

Countering Grand Corruption and Kleptocracy through Transformative Justice: A Victims of Corruption Approach

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Draft Paper² – February 2018

Introduction

Over the past two decades we have witnessed a significant consolidation of public and private resources behind the global anti-corruption movement. NGOs set up in opposition to grand corruption and kleptocracy, have mushroomed on the international stage. They feed into a heaving policy and legal ecosystem populated by state actors working through a growing range of multilateral forums. This inching up of grand corruption and kleptocracy in the global policy agenda, is married to often seismic political jolts, when national populations mobilise against corrupt elite through insurrection and revolution.

When caught in the slipstream of the political zeitgeist it is tempting to ‘run with the ball’, without taking the time to pause and ask essential strategic questions about the current direction of travel. The anti-corruption movement, in this respect, risks becoming a victim of its success at mobilising powerful supporters; put another way, the growing gravitas of those organisational actors buttressing this upward momentum creates a lustre, that delays the sobering moment where account must be made over whether all this frenetic activity is actually translating into meaningful results.

Against that backdrop, this paper argues for a moment of radical reflection. Part I suggests that national and international efforts to address grand corruption through reforms designed to strengthen public and market institutions in badly effected regions, succeeds primarily in treating the symptoms of grand corruption, and leave unaddressed the deeper structural processes that drive these activities over the *longue durée*. To that end, it is argued, that abuse of process and power at heart of grand corruption is symptomatic of a tendency within capitalist political-economies for power to pool in an increasingly narrow set of closely interconnected political and economic actors, who employ this disparity in power, to further consolidate their position by fixing and manipulating markets, and setting up systemic practices for redistributing revenues into the form of rent, interest and profit, at the cost of wages and taxation. This is frequently married to measures designed to insulate political and economic decision making from democratic forms of control. Kleptocracy is one symptom of this tendency, however, research indicates neoliberalisation is another expression of the same process, albeit a licit one. It is argued, this would indicate that technical solutions to grand corruption must be a supplement to measures which redistribute economic and political power – addressing the above mentioned tendency – sustained through long-term institutionalised arrangements.

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² Paper delivered at ‘Improving the Human Rights dimension of the fight against corruption International Conference’, Geneva, CICG, 19-20 February 2018. Comments and feedback are welcome, please email them to: kak.lasslett@ulster.ac.uk

This leads in to the second part of this paper's critique. It will be maintained that the global campaign against grand corruption and kleptocracy, in its design and delivery, frequently excludes those victimised by corruption, from meaningfully participating in anti-corruption initiatives. As a result, there is a risk that victim populations will be further marginalised through elite driven technocratic solutions, which would only serve to solidify the very disparities of power that grand corruption thrives within.

To address these challenges, the second part of this paper sets out applied concepts that offer an alternative basis on which to steer anti-corruption efforts. In particular, it will be suggested that the rights of victims set out in UN guidelines, offers tangible criteria for building anti-corruption agenda that remediates the harm suffered by impacted populations and focuses on reforms that guarantee non-reoccurrence through democratisation and improved accountability. However, if this rights based approach is to bear fruits, it must be married to the emerging paradigm of transformative justice, which offers precepts for a grass-roots approach to addressing gross human rights violations. To demonstrate how this might be crystallised practically, the example of stolen asset recovery will be employed, using the case of Gulnara Karimova in Uzbekistan.

Part I - From symptom to cause: A critique of anti-corruption practice

In policy discourse and academic research, grand corruption (and kleptocracy) is frequently censured employing two frames. First, it is a moral blemish, something that is offensive and wrong, which violates commonly accepted norms governing legitimate conduct. Then there is the consequentialist frame, which focuses on the deleterious, long-term impacts these wrongdoings have on society, government and markets. Both grounds offer justification for interventions designed to reform political, economic and social institutions in badly affected regions.

Take the British Prime Minister's foreword in an edited essay series published to mark the 2016 anti-corruption summit. David Cameron (2016) states:

Corruption is the cancer at the heart of so many of our problems in the world today. It destroys jobs and holds back growth, costing the world economy billions of pounds every year. It traps the poorest in the most desperate poverty as corrupt governments around the world syphon off funds and prevent hard-working people from getting the revenues and benefits of growth that are rightfully theirs. It steals vital resources from our schools and hospitals as corrupt individuals and companies evade the taxes they owe. It can even undermine our security, as Sarah Chayes argues in her essay, if the perceived corruption of local governments makes people more susceptible to the poisonous ideology of extremists.

What normative and consequentialist frameworks omit, however, is a serious structural examination of the material conduct employed to execute schemes that fit within the broad rubric of grand corruption. That is not to suggest that this conduct is excluded from academic, political and policy discourses. There is certainly a growing interest in how different forms of corrupt activity are organised through secretive transnational networks, and complex transactional sequences, which take full advantage of globalised financial and corporate landscape. However, it is less common to find research that aggregates these exposés of grand corruption, employing a set of unified tools that permit comparative analysis, on which

basis we can begin to ask are there deeper structural forces driving these events. To use an analogy, we are in a situation where there is solid data on the impact earthquakes have on built environments, but tectonic shifts in the earth's crust that produce these destructive tremors have largely alluded serious conceptualisation.

However, applied tools are emerging which allow grand-corruption data to indeed be collected and coded in a way that permits comparative analysis of cases to occur, so patterns can be identified, on which basis we can begin to consider structural explanations (see Lasslett 2017, 2018). These tools have been applied by the author in both Papua New Guinea and Uzbekistan, countries heavily impacted by grand corruption (see <http://pngicentral.org/>; Lasslett, Kanji and McGill 2017). The type of conduct analysed includes bribery, market rigging, price fixing, fraud, extortion rackets, asset-raiding, misappropriation, tax evasion, to name a few examples. Once the data on these activities was aggregated, underpinning structural processes could be observed, that were not apparent by looking at single cases alone.

Only a truncated summary can be provided here. To begin, an ideal model of capitalism is needed, in order to depict the types of deviation corrupt activity drives. Put crudely, the latter system involves a mass of social wealth in the form of capital, which is invested in a vast number of enterprises and processes, that interact through competitive markets through which prices are formed. Countless exchanges take place, which congeal revenues which are distributed in different forms – such as wages, profit, interest, taxation, rent – which is then consumed by the recipient creating the impetus for further economic activity. In kleptocratic regimes, a range of illicit methods are used, to illicitly consolidate the mass of social wealth – financial capital, prime real-estate, minerals, industrial enterprises, etc. – in a narrow set of privileged hands. This might take place through misappropriation, rigged privatisations, mass land-fraud, expropriation rackets, etc. Further advantage is gained by manipulating markets to shift prices so goods and services trade at a lower or higher price than they otherwise would, leading to a diversion of revenues into the profits of a kleptocratic elite; a process that can be further augmented through tax evasion. Meanwhile, the benefiting elite attempts to protect the levers used to ratchet up, in their favour, the share of national economic resources and revenues, by insulating political power from democratic control.

What became interesting as these broad results emerged, was that in many ways they echoed the dynamics which researchers have observed in political-economies heavily fashioned by neoliberal policy paradigms – with the notable difference that the latter achieves these ends, ostensibly through legitimate means. A survey of the literature notes a range of tendencies often found in neoliberalised political-economies. They include, a policy commitment to wide-ranging privatisations often on generous terms for investors; the reduction in taxation for corporations and high networth individuals; the stripping away of regulations; the diminution of labour movements and union; a diminished public influence over policy and legislation; growing financialisation; the commodification and marketization of non-market institutions and relationships; and, the expansion of government surveillance, repression and punishment. These tendencies – which appear in different intensities and combinations, depending on nationally rooted neoliberal regimes – have a number of aggregate effects when observed over time. They lead to a significant increase in wealth inequality; the shift of revenues from taxation, and wages, to profit, interest, and rents; the redistribution of costs associated with enterprise to the public (unregulated environmental damage), or private households (privatisation of healthcare); and the reduction of the public's capacity to exert

democratic influence over the policies, laws and infrastructure which shape how economic resources are employed.

The key point to underline is that it would appear the transactional sequences employed to prosecute neoliberal policy facilitate structural tendencies that echo the structural tendencies observed in regions impacted by endemic levels of grand corruption. This is not an academic point. Rather it alerts us towards the multiple ways elite actors can use growing disparities in political and economic power, in order to manipulate control over economic resources, and the distribution of revenues, which is then insulated from social control by reducing the impact of democratic levers. And as a consequence of this activity – whether in the kleptocratic or neoliberal form – the wider population is inhibited from gaining access to resources, goods and services essential to realising their human capabilities.

Against this backdrop, it is by no means assured then that measures taken in response to grand corruption which focus on strengthening the integrity of governments and markets will pay dividends, for two key reasons. First, it assumes that a breakdown in integrity, precipitated a range of illicit activities designed to loot and redistribute wealth. However, the above analysis indicates that the benefits which accrue to elite actors from looting assets and manipulating revenue flows, doesn't rise from weak institutions by disparities in power and certain drives endemic to capitalist political-economies. Anti-corruption practice, of course, should not ignore integrity. That said, it must devote much more attention to how we address the serious imbalances of power in our society, which enable an insulated class of elite actors, to exploit the political landscape, to rig in various degrees, the distribution of economic resources and revenues. This means trying to build more socially inclusive vehicles for a much wider public to share in power and exert direct control over these resources and revenues - a point that will be elaborated further on in Part II – may offer a more meaningful and sustainable way countering corruption, complimented by orthodox integrity measures.

This dovetails with the second dimension of the critique foreshadowed in the introduction. Namely, that as the anti-corruption movement has grown in size – with a large range of state actors and NGOs playing increasingly vigorous roles – there has not been a visible concern for mobilising or incorporating in any meaningful way those harmed by grand corruption. To use an example known well to the author, Papua New Guinea. At the national level, a significant amount of donor money – primarily from Australia – has been invested into improving public integrity, through public service and financial management reforms, implemented with assistance from consultants and/or seconded staff. This has been complimented by short-lived attempts to improve rates of prosecution, and engage in asset recovery. There has also been funded research conducted into public perceptions of corruption. Nevertheless, when the wider public has mobilised to confront corruption by utilising their power as citizens, for instance through the Occupy Waigani movement, it has been repressed by the government as an affront on power. Those in Papua New Guinea who have been harmed by grand corruption, through diminished access to educational, health and social support services; reduced enjoyment of essential transport and communications infrastructure; and the loss of property and land; feature, at best as the largely silent and hidden victims of corruption, with justice and reform being conducted in forums to which they are not privy or invited. Madlingozi reminds us, 'the practice of speaking for and about victims further perpetuates their disempowerment and marginality'. And it is this marginality, and passivity, which most acutely empowers kleptocratic elites to dispossess assets and manipulate revenue flows.

Therefore, constructively engaging in substantive ways the broader constituencies harmed by grand corruption, is an essential inroad towards building the sort of mobilized, active and participatory citizenry, who can begin to claw back the inequalities of power, that allow elite actors to organise political regimes, which increase their share and control of the national wealth, through manipulation, theft and gouging. Anti-corruption practice, in this mold, becomes less about countering the immediate symptoms of the problem – abuse of process, manipulation of public institutions, etc. – and more about addressing the root cause. This might be through thinking about new methods for exerting democratic control over strategic economic assets through promoting worker cooperatives in industries prone to gouging and price fixing, or helping communities exert democratic control over public spending through participatory budgeting.

In short, there is a propensity in our current political-economy for power to pool in the hands of a small minority, who exploit that position to augment their capacity to accumulate wealth, through fixing and manipulating markets and market exchange, and through different forms of misappropriation and fraud. Enhancing public integrity institutions may challenge this process, but it is not a sustainable solution in the long-term. A more substantive approach must find ways of decentralizing power and setting up mechanisms that incentivize a mobilized and active citizenry to contribute towards direct democratic control over a wider range of transactions that manage our social wealth, to ensure our resources and revenues are employed with integrity and probity. The next section looks at how we might begin this journey, with a focus on initiating steps and low hanging fruit.

Part II: Anti-Corruption, Victims and Transformative Justice

On the policy margins, there is a growing emphasis being placed within anti-corruption circles, on victims of corruption. Equally it is a contentious turn of phrase, because it is not clear how we delineate victims of corruption, or what the implications of this are for anti-corruption practice. It is important that we bring greater clarity to the debate in this respect, as victims of corruption is one concept that could potentially create a framework for democratising anti-corruption practice.

Below, are four distinct ways we can think about victims of corruption. The variation in approaches allude to the potential for confusion, but also highlights the importance of specifying the exact sense in which a victims-centred approach can have a democratising role. Victims can be a:

- **Tortious category** designed to identify those who have suffered harm as a result of specific conduct, who in turn have standing to seek remedy in the courts or other negotiated forums.
- **Analytical category** which focuses on how the deviant activity harms individuals and communities, i.e. the victimisation process. Harm here denotes direct forms of violence that result from corruption (theft of personal assets, gouging of consumers, torture, imprisonment, etc.), or structural forms of violence (reduced access to health, education, social services, etc.) which diminishes the capacity of affected peoples to fully realise their human potential (Meng and Friday 2014).
- **Constructionist category** that captures the complex negotiated ways in which individuals and communities begin to define themselves through the lens of victimhood, and then leverage this status to publicly pursue contentious claims.
- **Transformative category** which focuses on organising a socially inclusive response to victimisation, which ensures that those deleteriously effected by corruption, have a

role to play in diagnosing the problem, designing the solution, and participating in any subsequent remedial/reformative process.

It is proposed here that in order to counter grand corruption, the analytical and transformative approaches offer a framework that is sensitive to the issues raised in Part I, while also finding precedent within key UN instruments.

On the latter front, it is worth turning to the *UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, where a definition of victim is proffered using a harm based approach that recognises victimisation can occur at an individual and collective level. It states victims are:

Persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power.

An additional definition is offered for victims of abuse of power:

Persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that do not yet constitute violations of national criminal laws but of internationally recognized norms relating to human rights.

Another important UN instrument on victims that broadly adopts the above approach is the *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*. The latter framework is important, because it prescribes holistic set of rights those victimised through gross human rights violations can expect to enjoy. It includes the right to restitution, compensation, rehabilitation, satisfaction (cessation of violations, truth, judicial and administrative sanctions against perpetrators, memorialisation), and guarantees of non-repetition (effecting democratic controls, enhancing rule of law, protection of civil society, public education, legal reform, ongoing social monitoring).

Given that grand corruption, particularly in kleptocratic regimes, involves the systematic and egregious violations both of civil and political rights, in addition economic, social and cultural rights, we have in the above guidelines a helpful set of criteria for ensuring state parties deliver justice to victims of corruption in conformity with their international obligation. But also, crucially, this offers a policy window for encouraging state parties to be more accountable to those victimised by corruption, by ensuring the latter are beneficiaries both of justice measures and political reforms. However, there is no prescript in these guidelines for making this a participatory process. State parties are at liberty to simply organise the justice and reform process in the name of victims, whose role is one of passive recipient, rather than active partner. This risks failure for the reasons pointed to in Part I.

The barriers which socially exclusive forms of justice present to genuine reform has also been documented by scholars working in the field of transitional justice, a domain focused on the processes and mechanisms used in societies transitioning from periods of conflict and/or

authoritarian rule. A new paradigm of justice has been proposed by transitional justice scholars to address such shortcoming, which is worth considering. Known as transformative justice, it is an approach that can enliven the rights of victims set out in the above criteria, so they are genuine pathways for challenging the disparities of powers and structural drives that stimulate grand corruption.

Gready and Simons have set out the broad parameters of this emerging paradigm of justice. They explain: ‘Transformative justice is defined as transformative change that emphasizes local agency and resources, the prioritization of process rather than preconceived outcomes and the challenging of unequal and intersecting power relationships and structures of exclusion at both the local and the global level’. They continue:

It seeks a form of participation that engages with but transforms victimhood. It defines victimhood broadly, and is participatory and transparent about whose voice is heard and which organizations gain a seat at the table. Transformative participation should shape all elements of the transitional justice ‘project cycle,’ from problem analysis to evaluation, and stress the interdependence of process and outcomes (without an outcome, process can be delegitimized). It should transform both the people involved (their views, skills, levels of organization) and their situation. As such, it chimes with Paulo Freire’s notion of conscientization. A process-based approach to transformation also challenges power relations: participation then becomes a key element of empowerment that sees the marginalized challenge, access and shape institutions and structures from which they were previously excluded. (2014: 358).

If we apply this approach to anti-corruption practice, it demands a serious rethink. Critically, it requires state parties and civil society organisations to forego their role as lead-actors in executing anti-corruption measures. Instead, it limits the role of these parties to one of facilitators, that help establish the spaces where those victimised by corruption can begin to participate in schemes and processes that will see a redistribution of power, particular at key nodal points in the political-economy that have been abused by kleptocrats to consolidate their positions and accumulate wealth. This new role, in turn, requires serious reevaluation of the tools currently employed to fight grand corruption, and how fit for purpose they are in facilitating a participatory journey that aims to redistribute power on a scale that can decimate the soils in which grand corruption blooms. Such an evaluation may require that existing approaches to anti-corruption practice are transformed, and a turn to new mechanisms that go beyond the existing toolkit with its lean towards legal/technical measures.

To demonstrate how this might be crystallised in practice, it is worth shifting here from the level of generality to a very exact example, involving existing efforts to freeze, seize and return assets stolen by the Gulnara Karimova syndicate in Uzbekistan. Uzbekistan is a country whose regime broadly fits within the rubric of kleptocracy. Insulated from democratic accountability by decades of authoritarian rule, the nation is ruled by informal networks of powerful actors, affiliated through a range of cross-cutting ties. These informal networks command the levers of governmental authority to control economic resources, fix markets, rig transactions, and administer a range of rackets, which allows wealth to be consolidated in a small number of hands. This especially extreme inequality in power, and as a result wealth, is buttressed by a surveillance apparatus, that is able to distribute violence in a focused and general scale, when threats emerge to elite groupings. This broad governance

framework was utilised by the daughter of then former Uzbek president, Islam Karimov, to organise a syndicate that accumulated significant wealth through a range of illicit rackets. Subsequently, under the leadership of the United States and Switzerland, approximately one billion dollars of laundered proceeds of crime connected to the Karimova syndicate have been frozen, and will likely be seized. This creates the dilemma – if successful, how can these assets be returned in a way that broadly achieves the international responsibilities incumbent on states to uphold the rights of victims.

Orthodox asset recovery practice would dictate that the stolen assets are returned to the government of Uzbekistan. This would present a series of serious problems, from a victims of corruption perspective. First, evidence strongly suggests that the Karimova case is an example of state-organised crime; consequently, returning the proceeds of crime to the institution responsible for committing the illegal acts would appear a direct violation of the victims' right to cessation of violations, and the right to restitution. Second, owing to the significant limitations under which the Uzbek state operates, as an authoritarian regime where power pools in a number of unaccountable officials, there is a lack of capacity to facilitate the type of forums where those victimised by corruption can participate in the return process, in ways that are congruent both the UN guidelines and the norms set out in the transformative justice literature. However, we have seen a precedent that could address these concerns.

When stolen assets were returned to neighbouring Kazakhstan a third party mechanism was set up – the Bota fund – which allowed stolen assets to be returned with a degree of independent accountability and oversight. However, for a third party mechanism to produce a transformative outcome that accords with rights afforded to victims of corruption, more is required. In addition to accountability and oversight, mediated asset return through a third party vehicle offers an opportunity for those victimised by corruption to participate in a new forum that can both help address their marginality, and stimulate new capacities which empower victims to realise their agency-powers to assume democratic control over national economic resources and revenues.

For example, rather than prescribing a predetermined set of outcomes the asset returns will be spent on, participatory budgeting forums could be set up with trained facilitators, to engage communities across Uzbekistan in deciding how this money could be best applied to address the underlying problems precipitating corruption and abuse in their country. Such forums would also offer a process for designing restitution measures that have the buy-in of victims. This might lead, for instance, towards apportioning part of the stolen assets towards setting up community farming cooperatives through micro-finance schemes, creating an alternative governance model for administering agricultural production, which overcomes the significant problems associated with forced labour, command-control management structures, and the looting of cotton revenues by senior officials. In short, we have here a forum for potentially stimulating the type of activity that begins to redistribute power in institutionalised ways, that guard against the unaccountable pooling of authority so essential to kleptocratic regimes.

If this sounds profane and laughably unrealistic, this is perhaps a signal of how far anti-corruption practice must travel if it is to become a truly emancipatory paradigm for those victimised by systemic occurrences of grand corruption. That said, some of the anticipated recoil from policy makers might be addressed through careful advocacy and framing, with an emphasis on gradual steps that work in tune with existing measures. However, even if policy maker support can't be elicited at particular junctures, having a clear and principled approach

that accords with international best practice, at least casts clear light on moments when state parties derogate from their duties to victims.

Conclusion

The problem being confronted in the campaign against grand corruption and kleptocracy is one that manifests itself across a diverse range of political-economies. While abuse of power may be its symptom, its cause is a propensity within really existing capitalism for power to pool in an increasingly narrow set of closely interconnected political and economic actors, who employ asymmetric power relations, to further consolidate their position by looting assets and manipulating revenue flows, leading to growths in profit, rent, and interest, at the cost of wages and taxation.

Countering this structural problem requires an anti-corruption movement that is committed to a redistribution of power, through participatory methods that mobilise and empower the wider population to directly govern economic resources and revenue flows. An activated citizenry, with a wider range of capacities to direct and govern the social wealth they create, supplemented by mechanisms designed to increase public integrity offers the basis for a long-term solution that can counter the structural tendencies that manifest in grand corruption. This is not a radical break though from what state parties have committed to, rather it gives substance to the rights victims set out in UN guidelines. However, it does require a radical break in the dominant forms of thinking that has crept into the anti-corruption movement, so we can move beyond existing approaches, and creatively design participatory measures that safeguard our critical assets and revenue flows from forms of elite capture.

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