

Cross-border crime inroads on integrity in Europe

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(Crime-)money, corruption and the state

Petrus C. van Duyn

An intertwined or unholy trinity?

The 'state' and money have always bedevilled man's mind. Between the two there looms the evil interaction of corruption. Is this an unholy trinity? In history money or its equivalent, gold, has always been disputed just because of its potentially moral corrosion. The Spartans perceived it as threatening their pure life style. So they banned it and replaced it by iron bars, while culturally degrading their society by an austere life-style. The myth of king Midas who turned everything he touched into gold also serves as a warning against the barren nature of gold, while the adoration of the biblical Golden Calf is a symbol of the seductive attraction of material wealth in general, and money in particular, and the related loose morals.

Reflections on the state, its best form or its necessity, used to be critical too. From Plato onwards questions have been raised on what should be the best form of state, without tyranny, greed and corruption. Against a background of corrupt rulers and violent political upheavals, history shows a continuous striving for a virtuous state, with disappointing and often violent outcomes. The causes of such outcomes are inherent in the drive for virtue itself: it leads to totalitarianism. Why? In contrast to gold which has levels of carat and is easy to mix with less noble metals, virtuousness is 'non-dilutable'. One cannot have just half or three-quarters of virtuousness. As a Dutch minister of Internal Affairs once remarked about corruption: "It is like pregnancy: you cannot be a bit pregnant and you cannot be a bit corrupt" (Huberts, 1992). Therefore, this drive tends to be total.

Though there is a compelling logic in this statement, attempts to realise it have not brought much happiness. Zealots of whatever form of pure society more often than not saw dreams and lives end violently. Their list is long, cruel and wide indeed: from religious purists like Jan van Leyden (Anabaptist), ending in a cage of the bishop of Münster (1536) (Klötzer, 1992), to the 'incorruptable' Robespierre who could indulge for only 12 months in his political purist ideas, before he was beheaded himself (1794) (Soboul, 1994). Those who thought

mankind should be liberated from the tyranny of the corrupt state and who unfolded the banner of anarchism ended at the gallows too, particularly in the 19th Century Russia (Sievers, 1980). The biggest ‘real live experiment’ to establish a pure (socialist) society by which the state would become superfluous, lasted almost seventy years and imploded two decades ago after a miserable record of covered failures. Indeed, history does not provide many positive examples to put much trust in moral fundamentalists turned into political purists. It rather proves the price to be paid: total virtue requires total control, which is only feasible in an absolute state. And how many absolute states were without corruption?

Though utopian schemes are considered as something of the past, the ‘state’ never abandoned its aim of keeping its citizens to the straight and narrow path. Not within a total utopian grand design, but piecemeal, topic by topic, whether it concerns safety or sex, health or property. It adapts pragmatically parts of its criminal law armamentarium to murky markets of ‘vice’ that are constantly springing up. Vice markets imply that criminal profits are being made. These crime-monies are considered to have an even greater potential to corrupt than is attributed to ‘normal’ money. Hence, a new control task developed: controlling criminal money management, which is supposed to affect the integrity of the financial system, unleashing a new drive for total control. This has been achieved through a global law enforcement regime (Stessens, 2000).

With this observation we are back at the triangle of (crime-)money, corruption and the state. To increase its control capacity the state invokes another moral principle: transparency. Upholding this principle is not just a concern of single, national jurisdictions: it must have a global effect. This applies not only to the (international) financial system, but to all corners of trade and industry where corruption is looming, whether at home or in transnational transactions.

One may wonder what aspects of society are left unguarded to prevent a sliding down towards moral desintegration. It is a process of encroaching moral control: all for the common good. But what about the state itself permeating and overarching society? Is the state a transparent, ‘open book’ as well? And if open, is it also readable? Or is the state the ‘self-excepting fallacy’?

This volume deals with various sides of this triangle of (crime-)money, corruption and the state. Though one may think the order of the three arbitrary, I think it appropriate to start with discussing the chapters dealing with the subject where vice starts: corruption. Money may be clean, the state may be virtuous, but underneath corruption may eat into both sides.

Facing corruption: global and local

The history of corruption is characterised by bad conscience as well as connivance. Abuse of office and bribery has always been frowned upon, usually silently. This ambiguity allowed the launch of occasional accusations of corruption as a stick to beat a (political) dog. For example, the politician (and philosopher) Francis Bacon, ended his career in disgrace after being found guilty of bribery (1621) in a time when non-corrupt administrations did not exist. As a matter of fact, the nascent public administration was a market of coveted positions (Swart, 1990). Indeed, even in the most abject corrupt state, the concept of the immorality of corruption is not absent.

In the course of the 19th and 20th Centuries this connivance receded, but did not fully disappear. In the past decades exposure of corrupt dealings of politicians or high-level civil servants led to the end of their career if not a prosecution. In Europe, however, this was geographically an uneven development. Whether or not it is another cliché, in the protestant Northern Europe this development was more advanced than in the catholic Southern Europe. However, in the past decade, these Northern countries have witnessed a number of high-level corruption cases in Germany, the UK, the Netherlands and even Norway (Andvik, 1994). But the fact that these cases were exposed can be used to underline this cliché. In Italy exposure appears to have fewer consequences: MPs convicted of corruption (or other crimes) are allowed to retain their seats in Parliament (Stille, 2006).

Nonetheless, these uneasy feelings about corruption remained highly selective: while corruption at home was frowned upon, cross-border corruption by western corporations in other countries was condoned. These cases of bribery were considered necessary for obtaining foreign contracts; they were even tax deductible. In this way 'non-corrupt' western entrepreneurs declared themselves 'forced' to become 'a bit corrupt'. In the chapter of *Liliya Gelemerova* on the crusade against foreign corruption the author discusses this aspect of corruption as well as the way it was addressed forcefully by the USA.

What is the case? During the Cold War, the USA and other western countries supported any corrupt state as long as it was anti-communist. It kept kleptocrats like Mobutu in power for decades (Meredith, 2006). Bribery was also rife in foreign trade. But while a corruption condoning foreign policy continued, at least until the fall of the Wall, foreign trade relations did not escape so easily. In the sequel to the Watergate affair 1975, much evidence of foreign trade related corruption was found. Eventually this led to the Foreign Corrupt Practices Act (1977), which was a milestone of the American internationalisation of a domestic moral concern and policy. This internationalisation was preceded by the world-

wide anti-drug policy (Van Duyne and Levi, 2005) and followed by the global anti-laundering policy (Stessens, 2000; Van Duyne *et al.*, 2005; Gelemerova, forthcoming), with which it shares many features.

Of course, there were sound national interests involved: if American companies wanted to avoid becoming outcompeted by foreign corporations the anti-corruption policy should be accepted universally. Ever since this the US government has endeavoured to make other countries accept the same policy, particularly through the US dominated OECD: in 1997 thirty three countries signed the 'OECD Anti-Bribery Convention' promising to make bribery an offence in domestic legislation.

The author describes how the US fight against international corruption turned into a crusade, comparable with the anti-laundering policy. Technically there is also much overlap between the two and a free field of fire for the prosecution: there is no corruption without laundering. In both fields the law has the immense dimension of a trawl net, drawing in whatever small it finds in its way: e.g. operating fully abroad but using a US server or bank account is sufficient for criminal liability in case of 'having attained an illegal advantage'. Another common element is the rule of due diligence, which is imposed in both fields. But they differ in clarity: concerning cross-border corruption the criteria of this rule lack proper precision and transparency. Surveying the case history the author concludes that the industry is left to itself to find out what criteria law enforcement will apply: it dodges its own transparency demands. What applies to potential offenders does not necessarily apply to the state.

As is usual, law in the books and law in action are different things, certainly with trading in remote corners, such as at the border between Russia and Finland. The chapter on corruption in this remote area by *Minna Viuhko, Martti Lehti, and Kauko Aromaa* makes clear that the OECD Anti Bribery Convention has little impact here, whether Finland has ratified it or not. At this point other rules prevail: no transport company is able to operate if it does not play along with the 'system' of the Russian Customs. And giving presents implies more than a bottle of vodka: it is a matter of being regularly 'milked' at the customs or interacting at a higher level with the corrupt predators. It is interesting to observe that cognitively there is no 'moral relativism' indeed between the Finns and Russians there appears to be little difference in understanding of the meaning of corruption. But there is a wide difference in acceptability. To the Finnish entrepreneurs bribery in whatever form is unacceptable, but they resign to playing along nevertheless. The Russian interviewees display more ambiguity which must be projected against a background of rampant corruption in the form of a top-down system which has its roots deep in the socialist era (Brovkin, 2003). In terms of own experience, the

Finns said to have to cope with it daily at the Russian border, while Russian interviewees referred in general terms to the widespread corruption in their country but said that they did not have experienced it themselves. Therefore the authors could not penetrate into the details of the corruption *system*. But if there is a system it can be anticipated, which was preferred by the Finish entrepreneurs, allowing them to pay a monthly instead of the unpredictable daily bribery. But who 'owns' the system when the owners deny ownership while those who are plausibly involved never happen to notice anything personally?

Obviously corruption is a troubled water phenomenon, not to be addressed by a one-causal or one-dimensional approach, as the authors *Gudrun Vande Walle* and *Arne Dormaels* elaborate in their chapter about the Belgian Customs Organisation. Besides other explanatory variables which the authors adopt from Gobert and Punch (2003), an important personal variable is the defence mechanism. This may take the form of rationalisations, neutralisation or flat denial, the concrete forms being determined by the surrounding landscape. A 'corruption tariff system' as is operated at the Finnish-Russian border gives little latitude for denial but the individual can evoke 'the system' as excuse. Whether this is the case within the Belgian Custom Organisation is less clear. Here another tension is created because of the intertwining of two contrasting service attitudes: serving trade and industry by speeding up the handling of custom clearance and serving the public fund by levying the taxes due. This is a working environment which on the one hand, favours economic interests, furthered by pressure and the temptation of presents and favours. On the other hand, it gives cause to public scrutiny which at present is highly sensitive to profiteers. This has to be balanced against the organisational culture within the service itself: the management striving to reach commercially favourable targets, while the control units at ground level daily interact with transporters, balancing different interests. An organisational landscape in which it is not difficult to find self-serving rationalisations. Even if corruption is moderate (compared to the Finnish-Russian situation), there is a strong lid on the basket preventing much evidence coming out.

Knowing and talking about widespread corruption while finding so few actual cases or the 'owners' of the system is not restricted to Russia or Belgium. The researchers *Petrus C. van Duyne*, *Elena Stocco*, *Miroslava Milenović* and *Milena Todorova* report a similar outcome in their chapter on corruption in Serbia: allegedly a country with rampant corruption with an amazing shortage of facts, apart from a few scandals which were difficult to hide. On the other hand, unlike Russia, Serbia is forced to fight corruption if it wants to join the EU family. But this aim intersects with many established corruptive interests like jobs, positions and political power, which are 'owned' as Medieval fiefdoms. Again the question is: Who

'owns' the corrupt system, which in Serbia means: who owns the country? Before 1989 it was the Socialist Party. Now there are many owners: the state looks rather like a kind of old socialist apartment block after privatisation, being split up between a few powerful bidders with impoverished dependent tenants.

This turns the unfolding anti-corruption policy into an up-hill struggle of reformers with other interesting actors causing regular setbacks and delays. The authors capture this in the metaphor of Sisyphus, who had to push a stone up-hill but that rolled down again as soon when it got near the top. This counter reaction is not a matter of street-level bribery, but of strategic, higher level corruption, which has an interest in maintaining an opaque landscape.

Keeping things opaque does not only concern the actors' conduct. As a matter of fact, the authors found the whole situation, but particularly that concerning data management about corruption devoid of basic transparency. Databases which should match failed to do so. But whatever database the authors analysed, the number of convictions for bribery are dismally low. And even if ending in a conviction, the time taken to process the cases was very long: from reporting to sentencing it took on average 3,8 years, usually ending in mild sentencing (often on probation).

The state of corruption with an emphasis of fraud against the EU finances in the neighbouring state of Serbia is described in the chapter about Croatia by *Brendan J. Quirke*. In terms of corruption which accompanied the rise of a new Croatian elite, there are many similarities with Serbia. A combination of former war heroes, criminals and wily entrepreneurs connected to the authoritarian regime of Tudjman took over the best positions to serve their interests. Corruption did not end with the rule of Tudjman and his party. The corruptive stakes are too important and too much engrained in the tissue of the public administration to disappear with a regime change.

However, Croatia does not stand alone as it strives to be accepted in the EU family. This entails that another party, the EU Commission has come to the fore with strict demands concerning good governance, if only to protect its own financial interests. This produces an interesting picture of attempts to fulfil the demands and standards set by the EU, interacting with its 'fraud watch dog', OLAF (Office Européen de Lutte Anti-Fraude), and scandals which have come to light, which damaged European financial interests. As has been the case with other candidate countries, the process is far from flawless, which cannot be attributed to these countries only (Quirke, 2008; 2009). There were also defects at the EU side and OLAF demonstrates regularly that it is an organisation with a questionable learning capacity (Quirke, 2010). In many respects guidance and education is lacking and the Croatians are sometimes left to their own devices. How-