiable and easily measurable tax bases gives discretionary powers to the tax inspectors, who deal with particular taxpayers. Close controls at times breed vicinity and familiarity between taxpayers and tax administrators. This in turn can lead to favors and requests, or offers, of bribes, in exchange for lower tax payments.


When countries become more developed, it becomes easier to identify tax bases, because the incomes, or the sales, originate in larger establishments (e.g., enterprises, supermarkets, banks) that keep better accounts. It also becomes possible to collect taxes at the source, by withholding them, thus eliminating the physical contact between inspectors and taxpayers. The difficulty in identifying objective tax bases has been particularly significant in the customs administrations where corruption is often rampant. In the absence of verifiable invoices presented by importers, import duties are calculated on the value

of imports determined by customs inspectors. Inspectors can close their eyes to goods smuggled in, or can give them a classification that lowers the duties owed on them. In these and other ways, customs officials can reduce the tax payment in exchange for bribes.

Because of the discretion given to those who grant them, tax incentives have often been a fertile ground for corruption. An enterprise that is granted a tax incentive may be able to reduce its tax liability by large amounts. It may, thus, be willing to pay a difficult to resist bribe to the officials that will make the decision. When the tax liability, without the tax incentive, is high and the salary of the tax officials is low, the probability of corruption will rise. Thus, once again, transparency of laws and of decisions, and the reduction of discretion for those who make these decisions, can go a long way toward reducing corruption. The existence of an effective appeals process or of effective controls within the tax administration may help.

Before leaving the area of public revenue, it may be worthwhile to mention the corruption that is related to the appropriation or better the stealing of public revenue from the exports of government-owned mineral products (see Leite and Weidmann 2002). Often high-ranking politicians (presidents, ministers) have the power to control the earnings derived from the production and the export of natural resources, such as petroleum, diamonds, copper, tin and other valuable mineral commodities. When these commodities are exported, the earnings may be difficult to precisely control, especially when there are inefficient checks on quantities exported, and especially when the prices of the exports fluctuate even within short periods of time. At times these exports may be sold at low prices to foreign, and controlled, intermediaries, and then resold at higher market prices. This operation is at times defined as "tolling". The differences in earning may end up in secret, foreign bank accounts of political leaders or other relevant individuals. This is often a classic example of "grand corruption". It is difficult to control in the absence of a democratic process and good systems of accounting and accountability.

## Public Spending



Corruption connected with the use of public financial resources (with public spending) is very common and can take many forms. Some of these forms concern the activities of public servants at the low end of the bureaucratic scale, some concern higher levels of civil servants, while others involve political leaders. In all cases, the result is to increase public spending, reduce the efficiency of the public sector, and, often, reduce the growth of the economy. Corruption in public spending can range from the relatively trivial, such as the stealing of pencils by government employees, to grand misappropriation or great misuse of resources.

The "trivial" forms of corruption in public spending include public employees who: (a) receive a salary but do little work; (b) claim to be sick when in fact they are not; (c) appropriate some public supplies for their private activities; (d) spend working time on private activities, and so on. These actions raise the cost of running a government and reduce its efficiency and outcome.

Beyond this form of trivial corruption, there are less trivial examples such as (a) nepotism and clientelism, which may in some cases put unneeded or incompetent persons in particular and, at times, even sensitive jobs. These individuals can do damage to society that extends well beyond the salary they receive; (b) ghost workers, who are individuals who receive a salary without ever showing up for work; or who may not even exist so that their wage is appropriated by someone else; (c) expenditure paid for services not performed or for supplies never received; (d) abuses in the procurement activities, by benefiting particular suppliers or, paying higher prices than necessary; (e) diversion of funds toward extra budgetary accounts that are difficult to control and that serve non-official and non-legitimate activities; or (f) ghost pensioners, who are dead or non existing individuals who may receive public pensions.

Some of these forms of corruption are found in most countries, and a few countries experience most of them. The possibility of hiring based on nepotism or "clientelism" has often led to policies that limit the freedom of managers to hire the most needed individuals. This freedom may be eliminated by bureaucratic and often ineffective civil service rules (for example promotions strictly based on seniority) that, in turn, reduce the possibility of introducing "value for money" performance criteria in public institutions and prevents the introduction of incentive systems for compensation or promotion.

The existence of ghost workers is often made possible by ineffective administrative controls. Often the workers are only partly "ghosts" because they may show up for brief periods and disappear for much of the time, in order to pursue private activities during the time they should be working for the government. Ineffective administrative controls make it possible for some public officials to claim that they have made payments for supplies or services that were never received; or that have made payments for higher quantity or quality of services or supplies than effectively received. These problems have been reported in many countries, including advanced countries.

Public sectors need to buy supplies and services for their activities. Procurement operations provide a fertile ground for corruption because the private suppliers can inflate the prices for the goods and services provided by paying bribes to public officials that may in turn support political parties. Transparency international reported, for example, that after the "tangentopoli" scandal, in Italy in the early 1990s, the cost of digging one kilometer of metropolitan in Milan fell by 50 percent. These practices can significantly increase the cost of running governments. To prevent these practices, governments, at times, introduce detailed rules and specifications on the characteristics of the goods to be bought. These specifications may reduce the abuses but they tend to increase the cost of the items bought. For example U.S. rules give 35 specifications of the way a mirror bought by the government should break when it falls. Countries have tried to rely on open

and transparent bidding on particular government contracts. However, bidding and public auctions may lead to collusion among bidders that may neutralize their positive impact. This is especially the case when participation in the bidding is restricted, for example by excluding foreigners. Procurement is an area that has been receiving considerable attention in many countries in recent years.

Public investment is an area of public spending in which corruption can and does play a major role. Public investments have characteristics that expose them to the possibility of corruption. Each public investment has a high cost and must be approved by some public official. Many of its characteristics must be determined at some point such as size, design, location, quality of the work, and so on. The company that will execute the project must be selected; the price and timing of the work must be agreed; and the possibility of revising the contracts to introduce modifications to the projects that the government may require must be restricted to prevent that a bidder that wins a contract by submitting a low bid could require a more expensive payment at a later time. The contract with the executor will need to include many specifications to accommodate unexpected events. Particular high level individuals in the government must make some of these decisions and must negotiate the contracts. The projects must be inspected to ascertain that their execution is consistent with the agreed specifications and is not reducing the costs to the executing companies by reducing the quality of the project. All these steps may lend themselves to the payments of bribes.

There is evidence from countries that corruption has played a significant role in these choices so that money spent on public investments has provided less benefit than expected. The world is full of so-called "white elephants," projects, built at high costs that have provided little or no benefits to countries (see Robinson and Torvik 2005). Often, the payment of bribes has been a determining factor in promoting these investments (see Tanzi and Davoodi 1998). In some cases, such as the building of roads or airports, the locations may have been chosen to promote the economic interests of particular high-level, political

figures. Thus, in these cases the payment of bribes may not be part of the act of corruption but corruption has still played a role.

The budget cycle normally includes four stages (see Dorotinsky and Pradhan 2006). These are:

- a) Budget formulation. At this stage it is often difficult to distinguish explicit corruption from policies that may depart from what could be called the "public interest." Different forms of government create different opportunities for this departure. At this stage, when corruption occurs, it is likely to be "grand" or "political" corruption and to reflect examples of "state capture."
- b) Budget execution. It has itself several aspects such as (i) cash management, (ii) commitments that can be formal or informal, (iii) verification; and (iv) payment authorization. In all of these phases there is scope for corruption when effective controls are not present.
- c) Budget accounting and reporting. This phase highlights the importance of good statistical classifications to prevent, for example, the possibility that money allocated for education may end up being used for building swimming pools. This issue is important especially in countries with decentralized fiscal systems where the revenues are obtained by the central government while some of the spending is done by sub-national or decentralized institutions. There has been a lively debate in recent years on whether fiscal decentralization and fiscal federalism reduces or increases corruption. This debate is stimulated by the fact that fiscal decentralization has been a growing phenomenon promoted by institutions such as the World Bank (see Tanzi 1995; de Mello and Barenstein 2002; and Shah 2006).
- d) Audits and oversight. This last phase of the budget cycle could be very important in preventing corruption but often it plays

only a perfunctory function. Audits focus on legal or formal requirements, rather than on the efficient use of resources. There is often little effective follow up to the formal oversight, and the results obtained tend to have limited if any impact on the agencies controlled.

All four of these stages can be contaminated by corruption. Thus they must all be strengthened in order to create a "public financial management system" that prevents or reduces corruption. As with the revenue side, excessive complexity in the budgetary process, lack of transparency, lack of good classifications, and poor accountability are elements that contribute significantly to corruption. Complexity creates niches that lead to principal-agent problems. Lack of transparency reduces public scrutiny. Lack of full accountability reduces the incentive to perform in line with efficient and honest behavior.

#### Provision of Goods and Services at Below Market Prices

All governments provide some goods and services to the citizens at zero prices or at prices that are below what the market would charge. In some cases (educational and health services, public housing, food stamps) the prices charged may be zero. There is, thus, usually an excess demand for these goods and services and, as a consequence, the need to ration them. The task of rationing is often assigned to particular individuals who must make the decisions as to whom and when to provide the goods and services, and how much. In these circumstances, individuals will often try to get larger quantities of goods, or faster access to services, by attempting to bribe the public officials who make the decisions. Alternatively, the latter may request some payment for favoring particular individuals. This is an area where the need for effective controls is evident.

The areas most affected are (a) foreign exchange; (b) subsidized credit; (c) provision of electricity; (d) provision of water; (e) public housing; (f) underpriced consumption goods; (g) access to educational



and health facilities, especially surgery; (h) access to public land. Another area in which corruption plays a role is in situations where private individuals or enterprises have performed services for, or sold goods to, the government. For these actions they are entitled to public reimbursement. However, governments are often late in making these payments, because of their limited cash budget. Attempts to be put in front of the receiving line may lead individuals to offer bribes to officials charged with making these decisions; or it leads these officials to ask for bribes. In some countries this is a common situation.

Policies that control the rents for privately owned houses or buildings are a special category of this category of problems. In this case, the providers of the services (the houses that are rented) are private individuals; and the users of these services are also private individuals. Rent control policies create a special category of private sector corruption when those who have come into the legal use of rent-controlled apartments or houses are able to sublet them to others at high rents as it often happens. It has been said that there are two ways to destroy cities: either by bombing them or by subjecting them to rent controls. This may not be much of an exaggeration as, inevitably, policies of rent control lead to urban decay, because the private owners of the buildings have no incentives to make needed repairs. Rent control policies are not even pro poor, because they tend to have a random impact on income distribution.

#### Other Discretionary Decisions

There are other decisions where the discretion left to particular public officials, combined with the value of these decisions to the beneficiaries of these decisions, create conditions that in the absence of effective controls, often lead to corruption. There are many such areas in addition to those already mentioned. These include (a) decisions by public officials on the legal use of land, as with zoning laws. In this case public officials have the power to determine whether a particular piece of land can be put to low value uses, such as agriculture, or

can be used for housing or even for high-rise apartments. The legal classification can change dramatically the market value of a piece of land; (b) decisions that authorize particular investments by foreign companies; (c) decisions on the sale of public assets; (d) decisions that grant monopoly power for particular activities (such as importing medicines) to some individuals; (e) decisions that grant amnesties to particular individual or enterprises for significant legal violations; (f) decisions as to which bank will receive as deposit funds held by public pension funds, public enterprises, ministries, or other public institutions. There is a lot of evidence that indicates that governments often let large deposits sit in accounts in private banks that do not pay any interest. This implies a large subsidy to the financial institutions that hold these funds. In many of these cases the value of the decisions to the private agents can be very large, while the decisions are made by public officials whose salaries are low and, because of this, may be more exposed to the temptation of bribes.

### Other Factors

In addition to the factors mentioned above that may directly influence acts of corruption, there are other factors that can contribute to corruption indirectly. It is difficult to assess the quantitative importance of these factors, but there is little doubt that they can be important in some countries. The following deserve to be mentioned.

Social status and traditions of public employees: When honesty and pride in belonging to a cadre of dedicated civil servants characterizes public service, and when public employees command a high status in society and decent salaries, corruption may be contained. This is especially the case when rules regarding hiring and promotions are considered fair, so that the employees have been hired because of their ability and merit. However, when clientelism and nepotism prevail, and when the political affiliation of a public employee, or his/her family background, becomes an important consideration in hiring and promotions, this will lead to dissatisfaction that in turn will

lower the morale and the ethical standards that should guide public servants. These factors were stressed a long time ago by Max Weber (Weber 1947), the famous German sociologist.

Another factor mentioned in the literature, and that undoubtedly plays some role in influencing the behavior of public employees, is the level of wages that they receive compared with that received in the private sector. Over many years there has been a lowering of the wages received by public employees, respect to those in the private sector. Populism has often forced governments to increase hiring in the public sector, while reducing the real wages of those hired. In some countries public wages have been reduced to levels that make it difficult for public employees and their families to maintain a decorous life, consistent with their official positions. In these circumstances, there are increasing pressures, on at least some public employees, to begin to do favors for citizens who repay them with other favors or with the offer of bribes. Of course once some employees follow this path, others are tempted to do the same. There are indications that public salaries tend to be high in countries where the perception of corruption is low. Some empirical evidence has connected corruption to the level of public wages (see, for example, Van Rijekeghem and Weder 2002).

Another factor that has also attracted considerable attention in the literature on corruption is the penalty that is imposed on those caught in corrupt acts. There has been a tendency in this literature to apply to corruption theories developed by Gary Becker (Becker 1968), for criminal activities, and by Allingham and Sandmo (Allingham and Sandmo 1972), for tax evasion. The two theories, though applied to different areas, are similar. They both stress the trade-offs that exist between the probability of being caught, in an illegal or criminal activity, and the penalty that would be imposed in such an event. The theories argue that an increase in the probability of getting caught, or an increase in the penalty imposed, once one has been caught, will make individuals less disposed to engage in illicit acts. A fall in the probability of getting caught or in the severity of the penalty will have

the opposite effect. Thus, a morally neutral person one that is guided solely by the expected economic benefit from an illicit activity will base his or her decision on these two variables.

Some economists have added interesting policy guidelines to this theoretical analysis. It has been argued that raising the probability of catching individuals engaged in illicit acts requires higher financial resources, because more policemen, comptrollers, or inspectors will be needed. Therefore, it might be cheaper to reduce administrative controls while compensating for this reduction by increasing the severity of the penalties. The assumption is that penalties can be increased without cost.

There are problems with the above analysis. First, it assumes moral neutrality. However, most (though not all) individuals favor moral behavior and many would not commit illicit acts, even when the probability of being caught is low. Second, it is not true that there are no costs associated with higher penalties. Jails, or trials are costly and they are associated with higher penalties. Third, when penalties become high, they tend not to be applied. One reason is that if some people are caught while many others who are committing the same illicit acts are not, the imposition of penalties introduces a major problem of horizontal inequity among individuals. People committing the same crimes are treated differently. For this reason harsh penalties often tend not to be applied by judges. Fourth, in some undemocratic societies, when the application of harsh penalties is possible, the penalty may be applied selectively, to political opponents. Thus, the penalties may become tools for repressive governments. Finally, in a society in which corruption is not a rare occurrence, those who must apply the penalties may themselves be corrupt. For example, surveys made by the Gallup Organization for Transparency International indicate that "judicial systems" tend to be among the most corrupt institutions. Thus, those who will apply the penalties, may be bribed by those that ought to be punished, especially when the latter have the financial means to pay large bribes. All this leads to the conclusion

that, whenever possible, preventing illicit activities through better controls is always a better policy than relying on harsh penalties.

#### **IV. Some Economic Consequences of Corruption**

Market economies derive their legitimacy from the belief that the incomes that individuals receive depend broadly on what they contribute to a country's economy. Large incomes are supposed to be the counterpart of large contributions to the economy. There are several reasons why this may not occur. The correlation between contributions to the economy and the incomes received may break down because of monopolies, unearned rents, earnings from crimes, and so on. Corruption may be one of these reasons. Corruption may provide some well-placed individuals with undeserved incomes. Thus, where corruption is predominant, it raises fundamental questions about the legitimacy of the existing economic system. Furthermore, there is growing evidence that countries where corruption prevails have greater difficulties to sustain growth and have more uneven income distributions.

There are now available various indices of corruption, such as the "Corruption Perception Index," the "Global Corruption Barometer," the "Bribe Payers Survey," and other surveys by the World Bank, the EBRD and by other institutions. With the growing availability of indices of corruption, it can be shown that there is a negative correlation between the level of development of countries, measured by their per capita incomes, and the indices of corruption. There is also a negative correlation between indices of corruption and growth rates (see Tanzi and Davoodi 2001). Naturally, these correlations, per se, are not proofs of cause and effect. In theory, the causation could go in both directions. However, lower corruption must make it easier for a country to grow and, as the country becomes richer, it might become more interested and more capable of dealing with corruption, because it would have the means to build better institutions and to institute better controls. This issue has attracted some attention on the part of experts, especially at the World Bank (see, for example, Kaufmann and Kraay, internet).

There was a time, decades ago, when some economists argued that, in very rigid economic systems, as developing countries were assumed to be, corruption could have a beneficial effect on economic activity because it could have the same effect as oil in a mechanical system. The payment of bribes could help remove obstacles to investment and to other economic initiatives, allowing the most profitable enterprises that had more money to pay the highest bribes, to obtain needed authorizations to make particular investments, or to undertake particular activities. The payment of bribes could also help to speed up procedures or decisions to obtain needed authorizations or permits. Furthermore, bribes might operate as supplements to salaries thus keeping the wages of public servants and, thus, taxes low. This benign view of corruption, that saw corruption as almost a growth factor is now largely discredited. Better information, more data, and deeper analyses of the effects of corruption have convinced most scholars that its impact on economic development is unquestionably negative. Many arguments have led to this conclusion. We shall mention only some of them.

Most students of corruption are now convinced that in many societies the existing rigidities, the ones that corruption is supposed to relax or remove, are not inevitable, or God-given. They are in fact endogenous to the system. They are often created or hardened explicitly to create the conditions that make it possible for particular public employees to elicit bribes, to remove the obstacles that they have themselves created. A good analogy would be that of an individual who blocks a road with an obstacle and then imposes the payment of a fee, to remove the obstacle, on those who want to use the road. These rigidities create veritable bureaucratic cholesterol that damages economic activities. They slow down or stop the flow of individual decisions and actions that are important for economic growth. They raise the costs of transactions, delay the taking of economic decisions, distort competitive markets, and generally reduce efficiency. In many ways they operate like inefficient and arbitrary or random taxes on economic activities.

A significant problem is that these negative effects tend to be particularly significant for small and new enterprises which, as is well known, are often the ones that provide dynamism and create employment for a country's economy. Small and new enterprises often lack the political connections and the political capital that protect the largest enterprises from the extortions that unscrupulous public employees often exert on economic agents. There are various surveys by the World Bank and the European Bank for Reconstruction and Development that indicate that, in the countries surveyed, the share of an enterprise's revenue that goes to the payment of bribes falls with the increase in the size of the enterprise. Large enterprises often have strong political connections and power that not only protects them from bureaucratic corruption but also allows them to extract rents through favorable regulations, subsidized credits, trade protection, tax incentives, and other measures. Small enterprises do not have this shield against corrupt officials. Thus, corruption operates like a tax that is regressive with respect to the size of the enterprise. When the tax is not only high and regressive but also random and capricious, the economic damage can be especially high.

A second way in which corruption may reduce economic growth is through the misallocation of talent (see Murphy, Shleifer, and Vishny 1991; and Baumol 1990). In most societies there are few individuals who have the talent to excel in almost any activity they undertake. Although talent is at times activity specific – Mozart could not be Shakespeare; Pelé or Maradona could not be Tiger Woods – often talented individuals have the capacity to excel in different fields. They choose the field that will provide them with the highest benefits. When in a society the exploitation of political connections to get economic rents is the activity that generates the highest return to a person's talent, that person will choose this option over that of activities that could benefit a country such as managing enterprises, making valuable discoveries and so on. There is empirical evidence that in these circumstances there will be less engineers and more lawyers, because the latter's skills are more useful for individuals who operate

in these societies (see Tanzi and Davoodi 2001). In conclusion, the misallocation of talent toward rent-producing activities will have a negative effect on growth.

A third way in which corruption can have a negative impact on economic growth is through its effect on the quantity and quality of investment. Economic theory generally agrees that, *ceteris paribus*, higher investment leads to higher economic growth, at least over a long though not infinite, time period. This conclusion is backed by considerable empirical evidence. Thus, a reduction in the investment rate should lead to a reduction in the rate of growth.

A study by Mauro (Mauro 1995) has shown that (a) corruption leads to a reduction in the investment rate; and (b) that the fall in investment leads to a fall in the rate of growth of countries. Over time, a lower growth rate leads to significantly lower standards of living for a country's population. A study by Wei (Wei 1997a) has shown that corruption leads to a reduction in the ratio of foreign direct investment (FDI) to GDP. Corruption tends to scare away foreign investors. Since FDI is important not only for the capital that it brings into a country but also for the new technologies that accompany it, it is evident that a reduction in FDI can reduce the growth rate. In another paper, Wei (Wei 1997b) had shown that the predictability of corruption is also important. Given the rate of corruption in a country, the more predictable is corruption (the more centralized it is); the lower will be its negative impact on growth. Thus, centralized corruption operates like a general tax that can be anticipated, while decentralized corruption operates more like a random tax that is less easy to anticipate.

Some studies have shown that corruption increases public investment but reduces the efficiency of that investment (see Tanzi and Davoodi 1998). Bad investments will be approved because some officials will get bribes from those who execute the projects or they will benefit directly from the investments. Often less efficient companies and less optimal project designs will be chosen to carry out the investment. At



the same time, expenditures for operation and maintenance (O&M) that are necessary to maintain the country's infrastructure in good working conditions will be reduced. There will be less money available and there are fewer opportunities for bribes in O&M expenditure. In conclusion, new unprofitable projects will be carried out while the existing infrastructure will be allowed to deteriorate.

There are other ways through which corruption may affect growth. These can be mentioned briefly. Corruption affects the composition of public expenditure. It also distorts the tax system. Econometric work by Mauro (Mauro 1998) and by Tanzi and Davoodi (Tanzi and Davoodi 2001) had shown that corruption reduces public expenditure on education and health. Thus, it reduces the formation of human capital that is also important for economic growth. Tanzi and Davoodi (Tanzi and Davoodi 2001) have identified effects such as those on the level and the composition of the tax system. Corruption reduces the tax level, decreases the productivity of value added taxes and reduces the contribution of income taxes to tax revenue. Other authors have shown the impact of corruption on borrowing costs; on the safety of property rights; on the distribution of income, and on other variables. All these studies support the conclusion that corruption affects economic development in a negative manner.

## V. Attempts to Reduce Corruption

The attention that has been directed toward the problems created by corruption has naturally led to attempts to reduce the scope of this problem. It is not possible to survey fully these attempts. They have ranged from international initiatives to promote integrity and ethics in international dealings to initiatives to reduce the phenomenon by specific countries.

The international initiatives have had two specific but distinct objectives. The first has been to level the global playing field in the international sphere, so that multinational enterprises would face the

same consequences, at least in theory, for engaging in acts of corruption. This leveling of the playing field would allow the enterprises that do not pay bribes not to be disadvantaged in their competitiveness. There was a time when American managers of enterprises could go to jail for paying bribes to the public official of foreign countries, while the managers of enterprises of some other countries not only would not be punished for similar acts but their enterprises could treat the bribes paid as business expenses that were deductible for tax purposes. International conventions and agreements have attempted to eliminate these anomalies. The second objective has been that of raising the sensitivity of those who operate in the international arenas to the problems that are caused by corruption. Attempts have been made to create "islands of integrity" by having corporations join virtual clubs, of enterprises that make commitments not to pay bribes. It is an open question how effective these attempts are.

Perhaps, the initiatives at the country level are more interesting. A few examples will be mentioned.

Corruption has been a big issue in China for which the score on the corruption perception index (CPI), estimated by Transparency International, has been low. China's leaders have been making strong pronouncements against corruption and have been taking at times drastic punitive steps, including capital punishment, for some of those who get caught. So far these steps have had some positive but marginal results perhaps because the opportunities for, and the potential gains from, corruption have remained very high. The chance of being caught must also have remained relatively small. There continues to be a perception among observers that the penalties may, at times, be imposed for political purposes, to get rid of particular individuals. To continue to sustain its high growth rate, China will need to do better on the question of corruption. The leadership seems to have become aware of this.

Singapore is an interesting case because, within a little more than a generation, it has gone from being a normal, developing country,

where corruption was common, to a country with one of the best scores on the CPI. This dramatic improvement was the result of several factors: (a) the example provided by the leadership; (b) the transparency of the rules and regulations that direct economic activities and that has made Singapore one of the most competitive places in the world; (c) the high salaries for public employees and high level officials that have reduced the "rate of temptation;" (d) the zero tolerance for acts of corruption; and (e) the existence of a *powerful and politically independent anti-corruption commission* that investigates any signals that it receives of possible acts of corruption and that has the power to take corrective measures, without regard to the political consequences and without any needed political authorization.

The role of a powerful and politically independent anti-corruption commission seems to have been very important in sharply reducing corruption also in Hong Kong. The contrast between Hong Kong and China is striking. While the CPI in China, is very low, that in Hong Kong is high.

Placing it among the countries with relatively low corruption. The commission is given an ample budget and has wide and politically-free support and powers. The clarity of the rules and the limited role of the government are also factors that have helped to achieve its present position. It was not always a relatively corruption-free economy.

Perhaps the last example worth mentioning is that of Chile, a country that in recent years it has had the best CPI score among developing countries. The Chilean achievement has much to do with the clear definition of the role of the state in the economy, with the transparency of its rules and laws, and with the attempt over the years of keeping politics as far out of economic decisions as possible.

For example, the tax administration of Chile has a high degree of political independence. Politics of course determines the tax laws. But

these laws are not changed frequently and the tax authority administers them in a politically free environment.

## VI. Concluding Remarks

This paper has surveyed various issues related to the role of corruption in the economic activities of countries. Corruption also plays a role in political activities. The "Global Corruption Barometer" made available by Transparency International, has listed "political parties" and "parliaments/legislatures" as the most corrupt institutions among countries. This paper has focused on the economic and not on the political impact of corruption. Corruption delegitimizes the working of a market economy, as well as the outcomes of political processes.

This paper has highlighted ways in which corruption, by distorting economic decisions and the working of the market economy, inevitably reduces a country's rate of growth. The paper has also discussed some of the channels through which corruption distorts various economic decisions. Finally, the paper has reported on some actions that have been taken by countries in their attempt to reduce corruption stressing that the fight against corruption cannot rely on a magic bullet but has to be fought on many fronts.

## Bibliography

- Allingham, Michael G. and Agnar Sandmo (1972), "Income tax evasion: A theoretical analysis," *Journal of Public Economics* 1(3/4): 323-338.
- Baumol, William J. (1990), "Entrepreneurship: Productive, unproductive, and destructive," *Journal of Political Economy* 98: 893-921.
- Becker, Gary (1968), "Crime and punishment: An economic approach," *Journal of Political Economy* 76(2): 169-217.
- Campos, Edgardo J. and Sanjay Pradhan (eds.) (2006), *The many faces of corruption*, Washington, D.C.: The World Bank.

- De Mello, Luiz, and Matias Barenstein (2002), "Fiscal decentralization and governance: A cross-country analysis," in: George T. Abed and Sanjeev Gupta (eds.), *Governance, corruption and economic performance*, Washington, D.C.: The International Monetary Fund, pp. 333-367.
- Dorotinsky, William and Shilpa Pradhan (2006), "Exploring corruption in public financial management," in Campos, J. Edgardo and Sanjay Pradhan (eds.), *The many faces of corruption*, Washington, D.C.: The World Bank, pp. 267-293.
- Kaufmann, Daniel and Aart Kraay, "Growth without governance," Washington, D.C. Mimeo: The World Bank, (internet) available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=316861](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=316861)
- Klitgaard, Robert E. (1988), *Controlling corruption*, Berkeley: University of California Press.
- Leite, Carlos and Jens Weidmann (2002), "Does mother nature corrupt? Natural resources, corruption, and economic growth," in Abed, George T. and Sanjeev Gupta (eds.), *Governance, corruption and economic performance*, Washington, D.C.: The International Monetary Fund, pp. 159-197.
- Mauro, Paolo (1995), "Corruption and growth," *Quarterly Journal of Economics* 110(3): 681-712.
- Mauro, Paolo (1998), "Corruption and the composition of government expenditure," *Journal of Public Economics* 69(2): 263-279.
- Murphy, Kevin M., Andrei Shleifer, and Robert W. Vishny (1991), "The allocation of talent: Implications for growth," *Quarterly Journal of Economics* 106(2): 503-530.
- Noonan, John T., Jr. (1984), *Bribes*, Chicago: The University of Chicago Press.
- Posner, Richard A. (1971), "Taxation by regulation," *The Bell Journal of Economics and Management Science* 2(1): 22-50.
- Remnick, David. (1994), *Lenin's tomb: The last days of the Soviet empire*, New York: Random House.
- Robinson, James and Rogeran Torvik (2005), "White elephants," *Journal of Public Economics* 89(2-3): 197-210.
- Rose-Ackerman, Susan (1978), *Corruption: A study in political economy*. New York: Academic Press.

- Shah, Anwar (2006), "Corruption and decentralized public governance," in Ehtisham Ahmad and Giorgio Brosio, *Handbook of fiscal federalism*, Cheltenham: Edward Elgar, pp. 478-498.
- Tanzi, Vito and Hamid Davoodi (1998), "Corruption, public investment and growth," in Hirofumi Shibata and Toshihiro Ihori (eds.), *The welfare state, public investment and growth*, Tokyo, Berlin, Heidelberg, New York: Springer, pp. 41-60.
- Tanzi, Vito and Hamid Davoodi (2001), "Corruption, growth and public finance," in Arvind KJain (eds.), *Political economy of corruption*, London: Routledge, pp. 89-111.
- Tanzi, Vito (1995), "Corruption, arm's length relationships, and markets," in: Gianluca Fiorentini and Sam Peltzman (eds.), *The economics of organized crime*, Cambridge: Cambridge University Press, pp. 161-180.
- Tanzi, Vito (1996), "Fiscal federalism and decentralization: A review of some efficiency and macroeconomic aspects," in: Michael Bruno and Boris Pleskovic (eds.), *Annual Bank Conference on Development Economic*, Washington, D.C.: World Bank, pp. 295-316.
- Tanzi, Vito (1998), "Corruption around the world: Causes, consequences, scope, and cures," *IMF Staff Papers* 45(4): 559-94. Republished in: Vito Tanzi (2000), *Policies, institutions and the dark side of economics*, Cheltenham: Edward Elgar; and in George T. Abed and Sanjeev Gupta (eds.) (2002), *Governance, corruption and economic performance*, Washington, D.C.: The International Monetary Fund.
- Transparency International (2006), *Corruption Perception Index for 2006* (Berlin).
- Van Rijckeghem, Caroline and Beatrice Weder (2002), "Bureaucratic corruption and the rate of temptation: Do wages in the civil service affect corruption, and how much?," in George T. Abed and Sanjeev Gupta (eds.), *Governance, corruption and economic performance*, Washington, D.C.: The International Monetary Fund, pp. 59-89.
- Weber, Max (1947), *The theory of social and economic organization*, London: The Free Press and Glencoe.
- Wei, Shang-jin (1997a), *How taxing is corruption on international investors?*, NBER Working Paper no. 6030, Cambridge, Massachusetts: NBER.
- Wei, Shang-jin (1997b), *Why is corruption so much more taxing than tax? Arbitrariness kills*, NBER Working Paper no. 6030, Cambridge, Massachusetts: NBER.

## Corruption around us: Serbia and the Rest of the World

### Introduction: Pervasiveness and Omnipresence of Corruption

There could be little doubt about corruption representing a malign fissure on the body of any society acting as one of the most pernicious evils in economy and other spheres of social life. Yet, it should not be viewed as an extravagant, bizarre phenomenon arising under exceptional and rarely met circumstances. Quite to the contrary, a world with corruption is much easier to envisage and to comprehend. In fact, a world without corruption would seem quite strange and almost impossible to comprehend. That follows not only from its universal presence – it is practically impossible to find a country which is not cited as a place of corruptive dealings – (cf. Tanzi 2012; Rouz-Ejkerman 2007, 1999: 24–26; Rose-Ackerman 2001: 45–46; Begović 2007: 261–285...) – and its sheer diffusion is sufficient to conclude that it makes a predictable, in fact widely expected ingredient of social life. In empirical analyses of the scope and forms of corruption such countries are mentioned as Russia, Sweden, Italy, Japan, Russia, the United States, Brazil, Thailand, an entire array of Latin-American and Asian countries...Not to speak about Africa where it grew into a set of practices closely approaching the literally taken daily routine and not easily differentiable from ordinary doings and usual chores – quite normal and fully legitimate – activities. That could hardly come as a surprise, at least to the initiated: de Soto (De Soto 2000: 100–101) speaks of the deep *historical* (emphasis added) roots of corruption. Perhaps the most telling survey is presented by Begović (Begović 2007: 277) in which the results of the international surveys are given containing between 21 and 144 countries. The sheer spread of corruption

is sufficient to conclude that it appears as a very familiar and lasting social phenomenon. The astounding amount of corruption arises not infrequently from the fact that institutions are so poorly designed and laws so badly written that bypassing them turn a more attractive option of acting than abiding by such inferior arrangements. One should add that corruption is universally recognizable not only in the dimension of space, but also in the dimension of time. Tanzi (Tanzi 2012) reminds the reader quite appropriately about its being mentioned in the Bible, in writings of classical Indian philosophers and in Gibbon's account of Roman history, while it is well known that the corruptive practices were wide spread and in many ways dealt with among the old Greeks.

Its natural association with all walks of social life and its predictable presence in a wide array of human interactions can be directly derived from its definition. Tanzi (Tanzi 2012) defines it broadly as "deviation from accepted and desirable behavior" and Begović and Mijatović (Begović and Mijatović 2001: 136) as "purposeful violation of the principle of impartiality in decision making with the objective of appropriating certain benefits" and all that unfolds in a context of comfortable managing resources which belong to somebody else. While defining corruption authors don't fail to mention that the organizational set-ups generating corruption involve well known principal-agent problems in which the former are able to establish only limited control over the latter. As principal-agent combination arise both in the private and the public sector, one can safely speak about corruption in private as well as in the public sector. But the two varieties of corruption are far from being symmetric. Corruptive abuse in the private sector affects financially only the owners and eventually those individual agents who are discriminated against in one way or the other. The damage, at least the one defined in economic and financial terms, does not reach much beyond the individual agents who are affected.

The consequences turn out quite different in the public sector. Corruptive dealings in this sector are at the expense of the vast multitude



of the tax payers, in fact at the expense of the society as a whole. The impact of corruption is incomparably wider in the public sector. This is why the motivation to resist and prevent corruption is much stronger in the private sector; one could perhaps hypothesize that the private sector has healthy motivational impulses and accompanying devices to defend itself against the corruptive encroachments. Public sector is incomparably weaker in defending itself against corruption. There are individuals and organizations managing public resources over which no private (*severall!*) property is defined, so that healthy defensive instinct is simply absent. On the other hand there are fairly easy and not very risky ways of privately appropriating public resources belonging to the vast tax paying body but to no one in particular. Appropriating public property brings considerable gains to the perpetrators and, as individual acts, causes no particular damage to anybody in particular. With very much to be taken without efforts worth mentioning and with generally low risk of being caught during or after committing the corruptive act, it would be unexplainable if the corruptive doings did not multiply in large numbers. This is the classical case of highly concentrated benefits and widely spread costs – a situation in which fighting malfeasance turns out complicated and with little prospects for success. This is why the stories of shocking corruptive abuses are an everyday occurrence while the cases of successful suppression of corruption are so rarely heard.

Notable differences between the private and the public sector regarding the motivation and ability to resist corruption make it permissible to define – at least as a first approximation – corruption as a phenomenon germane exclusively to the public sector. Indeed, the public sector and the collective ownership germane to it are easily recognizable as the true breeding ground of corruptive practices. The definition developed and used by the World Bank takes implicitly cognizance of that important fact. That definition is easy to spell out and to apply in an operational context. In this useful alternative conceptualization corruption “represents the abuse of public authority with the purpose of realizing private benefit” (Begović and Mijatović 2001: 12). Sticking

to such definition proves very convenient from an operational point of view and makes analyses concrete, dawn-to-earth and practically relevant. When it comes down to examining truly massive and disruptive streams of phenomena of corruption, the deviations in the private sector are usually forgotten and the attention is exclusively directed to where veritable corruption predictably breeds. It goes without saying that its true home is public sector.

The amount and kind of corruption can be taken as a basis for the first, tentative assessment of the quality of government. On a general level the connection between government and corruption suggests at least two things. On the one hand, corruption mirrors the inability of government to come to grips with the host of perverse behaviors leading to corruption and constituting it. On the other hand, it indicates the corruptive impulses generated by the government itself: much of what is really perilous in the nexus of corruptive phenomena comes from within governmental machinery.

It is perhaps apposite to round off this introductory section with the remainder that a sign of spread and magnitude of corruption could be the frequency and pitch with which it is reported on and commented in the media. In Serbia it is the theme number one at the time of writing and in the course of the past couple of months. To wit, a daily newspaper with, as it says on the first page, largest circulation reports on the big international companies bypassing Serbia and declining to start businesses here; corruption is pointed out as one of the principal reasons for their shying away (E.E.P. 2012: 7). In another high circulation daily – it also, again on the front page, declares itself as the paper with the highest circulation – a very long report is offered on the hundred million euro package of abuses in the fertilizer factory in Pančevo, package in which corruption evidently carries significant weight (Cvijić 2012). Complicated relation between the public beliefs about the scope and gravity of corruption will be discussed in the sequel of this paper, but the appalling quantity of writings and public

pronouncements about the spread of corruption certainly represents a more than indicative pointer of a shocking social evil.

## 1. Recognition, definition, measurement

The difficulties of measuring the corruption are notorious and proverbial and will not be dwelt upon here. But there is much more to it than just finding ways of – at least partly reliable – measurement. Corruption is first of all hard and occasionally impossible even to recognize. It merges gradually and imperceptibly into a broad set of human interactions which are only partly corruptive, with the degree of corruptiveness varying continually and progressively, with no safe criterion for drawing the boundary between corruptive moves and those which cannot be qualified as corrupt and illegitimate. Quite clearly, this broad and hard to encompass array includes pure gifts granted without expectation for any counter service. As many counter doings don't coincide with these unilateral services, it is impossible to ascertain that any of these is corruptive. Not even at the level of principle. Moreover, some of such doings are only understood, quite frequently only by one side of these (temporarily or permanently!) unilateral transactions, so that again the issue of recognizing some acts as a form of bribes arises in its full scope. There are gifts and services granted unilaterally just to create good will for some future contingencies which might never arise; in an uncertain world that too comes out as a form of rational behavior. How to qualify such acts if they are not undertaken with any particular aim in mind, if the beneficiary is not even conscious that some sort of counter service might some time in the future be expected from him and if – in the inevitably stochastic world – the situation in which such unilateral act would come for repayment might never arise (cf. Begović and Mijatović 2001: 11)?

The problem of definition is already indicated in the foregoing paragraph. If the acts which are not immediately repayable vary continually with respect of what might be expected or asked in return, where

to draw the boundary and how to differentiate the corrupt from the correct and perfectly legitimate? A similar problem arises with respect to the quantity of repayment. Transaction involving corruption are never cut and dried, with precisely determined "price," quality, the deadline of delivery...The relatively rare exceptions are the cases in which cash is directly delivered precisely at the time the service is made. If the price for whatever service is rendered varies in wide intervals, taking here and there very high values but going down to insignificant amount, including zeros in the literal sense of the word, the dilemma is again confronted as to where to draw the boundaries. The reasoning in this and the preceding paragraph can be briefly summarized: What cannot be unequivocally defined and not even with reasonable certainty recognized cannot certainly be measured. As measurability obviously implies the clear and generally accepted definition of the thing to be measured, one has to conclude that grave problems of measurement regarding corruption appear even at an abstract conceptual level.

It is then impossible not to arrive at the conclusion that corruption can only be "measured" indirectly, based on mediated evidence and thus with poor reliability and with serious risks of imperfect observations and the resulting mismeasurement. Corruption is illegal and, as a rule, one cannot expect either the corrupter or the "corruptee" to report on the corresponding transactions. The source of information on corruption is consequently indirect and remote, usually through those who have "heard" something about it and perhaps learned about it through a chain of several intermediaries. The observer is confronted not by the real facts of corruption or with its incontestable quantitative indicators but with *the perception of it*. Such evidence is by its very nature unreliable and, if not treated carefully, can lead to mistaken conclusions.

The question then arises as to whether anything analytically usable can be achieved with such evidence. To some extent surprisingly, the answer is a qualified yes. The first reason for such an affirmative

answer is the fact that – in this field perhaps more than in some others – one can reasonably postulate connection(s) between the real phenomena and their perception. If there is widely noticeable belief that corruption is a major social evil, the likelihood is high that the equivalent in reality is markedly present. Moreover, there are good reasons to accept the postulate about numerous, perhaps even all-encompassing correlations among social phenomena and that observing some of them makes it possible to conclude a lot about the others. On the other hand, it should be apparent that the sensitivity to corruption and the willingness to eradicate it varies across societies, so that perception of corruption could to a large extent measure that sensitivity rather than the real state of affairs itself. Furthermore, it has been empirically demonstrated (Begović and Mijatović 2007: 22) that the general dissatisfaction with various arrangements and developments in a society, not having anything concrete to do with corruption, finds its expression in the articulation of the beliefs that the society is highly corrupt! To the extent that the perception of corruption is correlated with the corruption itself, it follows that measuring the corruption by, or on the basis of, its perception might be accepted as a legitimate methodological approach. Moreover, even if the “real” corruption – the difficulties of its conceptual clarification and generally acceptable definition are here ignored – is absent, the widely diffused perception of it could prove fully relevant. Such a perception may mirror some other social deficiencies and failures and as such deserves careful study. If there are many objections and loud outcries directed at a particular fault of a particular man, they are quite informative about general undesirable traits of character of that man even if they are not literally true regarding that concrete failing. Analogy to various social configurations is straightforward.

Much more important is the fact that the perception of something undesirable, including corruption, is a serious social problem *per se*. To begin with, the perception of corruption is a likely cause and prospective driver of the corruption itself. In an environment in which people believe in mass that lots of corruptive dealings are going on,

the individuals are likely to indulge in similar practices themselves. They may feel handicapped and unjustly put at a disadvantage if they endeavor to remain honest in an atmosphere in which vast majority of others help themselves with these illegal means. Competition may force upon people various patterns of behavior even in the cases in which such ways are problematic from an ethical and also legal point of view. Moreover, perception of corruption will foment the real practice if on the basis of the belief that it is widespread conclude that it is easy to get away with it and that the probability of being caught is negligible. Thus perception matters even in the highly hypothetical situations in which it is, by assumption, false.

There are broader unfavorable consequences of the perception of corruption. It worsens the image of the country in the international community. In the contemporary highly interrelated world this image is extremely important and has, among other, far-reaching economic and financial implications. It certainly affects the country as a possible destination of the foreign direct investment (FDI). A precious feedback can be noticed: foreign investors are laudably very active in suggesting institutional adjustments and policy changes (cf. Foreign Investors Council 2011, especially 47-122), pressing for major but well thought out changes in policies and regulative framework, they indirectly support the policy of fighting corruption: That would be just one of the numerous beneficial indirect effects of their ramified activity on economic policy of this country. That comes as no surprise as they come from environments in which corruption is certainly less noticeable and probably takes entirely different forms. This is the point at which corruption act as a deterrent of FDI as foreign investors are not familiar with the local technology of corruption and in that respect obviously suffer a comparative disadvantage in relation do domestic business entities. There has always been and there still is much talk about so called business environment as a major determinant of the readiness of investors to start businesses in a country and the quantity of the SDI resulting from it. Similar effects are to be expected in the domain of public, particularly foreign indebtedness

where perception of corruption affects credibility of the country in the world's financial circles and through that interdependence the ability to raise additional loans and even the interest rate and other important conditions under which the loans are granted. For a country with huge and lasting "twin deficits", as is the case with Serbia, this is an issue of utmost importance. A further connection between perception of corruption and macroeconomic performance goes through credibility as it relates to economic policy. Without credibility public policies become outwardly ineffective the capacity of the regulative system to stabilize and steer the economy is drastically reduced. One could conclude that perception of corruption possesses a peculiar self-fulfilling potential of realization and, as Dostoyevsky said in his *Evil Spirits*, if the scandal is generally expected, the scandal is bound to happen.

There is a broad-based set of difficulties going far beyond corruption which stem from the fact that in certain segments of the economy (natural monopolies being a proper illustration) in which the government's intervention appears to be undoubtedly necessary, but which at the same time offer a fertile ground for corruption. In other fields financing is functionally removed from rendering the services – say in the health system almost all is paid by the social insurance funds and the patients are under psychological pressure of being treated free of charge – and the idea of having to reward those who work for you comes, so to speak, all by itself. Legitimate moves are very hard to differentiate from the illegitimate; moreover, the legal in these areas is quite difficult to discriminate against the illegal. It goes without saying that in the area in which various phenomena cannot easily be conceptually differentiated, the problems of measurement are bound to arise. Associated to this is the fact that public policies by definition involve multiple options and the room for choice and that the choice is necessarily influenced by a multitude of motives not all of which are equally related to *common good* or *public interest*, no matter how are these hazy notions defined. Depending upon the point of view, almost any given act of public policy can be characterized as corruptive

or non-corruptive. If a large bridge is built in the capital and it turns out to be of monumental proportions, should that be characterized as subtle corruption of the electoral body because people might eventually come to like it or because building the bridge created more jobs for future voters on account of its size? The most drastic case is the policy of public welfare whereby transfers are allotted unilaterally and nothing is expected in return; it is evident that the beneficiaries will vote for those who set aside more money for these purposes, and treating that as political corruption is a matter of unrestricted choice of any interested analyst. In the contemporary world of multiply and almost incomprehensibly intertwined productive and (re)distributive activities and policies unequivocal identification of corruption becomes practically impossible and truly multidimensional nature developments and versatile changes in the society offers abundant room for all kinds of interpretations, including those entirely opposed to each other.

The enumerated peculiarities of the host of economic activities and other social processes make it relatively easy to ascertain the long list(s) of circumstances leading almost inevitably to corruption. Begović and Mijatović (Begović and Mijatović 2001: 13–17) argue that the most abundant and in fact typical source of corruption is more and more pronounced rent seeking which leads the economic agents to orient themselves to redistributive rather than productive gains. Opportunities for rent seeking are created by various governmental policies and, looked through this aspect of its role in the economy; government is the generator of some of the most damaging losses in any society and in the rapidly reforming countries obviously more than in others. The two others enumerate the typical mechanisms through which governments create opportunities for rent seeking and thus for corruption, the most conspicuous being the classical ones – the quotas and other constraints in foreign trade, the policies of (overvalued) exchange rate, numerous and incomprehensibly differentiated systems of licensing for most prerequisites of doing business regularly, the evaluation of fitness of various agents for this or that



economic activity...Once it is recognized that governmental functions are essential for economic activity – indeed, without governmental development and protection of property rights and its penal system of guaranteeing promises and implementing contracts the market in the usual sense of the word could hardly be imagined – in the course of its functioning innumerable deviations occur and in many of their doings governments turn into veritably exploitative macro social arrangements. Hence the general recommendation for the fighting of corruption, the one that will be the main point of this paper: to radically reduce corruption – about eliminating it there can be no mention – cut down the broad array of pathologically perverted governmental functions, particularly those directed to immediate meddling with resources and money.

## 2. Institutional Determinants of Corruption

Institutional determinants of anything, including corruption, are understood as broadly conceived structure of the regulative order in the economy and the society at large. Regulative order is defined as the set of arrangements coordinating economic decisions and streamlining the basic macroeconomic aggregates, including in particular their stabilization and eventual steering towards a dynamic trajectory taken by some criteria as desirable from the point of view of the system as a whole. The usual approach toward analyzing these regulative systems is to examine them through three basic synthetic and very complex attributes called *structures*. Three such structures are identified: management (or allocation of authority) structure, motivation structure and information structure.

The management structure determines who is deciding about what. It clearly is crucial element of any system. Different agents have vastly differentiated capacities to manage and control various segments of the system and one could think of infinity of various distributions of decision making authority over an almost uncountable set of actors.

Clearly, not all such distributions are equally efficient and it is possible to conceptualize *optimal distribution* in the sense of its leading to a set of optimal outcomes according to some criteria postulate in advance. Distribution of authority is, among other, important from the point of view of corruption as different allocations of authority produce, in this domain too, expectedly different results. This is the context in which the role of the government is considered most appropriately because it acts as the perennial focus of corruption. As far as corruption is concerned, the general principle would be to allocate as little authority as possible to those actors who manage and control resources created by or belonging to others and analogously to maximize the authority of those who dispose of the generated and hopefully owned by themselves. This leads to the standard argument that the role of market(s) in allocative processes should be maximized, implying the minimization of the role of government in immediate, direct dealings with resources. It is almost evident that such allocation of authority is best from the point of view of preventing corruption, but there is a strong stream of convictions and insights in economic profession that such an allocation of functions and prerogatives is also desirable, some would say optimal, from a much broader point of view – from the standpoint of the social rationality of the system taken in its most general sense.

The motivation structure is equally important. Not all economic and social agents display equal bent towards corruption. Some are so placed in the regulative system that their energy and inventiveness are naturally oriented towards the constructive, socially productive pursuits. There are others whose motivation is turned the diametrically opposite way. It is almost tautological that the socially rational arrangement should favor the agents with the productive motivation, whereas the redistributively inclined agents should be located in the spheres in which their functions are socially needed and beneficial but where their redistributive propensities will be minimized if not suppressed altogether. It bears repeating that such allocation of decision making prerogatives is desirable from the already mentioned

much broader point of view. Empirical evidence has provided us with lots of insights, some of which are really deep and convincing, that governmental bodies and agencies are eminently prone towards redistributive practices leading to corruption and including it as one of the principal components. More generally, the most widely conceived set of economic and social actors could be arranged in a long series of entities by one single criterion – the proximity to government. It regularly and predictably turns out that the closer the agents to the government – closer in the sense specified in the preceding sentence – the more prone they are and also the more equipped to indulge into various forms of corruptions or at least into activities which are contiguous to corruption and represent more or less recognizable shadings making them similar to if not identical with corruption. The less governmental dirigisme and the fewer in number government's protégées the less there will be the burden of corruption in the society under consideration.

There is also the information structure. Information is the “raw material” or input in the decision making processes. It is hard to conceive taking any decisions without some kind of information. *Ceteris paribus*, the more abundant and more reliable information, the higher the quality, i.e. efficiency of the decisions taken. If the motivation within a system were exclusively productive, i.e. if no redistributive intentions and encroachments were to be found in the given system, there would exist a unique and positively structured relation between completeness and quality of information and the efficiency (and the growth potential) of the system as a whole. As this is not the case and as a not insignificant number of actors use their ingenuity and information to raise their welfare at the expense of others, the relation is far from unequivocal and a variety of outcomes can be observed. Some will indeed use information to be more efficient and more productive, whereas others will thanks to superior information be able to extract more successfully income and wealth at the expense of others. Looked again from some – however defined – social point of view more information of a higher quality will be for the better only in the

case of some agents; as for others their being better informed will be detrimental for the rest of the society. In the case of some agents, those in the proximity of governmental machinery and its meddling with resources, more and better information will lead to more redistributive exploitation and more corruption.

This somewhat lengthy elaboration is developed to make a just one short and hopefully forceful point. In the public at large and to a large extent even in the professional public there seems to prevail the opinion that corruption results from some people, particularly those in power, being unethical and not worthy of the (usually high) positions they occupy in the ruling hierarchy. If only other people came in their places, the system would produce incomparably higher performance, general welfare would quickly and significantly increase and the distribution of impressively enlarged benefits would be more just and made consistent with truly human needs and ethical standards. Such a view is only to be regretted. While it is undeniable that not all people have the same or similar criteria and while it has to be granted that some people are more honest, more sincere and more ethical than others, ascribing all to the lack of honesty and competence is naive and mistaken. Despite undeniable differences in individual behavior under the same institutional and all other circumstances, behavior is in many of its features, indeed in its most decisive traits, determined institutionally, by the assigned authority, motivational impulses and information with which the decision making agents are equipped. Finding faults predominantly or even exclusively with the people means falling prey to what Popper (Popper 2002/1963/: 195, 484) quite aptly and with justified cynicism called *the conspiracy theory*. The very magnitude and the terrifying degree of corruption should make one think that there must be some equally far-reaching *objective causes*. A massive and widely spread phenomenon cannot be generated by such petty causes as personal, strictly individual traits of the agents who happened to perform public duties and governmental functions. A large and widely spread occurrence, an almost spectacular eventuality quite naturally calls for equally consequential determining factors.

This equilibrium or correspondence of the explanator and the corresponding explanandum could perhaps be postulated as an *a priori* and universal methodological imperative. An additional argument pointing to the same message derives from the fact that the choice of the functionaries and officials who are exclusively blamed for the failures in the system's functioning – is itself institutionally determined, i.e. conditioned by the very same system within which the relevant processes unfold. And whose functional specificities are so blindly and so sadly ignored. Another widespread misconception is that not much should be ascribed to the system of institutions because it is man-made and, unlike the law of gravitation, can be adjusted and can be changed and improved provided there is will to proceed as needed. Nothing can be further from truth. To demonstrate that the best way is to refer to de Soto whose famous book is in its entirety dedicated to the difficulties, close to impossibilities, of erecting a socially rational, productively and not redistributively oriented institutional structure (De Soto 1989: 186, 189–199, 131–187, particularly 173–177). After the appearance of the de Soto's book it should be clear to everyone that institutions are the true and ultimate productive force in a society and that even substantial quantities of crude, institutionally not formalized resources do not nearly offer the desired economic effects which are beyond any doubt technologically feasible. Unforgettable is his mighty lake metaphor (De Soto 2000: 44–45): no matter how large and how technologically advanced mass of raw resources turns out sadly ineffective without corresponding institutional infrastructure; it is like a lake with huge quantities of potential energy but which delivers nothing of it unless and until the power station is built on it.

Being both a state in transition and an underdeveloped country, Serbia is handicapped on both accounts. Continuing to deal with the general characteristics of the economies and societies encouraging corruption and contributing to its expansion and deepening, some of those common features, applying to Serbia, will be briefly summarized. Most important, but at the same time most neglected and typically ignored, fact is that an underdeveloped economy is not just

economically undeveloped in the sense of being poorly equipped with capital and having low *per capita* income, but is also underdeveloped in the paramountly important institutional dimension. As de Soto (De Soto 2000) has effectively demonstrated, general underdevelopment is above all a state of primitive, coarse, maladjusted and frequently nonexistent institutions which make it impossible to deploy properly available resources and to utilize them with reasonable efficiency. Economies are underdeveloped and societies poor predominantly because of inadequate or missing institutions; if it not had been for institutions, the societies would not be poor in the first place. It is easy to see and has become a part of common knowledge that – as they are euphemistically called – developing economies are deficient in all three dimensions of institutional development adduced above.

To begin with the authority is arbitrarily allocated, with overcentralization and to a large extent to the actors who are redistributively and not productively oriented. Enormous amounts of discretionary authority, coupled with poor or nonexistent supervisory arrangements are simply predestined to breed corruption. The negative correlation of corruption with the development level is the natural outcome of such institutional structure and best evidence of the importance of systemic arrangements as a protective scaffold against corruption. The arrangements are such as to make corruption very profitable and not especially risky, which means that the motivation structure is also shaped in a way favoring corruption. Information structure is also substandard, which may turn some profitable corruptive moves unnoticeable, but that is more than compensated by the lack of transparency and poor ability of the society to identify and punish corruptive acts: sheltered by the dense veil of non-transparency, the authorized individuals and collective bodies can extract large quantities of public income and wealth without anxiety deriving from the risk of being discovered and punished. Poor information structures are particularly damaging on the account of the inadequate insight of the public at large into dealings and shady transactions of authorized personnel in the public service and the political circles.

### 3. Institutional Implications of Underdevelopment – A Look at the Formal Models and Some Policy Trade-offs

The traits of underdevelopment, in the important dimension of facilitating and encouraging corruption, can vividly be illustrated through the simple, yet telling models of various forms of corruptive behavior. The analytical sub-discipline of developing such models and adjusting them to various behavior patterns is by now highly developed. Building on the pioneering work of Becker, Lambsdorf has, among others, developed an entire series of such models, having presented them in an impressive array of papers (e.g. 2992). By far the most complete analytics of corruptive behavior in the domestic literature has been developed by B. Begović (Begović 2007: 188–192; 254–260), who contributed a good deal to the empirical analysis of corruption as well. Both ends of corruptive transactions are quite appropriately worked out in these models. From the point of view of the beneficiaries of corruption the size of the benefit to be realized through such deals is, quite naturally, highly significant. The magnitude of the likely punishment and the probability of being discovered and prosecuted are further important parameters in these models. From the point of view of the corruptor the amount to be given as a bribe, the probability of realizing the expected counter service, the money equivalent of the likely punishment, the transaction cost of arranging the deal and, again, the probability of the deal being discovered and of suffering the accompanying punishment are magnitudes determining the willingness and ability to indulge into corruptive bargains.

The survey of general conditions facilitating and encouraging corruption can be cut short by pointing to the fact that most just adduced parameters and variables appear to be characterized by two basic properties: they by and large fit into the description of an underdeveloped economy and, on the other hand, turn out to describe an environment extremely conducive to corruption. Thus, because of a low administrative capacity the probability of discovering corruptive deals is hopelessly low, the bribes are *relatively* high – concentrated

authority makes it possible to set them so as to make them very attractive and generally low incomes are the reason because of which those who are to be bribed are very cheap – transaction costs are never prohibitive for this kind of deals and due to inefficient (and also corrupted) judiciaries the fines are low and take very long to be decided. The economic and social environment, as generally described by the constellations of parameters figuring in the mathematical models, is more than conducive to all kinds of corruptive practices. Without further ado the following can be stated about the large group of countries to which Serbia unequivocally belongs: they are underdeveloped, with underdevelopment relating in particular to institutional shortcomings, and they are burdened by corruption more than the countries with higher incomes and more advanced institutional superstructure.

The level of income determines behavior of individuals in a more fundamental way. In the low income countries a large number of citizens live in the neighborhood of the poverty line and quite a few way below it. Many among them are existentially threatened. Such people are very vulnerable to corruption as one cannot expect the grossly deprived people to forgo some material benefits for high ethical principles. It doesn't seem hazardous to hypothesize that, metaphorically speaking; the elasticity of demand for clean moves and principled attitudes towards social milieu is a luxury good with elasticity way above one. Other things being equal, one is perhaps entitled to hypothesize that various deviations from what is considered right and just should be more abundantly represented among the poor and thus corruption, along with other instances of social pathology, would in such settings be more spread as well. All this, combined with typically low educational level frequently leads to accepting corruption as normal and legitimate occurrence. The beneficiaries of corruption are as a rule relatively high placed in the ruling hierarchy; as it takes years of schooling and perseverant work, many people come to accept bribes as a part of just rewards for the effort invested to reach the (elevated) positions where such advantages can be enjoyed. A way of describing the social surroundings in which corruption has



strong and numerous chances to develop is simply to enumerate the elements of a prosperous society with developed economy and strong financial base – the elements markedly absent from the social milieus of underdeveloped countries; these are limited government, strong and unrestrained competition, efficient protection of property rights and contractual stipulations, market based allocation of investible resources and capital and free foreign trade. The enumerated elements could also be interpreted as an institutional and, more broadly, social defense against corruption; their conspicuous absence is tantamount to having to be reconciled with corruption and accepting all of its negative consequences.

One channel through which corruption impairs the growth potential of a society is the one based on expectations. Since the so called *rational expectations revolution* it is generally recognized that expectations play decisive role in the effectiveness of economic policy and prospects for it to achieve whatever objectives are being set. The works of Lucas (Lucas 1972), Sargent (Sargent 1981) and Barro (Barro 1976), along with comprehensive and, as it seems, definitive treatment of this towering issue in Attfield and Demeny (Demeny 1989/1985/), have conclusively established that trust, credibility and expectations are of crucial importance for any success of economic policy and that the same set of measures can produce vastly different outcomes depending on whether there is trust among the economic agents and what expectations they develop in connection with policies to be implemented (see Blanchard 2006; 1997: 356–368, especially p. 366; an extensive and almost all-embracing treatment of rational expectations is given in Attfield and Demeny 1989; 1985). Comprehensive and powerful theoretical demonstration of the importance and potential performance of credibility and trust is given in a series of papers which by now have obtained the status of classical pieces reprinted in Snowdon and Vane (Snowdon and Vane 1997). Particularly instructive are Section II of the Reader, devoted to the “monetarist counterrevolution, (1997: 164–261, containing papers by Friedman, Modigliani and Laidler), and Section III, dedicated to rational expectation and new classical macroeconomics

(*ibid.*: 265–358, reproducing the work of Barro, Lucas, Sargent and Laidler again). Trust does not grow by itself and has to be earned by consistent and true-to-the-promises public policies. Trust in government is most significant for ensuring success in policy actions. Trust among economic agents is also helpful but is not to be confused with the trust in governmental proclamations and policies. Rose-Ackerman (Rose-Ackerman 2001: 65–69) finds that bilateral trust and, more generally, trust among the multitude of agents can, depending on circumstances, be both conducive and countering with respect to public policies, but to initiate slow and gradual processes of building inter-agents trust property and contracts should be well protected, implying that publicly provided institutional conditions for such decentralized trust are undoubtedly needed. This line of reasoning will be cut short by simply stating that corruption *corrupts* not only allocative decisions and flows of resources, but also invisible but crucially important nexus of expectations which decisively affect not only performance of taken policy actions but even the sheer possibility to undertake many of them. With distorted expectations the space of feasible policy moves drastically shrinks and corruption becomes compellingly important in this context through its destructive influence on expectations.

It is not just low income and widespread poverty that lead to genuine floods of corruption. Transition is another powerful driver of corruption. In the first place transition means that a completely new regulating system is (to be) built, which in turn implies that institutional vacua are part of reality that has to be dealt with. Such vacua mean that many rules are simply lacking and the absence of rules cannot fail to produce corruption. Transition also implies that many new laws are being enacted and that the wide bunches of bylaws are created and imposed upon the world of business and other segments of society. Being hastily written and precipitately enacted these laws are far from satisfactory in terms of quality. They are often contradictory among and within themselves, they lack clarity and are repeatedly in conflict with most elementary exigencies of life. Because of their intermittent changes, they are hard to learn and even harder to comply. The

obvious consequence is that they are and have to be regularly broken. Breaking the laws almost automatically leads to corruption. On the one hand, the law breakers are easy prey to all kinds of blackmail and corruption is typical way of alleviating such threats. On the other hand, the potential victims themselves anticipate persecutions and offer bribes to forestall the impending trouble. On top of all of that, the frequently violated rules lose their deontological appeal and expand into a more general dilapidation of the value system; with values undermined the social (dis)order is ripe with most serious hazards of triggering off corruption in the most sensitive areas.

Laws are not only in opposition to social realities, unclear, contradictory and fast changing, but also counterproductive in the sense of severely complicating entry of the new business entities; this restrains competition in the most harmful way; as competition act as a real rampart against corruption, such curbing it leaves the economy without permanently needed and clearly effective defense. It is well known that the unwieldy complexity of laws is not only the result of hasty writing and precipitous enacting, most often without needed public discussion and professional testing, and not only of the lack of administrative capacity and sheer ignorance, but it also represents a consciously created difficulty in legal transactions. Complexity is an instrument of extracting corruptive gains. With complex laws the frequency of violating them increases with the above described consequences regarding the rise of corruption. More than that, economic and other agents need help in understanding, interpreting and applying the laws; the functionaries in the public service are most natural persons to turn to for help, and from such contacts corruption arises almost automatically. It is typically masked as a form of professional assistance and as such practically impossible to discover. These considerations are very much consistent with Tanzi's (Tanzi 2012) statements about the generators of corruption and accompanying contributory determinants deepening it and making it socially more poisonous. Tanzi underlines the volume of public command over resources – public spending and taxes as a powerful source of

corruption, as well as the presence and volume of regulation and the complexity of the system within which agents are to perform their numerous activities. Among the contributing factors Tanzi points to the number of laws and again their complexity, the overwhelming presence of manipulative tax incentives and allowances combined with exemptions allegedly designed to produce structural changes in the economy, rising lobbying in the political bodies and public service, perseverance of the principal-agent problems within public administration and, quite significantly, the number of policy objectives to be realized within governmental machinery.

A last point in this connection is the very complicated and practically unwieldy interrelation among various branches of economic and, more generally, public policies. Some of the particular policies are complementary and mutually reinforcing. Others are substitutable and acting counter each other. Tanzi's (Tanzi 2012) remark on cross-institutional externalities sheds additional light on the general issue of interdependence of economic policies and globally directed processes of institutional development. That in itself makes the problem of policy formulation a very complicated, risky and delicate. As for prospects of fighting corruption, some policies are fortunately complementary with that strategic objective and, while oriented to other objectives, contribute very much to eradicating corruption. Such are broadly taken policies of liberalizing the markets and opening the economy towards international trade. Such policies enhance competition and through that mechanism cannot fail to invigorate the struggle against corruption. On the other hand the need or determination to implement various actions aimed at eliminating corruption may, because of mentioned complementarities, force policy architects to deviate from what are considered best courses of some other policies. To achieve the envisaged results in suppressing corruptions, departures from otherwise achievable objectives in the field of other policies have to be accepted. Occasionally it turns out that policies of doing away with corruption directly contradict with other policies, causing measurable costs and direct losses. This is the case

in which the costs of weeding out corruption are directly revealed and the painful trade-offs have to be explicitly borne. A case of point is – as many economists believe – too swift and much too broadly undertaken liberalization of foreign trade in Serbia in 2001. Personally conveyed information has it that such radical liberalizing move, with obvious risk that it might badly hurt the economy which just went of the perilous UN sanctions and the NATO bombings, had been undertaken only to eliminate widely spread and deeply rooted corruption for which task no other medicine was available.

#### 4. The Case of Serbia

Serbia is almost preordained to be exposed to intensive corruption and to bear its pernicious consequences. At least four structural and functional features can be identified each of which tending to foster corruption and all of them, in their synergic interaction, producing more corruption than would be the sum of their individually taken contributions. *In the first place*, Serbia is evidently an underdeveloped country, with income per head among the lowest in Europe and occupying an unenviable place in the lower part of the world's rank list of countries ordered by this key development indicator. To the extent that the spread of corruption is negatively correlated with the development level, substantial corruption could be expected on this account alone. *Secondly*, Serbia is a country with socialist past, and indeed one which, unlike most European transition states, carries positive memories of the demised collectivist order prevailing for almost half a century. Collective ownership, irrespective of its concrete institutionalization, never protects resources as effectively as private property. Appropriating what does not belong to a given subject was much easier than in the private property system and distributing the unearned continued over decades without meeting serious resistance. That appeared to have acted as a basis for formation of a culture inciting corruption and leaving long traces in the post socialist times. Self-management was a particular form of socialism which was to a large extent about controlling, disposing and appropriating resources not

belonging to those authorized to manage them. Such an arrangement must have created a set of practices and a habit highly conducive to corruption, at times when it was officially ruling, but in subsequent times as well.

*Thirdly*, as it was emphasized in the preceding section, economic underdevelopment is never limited to the economy alone; it is functionally coupled with insufficiently advanced progress in other dimensions of social evolution. One of such dimensions is inescapably slowed down but utterly important institutional advance. As emphasized in the preceding section, institutional deficiencies are among the key determinants of corruption. *Fourthly*, the tradition of having strong, domineering and overexpanded government is extraordinarily long in Serbia. Bulky government is tantamount to being exposed to grave risks of corruption. *Fifthly*, Serbia is the country still in the process of transition, and the belated transition at that. Transition brings and implies hasty creation of laws and accompanying statutes, poorly structured and contradictory laws, lots of legal voids and institutional vacua and insufficient capacity to apply the laws whatever their quality and consistency; it is apparent that all this greatly contributes to spreading of corruption. Belated transition means that the sense and spells of urgency and haste intermittently surge both in public policies and expectations of general public so that weaknesses enumerated in the preceding sentence become magnified and come more forcibly to the fore.

*Sixthly*, unlike majority of the countries in transition, Serbia has had a number of quite specific difficulties which greatly reduced her capability to fight corruption. Over a period encompassing a quarter of a century Serbia struggled with enormous problems of streamlining somehow her state organization. The dire consequences of breakup of Yugoslavia are still with us, the effects of war in the immediate neighborhood have been intensely felt, then came the breakup of the "second Yugoslavia" with Montenegrin independence, and along with all of that, and still dragging on, there persists the perennial problem

of Kosovo. The implications of these atypical and specific exclusively to Serbia problems are obvious and incontrovertible: they absorb a great deal of the available administrative capacity and to the extent the functionaries are forced to work on such issues less time, energy, investigating capabilities and *capacity* in the most general sense is left for streamlining the internal economic and financial relations, thus leaving unimpaired one more powerful generator of corruption. Much of the available capacity has, on account of these special and utterly unusual tasks, simply been wasted. It is bizarre and saddening at the same time to see the second- and the third-grade officials coming from Brussels and Hague to tie up the highest functionaries of this country, including the premier minister and the president of the Republic, discussing with them the issues which should belong to their third-grade counterparts in Serbia and, as far as the top office holders are concerned, should be matters of daily routine and responsibility of much lower placed members of civil service.

One should not and cannot fail to mention a veritably unique and again specific to Serbia generator of corruption, the *seventh* in the here established order. Serbia has suffered international economic sanctions for about a decade, laboring for about half of that period under the strictest sanctions imposed on all international relations, and coping with somewhat softer "outer wall" sanctions for the rest of the period. The only way to survive this long series of traumatic shocks was to seek and find the refuge by means of corruption. Heavily corrupted must have been all our neighbors – not all of them, to be sure, in the same degree – so that the price fetched by our exports was some 30% below what it would have been under normal circumstances and the imports were about that much more expensive. The 30% difference in each case went on corrupting the officials of neighboring countries so that country could survive the predicament at all. Adjusting to such a huge quantity of corruption could not have failed to leave deep roots in the future. Thus created *corruptive hysteresis* of the kind undoubtedly generates outcomes with which we have to live today and a disturbingly long time in the future.

One particular set of determinants of corruption reflecting again the particular circumstances of this country has to deal with subventions, which are long lasting and oversized and have become one of major stumbling blocks in the efforts to consolidate the badly eroded fiscal system. Thorough and analytically firmly footed diagnosis of Serbian budget(s), including the state of public at the lower levels of government, including local communities, is regularly offered by the Fiscal Council, probably the most competent official body in the present Serbian governmental machinery (2012a: 9–11; 2012b: 24). The Council points to the subventions as a lasting source of a more general decay of public finance and even of the economy as a whole. Subventions are mostly being distributed to the firms without any financial and business future.

The problem of fiscal policy being trapped with subsidies is in fact twofold. On the one hand, there is no proper understanding nor the objective diagnosis of the position and quality of the firms inherited from the socialist times and, having been wrongly “coded” unable to adjust to the newly emerged market economy. The policy makers seem unable to understand that many of such firms, gone through several failed attempts of privatization, cannot simply rehabilitate and become viable going concerns. The second problem consists in the fact that a significant number of jobs are being maintained in these firms with their eventual liquidation leading yet to another spurt of unemployment. There are serious social reasons behind efforts to preserve these jobs, despite the fact that paying corresponding nonperforming workers directly out of budget would be much cheaper and would represent the only sound solution under the circumstances. But this option seems unacceptable for psychological and, ultimately, political reasons. Thus, serious and weighty social and human reasons can be identified behind the policy of subsidies as a very expensive way of keeping such jobs. However, the workers whose jobs are kept in that expensive way are at the same time members of the electoral body. There should be no doubt that, by extending subsidies, the



incumbent politicians are strengthening their political support and increasing the probability of reelection.

Here one is again confronted with a bulky and unperceivable nexus of intricate relationships in which a subtle, indirect corruption is most likely involved but is in all likelihood impossible to prove. If one takes the lead from mathematical models of corruption and postulates that in the most general approach corruption appears to be an increasing function of the difference between the expected value of corruptive acts and the corresponding expected value of associated costs, then subsidies would turn out as a fertile field of a whole array of corruptive abuses. Could such a large volume of subsidies be interpreted as suggestive of the abundant chances which in this very field offer themselves for corruption, so that in parallel with bribing the electoral public these unilateral transfers to failed enterprises make it very convenient to administer plenty of sweet deals at an individual, strictly down-to-earth level? Corruption is very difficult to pinpoint in any economy, but Serbia is a special case in this respect, too: the inextricable mixture of legitimate actions to alleviate the human sufferings begotten by transition, the political bribery engineered with the purpose to gain competitive advantage in the electoral process and the straight, literally vulgar buying of concrete individuals make for an indistinguishable complex whole in many aspects impervious to straightforward and effective policy measures. The measures which at least harbor hope that they themselves will not be infected by corruption.

## **5. The Case of Serbia – The Other Side of the Corruptive Syndrome**

It is notorious that successful fighting of corruption requires strong and efficient state with clear and strong will to do away with it. None of these conditions is fulfilled in Serbia. Governments in Serbia are characterized by peculiar combination of excessive strength in matters where such strength is evidently undesirable; and by marked weaknesses in areas where their potency and effectiveness is a matter

of highest social priority. Both untoward and seemingly contradictory characteristics stem from their unavoidable relying on broad political coalitions. It is not astonishing, much less miraculous, that the really deep and thoroughgoing analysis of this eminently political set of interrelated problems was offered not by political scientists but by economists. Credit goes to Begović and Mijatović (Begović and Mijatović 2007: 14–16) for being the first to identify the issue of peculiar structure of governments operations in this country and to examine systematically the obstacles such governments are bound to meet in the attempts to suppress corruption. Serbia is politically extremely heterogeneous country with numerous political parties spread across a wide ideological and programmatic spectrum. Not long ago there were some 600 registered parties in Serbia. Equally dispersed are political preferences of the electoral body. Consequently, Serbia can never obtain a government controlled by one party or at least by a reasonably limited number of such political organizations. The first government believed to be genuinely democratic, formed in 2001, had to be backed by a coalition containing no less than 17 parties. The extant proportional electoral system is widely acknowledged as an important factor contributing to such dysfunctional political fragmentation.

Governments depending on such broad coalitions are frail and insecure. They have to satisfy a vast array of particular party interests which are in the course of daily functioning of governmental machinery in the well known way converted into constraints severely limiting the space of feasible decisions. All coalition partners, including those with negligible electoral support, have to be satisfied and taken good care of. Failing this, government can easily fall. In the course of some seven years a minor party has toppled three governments in a row. Governments exposed to risks of being overturned by a large number of participants and forced to go along with their requirements – are excessively insecure, slow in taking needed policy measures, vulnerable to external pressures (business circles can buy off some of the partner(s) and deprive the government of the needed parliamentary confidence and, after all, very slow in forming. The lack

of self-confidence and the disappointingly slow rhythm of decision making lead predictably to the lack of credibility vis-à-vis broadest public; that only contributes to insecurity and indecisiveness of governments being shaky and insecure. It used to happen with distressing frequency that governments reversed their decisions just a couple of days upon having taken them.

Such governments are too weak to launch any serious anti-corruption campaigns. Any energetic measures undertaken with the purpose of attacking certain corruptive deals are likely to hurt the interests of some of the coalition partners and as a consequence government may lose its precarious parliamentary support and be removed. This is why governments in Serbia are disappointingly weak in all policies aimed at suppressing and containing corruption. With such governments the prospects of reducing corruption are literally bleak. On the other hand, governments or, better said, the parts of it are very strong and can indulge in supporting corruption and even exercising it without danger of being exposed to dire consequences. Each partner is (badly) needed for government to survive and does not have to worry that anything serious will be undertaken against in the case indulging into corruptive transactions. Each partner is sufficiently strong *within* governmental structures and public service operations as not to have to worry that anybody would expose his shady deals. This is the way in which government is *strong* and in which its strength seriously jeopardized the interests of the entire economy and the broadest public.

On top of the overwhelming collection of difficulties connected with the weak and shaky coalition governments comes a grave additional complication under the name of so called *vertical division of powers*. This type of the division of authority consisted in dividing the entire mass of politically empowered ruling bodies and the accompanying public service literally into vertical slices in such a way that coalition members participating in the government obtain complete command over all hierarchical levels contained in that slice, without other members having any possibility to interfere. To explain and

illustrate, a party which in the distribution of the electoral spoils obtains e.g. mining is in the position to fill all managing posts at all levels of the hierarchy – it nominates the minister, the ministerial aids and so called state secretaries, the top advisers, the high posts in the part of the public service, directors in the mines and factories working in that sector...all the way down to officials of modest rank. This is the way in which party activists are rewarded for their contributions during the campaign, in fact for all services of some significance for the electoral success of the party. This is aptly summarized by the popular and frequently cited saying that in Serbia one cannot become even a porter or street sweeper without being patronized by one of the ruling parties. Granting such absolute and *uncontrolled* powers over wide stretches of social tissue is a way of attracting electorally less efficacious parties by the strong parties which form the government, "the guardians of coalitions". Quite clearly, such powers make the participation in the coalition and in the government formed by it very attractive and make for readiness of the member parties to preserve these coalitions until some major temptation props up. People look back with some nostalgia at the socialist times when party affiliation seems to have played much less of a role. A number of highly indicative remarks about difficulties of restructuring of the public sector and about obstacles deriving ultimately from the vertical division of powers is given in a couple of passing but well taken remarks in a still relevant paper by K. Udovički (Udovički 1995: 92–95).

One does not need to waste words to demonstrate what dire implication such a political set-up has with respect to corruption: the realms are divided, each party is an absolute master in the allotted area and corruption can easily unfold, without constraints and limits and without risk of anybody interfering from "outside". The conditions for maximum corruption are created in the described way and there would be a lot of good reasons to worry even if the miracle happened and there had been no corruption. As pointed out in the section 2, the very semblance of corruption and the arrangements in which it is likely to be generated are a serious problem *per se*. Irrespective of the

amount of corruption they generate, they contaminate business and the general social environment and they act as an additional and independent *generator of corruption*. Creating institutional structures fostering corruption simply means inviting corruptive practices and making it practically certain that corruption will appear even if it is altogether absent to begin with. If the conditions for scandal are ripe, the scandal is bound to happen.

There is a fantastically informative piece of evidence emanating from a recent major political change which sheds on institutional determinants of corruption and on likely disturbingly massive spread of corruption, a spread altogether unlikely to fail to dominate the social scene of this country. The May 2012 elections brought a marked shift of government, with opposition parties conquering in both presidential elections and in the parliamentary contest. As for parliamentary elections, the biggest opposition party won a relative majority meaning that it reaped less than 50% of the vote, but, of course, not enough to form the government by itself. A coalition had to be made, but this time the one consisting of ideologically closer parties than was the case before. In short, a truly immense change of government took place. The most conspicuous, veritably spectacular consequence of this radical governmental change was, and still is unbelievable surge of corruptive investigations, the revealed cases and initiated prosecutions. The frequency and scope of corruption affairs is so much augmented that, at least in that dimension of social interactions, one has the impression as if one all of the sudden fell into a completely different world.

Such ostentatious change speaks an awful lot for itself and offers persuasive grounds for several far-reaching conclusions. *First of all*, such momentous change in the number of revealed and judicially initiated cases obviously does not correspond to "corruptive realities" of this country. *Natura non facit salta* and it is impossible for the number of corruptive abuses to jump so much all of the sudden. *Secondly*, the spectacular increase in the number of prosecutions is, no doubt,

politically motivated. The new authorities have found strong political interest to present themselves as originating from the tribe of Robin Hood and irrevocably determined to exterminate the exploitative "enemies of the people". Owing to the set of political circumstances the presently ruling coalition has found its political interests in persecuting corruption and, in particular, in widely publicizing its "achievements" and "deeds" in this touchy field. This is an additional confirmation of the rule, which has the character of an empirical "law," that large actions are initiated and grand "results" achieved only if there is some sufficiently powerful political force in the system which will find such actions and undertakings profitable and contributing mightily to its electoral support and overall popularity. Common good and public interest are *not* the drivers of such actions and will be promoted only under the condition and exclusively to the extent that they simultaneously bring *political profits* to those who would eventually pursue them. *Thirdly* and most depressingly, the sudden jump in the discovery of corruptive abuse testifies to the sad lack of independence and integrity of those institutions which are professionally equipped and legally authorized to prosecute such illegal deeds. If these institutions are doing their job as prescribed by laws and regulated by accompanying statutes, the change of parties controlling the government should produce absolutely no effect on the quality and intensity of their work.

The sudden turnaround in the performance of public attorney's offices, investigating judiciary institutions and the criminal police shows quite evidently that these allegedly independent institutions are politically bossed, that they follow political will of those in power and that their functioning can be nothing else but a haphazard exercise of what they are ordered to do. The struggle against corruption has no sustainable future in this country as the functioning of the entire punitive system will follow the whims of politicians and could again suddenly change with the change of the collection of parties in the office. This conspicuous change in the style of work and performance of the institutions responsible for fighting corruption speaks very

*unfavorably* for both ruling directorates: the preceding one evidently colluded with the wide host of corruptive factors and went along with their illegal transactions; the incumbent ruling commissariat demonstrates its determination not to leave the authorized institutions to work autonomously and thus the intention to continue the illegitimate practice of their instrumentalization.

As for recommendations, not much is about to be offered as a conclusion emanating from this paper. Suggestions that will be offered are of a more or less general nature. The principal reason for the necessity of this stand is the most unwelcome circumstance that majority of determinants of corruption are not controllable. Few concrete policy instruments can be targeted so as to affect corruption directly. On the other hand those elements of the system that are controllable are captured by the politically inspired actors within the system and used predominantly to achieve electoral objectives of maximizing political support and winning over the body of voting citizens. Politically exploited in the described way, these instrumental variables appear exogenous from an economic policy point of view. Corruption is one of those fields on which political arithmetic drastically departs from the economic calculus (Madžar 2011: 318, 377, 384). The crux of the matter is the fact that things regularly recommended by the economists – the insights and suggestions following the lines of economic efficiency and social rationality conceptualized one way or the other – are most of the time not politically profitable. The measures conducive to economic advance and prosperity, particularly in a long run perspective, do not bring votes and quite often turn away electoral body.

Yet, some general guidelines can be offered. As government acts as the breeding ground of corruption, the obvious advice is turn to limited government and minimize or, even better, eliminate its direct interference in allocating and husbanding resources. That recommendation is valid in relation to corruption, but it has general validity and much wider scope of application. Government does not produce nor generates income; to apply resources to a particular development option it

has to take it relying on coercion from those who have created them. The standard truth from the public finance theory is that every dinar taxed or extracted in some other way by the government costs the economy *more than the dinar taken*. That is due to allocative distortion that taxation and other forms of governmental takings produce the well known distortions and shift the system away from economic optima. The other well known deformation is that governmental give and take distorts motivation on both ends of such operation: those from whom income is taken are naturally demotivated for further productive efforts; those to whom is extra income allotted become (re)distributionally motivated and turn their actions to attempts and stratagems conceived so as to appropriate effectively income created by others rather than endeavor to produce income of their own.

As for Serbia, there have been identified specific reasons because of which the orientation to limited government is highly desirable and grave social losses from its crude dirigisme most likely. Because of the weak coalition governments, government itself is likely to remain weak and unable to deliver even the minimal performance which it so irresponsibly promises in an effort to maximize the electoral support. Moreover, vertical division of powers makes governmental machinery almost predestined to generate disturbingly large mass of political and administrative abuse. Transition fever in accelerating legislation, poorly written laws and coercion (and not infrequently free choice and autonomous opting) to adopt the recipes of the European Union – make the governmental meddling in the allocation and husbanding of resources even more damaging. Reducing to the utmost discretion in implementing public policies is an age-old advice which by no means can ever fail. In Serbia even much less that in the vast majority of other counties.

All said, the just proposed general suggestions of minimizing government should not be interpreted as insisting on doing away with government altogether. The usual reminder should again be spelt out: there are crucially important things that can be properly or even in any way performed exclusively by the government and one could hardly



think of any success story in economic development in which government has not played decisive role. But that is only one more argument for pushing government out of dealing with resources directly as it is bad producer, inept investor, poor entrepreneur and lousy innovator. Government should be freed from these interventions into regular business and oriented to decisively important functions of building legal order and steering institutional development, the functions without which sustainable economic development is unthinkable and securing civilizational progress in the form of lasting modernization simply unimaginable. One way or the other, corruption will stay with us. We are not faced with the question of whether there will be corruption or not. The question is only how much corruption and eventually what type out of the broad menu being its constituting part.

## Bibliography

- Attfield, C.L.F., D. Demery and N.W. Duck (1989/1985), *Rational Expectations in Macroeconomics – An Introduction to Theory and Evidence*, Oxford, UK: Basil Blackwell, Inc.
- Barro, Robert J. (1978), "Rational Expectations and the Role of Monetary Policy," *Journal of Monetary Economics* 2: 1–33.
- Blanchard, Olivier (2006/1997/), *Macroeconomics*, Upper Saddle River, New Jersey: Prentice Hall, Fourth Edition.
- Begović, Boris and Boško Mijatović (eds.) (2001), *Korupcija u Srbiji*, Beograd: Centar za liberalno-demokratske studije.
- Begović, Boris and Boško Mijatović (eds.) (2007), *Korupcija u Srbiji pet godina kasnije*, Beograd: Centar za liberalno-demokratske studije.
- Cvijić, Vuk Z. (2012), „Pljačka preko Azotare 100 miliona evra“, *Blic*, 24. novembar, p. 15.
- E. E. P. (2012), „I ucene teraju brendove“, *Večernje novosti*, 24. novembar, p. 15.
- Fiskalni savet Republike Srbije (2012), *Mišljenje o predlogu fiskalne strategije za 2013. godinu sa projekcijama za 2014. i 2015. godinu*, Beograd, 13. novembar.
- Fiskalni Savet Republike Srbije (2012a), *Ocena predloga zakona o budžetu za 2013. godinu*, Beograd, 13. novembar.

- Foreign Investors Council (2011), *White Book – Proposals for Improvement of the Business Environment in Serbia*, Belgrade: Foreign Investors Council, co-edited with Professor Mihailo Crnobrnja.
- Lucas, Robert F.Jr. (1972), "Expectations and the Neutrality of Money," *Journal of Economic Theory* 4: 103–124.
- Madžar, Ljubomir (2011), *Iskušenja ekonomske politike u Srbiji*, Beograd: JP Službeni glasnik.
- Poper, Karl (2002/1963), *Pretpostavke i pobijanja*, Novi Sad i Sremski Karlovci: Izdavačka knjižarnica Zorana Stojanovića.
- Rose-Ackerman (2001): "Political Corruption and Democratic Structure," in: Arvind K. Jain, (ed.), *The Political Economy of Corruption*, London and New York: Routledge, pp. 35–62.
- Rouz-Ejkerman, Sjuzan (2007 [1999]), *Korupcija i vlast*, Beograd: Službeni glasnik.
- Snowdon, Brian and Howard R. Vane (1997), *A Macroeconomic Reader*, London and New York: Routledge.
- Soto, Hernando de (1989), *The Other Path*, New York: Harper and Row Publishers.
- Soto, Hernando de (2000), *The Mystery of Capital*, New York: Basic Books.
- Tanzi, Vito (2012), *Corruption and Public Administration*, Power point notes for the lecture delivered in the Institute for Philosophy and Social Theory, October 21, 2012.
- Udovički, Kori (2005), „Restrukturiranje javnog sektora u Srbiji: da li smo spremni?“, B. Pelević et al., članovi Programskog odbora, *Ekonomska politika u 2006. godini*, zbornik radova sa istoimenog savetovanja održanog 17. i 18. decembra u organizaciji Naučnog društva ekonomista Srbije sa Akademijom ekonomskih nauka i Ekonomskog fakulteta u Beogradu, Beograd: Ekonomski fakultet u Beogradu, pp. 91–96.

Narcis Tulbure

## Faces of Corruption: Gossip, Opportunistic Reasoning, and Value Creation on Romanian Capital Market

Breathing heavily, Ippolit Matveyevich nodded his assent. Ostap Bender then began stating his terms.

"In the event of acquisition of the treasure, as a direct partner in the concession and as technical advisor, I receive sixty per cent. You needn't pay my national health; I don't care about that."

Ippolit Matveyevich turned grey. "That's daylight robbery! And how much did you intend offering me?"

"Well . . . er . . . five percent, or maybe even ten percent. You realize, don't you, that's fifteen thousand rubles!"

"And that's all?"

"Yes"

"Maybe you'd like me to work for nothing and also give you the key of the apartment where the money is? In that case, I'm sorry," said Vorobyeninov through his nose. "I have every reason to believe I can manage the business by myself."

"Aha! In that case, I'm sorry," retorted the splendid Ostap. "I have just as much reason to believe, as Andy Tucker used to say, that I can also manage your business by myself."

...

"You're a rather nasty man," retorted Bender. "You're too fond of money."

"And I suppose you aren't?" squeaked Ippolit Matveyevich in a flutelike voice.

"No, I'm not."

"Then why do you want sixty thousand?"

"On principle!"

Ippolit Matveyevich took a deep breath.

"Well, are things moving?" pressed Ostap.

Vorobyeninov breathed heavily and said humbly: "Yes, things are moving."

[Ilf and Petrov, *The Twelve Chairs*, Chapter Six: A Diamond Haze]

In the evening of December 3, 2009, most Romanians were sitting in front of their televisions watching the final confrontation between

the two presidential candidates running in the second round of the elections. The campaign had been very tense, with lots of attacks, sensational stories about the opposing candidates, and the uncovering of long forgotten episodes in their biographies that led to a radical polarization of both the political actors and Romanian society behind the two candidates. In most opinion polls, the acting president of Romania at the time, seen by many as a supporter of Romania's Western integration and an advocate of anti-corruption policies, was lagging behind the candidate of a broad coalition of left-wing, liberal, and ethnic parties. Although he was a former Romanian ambassador to the United States of America and a prototype of the new technocrats emerging at the end of the socialist period, the left-wing candidate was seen as suspiciously close to Moscow (a constant object of fear in the Romanian political imaginary) and as too tolerant towards the cases of corruption in his own Social Democratic Party. All things considered, everybody knew that the acting president had to pull something big if he were to reverse the trends registered by the opinion polls. Then, three nights before election day, well into the televised debate, when the candidates had the chance to address questions to each other, the questions of the acting president struck his opponent one after another: "Why did he lie in the past debates about the several meetings he had with Sorin Ovidiu Vintu (SOV)?", "Was it true that he visited SOV the night before?", "What was so urgent that a President of the Senate and would-be President of Romania visits the home of a controversial businessman in the middle of the night just a few days before the elections?", "Was SOV afraid after Nicolae Popa, the pawn he had used to siphon money from several mutual funds, already condemned by Romanian courts to 15 years in prison, had been caught in Jakarta and was about to be extradited to Romania?", "Did SOV ask for protection from justice and has the politician made any promises?", "Was the constant support he received from SOV's media empire throughout the campaign part of this arrangement?"<sup>1</sup>

1 The specific fragment of the TV debate between the two presidential candidates is available at the following address: <http://www.youtube.com/watch?v=wCziKfNj7-o>.

That moment in the debate is said to have had a huge impact on the result of the elections. Contrary to all expectations, the trend in the voting options had changed and, three days later, the acting president had won a second mandate by only a very narrow margin. SOV's interventions at his own TV station (*Realitatea TV*)<sup>2</sup> that night as well as the interviews he gave to the newspapers during the following days were not able to provide an acceptable explanation for the visit.<sup>3</sup> While the wrong step of the presidential candidate did not take many by surprise given his record of political mistakes, many people were surprised to see SOV take such a public stance and get involved publicly in a political dispute. Was he really so desperate as to step out of his reserved attitude? Did he really lose so much money that despair made him lose the phantomatic aura he had worked so hard to create over the years? Or, on the contrary, did he feel so powerful at the time and so sure of his candidate's victory that he did not think it was necessary to mask his actions anymore? Did he really think he could out-talk everybody and manipulate public opinion, as he had done so brilliantly in the past, and this made him assume an unprecedented risk?

In spite of the apparent contradictions, one is actually able to accept affirmative responses to all the above questions. While his businesses were not going so great, SOV, as many in his camp of spectacularly rich people who were "made in postsocialism" through financial swindles and inflated contracts with the state, believed the candidate he was supporting had no chance of losing the elections. He also must have believed that he would be in a good position to exert a strong influence on the decisions of the new president in exchange for the personal advice and media support given during the campaign. In this

2 *RealitateaTV* (<http://www.realitatea.net/>) has been for several years the most important news station in Romania based on the TV ratings. The media trust owns also The Money Channel (<http://www.money.ro/emisiuni.html>), a station dedicated to financial news and analyses.

3 According to SOV, "I [SOV] have been friends with M.G. [the candidate] for over four years; I liked him very much as a Foreign Minister. It is a genuine friendship that I had the delicacy not to disclose. [...]. He came to me to relax, we are friends, we chatted a lot." See: Ziare.com 2009a: internet.

context, appearing in public before the vote and having his support noticed even before the official result was known would prove crucial in the competition for political favors among Romanian businessmen in financial distress. Moreover, SOV must have thought he would be once more in a position to outwit everybody and have the public play his game.

### **The promises and performances of the Romanian capital market**

My chapter focuses on one of the most frequently mentioned names in the public debates about the collapse of the National Investment Fund and the National Accumulation Fund – two hugely successful mutual funds that collapsed in the spring of 2000 generating a huge political scandal and increased social tensions. The person generally considered to have masterminded the pyramid scheme that led to the collapse of the mutual funds mentioned above, Sorin Ovidiu Vintu, became afterwards a media owner with good connections among the highest level politicians and the secret services. I draw his portrait based mainly on the few interviews he gave to journalists over the years, on innumerable articles about him in Romanian newspapers and online media, on the information that surfaced from his file as an informant of the socialist secret services (*Securitate*), as well as his image created through gossip by the lay investors that I interacted with during fieldwork.

Vintu illustrates key ways of understanding the value of money, the moral and social values on which its multiplication and redistribution should be based, or the role of the state in fostering notions of risk and gain. His reasoning provides some of the most articulate visions of capitalism and ideals of political organization circulating in Romania. However, reason is not the only ingredient giving currency to his visions. Gossip proves to be a fundamental form of knowledge. Such knowledge could be seen as the *verso* of more formal types of rationality, yet at least as influential in facilitating social action.

The various notions of value described in this chapter are illustrated with the interventions of differently positioned actors. Concomitant with the analysis of financial repertoires pertaining to value, one should illustrate, I argue, the renegotiation of social and moral registers understood as values-in-use situated in context. This chapter is a presentation of the opportunistic shift between registers of value and of the redefinition of capitalist morality by some of the key actors of Romanian capital market. Such opportunistic endorsement of (even contradictory) values is the correlative of the ambivalent relation between lay investors and financial speculators that have proved their skills at playing the financial exchange.

The capital market designed for Romania by the U.S. Agency for International Development (USAID) started operations in a turbulent economic climate. The political counterparts of the more or less chaotic transformations in everyday economic practices after socialism were the state measures towards stabilization, marketization, and privatization. These were conceived as a mix of policies meant to transform the planned economy inherited from socialism into a "functioning market economy" and a political regime of "market democracy"<sup>4</sup>. Economists of transition have described postsocialist reforms as a web of interconnections, a range of simultaneous and interdependent measures towards price liberalization, privatization, and macroeconomic stabilization (Lipton 1993: 3). Although the Western advisors of early democratic governments in Eastern Europe (Kornai 1990; Lipton, Sachs 1990; Feige 1990; Kowalik 1991; Demekas, Khan 1991) had a clear roadmap in mind that was recommended to every country in transition, the later retrospectives on Eastern European reforms generally refer to the ambivalent results of such processes (IMF 2000; Pradeep 2002; Myant, Drahokoupil 2010).

---

4 While the concept emphasizes the solid link between democracy and market economy, some critics decry the dilution of democratic principles with the growth of market practices involved in the coordination of more and more spheres of social life, including those previously premised on political arrangements such as pensions, social benefits, education or healthcare.

In Romania, the recreation of private property rights and the privatization of the state enterprises were implemented rather late and without enthusiasm, and were soon misappropriated by those with good political connections among either the communist technical elite or the newly rich. The privatization of state factories proved, in all respects, a challenging enterprise. The early postsocialist authorities were caught in between pressures to privatize made by international financial organizations and the example of their peer Eastern European countries, the demands for social assistance by state employees, calls for protectionism by the state managers and the technocratic elite, resistance to privatization from the nationalistic groups involved in politics, as well as their own preference for a system in which the state plays a controlling role. The first privatization attempts were based on the MEBO (management and employee buyout) method (Ellerman 1993). The procedure gave managers and workers (directly or represented by the labor unions) the chance to subscribe to some of the shares of the company in which they worked.

Although an excellent theoretical idea that would give workers the chance to become owners and would close the gap between principals and agents, the MEBO method of privatization proved in practice an instrument for the appropriation of value by the older managerial elite. The subscription of capital was administered by the directors and the labor union leaders, many of them controlled politically and through *Securitate* files. Most of the workers were only nominal owners as their voting rights were regularly exercised by the managers that got their mandate. Others were even forced to give away their subscription rights or sell their shares at very low prices to the directors under the threat of being laid off.

Romanian authorities were soon forced to put in practice a more comprehensive privatization process. Faced with financial disequilibria, Romania had to give in to the pressures of international financial organizations and implement a voucher privatization process following the model in the Czech Republic and the Russian Federation. Former



socialist state enterprises were incorporated and their shares were allocated among a State Property Fund (70% of capital) designated to administer the privatization process, and five regional Private Property Funds. Adults were initially distributed privatization coupons<sup>5</sup> with a set nominal value that could be subscribed either directly for the shares of specific companies or to one of the five Private Property funds organized as closed-end funds.

In the absence of any familiarity of the public with financial instruments and markets or of any serious public information campaign, the first wave of the privatization process proved a fiasco. In spite of the nominal value each coupon had, the rapid inflation and the impossibility to evaluate the companies undergoing privatization made it a challenge to determine the value of privatization vouchers in any fundamental way. Privatization vouchers were traded informally in the streets of all cities and towns (usually next to farmers' markets) or were given away to relatives and political patrons. Among those who did subscribe their coupons, few did it based on a "rational" calculus in the economic understanding of the term. Many were driven by affective criteria and the notoriety of local companies. Even more people used their coupons and those of their family to invest in the company where they worked replicating thus the previously implemented MEBO strategy<sup>6</sup>. Either through de facto control of voting rights, through purchase of shares at ridiculous prices, or through outright appropriation, many of the directors of former state companies managed to concentrate large chunks of their capital offering in exchange political connections that secured subsidies for the companies and the promise not to lay off their subordinates. Most of these local forms of barter (giving up ownership control in exchange of job

---

5 See Law no 58 of 1991 regarding the privatization of companies, Adopted by the Romanian Parliament, Published in the Official Bulletin no. 169 from 16 August 1991, (internet) available at: [http://www.cdep.ro/pls/legis/legis\\_pck.htp\\_act?ida=1330](http://www.cdep.ro/pls/legis/legis_pck.htp_act?ida=1330).

6 This was, however, a distinct privatization strategy as outsiders were allowed as well to subscribe the shares of the respective companies.

security) proved futile as many of the state loss making state companies were shut down and sold as scrap iron during the structural adjustment programs at the end of the 1990s.

While the poor economic performance and macroeconomic disequilibria during the mandate of the socialist regime of the early 1990s were used by the international financial institutions to force the Romanian government to re-embark on structural adjustment reforms and a new program of privatization (whose institutional vehicle was a capital market designed and paid for by the USAID [Liebersson *et al.* 1998; Fox 2000; USAID 2001]) the economic conditions proved to have different kinds of implications for the market in the longer term. These conditions forced the right wing coalition of parties, running on a reformist and pro-Western platform and brought to power at the end of 1996, to adopt harsh measures of macroeconomic stabilization, price liberalization, and industrial restructuring. The necessary readjustment of the economy came at the cost of a harsh economic contraction throughout the period of 1997-1999.

The privatization program was given a new impetus in 1995 when a new series of vouchers were distributed to adult Romanian citizens and a new set of state companies were listed for privatization. This was the dawn of an easy money era in postsocialist Romania. Taking advantage of the regular errors of independent registries servicing the stock exchange, of the complications due to oversubscription of shares and of the large mass of uninformed (if not financially illiterate), old and even dead investors, huge numbers of shares were sold fraudulently by financial intermediaries that made fortunes banking on authorities unwillingness or inability to enforce the law. A large part of the "capitalists" in the Romanian version of *Fortune's* top 100, among them, Sorin Ovidiu Vintu, the central character of this chapter, also pretend to have made their "first million dollars" in the muddy financial markets of the 1990s.

Many of the weaknesses of the Romanian capital markets were structural, being induced by the faulty design and the untimely institu-

tionalization of market authorities. Others can be assigned to the informal power of the former technocratic elite and of the communist secret services that were able to manipulate the privatization process. Equally important, the culturally situated forms of knowledge and action through which new financial practices were filtered by the large part of the uninformed public also generated particular configurations and dynamics of the privatization process. Scholars writing about the Romanian capital market (Vosganian 1999; Markiewicz 2007) or professionals contemporary with the events generally consider that the creation of the first market institutions and investment funds before a supervisory agency (an independent securities commission) was in place was an institutional mistake that invited fraudulent practices. By the time the Romanian National Securities Commission (CNVM) and the Bucharest Stock Exchange (BSE) were created in 1995 (based on the Securities Law adopted a year before) Private Property Funds created by the state and independently initiated mutual funds had been operating for several years. Similarly, the distribution of privatization vouchers and the issuing of shares prior to the development of an exchange for the quoting of transferable securities complicated very much the process of valuation and stimulated speculative transactions that made some rich and ruined others.

Added to the technical inconsistencies outlined above, the effects of the macroeconomic contraction during the second half of the 1990s were rather depressing for the newly created capital market. Although RASDAQ, the market commissioned by the USAID, had a rally for over a year which also involved the previously created Bucharest Stock Exchange, the signs of decline in the market began to appear towards the end of 1997. Further down the chain of financial intermediation, the effect of the capital market decline on the emergent mutual industry was devastating. While most mutual funds decided to withdraw from the capital market towards the safety of bank deposits and instruments of the monetary market, there were some whose managers decided to be "creative" in the context of the economic crisis. Such was the case with the National Investment Fund [*FNI*] and the

National Accumulation Fund [FNA] whose asset manager, appointed and manipulated by SOV, began making dubious investments in unlisted securities, engaging in creative accounting and the inflation of asset values, as well as reporting fictitious growths of net asset values. Such practices brought the two funds into a position to dominate the mutual fund sector with regard to the number of investors and the reported asset values through the end of the 1990s, but also created the condition for spectacular defaults.

Unfortunately but unavoidably, *FNI* collapsed in May 2000, just half a year before the general elections, pulling *FNA* down with it. From the collapse of the two funds to a crisis of the mutual fund sector was just a short way. The effects were spectacular: huge losses (at least when compared to the last stated net asset values), over 300,000 retail investors deprived of their savings, social unrest, considerable political implications, and a long-term effort for the recuperation of losses and the reimbursement of defrauded investors. Obsessive questions seemed to haunt everybody's mind: who was behind the two funds? Who had designed the fraudulent scheme? Who was involved in the collapse of the funds? Who was to take responsibility for their acts? Who was going to resolve the crisis? Who was going to bring compensations to the investors?

### The "great combiner": a Romanian Ostap Bender

Sorin Ovidiu Vintu has been described by some of the insightful analysts of recent Romanian history and politics as a local Ostap Bender,<sup>7</sup> the main character of Ilf and Petrov's novel the *Twelve Chairs*.<sup>8</sup> Sabina

---

<sup>7</sup> See Fati 2011a: internet.

<sup>8</sup> Written by Ilf and Petrov, two authors originally from Odessa, the novel describes the journey of a member of the former Russian nobility and a street-smart wanderer in pursuit of the family jewels hidden by the mother-in-law of the first character in one of the twelve chairs they had in the dining room. As the communists have confiscated the furniture and distributed the chairs to various state institutions, the two associates travel throughout post-revolutionary

Fati, one of the best investigative journalists in Romania, finds many similarities between the main character of the novel and Vintu: a mustached sympathetic crook, the local financier proved able to manipulate the messy bureaucratic system and to pander to the greed, opportunism, and gullibility of innocent people.<sup>9</sup> In time, however, SOV felt the role of a brilliant yet powerless swindler to be limiting; he progressively assumed the role of "great combiner", something Ilf and Petrov's character always pretended to be. Possessing the same wit, personal charisma, persuasiveness, and ability to exploit every situation to his advantage as his imaginary Russian equivalent, SOV is said to have charmed many people. Close collaborators and former employees, prominent public intellectuals and journalists, public functionaries and politicians, all that have come to know and work with him were caught in the web of meanings and actions meticulously spun by Vintu. One by one, great figures of the Romanian intellectual establishment came to be entertained by SOV and funded through generous cultural prizes he set up.<sup>10</sup> Quality publications such as the cultural weekly *Ideii în dialog* or the political satire weekly *Academia Cațavencu* were funded or bought by Vintu well after the *FNI* scandal. To the surprise of Sabina Fati, none of those funded by SOV seemed to wonder where the money came from or to have second thoughts about their relations to a controversial figure.

Other journalists, such as Ioana Lupea,<sup>11</sup> are convinced that all those respectable intellectuals and journalists were made into the best

---

Soviet Union and when they finally get to the twelfth chair they find out that the jewels had been already found and used to pay for a club for railroad workers. The novel is an excellent illustration of the historical change brought by the Bolshevik Revolution, the inadaptability of former elites, their egoism, individualism, gullibility, as well as the unbounded imagination of con-men.

9 See: Fati 2010: internet.

10 The names mentioned by Sabina Fati – Alexandru Paleologu or Nicolae Manolescu, more than respectable for anyone familiar with Romanian high culture, add to a list of numerous other prominent figures who received funding or prizes for their remarkable careers.

11 See: Lupea 2010: internet.

possible PR agency working for Vintu. All of them accepted inclusion in a collection of figures sponsored by the swindler in exchange for prestige and legitimacy. Many of the intellectuals and journalists who reported on their collaborations with SOV projected the image of a complex personality with numerous qualities: a brilliant financial speculator with a genius of business, endowed with great literary taste and sensibility, a lover of domestic animals, protector of the arts, media mogul, and visionary counselor for leading politicians. The journalist admits SOV's strategic intelligence as taking advantage of investors' gullibility and greed, and after having worked through naive frontmen that protected him from any legal liability, he also employed a large group of respectable public figures to project his favorable image, in addition to employing numerous retired *Securitate* officers to open doors and offer protection to his businesses. His cynicism in elaborating and using this strategy is evoked by one of his interlocutors, reproducing Vintu's words: "people who have a lot of money collect stamps or famous paintings; I collect famous people. I'll stay in Romania until every last citizen of this country is proud to have been my contemporary."<sup>12</sup>

In spite of the reasons one could find behind Vintu's public involvement in the presidential campaign of 2009, his frequent public positions in recent years appear as a change of style if not as a surprising shift of strategy. Over the years, SOV managed to entertain the image of a mysterious and powerful character on the local financial and political scene, somebody who knows everything and everyone, makes decisive and brilliant decisions, using intricate strategies, and almost never appears in public. In the late 1990s, Vintu's mystique grew as spectacularly as his wealth. Almost everybody was aware of the presence of the potent owner of *Curentul* (a prime, quality daily newspaper) and of the group of financial companies centralized under the name of *Gelsor*. However, his strategies or the beliefs that drove him remained, for most people, an impenetrable secret.

---

12 See: Sima 2010: internet.

## The sleaziness of markets in the 1990s and the personal mystique of financial speculators

According to rumors, Vintu has started making money in his native town of Roman (near Iași, in the province of Moldova) with a few boutique stores opened after 1989, and through a local newspaper published there in the first years of the postsocialist period.<sup>13</sup> Others believed that SOV's first spectacular profits were made through speculation in the certificates of property distributed in the privatization program at the beginning of the 1990s.<sup>14</sup> That rumor is confirmed by recent articles reporting on Vintu's early postsocialist history. In fact, together with Gelu (Gheorghe) Teodorescu, a professor of sociology at Alexandru Ioan Cuza University in Iași, Sorin Ovidiu Vintu incorporated *SC Bursa GelSor SA* (the name of the company is formed from the initial letters in the names of the two associates).<sup>15</sup> The company was the institutional vehicle through which certificates of property were collected in the "street corner market" with the help of Roma "brokers" and then resold at a huge profit.<sup>16</sup> As the certificates were not legally securities (they were classified as potential subscription

---

13 In an interview in the business weekly, SOV reminisced about *Românul Liber*, the newspaper he published in the first days of the revolution of 1989, as well as about the boutiques he kept in Moldova during the first postsocialist years. See: Capital, 2001: internet.

14 M., whose view on Romanian capital market was presented in the previous chapter, confirmed during our interview that Vintu was a close acquaintance of his, that they knew each other from the early '90s, and that he was one of the biggest aggregators of certificates of property distributed during the mass privatization program.

15 See: Dan 2012: internet.

16 Recent articles in obscure regional newspapers (common venues for information slipped from the secret services) report that Vintu was relying on "mafia țigănească a bulibașilor" [Gypsy headmen mafia] who gathered certificates of property all over the country and sold them to him. He is proud that the government eventually changed the law to incriminate the intermediation of certificates of property in response to the control over the subscription rights issued by the government that was exercised by Vintu and a handful of other people. See: Popescu 2011a: internet.

rights in the companies to be privatized), their trading was not clearly regulated by law. While some people were actually imprisoned for dealing in certificates – actually, for a variety of small crimes having to do with notions of speculation inherited from the communist penal code, with unregistered commercial activities, and with tax evasion, Vintu was luckier: he was only fined by the fiscal authorities and later made a fortune. His aim was that of creating a capital market in Romania. *Bursa Gelsor* was the vehicle he envisioned for that. Vintu was also frustrated to see his efforts wasted by USAID's sustained program aimed to construct from scratch a new capital market in Romania, one that, as opposed to its predecessor in the early 1990s, was to be (better) regulated from the top.

Speculation in certificates of property was good training for SOV and his collaborators. Later on, when the Bucharest Stock Exchange and the USAID market (RASDAQ, modeled on the American NASDAQ) were in place, Vintu used another company from the *Gelsor* group to mediate transactions on the regulated markets. His ambition was, again, that of controlling the market and of being more than a competitor in a game designed and arbitrated by others:

we were the first market makers. We created the Bucharest Stock Exchange. Not me alone. There were others that worked for the creation of the exchange, but we were among the first.<sup>17</sup>

Capital 2001: internet

*Gelsor* was expanding spectacularly. The mirage of an important institutional development as well as the incredibly high salaries attracted some of the best specialists in finance in Romania during the 1990s. The vice-governor of the central bank, the chief economist of

---

<sup>17</sup> See "Lumea lui Sorin Ovidiu Vintu" [Sorin Ovidiu Vintu's World], *Capital*, 8 November 2001, (internet) available at: <http://www.capital.ro/detalii-articole/stiri/lumea-lui-sorin-ovidiu-vintu-5370.html> (viewed 1 September 2012).



the central bank, a director in the Ministry of Privatization, and even a former prime minister came to work for SOV in the second part of the 1990s.

Whatever he had done in the first years after 1989, Vîntu really became notorious for the creation and (initially) successful administration of *FNI* and *FNA* and for having built *Gelsor* – a company portrayed by SOV himself as the most successful broker operating on the Romanian capital market. Until the funds collapsed, people were gossiping about the role of numerous former *Securitate* officers now occupying leading positions in Vîntu's firms, including ones as directors of 43 out of the 46 county branches of *FNI*.<sup>18</sup> He came to admit that in one of the rare TV interviews he gave, to journalist Marius Tucă in 2002, but retired intelligence officers are used by all major financial companies as an internal protection service.<sup>19</sup> However, knowing how former *Securitate* agents have come to dominate important niches of the Romanian private sector after the postsocialist privatization, few people really believed the mission of such agents was merely defensive. Such people could indeed be used to protect the organization, but they were also masters of blackmail, extortion, and the use of classified information for their own profit. Other people were talking about his high political connections and rumored that every major politician in every significant political party in Romania was on Vîntu's payroll. The businessman also came to acknowledge as much in the TV interview of 2002 but confessed to having invested mostly in right-wing political movements that were closer to his own ideological beliefs.<sup>20</sup>

---

18 For a confirmation of these rumors, see the statement of the officer of the Police that was initially in charge of investigating the collapse of *FNI* in Ziare.com 2010: internet, as well as Athenian-Legacy.com 2010: internet.

19 See live interview taken by Marius Tucă to Sorin Ovidiu Vîntu, *Marius Tucă Show, Antena 1*, 7 January 2002, min. 00:37:00, (internet) available at: <http://www.youtube.com/watch?v=ZabxsZP8CMY&feature=related> (viewed 1 September 2012).

20 *Ibid.*, min. 00:09:30.

## More pawns on Vîntu's chessboard

During the same period, SOV sold some companies, such as *SOV Invest*, the asset management company that administered *FNI*, in what many saw as an essential move towards the default of the fund and his escape from legal responsibility, and opened up some new businesses, including *Banca Română de Scont* [Romanian Discount Bank] and *Banca de Investiții și Dezvoltare* [Bank for Investments and Development], where most of the money he siphoned of *FNI* was eventually invested.<sup>21</sup> In both cases, Vîntu worked through well-chosen intermediaries that served his interests well and severed his ties to any form of legal responsibility.

*SOV Invest* changed ownership several times but ended up in the property of *CENTROCOOP*, the largest cooperative of craft smiths and shopkeepers under socialism that became, by the end of the 1990s, a cash cow with huge real estate assets all over the country and a naive leadership; *CEC*, the state savings bank since socialism, and *Banca Agricolă*, a relatively large state-owned bank focusing on the agricultural sector. The mutual fund manager appointed by Vîntu, Ioana Maria Vlas, bought *SOV Invest* from her boss and later sold her participation to the state banks. This continuous change in ownership is seen now as part of the process through which Vîntu escaped legal responsibility, sold a decaying business at an unrealistic price, and various other state officials/organizations became the target of accusations and demands for compensation instead.<sup>22</sup>

Ioana Maria Vlas, the former employee of Vîntu who became the president of *SOV Invest*, took all the controversial measures during

---

21 Vîntu admitted to having done that in the same interview with Marius Tucă, min. 00:34:00. The transfer of money, intermediated by SOV's representative left at the management of *SOV Invest*, Nicolae Popa, was seen by the Romanian central bank as a form of domestic credit and an illegal source of capital for a newly created bank.

22 See: Popescu 200b: internet.

the period that ended up with the collapse of the fund. She fled to Israel, but was brought back to justice and eventually sentenced to several years in prison in each of the *FNI* and *FNA* cases. A teacher of French at a high school in Cluj-Napoca, Vlas had come to Bucharest in search of a better fortune. She gained some reputation because of her intelligent remarks made during the USAID-organized seminars for the training of brokers for the capital market. Speculating during several moments of crisis on the market for mutual funds, including the collapse of the very notorious *SAFI Invest* in 1996, and circulating a false biography according to which she had been in charge of investment companies in the USA or of pension funds in Chile, Ioana Maria Vlas was appointed to the top of several asset management companies and even as president of *Uniunea Națională a Organismelor de Plasament Colectiv [UNOPC]* – now the Romanian Association of Asset Managers (Atac de Constanța 2011: internet). Her professional relation with Vîntu came as recognition of her promising finance career and as an opportunity to prove herself. Unfortunately, she ended up just another pawn on SOV's chess board, a game he plays obsessively every day.<sup>23</sup>

For *Banca de Investiții și Dezvoltare [BID]*, Vîntu chose Nicolae Văcăroiu, former top ranking bureaucrat in the Ministry of Finance under communism, prime minister of Romania when the USAID capital market and new privatization scheme were designed, and after 2001 President of the Romanian Senate, to build a truly professional bank.<sup>24</sup> This was a great move given that Văcăroiu's party won the general elections in the fall of 2000. No wonder, then, that Vîntu escaped any charges related to the *BID* case<sup>25</sup> when his crimes

---

23 After conviction, she spent several years at a women's penitentiary, got involved in the education of several younger inmates, and wrote poetry and a book about her experiences in prison. She currently lives in a former German village next to the charming city of Sibiu, in the house of a family friend, reading, feeding the chickens, and fishing every day. See Flavia 2011: internet.

24 See: Ziarul de Iași 2000: internet, as well as: Ziarul de Iași 2001: internet.

25 See: Ziare.com 2009: internet.

reached extinctive prescription.<sup>26</sup> Operations at *Banca Română de Scont [BRS]* were then conducted by Teodor Nicolăescu. A director in the Romanian Ministry of Privatization, Nicolăescu was recruited by Vîntu and worked for *Gelsor* before becoming a shareholder and president of *BRS*. To Vîntu's benefit and, as he later confessed, at Vîntu's command, Nicolăescu appropriated funds from the bank customers and deposited them in his employer's account. In typical fashion, he fled Romania when the bank collapsed but later surrendered to the authorities, was incarcerated for a year and a half and only sent to trial in 2010.<sup>27</sup> Vîntu is yet to face trial for his involvement in the *BID* affair.

SOV's association with people affiliated with the Romanian government and/or agents working for the intelligence community seemed to pay off. Recent reports explain in detail some of his spectacularly successful investments made during the mid-1990s, such as his purchase of *Sanevit*, a bankrupt state producer of medical supplies in 1995, just months before the company was recapitalized with state loans and later received the exclusive right to sell disposable syringes to Romanian hospitals. *Gelsor* later sold the company at a huge profit to one of the private investment funds just a few days before the Romanian competition council decided to break *Sanevit's* monopoly over the supplies for the domestic hospitals.<sup>28</sup> Later on, the flow of money towards the National Investment Fund (*FNI*) was amplified by a government ordinance (No. 98 of 1999) granting the immediate payment of compensation to workers laid off as part of the structural readjustment programs implemented by the Romanian government if the funds were invested on the capital market or in domestic

26 Extinctive prescription, or the negative prescription for crimes and misdemeanors, referring either to sentences or to indictments, is an import into Romanian law from French public law. It can be considered a functional equivalent to the statute of limitation in American law. See: Wikipedia, internet, as well as *doctorate.ulbsibiu*, internet for more information about prescription in France and Romania.

27 See: Hotnews 2012: internet.

28 See: Toncea, 2012: internet.

mutual funds.<sup>29</sup> As *FNI* was attracting more than three quarters of all sums invested in mutual funds in Romania, many have alleged that the ordinance was meant to facilitate the further growth of the pyramid scheme at a time when its development resources were starting to shrink.

The "great combiner" continued to do business after the elections of 2000. In spite of his past sympathies and support for right-wing political parties, the recruitment of Nicolae Văcăroiu – soon to be appointed President of the Senate by the Social Democratic Party – and friendship with Radu Timofte – the director of the Romanian Intelligence Service (*SRI*) from 2001 to 2006 – assured him of good treatment from the new regime.<sup>30</sup> His relations to the secret services have known ups and downs: from pragmatic collaboration with the first head of *SRI* under postsocialism, Virgil Măgureanu, who supplied him with retired and even active information officers for his financial companies,<sup>31</sup> to his alleged threats to assassinate the head of the Foreign Intelligence Service in 2000,<sup>32</sup> back to a friendly relationship with the head of *SRI* after 2001. The image of a ruthless player was amplified by later rumors about the assassination of Luminița Segă, the prosecutor investigating Vîntu's crimes in the *FNI* case. Forensic examination found her to be a victim of aluminum poisoning, but the investigation stalled and the case is still surrounded by mystery.<sup>33</sup>

29 See article 34/1/b of Ordonanță de Urgență nr.98 din 24 iunie 1999 privind protecția socială a persoanelor ale căror contracte individuale de muncă vor fi desfăcute ca urmare a concedierilor colective [Government Ordinance no. 98 of June 24, 1999 regarding social protection measures for persons whose employment is finished during collective layoffs] (Official Bulletin of Romania 1999: internet).

30 See: Ovidiu, 2005: internet, and Roncea 2010: internet, for the alleged relations between SOV and the heads of Romanian secret services.

31 See: Popescu 2011a: internet.

32 Roncea 2010: internet, presents the accusations made recently by Cătălin Harnagea, the head of the Foreign Intelligence Service in 2000. Vîntu rejected such accusations as ridiculous in an interview with Marius Tucă in 2002 stressing that neither is he a killer, nor is the alleged target worth a bullet.

33 See: Dancu 2007: internet.

Although it is hard to believe that things could have gone so far without the state institutions to intervene, Vintu definitely enjoyed his mask, as his threats to a younger business partner a few years ago seems to indicate: "Let's have a man-to-man discussion, a discussion from an old scamp to a younger one. [...] Your friend Măgureanu can tell you how he gave me approval to shoot racketeers on Romanian territory [...] and I killed hundreds of them, not only tens."<sup>34</sup> Little, if anything, should be added to such a "confession".

He continued to invest in many domains but expanded progressively towards mass-media, a choice determined by his reaction to the "vicious" press campaign initiated against him after the *FNI* scandal and facilitated, according to his confession, by the low standards of morality among Romanian journalists that almost ask to be bought by those financially potent.<sup>35</sup> In the first years after 2000, he had a rather untroubled relation with the judiciary as he was either acquitted or not effectively prosecuted in any of the cases in which he was investigated. While his friendship with the head of the Romanian Intelligence

34 See Fati 2010b: internet. Recordings of the dispute among the two businessmen were published by the most important news stations and newspapers soon after Vintu was briefly arrested and soon after sent to trial by the prosecutors in 2010. According to the investigators, Sebastian Ghiță, a prosperous businessman who accumulated a considerable fortune by providing various state institutions with software applications, had complained to the authorities that Vintu, whose news station (*Realitatea TV*) Ghiță was administering and financing at the time, was blackmailing him to make additional payments related to their contract. Ghiță agreed to wear a recording device and was able to capture the conversation during which Vintu was threatening him. Subsequently, during the trial sessions that led to his incarceration, Vintu accused Ghiță of being himself a pawn of the secret services (*omul serviciilor*) and their new tool in the fight with him. See Ziare.com 2011: internet

35 See live interview taken by Marius Tucă to Sorin Ovidiu Vintu, *Marius Tucă Show, Antena 1*, 7 January 2002, min. 00:43:00, (internet) available at: <http://www.youtube.com/watch?v=ZabxsZP8CMY&feature=related> (viewed 1 September 2012). Other businessmen familiar with Vintu's machinations describe specific situations when SOV managed to "buy"/subsidize some of the most reputed investigative journalists by providing them with funds through respectable intermediaries, such as the dissident poet Mircea Dinescu. See Sima 2010: internet.

Service was notorious,<sup>36</sup> the politicians in power in Romania until 2004 were in a paradoxical situation: either they called him innocent and then had to face criticism from the public, or they called him as responsible for the collapse of *FNI* and other financial scandals and then had to explain the association with SOV of various prominent figures of the political regime.<sup>37</sup> Vîntu had a few media appearances and gave some well scripted interviews to carefully chosen journalists, but was prudent enough to decline appearance in satirical cinematic productions such as Alexandru Solomon's masterfully crafted documentary on the most controversial figures among the postsocialist newly rich.<sup>38</sup>

### Twists of fate, revisions of the past, and some theoretical reassessments

Fate turned against SOV after his public involvement in the campaign for the presidential elections of 2009. Both journalists and the public commented on the imprudence committed by someone who had built his postsocialist career as a very discrete mastermind of finance and politics. Soon after the capture and extradition from Indonesia of Nicolae Popa (SOV's "right hand" at *FNI*) in the fall of 2009, Vîntu was faced with renewed penal charges regarding the collapse of *FNI* and *FNA* as well as the bankruptcies of the various banks connected to the *FNI* affair.<sup>39</sup> He had been already convicted to six month in prison for blackmailing and threatening to kill one of his business partners, and to two years in prison for helping Nicolae Popa, the person thus far responsible in the *FNI* case, to evade conviction and up to 15 years in prison.<sup>40</sup> Gone were the days when the warrants issued by Romanian courts to bring Vîntu to the witness stand could not be enforced or when the Parliamentary Commission for the analysis of the collapse

---

36 Sima 2010: internet.

37 Ibid., min. 00:42:20.

38 See: Solomon, 2010.

39 See: Dan, 2012: internet, as well as Stoica; Burlă 2012: internet

40 Realitatea.NET 2012a: internet; Ondine 2012: internet, as well as: Realitatea.NET 2012b: internet.

of *FNI* could not interview him, as the members of the commission were simply afraid of Vintu and his potential revelations.<sup>41</sup>

This twist of fate led many to reconsider Vintu's role and trajectory after the 1990s, portraying him as a tool of the secret services that used him to accumulate money and control privatized companies during the 1990s but that got rid of him as soon as he became inconvenient and useless. Such interpretations are reinforced by the similarly powerful blow to Vintu's self-esteem delivered through the release of transcripts from his file as an informant of *Securitate*.<sup>42</sup> Detailed accounts based on this file, but also on interviews with his neighbors and retired *Securitate* officers in his native town, reveal that SOV was imprisoned for over two years (from 1983 to 1985) for having forged bills and accounts at the tobacco store he administered. While in prison, he was recruited as an informant under the pseudonym *Nuș* (pronounced *noosh*) from *Sorin* – *Sorinuș* – *Nuș* (the diminutive of his first name).<sup>43</sup> *Nuș* gave information on his fellow inmates and was later used to provide information on various other friends and acquaintances in *Roman*. Although a valued source of information while in prison, Vintu was given up soon after his release because of his entourage and lifestyle: he was frequented mainly by bums and scalpers, was having difficulties getting a job because of his poliomyelitis, and was developing drinking problems.

One of the retired *Securitate* officers confirms that Vintu made a lot of money during the first years after the fall of socialism but argues

---

41 This was confirmed to me by Varujan Pambuccian, a Romanian MP since 1996 representing the Armenian minority. A rather luminous figure among his colleagues and the author of numerous legislative projects and democratic initiatives, Pambuccian agreed to give me a recorded interview on August 25, 2005. His confession regarding their failure to interrogate Vintu in spite of all the allegations describing him specifically as the mastermind of the *FNI* affair left me without retort.

42 See: Corlățan, 2010: internet.

43 The following account is based mainly on Tăpălagă; Prisacariu 2010: internet, and Corlățan, 2010: internet.



that it was always other people's money being circulated by him: he created a newspaper with the money of the archbishop in Roman and later invested former *Securitate* money (including money from Ioan Timofte, his acquaintance and later head of the Romanian Intelligence Service) in *Caritas*.<sup>44</sup> While such rumors are hard to verify, they circulate incessantly, rendering the image of a pawn of *Securitate*, recruited under socialism but later used throughout the postsocialist period by people still working for the domestic intelligence services or by privatized groups of former *Securitate* agents.

Journalists were also trying to convey a new image of Vintu, one in contrast to the self-projected persona of a "great combiner" and ruthless speculator. Thus, bold statements such as "Romanian capitalism is being built by capitalists. [...] It is important that they respect the law. With regards to their morality, this is reflected by their business success. These are the yardsticks of the business world,"<sup>45</sup> or "I'm not a small fish on the Romanian market. I used to be a piranha during the '90s. I am now a catfish,"<sup>46</sup> made in interviews during the period when he seemed untouchable, are blatantly contradicted by more recent confessions of his collaborators, neighbors, or friends rediscovered after the recent events. For instance, Vlad Soare, former vice-governor of the Romanian central bank and later his employee, argues that, "on a personal level, Sorin Vintu is one of the most timid persons I have met. If you get him out of his world, he turns inside his shell. This generates a sort of fake aggressiveness that probably displeases him too."<sup>47</sup> His neighbors in Roman remember him as a cunning person, involved in speculation with artisanal items (icons, carpets, silverware, etc.), or as a petty swindler cheating foreign tourists, but never as a high profile crook. His ego seems to have grown with his success in business, as one of his closest advisors came to confess that:

44 See: Verdery 1995a, Verdery 1995b for an analysis of *Caritas* and some of the rumors and speculation in Romanian society at the time over the involvement of the communist secret services in the creation and collapse of the pyramid scheme.

45 See: *Evenimentul zilei* 2006: internet.

46 See: *Tăpălagă*, 2009: internet.

47 See: *Capital* 2001: internet.

SOV has many problems coming mainly from his inability to adapt, from his constant feeling that the environment can be modeled according to him. [...] I once told him: "You constantly want to be a constant but you do not realize that your puppets will start walking without strings at some point." I preferred walking away from SOV because I felt I was starting to look too much like him.<sup>48</sup>

Vîntu's humble side became more and more apparent with the restructuring of the Romanian intelligence services after the country's progressive integration into NATO and the European Union. Radu Timofte, his life-long friend, was replaced as the head of the Romanian Intelligence Service. Many former agents and analysts were laid off from the intelligence services as part of the massive structural reforms in which they have been involved over the last decade. Paradoxically, organizations of former agents have become semi-autonomous from the intelligence community, creating a more fragmented and less stable landscape that generates many "arbitrage" opportunities among holders of informal power, but also areas of danger for those who have been previously involved with them. SOV seems to be one of those now settling his accounts with his former masters/allies.

In spite of or, maybe, just because of this twist of fate affecting Vîntu and of the abundance of information and confessions regarding him, one is left with numerous unanswered questions: what made all those bright people work for him and some even take the blame in his place, as if hypnotized? Were all of them naïve? Did he control them all somehow? Are his charisma and persuasiveness as great as many believe? Transcripts of recordings from his case files indicate a rather cynical and immoral character, dominated by a disproportionate ego and always trying to manipulate others for personal gains and the evasion of responsibility. At the same time, episodes revealed by his *Securitate* file can also be taken as the script of a pathetic personal history. Such details put in a different light his collaboration with power agents suggesting he might have been himself the pawn of secret services, a puppet used and later disposed of in favor of a more easily controllable "tool".

48 Capital 2001: internet.

Such contrasting interpretations of Vîntu's personal history are illustrative of two distinct forms of understanding social change and agency. One situates Vîntu as well as all of those he has collaborated with within the control of powerful actors – politicians, government officials, or the secret services. Their story is then a case illustrative of the continuities and patterns of elite reconversion between the socialist and postsocialist regimes. An example of the conspiracy theories circulating widely during the last two decades in Romania, such a perspective actually denies change as it affirms the perpetuation of the same agents of power between the two regimes, manipulated by hidden actors even when they seem to have accumulated impressive financial and political resources, as well as the powerlessness of simple people. *Securitate* and its inheritors are, according to this informal theory, the genuine "great combiners" of Romania recent history.

An alternative theory emphasizes Vîntu's genius in working with money and people. His personal qualities and, even more so, the brilliance of his strategies, be they related to the investing of money, organization of companies, or instrumentalization of people, put him in a position to control so many and so much and to acquire the reputation of a "great combiner". While supporters of the first theory argue that SOV's image was carefully crafted, manipulated, and later destroyed by those for whom he worked, supporters of the second theory argue that Vîntu's brilliant ideas carried him forward to an impressive level of notoriety and influence. Influential leaders and puppeteers behind the scenes of Romanian politics and finance felt threatened by his power and colluded to take him off the scene. Their strategy was that of creating for him the opposite image of an immoral crook, a swindler in the service of "the services,"<sup>49</sup> an egotistic character always ready to produce *gulgute*<sup>50</sup> in order to turn the situation in his favor.

---

49 There is always ambiguity in gossip about the specific group within the domestic or foreign secret services allegedly controlling SOV.

50 An argotic term with strong ethnic (Roma) connotations, often associated with the language learned in prison and used by criminals during hits, *gulguta* refers to either a doughnut or dumpling, or, figuratively, to a lie, a con job, or a more complex scam.

Upon closer analysis, both of the quasi-theoretical representations produced above seem partially true; or, better said, neither of them seems sufficient as both are only partially accurate descriptions of reality. The theory focusing on the bad genius and his ideas seems rather too simplistic given the multiplicity of persons, beliefs, institutions, and things intertwined in Vintu's live trajectory and in the history of the web of financial institutions he kept spinning. The political determinism of the theory emphasizing the force of the more or less hidden structures of power do away with notions of individual agency, contingency, and accident in the postsocialist period. One feels a more sophisticated analysis of social change is needed. As the profoundly insightful depiction of Napoleon's campaign in Russia realized by Leo Tolstoy (Tolstoy 2008) reveals, what appear retrospectively as great events and moments of historical fracture are not caused by either great men or by determinist social/economic/political forces but are the result of the accidental and often uncoordinated accumulation of motives, perspectives, and actions of an infinity of actors. Or, to follow Bruno Latour's brilliant reworking of the Tolstoyan approach to describe "the Pasteurian revolution" during the XIXth century, one has to look at the diversity of "actants", the alliances they constitute, and the networks emerging out of their interactions in order to make sense of such history-changing technoscientific achievements (Latour 1998).

The limiting focuses on either on SOV's manipulative genius or on the political structures playing him around the board miss the heterogeneity of "actants" making up his financial technologies, the numerous translations between actants, forms of knowledge, institutional domains, and arenas for the constitution of values, as well as the "trials of strength" meanings constituted in such processes of translation. Following Latour following Tolstoy, a more nuanced, decentered, and non-teleological perspective is made possible, to make sense of the shifting configurations of actors and values, of the dynamics of the events, of the opportunist actions of many of the actants and the ex-post reconstitutions of facts, as well as on the numerous contingencies affecting the processes under examination. In retrospect, Vintu

seems both a “great combiner” of people and resources and a pathetic pawn of hidden structures of power; there were always ever more mediators associating to produce the financial schemes ending in scandal: translators of Western financial markets and practices such as those employed by Vîntu, opportunistic investors and state officials, or coward politicians – all of them and even more that aren’t usually mentioned made possible socio-technical arrangements such as *Gel-sor – SOV Invest – FNI – Centrocoop – CEC – Banca Agricolă*.<sup>51</sup>

There was no master plan, but rather a succession of associations, adaptations to changing circumstances, opportunistic decisions taken under financial and temporal constraints, all growing into a self-writing script whose main writers did not anticipate an end result but kept toying with alternative possibilities. Vîntu’s roles and responsibilities are hard to outline in such changing networks of actions and interests, but become literally impossible to grasp if analyzed separately or as a resultant of deterministic factors. This seems to be one of the premises of the prosecutors reopening the *FNI* case to assess *SOV*’s involvement and his eventual responsibility for the collapse of the fund. In a section of the indictment entitled “The neglect of temporal aspects” (*Ignorarea aspectelor temporale*),<sup>52</sup> the prosecutors claim that the disjunction of several files concerning Vîntu from the *FNI* case – a strategy of the prosecutors investigating him until 2008 – made it impossible to follow the temporal unfolding of the *FNI* scandal. This, in turn, made it impossible to document the role Vîntu played in creating associations that engendered action and to assess his role in the

---

51 These are just some of the main organizations associating in the *FNI* case. At the same time, although the similarities between actants such as Vîntu and what Janine Wedel (Wedel 2000; Wedel 2009) has called *transactors* in the context of Western foreign aid to Russia, that is, “players in a small, informal group who work together for mutual gain, while formally representing different parties” are many, one should also be aware that Wedel is emphasizing the conflicts of interests of Harvard economists whereas I am mainly interested in the creativity of local actors in appropriating technologies and political forms from foreign organizations to their own goals.

52 See details from the indictment act presented in Stoica; Burlă 2012: internet.

events. Taking the prosecutors' insight as a methodological promise, one should focus on the human and institutional "actants" in the *FNI* case and their associations with actors such as Vîntu, in order to account for the networked actions and mutual allocation of responsibilities of those involved.

## Conclusion

My chapter has introduced one of the characters associated with corruption on the capital market created in postsocialist Romania. His multiple roles in the wider networks of persons, things, and actions became emphasized in many of the key moments of the National Investment Fund (*FNI*) case. Sorin Ovidiu Vîntu played the role of a "great combiner" for most of the period associated with the creation and ongoing reformation of Romania financial markets. He constitutes a powerful "actant" that generated multiple associations between distinct types of resources and contrasting domains of value creation. His impressive work of "translation" among shifting situations, different types of action, and eclectic forms of knowledge constituted his agentivity and placed him in key positions of the processes I have been studying.

I argued that specific forms of gossip and opportunistic reasoning were some of the preferred ingredients used by repellent figures such as SOV, but also coagulating around their personae. At the same time, SOV illustrates well the strategy of using others while also allowing oneself to be used.<sup>53</sup> Described either as a brilliant mastermind of innumerable financial and political schemes or as a pathetic pawn controlled by obscure structures of power in postsocialist Romania, Vîntu can be better depicted as the nexus of a diversity of interests, forms of political and financial resourcefulness, and types of knowledge. His case illustrates well the dangers of reducing complex social processes to ex-post schematic explanations of events.

53 "I knew how to use people and to let myself be used by those I used." This is the pragmatic compromise Vîntu admits to having made throughout his career to stay in the game and keep a minimum of autonomy. See: *Capital* 2001: internet.

The prevalence of gossip and situated forms of reason demonstrated by the central character of this chapter illustrate the relatedness of the two types of speculation: a form of trading characterized by high risk & high return (*speculă*) and a form of conjectural thought (*speculație*). While the common root of the two Romanian words (*speculă* and *speculație*) carries with it references to forms of similarly opportunistic associations of meanings and values, the set of concepts facilitate a better understanding of the pragmatics of financial action on Romanian capital markets. Thus, the histories of *FNI* and *FNA*, as well as the ongoing attempts to bring a resolution to the disputes they engendered, reveal the role of rumors, gossip, allegations, allusions, the use of partial information, one legged arguments and crippled knowledge, as well as of the widespread secrecy surrounding capital market activities in Romania. Such practical modes of action contradict both the model of perfect competition elaborated inside the neoclassical theory of markets (Samuelson 1947; Debreu 1959; Arrow and Hahn 1971) and the more recent theory of market efficiency in finance (Fama 1970, Fama 1991) that postulate either the undifferentiated access to information of all market actors or the immediate incorporation of public and private information in the market prices of securities. Elaborated in Western academia and having a certain applicability to developed capital markets, characterized by a huge number of daily transactions, relatively robust market institutions, enforceable laws, responsible regulators, availability of real time information on market prices, the sanctioning of inside trading, and a diffuse ideology of the universal access to the market, such theoretical simplifications are at odds with practices on the Romanian capital market.

A closer examination of the modes of operation of Romanian capital market creators, regulators, and speculators reveals the role of secrecy and fragmented knowledge more attuned to the work of intelligence services than to theories of perfect competition on capital markets. While the role of social relations and unforeseen associations of persons, technologies, and ideas on advanced financial markets has already been documented (Zaloom 2005; Zaloom 2006; Beunza, Stark

2004), after the recent global financial crisis the voices of heterodox economists questioning the efficiency of markets and affirming the role of emotions in speculative dynamics ending in crises are heard more and more often.<sup>54</sup> Although timely and profound, such critical positions do not address directly the specifics of capital market processes in Romania. Here, an ethnographer is able to observe the overlap of distinct modalities of action: within the frameworks of a publicly regulated market, social practices premised on rumors, gossip and allusive communication intertwine with the logic of secrecy and partial information shrewdly manipulated by intelligence specialists or retired analysts/officers of the secret services.

Similar to Western capital markets, information is the foundation of value creation in postsocialist Romania. However, access to valuable information is not facilitated by arbitrage rooms ("financial laboratories", according to Beunza and Stark (Beunza and Stark 2004a)) organized to produce new associations of ideas and trading models. In Romania, the stakes are access to privileged information whose scarcity is artificially produced. As Robert Hayden well observed (letter to author, December 13, 2012), this mode of operation closely resembles the creation of scarcity under socialism through central planning and rational redistribution as described by Katherine Verdery (Katherine Verdery 1991; Katherine Verdery 1996). In fact, political redistribution of resources and information subsisted in postsocialist Romania well into the 1990s as state subsidies were distributed to controlled municipalities and state companies in exchange for votes in political elections and was brought to a certain control by the austerity measures imposed by the IMF/WB when the budget resources that could be redistributed became increasingly scarce. In spite of such austerity policies, the emerging financial elite reconverted from the former communist elite and the lay investors continued to be guided by the logic of central redistribution with regards to information about the

---

54 See criticism of efficient capital markets in behavioral finance by economists such as Robert Shiller, Richard Thaler, Nassim Taleb, and Benoit Mandelbrot.



market. All seemed to rely more on privileged, gossiped, whispered or private information (seen as both scarcer and more reliable) than on publicly available information. Actually, many saw what was made public as worthless propaganda and fake reporting if not outright disinformation. Private registers of language and narrow channels for the transmission of information gave a specific configuration to finance and value generation practices increasing the power of informal examples over publicly endorsed rationality and models of behavior.

Unlike the case of developed capital markets, Romania is not characterized by an abundance of news about companies but by the scarcity and non-intelligibility<sup>55</sup> of data, generating a distinct type of competition for scarce information. While the Romanian case, similar to developed capital markets, is characterized by redundant information, this part of knowledge is not constituted by the informational noise that is readily available and known by too many people to have any financial value, or that is rather banal and does not allow any possibility of arbitrage. In Romania, the informational noise is formed by the rumors and false information (*gulgute*) circulated by key market actors, of the irrelevant data slipped into the public sphere, of the intrigues plotted by retired intelligence officers, or of the numerous irrelevant claims to knowledge advanced by self-made market "experts". Those who thrive in such an environment are often those practicing forms of cognitive and moral opportunism, better attuned to mutating arenas for value production than to the neat bureaucratic procedures taught in financial and legal textbooks.

---

55 Dubious accounting and audit practices, the emphasis of fiscal accounting and the evasion towards areas of informal economy by overtaxed companies, as well as the lack of a culture of transparency characterizing countries with high corporate governance standards.

## Bibliography

- Alexandru Solomon (2010), *Kapitalism*, produced by Hi Film [Romania]/ Sepia [France]/ Neon Rouge [Belgium]).
- Athenian-Legacy.com (2010), Sorin Ovidiu Vântu și privatizarea Securității" [Sorin Ovidiu Vântu and the privatization of *Securitate*], 11 August, (internet) available at: <http://www.athenian-legacy.com/2010/08/sorin-ovidiu-vantu-si-privatizarea-securitatii/> (viewed 1 September 2012).
- Beunza, Daniel; David Stark (2004), "Tools of the Trade: The Socio-Technology of Arbitrage in a Wall Street Trading Room," *Industrial and Corporate Change* 13(1): 369-401.
- Capital (2001), "Lumea lui Sorin Ovidiu Vîntu" [Sorin Ovidiu Vîntu's World], 8 November, (internet) available at: <http://www.capital.ro/detalii-articole/stiri/lumea-lui-sorin-ovidiu-vintu-5370.html> (viewed 1 September 2012).
- Chelcea, Liviu (2003), "Ancestors, Domestic Groups, and the Socialist State: Housing Nationalization and Restitution in Romania," *Comparative Studies in Society and History* 45(4): 714-740.
- Corlățan, Mirela (2010), "Vîntu, informator în pușcăria din Bacău" [Vîntu, Securitate informant since spending time in Bacău penitentiary], *Evenimentul zilei*, 12 July, (internet) available at: <http://www.evz.ro/detalii/stiri/sorin-ovidiu-vintu-nume-de-cod-nus-900414.html> (viewed 1 September 2012).
- Cristian, Flavia (2011), "Mama FNI", Ioana Maria Vlas, crește găini și dă la pește" ["Mother of FNI" Ioana Maria Vlas raises chickens and goes fishing], *Adevărul*, 13 October, (internet) available at: [http://www.adevarul.ro/locale/brasov/brasov\\_-Mama\\_FNI-loana\\_Maria\\_Vlas-creste\\_gaini\\_si\\_da\\_la\\_peste\\_0\\_571742909.html](http://www.adevarul.ro/locale/brasov/brasov_-Mama_FNI-loana_Maria_Vlas-creste_gaini_si_da_la_peste_0_571742909.html) (viewed 1 September 2012).
- Dan, Octavian (2012), "Sorin Ovidiu Vintu, urmărit penal sub toate guvernările" [Sorin Ovidiu Vintu, investigated under all political regimes], *Bursa*, May 2, (internet) available at: [http://www.bursa.ro/sorin-ovidiu-vintu-urmarit-penal-sub-toate-guvernarele-170054&s=print&sr=articol&id\\_articol=170054.html](http://www.bursa.ro/sorin-ovidiu-vintu-urmarit-penal-sub-toate-guvernarele-170054&s=print&sr=articol&id_articol=170054.html) (viewed 1 September 2012).
- Dancu, Ionel (2007), "Luminița Segă, procurorul care a anchetat cazul FNI, a fost asasinată" [Luminița Segă, the prosecutor investigating the FNI case, died of poisoning], *Curentul*, 1 March, (internet) available at: <http://www.hotnews.ro/stiri-arhiva-110765-luminita-sega-procurorul-care-anchetat-cazul-fni-fost-asasinata.htm> (viewed 1 September 2012).

- Demekas, Dimitri; Mohsin Khan (1991), "The Romanian Economic Reform," *International Monetary Fund*, Occasional paper no. 89, (internet) available at: <http://www.imf.org/external/pubs/cat/longres.cfm?sk=61.o>.
- Doctorate.ulbsibiu (internet) available at: <http://doctorate.ulbsibiu.ro/obj/documents/rez-eng-buganu.pdf>.
- Ellerman, David (1993), "Management and Employee Buy-Outs in Central and Eastern Europe: Introduction," in Ellerman, D. (ed.), *Management and Employee Buy-Outs as a Technique of Privatization*, Ljubljana, Central and Eastern European Privatization Network: 13-30, (internet) available at: <http://www.ellerman.org/Davids-Stuff/The-Firm/CEEPN-MEBO1.pdf>.
- Evenimentul zilei (2006), "Interviu în exclusivitate cu "onorabilul" domn Vintu" [Exclusive interview with the "honorable" gentlemen Vintu], 31 May, (internet) available at: <http://www.evz.ro/detalii/stiri/interviu-in-exclusivitate-cu-onorabilul-domn-vintu-715965.html> (viewed 1 September 2012)
- Fama, Eugene (1970), "Efficient Capital Markets: A Review of Theory and Empirical Work," *Journal of Finance* 25(2): 383-417.
- Fama, Eugene (1991), "Efficient Markets: II, Fiftieth Anniversary Invited Paper," *Journal of Finance* 46: 1575-1617.
- Fati, Sabina (2010), "Cine este Vintu și ce vrea el" [Who is Vintu and what he wants], *România liberă*, 16 September, (internet) available at: <http://www.romania-libera.ro/opinii/editorial/cine-este-vintu-si-ce-vrea-el-199684.html> (viewed 1 September 2012).
- Fati, Sabina (2011a), "Ce-i va spune Vintu lui Popa la întâlnirea de 10 ani?" [What will Vintu tell Popa at their 10 years anniversary meeting?], *România liberă*, 11 April, (internet) available at: <http://www.romania-libera.ro/opinii/editorial/ce-i-va-spune-vintu-lui-popa-la-intalnirea-de-10-ani-223123.html> (viewed 1 September, 2012).
- Fati, Sabina (2011b), "Ce-i va spune Vintu lui Popa la întâlnirea de 10 ani?" [What will Vintu tell Popa at their 10 years anniversary meeting?], *România liberă*, 11 April, (internet) available at: <http://www.romania-libera.ro/opinii/editorial/ce-i-va-spune-vintu-lui-popa-la-intalnirea-de-10-ani-223123.html> (viewed 1 September 2012)
- Feige, Edgar (1990), "Perestroika and Socialist Privatization: What is to be Done? and How?," *Comparative Economic Studies* 32(3), (internet) available at: <http://129.3.20.41/eps/dev/papers/0312/0312002.pdf>.

- Fox, James W. (2000), "Efficient Capital Markets: A Key to Development," *U.S. Agency for International Development, Center for Development Information and Evaluation, USAID Program and Operations Assessment Report No. 26, November 2000, PN-ACG-620*, (internet) available at: [http://pdf.usaid.gov/pdf\\_docs/pnacg620.pdf](http://pdf.usaid.gov/pdf_docs/pnacg620.pdf) (viewed 15 July, 2012).
- Gherguț, Ondine (2012), "Vintu, tot mai departe de libertate", *România liberă*, 3 October, (internet) available at: <http://www.romanialibera.ro/actualitate/justitie/vintu-tot-mai-departe-de-libertate-279339.html> (viewed 3 October 2012)
- Hotnews (2012), De la Răzvan Temeșan la Claudiu Cerel. Mica enciclopedie a șefilor de bănci care s-au intersectat cu Procuratura" [From Răzvan Temeșan to Claudiu Cerel: small encyclopedia of bank presidents being prosecuted], 2 November, (internet) available at: [http://economie.hotnews.ro/stiri-finante\\_banci-13534302-razvan-temesan-claudiu-cerel-scurt-istori-sefilor-din-banci-care-fost-retinuti.htm](http://economie.hotnews.ro/stiri-finante_banci-13534302-razvan-temesan-claudiu-cerel-scurt-istori-sefilor-din-banci-care-fost-retinuti.htm) (viewed 2 November 2012).
- Humphrey, Caroline (2000), "How is barter done? The social relations of barter in provincial Russia," in Seabright, P. (ed.), *The Vanishing Rouble: Barter Networks and Non-Monetary Transactions in Post-Soviet Societies*, Cambridge: Cambridge University Press, pp. 259-297.
- Ilf, Ilya Arnoldovich; Yevgenii Petrovich Katayev [aka Ilf and Petrov] (2002 [1928]), *The Twelve Chairs*, Translated from the Russian by John Richardson, available at: [http://lib.ru/ILFPETROV/ilf\\_petrov\\_12\\_chairs\\_engl.txt](http://lib.ru/ILFPETROV/ilf_petrov_12_chairs_engl.txt).
- Kornai, Janos (1990), *The Road to a Free Economy, Shifting from a Socialist System, The Example of Hungary*, New York, W. W. Norton and Company.
- Kowalik, Tadeusz (1991), "Marketization and Privatization: The Polish Case," *Socialist Register* 27, (internet) available at: <http://www.socialistregister.com/index.php/srv/article/view/5598>.
- Latour, Bruno (1998), *The Pasteurization of France*, Cambridge, MA, Harvard University Press.
- Lieberson, Joseph M.; Ross Bankson; Alain de Maynadier; Denis V. Korepanov; Michael Sipos (1998), "Developing Romania's Capital Market," *United States Agency for International Development, CDIE Evaluation Impact No. 4, PN.ACA.921*, (internet) available at: [http://pdf.usaid.gov/pdf\\_docs/PNACA921.pdf](http://pdf.usaid.gov/pdf_docs/PNACA921.pdf) (viewed 15 July, 2012).

- Lipton, David (1993), "Eastern Europe," in Henderson, D.R. (ed.), *The Concise Encyclopedia of Economics*, (internet) available at: <http://www.econlib.org/library/Enc1/EasternEurope.html>.
- Lipton, David; Jeffrey Sachs (1990), "Creating a Market Economy in Eastern Europe: The Case of Poland," *Brookings Papers on Economic Activity* 1: 75-133.
- Lupea, Ioana (2010), "Ce se află în valiza lui Vintu" [What's in Vintu's suitcase], *Evenimentul zilei*, 16 September, (internet) available at: <http://www.evz.ro/detalii/stiri/editorialul-evz-ce-se-afla-in-valiza-lui-vintu-906073.html> (viewed 1 September 2012)
- Mandel, Ruth; Caroline Humphrey (eds.) (2002), *Markets and Moralities: Ethnographies of Postsocialism*, New York: Berg.
- Markiewicz, Olga (2007), "Why Some Central and Eastern European countries were able to create capital markets with growing importance in the economy while other were not?," June Paper, Department of Political and Social Science, European University Institute. Paper made available by the author.
- Myant, Martin; Jan Drahoš (2010), *Transition Economies, Political Economy in Russia, Eastern Europe, and Central Asia*, Hoboken, NJ, Wiley-Blackwell.
- Official Bulletin of Romania no. 303, of 29 June 1999, (internet) available at: [http://www.cdep.ro/pls/legis/legis\\_pck.htp\\_act\\_text?id=20102](http://www.cdep.ro/pls/legis/legis_pck.htp_act_text?id=20102) (viewed 1 September 2012).
- Popescu, Andreea (2011a), "Cazul Vântu (III): Imperiul Gelsor" [Vintu Case (III): Gelsor Empire], *Atac de Constanța*, 17 June, (internet) available at: <http://www.atacdeconstanta.ro/articole/3362-cazul-vantu-iii-imperiul-gelsor.html> (viewed 1 September 2012).
- Popescu, Andreea (2011b), "CAZUL VÂNTU V: Fondul Național de Investiții a fost o CONSPIRAȚIE" [Vintu Case (V): The National Investment Fund was a conspiracy], *Atac de Constanța*, 22 July, (internet) available at: <http://www.atacdeconstanta.ro/articole/3376-cazul-vantu-v-fondul-national-de-investitii-a-fost-o-conspiratie.html> (viewed 1 September 2012).
- Pradeep, Mitra (2002), "The first ten years. Analysis and Lessons for Eastern Europe and the Former Soviet Union," *The International Bank for Reconstruction and Development*, (internet) available at: <http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/ECAEXT/0,,menuPK:258621-contentMDK:20217865-pagePK:146736-piPK:146830-theSitePK:258599,00.html>.

- Realitatea.NET (2012a), "SORIN OVIDIU VÎNTU, condamnat la șase luni de ÎNCHISOARE CU EXECUTARE" [Sorin Ovidiu Vintu, convicted to two years in prison], 3 February, (internet) available at: [http://www.realitatea.net/sorin-ovidiu-vintu-condamnat-la-sase-luni-de-inchisoare-cu-executare\\_910394.html](http://www.realitatea.net/sorin-ovidiu-vintu-condamnat-la-sase-luni-de-inchisoare-cu-executare_910394.html) (viewed 1 September 2012).
- Realitatea.NET (2012b), "Sorin Ovidiu Vintu, CONDAMNAT la doi ani de închisoare CU EXECUTARE" [Sorin Ovidiu Vintu, convicted to two years in prison], 2 October, (internet) available at: <http://www.antena3.ro/romania/sorin-ovidiu-vintu-condamnat-la-doi-ani-de-inchisoare-cu-executare-pentru-favorizarea-lui-nicolae-popa-186269.html> (viewed 2 October 2012)
- Roncea, George (2010), "Vintu - un borfaș cu intenții criminale, protejată de cadrele corupte din SRI" [Vintu - a crook with criminal intentions, protected by corrupt SRI agents], Curentul, 15 September, (internet) available at: <http://www.curentul.ro/2010/index.php/2010091548840/Actualitate/Vintu-un-borfas-cu-intentii-criminale-protejatul-cadrelor-corupte-din-SRI.html> (viewed 1 September 2012)
- Sima, Cristian (2010), "SOV și Junimiștii" [SOV and the Junimists], *Hotnews*, 13 September 13, (internet) available at: <http://www.hotnews.ro/stiri-esential-7783840-sov-junimistii.htm> (viewed 1 September 2012).
- Sima, Cristian (2010), "SOV și Junimiștii" [SOV and the Junimists], *Hotnews*, 13 September 2010, (internet) available at: <http://www.hotnews.ro/stiri-esential-7783840-sov-junimistii.htm> (viewed 1 September 2012).
- Stoica, Ionel; Virgil Burlă (2012), "Sorin Ovidiu Vintu a fost trimis în judecată în dosarul prăbușirii FNI. Acuzații: spălare de bani și instigare la delapidare" [Sorin Ovidiu Vintu has been sent to trial in the case involving the collapse of FNI. The charges are: money laundering and instigation to embezzlement], *Evenimentul zilei*, 24 September, (internet) available at: <http://www.evz.ro/detalii/stiri/Sorin-Ovidiu-Vntu-a-fost-trimis-n-jduecat-n-dosarul-prbuirii-FNI-1002223.html> (viewed 24 September 2012)
- Stoica, Ionel; Virgil Burlă (2012), "Sorin Ovidiu Vintu a fost trimis în judecată în dosarul prăbușirii FNI. Acuzații: spălare de bani și instigare la delapidare" [Sorin Ovidiu Vintu has been sent to trial in the case involving the collapse of FNI. The charges are: money laundering and instigation to embezzlement], *Evenimentul zilei*, 24 September, (internet) available at: <http://www.evz.ro/detalii/stiri/Sorin-Ovidiu-Vntu-a-fost-trimis-n-jduecat-n-dosarul-prbuirii-FNI-1002223.html> (viewed 24 September 2012)

- Tăpălagă, Dan (2009), "Sorin Ovidiu Vântu: Eu sunt cel care poate să-l cumpere pe Dinu Patriciu, și nu invers. Eu nu sunt peștele mic în piața românească. Am fost pirahna în anii '90. Acum sunt somn" [Sorin Ovidiu Vântu: I'm the one capable of buying out Dinu Patriciu, not the other way round. I'm not the small fish on Romanian market. I used to be a piranha during the '90s. I am now a catfish], *Hotnews*, 8 December, (internet) available at: <http://www.hotnews.ro/stiri-politic-6698869-audio-sorin-ovidiu-vantu-sunt-cel-care-poate-cumpere-dinu-patriciu-nu-invers-nu-sunt-pestele-mic-piata-romaneasca-fost-pirahna-anii-90-acum-sunt-somn.htm> (viewed 1 September 2012).
- Tăpălagă, Dan; Cătălin Prisacariu (2010), "Trecutul ascuns al lui Sorin Ovidiu Vântu. Povestea informatorului Nuș", *Hotnews / Kamikaze*, 11 July, (internet) available at: <http://www.hotnews.ro/stiri-esential-7566833-trecutul-ascuns-lui-sorin-ovidiu-vntu-povestea-informatorului-nus.htm> (viewed 1 September 2012).
- The IMF (2000), "Transition Economies: An IMF Perspective on Progress and Prospects," Washington, D.C.: The IMF, (internet) available at: <http://www.imf.org/external/np/exr/ib/2000/110300.htm>.
- Tolstoy, Leo (2008 [1805-1812]), *War and Peace*, Translated by Louise and Aylmer Maude, Work is licensed under a Creative Commons Attribution-Noncommercial 3.0 United States License.
- Toncea, Sergiu (2006), "Vărsat de vânt pe obrazul justiției", *Săptămâna Financiară*, 23 October, (internet) available at: <http://www.hotnews.ro/stiri-arhiva-1148208-varsat-vant-obrazul-justitiei.htm>.
- USAID (2001), "Transformation of Trading on RASDAQ: A Feasibility Study," *Romanian Financial Markets Reform Project*, SEGIR FS Task Order No. 812, prepared by Deloitte Touche Tohmatsu Emerging Markets, (internet), available at: [http://pdf.usaid.gov/pdf\\_docs/PNACT277.pdf](http://pdf.usaid.gov/pdf_docs/PNACT277.pdf) (viewed 15 July, 2012).
- Verdery, Katherine (1991), *National Ideology under Socialism, Identity and Cultural Politics in Ceausescu's Romania*, Berkeley University of California Press.
- Verdery, Katherine (1995a), "Caritas: And the Reconceptualization of Money in Romania," *Anthropology Today* 11(1): 3-7.
- Verdery, Katherine (1995b), "Faith, Hope and Caritas in the Land of the Pyramids: Romania, 1990 to 1994," *Comparative Studies in Society and History* 37(4): 625-69.

- Verdery, Katherine (1996), *What Was Socialism and What Comes Next?* Princeton: Princeton University Press.
- Verdery, Katherine (2003), "Property in Socialism: Collectivization, Administrative Rights, and the Circulation of Goods," in Verdery, K., *The Vanishing Hectare*, Ithaca, NY: Cornell University Press, pp. 40-76.
- Vosganian, Varujan (1999), *Reforma piețelor financiare din România [Financial Markets Reform in Romania]*, Bucharest: Polirom Press.
- Wedel, Janine R (2009), *Shadow Elite: How the World's New Power Brokers Undermine Democracy, Government, and the Free Market*, New York: Basic Books.
- Wedel, Janine R. (2000), "Tainted Transactions: An Exchange. Jeffrey Sachs, Anders Aslund, Janine Wedel," *The National Interest* 60: 107-110.
- Wikipedia, (internet) available at: [http://fr.wikipedia.org/wiki/Prescription\\_en\\_droit\\_fran%C3%A7ais](http://fr.wikipedia.org/wiki/Prescription_en_droit_fran%C3%A7ais).
- Zaloom, Caitlin (2005), "The Discipline of Speculators," in Ong, A. and S. Collier (eds.), *Global Assemblages: Technology, Politics, and Ethics as Anthropological Problems*, New York: Blackwell, pp. 253-269.
- Zaloom, Caitlin (2006), *Out of the Pits, Traders and Technology from Chicago to London*, Chicago, University of Chicago Press.
- Zara, Ovidiu (2005), "Timofte și Ardelean au pus SRI și UM 0962 în slujba inculpaților din dosarul FNI" [Timosfte and Ardelean had put the Romanian Intelligence Service and the Intelligence Service of the Romanian Police in the service of FNI instigators], *Cotidianul*, 3 February, (internet) available at: <http://www.hotnews.ro/stiri-arhiva-1242187-timofte-ardelean-pus-sri-0962-slujba-inculpatilor-din-dosarul-fni.htm> (viewed 1 September 2012),
- Ziare.com (2009a), "Vintu: G. mi-e prieten, a venit la mine să se relaxeze" [Vintu: G. is my friend, he came to me to relax], 4 December, (internet) available at: <http://www.ziare.com/basescu/mircea-geoana/vintu-geoana-mi-e-prieten-a-venit-la-mine-sa-se-relaxeze-966280> (viewed 1 September, 2012).
- Ziare.com (2009b), "Sorin Ovidiu Vântu a scăpat în dosarul BID" [Sorin Ovidiu Vintu escapes the accusations in the BID trial] 20 October, (internet) available at: <http://www.ziare.com/stiri/frauda/sorin-ovidiu-vantu-scapat-in-dosarul-bid-925899> (viewed 1 September 2012).



- Ziare.com (2010), "Dezvăluiri spectaculoase ale ofițerului care a anchetat cazul FNI" [Spectacular revelations made by the police officer that first investigated the collapse of FNI], (internet) available at: <http://www.ziare.com/sorin-ovidiu-vantu/fni/dosarul-vintu-dezvaluiri-spectaculoase-ale-ofițerului-care-a-anchetat-cazul-fni-1041979> (viewed 1 September 2012)
- Ziare.com (2011), "Vîntu: SRI și-a făcut partid, a vrut să-și facă televiziune" [Vîntu: SRI [The Romanian Intelligence Service] created its own political party; they also wanted to have their own television station], 28 October, (internet) available at: <http://www.ziare.com/sorin-ovidiu-vantu/stiri-sorin-ovidiu-vantu/vintu-sri-si-a-facut-partid-a-vrut-sa-si-faca-televiziune-1130295> (viewed 1 September 2012).
- Ziarul de Iași (2000), 16 October, (internet) available at: <http://www.ziaruldeiasi.ro/economic/sorin-ovidiu-vintu-detine-99-din-actiunile-bancii-de-investitii-si-dezvoltare-niiqs> (viewed 1 September 2012).
- Ziarul de Iași (2001), Nicolae Văcăroiu se autosuspendă de la Banca de Investiții și Dezvoltare"[Nicolae Văcăroiu suspends his contract with the Bank for Investments and Development for his term as President of the Senate], 7 February, (internet) available at: <http://www.ziaruldeiasi.ro/national-extern/nicolae-vacarioiu-se-autosuspenda-de-la-banca-de-investitii-si-dezvoltare-niipfi> (viewed 1 September 2012).

## **Serbian Anti-Corruption Policy: welcome to Potemkin Village?**

### **Corruption: a matter of general concern?**

Surveying the numerous reports, memos and papers on corruption in Europe, one cannot escape the impression that it is a matter of real concern of all, whether institutions, the business community or the citizens. At present this is reflected in the National Integrity System assessments that are carried out in the EU, supported by the EU and coordinated by Transparency International in Berlin. Given this generally shared attitude one would expect a Europe-broad approach to this phenomenon. However, this appears to be a too optimistic view. As a matter of fact, given the fact that corruption is to a large extent (also) a political concern, political opportunism always slips in. While the European Union first allowed two highly corrupt countries, Romania (Nicolae 2013; Transparency International 2011) and Bulgaria (Pashchev *et al.* 2007; European Commission 2012), to enter the Union, and only after this event took severe measures against corruption in these countries, it turned a blind eye on corruption in Greece and Italy. The case of Italy hardly needs further illustration: for almost two decades the EU heads of governments and states resigned to the presence of an (allegedly) corrupt Prime Minister amidst their ranks. No token of concern being expressed though the Italian corruption is very well documented while “innocent until proven guilty” meant in Italy that the prime-minister could orchestrate his own innocence through an equally corrupt Parliament (Stille 2007). Given the blatant openness of the Italian corruption, this resignation is the more blameworthy. Does this also apply to Greece? Politically high-level corruption cases have come to light in the country, but systematic literature or research is very scarce. No general concern was expressed, until Greece proved

to have defrauded its national financial statistics, though right “under the nose” of Eurostat. Only then was Greece’s rampant corruption and nepotism brought to the open.

What sparked the concern for corruption in these countries were the enormous financial risks which emerged and not the immorality of corruption itself. The same applies to Bulgaria and to a lesser extent Romania: (fear of) embezzlement evoked action from “Brussels”. These observations shed doubt on the pretention that corruption is a concern of us all: it is subjected to opportunistic political considerations instead of a genuine worry.

In the EU an important consideration is the state of affairs of the state of corruption in the countries which want to join the EU. At the moment these are the countries of the western Balkan, the largest of them being Serbia. There are more worries about this country, one of them about the relationship with the new state of Kosovo, the other being corruption, which is raised as a matter of great concern to the EU. However, where the previous section cast doubt on the degree in which this is a genuine worry internationally, the same question has to be raised at national and local level: the daily level of policy makers and citizens. The relevance of this question is based on the plausible assumption that if anything is to be changed, it must find roots in the life and feelings of the common people. If it is not their concern, why should policy makers and politicians care? True, there is external pressure from “Brussels” which matters, but only as an external motivation. The internal motivation must come from the people: they can either resign to corruption, be part of it or make their dissatisfaction known, for example during elections, assuming that there are non-corrupt political alternatives. Few Serbian citizens think so: opinion surveys show that 77% of the respondents consider the political parties corrupt (UNODC 2011). This lack of trust is a recurrent observation over the past decade (Vuković 2002): in the perception of the people little has changed. Against this background Van Duyne and Stocco (2012) raised the question: “who cares about corruption?”

So, this paper will first address this question: "Who cares". Then the subject itself must be described: corruption as far as brought to light and the way it has been handled by the institutions of law enforcement. Then we will return to the initial "who cares" question by comparing intentions, pretensions and reality.

### **After Milošević: a decade of hope, deception and indifference**

The era of Milošević was one of decay and cynicism. The economy of Serbia was ruined, not only by the sanctions, but by a government under whose leader the economy was "criminalised". Interaction or even complicity of authorities with criminal organisations were hardly veiled (Logonder 2008). Corruption, nepotism and misappropriation of state funds were rampant while the population became impoverished (Pešić 2007; Begović and Mijatović 2007).

After the fall of Milošević, in 2000, there was new hope of a return to the "rule of law": justice without corruption. People began to turn against the "ugly face of corruption" and launched complaints against all kinds of corruption (Van Duyne *et al.* 2010), covering all kinds of *abuse of office* as well as nepotism: for example against the judiciary, privatisation agencies, utility companies or the health service (Begović *et al.* 2007). Did this herald a reform movement against a general corrupt governance?

The picture is very ambivalent and weighing progress and stagnation, the scales tip towards the latter. At the beginning this did not look like that. There was improvement of some indices, however imprecise these are. These concern the World Bank rating of control of corruption in Serbia as well as the Corruption Perception Index since respectively 2000 and 2003 (Sadiku 2010). Indeed, there was optimism in the air, if not a "*post-October euphoria*" as Begović (Begović *et al.* 2007) called it. Anti-corruption legislation was extended and various organs, such as the Anti Corruption Council (Oct. 2001), mobile

anti-corruption teams were established and the role of the state in the market was reduced, which also lowered its corruption potential. The perception of the prevalence of corruption became slightly more favourable. However, this did not last. Later Begović *et al.* (Begović *et al.* 2007) observed a waning of the anti-corruption spirit.

This is understandable as behind the stage decors of the reform much remained the same. The reformist premier Đinđić is said to have moved too fast to the taste of many and was killed by members of Belgrade organised crime, in 2003. Still, also under Đinđić, rich criminals were well served: 2001, the Extra Profit Tax legalised with one stroke of the pen, much crime-money by simply taxing (and effectively pardoning) those who had taken advantage of the corruptive previous regime. This did not eliminate the need for money-laundering, which continued unabated, irrespective of the Serbian Financial Intelligence Unit which proved little effective (Van Duyne and Stefano 2008). Public institutions continued to perform badly, whether for entrepreneurs or the "sick and needy", creating a demand to buy those services that were delayed unreasonably or even denied. According to an early research 89% of the entrepreneurs bought services from corrupt civil servants, acting as if they were the "rightful owners" of their position, sometimes "by heritage" from parents or other relatives (Vuković 2002).

On the other hand, foreign (EU) pressure contributed to a modest and steady progress, in particular as far as legislation and the establishment of institutions are concerned. As paper won't blush, much remained on paper: throughout the past decade and up until now, the laws are fine but the implementation remains defective. Whether it concerned the National Anti-corruption Strategy, the Government Audit Institution or the Anti-corruption Agency, every development looks like a hurdle race, but then in slow motion. Or was it mainly a *Potemkin Village*-like acting? Or perhaps a bit of improvement and a bit of acting and pretending at the same time? I think that this is the most plausible interpretation, given the lower corruption perception data in the middle of the previous decade (Begović 2007: figure 7). At the political level,

there was still stagnation in the fight against corruption, which is understandable if Pešić's (Pešić 2007) description of Serbia as a "feudalistic state" is correct. In such a state political bosses act like medieval Lords, bestowing favours (positions) to their political retainers. Likewise, in Serbia the political leadership grabbed the state as a property, divided it in "fiefs" which were bestowed on followers as vassals. Small wonder that with so many broadly shared interests at stake, progress was smothered behind the settings of laws and institutions. The latter proved to be ineffective, not only against political corruption, but also the lower level "executive" corruption: bribery in the form of the selling medical services, school or university diplomas, or buying off traffic fines.

There are various interpretative models for corrupt behaviour. The more rational economic approach of the 'principal-agent' model is attractive, but does not take fully account of the normative environment and irrationality (Jager 2004). The *decision making* approach of Van Duyne (Van Duyne 2001) is more cognitive-psychological but seems to be more relevant for corruption at managerial than at lower executive level. As a matter of fact, these are not competing models: while the agent (policeman) may have opportunities to grab some change, decision makers violate the integrity of decision making within a whole organisation.

From the decision making perspective, the anti-corruption policy in Serbia shows a faltering course: a mixture of some progress and much stagnation (Freedom House Report Serbia 2009), does not reflect much enthusiasm for fighting corruption, as observed by Trivunović *et al.* (Trivunović *et al.* 2007: 73). The authors remark with clear disappointment that "*there is little interest, both within the government, but also civil society in participating [in the fight against corruption] . . . let someone else do it.*"

With disappointment came indifference. Research on corruption disappeared from the Serbian academic radar: there were (and are) no funds nor interest. As one respondent conveyed to me: "*Corruption is*

*no longer a sexy subject for my students. They do not care.*" Correctly, who cares for things which are not sexy?

We are not short of solemn official proclamations of how serious the authorities take the corruption issue. This chapter will investigate this claim later by comparing it with the latest research findings. For the moment it is informative to juxtapose this claim with the outcomes from opinion surveys discussed below. Of these the most important findings concern the *seriousness* ratings and the *own experience*.

- Seriousness

Do the people think corruption as the most important problem of the country? No. In all the opinion surveys corruption as "most important problem of the country" ended on the *third* place. That was the case in 2001, 2006 (Begović *et al.* 2007) and with the recent surveys carried out in the *TNS-Medium Gallup* and *UNDP* project (*TNS-Medium Gallup* and *UNDP* 2010), by Transparency International or UNODC. While poverty and unemployment, respectively, were rated by 20-30% of the respondents as the "most serious" problem in the country, corruption achieved a rating of 9-18% with only in the UNODC survey exceeding the 10%-mark). In the 2001 and 2006 surveys the seriousness rating remained at 10%, while in 2006 only 5% thought it a problem experienced personally.

- Own experience

The above mentioned surveys also asked for personal experience, broadly formulated as "did you or someone of your household pay a bribe in the past . . ." Depending on the project the period was set at 3 or 12 months. Alternatively, the score was related as % of the *real contacts* with civil servants. This method is realistic: more contacts, more exposure. While in the former method the direct and indirect experience approached 20%, relating the experience to the frequency of real contacts resulted in a lower figure of 8%. This does not mean that the other figures are wrong, but that other denominators were used.

Summarised: a sizeable part of the population has a personal experience with corruption, which they may consider as a nuisance, but not as the most prominent problem for themselves or the society in general. But how bad is that experience? When bribes are not extorted, it is a voluntary barter transaction: indeed, 85% of "own experience" respondents admitted to have taken the initiative, for example to get the desired medical treatment or to avoid problems with the police (TNS-Medium Gallup and UNDCP 2011).

Hence, many "do it" – and as initiator! This must be weighed against statements of disapproval or resentment. To what extent do these statements reflect political correctness? This is important, because it is difficult to pursue an anti-corruption policy which is mainly based on political correctness. We meet here an ambivalent situation. On one side of the balance we have the political correctness: "corruption is bad" and police, prosecution and courts should do something about it. On the other side it appears that citizens think these branches of law enforcement too corrupt to handle corruption cases: the perception of the morality of the legal professions is very low (only politicians and doctors are less trusted). This is an enduring phenomenon reflecting a deeply rooted reputation problem (Begović *et al.*, 2004; chapter IV; Trivunovic *et al.* 2007: 21). This perception itself reinforces the attitude of the citizens concerning reported cases to the police: of the bribe payers 35% thought reporting to the police pointless: "*Nobody would care*" (UNODC report, figure 22; 32). Perception creates reality which again reinforces perception. "*Many do it and few care.*" This reflects the major obstacle of the past decade: indifference, displayed either openly or behind the stage settings of law and institutions.

### **Black box conception of the law enforcement**

The previous section outlined a decade of expectations sliding down to indifference as far as the citizens are concerned. During the same decade a corruption policy has been formulated, related laws have



been enacted and institutions established (e.g. Anti Corruption Council; Ombudsman; Board for Freedom of information of public interest), with the Anti-Corruption Agency as the last "acquisition". If all these measures and institutions are effective these constitute important developments, though they fail to impress the population as is shown in the opinion surveys presented in the previous section. Of importance are also the institutions of law enforcement, functioning as the "*ultimum remedium*" in the whole anti-corruption strategy. As a matter of fact, little is known about the functioning of the "rule of law", except that in all opinion surveys the related institutions end invariably in "the top five of distrust". But these are no substitutes for a proper evaluation: they are subjective ratings and do not inform us about the real functioning of the law enforcement agencies, as far as it concerns tackling corruption.

This chapter will focus on the criminal law enforcement by the prosecution and the courts. Though we intended to involve the police too, the Ministry of Interior pursued such a "byzantine" procedure that this intention was effectively blocked. As the Ant-Corruption Agency has a monitoring function in the implementation of the Anti-Corruption Strategy, also concerning criminal law enforcement, the chapter will also relate the Agency's findings in this field.

With so little knowledge it is difficult to formulate hypotheses about the functioning of law enforcement, let alone carry out meaningful tests. Even with the beginning of insight from our first OSCE supported research project (Van Duyne et al. 2010), the institutions of prosecution and the judiciary are still a kind of *black box*. That may not look positive, though in experimental psychology it is a neutral concept used to denote the "mind" which is closed to direct observations and therefore a "black box". All we can do is to observe what kind of stimuli are exerted upon someone (input) and what kind of conduct comes next (output). In between we must speculate about inner mechanisms. The same approach can be used to address the prosecution and courts embedded in a surrounding anti-corruption strategy.

It is plausible to expect that this strategy exerts stimuli on the law enforcement and that as a consequence, there is a related output, consisting of prosecutions, verdicts and sentences. Of course, this output will be related to a description of the input of cases, which in its turn should be a function of the surrounding strategy.

### Method of research

As remarked in the previous section, there is not much research tradition in this field in Serbia. Apart from the OSCE-project, there have been no research projects of any significance since 2006/7. In a country, generally characterised by opaqueness, when it comes to corruption one has to throw a wide net in a muddy pool and fish up bits and pieces of empirical evidence. In a way, the methodology is itself a kind of anthropological finding, which tells us about the corruption attitude of the people we addressed.

Given the state of the knowledge and the data management in the country, we had to knock on the doors of many institutions. Could their reactions be considered as a kind of attitude measurement? I think this is permissible with institutions and functionaries having a direct responsibility for the corruption policy. Can one scale this attitude? That would be too intuitive and a bit of "wisdom by hindsight". Lining up the addressed institutions we get the following:

- *Ministry of Interior*, essential for getting cooperation with the police: failed. To obtain a few obsolete and useless data the research team was sucked into a bizarre correspondence involving even the Dutch embassy;
- *Ministry of Justice*, important for obtaining access to the Republic Public Prosecution Offices (RPPO). The addressed persons, whether high-up or humble-down, did not respond to or requests. The Minister is the national anti-corruption coordinator.

- The Republic Prosecution Office, *Anti-Corruption Department*: should have about 2.200 cases archived for inspection and coordination, but denied the possession of any data, except annual frequencies which do not match with any other data. Letters with requests, delivered in person, were not responded to.
- The *Anti-Corruption Agency*: the staff showed no interest in data or research, even if it has a *monitoring and coordinating task* (art. 66 Act on the Anti Corruption Agency). How to carry out such a task without data is a mystery.

These are central organs, tasked with coordination and having as their mission to “*inform the general public*”, as a glossy booklet of the Republic Public Prosecution states (The Republic Prosecutor’s Office 2011). However, no trace of task fulfilment could be identified. Searching the websites of the ministries and RPPO with “corruption” and all the synonym search words only produced blanks: no public informed and no evidence of coordination.

The following organisations displayed more responsiveness and cooperation:

- The *Anti-Corruption Council*, which is a governmental advice body, but acting independently. The ACC collects and investigates cases with a team of experts. If its findings are relevant for further criminal investigation, it passes the case to the RPPO, which rarely responds. It also advises the government, which never replies (ACC 2011). We obtained full insight into the cases processed by the ACC.
- The *Special Prosecutor for Organised crime*, also competent for serious corruption cases provided us with the indictments of all 26 corruption cases.

- The *Courts*: the First Basic Court and the Belgrade Higher Court allowed us to study 65 verdicts, from which we selected 31. The Second Basic Court denied having any corruption cases, though from the database of the Statistical Office we could extract 109 processed by this court.
- The *Statistical Office of the Republic of Serbia* cooperated fully by providing us with the raw excel databases of the years 2007-2009. From these databases we omitted the records of unknown perpetrators. The remainder was converted into an SPSS database. The databases of the Prosecution Offices and the Courts could not be integrated as their input format is different, excluding a fusion. The relevant offences were the articles 359-369 from the chapter "Criminal offences against official duty" which is a broader concept than corruption itself. These offences can be considered as an equivalent of "violations of integrity in office". There is no official definition: only two articles (367 and 368) deal with "hard core" corruption in the meaning of giving and receiving bribes. As otherwise all relevant policy papers in Serbia, the EU and OSCE use the term "corruption" in a generic meaning, I adopted that term in the analyses presented in the following sections.

Because of the low frequencies, the data from the Basic Courts had to be put together according to the District Court to which they belong. They will be called "Court Regions". There is no separate appeal database available.

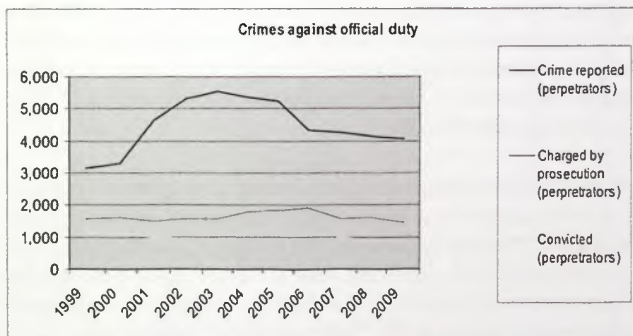
### **Results: from black box to random box**

From the perspective outlined above this chapter will first give a general overview of the past decade concerning the reported cases of "crimes against official duty" and the decisions of the Prosecution and the Courts as presented in Table 1 and Figure 1.

**Table 1** Crimes against official duty: reported offenders, charged and convicted 1998-2009

Year	Offenders			%		
	reported	charged	convicted	Charged/ reported	Convicted/ Charged	Convicted/ reported
1998	4.303	1.860	1.242	43	67	29
1999	3.169	1.566	1.133	49	72	36
2000	3.312	1.583	1.101	48	70	33
2001	4.640	1.473	983	32	67	21
2002	5.312	1.553	1.031	29	66	21
2003	5.535	1.566	1.038	28	66	19
2004	5.356	1.796	1.170	33	65	22
2005	5.253	1.839	1.126	35	61	21
2006	4.343	1.896	1.147	44	60	26
2007	4.244	1.564	994	37	64	23
2008	4.114	1.661	1.079	38	58	22
2009	3.980	1.833	878	46	48	22
<b>Average</b>	<b>4.463</b>	<b>1.683</b>	<b>1.076</b>	<b>37</b>	<b>64</b>	<b>24</b>

Source: Statistical Yearbook 2010

**Figure 1** Trends in reports, charges and convictions of crime against official duty

Do these figures tell us something about what happened in society and within law enforcement? Let us follow the timeline. With the regime change in 2000 we also see a change in reporting conduct: the frequency of reported offences rose steeply, till 2003. After the murder of Đinđić in that year the curve slides down steadily. In 2005/6 even markedly, corresponding with the growing disappointment (Begović 2007). And what happened with the Prosecution and the Courts? Almost nothing: a virtual flat line suggesting a non-responding black box. Of course, these numbers must be related to the total number of reported crimes, for which we only have the years 2006–2009. For these years the percentage of crimes against official duty went gradually down from 6,8% in 2006 to 6,1% in 2009.

These are aggregate figures which may veil local differences between the Prosecution and the Courts. These will now be discussed in two sections.

#### a. The prosecution offices

Table 2 (below) show the input of corruption reports, broken down by district. Differences between the districts are clearly present, though very unsystematically: at the low end of the range we find Pančevo (2,8%), Subotica (2,0%), Zrenjanin (3%) and Belgrade (3,5%). At the high end we have Vranje (11,4%), Leskovac (10,6%) and Požarevac (10,5%). But viewed over the years there are no regular high- and low-frequency districts. Jagodina being on top in 2007, with 15% crimes against official duty, Požarevac heading the year after with 10,2%, and in 2009, Leskovac with 14%.

When we look at the 2007–2009 database for a comparison of increases and decreases per Prosecution Office in the districts, we see a similar unsystematic variability. Between 2007 and 2009 Leskovac showed an *increase* of cases from 159 to 249, while in the same time span Negotin experienced a *decrease* from 155 to 81. In percentages: an increase of 57% versus a decrease of 48%. Table 2 provides the full picture.

Large increases ( $\geq 40\%$ ) can also be observed in the districts of Čačak, Kraljevo, Pito, Užece and Valjevo. Decreases of more than 30% are observed in Kragujevac and Niš. On average there is more decrease than increase resulting in a slightly lower figure in 2009 compared to 2007.

**Table 2** Reported offenders against official duty at Prosecution and bribery cases: per court region 2007-2009

Districts (regions)	Reported offenders against official duty			Difference 2007-2009 in %	2007-2009	
	2007	2008	2009		Taking bribes	Giving bribes
Belgrade	426	473	436	2	35	24
Čačak	83	150	120	45	2	1
Kragujevac	123	94	85	-31	1	1
Kraljevo	73	55	112	53	19	15
Kruševac	144	134	165	15	6	1
Leskovac	159	180	249	57	17	9
Negotin	155	103	81	-48	18	9
Niš	115	112	77	-33	6	5
Novi Pazar	71	46	60	-15	10	10
Pirot	50	35	70	40	0	1
Požarevac	195	218	198	2	26	23
Prokuplje	110	120	87	-21	6	2
Smederevo	179	182	131	-27	41	51
Jagodina	239	154	207	-13	25	10
Šabac	254	303	259	2	28	10
Užice	106	154	150	43	7	4
Valjevo	152	187	219	44	5	8
Vranje	388	315	361	-7	18	45
Zaječar	166	193	163	-2	9	2
Novi Sad	217	222	173	-20	12	5
Pančevo	66	59	54	-18	5	4
Sombor	95	75	102	7	8	14
Sr. Mitrovica	232	229	184	-21	16	10
Subotica	85	67	77	-9	5	2
Zrenjanin	98	91	77	-21	1	2
<b>Total</b>	<b>3981</b>	<b>3951</b>	<b>3897</b>	<b>-2</b>	<b>326</b>	<b>268</b>

There are no explanations for these sudden increases or decreases which look rather like an unpredictable weather forecast in the autumn than a trend of an underlying stable phenomenon let alone the outcome of an anti-corruption strategy. Statistically the input of black box appears to be quite at random.

Given their relevance the frequencies of the reported bribery (taking and giving) are added in the last two columns, albeit measures by their numbers their relevance looks less convincing. That must be reduced with about 20% non-indictment. In about half the Court regions there are less than ten cases for both taking and giving bribes together. Some of the Court regions handle only one or two cases in three years.

Given this seemingly random input, what will the output look like? The output consists of the decision whether to pursue the prosecution by filing an indictment; dismissing the report; or by suspending or terminating the investigation. Looking for a "system", the next question concerns the pattern of indictment rates differentiated per Court district. This is presented in Table 3 (next page).

Almost 60% of the reports do not result in an indictment. However, the picture is again very diverse with large differences between the districts. The indictment rate ranges between the extremes with on the low end Požarevac with 26,2% and at the other extreme Kraljevo with a 65,4% prosecution chance. Of course, we do not know potential underlying causes. Kraljevo has less cases reported than Požarevac. Is there an underlying policy? Such as: Kraljevo filters out weak cases resulting in a high indictment percentage. In Požarevac, on the contrary, the report frequency is high and therefore the likelihood of weak cases which must be dismissed for lack of evidence is higher. But this assumes that the inflow of cases is subjected to a management strategy. This assumption is not corroborated: neither in the previous research, nor in the present one did we ever found a trace of any strategy.



Table 3 Type of prosecution decision per Court district: 2007-2009

Court region	Dismissal report %	Disrupt investigation %	Terminating investigation %	Indictment %	Total N 100%
Belgrade	31,8	1,4	9,0	57,8	1316
Čačak	41,5	0,6	8,3	49,6	337
Kragujevac	26,2	0	10,3	63,5	301
Kraljevo	32,1	0	2,5	65,4	240
Kruševac	38,5	0,2	7,9	53,3	418
Leskovac	60,5	0	6,0	33,4	583
Negotin	66,2	0,3	3,3	30,3	337
Niš	65,3	0	4,3	30,3	300
Novi Pazar	44,5	0,6	2,3	52,6	173
Piroć	58,7	0	11,0	30,3	155
Požarevac	70,9	0	2,9	26,2	595
Prokuplje	46,6	0,3	14,2	38,8	309
Smederevo	34,2	1,3	6,7	57,8	479
Jagodina	64,6	1,0	3,4	31,0	594
Šabac	64,0	2,3	5,3	28,4	791
Užice	43,8	0	13,9	42,3	404
Valjevo	69,3	0	3,1	27,5	541
Vranje	50,2	0	12,8	37,0	1033
Zaječar	63,2	0,2	9,3	27,2	503
Novi Sad	31,2	0,5	6,2	62,1	593
Pančevo	33,5	0	9,1	57,4	176
Sombor	29,6	0	13,7	56,7	270
Sr. Mitrovica	47,9	3,1	11,3	37,7	639
Subotica	46,2	0	1,8	52,0	223
Zrenjanin	37,5	0	6,4	56,2	251
<b>Total</b>	<b>5652</b>	<b>78</b>	<b>886</b>	<b>4945</b>	<b>11561</b>
	<b>48,9%</b>	<b>0,7%</b>	<b>7,7%</b>	<b>42,8%</b>	<b>100,0%</b>

The correlation between the percentage of indictments and the total case input is slightly negative (Spearman's Rho = -0,27,  $p = 0,18$ ; Pearson = 0,-18,  $p = 0,38$ ), but not significant.

The large differences in indictment percentages may be related to differences in deciding on certain categories of cases: do the same offence categories have more or less the same chance of indictment or are the decision outcomes different per court. For this reason the extremes of Požarevac (highest) and Kraljevo (lowest) are compared, though their case frequencies differ widely: 595 against 240 cases. Table 4 presents the comparison.

**Table 4** Type of decision of Požarevac and Kraljevo: 2007-2009

Type of offence	Požarevac				Kraljevo			
	Dismissal report %	Terminating invest %	Indictment %	Total	Dismiss report %	terminating invest %	Indictment %	Total
Abuse of office	67,2	4,4	28,4	229	26,6	2,3	71,1	128
Law breaking court	91,7	0	8,3	241	92,3	2,6	5,1	39
Dereliction duty	84,2	0	15,8	19	71,4		28,6	7
Illegal collection payment	100	0	0	1				0
Fraudulent serv.				0	33,3		66,7	3
Embezzlement	17,0	13,2	69,8	53	4,0	4,0	92	25
Offence by civ. Servant	0	0	100	2			100	4
Influence trading			100	1				0
Taking bribe	57,7	0,0	42,3	26			100	19
Giving bribe	26,1	0,0	73,9	23		6,7	93,3	15
<b>Total</b>	<b>422</b>	<b>17</b>	<b>156</b>	<b>595</b>	<b>77</b>	<b>6</b>	<b>157</b>	<b>240</b>
	70,9%	2,9%	26,2%		32,1%	2,5%	65,4%	

As can be observed in the findings, given in Table 4, the main difference appears to be the decisions on *abuse of office* cases, with a

low indictment rate in Požarevac and a high one in Kraljevo: 28,4% against 71,1%. With the exception of complaints against judges and prosecutors, embezzlement and bribery, the other crime categories have too low absolute frequencies in either of the two regions (or in both) for presenting relative frequencies.

*Bribery* cases show also marked differences: in Kraljevo almost all cases are indicted, while in Požarevac taking and giving bribes are prosecuted in 42,3 and 73,9%. *Embezzlement* is also prosecuted more often in Kraljevo: 92% against 69,8% in Požarevac.

To explore a frequency effect (240 against 595 cases), the team also looked at the district with a similar high prosecution percentage but with a comparable case frequency: *Novi Sad*, with 593 cases, does not differ much from Požarevac, but has an indictment percentage of 62,1%. Now the main difference is determined by *abuse of office* with also a high indictment rate in Novi Sad: 64,3%. Other categories do not differ essentially or the absolute numbers are so small as to make a comparison futile. For example, in Novi Sad there are only 15 cases of taking bribes and 5 cases of giving bribes over a three year period.

Inspection of the whole of the decision outcomes of the Court districts broken down per offence categories shows that the absolute frequencies are very low (making percentages meaningless) except for *abuse of office* and *embezzlement*. Their indictment percentages also display different but large ranges between the Court districts: *abuse of office* ranges from 27,2% to 71,2%; *embezzlement* starts with a much higher threshold of 50% with the maximum of 90% of the reported cases leading to indictments. The variance between the courts is similar, but the threshold differs.

Before we move on it will be useful to pause for a moment and look back: what do we see? Mainly a bundle of case processing institutions with a low frequency input for a high priority policy, with – unknown – differences in decision outcomes. The statistical view is somewhat

troubled by the dominance of the "umbrella article" of abuse of office, though this does not veil the very low figure of the key offences such as taking and offering bribes which then must be reduced with 20% non-indictment.

#### b. The courts

The above section looked at the prosecution output, which concerned the indictments that should be the input of the Courts: indictments out of the Prosecution and into the Courts should therefore match. However, that is not the case: in this database there is a difference of 402 cases between Prosecution output and Court input. This difference is also unsystematic: some courts "missing" more than others. This makes clear that the Prosecutor and Court databases must be treated as different – statistical – populations, even if dealing with the same suspects.

As is the case with the prosecutions, the "turnover" of the courts went gradually down: from 2007-2009 a reduction from 1.558 to 1.420, a difference of 9%. And also with the Courts, the difference was not spread evenly over the local units: Niš saw a reduction of 63 cases while Zaječar had an increase of 42. The increases and decreases of the courts did not correlate with that of the related Prosecution offices in the same district (Spearman's  $Rho = ,05$ ): within the same locality, the Prosecution could have an increase and the Courts a decrease.

The most important criterion variable is the decision outcomes of the courts: verdict and sentencing. The decision categories in the verdicts are very refined: 13 categories, which can then be broken down per year and municipality and district. Given the low frequencies in most of them these were reduced to three categories (see Table 5 below). Noticing not much difference between the years (57,9% in 2008 to 63,6% in 2007), these categories were again fused. Concerning the District and the Municipal Courts, the percentage of guilty verdicts were 60,6 and 60,7 respectively for which reason we grouped the Courts again into regions (District plus Municipal Courts).

**Table 5** Category of verdict: guilty or not guilty

Regions (district + municipal courts)	Category of verdict			Total = 100%
	Guilty %	Charge lifted/denied %	Other end not guilty %	
Belgrade	53,8	16,7	29,5	593
Cačak	56,8	34,8	8,3	132
Kragujevac	41,6	38,3	20,2	243
Kraljevo	63,9	23,6	12,5	144
Kruševac	62,8	23,0	14,2	113
Leskovac	52,9	39,2	7,8	204
Negotin	54,9	33,3	11,8	102
Niš	69,4	17,6	12,9	255
Novi Pazar	63,4	26,8	9,8	41
Piroć	45,6	30,4	24,1	79
Požarevac	73,0	16,4	10,7	122
Prokuplje	66,7	29,4	3,9	51
Smederevo	82,9	17,1	0	105
Jagodina	62,9	31,7	5,4	224
Šabac	63,1	23,6	13,3	195
Užice	65,4	26,2	8,4	107
Valjevo	56,3	30,4	13,4	112
Vranje	72,1	24,5	3,4	265
Zaječar	63,0	20,3	16,7	227
Novi Sad	53,5	29,8	16,7	467
Pančevo	70,4	18,4	11,2	152
Sombor	69,2	26,6	4,2	143
Sremska Mitrovica	65,8	16,9	17,3	266
Subotica	56,8	24,2	18,9	95
Zrenjanin	62,6	28,7	8,7	115
<b>Total</b>	<b>2.759</b>	<b>1.141</b>	<b>652</b>	<b>4.552</b>

First we have to look at the comparison of the guilty verdict rank order of the Court regions with the rank order of the indictments of the Prosecution Offices: is a high (or low) indictment score indicative for a high guilty score? Not necessarily: prosecutors may charge too many weak cases resulting in a higher percentage of non-guilty verdicts.

That would result in a negative correlation. The comparison between the rank order of indictments and guilty verdicts (Spearman's Rho) shows a slightly negative correlation of  $-0,091$ , however it is non-significant. There is no support for the hypothesis of coherence between the decisions of the Prosecution Offices and the Courts, lending support to the hypothesis of a *random* functioning of the institutions of criminal justice.

Subsequently there are the differences between the Court regions. As can be observed in Table 5, around the average of 60,6% guilty verdicts, the interregional differences are again large, ranging from 82,9% (Smederevo) to 41,6% (Kragujevac). These differences are compounded by differences between the offences. The guilty verdict rate of abuse of office, being the most prevalent offence category, scores with 55% below the average of 60,6%. This can be observed in all Court regions, though the largest percent differences can be observed in Belgrade, Zrenjanin and Pirot (-15% to -16%).

Comparing guilty verdicts against the Court regions is hampered by low frequencies of most offences per cell ( $< 10$ ). Only *abuse of office* and *embezzlement* have sufficient frequencies for further comparison. Concerning abuse of office with an overall 55% guilty verdict, Pirot has the lowest guilty percentage, 30,2% against 77% for Smederevo. For embezzlement the overall guilty percentage is 75, with a range from 56% (Prokuplje) to 97 and 100% (Požarevac, respectively Smederevo, though only 15 cases). It demonstrates again the large differences between the court regions.

Are such differences also to be expected when it comes to sentencing? Given the previous findings, such disparity would not come as a surprise. There are many sentence modalities, which can be simplified to: prison, fine and a (suspended) punishment on parole or under conditions. The fines can be discarded, as only three fines have been imposed. Hence, with prison as the main category, we can differentiate between an unconditional and a conditional prison sentence:

78,6% (2167) of the prison sentences were conditional (probation). In this modality we find again the usual differences. Four Courts are the most *lenient* by meting out mostly conditional prison sentences:

- Prokuplje 94%
- Valjevo 94%
- Vranje 92%
- Subotica 91%

The three most *severe/strictest* courts in terms of lower conditional sentences are:

- Čačak 45%
- Sombor 51%
- Kraljevo 64%

Further breaking down per offence category is again hampered by low frequencies, with the exception of abuse of office and embezzlement.

In *abuse of office cases* Sombor and Čačak, with 50% and 52% unconditional sentences, respectively, are the most strict, against 100% conditional sentences in Prokuplje, and Novi Pazar.

With *embezzlement* Čačak was even more implacable and had with only 21% conditional punishments the most severe score. It was in this regard followed by Niš: 45%. In contrast, Subotica with only conditional sentences handed down, was very lenient, followed by the other lenient courts: Vranje and Valjevo (95%). And Prokuplje? It had only five embezzlement cases, three of them conditionally punished. Small frequency constraints prevent us from further breaking down the data.

These findings seem to point at some within-court consistency. Is that also the case if the length of prison sentence is taken into account? To make comparisons on this dimension all the crime types are put together, which produces the following picture for *unconditional* prison sentences.

Table 6 Unconditional prison sentences per court region, all years

Court regions	Length prison term									
	Till 30 days %	1-2 months %	2-3 months %	3-6 months %	6-12 months %	1-2 years %	2-3 years %	3-5 years %	5-10 years %	Total Courts = 100%
Belgrade	2,6	5,1	30,8	43,6	15,4	2,6				39
Čačak	2,4	19,5	34,1	19,5	12,2	12,2				41
Kragujevac	9,1	9,1	36,4	45,5						11
Kraljevo	3,1	12,5	37,5	21,9	18,8			6,3		32
Kruševac			11,1	66,7		11,1	11,1			9
Leskovac	6,5	12,9	16,1	45,2	12,9	6,5				31
Negotin		7,7	15,4	46,2	23,1			7,7		13
Niš		1,3	11,7	46,8	31,2	6,5	1,3	1,3		77
Novi Pazar				66,7	33,3					3
Pirot			44,4	22,2	33,3					9
Požarevac		9,1	40,9	45,5	4,5					22
Prokuplje			50,0			50,0				2
Smederevo			18,2	36,4	36,4			9,1		11
Jagodina		6,7	13,3	20,0	33,3	16,7	10,0			30
Šabac		4,8	23,8	52,4	9,5		4,8	4,8		21
Užice			13,0	43,5	26,1	17,4				23
Valjevo			25,0	50,0		25,0				4
Vranje			23,1	46,2	23,1	7,7				13
Zajecar			26,1	43,5	30,4					23
Novi Sad			4,9	21,3	29,5	23,0	14,8	4,9	1,6	61
Pančevo			6,3	56,3	12,5	25,0				16
Sombor	2,0	2,0	10,2	26,5	24,5	26,5	4,1	4,1		49
Sr. Mitrovica			5,6	44,4	33,3	5,6	5,6	5,6		18
Subotica				50,0	50,0					4
Zrenjanin			25,0	41,7	8,3	16,7	8,3			12
<b>Total</b>	<b>3</b>	<b>14</b>	<b>76</b>	<b>216</b>	<b>155</b>	<b>72</b>	<b>25</b>	<b>12</b>	<b>1</b>	<b>574</b>
<b>%</b>	<b>0,5</b>	<b>2,4</b>	<b>13,2</b>	<b>37,6</b>	<b>27,0</b>	<b>12,5</b>	<b>4,4</b>	<b>2,1</b>	<b>0,2</b>	



Though sentencing intervals used by the Statistical Office are unequal, while for a number of Court regions the absolute numbers are very small, it seems that Belgrade, Kragujevac and Požarevac tend to impose more unconditional prison terms in the 6–12 months category, while Novi Sad imposed prison sentences of more than one year in 44,3% of the cases, mainly pertaining to *abuse of office*: of the 56 unconditional prison sentences for this offence, 43% were longer than one year. This Court region can be considered as one of the severest in Serbia: in terms of the length of prison sentences, but not regarding the conditional/unconditional division.

### c. The time variable: justice delayed is justice denied

Time is a very important variable in all legal matters: being tried within a reasonable time is a basic right. But what is reasonable? There are complaints about the slow functioning of the Serbian justice system. These are moral issues, which must come after the facts. Our question is: what is the processing time of our judicial black box of cases concerning crimes against official duty. Of course, answers to this question must be related to the total processing times in all criminal cases as a base line. The Statistical Office reported as follows:

- for *all* criminal cases finished in 2007–2009 by the Courts around 45% lasted more than one year. Half of these lasted more than two years (23% of the total number of cases);
- acquittals last systematically longer: For the non-guilty verdicts only 39% were processed within one year. Of that 60% lasting more than one year, 40% of the defendants had to wait for more than 2 years for an acquittal. The guilty ones were served quicker in relative terms: 59% of the *guilty* verdicts were pronounced within one year. Still 20% had to wait for more than 2 years.

- the average duration of criminal proceedings in the Basic Courts is 1,47 years; in the Higher Court in the first instance it is 1,6 years and in the second instance it is 1 year.<sup>1</sup> There is no information about the accumulation of processing times in cases of more instances.

Not all the time raw data could be converted into time variables within the SPSS programme. But we could retrieve the *date of receiving the charge* and the *date of decision* as a full day-month-year time variable. This was not possible for the *offence* and the *finalisation* date: these were only available as a full *year* variable. This entails some rough rounding off.

There are some additional *caveats* to mention: (a) the year of finalisation may sometimes be the next year; (b) the year of offending is not necessarily the year in which the case has been registered. In addition, we do not know the investigatory or procedural part of the time span before the day of receiving the charge: the pre-charge phase. Naturally, this pre-charge phase has also its division of "time slices": the "police time" and the "prosecutor time". This precludes attributing the length of the procedure to either the police or prosecution. This makes it impossible to answer the "who delays" question.

Nevertheless, we have three interesting time spans: (a) the *total time span* from the year of offending to the year of finalisation and within that (b) the time span *before* receiving the charge (pre-charge) and (c) the time span from the day of receiving the charge till the day of the finalisation (post charge). How do these relate? Table 7 provides an interesting insight.

---

1 Answers given to the European Commission questionnaire: question 23. (EU Commission Staff Working Paper, Analytical Report.)

**Table 7** Processing times in years: from year offence till finalisation: from year of offence till receiving of charge and from year receiving charge till finalisation.

Court District	N	Mean: total time	Mean pre-charge	Mean post-charge	Maximum total time
Beograd	592	5,20	2,60	2,95	18,00
Čačak	132	5,62	3,16	2,84	14,00
Kragujevac	242	5,59	2,65	3,31	13,00
Kraljevo	164	5,99	2,88	3,32	14,00
Kruševac	113	4,53	2,24	2,69	11,00
Leskovac	204	4,72	2,55	2,51	13,00
Negotin	102	4,59	2,23	2,79	12,00
Niš	255	4,72	2,39	2,68	17,00
Novi Pazar	41	3,83	1,68	2,68	9,00
Pirot	79	5,23	2,30	3,49	14,00
Požarevac	122	4,13	2,23	2,18	13,00
Prokuplje	51	3,82	2,68	1,61	10,00
Smederevo	105	5,58	2,72	3,18	12,00
Jagodina	223	4,49	2,66	2,06	15,00
Šabac	195	4,78	2,73	2,26	18,00
Užice	107	4,63	2,81	2,22	13,00
Valjevo	112	5,39	2,64	3,07	12,00
Vranje	265	4,89	2,22	3,01	17,00
Zaječar	227	4,17	2,67	1,84	12,00
Novi Sad	467	5,64	3,09	2,93	14,00
Pančevo	152	5,01	2,78	2,53	14,00
Sombor	143	6,57	3,20	3,57	14,00
Sremska Mitrovica	266	6,76	2,87	4,24	16,00
Subotica	95	5,36	2,79	2,75	15,00
Zrenjanin	115	4,48	2,59	2,31	11,00
<b>Total</b>	<b>4569</b>	<b>5,16</b>	<b>2,67</b>	<b>2,83</b>	<b>18,00</b>
<b>Median</b>		<b>5,00</b>	<b>2,14</b>	<b>2,00</b>	

Despite the fact of high maximum total processing times for single cases, the median is close enough to the mean to use that index.

A few observations can be made. In the first place, the difference between the averages of these cases and *all* criminal proceedings is very wide: 5,16 versus 1,47 years for the Basic Courts and 1,6 for the Higher Courts. A methodological warning must be made: our Court regions (District Courts + Municipal Courts) are not the same as the Higher and Basic Courts after the judicial reform of 2010, while many corruption cases are not handled by the lower courts. Nevertheless, assuming that the answers of the Ministry of Justice given to the EU Commission are correct, we must face the hypothesis that in corruption related cases the procedures last much longer than in "normal" cases. This is an important finding which needs to be investigated in-depth by applying the analysis of this research on all other criminal cases. As we do not have the total criminal database, we have to continue with this subset which is likely to consist of another statistical offender population.

In the second place, the difference between the means of the two processing time spans should be noted: the difference between the pre-charge phase and the charge-end phase was significant (T-test, 2 tailed,  $p < 0,000$ ). This means that the processing time of the Courts deviates not just "by change" from the prosecution-and-police time. If justice is delayed, it is significantly delayed by judges.

Further observations concern:

- the *total* processing time: the between-court differences range from 3,8 (Prokuplje) to 6,8 years (Sremska Mitrovica), a two years difference;
- the time span of the *pre-charge* ranges from 1,68 (Novi Pazar) to 3,2 year (Sombor), just more than one year and half;
- the processing time *from charge to finalisation* ranges from 1,61 year (Prokuplje) to 4,24 years (Sremska Mitrovica), a difference of 2,63 years.

Apart from Prokuplje, every time another district appears to be at the low or high end of the division. Where is the "system" or coherence? In statistical terms there is none. The correlation between the two processing time spans (pre-charge and post-charge) was  $r_{xy} 0.021$  and not significant (Pearson, 2 tailed,  $p = 0,16$ ) for the whole database of single cases. When we do the same for the 25 Court districts and compare the pre-charge and post-charge means, there is some trend (Spearman's rho as well as Pearson: 0.17 respectively 0.15) but statistically also not significant ( $p = 0,05$ ): police, prosecution and judges, they all can be delaying factors in all *at random* combinations. Finally we checked whether there is a correlation between the *number* of processed cases per Court region and the processing times: the turnover volume which tested against the total time, the pre-charge and the post-charge means. Here we found stronger, but statistically still not-significant trends ( $p = 0,05$ )

- total time and N cases: Pearson .29 and Spearman's rho .27
- pre-charge time and N cases: Pearson .22 and Spearman's rho .24
- post-charge time and N cases: Pearson .38 and Spearman's rho .31

Taken together, these findings do not appear to represent a coherent ordering of the lengths of the processing times, either in the pre-charge phase or the charge-to-end phase (the "Court time") or between them. In fact, nothing correlates (significantly) with anything. In the correlation between total turnover and processing times some trend seems to dawn, though: if cases can drag on for years, the more so in 'busy' districts even if statistically not-significant.

Once the charge has been received, it is of interest to learn (a) how long it takes for a (not-)guilty verdict, (b) for what crimes and (c) with what punishments. This implies that we shrink our database to the post-charge phase while using the full day-month-year measures. Changes in missing variables may cause some variation in totals.

First, we dichotomize the type of sentence into guilty and not-guilty. This results in the following average case processing time:

- Guilty: 2,48 years
- Not-guilty: 3,36 years

Apparently, reaching a guilty verdict takes less time than a non-guilty verdict ( $t$ -test  $p < .000$ ). This is in line with the observation of the Statistical Office for all criminal cases. Also on this criterion variable no such correlation between the turnover of the Court regions and guilty/not-guilty verdicts was observed. (Spearman's rho,  $-0,034$  for the "guilty";  $0,317$  for the not-guilty. sign. =  $0,123$ ; two tailed).

Differentiating according to the type of offence reveals a considerable variation. In cases of fraud-within-service or taking bribes it takes respectively 5,5 and 3 years before being acquitted. For staff of Courts or Prosecution Offices this takes only 11 months. Also awaiting a prison sentence the "waiting time" for the sentence increases with the length of the prison term imposed.

**Table 8** Average processing time and sentence modality

Prison term category	N total	Mean all	Mean parole	Mean not parole
up to 30 days	36	1,81	1,85	1,43
1 - 2 months	63	2,15	2,26	1,77
2 - 3 months	415	2,43	2,45	2,35
3 - 6 months	1411	2,40	2,35	2,65
6 - 12 months	631	2,60	2,54	2,78
1 - 2 years	147	3,10	2,79	3,60
2 - 3 years	25	2,64	2,41	2,64
> 3 years	12	3,07	1,85	3,07
<b>Total average</b>		2,48	2,26	2,75
<b>Total N</b>	2.740		2.167	573

Justice delayed, justice denied? This question can only be raised, as there are no standards for a fair term within which a case must be processed. Also the European Convention of Human Rights or the European Court does not provide general standards. Notwithstanding that, the high average and extreme maximum processing times as well as the lack of consistency between most variables should raise concern. From the perspective of rule of law and equality of justice, these findings more than justify deeper and more detailed research.<sup>2</sup>

Summarising the outcomes of this statistical analysis of the input and output of the judicial black box, we find an overwhelming inconsistency: hardly anything correlates with anything. Whatever may go on inside the black box, in its outward functioning it behaves like a slow *random (black) box*. This applies to the general patterns as well as to the Prosecution and the Courts: the two random boxes interacting as two different entities without coherence and together producing this total randomness. One may identify one consistency: above average and often extreme processing times, but also randomly distributed. This refutes the priority claim of the anti-corruption policy: "high priority", yes, but: "haste slowly".

One of the aspects of this black box characteristic is the rate of responsiveness, as we have already sketched. The next section will address whether this pertained to this particular research or should be considered as a basic characteristic.

### **The non-responding random black box**

We are not alone in our attempt to make the black box "speak". The agency which supported us throughout, the Anti-Corruption Council, has been knocking on the doors of its own government as well as the Republic Public Prosecution Office since its beginning. It reported

---

<sup>2</sup> A more extensive analysis can be found in *Criminal corruption policy in Serbia* (Van Duyne and Stocco 2012)

more than two hundred cases of highly dubious financial dealings to the Government. The reports were summarily neglected, as was also observed by Transparency International (2011). Do the authorities share the “who cares?” attitude of the people? Sometimes the reverse occurs and the authorities do care, albeit in a foul way: it turns itself actively against those who blow the whistle, as illustrated by the following ACC report.

Zoran K. submitted four times (2004, 2005 and 2006) criminal complaints to the II Municipal Prosecution office in Belgrade against officials for dereliction of duty and corruption related to building permits in his building, which is in private ownership. These criminal complaints were not processed. However as soon as Zoran K. had gone public in the news paper DANAS, the President of the Executive Board submitted a criminal charge for slander. Now the police reacted without delay and called Zoran immediately for an interview.

Likewise, in the case of JUGOREMEDIJA, the prosecution did not process the criminal charge that the Association of Small Shareholders of that company has filed in 2004 against the director of the company for abuse of office and falsifying official documents. The conflict escalated and became violent and in the end the prosecution proceeded at short notice against the strike committee. The complaint of the Association of Small Shareholders were investigated only after two years.

The President of the ACC added: *“This example is not the only one; the same situation can be found in many cases the Council is familiar with, from the complaints of citizens.”* The President can draw on her own experience: she saw her efforts against the machinations around the Port of Belgrade responded to by a criminal investigation against herself. (Letter to the Government 26 October 2009).

Compared with the long processing times discussed in the previous section, the authorities do show a capacity to act fast and firmly – against those who act against foul play.



How does the ACC work and what happens next? The ACC regularly receives complaints from concerned and/or aggrieved citizens and carries out an investigation by its own experts to determine the seriousness. From 2001 till 2009, 212 complaints were considered to be serious enough to be presented as criminal charges to the Republican Public Prosecution Office (RPPO). The complaints were classified as represented in Table 9.

**Table 9** Complaints from the public to the ACC about law breaking

Submitter	Field/subject of complaint	N
Unions/small shareholders	Privatisation & bankruptcy	46
Tenants ass. & individuals	Urbanisation and construction	55
N.a.	Courts: intentional stalling procedures	51
N.a.	Economy	23
N.a.	Other economic and public interests	37
<b>Total</b>		<b>212</b>

Source: ACC report 2009. N.a. = not available

Apart from informing the government (which does not respond), the ACC sends its reports to the RPPO. It is interesting to look at the persons and institutions who were accused of wrong-doing.

**Table 10** Persons and institutions being accused.  
2001-2007

Municipal management	16
Directors	28
Representatives of elected bodies	31
Judges and prosecutors	35
City planning management	10
Other	25
<b>Total</b>	<b>145</b>

Source: Anti Corruption Council

Indeed, this represents the very social-economic elite.

How did the RPO respond? The special Anti-Corruption Department was most reluctant to inform the research team, but eventually it was told that of the 147 cases sent to the Prosecution Offices, only in 22 cases a response was received: 11 of which mentioned a *rejection* of the charge; the other reports were forwarded to the Prosecution District Office, to another agency for information gathering or fused with an existing file. There were no reports about the finalisation of these cases, unless rejected.

The underlying material is poor in terms of content and does not allow far reaching conclusions, though it certainly justifies a further investigation if only to exclude the not all too implausible hypothesis of an apparent *elite class bias*.

About the flow of communication between the ACC and the RPPO there is no jumping to conclusions: on the side of the RPPO it reflects anything but responsiveness or a sense of urgency, unless it can move against complainants.

### **The Anti Corruption Agency: monitoring and coordination in Potemkin Village**

The situation described in the previous section may be puzzling against the background of a multitude of coordinating actors: the Minister of Justice, the specialised Anti-Corruption Department within the Republic Public Prosecution Office and above all that the Anti-Corruption Agency. Together they should be able to turn the *random box* into a more coherently operating apparatus. Is that the case?

Looking at the latest implementation of the Anti-corruption Strategy, the Anti-Corruption Agency (not to be confused with the Anti Corruption Council), we have to rely on their own task description and own account of its functioning as described in their annual report. In its annual report 2010 ACA, Annex I mentioned 21 tasks entrusted to

it. From our perspective the most important ACA task concerns the *"monitoring and coordination of the work of state authorities"* in the fight against corruption. That is a potentially powerful role, because it implies also the monitoring and coordination of the organs of criminal law enforcement: the police, the Republican Prosecution and the Courts. As the ACA became operational in January 2010, it cannot be held accountable for the "random black box" performance uncovered in our research. But how would it fulfil this function at present, assuming that the criminal justice institutions still operate at random? During the conduct of the research project no sign of monitoring or coordination could be observed, so we have to turn to ACA's annual report to find information we may have missed.

In its report (Annex I) the ACA accounts for an important monitoring fulfilment: a survey, the methodology of which was described in 28 lines. It sent out a questionnaire, which is not presented in an addendum, to an undisclosed number of "implementing entities" (implementing the National Strategy), of which there might be 11.000. In total 78 entities replied (0,7%) and only after some prodding of ACA; not on their own initiative. This "observation instrument" did not appear to be working very well: ACA complained about *"uneven usefulness and meagreness . . . diversity and lack of relevant databases . . . most entities gave descriptive answers i.e. without providing valid data and sources to support their assessments. The reporting was thus reduced to self-evaluation."* To make up for these deficiencies (which should have halted the whole undertaking), the ACA interviewed "experts" without mentioning who and how many.

It should be remarked that ACA's task of assessing the implementation of the recommendations of the Strategy and the Action Plan was certainly not to be envied. Nevertheless, ACA's staff made a valiant attempt while being frank about obstacles. However, given these adverse circumstances, a responsible Board of ACA should never have pursued this undertaking.

Given the methodological qualities of this survey, what relevant observations were communicated about the fulfilment of the National Strategy and the related Action Plan activities against corruption? The police, prosecution and the judiciary are taken together which obfuscates the account as they operate independently.

As far as the *National Strategy* recommendations for the police, prosecution and justice sectors are concerned, 29% was listed as completely fulfilled, 13% was not fulfilled, 46% only partly, at which one can think of "a glass half full or half empty". Below we will give reasons for holding the glass half empty, or even less than that. The remaining 13% was qualified as "permanent tasks", though unspecified.

Of the *Action Plan Activities* 30% was fulfilled, 19% not fulfilled, 12% partly and of 21% there were no data. The remaining 18% were unspecified "permanent tasks" (p. 37).

Implemented activities were only clarified with some examples, and these were far from reassuring. One example: the judicial reform counts as a fulfilled activity, which is only formally correct. Actually, this reform was criticised from virtually all sides: the Serbia 2010 Progress Report of the EU as well as GRECO expressed great concern, which makes one think of a fulfilled failure.

Another fulfilled strategy recommendation is the special Anti-corruption Department within the RPPO. We have encountered this non-responding body several times in the previous sections and could not but get the impression of a lasting non-functionality (see also Van Duyne *et al.* 2010)

The same impression is conveyed by the ACA report when it describes the fulfilment of the recommendation of the *ex post fact checks*: the extra control in case of dismissal or other discontinuation of prosecution. Not only we, but also ACA could find no trace of this fulfilled

recommendation except for the mentioning of its existence: "*The Agency, however, was unable to obtain data whether a system to review reports of such [political] pressures [not to prosecute] has been introduced.*" (p. 40) According to our estimate the Anti Corruption Department of the RPO would have handled or at least archived more than 2.200 cases between 2007 and 2009.<sup>3</sup> In view of this important information gathering role this department could not fail to have the relevant information. But it failed: the RPPO denied having any cases in their premises.<sup>4</sup>

Unless proven differently, we must apply here the principle of *esse est percipi*, or to be is to be perceived, implying that we are dealing here with a spook-fulfilment we cannot see. Or we are looking at the stage decor of a Potemkin village.

All together, I share the reservations of the EU in its 2010 report. The ACA methodology casts great doubt on the reliability of its mentioned achievements, in particular if they are described as "partly fulfilled". It would be more realistic to consider in these cases the glass less than "half empty". Nobody knows: the glass is stained.

### **Europe: welcome to Potemkin Village?**

The title of the concluding section is not a rhetorical question: it is intended as factual and needs to be investigated and answered from a fact based perspective, even if it is a historical metaphor. Because

3 *Work of Public Prosecutions in combating crime and the protection of constitutionality and legality in 2009.* (29 page of electronic version of report. Section: *The Work of the Anti Corruption Department*). A high representative of the RPO requested us not to disclose the actual figures, for which reason we rounded them.

4 In the previous research project (Van Duyne *et al.*, 2010), we basically asked for the same information. After first stating there were no files, we unexpectedly got a handful of them. Then we got a whole collection of unsorted, partly irrelevant reports "from the field" about 2007 and 2008, after which the flow of information dried up again.

it is so sensitive, it is best to give the floor to the institution which is supposed to be the most knowledgeable: the ACA.

Though this study criticised ACA's survey and consequently the execution of its monitoring and coordination task, this does not imply that the agency fails to shed any light on the broader landscape which I also highlighted in the first sections. Connecting beginning and end we come full-circle.

Reading the account of the ACA of its ill-fated attempt at fact finding, one must allow for ACA's sensitive position. The ACA is independent, but to what extent can it play a hard game? Anyhow, from ACA's report a feeling of disappointment is clearly conveyed.

In the first place, the ACA reports "*direct and indirect challenges*", which is a euphemism for serious societal and political shortcomings, "*the most important being the low anti-corruption activism in the society as a whole.*" [...] "*lack of incentives to fight corruption at the state administration level.*" [...] "*the bureaucracy lacks the will to change.*" (p. 6) This is important for a realistic valuation of the many partly implemented recommendations: how many of these are carried out half-heartedly or mentioned only for social-desirability reasons?

In the second place, the ACA encountered the same indifference as we did on many occasions during this research project: "*Not one of them [of the obliged "entities"] fulfilled the obligation to report [...] at their own initiative.*" Information is provided reluctantly, bit by bit which "eats away one's time".

In the third place, whether this is due to understaffing or a general disinterest, this finding has the methodological consequences mentioned before: the quality of the given information is of questionable quality: "*Most answers were descriptive and assessments were not corroborated by valid data and sources.*" What was the proportion of such

low-grade responses to the whole and what has finally been used for ACA's assessment? This may compromise parts of the report, though one cannot know to what extent.

In the fourth place, the ACA observed that the Strategy failed to focus on two very important fields, namely the education and health systems, while additionally characterising its Action Plan in all regards as "too broad and too vague", whether it concerns recommended activities or the formulation of indicators. In our metaphor: in the absence of clear indicators the ACA had to assess the random box of the criminal law enforcement administration while being surrounded by fog.

Notwithstanding, within this fog the ACA still records an achievement of 30% recommendations "fulfilled". Is this genuine or is it just another house front in the foggy main street of a political Potemkin village? What does "fulfilment" really mean against the background of a steady decline of registered and processed corruption and abuse of office cases and above average processing times of which nobody appears to be aware or concerned? If so few care to or look into these matters, one has to wonder whether this is not just another façade.

After having compared intentions, pretensions and a part of the reality we have to return to the question "who cares?" Based on the direct experience of the author and this research group's experience as well as other concerned people involved, it remains difficult to answer that question positively. On the one hand, various captains of industry and an erstwhile minister have been arrested recently, on the other hand, grave doubts are expressed by worried experts, such as by the Public Information Officer Rodoljub Šabić who complains about the lack of progress in the past six years: *"Over the past ten years, we have established new institutions, we have witness protection, we have ratified international documents, joined all associations [the Potemkin village], and what we need is genuine will and desire to do something about corruption. It takes an effort not just from the state, but from our society*

as a whole." (Politics, 18 March, 2013) And if the "society" does not care sufficiently, one can hope the impetus must come top down. Does it?

The following example illustrates how the lack of concern and care can manifest itself at central policy making level. The outcomes of this research convinced the Dutch Embassy of the importance of a transparent criminal statistics. Therefore it funded a small project to draft the outline for a new criminal statistical system, to be carried out by the Center for Liberal-Democratic Studies and which submitted its report to the Ministries of Interior and Justice at the end 2012. It fell on deaf ears. While finalising this article I inquired about the state of affairs. The author answered: "*Silence, just silence*".

## Bibliography

- Anti Corruption Agency (2011), *Annex Report on the Implementation of the National Anticorruption Strategy and the Action Plan for the Implementation of the National Anticorruption Strategy*, Belgrade.
- Anti Corruption Agency (2011), *Annex Report on the Implementation of the National Anticorruption Strategy and the Action Plan for the Implementation of the National Anticorruption Strategy*, Belgrade.
- Anti Corruption Council (2011), *Report on pressures on and control of the media*, Belgrade.
- Begović, Boris and Boško Mijatović (eds.) (2007), *Corruption in Serbia; five years later*, Belgrade: Center for Liberal-democratic Studies.
- Begović, Boris, Boško Mijatović and Dragor Hiber (2004), *Corruption in Judiciary*, Belgrade: Center for Liberal-democratic Studies.
- Begović, Boris (2005), "Corruption: concepts, types, causes and consequences," *Cadal*, 3 (March): 2-7.
- della Porta, Donatella and Alberto Vannucci (1997), "The resources of corruption: some reflections from the Italian Case," *Crime, Law and Social Change* 27 (3-4): 231-254.
- Corruption in health sector in Serbia* (2005), Report by the Center of Antiwar Action, Belgrade.



- Commission staff working paper, Analytical report (2011), *Commission Opinion on Serbia's application for membership of the European Union*, COM 668, Brussels.
- Datzer, Darko, Almir Maljević, Muhamed Budimlić and Elmedin Muratbegović (2008), "Police corruption through the eyes of the bribers: the ambivalence of the sinners," in: P.C. van Duyne, J. Harvey, A. Maljevic, K. von Lampe and M. Scheinost (eds.), *European crime-markets at cross-roads. Extended and extending criminal Europe*, Nijmegen: Wolf Legal Publishers.
- Duyne, Petrus C. van, (2001), "Will 'Caligula go transparent?' Corruption in acts and attitude," *Forum on Crime and Society* 1(2): 73-98.
- Duyne, Petrus C. van, Elena Stocco, Miroslava Milenović and Milena Todorova (2010), "Searching for contours of anti-corruption policy in Serbia," in: P.C. van Duyne et al. (eds.), *Cross-border crime inroads on integrity in Europe*, Nijmegen: Wolf Legal Publishers, pp. 89-123.
- Duyne, Petrus C. van, Elena Stocco and Milena Milenović (2009), "Corruption in Serbia: unique or a shared Balkan disease?" *Temida* 12(4): 29-56.
- Duyne, Petrus C. van and Stefano Donati (2008), "In search of crime-money management in Serbia," in: P.C. van Duyne, J. Harvey, A. Maljevic, K. von Lampe and M. Scheinost (eds.), *European crime-markets at cross-roads. Extended and extending criminal Europe*, Nijmegen: Wolf Legal Publishers, pp. 331-367.
- European Commission (2012), *Report from the Commission to the European Parliament and the Council interim report on progress in Bulgaria under the Co-operation and Verification Mechanism*. COM (2012) 57 final, Brussels, European Commission, Freedom House Report Serbia, 2009.
- Gelemerova, Liliya (2010), "Fighting foreign bribery. The stick or the carrot," in: P.C. van Duyne et al. (eds.), *Cross-border crime inroads on integrity in Europe*, Nijmegen: Wolf Legal Publishers, pp. 17-41.
- Hulten, Michel van, (2011), *Corruptie. Handel in macht en invloed*, Den Haag: SDU-uitgevers.
- Jager, Matjaž (2004), "In the quest of essence: the principle-agent-client model of corruption," in: P. C. van Duyne, M. Jager, K. von Lampe and J. L. Newell (eds.), *Threats and phantoms of organised crime, corruption and terrorism*, Nijmegen: Wolf Legal Publishers, pp. 227-253.

- Logonder, Anja (2008), "Who is 'Yugo' in 'Yugo-mafia'? A comparative analysis of Serbian and Slovene offenders," in: P.C. van Duyné, J. Harvey, A. Maljevic, K. von Lampe and M. Scheinost (eds.), *European crime-markets at cross-roads. Extended and extending criminal Europe*, Nijmegen: Wolf Legal Publishers, pp. 63-97.
- Nicolae, R. (2013), "Peculiarities of unjustified wealth confiscation policy in Romania," in: P.C. van Duyné et al. (eds.), *Human dimensions in organised crime, money laundering and corruption*, Nijmegen: Wolf Legal Publishers.
- Pashev, Konstantin, Assen Dyulgerov and Georgi Kaschiev (2007), *Corruption in the public procurement: risks and reform policies*, Sofia: Centre for the Study of Democracy.
- Pesić, Vesna (2007), *State capture and widespread corruption in Serbia*, Belgrade: Centre for European Political Studies.
- Sadiku, Lejla (2010), *Serbia, Civil society against corruption: School of Governance*.
- TNS Gallup and UNDP (2010), *Serbia corruption bench marking*, October, Belgrade.
- The Republic Prosecutor's Office* (2010), Belgrade.
- Stille, Alexander (2007), *The sack of Rome. Media + money + celebrity = power = Silvio Berlusconi*, London: Penguin Books.
- Transparency International (2011), *National Integrity system assessment Romania*, TI-Romania.
- Transparency Serbia (2011), *The National Integrity System of the Republic Serbia*, Belgrade, 13 September.
- Trivunović, Marjana; Vera Devine and Harald Mathisen (2007), *Corruption in Serbia 2007. Overview of problems and status of reforms*, Bergen: Chr. Michelsen Institute.
- UNODC, (2011), *Corruption in the Western Balkans. Bribery as experienced by the population*, Vienna.
- UNODC, (2010), *Technical Assessment Report*, Vienna, June.
- Vuković, Slobodan (2002), "Corruption in Serbia," *South-East Review* 1: 135-146.

Marija Zurnić

## Anti-Corruption Discourse and Institutional Change in Serbia: The Money in Cyprus Scandal

### Introduction

The Serbian media reports about corruption issues on a daily basis.<sup>1</sup> The archives of the national news agency BETA shows that on average, two high-profile corruption scandals surfaced every month from 2000 to 2010. Running parallel to this, there have been an increasing number of institutional changes in the field of anti-corruption with over fifty anti-corruption institutions being established in the space of ten years. This all raises the following questions: what is the link between corruption scandals and anti-corruption policies in Serbia? To what extent has the discourse of corruption generated this institutional change? In order to answer these questions, my research focuses on the following hypothesis: the ability to translate the rhetoric of anti-corruption into practical measures has been directly influenced by the scale of certain scandals. That is, very high-profile scandals are likely to have acted as a catalyst for increasing political action against corruption. This paper focuses on the scandal that occurred in 2001 during the intensive investigation of the money laundry scheme organised during the 1990s. This is the starting point in my analysis of the anti-corruption discourse in Serbia over the past decade. In analysing the scandals I look at the strategies employed by politicians, practitioners and civil servants to achieve their political agendas. The findings prove that most actors take one of the following positions. They either share with the public information about corruption scandals in order

---

1 I thank the Centre for the Study of European Governments (CSEG) University of Nottingham for supporting financially my empirical work in Serbia for this paper.

to gain legitimacy for anti-corruption action, or they coordinate their joint response and avoid talking about the scandals in order to reduce political costs. The paper will also discuss the impact of the scandal on legitimacy of the political elite in Serbia in the early 2000s.

## Political scandals and Discursive Institutionalism

Since the mid-1980s, there has been growing interest in political scandals worldwide and in their impact on the quality of governance (Rothstein, internet; Uslaner 1998), on political culture (Allen and Birch 2011, Pawelke 2010), on public trust (Memoli 2011; Dafydd 2005) and on electoral outcome (Maier 2011; Vannucci 2009). Most of this literature posits the dysfunctional argument and suggests that corruption scandals have a purely negative impact on political life in established and developing democracies. Significantly less research has been done on political scandals and ensuing institutional formation, since scandals were understood as an extra-institutional phenomenon, and are therefore unhelpful in analysing institutional formation and change. Discursive Institutionalism (DI), however, has provided an applicable theoretical framework for the analysis of discourse and its impact on institutional setting.

DI is a theoretical approach which appeared as a result of the shift of focus in political science to ideational processes.<sup>2</sup> It was named the *ideational turn* (Blyth 2002), *discursive institutionalism* (Campbell and Pedersen 2001: 1–24), *constructivist institutionalism* (Hay 2006: 56–74) or *strategic constructivism* (Jabko 2006). It was Vivien Schmidt who articulated these intellectual streams into a coherent theoretical approach embracing researches about discourse from various perspectives and with different ontological and epistemological assumptions (Schmidt 2010: 65–82, Schmidt, internet). Current issues

2 More precisely, "the turn to ideas undermines the basic premises of the older institutionalisms, i.e. that institutions are in stable equilibria, with fixed rationalist preferences (RI), self-reinforcing historical paths (HI), or all-defining cultural norms (SI)", Schmidt 2008: 304.

that the researchers are concerned with include the relationship between ideas and political action, strategies of public persuasion, the importance of deliberation for political legitimacy, and the concept of change in history and culture (Schmidt, internet).

As for definition of discourse, DI defines it as both the substantive content of ideas<sup>3</sup> and as "the interactive processes that serve to generate those ideas and communicate them to the public" (Schmidt and Radaelli 2004: 197). Moreover, discourse is not understood as the only dimension of political life. It is analysed within the institutional settings where the economic, historical or cultural explanations of the change are also taken into account. This makes discursive institutionalism different from certain post-modernist views "that understand reality as all words" (Schmidt 2006: 12) and analyse text without context. Discursive Institutionalism views ideas both in terms of the core concepts of rational choice theory (interests and rational decision making) and in terms of the concepts underpinning the culturalist approach to institutions (values and appropriateness). On the one hand, according to DI, there are *cognitive ideas* that appear as formalisation of the first two levels of ideas – policies and programmes – and contain concrete guidelines for political action. Cognitive ideas are often based on scientific knowledge and rational explanations of the problem aimed at providing efficient solution. On the other hand, *normative ideas* are based on values and they aim at legitimisation of policies and programmes by assessing their appropriateness.

Discursive institutionalists find it relevant to explain why certain ideas fail and other succeed; why they fail in certain countries and in others they are successful. Therefore, two spheres are differentiated where discourses are created and performed. The sphere of policy-making is where *coordinative discourse* represents the tool for policy makers to create, elaborate and coordinate their action as members of *epistemic communities* (Haas 1992) or *entrepreneurs* and *mediators* who

3 As opposite to other institutionalist approaches which are interested primarily in interests, values or institutional performance.

facilitate the change (Fligstein 2008; Fligstein and Mara-Drita 1996). On the other hand, between the policy sphere and public sphere is where *communicative discourse* is formalised and used by policy actors to present, deliberate and legitimise their political ideas in front of the general public.

How do actors actually bring change to institutions? In creating and maintaining institutions, agents use their *background ideational abilities*, i.e. the ability to make sense of the rational or ideational rules within the given setting.<sup>4</sup> With that in mind, Schmidt argues that the complementary concept of *foreground discursive abilities* is the key component in explaining institutional change. Discursive abilities or the logic of communication "enables agents to think, speak and act outside their institutions even as they are inside them, to deliberate about institutional rules even as they use them, and to persuade one another to change those institutions or to maintain them" (Schmidt 2008: 314).<sup>5</sup>

From the perspective of the analysis of discourse, corruption is conceptualised not as a fixed state caused by a certain combination of variables, but as a topic of narratives used to interpret and explain political reality. This perspective enables a better understanding of the current problems in Serbia, such as the identity formation of political parties, agenda setting or voting behaviour. Moreover, the analysis of political scandals may shed light on the use of anti-corruption discourse for political or party gain which may be perceived as a form of corruption in itself.

---

4 The concept of ideational abilities had been elaborated earlier by macro-sociologists – such as Bourdieu, Foucault, Habermas, Giddens – but their approach to this concept was focused more on how individuals create and develop ideas, and did not go into "the processes by which institutions change, which is a collective endeavour." See: Schmidt 2008.

5 The concept of discursive abilities has its origin in the idea of "communicative action" by Habermas (Habermas 1996) and in the literature on discursive democracy by Dryzek (Dryzek 2000) where the focus is on breaking the elite monopoly on national and supranational decision-making and ensuring access to that process.

## The Money in Cyprus Scandal<sup>6</sup>

One of the first scandals that occurred after the democratic changes in 2000 in Serbia was related to the illegal financial transfer from Serbia to Cyprus organised by the previous regime. The exact amount of money has never been reported but it was estimated that \$11.5 billion were illegally transferred from Federal Republic of Yugoslavia (FRY) to the Republic of Cyprus between 1992 and 2000.<sup>7</sup> Part of these funds was used for military expenditure which was investigated by the International Criminal Tribunal for the former Yugoslavia (ICTY) as a part of the indictment against Slobodan Milošević.<sup>8</sup> This paper, however, focuses on the money that the businessmen close to the state authorities in 1990s illegally transferred to their private bank accounts in Cyprus. The state-run investigation of this money laundry scheme

---

6 This paper is a part of a wider research based on a qualitative analysis of the political scandals occurred in Serbia between 2000 and 2010. The list of six scandals most frequently mentioned by the media – two scandals during each government over the decade – is the result of a NEXIS-based search using the words *Serb\**, *corrupt\**, *scandal\**, *embezzle\**, *bribe\** and the equivalent terms in Serbian, using the BETA and EBART databases. After collecting the data, the corruption scandals were coded according to the actors and type of corruption involved. The research is designed as a *case study within a case study* and this paper will present one of the six political scandals as the starting point in the analysis of the anti-corruption discourse in Serbia.

7 The international sanctions were introduced against FRY on 30<sup>th</sup> May 1992. According to the UN SC resolution 474, all financial transfers to the country were considered unlawful, except for the payments for medical or humanitarian purposes and food. The formal channels of money transfer were replaced by the informal and illegal ones. National Bank of Yugoslavia and the ruling Socialist Party of Serbia established contacts with the banks in Cyprus, Switzerland, Russia and other countries, and opened branches of the state owned banks and offshore companies in those counties. The money in cash was carried from Serbia abroad, deposited in the banks abroad and from there legally transferred to the bank accounts in over 50 countries. The money originated from the confiscated citizens' savings and from the illegal trade (oil, drugs, cigarettes, arms trafficking etc.) organised and supported by the authorities in Serbia during the 1990s.

8 For more information about the investigation within the Milošević's trial, please see: Torkildsen, internet or Human Rights Watch, internet.

started in 2000 and obtained the character of a scandal when the investigation was abruptly cancelled. The reason for the cancellation was not communicated to the public or investigated by the judicial authorities in Serbia. The aim of this paper is to examine the interrelation between this scandal and the institutional change in the field of anti-corruption as well as the impact of the scandal on political trust.

In October 2000 the Democratic Opposition of Serbia (DOS) came into power. The coalition was determined to reform the political and economic systems and to bring Serbia back to the group of democratic European countries. The new government symbolically started their mandate by signing the contract with citizens which set targets for their first year in power.<sup>9</sup> The term corruption was frequently used during the electoral campaign and afterwards but the discourse about corruption was not fully developed. Open debates about corruption were a novelty in the public life in the post-Milošević Serbia and they were often overshadowed by other more developed discourses – such as those related to the state sovereignty, Europeanization and organised crime. The new government, however, presented to the public that the investigation of the money in Cyprus was as an event of high importance. The investigation was expected to bring justice to the society and to punish those who “betrayed citizens’ trust and took advantage of their life savings” (Insajder, internet). Moreover, the extensive amount of money, if had been recovered, would have helped the devastated Serbian economy and enable a smoother transitional process. Besides the moral and financial reasons, the investigation of

---

9 Program of the Democratic Opposition of Serbia, 2000: “As citizens of Serbia and candidates for MPs, we would like to let the public know that our intention is, once we enter the Parliament, to withdraw privileges of the state officials, to stop discriminatory attitude of the authorities towards the citizens and to change fundamentally the current unsuccessful state policy. We will carry out the radical changes starting from ourselves. By signing this document we commit ourselves to regain citizens’ trust in the institutions, to root out corruption in governing bodies and public institutions and to start united the thorough reforms with the aim of bringing back to Serbia its equal position among the European countries”, Program of the Democratic Opposition of Serbia”, internet.



this case was an opportunity for the new political elite to prove their readiness to fight corruption and organised crime which would distinguish them markedly from the previous regime.

As was mentioned above, the ICTY conducted the investigation of this case, since Milošević's government could have used it for army expenditure in the region. However, there were suspicions that large amounts of money were illegally transferred to private bank accounts of politicians and businessmen close to the previous government. There are indications that the highly positioned members of Milošević's regime destroyed relevant documentation at the moment of the change of regime on 5<sup>th</sup>-6<sup>th</sup> October 2000. Therefore, before the investigation started the new government could rely only on the information available from the ICTY and Cypriot authorities.<sup>10</sup> In January 2001, Serbian government established the Commission for Investigation of Malfeasance with the mandate to investigate the illegal financial transactions from 1989 to 2001. The head of the commission was Vuk Obradović, Deputy Prime Minister and leader of Social Democracy. Two months after assuming the mandate, he was forced to resign due to the allegation of sexual harassment. The scandal happened immediately before the adoption of the Law on extra-profit and it coincided with Obradović drafting a highly confidential document – the list of businessmen in Serbia who illegally acquired their wealth during the 1990s.

Another important member of the Commission was the governor Mladen Dinkić who was in charge of providing the government with reliable evidence and documentation in order to facilitate the recovery of the money from abroad. Governor Dinkić was already familiar with this case,<sup>11</sup> but only after the change of regime, was he able to

10 For the same reason of unavailable sources, this paper is mostly based on the media coverage of the case, including the documentaries produced by investigative journalists including *Insajder: Drzavna pljacka drzave* broadcast by TV B92 in 2007 and the series of reports *Demokratska pljacka Srbije* published by the daily newspaper *Glas javnosti* in 2005 both available online.

11 Mladen Dinkić, as a young academic at the Faculty of Economy, at University of Belgrade conducted research on the topic of the sate run money laundry

initiate the investigation by institutional and diplomatic means. Governor and his team visited Cyprus and met with the local politicians and bankers who offered to help on the case. Upon his arrival back to Serbia, in March 2001, the governor optimistically commented on the progress of the investigation:

We identified the bank account, we identified the name, we know when the transaction took place, we also know the exact amount of money, but we don't want to make this information public yet, because we're waiting for Cypriot authorities to reply next week to the additional documentation that we had sent to them.

Insajder, internet

Several months later the governor halted the investigation and stopped informing the public about the case. He never gave a comprehensive and coherent explanation why the investigation was cancelled and why the organisers of the money laundry scheme were not brought to courts. The media, instead, reported a number of explanations. In the interview in 2007 the governor said that he stopped the investigation for personal reasons.<sup>12</sup> Afterwards, the governor explained that this was a very complex case of international organised crime and that he lacked reliable sources and technical support to fight it.<sup>13</sup> Another

scheme. In his book *Economy of Destruction* (Belgrade, Stubovi kulture 1997) he described the mechanisms of the financial transactions that Milošević's regime established with Cyprus.

12 Governor: "At the end of 2001 I literally stopped trying to do any serious investigation. My enthusiasm lasted about a year, but afterwards I realised, I said to myself – you can't do it." Journalist: "Did you have the right to give up? It wasn't your private investigation after all." Dinkić: "I didn't give up... I gave up as... I admitted to myself that I couldn't do it. There are moments when you say to yourself – you can't do it, nobody can. The issue was beyond my capacities, beyond my ability." Insajder, internet.

13 In the interview to TV B92 (Insajder, internet) in 2007 the governor said: "It is unrealistic to expect that any government after Milošević would be capable of solving this issue without getting help from outside. We were offered some help at the beginning but only in words; there were several meetings as

explanation offered by the media was that Serbian governor could not tackle certain political obstacles. For instance, among the crucially important people in the money laundry scheme was the Cypriot lawyer and politician, Tassos Papadopoulos, who became president of Cyprus in 2003. This circumstance made the investigation more difficult, since the Cypriot authorities were not motivated to cooperate fully.<sup>14</sup> Among the most intriguing explanations in the media was that the governor actually benefitted from the investigation and illegally acquired profit for himself or the third party. These suspicions arose from the fact that the governor did not regularly inform Serbian authorities about the progress of his investigation.

Besides the state-run investigation, there have been several more attempts to recover the illegally transferred money from Serbia. For instance, Serbian businessman based in Cyprus, Predrag Đorđević, had conducted private research and gathered relevant information about

---

well but practically we didn't get any help." In the same interview the governor explained: "Police investigator Mladen Spasić found about 350 million DM [Deutsche marks], if I remember well, on one of the bank accounts... on one account only. And we asked Americans to help us to block the account; we contacted the Hague Tribunal as well and the first answer from them was – we'll help you with this. A week later they called us to say that we were mistaken, that there had been no money whatsoever, that the account didn't belong to anyone related to Serbia. That's still an enigma to me, that's the only enigma here... it was the first time that we discovered something, and we were really happy and excited about the fact that we finally discovered something." The report of the ICTY investigator Morten Torkildsen confirms the governor's claims of the complexity of the case: "In my career, I have never encountered or heard of an offshore finance structure this large and intricate. I consider that to conduct an overall and comprehensive analysis of what happened to all of the funds that was deposited or transferred into the bank accounts of the eight Cypriot companies would almost be impossible and would be an extremely resource intensive exercise." Torkildsen, internet.

14 According to the Serbian governor, Cypriot authorities were not genuinely interested in cooperation when he visited them in 2001: "... they obviously let us search for something that wasn't there anymore and they knew it wasn't there. They let us search for a needle in a haystack, so to speak, but the needle wasn't there, it was in some other haystacks in some other country", Insaider, internet.

the illegal financial transfers.<sup>15</sup> He was critical towards the state investigation and he filed a complaint against the governor for abuse of office.<sup>16</sup> The businessman argues that several off shore companies in Cyprus involved in the money laundry remained active after the governor identified them which may indicate that the governor had interest in not blocking them. According to Đorđević, the governor had enough evidence to inform the authorities in Serbia about the illegal financial scheme which he did not do. Another party in the investigation was the London based company Forensic Investigative Associates (FIA). In February 2001 National Bank of Yugoslavia hired the agency to help them in the investigation of the illegal banking transfers to Cyprus. Half a year later the contract was terminated because National Bank was not satisfied with the progress on the case. Political leader of New Serbia and a member of the ruling coalition, Velimir Ilić, also offered his help in the investigation. In April 2001 he travelled to Cyprus and tried to recover the money through his personal contacts. The attempt was again unsuccessful.<sup>17</sup> In parallel with this, minister of justice, Vladan Batić, contacted the banks in Switzerland in order to trace the money transfers,<sup>18</sup> but the efforts were unsuccessful. The last time

15 Đorđević became involved in this case in 1994 when the payment to his bank account was transferred to another bank account without his authorisation. Đorđević assumes that this was a mistake in the money laundry scheme between Serbia and Cyprus. He sued the off-shore branch of Serbian bank *Beogradska banka* for the unauthorised money transfer, but the case was never processed by Cypriot judiciary. When Milošević's regime was changed, Đorđević was willing to share the results of his private investigation with the new government and to offer them help in dealing with the case.

16 Đorđević complaint is available in Serbian at [www.srpskapolitika.com/Tekstovi/Komentari/2006/075.html](http://www.srpskapolitika.com/Tekstovi/Komentari/2006/075.html).

17 This attempt was cancelled because Ilić's contacts in Cyprus allegedly asked for 10 mil dollars to recover what was left of the documentation that Papadoulos and his co-workers had previously destroyed. Serbian government and the governor did not accept the offer. Ilić and the governor accused each other of benefiting financially from the investigation. Ilić publicly accused the governor of monopolising the investigation and sabotaging it for personal and political gain (See: Milivojčević, internet and Insaider, internet).

18 Vladan Batić, minister of justice (2001-2004), was allegedly offered the dossier on this case by Carla del Ponte, chief prosecutor for war crime at the ICTY.

when the problem of the money in Cyprus was officially addressed was on 7<sup>th</sup> March 2006 during the official visit of the Serbian president Tadić to his Cypriot counterpart Papadopoulos. The presidents exchanged their views on the case and agreed that despite all efforts the illegal banking transfers could not be traced. The media on both sides, however, critically reported about the meeting: "Papadopoulos' statements were false and Tadić's nebulous" (I.K., S.P., internet).<sup>19</sup>

As the investigation of the money in Cyprus was losing its momentum, the public speeches about it were decreasingly frequent and enthusiastic. After several unsuccessful attempts to recover the money, Serbian authorities changed the approach to the problem.<sup>20</sup> They introduced the tax on illegally acquired capital during the 1990s according to the Law on extra-profit<sup>21</sup>. The law was criticised for its revolutionary-political character and for huge discretionary powers of the authorities in its implementation. Moreover, the law was described as retroactive – it covered previous 12 years – and in collision with other laws (Prokopijević, internet). It was not uncommon that the

---

Thanks to her, the minister learnt about six bank accounts in Switzerland belonging to Milošević's relatives and friends. However, Serbian Prosecutor's office did not provide the Swiss bank with relevant documentation and did not initiate investigation within three months as it stipulated Swiss legislation. Therefore, the bank accounts were unblocked and the money legally withdrawn.

19 More about Tadić's visit to Cyprus in: Akar 2006, Charalambos 2006 and FoNet, internet.

20 In July 2001, National Bank of Serbia led by governor Dinkić initiated the reform of the banking system and the liquidation of the insolvent banks. One of them, Beogradska Banka, was involved in the money laundry scheme through its off-shore subsidiary in Cyprus. The Serbian businessman Đorđević sued the governor for destroying the evidence about the illegal financial transfers to Cyprus by liquidating Beogradska Banka. The liquidation of Serbian banks is connected with another political scandal involving again Mladan Dinkić, this time as Minister of finance in 2003. This scandal discovered irregularities in the work of National Savings Bank and the direct intervention of high ranking state officials in private business.

21 *Law on One-Occasion Taxation of Extra Revenue and Extra Property Acquired by Using Special Privileges in Period January 1, 1989 – June 1, 2001* was adopted in June 2001 and abolished in June 2002.

implementation of the Law was informally negotiated between the political and business elite.<sup>22</sup> The opposition claimed that the inconsistent implementation of the law resulted in the informal contracts between the richest businessmen and the political parties in power. According to the economic expert Prokopijević "... [t]he results of enforcement of the extra-profit law are disastrous to its authors – till August 2002 just 60m USD has been collected, although 800m USD was expected" (Prokopijević, internet). In Jun 2002 the Law was abolished and Secretary of the Commission for investigation of malfeasance, Slobodan Lalović, resigned. He explained that:

... [t]he implementation of the law was so poor that there are more fingers on one hand than businessmen who paid the tax on extra-profit. Economic benefit is below the expected and the major part of the illegally acquired wealth was not subject to taxation. The rich businessmen keep their capital abroad which raises the issue of the selective approach to the implementation of the law (Insajder, internet).

The law provoked a heated debate about the understanding of illegality. On the one hand, the critics argued that the law enabled the rich businessmen to buy out their freedom by paying a one-off tax. On the other hand, some members of the public argued that the law was

---

22 One of the companies subject to the Law belonged to the then minister of interior. Under the Milošević's regime this company benefited from the privileged position and made an "extra-profit" of four million Deutch marks. When this was made public, the minister addressed the authorities in an open letter stating that taxation of the companies like his is "politically destructive" and will harm "the healthy part of the economy which survived Milošević's times" (Insajder, internet). Minister of finance and economy at that time, Božidar Đelić said in the interview to Insajder, internet: "Well, you know how it goes, it's not that someone gives you a ring and says – hey listen, can you reduce the tax to this guy? What they say is – look, our party would like to vote for the budget, but one of our distinguished party members has problems with the Revenue office about the extra-profit. What I say to them is – good, I'll going to the media conference and say this to the public, then we'll see what happens. And they say – no, no, don't do that... That's how it works."

a genuine attempt to bring justice to the society and to compensate the impoverished citizens for their financial losses during the 1990s.<sup>23</sup> Moreover, they argued that the businessmen subject to the law should not be treated as criminals buying out their freedom, since Serbian legislation in the 1990s did not directly regulate business-state relations. The third party in the debate, the experts in anti-corruption, the state anti-corruption policy must not be based on this kind of taxation. They insisted, instead, on investigation of the origin of the capital and on confiscation of the illegally acquired goods.<sup>24</sup> However, this change in policy has not occurred. The lack of a thorough and systematic investigation of the capital acquired during the 1990 subsequently resulted in a number of irregularities and corruption scandals during the process of privatisation.<sup>25</sup> The evident return of the

---

23 Interviews with Josip Bogić from the Fight against Organised Crime of the Serbian Ministry of Interior UBPOK and governor Dinkić available at *Insajder*, internet. Interview with Dinkić conducted by Sanda Savić available at [www.b92.net](http://www.b92.net).

24 The most prominent advocates of this idea include Čedomir Čupić (member of the Anti-Corruption Council at that time) and Verica Barać (Head of the Council 2003-2012). See: Trivić, internet.

25 Statements of the political leaders and practitioners in anti-corruption on this matter include:

Verica Barać, Head of Anti-Corruption Council 2003-2012: "It is obvious that that money [illegally acquired] is returning through privatisation; I'm sure that the previous government and this one as well think that it's normal not to check it; what matters to them is that the money is back, no matter how... The process of privatisation is going on for so many years and we never found out if the origin of that money had been checked or not" (*Insajder*, internet).

Mladen Dinkić, governor National Bank of Yugoslavia 2001-2003: "After 5<sup>th</sup> October when the privatisation started those who adopted the Law on privatisation never stipulated any control of the capital origin or any kind of company ratings; instead, the idea was to let the money in because we're a poor country, the more money we get, the better for us, better for the state. So, a privatisation like this brings about dodgy funds. I don't know what kind of funds these are and if they are legal or not, nobody can say that..." (*Insajder*, internet).

Božidar Đelić, minister of finance 2001-2004: "I can ascertain that not a few privatisations have been done with the funds from Cyprus, Panama, Luxembourg, Virgin Islands and so on. As a responsible person I can't tell you that this

money from Cyprus back to Serbia through the privatisation as well as the absence of any legal investigation of the case have generated significant decrease of public trust in the political will and capacity of the institutions in Serbia to tackle the problem of corruption. The following words of Verica Barać, Head of Anti-Corruption Council from 2003 to 2012 illustrate the bitterness and cynicism of the public debates referring to the scandal:

... as for Dinkić abandoning that business [the investigation of the money in Cyprus], I see it as the crucial moment for his later successful career. It might be that back then he didn't have enough information or that he didn't have right people to work with, but the question is why wasn't he interested in it later when he was in a higher position and had more power, for instance, when he became minister of economy? Obviously, because he discovered evidence of what was really going on in Serbia; because he realised that if he had continued asking question it would have led him to somebody's secret bank accounts, secret police and protected people who are allowed to buy Serbia with that money and secure their power in the country. If he had uncovered the case, probably, he would never have become either governor or minister. He realised it himself, for sure, and decided to take the side of the stronger. He gave up, so to speak. Our authorities abandoned all the promises they made in 2000 anyway. All their promises. They realised that it's more convenient to make pact with tycoons who actually have the power and money and intelligence service and control over many other centres of power, so they [Serbian authorities] considered it more profitable to join them than to undertake complicated and difficult reforms which can endanger their position in power after all...

Trivić, internet

---

is evidence, but we all very well know that the money is being recycled this way, absolutely", (Insajder, internet).

Dragomir Janković, Executive director of the European Economic Institute: "When ninety percent of privatisation in Serbia was finished, they adopted the law on investment funds, when the privatisation was almost completed, this doesn't make sense" (Insajder, internet).



## Discussion

The starting assumption of the Discursive Institutionalism is that ideas – articulated as discourses and communicated by political actors – can have transformative power on institutions. Schmidt argues that a discourse to be successful has to be coherent – even when communicated in different contexts and conveying different ideas – since coherence adds to its credibility (Schmidt 2008). She also suggests that “although discourses are most often successful if true, coherent, and consistent they need not be any of these things. Successful discourses may be manipulative, they may lie, they may be “happy talk” or “spin” to obscure what political leaders are really doing, and they may even be vehicle for elite domination and power ...” (Schmidt 2008: 31). Schmidt admits that establishing the norms for evaluation of the transformative capacity of discourse is a difficult task, but she explains that there is a large number of criteria that can serve as indicators for success.<sup>26</sup>

We suggest that the alternative way of analysing the transformative power of discourse should focus on the three interactive elements – *being*, *doing* and *saying* – constituting identity of a political community (Schmidt 2011; Habermas, 1996). In the case of Serbia in the early 2000s, the anti-corruption discourse in the Money from Cyprus Scandal evidently contributed to the institutional trans/formation. The self-identification (*being*) of the new political elite was clearly expressed in their electoral programme and supported by their action against corruption (*doing*). However, the inadequate *saying* about the action brought the former elements into question. The political elite

---

26 Schmidt (Schmidt, 2006: 12) offers a brief review of the research on evaluation of discourses. It has been conducted through “... process-tracing of ideas held by different actors that lead to different policy choices (Berman: 1998); through matched pairs of country cases where everything is controlled for except the discourse to show the impact of discourse on welfare adjustment (Schmidt: 2002) through speeches and debates of political elites that then lead to political action (Dobbin: 1994); through opinion polls and surveys to measure the impact of the communicative discourse (Koopmans: 2004); through interviews and network analysis to gauge the significance of the coordinative discourse etc”.

failed to recognise and constructively deal with communication strategies which gave room to the informal interpretations of the scandal and growing mistrust of the public, opposition and intellectuals in the new government.

In abandoning the investigation and reducing the scope of the related anti-corruption policies the political leaders enabled new corrupt practices to appear. At the level of discourse, abandoning the investigation reduced the transformative and mobilising power of the anti-corruption debates. Moreover, further use of anti-corruption rhetoric contributed to the delegitimisation of the government's *doing* and *being* in the field of anti-corruption. Last, the failure of the democratic bloc in power to produce an adequate communicative discourse coincided with its fragmentation. The joint response to the public was replaced by the separate communicative discourses which were aimed at the strengthening of self-identity (*being*), legitimacy for action (*doing*) and communication (*saying*) of the individual political parties and not of the coalition as a whole. It can be argued that the inability to act jointly and consistently against corruption at the level of discourse triggered competitiveness among the political groups and parties within the ruling coalition.<sup>27</sup>

## Conclusions

In its transition to democracy, Serbia persistently struggles with the problem of corruption. The local elites exacerbate the situation further by using corruption scandals for political gain. This paper explored the ways in which a scandal accelerated the adoption of anti-corruption laws and transformed the institutions in line with the aspirations of the political leaders. Most of the existing research about corruption scandals is based on quantitative discourse analysis. This research, however, addresses the aspects of political scandal that

---

27 These preliminary conclusions will be re-examined after the analysis of the remaining five scandals selected as case studies is completed.

cannot be addressed with quantitative methods, such as the historical and socio-political context in which the scandal takes place. *The Money in Cyprus Scandal* occurred in the early years of the new democratic government. At the beginning of the investigation of the illegal financial transfers to Cyprus by Milošević's government, the *being* of the political elite was consistent with their *doing* and *saying*. However, when the investigation was cancelled – whether for political and financial obstacles or for personal aspirations of the political actors involved – the communicative discourse became dysfunctional. Lack of a coherent top-down communication added to the disappointment with the anti-corruption action and to the decrease of public trust in politicians and democratic institutions.

## Bibliography

- Akar, Reşat (2006), "Money Smuggled by Milošević," *Halkın Sesi*, 18 March.
- Allen, Nicholas; Sarah Birch (2011), "Political Conduct and Misconduct: Probing Public Opinion," *Parliamentary Affairs* 64: 61–81.
- Andersson, Staffan; Paul M. Heywood (2009), "The Politics of Perception: Use and Abuse of Transparency International's Approach to Measuring Corruption," *Political Studies* 57: 746–767.
- Blyth, Mark (2002), *Great Transformations: Economic Ideas and Institutional Change in the Twentieth Century*, New York: Cambridge University Press.
- Campbell, Johan L.; Ove K. Pedersen (2001), "Introduction," in: J. L. Campbell and O. K. Pedersen (eds.), *The Rise of Neoliberalism and Institutional Analysis*, Princeton: Princeton University Press, pp. 1–24.
- Charalambos, Loucas (2006), "Taking Serbian People for a Ride," *Sunday Mail*, 12 March, (internet) available at: <http://www.topix.com/forum/world/cyprus/TL5LoENS8QUooVN5T>
- Dafydd, Fell (2005), "Political and Media Liberalization and Political Corruption in Taiwan," *The China Quarterly* 184: 875–893.
- Dryzek, John S.; Leslie, Holmes T. (2002), *Post-Communist Democratization: Political Discourses across Thirteen Countries*, Cambridge: Cambridge University Press.

- Fligstein, Neil (2008), *Euro Clash: the EU, European identity, and the future of Europe*, Oxford: Oxford University Press.
- Fligstein, Neil; Iona Mara-Drita (1996), "How to Make a Market: Reflections on the Attempt to Create a Single Market in the European Union," *American Journal of Sociology* 102: 1-33.
- FoNet (2006), „Predsednik Kipra zna gde su pare“, 5 March, (internet) available at: <http://www.novosti.rs/vesti/naslovna/aktuelno.69.html:180509-Predsednik-Kipra-zna-gde-su-pare>.
- Haas, Peter M. (1992), "Introduction: epistemic communities and international policy coordination," *British Journal of Political Science* 37: 333-57.
- Habermas, Jürgen (1996), *Between Facts and Norms: contributions to a discourse theory of law and democracy*, Cambridge: MIT Press.
- Hay, Colin (2006), "Constructivist Institutionalism," in R. A Rhodes. et al. (eds.) *The Oxford Handbook of Political Institutions*, Oxford: Oxford University Press, pp. 56-74.
- Human Rights Watch, "The Balkans. Weighing the Evidence. Lessons from the Milošević's Trial," (internet) available at: <http://www.hrw.org/reports/2006/milosevic1206/1.htm> (viewed 20 January, 2012).
- I.K., S.P. „Kipar zataškava istragu o pljački Srbije“, (internet) available at: <http://arhiva.glas-javnosti.rs/arhiva/2006/03/31/srpski/D06033001.shtml> (viewed 20 January, 2012).
- International Criminal Tribunal for the former Yugoslavia, (internet) available at: [http://www.icty.org/case/slobodan\\_milosevic/4](http://www.icty.org/case/slobodan_milosevic/4) (viewed 20 January, 2012).
- Insajder: Državna pljačka države, (internet) available at [www.b92.net](http://www.b92.net) (viewed 27 January, 2013).
- Jabko, Nicolas (2006), *Playing the Market: A Political Strategy for Uniting Europe, 1985-2005*, Ithaca: Cornell University Press.
- Maier, Jurgen (2011), "The Impact of Political Scandals on Political Support: An Experimental Test of Two Theories," *International Political Science Review* 32: 283-302.
- Memoli, Vincenzo (2011), "Government, Scandals and Political Support in Italy," *Interdisciplinary Political Studies* 1: 127-136.
- Milivojčević, Olivera, „Na Kipru sam otkrio 1.300.000.000 \$ srpskog novca, koji je 'nestao' pošto me je guverner Dinkić opozvao,“ (internet) available at: <http://www.mail-archive.com/sim@antic.org/msg05613.html> (viewed 20 January, 2012).

- Pawelke, Andreas (2010), "Anti-corruption in Slovakia The Role of Civil Society," *Romanian Journal of Political Science* 10 (Special Issue): 96–117.
- Program of the Democratic Opposition of Serbia, (internet) available at: <http://www.g17plus.org.yu/srpski/files/aktiv/program/1.htm> (viewed 20 January, 2012).
- Prokopijević, Miroslav (eds.), (2002), *Two years of Reform in Serbia: a Wasted Opportunity*, (internet) available at: <http://pdc.ceu.hu> (viewed 27 January, 2013).
- Rothstein, Bo, "Anti-corruption: A big-bang theory," *Quality of Governance Institute Working Paper*, (internet) available at: <http://dx.doi.org/10.2139/ssrn.1338614> (viewed 20 January, 2012).
- Savić, Sanda, *Intervju dana*, (internet) available at: [www.b92.net](http://www.b92.net) (viewed 27 January, 2013).
- Schmidt, Vivien, "Bringing Ideas and Discourse Back into the Explanation of Change in Varieties of Capitalism and Welfare States," *CGPE Working Paper Series*, (internet) available at: <http://www.sussex.ac.uk/cgpe/research/publications/workingpapers> (viewed 20 January, 2012).
- Schmidt, Vivien (2008), "Discursive Institutionalism: The Explanatory Power of Ideas and Discourse," *Annual Review of Political Science* 11: 303–326.
- Schmidt, Vivien (2006), "Give Peace a Chance: Reconciling Four (not Three) 'New Institutionalisms,'" paper presented at the National meetings of the American Political Science Association, Aug. 31 – Sept. 1, Philadelphia, PA.
- Schmidt, Vivien (2010), "Reconciling Ideas and Institutions through Discursive Institutionalism," in P. Béland and Henry Cox R. (eds.), *Ideas and Politics in Social Science Research*, Oxford: Oxford University Press, pp. 65–82.
- Schmidt, Vivian (2011), "The Problems of Identity and Legitimacy in the European Union. Is more politics the answer?," in S. Lucarelli, F. Crutti, V. Schmidt (eds.) *Debating Political Identity and Legitimacy in the European Union*, New York: Routledge, pp. 16–37.
- Schmidt, Vivien; Radaelli, Claudio (2004), "Policy Change and Discourse in Europe: Conceptual and Methodological Issues," *West European Politics* 27(2): 183–210.
- Torkildsen, Morten, *Amended Expert Report of Morten Torkildsen*, (internet) available at: [http://hague.bard.edu/icty\\_info.html](http://hague.bard.edu/icty_info.html) (viewed 20 January, 2012).

- Trivić, Branka, *Make up for Milošević's regime*, (internet) available at: <http://www.antikorupcija-savet.gov.rs/radio-televizija-i-stampa/cid1037-1404/barac-sminkanje-milosevicevog-rezima> (viewed 27 January, 2013).
- Uslaner, Eric M. (1998), "Social Capital, Television, and the 'Mean World': Trust, Optimism, and Civic Participation," *Political Psychology* 19: 441-467.
- Vannucci, Alberto (2009), "The Controversial Legacy of 'Mani Pulite': A Critical Analysis of Italian Corruption and Anti-Corruption Policies," *Bulletin of Italian Politics* 1: 233-264.
- Vlahović, Dragan (2005), „Demokratska pljačka Srbije“, (internet) available at: <http://arhiva.glas-javnosti.rs/arhiva/2005/02/28/srpski/feljton2.shtml> (viewed 20 January, 2013)

Peter Damo

## Social and Legislative Stand Against Corruption

Motto: *"I believe in the Force of Rule of Law, not in the Rule of Law of Force"*

Nicolae Titulescu

Romanian Minister of Foreign Affairs (1928-1936),  
President of the League of Nations in Geneva (1930-1931),  
champion of European Left policy in the Spanish Civil War

### 1. Introduction

Corruption may be traced back in time to the beginning of mankind. It may be noticed at individual level as well as at group level. Most generally, corruption has been defined as a deviation from accepted norms of conduct which aims of acquiring, most often than not, undeserved personal benefits. What such definitions lack is the "victim criteria", i.e. the number of people and/or the institution that suffer the effects of the act of corruption proper. In the aforementioned context, the state itself may be considered as being such institution.

Therefore, without minimizing petty acts of corruption such as the practice encountered in certain cultures where individuals give money or presents so as to obtain a certain favour, we hold that the definition of Corruption should include, besides transgression, the element of trespassing the Law, the number of people and the institution affected, directly or indirectly, by the act of corruption.

Let us, for example, make a comparison between two alleged acts of Corruption.

Let us suppose that the first act consists of giving the equivalent of 10 Euro to a clerk in a local Fiscal Administration office just to speed up

the issuing of a correct certificate of paid taxes which is necessary for some reason.

Let us suppose that the second act consists of a deed of a State Secretary in the Ministry of Education who secretly and preferentially granted a multi-million Euro project funded by the European Union to an NGO which actually was hers.

The latter actually happened in Romania in 2010. The individual was removed from office, but no prosecution followed whatsoever and she remained with the money a richer corrupt individual.

Let us now ask a rhetorical question: which of the aforementioned may be labeled as an act of corruption that breaks the law and affects the interests and rights of millions of people by actually draining illegally European funds, and which is a petty unethical and immoral act occurring between two individuals, act which is not even sanctioned by the penal code as a crime, and has hardly any effect at national level?

Whatever the definition, corruption is a major problem which has dramatic social, cultural, political, economic and financial consequences throughout Europe. It has acquired a systemic form in a number of countries, particularly in Central-Eastern Europe.

Albeit acknowledged as such and in spite of high-flown declarations, it has been tolerated both by national administrations and by the EU institutions for the sake of political, economic, financial and strategic reasons. Similarly, the international financial institutions, despite theoretically wonderful codes of conduct and principles such as the "arm's length principle", seem to have overlooked it for the sake of their own financial profit.

Corruption has been intrinsically linked with political power, crisis and austerity. Political decision makers preferred to implement harsh



austerity measures directed against people instead of adopting legal economic and financial measures against those factors responsible for the surge of the national debts and deficits and for the plundering of the national budgets precisely by means of corruption.

In the aforementioned context, it would not be far from truth stating that in Romania, like in other Central-Eastern European countries, the financial-economic crisis overlapped an already embedded multi-layer crisis, i.e. social, cultural, moral, political and economic.

What is happening today to Romanians in the Romanian state and society – a high percentage of poverty, increased discrepancies between the poor and the rich, generalized corruption, economic backwardness and political humiliation, inferior international status – has its origin in the way the communist regime was removed and in the manner the Romanian State has been reconfigured in the period of the début of the political and economic transition, 1990-1991.

Stoenescu 2003: 1

Viewed from a more general perspective, it appears that the degrading situation in the whole of Europe is nothing but the consequence of a series of prolonged unbalanced politics originating in the late 70s and early 80s emergence of the neoliberal paradigm, the financial-economic crisis itself being the expression of a systemic crisis.

The approach of corruption in Central-Eastern Europe should take into account the emergence of a specific brand of neoliberal capitalism which has been developing in the region ever since the early 1990s, i.e. mutant capitalism. Therefore, standing against corruption in such conditions requires fighting, at least, on a twofold battleground: law makers should have the political will to devise a far stricter legislation against corruption which, once adopted, the executive should fully implement, whilst trade unions, NGOs, social movements and networks, as well as citizens, should adopt a pro-active civil attitude to reject and curb the plague.

### 1.1. A historical-political consideration

When one would want to describe somebody or something that is trying to be or to act more strictly than acknowledged standards, we may use a proverb that goes: "*They want to be more catholic than the Pope*". This would make an informal but, nevertheless, suggestive and appropriate description of mutant capitalism.

Formally and briefly, mutant capitalism may be defined as the systemic form acquired by neoliberal capitalism ever since the early 1990s in Central-Eastern Europe.

There are a number of mutations which make this form of neoliberal paradigm particular. The characteristic elements which define mutant capitalism are to be discussed further.

In terms of political origins, the fundamental mutation lies in the fact that the former dictatorial left, i.e. the second and third echelon of power in the state, have turned into Right so as to survive the new political and historical realities after 1989 in Central-Eastern Europe and to thrive on them.

The hard-fact outcome was the emergence of a new breed of political, financial, and economic oligarchy. In order to acquire legitimacy and international political back up from the mainstream neoliberal actors, this new political "elite" had to perform two deeds: firstly, they had to commit a political parricide, i.e. they had to deny their own political origin by publicly condemning the former political system and ideology; secondly, once they "got rid" of their own communist past, they had to reinvent themselves as more neoliberals than the US, the IMF, the EU, the EC, the ECB, and so and on and so forth.

For instance, in Romania, they established an Institute for the Investigation of the Crimes of Communism which produced an official

“Report of Condemnation of Communism” in 2006. Ironically, the document was produced by some offspring of the very former NKVD agents who had implemented the Stalinist system in the late 1940s and early 1950s following the order of the President who himself was a communist high official before 1989.

The aforementioned document does not have the supervision of Romanian academics in history whatsoever. Its purpose was two-fold: internally, to be used as a political weapon for terminating political adversaries of those in power, as well as a means of manipulating the public opinion by diverting their attention from the real problems to faked ones; externally, to please the neoliberal policy directed from Brussels.

More or less similar policies have been conducted in other former socialist countries as well, which may lead to the conclusion that there is a sort of a strategically coordinated European attempt to undermine social opposition based on any leftist or left-social paradigm. Apparently this has been working, since there is general attitude of rejection of Left ideology and heritage manifested by a significant part of the society, especially by the younger generation.

The aforementioned political ideology took its toll on Romania between 2004 and 2012, particularly between 2008 and 2012, turning the country into what may be called a small-scale neoliberal experiment to be exported and implemented throughout Europe. On the whole, the political situation in this period may be characterized by the following:

- governing by by-passing the parliament and trespassing the constitution by means of enforcing so-called governmental emergency ordinances instead of having laws democratically adopted in the parliament;
- generalized corruption;

- enforcement of the notorious austerity measures, of the mechanism of cooperation and verification (MCV), of the Euro Plus Pact and of the economic governance package ahead of their adoption at the European level and without any consultation of social partners and population;
- undermining social cohesion and making different social classes and categories come to hate each other;
- dismantling the only force in the society that was capable to put up a significant opposition to the austerity plans, namely the trade unions;
- fragmentation of the Romanian society and driving it into deep impoverishment and social insecurity;
- undermining the principle of separation of powers in the state by attempting to wipe out the Independence of the judicial system and bring it under political control so as to issue anti-democratic laws and judgments;

In terms of economic governance, mutant capitalism has a most striking negative feature that distinguishes it from all traditional capitalism: the new oligarchy is mostly composed of, or related to, the structures of the actual state administration and state institutions which, together with their tycoon-clientele, are organized like gangs.

In other words, probably the main method of becoming tycoon overnight is by doing fraud business with the state from the very position of state high officials. Obviously, such mutation comes at the cost of dramatic spoliation of natural, public, and strategic resources to the detriment of the national interest of both state and people, but it offers the perpetrators tremendous personal and group benefit. Given the economic underdevelopment, this mutation has had a major impoverishing impact on the economy of the Romanian state and on the people's living standard ever since the 1990s. This is also, partly, explanation for the severe financial-economic crisis experienced in Romania and the region.

In terms of specific features, the mutant capitalist "elite" has an extreme propensity towards the neoliberal paradigm.

Mutant capitalism may be characterized by generalized corruption and democratic deficit, by lust for absolute power and financial resources, by double thinking and double language in orwellian phrase, and by lack of culture and education.

Since none of the aforementioned can be acceptable in a lawful and democratic state, it derives that mutant capitalism has a propensity for derailing from the basics of democracy and freedom to a sort of a totalitarianism and patriarchy where a father figure strongman and his party rule solely over their subjects.

International politics had undoubtedly an important role in shaping mutant capitalism. During the mid-1990s the US probably decided that they had waited long enough and began setting up the basis of the capitalist financial market in Romania. Paradoxically, this was carried out through a US AID project that would be implemented by native high officials who had held key positions in the former regime of Ceausescu.

It is also worth remembering that the Orange Revolutions which swept throughout Eastern European and some former Soviet countries during a period approximately set between 2003 and 2005 stand for the support of the US Administration for the latest phase of the evolution of the mutant capitalist system-machinery – the phase of the broad-daylight transfiguration of former dictatorial left into neoliberal right. Ironically, this phase has been accompanied by the official denial and demonization of the former communist system and ideology by the very former communist apparatchiks presently in power.

For obvious reasons, no one among the actors involved in setting up mutant capitalism wants to admit the reality, or to speak openly about

it. They would rather have the matter buried by the passage of time: the sooner forgotten, the better for them.

It was in May 2005 when the Democrat Party (PD) in Romania switched, practically, overnight from Left ideology to right ideology becoming the Democrat-Liberal Party (PDL). The shrewd political move from the Socialist International to the European Popular Neo-liberal political family was commented at the time by one of the party's MPs in the following "metaphorical" terms: *"Beginning with this night we will lay on our back having the possibility to turn a little to the left as well as a little to the right. What is important is that the night be free of nightmares"*. Almost immediately it was welcomed as full member of the European Popular Party (EPP). Few understood at the time that such an unprecedented political move would pave their rocketing to political stardom and power in Romania to the detriment of the society.

It would be worth considering that the US may well have re-assessed their interests in the region having in view the latest political, economic, and military coordinates of early 21<sup>st</sup> century such as: the potential rise of an enlarged and stronger European Union may not suit the American world hegemonic tendency; the export of neo-liberalism to the Middle East and to the Far East needs a bridge which is Central-Eastern Europe; given their more or less visible hard feelings against Moscow, Central-Eastern European countries may well be used as a political buffer against Russia; the geographic location makes certain countries in the region the perfect launching pad for controlling and deterring terrorist threats from the Middle East, as well as for supporting a hypothetic military strike in that region.

It was not long before, in their eagerness to offer full service to the US, Romania's administration, as well as other Eastern European countries' administrations, advocated the American military intervention in former Yugoslavia and Iraq and would even sent troops to prove

their political loyalty to the US. By doing this, they put at risk their position in relation to the EU, particularly with a couple of some of the most influential states on the continent, i.e. Germany and France which opposed American policy in Iraq.

Here are a number of examples supporting the prior logic.

Firstly, American military bases were allowed to be established in the perimeter of former Romanian military bases. Besides the military geo-strategic edges offered to the US by the mutant capitalist power, they also opened widely the door for the penetration of the American capital in Romania. The American company *Bechtel Inc.* was given by the Government a way over-priced contract to construct a highway in Transylvania. In the end, after more than a decade and having *Bechtel Inc.* literally sucked billions of euros from the Romanian state budget, the company simply packed up and left Romania leaving thousands of workers unemployed and the highway actually unfinished – only about 45 km were completed. They even claimed that they had been hindered in completing their job by the lack of payment on the part of the Romanian authorities. The contract with *Bechtel Inc.* is protected by secrecy clauses and no prosecution has been ever initiated against them.

Today a number of reputable political analysts and journalists assert that the disadvantageous contract signed with *Bechtel Inc.* was just one of the prices Romania paid for the Euro-Atlantic integration and for the support granted by the US to the political class in power at the time being.

Secondly, according to an interview published on the webpage of “Business 24” magazine on the 9<sup>th</sup> of September 2005, Robert Ziscovici, an American tycoon officially representing the interests of both *William Mullen Strategies Group* and *Manatt & Jones Global Strategies*, made it very clear that the US does have strategic military, financial and economic interests in Romania.

Analyzing his discourse, one may easily understand the connection pointed out in this work between the expansion of the US policies in Central-Eastern Europe on one hand, and the support given by the American Administration to the mutant capitalist establishment in countries like Romania. "We have not forget that Romanian soldiers are side by side with US troops in Iraq, Afghanistan, Kosovo and Bosnia. This is something that can not be forgotten," he declared. "We consider that Romania is the new California at the Black Sea [...] "President Basescu has to be respected for having come up with the doctrine Washington-London-Bucharest Axis [...] Let us be clear, when I say Romania I say President Traian Basescu", concluded the American representative.

Thirdly, according to a recent article published by "Hot News" news agency on their webpage on 5<sup>th</sup> of July 2012, the US General Wesley Clark, former commander in chief of NATO, was hired by Romanian Prime Minister Victor Ponta as special advisor on strategic, security and economic strategies issues. Leaving aside the suspicions such awkward political decision may generate, one would not grasp the picture in its entirety, should they not learn that the retired general is also board member of *BNK Petroleum Inc.* which is an American based company interested in the acquisition of the long-term exploitation rights over slate gases in Romania and Poland. One may remark that this is an astonishing synergetic coincidence.

All in all, the aforementioned illustrate some of the ways in which the US boosted their control over the region both in military and economic terms.

Thus, at the time, Jacques Chirac condemned the position of Eastern European candidate countries for the support offered to the Americans by saying that "*they lost a good chance to remain silent*".

Since nothing happens by chance and nothing comes for free, it is likely that the US support in setting up the Orange Revolutions that



brought to power in some of these countries the 2<sup>nd</sup> and the 3<sup>rd</sup> echelon apparatchiks who had adopted the Neoliberal identity and ideology, was one of the rewards the Americans handsomely granted them for their pro-US advocacy in this geo-strategic region.

Therefore, mutant capitalism should be treated and analyzed as a new historic stage development that bridges Western-Eastern gaps in terms of market economy and financial market. mutant capitalism offers the grounds for political and cultural expansion of the Western traditional neoliberal capitalist paradigm which would be engrafted on the aforementioned specific mutations. One of these mutations lies in the propensity of the mutant capitalist political class towards corruption.

## **2. Social, political and economic consequences of corruption in Central-Eastern europe**

2.1. There is a connection between corruption and social development, i.e. the higher the level of corruption, the lesser the social development. Presently, this may be broken down to a triad consisting of corruption on one hand, political power, respectively crisis and austerity on the other.

Apparently, austerity measures have been taken in order to counteract the Financial-economic crisis. In reality, austerity measures targeting people all over Europe have been preferred by Governments instead of other means of combating the crisis.

For instance, in Romania they could have cut the obscene salaries of the luxury public servants in the financial and administration sectors, they could have cut the huge governmental expenditure, they could have terminated the flat tax and imposed a progressive revenue taxation system, they could have overtaxed those companies which have an annual profit exceeding 10 million euro following the model

established in the US by Barack Obama, they could have introduced a progressive VAT with lower quota applied to basic products (for example 5% to 15% VAT applied to basic food products, medicine, books, etc.) and very high quota applied to luxury goods (for example 30% to 45% VAT applied to luxury automobiles, mansions, posh fur garments and jewelry, etc.), they could have reinforced the fight against border contraband and border corruption, they could have executed those private companies which had accumulated enormous debts to the state due to corruption, they could have put an end to the abnormal practice of allowing private companies owned by politicians to conduct business with the state based on dubious contracts worth billions of euro paid from public money, and so on and so forth.

But it is obvious that such measures would have prevented the very political class in power and their clientele from illegally thriving on at the expense of the society they are ruling.

Of course, one may argue that the austerity measures have been imposed by the Troika, i.e. EC, CEB and IMF. Such argument would shortly fall when you learn that the European Commission is actually composed of the heads of states and governments of the member states, whilst the IMF does have Romanian and Central-Eastern European high officials employed who might have had a word against the austerity policies enforced in the countries they are coming from.

This observation leads to the disturbing conclusion that the representatives of the national governments actually voted in favour of enforcing the austerity measures against their own countries hiding themselves under the pretext that they have been forced in doing so by the european commission and the international financial institutions.

In terms of politics, the ongoing financial-economic crisis has been used as a pretext to justify the difficult social-economic situation and divert the attention of people from the political cause of its appearance.

During the last ten years most people have gradually lost their trust in the political class which is regarded as corrupt, illegitimate, and as one of the main causes of their troubles.

Thus, for the sake of political protectionism, no active legal solutions were taken to stop the ever increasing debt and deficit and the ransacking of the national resources. Since debt and deficit need to be covered, governments resorted to austerity measures.

In other words, abuse of public power through corruption has led to unfair redistribution of national wealth, unemployment, impoverishment, segregation and fragmentation of society.

According to Antena 3 TV Channel broadcast of 4<sup>th</sup> of May 2011 occasioned by the black anniversary of the unilateral decision of the Romanian President to cut salaries in the Public Sector by 25%, pensions by 15%, scholarships, allocations for under full age children by 10%, the main problem in Romania has been the 2 billion euros annual budgetary deficit.

The so-called solution of the administration resorted to the aforementioned anti-social measures instead of approaching the real cause of the deficit, namely the national plundering of the budget, of economic and natural resources by the very political class in power. This plundering has been caused mainly by three notorious factors: private companies belonging to the high officials and their political clientele doing business with the state under the political protectionism, fiscal evasion of similar companies, and contraband performed under the very eyes of customs high officials who are members of the same ruling political party or have been nominated by it.

Economists demonstrated that, if those in power had the political will to reduce by 25% private companies doing less business with the State, by 25% fiscal evasion of politically protected companies, and by

25% the contraband, the aforementioned budgetary deficit would be more than covered and, more importantly, there would have been no need to adopt anti-social measures of austerity;

During the same TV broadcast it was revealed the shocking information that during the year of Crisis 2010, when implementing some of the most infamous Austerity measures, the Romanian former PDL government had, according to a Report of the Court of Accounts, expenditures exceeding 17 million euros that can not be justified;

Victor Ponta, the Romanian Prime Minister in charge, stated on 8<sup>th</sup> of October 2012 in a public intervention at the National Radio Romania News Channel (RRA) that the corruption of the former Democrat-Liberal (PDL) Government caused millions of euros damage to the state. As argument he mentioned that after removing from position the corrupt head of the National Fiscal Administration Agency (ANAF), the state budget gained in a couple of months more than 1,000,000 euros, which, otherwise, would have been lost to the political clientele. He also admitted that some of the strategic companies in the field of chemical industry (Oltchim S.A.), electric power production (Hidroelectrica) as well as the Romanian Post Company (Posta Romana) have been brought to the brink of collapse by corrupt management.

On 1<sup>st</sup> of November 2012 the Head of the Court of Accounts declared that in Romania 40% of the money are being stolen, which literally means that the State loses 40 Lei out of each 100 Lei. Obviously, this is caused mainly by corruption in the economy, but also in the financial sector and in politics. The connection between politics and corruption has been documented many-a-time by the media. For instance, according to breaking news of 1<sup>st</sup> of November 2012 broadcast by Realitatea TV Channel, the President of the Republic was recorded on tape during an investigation of the Direction for Investigation of Organized Crime and Terrorism (DIICOT) whilst giving indications to the corrupt Head of the National Fiscal Administration Agency (ANAF).

2.2. Corruption has been instrumental in the implementation of the "grand privatization" of Public Services and Common Goods, i.e. energy production and distribution, transportation, mining, health care, education, etc, imposed by the EU and IMF in Central-Eastern Europe, serving the EU and multinational companies strategy in the region as well as the immediate interests of the corrupt political authorities in charge.

On one hand, it is notorious that the strategy of multinationals in Central-Eastern Europe, including the Balkans, is mainly based on neoliberal principles such as profit maximization at any social and human costs, ruthless competition in a globalized market economy, social and wage dumping and delocalization.

On the other hand it is similarly notorious that the interest of the political class may be defined by two tenets, i.e. lust for power that is acquiring power in the state and keeping it at all costs, respectively lust for wealth that is getting ever richer.

Having said the above, one may recall that, in most of the cases, the much hailed "reform and privatization" meant literally undermining national strategic economic interests by dismantling, from inside, important state-owned firms and generating social insecurity and unemployment.

For instance, presently, one of the most important strategic Romanian state-owned companies in the field of energy production, *Hydroelectrica S.A.*, is being liquidated even though it could not have worked in deficit.

The main argument of the new Social-Democrat - Liberal (USL) Government consist of saving the asset by getting rid of the former corrupt leech private companies - the so-called "wise-guys" in the

electric power field – with whom *Hidroelectrica* had signed, following political protectionism, rather disadvantageous contracts which brought them to the brink of bankruptcy.

However, it appears that the new government continues the same detrimental policy like the former in terms of paying obscenely high salaries to certain Public Servants – the notorious luxury Public Servants and High Officials. For instance, the liquidator of “Hidroelectrica” S.A. is being paid from the State Budget, i.e. from Public money, an outrageous monthly salary of 50,000 Euro. Even more shockingly, this lawyer would be granted a bonus of 3,000,000 Euro in case he manages to successfully liquidate this State company in three years’ time. All this happens in time of Crisis when Austerity measures are still imposed to tax payers.

2.3. Rising Corruption in some regions of the European Union, i.e. Central-Eastern Europe, does impact the whole Europe by generating democratic deficit, less social protection, soaring debt and deficit and, ultimately, more submission to policies imposed by the EU bodies, the ECB, and the IMF.

The general concern about Corruption is illustrated by EU official data according to which 4 (four) out of 5 (five) EU citizens regard it as one of the main problems of their countries. According to EU official sources the cost of corruption impacting the EU economy is estimated to be around 120 billion of Euros annually.

The following examples spell about the impact of acts of corruption upon state budget. According to breaking news broadcast by Realitatea TV Channel on 23<sup>rd</sup> of October 2012, a PDL MP relative of the Head of the PDL former Governing party was charged together with her husband allegedly for fiscal evasion and contraband with oil at the Western border of Romania. They were both sponsors of the PDL governing party, which would offer them political protection and huge privileges in exchange. This is one of the many cases of border contraband and Corruption which caused deficits by tax evasion.

According to the same Media, on 4<sup>th</sup> of November 2012 it was disclosed that the National House of Health Insurances (CNAS) was sued at the National Anti-Corruption Department (DNA) by the new Government for a deficit of over 180 million Lei (approx. 41 million Euro) caused by their mismanagement in gathering social contributions to the budget. This is one of the cases of corruption involving State institutions which caused huge deficits by not observing the Legal provisions in force.

According to Antena 3 TV Channel breaking news of 11<sup>th</sup> of January 2013, the Head of the National Agency for Integrity (ANI) was denounced for giving 15,000 euros bribe to obtain his high official position, for not honestly declaring in his Public Wealth Declaration the three mansions he owns, as well as for allegedly drug consumption. No prosecution has ever been commenced against him.

One may wonder how it can be possible that very head of the Agency which is supposed to legally verify politicians and high officials in terms of corruption made use of acts of corruption and even managed avoiding prosecution.

Seeing countless such cases when high officials may trespass the law evading prosecution, citizens may rightly wonder about the practical meaning and the truthfulness of article 16 lines (1) and (2) in the Romanian Constitution that read loftily: "Citizens are equal before Law and Public Authorities, without privileges and without discriminations.", respectively, "No one is above Law".

According to Antena 3 TV Channel of 8<sup>th</sup> of November 2010, there is a top of a number of formerly state companies that have been privatized and are presently owned by foreign contractors that have huge incredible debts to the Romanian state: *Electroputere Craiova* (Diesel and Electric Railway Engine and High Power Equipment producer), property of an Arab firm, owes 1,000,000,000 euros; *RAFO Onesti Oil Refiner*, property of a Russian firm, owes 1,000,000,000 euros; *Renk*

SA. Resita (diesel engine and heavy duty electro mechanic equipment producer) owes 1,000,000,000 euros, and so on and so forth. The final debt of these companies amounts to 1 billion euros. Should the Romanian government and institutions be willing to recover these debts, a great deal of the budgetary deficit would be covered;

On 26<sup>th</sup> of April 2011, *Eurostat* made public their report on Romania's public debt and budgetary deficit disclosing that some of the official data provided by the Romanian Government may be doubtful because of uncertain and unreliable data.

The problem is caused by the unclear situation of a number of huge State owned companies such as *Transelectrica Electricity Company*, *CFR Marfa freight Railway Company*, *Termocentrale Rovinari* and *Termocentrale Mintia-Deva* coal-produced electric energy company, and others. All these companies have obscenely well-paid managers who are politically involved with the Democrat Liberal Party (PDL), formerly in power, and who have sponsored their electoral campaigns with large amounts of money. All these companies have huge debts to the state budget and operate inefficiently. nevertheless, the salaries of the directors of such state companies amount up to staggering tens of thousands of euros per month as reward for their political obedience. Of course, the solution advanced by the government consists of increasing the number of unemployed workers to save expenditures;

According to Antena 3 TV Channel talk show *Excess of Power* of 17<sup>th</sup> of December 2011, in spite of the fact that the debt accumulated by the National Public Television Channels TVR (*Televiziunea Romana*) soared to more than 100 million Euros, they have never been prosecuted. Their fleet of more than 300 cars remained intact. Moreover, the employers, particularly the heads of departments, have huge Western salaries and none of them were ever subjected to the austerity cuts by 25% applied in mid-2010 to the rest of the workers in the public sector in Romania. The explanation of this type of corruption is purely political: the National Public Television Channels (TVR) was



the obedient trumpet of the President and of his PDL ruling party. This abnormal situation of political protectionism began to change only after the fall of the PDL neoliberal government in March 2012 when the former heads of the National Public Television were dismissed by the new Power.

According to an IRES poll publicly released on 11<sup>th</sup> of June 2011 more than 60% of Romanians have their incomes lower and lower during the last 5 years, 27% of them have the same incomes, whilst about 12% declared to have higher incomes. In May 2011 the inflation was 8.41% and prices of vegetables and other basic food soared. PRO TV Channel revealed during prime time News on 5<sup>th</sup> of May 2011 that the inflation rate in 2011 would exceed 5.1%, which is 1% beyond prognosis.

According to a BERD poll publicly released on 29<sup>th</sup> of June 2011 more than 80% of Romanians are deeply discontented with their living standards, which is the highest negative percent in the entire European Union. At the same time, most Romanians believe that democracy is undermined and they do not believe in the correctness of elections. This assumption would be entirely confirmed during the Referendum for the deposal of the President in August 2012.

2.4. Corruption involving state high officials and mutant capitalist tycoons has been instrumental in facilitating unfair competition between private companies and state owned companies to the detriment of the national and public interest.

According to the news released in the media and testimonies of workers, the Romanian Government pays huge subventions to private railway companies that compete with the national Railway company (SNCFR) bringing it to the brink of economic and financial disaster and endangering the jobs of many thousands. It is worth mentioning that these companies have originated from the actual fragmentation of the former one National Railway Company. Such results are also

due to fraud contracts with the State, which are granted mostly to private competitors under political protectionism.

According to the news of Antena 3 TV Channel of 8<sup>th</sup> of November 2010, the Romanian government is financing private companies with subventions in the industry of fertilizers for agriculture with the declared purpose of getting less expensive fertilizers for farmers, but the fertilizers are being sold at the same price as before granting subventions. This raises a simple rhetorical question: what could be the interest of the Government to finance private companies that sell their products at the same price and thus obtain more profit?

According to the aforementioned Media source, ALRO Slatina Aluminum producer, presently owned by a Russian company, has been constantly blackmailing the Romanian state by threatening that if they are not supplied cheaper gas and electricity than on the market, they would stop the production of Aluminum.

Why do not state institutions, such as the National Anti-Corruption Department (DNA), take any actions against such companies? One possible answer may lie in the alleged connection of the President of the country with the ALRO Affair, as disclosed by various media sources during recent years.

2.5. Corruption involving high officials and mutant capitalist tycoons has been instrumental in supporting private companies to conduct fraud business with the State at the huge expense of the state Budget.

According to the news presented by Antena 3 TV Channel on the evening of 18<sup>th</sup> of November 2010, the Romanian government paid in this time of crisis more than 900 million euros on dubious contracts with private companies owned by their political clientele. For instance, one of the law consulting firm belonging to former minister of justice, Stoica Valeriu, top member of the Democrat Liberal Party (PDL)

formerly in power, gained no less than 15 million Euro from contracts with State Institutions and Agencies that have their own oversized and well-paid legal specialist staff (more than 7,000 people).

On the occasion of the World Exhibition in Shanghai in the summer of 2010, the Romanian Ministry of Tourism paid to THR/TNS joint venture a staggering 900,000 euros for market research and designing a country brand that was involved in an embarrassing plagiarism scandal and which, according to advertising specialists and the Media can be purchased for only 250 euros from the World Wide Web or could have been by young students and artists instead.

According to the media, the construction of highways in Romania is probably one of the most expensive and inefficient in Europe: the cost exceeds a staggering 27 million euros per kilometer, which is 12 times more than in Bulgaria and almost 3 times more than in Austria and Greece (10 million euros per kilometer). Reportedly, in Hungary the price is around 11 million euros per kilometer whilst in Germany and Czech Republic the price per kilometer is around 19 million euros. In spite of such high price only about 42 kilometers have been actually finished in the last decade or so. The main reason lies in the fact that most of the contracts are granted illegally to the so-called "kings of asphalt" who are anything but professionals in road and highway construction. As a rule, they use other subcontracting firms whom they pay far less, the result being snail progress and poor work quality. Reportedly, the "kings of asphalt" have been pumping a significant quota of the public money they get into the tanks of the former PDL Governing party.

As former Minister of Public Works and Territory Organization, Nicolae Noica, put it, "the price of highway kilometer is outraging" and it is caused by "the lack of responsibility of some State high officials" who sign such contracts paid from public money with private companies.

According to Antena 3 TV Channel of 1<sup>st</sup> of November 2010, more than 81,000,000 euros was spent in time of crisis for planning on paper a

non-existent highway between Bucharest and Brasov for which there is no financing perspective whatsoever in the near future.

Once again, so-called specialized private companies were granted the contract from public money as consequence of non-transparent and dubious auctions organized by some state authorities.

According to the Breaking News of 1<sup>st</sup> of November 2010 by Antena 3 TV Channel, the Romanian State has been ransacked during the crisis by its very own political clientele through fraud contracts signed with private companies worth of no less than 8,460,980,023 euros.

According to Antena 3 TV Channel afternoon news of 2<sup>nd</sup> of November 2011, the government offered the private company "Radacini SRL" a contract of no less than 4 million Euro from public money to provide winter tires for Governmental Institutions. Reportedly, the company was a member of the political clientele.

2.6. In terms of corruption there is a general similarity between Central-Eastern countries. This relates to historical, political, economic and psycho-social causes as well as to means of operation and effects.

This is relevant for the main argument of social and legislative stand against Corruption because it leads to the conclusion that through proper cooperation of social actors, i.e. trade unions and NGOs, and cooperation of competent state authorities, i.e. the executive, the legislative and the judicial system, from different Central-Eastern countries, one may witness positive results of combating the plague in the entire region.

There is a threefold argument in support of the aforementioned.

Following the 2<sup>nd</sup> edition of the Joint Social Conference in Romania (JSC Ro 2) organized in October 2011 in Bucharest, it turned out that

corruption has almost identical features in Czech Republic, Hungary, Bulgaria and Romania.

The same occurred during the European Joint Social Conference (JSC) organized in March 2012 in Brussels.

During the 5<sup>th</sup> edition of the Zagreb Subversive Festival and Balkan Social Forum organized in May 2012 in Zagreb, it turned out that the same applies to the region of former Yugoslavia as well.

Some of these features of corruption in Central-Eastern Europe are the following: the model of political protection of corrupt oligarchy granted by the political class in power, the model of private companies belonging to high officials conducting fraud business with the state at the expense of the State budget and of the society, the model of not prosecuting and not actually sentencing to jail the corrupt high officials, and so on and so forth.

2.7. Corruption has been tolerated by the European Union bodies for the sake of preserving their *status quo* in the decision-making process.

Albeit the EU does have some recent official initiatives to combat corruption, when considering reality it seems that these appear more like snoring attempts to appease and divert public opinion than committed endeavors.

At EU Commission level, on June 6<sup>th</sup>, 2011, the EC proposed a package of measures aimed at more effective treatment of problems connected with economic, social and political losses and damage caused to EU countries by Corruption which includes:

- The decision of the EC to establish a reporting mechanism for the field of the struggle against corruption.

- Report concerning the implementation of the EC decision No.2003/568/SVV on struggle against corruption in the private sector.
- Report on forms of participation of the EU in the Group of states against corruption (GRECO) within the framework of the Council of Europe.

"Sophisticated EU-level anti-corruption law is in place", but implementation and enforcement among EU countries is uneven and remains unsatisfactory, reflecting a "lack of political commitment on the part of leaders and decision makers to combat corruption in all forms", according to a Commission statement.

The Commission will therefore set up the EU Anti-Corruption Report to monitor and assess member state efforts to fight corruption and to encourage more political engagement. It should help countries better enforce legislation and underline failures and vulnerabilities, a commission representative told the Civil Liberties Committee.

"What we need most is not necessarily new legislation or institutions but stronger enforcement of what is already in place", they say.

The Commission will issue the report every two years, the first in 2013 and says it won't mean an additional burden for member states or duplication. "We will use different, existing, monitoring mechanisms, but also independent experts, businesses, civil society," the representative said.

The Commission will also come up with a series of other measures, including participation in the Council of Europe's group of states against corruption and proposals for new rules on confiscating criminal assets, improving criminal financial investigations, stepping up police and judicial cooperation, better training for law enforcement officers and a stronger focus on anti-corruption in the EU's enlargement process and development policy.

At EU Parliament level, they admitted that an estimated 120 billion euros, or 1% of EU GDP, is lost to corruption in the EU each year and 80% of citizens consider Corruption to be a major problem in their country. So what is going wrong – is it a lack of proper enforcement or is the problem a lack of political will in the member states? MEPs agreed in 2012 to calling for a clear statement of political will from ministers. Among other issues raised were the need for better protection for whistleblowers, faster investigations and the need to smooth out differences across the EU in how bribery by multinationals of state officials in third countries is treated.

At EU Council level, on 9<sup>th</sup> of April 2012 in Strasbourg, the Council of Europe Group of States against Corruption (GRECO) called on its member states to set up transparent systems for party and election campaign financing. In its *annual activity report* GRECO, while acknowledging an increase in regulatory efforts by states in this field, points out a number of shortcomings:

- The transparency of some sources of income of parties, such as donations in kind, party membership fees, loans or sponsorship are often neglected by the legislation;
- Anonymous donations are still possible in some countries;
- Legislation in many countries does not include local party bodies and other entities involved in election campaigns;
- Financial information is often not published in an easily accessible and timely way;
- A large number of states fail to have a truly independent supervisory body and in some states such a body does not exist or has limited functions;
- Sanctions are often weak, not flexible enough, limited in scope or not applied.

The case of Romania is both relevant and unsettling in support of the thesis in the sixth statement.

Probably the most outrageous foreign intervention in the internal affairs and democracy of a European state happened during the referendum in Romania in August 2012 when top representatives of the EU, the US, Germany and Hungary altogether, practically forcefully changed the result of the ballot by trampling the fundamental principles of international public Law and democracy and re-imposing the former President who was democratically and legally deposed from position by 7.4 million Romanians.

A rhetorical question may be asked at this point: what could be the reason for granting such international support to a high official and his party, i.e. the Democrat-Liberal Party (PDL), that are notorious for taking corruption to the limits?

On 7<sup>th</sup> of October 2012, Crin Antonescu, presently Head of the Senate and former interim President, declared that Romania has two Governors – one put in place by Barosso, the other Barosso himself. By saying this, he reconfirmed what many Romanians feel lately, as well as the opinion publicly expressed by many analysts and journalists according to which Romania has been treated by the EU similarly to a colony.

As if to confirm the opinion of the Head of the Senate, in early November 2012, one month before the parliamentary elections, Mark Gitenstein, US Ambassador in Romania, reportedly came out, once again since the referendum crisis in August, attacking the Romanian government and the Romanian state by declaring that a real democracy cannot rely on the will of the majority. Leaving aside the abnormality and anti-democratic character of such statement, the explanation goes that the US Ambassador was threateningly hinting thus to the majority expected to vote in favour of the new social-liberal government. This was another unacceptable attempt to interfere with the internal affairs of an independent State, member of the European Union, aiming at influencing the ballot and turning the tables in favour of the presidential Neoliberal pro-American party PDL, formerly in power until March 2012.



The way the connection between corruption and the implementation of EU neoliberal policies works is rather plain and obvious: the EU knows well that a significant number of state high officials have been alleged, exposed by the media and even charged for corruption, yet they continue cooperating with them and allowing them access to important European funds. The reason they are doing this stands in the fact the corrupt as they may be, such high officials are the perfect pawns to work with in order to implement the EU policies in that particular country.

In conclusion, we maintain that in spite of being well aware of the reality, the European Union, as well as other major international actors, have turned a blind eye to corruption at national levels, particularly in Central-Eastern Europe, in exchange of implementing their own neoliberal policies by precisely making use of the corrupt political authorities in some countries.

### 3. Proposals

Social actors, i.e. social movements, NGOs and trade unions, should consider putting on agenda corruption as a top priority and develop structured combat plans against it both at national level as well as at European level.

Along the aforementioned, I have developed concrete proposals that have been endorsed by the organizations, scholars and activists participating at 1<sup>st</sup> European Joint Social Conference process in Brussels, Belgium, on 10<sup>th</sup>-11<sup>th</sup> of March 2011, as well as by the participants at the 2<sup>nd</sup> Joint Social Conference in Bucharest, Romania, on 22<sup>nd</sup> of October 2011.

In the first case, the contribution on corruption has been supported and enriched by the participants at the workshop on this theme. Consequently, the theme of corruption was introduced in the text of the Final Declaration of JSC Brussels as one of the priorities in the form of a European campaign against corruption. In the latter case, the Final

Declaration of JSC Ro 2 containing concrete proposals against corruption was signed by more than 120 representatives of trade unions, NGOs and social networks in Romania and eight European countries (Austria, Belgium, Bulgaria, Czech Republic, Germany, Hungary, Italy and Serbia). The document had a very clear political objective, being meant to be submitted to the Romanian parliament and government in order to make them consider concrete constructive proposals of representatives of trade unions and civil society.

3.1. Developing actions/programs of cultural and political education of the younger generations for social solidarity and democracy. Since the financial-economic crisis overlapped an already embedded crisis in terms of cultural, social, moral, economic and political aspects, the younger generations should consider alternatives to the present day neoliberal paradigm.

Such endeavor should consider education a paramount factor in changing the system of non-values that most youth have been willingly-unwillingly embracing during the last two decades or so. A change of political culture would be likely to produce effects on both natural belittling of corruption and on conscientious combating it.

This aims at a better understanding of the importance of collective and individual consciousness as well as at raising the interest and active involvement of the youth in activities related to democracy, social responsibility and solidarity and, ultimately, combat of corruption.

3.2. Launching corruption audits following the already-established debt audit paradigm.

3.3. Setting up mechanisms that allow trade unions, social movements and NGOs to meet political legislative factors, i.e. MPs/MEPs, so as to lobby for anti-corruption legislation both at national level as well as at European level.

3.4. Lobbying for European legislation that would sanction private companies for doing fraud business under political protectionism with the state.

Such legal measures would have a noticeable impact on curbing corruption, fraud and state budget suction/leakage. This should contain at least a set of norms concerning transparency, easy-to-follow methodology, and, particularly, clear legal accountability of all parts involved in contracts with the State and rather severe legal sentences in case of proven fraud contracts. It should also contain norms and terms of implementation by all member states.

Since signing business contracts with the state may have long-term consequences on the economy as well as on the whole society, the concept of transparency should involve the presence of independent observers from the civil society when signing a contract between a private company and the state.

3.5. Lobbying for European legislation to prevent governments from granting subventions to private companies and thus enhance unfair competition to the detriment of state companies in the same field of activity.

3.6. Lobbying for European legislation to prevent governments from distraining or selling out State companies which have accumulated huge debts to the state budget due to political protectionism granted in exchange of mafioso management in strategic sectors (energy production and distribution, transportation, mining, media, etc.), at speculative prices below the real market value.

Since the economy and finance of Central-Eastern European countries does have an impact on the EU economic and financial evolution, particularly in this time of financial-economic crisis, it seems only natural to adopt and implement a series of legal measures designed to

have an immediate and positive impact on revitalizing state budgets and getting out of the recession.

On long term, such legislation would have a significant impact on discouraging grand tax evaders as well as on reducing corruption and mafioso activities related to politics which have impact on social justice and social life.

3.7. Lobbying for European legislation to hinder high officials from getting access to sensitive information and data related to privatization and other economic and financial projects and, particularly, to prevent them from making use of such information and data for their personal or group interests.

In Romania, as well as in other Central-Eastern European countries, it often happened that the very same high officials who orchestrated the privatization of important public assets in strategic areas such as mining, energy production, oil and refinery and highway construction, were the ones who would become the actual owners of the respective valuable assets.

For instance, if a high official knows the information about the lands upon which a highway is to be built, he would simply buy out all those lands at very low price from the poor peasant owners before the actual construction process begins only to sell them at tremendous price to the very State he is working for as well-paid public servant. This is a notorious way in which many have become tycoons overnight.

The same applies for bringing State-owned firms to the brink of bankruptcy only sell them during fake auctions and buy them out at a low price.

#### **4. End of the matter**

The latest MCV Report issued by the European Commission on Romania was officially released on Wednesday, 30<sup>th</sup> of January 2013, 11:30

a.m. It focuses particularly on Justice and it contains a number of critical remarks and suggestions concerning the fight against corruption, the lawful state, the media and their relations with Institutions of justice as well as with magistrates, the judicial system, and the immense privileges of the Romanian MPs.

The Report recommends that the fight against Corruption should be stepped up, the MPs who are in state of incompatibility should resign and those being under criminal investigation should lose their immunity.

Fighting corruption efficiently can be neither solely national, nor solely European, neither solely Social, nor solely Political, but it should be a joint European and national, as well as social and political, endeavor.

### **Bibliography**

- Abraham, Florin (2005), *Romania from Communism to Capitalism 1989-2004. Political Systems*, Bucharest: Tritonic Publishing House.
- Alexandrescu, Ion; Stoica, Stan (2005), *Romania after 1989. A Small Encyclopedia*, Bucharest: Meronia Publishing House.
- Boia, Lucian (2005), *History and Myth in the Romanian Consciousness*, Bucharest: Humanitas Publishing House.
- Booker, Christopher; North, Richard (2004), *The Great Deception. A Secret History of the European Union*, Bucharest: Antet XX Press Publishing House.
- Buchanan, James M. (2001), *The Limits of Freedom*, Iasi: European Institute.
- Bukovski, Vladimir (2006), *The European Union...A new USSR?*, Bucharest: Vremea Publishing House.
- Bulei, Ion (2006), *A History of the Romanians*, Bucharest: Meronia Publishing House.
- Cassirer, Ernst (2001), *The Myth of the State*, Iasi: European Institute.
- Cesereanu, Ruxandra (2004), *December '89. Deconstruction of a Revolution*, Iasi: Polirom Publishing House.

- Cherot, Daniel (2004), *The Origins of Backwardness in Eastern Europe*, Bucharest: Corint Publishing House.
- Constantiniu, Florin (2002), *A sincere History of the Romanian People*, Bucharest: Encyclopedic Universe Publishing House.
- Damo, Stefan-Petre (2004-2007), *Mutant Capitalism. A Study of Society and Politics*, unpublished work.
- Damo, Stefan-Petre (2007), "The European Union - Superpower or Power for Peace," *Transform! Journal* 1: (internet) available at: <http://transform-network.net/journal/issue-012007/news/detail/Journal/the-european-union-superpower-or-power-for-peace.html>. (viewed on 9<sup>th</sup> of January 2013).
- Damo, Stefan-Petre (2007), "Die Europäische Union - Supermacht oder Friedensmacht?," (internet) available at: [www.rosalux.de/publication/23433](http://www.rosalux.de/publication/23433) (viewed on 9<sup>th</sup> of January 2013).
- Damo Stefan-Petre (2009), "Report critico sulla crisi in Romania," *Transform Journal* 5: (internet) available at: <http://transform-network.net/journal/issue-052009/news/detail/Journal/a-critical-report-on-the-crisis-in-romania.html> (viewed on 9<sup>th</sup> of January 2013).
- Damo, Stefan-Petre; Voica, Adrian (2009), "Press Release on the Unique Public Servants' Salary Payment Law," (internet) available at: [www.openfsm.net/projects/ad-fsr-press-releases/blog/](http://www.openfsm.net/projects/ad-fsr-press-releases/blog/) (viewed on 9<sup>th</sup> of January 2013).
- Damo, Stefan-Petre (2009), "A Critical Report on the Crisis in Romania," (internet) available at: [www.ciranda.net/auteur1428.html](http://www.ciranda.net/auteur1428.html) (viewed on 9<sup>th</sup> of January 2013).
- Damo, Stefan-Petre (2011), "Final Declaration. Joint Social Conference in Romania, 2<sup>nd</sup> Edition, 22<sup>nd</sup> of October 2011, Bucharest," (internet) available at: [www.conferintasocialareunita.ro/index.php?page=acasa](http://www.conferintasocialareunita.ro/index.php?page=acasa) (viewed on 9<sup>th</sup> of January 2013).
- Damo, Stefan-Petre (2011), "Report: Joint Social Conference in Romania 2<sup>nd</sup> Edition," (internet) available at: [www.transform-network.net/blog/archive-2011/news/detail/Blog/Report-Joint-Social-Conference-Romania.html](http://www.transform-network.net/blog/archive-2011/news/detail/Blog/Report-Joint-Social-Conference-Romania.html) (viewed on 9<sup>th</sup> of January 2013).
- Damo, Stefan-Petre; Jeremić, Vladan (2011), "2<sup>nd</sup> Edition of the Joint Social Conference in Romania," (internet) available at: [www.rosalux.rs/en/artikl.php?id=102](http://www.rosalux.rs/en/artikl.php?id=102) (viewed on 9<sup>th</sup> of January 2013).

- Damo, Stefan-Petre (2012), "Working Document for Workshop on Corruption," (internet) available at: [www.jointsocialconference.eu/sites/www.jointsocialconference.eu/IMG/pdf/working\\_document\\_for\\_workshop\\_corruption\\_jsc\\_2\\_bxl-2.pdf](http://www.jointsocialconference.eu/sites/www.jointsocialconference.eu/IMG/pdf/working_document_for_workshop_corruption_jsc_2_bxl-2.pdf) (viewed on 9<sup>th</sup> of January 2013).
- Damo, Stefan-Petre (2012), "Prof. Petru Damo and the Teachers' Union of Alba County have proposed organizing a European campaign against Corruption," *Unirea*, (internet) available at: [www.ziarulunirea.ro/prof-petru-damo-si-sia-au-propus-organizarea-unei-campanii-europene-impotriva-coruptiei-70165.html](http://www.ziarulunirea.ro/prof-petru-damo-si-sia-au-propus-organizarea-unei-campanii-europene-impotriva-coruptiei-70165.html) (viewed on 9<sup>th</sup> of January 2013).
- Damo, Stefan-Petre (2012), "Brussels: Romanian Trade Unionists are demanding an Anti-Corruption Campaign," (internet) available at: [www.bucuresti.citynews.ro/international-20/bruxelles-sindicalistii-romancer-campanie-anti-coruptie-221842](http://www.bucuresti.citynews.ro/international-20/bruxelles-sindicalistii-romancer-campanie-anti-coruptie-221842) (viewed on 9<sup>th</sup> of January 2013).
- Damo, Stefan-Petre (2012), "Romania: bad news and good news from the EU periphery and social and trade union situation in CEE," (internet) available at [www.cadtm.org](http://www.cadtm.org) (viewed on 9<sup>th</sup> of January 2013).
- Dogaru, Mircea; Zahariade Mihail (1996), *History of the Romanians. From the Origins to the Modern Age*, Bucharest: Amco Press Publishing House.
- Durandin, Catherine (1995), *Histoires des Roumains*, Iasi: European Institute.
- Freud, Sigmund (2000), *Works, vol. 4, Studies about Society and Religion*, Bucharest: Trei Publishing House.
- Fukuyama, Francis (2004), *State Building, Governance, and World Order in the 21<sup>st</sup> century*, Filipestii de Tirg/Prahova: Antet XX Press Publishing House.
- Gallagher, Tom (2005), *Theft of a Nation. Romania since Communism*, London, Hurst&Co.
- Girardet, Raoul (2001), *Political Myths and Mythologies*, Iasi: European Institute.
- Giurescu, Constantin C.; Giurescu, Dinu C. (1974), *The History of the Romanians*, Bucharest: Scientific Publishing House.
- Gusa, Cozmin (2006), *Ten Sins of Romania*, Bucharest, Asociatia Initiativa, Bucharest.
- Hermet, Guy (2001), *The People versus Democracy*, Iasi: European Institute.
- Hurezeanu, Elisabeta, and others (1985), *The Modern History of Romania. Manual for High School - 9<sup>th</sup> grade*, Bucharest: Editura Didactica si Pedagogica.

- Keane, John (2003), *Civil Society. Old Images. New Visions*, Iasi: European Institute.
- Korten, David C. (1999), *The Post-Corporate World—Life after Capitalism*, Filipești de Tîrg/Prahova: Antet XX Press Publishing House.
- Liiceanu, Gabriel (2006), *About Lie. Classic sources of political morals (Sofocles, Plato, Machiavelli). The case of Romania*, Bucharest: Humanitas Publishing House.
- Nazat, Marian (2005), *Romania turned up-side down 2004-2003: the paradoxes of drifting nation*, Bucharest: Humanitas Publishing House.
- Olteanu, Antoaneta (2004), *Homo Balcanicus. Traits of the Balkanian mentality*, Bucharest: Paideia Publishing House.
- Orescu, Serban (2006), *Ceausism in Romania between the years of 1965 and 1989*, Bucharest: Albatros Publishing House.
- Orwell, George (2002), *Animal Farm*, Iasi: Polirom Publishing House.
- Orwell, George (2002), *Nineteen Eighty-Four*, Iasi: Polirom Publishing House.
- Pasti, Vladimir (2006), *The New Romanian Capitalism*, Bucharest: Polirom Publishing House.
- Rifkin, Jeremy (2006), *The European Dream. How Europe's Vision of Future is quietly eclipsing the American Dream*, Bucharest, Polirom Publishing House.
- Seiler, Daniel-Louis (1999), *Political Parties in Europe*, Iasi: European Institute.
- Scurtu, Ioan; Buzatu, Gheorghe (1999), *The History of Romanians during the 20<sup>th</sup> century*, Bucharest: Paideia Publishing House.
- Stoenescu, Alex Mihai (2002), *The History of Coups in Romania 1821-1999. The Failure of Romanian Democracy, vol.II*, Bucharest: RAO International Publishing Company.
- Stoenescu, Alex Mihai (2002), *The History of Coups in Romania 1821-1999. The Three Dictatorships, vol.III*, Bucharest: RAO International Publishing Company.
- Stoenescu, Alex Mihai (2004), *The History of Coups in Romania 1821-1999. "The Revolution of December 1989" – A Romanian Tragedy, vol.IV (part 1)*, Bucharest: RAO International Publishing Company.
- Stoenescu, Alex Mihai (2006), *From the backstage of the battle for Power 1989-1990. The first Government Petre Roman*, Bucharest: RAO International Publishing Company.



- Teodorescu, Bogdan; Sultanescu, Dan, and others (2005), *12/XII: The Orange Revolution in Romania*, Bucharest: PRO Foundation's Publishing House.
- Ternon, Yves (2002), *The Criminal State*, Iasi: European Institute.
- Tismaneanu, Vladimir (2000), *Slowly, towards Europe*, Iasi: Polirom Publishing House.
- Tismaneanu, Vladimir (2005), *The Revolutions of 1989. Between Past and Future*, Polirom Publishing House: Bucharest.
- Toffler, Alvin; Toffler, Heidi (2006), *Revolutionary Wealth*, Bucharest: Antet XX Publishing House.
- Treptow, Kurt W.; Ionescu, Mihail E. (1999), *Romania and the Euro Atlantic Integration*, Iasi, Oxford: The Center for Romanian Studies.

## A Legal and Ethical Approach To Corruption – Whistle Blowing as a Tool For Shifting Responsibility?

### Introduction

The Austrian legal system can be characterized as unsteady when it comes to provisions dealing with corruption. Intensification, mitigation, and making the law stricter describe the tendencies of the Austrian legislation on corruption during the last couple of years. Corruption is a spongy term and describes a quite complex phenomenon. Corrupt behavior does not only harm individuals but even more states and the general public (Augeneder 2012: 239). In a globalized world, the fight against corruption needs more than legal norms that are only valid in states, regions and territories. Without doubt, national as well as international legal norms describe a necessary framework for orientation. But in order to fight corruption efficiently by reasons of self-interest of states and politicians, legal gaps, or gray areas for example, it needs more than legal norms. Löhr and Burkatzki point out four characteristic problems for this subject matter: time lag, abstraction, implementation and rationality. First: Law is marked with a time-lag-problem, the real world changes much faster than legal provision can be created. Second: Abstract, indefinite terms – especially in complex economic crimes – cause less accusations in economic offenses. Third: Deals instead of verdicts are a result of complex and long proceedings in economic crimes which lower the reputation of justice. And last but not least: Companies mainly focus on economic reasons and arguments, therefore moral aspects need to be translated into this economic language (Löhr and Burkatzki 2008: 14).

Ethical benchmarks on whistle blowing, which are laid down in codes of conduct, cannot substitute legal provisions. But, as I will argue, they

can be a reasonable extension: Corporation's codes of conduct implement standards for human behavior for its own employees. Codes of conduct in a narrow sense are focused on employees, set up by the corporation itself and should reflect their ethical standards (Augeneder 2009: 386). Its contents vary from labor standards, environmental stewardship, consumer protection, bribery and corruption, information disclosure, competition, taxation, and science/technology. The scope of regulation in the area of corruption is quite wide, ranging from simply prohibiting bribery and corrupt behavior to detailed whistle blowing provisions or explicit elaborate standardizations of giving, receiving, demanding or soliciting gifts (OECD internet).

### **Whistleblowing – Definition and Types**

Whistle blowing as one possible tool for fighting corruption is becoming increasingly prevalent. Miceli and Near define "whistle blowing as the disclosure by organization members (former or current) of illegal, immoral or illegitimate practices under the control of their employers, to persons or organizations that may be able to effect action." (Near and Micelli 1995: 680) Characteristic for whistle blowing is the fact that a former or current employee has information about organizational wrongdoings; this information is in the area of responsibility of the organization, illegal practices cannot be finished by the whistle blower himself but will force the organization and other persons to further actions (Donato 2009: 11). Another quite restrictive (in my opinion too restrictive) characterization describes whistleblowing as a deliberate non-obligatory act of disclosure of non-trivial illegality to an external entity (Jubb 1999: 78). It has to (and will) be questioned whether whistleblowing is obligatory or optional; and second whistleblowing cannot be focused on the external version only.

Internal whistle blowing is used, if the wrongdoing is reported within the organization, but placed outside the regular chain of command (skipping the hierarchy/command structure) (Donato 2009: 13; Clausen 2009: 116). This measure can be seen as an early warning system

for the organization with the possibility of further investigation and actions (Brauneis 2010: 26). Nonetheless, ignorance is more often the result of internal whistle blowing (Briegel 2009: 62; Donato 2009: 13). External whistle blowing transfers the information to positions located outside the corporation such as the media, courts, ombudsman, consumer groups, government agencies or other. It is experienced as more intensive and damaging, therefore internal whistleblowing should be used first (Donato 2009: 14). The investigation of 33 legal cases concerning internal and external whistleblowers, who were wrongfully fired for reporting wrongdoings detected an interesting result. Employees who are relatively new to the organization use external channels for blowing the whistle. Employees with longer tenure and greater evidence of wrongdoing usually utilize ways of internal reporting. All the more internal whistleblowing is not as effective as external, having the organization more or less start with investigations or remedial actions. External whistleblower tend to have less tenure in organization and greater evidence of wrongdoing, are more effective in causing a change, but experience more extensive retaliation than internal whistleblowers. More extensive retaliations such as nullification, isolation und last but not least firing the whistleblower correspond with external whistle blowing (Dworkin and Baucus 1998: 1281, 1290, 1295).

Anonymous reporting, not revealing the identity of the whistleblower seems to have less impact than non-anonymous allegations. Lower credibility and fewer investigatory resources resulted with anonymous reporting channels (Hunton and Rose 2011: 75, 9). Personal reporting means that the whistleblower himself possesses the information and is involved in the wrongdoings, non-personal whistleblowing is characterized by disposing information accidentally without being involved in the wrongdoings (Donato 2009: 15).

Why does someone blow the whistle? The motives for blowing the whistle show a broad variety and range from altruistic to egoistic motives (Alford 2000: 403). Idealists possess very high personal standards, which should be transformed on the corporation's level.

Frustration results by a mismatch of reality compared with the high idealistic standards. Former employees who blow the whistle are either interested in informing and warning the public about wrongdoings or want revenge for unfair treatment during their occupation. And further more whistle blowing can be used as an instrument of self-defense trying to prevent disciplinary measures or an upcoming dismissal (Gobert and Punch 2000: 30).

From a sociological perspective a good job performance is characteristic for whistleblower, they tend to be more highly educated, hold higher-level or supervisory positions, are older and more experienced and may have greater power to effect change (Mesmer-Magnus and Viswesvaran 2005: 279, 285, 289). Compared with the characteristics of fraud perpetrators in the ACFE-Report a quite similar demographic data can be derived. The higher the position (executive level, owner), the older and the better educated someone is, the longer someone works for the organization, the higher are the losses and the more tends a person to be corrupt (ACFE, internet: 39-51). It looks as if at a special point in life a person can encounter a situation in which (s)he has to decide whether to become corrupt or sooner or later expose the wrongdoing.

The situation of whistleblowing makes employees prefer voice (such as blowing the whistle) over exiting the organization or remaining silent (Mesmer-Magnus and Viswesvaran 2005: 279; Keil et al 2010: 791). The five phases of whistleblowing illustrate that it is not a singular act but a long process until the whistle is blown and suitable steps are taken. The knowledge of the wrongdoing, collection of further information and evidence, the dilemma situation of ignoring or preferring voice, internal whistleblowing as the next step, external whistleblowing as a further measure, if no reaction is resulting and last but not least reactions from the corporation, emphasize the five possible phases (Briegel 2009: 62-64). The management can either disregard the claim or take appropriate action and therefore reward or retaliate the whistleblower. Retaliatory measures shall undermine the complaint's process, isolate, defame, and disgrace the whistleblower (Mesmer-Magnus and

Viswesvaran 2005: 281, 285). Available alternatives and benefits from exposing problems (corrective action, intrinsic or direct reward) can have a large impact on blowing the whistle (Keil *et al.* 2010: 790).

An Austrian (non-representative) study found 21 organizations out of 92 having a whistle blowing hotline adapted. A correlation could be derived from the size of the corporation (group affiliation), being listed at the stock exchange as well as the existence of ethic codes stimulating whistle-blowing hotlines. 71 organizations did not install whistleblowing hotlines. Reasons for the lack of hotlines were alternative solutions for wrongdoings (57%), such as compliance systems, internal guidelines, technical support, appraisal interviews, a good working atmosphere, but also the small size of the corporation. Interesting seems the fact that 59% of the interviewed corporations show a lack of knowledge not having any information about the existence of those hotlines. This argument goes along with the high amount of missing answers for not implementing whistle-blowing hotlines. Further reasons can be seen in the uselessness of such a hotline, supporting mobbing activities, denouncing or producing a bad working atmosphere (Hügel, internet; Keil *et al.* 2010: 790).

Reasons for implementing a hotline are the protection of the organization's reputation, the disclosure of criminal actions, implementation/obligation of superior guidelines (such as given guidelines from the trust), legal requirements (such as the Sarbanes-Oxley Act of 2002, internet) and as a measure of prevention. Wrongdoings such as corruption, fraud, piracy of products, money laundering, meanderings in accounting aspects or intern controlling systems, displeasing behavior (mobbing) or other criminal acts can be brought in. In most of the cases a compliance officer (in 12 out of 21 cases) is responsible for this information. But also in-house legal departments, external attorneys at law or external service provider can be addressed.

In eleven cases, after having contacted the above authorities the suspect got informed; in two cases the suspect was informed immediately

right after the arrival of information, and in two cases the suspect was not at all informed. Phone, e-mail, written messages or internet facilities are the most common channels of information. In 14 cases the whistle blower stayed anonymous, in seven cases the identity of the whistle blower was exposed, but could have kept anonymously in special occasions. The abuse of the hotline resulted in disciplinary measures in 11 cases; in 10 cases nothing was done. The actual relevance of hotlines is not as high as it could be helpful. Installed hotlines were used quite seldom, out of 13 corporations 10 organizations have less than 10 messages a year. In this context representative is the high amount of missing answers (Hügel, internet).

Breaches of internal policies such as codes of conduct, external regulations (Branchenvereinbarungen) or legal regulations can be reported. It needs more than developing good whistle-blowing policies, the implementation and its monitoring of whistle-blowing systems (such as anonymous reporting hotlines) are a fundamental step. (Lee and Fargher, internet) The key for a functioning, cordial and honest reporting system is to keep the benefits of whistleblowing as high and the costs as low as possible. In this sense it is important to "create an organizational culture that is conducive for whistleblowing in which bad news does not get you killed." (Keil *et al.* 2010: 805) In accordance to Keil's study it needs trust and integrity in supervisor as well as management responsiveness when it comes to the *modus operandi* for the reported wrongdoing. Whistleblowing tends to be more likely efficacious when the recipient is responsive to it (Keil *et al.* 2010: 795, 805).

### **Legal Aspects of Whistleblowing**

The Austrian legal system does not explicitly regulate the whistleblowing process yet. Considering the growing importance of the phenomenon, a legal framework has to be set. These regulations should not only determine and define the requirements for whistleblowing protecting whistleblowers from retaliation measures (financial cuts,

mobbing, discrimination, dislocation, dismissal,...), but also prevent the abuse of whistle blowing. Determining obligations or rights of disclosure, clearing the relation of contractual provisions about confidentiality and secrecy with reporting obligations, anonymous or personal reporting, data protection, liability for improper and incorrect use and many more aspects, which are in need of being regulated.

Does a whistleblower have a right to report anonymously? Not to reveal the identity is seen as a key factor for whistle blowing intentions (Keil *et al.* 2010: 794). Who needs to be informed? Data protection is another key word in this area. If substantial information is given to a relevant person/institution inside a corporation, it is up to them to set further actions. Should the ignorance of internal reporting result in a liability of those who did not react? But what, if the whistleblower does only possess parts of information; the whole complex can be quite abstract and complex and cannot be foreseen by the employee's perspective. It needs a regulation constituting consequences in case of reporting incorrect information *bona fide*, negligent unscreened information or intentional reporting (Glaser and Komenda 2012: 210–214). And furthermore, it needs to protect the whistleblower through dismissal protection, prohibition of discrimination (mobbing, stigmatization). On the other hand we should not forget the rights of the suspected person: does (s)he have a right to be informed? Does s(he) get a chance to argue and defend her/himself (Glaser and Komenda 2012: 220–222)? More questions than answers, all the more this gap needs to be closed with legal norms.

However, it is certain that blowing the whistle will affect different legal fields: penal law, labor law, data privacy law, and for example civil law. We need norms to encourage employees blowing the whistle, to give clarity in what to expect, when and how to blow the whistle. In this paper it cannot be mentioned how legislation should be done regulating whistleblowing issues. Nonetheless general aspects and issues from labor law in connection with whistleblowing can be derived already. Let me give a short overview.



As part of the employer-employee relationship, based on the labor contract, each employee has the duty to inform the employer about negative aspects of the working process (e.g. forbidden instructions of superior, serious suspicious facts that harm the corporation). The higher the position, the more of information can and have to be passed on. This can be derived from the fiduciary duty (the employee's duty of good faith) (Brodil 2009: 1025). Further, and detailed obligatory reportings and disclosures can be derived from specific legal norms, such as Art 53 (1) BDG (BGBl Nr 333/1979 in the version BGBl I Nr 120/2012), Art 41 BWG (BGBl 532/1993 in the version BGBl I 70/2013) or Art 98g WTBG (BGBl I Nr 58/1999 in the version BGBl I Nr 54/2012) (Glaser and Komenda 2012: 214–217). But: there is no such duty for former employees who can also blow the whistle. And whistleblowing consists of a broad spectrum of reported information.

When it comes to external whistle blowing, things get even more complex. The report of wrongdoings can conflict with loyalty, the employee's duty of good faith and even with provisions about confidentiality and secrecy (Briegel 2009: 68–80; Berka 2004, 70). Courts found that provisions about confidentiality and secrecy cannot prevent external whistleblowing as long as it is an "illegal secret". Furthermore a well-founded complaint, and a very gentle disclosure of information is required (Risak 2012: 244).

Although general labor law provisions regulate elements of whistleblowing, a lot of aspects are undetermined and unclear. Is it upon the employee to weigh the pros and cons, consider reporting versus confidentiality and loyalty, stay silent or exit the corporation. Legislative measures seem to be a necessary and important step.

### **Ethical Aspects of Whistleblowing**

Leadership relations consist of at least two persons or more and show up an asymmetric division of power, roles and status. Characteristic for complex, collaborative, hierarchical organizations are authorities,

which give directives in management processes. (Ulrich 2009: 230; Saam 2002: 139) At the same time thinking of a leader having to influence others, monitoring and directing followers, power immediately comes into mind (Kanungo and Mendonca 2012: 843, 846). The existence of hierarchical and asymmetrical relations justifies an ethical perspective (Ulrich 2009: 230; Saam 2002: 139). Endowed with power having the possibility of influencing others also includes dealing with responsibility (Werner 2011: 542), being responsible for actions, its consequences, for decisions, people and other aspects. Power and responsibility will be the focus of ethical reflection in this paper, especially in the context of whistleblowing.

## Power

Power (as corruption) is a complex phenomenon. In order to be helpful for the analysis at stake, we need a concept of power which helps us to understand corruption and whistle blowing. Max Weber's definition of power as "any chance to impose one's own will in a social relationship, even against resistance, regardless of what that chance is based on" (Weber 1922, quoted in Zimmerling 2005, 31) can be used as a starting base. The inclusion of resistance does not indicate a necessary presence of resistance but the possibility to impose the power-holders will if it is necessary (Zimmerling 2005: 31, 32). Dahl's definition of power excludes coercion, physical force and other negative forms of connotation (Near and Micelli 1995: 686; Dahl 1957: 202, 203): "Power is simply the ability to get some social actor to do something he or she would not otherwise have done" (Near and Micelli 1995: 686). Lukes' three-dimensional view of power illustrates an additional aspect. The first dimension (Lukes 1977: 11) "refers to situations exhibiting a manifest conflict of interest where, with the help of certain resources, in open contest one side succeeds in imposing its will on the other(s)" (Zimmerling 2005: 35). On this level power over people is based upon a conflict, resulting from different interests within the decision making process. The second dimension or "face" of power, as Bachrach and Baratz call it, deals with the aspect that decisions can be made *before*

a conflict is manifest (Grunwald 2005: 5; Lukes 1977: 16). Luke's third dimension refers to a situation of latent conflict of those who keep hold of power by manipulating wants, preferences and desires of others. The manipulated person, unaware of this manipulation, believes to react on the bases of its own preferences: "What one may have here is a latent conflict, which consists in a contradiction between the interests of those exercising power and the real interests of those they exclude. Where that a conflict is "latent" means that it is assumed that there would be a conflict of wants or preferences between those exercising power and those subject to it, were the latter to become aware of their interests" (Zimmerling 2005: 41).

Power is intentional, relational and dependent. It is intentional because it focuses on an intended outcome. Power is a relational term and can be described as power over people. Power is in Hegel's words the dialectic of master and slave, also showing the dependency on the slave through a willingness of obedience, compliance, approval and acceptance. The required acceptance of the subordinate makes power a fragile nature, as any chance to impose one's own will, without knowing how big this chance will be. This reversion of power-dependency-relation can be seen once more in the context of whistle blowing (Strasser 2010: 195-196).

The conceptualization of French and Raven's five bases of power have been criticized (Podsakoff and Schriesheim 1985: 387). Nonetheless, this typology is widely used and useful in this context. Power can be classified into reward power, coercive power, legitimate power, expert power (including informational power) and referent power. Reward power is the ability to administer positive valences and to remove or decrease negative valences, coercive power depends on the magnitude of the negative valence of the threatened punishment. Referent power is based on the identification with a person, a feeling of oneness or a desire for such an identity. A closer look will now be drawn on mainly two versions of power, being more complex as well as relevant in the whistle-blowing context: informational and legitimate power.

## Informational Power

Informational power is the power to pass or withhold information to or from another person. This type of power must be distinguished from the influence based on expert power as not being dependent on the potentate but concentrating on the information itself and its transmission (Sandner 1992: 20; French and Raven 1959: 263-268). Information itself (e.g. about wrongdoings) can be power – and an important tool in a whistleblowing process. In connection with the three dimensions of power sketched above, whistleblowing activities can be allocated as follows: dimension one can be characterized with a manifest conflict of interest. In my opinion the whistleblower who finds out about a wrongdoing has the power to reveal the information or not. If the whistleblower decides to reveal the information, a conflict of interest between the whistleblower and the corporation becomes manifest. If the whistleblower decides not to blow the whistle but to stay silent or leave the corporation, a decision is made before the conflict is manifest (dimension two). And the third dimension can be seen as a preliminary phase of whistleblowing where the corporation manipulates the employees in a way that a potential whistleblower is not aware of specific allegations, suspicions or accusations. This manipulation can make illegal actions appear to be legal actions in the interest of the corporation.

But not only information as means of power can influence the whistleblowing process but also resource dependence, the value congruence, minority influence in groups and individual power bases (Near and Micelli 1995: 687). Valuable resources of the whistleblower such as expertise or experience reduce the power of the corporation that might be driven to respond by halting wrongdoings. The perspective of congruent values focuses on the values of whistleblowers that are similar with the top management's values. These whistleblowers are likely more powerful to influence the management to terminate the wrongdoing. The third perspective has a look on the characteristics of a potential whistleblower in groups. The more credible, confident,

competent, and objective the potential whistleblower is, the greater the potential influence on the group may be. The last perspective explains why some whistleblowers are more powerful than others, concentrating on the referent power, coercive power or charisma as mentioned by French and Raven. According to this theory, a whistleblower can be ever more effective the more credible he is, the more influence he has and the higher his status is. Summing up, exposure of wrongdoing is effective, if the whistleblower is relatively powerful in the organization focusing on his/her status. Employees of lower status are easier replaced whereas the corporation is interested in keeping hold of employees with a high status, which can be reflected in their hierarchical position and professional status. They are considered to be more critical towards the organization and to expect less retaliation measures. Whistleblowers with status may use the bases of reward and coercive power, especially holding positions of authority or expert power. People in high status positions tend to be more credible and are encouraged to blow the whistle determined e.g. by codes of ethics (Near and Micelli 1995: 687-688, 690-692).

### Legitimate Power

Legitimate power is not only focused on internalized cultural values as the base for exercising power, but also on the legitimacy of authority; in other words, on the position of a person in a corporation and further more on generally accepted norms such as structures, codes or standards, accepted by the individual (Sandner 1992: 18-19; French and Raven 1959: 264-266). In other words, legal and non-legal norms can be the base of legitimation.

Legal rules but also codes of conduct can be understood as framework regulations with explicit instructions for actions. They stabilize structures and can be the base for legitimization of corporations, managers and employees behavior but also of de-personalized power. Especially in general norms the position of power can be partly independent from the actual owner of power. Managers can come and go, but the

power determined and defined in codes is settled. Popitz describes this institutionalized, formalized and de-personalization power as more steady and constant (Popitz 2004: 233–234).

But where is the origin of these kinds of powers? Power emerges wherever dependency is created. This can happen through warning, threat, or punishment, through promise, reward, or recommendation, but also through manipulation, persuasion, physical coercion, or by demand of subordination that can be accepted, refused or changed (Sandner 1992: 94). De-personalization, formalization and institutionalization of power create a consolidation, constancy and steadiness. In hierarchical corporations the direction of power usually goes from the potentate to the employee, but whistleblowing activities turn this relation upside down. A (potential) whistleblower is able to control individuals on the same level or even of higher status. Hierarchy barriers dissolve in some way (Hügel 2012: 15).

These observations bring about several questions, some of which we want to deal with in the next section: Is this a new area of responsibility for employees settled in codes of conduct, are they indebted for controlling other people or do they have a right? Does the term responsibility automatically correspond with obligation? The conjunction of power and responsibility – and therefore the crossover for the next term – can be seen in Jonas statement: “The exercise of the power with disregard of the obligation is, then, “irresponsible ...” (Jonas 1984: 93)

## Responsibility

From a general point of view, the complex area of responsibility describes the obligation to answer, respond, justify, and explain oneself (Wimmer 2011: 2310–2311; Lenk 1986: 38; Mittelstraß 2004: 499). The term responsibility contains the word “respond” – responsibility as “answerability” (Schicktanz and Schweda 2012: 133)? As a communication process of speech and counter speech (objection) it demonstrates an imbalance of speaking power among those who are involved:

being questioned by an authority and getting the possibility to defend and explain oneself (Wimmer 2011: 2311). As a multi-digit relational term, responsibility is often described that someone (a subject of responsibility/moral agent) is responsible for someone or something (an object of responsibility: persons, actions, outcome, functions, positions, roles) towards someone or something (an instance: manager, court, conscience) on the basis of certain normative standards (a standard) (Schicktanz and Schweda 2012: 133; Werner 2011: 543). This common formula of responsibility, amongst others to read about in Werner (Werner 2011: 543), is at least three-related (subject, object, and instance). It should be added with a normative standard but could be added with further aspects (Ropohl 1998: 272) (e.g. time, in which ways). It is important to keep in mind that responsibility does not constitute a standard but uses normative standards such as legal, moral, religious, economic norms (Wimmer 2011: 2310, 2318).

The descriptive (or retrospective) dimension of responsibility (also called causal responsibility, imputation responsibility, account responsibility or exculpatory responsibility) refers to a causal relationship between one's actions and its consequences (Werner 2011: 542). Retrospective responsibilities arise when someone fails to fulfill duties related to past actions (Williams 2012: 822). In order for a person to be held responsible for actions and their consequences (s)he is required to have freedom of action, action ability and intention in matters of act or omission (Wimmer 2011: 2312). The dominant use of the term "responsibility" within the legal sphere refers to the retrospective dimension and has shaped it as "being blameworthy" or "being guilty" (Schicktanz and Schweda 2012: 133). In our context the whistleblower could be held responsible, therefore be blamed, punished, held liable for having used this tool improperly, having denounced someone for e.g. mobbing reasons. In the meaning of retrospective responsibility the act of whistleblowing is on his shoulders. Nonetheless the process of accountability in organizations refers to the responsibilities attributed to members by the organization, which brings us to our next term: prospective responsibility (Tsahuridu and Vanderkerckhove 2008: 112).

The normative/prospective dimension, also named "task responsibility" or "competence responsibility", consists of a set of duties or obligations (Werner 2011: 542). Responsibility for tasks, positions, roles or offices (Höffe 2008: 326) characterize the prospective dimension, a correlation between responsibility and obligation is obvious: the statement A is responsible for B expresses that A has a duty or obligation in conjunction with B. B can be a person, an object or a condition (Werner 2011: 542). In other words responsibility is a synonym for "duty" in most of the cases (Internet Encyclopedia of Philosophy, internet). But as Werner mentions, prospective responsibility cannot be focused on duties and obligations alone. In the beginning 20<sup>th</sup> century the dissolving of traditional moral orders, the dialogical perspective of responsibility and moral responsibility made it necessary, to focus not only on obligations in the context of prospective responsibility but to use the concept in a broader way (Werner 2011: 544). An expanded and a less forceful definition of prospective responsibility is given by Williams who calls it a duty or matter that one is expected to attend to (Williams 2012: 821). Those expectations are "prospective" because they are meant to guide conduct and focus on the future (Williams 2012: 822).

Employees in organizations face both dimensions. Duties are ascribed to people, and people are held accountable (Tsahuridu and Vanderkerckhove 2008: 111–112). The existence of prospective responsibilities (obligations, duties, expectations) enables to be held responsible for having failed these duties/obligations in a retrospective way (correspondence relation) (Werner 2011: 542–543). Prospective responsibilities are given responsibilities that create duties (for other persons, decisions, or actions). Employees are held responsible and accountable for these obligations or expectations (Tsahuridu and Vanderkerckhove 2008: 111–112). Depending on their position, their role in the organization and, their extent of power, employees and managers have different areas and weightings (Wimmer 2011: 2310) of responsibility (so called task-responsibility, competence-responsibility). These areas of responsibility can be determined by legal as well as non-legal norms,



such as whistleblowing provisions in codes of conduct. From a prospective point of view these whistleblowing provisions can be shaped differently, ranging from very clear and determined proceedings (whistleblowing as a right, as a duty, when to blow, how to blow, who to inform at what time, ...) to a very general statement.

I want to argue that corporations have a self-imposed responsibility to create codes of conduct (including whistleblowing provisions). Employees however do not have a self-imposed responsibility to follow these codes. Instead, the employee has to choose whether to sign a contract of employment or to refuse the job offer. If he or she decides to sign, (s)he takes over every code attached to it and (originating from labor law) the responsibility to fulfill the corresponding duties and expectations. This all given that the contract as well as the code are not negotiable.

The theoretical foundation can be seen in Jonas threefold typology of responsibility: First, "contractual responsibility" includes an element of choice from which one may later resign or be released. Its binding force is drawn from an agreement, based on some degree of mutuality. It is a partly chosen responsibility that permits abdication in appropriate ways (Jonas 1984: 94). Wimmer describes this element of choice as the possibility to decide for or against the take-over or refusal of competences (Wimmer 2011: 2313). Second, "natural responsibility" is independent of prior assent or choice, irrevocable, and not given to alteration by the participants (responsibility without our choosing that knows no discharge from it). And third, "self-chosen responsibility" is an *opus supererogationis*. Here, power will be sought in order to gain responsibility (Jonas 1984: 94).

Individual, collective responsibility, partial responsibility, hierarchical levels of roles, tasks and functions, management responsibility (authority and supervision of employees), division of labor, sharing functions and further aspects in nowadays detailed working process once more show how complex the competence and imputation of

responsibility can be, furthermore how difficult it can be to blame one particular individual, but will not be dealt with any deeper in the course of this paper (Wimmer 2011: 2313).

### Shifting Responsibility – Creating Rights or Duties?

Codes of conduct are mainly not focused on employee's rights but made for the protection of corporations (Talaucar 2006: 226–227). "Codes usually tell the employee what (s)he is not permitted to do, but they seldom spell out worker rights" (Talaucar 2006: Fn 117, 227). Throughout these codes employees dispose major areas of responsibility reassigning further tasks and competences they were not responsible for before. Outsourcing those tasks from the management level to the employee's level leads to a shift of responsibility (e.g. obligatory/non-obligatory disclosure of wrongdoings). Tsahuridu and Vanderkerckhove called it an expansion of normative responsibilities on which causal responsibility can be attributed (Tsahuridu and Vanderkerckhove 2008: 114). Employees with knowledge of practices leading to a criminal or scandalous organizational outcome, but without the power to alter or prevent those practices can distance themselves from the practices and the outcome by raising concern. Whistleblowing policies allow individuals to increase their ethical distance from an outcome by taking up responsibility (Tsahuridu and Vanderkerckhove 2008: 113).

It is questionable whether employees have to take over the obligation and be responsive (a duty to blow the whistle) or if they just can take over and therefore be responsible in what (s)he is expected to do (a right to blow the whistle)? I want to argue that prospective responsibility can result in both ways – either a duty or a right. It creates a duty insofar as prospective responsibility is strictly seen as an obligation. But it also creates permission, as prospective responsibility is turned into a matter one is expected to attend to. In this case someone is allowed to disclose organizational wrongdoing, it may also be expected but (s)he is not obliged to do so. Phrases such as "the use of whistleblowing systems must not be compulsory, but be merely encouraged"

(Tсахуриду and Vanderkerckhove 2008: 108) or "whistleblowing schemes may not impose mandatory reporting on employees, and therefore, use of the reporting scheme must be optional" (Tсахуриду and Vanderkerckhove 2008: 108) indicate a version of permission.

Fighting corruption through whistleblowing provisions makes sense in creating transparency, turning power structures upside down, overlapping or dissolving hierarchical barriers. But the question remains whether it should be an obligatory or non-obligatory disclosure? Let me give an overview and bring up further questions.

Neither for nor against a right or duty is a mistaken concern because of the lack of information, possessing only parts of very complex and voluminous information. Blowing the whistle can be interpreted as an unintentional misuse of the tool. Further consequences and sanctions might follow. Trying to prevent mistaken concerns, substantial information is necessary in a process of informational asymmetry. Getting information for proof, evidence, and e.g. discharge by reconstructing, controlling procedures or persons in the same way distracts employees from their main focus of work and ties up resources.

Arguments for a duty to blow the whistle can be seen in eventually creating better results by the disclosure of wrongdoings, fighting corruption, but empirical research would be necessary comparing the outcome with the right to reveal grievance. The same counts for the realization of a duty which might be stronger than a right.

One argument against a duty to blow the whistle is the possible climate of a so called over-reporting, resulting in an excessive number of concerns being raised. Many of them could be erroneous because employees try to shed off liability as early as possible (Vandekerckhove and Tсахуриду 2010: 377). Failing to blow the whistle turns responsibility into liability; it can become another tool for controlling employee's roles and behavior. Furthermore, it shows a weak autonomy

(a quasi-legal/legal duty), having hardly any leeways in decision-making but fulfilling the duty from the employee's perspective or expecting sanctions for having ignored the obligation.

Arguments for a right to whistleblowing can be derived from a stronger autonomy having the possibility to decide whether to disclose the wrongdoing or stay silent respectively exit the corporation. Self-directed decisions, having bigger leeways in decision-making and possibly better-reflected concerns are key aspects while talking of a right.

The question about raising concern brings up a moral dilemma for the employee, fearing at least retaliation measures but also further consequences for their private life or the society. Arguments against a right to whistleblowing can be seen in an under-reporting having a tendency not to blow the whistle in case of doubt because there are no expected consequences by staying silent. But, does it turn a confident person into a co-perpetrator as a result of omission?

Recapitulatory, I come to the following conclusion: Whistleblowing provisions should be determined as a right, not only to balance the mismatch of rights and duties in codes of conduct but also to strengthen the attempts to act autonomously. Whistleblowing is a very sensitive matter with good impacts, fighting corruption should not be used against employees. Gaining more responsibility and turning power structures up side down should be "rewarded" with a (legal) right, having the choice to decide in all directions.

## Bibliography

- ACFE, "Report to the Nation on Occupational Fraud and Abuse 2012 Global Fraud Study", (internet), available at: [http://www.acfe.com/uploadedFiles/ACFE\\_Website/Content/rtnn/2012-report-to-nations.pdf](http://www.acfe.com/uploadedFiles/ACFE_Website/Content/rtnn/2012-report-to-nations.pdf) (viewed 8 January, 2013).
- Alford, Fred C. (2001), "Whistleblowers and the Narrative of Ethics," *Journal of Social Philosophy* 32: 402-418.

- Augeneder, Silvia (2009), "Sinn und/oder Unsinn von Verhaltenskodizes," in Dimmel K./Pichler W. (ed.), *Governance – Bewältigung von Komplexität in Wirtschaft, Gesellschaft und Politik*, Frankfurt a.M., Peter Lang Verlag, pp. 383–401.
- Augeneder, Silvia (2012), "Korruption als weltweites Phänomen – existieren sinnvolle Maßnahmen zur Korruptionsbekämpfung?" *Salzburger Theologische Zeitschrift* 16: 239–263.
- Berka, Walter (2004), "Whistleblower and Leaks. Von den Schwierigkeiten das Amtsgeheimnis zu wahren," in: Österreichische Juristenkommission (ed.), *Recht und Öffentlichkeit*, Wien/Graz: NWV Verlag, pp. 66–83.
- Brauneis, Arno (2010), "Whistleblowing – probates Mittel zur Korruptionsbekämpfung," in: Gröhs, B./Kotschnigg, M. (ed.), *Wirtschafts- und Finanzstrafrecht in der Praxis Band 4*, Wien: Linde Verlag, pp. 23–38.
- Briegel, Thorsten (2009), *Einrichtung und Ausgestaltung unternehmensinterner Whistleblowing-Systeme*, Wiesbaden: Gabler Verlag.
- Brodil, Wolfgang (2009), "Verpfeifer, Pfeifen und Verpiffene," *Ecolex*: 1024–1027.
- Clausen, Andrea (2009), *Grundwissen Unternehmensethik*, Tübingen: Francke Verlag.
- Dahl, Robert A. (1957), "The Concept of Power," *Behavioral Science* 2(3): 201–215
- Donato, Jessica (2009), *Whistleblowing*, Frankfurt a.M.: Peter Lang Verlag.
- Dworkin, Terry Morehead/Baucus, Melissa S. (1998), "Internal vs. External Whistleblowers: A Comparison of Whistleblowing Processes," *Journal of Business Ethics* 17 (12): 1281–1298.
- French, John R./Raven, Bertram (1959), "The Basis of Social Power", in D. Cartwright (ed.), *Studies in Social Power*, Oxford, reprinted via internet: [http://www.communicationcache.com/uploads/1/0/8/8/10887248/the\\_bases\\_of\\_social\\_power\\_-\\_chapter\\_20.pdf](http://www.communicationcache.com/uploads/1/0/8/8/10887248/the_bases_of_social_power_-_chapter_20.pdf) (viewed 25 January, 2013).
- Glaser, Severin/Komenda, Peter (2012), "Whistleblowing in Österreich – Gefahren, Probleme und Lösungsmöglichkeiten," *Journal für Rechtspolitik* 20(3): 207–225.
- Gobert, James/Punch, Maurice (2000) "Whistleblowers, the Public Interest, and the Public Interest Disclosure Act 1998," *The Modern Law Review Limited* 63(1): 25–54.
- Grunwald, Jana (2005), *Die drei Dimensionen der Macht nach Steven Lukes am Beispiel Wal Mart*, Norderstedt: Grin Verlag.

- Höffe, Otfried (2008), *Lexikon der Ethik*, München: C. H. Beck Verlag.
- Hügel Rechtsanwälte OG, "Whistleblowing-Hotlines in Österreich", (internet), available at: [http://www.leitbetriebe.at/wp-content/uploads/2012/05/Ergebnisbericht\\_120524.pdf](http://www.leitbetriebe.at/wp-content/uploads/2012/05/Ergebnisbericht_120524.pdf) (viewed 8 January, 2013).
- Internet Encyclopedia of Philosophy, "Responsibility," (internet) available at: <http://www.iep.utm.edu/responsi/> (viewed 30 January, 2013).
- Jonas, Hans (1984), *The Imperative of Responsibility*, Chicago/London: The University of Chicago Press.
- Jubb, Peter B. (1999), "Whistleblowing: A Restrictive Definition and Interpretation," *Journal of Business Ethics* 21(1): 77-94.
- Keil, Mark, et al (2010) "Toward a Theory of Whistleblowing Intentions: A Benefit-to-Cost-Differential Perspective," *Decision Sciences* 41: 787-811.
- Lee Gladys/Fargher Neil, "Companies' Use of Whistle-Blowing to Detect Fraud: An Examination of Corporate Whistle-Blowing Policies," *Journal of Business Ethics*, (internet), available at: <http://rd.springer.com/article/10.1007/s10551-012-1348-9> (viewed 8 January, 2013).
- Lenk, Hans (1986), "Verantwortung und Gewissen des Forschers," in Neumaier, O. (ed.), *Wissen und Gewissen*, Wien: VWGÖ, pp. 35-55.
- Löhr, Alfred/Burkatzki, Eckhard (2008), *Wirtschaftskriminalität und Ethik*, Mering, Rainer-Hampp Verlag.
- Lukes, Steven (1977), *Power. A Radical View*, London, Macmillan Press.
- Mesmer-Magnus, Jessica R./Viswesvaran Chockalingam (2005), "Whistleblowing in Organizations: An Examination of Correlates of Whistleblowing Intentions, Actions, and Retaliation," *Journal of Business Ethics* 62: 277-297.
- Near, Janet P.; Micelli, Marcia P. (1995), "Effective Whistle-Blowing," *Academy of Management Review* 20(3): 679-708.
- OECD, "Codes of Corporate Conduct: Expanded Review of their Contents", (internet) available at: <http://www.oecd.org/industry/internationalinvestment/corporateresponsibility/1922656.pdf> (viewed 8 January, 2013).
- Podsakoff, Philip M.; Schriesheim Chester A. (1985), Field Studies of French and Raven's Bases of Power: "Critique, Reanalysis, and Suggestions for Future Research," *Psychological Bulletin* 97: 387-411.
- Risak, Martin (2012), "Whistleblowing durch den Betriebsrat", *Ecolex* 3: 243-246.

- Ropohl, Günther (1998), "Technikethik," in: Pieper, A./Thurnherr, U. (ed.), *Angewandte Ethik. Eine Einführung*, München, C. H. Beck Verlag, pp. 264–287.
- Saam, Nicole J. (2002), *Prinzipale, Agenten und Macht*, Tübingen: Mohr Siebeck.
- Sandner, Karl (1992), *Prozesse der Macht*, Heidelberg, Physica Verlag.
- Schick Tanz, Silke; Schweda Mark (2012), "The Diversity of Responsibility: The Value of Explication and Pluralization," *Medicine Studies* 3(3): 131–145.
- Strasser, Michaela (2010), "Kunst, Wissenschaft, Macht und Anerkennung," in: C. B. Wöhle: S. Augeneder; S. Urnik. (eds.), *Rechtsphilosophie*, Frankfurt a.M.: Lang Verlag, pp. 193–204.
- Talaulicar, Till (2006), *Unternehmenskodizes: Typen und Normierungsstrategien zur Implementierung einer Unternehmensethik*, Wiesbaden, Deutscher Universitätsverlag.
- Tsahuridu, Eva E. and Vanderkerckhove, Wim (2008), "Organisational whistleblowing policies: Making employees responsible or liable?," *Journal of Business Ethics* 82(1): 107–118.
- Ulrich, Peter (2009), "Führungsethik", in: W. Korff (ed.), *Handbuch Wirtschaftsethik*, Berlin: bup, pp. 230–248.
- Vanderkerckhove, Wim and Tsahuridu, Eva E. (2010), "Risky Rescues and the Duty to Blow the Whistle," *Journal of Business Ethics* 97(3): 365–380.
- Werner, Micha H. (2011), "Verantwortung", in M. Düwell; C. Hübenal; M. H. Werner (eds.), *Handbuch Ethik*, Stuttgart, Metzler, 541–548.
- William, Garrath (2012), "Responsibility," in: Chadwick, R. (ed.), *Encyclopedia of Applied Ethics*, Waltham: Academic Press, pp. 821–828.
- Wimmer, Reiner (2011), "Verantwortung," in: P. Kolmer; A. G Wildfeuer. (eds.), *Neues Handbuch philosophischer Grundbegriffe*, Freiburg im Breisgau: Karl Alber, pp. 2309–2320.
- Zimmerling, Ruth (2005), *Influence and Power*, Dordrecht: Springer Verlag.
- Sarbanes-Oxley Act of 2002, (internet), available at: <http://www.sec.gov/about/laws/soa2002.pdf> (viewed 18 April, 2013).

## Corruption, Corporate Character-Formation And 'Value-Strategy'

### Introduction

The institutional context for discussions of corruption portrays it as an issue of control. The less effective the controls conducted by public institutions, presumably there will be more corruption in society. Furthermore, the weaker the democratic credentials of a society and the popular control of institutions through the independent media, the more likely it is that institutions themselves will become corrupt. Once the institutions are sufficiently corrupt, the society becomes hijacked by what is called "systemic corruption": the main method of doing business of any kind in the society becomes corruption.<sup>1</sup>

All three claims are well empirically justified, and unfortunately, especially the post-communist states of Eastern Europe have proven in their social realities that weak institutions mean rampant corruption. Much has been said and written about this, so little remains to be added. However, all three claims, empirically validated as they are, tend to be predicated upon a negative premise: that people are prone to being

---

1 To avoid creating dense text I refrain from citing full sets of references for each of the commonplace statements in political philosophy, ranging from Mill and Locke to Nozick and Rawls. Such sources can be found in any of the review texts on the subject that abound in social and political theory publications, and their quoting aside from the cumulative bibliography at the end of the paper may distract the reader from the arguments I put forward for an alternative view of looking at anti-corruption policy. I have discussed the social contract theory from a perspective similar to this, but in far more detail, in Fatić, 2007. As for the points about the liberal conceptualisation of sovereignty and the consequences for trust and fellow-feeling, Aleksandra Bulatović and I have discussed those in Fatić and Bulatović, 2012, internet.



corrupt, and institutions are there to stop them from actually engaging in corruption. This premise is rarely discussed, and like most negative or pessimistic premises in social theory, it tends to become commonplace and "accepted knowledge" without being sufficiently supported by argument. Much the same as the pessimistic view of human nature that stands at the core of liberal economic (and to a considerable extent political) theory, with the idea that people are driven mainly by selfish interest and ambitions and that institutions are there to ensure fair rules for the otherwise essentially egotistically driven competition for the limited resources, the view that people will be corrupt unless prevented to engage in corruption is commonplace in most discussions of institutional reforms and anti-corruption policies today.

Despite their tacit acceptance as "common sense", the pessimistic premises of social and political theory tend to be poorly proven, and some are couched in what could be considered sheer phantasm. Consider for example the theory of social contract – many would say the founding theory of modern political liberalism. The theory stipulates that society is justified on the basis of assumption that the initially totally sovereign individuals, equipped with full personal liberties and mutually independent, have created a consensus to relinquish the necessary minimum of their sovereignty to common institutions that would rule them all, in exchange for the provision of basic needs such as security and some predictability in their mutual interactions. This presumption is used by liberal theory to justify the need for the state to remain at a necessary minimum of prerogatives so as not to encroach on more personal sovereignty of the individual that is required by the presumed consensus. Consequently, corrupt institutions that develop full-fledged corporate interests of their own and start to artificially reproduce their own prerogatives threaten the legitimacy of liberal society — *because* such transgressions violate the social contract. This contract makes it clear that liberty lies primarily with individuals; it is not granted by the state as a product of the political community. Individuals are supposedly more "liberally free" outside the community, but they receive comparatively greater benefits from

communal life than is the price they pay by relinquishing some of their rights, allowing the institutions to regulate their transactions.<sup>2</sup>

The problem here, of course, is not just that the presumption of social contract is difficult to prove, but that such an event would have been existentially impossible. First of all, the idea that the "original" human condition is "asocial" is a phantasm: from the most primitive forms of social organization "human animals" were living and hunting in some type of community. This applies to all major human endeavours and the respective communities range from those based on family and broader kinship to modern industrialised and multi-cultural societies. Aristotle's definition of man as "political animal" is based exactly on the observation that man's primary condition is social, rather than solitary.

Secondly, even if human animals were solitary to start with, any "consensus", "congress" or similar event resulting in a social contract would not have been possible, especially when the idea that man is essentially selfish and interest-driven is added to the cocktail of assumptions. Mutually hostile, antagonistic and solitary individuals would have no common ground on which to actually work on a consensus. Much less would they be able to muster sufficient mutual trust to embark upon a common project that, if it went astray, would have guaranteed the demise of them all. Empirically speaking, social contract theory is nonsense. Aesthetically, it is a nice and elegant hypothetical explanation of how liberal ideology could be "generically" justified. In this case, the aesthetics of the argument has clearly prevailed over its empirical and existential viability.

In reality, human beings were never solitary, and equally they are not as selfish and interest-driven as the liberal paradigm would have us

---

2 The debate over just how much needs to be regulated, and respectively how much of the liberties may properly be forfeited to the state, is of course, the perennial debate within the liberal political discourse. This debate is not directly relevant for our context here.

believe. True, the advocates of market as the main (or even the only) regulating force for social relationships allow that what appears as "altruism" will sometimes occur, but they are usually quick to explain this as a method of preventing drastic outcomes and thus of maintaining a degree of systemic stability. Such common biologicistic models of collective self-preservation that dampen competition in liberal communities are conceptualised in the same way as the instinct of preservation of the species, which prevents predatory animals from killing each other when competing for hunting grounds or females to breed with.

A crocodile may be biologically programmed to stop short of killing another crocodile and rather expel him from the preferred hunting ground in much the same way as a liberal market society will stop short of letting its poor starve to death, and will provide them with free emergency health care. This is strongly opposed to ordinary acts of self-sacrifice for the benefit of another as exemplified in people who have run, jumped or dived to their death to save strangers engulfed in flames, caught by avalanches or drowning in the water. No crocodile will sacrifice itself for another crocodile, but some men will do so for another, often entirely unknown, man or woman.

It is almost as though liberalism and liberal competition are more ideologically suited to crocodiles than to the men and women most of us would aspire to become. That is why the morally educational role of liberal meritocracy is of limited value in developing the virtues arising from self-denial that tend to be posited towards the top of the value systems of most cultures. It appears that one of the problems of liberal political pragmatics is that it focuses too much on tolerance: tolerating the various religious and cultural value systems thus becomes a moral principle of liberal democracy itself. This principle is insufficient as far as the liberal democracy does not produce its own morality that can flourish as neutral from any of the plurality of religious and cultural normative systems.

Independently of particular religious and metaphysical assumptions — assumptions among which a modern liberal state must presumably maintain a certain neutrality — can there be a nonarbitrary basis for making moral judgements? Without a positive answer to this question, liberalism must self-destruct as a coherent moral ideology. The viability of liberalism as a political theory is closely tied to the possibility of a secular moral culture founded on something other than the controversial religious or metaphysical assumptions of any particular group. If, in order to maintain neutrality among religious and metaphysical assumptions, a liberal state must be constrained from any rational basis for values at all, then its foundational assumptions are self-delegitimizing, that is, they undermine their own moral legitimacy by entailing the arbitrariness, the sheer subjectivity, of all moral claims, including any claims that can be made on behalf of the liberal state itself.

Fishkin 1984: 2

Indeed the liberal moral theory is equipped with various non-arbitrary moral criteria, and all of them tend to focus on issues such as individual and group rights, entitlements, special and general obligations. All of these criteria are ultimately based on *interest* as the driving force of human action. The general shape of the liberal theory is one of a negative structure that acts restrictively upon the otherwise completely selfish spontaneity in satisfying one's desires and appetites. Liberalism thus cannot serve as a comprehensive philosophy of life. Liberal moral theory does not promise a good life or happiness: it merely purports to protect the society from the unrestrained exercise of anyone's "human nature", which is seen, pessimistically, as essentially selfish. The more "liberally moral" one is, the more capable one is to internalise the need to restrain one's selfish drive: it is entirely consistent for a person to be perfectly moral or virtuous, yet perfectly unhappy and unfulfilled. Unhappy people can be moral people, and happy people can be amoral ones. Fulfillment in life is in no way connected to one's moral values.

Thus contrary to the idea that everyone is programmed to act selfishly, there are situations that make it clear that, under certain conditions

and on the basis of certain values, people will act un-selfishly, not like crocodiles, but like humans, that is, without expectation of longer-term benefit. Whether or not in a particular situation and a particular social context they will act in this way will depend on their values, and not on their biological programming.

Self-sacrifice has not been a rare occurrence in human history, and more often than not it was the result of far more profound reasons than preservation of the species; in fact, man's awareness of his own finiteness makes self-sacrifice a potentially highly spiritual act. It is doubtful whether crocodiles are aware of their finiteness, and it is even more doubtful whether there is anything spiritual about them stopping short of killing each other in a fight.

The offensiveness of the "anthropological pessimism" that underlies economic and political liberalism is a matter of common sense. It contradicts the relatively frequent examples that support optimism with regard to the human nature. Not surprisingly, such examples tend to occur in value contexts that embrace an optimistic picture of man, quite opposed to the hypothetical and almost certainly counterfactual, even though aesthetically pleasing, liberal theories about human nature, such as the social contract theory (Solomon 1995). Pessimism about human nature originates from the conceptualisation of man as a *rule-abiding predator*. This idea denies him his more poetic and constructive attributes that operate on the same level of "anthropological constitutionality" as do interest, rights and greed.

In a very similar manner, the presumption that man is essentially corrupt or corruptible, and that institutions are there to keep him from resorting to his natural instincts when it comes to corruption, is both ill-founded methodologically, and dangerous practically, because it tends to become a self-fulfilling prophecy. The methodological fallacy comes from taking the institutions as the departure point for the conceptualisation of human nature. Institutions are seen as being there

primarily to regulate, and consequently it is assumed that what needs regulation is corruptible. However, the regulatory function of the institutions is only one aspect of them. There is an alternative perspective according to which institutions serve to maintain *social solidarity and trust* in complex societies that are *insufficiently transparent* for members to be able to *directly identify* with each other. In small organic communities people more or less knew each other and were able to sympathise with others, because everybody lived similar lives. In complex metropolitan communities, which are not only large, but also structurally heterogeneous, with members from a variety of cultural and geographic backgrounds, the transparency of life styles is no longer possible. Thus institutions take over as points of reference. While I may not be able to sympathise with the condition and situation of somebody else, whose life script is entirely different, if the institutions are impartial and equal, I may still be able to maintain a degree of understanding of that person's position *vis-a-vis* the common institutions. For example, I do not know whether or not a politician has committed a crime, embezzled funds or misused office in some way. As politicians live a different life from mine, and are socially differently positioned, I may have a limited ability to sympathise with them or understand their views or situations. However, assuming that I live in a society where criminal justice institutions are reliable and trustworthy, I can sympathise with a politician who is accused of a crime by the public prosecutor, because I have reason to believe that the public prosecutor does not accuse people without good reason, thus that the minister has ample reason to be worried about his future. Secondly, in short, where otherwise I would have no yardstick by which to judge what to sympathise with or what to take critical positions about, institutions are there to provide an orientation as to how it is to be someone else. In a sense this is the question about other minds' that Thomas Nagel phrased similarly: "What is it like to be a bat?" (Nagel 1974).

In addition to being regulators, in an integrative society institutions serve a cognitive function. They allow a degree of rational and "emotional cognition" that is necessary for the various types of fellow-feeling

to occur. In a functional sense, fellow-feeling "makes" a community. It is difficult to feel for someone whose identity is not known; it is correspondingly easy to sympathise or empathise with someone who is close, especially if we can identify as members of the same group. Institutions, when they are working well, serve as beacons that navigate us towards each other and help us determine our relative positions as members of the same community. This "navigation" occurs on a variety of levels, from cognitive to emotional to value-judgments about each other. Institutions, in an important sense, facilitate fellow-feeling between members of the complex, large communities of the modern world.

### Institutions and trust

The proposed view of the institutions focuses fellow-feeling as the main social capital. There are various types of fellow-feeling, ranging from formal ones such as trust, to more intimate ones such as sympathy or empathy. Perhaps trust has been the best investigated fellow-feeling from an institutionalist point of view so far.

Fellow-feeling is closely connected with what I call "organic" as opposed to instrumental trust. Eric Uslaner labels the same distinction "moralistic" as opposed to "strategic" trust (Uslaner 2002).<sup>3</sup> Organic or moralistic trust is a priori: it characterises members of trusting communities in which there is an ethical precept that, unless arguments to the contrary are provided, people should generally be trusted. In such communities another's word is taken as sufficient for all kinds of relationships. Credentials are rarely sought, and only in cases where trust has been broken or threatened to be broken. It is a matter of *good character* in such communities to trust others; distrustful behaviour tells badly about those who show distrust. Trust, in other words, is a

---

3 This distinction should not be confused for that between institutional and individual trust, or its normative implications (Maldini 2008; Lefkowitz 2007; Luhmann 1979).

*moral expectation*. Opposed to organic trust is instrumental, or "strategic" trust. This is a trust based on experience and/or evidence: one trusts one's friends because they have "earned" the trust by living up to expectations many times before. One trusts one's parents because they have a vested emotional and biological interest to advance one's well-being and thus be trustworthy. One trusts the doctor because, first, the doctor is formally institutionally credentialed in the field, and secondly, if she proved untrustworthy, she knows the sanction would be prohibitive — thus, the doctor is both trained and *forced* to be trustworthy, (at least in institutionally functional communities). Strategic trust is *earned* and based on documented grounds. Moralistic trust is simply *extended* as a matter of courtesy and good character.

It is interesting to consider the trust exhibited in closely-knit religious communities. In churches candles, icons and other items are regularly left for members of the congregation to purchase without supervision; theft is an exceptionally rare occurrence. On the surface, this would seem like moralistic trust, however one must note that the people in the congregation are pre-selected on the basis of their beliefs and character; they are mutually connected by the common faith, usually know each other, and thus feel a personalised moral obligation. They have every reason, empirically well proven and circumstantially confirmed, to expect that all of the others are trust-worthy in matters of morality defined by the faith (theft being ruled out by such morality). Thus the trust involved in such communities may or may not be moralistic; this is difficult to ascertain because, regardless of the moral dispositions of all members of the congregation, there is, usually plenty of empirical evidence to found instrumental or strategic trust.

Uslaner describes, however, rural communities in America where fruit is sold on unmanned stalls along the roads. Any driver or passenger is free to take the fruit and leave the money on the stall. Apparently theft here is also a rare occurrence. In such a scenario, what is at stake is clearly and undoubtedly moralistic trust: stall owners have no way of knowing who will stop by the stall, what kind of person they



will be, where they will come from, and they thus have no empirical grounds to believe in the honesty of potential visitors. Moralistic trust in such communities is a matter of character, not of calculations of odds, although, admittedly, if theft were to become common the trust would be quickly withdrawn and stalls would no longer be left unsupervised. The moral expectations and facts, are closely interconnected. The point of the examples, however, is that: "(t)rusting intentions reflect a basic sense of optimism and control. Trusting others is not so much a reflection of your life experiences as of what you were taught when you were young" (Uslaner 2002:12).

It is not surprising that experience supports the hypotheses about the positive correlation between optimism and trust. Clearly a more positive view of the human nature encourages moralistic trust, while the sombre picture of man as predominantly motivated by interest and selfish ambition discourages trust. Institutions facilitate trust in societies where states are stable, humane and understanding:

Leaders (...) are relatively honest. They believe in popular government, and they are predisposed to compromise with their political adversaries. (...) Social and political networks and organised horizontally, not hierarchically. The community values solidarity, civic engagement, cooperation and honesty. Government works.

Putnam 1993: 115

Conversely, institutions degrade trust in failed states. Dysfunctional communities exhibit a high degree of personal unhappiness because of the absence of trust:

Corruption is widely regarded as the norm, even by politicians themselves, as they are cynical about democratic principles. Compromise has only negative overtones. Laws (almost everyone agrees) are made to be broken, but fearing others' lawlessness, people demand stronger discipline. Trapped in these interlocking vicious circles, nearly everyone feels powerless, exploited,

and unhappy. All things considered, it is hardly surprising that representative government here is less effective than in more civic communities.

Putnam 1993: 115

On one level, corruption is a manifestation of pervasive lack of faith in fellow-men and women and in the institutions that serve both as beacons for social navigation and as regulators. On another level, corruption is a result of induced pessimism about human values and motives that is reproduced by the institutions themselves. Institutions are typically not the *source* of integrity in society, although they may and should adopt a high degree of integrity, but they may be and often are the main source of corruption. In communities that are morally upright to start off with, institutions, if solid, tend to reinforce that moral uprightness. This is synonymous with catalysing the ongoing processes of collective character formation. One external form that many morally strict communities take is a high threshold of standards that needs to be reached in order to become a member:

As a general rule, trust arises when a community shares a set of moral values in such a way as to create expectations of regular and honest behavior. To some extent the particular character of those values is less important than the fact that they are shared: both Presbyterians and Buddhists, for example, would likely find they had a great deal in common with their co-religionists and therefore form a moral basis for mutual trust (...). In general, the more demanding the values of the community's ethical system are and the higher are the qualifications for entry into the community, the greater is the degree of solidarity and mutual trust of those on the inside. Thus Mormons and Jehovah's witnesses, who have relative high standards for community membership like temperance and tithing, would feel stronger mutual bonds than, for example, contemporary Methodists or Episcopalians, who allow virtually anyone into their communities.

Fukuyama 1995: 153-154

However, the high initial threshold of membership is only an external manifestation that may or may not exist. Christian communities are welcoming and accept everyone, however the moral standards imposed on members are extremely high. On a moral level Christian communities require not only temperance and benevolence, but also the willful development of *positive love* for others, which may appear as the most difficult moral task of all. Such communities, when they are tightly knit, have proven extremely powerful in morally transforming delinquent individuals, such as prostitutes or gangsters.

The practice of virtue and adherence to moral values imposed by the community, combined with a strong attachment to the non-judgmental community of those who show positive affection for the person, tends to be a powerful catalyst of moral development. The institutions (or various institutional rituals) within such highly integrative moral communities may serve as guardians of membership in the formal sense: without being formally admitted to the Christian community, and without being Christened, one cannot be a Christian, however the moral substance of the community's character-forming role is embedded in the community itself and the everyday relations between its members.

In Christian communities, the crucial character-forming influence comes from the congregation, namely from the social influence arising from common acceptance and adherence to the same values. The same principle is at work in any community: the "congregation", that is the dense network of inter-personal relationships that make up any meaningful community, sets values and helps individuals map their own "value strategy" — a road map that allows the person to navigate from the current set of values to new ones. *The value strategy accounts for the transformation of character and is a key dynamic process of character formation.* All these processes take place outside and independently of institutions; they unfold under a key influence of social networks rather than formal authority. Such social networks reinforce strong elements of fellow-feeling, including trust, solidarity,

sympathy and empathy, allowing the individuals to feel accepted and understood. At the same time, they provide powerful dynamic factors for the internalisation of the community's morality by all members.

Clearly there is a crucial connection between the moral uprightness of a community, trust, and institutional integrity. I will discuss this connection in what follows, focusing on what I believe to be its determining context, namely the process of character formation: individual, collective and corporate. This, I will argue, is the root of public integrity.

### Integrity and character-development

Morality is an internal character trait in that it depends on deep-seated values and convictions, and cannot be reduced to mere functional attributes of its various cognitive and emotional components. I have hinted above at the connection between trust and morality, and have mentioned the distinction between moralistic and strategic trust. The main difference between strategic and moralistic trust, apart from the *a posteriori* character of the former and the *a priori* nature of the latter, is that unlike moralistic trust, strategic trust is conceptualised functionally:

(...) we are essentially dealing with a form of what economists term "external-ity", a good or commodity that enables further production of articles of worth that cannot in itself be traded on an open market. We are positing a "self-reinforcing" mode of behavior that obviates the necessity of any third-party enforcer to contracts. It is this very property of what the above-noted authors have termed "trust" that makes of it such a potent "system-lubricant". And as we have noted, the more system develops and its roles differentiate, the more this lubricant must come into play for the system to continue functioning.

Seligman 1997: 79

Moralistic trust is not primarily a "social lubricant": it is a moral attitude not primarily determined by expected consequences. This is a characteristic moralistic trust shares with the other types of fellow-feeling,

such as sympathy. While capable of acting as "social lubricants" externally viewed, fellow-feeling focuses on the "here-and-now" of another's human condition rather than on forward-looking consequentialist expectations of smoother social transactions or greater effectiveness in social relationships.

One of the most convincing philosophical accounts of character development is that proposed by David Hume. This account is based on the idea that one must first diagnose one's own moral issues, to follow with a careful "plan" to develop the virtues that constitute the character one wishes to acquire (Hume 1963).

While Hume (...) mocks the 'monkish virtues', he (...) recommends practices that just are traditional spiritual exercises. Moral formation, he (...) says, requires 'the utmost art and industry' (...). By 'art' he means a set of skills and techniques, while 'industry' is hard work involving effort and discipline. Hume (...) identifies two main tools of moral cultivation — 'study and application' (...) These parallel the steps of moral formation — illumination and purification — found in the spiritual practice literature of the western medieval contemplative traditions. First, we must awaken — identifying truth (in the form of moral standards) and knowing ourselves (by monitoring our behavior). Second, we must cure the self by habitually renouncing evil and turning to good (through active self-interruption). The practices of study and application counteract the two main causes of moral failure (ignorance and weakness of will) and develop the two basic types of virtue which Aristotle identifies (intellectual and moral).

Gould 2011: 843

Hume is a consistent empiricist in believing that the development of virtues is possible through practice and repetition. However, to start off, the person must be "tolerably virtuous" (Hume 1963: 174). "Where one is born of so perverse a frame of mind, and of so callous and insensible a disposition, as to have no relish for virtue (...) such a one must be allowed entirely incurable, nor is there any remedy in philosophy"

(Hume 1963: 172). With sufficient willpower, and with a reasonably morally sound character, one should, according to Hume, be able to develop most of the virtues one strives for in order to reinforce one's moral character. Moral practice will lead to moral improvement; conversely, moral decadence will lead to relativism and moral degradation. The same principle applies to cultural influences on personal and group morality: cultures that foster moral efforts and promote demanding moral values help those who already have some "relish for virtue" to increase their integrity and perfect their moral virtues. On the other hand, cultures that neglect, or mock moral values, those that promote lowly hedonism, pornography and disrespect for systems of high moral demand (including religions), as many modern cultures do, contribute to character degradation on both individual and community levels. The conclusion seems obvious and has been frequently lamented; however its influence on public integrity appears not to have been adequately recognised.

"Corruption" is a word originally used to denote any type of moral decadence, such as "civilisational corruption", or "sexual corruption". Only recently has it been limited to the meaning of bending proper action in line with private interest.<sup>4</sup> The difference in scope between the two uses is insignificant for the present argument: corruption remains a phenomenon of moral degradation, or the opposite of "integrity", whatever scope is ascribed to either concept. It is not surprising, thus, that corruption, either on the general, cultural level, or on the more limited, institutional and legal one, will increase in communities that lower the moral standards by treating virtues as relative to life-plans.

The modern liberal lifestyle is potentially a threat to public discourse based on character development; its pluralism tends to be confused with relativism. While it is possible for various moral integrative

---

<sup>4</sup> I avoid quoting the numerous academic and institutional definitions of corruption here, as they are immaterial for the philosophical aim of the paper, namely relating corruption to corporate character and the conditions for its development.

systems to co-exist in multicultural societies, with each of the cultural communities maintaining their own morality, the danger in liberal societies is that such value-pluralism is easily translated into the idea that those not belonging to either value community, and — by extension — to any shared value community — have equal moral rights as everybody else. This is a situation exemplified by the status of atheists in multi-religious communities: given that people are allowed to maintain faith in various deities, it seems logical that those without faith occupy some kind of "middle" or possibly "third ground" that is on the same moral level as everybody else's. The problem here is that, if along with the faith, they also reject any common system of moral values, they still retain liberal rights, including the rights to be treated as moral equals to everybody else, while in fact they are not. The further danger is that pluralism leads to a cognitive "clogging up" of the community, so the plurality of moral values collapses into no moral values at all: instead of character, integrity and common morality (which is usually unpopular, because it tends to be restrictive), the dominant politically correct language invokes "life-styles" and "life-plans". In such morally diluted settings the initiatives for character development, and indeed for any consensus on a socially accepted concept of good character, become obscured; corruption becomes just a "social evil" that needs to be controlled institutionally without seriously considering the internal causes of its development.

Tightly knit moral communities act as powerful catalysts of character development. They not only stimulate the moral practice that Hume posits as the method for attaining proper character, but also greatly increase its effectiveness by fostering the feeling of belonging and acceptance. Such communities allow those who otherwise may not have the sufficient strength of character, and even those of "a callous and insensible disposition", who otherwise would not be able to work on their own character development by themselves, to transform their moral characters almost entirely. Through the influence of morally highly integrative communities, even those who are not "tolerably virtuous" — thieves, traitors and the like, have been known to have progressed

through transformative "value strategies" that have changed them as persons to levels unrecognisable. Conversely, corrupt, decadent communities will test to the limit the virtuousness of even the best character: they will not only deprive their members of any meaningful initiative to engage in moral practice, but will drag down those with demanding values and defame them as enemies of "freedom of life-styles and life-plans". The reason is in the simple fact that high moral standards militate against nihilism, if only as irritating beacons of what once was or of what is being lost through moral degradation.

Everything that has been said about individual character development applies to collective and corporate character-building, as well. Where no consensus exists on the relatively few clearly defined moral expectations within each profession or public office, the possibility of shame with regard to corporate honour and morality is banished. Without the internal sanction of shame there is no stimulus for corporate character development. Furthermore, in societies with sufficiently lax and fluid standards, justified by "cultural relativity" or "freedom of life-styles and life-plans", the very idea of corporate character tends to be transformed in line with instrumentalist and functionalist expectations: businessmen continue to be honest, not because this is an inherent moral value, but because functionally dishonesty in the long term is bad for business. Public officials continue to be expected to maintain certain standards, but not because by doing so they fulfill the demands of corporate morality. They are expected to perform because otherwise they will be punished by the politicians, and if they are not, the politicians will be expelled from office at the next election. This neat functionalist picture seems pretty. The rather administrative term "integrity" is used instead of "morality" to fit that picture. The system of controls is such that one better has "integrity", or else the system will eject one. However, even in highly functioning democracies, something is lost by this functionalist transformation of morality into "integrity".

What happens if, for some reason, the electorate or the political elite do not react to the public servants falling below the expected standard? Does this make their behavior acceptable, even though it is not



sanctioned? Furthermore, what are the consequences of moral relativism and confusing pluralism where those with (different) values and those renouncing any moral values are treated on a par, if institutional mechanisms fail to check transgressions? After all, every mechanism fails sometimes. Does this make those with strong moral character and those without it (perhaps through their own choosing) equal? Finally, does this mean that in such pervasively institutionally-mediated societies, where "integrity" is seen as a value required primarily by functionalist considerations, morality and immorality are equal, that those with strong and those with weak character equally qualify for public office?

Corporate character standards are not a novelty in the history of development of public administration; it would be more appropriate to conclude that they have been gradually pushed out of public discourse fairly recently. For example, the rules for the selection and behavior of police officers in early modern Montenegro, among other things, stipulate that:

- Police officers may never behave to others "bitterly" and offensively;
- They must always be sober and reasonable; they must never live an immoral and disorderly life, and may never "idly stay late in pubs and taverns".
- The most important character traits a police officer must possess are the following: incorruptibility, sincerity, truthfulness and trustworthiness to keep secrets.
- In the place of duty the police officer should know the whereabouts of people from all walks of life, and especially the thieves, fraudsters, adulterers, idlers, troublemakers, gamblers, etc. He should also know about the places of gathering of potential suspect persons, such as robbers, fraudsters, gamblers, adulterers, etc.<sup>5</sup>

<sup>5</sup> The Rules are printed today at the wall of the Montenegrin Police Academy in Danilovgrad.

In most western societies today the implementation of many of these standards would be considered open discrimination. For example, it is considered politically incorrect to demand that public servants "do not live an immoral and disorderly life", much more so to ask that they "do not idly stay late in pubs". The right to live "an immoral and disorderly life", to be "gamblers" or "adulterers" appears to be guaranteed to public servants today. In other words, they are considered to have a right not to have strong moral character, to be persons with whom one would not necessarily want to socialise. While "acting in public capacity", that is during their work hours, they are not allowed to gamble or drink (nothing is said about "adultery"), however as soon as they go home they can revert to the character traits considered less than exemplary. The highly selective moral requirements apply only to office hours.

## Conclusion

Institutionalised requirements of virtue tend to be seen as heresy in modern liberal society. They are seen as transgressions of the right to privacy, violation of the boundary between the private and the public, and intrusions into one's intimate spheres of life. In fact, there is nothing intimate about virtue: the practical dimensions of being virtuous concern both the holder of virtue and the broader community, because virtue relates individual values to those of the community, allowing an optimum of positive exchange between the individual and the collective. On the one hand, the possession of virtue facilitates one's contribution to the community, or one's ability to constructively participate in "joint projects" (Macintyre 1981). This is the facet of virtue emphasised by the political philosophy of communitarianism. On the other hand, the possession of virtue allows one to effectively and fulfillingly enjoy life while making one's particular abilities arising from virtue useful to the community. This is the facet of virtue emphasised by eudemonistic ethics. Someone who is of keen mind and understanding character may find personal fulfillment in helping others resolve their issues. Another person with a meticulous character

and administrative abilities to find normative solutions for various real life situations will find fulfillment by assisting in the running of public administration or private companies, and will simultaneously make life better by acting efficiently for a large number of clients. A person that is particularly courageous and righteous will find fulfillment acting as a modern society's "warrior" (soldier or police officer). In each particular case the development of virtue and corresponding character goes hand-in-hand with the performance of adequate duties. This also means that the selection of people to perform various social functions should be based not only on their formal qualifications, but also on the virtues that encompass their private lives — a familiar idea from Plato. It makes sense that the police officer "does not idly stay in pubs" and does not socialise with "thieves and adulterers". This is a requirement that touches one's private life, but only insofar as virtue connects private life and public duty. Indeed, virtue is private in an important sense, yet it is crucial for public office. A disgraced president caught in adultery naturally loses the respect of his citizens, and although his improper sexual behaviour belongs to the realm of the private, when uncovered it is a delegitimising factor for his presidency, because it reveals an aspect of his personality that lacks the virtues of loyalty and honesty that are normally expected of a nation's president. The same principle naturally applies to any other public duty. A dishonest and disloyal police officer who cheats, drinks and gambles is delegitimised by the lack of virtues normally expected of a police officer. Private virtues or their absence *are relevant* for one's public persona.

For all of the above reasons, the moral perspective inherent in a political system will strongly impact prospects for the cultivation of corporate character throughout the society. A medical profession in a caring system that favours the value of human life over most other values will likely develop moral standards for its members that will foster the development of caring character amongst the doctors and nurses. Corruption will be a far-fetched possibility, and when it occurs, reactions by the other members of the profession will act as powerful

deterrents. A commercial system of medical care, on the other hand, such as those in some modern liberal states, will naturally stimulate the development of entrepreneurial character in doctors and nurses. Just as the idea of not providing care to someone who cannot pay for it has become not only acceptable, but increasingly seen as "natural", so could the idea that doctors should not treat people when they do not have the best of work conditions and salaries that allow opulent life styles. For the public administration, in systems where citizens' claims are seen as the legitimating basis for the public service as a whole, the public servants will have reason to develop outgoing and understanding characters, along with creative abilities and incentives to solve problems on behalf of their clients. In systems where the state is accorded normative priority in relation to the people, public servants will be encouraged to develop bureaucratic characters.

To a large extent, corporate character is a matter of context, value-system and the strategy that lies behind the manner of governance. Organic communities such as religious ones have demonstrated that a "value strategy" that targets both the cognitive and emotional aspects of one's moral convictions can shift values and generate sufficient dynamic momentum for a dramatic change of personal character. The same principle, applies generally both on the level of persons and on the corporate level. The nature of the social world where the individual or the group are embedded finally decides the direction in which they will develop, assuming that they possess the basic moral faculties and soundness of judgement to understand what is expected of them and decide to choose a path of personal development.

Just as a certain "climate of change" is required for political and social transformations, even revolutions, so a climate of integrity is required for the flourishing of a morally highly integrated public administration and a society that encourages personal character improvement. Liberal societies, with their reluctance to posit substantive values as guiding lights for their members and their excessive sensitivity for the partly artificial boundaries between private and public virtue,

character and public persona, are not particularly conducive to either individual or corporate character development. In an atmosphere arising from a near deification of interest and inviolability of lifestyle, it is difficult to generate a strong moral climate. Conversely, in a social climate where interest, profit and entitlements are seen as dominant categories, and morality is seen as predominantly restrictive — in fact often opposed to human fulfillment and happiness, any restrictive insistence on administrative and institutional controls of corruption is unlikely to succeed in the long term. Much less is it likely to address the key underlying issues and deficiencies of the social system that lead to high levels of corruption.

Liberal democracy appears to be in a crisis not entirely unlike the cyclic crises of liberal economic systems. Crudely speaking at least some global economic crises arise from the systems of borrowing, investment and job creation occasionally falling so "out of sync" that the entire structure of transactions defaults to various extents. The recovery then requires interventions such as injections of large amounts of cash into the banks by the governments, major cuts in consumption and structural re-adjustments in order to get the system back on its feet. The situation is similar with integrity when it is perceived as an institutionally-mediated system of interruptions of an otherwise free pursuit of interests: sooner or later the interests will become tangled up in ways that prevent effective institutional intervention, or will include institutions as bearers of their own corporate interests that were not calculated into the system. Such situations will then require moral intervention by the elites to get the basics right again.

On an individual level, the liberal morality requires active self-interruption in what is otherwise perceived as a free pursuit of one's selfish motives. More generally, liberal morality requires an active self-interruption, by the pessimistically conceived human individual, of his own, *constitutive* selfish motivation. In such a context, corruption is a natural occurrence. The contemporary organic communities, on the other hand, teach us an important Humean lesson: it is possible

to teach both individuals and corporate entities to be moral and thus reduce corruption in a *non-repressive* manner. This, however, requires a different value context: one that allows more optimistic starting assumptions about human nature to be at play. Such an approach may sacrifice parts of the liberal edifice, including the isolation of private virtue from the realm of public expectations; however, the rewards in terms of fighting informality, corruption and other social vices would be considerable, and would largely stem from the building of a social consensus on virtues, along with an atmosphere that, much like a "collective mood", is able to enthuse and dynamise people to act morally out of their own accord. Such circumstances would conduce to a maximisation of autonomy and would thus give public morality its fullness by allowing moral action to flourish from a freedom not directly bounded by a threat of sanction.

### Bibliography

- Barry, Brian (2005), *Why social justice matters*, Cambridge: Polity Press.
- Fatić, Aleksandar (2007), "What has happened to firstborn social theory: The social contract," *South-East Europe Review* 10(3): 121–131.
- Fatić, Aleksandar (2009), *Freedom and Heteronomy: An essay on the liberal society*, Beograd: Institut za međunarodnu politiku i privredu.
- Fatić, Aleksandar and Aleksandra Bulatović (2012), "The role of sympathy vs. Competition in communal ethics: Crocodile liberalism and fellow-feeling". Paper for the Aleksanteri Institute Conference "Competition and Good Society: The Eastern model," University of Helsinki, 24–26 October 2012, (internet) available at: <http://www.helsinki.fi/aleksanteri/english>.
- Fishkin, James S. (1984), *Beyond subjective morality: Ethical reasoning and political philosophy*, New Haven: Yale University Press.
- Fukuyama, Francis (1995), *Trust: Social virtues and the creation of prosperity*, New York: The Free Press.
- Gould, James B. (2011), "Cultivating character: Hume's techniques for self-improvement," *Philosophical Practice* 6(3): 832–843.

- Hume, David (1963), "The Sceptic," Essay 18 in *Home, Essays: Moral, political and literary*, Oxford: Oxford University Press.
- Lefkowitz, David (2007), "On a moral right to civil disobedience," *Ethics* 117: 202-233.
- Luhmann, Niklas (1979), *Trust and power*, New York: John Wiley.
- Macintyre, Alasdair (1981), *After virtue*, Notre Dame, University of Notre Dame.
- Maldini, Pero (2008), "Političko povjerenje i demokratska konsolidacija", *Politička misao* 45: 184-186.
- Nagel, Thomas (1974), "What is it like to be a bat", *Philosophical Review* 83: 435-450.
- Nozick, Robert (1974), *Anarchy, state and utopia*, New York: Basic Books.
- Putnam, Robert (1993), *Making democracy work: civic traditions in modern Italy*, Princeton: Princeton University Press.
- Rawls, John (1971), *A theory of justice*, Cambridge (Mass.): Harvard University Press.
- Seligman, Adam B. (1997), *The Problem of trust*, Princeton: Princeton University Press.
- Solomon, Robert (1995), *A passion for justice: Emotions and the origin of the social contract*, New York: Rowman and Littlefield.
- Uslaner, Eric (2002), *The moral foundations of trust*, Cambridge: Cambridge University Press.

CIP - Каталогизacija u publikacijii  
Narodna biblioteka Srbije, Beograd

343.351(082)  
316.334.3(082)

CORRUPTION and Social Development /  
editors Ana Birešev, Rada Drezgic i Srdan  
Prodanović. - Belgrade : Institute for  
Philosophy and Social Theory, 2013 (Belgrade  
: Colorgrafx). - 297 str. ; 20 cm

Prema belešci u kolofonu, publikacija sadrži  
radove s istoimene međunarodne naučne  
konferencije, održane 19-21. oktobra 2012. u  
Beogradu. - Tiraž 300. - Napomene i  
bibliografske reference uz tekst. -  
Bibliografija uz svaki rad.

ISBN 978-86-82417-38-5  
1. International Scientific Conference  
"Corruption and Social Development" (2012 ;  
Belgrade)  
a) Корупција - Интердисциплинарни приступ -  
Зборници  
COBISS.SR-ID 201246988





