




# A LIBERAL VIEW

## CORRUPTION

The background features a complex illustration of interlocking gears in various sizes and colors (brown, green, grey) overlaid on a stylized cityscape with buildings and a winding road. The overall color palette is warm, dominated by yellows, greens, and browns.

*“With Latin America still in the throes of what is probably the world’s largest ever corruption scandal – the case of Brazilian construction company Odebrecht, commonly referred to as “Operation Car Wash”–, a widespread shift is occurring in people’s attitudes towards insitutionalised corruption. ”*

## When “greasing people’s palm” becomes a social institution

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**C**orruption has no affiliation with any particular political party, nor is it the exclusive preserve of certain social groups, regions or countries. It is a global phenomenon, defined as “the abuse of a position of authority in government, politics, the economy or other key social institutions, where the established rules are broken for personal gain”. Accordingly, an act of corruption always involves an individual transaction between at least two actors seeking to obtain an advantage with respect to third parties, in contravention of the official regulations governing this type of transaction. Corruption cloaks itself in metaphors, passing itself off as no more than a means of “speeding up” the formalities, be it to obtain a building permit or passport, win a public works contract or procure political favours.

The negative consequences for third parties, society as a whole and the economy are self-evident. As Carlos Manfroni stresses in his article, these harmful effects mean that corruption should be fought whatever the political system and whatever the circumstances. However, there are certain factors and structures that are conducive to the phenomenon of corruption and others that inhibit it. Birgit Grundmann describes how Germany has developed a wide suite of measures for preventing and punishing corruption. There is no question that cases of corruption occur even in those nations that are viewed as the most highly developed and immune to large-scale corruption.

The difference is how these countries’ institutions and societies deal with these cases. Germany has a range of institutions and mechanisms that are effective in ensuring that those guilty of corruption do not go unpunished. Moreover, there is a very broad consensus in German society that acts of corruption should meet with zero tolerance.

That is the big difference compared to the situation in Latin America. Ernesto Selman describes how corruption has long been a widespread problem in the majority of Latin American countries. Even back in the colonial era, when the Spanish Crown sold government posts in New Spain to the criollos, the concept of the “backhander” or “greasing someone’s palm” was already well established as part of Latin Americans’ day-to-day reality.

In many cases, it is an “inescapable rule of the game”, for instance for people wishing to open and run a business or obtain a permit. Unfortunately, it is still an “accepted” way of doing business in many places. Several articles in this issue of *A Liberal View* analyse and continue to explain how these structures work. Overgrown bureaucracies, a complete lack of transparency in decision-making and financial management, and generally weak institutions (especially in the justice system) make it possible to engage in corrupt practices with impunity. The result is



that corruption has virtually become an “institution” in its own right in some societies. This is clearly illustrated by the cases of Guatemala, Venezuela, Ecuador and Mexico that are discussed in this issue of A Liberal View. Moreover, the example of the earthquake that hit Mexico on 19 September 2017 – described so vividly in Max Kaiser’s account – contains a powerful message for us all: as well as having an extremely high economic cost that can hold back a society’s development, corruption is also quite literally a killer. This is brought home by the many people who lost their lives in the earthquake due to collapsed buildings that failed to meet municipal building regulations in a seismic zone like Mexico City.

Nevertheless, times are changing. With Latin America still in the throes of what is probably the world’s largest ever corruption scandal – the case of Brazilian construction company Odebrecht, commonly referred to as “Operation Car Wash” –, a widespread shift is occurring in people’s attitudes towards insitutionalised corruption. From 2000 on, Odebrecht paid a staggering 788 million US dollars in bribes to public officials and government members in 10 Latin American and two African countries in order to secure public works contracts.

*“Corruption cloaks itself in metaphors, passing itself off as no more than a means of “speeding up” the formalities, be it to obtain a building permit or passport, win a public works contract or procure political favours.”*

And it was taxpayers in these countries who ended up footing the vastly inflated bill. As well as bribing public servants, Odebrecht also funded election campaigns in Peru, Venezuela and allegedly Mexico, with serious consequences for the political landscape in these countries. Several senior politicians, civil servants and businesspeople have been jailed as a result of the investigations, including former Peruvian president Ollanta Humala and his wife. This vast corruption case was uncovered thanks to the inquiries and investigations carried out in Brazil and by the US Department of Justice. Ernesto Selman provides an extremely detailed analysis of events in the Dominican Republic.

But how could any of this happen in Brazil, a country once famed for its weak and corrupt justice system? How can we explain the sudden strength and independence shown by the Brazilian judiciary in the investigations into the Odebrecht case? The judge in charge of the case, Sergio Moro, has become a champion of the rule of law in Latin America. He belongs to a new generation of young lawyers who studied abroad and learned about alternative concepts of justice and the true meaning of a strong and independent judiciary. Thanks to the efforts of this judge, the investigations into the case are continuing despite the huge political pressure

that has been brought to bear on the Brazilian judiciary. When an interviewer asked him how he was able to withstand the political pressure and press ahead with his investigations, Moro answered: “It’s not that hard when there are 2 million people demonstrating in the streets”. In other words, the Brazilian people’s perception of corruption as a routine practice is clearly changing. They are becoming less tolerant of these abuses and the judiciary is becoming an institution that inspires hope in many Brazilians. The article on Brazil in this issue provides a valuable insight into the ambivalent situation that the country is currently going through. It also contains a powerful and optimistic message: if a country’s citizens are prepared to stand up and be counted, then it is possible to fight the widespread practice of corruption.

# “Don’t give corruption a chance”

## The German way to prevent and fight corruption in Germany and abroad

**Dr. Birgit Grundmann**

Lawyer, former State Secretary of the German Federal Ministry of Justice

In Germany, there is a broad political consensus that preventing corruption is the shared responsibility of the public sector, private sector and civil society and is something that we must work towards on the national and global stage. Germany is a signatory to all the relevant international treaties. We have a number of different measures to prevent corruption in the public administration and the private sector at home and abroad. In addition, the fight against corruption is an integral part of German development policy.

Corruption in government damages citizens’ trust in the government’s independence, integrity and ability to take action. It compromises the reputation of the civil service, constitutes a risk to democracy and creates legal uncertainty. The motto of our Federal Administration is “Don’t give corruption a chance”. German criminal law and special fines for public servants relating to their status, income and pensions constitute important anti-corruption measures. But more than this is required to create and maintain public trust in the integrity of our civil service. As a nation governed by the rule of law, we have also defined the relevant rules and created instruments to ensure compliance with these rules. In 1998, the Federal Government first published its Directive concerning the Prevention of Corruption in the Federal Administration. It covers the major aspects of a preventive strategy such as identifying areas of administrative activity especially vulnerable to corruption, designating a contact person, raising awareness among employees and establishing principles for awarding contracts. The Directive also contains a code of conduct for federal employees which explains the principles of transparent and honest conduct.

Special guidelines inform supervisors and executives about the concrete measures and actions that must be taken in order to minimise the risk of corruption in their area of influence. In addition to these rules, there is a range of recommendations such as the Circular on the Ban on Accepting Rewards or Gifts, the Regulation to Promote Activities by the Government through Contributions from the Private Sector (Sponsoring), rules on internal audits and a regulation to reduce the influence of lobbyists. In every Federal Ministry, special Commissioners work to ensure the rigorous application of these regulations.

“Corruption in government damages citizens’ trust in the government’s independence, integrity and ability to take action.”

Effective prevention needs transparency. For this reason, the Federal Ministry of the Interior has to present an annual Report on the Prevention of Corruption in the Public Sector to our parliament. This report is published on the Internet and is thus accessible to anyone who wishes to read it. Effective public control is also guaranteed by our independent press and powerful organisations like Transparency International.

How do we prevent corruption in the private sector? There is no doubt that corruption is a major barrier to economic growth and sustainable development. It deters investment, weakens the rule of law and increases the costs and risks of doing business. Preventing and fighting corruption is thus in the German economy's own interests. On the national level, we combine a variety of measures among which criminal law plays an important role. We recently enacted new criminal law provisions in the healthcare sector to fight corruptive relationships

between pharmaceutical companies and doctors and in the sports sector to prevent doping. Procurement law is another effective and modern instrument. Public contracts are an important part of the economy. Every year, the public sector awards contracts worth hundreds of billions of euros to private companies.

*“Many German companies have established extensive corruption prevention measures in recent years.”*

The legal requirements for equal treatment, non-discrimination and transparency are intended to ensure fair competition between the bidding companies and to prevent corruption and nepotism. To raise transparency standards still further, we recently passed a law establishing a new central anti-corruption register that contains a list of companies which have been convicted of financing terrorism, money laundering, bribing officials and fraud. The “bad apples” on this register will no longer be considered as contractors for public institutions.

And how can we prevent corruption abroad? The German economy is traditionally strong in exports. Market liberalisation, lower transaction costs and increasingly powerful communications networks have made it much easier for German companies to invest in other countries. As a result, in recent years the public debate has seen a growing focus on the issue of corruption and the integrity of our companies on international markets. International instruments to combat corruption are becoming increasingly important. Every German company operating abroad is called on by the German government to observe the OECD Guidelines for Multinational Enterprises, including the guideline on the fight against corruption. If companies fail to comply, any individual or organisation can file a complaint about an alleged violation of the guidelines. The German Federal Ministry for Economic Affairs will process the complaint and publish a final statement within three months on the ministry's homepage.

Transparency is the watchword! The UN Global Compact is another important measure. 438 German companies now participate in the “world's largest sustainability initiative”. The Compact calls upon companies



**German Chancellor Angela Merkel, speaking during the session on 'Revitalising Global Trade' at the 2011 Annual Meeting of the World Economic Forum in Davos, Switzerland, on 28 October 2011.** By: CC BY-SA 2.0 via Wikimedia Commons

to align their strategies and operations with universal principles on human rights, labour, environment and anti-corruption.

Furthermore, many German companies have established extensive corruption prevention measures in recent years. State regulation is increasingly complemented by self-regulation in a “responsive law” approach. The Federal Government supports these efforts. In 2016, the Federal Cabinet adopted the National Action Plan for Business and Human Rights (NAP). By 2020, at least 50% of all companies based in Germany with over 500 employees are

expected to have integrated the human rights due diligence elements described in the NAP into their business processes. The aim is to develop procedures designed to identify any adverse effects of their international activities on human rights and to take measures to prevent them. It goes without saying that corruption is often one of these adverse effects.

Germany also supports the fight against corruption as a member of the G20 and the European Union. In 2014, the G20 leaders identified priorities in the fight against corruption and presented the 2015-16 G20 Anti-Corruption Action Plan. Under the German presidency, the G20 and the OECD organised an international conference with participants from the public and private sectors and civil society to facilitate the exchange of best practices, know-how and experience. Meanwhile, the EU is also committed to promoting greater transparency. New EU rules on corporate social responsibility require large public companies with more than 500 employees to publish regular reports on the social and environmental impacts of their activities. This “non-financial reporting” helps investors, consumers, policy makers and other stakeholders to evaluate the non-financial performance of large companies and encourages these companies to develop a responsible and sustainable market behaviour. Disclosure of information relates to environmental protection, social responsibility and treatment of employees, respect for human rights, anti-corruption and bribery, and the diversity on company boards. Should a company fail to meet these requirements, a (revenue- and profit-based) fine of up to 10 million euros may be imposed.

In summary, it can be said that the German way to prevent corruption is a comprehensive approach. It includes all the relevant stakeholders and combines different measures at a national and international level. Germany’s development policy forms an integral part of this strategy. Germany supports reforms aimed at tackling corruption in its partner countries, compliance and risk management in development cooperation and the fulfilment of international commitments – in keeping with its motto “don’t give corruption a chance!”.



# ¿Why and how should liberalism fight corruption?

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**C**orruption should be fought whatever the system and whatever the circumstances. Much has been said about the economic and non-economic damage caused to society by this misuse of government power. Its many harmful effects include an increased tax burden, unsound strategic decision-making, a decline in the quality of public services, an exodus of investment, distortion of competition, damage to the environment and the absence of controls that have been taken over by the government.

But are there any additional reasons to eradicate corruption in a society governed by liberal principles? While the prospect of higher taxation is in itself reason enough, there are other ways in which government malfeasance harms society that are just as or even more important than the economic burden.

There is a close link between corruption and the growth of the government bureaucracy. This increase in the size of government includes the proliferation of laws and other regulations designed to control the lives of a country's citizens.

The German-Argentinian jurist Werner Goldschmidt (1960) described the subtle tyranny which creates a swathe of regulations that can in principle all be observed individually, but that are impossible to comply with in their entirety. This puts citizens in a position where they are permanently in breach of some law or other.

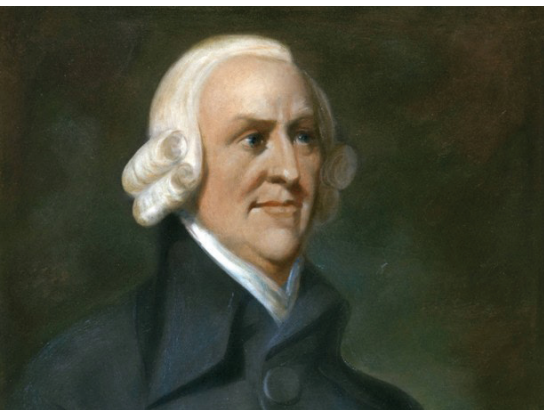
There is nothing better for a corrupt public official than a citizen who has broken the law, since this allows them to sell this citizen an official pardon, the exception to the rule. However, this same set-up also plays into the hands of tyrants, rarely known for their subtlety, enabling them to manufacture offences so that they can persecute whoever they wish, almost invariably members of the opposition.

One of the challenges for a liberal government and civil society is to untangle the morass of regulations constraining the lives of the country's people. They must focus on this and on mathematical simplification, i.e. on reducing the number of regulations down to the minimum required

to ensure compliance with the values implicit in the Constitution, but no more. This might involve setting up a parliamentary committee devoted exclusively to this task, with input from representatives of business and civil society, both of which have to endure the oppressive effects of over-regulation on a daily basis.

Corruption also results in the concentration of power. The separation of powers ceases to exist because legislators and judges are bribed by the people in executive or administrative positions.

Liberal governments must avoid falling into the trap of imagining that the concentration of power can be used to good ends. The first thing a liberal government should do when it enters office is divide its power up into so many separate parts that it will be nigh-on impossible to concentrate it again in the future. This is what they have done in the United States with their multiple executive agencies, the congressional districts system where



**Portrait of the political economist and philosopher Adam Smith (1723-1790) by an unknown artist.**



one Congressman is elected for each district, and the municipal independence so admired by Alexis de Tocqueville.

Of course, it is always going to be very difficult to maintain a free market and competition in a corrupt society. The second question concerns how a liberal society should go about combating corruption. Does it really make sense to leave the fight against corruption entirely in the hands of the government? However good the administration may be, a society that subscribes to the ideals of liberty should never lose its innate wariness of government authority.

*“There is nothing better for a corrupt public official than a citizen who has broken the law, since this allows them to sell this citizen an official pardon, the exception to the rule.”*

Since the mid-1990s, the international community has adopted a number of conventions against corruption. These include the Inter-American Convention Against Corruption (1996), the OECD Anti-Bribery Convention (1997), the United Nations Convention against Corruption (2003) and many more. Although they have undoubtedly made a valuable contribution, they are nonetheless still agreements concluded between national governments. Moreover, even the conventions themselves call for measures to promote the involvement of civil society.

The involvement of civil society is always a fine-sounding phrase in whatever context it is used, but it is important to find ways of making it happen. This is because people who have lived under the yoke of corruption for too long can sometimes be rather apathetic and may lack the wherewithal to stand up for themselves. Once again, the theory of enlightened self-interest that was postulated by Tocqueville (1835) and was also implicit from the start in the doctrine of Adam Smith (1759) could provide a basis for more specific incentives.

Qui tam is the abbreviation of a Latin phrase that translates as “he who sues in this matter for the king as well as for himself”. The concept passed from ancient Rome into the law of medieval England. Whether or not he was aware of its history, Abraham Lincoln would subsequently pass a law during the American Civil War that awarded a share of the recovered proceeds to private individuals who sued unscrupulous contractors on behalf of the government for selling shoddy equipment and supplies to the Army. Known as the False Claims Act, this law still exists today. It permits private individuals to file actions to recover any overpayments by the government resulting from corruption or simple waste. If they succeed in recovering government assets, they stand to receive a share of the proceeds of between 15% and 25%. It is hardly surprising that there are now numerous organisations specialised in seeking out these cases of corruption on a professional basis. Perhaps rather more surprising is the fact that they recover around 3.5 billion dollars a year.

Even foreign citizens and private organisations can cooperate by reporting assets that corrupt public officials have moved offshore.

This is an instrument that is compatible with a liberal society and which allows it to benefit from the exercise of enlightened self-interest without demanding huge sacrifices of its citizens.

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\* The author was a member of the OAS Group of Experts that drafted the Inter-American Convention Against Corruption and has published several research books.





# Can Brazil get rid of corruption?

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Let me start with some figures just to catch your attention. The bribery scheme at Petrobras, Brazil's state-run oil company, involved more than 5 billion dollars paid by construction firms to politicians and executives. Just one former manager at Petrobras, Pedro Barusco, agreed to return no less than 97 million dollars to the Brazilian authorities. In the United States, Odebrecht, Latin America's biggest construction company, agreed to pay 3.5 billion dollars to settle corruption allegations. According to Bloomberg, this is the largest corruption penalty ever imposed by the American prosecutors (more than double the previous record of 1.6 billion dollars paid by Siemens AG to the U.S. and German authorities).

*“Eletrobras, the state-owned electricity company, is accused of having embezzled 58 billion dollars in the last 15 years, mostly through overpriced services.”*

In Brazil, the convictions related to the Petrobras corruption case add up to a total of 1,300 years in jail. It is not only the largest corruption scandal in Brazilian history, but in human history. And it should be remembered that the Petrobras bribery scheme is just one among many other corruption cases in Brazil – some of them on a comparable scale.

Nevertheless, there are strong reasons for Brazilians to feel optimistic and hope that this huge problem is going to diminish. The justice system, maybe the most important institution of a country, has shown itself to be independent and free from improper influence by private interests. Brazilians are despondent about all the fraud and bribery cases reported in the news. But perhaps there is some good news in there, too. Thanks to our judges, investigators and prosecutors, practices that some years ago were considered part of the traditional

way of doing business are now the subject of scandals on TV and social media. Even more importantly, the size of government is shrinking – and this is fundamental to solving the problem.

Brazil is a good example of many theories and studies about the causes of corruption. For instance, both the OECD and Transparency International acknowledge that state-owned companies are more prone to this type of crime. They are often under-supervised, vulnerable to political influence and do not offer strong incentives for directors to avoid losses and the spread of bribery.



Brazil is an obvious case in point – and not only because of Petrobras. In fact, it is hard to find a state company not caught up in some scandal or other. Eletrobras, the state-owned electricity company, is accused of having embezzled 58 billion dollars in the last 15 years, mostly through overpriced services. During that time, the government had to inject 71 billion dollars of taxpayers’ money to cover the company’s losses. Another huge scandal involves BNDES (Brazilian Development Bank). A state bank that provides subsidised loans, BNDES was at the heart of Brazilian “crony capitalism” during the Workers Party government of 2003 – 2015. Many directors of leading companies, including Odebrecht and JBS (part of J&F, the biggest protein producer in the world) have confessed to paying bribes to politicians in order to gain access to cheap money from BNDES. Another well-studied cause of corruption is when imports only account for a small share of the economy.



Political scientist Daniel Treisman, perhaps the world’s foremost expert on the causes of corruption, found that low prevalence of this crime is associated with high levels of international trade, probably because, as he puts it in a 2009 paper, “openness to international trade will intensify market competition and reduce the monopoly power of domestic producers, shrinking the profits available for corrupt officials to extract”. But Treisman is not sure about what causes what – less free trade can lead to corruption, but is also possible that corruption results in less free trade. In fact, it may be a bit of both – a vicious cycle where regulation and taxes lead to corruption and this in turn leads to more regulation and taxes.

Again, Brazil provides many examples of this vicious cycle. Bribery in order to circumvent regulations and import tariffs or obtain business licences is quite common – we see cases of this crime almost on a weekly basis. However, Brazil also suffers in the opposite direction: established companies bribe politicians to create more regulations and tariffs that keep competitors out of the game. One striking example is the case of Braskem, Brazil's biggest petrochemicals producer, which is owned by Odebrecht and Petrobras. In 2012, President Dilma Rousseff increased the import tariff on resins from 12% to 20%. This is way above the global average of 7%. As Braskem already dominates the resins market in Brazil (with a market share of more than 70%), hundreds of plastic producers were up in arms, since effectively the decision only served to strengthen Braskem's monopoly. And indeed, one year after the tax increase, the price of Braskem's resins had soared by 27%. In 2017, as the bribery investigations neared their conclusion, Braskem pleaded guilty and, under a leniency agreement, agreed to pay 1 billion dollars to the Brazilian authorities and more than 950 million dollars to the U.S. Justice Department and Securities and Exchange Commission.

As mentioned above, the judicial system's fight against corruption is reducing impunity and changing business practices in Brazil. But it is not clear whether these admirable efforts will be enough to put an end to this kind of crime. The investigations can have unintended side-effects by reducing the number of players on the market and thus enabling those who remain to charge more for privileges. Because the returns are higher, the number of corrupt officials tends to increase again, and this in turn leads to more investigations. That is why, besides the judicial fight, Brazil also needs to reduce regulation, the number of state companies, import barriers and privileges.

Fortunately, this trend is already apparent in Brazil. President Michel Temer announced in August the privatisation of 56 state-owned companies, including airports, ports, parts of Eletrobras and even the "Casa da Moeda", the Brazilian mint. The sale of offshore oil blocks is becoming more dynamic – until 2016, Petrobras was obliged to participate in all private oil exploration projects, but the Congress changed this rule some months ago. Even more importantly, BNDES recently brought its interest rates more closely into line with market rates – so the race for privileged loans will no longer be so attractive.

Brazilians spent the last decade believing that a heavy state was necessary to help the poor. Now, they are finding out that the big state damages the economy and benefits the richest people in the country. They no longer trust the state. We must hope that corruption goes the same way as the public's faith in the state and experiences a major downturn.

*“The judicial system's fight against corruption is reducing impunity and changing business practices in Brazil. But it is not clear whether these admirable efforts will be enough to put an end to this kind of crime.”*

# Chile and the lessons of its anti-corruption journey

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For many decades, one of the central aspects of “Chilean exceptionalism” within the Latin American political landscape was the country’s ability to remain relatively immune to the latent threat of corruption. This was reinforced by the strength of its institutions and its comparative economic and political stability.

However, the three components of this virtuous circle are not an inherent characteristic of any particular country – a given society is not innately more or less corrupt than any other. Put simply, there are per se no sociological factors that make it likelier or less likely for a society to be more or less corrupt. Finnish citizens are not born with a weaker urge to obtain private benefit from public office (this is the working definition that I shall use for the phenomenon of corruption). Instead, a combination of political, institutional and indeed educational measures are eventually reflected in a behavioural pattern, creating an ethos or climate of integrity that becomes a central tenet of a given political system.

Chile may have been guilty of complacency because of its reputation in this area. That is not to say that this reputation is undeserved – it is no accident that it has consistently been ranked around twentieth in Transparency International’s Corruption Perceptions Index, making it one of the two least corrupt nations in Latin America, together with Uruguay. However, for a number of years, Chile failed to maintain its institutional efforts to keep cultivating this ethos of integrity and transparency. In fact, the last major reform concerning integrity and transparency in the political system took place following a cross-party political agreement reached in the wake of a string of corruption scandals in 2003.

*“Chile may have been guilty of complacency because of its reputation in this area. That is not to say that this reputation is undeserved – it is no accident that it has consistently been ranked around twentieth in Transparency International’s Corruption Perceptions Index.”*



**Palacio de la Moneda, Chile's presidential palace.** By: Gonzalo Ramirez 2.0 Generic (CC BY-NC-SA 2.0)

The regulatory framework created as a result of the 2003 political agreement established a mixed (public and private) funding system for political parties and candidates, together with a number of laws, including a Transparency Act. Although it undoubtedly constituted a significant regulatory improvement, it was far from perfect and its limitations would eventually become apparent.

Loopholes in the regulations meant that after they had come into force it became possible to misappropriate some of the funding for political campaigns. A number of high-profile cases hit the headlines in 2014, accompanied by other scandals involving influence peddling and conflicts of interest. This provoked widespread public outrage and a regulatory response in 2015 under the auspices of the Presidential Advisory Council against Conflicts of Interest, Influence Peddling and Corruption that sought to bring the situation under control. However, the Council succumbed to the temptation of tackling the crisis through legislation.

This resulted in a bloated package of laws that significantly increased the state's share in political funding, banned political funding from private companies, drastically reduced the upper limit on election spending and established severe penalties for non-compliance. It is well known that this is not the most efficient way of addressing the problem – experience has shown that draconian measures tend to fail in the fight against corruption.

So what lessons can we learn from Chile's recent experience as far as anti-corruption policy is concerned? We have identified three key recommendations:

## 1. Recognise that corruption is a cyclical phenomenon.

The seeds of corruption are always present as a latent threat. Rather than looking for ways to get rid of corruption, institutional design should therefore focus on creating deterrents so that the problem does not come about in the first place. It is all very well making grand pronouncements about "rooting out corruption", but in practice this is little more than demagoguery. As with the vast majority of public policy problems, an effective anti-corruption strategy cannot apply simplistic solutions to complex issues. Any anti-corruption regulations or measures implemented in response to transparency or integrity scandals will always contain loopholes that provide new opportunities for those who seek to defraud the public for their own personal gain. That is why it is important to

allow the initial uproar – which usually results in knee-jerk regulation – to die down and then to work on prevention. The fight against corruption should be recognised as a permanent, priority challenge for modern democracies, with organised civil society and the democratic control that it exerts playing a key role in this endeavour.

*“If men were angels,  
no government would  
be necessary”*

## 2. Giving more power to the state does not equate to more transparency and integrity.

One frequent approach to tackling corruption is to give more power to the state. However, as James Madison said in the Federalist Papers “If men were angels, no

government would be necessary”. The temptations and incentives for government officials to act against the public interest are the same as for any other citizen, if not even greater – given their exposure to power and their inside knowledge of the regulations, the seeking and obtaining of personal financial gain is likely to be even more prevalent among certain government actors.

## 3. Approach the issue from a liberal perspective.

In order to prevent corruption, it is paramount that regulations should focus on promoting liberal values such as autonomy, freedom and competition. First of all, autonomy means the deconcentration of political power, respecting the independence of the different areas of government and finding an effective way of making sure that the public authorities fulfil their mandate to safeguard the public interest. Secondly, anti-corruption regulations should not undermine or weaken the freedom of individuals or civil society groups. The fight against corruption is frequently used as a pretext for curtailing fundamental freedoms that must be protected at all costs. Finally, free competition always acts as an antidote to corruption in both the public and private sectors. These three principles have proven to be far more powerful tools for fighting corruption than increasing government control and bureaucracy. Getting this message across is part of the challenge we face as proponents of a society that is free in the widest sense of the word, but also freer of corruption.



# Corruption in Ecuador: causes, effects and controls

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Last year, the corruption scandals at the heart of Rafael Correa’s administration started to come to light. Alex Bravo, the former chief executive of state-owned oil company Petroecuador, was arrested in May 2016. The evidence against him was contained in the leaked Panama Papers. Former oil minister and ex-president of Petroecuador Carlos Pareja Yannuzzelli was also implicated. Correa, who was still President at the time,

played down the significance of these cases, alleging that they were isolated problems.



Esmeraldas refinery

Shortly afterwards, the Odebrecht scandal broke. Senior executives of the company who had been implicated and convicted of crimes in Brazil and the US started to talk in a bid to get their sentences reduced. The scandal spread to other countries, including Ecuador, and the argument that it was just a couple of isolated cases lost all credibility.

The list of senior Correa administration officials linked to the scandal continues to grow: former energy minister Alecksey Mosquera has been arrested for influence peddling and illicit enrichment; the businessman Ricardo Rivera, uncle of vice-president Jorge Glas, has been accused of receiving millions of dollars of bribes in exchange for awarding contracts to Odebrecht; Carlos Pólit, the Comptroller General who formed part of Correa’s administration throughout its 10 years in power, was seriously implicated by video and audio evidence provided by one of the informants to the Brazilian courts. The audio and video recordings reveal the comptroller asking for bribes in exchange for issuing favourable reports or not disclosing damaging information in connection with the performance of public works.

An informant’s testimony to the Brazilian courts also implicated the then vice-president Jorge Glas, who has now been remanded on conspiracy charges. In addition, the Expreso newspaper revealed that former Attorney General Galo Chiriboga had been in possession of crucial information about the Odebrecht case since early February 2017 – during the presidential election campaign – and lied to the nation when he claimed that he had not received cooperation from the United States, even though we now know that they had in fact already been cooperating with him several months earlier.

Images provided by the author.





President Correa in Valencia By: Presidencia de la República del Ecuador (CC BY-NC-SA 2.0)

What sort of figures are involved in the corruption scandals that have come to light in Ecuador? The following are just a few examples: the cost of the Esmeraldas refinery spiralled by almost 1,200%; more than \$1.5 billion has so far been spent on a 93-kilometre oil pipeline for the Pacific refinery which still hasn't been completed; the gas plant in Monteverde ended up costing more than twice as much as originally planned. And then there is the Petroecuador corruption network uncovered three years ago by a journalist and legislator who were subjected to persecution before the scandal was confirmed by information contained in the Panama Papers.

No-one is saying that corrupt officials didn't exist before. But this is the first time that so much money and power have been concentrated in the hands of one government for such a long time.

## Systemic corruption

Sergio Moro, the feted Brazilian judge who stunned the world with his probe into "Operation Car Wash", explained that "Corruption as an isolated crime exists all around the world. But systemic corruption – the payment of bribes as a rule of the game – isn't really that common".

There are several reasons for the nefarious effects of systemic corruption. Firstly, it affects the administration of public funds, since the cost of government contracts is augmented by the cost of the bribes. It is easy to imagine the impact that widespread corruption has on the public finances. Secondly, it distorts (public and private) investment decisions for two reasons: (a) more conservative investors steer clear of markets where they perceive bribery to be standard practice, since this creates a higher degree of uncertainty for them; and (b) as Judge Moro explains, some bad investments are not only down to poor judgement or bad luck, but are a direct consequence of corrupt public officials' desire to pocket bribes.

Much of this situation was made possible by a hyper-presidential Constitution that confers wide-ranging powers on the President. These include the power to decree a state of emergency, a power which he made liberal and repeated use of. The state of emergency and the situations in which it applies are clearly defined in the Constitution and the Organic Law of the

“An informant's testimony to the Brazilian courts also implicated the then vice-president Jorge Glas, who has now been remanded on conspiracy charges.”

National System of Public Procurement. Was the bypassing of the usual controls on public procurement justified based on these definitions? And why exactly were they bypassed?

## Structural reforms to limit corruption

Corruption expert Susan Rose-Ackerman proposes the following reforms to combat corruption: (1) eliminating any entities, programmes and government subsidies whose costs (including malfeasance) significantly outweigh their benefits; (2) reforming government programmes that are considered to be necessary by giving public officials less discretion to make their own decisions; (3) reforming the bureaucracy such that its incentives are aligned with more efficient administration of public resources; (4) reforming adjudication procedures by reducing the discretion of public officials when it comes to awarding government contracts and licences.

She also recommends (5) implementing reforms that guarantee an independent judiciary and independent anti-corruption agencies; (6) facilitating free access to detailed information about the management of public affairs; and (7) restoring freedom of speech. In short, these measures are the opposite of what Ecuador's government did during the past decade.

## The example of Brazil

The Brazilian lawyer Geanluca Lorenzon highlights a number of reasons why impunity is no longer guaranteed in Brazil, including the use of plea bargaining. This is an instrument that encourages criminals to collaborate with the judiciary by guaranteeing that their sentence will be reduced if they do. Although plea bargaining was originally introduced in the 1990s, it was only as recently as 2013 that specific criteria for valid plea deals were adopted. If a criminal meets at least one of these criteria – which range from identifying the other perpetrators of the crime to disclosing the hierarchy within the criminal organisation – their sentence may be significantly reduced or downgraded and they may even be granted a pardon.

Another measure cited by Lorenzon is that the procedure for appointing judges in Brazil was changed in 1988, with 80% of them now being selected on the basis of professional merit rather than political connections. Ever since the Constitution of 1988, the Brazilian courts have maintained their reputation for independence under governments of various political colours. Lorenzon also points out that both the Federal Public Ministry (the equivalent of the Public Prosecutor's Office) and the Federal Police now enjoy greater autonomy.

**“** Corruption as an isolated crime exists all around the world. But systemic corruption – the payment of bribes as a rule of the game – isn't really that common**”**

<sup>1</sup> <http://www.elcomercio.com/actualidad/exgerente-petroecuador-detencion-tumbaco-investigacion.html>

<sup>2</sup> <http://www.elcomercio.com/actualidad/carlospareja-dejo-pais-petroecuador-fiscalia.html>

<sup>3</sup> <http://4pelagatos.com/2017/06/28/la-serie-sobre-alecksey-mosquera-pide-ser-llevada-a-netflix/>

<sup>4</sup> <http://www.expreso.ec/actualidad/el-proceso-abierto-al-tio-de-glas-deja-de-ser-reservado-BE1530672>

<sup>5</sup> <http://www.planv.com.ec/investigacion/investigacion/audios-y-coimas-odebrecht-y-el-contralor-carlos-polit>

<sup>7</sup> Susan Rose-Ackerman, *La corrupción y los gobiernos* (2001, Siglo XXI).

<sup>8</sup> *Publicación pendiente, borrador para estudio del Instituto Cato.*

# A proposal to reduce corruption in Guatemala



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**“Power tends to corrupt, and absolute power corrupts absolutely”.**

*Lord Acton*

**C**orruption is one of the most serious problems in today’s societies. The main reason for this is that governments have grown too big. These huge entities engage in activities that they should have nothing to do with, using more and more of their citizens’ resources to do so. Corruption has reached alarming proportions as a result of their controls, regulations, interventions, institutions, ministries and innumerable unproductive jobs.

Guatemala is no exception. It ranked 115th out of 175 in Transparency International’s 2014 Corruption Perceptions Index. Everyone knows that corruption is rife in Guatemala, where impunity levels are as high as 97%. In a country with a total population of approximately 17 million, 80% of the economically active population (11.1 million) works in the informal sector, while the quality of public services – especially law and order and justice – continues to deteriorate.

*“ Corruption exists at every level in Guatemala. From the lowliest administrator who you need to stamp a document, right up to the people in charge of ministries and public institutions. ”*

The country’s roads are in a state of complete disrepair, except for those that are operated by the private sector. The public healthcare system is in meltdown, while the state education system is under the thumb of the trade unions. The government ministries, such as the Ministry of Environment and Natural Resources, the Ministry of Energy and Mines, the Ministry of Economy, the Ministry of Labour and the other ten – not to mention the country’s municipal authorities – are holding back Guatemala’s development and evolution. Entrepreneurs are forced to obtain permits and licences for their investments. The Ministry of Social Development is one of the chief platforms for providing political support to whichever government happens to be in power. The customs authorities are a permanent source of corruption because of the discretion they





Protest in Guatemala.

enjoy to impose duties. But the most pernicious form of corruption in Guatemala is the blackmail found throughout the justice system. There is a belief that blackmail can be used to control the politicians who wield the power. To me, it seems that the reality is that anyone can be blackmailed with the threat that they will go to prison if they fail to do as they are told.

The trade unions also have a serious corruption problem. In broad terms, the issues include their intransigence, immunity and collective agreements, which can hamper and destroy opportunities for prosperity and wealth.

Corruption exists at every level in Guatemala. From the lowliest administrator who you need to stamp a document, right up to the people in charge of ministries and public institutions. I also believe it exists in the bodies that are key to a country's balance of power, such as the Congress, the judiciary and the government.

The CICIG (International Commission against Impunity in Guatemala) is a unique body within the United Nations. It has been active in Guatemala for 10 years, working in conjunction with the Public Ministry. Its achievements include the dismantling of several corruption networks linked to customs fraud. It has also uncovered corruption in other organisations, including cases of procurement fraud, illegal funding, tax fraud, influence peddling, etc. Personally, I consider its most impressive and commendable exploit to be the uncovering of a female judge who was receiving bribes from three attorneys.

*“ Over-regulation and interventionism lead to corruption. ”*

But it seems that corruption has even found its way into this body. The big problem is that the members of the commission have full immunity. They can do whatever they want with no fear of punishment. The commission has made a series of misjudgements that have tarnished its reputation, for instance the use of false witnesses. It has also ended up becoming ideologically and politically influenced.

The downfall of Guatemala's previous president and vice-president also came about due to a huge public outcry. When Guatemalans saw the evidence of their corruption, they took to the streets, occupying the Central Park and demanding that the president be removed from office.

Over-regulation and interventionism lead to corruption. I would argue that to reduce corruption it is therefore necessary to get rid of inefficient institutions that have no justifiable *raison d'être*. This would create a more efficient and trustworthy system of government that would focus its resources on the things that really matter, such as protecting the lives, property and liberty of the country's citizens.

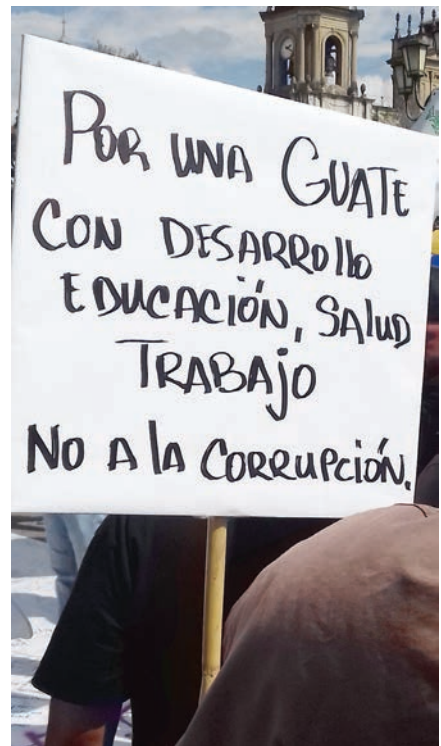
I believe that the following suggestions can help to reduce corruption:

Images provided by the author.

Firstly, the scope and responsibilities of government should be reduced. The reasoning is simple: a smaller government budget means there are fewer opportunities for corruption. If governments stuck to their basic function, it would not be necessary to coerce productive citizens into paying them so much money – a small government has no need for such high levels of tax revenue. Abolishing import duties would allow us to get rid of the customs agency, while abolishing income tax would allow us to get rid of the huge numbers of bureaucrats and forms involved in its administration.

Secondly, the justice system should be strengthened. As we know, a country whose citizens wish to increase their standard of living is best served by a politically independent judiciary. Accordingly, the process for appointing judges and magistrates should begin with a competition to evaluate their professional capabilities. In order to depoliticise their appointment, lots would then be drawn to decide which of the finalists are selected. It is important that these individuals should be appointed for life, enjoy an appropriate standard of living and be protected so that they are able to perform their duties professionally in a safe environment where their sole concern is to do whatever it takes to ensure that the justice system works properly.

Thirdly, it is extremely important for the public to play an active role by reporting cases of corruption rather than saying and doing nothing. And I don't just mean formally reporting corruption to the authorities – they can also draw attention to it on the radio, in the newspapers, through demonstrations or in any other way they see fit. A free press is essential for this to be possible.



My fourth and final proposal is to promote greater transparency in public administration. It is not enough simply to limit the power of public officials – transparency must also be demanded. More transparent and publicly accessible accounts mean fewer opportunities for corruption.

In short, if the government concentrates on the fundamental tasks that it was created for – protecting the individual's rights to life, liberty and property – and gives up all those additional activities that should in fact form no part of its business, then there will be less corruption and a dramatic rise in people's standard of living.



Protest against corruption in Guatemala.



# Corruption and natural disasters

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**T**he devastating earthquakes that hit Mexico in September left over 300 people dead, thousands injured and thousands more without shelter. But they have also led to corrupt practices being unearthed that could well be to blame for the scale of this human disaster.

In a country where impunity is the rule rather than the exception, it is relatively easy to disregard the law and create opportunities for public servants to make private deals with individuals and companies wishing to obtain certain privileges. And it is precisely these practices that have started to come to light in the wake of the recent earthquakes.



**Scenes in the aftermath of the earthquake in Mexico City on 19 September 2017.** By: Protoplasmakid (CC BY-NC-SA 4.0)  
via Wikimedia Commons

According to the preliminary official report, we now know that more than three thousand buildings suffered some form of damage in Mexico City alone. Many will be declared uninhabitable and will have to be demolished. Hundreds, perhaps even thousands of people will be left homeless, with no assets, and potentially facing lengthy legal battles for compensation.

Many of the affected buildings were several decades old and simply fell victim to the forces of nature. But every day stories emerge of new or recently built buildings that were badly damaged, in some cases even causing fatalities.

One example is the Residencial San José building (or what remains of it) at 56 Calle Emiliano Zapata in the Portales Sur district. This six-storey building containing 24 apartments was built by the Canada Building Group.

According to a report by Arturo Ángel for online news site Animal Político on 22 September, the people who bought the apartments were promised that they would be living in a new building built with state-of-the-art technology, supported by a lightweight, environmentally-friendly but strong steel structure. They were also told that it would be energy self-sufficient thanks to the huge solar panels on the roof. The average cost of an apartment was two and a half million pesos.

Two people lost their lives in the earthquake of 19 September when a quarter of this building collapsed in the space of a few seconds. It had only opened nine months earlier. According to the engineers and architects who have visited the site, it was all down to a design flaw – the building lacked the reinforcement columns that are required by current building regulations. It has also been suggested that there were failings in terms of how the building was built and the materials used.

Unfortunately, more and more stories like this are coming to light as time goes by and the human crisis gives way to a social crisis.

At the very least, those responsible were guilty of criminal negligence. In other words, the authorities took their responsibilities lightly, sitting at their desks and waving through the paperwork rather than conscientiously supervising the planning, design and execution of the buildings. This attitude is fuelled by regulations with complicated bureaucratic procedures and dozens of different requirements that have little to do with the safety of the people who live in the buildings or the communities where they are built.

At worst, public authorities and private companies colluded to profit illegally by cutting corners in order to save on time, materials, technical expertise, equipment, paperwork and labour.

Sadly, it was already an open secret that this is how things work in Mexico's capital city. There are dozens of first-hand accounts from builders on private forums confirming that it is impossible to build anything unless you pay cash to get the change in land use approved, get the signatures you need on the documents required for the construction project, obtain planning permission and pass the various inspections.

Yet the same builders who complain about corruption also claim that they have no choice but to go along with it. They say that if anyone reports wrongdoing they are blacklisted by the authorities and end up with no work. In other words, bribes have become a standard "business cost".

This has led to the "normalisation" of corruption – it has been tacitly accepted by both parties and by a passive society that has preferred to look the other way. Nobody thought that anything serious would happen, after all it was just a case of pocketing a bit of extra cash on the sly.

The problem is that neither the authorities nor the companies involved expected to be exposed by an earthquake. The events of last September will have huge social and economic repercussions. The victims have now started publicly reporting the different cases on online forums and social media. One by one, they are gradually coming to light.

*“ In a country where impunity is the rule rather than the exception, it is relatively easy to disregard the law and create opportunities for public servants to make private deals with individuals and companies wishing to obtain certain privileges. ”*



Rescue operation in Xochimilco, Mexico, following the earthquake of 19 Sep. 2017. By: Xolotl (CC BY-NC-SA 4.0)

There are three key challenges for the future:

1. How can all those involved be held to account through administrative and criminal proceedings?
2. How can these practices be prevented from recurring once the crisis is over?
3. And how can the victims be indemnified?

These three challenges come just after the establishment of the National Anti-Corruption System (SNA), which was created to fulfil four basic functions: identify acts of corruption, investigate them, impose the appropriate penalties on those responsible and learn from them in order to prevent their recurrence.

There are at least five very important lessons that this terrible human and social tragedy can teach the SNA in terms of how the construction industry needs to change in the future:

1. The design of regulations is paramount for an industry as important as construction.
2. Excessive paperwork, procedures and requirements tend to increase the risk of corruption.
3. There is no point in having regulations if they are not properly supervised by competent authorities.
4. People who report cases of corruption should be able to do so easily and safely. As well as being informed about the outcome of the investigation, they should be provided with an alternative, legal means of completing the required paperwork.
5. It is crucial that severe penalties should be imposed on both the public and private sector actors found guilty by the investigations, since this will act as a deterrent to corruption in the future.

We owe it to the victims of this tragedy to make sure that future natural disasters do not result in preventable social disasters.

*\*Max Kaiser is Anticorruption Director at the Mexican Institute for Competitiveness (IMCO).  
Follow us at [www.imco.org.mx](http://www.imco.org.mx) or on Facebook and Twitter at @imcomx*





# Corruption and Politics

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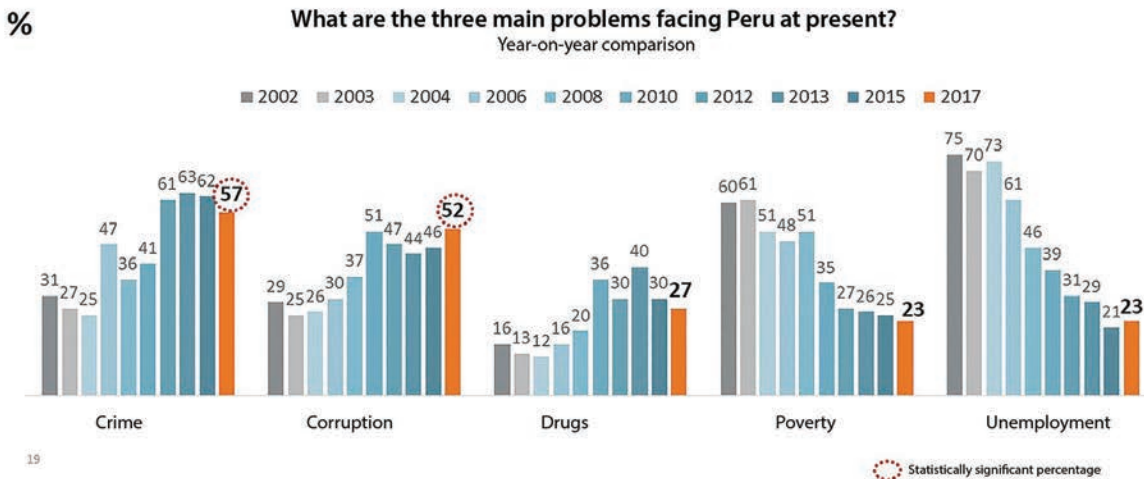
**D**emocracy dies when those who defend it are weak. This weakness is due to their lack of enthusiasm for defending it because they have become disillusioned with it. And this disillusionment is fuelled by disappointment. One cause of disappointment is when corruption occurs with impunity. This leads to a number of serious problems that undermine the democratic system. Let us consider three of these problems.

The first is that corrupt politicians are able to find their way into the system. When people in a society want to wield power for personal gain, the government will act in the interests of a few private individuals rather than in the public interest. This results in misgovernment, i.e. in a government that fails to fulfil its function of working for the common good (the collective wellbeing of all the country's citizens).

## CORRUPTION PERCEPTIONS



**Corruption is one of Peru's main problems and has increased in recent years.**



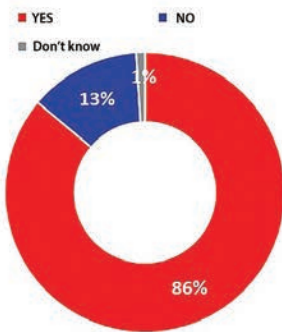
*Corruption is nothing more than crime committed by people in suits. According to the Peruvian public, corruption and crime are the two main problems facing the country. Graph source: Tenth national corruption perceptions survey - 2017 Proética*

The second is the concentration of political and economic power. When business owners do not believe in the benefits of the free market but do believe that they stand to gain from mercantilism, then rather than creating new winners, government policy merely perpetuates those that already exist. The economic benefits for business owners become so great that they prevent new entrepreneurs from entering the market. Rather than promoting creative destruction, corruption with impunity causes the destruction of creativity.



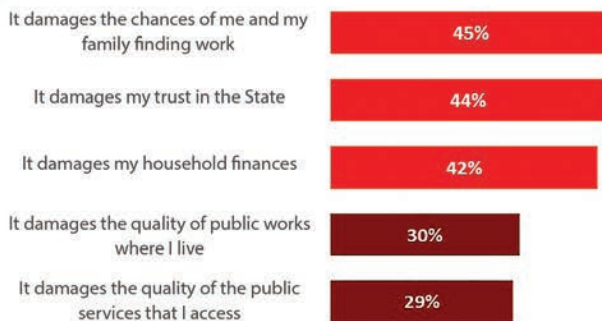
## Corruption affects respondents' household finances and damages their trust in the State.

Do you think corruption has a detrimental impact on your everyday life?



24  
Sample: All respondents (1,314)

In what way do you think corruption has a detrimental impact on your everyday life?



Sample: All respondents who said they thought corruption had a detrimental impact on them (1,132)

	Lima	Interior
It damages the chances of me and my family finding work	48%	42%
It damages my trust in the State	50%	39%
It damages my household finances	51%	36%
It damages the quality of public works where I live	30%	31%
It damages the quality of the public services that I access	30%	28%

Statistically significant percentage

**Corruption damages people's trust in the State.** This can lead to disillusionment with the democratic political system that protects their liberties and rights. Corruption is thus the enemy of liberty. Graph source: Tenth national corruption perceptions survey – 2017 Proética

Thanks to the financial support of mercantilist business owners, corrupt politicians have more chance of winning elections because they have more money to spend on their campaigns. As a result, political power is concentrated in the hands of the few, since anyone not involved in the system of corruption has few realistic hopes of being elected.

The third is disillusionment with democracy. Citizens become disenchanted with democratic institutions when they see that the government and the economy remain in the hands of the usual suspects whose power keeps growing while their own power as citizens continues to wane. This leads to the emergence of charismatic leaders who, under the pretext of restoring order and justice, form authoritarian governments that restrict people's liberties and are far removed from the principles of democracy.

The consequence of all this is a loss of liberty. A government interested only in the wellbeing of a select few rather than of all the country's citizens will facilitate the concentration of political and economic power in the hands of an elite. This will widen the gap between the few "haves" and the many "have-nots", allowing the former to restrict the liberty of the country's citizens so that they can continue to accumulate power. The corrupt become the enemies of liberty.

It takes a huge effort to prevent the collapse of democracy and loss of liberties. The State must concentrate on one of its basic functions: the administration of justice. In December 2016, Peru created the Special System for Corruption Crimes by Public Officials in the aftermath of Latin America's catastrophic Operation Car Wash scandal. For 2018, the judiciary has been promised funding for no fewer than 12 new anti-corruption courts, enabling corruption cases to be heard in locations other than Lima. As of September 2017, around 600 current and former regional and local authority officials in Peru were the subject of investigations by the district

*“ Another way of fighting the scourge of corruption is to name and shame those responsible and ensure that they are held accountable for their crimes, however much time has gone by. ”*

attorney's office and legal proceedings in connection with alleged corruption offences. If corruption is a nationwide phenomenon, why was it hitherto only dealt with by the courts in Lima? Too much State, not enough justice.

Another way of fighting the scourge of corruption is to name and shame those responsible and ensure that they are held accountable for their crimes, however much time has gone by. Peru has made some progress in this area. In August 2017, the judiciary's Special System for Corruption Crimes by Public Officials launched a web site where any citizen can view the sentences handed out to public officials convicted of corruption offences. That same month, a law was passed making corruption charges imprescriptible.

After 196 years of independence, Peru finally has a national policy – adopted on 14 September 2017 – for promoting integrity and fighting corruption. The Ministry of Health dismissed 32 officials and took disciplinary action against a further 131 in connection with corruption cases between January and September 2017 alone. It has processed 580 corruption charges since Pedro Pablo Kuczynski's government came to power in July 2016.



On 16 February 2017, a "March Against Corruption" was held in Lima, organised by various civil society organisations and students in protest at the corruption uncovered in Peru in connection with Operation Car Wash. The scandal has resulted in the country's former President Ollanta Humala being remanded in custody, while another former President, Alejandro Toledo, remains on the run after a warrant was issued for his arrest. Image source: diario Perú 21 <https://peru21.pe/lima/marcha-corrupcion-desarrollo-manifestacion-fotos-66237?foto=1>

In the first half of 2017, the Office of the Comptroller General of the Republic of Peru received 1,465 allegations of irregular or illegal activity in the public administration. And this after almost 200 years in which the Peruvian State had shown no interest at all in fighting corruption. Big government equals more corruption.

In connection with Operation Car Wash, in September 2017 Peru's Public Ministry revealed that it is running 19 investigations relating to alleged cases of corruption involving Brazilian companies, and that 71 bank accounts – in which around 2,000 suspicious transactions have been identified – have been frozen in Peru and various tax havens. Tax havens are the enemies of global liberty.

To get rid of corrupt politicians, we urgently need a radical reform of political party funding. In August 2017, the Constitutional Commission of the Peruvian Congress approved a ban on private companies making financial contributions to political parties. The ban would also apply to individuals convicted of or remanded for crimes against the public administration, drug trafficking, illegal mining, illegal logging, human trafficking, money laundering or terrorism. The ban has yet to be formally adopted by Congress.

In August 2017, Proética (the Peruvian chapter of Transparency International) carried out a national corruption perceptions survey. One in five Peruvians think that corrupt public officials should not be convicted if they hold a job that is in the public interest. We need to teach our citizens that corruption deprives them of their liberty. The judiciary (48%), the Congress of the Republic (45%) and the National Police Force (36%) are rated as the country's most corrupt institutions. 71% of all businesspeople are perceived as corrupt. Is there any hope for democracy and the free market if these perceptions persist among the general public? A situation like this is fertile ground for politicians who wish to be judge, legislator and police officer all rolled into one – otherwise known as dictators (not to mention the attendant state capitalism). So, can we kiss liberty goodbye? The time has come to take up the fight against corruption with impunity and in defence of liberty.

*“In August 2017, Proética (the Peruvian chapter of Transparency International) carried out a national corruption perceptions survey.”*

# Corruption, impunity and the institutional framework in the Dominican Republic

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CREES (Centro Regional de Estrategias Económicas Sostenibles)

@erselman

**C**orruption is a phenomenon that has been present in the vast majority of Latin American countries since time immemorial – and the Dominican Republic is no exception. Here, it has gone hand in hand with impunity, a problem that has been diminishing in other parts of the region. During the 1970s, Dr Joaquín Balaguer's governments swept the issue of corruption under the carpet – very little information was available on the subject under his

authoritarian regime. As democracy began to take hold in the 1980s, the issue entered the public debate after a number of corruption cases received widespread coverage in the media.

*“ However, instead of the public interest, it was private interests and political wrangling that were behind the prosecution of these corruption cases – no genuine effort was ever made to eradicate the problem itself. ”*

However, instead of the public interest, it was private interests and political wrangling that were behind the prosecution of these corruption cases – no genuine effort was ever made to eradicate the problem itself. In 1982, the outgoing President Antonio Guzmán Fernández took his own life in the presidential palace shortly before the inauguration of the new President, after the President-elect, fellow party member Salvador Jorge Blanco, had publicly threatened to jail Guzmán's daughter for administrative corruption. Five years later, Jorge Blanco himself went to prison after being found guilty of corruption during his time in office; on this occasion, the charges were brought by another former President, Joaquín Balaguer. In all of these cases, the corruption

charges were just a means to political ends rather than part of a legitimate attempt to reform the legal and institutional framework.

With the exception of the period from 1996 to 2000, when some measures were taken to strengthen the country's institutional and legal framework, the Dominican Republic's different governments have engaged in various types of administrative corruption. At the same time, impunity has become increasingly prevalent. Indeed, impunity has not only been used to protect members of one particular political party but has even been extended to politicians from other parties. In several instances, the Public Ministry has brought cases before the courts having failed either to make a sufficiently strong case or to follow the correct legal procedures. As a result, these cases lacked a strong legal foundation and simply fell apart during the course of the trial. Moreover, the politicisation of the judiciary has been standard practice throughout the Dominican Republic's history, making it difficult for corruption cases to be brought to a successful conclusion.

The Odebrecht case was a real eye-opener for the Dominican public. Although they already knew that administrative corruption was rife, they had no concrete facts or figures to point to. The case was also significant in that public servants in positions of power from right across the political spectrum were involved in some form or other in the different projects carried out by Odebrecht. It is important to note that the facts and figures about the corruption and bribery in the Odebrecht case came from abroad, mainly from the U.S. Department of Justice and the inquiries in Brazil.

From 2001 on, Odebrecht paid USD 92 million to Dominican public officials in order to secure 17 contracts to build roads, dams, a thermal power plant, etc. This is the second highest figure paid to any country out of the total bribery payments of USD 788 million made by Odebrecht across 10 Latin American and 2 African nations. In October 2014, when the Brazilian company started to feel the heat from the legal proceedings in its own country, it transferred its Structured Operations Department – which handled the payment of bribes worldwide – to the Dominican Republic.

According to statements made to Brazil’s Superior Court of Justice by the erstwhile head of the Structured Operations Department, Hilberto Mascarenhas Alves da Silva, the main reason that the company transferred its bribes department to the Dominican Republic was “security, chiefly security for the company”. This indicates that the Caribbean country was viewed as an ideal place to cover up the Brazilian company’s illicit activities. This simple fact reflects the country’s weak institutional and legal framework and demonstrates the complicity of the Dominican authorities and political system in this type of crime. Odebrecht is just the tip of the iceberg of a widespread corruption and impunity problem in the Dominican Republic – it is just the part that we can see. The part that we cannot see is greater still.

The Dominican Republic rates poorly in the indexes for institutions, justice and transparency that are produced by a variety of organisations, generally occupying a position near the foot of the table in the international rankings. The Dominican Republic comes 129<sup>th</sup> out of 137 countries in the institutions pillar of the World Economic Forum’s 2017 Global Competitiveness Index. This pillar considers 21 factors that affect a country’s institutional framework. Some of the areas where the Dominican Republic did especially badly are shown in the table below:

## Global Competitiveness Index 2017-2018 Institutions pillar Dominican Republic

Components	Rank (out of 137 countries)
Public trust in politicians	136
Favouritism in decisions of government officials	136
Diversion of public funds	135
Reliability of police services	132
Ethical behaviour of firms	132
Efficiency of government spending	131
Judicial independence	130
Business costs of crime and violence	125
Burden of government regulation	117
Irregular payments and bribes	116

“ The evidence that has come to light mainly as a result of the Odebrecht scandal regarding corrupt practices in the political system and widespread impunity has been a real wake-up call for Dominican society, leading to the emergence of a nationwide protest movement against this malfeasance. ”

The Dominican Republic also does poorly in Transparency International's ranking, scoring just 31 out of 100 and coming 120<sup>th</sup> out of 176 countries overall. According to the report on *People and Corruption: Latin America and the Caribbean*, 71% of respondents think that corruption has increased in the last 12 months. Moreover, the surveys conducted for this study found that the Dominican Republic is second only to Mexico in terms of the percentage of people who say they have to pay bribes to use public services.

The evidence that has come to light mainly as a result of the Odebrecht scandal regarding corrupt practices in the political system and widespread impunity has been a real wake-up call for Dominican society, leading to the emergence of a nationwide protest movement against this malfeasance. The Green March is a civil movement that has sprung up spontaneously among various socio-economic groups and civil society in general. We can only hope that this nationwide movement has an impact at every level of society and can bring about the strengthening of the country's institutional framework that its citizens so desperately long for.



Presidential palace in Santo Domingo. By: SM-G920F Creative Commons CC0.



# Corruption as a threat to liberty

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It seems that the majority of Latin America’s presidents and ex-presidents had “irregular” dealings with the Brazilian companies involved in Operation Car Wash, chief among them Odebrecht, where the scale of the corruption was on a par with the scale of its construction projects. This grand corruption that makes the headlines day after day, leaving the public feeling angry and powerless, has come to overshadow the petty corruption practised by public officials who extort money from people in exchange for speeding up bureaucratic procedures.

Transparency International defines grand corruption as the abuse of high-level power that benefits the few at the expense of the many, and causes serious and widespread harm to individuals and society, often going unpunished. This definition highlights how those in power take decisions with the complicity or collusion of a sufficiently large proportion of key roles in the judiciary and comptroller’s office to ensure that the beneficiaries go unpunished in spite of the harm caused to society.

*“ The abuse of high-level power that benefits the few at the expense of the many, and causes serious and widespread harm to individuals and society, often going unpunished. ”*

Hospitals that were promised and paid for but never built, the purchase of expired vaccines by the public healthcare system and the acquisition of medical equipment that can’t be used because the technology is incompatible. While for some people, cases like this mean death and ill health, they allow others to live a life of luxury.

Grand corruption is not only a reflection of the failings of democracy, as Guillermo O’Donnell claims in his studies of the young democracies of the 20th century. Neither is it a disease that reflects the quality of a democracy, as argued by Israel Covarrubias González. In fact, it poses a threat to the Republic itself, by which I mean the basic structure that society has developed to limit power: the separation of powers and responsibilities (checks and balances) and the rule of law which means that everyone is equal before the

law and the law always comes above private interests.

In the 21st century, corruption has brought down presidents in countries such as Guatemala, but without causing them to change the country’s corrupt power structures. We have also seen Brazil’s leaders, from Lula to Dilma and even Temer, accused of promoting and being involved in the region’s largest ever corruption scandal, and a powerful man like Mauricio Odebrecht being sentenced to 19 years in prison. Nevertheless, most corruption

† Ver <https://www.transparency.org/country/DOM>







Banner explaining the reasons for the opposition protests. Source: Creative Commons CCO 1.0 Universal Public Domain Dedication.

cases are not investigated. If they are investigated they never make it to the courts and even if they do make it to the courts they do not result in convictions. Impunity is the scourge of justice and liberty.

How can a citizen go to court with any confidence that they will receive justice if they know that judges can be bribed? How hard must it be for an entrepreneur to start or develop a new initiative if they believe or know that they will have to bribe several public officials in order to complete the formal requirements? How can we expect anyone to take part in a tender if another company has already paid a bribe to make sure they are awarded the contract? How are we supposed to report offences and injustices if we know that the police are not independent? Why should we participate in elections when one of the parties can get away with using public money to fund its campaign and when the rules are not applied equally to all parties but are instead changed to suit the interests of one of them? How can we engage as citizens if access to information about public affairs is confined to those in power? The legal certainty that we need to act as responsible citizens is jeopardised by the risks of confronting public authorities undermined by corruption. How free can we be with so much fear and so many threats?

Grand corruption will do whatever it can to get rid of the things that constrain it. At times, it operates slowly and insidiously, buying cooperation, favours, legal verdicts and licences. At other times, it resorts to violence in order to remove any obstacles standing in the way of its wrongdoing. Corruption weakens a country's institutions, creating parallel structures that in some countries have, over time, transformed from networks of complicity and corrupt bureaucracies into dangerous transnational organised crime groups.

In recent years, some cases have blurred the line between corruption and organised crime. In Honduras, Colombia, Venezuela and Mexico, there have been multiple cases of drug enforcement officers being charged with and convicted of drug trafficking offences. Not to mention the murder of mayors, police officers, journalists and human rights campaigners who dared to expose the corrupt or the corrupters.

The corrupt have no ideological hang-ups – they will quite happily support both left-wing and right-wing leaders. Regardless of who is in power, they know when to move and when to stay put, reinventing themselves and switching their allegiances – doing whatever it takes to survive the ups and downs of politics. The leaders of grand corruption are not so much autocrats as kleptocrats – to them, power is just a means of controlling resources.

“ Our societies are often willing to let things go and accept conflicts of interest without kicking up a fuss. But these conflicts are fatal to individual responsibility and are at the root of the silence regarding the lack of accountability in the public sector. ”


What corrupt people are very good at is finding efficient and innovative ways of using the points where the public and the private come into contact to their own advantage, i.e. bypassing the laws that apply to the rest of us for their own personal gain. In order to get away with it, they have to bribe a lot of people – the number of accomplices varies depending on how much money is involved. In the case of a \$100 bribe, the victim and the corrupt official may be the only people who know about it. But when millions of dollars are involved, they need a transnational network including everyone from the initial contacts or connections right up to financial and legal experts who launder the money and pay it into legitimate bank accounts so that it is available for them to use and enjoy.

Our societies are often willing to let things go and accept conflicts of interest without kicking up a fuss. But these conflicts are fatal to individual responsibility and are at the root of the silence regarding the lack of accountability in the public sector.

We need to jog our leaders’ memories and remind them that they are there to represent collective interests and administer the assets and resources of the nation’s citizens accordingly. Before we can enjoy liberty as citizens, it will be necessary to build a network of autonomous and independent government agencies that work together to control the government’s actions and that have effective powers to prevent and punish malfeasance by public officials. If we did that, we could at least begin to be free.



Third “mass protest” in Mexico City on 22 June 2012. By: Yaomautzin Ohtokani Olvera Lara [CC BY-SA 4.0 by Wikimedia Commons]



*“ The result is that corruption has virtually become an “institution” in its own right in some societies. ”*

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