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Citation

FINDLAY, Mark. Crime, Development and Corruption: Cultural Dynamic - Global Challenge?. (2014). *Organized Crime, Corruption, and Crime Prevention*. 179-186.
Available at: https://ink.library.smu.edu.sg/sol_research/2102

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Crime, Development and Corruption: Cultural Dynamic—Global Challenge?

Mark Findlay

Focusing on globalising as the context of corruption relationships, the paradoxical economic and political messages of globalisation generate corruption relationships as business options, when modernisation is brought up hard against customary obligation. Even so, world financial agencies and international organisations still tend to blame the corrupt, rather than analyse their part in the corruption process within particular cultural contexts. These characteristics are highlighted in the following case study on corruption, and their consequences both for promoting effective control within more realistic global development paradigms, are critiqued

What is Corruption

Besides the common normative representation of corruption as some moral failing in the individual and some cancer in free-market enterprise, being a business reality:

- Corruption is a relationship between self-interested parties enjoying different degrees of power in the relationship.
- Corruption is a market reality often facilitating legitimate and illegitimate commerce.
- Motivations for corruption are influenced by common profit priorities.
- Morality is not an essential consideration for the definition of corruption.
- Networks of trust (Fukuyama 1995) are distinctly culturally relative—violation of trust as corruption is heavily dependent on cultural location.
- Corruption is a natural by-product of cash economies.
- Corruption arises from power imbalance.

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Understanding these characteristics will enable a market focus for corruption control to prevail over programmes of problematic commercial moralising (Transparency International 2012).

Corruption as a Unique Crime Type

Because of its heavy moral overlay, and its assumed challenges to good governance or public probity, corruption is treated in many jurisdictions and within many crime control agendas as a unique problem demanding unique solutions (Findlay 1994). In such representations, corruption is criminal, more than criminal, and outside crime. Besides having the characteristics of a substantive offence in itself, corruption acts as a facilitator of associated crime. For instance, many large-scale criminal enterprises could not profit or be sustainable without the assistance of corrupted and compromised market regulators (Findlay and Hanif 2012).

One of the challenges in understanding the reality of corruption as crime is to disentangle the nature and the dynamics of the phenomenon from the characteristics of control directed against it. Recent corruption control agendas work from the assumed uniqueness of the phenomenon and thereby require control powers which often far exceed what would be available to standard criminal investigation projects (Findlay, Odgers and Yeo 2009; chap. 3).

Criminalising relationships as corrupt has a political benefit through utilising the language of criminal law. Sanction tends to *de-legitimate*, *commercially ostracise*, and *de-politicise* the motivations for and the consequences of corruption. Using the device of criminal liability, the control of corruption through investigation related to possible prosecution focuses on the individual rather than the organisational reality of corruption as a commercial dynamic involving several players and interests. In this respect, the discourse and procedure of criminalisation emphasises pathology and illegality, rather than commercial and social utility. In so doing, there is an avoidance of the need for a wider conceptualisation and context for corruption, by emphasising its criminality and the unique responses to its control.

Criminalisation, rather than a more sophisticated market analysis of the conditions for corruption particularly as a consequence of modernisation, suggests power over corruption through control institutions and language, rather than a more realistic need to adjust the dynamics of socio-economic development and relationships of commercial domination and dependency. In this situation of underplaying commercial conditions, successful corruption control can be marketed as a product of political strategy, rather than corruption being a product of political and economic power relations (Johnson 2012).

Representation of Corruption Control

As mentioned above, where the major anti-corruption NGOs, such as *Transparency International*, represent corruption as a critical challenge to good governance through criminalising breaches in public probity, the control of corruption becomes the natural

province of nation-state government through their *independent agencies* (Findlay, Odgers and Yeo 2009; chap. 3). A failure by states to acknowledge and initiate the independent agency control approach might be judged by international organisations and their global corruption indices as a failure to address the governance challenges of corruption, and even as evidence of corruption within these states.

One clear limitation in the good governance/political control nexus is the absence of the dynamic commercial dimension of corruption relationships as they operate particularly in developing economies (Findlay 1999; chap. 5). Additionally, in missing the market imperatives of corruption when representing control responses, nation-states are vulnerable in that even the market-based imperatives for the government, where the government is a monopolist player, a monopolist regulator, and a trustee of market conditions, are under-recognised.

Complicating this, if we are seeking a more effective role for government in corruption control, is the reality that government takes up the role both as the broadcaster of corruption problems and the regulator of its consequences. This duality is particularly problematic in national governance settings where independent control agencies are anything but independent, and the state is an active player in corruption relationships. With these conditions in mind, it is still difficult to displace the state out of the corruption control project. Partly, the inevitability of state influence over regulating corruption rests in the recognition that through its sponsorship of law, the state, and its legal institutions and processes stand generally as the legitimate regulator of property relationships and the guarantor of compliance over property transactions and obligations. This centrality is paradoxically a critical reason why the state is a valuable player in corrupt relationships, and politicians can be rewarded handsomely for their facilitation of these relationships. Take for instance a state with an active expressive legality which condemns anti-competitive behaviour, while at the same time, through preferential licensing, subsidies and market positioning, limits market competition in favour of corrupt players. Where the authority to dispense regulatory favour is delegated to state control functionaries who exercise discretion, then these individuals have much to sell in the corruption marketplace.

So far, we have not ventured too specifically into global corruption control and its regulation besides mentioning the discourse of NGOs in the field. If we examine the *UN Convention against Corruption* (UN Convention against Corruption 2003) two features seem consistent with the critique of nation-state control representation discussed above. Firstly, the control discourse is constructed around criminalisation and languages of individual liability. Secondly, responsibility for corruption control, consistent with conventional public international law obligations, is couched in terms of nation-state law enforcement capacity.

As with state control conceptualisations, the Convention under-represents corruption from the interests of legitimate market and consumer communities as economically anti-competitive and dangerous to legitimate market preferencing, thus ineffectively individualising responsibility for vast networks of corrupt commercial influence in developing market economies. If international criminal justice is to have a role to play in the regulation of trans-national and global economic corruption through convention-centred mechanisms, then there is a critical need to:

- Understand corruption relationships as commercial realities beyond the jurisdictions of nation-states;
- Appreciate that many disaggregated states and delegated politicians are induced into corruption relationships, and thereby, the capacity of the state to control is compromised. Complementarity in such circumstances might shield, rather than facilitate, control outcomes where both local and international commercial interests are aligned against successful investigation/prosecution (Findlay 2013a; chap. 3);
- Develop within international criminal law a conception of global corruption, with a greater capacity to criminalise collective and corporate responsibility, and confront layers of complicity (Beare 2003; chap. 8);
- Recognise that because of the high level politicisation and multi-national commercialisation of global and trans-national corruption, and the manner of its victimisation, restorative processes of responsabilisation might prove more effective through international criminal justice (ICJ) than individual criminalisation;
- Counteract the opportunity-generating conditions within modernisation and development that flourish corruption, beyond a narrow deterrent strategy; and
- Due to the institutional and process limitations of contemporary international criminal justice (ICJ) options, there could be a case for developing a particular corruption control facility at the global level.

Symbolising Corruption—Dangers of Creating Monsters

A natural consequence of presenting corruption as a unique crime requiring unique control solutions, rather than as an all too familiar commercial preference, is to broadcast offenders and offences through selective public exposure in order to confirm the *rotten apple* theory. It is much more convincing for community consumption to individualise corruption through scape-goating, rather than to explore the institutional and process dynamics in a more conventional market analysis.

By objectifying and externalising corruption in terms of actions by individuals with deviant and destructive motivation, it makes understanding and responding to the behaviour simpler and more distant from more troubling situational contexts. Individualising the offence lends the state and its institutions the credibility to propose the market dominance of state regulators, and their neutrality. The alternative to *monstering* corruption players, particularly when considering the relationship between crime and development, is to investigate potential opportunities and locations for corruption. A situational analysis requires looking away from individuals and their moral failures, to processes and relationships wherein corruption becomes *good business*.

The discourse surrounding global corruption as a dangerous challenge to some model of good global governance requires the orchestration of public expectations about corruption. For many of the recent anti-corruption institutions and initiatives, a symbiosis with a compliant media is essential. If the media is willing in any

way to discuss corruption as a social by-product, it does so by suggesting that its prevalence and prevention are community responsibilities, rather than predictable consequences of modernisation in transitional cultures, or disaggregated states and commercial markets (Findlay 2013).

Globally or trans-nationally, it is through externalising corruption threats in the same way hegemonic interests externalise organised crime and terrorism (Ramraj et al. 2005) that it is possible to create and endorse a symbol of good global governance, and an atmosphere of necessity and moral panic within the symbolic global community. Corruption receives a communitarian treatment without in anyway requiring the analysis to confront actual features of community socialisation (such as bonds of obligation (Findlay 2007)) that may enable interpretations of commercial arrangements that otherwise are easily branded as corrupt. By employing a model communitarian location for corruption, it is against symbolic communities rather than real markets that the success or failure of corruption control is measured. In this way, simply the extent to which a prevention Convention is ratified by Member States of the UN can be presented as a victory for control. In this artificial location, the commitment of governance institutions to good governance can also be symbolised by ascribing to narratives of control that express honesty over commercial self-interest.

Market Model for Corruption and Control

Preceding any convincing market model for corruption, whether it be culturally or trans-nationally located, is the existence of market structures over property rights largely pre-determined by government regulation. Corruption would not likely be a problem in communitarian or subsistence societies where universal private property is not an exclusive measure for wealth or its transaction. If there were no material profit in it, then corruption would not be actively pursued in commerce and trade.

Accepting this, the enquiry then turns to the source of opportunity for corruption through discretion-based regulation. If there is a control interest in individual players, it is in what motivates them to interact, and what makes corruption an attractive, over a risky, business association. In such an analysis, two levels of market engagement emerge which *negotiate* regulation:

- corruption as a market variable; and
- corruption as a commercial alternative.

Making a market determination for or against corrupt commercial arrangements invites a cost/benefit measure of the profit potential in corruption relationships, and their likely cost through successful regulation.

Interestingly, consistent with any state regulation over lucrative markets (especially through law enforcement when supply is limited and demand is inelastic), by orchestrating entry restrictions to any markets for legitimate or illegitimate players, governments generate opportunity to:

- subvert regulation through corruption; and
- facilitate corruption outcomes using regulation as a facilitator.

In this way, corruption control strategies meant to set entry hurdles into illegitimate business enterprises or for illegitimate business into the general market, in fact, may predetermine the attractiveness of moving across the legitimate/illegitimate commercial divide courtesy of corruption relationships. Regulation becomes the opportunity.

To overcome the risk of regulation creating market opportunity through corruption, control strategies must try to shift the benefit/detriment balance towards legitimate market practice, and sensitive regulation with integrity. In addition, the attitude of the community within which any market operates must generate a strong anti-corruption consciousness which backs up the benefit/detriment balance.

Limitations of Control Response

For international criminal justice to engage with global or trans-national corruption stimulated through the opportunities presented by selective modernisation and socio-economic development, a more holistic control approach will be constrained by:

- prevailing ideologies of nation-states and of multi-national commerce;
- micro-level controls which conceal the institutional significance of opportunity;
- regulatory methods and mechanisms over which governments (corrupt or not) have a monopoly in terms of who controls control discourse;
- creation of *false limits* in the market by legitimate and compromised regulators;
- control strategies based on *failure theory* in conventional regulation modes, and promoting unhelpful dichotomies in assumed market divisions (legitimate/illegitimate); and
- the expansion of discretion at all levels of market regulation and commercial engagement.

A holistic approach to control will move the conceptualisation of corruption away from individual failures of trust, political failures of propriety, prudential failures of regulation, to circumventing illicit commercial advantage. Through a repositioning of corruption as a feature of certain trading and commercial cultures, business will be implicated in corruption prevention, and the control of market conditions for its proliferation.

Corruption and Development

The key factors we suggest in understanding how socio-economic development has facilitated corruption (and its misunderstanding) in transitional cultures and fragmented states need to be viewed outside a modernised normative lens. Otherwise,

control strategies at the international level will not develop without the capacity of exacerbating what they set out to regulate. Essentially, the key factors on which control should rest include recognition of:

- a-cultural representation of corruption
- community-centred corruption and regulation
- politics of development and dependency which foster corruption
- post-colonial political processes which also foster dependency and influence ripe for corruption
- commercial exploitation as a by-product of development
- environmental degradation characteristic of development
- colonial imposition of economic modelling in which universalised corruption definitions victimise dependent developing economies

Conclusion

Through the pressure to modernise, the crime development nexus presents a pervasive challenge for international criminal justice and global governance. In keeping with a more expansive understanding of global crime and international criminal justice (Findlay 2013a; chaps. 7 and 8), it is fair to say that crime generated through relentless and culturally dislocated socio-economic development in the modernisation mode demands a justice response that goes further than national interest or international economic priorities. That said, there lies a danger in generalising or dislocating from specific cultural contexts the crime/development nexus, and thereby creating a regulatory frame which may exacerbate rather than ameliorate the problem of crime and control which misconstrues cultural bonds as crime opportunities (Findlay 2013a: organised crime case-study in chap. 8).

The preconditions for an international criminal justice response to the crime/development nexus (Findlay 1999; chap. 2) include recognising, within both justice and development policy at the global level, that development is not sufficiently appreciated as a natural context for crime. As the central international imperatives for development are beyond local control and crimes that accompany development are often not known in the original culture or at least to the same degree, then managing the crime/development nexus is beyond the development policy of individual nation-states. This is particularly so when, in certain developing economies where the state is weak and commerce is exploited from beyond local markets, crime thrives in cultures of dependency. Ultimately, to develop an effective prevention and control approach which will maximise social capital and minimise the criminogenic consequences of development, crime must not continue to be misrepresented as naturally determined within customary relationships of obligation, leading to control strategies which damage cultural integrity, and cloud the real causes of crime.

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