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THE ANTICORRUPTION JORNEY THROUGH MASQUERADES
ПРИТВОРСТВО НА ПУТИ БОРЬБЫ С КОРРУПЦИЕЙ

Abstract: In this comprehensive review article, the author considers processes of anticorruption activity in the world. Basing on the analysis of international financial crisis's consequences, anticorruption policies in different countries and particularly the United States of America (US-style plea bargaining, lobbyism and so on), the role of multinational organizations and public-private partnerships in the formation of governing coalitions susceptible to corruption the author justifies inefficiency of the modern anticorruption activity.

Аннотация: В настоящем всестороннем обзоре автор рассматривает процесс борьбы с коррупцией в разных странах мира. Основываясь на анализе последствий международного финансового кризиса, антикоррупционных мер в разных странах и, в частности, в США (таких типичных для США явлений, как сделки о признании вины, лоббизм и т. д.), роли международных организаций и государственно-частных партнерств в формировании

правящих коалиций восприимчивых к коррупции, автор приходит к выводу о неэффективности борьбы с коррупцией в настоящее время.

Key words: media politicking, anticorruption lawfare, snitches versus whistleblowers, public-private partnerships, corruption, populist (substandard) justice.

Ключевые слова: политиканство в СМИ, антикоррупционное законодательство, стукачи против разоблачителей, государственно-частное партнерство, коррупция, популистское (низкокачественное) правосудие.

Imagine a ship in which the captain is taller and stronger than any of the crew, though a little deaf, shortsighted and with poor knowledge of navigation. Sailors quarrel with one another about piloting, each supposing he ought to steer, even though he has never learned the art and can't tell who his teacher was nor prove if there was a time when he learned it. They further assert that steering isn't teachable, and are ready to cut to pieces anyone who says the contrary. On ships in state of mutiny like these how will a true pilot be regarded? Will he not be called a prater, a stargazer, a good-for-nothing?

(Plato, The Republic [1])

For Jerome Ravetz.

Introduction

To overcome deadlocks in 'inelastic' judicial institutions (specifically in fledgling democracies) and to appease publics demanding rapid punishment, governments and multilaterals have adopted ersatz anticorruption tools. These have virtually cancelled some previous efforts to improve justice systems and augment regulatory risks for corporations.

In the aftermath of the 2007–2008 financial crisis, an alternative instrument started to demarcate corruption no longer as 'economic', but as an insidious 'bug' in the organizational innards of political systems. Two goalposts were quickly established as prerequisites for success: to 'reduce complexity' and to

implement procedures bringing prosecutors and squealers over alleged corrupt actions committed by unwelcoming actors, mainly political leaders. The usual results on most occasions, however, after protracted periods of massive social, political and economic turmoil, were neither improved corruption control nor reduced local perceptions of malpractices.

More likely there were bouts of appeasement of concerns ostensibly focused on corruption but in fact more readily disposed to harass and undermine differing views. The arrangement in view was regulation through 'collective action', manifestly intended for businesses but used in actual truth by powerful sectors disposed to mutually contrive sanctions with the support of an hyper-partisan media. The modus operandi to that effect came from a criminal justice system that, despite being permanently on the brink of chaos, relies on ample resources to shape preferences through pressure and appeal, and to influence and change social and public opinion at home and abroad.

1. Of dogs and honest corruption

Men who turn means of destruction against others see themselves obliged/ forced to annihilate their victims and objects, even morally. They have to consider the other side as entirely criminal and inhuman, as totally worthless. Otherwise they are themselves criminal and inhuman [2, p. 67].

In more than a few countries recent anticorruption developments "have given rise to a real and immediate risk of collapse in security, intelligence and cooperation", [3] and contributed to plunge the economies of other nations into recession and paralyzed their fragile democracies by utterly discrediting major companies and mainstream politicians [4]. Concurrent with scandal and public execration, the struggle against politically intended *macro crimes* (illegal trusts, money laundering, embargo breaches, corruption) were used as 'means of destruction' of foes selected by the media of mass communication performing a "satanic role in the revolutionary change of perceiving the world, and in the extent to which these mechanisms can be manipulated" [5, p. 61]. The media's recurring maverick role

is dictated this time by structural elements such as "a drastic drop in sales of print media" and "an increasingly saturated market in which traditional journalism competes with less formal or professional reporting" [6]. A burden that pushed its otherwise hi-tech communication infrastructure to secure "alternative ways of maintaining market shares and attention spans through the use of sensationalism and frantic news hunting". Not surprisingly, contemporary media has become, according to the late Umberto Eco, a 'muck spreading machine'.

There is not such a thing as 'the news', newsmen create it. When it comes to bad journalism every single newspaper insists that it's a matter that concerns only the other diaries. But the home of bad journalism today is the Internet, which cannot differentiate undependable sources from reliable ones. Suffice to think of web pages and their success with reporting conspiracies and nonsensical accounts with enormous following not just from Internet users but also from influential people who take them seriously [7].

All of this does not seem to alarm multilateral organizations – UN, IMF, the World Bank – which came in recent year together on a 'mission' of demonizing corruption – because "it diverts resources from the economy and social development" – and to advance government reforms to a next higher stage: mitigating the effects of corrupt practices [8, p. 3–4]. Taxpayers, on the other hand, are warned that even though the press is biased it is not entirely "destructive" [6], provided credible sources are used and disseminated "in a professional, accountable and ethical manner, abiding by agreed journalistic codes of practice" [9, p. 160] – things which the informed public and the general population do not believe mass media of communication, small and great, are able to handle [10]. Deficiencies that have not prevented the formidable impact of electronic media and the press upon the trend of anticorruption warfare – they remain, increasingly through algorithms that make all the choices for us, a "consciousness-shaping industry" with "directional and control functions" [11, p. 99], thereby leaving many wondering if "we can ever again have a free and fair election" [12, p. 19]. Their vested

powers have less to do with the information broadcasted than with the usefulness of the 'content' (the 'piece of meat', in Marshall McLuhan's colorful depiction (1964), brought by the burglar to distract the guard dog while he plunders the house [13, p. 24]).

In other terms, structural changes are thrown out when the addressees' attention is focused in the 'piece of meat'. A circumstance confirmed by empirical research: truth, sincerity and convenience are not as essential to media credibility than the 'intelligibility' achieved through elements such as equipment, signal quality and volume, type, level and reverberation of the noise in the background, all by far more determinant to coach and influence consumer perception [14, p. 584]. Therefore, 'warning' consumers on the limits of media responsibility might not be as important as multilateral organizations want us to believe, nor does it seem so relevant to expect the press to be 'neutral' – particularly if we consider the capacity of newfangled media to 'rub and knead' readers', viewers' or listeners' perceptions in its quests for 'beneficial' responses to social, moral or political anomalies [15, p. 67]. Continuous sessions of such therapy lately ensured the media's protagonist role in increasingly fierce anticorruption campaigns – in which it stands out a capacity to produce uniform points of view [16, p. 68], mostly when problematic normative significance are questioned.

The same holds in the case of corruption, till recently approached by leading theorists as a 'functional', even hoped-for, phenomenon. As when corrupt practices are introjected into public services in the form of a 'marketing element', namely bribery, viewed as a "volunteer transaction" whose social benefits exceed its costs because it helps to bypass inefficient rules and trade rigidness. Not surprisingly, "an honest, incorruptible judiciary can increase economic efficiency by greatly reducing the amount of corruption – though it is equally important to have a commitment to free markets, workable legislative and regulatory machinery (as) to prevent economic activity from becoming encrusted with inefficient restrictions" [17]. Thus, unrestrained market forces live perfectly alongside "honest

bribery", advantageous for corrupt agents but also "free of charge" for the public at large. In a wider context, corruption may be an 'integrative' perversion that 'defragments' or 'loosens' public administration by enabling greater coordination between different departments or levels of government [18]. As when private initiative chooses corrupt practices in order to occupy urban space, creating 'real' cities over and above 'imaginary' ones, which are chimerical, existing only in licenses, official reports, plant maps, prototypes.

He who lives in 'the real' (city of) São Paulo may bump for instance into an upper-middle class allotment with 13 residential buildings, shopping malls and a sports' complex, a mix of clubhouse and gym. In the city administrative division, which determines the perfectly regular use and occupation of the urban space, you find the same 13 buildings but instead of a sports complex there is a public park, and instead of shopping malls nine small buildings for commercial and service purposes [19].

For all practical purposes the costs of 'real cities' – based on 'integrative corruption' – amount to public services permanently out of schedule in relation to demand, to seemingly endless traffic jams, and to the disqualification of public urban planning as an element of improvement of the quality of life. Economists and jurists are there who think that the cost impacts of corruption may be disregarded – for the above-mentioned magistrate for example dysfunctional corruption does not belong to the realm of private initiative; it's rather a matter of a "Congress that for a long time has been owned by the rich" [20]. To say that in the private sector there is anything remotely similar to corruption is a "blasphemy", he says, simply because giants like Google, Amazon and Microsoft list among the "best multinational corporations in the world" – one only needs to "talk and persuade them to change their actions a little and everything will be alright". Thus, since they have "never came up in my court", no one should "bother if they are monopolies" nor if there are "serious, real, and lurking problems with them". However, the reason of such nonappearance of at least one of those companies is quite clear:

During Barack Obama's administration Google hired throughout the top echelons of Washington's policymaking world. Meanwhile former Googlers occupied key positions at the National Economic Council and the U.S. Digital Service, part of the President's Executive Office. In the interim the company and its main law firms hired several people from the Federal Communications Commission and the Federal Trade Commission – the latter being an agency that has conducted investigations into the company's conduct on privacy and antitrust grounds [21].

2. Politics in tatters

Before the year 2000 bribery was considered a 'necessary evil' by most exporting countries. Of course, it was perceived as a nuisance to those having to pay, and the exporters realized that local judiciaries were rarely able to deal with it. In fact, in many instances local law enforcement agencies and judges were part of the problem. Therefore, an attitude 'when in Rome do as the Romans do' prevailed. Even companies based in countries culturally averse to bribery (such as the Nordic States) rarely saw a problem when bribing in the Third World. Lawyers in developed states helped bolster this attitude with the corresponding theory: host states of companies are not responsible for the protection of the public interest of foreign states, they said. Overall, this attitude was very much embedded in (post-) colonial thinking [3, p. 7].

The intimate relation that brings great corporations, governments and banks into a close, indefatigable association was tested during the crisis of 2007–2008, ranking North American politics and business along the most corrupt of the world. To the average American citizen however, corruption remains a phenomenon not entirely 'abnormal', probably because is not always uncouth nor done secretly; it is rather a chapter of the 'rule of game', even acknowledged as a perfectly legal feature of U.S. politics since the year 2010, thanks to a verdict of six out of eleven members of the Supreme Court. A decision apparently in contrast with a Founding Fathers' corner-stone clause on political corruption established more than two centuries ago: "it is necessary to shut the door against corruption", a provision

on which "our liberties depend – and if we strike it out we are erecting a fabric for our destruction" [22]. Yet, the heart and soul of the venerable patricians' argument had very little to do with our contemporary notion of political corruption, as the misuse of power by government officials for illegitimate private gain. What they dreaded most was the prospect of "men of little character" to acquire too much power and becoming "easily the tools of intermeddling neighbors", whose interference had to be avoided if "we ought to go as far in order to attain stability and permanency" [23]. Now, once this is achieved republican principles are no longer under threat and it becomes only natural – at least according to the majority of judges on the U.S. Supreme Court – that no limits should be imposed to private investment in politics and political parties. Therefore, that money "cannot be regarded as corruption" – quite on the contrary it must be looked upon as an equivalent to the freedom of speech; preventing such an investment should be seen as detrimental to democracy as preventing the individual citizen from taking part in politics. A decision with historical dimensions that confirmed the Court's secular intention to give to multinationals the same constitutional status of commoners – something rejected by at least 80% of the population.[1]

Five years after the 2007–2008 crises, 200 of America's most politically active corporations spent a combined $5.8 billion on federal lobbying and campaign contributions. Only they – not counting the other companies and associations which integrate the 'free market' of the country – had gotten in exchange $4.4 trillion in federal business and support [24].

Over and above the zone of market economy par excellence [of ordinary capitalism, based on competition] presides a zone of anti-market ['contre-marché'], where great predators roam and the law of the jungle operates – today as yesterday, even before the Industrial Revolution. Capitalism only triumphs when it becomes identified with the state, when it is the state [25].

1 Citizens United v. Federal Election Commission, Application No. 08-205, U. S. Supreme Court, January 21, 2010.

Academic literature also shows that, notwithstanding massive amounts of murky money transacted in domestic and external economy and in politics, the average American learns "to distinguish between examples of serious wrongdoing from those with which he/she can live", and to find a line separating "what is deliberately corrupt from what is not". In many foreign countries, but particularly in the United States citizens increasingly hear about scandals of corruption but feel "a certain degree of comfort knowing that at least these corrupt activities were uncovered, publicly disclosed in the press, and might possibly be investigated and even prosecuted and punished" [26, p. 146].

In the United States there is an overly close relationship between politician, donor, and lobbyist. What makes their quid pro quo-looking exchanges acceptable is that they are not boorish backroom examples of out-and-out bribery. They are legal. The contributions are transparent, the favors given are on record, and it is all done consistent with technical rules that restrict who can give and how much can be given. Still, it astonishes that in a country that so vigorously prides itself on being democratic, only people with access to a lot of money are able to be viable candidates for most political offices.

A curious perception of the link between politics and corruption in that democracy is the statement by a main advisor of at least three U.S. former presidents: "our democracy is a fraud"; it is a system overwhelmed by two parties and by politicians whose "household expenses, food and even beer are paid for by great corporations". A system in which "to do well, the politician needs around $200 million dollars", money a congressperson can raise by falling in good graces with their party's president who, accordingly to convenience, provides the partner with a password authorizing to entertain donors in his/hers office every afternoon. Besides those obligatory 5 hours, the congressperson must take part in cocktails, dinner parties and meetings – which conveys "a very clear message: you are a slave and the donors your masters" [27].

Politicians who do not fit in this 'normal' scheme must count exclusively on their own resources. Some of them barely make it. A case in point was William J. Jefferson's, the son of a modest family, first black member of legislative in history to represent Louisiana, one of the states with largest Afro-American contingent of voters in the country. All through his nine congressional mandates, from 1991 to 2009, Jefferson was a member of the 'Progressive Democrats of America', a political organization and grassroots action committee operating in and outside the Democratic Party advocating health care as a human right, social and economic justice, environmental protection, end of using military force and of mass criminalization, etc. Against the host party's design Jefferson was successively reelected, even after we was accused of 'corrupt acts' – that is, of summoning and organizing public workers to attend meetings and promotional events promoted by African energy, farming and communication companies. Dismissing the charges of corruption his lawyers claimed that all he did was perfectly legal, still more considering the 2010 Supreme Court decision. Even so Jefferson was convicted to 13 years in prison and remained in jail until 2017 when a federal judge finally disqualified almost every accusation and ordered his release.

As it unfolded over several years the Jefferson case set off a government battle of constitutional proportions, when the Federal Bureau of Investigation found $90,000 neatly wrapped in aluminum foil and placed in Mr. Jefferson's home freezer. A federal judge upheld the raid, but an appeals court ruled that it was constitutionally flawed and that some documents should be returned to Mr. Jefferson. The Supreme Court let that ruling stand. Prosecutors said the money was from a Kentucky businessman and was supposed to be used to bribe a high official of Nigeria, later identified as the vice president Atiku Abukaer, who denied being part of any scheme [28].

3. Focus on the vulgar and destiny

The United States is hardly a country that acts in accord with international standards, expectations or specifications of right or good conduct. It has a history

of frequent (more than two hundred) military interventions overseas and of meddling (at least 81 times from 1946 to 2000) in elections in democratic foreign nations [29]. Not surprisingly, American attitudes towards corruption or protection of human rights are unreliable – for the political elites genuine 'human' are only the rights to 'property', 'free market' and 'religion' – since the 1950s the country has consistently refused to recognize the International Criminal Court and has not ratified several major human rights' treaties (including the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social, and Cultural Rights).

Today, the United States is still not fully committed to the international human rights system. The government has yet to ratify important human rights-related treaties and opposes some forms of international cooperation on human rights such as the International Criminal Court. There are signs, however, that the United States is increasing its commitment to international human rights. In 2009, the United States rejoined the UN Human Rights Council that it helped to create and signed the newly created Convention on the Rights of Persons with Disabilities [30].

The most recurrent excuse for failing to abide by international standards is the Cold War, a tragic and mostly senseless geopolitical confrontation with the Soviet Union, and subsequently the Russian Federation (plus Cuba, North Korea, Iran, Venezuela, etc.). Cold warmongers insist that to respect human rights would put U.S. global hegemonic interests at risk – "to do good requires most of the times to commit an evil", according to a psychopath-cum-business executive and secretary of defense [31]. Yet another flimsy pretext to disrespect human rights is the proverbial American unwillingness to change domestic discriminatory laws and politics, only on account of some 'foreign' treaty. It is therefore not surprising that so many federal states have so often carry out racial intolerance and criminalized rules to the detriment of political opponents. In the 1950s,

for instance, hundreds or even thousands of Americans were penalized through trial verdicts and laws later declared unconstitutional, illegal or actionable dismissals and extra-legal procedures (informal blacklisting), etc. [32]. Human rights' violations seem 'natural' if they happen overseas and the average U.S. citizen does not recognize that they are being disregarded also in the United States – which reveals an "extraordinary ability to naturalize and accept the violation of human rights and to familiarize with it" [33].

Those amazing but rather disquieting abilities to withstand changes and to function 'as usual', reflect the workings of a social structure that organizes actions and perceptions by making social inequalities and violation of rights seem tolerable and even 'natural'. Not just the public opinion but also scholars apparently perceive with compassion abuses of rights and corrupt practices – including excesses with which the common citizen puts up with reassurance, on account that 'feelings always change', therefore something seemingly abusive today may almost without fail become 'acceptable' tomorrow – taking into account new facts, events or "manners, rules and orientations emanating from Congress, the courts and agencies of regulation" [26, p. 22]. What is more, since "not all issues are ever solved" at all times the best way to redress is to trust sound common sense and the commitment of the press to identify "violations in need of more attention, punishment and remediation".

Such a penchant to 'hand over everything to the vulgar and destiny' denotes a characteristically Machiavellian attitude ("what is bad today might be good tomorrow"), an incompetence to go through relationships or to imagine other settings, explains virtually nothing about human rights or corruption. It refers to an over-analytical propensity to bring social structures down to minute elements – denoting in particular the multilateral organizations' preference for confronting corrupt practices through 'democratic dialogue' (regulated by the media) and by means of collective construction of "a culture of transparency and accountability" [8, p. 8]. Initiatives that depend on the will of the most powerful agent,

the state – as it happened in the United States back in 1977 when an excess of bribery defrayed to public servants, politicians and foreign political parties led to the promulgation of the Foreign Corrupt Practices Act (the FCPA).[2] The idea was to keep under surveillance the accounting transparency of American companies and to suppress their paying bribes to aliens. Therefrom, under the watchful eyes of a 'Securities and Exchange Commission' (the SEC), in charge of "protecting investors, keeping markets fair and efficient, and to make the reproduction of capital less difficult", the state began to play a crucial role in the "cooperation and coordination among regulatory agencies and systems of justice all over the world" [34]. The problem however was that the commission soon became a stepping stone for those who wanted a successful career in financial markets – a reason why so many corporations' wheelings and dealings usually do not come to courts' knowledge, particularly during the Wall Street boom years.

There certainly is a problem with capture of regulatory agencies. The best example is the SEC with a particular career pattern. You go to work for a financial firm in Wall Street, do well and then go to work for the SEC, get a good job there and then go back to Wall Street, where you get a better job. The fear is that in order to have a sure path to returning to Wall Street, you better not be too ferocious as a regulator. There are other situations where working for regulatory agencies is just a stage in your career, but you have to be careful to not be too aggressive as a regulator. I don't have a sense that this happens with the Justice Department. I think prosecutors are expected to be aggressive. Aggressiveness is valued by the private sector, and when they're tired of being prosecutors they're hired to be tigers for the other side [20].

4. A shared encumbrance

In violation of United States trade sanctions for more than 10 years Barclays moved huge sums of money for enemy governments. The British bank systematically disguised the movement of hundreds of millions of dollars through wire

2 The Foreign Corrupt Practices Act. URL: https://www.sec.gov/spotlight/fcpa/fcpa-resource-guide.pdf.

transfers that were stripped of the critical information required by law that would have enabled the world to know. Yet all federal prosecutors wanted to settle the problem was a small piece of the action "Why isn't the government getting rough with these banks?" the remarkable response was that the government had investigated but couldn't find anyone responsible. In recent years, Union Bank of California, American Express Bank International, BankAtlantic and Wachovia have all been caught moving huge sums of drug money, but no one went to jail. The banks just admitted to criminal conduct and paid the government a cut of their profits. Of course, the government did a thorough investigation but could find no individuals responsible [35].

No country approvals corruption and the current trend is for anticorruption legislations to coalesce. For a time, for corporations at least, there as an outward appearance that unwanted outcomes could no longer be avoided – corruption was said to be 'inherent' to certain kinds of industry like mining, oil and gas, defense, building and engineering, all at risk of being investigated in different parts of the world. Then, it was not so much a matter 'corrupt country' than but 'corrupt industry' – the task of governments was only that of increasing their standards to fight and prevent corrupt practices, and to guarantee company accountability [36]. American experience in this respect, notwithstanding 'inevitable' careerism, imparted good examples of good practices with positive improvements. Such as predominance of 'premonitory' (symptomatic) control with the purpose of handling information about corrupt practices before and during the act, often using early warnings to take preventive action against deviance. It encouraged greater organizational accountability, stricter supervision and removal of procedures that stimulate corrupt practices. Focused on monitoring and on anticipated warning, in much the same way as in public health and civil defense, premonitory control can be more effective to prevent corrupt practices and also to repress them. Surely enough, proof and evidence obtained this way tend to be more convincing in criminal trials than postmonitory control – it is more reliable and admissible,

as a classic study on corruption in public organizations (police) had established quite a long time ago [37, p. 20–21, 120–145].

The SEC, for one, is an example of elaborated premonitory system of corruption control that instead of working in isolation listens and learns from the experience of actors in markets, specifically large corporations, from whom the system peremptorily requires updated, complete and precise information to enable safe decisions from investors, yet another source of learning and doing about certain subjects or events. Every year, with the assistance of such contributors, the SEC promotes strict measures against companies and individuals suspected of negotiating valuables using false or disorienting data. In most of these functions the Commission plays the role of main supervisor and regulator of markets in the United States, acting alongside Congress, federal offices and regulatory organizations such as state and private stock exchanges. Something said to prevail also abroad, particularly in Brazil after the enactment in 2013 of the 'Clean Company Act' (BCCA) – considered by the Commission and the Department of Justice as "more extensive" than U.S. legislation.

While largely similar to the FCPA, there are some notable distinctions of which companies operating in Brazil should be aware. For instance, the BCCA imposes strict civil and administrative (although not criminal) liability on foreign and domestic corporations that bribe public officials. A key distinction from the FCPA is that under the BCCA corrupt intent need not be proved. In addition, so-called facilitation or 'grease' payments are not permitted under the BCCA. The Brazilian law also goes further than the FCPA by prohibiting fraud in public procurement, bid rigging, and contracts with public bodies, and by covering bribes made to both domestic officials in Brazil as well as foreign officials. Importantly, the BCCA provides explicitly that companies will receive credit for compliance programs [in other words, willing to attend norms from regulatory entities in inherent aspects to their own intern control] [38].

To foreign observers, the problem is to put in action such an aspiring legislation – to be effective it depends to a great extent on authorities firmly deciding which procedures can be adopted in distinct situations. A seemingly fair reasoning, considering that despite the declared public interest on the impact of corporate corruption and the great amount of concern about its dangers, just a single process was finalized in Brazil for a considerable long time after the ratification of OECD's Convention in 2000. A substandard performance not dissimilar from other nations, reflecting an overall low commitment of governments and companies in the enforcement of laws against corporate wrongdoing is extremely low – "in contrast to the apparent consensus on management issues [e.g., the ISO standard of environmental management], there is little evidence of a de facto standard on companies' published anti-corruption commitments. Fifty-seven among the top one hundred multinational enterprises do not explicitly acknowledge the issue on their websites" [39, p. 14]. An extant possibility would to 'debar' corporations from obtaining incentives, subsidies, grants or loans from government agencies. Canada, for instance, debarred contractors from participating in government procurements for 10 years after a contractor or its affiliate has been convicted of an 'integrity offence' (bribery, extortion, tax evasion, bid-rigging, forgery, fraudulent manipulation of stock exchange transactions, insider trading, falsification of books, money laundering and acceptance of secret commissions). Outside Canada, however, it is apparently business as usual.

After the rout of Saddam Hussein by the US and its "coalition of the willing", a large-scale effort to reconstruct Iraqi facilities and infrastructure was mounted. AECOM [an American multinational] was one of the companies awarded a contract to supply the Iraqi army to the tune of US$1.1bn. An audit by the office of the special inspector general for Iraq reconstruction found that AECOM potentially overbilled or could not support more than $4.2m in costs, or 14% of the $30.6m the office was able to examine. Numerous financial irregularities and accounting problems were identified that rendered it almost impossible to reconcile costs against expenditure – creating a situation described as tailor-made

for expense padding and outright fraud. To give an example, documents showed that AECOM exorbitantly overcharged for routine items such as replacement parts: it charged $237 for a vehicle mirrors costing only $14.88, submitted invoices seeking reimbursements of $196.50 for a bag of 10 washers costing only $1.22, $10 for a 45-cent fuse, and $210 for an inner tube that was supposed to cost $24.09. Such assessed charges by AECOM represent cost inflations on cheap, commonly available items in the order of several thousand per cent [40].

It is not surprising that AECOM's malpractices in the Middle East have not prevented the company from offering, in Brazil and Latin America for example, 'environmental services", and from helping corporations, their law firms and trade associations, "to develop cost effective solutions" (hopefully not with the expertise gained in Iraq). In general, government action is flimsy, also because companies themselves have little interest in sharing concepts and vocabulary for making anticorruption commitments, notably "in areas such as political contributions, facilitation payments, gifts and entertainment [39, p. 11]. Evidence that explains why more than a few experts prefer premonitory control and come to the conclusion that there is "no way to detect corruption unless there are measures to protect whistleblowers" willing to expose government or company dishonest, illegal or unethical information or activities [41], [42, p. 5], [43]). Even so legislation passed in the United States, as a reaction to the 2007–2008 crisis, in order to improve accountability and transparency in the financial system – by means of giving whistleblowers job security and pecuniary reward – is at present under serious threat of being dismantled. The pretext is that its costs are too high to business: less than $1 billion in 2011 to almost $12 billion five years later [44]. Things are even worse in the case of government employees who dare to make disclosures – a Supreme Court decision has curtailed free speech liberties by submitting whistleblowers to an antediluvian Espionage Act (1917)[3], a "poor vehicle for prosecuting" used as a "tool of intimidation" for leakers and whistleblowers who might want to follow the examples of Edward Snowden, Chelsea Manning and Joshua Schulte [45, p. 4–5].

3 Espionage Act (1917). URL: https://archive.org/details/jstor-2187619.

Obsession for secrecy is a contagious also in Brazil where protection of official deeds greatly increased in recent years. A federal decree (Jan. 23, 2019), for example, has still thwarted an allegedly poor performance of anticorruption agencies already encumbered with "layers of legislation and regulations" preventing the application of international recommendations. Not to mention an "uncertain" capacity to recover the product of bribery, resulting from officers' poor guidance and training in matters concerning money laundering, accounting and auditing [42]. Uncertainty that haunts civil servants not just in Brazil, caused by "mountains of meaningless data" produced by dirty money tracking, predestined to collect "dust next to the already unmanageable oceans of data which banks are required to produce" for governments [46]. This aggregate of doubts and limits forced authorities everywhere to desist from supporting whistleblowers, and opt to encourage suspects to provide information about their associates in wrongdoings. Hence a "wider strategy" presented to companies by compliance specialists and multilateral agencies: corporations would take their "own share of responsibility and control over the anti-corruption agenda", whereas society (mostly the media of mass communications) "fosters, mediates, and monitors this development" [45, p. 14].

Thus, from now on the idea of corruption as a typical 'collective action problem', bringing together citizens and firms against crooked government officers, each other enmeshed in 'games' devised at first to fit opposing nuclear powers, then financial markets, and at present 'swift' criminal justice. Its better-known products, the 'prisoner's dilemma' and 'plea bargaining', proclaim benefits for all, mostly society but also the accused of corrupt practices (in exchange of incriminatory evidence about other suspects) – which is rather convenient if the 'problem' is to associate corruption with political adversaries. In the words of a member of the Brazilian Supreme Federal Court:

There is nothing a prosecutor wants more than to resolve things speedily, but there is a distance between what he wants and what the legislation authorizes.

Unfortunately, we are learning how to use plea bargaining during a perfect storm when, because of investigations into corruption such as the 'Lava Jato' [internationally celebrated anti-corruption task force known as Operation Car Wash], the public demands rapid punishment. Someone who takes a position against any aspect of plea bargaining is immediately labeled as in favor of corrupts. Perhaps at a different time this new institution could be analyzed with more calm, but this is the reality, and we need to deal with it [46].

We are introducing an institution whose historical roots are in another judicial culture into the Brazilian judicial system, which is a rather delicate process. Evidently, plea bargaining has produced results and should be preserved, but all negotiations must comply with the Brazilian constitution and laws. If not, the effect will be the opposite of what is expected, because all sorts of agreements will be made and in a short while public opinion will reject it [the new instrument] [49].

5. From control to spectacle

To overcome deadlocks in 'inelastic' judicial institutions (specifically in fledgling democracies) and to appease publics demanding rapid punishment, a few NGOs, governments and multilaterals have adopted ersatz anticorruption tools. These have virtually cancelled some previous efforts to improve justice systems and augment "regulatory risks for corporations" [47, p. 14]. In the aftermath of the 2007–2008 financial crisis, an alternative instrument started to delineate corruption no longer as 'economic', but as an insidious 'bug' in the organizational innards of political systems. Two goalposts were quickly established as prerequisites for success: to 'reduce complexity' and to implement procedures bringing prosecutors and squealers over alleged corrupt actions committed by unwelcoming actors, mainly political leaders. The usual results on most occasions, however, after protracted periods of massive social, political and economic turmoil, were neither improved corruption control nor reduced local perceptions of malpractices. More likely there were bouts of appeasement of concerns ostensibly focused

on corruption but in fact more readily disposed to harass and undermine differing views. The arrangement in view was regulation through ‘collective action’ [50], manifestly intended for businesses but used in actual truth by powerful sectors disposed to mutually contrive sanctions with the support of an hyper-partisan media.

The modus operandi to that effect came from a criminal justice system that, despite being permanently on the brink of chaos, relies on ample resources to shape preferences through pressure and appeal, and to influence and change social and public opinion at home and abroad [51]. Its most alluring promise is to ‘unchain’ the penal process and, despite of not having constitutional nor statutory bases, it offers a ‘mutuality of advantages’ that serves the interests of the accused and the courts, though notably prosecutors’ whose profession regained a lost sense of purpose and utility – expressed by a rate of conviction in 90-95% of cases [52]. Hence a prevailing notion that plea negotiation is inevitable, desirable, or both, and that efforts should be directed at improving rather than eliminating the practice. Hence a propensity to approach it as a consolidated institution, suitable for any category of crime, including the most serious ones – its supporters say that American justice would not work properly without it, although some of most qualified jurists disagree.

The Commission flatly rejects the idea that plea negotiations are needed to give flexibility to the criminal justice system and to avoid unjustifiably harsh provisions of substantive law. This Commission has recommended a reasoned, rational penalty structure. Further, if there appears to be a harsh effect, a prosecutor can alleviate the problem in hers/his selection of initial charge. To the extent that greater flexibility is desired, it should be made available as a matter of formal law, either by changes in the definitions of substantive crimes or in a modification of dispositional alternatives available to sentencing courts. [Hence the Commission’s conclusion that] as soon as possible, but in no event later than 1978, negotiations between prosecutors and defendants – either personally

or through their attorneys – concerning concessions to be made in return for guilty pleas should be prohibited. In the event that the prosecution makes a recommendation as to sentence, it should not be affected by the willingness of the defendant to plead guilty should not be considered by the court in determining the sentence to be imposed [53].

Effectively, the drive towards 'negotiation' prevails in countries where criminal codes are increasingly punitive; the American sentencing structure, for one, is harsher than any Western nation's at present. Analogous difficulties take place all around especially when certain definitions of crimes, even though obsolescent, are imposed by extremely conservative pieces of legislation in which those definitions are framed. As in the case of the above-mentioned U.S. Espionage Act, or the Brazilian legal concept of 'criminal organization' – law no. 12.850/2013, based on a magic figure of 4 or more individuals "structured ordered and separated according to a division of work, for criminal purposes". The statute is retroactive to the 1930 Italian fascist penal code, whose terms are still to be found in every candid definition of 'systemic' (widespread, pervasive, entrenched) crimes – including corruption rooted "deeply in bureaucratic and political institutions" and seen as "routine in dealings between the public sector and firms or individuals" [54]. Actually, a rather flimsy perception in the light of more up-to-date legal understanding enlightened by criminological research –the New York Penal Law § 460.20, for example, mentions uniquely '*enterprise* corruption' in connection with white collar or organized crime, whereas the Supreme Court requires a 'continuity [long-term] plus relationship' clause, making clear that there are associations which "include, but extend well beyond those traditionally grouped under the phrase 'organized crime'" [55]. Therefore, the best alternative today – regrettably not yet a priority in most countries – would be using a comparative perspective to reshape the "wrongfulness [existence of intention to indulge in an enduring criminal lifestyle] and the dangerousness of organized crime groups within society and economy of a country".

On the other hand, definitions frozen in time, tainted by symbolic measures, are as inadequate to apprehend ongoing phenomena as Woody Allen's 'explanation' for organized crime: a business capable "to move more than 40 billion dollars per year and at the same time spending very little in stationery". From another standpoint, Italian criminologists have for long discerned organized crime and corruption – even when the latter is 'systemic' or 'organized' – as phenomena quite dissimilar [56]. "Contemporary mafias corrupt but are not mafias in a classic historical sense; organized crime, on the other hand, is not mafia since it does not intend to establish a primarily organic relation with political power, which is a mafia's archetypal feature" [57]. Dissimilarities seem to be even greater as far as politics is concerned, even from a human existential perspective.

It is difficult for a politician to become a 'man of honor'. There is a strong sense of mistrust in Cosa Nostra towards politicians because they are treacherous, they do not keep promises, and they are sly. They are people who break their words and are without principles [58, p. 208].

This statement by the mafioso state's witness Antonino Calderone, unintentionally sarcastic, touches a very important aspect. Contrary to a common belief, the Mafia and corruption are completely separated phenomena when considered analytically. They are discrete 'businesses', dealing essentially in different commodities: private protection, on the one hand, property rights on political rents, on the other. This explains the obsession of the mafiosi, as arbitrators in controversies, for respecting the given word […] The unscrupulous attitude of politicians on this point cannot but arouse contempt. There is only a limited ground for potential interaction, a common market where both Mafia and political protection can be offered simultaneously [59, p. 236].

Despite the difficulties of interaction and dissimilarities of 'markets', to function and continue to run on their own terms, without having to answer to anybody but themselves, companies – business elites, to be precise – have increasingly resorted to Mafia-like routines [60]. *Et pour cause*, since resources count

as ever more than votes, so that business "communities" stand by far the most powerful actor in any political scene. A kind of autonomy that, in late 20th and early 21st centuries, stood uncontested thanks to long-term contracts of 'cooperation' between public sector authorities and private parties for infrastructure provision: 'public-private partnerships' (PPPs or P3) in which the notion 'cooperation' denotes precedence to 'parts' rather than 'partnership', in so far as most or all of the income risk is borne by the public sector. The scheme waned significantly since the fateful crisis of 2007–2008, after being a tool for establishing 'governing coalitions' susceptible to corruption and conflicts of interests [61, p. 148–149], at various levels of government, offering business elites a gateway to political influence and never-seen-before ways to concoct political consensus.

There have been PPPs of various amplitudes, involving project design/financing, construction, operation/maintenance, and even ownership by private companies, but the most far-reaching model, also a "fertile ground for corruption", used with the aim to "jump from billions to trillions", was devised by the World Bank. In 2011it proclaimed that its arm in the private sector, International Finance Corporation, was "providing an innovative US$ 50 million partial credit guarantee" to a longstanding client, the construction giant Norberto Odebrecht, in order to "support the development of infrastructure in Brazil and other Latin American countries". Almost immediately, those funds were multiplied by a factor of 40, as IFC communicated it would support Odebrecht up to US$2 billion – the initial 50 million were used to assure to further squeeze up to US$ 250 million in surety bonds, directly supporting up to US$ 2 billion in construction contracts in sectors such as power, water, roads, ports, airports, and irrigation.

The alliance between the World Bank and Odebrecht was so successful that a few months after this announcement, in July 2012 the IFC tested with the same construction firm a new model of public-private partnerships (PPPs), now aimed at education. Additionally, Odebrecht and four other construction companies (Camargo Correa, Andrade Gutiérrez, Queiroz Galvao and OAS Construction)

received billions of dollars from the Brazilian development bank BNDES to expand their operations in Latin America to Africa. While the model expanded fast, in 2014 a small department of the Brazilian federal police was starting the code-named 'Lava Jato' operation to investigate these five companies. For the meantime, José Luis Guasch, an economist formerly at the World Bank remarked that 78 percent of all transport PPPs in Latin America were renegotiated with an average of four addenda per contract and a cost increase of US$ 30 million per addendum – contract changes that can be "fertile ground for corruption". There was abundant research on the matter available at the World Bank in the first decade of this century to warn about the potential negative effects of PPPs. "Everyone knew that Odebrecht was doing this […] collusion was clear from the beginning", said Christopher Sabatini, a lecturer at Columbia University's School of International and Public Affairs; it was only logical that corruption might be embedded in the model. When you have a firm that leverages public money to raise private money (e.g., from US$ 50 million to US$ 2 billion) and it only has one possible client (government), the temptation to influence that client through non-orthodox means might be too big. Yet, the World Bank not only went on with the model, expanding it from Brazil to all of Latin America (and in the process severely undermining incipient democracies) but even after the 'Lava Jato' scandal, it decided in the spring of 2017 to accelerate the global push for PPPs, with the aim of jumping "from billions to trillions" in infrastructure funding, following exactly the same 'innovative' model first tried with Odebrecht in 2011. Meanwhile in Brazil, 89 politicians and business people were convicted, sentenced to total of more than 1,300 years of prison time. Similar investigations were only starting in other affected countries. But the World Bank needed not fear. According to the country agreements that the Bank requires before operating anywhere, its officials are immune from prosecution by the host government [62, p. 154–156].

In the meantime, a bureau of moral endeavors was manifesting the intention to evaluate foreign firms based in Brazil and persuade them "to adopt increasingly

high patterns of transparency". A project to make corporations more accountable in the eyes of the domestic market and society, in point of fact a forlorn hope since – while the bureau proclaimed that "we all must appraise corporate ethic conduct, more so we have the duty to impose an obligation on corporate promises to be carried out"– most Brazilians (83 percent, the highest among 78 countries) [63] believed that only "individuals can make a difference". Oddly enough, popular idiosyncrasies were the decisive factor to change a routine police investigation into a party-political jihad and plea bargaining into a fetish, in what heedless of consequences that same bureau went on to call as the "biggest corruption scandal in history".

At first, the press described it as the biggest corruption scandal in the history of Brazil; then, as other countries and foreign firms were dragged in, the world. The case would go on to discover illegal payments of more than $5bn to company executives and political parties, put billionaires in jail, drag a president into court and cause irreparable damage to the finances and reputations of some of the world's biggest companies. It would also expose a culture of systemic graft in Brazilian politics, and provoke a backlash from the establishment fierce enough to bring down one government and leave another on the brink of collapse [4].

Scandal is a social reaction to a violation of socially invested trust in an institution or role. Societies seem to invest more in those roles and institutions closer to the center of the society. Such central institutions as law, government, and religion symbolize the identity of the society itself. Deviance in these central positions suggests something negative about the entire society, something the society may be unwilling to accept. It suggests that the society itself is deviant from its own standards of conduct. The unacceptability of this suggestion may be the source of the social outrage that is scandal [39, p. 61–62].

In Brazil, since 2014 conflicts of diverse nature have been exposed through reactions of affront and denial, converted by the media of mass communication into public displays of information and anger, the most preferred of which were

the revelations of bribe schemes resulting in "condemnations totalizing more than thousand years of imprisonment" [63]. No mention of the impact of convictions on effective corruption control, apart from comments on "much work remains to be done" to implement "wide-ranging reforms on the country's political system" [64, p. 8–9]. In the case of business, on the other hand, the actions recommended should never be punitive, but in order to prevent companies from becoming a focus of bribery solicitation by corrupt government officials. A questionable feeling that companies "wish to escape from the trap of extortion" and "desire to earn recognition for their efforts to comply" [47, p. 14]. In another context, China, the punitive logic is preached and used more extensively, though up to a 'standard': the severity of a sentence varies according to the growth of national product – before 2016, those found guilty of receiving 100 thousand yuan of bribe were put to death; today, to face a firing squad someone must have embezzled at least 3 million yuan [65].

6. Disastrous choices

Such inconsistencies bring to memory a number of anticorruption tsunamis that brought many societies in disarray in name of 'good governance', 'transparency' and 'responsibility', which have in fact used corrupt practices as a pretext to repress political opponents. Circumstances old and new in which the purposes of morally flexible 'men of good will' evolved to become serious risks for social, economic and political stability – all the same their strategies were replicated and caused crippling damages to governments democratically elected, by means of:

1) encouraging a perception that politicians and basic democratic institutions are irretrievably corrupt, and in that way disseminating discontent and occasions for populist solutions;

2) obstructing resistance against authoritarianism by distorting and vulgarizing political debate, validating depoliticization and obsessive searches for 'pure' and 'honest' simple remedies for difficult problems;

3) sowing generalized skepticism about the feasibility of democracy and citizens' empowerment wherever corruption is 'systemic' or inherent to politics thereby resolved uniquely through muckraking, persecution and punishment;

4) bragging on anticorruption being the ultimate roadbed towards good governance, but actually a pretext to excoriate political opponents and endorse inequality, oppression and privilege [66].

The anticorruption struggle in new democracies of Asia, for example, after years of social conflicts, economic crises and political stagnation, served as an excuse for coup d'états. In terms of corruption reduction, however, the results of so much suffering were "minimal"; freedom of speech and the space of civil liberties diminished, forcing moral entrepreneurs to recognize that it would have been better "to put statistics, methodologies and classifications aside" and give priority to changes that countries really needed [67]. Such were the changes that those countries were promoting before the anticorruption struggles started, creating an unwholesome environment which precluded transformations. Conspicuously since 2013, when it began a systematic assault at democratic elected governments prone to financial and political influence from China and Russia, but also at others prone to "move more rapidly to carve out their own regional spheres: Turkey in the area of the old Ottoman Empire, Brazil in the Southern Hemisphere, and so forth" – none of them, however, would have "the requisite combination of economic, financial, technological, and military power even to consider inheriting America's leading role" [68].

And as the world after America would be increasingly complicated and chaotic, it is imperative that the United States pursue a new, timely strategic vision for its foreign policy – or start bracing itself for a dangerous slide into global turmoil.

The anticorruption struggle was an element of this "new, timely strategic vision" for the imperial foreign policy. Much as in the same way as human rights were used earlier as a means with the purpose to remove corrupt nationalist

military regimes in the Third World and replaced by corrupt, unassuming parliamentary forms. Yet, under the new circumstances, corruption would no longer be an economic issue but an asset for semi-scholars and semi-strategists to operationalize for multilaterals organisms like the World Bank.

The World Bank Group considers corruption a major challenge to its twin goals of ending extreme poverty by 2030 and boosting shared prosperity for the poorest 40 percent of people in developing countries. In addition, reducing corruption is at the heart of the Sustainable Development Goals and achieving the ambitious targets set for Financing for Development [69].

It is astonishing that, however, such a powerful organization, staffed with technical and political cadres of proven competence, took so many decades to realize that corruption was a "major challenge". As a matter of fact, it only became aware after the media transformed sudden street protests against into public performances of remarkable nature: the raise of electricity bills in Bulgaria and bus fares in Brazil, the construction of a shopping center in a public park in Turkey, taxation of the Internet in Hungary, a project of a general amnesty law in Thailand, alleged telephone tappings in Macedonia, payment of taxes in Moldavia, restrictions of media coverage of parliament sessions in Poland, Ukrainian government refusal to accept a 610 million euros loan from the European Union when Russia offered cheaper gas and 15 billion, etc.

Previous in time, the world was shaken by the end of multilateral organizations' honeymoon with a fanciful image of 'market', as hundreds of billions, probably trillions, of dollars of public money were made available to help banks and businesses from the consequences of their 'corporate free-marketism'. From then on American public opinion got accustomed to president Barack Obama being depicted as "the true CEO of General Motors", whilst another world leader, unloved at all times by "many international financiers, markets and Wall Street" [70], the Brazilian president Lula da Silva, when rebuffing those who blamed immigrants for the crisis, became the system's bogeyman – on account of launching a "bizarre tirade":

No black man or woman, no indigenous person, no poor person had been in any way culpable for the global banking crisis. The crisis was fostered and boosted by irrational behavior of white, blue-eyed people that previously seemed to know everything about economics, but who now have demonstrated that they don't know anything about it. The part of humanity that's responsible should pay for the crisis [71].

Government bailouts, to rescue corporations or countries that otherwise would be on the brink of failure or bankruptcy, were precisely the opposite of what the World Bank and other multilaterals recommended. Not long before that, WB experts regretted that governments and taxpayers were shouldering "the direct costs of banking system collapses – these costs have been large: in our sample of 40 countries governments spent on average 12.8 percent of national GDP to clean up their financial systems" [72, p. 3]. Not surprisingly therefore Lula was asking for "tougher regulation" of the financial sector, even though his resentful faultfinders claimed that "gave governments the chance to create a bigger state". The president also reprimanded the media for being discriminatory and for demonizing, immigrants in particular, "most of whom", according to him, "do not share the fruits of globalization, but, on the contrary, are its first and utmost victims". Those harsh remarks aroused yet another chip on his shoulders from those who "seemed to know everything" but were caught in "ideological precepts"; hence their pangs of conscience when obliged to recommend market regulation through *good governance* – the "key to overcome challenges related to security, growth and equity" [69]. And yet there was another 'key': the struggle against the 'source' of all evil, corruption, which had to be confronted no longer at the level of public management or financial administration, but in the internal organization of the political system and at the level of relations between business, the state and civil society. Anticorruption became thus an industry, a never-ending endeavor of creating 'myths' that include fighting through "yet another anti-corruption campaign, the creation of more anti-corruption commissions

and ethics agencies, and an incessant drafting of new laws, decrees, and codes of conduct" [73, p. 88].

Multilateral organizations, at least as far as corruption and governance are concerned, exist so that the 'international community' can have a determining say on how individual countries, except the United States, are managed and controlled. Thus, while the World Bank endorsed Brazil's good practices in initiatives such as WWP ('World Without Poverty') [74], the country was questioned by the IMF for leaving social expenses outside the calculation of fiscal deficits. Once again, this time by claiming that a 'new regional sphere' was bypassing fiscal goals, controlling currency and fixing the inflation rate, those 'who know everything' prefigured that the country was making "wrong choices" – by departing from the 'spirit' of good accounting, in a manner similar to the 'creative accounting' engendered earlier by Enron Corporation and Arthur Andersen LLP.

Meanwhile, real unfortunate choices were on the making in the legal systems of Brazil and those of other nations, as since 1990 juridical aberrations started to be transplanted from their home country where they are considered "inherently unfair and irrational, and objectively irrelevant if compared to any other appropriate penal procedure" [75, p. 652]. A remarkable consequence was the improper definition of corruption as 'organized crime' – a reflection of the ongoing cycle of fear and distrust of global influence in which corruption emerges as a 'universal evil', another 'systemic octopus', such as drug trafficking, spreading tentacles everywhere. Affected by those stereotypes new Brazilian legislation, for example, has encouraged an idea of existing 'criminal organizations', Mafia-like oligarchies that hold monopolies led by 'Number Ones'. Those are in fact mere allegories that cannot portray organized crime ("several republics randomly interacting in an international division of criminal labor" [56] satisfactorily. Corruption, on the other hand, tends to be 'systemic' seemingly only once embodied deeply into an institutional texture:

Corruption gives rise to networks in which superiors tell subordinates how and when engage in corrupt practices. An obvious case was that of a young woman just appointed to work in a major executive division of a government. Still exulting with her personal accomplishments, she received her first paycheck but noticed that there was half a salary in excess. Astonished, she asked her boss what could have happened and how to return the money. Fatherly, the man told her to calm down and that the money was all hers, she could keep it. He also said that she would receive more every month provided she followed additional instructions from 'higher up'. What he didn't mention she discovered soon afterwards: that by failing to comply with those instructions she would not only cease from getting extra deposits, but would most certainly be transferred to a remote area or be forced to resign [76].

However, this is not all considering that experts may identify corrupt practices only in the public sector, whereas in the preferred term are 'fraud schemes' focused – in case of corporate fraud – on falsification of financial information, self-dealing by corporate insiders, or fraud in connection with an otherwise legitimately operated mutual hedge fund. They are a matter of fairly organized deception in absence of corruption or violence in which 'outsiders', criminal groups or firms lure inside a company with intent to facilitate crime, launder money or in some way take advantage of it.

The line between 'complicity' and 'corruption' is blurred and is a matter of interpretation. Notaries [for example] can abuse their position by helping shield criminal activities and their proceeds. They (but more often law-firms) could act as fronts to criminal companies, allowing these for instance to use their address as an official one. Various court experts are usually – employed by the defense or courts to provide expert assessment on evidence – also susceptible to corruption. A main reason why criminals corrupt company staff refers to cases when they intend to abuse the company for their own financial gain. Here the most frequent type of fraud refers to cases where a purchase or procurement officer

purchases a service or product that is not in the best interest of the company owners. The officer, though, receives a kickback [77, p. 120].

7. Prisoners of the journey

Enthused by over 300 condemnations and almost 3 thousand years of aggregated prison sentences, attained earlier by the 'Maxiprocesso di Palermo', a maxi-trial in Italy (1986–1987) against the Sicilian Mafia [78] Brazilian jurists built a chaotic picture of symbolic laws, less useful by their real value or utility than as tools to promote agencies whose power, "heated by the flame of personal vanity, tends to infinite" [79]. Hence the importation of a 'new' model of investigation, which despite having no legal or constitutional base (Supreme Court, Brady v. United States, 1970)[4] is the determining factor to penalize 9 out of 10 suspects of crime in the United States – regardless of deficient complaints or if the accused, even innocent, will spend many years in jail. The only solace, to an embittered Supreme Court, is to discern plea bargain as a relief for the American penal system, made more 'flexible' thanks to a negotiating element with 'mutuality of advantages' for defendants and the justice system. The tool is truly a 'safety valve' for a system in an apparently irreversible critical state, from where it pops out as "the only factor between the administration of justice and the utter chaos".

Without this practice, every defendant charged with an offense, however serious or benign, would have to go to trial. With the current resources, a person arrester today might have to wait a quarter of a century for his or her case to come up. Aside from expediency, however, the 'virtue' of plea bargaining for both the defendant and the prosecution is that it eliminates uncertainty – all sides generally prefer to opt for a 'sure thing'. On the negative side, however, there are individuals innocent of any offense who would rather plead guilty to a negotiated offense than face the possible consequences of an adverse verdict. Alternatively, with the increased emphasis on drug control and the greater number of drug-related offenses reaching the courts some argue that plea negotiation is being

4 Brady v. United States, Application No. 270, Supreme Court, May 4, 1970.

misused. More specifically, it is claimed that in a number of jurisdictions an overuse of plea negotiation to relieve court backlogs has resulted in a near decriminalization of certain crimes. Although prosecutors can boast high conviction rates, the majority of felony cases result in reduction to misdemeanors and/or sentences of 1 year or less [80, p. 350].

In an entirely different legal context, where "negotiations must comply with the constitution and laws" – if not, "the effect will be the opposite of what is expected" [49] – the same stratagem has been presented as a factor of change. In fact, used on the assumption that corrupt practices must be punish speedily – those who take "a position against any aspect of plea bargaining are immediately labeled as in favor of corrupts" [48] – it misrepresents vital concepts such as offense, process and proof, downplaying their implications and value requirements. Reduced to an essentially political phenomenon corruption is seen as an element of a globalized cycle of fear and distrust regarding the liberal democratic system's functions, values and pledges. Subject matter of negative feelings intensified with the 2007–2008 crisis to which the system relapsed after a brief period of recovery in 2015, this time taking Brazil with it.

Research reveals the largest-ever drop in trust across the institutions of government, business, media and NGOs. Trust in media (43 percent) fell precipitously and is at all-time lows in 17 countries, while trust levels in government (41 percent) dropped in 14 markets and is the least trusted institution in half of the 28 countries surveyed. The credibility of leaders also is in peril: CEO credibility dropped 12 points globally to an all-time low of 37 percent, plummeting in every country studied, while government leaders (29 percent) remain least credible. Fifty-three percent of respondents believe the current overall system has failed them – it is unfair and offers little hope for the future – while only 15 percent believe it is working and approximately one-third are uncertain. Even the elites have a lack of faith in the system, with 48 percent of the top quartile in income, 49 percent of the college-educated and a majority of the well-informed (51 percent)

saying the system has failed. The gap between the trust held by the informed public and that of the mass population has widened to 15 points, with the biggest disparities in the U.S. (21 points), UK (19 points) and France (18 points). The mass population in 20 countries distrusts their institutions, compared to only six for the informed public [81].

The systemic crisis resulted in destabilizing collisions in which both public and academic opinion seemed to have assimilated time-honored reductionist notions: Aristotle's 'constitutional deviations' (from middle-class rule), Machiavelli's 'degradation of virtues' (weakening of social/civic behavior, and propensity to vice or perversion – hence, 'corruption' with doctrinal connotations), and Montesquieu's 'perversion of political order' (partisan administration of law = perversion of law and denial of the rule of law). On these views depend most recent views of 'degenerative processes' affecting basic political structures and leading astray the capacity of citizens to bind themselves to the common good [82]. An historical recurrence led Sigmund Freud [83] to identify collective scenarios of anxiety and discontent, and their pathological consequences in the shape of feelings and dissolution of links with society and universe.

At present, Freudian cycles display worries and hassles somewhat diverse from older days, in which they were the offspring of excessive craving for balance and control [84]. Now they are portrayed as 'devilish incarnations': the 'corruption' (found everywhere), the 'globalization' and the 'immigration' (threatening economy, culture and safety), the 'erosion of values' and the 'pace of innovations' (exceedingly branched out and fast for certain people and cultures to follow and assimilate, so they are likely to be rejected forthwith). The first and last of these are precisely the avatars that have made Brazil, for example, one of the most unease nations of the world. For that matter, the most disbelieving countries, by order of lack of faith, are France, Italy, Mexico, South Africa, Spain, Poland, Brazil, Colombia, Germany, England, Australia, Ireland, USA and Netherlands. In them the 'loss of trust in the democratic system' is expressed through

(a) feelings of injustice (the system favors increasingly richer and indifferent elites); (b) hopelessness (hard work no longer compensates, new generations will not live better in future, governments are not taking the correct decisions not going in the right direction); (c) lack of confidence in existing leaderships; and (d) yearning for reforms (which only unwary populist leaders can conduct – confirmed by the profile of some present-day heads of state). [85]

It is no surprise therefore that in Italy – one of the nations most affected by 'degenerative processes' in last decades – has emerged during the 1990s a paradigmatic set of assumptions, concepts, values and practices of *anti-avatar intervention*: a nationwide judicial investigation known as (the internationally celebrated anti-corruption task force) 'Mani pulite'. The lives of leading politicians were scrutinized, 500 congressmen and thousands of public officials were sent to jail, and four traditional political parties in government eventually disappeared. In the first elections after the close of the operation, 91.8% of voters declared that, after unemployment, corruption was for certain the most important national problem to be resolved. Twelve years later, however, only 0.2% of voters said the same; the extensive scenario of corruption persisted and there wasn't any more public opinion interest on debating anticorruption measures. None of the involved in corruption scandals remained in jail and from the thousands involved, at least a hundred returned to public office. So much disheartenment that the main judicial figure in charge of investigations, judge Antonio Di Pietro, himself recognized that in future "there shall be in history books only a single line about Mani pulite" and even so not necessarily the correct one [86].

The Mani Pulite inquiries, it now seems, had only a short-term impact on corruption. The overemphasis on the role of magistrates, to whom civil society after 1992 delegated the task of renewing the political class and purifying the whole system, turned out to be a boomerang. Its political legacy has been an escalation of institutional tensions been political powers and the judiciary. Its social legacy has been a deep-rooted pessimism concerning the integrity

of political and economic elites; a delegitimation of almost all institutional authorities; reinforcement of the widespread tolerance of illegal practices. Its economic legacy has been a blurring of the lines of division between the market and state activities; deregulation and the emergence of mixed public/private arrangements in the delivery of public services, especially at local level; a multiplication of conflicts of interest due to the political careers of entrepreneurs, and the entrepreneurial vocations of politicians – factors which have made corruption more difficult to detect and sanction. The Mani pulite inquiries courageously exposed, but could not solve the issue of widespread corruption in Italy. An enduring improvement in the quality of public ethics would have required the specific interest and consequent action of leading political actors, or strong and enduring social support for an anti-corruption agenda. Neither condition, however, has ever been realized [87, p. 258–259].

Today, Italy ranks among the countries where institutions are less trusted; the disapproval of government institutions in particular remained above 70% during the last decade. In Brazil – where Mani pulite still is considered a "most impressive" and successful judicial crusade [88] – confidence in official institutions began to collapse in 2015, and is at present, on equal footing with South Africa, Spain, Argentina and France, one of the most distrustful publics of the world. Meanwhile, mainly in Germany, U.K., U.S. and Australia, trust rates in government are similar to Italy, although, differently from Italy, public opinion remains confident that Mani pulite (with the addition of 'plea bargaining') remains a 'world paragon', the most gifted contrivance in the world struggle against corruption. With the exception, yet again, of the United States, where at least according to an American judge, "it wouldn't be appropriate to threaten to put someone in jail solely with purpose of extracting from him/her a negotiated charge of a felony. No judge would ever agree with it" [89].

In the intervening time, the World Bank prompts its clients to adopt 'anti-corruption' and 'good governance' as top priorities. The bank cries it out, but has

in point of fact for long practiced exactly the opposite, in accordance with which forcibly destabilizing young democracies with 'innovating' projects which indeed constitute breeding ground for corrupt practices and bad governance. All done with a sense of redemption under a salvationist atmosphere achievable through "spells of purification and exclusion" [90, p. 7] – characteristic of the 'new' standard instrument of investigation (plea bargaining) used, for example, in the case of the CEO of Latin America's largest construction company. Accused of gross corruption, he had his sentence enormously reduced and modified to house arrest in exchange for incriminating political parties, former presidents and several of his African and Latin American associates. Until then, he was greatly instrumental for a World Bank's smart money scheme to accelerate a global push for PPPs, aiming at jumping 'from billions to trillions' in infrastructure funding. "A fertile ground for corruption", according to experts, and of which the bank was entirely conscious.

But the World Bank needs not fear. According to the country agreements that the Bank requires before operating anywhere, its officials are immune from prosecution by the host government [62].

8. The new standard

The adoption of US-style plea bargaining has reached 'epidemic proportions' as more and more countries persuade defendants to plead guilty and renounce traditional trial rights, a survey of international justice systems warns. The study of 90 countries by the human rights organisation Fair Trials reveals that use of such procedures has increased by 300% since 1990, boosting, it is alleged, the risk of miscarriages of justice. The US model has been the ideological inspiration for adopting trial-waiver systems worldwide, the study notes. The US government has provided development funding and technical support for rule of law projects, primarily through the Office of Overseas Prosecutorial Development and Training (OPDAT) sending out American prosecutors to train foreign judges and lawyers. Fair Trials says that use of trial waivers in some

countries has skyrocketed over the course of a few years because they are promoted as providing a more efficient form of justice. In Georgia, 12.7% of cases were resolved through plea bargaining in 2005 but that figure had soared to 87.8% of cases by 2012. In Russia, deployment of plea bargaining deals shot up from 37% in 2008 to 64% in 2014. In the first instance courts in Chongqing, one of China's major cities, use of 'summary procedures' – equivalent to trial waivers – increased from 61% in 2011, to 82% two years later. In South Africa, the number of similar 'plea and sentence agreements' increased by a third in 2014–15 [91].

There is apparently no allegory more appropriate for contemporary anticorruption 'pyramids' than Plato's 'ship of fools'. In his *stultifera navis* crewmen are constantly involved in conflicts; their misconduct and frequent abuses compel passengers to accommodate and even to take their attitudes as exemplary deeds. In Brazil, the political party of former president was chosen to be the main target of persecution, even though it had been the leading organization in the country to advocate and adopt of an internationally-recognized anticorruption bill. However, the statute soon sunk in a quagmire of pious feelings towards the judiciary as "fully capable of sorting things out and to evaluate the rationality of the legislation's consequences" [92]. Therefore, when that same politician was arrested on disputatious charges of corruption, he insisted in saying that "Operation Car Wash" was not a masquerade [93], so he was "not against" its focus on anticorruption. And as if that wasn't enough, persuaded that corruption should be dealt with imprisonment, as in Brazil, or capital punishment, as in China, Laos or Iran, he, one of the greatest grass roots leaders of all times, insisted that "bandits should always be caught and arrested" [94].

Keeping up the Platonian metaphor, in a previous article published in Russia [95] the author recapped Herman Melville's famous description of an insane hunting with no map or direction that, just like our anticorruption struggles, ended up adrift. In this paper he understood that, as acknowledged by Melville himself in his last book [96], the crux of the matter is not a 'whale', but a 'ship' that raises

anchor on April Fool's Day for a journey in which all on board will be brought face to face with everything they trust and belong.

Locked in the ship from which he could not escape, the madman was handed over to the thousand-armed river, to the sea where all paths cross, and the great uncertainty that surrounds all things. A prisoner in the midst of the ultimate freedom, on the most open road of all, chained solidly to the infinite crossroads. He is the Passenger par excellence, the prisoner of the passage [90].

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