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Jan-Erik Lane

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University of Geneva, Switzerland

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The Political Economy Inquiries Vol.1

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Dedication

To the memory of

Aaron Wildavsky

University of California Berkeley

Foreword

It is possible to present a brief summary of the subjects that the chapters in this book focus on.

Ch 1. The principal-agent models may be employed to elucidate central problems in interaction between principals and agents in both policy implementation and public policy-making concerning performance and remuneration. One then hits upon the double principal-agent relationships that are typical of the policy cycle, from policy-making to policy implementation and back: 1) government as principal for agents in public service delivery; 2) the population as principal for political agents under various forms of rulership.

Ch 2. Today there is a set of well-ordered countries to which many people would like to move. What is their advantage? Reply: they are well-ordered in the public and private sectors adhering to the Keynesian model of a mixed economy.

Ch 3. The Republic of Fiji Islands has been under military rule since December 2006. Yet, the regime of Frank Bainimarama is not really like any other military regime in the world, nor does the 2006 coup resemble the earlier military interventions in the country. It is attempting development without freedom, but can it succeed? It is important to recognize that dictatorships can be of very different kinds. What happens with the Bainimarama

regime will have a major impact upon the Pacific scene, not only for the Fiji Islands but also for the Pacific Forum and the role of China in regional integration. And the course of future events will depend much upon what strategy Fiji's strongman chooses and what kind of constitution is put in place.

Ch 4. Political systems allocate values authoritatively, stated David Easton in a few major books. The allocation of public services and distribution of transfer payments make up the public sector which everyone is bound by. The structure of authority has strong impact upon two values, freedom and equality. It is the outcome of the profound principal-agent game that is the core of politics.

Ch 5. The development of theories of asymmetric information and of opportunistic behaviour is very important for understanding the increase in so-called affairs in capitalist democracies. The frequent occurrences of economically immoral behaviour in state and society call for more refined inquiries into various types of cheating and bluffing. Traditional economic theory only covered monopoly and collusion, but realistic political theory acknowledged the relevance of immoral activities. Here we reject the naive approach, calling everything "corruption" and calling for moral rearmament to build up something as diffuse as "social capital". Distinguishing between petty and big corruption is the key for modelling economically immoral behaviour comparatively, as well as separating between defection, corruption, looting and bluffing.

Ch 6. More than half of the countries on the globe are dictatorships. What drives the dictator and his or her entourage is the quest for money. The standard wisdom says power, but it only applies to rule of law countries, i.e. the democracies. The politics of looting is more pervasive than the theory of power entails. This article examines the mechanisms of a dictatorship. The article concludes that the remuneration of politicians may get out of hand. This is very much the case when looting occurs. It is feasible in any dictatorship - actually its main reason.

Ch 7. Looting typically stands for mass riots and civil unrest resulting in shop looting. However, we can in a fruitful manner broaden the concept to include the management of

embezzlement in the state. It is not the same as corruption. And it drives dictatorships

Ch 8. Swedish sociologist and Nobel laureate Gunnar Myrdal focused on Asian poverty in his major work *An Asian Drama* (Myrdal, 1969). Now after fifty years of rapid economic development it is time to inquire into institutional performance and well-ordered societies. The measuring rod - rule of law - has no basis in mainstream Asian philosophies: neither Hinduism or Buddhism nor Confucianism or Shintoism.

Ch 9. The social sciences know three great founders: Marx, Durkheim and Weber. My candidate for number 1 is Weber, because he mastered both the micro and the macro.

Ch 10. Max Weber became famous for a number of macro theories but his long lasting contribution is his *Wissenschaftslehre*.

J.E. Lane

Switzerland

November 15, 2022

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1 The principal-agent approach and public administration

Introduction

In a world of politics based upon perfect and symmetric information, an imaginary world of politics along Downs' 1957 well-known model of two-party system competition in a presidential type regime, the demos as principal would contract with the correct politicians as agents, promising the making of the policies that majority group in the principal favours. Politicians would be paid a decent salary, somehow above their fixed reservation price. But there would be no need for rents or quasi-rents. Politicians who performed better in terms of a goal like for instance affluence or GDP growth would be favoured ahead of politicians who performed badly, the re-election mechanism doing the selection of agents for the demos.

Given perfect knowledge, voters would pick political agents on the basis of the proximity rule, minimising the policy distance between their own political preferences and those of the politicians in government and the legislature. Thus, radical left-wing leaders like Lenin, Stalin or Mao would not be chosen

in free and fair elections, when the electors would know about their hidden agenda. Right-wing leaders like Hitler, Mussolini and Franco could only be chosen in the first election before their hidden agenda had been revealed to the population, having then experienced the emptiness of national chauvinism.

Principal-agent games under perfect information would resemble the referendum democracy or a representative regime with imperial mandates. In a two-party system in Downs' model, the principal would elect the agents they want, pay them in a straightforward manner as well as receive the policies they prefer. With no rents, opportunism would not work. Besides, one may assume that politicians in these games are driven by vocation, as with Max Weber's model of the ideal agent politician.

The same—first best solution or perfect equilibria—would be found in the implementation of policies under perfect and symmetric information. The government as principal would hire a set of bureaux to do the job, i.e. provide a set of public services. These bureaux would be paid a decent remuneration, hired on long-term contracts with promise of predictable pension in order to make sure they develop expertise on policy matters. Given a sharp distinction between policy-making and policy implementation, the bureaux would focus their attention upon the means to achieve goals, maximising efficiency and effectiveness in policy technology as well as neutrality in politics, along lines suggested by Weber's ideal-type model of the bureaucracy.

The introduction of asymmetric information changes all of this, allowing for the search for rents or quasi rents by agents engaging in opportunism.

The principal-agent model

Two conspicuous features in the politics and policy-making in the early 21st century include:

- 1) Policy implementation: The increased externalisation of public services provision;
- 2) Policy-making: The increasing call for clean politics and restraints upon politicians.

The first is linked with the success of the NPM reform movement, which was based upon a critique of the classical model of bureaucracy of Weber (Weber, 1978: pp.956-1002), whereas the second involves a rejection to the ideal model of the politician, also launched by Max Weber in “Politics as a vocation” (Weber, 1991: pp.77-129). Both of these major events in politics today may be analysed in terms of the perspective upon politics and policies launched by the principal-agent model. It asks pertinently:

- 1) Which agents are to be employed in policy implementation?
- 2) Can politicians as agents of demos be trusted, under what rules of the game?

The principal-agent model identifies two major difficulties when a principal contracts with a set of agents under asymmetric information, namely moral hazard (hidden action) and adverse selection (hidden knowledge). These two difficulties surface whether the contract is explicit and enforceable in court, as with policy implementation, or the contract is opaque and only enforceable to a limited extent, as with politics.

The principal-agent model has been applied in various private sector settings, such as the remuneration of CEOs, the choice of contracts in agriculture and the client-lawyer interaction (Rasmusen, 2006). When it is applied to politics, then one must model a double principal-agent interaction, starting backwards with first the government choice of agents who will handle the provision of services and moving then to the choice of the electorate of political agents with different policy preferences.

The most simple principal-agent model analyses the interaction between a risk prone principal and a set of risk avert agents, where the former hires the latter on the basis of a contract involving work effort, salary plus perks involving a basic quid pro quo, whereby the agents are paid from the value of the output they deliver. The agents may deliver low or high effort, which has implications for the probabilities of low or high output. As the principal aims for high output, he/she wants to write a contract that elicits high effort. But all contracts are subject to two basic principles that must be

satisfied: the reservation price of the agents on the one hand and incentive compatibility on the other hand. With perfect information one may calculate first best solutions that satisfy these requirements. However, given asymmetric information—hidden actions and hidden knowledge, one has to face suboptimal solutions. They are actually well-known in the literature on bureaucracy and comparative politics, although the language of the principal-agent model has not been used.

The Niskanen model of bureaucracy with the public choice school is a principal-agent model where the agents employ their information advantage to supply a non-optimal level of public services. In non-democratic politics, the rulers monopolize the benefits in politics, sometimes reducing the population to a form of political slavery (Burma), but always restrict the choice of the electorate, in order to make looting easier. The opposite solution, exploitation, is also feasible, for instance in agriculture with powerful landlords (zamindars) employing indentured labour or controlling sharecropping contracting (McLane, 1993).

Between these two extreme solutions, exploitation by the principal versus looting by the agents, one finds all kinds of varying solutions concerning both the value produced and the division of the mutual gains from interaction. The output can be either private or public services and the value of the output may be calculated with market prices or the willingness of taxpayers to pay. One application of the principal-agent model was less focussed upon rent seeking and targeted more prestige. The public choice model of public regulation claimed that it had a fundamental credibility problem, as regulators would like to deviate from the original policy intentions behind regulatory schemes.

Below, we focus upon the struggle between the principal and the agents about the division of the monetary gains from cooperation. When agents are self-centred and do not refrain from opportunism with guile, then what strategies can they employ in order to get an extra payment using asymmetric information?

Agency costs

The population as principal has to carry two kinds of agency costs. First, there is the remuneration of political elites, both pecuniary and non-pecuniary. The direct costs may go very high in non-competitive regimes, as looting is much more probable in them. Second, there are the indirect costs from dire agent performance or mistakes, which could go as high as the complete loss of huge national assets or political territory. Political leaders may promise paradise on Earth, but accomplish only destruction. “Mission accomplished”, declared President Bush, only to have to face the strong insurrection in Iraq that costs so much in terms of peoples’ life, American casualties and misspent trillions.

First, politicians wish to have discretion on policies in relation to their voters, which is what asymmetric information provides. Thus, they claim that they have a general mandate from the population to search for the policies that are in the national interest. Politicians have their own agenda, open or hidden. The election contract tends to be little specific, often general or ambiguous. It is a fundamentally incomplete agreement, allowing the politicians as agents much space to manoeuvre in relation to unforeseen circumstances, or the contingencies. The politicians may set up a multi-party system, which would make coalitions possible beyond the horizon of their voters.

Given such opaque election contracts, the politicians would wish to amass considerable amounts of resources to allow them to operate freely, either as parties (partitocrazia) or as independents (political entrepreneurs). And they would wish to maximise the resources for the conduct of their business, either by state contributions to parties (Europe) or by means of society contributions through e.g. the PAC system in the US. These resources—spolia—will be used to remunerate or give favours to the people who helped them win elections, using massive propaganda to convince the principal about their suitability as political agents. Thus, party government emerges with massive rent seeking where the political elite has a formidable knowledge advantage over the population.

Second, under asymmetric information the implementation agents will embark upon various opportunistic strategies that increase their remuneration, pecuniary or non-pecuniary ones. Thus, bureaucracies and public enterprises exploit the budget maximising strategy-shirking. The move of government to New Public Management, i.e. tendering/bidding under a regime of short-term contracts, will stop moral hazard in the public sector, but it invites adverse selection as agents bid who are not trust-worthy or reliable. Managing tournaments and auctions will be as difficult as to monitor huge bureaux for government as the principal of the public sector.

Agency costs, like e.g. the spoils of competitive politics are motivated by the classical Burke theory of politicians as the guardians of the general interests of the principal. But who knows the true interest of the population—*asymmetric information*?!

Sometimes the rent-seeking ambitions of political agents lead them to engage in illegal activities:

- Patronage,
- Embezzlement,
- Corruption;
- Tax evasion;
- Kick backs and commissions on public contracts.

An economic rent is an unearned income, meaning an excessive remuneration compared with what had to be paid, or it is a payment in excess of the opportunity cost. The theory of economic rents has concentrated upon monopoly profits, collusion gains from oligopolistic competition, as well as rents for lobbying government to secure lucrative contracts or favourable regulation (Tullock, 2005). Rents figure prominently in principal-agent interactions, whether as pecuniary or non-pecuniary advantages. The nature of the political regime—its basic structure of public law—affects how political agents maximise the rents.

Non-Competitive Regimes: In a traditional or authoritarian regime, like Saudi Arabia or North Korea, political agents tend to take such a huge part of total output (GDP) that one is allowed to speak of looting. Thus, the remuneration of the large Saudi family is immense, comprising all kinds of income, perks

and capital assets, home or abroad. In North Korea, the entire country has been mobilised to provide favours and advantages to the clan of the ruling family. Charismatic regimes like the Maoist rulership in China involve enormous agency costs, both direct in supporting Mao and his entourage, as well as indirect ones, resulting from mistaken policies.

Competitive Regimes: The agency costs for political regimes that have open access tend to be much lower than those of closed regimes. Thus, when political agents cause costly mistakes to the population, they will probably be voted out of office. However, also competitive regimes run with economic rents for the politicians.

Politicians or political parties have an unsatiable need for resources in order to maintain themselves and their advantageous positions in society, as there are considerable costs of competition. Thus, they employ all kinds of ways to bolster their coffers: high salaries for representative positions, political appointments in the bureaucracy, campaign contributions, “cumul des mandates”, close connections with support groups (industry, labour, and agriculture), public contributions to newspapers affiliated with parties, subsidised education courses by affiliated organisations, tax reductions for trade union fees and payments to think tanks, etc.

Value of output, remuneration and rent

The agents hired by the principal to deliver a valuable output must of course be paid somehow for their work and effort. The payment of the agents comes out of the value of the output, either directly through market prices or indirectly through taxation and public fees. All other things equal, the agent wants as large remuneration whatever its forms as possible whereas the principal remains the residual claimer, thus being interested in maximising the difference between the value of output—agent remuneration.

What the agent is paid in pecuniary and non-pecuniary forms of remuneration depends upon their effort, the reservation price and incentive compatibility, given asymmetric information. The occurrence of conditions for

moral hazard or adverse selection opens up for strategies of opportunism on the part of the agents, attempting to get hold of an extra remuneration, a so-called rent in economic theory. Long-term contracting invites the option of shirking, whereas adverse selection provides for opportunities of pretending.

Policy implementation: From moral hazard to adverse selection

The NPM (New Public Management) revolution in public administration emerged from a background of weariness with big government, public deficits and government overload in the mature welfare state. Intellectually, it was much inspired by public choice theories, especially their criticism of long-term contracting, as with bureaucracy and the public enterprises. Both bureaucracy and the public enterprise were institutional mechanisms that invited one key strategy from the agents, namely shirking. Given asymmetric information, government would be in a weaker position, having to take whatever cost increases the bureau or public enterprise came up with. Both the bureau and the traditional trading department captured an excessive remuneration by expanding activities beyond what was optimal, resulting in excessive number of employees and costs. In reality, there was here a form of moral hazard, as the risk ended up one-sidedly with government whereas the benefits would be mostly with the bureau or public enterprise. In long-term contracting, promises are cheap, and memory is short concerning what was promised when outcomes turn up that are undesirable.

NPM recommended short-term contracting as a strategy to strengthen the position of the principal in relation to the providers of public services. Instead of bureaucracy and the traditional public enterprise, the principal would apply the following mechanisms suitable for short-term contracting:

- 1) Outsourcing;
- 2) Tournaments;
- 3) Auctions;
- 4) Incorporation.

All these mechanisms involve the employment of tendering-bidding that replaces the authority structure with the capacity of government to exercise authority over its bureaux and employees. Government gives up its power to plan and direct the agents responsible for policy implementation in order to buy specific services in accordance with a private law contract, specifying performance as well as quantities and quality. The public law governed budgetary process is undone, as the private law contract is supposed to cover the most relevant contingencies, including costs and service quantity and quality. Government becomes a contractor, employing private law to arrange for the provision of services. Public ownership is transformed through incorporation into the holding of assets through aktien, i.e. a private law institution. Government hires agents to manage its capital assets in accordance with private management principles, focussing upon rentability in the first place.

The move from long-term contracting to short-term contracting entails that government has to struggle with the problem of adverse selection, i.e. how to figure out which agents who are forthcoming to bid for all the government contracts can be trusted. Government is bound to run into massive transaction costs when it moves from bureaucracy to tendering-bidding, as conflicts arise about what has been agreed upon. Contracting presupposes considerable time and effort for negotiation and may involve substantial costs for enforcement as well as dispute settlement in courts or outside.

Nothing guarantees that government will be able to reduce its overall costs or increase performance in service delivery, when moving from long-term contracting to short-term contracting. Just as a number of strategies can be used by agents to shirk under long-term contracting arrangements, so alternatives ways for agents to engage in opportunism exist under short-term contracting, all allowing for agents to pretend they are better than they really are. It may indeed be costly for government to correct these pretending strategies, incurring switching costs when turning to another set of agents or being forced to pay more for unforeseen costs besides

looting court cases where agents exploit badly written contracts.

The principal and the agents have common interests in the agents delivering a big output of value, but agents will only try hard when incentive compatibility is met by the principle. Nothing prevents the agent from demanding a huge remuneration for pretending high effort, i.e. to engage in the opportunism of looting. When the traditional public enterprise is incorporated and deregulated, then the temptation of the looting strategy may be irresistible. Thus, with incorporation the number of employees goes down and profits go up, but the salaries of the key CEO:s tend to skyrocket, especially when large public corporations turn to regional or global strategies outside of the home country.

Policy implementation: Hidden actions and adverse selection

When governments set out to deliver a set of public services, they have to rely upon sets of agents. The classic model of public administration outlined a set of bureaux with specialised functions, accumulating expertise over time. However, under long-term contracting agents have incentives to capture a rent due to asymmetric information. This rent from shirking may consist of X-inefficiencies or merely too much employment. The controller of the bureau—the Ombudsman—would investigate the occurrence of hidden actions among the agents, i.e. violations of the public law framework of bureaucracy.

Public sector reform during the last twenty years has turned to short-term contracting to remove this rent, favouring externalisation of the delivery of public services, including the incorporation of the big public enterprises. However, with tendering-bidding and short-term performance contracting come adverse selection, which provides the agents with another type of opportunistic strategies in order to capture a rent from pretending. The principal has to assume considerable transaction costs in order to handle the implications of adverse selection.

Policy-making and asymmetric information

The agency problems involved in hidden action and hidden knowledge characterize not only the implementation of policy, but they figure prominently also in politics as policy-making: Can the demos as principal trust its politicians as their agents for the making of public policies?

The distrust in political elites was theorized in the so-called elite theory with the three Machiavellians: Pareto, Mosca and Michels. They argued that politicians develop their own agendas in order to promote their special elite interests, capturing a rent by means of opportunistic strategies.

Elite theory was much criticised by pluralist theory, mainly by means of the argument that political elites tend to be pluralistic in terms of both origins and composition. However, this counter-argument does not take into consideration that political elites from various backgrounds—social and ideological, en-gage in hidden actions and employ hidden knowledge to in-crease their remuneration in a broad sense of the term, covering both pecuniary and non-pecuniary rewards.

Moral hazard pocketing any favourable outcomes—merely luck, while placing the risk with the country or blaming — unforeseeable negative results—occurs often in politics. Similarly adverse selection is omnipresent, especially in elections where the demos has difficulties in evaluating electoral promises as realistic or unrealistic ones. The rationale of constitutionalism in politics derives from its contribution to undo asymmetric information, revealing hidden actions and hidden knowledge among the political elite.

Thus, the mechanisms against political opportunism are handed down in the theory of rule of law, including:

- 1) Judicialisation of politics;
- 2) Referendum and recall;
- 3) Parliamentary opposition;
- 4) Federalism or political decentralization;
- 5) Civil society involvement;
- 6) Re-election of politicians: limits on tenure, primaries, etc.

Constitutional democracy consists of a number of institutions that counteract the implications of political

elitism. These institutions divide up the set of political agents into competing sets with the consequences that asymmetric information is reduced considerably for the demos. Opportunistic strategies based upon hidden knowledge—bad politicians—or hidden actions—illegal manoeuvres—trigger responses or counter strategies. In a rule of law regime, bad politicians are—some-times at least—eliminated and illegal practices punished. More specifically, public law restrains the solutions to the principal-agent problematic through the following: Predictability: Public law when properly implemented makes it possible for people to increase the rationality of behaviour. They know what rules apply, how they read as well as how they are applied consistently. This is very important for the making of strategies over a set of alternatives of action.

Transparency: Societies operate on the basis of norms prohibiting, obligating or permitting certain actions in specific situations. Rule of law entails that these norms are common knowledge as well as that they are not sidestepped by other implicit or tacit norms, known only to certain actors.

Due Process of Law: When conflicts occur either between individuals or between persons and the state, then certain procedures are to be followed concerning the prosecution, litigation and sentencing/incarceration. Thus, the police forces and the army are strictly regulated under the supervision of courts with rules about investigations, seizure, detainment and prison sentencing. No one can take the law into their own hands.

Immunities: People have certain rights against the state, meaning that government faces definitive duties concerning the protection of life, personal integrity and property. One may call them the habeas corpus rights.

Counter-weighting Powers: Under the rule of law regime there could be no single source of political power, or a hierarchical order of command. Instead, it favours multiple centres of power, or pluralism. In terms of religion, it adheres to a secular state based upon religious tolerance.

Separation of Powers: In order to have respect for the law as the key instrument for governing society and regulating the state, legislation, policy-making and implementation as well as

law adjudication must somehow be separated. Under rule of law this separation of powers targets the political elite active in the state, with the claim that it has to be divided into three different elites: legislators, governors or governments and courts. These classic functions in the state cannot be exercised by one and the same set of political elites. Separation of powers enhances checks and balances in government as well as counterweighing powers.

Fairness: Public law comprises a number of mechanisms that promote not only the legal order, or the law, but also justice, or the right. For ordinary citizens, the principle of complaint and redress is vital, providing them with an avenue to test each and every decision by government, in both high and low politics. Here one may emphasize the existence of the Ombudsman, as the access to fairness for simple people.

Conclusion

Politics is both policy-making and policy implementation. The demos selects and instructs a set of agents—the politicians—to come up with a list of policies that the demos prefer. Yet, the politicians do not have time or expertise to put these policies into practice, which is why they—as principals—rely upon a set of agents to deliver public services. Thus, one arrives at the double nature of principal-agent interactions in politics.

One may interpret the move from bureaucracy to New Public Management as the search for strategies that reduce the asymmetric information advantage of bureaux. NPM helps against shirking but invites another form of opportunism, namely pre-tending. Adverse selection is not a major problem in long-term contracting, as the principal has a general authority to direct the work of the agents. But in short-term contracting, the selection of bad agents can only be corrected by high transaction costs, as failure to fulfil a contract will often be contested in court. Shirking may of course also occur in short-term contracting.

The huge attention given to political scandals in present day politics fits well into a principal-agent approach to elections and policy-making. Politicians as elite have incentives to cap-

ture a rent by means of all kinds of opportunism. Only the rule of law regime can counteract the consequences of hidden actions and hidden knowledge.

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2

Well-orderedness in state and society

Introduction

In chiliastic theory like Marxism and Anarchism or anarcho-syndicalism there is the idea of an end state of human history where liberty and equality would be both realizable. The state as regulator would cease to exist and society flourish unoppressed by institutions that constrain freedom.

The principal-agent model from the economics of information entails that egoism and asymmetrical knowledge make such an end state impossible. Only a country with institutions that restrain opportunistic behaviour can be a happy country.

Rawls: TTE-WSLL-Ordered country

In A Theory of Justice Rawls pictured the necessary background to the implementation of his principles of justice, namely the well-ordered society. Here there was actually a

tautology, as Rawls used his 3 rules of justice to construct this well-ordered society. To be more precise, a well-ordered society fulfills two of his justice notions: freedom and impartiality.

What caused much attention was Rawls' third principle: maximin derived from a veil of ignorance. As a matter of fact, this is socialist equality involving considerable transfer payments and free public services. No country has ever tried the maximin strategy for social justice – to maximize the share of the least favoured. This amounts to feasible equality, given losses from taxing the more favoured.

In his later writings, Rawls never returned to socialist equality but emphasized political liberalism.

Freedom, impartiality and equality are focused upon in theories of justice. In the well-ordered countries around the world it is freedom and impartiality that counts.

Barry claims that justice is impartiality but this seems to hold for legal justice much more than for social justice. For instance, how about progressive taxation, central to social justice? Sen argues that Rawls' notion of a state of the veil of ignorance entails transcendentalism, but it merely posits a game where a player does not know whether he happens to be or become rich or poor.

Now, how then to tell whether a country is well-ordered or not? Can one speak about degrees of well-ordered countries? Yes, by linking it up with the concept of rule of law.

Rule of law

There is no neat and tidy definition of the expression "rule of law". The Oxford English Dictionary offers the following entry:

"[t]he authority and influence of law in society, especially when viewed as a constraint on individual and institutional behavior; (hence) the principle where by all members of a society (including those in

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government) are considered equally subject to publicly disclosed legal codes and processes.”

One may deconstruct this concept with other concepts or criteria like:

1. Strong legal formalism promoting equality under the laws

2. Individual rights covering contract, free labour and private property as well as the joint stock company with bourses.

3. Checks and balances, i.e. institutionalized mixed government with countervailing competences between executive, legislature and judiciary.

The World Justice project (WJP) maps the existence of rule of law, unpacking a rule of law regime as follows:

a) Constraints on Government Powers

b) Absence of Corruption

c) Open Government

d) Fundamental Rights

e) Order and Security

f) Regulatory Enforcement

g) Civil Justice

h) Criminal Justice

The WJP underlines accountability, judicial independence, legal formalism and balance of power between executive and legislature.

Table 1 presents results of the most recent survey of the RL Index for 138 countries around the world, presenting the mean value by region.

Table 1. *Average RL index by World region 2021*

Region	Min.	Average	Max.
East Asia & Pacific	0,32	0,60	0,83
Eastern Europe & Central Asia	0,42	0,50	0,61
EU + EFTA + North America	0,52	0,74	0,90
Latin America & Caribbean	0,27	0,52	0,71
Middle East & North Africa	0,35	0,49	0,64
South Asia	0,35	0,44	0,52
Sub-Saharan Africa	0,35	0,46	0,52

Source: [WJP, 2021](#).

The scores above are the results of numerous computations. For each aspect of rule of law a country is scored between 0 and 1, allowing a conclusion about more or less, which scores are then aggregated.

Most well-ordered

Here we find countries scoring between 0.9 and .75. The top well-ordered countries are all Nordic countries and the US comes lower at .69. Why? It may be pointed out that Western

Europe, Australia, Canada and Uruguay come in between the Nordics and USA. What is the secret behind Scandinavian well-orderedness?

Perhaps the comparison of the US with small Nordic countries is misplaced. All the large countries of the world perform worse than USA. The large West-European countries score above the US except Italy.

The WJP index mentions a large number of countries that score below 5. They are deficient in terms of:

- I) Accountability
- II) Just law
- III) Open government
- IV) Accessibility and impartiality.

One observes that the majority¹ of mankind lives in ill-ordered countries like Uzbekistan at .5, China at 0.47, and Venezuela at very low 0.27.

Many of the countries that are ill-ordered are Hobbesian, i.e. they are plagued by chaos or tribal conflicts. On the other hand, we also find firm dictatorships.

In the set of ill-ordered countries we have dictatorships of all kinds. Today it is actually difficult to distinguish between right-wing and left-wing authoritarian regimes. Take the case of Burma!

The ill-ordered countries are to be found in Latin America, Africa, Middle East and Asia as well as the Caribbean and the Pacific. However, there are clear exceptions: Costa Rica and Chile, Botswana and Namibia, Japan and South Korea for example.

Dictatorship

The road to ill-orderliness in sub-Saharan Africa has been the making of coups. Once a country is the victim of a coup, this often happens repeatedly. There is no counterweighing force in African countries, except in a few well-ordered ones.

Military coups are one plague, and the other one is long-term mismanagement by a too long sitting president, like in Congo, Zimbabwe and Sudan. Modern dictatorships have a conspicuous economic face. It is driven by the search for material advantages like luxury lifestyle and the accumulation of wealth and properties. Nowhere is this motivation more apparent than in the former USSR and the Gulf monarchies.

Let me call this human drive "looting". It is closely connected with the orientation of dictators and their entourage towards the family and kin.

Max Weber writes in his famous article "Politics as a vocation" that politics is all about power. No, I would say. In dictatorships economic benefits are the end and politics the means, whereas in political life economic policies are the means and power the end.

The Weber focus is power, as ends and means. Nowhere does he talk about economic motives. Instead he opposes the ethics of righteousness with that of realism.

Latin American violence

Few countries in Meso America or South America score as well-ordered. On the contrary, they mostly come in at around .5 or lower. In fact, LA political history is much characterized

by instability and outright violence, between counties or within them. Chile ranks high although the memory of Pinochet is still fresh.

LA countries have a form of instability and disorder at the basic social level among the interactions of people. A few are drowning in gangster or mob violence, often relented to drug battles. It should be pointed out that the Caribbean has both well-ordered and ill-ordered countries. The slaughter of the rain forest and indigenous cultures is heart-breaking.

Kadi-Justiz

None of the Muslim countries score as well-ordered; except the UAE? It is the quality of the legal system in Dubai that renders such a high evaluation. Yet; the WJP puts open government at UAE to .65 – hardly correct. That Muslim countries are ranked often as ill-ordered reflects the strong position of Sharia Law or Shia legal institutions. Law is what the Kadi and the Mufti arrive at in court, even when deviating from just law and impartiality.

Muslim countries are mostly either dictatorships or in Hobbesian strife between Sunnis and Shias. Several regimes are patrimonial and resources belong to a ruling dynasty. A few Muslim states use the Koran as the Basic Law that is outside of principal-agent modelling of politics and administration. Malaysia and Indonesia are promisingly innovative.

Leninism

No political theorist has had a practical influence as Lenin. Writing dogmatic elaborations of Marx, he confronted the question of what could be done in a backward society to enhance socialism. Lenin focused on Marx' idea of the dictatorship of the proletariat that had not been spelled out in detail.

Lenin outlined the Leftist State with total control that would assist economic development in its path towards its end state – from each according to capacity, to each according to need. It was a one party state – dictatorships of the proletariat. This was the centralised Soviet Union, adopted in one form or

another in the countries where the Communist Party took power. Millions of people live under Leninism as polity which has no foundation in principal-agent theory.

The dictatorial state that Communism ushered in is ranked by the WJP as ill-ordered but because of its instability. The crux of the master is the political control of the judiciary. Socialist law is not guided by considerations of justice like Common Law and Civil Law.

Conclusion: Politics, economics and the law

Well-ordered countries are affluent meaning gdp per capita. But not all countries that are not part of the set of well-ordered countries are to be found in the Hobbesian condition of poverty and conflict. It is true that a few are in dire straits but several outside the set of well-ordered countries are neither poor nor unstable. Diagram 1 shows the relationship between the WJP index and GDP per capita.

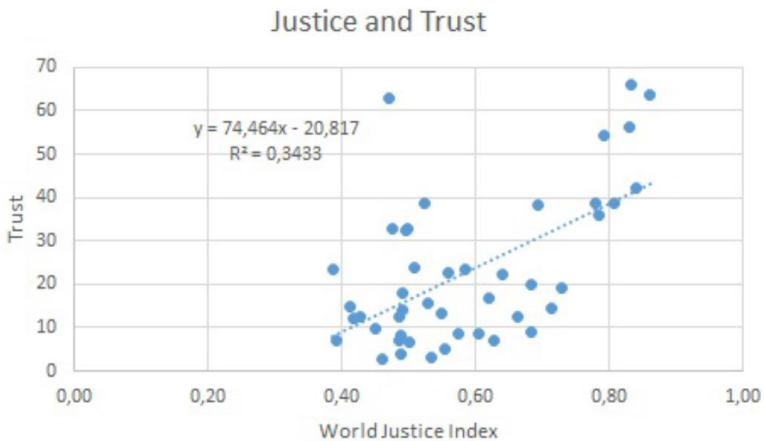


Diagram 1. GDP per capita and WJP index (*World Bank 2022; WJP 2021*).

Affluence seems to be a necessary but not sufficient condition for well-orderedness. Culture also matters: the legal system of the country must be either Common Law or Civil Law. Still; the most well-ordered countries in the world employ

Scandinavian Law. It has not been exported except its Ombudsman.

Much of human suffering is due to a life under injustice or institutions which do not restrain opportunistic behaviour like e.g. looting. In the ill-ordered country without rule of law: accountability, just law, open government and impartiality people are oppressed. The Nordic model goes beyond Nozick's justice solution.

We may add that well-orderedness promotes trust – see Diagram 2.

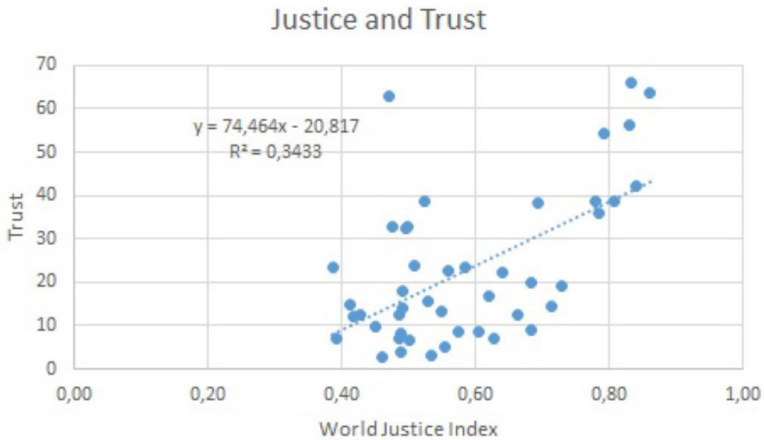


Diagram 2. *Connection justice and trust* (WJP 2021; Ortiz-Ospina & Troser, 2016).

Well-ordered countries face abrupt climate change which requires cooperation with the illordered countries and it may not be forthcoming in time. The shape of Law shapes the country - both publicly and privately.

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3

Fiji: What kind of militocracy?

Introduction

The independent states in the Pacific are characterized by institutional weakness. Today global attention is directed on Fiji, which suffers from increasing international sanctions and isolation. The simple truth is, however, that none of these countries can afford such political instability. Why, then, are the political elites in these societies so incapable of finding a *modus vivendi*?

Since December 2006, the islands of Fiji have been ruled by the military. Actually, military rule was not introduced until spring 2009, when a state of emergency was declared, involving the suspension of the constitution of the country. The military leader states that the take-over was necessary to move the country 'forward'. However, questioning this national motive leads one to enquire into the rationale of military regimes: altruistic nation saviours or egoistic rent-seekers? On the international television channels, the military is blamed for the Fiji crisis, in accordance with the official version of Australian diplomacy.

However, the Fiji games played among its adversarial political elite is far more complex.

Regime instability is hardly a new phenomenon in the Pacific area, referred to as harbouring an ‘arc of instability’ (Duncan & Chand, 2002), leading up to the big question of sustainability of entire countries (Hughes, 2004; Curtin, 2005). Yet, the conditions for political instability are multiple, each country having a unique mix of instability inducing conditions. How come that Fiji cannot establish a stable democracy? There is an elaborate body of research that has enquired into the peculiar situation and historical legacy of Fiji, for example by scholars such as Robertson, Chand, Naidu, Gounder, and Duncan (Allen, Bourke, & Hide, 1995; Chand, 2001, 2009; Daye, 2003; Jolly, 2005; Dobell, 2006; Doornbos & Akram-Lodhi, 2000; Moore, 2004; Lal & Pretes, 2001; Robertson & Sutherland, 2001; Lawson, 1991; Levine, 1997; Premdas, 1995; Powles, 1996; Durutalo, 1996; Fraenkel *et al.*, 2009).

A regional expert, Reilly – see for instance Reilly (2006, 2007) – speaks of:

The progressive ‘Africanisation’ of the South Pacific region. ‘Africanisation’ refers to four inter-related phenomena that have long been associated with violent conflict and the failure of democratic government in Africa:

- the growing tensions in the relationship between civil regimes and military forces;
- the intermixture between ethnic identity and the competition for control of natural resources as factors driving conflicts;
- the weakness of basic institutions of governance such as prime ministers, parliaments and, especially, political parties; and
- the increasing centrality of the state as a means of gaining wealth and of accessing and exploiting resources. (Reilly, 2000: 262–3)

What needs to be added to the Fiji story is an understanding of the various roles that the military may play in Third World politics, focussing upon Fiji especially and its strongman.

One speaks of a *coup culture* in Fiji, summarizing the tendency of its military establishment to become involved in

politics and the running of the country. One may list four coups: 1987, 2000, 2006, and 2009, where the latter achieved what had been initiated as a half measure three years earlier. Actually, the period in between the December coup in 2006 and the March emergency law declaration in 2009 is a most interesting one, the interim government under military commander Frank Bainimarama ruling the country in a semi-legal manner with presidential approval and participation from one of the major parties (Fiji Labour Party) with Fiji-Indian M. Chaudhry as finance minister. Its fate was decided by the famous court ruling in March 2009, triggering the immediate installation of complete military rule by emergency law. Since then, Interim Prime Minister Bainimarama rules Fiji with decrees in the role of sole dictator, surrounded by an entourage of loyal ministers and his army. How does he see the future of the country and his role in a new dispensation for the Republic?

Types of dictatorship

In the comparative literature on military involvement in politics, there is a set of models offering a classification of how the military can interact with civilians regardless of their basic motivation. It is illuminating to attempt to examine the military establishment in Fiji in terms of the distinctions this literature has provided, drawing upon experiences from Latin America, Africa, and Asia. Since the Second World War, a large number of military interventions have taken place in Latin, Moslem, Sub-Saharan as well as Buddhist countries, which have been modelled in terms of the conditions and motives behind these interventions, and the results ([Huntington, 1968](#); [Finer, 1969](#); [Janowitz, 1971](#); [Janowitz, 1977](#); [Stepan, 1971, 1988](#); [Hamill, 1995](#)). Where does the present military government in Fiji fit into these models? Military rule has frequently occurred in Latin America, Africa, and Asia. The military regime varies in both its form and content – see the following typology:

(a) Totalitarianism: complete subjection in every sphere of life to domination by the state.

(b) Tin pots: enough repression to sustain looting but not excessive.

(c) Tyranny: employment of violence to create servitude.

(d) Timocracy: benevolent dictatorship. (Wintrobe, 2000: 7-15)

Clearly, this typology, although entirely qualitative, entails a quantitative reduction in repression going from (a) totalitarianism to (d) benevolent dictators. This is not the place to enter into a long discussion of Wintrobe's scheme, especially whether (b) and (c) are mutually exhaustive. Actually, all dictators engulf themselves in some form of looting or other and they would not survive if it were not for the servitude they willingly or unwillingly spread in the population at large. Now, where to put the present Fiji military regime?

From the political point of view, a military regime is always a temporary phenomenon. It cannot lead to political stability due to its own internal logic. Military intervention is supposed to be short-run, assisting the country somehow. When it becomes long run, then it institutionalizes the repressive capacity it is always based upon, as in Myanmar. Bainimarama has frequently, promised a return to democracy, first within a time limit of two to three years, but now not until 2014. The promise of a return to civilian rule is at the core of the logic of military intervention, justifying its occurrence and containing the rationale for accepting the exceptional predicament. However, it is a conditional promise, which when not respected or honoured can be pushed forward into the distant future. When the military regime reneges upon its promise, then its oppression becomes blatant. The logic of a military regime is the *constant questioning of time*: When will there be a return to civilian rule?

Political instability in Fiji

The manifestations of political instability are multiple. Scholars have distinguished between short-term and long-term, violent and non-violent, governmental, societal and constitutional instability, etc. Political instability may occur in both authoritarian and democratic countries. In the former, it may pave the way for the introduction of democracy, whereas in the latter it may result in the overthrow of democracy. Political

instability may become endemic in a country, as a coup legacy is established or as constant deaths from domestic violence occur, such as in countries with rebels or terrorists.

The third military coup in Fiji was very different from the earlier two coups. It was well planned and masterly implemented without much protest internally and little if no political violence. It attempted constitutional recognition by approval from the President and the interim government in place has gone to great length in governing the country, respecting the main features of the legal order of Fiji with the exception of the role of Parliament.

However, the third coup presents the most serious threat to the possibility of democracy on these islands. The regime in place has complete control over events and shows no signs of faltering. Most importantly, the military establishment in Fiji has declared that emergency rule will continue up until 2014, but it can of course be extended as it was in March 2009 after the court ruling on the constitutionality of the military take-over.

Why, then, is Fiji not a stable constitutional democracy? The key hypotheses in the literature on political instability suggests the following factors: poverty, ethnicity, religion, dependency, legacy, and political institutions, as well as a lack of civil society. These factors are not without relevance to the understanding of political instability in Fiji, but they must be complemented with an analysis of the logic of a military coup.

Poverty

Fiji's economy is not a strong one, but the country is far from the level of the so-called '49ers', i.e. the set of poorest countries in the world. Most of the independent island countries in the Pacific belong to this set, numbering now 50 countries. As a matter of fact, the average income of people in the non-independent island countries, French Polynesia, New Caledonia, Guam, and American Samoa, is much higher than that of the people in the countries having reached independence. Fiji used to be the most dynamic of the island states, but its economy is facing increasing difficulties due to its dependence upon its sugar exports. Some

numbers may help in describing the level of country affluence and the spread of poverty.

In 2008, Fiji ranked number 119 in terms of Gross Domestic Product – GDP (purchasing power parity – PPP) per capita according to the World Bank estimates with some US\$4,300, clearly above Papua New Guinea (PNG) with US\$2,200, but both numbers are far lower than that of French Polynesia. Fiji is far from the level of the 49ers (US\$700), but economic growth has not been high enough to keep up with population growth, especially since 2006. In terms of total size, Fiji ranked as number 143 in 2008, meaning that its economy is small, actually smaller than that of less developed PNG.

The economy of Fiji is characterized by its openness, which index goes almost to 100%. This reflects the basic economic situation of import dependency, as Fiji has little manufacturing and weak agriculture. To pay for the import of most goods in daily consumption, Fiji exports sugar and there is considerable tourism. In addition, there is some mining and a lot of fishing. However, every year there is an external deficit, which puts pressure upon the Fiji dollar downwards (Table 1). Thus, in 2009 it was devaluated by a large 20%. Despite policy measures, it has not been possible to strengthen agriculture and thus provide for basic nutrition. Fiji is basically living every year at a standard that is beyond its means.

Table 1. *Typology of Dictatorships*

Totalitarianism	complete subjection in every sphere of life to domination by the state
Tin pots	enough repression to sustain looting but not excessively
Tyranny	employment of violence to create servitude
Timocracy	benevolent dictatorship (Wintrobe, 2000: 7–15)

The Fiji economy is in decline, although it is not clear which numbers to trust. Economic growth during 2001–06 averaged around 3% of GDP. In 2007, the economy contracted by a massive –6.6% of GDP. The official statistics from the Reserve Bank of Fiji speaks of minor reductions in GDP for 2008–10, but there is no way to verify these negative growth numbers.

A Fiji government paper has confirmed that more than one-third of the population lives below the official poverty line

identified for Fiji. The so-called Strategic Development Plan (Narain, 2002; Ratuva, 2000) says 34.4% of the population is below the basic needs poverty line, defined as a household income of US\$4,675 a year. A household income and expenditure survey found that the average income of poor households was only US\$3,160 a year, or US\$1,500 below the government's own poverty line. In urban areas, the highest percentage of those below the poverty line was actually among the Indians, although poverty is more widespread among the indigenous Fijians. These estimates are in line with those of economists at the University of the South Pacific (USP). Thus, economist Narsey, who dares to openly criticize the regime, has stated that 147,000 Fijians, 109,000 Fiji-Indians, and 8,000 from other ethnic groups lived under the poverty line during the period 2002–03 out of a population of roughly 900,000 inhabitants.

The structural weakness in the Fiji economy derives mainly from its large sugar industry, which is barely viable without support from the EU under the COTENU agreement. Since there is over production of sugar in the world market, the Fiji sugar industry only survives thanks to preferential treatment by the EU, the continuation of which is open to debate, especially after the military coup in 2009. The sugar production in Fiji is heavily dominated by government involvement and regulation, which has not stimulated entrepreneurial initiative to engage in more value added production such as bio fuels. The refusal of the EU to support the sugar industry by some 40 million Euros has plunged the entire sector into disarray, many farmers talking about shifting to other crops and livestock. Recently, Fiji has even imported sugar.

Are poverty and a weak economy a sufficient condition for political stability? Hardly. In any case, it is not the poor people in Fiji who call for regime change and have undone the existing constitution. Actually, there is little political unrest in the country. And there is no organization along class lines. The poverty hypothesis explains little. But it is also true that the Fiji economy has not in any way improved during the period of military led rule.

Regional integration efforts in the Pacific area have not brought much support to the Fiji economy. At present further

advances in trade liberalization and regional economic integration under various schemes (PICTA – Pacific Island Countries Trade Agreement, PACER – Pacific Agreement on Closer Economic Relations, etc) are more difficult to accomplish given the standoff between Fiji on the one hand and Australia on the other hand with a few island governments taking a position in between.

Dependency

It is true that the Fiji economy is highly dependent upon the international market and capital transfers from, for example, private or international organizations such as the World Bank and the IMF. Thus, the country needs both foreign direct investments for its tourism industry and financial assistance for its sugar industry. In general, the country has a considerable debt burden to serve, which has increased lately. Fiji's debt rating has been lowered and the devaluation makes the debt burden more cumbersome. One may look upon Fiji as peripheral in British colonialism, orchestrated to furnish raw materials to the centre, especially sugar. The EU had somehow taken over this power position by means of its COTENU agreement, which has had ramifications for the trade relations of Fiji with both Australia and the United States. However, there is no other future for Fiji than to accept globalization and try its best to find niches in the international market, supported by means of preferential trade agreements. Fiji hosts the Secretariat of the Pacific Forum, indicating that the country has played an active role in the regionalization efforts in Oceania, involving several trade agreements. Yet, trade talks about further trade liberalization are not furthered by the events that have evolved since 2006. As Fiji has been suspended from the Pacific Forum, it has attempted to develop links with Asian countries, for example China, to compensate for the sanctions against it by its established trade partners. Dependency theory explains little of the present predicament of the economy of Fiji, as global ties also constitute opportunities. Thus, Fiji could probably do much better economically if Fiji's relative advantage was exploited better, for example by producing ethanol.

Ethnicity

The ethnic composition of the Fiji population has been much discussed, although not in relation to politics. The subject is considered a taboo, because it can appear as racism. However, when ethnicity is clearly distinguished from race or racism then the map of ethnic groups is relevant to Fiji's instability, in accordance with general research into the negative consequences of multiple *ethnicities* as well as a clan society (Alesina & Rodrik, 1994; Kimenyi, 2003). Fiji harbours two ethnic groups, natives and Indians, with different cultures, involving language, religion, and ways of life. These two ethnic groups constitute the pillars of the two dominant political parties, the SDL and the Labour Party.

The history of Fiji is dominated by the establishment of British supremacy over the islands in the nineteenth century, resulting in a colony run by a governor up until independence in 1971. During the colonial period, indentured labour from India was imported in order to get the sugar plantations going. The Indian community gradually increased in size due to both high birth rates and additional immigration. In 1966, people of Indian descent made up 51% of Fiji's population. The Fiji-Indian population drop, which had been 0.3% a year between 1986 and 1996, has more than doubled, to 0.7% each year. The Fiji-Indian population decreased by more than 25,000 between the 1996 census and the 2007 census, while the total number of indigenous Fijians increased by 82,000. Presently, the size of the Fiji-Indian community may be estimated to be some 35% of the total population.

Yet, Fiji must be described as a multicultural society with two distinct ethnic groups. Reilly states that theories of ethnicity:

help explain why Fiji, the wealthiest and most developed sovereign state in the South Pacific, has nonetheless suffered several coups while Papua New Guinea, with a much poorer economic record, is nevertheless one of the very few post-colonial states to have maintained an unbroken record of democratic rule. As is well known, in Fiji the dominant ethnic cleavage is a bi-polar one between indigenous Fijians and Indo-Fijians, and in both

1987 and 2000 this cleavage was used to mobilise support for an economically disastrous coup. By contrast, there has been no coup in Papua New Guinea, despite a much larger and poorer population, failing infrastructure, declining investment, falling living standards, and weak economic growth (Reilly, 2004: 484).

Although the relative size of the Fiji-Indian community is declining, Indians play a most important role in both the economy and in the education system. Many of the major enterprises are Indian owned and most of the professors at the University of the South Pacific come from the Fiji-Indian community. Weak employment prospects trigger Fiji-Indian youth emigration. It is a fact that the Indian community was targeted in the earlier coups with considerable suffering. But at present the Indian community is not disadvantaged at all. On the contrary, the interim government pursues a policy of integration, abolishing ethnic markers, allowing for Hindi teaching in schools, and encouraging contacts with New Delhi.

Ethnicity in Fiji has contributed to political tensions in Fiji, but it is hardly the main cause of military involvement and take-over. There is widespread talk about the possibility and desirability of a multi-racial society, but the native community especially insists upon its traditional position as the historical people of the islands. The Fiji-Indian population is projected to decline to roughly 26% by 2030, although it might happen earlier. Dramatic decline in fertility rates and emigration are two of the contributing factors. The ethno-nationalist policies of the SDL group, during the Qarase government, to enhance the position of the Fiji-Native population were not really attuned with realities. However, with military intervention the relevance of the ethnic cleavages has subsided markedly, as the focus is now on the intentions of Bainimarama for Fiji.

Tradition

Of importance has been the tribal organization of the native community. It has outlasted colonial rule and is very much alive in the tribal classification of the natives under a so-called '*Ratu*'. Many of the natives have vibrant ties with their tribe, even when they do not live in the many villages in the country. Thus, chiefs

may be involved in the running of affairs for the native community. Politically, the chiefs have their *Great Council of Chiefs* (GCC) (suspended by Bainimarama), which represents the tribes before governments, participating in the running of tribal matters, the most important of which is land leases. Most of the land in Fiji is communal and not private, belonging in principle to the tribes and administered by the chiefs in collaboration with the Native Land Trust Board, which is a state body for handling the land leases. Much of the land is leased to sugar farmers on a long-term basis, creating a tension between landowners and tenants, which basically coincides with ethnicity.

The traditional or communal form of land ownership in an economy where agriculture constitutes a considerable part of GDP is conducive to political tensions, especially when reinforced by ethnicity. Political stability tends to be positively related to the institutionalization of the rules of the market economy, such as fully enforceable private property rights. The land issues add to a lack of institutional transparency in Fiji that not only restrains economic activity but also leads to conflicts in politics and policy-making. Control over the Native Land Trust Board has been politicized when the military government decided to suspend the GCC. The legacy hypothesis, focusing upon the implications of communal land ownership, is more relevant than the colonial heritage hypothesis or dependency theory (Prasad, 1997; Nithyanandam & Gounder, 2004; Gounder, 2002, 2004, 2005).

Weak civil society

From the point of view of civil society theory, the recent developments in Fiji are most interesting as the military regime is most interested in furthering its objectives by the setting up and supporting a Third Sector organization – the *Citizen Charter Movement*. However, at the same time it faces opposition from one already established group in civil society, the Methodist Church, having some 200,000 members. One may look upon the Charter Movement as a network organization to help pave the way for the making of a new constitution in 2014,

when general elections are to be held. Yet, the Methodists represent a genuine civil society group in the classic Tocquevillian framework.

It is often stated that civil society is one of the main sources of opposition to a military regime. Whereas Third Sector organizations constitute schools of democracy – discussion, argument and reciprocal interaction – military regimes are founded upon hierarchy and obedience. Fiji has a rich carpet of Third Sector organizations, comprising not only internationally supported NGOs but also domestic groups, especially religious ones. The largest Third Sector organization is the Methodist Church. But also the adherents of Hinduism and Islam have their organizations. There are several small Mosques in Fiji, but the Hindu groups are more numerous than the Moslems. Religious heterogeneity follows ethnic fragmentation. Thus, the natives are Christians, either Protestants or Catholics, and the Indians are Hindus or Moslems. Traces of animism are not often to be encountered in the native community, where Methodism is strongly entrenched. The Methodists were vocal in their resistance to the military rule. Islamic fundamentalism is not known on the Fiji Islands, where a few mosques testify to the simple truth that not all Indians are Hindus, neither in India or in all the Indian *Diasporas* along the Asia-Pacific arc of emigration.

The Methodists are well organized around the islands and they have key links with both the traditional chiefs and the main native political party, the SDL. In addition, they receive ample support from the global Methodists movement. Also, there is not much religious animosity between the native community and the Indian community. Ethnicity trumps religion in the Fiji islands. The military regime was first at loggerheads with the Methodist Church, pursuing several of its leaders in court for various forms of so-called ‘resistance to the Prime Minister’. Presently, the protests of the Methodists have been silenced. The military regime has clearly understood the implications of the civil society theory, as they have set up their own support organization, namely the so-called *Citizens Charter Movement*. Based upon a manifesto, the Citizens Charter Movement aims at

nation building, bridging the ethnic cleavage, and mobilizing support for the development ambitions of the regime.

At first, the Citizens Charter Movement was resisted by key persons and groups within the Fiji-Native community, especially the Methodist Church. But recently a change in attitude has occurred with several chiefs among the Fiji Natives. The position of regime is less contested today, and the Interim Prime Minister often makes explicit attempts to reach out to the Fiji-Native community.

Political institutions: old and new

The now squashed *Constitution of the Republic of the Fiji Islands* dates from year 1997 – Fiji's third constitution. The first, adopted in 1970 upon independence, was abrogated following two military coups in 1987. A second constitution was adopted in 1990. The Fiji constitution of 1997 provided for a Westminster model democracy with a republic and parliamentarism. It had a one-chamber national assembly with the GCC acting as a consultative body on indigenous affairs. The judicial system was also a legacy from the British colonial period with a high court, an appeals court, and a supreme court. Weak presidentialism together with parliamentarism and recognition of traditional chiefs would, generally speaking, be conducive to political stability. But things did not work out that way.

The main weakness in Fiji's political system after independence is to be found in the party system that is highly adversarial, partly due to the strange election techniques employed. The 2006 elections were held in accordance with a most unique election formula, combining the highly majoritarian Alternative Vote procedure with a communal classification of voters according to the two ethnic groups.

The party system of Fiji is most strict two-partism with only minor changes in 2006 in comparison with the 2001 election results. The combination of a highly majoritarian election method with a classification of single-member electoral constituencies along ethnic lines can only fuel adversarial politics. The last free elections resulted in a stalemate between

the two leading personalities in Fiji politics besides the military, namely Fiji-Native Qarase and Fiji-Indian Chaudhry, the first receiving 44.6% of the vote and the latter taking 39.2%, no other party being represented. The animosity between these two contenders for the Premier position has blocked political consensus that this developing country so badly needs, given the shaky road since independence.

Before 1999, the British first past the post system of voting was employed in elections. The new constitution agreed to in 1997-98 established instant run-off voting, the Australian Alternative Vote technique, allowing votes to be transferred from a low- polling candidate to other candidates, according to an order prescribed by the candidate, which may be customized by the elector. A constitutional revision in 1997-98 reduced communal representation to 46 seats out of 71: of these 46, 23 seats are currently allocated to ethnic Fijians, 19 to Fiji-Indians, 1 to Rotuman Islanders, and 3 to minority groups. The remaining 25 are elected by universal suffrage. The constitutional revision in 1997- 98 allowed direct electoral competition between candidates of different ethnic groups with candidates of all races competing for votes cast on a common voters' roll. Open constituencies have proved to be more competitive than the communal constituencies, in which ethnic loyalty to particular political parties generally guaranteed predictable results. But the outcome is two-partism in any case.

When it comes to the judiciary, one may confidently state that it was functionally sound until all the judges were fired in March 2009 when it was also decided that all licenses for lawyers had to be renewed. Fiji had vigorous courts with highly active lawyers organized in its well-known Fiji Law Society, which became very critical of the take-over in 2006. The mind of Fijians is as adversarial as their Westminster legacy, people preferring to sue each other in court than to try to and find common ground and settle their differences by negotiation. When Qarase litigated the interim government for removing him as prime minister, the High Court took the case and ruled on it. Similarly, when Qarase went to the Appeals Court after losing in the High Court, it also took the case, although Fiji has no recognition of legal review.

When in March 2009 all judges were fired by presidential decree the political independence of the judicial system can no longer be safeguarded. The shortage of judges is such that chief judge A. Gates had to go to Sri Lanka to try to recruit some new judges. Due to the censorship over the mass media, especially the press, there is today almost no criticism or open opposition to the government, neither in the newspapers nor by any court. The regime has issued a law on information and communication that restrains the mass media from reporting criticism or sensational matters, and also forbidding meetings of more than three to five people.

The regime is preparing a new constitution together with the Citizens Charter movement. It may be a presidential regime with direct election of a president of the people. The new dispensation may contain a ban upon the SDL Party from participating in the planned 2014 elections. In any case, both Qarase and Chaudhry are on route for corruption trials, where a guilty verdict would prevent them running again for political office. It would be surprising if there were to occur a major shift in Fiji politics in 2014, as more and more key ministers and administrators are picked from the military. Although the Fiji military still serves in old contracts with the United Nations in the Middle East (Lebanon and Iraq), it no longer receives any new contracts.

The political game

The strong man of Fiji today is without any doubt Frank Bainimarama, who is Interim Prime Minister, holding a number of other positions besides being supreme leader of the armed forces. His government rules by decrees and gets the president to sign any major decision such as the annulations of the 1997 Constitution or the introduction of the act restricting news dissemination and public meetings. Bainimarama is, it seems, not opposed by any of the strong men in his environment. Ministers who give voice to criticism are immediately dismissed. And his closest collaborators coming from the army or the navy are loyal without hesitation. He is a native and the army is mainly composed of natives, although there are some

Indian officers. He is distantly related to his chief opponent, Qarase, whom he put in office after the 2000 coup, when he was almost assassinated. Bainimarama at first allied himself with Qarase's political enemy, Chaudhry, but removed him from the interim government in 2008.

Fiji's politics is a nested set of games involving three main groups: the military, the natives, and the Indians. These players are not compact, meaning that there are numerous divisions in these three sets or social groups. Thus, there are two major Indian political parties battling against each other. And the natives host numerous tribes with chiefs who make alternative alliances. But the military appears to be totally behind Bainimarama today, which was not true during the 2000 coup. What, then, drives the Fiji military establishment? It is easy to drown in the details of the Fiji coup story, rendering an account of all and each event, in the belief that accidental or contingent happenings have causal significance. However, one needs a theory of the role of the military in politics in order to interpret the confusing and often contradictory developments in the four Fiji coups.

In the Fiji case, pressure is maintained by the surrounding stakeholders: Australia, New Zealand, the EU, and the US. Since these countries are the main trading partners of Fiji, any international criticism of Fiji imposes a heavy burden upon the regime. It has tried to seek support from other countries, mainly China, Japan, and India. One observes a strong increase in the links with China, assisting Fiji in various ways economically but also in the construction of major infrastructure projects (roads, dams, offices, etc.). The interim government speaks of an open policy, aimed at finding new partners outside of the Pacific Forum, such as China and members of the Asean.

The rhetoric of Bainimarama and his group is a mixture of nationalism and development zest. Without mentioning any benchmarks for what he hopes to achieve, Bainimarama speaks all the time about 'moving the country forward'. On the one hand, he insists upon the right of Fijians to decide their own future without interference from other countries, especially the neighbours New Zealand and Australia. On the other hand, he refuses to reinstall the democratic regime with a national assembly

augmented by the GCC, national elections, and the party system. The stated ambition is to create a new Fiji without racism and corruption.

In order to increase the credibility of this official motivation for the military intervention, Bainimarama has criticized the Qarase government for racist policies, especially in regard to the election system, and has taken the former Premier to court for alleged corruption. Actually, both these objectives – promoting a non-racist society and clapping down upon corruption – have been emphasized to a very high degree. Thus, a new constitution has been promised that undoes all forms of racism, and anti-corruption programs have been initiated with considerable running costs.

What is myth and what is reality in this official motivation? Clearly, Bainimarama is reaching out to the Indian community, promising them full citizen recognition. Whether the SDL party under Qarase is to be described as promoting overtly or covertly racism is a political issue concerning the identity of the Fijian society – multicultural or predominantly native-indigenous? The Indian community is proud of its historical and religious legacy, which they wish to promote by all means. The corruption philosophy appears to be very weak in its foundations, as few major cases have reached a court verdict. Probably Fiji is less corrupt than several other Third World countries, given its lively civil society with puritan creed – the Methodist Church for instance.

So far, the military intervention has not been without benefit for the group around Bainimarama, as they have successfully claimed compensation payments for past unpaid service and have raised the remuneration for military service in general, despite considerable reductions in spending on health and education. How, then, to judge the interim government and the military regime: national saviours or merely advanced rent-seekers? No doubt, Bainimarama has surrounded himself with loyal people, handing out nice jobs in government and public administration to several military persons. There have also been pay rises for the military and special over-time compensation. Yet, Bainimarama has not reneged on his promise to hold general elections in 2014 and the economy has not been

targeted for extortions. Yet, he seems more and more interested in finding means to prolong his rule, using a new constitution in order to legitimate his regime. Various scenarios are imaginable for the future, but the most likely one is that the regime somehow stays in power, more, and more backed and helped by China.

The sorrows of dictatorship

The Fijians are experiencing one most concrete effect of the military regime, namely economic decline. Fiji is in negative economic growth, presenting real hardships to the population at large. As GDP contracts, poverty increases and vital investments for the future must be put on hold. Most spectacular is the sharp decline in one of the two basic sectors of the Fijian economy, namely the sugar industry. Sugar production has a long standing in Fiji, started by the British with indentured labour from India. By linking up with EU support programs and preferential trade agreements, this industry not only created much employment in agriculture but also collected much foreign currency. However, the EU decided in 2010 to suspend the program, as the Fiji interim government refused to honour its promise of early free and fair elections, delaying elections until 2014.

With the sugar industry crumbling, Fiji has only one leg to stand on, namely its tourism industry. It is huge and still successful. But it suffers under the international sanctions against Fiji, with the country suspended from several international or regional bodies. Since Fiji imports so much of its consumption, the tourism industry must deliver enough foreign exchange, which task has become increasingly difficult.

It is telling that no attempts have been made to turn the huge sugar fields of Fiji into ethanol production, which it could have done with assistance from Australia with their global expertise in energy. Instead, the Fiji government has turned to China for help, borrowing substantial amounts of funds for the construction by China of a power dam for electricity production.

Fiji is moderately indebted, but its capacity to raise new funds for repaying old loans is very restricted, given its constant deficits on the budget and on the current account. It

has asked for a major loan from the IMF for 2012, but it will come with strings attached that Bainimarama may find too restrictive for his interim government. Yet, the loss of freedom probably causes more hurt than the slow economic decline. The control by government of the news media is total, both television and radio as well newspapers. All forms of open debate in the newspapers and on television have been strangled. Attempts at criticizing government meet with swift and effective counter measures, albeit not using physical violence. The interim government has abstained from the behaviour typical of African authoritarian rule, meaning looting and harassment/killings, although military people have at the same time been recruited massively into government positions. Spending on military items has increased considerably since 2007.

The draconian draft media law for Fiji has sparked protest by news groups, academics, and civil society movements. It provides for the establishment of a Media Development Authority and a complaints tribunal with the power to fine the news media and imprison journalists for up to five years. It also restricts foreign ownership of news media to 10% with all company directors required to be citizens of Fiji. The Rupert Murdoch-owned *Fiji Times* group, for long the country's largest and most influential daily newspaper, has been transferred to a Fiji group. The *Times* has long been an irritant for the regime, which has sought to gag this newspaper along with Fiji Television. Regime Attorney-General Sayed-Khaiyum, who also holds ministerial posts, condemned the newspaper publicly, describing it as 'the purveyor of negativity - at least for the past three years'.

Conclusion

Examining the social structure of Fijian society as well as its political institutions, one would be inclined to argue that Fiji is not poised for dictatorship. It does not belong to the 49ers- the poorest countries in the world. It has been well connected with advanced countries. And it has had Western institutions and several institutional choices after independence. Moreover, it has

a vibrant civil society with both domestic and international Third Sector groups. Political instability derives from the presence of a strong and proud military force, which is known for its capability, proven in international missions around the world. Yet, the mere existence of this military establishment with some 4,000 well equipped men does not in itself make stable democracy impossible or improbable. The adversarial nature of the party system adds controversy as well as suspicion to political life, making compromises very difficult to attain among the chief players, to which group the top military also belongs. A culture of trust and bargaining is completely lacking to such an extent that when the political parties were offered a quick resolution of the conflict in 2008, on the condition that they accepted Proportional representation (PR), they all declined. This uncompromising attitude even among parties that would gain from the introduction of PR released the threat of full emergency rule in 2009.

The striking animosity among politicians in Fiji cuts across ethnic boundaries. Thus, one Indian opposition party vehemently opposed Chaudhry's role in the Interim government. The decision by Premier Qarase to show clemency with some of the coup leaders of the abortive attempt in 2000 made matters worse, since Chaudhry suffered personally when he was held hostage in 2000 for many days. No one could understand this leniency towards the perpetrators of the 2000 coup which resulted in the loss of innocent lives. It was actually Bainimarama who put Qarase in government 2000, as he rejected the 2000 coup.

The Fiji military regime presents a major obstacle for regional integration in the Pacific. The stand-off between ruler Bainimarama on the one hand and Australia and New Zealand on the other hand paralyses the Pacific Forum in reforming the trade regimes set up. Fiji is a country with profound social problems, where the deep-seated ethnic cleavage reinforces institutional fragility. The military regime argues that it is part of the solution, but the risk is that it becomes enmeshed into the problematic of Fiji society and politics. Fiji's military ruler has the future of his country in his hands. Thus far, the rule of this strongman has been benevolent, trying to steer the country

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towards national unity and development: 'moving the country forward', as he expresses it.

The behaviour of military regimes revolves around three dimensions: authority, nationalism (development), and looting. Various military regimes differ along these dimensions, as preferences and circumstances pull the concrete set of military rulers along each dimension differently. Time seems almost always to be conducive to one outcome: authority in combination with looting, as the developmental ambitions fade or get stuck in the midst of unfavourable conditions (Stepan, 1971, 1988). Yet, there are interesting exceptions with a few benevolent developmental regimes, such as for instance Kemalism. It remains to be seen whether civil society can be brought on board, supporting some sort of solution to the problem of political legitimacy in the republic of Fiji. It would require, I believe, not merely a successful Citizens Charter movement but also some political accommodation with the leaders of the two main communities, the Fiji-Natives and the Fiji-Indians (Ramesh, 2010). In January 2012, Fiji's strongman declared that the emergency law would be lifted so that consultations on a new constitution could begin ahead of elections, now promised for 2014. The conduct of these elections will no doubt be monitored internationally in order to establish whether they meet the criteria of being free and fair under the new dispensation, whether a parliamentary or presidential one.

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4

Authoritative allocation of values

Introduction

The governors and those governed—what is the QUID PRO QUO? The governed has to give the governors various things like money, work, soldiers etc. Easton summarized them under demand and support. The counter gift by those governing is the public sector + their own individual compensation in salary and perks. This is key in the principal-agent modelling of the governors and the governed.

To meet demand and receive support the governors take decisions or perform actions. What Easton means is the public sector. This sets up an input-output equilibrium, which though is very difficult to measure.

However, the governors will not work for nothing. They look for a rent to be added to their monetary compensation. There are in principle two ways to secure this rent:

- A) Stay in power by winning competitive elections;
- B) Introduce a monopoly on power and start looting.

Cui Bono?

The economic benefits—in a wide sense covering money jobs; fungibles—for the governors cannot be overestimated although badly researched. Most politicians in so-called Western democracies are millionaires. It is true that salaries for top politicians and civil servants are far lower than top CEOs. But a nice set of rewards and perks year in and out add up nicely.

Competitive polity

In a two-party system or multi-party system the struggle concerns who takes the SPOLS—the set of jobs, contracts, positions and policies up for grab. When one party manages to hold top power for a few election periods, there is a lot to distribute.

When the financing of election campaigns is added to the spoils we strive at gigantic economic incentives. They require strong regulations to stem opportunistic behavior—the rule of law that a well-ordered country provides by means of law.

The ultimate guarantee of the proper use of all these economic benefits is the completion itself.

Dictatorship

Dictatorships may be crested in different ways. It is commonly said that political power is thru drive behind dictatorship. I would instead suggest economic benefits. Dictators eliminate competition in order to hoard economic advantages for his circle or family. Sooner or later looting begins. Even a fanatic like Hitler amassed a considerable fortune.

Justice

In *A Theory of Justice* Rawls pictured the necessary background to the implementation of his principles of justice, namely the well-ordered society. Here there was actually a tautology, as Rawls used his 3 rules of justice to construct this well-ordered society. To be more precise, a well-ordered

society fulfills two of his justice notions: freedom and impartiality.

What caused much attention was Rawls' third principle: maximin derived from a veil of ignorance. As a matter of fact, this is socialist equality involving considerable transfer payments and free public services. No country has ever tried the maximin strategy for social justice—to maximize the share of the least favoured. This amounts to feasible equality, given losses from taxing the more favoured.

In his later writings, Rawls never returned to socialist equality but emphasized political liberalism. Freedom, impartiality and equality are focused upon in theories of justice. In the well-ordered countries around the world it is freedom and impartiality that counts.

Now, how then to tell whether a country is well-ordered or not? Can one speak about degrees of well-ordered countries? Yes, by linking it up with the concept of rule of law.

There is no neat and tidy definition of the expression-rule of law. The Oxford English Dictionary offers the following entry:

-[t]he authority and influence of law in society, especially when viewed as a constraint on individual and institutional behavior; (hence) the principle whereby all members of a society (including those in government) are considered equally subject to publicly disclosed legal codes and processes.

One may deconstruct this concept with other concepts or criteria like:

- 1) Strong legal formalism promoting equality under the laws;
- 2) Individual rights covering contract, free labour and private property as well as the joint stock company with bourses.
- 3) Checks and balances, i.e., institutionalized mixed government with countervailing competences between executive, legislature and judiciary.

World justice project

The World Justice Project (WJP) maps the existence of rule of law, unpacking a rule of law regime as follows:

- a) Constraints on Government Powers
- b) Absence of Corruption
- c) Open Government
- d) Fundamental Rights
- e) Order and Security
- f) Regulatory Enforcement
- g) Civil Justice
- h) Criminal Justice.

The WJP underlines accountability, judicial independence, legal formalism and balance of power between executive and legislature.

Table 1 presents results of the most recent survey of the RL Index for 138 countries around the world, presenting the mean value by region.

Table 1. *Average RL Index by World Region by 2021*

Region	MinAverage	Max
East Asia & Pacific	0,320,60	0,83
Eastern Europe & Central Asia	0,420,50	0,61
EU + EFTA + North America	0,520,74	0,90
Latin America & Caribbean	0,270,52	0,71
Middle East & North Africa	0,350,49	0,64
South Asia	0,350,44	0,52
Sub-Saharan Africa	0,350,46	0,62

Source: WJP 2021.

The scores above are the results of numerous computations. For each aspect of rule of law a country is scored between 0 and 1, allowing a conclusion about more or less, which scores are then aggregated.

Most well-ordered

Here we find countries scoring between 0.9 and .75. The top well-ordered countries are all Nordic countries and the US comes lower at .69. Why? It may be pointed out that Western Europe, Australia, Canada and Uruguay come in between the

Nordics and USA. What is the secret behind Scandinavian well-orderedness?

Perhaps the comparison of the US with small Nordic countries is misplaced. All the large countries of the world perform worse than USA. The large West-European countries score above the US except Italy.

Ill-ordered country

Country

The WJ index mentions a large number of countries that score below .5. They are deficient in terms of:

- I) Accountability
- II) Just law
- III) Open government
- IV) Accessibility and impartiality.

One observes that the majority¹ of mankind lives in ill-ordered countries like Uzbekistan at .5, China at 0.47, and Venezuela at very low 0.27.

Many of the countries that are ill-ordered are Hobbesian, i.e. they are plagued by chaos or tribal conflicts. On the other hand, we also find firm dictatorships.

In the set of ill-ordered countries we have dictatorships of all kinds. Today it is actually difficult to distinguish between ring-wing and left-wing authoritarian regimes. Take the case of Burma!

The ill-ordered countries are to be found in Latin America, Africa, Middle East and Asia as well as the Caribbean and the Pacific. However, there are clear exceptions: Costa Rica and Chile, Botswana and Namibia, Japan and South Korea for example.

The road to ill-orderdness in sub-Saharan Africa has been the making of coups. Once a country is the victim of a coup, this often happens repeatedly. There is no counterweighing force in African countries, except in a few well-ordered ones.

Military coups is one plague, and the other one is long-term mismanagement by a too long sitting president, like in Congo, Zimbabwe and Sudan

Modern dictatorships have a conspicuous economic face. It is driven by the search for material advantages like luxury lifestyle and the accumulation of wealth and properties. Nowhere is this motivation more apparent than in the former USSR and the Gulf monarchies.

Let me call this human drive —looting! It is closely connected with the orientation of dictators and their entourage towards the family and kin.

Max Weber writes in his famous article —"Politics as a vocation" that politics is all about power. No, I would say. In dictatorships economic benefits is the end and policy the means, whereas in political life economic policies are the means and power the end.

The Weber focus is power, as ends and means. Nowhere does he talk about economic motives. Instead he opposes the ethics of righteousness with that of realism, i.e., power.

Few countries in Meso America or South America score as well-ordered. On the contrary, they mostly come in at around .5 or lower. In fact, LA political history is much characterized by instability and outright violence, between countries or within them. Chile ranks high although the memory of Pinochet is still fresh.

LA countries have a form of instability and disorder at the basic social level among the interactions of people. A few are drowning in gangster or mob violence, often relented to drug battles. It should be pointed out that the Caribbean has both well-ordered and ill-ordered countries.

None of the Muslim countries score as well-ordered; except the UAE? It is the quality of the legal system in Dubai that renders such a high evaluation. Yet; the WJP puts open government at UAE to .65—hardly correct. That Muslim countries are ranked often as ill-ordered reflects the strong position of Sharia Law or Shia legal institutions. Law is what the kadi and the mufti arrive at in court, even when deviating from just law and impartiality.

Muslim countries are either dictatorships or in Hobbesian strife between Sunnis and Shias. Several are patrimonial and belong to a ruling dynasty.

Leninism

No political theorist has had such a practical influence as Lenin. Writing dogmatic elaborations of Marx, he confronted the question of what could be done in a backward society to enhance socialism. Lenin focused on Marx' idea of the dictatorship of the proletariat that had not been spelled out in detail.

Lenin outlined the state that would that would assist economic development in its path towards its end state—from each according to capacity, to each according to need. It was a one party state—dictatorship of the proletariat. This was the centralised Soviet Union, adopted in one form or another in the countries where the Communist Party took power.

The dictatorial state that Communism ushered in is ranked by the WJP as ill-ordered but because of its instability. The crux of the matter is the political control of the judiciary. Socialist law is not guided by considerations of justice like Common Law and Civil Law.

Looting in the former USSR has been much promoted by the enormous development of the unofficial economy ([Blas & Farchy, 2022](#)).

Politics, economics and the law

Well-ordered countries are affluent meaning GDP per capita. But not all countries that are not part of the set of well-ordered countries are to be found in the Hobbesian condition of poverty and conflict. It is true that a few are in dire straits but several outside the set of well-ordered countries are neither poor nor instable. Figure 1 shows the relationship between the WJP index and GDP per capita.

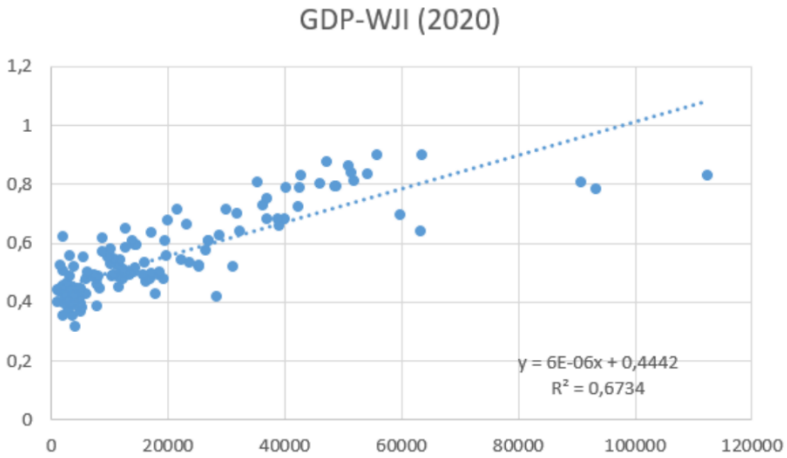


Figure 1. *GDP per Capita and WJP Index (World Bank 2022; WJP 2021).*

Affluence seems to be a necessary but not sufficient condition for well-orderedness. Culture also matters: the legal system of the country must be either Common Law or Civil Law. Still; the most well-ordered countries in the world employ Scandinavian Law. It has not been exported except its Ombudsman.

Much of human suffering is due to a life under injustice or institutions which wrong the rights of men and women. This is the ill-ordered country without rule of law: accountability, just law open government and impartiality.

We may add that well-orderedness promotes trust—see Figure 2.

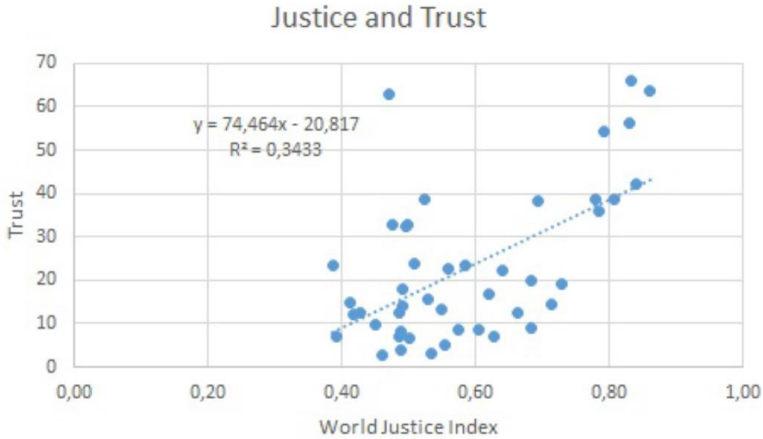


Figure 2. *Connection Justice and Trust (WJP 2021; Ortiz-Ospina & Troser, 2016).*

Conclusions

The idea of Easton that political equilibrium E is: support – demand– (actions ÷ decisions),

constitutes a very general macro law stating that political systems depend upon how government responds to demands by decision-making and policy implementation given support. These generalisations are useful in explanation but too vague for prediction.

In a micro perspective political stability is a function of the present principal-agent interaction. Thus, in a competitive system there is political instability when the principal picks a new set of agents like in the US 2020. If the agent has established political monopoly there will be looting as political instability as in Russia now.

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5

Typical immoral behaviour: Bluffing, cheating and looting in state and society

Introduction

The cheating phenomena have always interested the political scientists, but only recently has economics taken up the topic to lengthy theorizing. Cheating occurs very frequently in state and market. But one should distinguish between a variety of cheating behaviour. Corruption constitutes a form of cheating, but there are many others. Consulting the standard dictionaries, one receives an unambiguously nice definition, common to all of them. Thus, we read versions of the following core: "Cheat: to break a rule or law usually to gain an advantage at something".

The definiens expression comprise a) break a rule or a law, and b) gain advantage. Thus, we can separate moral cheating in relation to a rule and legal cheating visavi the law. Whether it is the first or the second, the cheater acts rationally to gain something he or she could not otherwise have. This entails that the expected value of cheating must be larger than 0 as well as higher than the expected value of not cheating.

The logic of cheating was modelled in a brutal manner in Machiavelli The Prince, but he was accused of confusing the IS

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and the OUGHT, recommending or legitimating bluffing, reneging, corrupting, looting, etc. Although these types of behaviour are immoral, they need to be understood in the manner of positive social science. Bluffing, for instance, differ from cheating in that a convention or agreement is not the central point. But its relevance today has been shown by the manoeuvres of Putin, over-displaying the military might of Russia, while President Obama did not call uppn his bluffs in the Ukraine and Syria.

This paper discusses three forms of cheating, namely reneging in international coordination, corruption in poor and rich countries and the new form of looting in private enterprises and financial institutions, involving extreme pay and fringe benefits for CEOs—bonus culture. We start to mention the fundamental G. Becker model of cheating behaviour at the micro level. And we end with a theory of the general rise of cheating in capitalist democracies: the bonus culture society.

Cheating behaviour

Cheating is of course troublesome for social systems, as so much interaction is based upon agreements, promises or formal arrangements like treaties, etc. Defection is an option in all forms of cooperation or coordination, like S. Kierkegaard's two conceptual pairs: Either—Or: Comply or Renege? Game theory shows stunningly the force of reneging, once, repetitively or sequentially.

The multiple forms of cheating must fit into the Becker equations (1968) on rational micro behaviour. The benefits must outweigh the costs. But the cheater(s) can only have subjective estimates of these numbers, meaning that there are bound to occur misjudgements and mistakes about probabilities of success. Since the probability estimates of success or failure are subjective, they may be very far off the objective probabilities. However, cheaters update themselves in order to come closer to reality.

Cheating tends to become a repetitive behaviour, which allows for more accurate estimations. The costs involve the

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retaliation of other people, personal friends or the legal authority. Cheating can become very nasty for the cheater, for instance in insider trading or faked jobs. If the cheater is disclosed, the harm of his/her reputation may be very costly indeed. But there may also be high lawyer fees for defence.

The benefits may be substantial of course. It may be a one time bonanza or cheating may reap benefits in continuity. A successful cheater become accustomed to his success and keeps going until there is a reaction. Cheating may be rather innocent, as when a person reneges upon a small promise, or it may involve gigantic sums of money, as with insider trading or the rigging of contracts and bidding processes.

Cheating occurs in both government and their bureaux as well as in markets and enterprises. A spectacular example of the former was the housing cheat in Parliament, where several MP:s bent the rules about double residency in ugly manner. One of the most spectacular cases of private sector cheating was of course the Jew Bernie Madoff, who did not even hesitate to embezzle Jewish welfare agencies, supporting, e.g., Jerusalem University.

Prosecuting cheating tends to be cumbersome, as cheaters can often afford lawyers with great skills in questioning evidence. If a statesman accepts gifts, then so what? If a Premier employs his family on public jobs, so what? How to present proofs of insider trading, when it could be just accidental? Cheating is different from theft or murder, making it much more transaction cost heavy to identify and punish. And accusation of cheating are often countered by litigation, again costly transactions.

When cheating takes place in a game of coordination based upon cooperation and promises thereof, we say the cheater commits defection or renegeing. The famous model of the PD game is about defection and has been analysed at great length in all kinds of versions: one shot game, repetitive game, finite repetition and with infinite horizon. Defection may occur by one player or both players in a two person situation, but PD games may also involve ocean games, the larger the game the less likely is coordination success. In finite games, renegeing is

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In the new developments in game theory assuming asymmetric information, two new types of cheating emerge: shirking and pretending. These forms of cheating refer to long-run contracts in principal-agent gaming, where the agent cheats either ex post or ex ante. These concepts are useful in analysing the phenomenon of bureaucratic inefficiency and firm looting.

Defection

The coordination masterminded by the UN concerning global warming, the many COPs and the UNFCCC institution, runs with a great risk of one form of cheating, namely defection. If a small poor country reneges, it is no big deal, because emissions are a function of the size and affluence of an economy. The COP21 Treaty is an Elinor Ostrom Common Pools' Regime (CPR), covering the entire world. Her argument was that CPR:s may work despite the rational response to PD games, namely defection, at least in the last round of play—backwards induction. Now, the US has decided to renege upon the COP21 Agreement, which will destroy much of the coordination effort, as other nations will be tempted to defect too. The size of US emissions is second only to that of China. And other nations like Australia, South Korea and Japan may be tempted to do the same. Let us look at the energy-emissions problematic from the point of view of US defection. It is in fact not at all forced by the circumstances, as with other countries where alternatives hardly exist.

At the end of the day, some countries may simply renege upon the COP21 goals of decarbonisation. They may feel they cannot afford such an immense energy transformation., at least not without massive assistance the so called Super Fund.

The US is a major carbon polluter, both in aggregation and per person. Figure 1 shows its dependence upon fossil fuels.

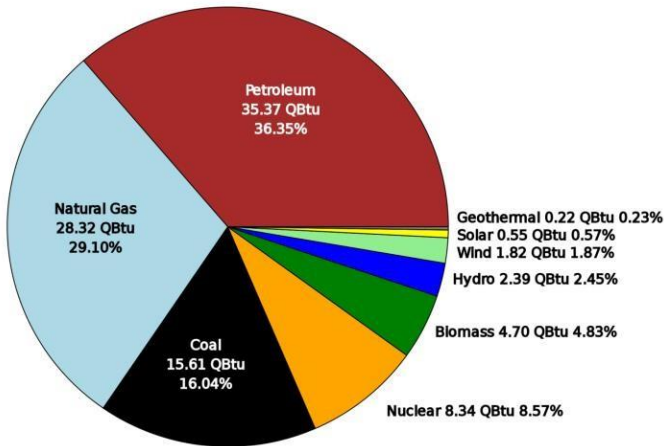


Figure 1. Energy Mix for the US

Yet, the positive signs for the US include a downward sloping curve in Figure 2. But as solar power and wind power expands, so atomic power is reduced and shale oil and gas are augmented. Yet, politics is decisive here, as the US now reneges upon the COP21 decarbonisation goals.

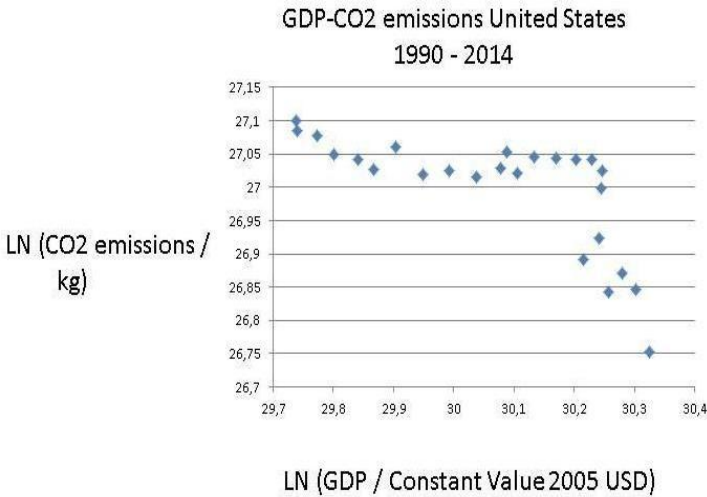


Figure 2. USA: Link GDP-CO2

Developments in the US have been looking promising lately, as most countries display upward sloping GDP-CO₂ links. But to comply with the draconian COP21 goals, the US would have needed to do much more in terms of reducing fossil fuels, increasing renewables or restart with nuclear power. Now the Trump administration defects, which just reflects that there is no clear and consistent energy policy in the US.

With regard to global warming, the entire globe is a common pool ([Ostrom, 1990](#)), but Ostrom's solution to free riding—the Common Pool Regime (CPR)—simply does not work, especially not for *ocean* games. Her argument that CPR may even work concerning small groups, due to informal or social pressure, is questionable, as also these communities would call in the state against defections somehow directly or indirectly.

Stylised heralded view of corruption

In much of the literature on corruption (see e.g., [Bowles, 1999](#); [Holms, 2015](#)), one finds the following standard tenets:

- a) There is massive corruption over the whole world, causing lots of negatives;
- b) The corruption in Third World countries is much higher than in the First World, counting the Second World to the Third World;
- c) Public sector corruption is more wide-spread and dangerous than private sector corruption.

Let me quote a typical generalisation about corruption from an encyclopaedia with the entry “corruption”:

“In the world's worst offending countries, corrupt government officials steal public money and collude with businesses to sell laws, rules, regulations, with and government contracts. The World Bank reports that “higher levels of corruption are associated with lower per capita income” ([World Bank, 2001](#), p.105; [Melese, 2002](#)).

Yet, embezzlement is not the same as corruption. And collusion between government and the private sector occurs in many countries, not only the “world's most offending countries”. Just reflect over all the pressure groups and the

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Political Action Committees (PAC) in Washington, DC. The PACs fund the incredible election expenses of candidates and legislators, but how to confine these millions of dollars to non-private spending? And what is the implicit *quid pro quo* when a whole industry supports a candidate or his family, like oil and Bush? One must be more specific about the concept of corruption and model how it may occur in poor and rich countries—directly and indirectly, and whether it is a matter of petty or big corruption: R.A. Posner states: “The Real Corruption Is the Ownership of Congress by the Rich” [[Retrieved from](#)].

The well-known Transparency Index targets *perceived* (!) corruption, which is a quite different entity compared with real corruption, according to the more specific concept above. CPI will include whatever the experts in the panel asked state. Thus, it is likely that these expert estimates cover most of the above listed abuses under the heading “perceived corruption”.

Perhaps this is the only research approach possible, when it comes to country comparisons? The CPI states the following definition of “corruption”: “Corruption is the abuse of entrusted power for private gain. It can be classified as grand, petty and political, depending on the amounts of money lost and the sector where it occurs”. [[Retrieved from](#)].

This amounts to a most wide concept of corruption, but focusing only upon government and its bureaucracy. Perhaps it is both too wide and too narrow as a definition? This is not the place to question the individual country rankings, but some scores are a little stunning, like for all countries in the Balkans, Latin America in general and Tunisia. Both the validity and the reliability of the transparency index may be criticized. How to know whether one African or Asian country is more corrupt than another?

This concept of corruption covers all forms of abuse of public power for private gains—see the above list. Thus, it would be more appropriate to speak of CPI as an index of “economic crimes in government”.

The perceptions of average economic crimes come from a panel of experts with some international organizations. We read in Wikipedia the following: “Transparency International

Ch.5. Typical immoral behaviour: Bluffing, cheating and looting in state and... commissioned Johann Graf Lambsdorff of the University of Passau to produce the Corruption Perceptions Index (CPI). The 2012 CPI draws on 13 different surveys and assessments from 12 different institutions. The institutions are the African Development Bank, the Bertelsmann Foundation, the Economist Intelligence Unit, Freedom House, Global Insight, International Institute for Management Development, Political and Economic Risk Consultancy, Political Risk Services, the World Economic Forum, the World Bank and the World Justice Project”.

Perhaps the country rankings from 0 to 100 were averaged out for these expert groups? We do not know what materials they employed for the rankings, from much corruption to no corruption.

Let us look at the average continent scores for 2015 (Table 1).

Table 1. *Amount of Transparency in the Public Sector = Average Lack of Corruption Numbers*

The Global Picture	43
EU & Western Europe	67
Eastern Europe & Central Asia	33
Asia Pacific	43
Middle East & North Africa	39
Americas	40
Sub-Saharan Africa	33

Source: [\[Retrieved from\]](#).

Actually, these average scores do not say much, as the group categories are extremely wide. The span within some groups is quite large, meaning that the category continent explains little. “Americas” comprise both North, Central and South America, although their scores vary much. Let us try affluence first and foremost. The same applies to “Asia Pacific”.

Figure 3 shows instead in a clear fashion that these CPI scores are linked with affluence as GDP per capita.

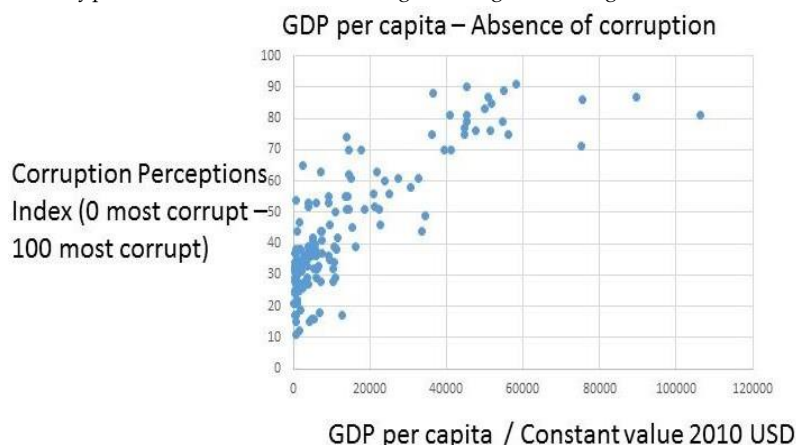


Figure 3. *CPI and GDP Globally: $y = 0,0008x$; $R^2 = 0,68$*

Sources: Corruption Perceptions Index 2015. Transparency International, [Retrieved from].; World Bank national accounts data; OECD National Accounts data files.

The finding in Figure 3 is an asymptotic curve, meaning that over a certain threshold of affluence, the lack of corruption is established and transparency not augment with more GDP. This magical threshold seems to take place at 4000-6000 US dollar per capita, which is maybe an income that makes a person less eager to supply corrupt services—see the demand—supply model below.

Examining Figure 3, one is inclined to argue that the CPI measures government abuse in general, and not merely corruption. If one includes all kinds of personal abuses by politicians and bureaucrats, one arrives at the conventional view that public sector criminality is higher in the Third World countries than in the First World countries. But is this really specifically corruption as bribery, covering the entire society, also the market sector? Or is it merely the occurrence of general crime against the state in poor countries?

Is the standard inherited view on crime correct? One may consult other indices that tap the respect for the law and contract enforcement in general, like the rule of law index in the big World Bank Governance project. In the major WB Governance project, the authors make a distinction between the rule of law on the one hand and control of corruption on

the other hand. They state: (1) “Rule of Law (RL)—capturing perceptions of the extent to which agents have confidence in and abide by the rules of society, and in particular the quality of contract enforcement, property rights, the police, and the courts, as well as the likelihood of crime and violence”. (2) “Control of Corruption (CC)—capturing perceptions of the extent to which public power is exercised for private gain, including both petty and grand forms of corruption, as well as ‘capture’ of the state by elites and private interests” (Kaufmann, Kraay, & Mastruzzi, 2010).

The CC index is evidently very much the same as the CPI, i.e., extremely broad, covering all kinds of public abuse for private gain. The WB Governance project state that they made use of the Transparency Index when calculating the CC index.

However, what is troublesome is that the RL index in reality turns out to be much the same the CPI index, i.e. measuring the backwardness of the Third World. Figure 4 shows the link between WB’s rule of law index and Transparency International’s CPI. They measure the same phenomenon, namely the link between economic criminality and poverty.

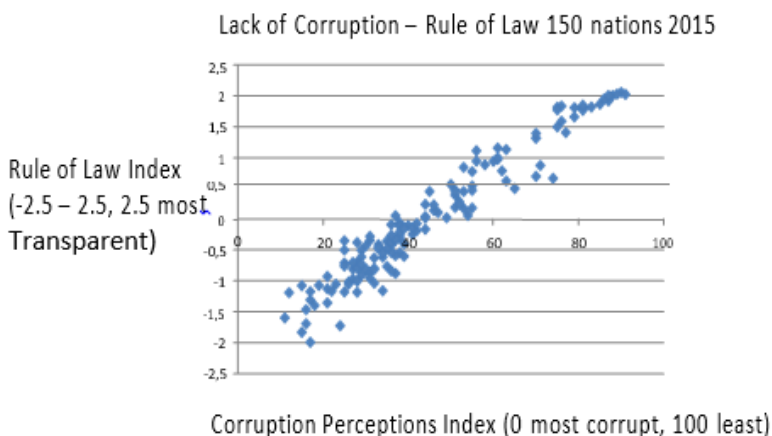


Figure 4. *CPI and WB: RL; $R^2 = 0,94$*

Perhaps then, the RL index by the WB Governance project is also a Third World index? Look at Figure 5 for the same curvature, very low scores in poor nations and then an

Ch.5. Typical immoral behaviour: Bluffing, cheating and looting in state and... augmentation up to a certain level, an asymptotic curve. But the CC or CPI was measured independently of the RL index!

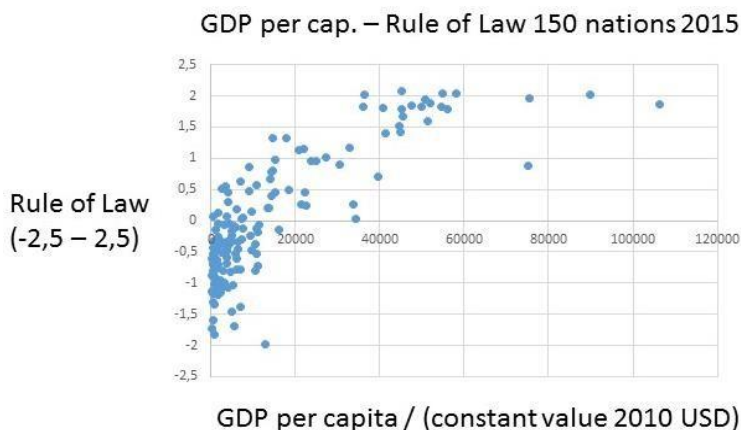


Figure 5. GDP—Rule of Law (WB): $R^2 = 0,6485$

One may pursue this finding one step further, by looking at the link between the GDP scores and the so-called World Justice index. It is calculates thus: “The WJP Rule of Law Index relies on over 100,000 household and expert surveys to measure how the rule of law is experienced in everyday life around the world. Indicators are grouped around the following nine factors” ... “Performance is measured using 44 indicators across eight primary rule of law factors, each of which is scored and ranked globally and against regional and income peers: Constraints on Government Powers, Absence of Corruption, Open Government, Fundamental Rights, Order and Security, Regulatory Enforcement, Civil Justice, and Criminal Justice”. [Retrieved from].

The World Justice Project out of Washington DC covers not only corruption or rule of law but criminality at large at arrive at the picture as the CPI index, namely.

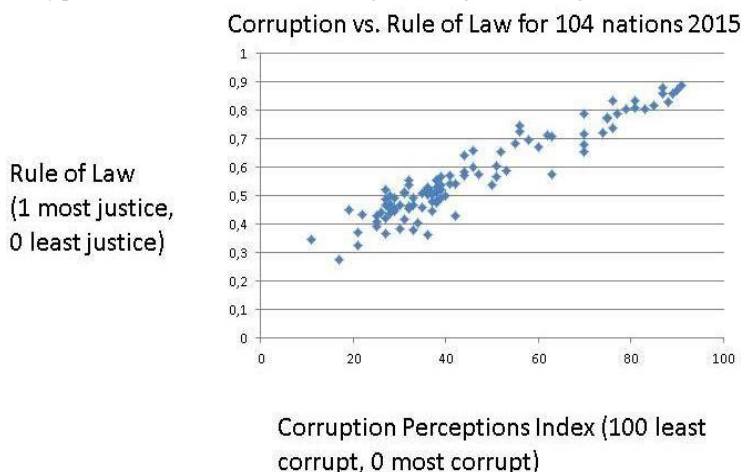


Figure 6. CPI and Rule of Law (WJP): $y = 0,0069x$; $R^2 = 0,90$

Source: Corruption Perceptions Index from Transparency International, [Retrieved from].; World Justice Project, [Retrieved from].

Concept of corruption

We hear daily about accusations of corruption in politics and economics. One may be led to believe that corruption is very widespread and impacts upon social outcomes in a broad manner. But what is corrupt behaviour? And does it matter so much for outcomes everywhere?

The often cited index of transparency (CPI) is claimed to constitute *the* index of corruption. We cite: “Corruption takes many forms, but always involves the abuse of entrusted power for private gain” [Retrieved from]. This definition of “corruption” is both too broad, including all forms of government or bureaucracy abuse, and too narrow, excluding the private market sector. It is not a very telling index. We need to go beyond the conventional framework of analysis, based upon the Transparency Index, which actually is heavily skewed against poor countries, or the Third World.

First we need a concept of corruption that is specific and does not denote any crime or abuse. Second, we must revise the stylized and inherited picture that corruption is mainly a set of Third World phenomena. It is vital to distinguish between two types: *petty* corruption and *big money* corruption.

It should be acknowledged from the outset that data is sparse of obvious reasons. To find actual information about specific cases of corruption, one would need access to lots of legal rulings and processes comparatively. Thus, what follow below is mainly some theoretical notes and conceptual deliberations.

The occurrence of corruption is a hot topic of research now, but what is the meaning of the word “corruption”? A theory of corruption in society with comparative implications has to start from conceptual considerations, separating between various forms of economic vices. One can criticize the approach of Transparency International with its corruption perceptions index that it covers all kinds of public vices but leaves out private sector corruption. The specificity of corruption should be emphasized, underlining implicit contract consideration with a quid pro quo. The approach to corruption as bribery or kickbacks in *Law and Economics* with R.A. Posner is not consistent. The distinction between petty and big corrupt practices is crucial for understanding the role of bribery in society.

“Corruption”

One may use various sources for a small scale enquiry into the semantics of “corruption”. Here, we go to a few standard dictionaries, like first the Oxford Thesaurus:

“SYNONYMS: dishonesty, dishonest dealings, unscrupulousness, deceit, deception, duplicity, double-dealing, fraud, fraudulence, misconduct, lawbreaking, crime, criminality, delinquency, wrongdoing, villainy, Bribery, bribing, subornation, venality, graft, extortion, jobbery, profiteering, North American payola Informal crookedness, shadiness, sleaze, palm-greasing, Malfeasance, misfeasance, archaic knavery, rare malversation. Antonyms: Honesty”. [\[Retrieved from\]](#).

Reading this long list, one immediately gets the impression of semantic chaos. “Corruption” has several and different meanings and the claim to synonymy is unclear if not unfounded. One may wish to separate between the following concepts:

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- Crime
- Misconduct
- Dishonesty
- Fraud
- Bribery (illegal kickbacks)
- Unscrupulousness
- Extortion
- Malfeasance

These concepts are definitely not the same or identical, reducible to one common foundation, i.e., corruption. A crime like manslaughter does not entail corruption, misconduct does not imply corruption, dishonesty neither nor fraud. On the contrary, bribery entails corruption. For unscrupulousness, extortion and malfeasance holds the same, i.e., no necessary link, only contingency. No small wonder that people write that if corruption is stopped, then big wonders arrive.

Corruption is a sufficient condition for crime, misconduct, dishonesty, fraud and malfeasance, but it is definitely not a necessary condition. In a definition, we would like to cite both necessary and sufficient conditions. Approaching the definition of the concept of corruption, one may travel along the broad route above, but it makes the concept too broad or hollow. Only bribery is an essential property of corruption, in my view.

Public and private sector

If the Oxford Thesaurus presents a too broad definition, the perhaps the Oxford Dictionary holds a too narrow definition. First, it presents the adjective “corrupt”:

Having or showing a willingness to act dishonestly in return for money or personal gain: “unscrupulous logging companies assisted by corrupt officials”;

Then the Oxford Dictionary goes on to present a definition of the work “to corrupt”:

Cause to act dishonestly in return for money or personal gain: “there is a continuing fear of firms corrupting politicians in the search for contracts”.
[Retrieved from].

Here, the concept of the bribe is essential, but there is no reason to limit its use to the public sector, i.e., politicians and bureaucrats. The bribe or kickback knows no borders, public or private. But the bribe is the essence of corruption, establishing a link between the person who somehow pays and the person who in some manner receives, making both legally or morally culpable—a *binary* relationship.

Thus, corruption is a relationship, a binary word according to logic. One person supplies something valuable that the other person demands for a service or good. Thus, corruption binds two persons together in a *quid pro quo*, which is essential. Following this conceptual development, we must inquire into the definition of the term “bribe” to distinguish it from natural gift or ordinary payment, which actually is quite tricky. Perhaps it can only be done inside the court-room, as outside of court it could be just an accusation. This emphasis upon:

- a) Binary interaction
- b) Dishonest favour
- c) Illegal payment

Makes it possible to identify a specific concept of corruption. And, importantly, one can distinguish the term from other terms, like the following.

- i) Embezzlement
- ii) Favouritism
- iii) “Concubinage”

Patronage

- iv) Cronyism
- v) Money laundering
- vi) Tax evasion
- vii) Insider trading
- viii) Fake public job

All these phenomena may contingently involve the bribe, i.e., corruption, but it is not a necessity. Embezzlement falls under the concept of theft, whereas the other forms of may involve reciprocity between the favourite and the giver of favours, but it is not necessary. These relations may be one directional and involve no bribe. Having clarified the concepts of corruption and their differences, one faces the difficult task of measuring the occurrence of specific corruption as bribery,

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as contract “consideration” between two individuals or two organizations, represented by individuals.

Bribes: Payments or Gifts

Corruption as bribery is nothing but a tacit contract between two parties where the key element of *consideration* is kept or must be kept secret.

In contract law consideration is concerned with the bargain of the contract. A contract is based on an exchange of promises. Each party to a contract must be both a promiser and a promisee. They must each receive a benefit and each suffer a detriment. This benefit or detriment is referred to as consideration. We cite again:

“Consideration must be something of value in the eyes of the law—(Thomas v Thomas) (1842) 2 QB 851. This excludes promises of love and affection, gaming and betting, etc. A one sided promise which is not supported by consideration is a gift. The law does not enforce gifts unless they are made by deed”. [\[Retrieved from\]](#).

In a corrupt deal, the consideration is neither explicitly written down nor is it kept open to others. And following Kant’s publicity rule, that what is not capable of being revealed publicly is most probably illegal or reprehensible. A consideration binds both parties to deliver something agreed upon. Thus, there is a binary relation involving a *quid pro quo*. The promisee pays something of value and the promiser delivers a service.

Now, this is a narrow concept of corruption, but it is certainly not restricted in its application to the public sector. The crux of the matter is that the consideration involves the buying and selling of something that is not legally for sale. When proving corruption, it is vital to show that there was consideration about something that cannot be sold, which is not always easy to find evidence for.

Now, how widespread is corruption according to this strictly defined and narrow concept? I would suggest that it is hardly as widespread as claimed, although culture and legal tradition matters. Of course, poverty would be a strong motivation to

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supply corruption. Poverty may also be a factor on the demand side, but corruption may be expensive. In an economic approach to the demand and supply of corruption, one must start from the benefits and costs of the individuals involved in this binary transaction, the bribe. In addition, the cost of being caught in the act has to be taken into account. Interesting cases of corruption arises when the accused of supplying a service defends himself/herself that it was only a matter of a gift without consideration. Consider the examples of Giscard d'Estaing and Olmert and Netanyahu in Israel.

Gifts as bribery is tricky, as the *quid pro quo* may be released a long time after the transaction. Payments as bribes may be negative, as when the consideration involves buying a good (e.g., property) as a much lower price than going market price.

Ambiguity of the gift in politics and public administration

The gift may be an invitation to corruption in the sense of bribery here, but it could also just be a token of sympathy. To prove corruption, one must show the *quid pro quo*, actual or expected. We are here on the demand side of corruption as a binary relationship, and the gift may constitute a legitimate expectation of some counter offer from the supply side of corruption. When a major politician like the French president or the Israeli Premier receives large valued gifts, then that calls for corruption inquiry. To whom belongs the gift? Is it personal or public? Is there any consideration involved, now or in the future?

In Singapore, known for its stern fight against corruption, gifts to public officials are not really allowed, due to the fact that giving may raise expectations. The regulations about corruption include a strict awareness of the problematic of the gift—one-sided or two-sided. Let us quote about corrupt intent and gift restrictions:

Quid Pro Quo

“Under Singapore law, on satisfaction of the “public body” test, there is no need to prove that the receipt of gratification was an inducement for a specific corrupt act. It is sufficient for

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the gratification to be given in anticipation of some future corrupt act. However, the accused must have corruptly accepted the gratification, i.e., believing that it was offered as an inducement, before this presumption is triggered. Case law refers to the sense of obligation the receipt of the gratification must create in the recipient. The relationship has been characterised by the courts as the purchase of the recipient's "servitude", establishing a "retainer" relationship and the accused being "beholden to" the giver".

Gift Threshold

Although there is no specific guidance on monetary thresholds of gifts in Singapore law, practical guidance can be found in the approach of public bodies. The Instruction Manual, published by the Singapore Government, which applies to all Singapore public officials, details when gifts and entertainment can be accepted and when they must be declared. As a matter of practice, all gifts need to be approved by a permanent secretary and only gifts under S\$50 can be accepted. Any gifts valued at more than S\$50 can only be kept if they are donated to a governmental department or independently valued and purchased from the Government. Taking a slightly different approach, Tey's case revealed that the NUS Policy on Acceptance of Gifts by Staff requires consent to be sought for all gifts over S\$100. [[Retrieved from](#)].

Politics of corruption

The broad definition of "corruption" lends itself very well to political gaming. In some countries, accusation of corruption are legio, but one does not know whether it is corruption as bribery or corruption as any crime against the state, like embezzlement, favouritism or patronage. Often these accusations are merely politically motivated and enter into a blame game, where corruption accusations are traded among opponents.

Not many accusations of corruption end up in court, and even fewer result in punishments or incarceration. Proving real corruption, one has to give evidence about the parties involved, the consideration at the centre of the interaction and the

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following quid pro quo realization. Often, in these political debates about “corruption”, what is meant is favouritism or embezzlement. This seems to be case for Brazil, where giant firm *Petronas* is said to have provided gifts, like luxury apartments (e.g., Lula), although this is difficult to prove, instead of naming all kinds of bad economic behaviour in the public sector “corruption”, it is better to focus upon the specifics in each case. If it is corruption and not solitary embezzlement or group patronage, then what is the bribe in question? If it is a matter of a general relation of symbiosis, like in cronyism or favouritism, then it is more clarifying to speak of these phenomena directly than place them under “corruption”.

Corruption has a strong illegal connotation, which is lacking in general favouritism. One may even argue that moral accusations of corruption can only be validated by court action. Yet, this would limit the application of the concept too much, because court systems in various countries possess different qualities in terms of the rule of law. Failure to punish corruption does not prove innocence, but it may merely be a matter of lack of evidence or court competence.

Why condemn corruption

Basically, the rejection of corruption whether in the public or the private sector has to be grounded on some fundamental concept governing social interaction or social systems at large. Political scientists adduce justice, whereas economists argue that efficiency holds the key to forbidding corrupt practices. Jurisprudence would side with the political scientists, although admitting that law varies from one country to another. But *Law and Economics* would claim that also jurisprudence would at the end of the day side with Posner’s wealth maximization criterion, i.e., economic efficiency.

The justice argument against corruption focuses upon justice as impartiality or justice as formal equality, buttressed by several theories (Rawls, 1971; Raz, 2009). However, when justice is interpreted as real equality (Dworkin, 2000; Barry, 2005), then the implications of justice for corruption are less

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clear. The economic argument against corruption from *Law and Economics* is more complicated, as it depends upon various contingencies, like investments, rent-seeking, etc.

Outline of a new approach

The image of global corruption typically rendered on the basis of the index of transparency is too blunt, placing most corruption with Third World countries under a most general definition of “corruption” as public sector abuse for private gain. Targeting the concept of corruption as bribery, one may construct a more nuanced picture where corruption in the First World is fully recognized on the one hand and corruption in the Third World is better understood as mostly petty corruption on the other hand.

Opacity of private sector corruption

The Transparency Index deals only with the abuse in the public sector. This is a major limitation, because in the private sector the opportunities for abuse are more numerous and much more difficult to spot and correct. Two reasons for this may be identified:

- The rules are less clear and enforceable;
- The spirit of collusion typical of private sector governance often hinders full scale revelations of abuse.

In the market sector with huge multinational enterprises and financial institutions, there is plethora of remuneration types that can be employed in the grey zone between legality and illegality. The amount of money for compensation is often staggering, with so-called bonuses reaching over 100 per cent of normal salary. Another opaque concept besides the ambiguous “bonus” (for success or mediocrity?) that may invite corruption is the “commission” in market dealings. During the last decade, the salaries, firing and pension deals of CEO:s have sky-rocketed to a level that indicates market failure, i.e., a lack of competition in the bidding process for these jobs.

The CEO may often count upon support from the board of his firm for large salary increases, regular or *ad hoc*, because he/she may suggest at the same time huge augmentations of

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board members' remuneration—perfect collusion against shareholders or stakeholders.

Principal-agent gaming

Some forms of corruption adhere to the principal-agent model, where an employee uses corrupt practices to go behind his/her principal to get extra revenue in an illegal manner, more or less tacitly. As public employee is bureaucracies in the Third World have a very low income in general, the supply of services or goods for bribes is huge. Similarly, as the quantity and quality of public services is low in poor countries, there is a large demand for improvements that may be the quid pro quo of a bribe.

Big versus petty corruption

Poverty feeds crime. That is the conclusion one draw from the above Figures. But one knows not much about corruption in its more strict meaning as bribery. Theorizing corruption in a more strict definition as a binary relationship concentrated upon the bribe, one cannot assume that it occurs much more often in poor than in rich countries. It is vital to separate petty corruption from big corruption.

Petty corruption is often occurring in Third World countries. Why? Poverty! Often salaries of public officials are low, or they may not have been paid full salaries for some time. One can analyse petty corruption as a market phenomenon, where the buyer and seller meets, given their ambition to maximize expected value. The bribe has an additional cost or benefit, namely the risk of disclosure and loss of work or punishment.

The occurrence of corruption in Third World countries reflects their poverty and it is mainly a matter of petty bribery of low paid officials. The difference between the Third World and the First World may be visualized in a demand and supply framework (Figure 7).

Some may question the ambition to subject corruption to a demand and supply type of analysis. It could smack of economic model imperialism, as with Becker's framework (2013) or like

the ideas of an economic analysis of law with Posner (2004). Yet, the aim here is just conceptual, i.e., to pin down a more precise concept of corruption and offer a reasonable theory of the difference between First World and Third World corrupt practices.

It is of course possible to speak of demand and supply of corruption, since there is the typical element in a contract between two parties, viz. the consideration. On the one hand, the promiser offers something and the promisee receives something and on the other hand there is the contra exchange of something valuable. There may be defection, but it would have to be settled outside of court, by means of retaliation.

One has to add the potential legal costs to the calculation of benefits and costs in corruption. It is a probability assessment that lies at the core of offering and taking bribes, but it is a question of subjective probabilities that may be completely wrong. In petty corruption, the probability of an incarceration must be taken into account somehow, whereas in big corruption the reputation costs could be enormous for a business. See Figure 7 for a simple model.

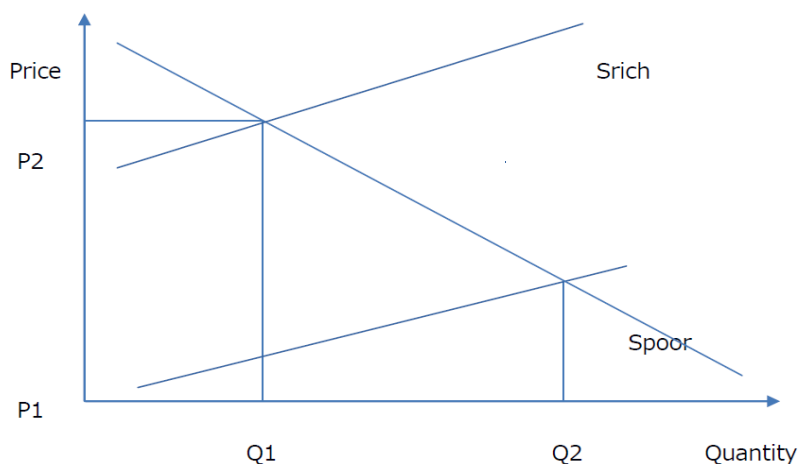


Figure 7. Demand for and Supply of Petty Bribes in Poor Societies (Q_2) and Rich Societies (Q_1)

The supply of petty bribes will be highly restricted in rich societies, because officials are paid decent remuneration and

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fear much the legal consequences of revelation. The demand curve is the same.

Omnipresence of big corruption

When it comes to big corruption, then each society comprises a clientele who dares to engage in such activities, focussing upon millions or billions of dollars. Here it is the demand curve that differs between the poor and rich country.

Big corruption is not often of the principal-agent gaming kind, but involves organisations, buying for licences or contracts. Kickbacks often take this form, where an organization promises to do some extra favours for the state, if awarded the deal. A firm may also pay an employee an astonishingly high bonus, if he/she can get hold of the contract in question. Sometimes firms operate a whole system of bonuses that far outweighs the normal salary in order to create inducements. Whether this is legal or not is a question for the grey-zone, but the temptation for the individual employee to fix the deal may become too tempting.

One has recorded several cases of firm corruption in defence procurement as well as in the competition for, e.g., Telecom contracts or defence procurement. Rose-Ackerman (2016) argues that corruption has increased, but are we talking about big or petty corruption, corruption as bribery or kickback or merely economic crimes against the state?

Rose-Ackerman presents an analysis along Chicago School Economics of corruption as resulting from the incentives of public officials. She suggests numerous reforms to “reduce the incentives for bribery and increase the costs of corruption”, reminding of Becker’s famous analysis of crime—“three strikes and you are out”.

Yet, why care about petty corruption? Big corruption is different, violating for instance the World Trade Organisation’s rules for public procurement. In petty corruption like in Nigeria, bureaucrats often simply try to stay alive, sometimes not paid or paid properly. Big corruption occurs in the summit of states and markets, but it is not the same as, e.g., embezzlement, patronage or money laundering.

An accusation of big corruption must provide evidence of mutual consideration, involving some form of bribery or illegal kickback. See Figure 8 on big corruption.

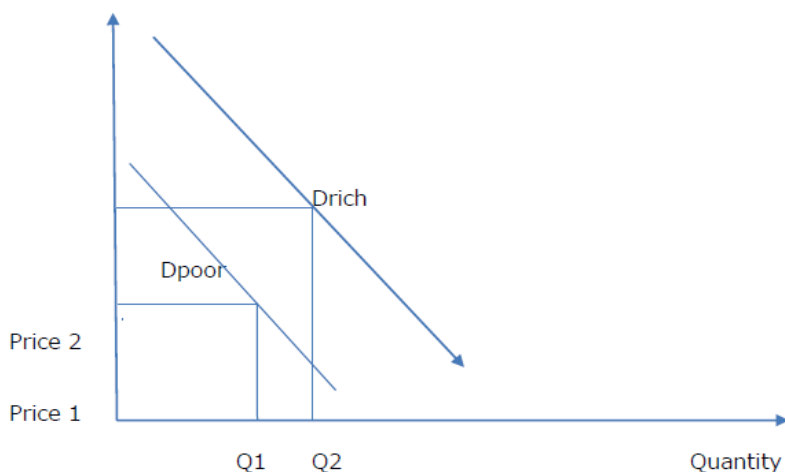


Figure 8. Demand for and Supply of Big Bribes

Comparing Figure 8 with Figure 7, we arrive at the conclusion that petty corruption would be expected to occur mainly in poor countries, whereas big corruption would expectedly take place predominantly in rich countries. Big corruption cases receive lots of attention, because they are important for market ethics and state integrity. But accusations of big corruption are not always validated by a court—see for instance the many cases in Israel! Big corruption typically involves the market sector with private firms seeking illegal favours in some *quid pro quo*. The limitation in the CPI to the public sector is arbitrary!

Dynamic analysis

Social transformation may reveal itself in the demand and supply of corruption. Thus, when societies develops towards anomie or anarchy, corruption will increase, because it becomes a survival mechanism for both the demand and the supply side—Figure 9.

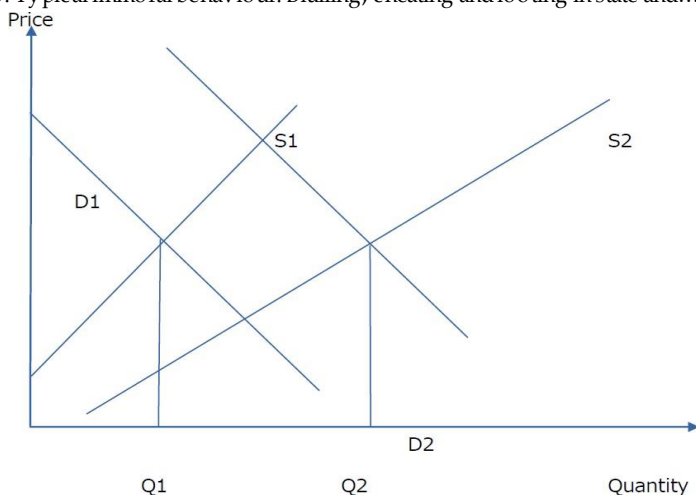


Figure 9. *Increasing Demand and Supply of Corruption*

When societies lose their firmness of institutions, corrupt practices spread with anomie and anarchy, from Q_1 to Q_2 .

Petty corruption

Using the demand and supply framework for the analysis of corruption as a binary relationship, one may add a few dynamic remarks to the static pictures above. The demand curve shifts outward when a society faces a crisis, economically or politically. People find that the normal ways of getting goods and services do not function smoothly, which is why they may try to offer an extra payment, monetary or non-monetary ones. There will be more corruption for a higher price in poor societies. If there is a *coup d'état* changing the regime towards less institutionalization, the supply curve shifts outwards, as corrupt officials need supplements to their unsafe income, or salaries. The price of corruption goes down and the quantity increases in poor societies.

Big corruption

Also, the phenomenon of big corruption is susceptible to dynamic analysis. Suppose there is a change in government from a hard core left one to a right wing government, friendly

Ch.5. Typical immoral behaviour: Bluffing, cheating and looting in state and... to the business community. The supply of corruption increases and the curve shifts downward with a new price and quantity.

Remedies

How to reduce corruption is a much discussed topic. It would seem arguable that corruption could be counter-acted by the legal machinery, but it could not possibly be eradicated in any society. Moralists suggest that altruism, or social capital, is the central remedy. Alas, cheating cannot be fully controlled or completely eliminated. The integrity of the legal system and its legislation is central.

Social trust (Rothstein 2015)

A few scholars regard corruption is the “cause” of all evil, almost as in a religious theory. They take the reliability and validity of the corruption rankings in Transparency Index CPI for granted, and they correlate these numbers (low for Third World, high for First World) with all bad phenomena. They conclude, like religious believers: Eliminate corruption and the world is saved from evilness! They even go on to suggest a basic remedy, viz. social trust. The problem with the concept of social trust is the same as with corruption in the Transparency Index: too many different connotations and no validated unique denotation. It has even been proposed that the R. Inglehart (1999) individual indicator: Survey question: “Most People can be Trusted” (interpersonal trust or generalized trust) can measure the amount of resistance to corruption in a whole society. This is merely an *ecological fallacy* (Burnham *et al.*, 2008, p.41), as it may be the people who answer YES to Inglehart’s trust question who engage in corruption!

I would sincerely argue that generalized trust may not be a rational strategy in an environment of infested terrorism. The entire framework of social trust or social capital is a conceptual muddle (Guinnane, 2005; Durlauf, 1999; Stirrat, 2004; Franklin, 2004), despite recent attempts to create a Handbook (Li, 2017). Fukuyama’s Trust (1995) is a key text, spelling out social capital theory, but it is too meagre in advancing empirical

confirmation, like no regression analysis to support the claim that interpersonal trust increases GDP growth. Theory without data is empty.

Wealth maximization and corruption (Posner)

For scholars who believe that justice is economic efficiency more or less, the rejection outright of corruption becomes difficult. Whether wealth maximization, Posner's criterion (Posner, 2004) is to be measured in money or utility, it is easy to contrive many situations where corrupt practices satisfy wealth maximization, especially in cases of petty corruption. One may, e.g., refer to Tullock's (1996) analysis of corruption, which carries a mixed evaluation, as opposed to the standard condemnation in economics (Bhagwati, 1982; Bardhan, 1997; Tanzi & Davoodi, 1997), looking mainly on macro evidence about negative impact upon economic growth.

Institutional economics and corruption

It is a fundamental assumption in the theory of efficient markets that contracts are transparent, visible and enforceable in the legal machinery. There is absolutely no room for corruption (Cooter & Ulen, 2011), Why? Two reasons paralleling the above justice distinctions:

a) *A priori justice*: a market economy operates per definition upon the notions of impartiality, formal equality and transparency. This may be motivated by some theory of justice like, e.g., Rawls' well-ordered society. One of Rawls' precepts of fairness states that offices must be open to all and recruited on the basis of competence. Thus, buying a position would be unjust and constitute a favour against others. This is micro justice that covers for instance jobs and remuneration.

b) *Utilitarian reason*: Here the arguments are many, claiming that big corruption hurts economic efficiency from several angles like growth, investments and overall competence. There is a large literature, attempting to show by numerous examples that corrupt practices are conducive to bad outcomes, especially at the macro level.

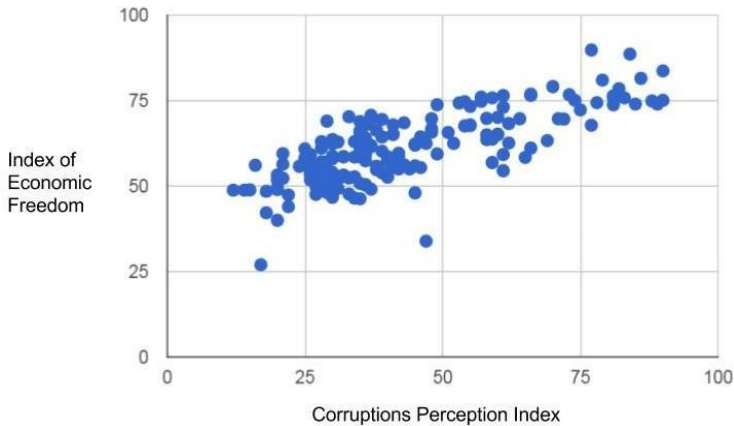


Figure 10. *CPI and Economic Freedom Index: $y = 0,415x$; $R^2 = 0,58$*

Institutional economics considers a low level of corruption as a necessary condition for a vibrant market economy, or crime in general as hurting economic freedom. In Figure 10, this idea is visualized with today's nations, the level of perceived corruption (CPI) being highest among countries with low economic freedom. But big corruption can be large also in capitalist democracies, as the steady flow of "affairs" show. And in poor nations, corruption takes often the form of petty corruption, which is not as significant as moralists tend to claim,

Looting

In a principal-agent model of the firm, there is the possibility of looting, meaning that the agent(s) take the entire profit as bonuses. The bonus culture has spread like wild fire the recent decades. And a bonus may now be much larger than the fixed salary of the CEO(s). It used to be linked to a special or separate performance, but it now tends to be awarded indiscriminately, even when the firm operates at a loss. The bonus culture is an integral part of the immense remuneration packages that CEO(s) have been able to negotiate for themselves. Economists Hart & Holmstrom (1987) were awarded the Nobel Prize in economics for their analysis of the principal-agent model of agency pay, given a number of

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assumptions like, e.g., incentive compatibility and the reservation pay, non-observability and costly legal verifiability.

However, they could not show excessive remuneration or foul play. Assuming perfect information, there is a correct remuneration scheme for effort, corresponding to several things like competence, ambition and hours worked and verifiability. But with asymmetric information, the CEO(s) have the upper hand against the shareholders and the work force. If necessary, the CEO(s) can easily engage in collusion with board members, constantly increasing their fees, on the condition that they receive these incredible pay packages as well as yearly increases whatever the firm result. Is this a form of corruption or cheating perhaps? And the CEOs protect themselves against failure or misfortune (which is which?) with excessive parachutes.

For instance, the giant energy corporation, *Vattenfall*, plays principal-agent looting with great success every year. Despite deep running losses and sharp capital down-writes, the CEOs receive handsome bonuses every year, which the owner accepts, at times a socialist governments.

The bonus culture society

The remuneration changes for the top elite in the private sector have by and by contributed to the transformation the entire social structure in advanced capitalist democracies. The post-modern social structure is much different from that of the industrial society in the 20th century. Between the excluded and the super rich families, there is a broad set of middle classes who fear social exclusion and envy the super rich, even to such an extent that the temptation of cheating sometimes becomes irresistible.

The enormous incomes of the private sector leaders are transformed into capital and wealth, pushing housing prices into sky-rocketed levels. And the better off middle class hangs on these developments in real estate and financial assets. For other elites in society, the politicians and higher bureaucrats as well as the academics, the only way to afford a living standard like the CEO:s is to procure other incomes, in whatever way.

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Thus, the bonus culture directly and indirectly increases cheating in society, as is apparent in the augmentation of affairs, calling for judicial counter-action.

The post-modern society with a bonus culture in a vibrant market economy with more and more of NPM is dominated by the rising inequalities in the economy—a development strongly supported by the monetary policy of the Swedish *Riksbanken*, sticking to negative interest rates for a long time. Take Sweden for instance where in the course of twenty years a welfare state based on a strong public sector has been changed in to a welfare society with deteriorating public services and meagre pensions. Sweden is no longer the prime example of a *mixed economy*, with a 50-50 division between state and market. The redistributive edge of Swedish social democratic society has been undone.

Looting as a strategy by CEOs stems from their information advantage and greed. With asymmetric information, they will charge an extra cost for the shareholders that often constitutes an ocean. Two example, *Ericsson* and *Nokia*, were brought down not only because the competitors in telecommunications become too difficult to compete with, despite enormous competitive advantage in the beginning. The huge profits of these two Nordic giants stimulated looting. The truly giant state owned enterprise, *Vattenfall*, plays principal-agent looting with great success every year. Despite sharp capital down-writes, the CEOs succeed in looting.

Conclusion

When the concept of corruption is theorized in a more precise manner as a binary relationship, and modelled according to demand and supply, then it is to be found in both poor and rich countries, but it is not the same type of corruption that dominates—petty against big corruption. I hope this argument contain a more nuanced view of corruption than the CPI.

Cheating occurs in all countries. The poor countries have much of petty cheating, which is annoying but not lethal as is cheating in the anarchic societies, like the Saharan countries:

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Libya, Somalia, Ethiopia, the two Sudans, etc. Big cheating is to be found in both poor and rich societies. In advanced capitalist economies, the bonus culture frames the inequalities and leads some elites in the public sector to cheat in various ways, like faked jobs for friends, misuse of public funds, embezzlements, extravagant use of per diem, gifts, excessive pay for lectures, consulting with huge fee levels, non-economic favours, etc. Why would world politicians like, e.g., Blair, the Clintons and Fillon accept that CEOs outdistance them in affluence and richness? Global consulting, excessive remuneration for speeches and public family employments help a lot.

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6

Global governance illusions

Introduction

The recently ended COP26 negotiations ended in a watered down compromise, and it is hardly a surprise that China and India reneged against the original formulation of phasing out coal power. Both countries use a lot of coal plants to get cheap energy for rapid economic development. Their governments promised to reduce coal power, but it remains to see what this entails. The other countries at Glasgow would like to know when they will start a process towards complete phase-out, because it is an externality for the globe with extremely high costs.

The governments of China and India can't be considered to be climate change deniers per say, but has shown reluctance towards any kind of measures reducing fossil fuels. They have faced considerable critique from other countries like Pacific states and several Earth scientists 'stating that going slowly may bring disastrous consequences.

Coal power in India and China

The energy situation in the most populous countries in the world is of great concern. It is not only that coal power makes up about half of total energy consumed – see Figure 1 and Figure 2.

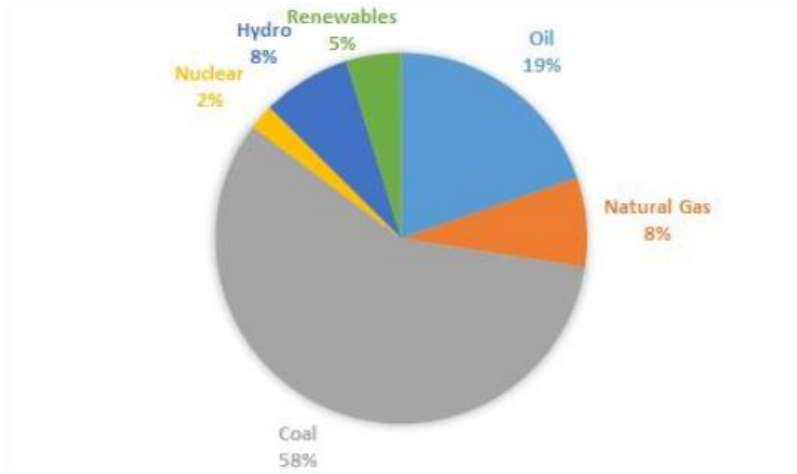


Figure 1. *India consumption of energy 2019 (Energy India, 2021).*

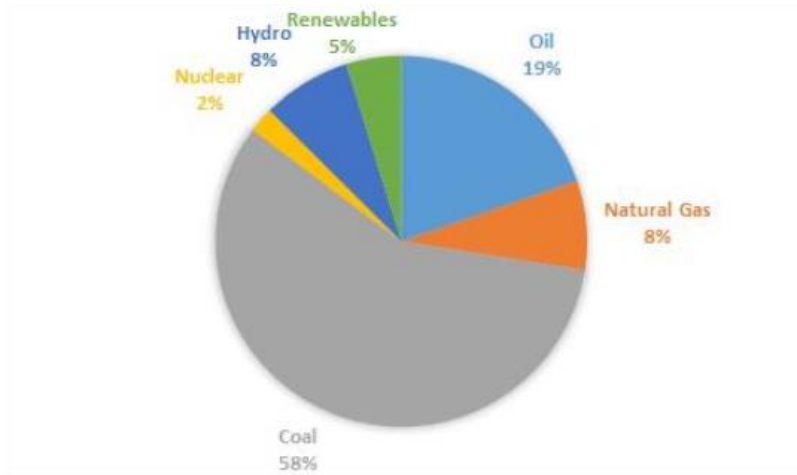


Figure 2. *China consumption of energy 2019 (BP, 2021).*

Although both countries have access to renewable power sources, coal and other fossil fuels dominate. They are projected to undergo rapid economic growth over the course of the 21st century, drastically increasing demand for energy beyond already alarming levels. In addition, the electric power in India and China is overwhelmingly produced by coal – see Figure 3 and Figure 4.

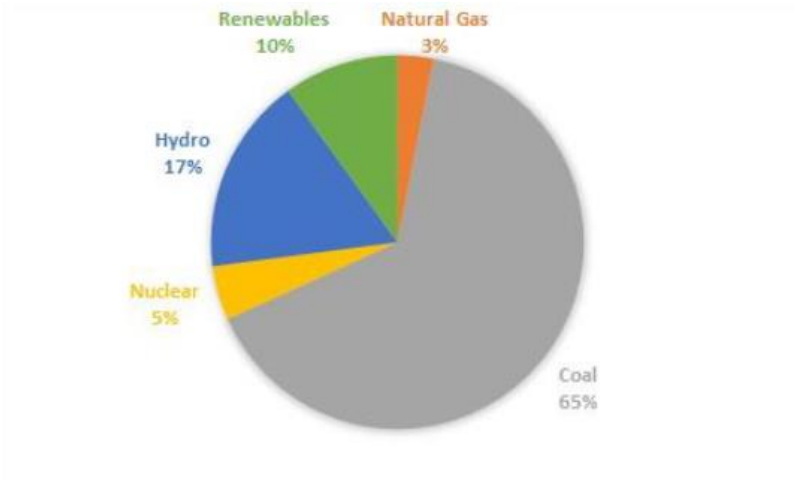


Figure 3. *Electricity production in India 2019 (BP, 2021).*

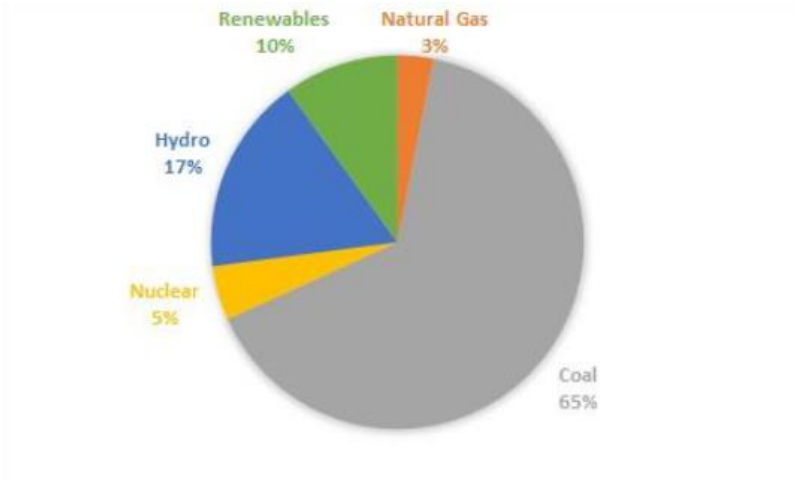


Figure 4. *Electricity consumption in China 2019 (BP, 2021).*

Both countries face enormous challenges:

- 1) Retrieve electricity from non fossils;
- 2) Replace fossil fuel power with electricity;
- 3) Increase total power supply considerably.

China says it can accomplish all these goals by 2050, whereas India wants a delay until 2060. Will their plans be successful? Arguably not, as the reason is behind the climate crisis is the energy conundrum.

“Climate hysteria”

For a Green activist like Greta Thunberg or a cornucopian like Bjorn Lomborg, the Glasgow meeting was a disappointment, where both would claim the measures agreed upon will not be enough to halt global warming. Thus, the ecologist demand more, while the cornucopian belittles the outlined efforts calling for entirely other social policies. Although focusing on the cost-benefit approaches, Lomborg downplays the probability of immense damages to mankind. Lomborg would be correct if he could factually argue that climate change induced costs can be handled – resilience. However it is obvious that it is not the case.

Ecology and energy

The debate about climate change involves all aspects of ecological deterioration. Global warming on the other hand deals with greenhouse gases. To save nature globally lots of measures are necessary, while the global warming phenomenon has been attributed in particular to CO₂ emissions.

The amount of CO₂s in the atmosphere depends upon emissions of greenhouse gases and these depend upon the size and economic development of a country. Table 5 lists the 20 largest emitters.

Table 1. CO₂ emitters 2016 (*Statista, 2021*).

Country	Share of World Emissions
China	29.18%
United States	14.02%
India	7.09%
Russia	4.65%
Japan	3.47%
Germany	2.17%
Canada	1.89%
Iran	1.80%
South Korea	1.69%
Indonesia	1.48%
Saudi Arabia	1.45%
Brazil	1.29%
Mexico	1.23%
Australia	1.13%
South Africa	1.09%
Turkey	1.03%
United Kingdom	1.03%
Italy	1.00%
France	0.93%
Poland	0.83%

Global warming will – in this analysis – loose momentum if the CO₂s are reduced. This can be done by each country according to a global regime: the COP resolutions.

International governance

Global governance has increased much since the end of World War Two, and in ecology the United Nations is very active in different projects or bodies. For global warming or climate the UN operates a special regime with the group of all member states. Emission reduction agreements requires unanimity to avoid free riding. Since cutting CO₂s has energy and economic consequences, opting out can be very tempting especially for developing countries. A country may of course as well sign a treaty and ex post renege, and regimes are vulnerable to members' opportunism – pro ante or ex post the accord.

We may call COP26 an Ostrom Club after Elinor Ostrom, who argued famously that groups of actors could regulate public goods allocation by means of a voluntary regime.

Energy and CO₂s

CO₂s are only one kind of greenhouse gases, but measurement is readily available from day to day. The atmospheric concentration is rendered in Figure 5.

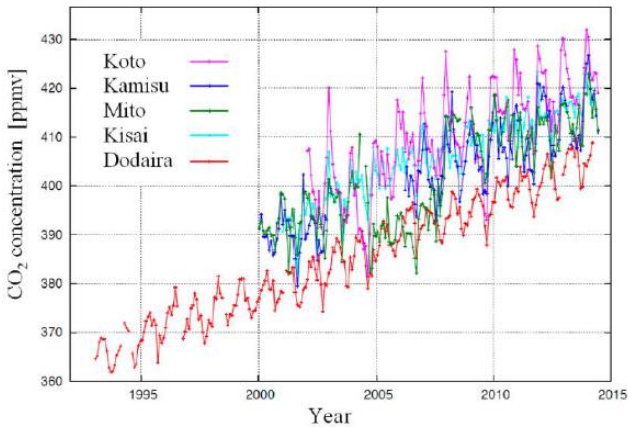


Figure 5. *Atmospheric CO₂ concentration in 5 Japanese cities (Imasu & Tanabe, 2018).*

The so- called Keeling curve goes slowly upwards with the exception of 2020. Now it stands at about 415. Earth scientists and climate experts like the UN have demonstrated that this rise is the chief cause of temperature increase. Thus, the global club decided to start cutting the CO₂s according to various promises: 2030, 2050 and 2060 on the assumption that temperature rise would stay between 1.5 and 2 degrees Celsius.

The Keeling curve would level off at some point securing a sustainable solution for the conundrum. Is this likely? Once again negative based on the facts at hand.

The Keeling curve has increased by 2 percent per year since global warming was diagnosed by in 1988, driven by CO₂ emissions. The amount of greenhouse gases has augmented sharply, driven by energy increases. The latter will not decrease. On the contrary, both greenhouse gases and energy consumption is up 2021 from 2020. Here is the crux of the matter. While the Keeling curve goes up 2%, global emissions go up 1%. It is all about energy.

Energy

The demand for energy goes up year after year. Since 1990 the increase is x per cent per year. Total energy supply is sharply up even when energy decarbonisation takes place. It is true that renewable energy sources have been put in place in many countries, but fossil fuel energy still dominates much. The transition from coal, oil and natural gas occurs at the time as demand for energy augments. With the shift to electric cars and trucks the consumption of electricity will more or less skyrocket in many countries. Figure 6 shows some estimates of energy.

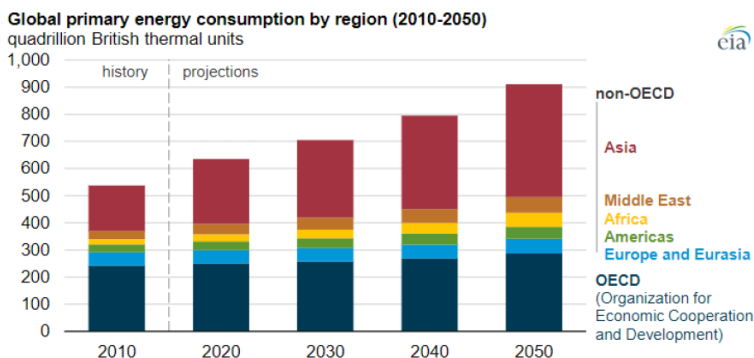


Figure 6. Projected Energy demand 2020-2050 (EIA, 2019).

Ostrom's theory

Elinor Ostrom was greatly rewarded for the hypothesis the groups or club can overcome free riding by voluntary accord and mutual control. She looked for empirical in Asian practices of

agriculture and fisheries as well as for theoretical support from Axelrod's analysis of repeating PD games. The COP is the club to handle the negative public good of CO2s. Since cooperation is not NASH in a finite sequence, which China and India showed at Glasgow, reneging will make climate change unstoppable. We have illusions:

A) States reveal truthful CO2 emissions

B) States will enforce their COP accords honouring club membership;

C) States will not go back to fossils when they face an energy shortage.

Conclusion

If the states of the world were committed to halt climate change to 1.5 degrees, then they enact much more severe restraints without free riding. However, states are as opportunistic as men and women, and will find ways out of or around agreements. The mechanisms in COP26 will not be sufficient.

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7

Looting: A new analysis

Introduction

Traditional forms of looting can be observed in riots and warfare. In riots there is explosive events of a PD game where each looter tries to come first or looks for the best grab. Often the forces of law and order have been sidelined.

Looting in war is sometimes systematic as the winning side secures the *spolia*. For example, Tamerlane brought enough spoils back to create the wonders of Uzbekistan.

In the state today there are many opportunities for looting systematically, especially when rule of law institutions are weakly observed. One may separate between banal and refined state looting.

On corruption

One would like to emphasize that looting and corruption is not the same. Sometimes the concept of corruption is defined broadly to cover a number of sins like:

Favoritism

Patronage

Embezzlement

Theft

Harassment

Racketeering

The essence of corruption is a *quid pro quo*, i.e. a tangible interaction between two parties in which an illegal trade occurs to the benefit of both, most often of pecuniary or fungible nature.

Corruption is bribery, which tends to be different from embezzlement or theft or harassment. It has been suggested that corruption is partiality, following the proposal of philosopher Barry that impartiality is the core of justice. However, friendship entails partiality but not corruption nor injustice. Before big corruption, there must be looting.

Banal versus serious looting

International indices tapping corruption deals with the public sector. This is a serious limitation as private sector behaviour often displays dysfunctions like the above.

Banal forms of corruption or embezzlement occur no doubt in any country. An employee at US open in tennis operates his own gate letting in people against a bribe. Or the border clerk in Burma receives a bribe for not checking a lorry minutely. Banal corruption or embezzlement often reflects personal misery. Actually, it may be legitimate in a country where salaries are irregular or basic needs denied. Petty corruption is hardly a nuisance in a poor country.

Looting on a gtsnd scale occurs when state assets are transferred to private ownership. Processes of looting typically goes on for s long period of time employing various quasi legal or illegal methods. Looting involves today not the *spoila* in the Roman civilisation, but the smart employment of financial tricks to empty the state coffers to private benefit.

It is most visible in the former USSR , the Arab kingdoms and at times in African and Latin American dictatorships. The occurrence of looting is to be found in dictatorships where it is essential. Looting is much much simpler in a dictatorship than

in a rule of law society. It is the essence of dictatorship being a handy form of embezzling.

In some traditional countries there is no clear conception of the *fiscus* as the economic assets of the state. For example, oil and natural gas riches are seen as belonging to the ruling dynasty and not the anonymous *fiscus*. It was the Roman's who first developed this notion of state coffers. In patrimonial countries the public services constitute a gift to the inhabitants who pay no taxes. No need for parliament.

Organised looting became big business with the transformation of the Soviet economy. One may point to other examples of big scale corruption or embezzlement:

- A) Angola – the oil
- B) Tunisia – the telecom contracts
- C) Zaire – Mobutu's theft
- D) Argentina – stealing babies
- E) Libya under Khadaffi
- F) Saudi Arabia – oil money.

However, nothing compares to the pauperization of the former USSR when the economy became capitalism under controls of KGB people. Mobutu took cash from state coffers to pay for luxury champagnes all the time, but the Russian oligarchs buy London properties and yachts for billions \$. Actually, the very same process of looting occurred in the Soviet republics except the Balkans.

In North Korea in possession of nuclear ruling family has created misery for its population. It remains to be seen if the communist party of China can curb its many billionaires.

Pillage occurs of course in the private sector too when a company is taken over and cut into pieces and sold off. In well-ordered societies such predatory strategies are restrained by the rule of law. But in the communist or post-communist state there was or is no rule of law.

Only the complicated system of institutions making up rule of law can harness wild or crony capitalism and government looting. It is as much a matter of constraints upon the private sector as the public sector.

Cui Bono in the state?

In a democracy the interests of the electorate are transmitted to government by means of party competition. What interests do dictatorships pursue?

Modern dictatorships have a conspicuous economic face. It is driven by the search for material advantages like luxury lifestyle and the accumulation of private wealth and properties. Nowhere is this motivation more apparent than in the former USSR (Belton, 2020).

Government is basically the management of the public sector. The principal is the nation or the people/citizens. They hire managers to handle state affairs by sending signals like voting, laws, constitution and opinion polls. In a dictatorship these restraints are few and not always taken seriously. Instead the dictator employs these with myths about the will and needs of the state or the ordinary man and woman. In the end the agents become the principal.

Financial economy

Looting would not play such an important role in the politics of globalisation if there was no vibrant global financial economy. The money that is transferred daily around the globe has increased much in the latest decades. Part of this money is in the official economy and the other part is in the unofficial economy or black economy. The black global economy thus comprises the interactions between the looters and the financial institutions that handle the loot. It could be:

- a) Taxable incomes or profits
- b) Money from theft, corruption, embezzlement and extortion
- c) Windfall profits
- d) Money from illegal activities.

On the other side of the table, we have tax heavens, offshore banks and Swiss banks and London City and Wall Street. The problem: money laundering or get the money from the unofficial financial economy to the official economy.

Rule of law: Essence

There is no neat and tidy definition of the expression “rule of law”. The Oxford English Dictionary offers the following entry:

“[t]he authority and influence of law in society, especially when viewed as a constraint on individual and institutional behavior; (hence) the principle whereby all members of a society (including those in government) are considered equally subject to publicly disclosed legal codes and processes.”

Now, this sounds rather complicated as well as somewhat legalistic: how to measure it in order to compare states?

One may deconstruct this concept with other concepts or criteria like:

- 1) Strong legal formalism promoting equality under the laws;
- 2) Individual rights covering contract, free labour and property;
- 3) Property institutions clarifying what is private or public, how property may be acquired or sold, what is a joint stock company, how they operate and pay tax, bourses etc;
- 4) Checks and balances, i.e. institutionalized mixed government with countervailing competences between executive, legislature and judiciary.

A political regime characterized by limited government and countervailing competences may satisfy different institutional models of democracy.

The global picture

Spreading democracy around the globe is tantamount to inserting rule of law. The world justice project (WJP) measures today the existence of rule of law. The WJP unpacks a rule of law regime as follows:

- a) Constraints on Government Powers
- b) Absence of Corruption
- c) Open Government
- d) Fundamental Rights
- e) Order and Security

f) Regulatory Enforcement

g) Civil Justice

h) Criminal Justice.

The WJP underlines accountability, judicial independence, legal formalism and balance of power between executive and legislature. It is worth pointing out that democracy is not mentioned. Rule of law was conceptualized before the advent of democracy after the Great War. Rule of law as legality, rights and countervailing rule may be combined with democracy as popular participation rule, but it has not always been so.

Table 1 presents the results of the most recent survey of the RL Index for 128 countries around the world, presenting the mean value by region.

Region	Min	Average	Max
East Asia & Pacific	0,32	0,60	0,83
Eastern Europe & Central Asia	0,42	0,50	0,61
EU + EFTA + North America	0,52	0,74	0,90
Latin America & Caribbean	0,27	0,52	0,71
Middle East & North Africa	0,35	0,49	0,64
South Asia	0,35	0,44	0,52
Sub-Saharan Africa	0,35	0,46	0,62

Not merely Western countries score above 0.6 on this scale. Rule of law countries include: Japan, South Korea, Singapore, Chile, Costa Rica, Uruguay, Mauritius and Namibia. But the countries with crony capitalism – money laundering, tax evasion, offshore banking – resulting in looting all score under .5.

Conclusion

Elites in government are typically paid less than business elites, at least in well-ordered societies. In dictatorships looting offers the remedy creating oligarchs.

The remuneration of politicians may get out of hand. This is very much the case when looting occurs. It is feasible in any dictatorship - actually its main reason. Weber stated that a regime based upon *naked* power was instable. And Lenin argued that the revolution need an agency - the party *vanguard*

(Nimtz, 2014). Both were wrong. The agents of government (politicians, bureaucrats and consultants) can sit for a long time embezzling the principal – money trumping power. Only rule of law and competitive politics can stop the motive of looting and its consequences. It seems as if Russia under Putin has become a major supporter of looting regimes.

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8

Asian giants: Institutional outcomes

Introduction

The three Asian giants have different institutions, reflecting various institutional philosophies. China adhered to Leninism, India took over British majority rule and American federalism, while Japan had a constitution designed by the USA after the unconditional surrender of 1945. How have these institutional novelties fared over time?

Concept of an institution

The meaning and reference of the word “institution” is not clear. One may separate between the atomistic and the holistic definition:

1) Atomistic approach; in rational choice or social choice “institution” refers to a rule like the rules of chess or the voting rules of Parliament. The idea is to test fit path dependency which entails that different rules give different outcomes when the same preferences are aggregated according to various rules (Nurmi, 1987). Social voting give different outcomes from the

same preferences when various rules of aggregation are used. Institutions matter!

2) The holistic approach: Frankly speaking, it is not an easy task to determine what “institution” refers to here. The problem is simply that so many things are called “institution”:

- a) Public organisations
- b) Private organisations
- c) Rules
- d) Law
- e) Famous people (Mandela)
- f) Market
- g) Hierarchy
- h) Tradition

Instead of trying to find a common core among these, I will suggest a stipulated definition: An institution is a rule or set of rules that meet with a high probability of enforcement.

Thus, marriage is an institution as well as democracy, or the market economy is a set of institutions. Institutions as rules restrain the behaviour of people and organizations. They call for a legal order of public and private law as well as the legal machinery. One can always ask about institutions as rules of behaviour: are they observed or enforced?

Normativity: Ideal institutions and real ones

There are two different kinds of normativity that are often confused. Take the example of constitutional rule in Russia.

Putin has bypassed the Russian constitution from 1993 and introduced an authoritarian regime. One normativity was replaced by another and entirely different. Normativity is in place when its norms are observed or enforced. This is the logic of appropriateness that March and Olsen speak much about (March & Olsen, 1984).

Normativity is in every society enforced by law or custom. It may be rejected in the search for new rules. Institutional change is the process in which new rules replace old ones. To mention one example: the rules of justice.

In one of the most discussed books after World War 2—A Theory of Justice (1970)—Rawls proposed ideal normativity consisting of 3 rules:

- I) Freedom
- II) Impartiality
- III) Maximin

The set of liberties is wide, impartiality applies mainly to public offices and maximin calls for warfare state spending ([Rawls, 2005](#)).

Institutional realities deviate from these ideals. Liberties can be restricted—compare the case of Assange. Partiality is easily spoken of—compare the conflict at the USP in Fiji. Maximin is not achieved even in Nordic welfare states.

Looking at real institutions, one finds discrepancies compared with the ideal ones in Western political tradition where rule of law is mentioned as an ideal set of institutions. How far are real set of instructions from these benchmarks?

Ideal institutions: Rule of law

In a well-ordered country there are rule of law institutions. Their role for justice is necessary even when not sufficient. The German rechtsstaat is mentioned by Kant as integral to justice although not an ultimate value. In English legal thinking it has a most prominent place.

Speaking generally, rule of law is a set of rules that a just state must have.

Real institutions

Let us try to get some insights into how rule of law institutions occur in the state. Firstly, there is the norm of accountability. State decisions and actions must be recorded systematically with the possibility of complaint with an oversight capacity. Secondly, we have the norm of open government. Openness is promoted by competitive at all levels of government in the state. Thirdly, there is just law. This encompasses both private and public law. Roman Law defined just law as living honesty, speak the truth and give to everyone his/her due. What the last requirement implies is the

conundrums of legal and political theory today. Fourthly, we have impartiality.

I have here followed the World Justice Project (WJP) that makes a yearly survey of the rule of law in as many countries as they can find expert opinions.

WJP ranks some 140 countries in a nominal scale from 0 to 1, allowing for a comparison of more or less rule of law. No country is placed at 1 or 0, but some glaring differences may be nosed. How about the 3 Asian giants?

China

The overall score on being well-ordered or having the characteristics of Rechtsstaat is low—see Table 1.

Table 1. China

WJP Rule of Law Index: Overall Score	0,47
Factor 1: Constraints on Government Powers	0,31
Factor 2: Absence of Corruption	0,53
Factor 3: Open Government	0,38
Factor 4: Fundamental Rights	0,27
Factor 5: Order and Security	0,81
Factor 6: Regulatory Enforcement	0,49
Factor 7: Civil Justice	0,52
Factor 8: Criminal Justice	0,45

The weak scoring for China reflects its Leninist legacy that is now fulfilled in a centralised one party state. Looking at the components of rule of law China performs very low on limitations upon government, low on justice reflecting the judges’ dependence on government, and high only upon order.

India

When we come to India we reach at least .5 on an average—the Nordic countries score at .9. The Indian problematic is entirely different from China’s. India scores well on restrictions on government and openness of society—see Table 2.

Table 2. *India*

WJP Rule of Law Index: Overall Score	0,50
Factor 1: Constraints on Government Powers	0,59
Factor 2: Absence of Corruption	0,40
Factor 3: Open Government	0,60
Factor 4: Fundamental Rights	0,49
Factor 5: Order and Security	0,60
Factor 6: Regulatory Enforcement	0,48
Factor 7: Civil Justice	0,44
Factor 8: Criminal Justice	0,39

In India corruption has entered the judiciary and fundamental rights are not well protected for example *visavi* Muslims and the poor.

Japan

Finally, we arrive at an Asian country scoring better than the US. Japan certainly did not choose the rule of law system, as it was imposed by the US. However, It is well implemented—see Table 3.

Table 3. *Japan*

WJP Rule of Law Index: Overall Score	0,79
Factor 1: Constraints on Government Powers	0,72
Factor 2: Absence of Corruption	0,82
Factor 3: Open Government	0,70
Factor 4: Fundamental Rights	0,78
Factor 5: Order and Security	0,92
Factor 6: Regulatory Enforcement	0,79
Factor 7: Civil Justice	0,77
Factor 8: Criminal Justice	0,77

It is remarkable that Japan scores well on all 8 dimensions of a *rechtstaat*, especially low corruption as well as high regulation enforcement.

Conclusion

The WJP shoes that rule of law has decreased since 2015. For the US it is a clear downward spiral, especially with the Trump presidency.

One is amazed that Trump can draw support from various groups as a demagogue. He promises much but delivers little of positive outcomes. The real negatives of a Trump re-election would be:

Danger 1: Damage to *rule of law*. We have long believed that American constitutionalism foolproof. A president who treats the office with complete opportunism with guile would not survive US checks and balances. Not so. Trump not only lies strategically but is surrounded by mafia and family. US democracy today is hardly impressive

Danger 2: *War*. Given his capriciousness and aggression Trump may start WW3. His national zest brings USA into collision everywhere. How would the EU react to a war in the Chinese Seas or an attack on Iran?

Danger 3: *Strongman* model reinforced. We see so-called strongman appear ominously in Communist or post-Communist countries and Brazil.

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9

Max Weber as theoretician

Introduction

One can look at Weber's publications from different angles. The mainstream interpretation was stated by R. Bendix, but recently more daring approaches have been launched. On the one hand, there is the Freudian interpretation with focus on the troubled personality of Weber. On the other hand, we have the Marxist approach setting Weber in the political situation in Germany at his time - "situation determined" a la Mannheim, including the German catastrophe 1933-1945.

I will outline still another kind of interpretation, though admitting that both the psychological and the Mannheim approaches have some evidence - Weber failed as an Ordinarius and he gave a virulent talk on the Ostfrage at UNI Freiburg in 1895. Weber was both a theoretician and a philosopher of science. His Collected Papers in the Philosophy of Science is a book published after his death in 1920, making him one of the most influential philosophers of science besides Popper, Hempel and Kuhn.

Microfoundations

Weber identified the basic micro unit in social science analysis as intentional behaviour. The emphasis for Weber was upon intention – what he called "Sinn" (meaning). This word has a specific semantics in German philosophy and in religion. Sinn was the inner side of behaviour: thought, belief, will, emotion, etc. When outer behaviour was directed by complex Sinn, there was "Sinnzusammenhang". Weber devoted much time to analysing such meanings or complexes of meanings in macro theories.

Sinn

The humanities and social sciences understand outer behaviour by advancing intention or motive. He called it "deutend verstehen". There is nothing similar in the natural sciences. Sinnzusammenhang This emphasis on the basic subjective nature of human activity opens up for the analysis of ideas, plans, hopes, etc. Since the relationship between inner and outer behaviour is many-one, finding the correct intention requires a conjecture or hypothesis. Intention or reason is simple or complicated, as when I walk over the street a la J. Searle in order to buy ice cream or when I travel to Dubai a la Mossad to spy upon terrorists. Action = intention + behaviour.

Example 1:

On midsummer 1941, lots of people and objects started to move on the Ostfront into the USSR. What was the plan? The war had been planned for one year, but the end and the means? Amongst the German generals there were different goal conceptions but they all adhered to the Blitzkrieg as means. Yet, in August the Supreme Commander declared Minsk and Kiev (cauldrons) the priority, not Moscow. Hitler's decision changed Barbarossa into an attrition war with one likely ending.

Means and Ends

Weber declared that every rational action could be analysed with the means-end framework for understanding the inner aspect. Much criticism has been raised against Weber's methodology of understanding an actor's motive - the inner side. It is all wrong. Without intention, how to account for the outer side? Goals change behaviour.

Example 2:

Why did Gustavus Adolfus intervene in the 30 years war? The motives and plans? Can sayings or written documents be trusted? His innermost intention?

Weber stated that any hypothesis from "verstehen" needs corroboration or outer evidence. A social relation occurs when two persons relate to each other in consciousness, i.e. Sinn. What, then, does "Sinn" refer to? The scope of Sinn is large and its importance makes a great difference visavi Nature and the natural sciences. Searle and Putnam live in a so-called material world, whatever this may be: atoms, waves, strings or quanta. Weber did not advocate Cartesianism or phenomenology and rejected dialectic materialism.

Macro theory: Ideal-types and causality

The subjective aspects of action did not pose a hindrance to causality. It was not the mind-body problem that interested Weber, but cause and effect in social life. He argued incessantly that belief and ideas mattered, although as a realist he underlined power and material benefits. Thus, he was to penetrate into the cores of religious beliefs, while explaining religious struggle as conflict over life opportunities.

Weber put forward a number of macro theories where he often employed his specific method of concept formation - ideal types. Here, we have:

- The difference between the Orient and the Occident ecologically – in Anticipation of Wittfogel's thesis.
- The end of the Antique period by the transformation of slaves into serfs - anticipating Rostovtzeff's thesis.
- The evolution of two Law families that could claim justice, or the difference between Roman and Common Law on

the one hand and socialist law as well as Kadjustice on the other hand – anticipating Law and Economics.

- The Staendestaat as the ideal type of feudal society.
- The emergence of commercial law in late medieval trading societies (commenda)
- The rise of modern Herrschaft with the ideal type of bureaucracy.
- The two ideal types of democracy: parliamentary and presidential democracy.
- The impossibility of a socialist or military economy-anticipating Hayek.

All these theories include causality arguments, which needed various kinds of evidence, even counterfactual analysis. They also have micro foundations.

Microtheory

Weber became well-known for his theory about the rise of capitalism. He linked the modern market economy with the Reformation, specially Calvinism, leading to endless debate about Sinn, causation, and modernity.

Weber argued 1904 that the parallel between the meaning of reformation and the meaning of modern capitalism were affiliated both logically and causally. He then in 1913 set out to show the opposite: no capitalism, no Calvinism. Causation called for evidence from outer behaviour or actions. The debate over the so-called Weber thesis goes on, now as the origins of modernism. For example Swedish economic historian K. Samuelson denied any connection, neither on the level of meaning (Sinn) nor in causation

Weber emphasized Sinnzusammenhang inquiring into the world religions and their economic impact. He found their essence in the thoughts of the virtuosi, i.e. Sinnzusammenhaenge.

Conclusion

Weber developed a meta-science in a very original manner, picking the best from mainly German philosophy. He was

neither a Kantian nor a positivist or adhered to phenomenology. His concept of the inner aspect of actions is today highly relevant. The subjective meaning cannot be neglected but what is it? Meaning or intention is not in the external world except in the sense that actor x's Sinnzusammenhang is outside of actor x's Sinnzusammenhang but other people's mind is outside of my mind but not merely brain substance or neurological interactions. Finally, Weber was a honourable German democrat and their foremost social scientist ever, as his private correspondence testifies. Neither Marx nor Durkheim had a plausible micro approach to support their macro theories.

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10 A note on Weber

Introduction

One can look at Max Weber's publications from different angles. The mainstream interpretation was stated by Reinhard Bendix (1964), although American sociologist Talcott Parsons already in the 1930s recognized his unique contribution to the social sciences. Recently other interpretations of or approaches to Weber: a Freudian interpretation with focus on the troubled personality of Weber; a Marxist approach placing Weber in the political situation in Germany at his time - "situation determined" *a la* K. Mannheim, including the German catastrophe.

Weber lived a difficult life working like an ascetic. He failed as an *Ordinarius* and he gave a virulent talk on the *Ostfrage* at UNI Freiburg 1895. This was his inaugural speech, calling – wrongly – for nationalist policy or state intervention against Polish migrations. Yet, Weber's genius appears after his personal collapse in especially his philosophy of the social sciences and history. His

Wissenschaftslehre (1922) remains the most original work on methodology till this day.

Microfoundations

Weber identified the basic micro unit in social science analysis as intentional behaviour. The emphasis for Weber was upon intention - what he called "Sinn" (meaning).

Meaning is the inner side of behaviour: goal, belief, will, emotion, etc. When outer behaviour is orientated by complex *Sinn*, there is "Sinnzusammenhang". Weber devoted much time to analysing such meanings or complexes of meanings. This emphasis on the basic subjective nature of human activity opens up for the analysis of ideas, plans, hopes, etc. Since the relationship between inner and outer behaviour is many-one, finding the correct intention requires a conjecture or hypothesis. Intention or reason is simple or complicated.

Means and ends

Weber declared that every rational action could be analysed with the means-end framework for understanding the inner aspect. Much criticism has been raised against Weber's methodology of understanding an actor's motive - the inner side. It is all wrong. Without intention, how to account for the outer side?

Weber stated that any hypothesis from "verstehen" needs corroboration or evidence. A social relation occurs when two persons relate to each other in consciousness, I.e. *Sinn*. What, then, does "Sinn" refer to? The scope of *Sinn* is large and its importance makes a great difference *visavi* Nature and the natural sciences.

Teleology and rational choice

The most basic model in the social sciences today is the rational choice framework. Its origins are to be found in micro economics – *homo economicus* in Austrian economic theory. Weber's model of meaningful behaviour is sharply teleological like rational choice but lacks the requirement of utility and probability. The means and the ends do not have to be causally related! And objectives may be unfeasible or not capable of realization. Weber modeled all kinds of meaning or intentions,

whether rational as with Bismarck or irrational as with the *virtuosi* of religion.

Macro theory: Ideal-types and causality

The subjective aspects of action did not pose a hindrance to causality. It was not the mind-body problem that interested Weber, but cause and effect in social life. He argued incessantly that belief and ideas mattered, although as a realist he underlined power and material benefits. Thus, he was to penetrate into the cores of religious beliefs, while explaining religious struggle as conflict over life opportunities. All forms of priesthood he looked upon as the institutionalized power ambition.

Thus, Weber analysed at great length Eastern and Western religions, omitting Islam and Orthodox Christianity. Why? They did not fit the so-called "Weber thesis" below.

Weber put forward a number of macro theories where he often employed his specific method of concept formation - *ideal-types*. Here, we have:

(1) The difference between the Orient and the Occident ecologically - in

anticipation of Wittfogel's thesis.

(2) The end of the Antique period by the transformation of slaves into serfs - anticipating Roztovzeff's thesis.

(3) The evolution of two Law families that could claim justice, or the difference between Roman and Common Law on the one hand and socialist law as well as *Kadijustice* on the other hand - anticipating Law and Economics.

(4) The *Staendestaat* as the ideal type of feudal society.

(5) The emergence of commercial law in late medieval trading societies.

(6) The rise of modern *Herrschaft* with the ideal type of bureaucracy.

(7) The two ideal types of democracy: parliamentary and presidential democracy.

(8) The impossibility of a socialist or military economy-anticipating Hayek.

All these theories include causality arguments, which needed various kinds of evidence, even counterfactual analysis.

Weber became well-known for his theory about the rise of capitalism - Weber's thesis linked the modern market economy with the Reformation, especially Calvinism, leading to endless debate about *Sinn, causation, and modernity*.

Weber argued 1904 that the parallel between the meaning of reformation and the meaning of modern capitalism were affiliated both logically and causally. He then in 1913 set out to show the opposite: no capitalism, no Calvinism. Causation called for evidence from outer behaviour or actions. The debate over the so-called Weber thesis goes on, now as the origins of modernism. For example Swedish economic historian K. Samuelson denied any connection, neither on the level of meaning (*Sinn*) nor in causation.

Wissenschaftslehre

While composing his major empirical theories from 1900 he also wrote philosophy pieces continuously. They rank high on originality, breaking off from the contemporary German schools of philosophy. He would today be classified as *internalist* due to his microfoundation, rejecting for instance Searle and his New Realism = One Reality i.e. the world of quantum physics.

Conclusion

Weber developed a meta-science in a very original manner, picking the best from mainly German philosophy. He was neither a Kantian nor a positivist or adhered to phenomenology. His concept of the inner aspect of actions is today highly relevant. The subjective meaning cannot be neglected.

Meaning or intention is not in the external world except in the sense that actor x's *Sinnzusammenhaenge* are outside of actor x's *Sinnzusammenhaenge*. Other people's mind is outside of me but not merely brain substance or neurological

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