
Legal but corrupt

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Criminality is generally portrayed as the dark underbelly of society – an underworld populated by those on the margins who live to break the rules. As a storyline, it has clear appeal to those whose interests lie in the mainstream being viewed as “above board”, “legitimate” and “decent”. In reality, however, the boundary lines between “honorable citizenry and the penitentiary” (as the German revolutionary Rosa Luxemburg put it) (1) have long been paper thin. Indeed, mainstream capitalist enterprise arguably only prospers because its particular forms of looting, theft, fraud and cheating have been blessed with the holy water of “legality” whereas other forms, similar in substance, have been deemed “illegal”.

Corruption is a case in point.

Some corruption has been criminalised. The bribery of public officials is now universally outlawed, even in countries, such as Germany, where bribery of foreign (as opposed to German) officials was legal until twenty years ago. Bribes are also no longer tax deductible in Belgium, Denmark, France, Japan, Canada, Luxembourg, The Netherlands, Austria, Switzerland, the UK and the USA, a practice that was also legal until the mid-1990s. Fraud, extortion and money laundering are unlawful in all jurisdictions, although not a single US bank has ever been prosecuted for the crime of money laundering.

But bribery, money laundering and fraud are not the be-all-and-end-all of corruption. Indeed, a narrow focus on such crimes (vital as it is to investigate and prosecute them) hides many perfectly legal practices that the general public often rightly regards as corrupt. Examples include: sweetheart deals that let companies pay minimal tax; cronyism; the “overlooking” of the landgrabbing done during colonial times which found the bases of many large companies operating in the forests nowadays; the use of military forces to “protect” private investments while violating citizens lives and livelihoods; the effective immunity from prosecution granted to “too big to jail” companies; official tolerance of conflicts of interest; the deliberate engineering by corporate lawyers of loopholes in the law to circumvent rules and regulations; and the privatisation of policy-making through special interest lobbying and political donations.

Cue the steady stream of heads of industry, ex-Ministers and government officials that pass back and forth (quite legally) through the revolving doors between politics and business. Cue banking regulatory committees whose board members (quite legally) are heads of the very banks that they are supposed to regulate. Cue the self-interested policy-making that, through privatisation, outsourcing and public-private partnerships, has transformed the provision of public services into publicly-guaranteed get-rich-quick schemes that channel billions of dollars of public money into the hands of private investors and financiers. Cue the development institutions and banks from the global

North pressuring with their aid money governmental officials in the global South to establish those neoliberal policies which will benefit the companies from Northern countries.

Many of these perfectly legal but nonetheless corrupt practices are routine within government and companies: worse, such practices frequently pass for “good governance”. Some may even be deemed duties of office; and many – privatisation, for example – are the stated mission of public bodies. Such normalisation of corruption is not new: but today it is widespread enough for Bruce Buchan, a prominent scholar of corruption, to call our current era a “Golden Age of Corruption”. (2)

It is not just that the law, to use the metaphor of the 18th century Anglo-Irish satirist Jonathan Swift, has been designed like a cobweb that catches “small flies but let hornets and wasps pass”, although this is certainly true. Nor that the law is unequally applied, although, again, this is undoubtedly true – three strikes and you go to jail if you are poor and black; no jail time if you are a banker. The decay goes deeper: the very policies and laws that overtly serve to combat corruption are now themselves a shield to the corrupt.

Consider the definition of corruption employed by the World Bank, namely, “the abuse of public office for private gain” – a definition that has provided the template for numerous “anti-corruption” laws and regulations. Corruption is cast as a pathology exclusively of the public sector – “the abuse of public office for private gain”. Private sector corruption is thus conveniently excluded from legal sanction. The definition thus renders “uncorrupt” (and legal) a range of corrupt forms of power mongering – from political contributions by companies to the influence they exercise through the many elite social networks that link corporate boards to government.

The focus on *individual* “private gain” made by *individual* “office holders” likewise obscures institutionalised forms of corruption that work to advance the interests of groups or classes without rewarding any particular “office holder” directly or at all. An official who takes a cut of a public sector contract falls foul of the definition. But a politician who uses illegal payments from foreign governments to finance an election campaign but makes no financial gain personally does not.

The fetishizing of public sector corruption has additional strategic utility. Conveniently ignoring the collusions between “public” and “private” that make most corruption possible, it casts the ‘public’ (interpreted as “the state” or “bloated bureaucracy” or “regulators”) as a perpetually grasping hand and the ‘private’ (interpreted as “the private sector”) as its victim, tainted only because it is forced to pay bribes to get its work done (no mention here of the role that the mainly Western, mainly multinational private sector plays in facilitating the laundering of the proceeds of corruption).

Anti-corruption policies can thus be readily enlisted (as they are) to the cause of rolling back the state, privatising state assets and giving the private sector a greater say in decision-making, ostensibly in the name of protecting private interests from avaricious rent-seeking officials who would otherwise place transactional barriers in the way of business. The outcome is not to banish corruption, but rather to make certain corrupt interests acceptable and normal within the sphere of government decision-making.

This should come as no surprise. For, despite the rhetoric of “public” and “private” being separate spheres that must be kept separate, the entanglement of the two makes such a separation impossible. Indeed, a complete separation would, as academic Peter Bratsis points out, make “politics as we know it . . . impossible”.

The issue is *who* decides and *how* what mingling does or does not act for the common good, which

presupposes a process through which the plurality society (with all its diverse groups) (rather than just the Bank) can deliberate what actually constitutes the common good. But it is precisely this process that has been corroded through corruption, not to speak of the myriad other forms of oppression rooted in a history of colonialism, racism and patriarchy that exclude many groups in society from these debates. For the common thread that runs between all forms of corruption – from bribery to revolving doors – is the capturing or bypassing of democratic forms of deliberation.

Such capture is not an unwanted side-effect of capitalism: it is central to its operation. Indeed, the entanglements between corruption and capital are such that to challenge corruption *is* to challenge modern capitalism. Recognising this, and taking seriously its implications, will surely be essential if strategies and alliances are to emerge that allow future forest use to be determined through bottom-up democratic politics, rooted in respect for the commons, rather than the narrow interest of political or financial gain.

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(1) Rosa Luxemburg, [The Russian Revolution, Chapter 7, The Struggle Against Corruption](#)

(2) Buchan, B. (2016) 'Our Golden Age of Corruption'. *Arena*. [Available here](#).

(3) Swift, J. (1707) *A Trritical Essay upon the Faculties of the Mind*. [Available here](#).

(4) World Bank (1997) *Helping Countries Combat Corruption: The Role of the World Bank*. World Bank: Washington DC. [Available here](#).