Winners and Losers. Perpetrators and Victims of Corruption

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Overview

- Introduction: the penal concept of corruption
- The many facets of corruption
- Victimological perspectives of corruption
- Excursus: the victim-offender overlap
- Conclusions
Introduction
Introduction

• Corruption is a multi-faceted criminal – and social – phenomenon

• In focus: penal aspects of corruption control, seen through the criminological and victimological lens
  – Focus of attention often on criminological aspects
  – Victimological issues less intensively discussed (disappearance of the victim, Gournev & Ruggiero 2012)
    » focus mainly on victims of corruption
    » victims in corruption only rarely addressed
Introduction

- Significant expansion of criminalization
  - Corruptive practices in the private/business sector
  - Gradual alleviation, sometimes complete abolishment of the statutory requirement of an "unlawful agreement" as decisive element of the crime
  - Constant growth of additional soft law (compliance codes, etc.)
  - Utilitarian concept: effectiveness of prosecution and prevention vs. complexity of the phenomenon
• Transaction crime: all parties criminally liable
• At first glance designed as a victimless crime
• Involvement not necessarily consensual or fully consensual
• Legal provisions as well as the definatorial framework are static, neglecting or failing to adequately consider the dynamics and further situational aspects of corruption in practice
  » in particular: victimizing aspects often neglected
  » lack of exceptions from punishability for small scale cases – unlike in other areas of transaction crime (e.g., drug crime)
  » more attention for socially accepted forms is crucial (macro, meso, micro level) – CRITCOR
What is criminally relevant?

The deviation from established (formal) behavior rules is not per se sufficient to make it bad in a moral sense, or harmful in a victimological sense

» imagine the situation of a fellow Jew deported to a concentration camp trying to bribe his or her way out of that place (Rose-Ackerman 1978)

Corruption can even be a substitute for individual or economic freedom

» levering of exuberant bureaucratic barriers
» reduction of transaction costs

Overregulation can have adverse effects

» look at the current EU's vaccine policies
The Many Facets of Corruption
Facets of Corruption

Corruptive practices occur on a continuum of various facets:

- legal – illegal
- good – bad
- moral – immoral
- just – unjust
- socially accepted – discredited
- grand – petty
- active – passive
- explicit – implicit
- direct – indirect
- routine/systemic – opportunistic (incidental/exceptional)
- targeted – diffuse
- open – secret
• Corruptive practices occur on a continuum of various facets (cont'd):
  – voluntary – involuntary (coercion, extortion, etc.)
  – self-beneficial – for benefit of other(s)
  – rich – poor
  – power – powerlessness
  – etc.

  – perpetration – victimization
The Perpetration – Victimization Continuum

- Any of these facets may have victimological relevance, and impact
- Currently some of these aspects are sometimes considered by courts as aggravating or mitigating aspects in sentencing
- No systematic analysis
- The perpetration – victimization aspect can have a double function
  - As an additional (isolated) variable
  - As an intersectional category totalling all penally and victimologically relevant aspects of a case
Victimological Perspectives of Corruption
Definition and Typologies of Victimhood

- Penal victim definition: Any person who might have suffered harm – including physical, mental, emotional or economic harm – caused by a criminal offence

- Typologies of victimhood
  - Categories of victims
    » direct, indirect
    » individual (personal), collective
    » natural, legal persons
  - Dimensions of victimization
    » primary, secondary, tertiary
  - Volume of victimization
    » singular, repeat, multiple, chronicle
Indirect Victims – Different Perspectives

- Example: Organized transborder transportation involving corrupt border police/customs staff:
  - Transport of humans in the course of human trafficking: trafficked victims are in addition also (indirect) victims of the corruption chain which includes the corrupt border staff.
  - But:
    - Transport of (illegal) migrants in the course of human smuggling: migrants are co-perpetrators; they would be (indirect) victims of a non-corrupt customs officer.
  - Transport of smuggled rare medicine into Venezuela: population are potential victims (indirect and collective) of a non-corrupt customs officer.

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• Within their general/overarching deviant nature corruptive relations can – and often do – include certain victimizing elements

• In particular, one or all of the offending parties involved in corruption or corrupt practices may perceive themselves as victims
  – Power gap
  – Offensive initiation
  – Situational dilemmas (polite/impolite)
  – Personal problems
  – Coercion (e.g., drug smuggling prison guard)
  – Situational dynamics (can escalate into extortion)
  – Etc.
Voluntariness

• Giving vs. Receiving: situational approach of assessing potential victimizing aspects
  – Offer can be perceived as an act of inducement or an offensive demand (to be treated favorably)
  – Demand can be perceived as an act of coercion or even extortion (denial of a service the giver wishes to get, or urgently needs)

• Facilitating payments by a citizen who has the right to receive the requested goods or service
  – Incentive for the public official to render the requested service faster, or more smoothly
Social Acceptance

- For example: presents for medical staff
  - Quite popular in Germany in COVID times as *general donations* by local businesses
  - Widely accepted as well as *individual inter-personal gratitude*: cookies, flowers, fruit basket, bottle of wine
  - "Gratitude payments"?
  - Where is the deviding line?
  - Where does voluntariness end?
- Tipping
  - Tipping in Europe: occasional and voluntary gratitude, buying of good service
  - Tipping in US: coercive surplus, risk of blaming and exclusion in case of non-compliance
Social acceptance is variable: cultural, sectoral, individual

For example: sectoral differences

- public service: rigid rules, extremely low maximum (zero tolerance)
- business sector: expensive dinner invitation, etc.
- medical & pharmaceutical sectors: sponsored congress invitations in prime touristic hotspots
- politics: donations and other forms of "cultivation" of relations still widespread in many countries (Germany: "Landschaftspflege" [gardening])
• Systemic/endemic – institutional – individual corruption
  – Distinct levels, corresponding with distinct criteria for victimological classification and impact
• The organized crime nexus of corruption
  – Specific perceptions and concepts of the victim
  – Violence involved
  – Intimidation
  – Racketeering
Harm has different dimensions:
  – As a result or mid/long-term consequence of corruption
  – As a pre-condition or trigger for corruption

Types of damage/harm:
  – Individual – institutional – social – or societal
  – Tangible – intangible/abstract
  – Direct – indirect
  – Pecuniary – non-pecuniary
  – Favour – favour in return
  – Threat
  – Etc.
## Typification of Harm Connected to Corruption

<table>
<thead>
<tr>
<th>How corruption manifests itself</th>
<th>Systemic (Cultural)</th>
<th>Sporadic (Selective but consistent)</th>
<th>Incidental (Lower level participants)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Structural</td>
<td>Tangible</td>
<td>Intangible</td>
<td>Tangible</td>
</tr>
<tr>
<td>Public resources are</td>
<td>Perpetuates a</td>
<td>Infrastructure (roads, bridges,</td>
<td>Undermines Rule of Law</td>
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<tr>
<td>allocated inefficiently</td>
<td>culture of</td>
<td>buildings) of inferior quality</td>
<td>Loss in predictability in doing</td>
</tr>
<tr>
<td>Foreign aid disappears</td>
<td>corruption</td>
<td></td>
<td>business</td>
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<tr>
<td>Environmental safety</td>
<td>Undermines the</td>
<td></td>
<td>Undermines the value of honesty;</td>
</tr>
<tr>
<td>may be compromised</td>
<td>fundamental goals</td>
<td></td>
<td>reduced confidence in the system</td>
</tr>
<tr>
<td>Creates great income</td>
<td>of social and</td>
<td></td>
<td></td>
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<tr>
<td>disparity between rich and</td>
<td>economic</td>
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<td></td>
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<tr>
<td>poor</td>
<td>development</td>
<td></td>
<td></td>
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<tr>
<td>Lower GDP</td>
<td>Weakened State</td>
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<td></td>
<td>legitimization</td>
<td></td>
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<td></td>
<td>Political instability</td>
<td></td>
<td></td>
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<tr>
<td>Institutional</td>
<td>Political and</td>
<td>Selective agency efficiency</td>
<td>Social trust, the trust and</td>
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<tr>
<td>Poor education, health care</td>
<td>economic instability</td>
<td>— inefficient allocation of</td>
<td>credibility of the institutions</td>
</tr>
<tr>
<td>and other services</td>
<td>Good governance and</td>
<td>resources; lower productivity</td>
<td>suffer</td>
</tr>
<tr>
<td>Public services on which the</td>
<td>good public financial</td>
<td>Opportunities for organized crime,</td>
<td>Loss of State</td>
</tr>
<tr>
<td>poor depend are starved of</td>
<td>mgt. lost</td>
<td>drug/arms trafficking</td>
<td>credibility</td>
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<tr>
<td>funds</td>
<td>Lost political</td>
<td></td>
<td>Fundamental rights denied</td>
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<tr>
<td></td>
<td>credibility</td>
<td></td>
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<tr>
<td>Individual</td>
<td>Low standards of</td>
<td>General population’s level of</td>
<td>Competent and honest citizens feel</td>
</tr>
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<td></td>
<td>living, poverty,</td>
<td>distrust rises</td>
<td>frustrated</td>
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<tr>
<td></td>
<td>high infant</td>
<td>Competent and honest citizens feel</td>
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<tr>
<td></td>
<td>mortality</td>
<td>frustrated</td>
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<td></td>
<td>Poor health from</td>
<td>Economic costs transferred to</td>
<td>Cost greater</td>
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<td></td>
<td>unclean water or</td>
<td>individual</td>
<td>Frustration, anger</td>
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<td></td>
<td>other compromised</td>
<td>Financial cost in proportion to</td>
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<td></td>
<td>resources</td>
<td>income is great</td>
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<td></td>
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<td>Disrespect for the entire</td>
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<td></td>
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<td>agency e.g. police</td>
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</table>

Source: Meng & Friday (2014)
The Victim-Offender Overlap
Popular Stereotypes as Role Models

- "Victim" and "offender" are attributions
  - the ideal perpetrator: the bad and dangerous criminal
  - the ideal victim: weak, innocent, etc.
- Empirical research has shown that in real life, a variety of overlaps of these two idealistic role models can be identified (see, e.g., Haverkamp & Kilchling 2017)
• Occasional overlap of victim and offender roles
  » Interchanging roles in an actual crime scenario
• Situational role changes
  » Individuals acting alternately as offenders and victims
• Victim-offender sequence (non-recurring)
  » Offending triggered by one-time or multiple prior victimization
• Victim-offender career
  » Multiple offending triggered by one-time or multiple prior victimization
• Offender-victim sequence
  » Offenders/ex-offenders victimized
• Collusive deviant interaction (blurred 'roles')
  » Transaction crime (potential to escalate into victimization)
For Example: Situational Role Change

- Dynamics of corruption:
  - Inspection by hygiene police in a highwest rest station resulted in the offer of a free meal for the inspection officer by the owner in return for the promise to quash the complaint – what was accepted
  - A few weeks later the officer returned in the evening in company of a colleague asking for free dinner
  - Further "dinner visits" followed, with growing numbers of "customers"
  - All were charged and convicted
"Bad" Victims?

- Victims involved in criminal activities as "bad" victims? ("once perpetrator – always perpetrator")
- Legislative concepts static and rigorous
  - Regularly based on the "good" victim stereotype
  - Any link to, or involvement in, crime (direct or indirect) can result in the denial of the legal victim status
- Significant consequences
  - Denial of the privileged status in criminal procedure
  - Exclusion from victim support
  - Exclusion from victim compensation
  - Reduction of credibility as a witness
  - Restrictions in crown witness laws
  - Etc.
Conclusions
Conclusions

- Corruption is a multi-faceted phenomenon
- All general types of victimization (including the various overlap scenarios) can be prevalent in the context of corruption
- Individualized approach: perpetrators and victims may be winners or losers, or both
- Existing corruption control regimes partly ignore victim interests
- CRITCOR findings on socially accepted variants of corruption can produce an important contribution for the development of criteria for an adequate attribution of victim and offender roles and responsibilities in corruption

Mid-/long-term vision: the victim-witness has become a common concept in criminal procedure law – why not developing and adopting a victimologically grounded legal concept of a "victim-offender"? The field of corruption crimes is a good example…
Nagyon köszönöm – Thank you for your attention!

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