



*Bridging Legal and Political Notions of 'Corruption:'  
The Road Without This Bridge Indeed Goes  
Nowhere*

*Dick Farkas, DePaul University  
Inter-University Center, Dubrovnik  
March 2011*

- ***“Corruption is the key threat to good governance, democratic processes and fair business practices.”*** OECD

- 
- ***“Corruption is the single most severe impediment to development and growth.”***

Survey of 150 officials from 60 countries

- ***Multidisciplinary approach essential !***



# “Politics”

- ▶ Governing ... *management*
  - induce constructive behaviors
  - prevent or punish negative behaviors
- ▶ “Corruption” by definition is negative behavior from a systemic perspective
- ▶ Two dimensions: “demand side” & “supply side”



# Forms of CORRUPTION

- Selling influence
- Violation of restraints
- Selling decisions
- Exercising powers  
beyond designations;  
crossing boundaries
- Abusing privileged  
information
- Neglect of designated  
responsibilities;  
abdicating functions
- Vote manipulation
- Steering procurement /  
contracts
- Bribery
- Hiring relatives
- Collusion



▶ **SELLING**

▶ **ACTING**

▶ **FAILING TO ACT**

- *“personal profit from exercise of public authority”*
- *“impairment of integrity”*
- *“inducement to wrong by improper or unlawful means”*
- *“a departure from the original or from what is pure and correct”*      *defined by ?*



# *Transitional Characteristics*

- Poor infrastructure (very limited resources)
- Complicated tax systems (unrefined / overlapping)
- Confusing accounting standards (absent experience)
- Absence of “rule of law” (cloud & line)
- Politicization of the business sector (new phenomenon)
- Weak enforcement agencies (resources & skepticism)
- Frail stock market mechanisms (newness)
- Stark VULNERABILITY of small & medium size business
- Government-private sector corruption = norm (legacy)
- Corrupt behavior is accepted and is often  
NOT questioned



# *Result ... political*

- Undermines stability and predictability
- Evidences weakness of broader political system
- Undermines government legitimacy
- Enhances distrust of officials
- Public officials routinely expect to augment salary
- Dissolves credibility of “rule of law”

***CORROSIVE !***



# *Result ... economic*

- Sustains non-competitive enterprises
- Creates misallocation of resources
- Exacerbates inequality in society
- Increases cost of procurement
- Deflects and deters foreign investment
- Creates impression of NO choice;  
competitive disadvantage

***CORROSIVE !***





# Some framing questions ...

- *In political systems in “transition,” is there necessarily more latitude for political behavior ?*
- What are reasonable expectations among the public when it comes to a profit motive among those with public authority?
- *Is it possible to serve the public interest so significantly that it is reasonable to ascribe some personal gain from that same performance or those same services?*
- How can political systems find leadership with no financial ambitions? or with no self-interested motives?
- ***Is fear of prosecution or altruistic character the most effective technique for achieving corruption free politics?***



# BIG PICTURE Explanations:

- Transition from “cloud to line”  
ambiguity, connections, non-performance-based econ
- Intrinsic tension between profit  
maximizing and ethical behavior
- Opportunity stemming from absence of  
institutionalization
- Low public expectations



# Optional Approaches

## Induce constructive behaviors

- ▶ Make policies & laws to dis-incentivize:
  - highlight potential costs
- ▶ Model behavior
- ▶ Incentive compatibility
- ▶ Refocus goals: ethics
- ▶ Create new expectations

## Punish negative behaviors

- ▶ Make laws to remove violators
  - removal from public office
  - cripple business
  - replace exec. leadership
- ▶ Contingent on police & judicial systems with integrity!



# Remedies

## *Transparency & Accountability but to whom?*

### Demand-side Remedies

- Inspector General
- Investigative authorities
- Competitors monitor
- International & European control authorities

### Supply-side Remedies

- Corporate governance
- Business Associations
- Think Tanks
- “Regulatory Webs”



# Corporate Governance

- *Complications:* political sensitivities  
legal inconsistencies
- TRANSPARENCY in corporate transactions; responsibility
- Sound corporate governance mechanisms target supply-side corruption / corporate codes of conduct
- Payments or gifts quickly exposed / become unsustainable
- **Nexus:** legal parameters & business ethics =  
corporate culture
- **Private sector is essential to effective anti-corruption strategies**



# ***Business Associations***

- Crucial to set standards /  
*a priori* agreement
- Creates collective security in face of demand-side – while single private sector actor ineffective in face of solicitation



# Requisite Action by Business Associations

- Dissemination of information & recommendations
- Providing tools for training, prevention, due diligence and information sharing
- Advice, mechanisms and security for collective action
- Muscle for resisting extortion & solicitations



# *Romanian Strategic Alliance of Business Associations*

- Corporate governance = major challenge in post-Communist market environment – weak or non-existent institutions
- Small & medium size enterprises most vulnerable – limited resources
- **Key:** building institutions – trade and business associations, chambers of commerce / industry
- Corporate Governance Initiative for Economic Democracy & SABA create model for corporate governance & dialogue / promotion





# *Corruption Study: Serbia*

*Center for Liberal Democratic Studies*

- Profound consequences for public & private sector
- Survey: **10%** say corruption #1 priority  
Majority think cause is “crisis of morality” due to growing poverty, lack of respect for the law, legacy of communism, inefficiency of public services
- Corruption = circumnavigating legal obligations and norms , changing and misrepresenting them
- Cite corruption in the judiciary, licensing, registration, inspection, tax administration, gov contracts, customs documentation, currency transactions



# **OECD Convention** (Nov. '09)

- “widespread phenomenon” raising serious moral and political concerns
- “undermining good governance, econ development, distorting competitiveness
- Requires efforts by companies, business organizations, trade unions
- Accounting, indep. external audit, internal control, ethics, cooperation in investigations with integrity



# Four “**key areas**” in OECD anti-corruption strategy

- Fight transnational bribery
- Corruption & business
- Corruption & public education
- Corruption & public procurement (gov)
- *Istanbul Anti-Corruption Action Plan* (Sept '08)



# Complications

- “small facilitation payments”
- “tax loopholes” -- bribes deductible
- protecting employees who report ...
- “off the books” accounts
- inadequate scrutiny of **third parties**:  
*agents, intermediaries, consultants,  
representatives, distributors,  
contractors, suppliers, consortia,  
joint venture partners*



# Best Practice in Companies

- Commitment from senior leadership
- Clear, regular corporate policies / communication
- Explicit rules for rank & file (top to bottom) / training
- Oversight by indep monitoring bodies or internal auditors reporting directly to Board of Directors
- Tight financial procedures
- **Rewards** for compliance & ethical behavior / all levels
- Swift responses to reports of corruption



# Prevent & Detect ...

- Gifts
- Hospitality; entertainment
- Customer travel
- Political contributions
- Sponsorships
- Facilitation payments
- Solicitation & extortion



# Legal Remedies ... one record

- OECD report:
- Cases “sanctioned under criminal proceedings”
- 1999 – 2009 148 individuals; 77 entities  
in 13 countries  
40 sentenced to prison; 1 company fined  
€1.24M  
280 ongoing investigations; 21 countries



# ***Most Engaged IOs***

*and a critical part of the “regulatory webs”*

- OECD
- Transparency International (“Integrity Pact”)
- ACN (Anti-corruption Network for Eastern Europe and Central Asia)
- International Chamber of Commerce  
 (“Rules of Conduct”)
- World Economic Forum  
 (“Partnering Against Corruption Initiative”)
- “Convention Against Corruption” (123 signatories)  
*Also Hess & Dunfee’s “C2” Principles*





# Political Science & Business Studies

## *What Social Science has to Contribute*

- ▶ “Soft Law”
  - ▶ “Regulatory Webs”
    - ▶ “Epistemic Communities”



# “Soft Law”

- Multitude of actors:

*states, officials, regulators, NGOs, civil society, corporations*

*“In the absence of an international sovereign to exercise coercive power, it has become necessary to look to other means to control the behavior of international actors.”*

- Soft law mechanisms often “discussed by scholars in terms of state compliance with international law”
- *Haas, Choosing to Comply, (The Role of Non-Binding Norms in the International Legal System), ‘00*
- *Braithwaite, “Enforced Self-Regulation: A New Strategy for Corporate Crime Control,” Mich Law Review ‘82*



# “Regulatory Webs”

- “dialogue & persuasion” rather than coercion
- Use soft power to shape corporate behavior through “**redefinition** of interests and **reputational sanctions**”
- Webs become a locus of soft power influencing the behavior of corporations without recourse to explicitly coercive hard power.
- *Ellickson, Order Without Law, ‘91*
- *Braithwaite & Drahos, Global Business Regulation*



- “dialogic mechanisms of corporate regulations (through consultation between corporations and regulators) enhance compliance.” foster habits of compliance
- Nurture *redefinition* of internal corporate interests
- “These webs operating through persuasion rather than coercion, can effectively globalize practice without recourse to state-propagated rules.”



# Examples

- *Global Reporting Initiative*  
(reporting processes)
- *Global Compact*  
(voluntary initiative / observe 10 principles / human rights, labor standards, environment, corruption)
- *Dialogic webs*  
“architecture for social learning network”
- *Pacts are designed to reintroduce expectations of honesty*



# “Epistemic Communities”

- Defined: *Networks of individuals with shared beliefs and expertise on a given issue.*
- Shared interest = process of regulation
- Through expertise, they control the diffusion of ideas and knowledge which can lead to new patterns of behavior; influence how problems are perceived; and the scope of potential solutions ... **in the case of corruption, this process involves the recognition of corruption as a problem and collective understanding of how to attack it.**



Fosters internal norms of behavior

“represents a significant improvement on traditional coercive regulatory methods.”

▶ where management officials invest in the creation of standards, they demonstrate a greater likelihood of complying with them.”

Tailor rules to corporate needs ...



# Who?

- Compliance professionals, regulators, public interest groups, communities of professional experts frame ethical & legal compliance and social responsibility.
- Emphasize compliance over profits
- Proliferation of voluntarily signed corporate codes on corruption
- Increase in corporations reputationally accountable for breaches





# Summary ... “webs” use

- **Four mechanisms:**
  1. Redefining interests
  2. Use of reputation as restraint on behavior
  3. Creation of intellectual resources valuable to corporations
  4. Habitual compliance incorporated into organizational routines



# *“Reputation”* as restraint

- Reputation acts as a restraint in situations of complex interdependence and/or public pressure
- Corporations take on obligations apparently counter to their direct interests as part of a larger benefit strategy
- Reputation = valuable commodity – motivation to reform (comply) – avoid consumer backlashes & public scandal
- Corporate execs often advertize their compliance for peer status



# Two Primary **Qualifications**

1. Corporations or their executives may NOT value their reputations
  2. Corporations may respond with public relations spin rather than genuine reform of their behavior
- ▶ **Reputation = one strand in a web of regulatory influences**



# Intellectual Resources for corporations

- NGOs engage in a form of private capacity-building, making it easier for corporations to regulate themselves
- The credible and authoritative information provided is at a premium in a globalized world where there is an oversupply of information
- Experts are at the center of crucial communication networks acquiring influence as agents of new approaches
- Keohane & Nye, *Power and Interdependence in the Information Age*, *Foreign Affairs*, '98



# *Limits of Soft Power*

- Significant aspects of corporate practice remain uncontrolled
- Real gap between norms and behavior
- “Operative” codes of profit-maximization

Webs are a useful but insufficient means of controlling corporate behavior!



# Webs & Government

- Model: corporations draft their own codes; government approves and audits
- Legal threats supplement and reinforce the regulatory web
- *Keohane*: “The dialogue built into the regulatory web enhances accountability”  
(electoral & hierarchical)



# *Conclusion*

- ▶ The problem is threatening to society
- ▶ Solutions must use all disciplinary insight
- ▶ Approaches must be politically, economically and legally refined
- ▶ Success will ultimately be measured by changes in the expectations and attitudes of elites and the general public

