POLITICAL CORRUPTION AS AN INTERNATIONAL OFFENSE

The panel was convened at 10:45 a.m, Thursday, April 6, by its Chair, Daniel K. Tarullo, Georgetown University Law Center, Washington, DC, who introduced the panelists: Claire M. Dickerson, Rutgers Law School, Newark, NJ; Joel Paul, University of California Hastings College of Law; and Susan Rose-Ackerman, Yale Law School, New Haven, CT.

OVERVIEW BY DANIEL K. TARULLO*

Bribery and corruption may be as old as government itself, but they have come under increasing international scrutiny as markets have globalized and democracy has spread. Proponents of international action to combat transnational commercial bribery have argued that the practice (1) distorts the economies of developing countries in particular by inducing the purchase of items that would not otherwise be purchased, or would be purchased less expensively, (2) undermines democratically accountable institutions, and (3) unfairly disadvantages companies that refuse to pay bribes because of legal constraint or corporate practice.

Under the auspices of the Organization for Economic Cooperation and Development (OECD), an international convention now binds OECD members and other signatories to punish their own nationals for commercial bribery of foreign officials. The Organization of American States (OAS) has adopted a convention to discourage bribery throughout the Americas and to provide for mutual assistance in prosecuting those who bribe foreign officials. The World Bank and International Monetary Fund have incorporated strictures on bribery or exhortations for “good governance” in many of their programs.

While the panelists agreed that high-level corruption can be harmful, they were unanimous in their skepticism that corruption should be treated as something that deprives the citizens of a nation of their civil and political rights. The discussion did reveal significant differences over the politics and economics of at least some anticorruption efforts.

SUMMARY OF REMARKS BY CLAIRE M. DICKERSON**

To ask whether political corruption, like despotism, destroys civil and political human rights is to make fundamental assumptions about our norms and expectations today. In particular, the question reflects a conflation of private and public international law, and of economic and political power, inimical to the protection of human rights.

The conflation of private and public international law is well established and not illogical. On the one hand, buying a public official does compromise first-generation human rights by disenfranchising voters. On the other hand, the elimination of corruption, too, can be a violation of human rights, in particular the cultural rights of indigenous populations. For example, the OECD antibribery convention may be viewed as a conspiracy by the developed countries to protect multinational corporations by reducing bribe payments, but without considering the cultural norms of the payee country’s population. The convention’s merit then depends on determining the relative importance of first-generation versus third-generation rights.

Similarly, economic power and political power have traditionally been conflated, most recently by subsuming the latter in the former. While the United Nations is dismissed as toothless, the World Trade Organisation (WTO), an intensely economic arrangement that protects the economically powerful through retaliation, is touted as the real international

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powerhouse. In this context, the developed countries’ adoption of the OECD antibribery convention may be an admission that market regulation is appropriate to check economic power. However, even if the antibribery convention does help protect civil and political human rights, it nevertheless is the product of serendipity: How is one to divine when such a laudable result would recur? In addition, the convention is inherently unstable because the signatories’ incentive is to shirk the obligation to monitor their multinationals. Thus, economics as a safeguard for human rights is not reliable. Perhaps the purely economic perspective is not well adapted to protecting human rights.

The solution is to separate anew the private from the public international law, the economic from the political. Conceding this proposal’s “retro” appearance, I suggest that we again consider world government. This time, such a government would recognize the power of the economic, of private law. However, it would cabin that power by restricting the economic and private law perspectives to enforcement alone. An organization more democratic than the WTO, perhaps the United Nations, perhaps the International Labour Organisation for work-related issues, would define relevant values. That would be the role of public international law, of the political. Only then would the WTO, from its private law, economic perspective, enforce those values.

Thus, separating the private from the public international law, the economic from the political, is important to the protection of human rights. To conflate them, for example by asking whether political corruption is like despotism, is to put human rights at risk.

**SUMMARY OF REMARKS BY JOEL PAUL**

There are two aspects of the relationship between the anticorruption campaign and the project of market liberalization that interest me.

First, in emerging markets, there is a close relationship between globalization and political corruption. As markets liberalize, foreign investors compete with local entrepreneurs by engaging in rent-seeking behavior. Foreign capital bids up the purchase price of political influence. To the extent that international institutions pressure emerging markets toward liberalization without regard for the economic structures in those markets, they may be contributing to the rise of political corruption. Second, the idea of political corruption posits a paradoxical situation in which political corruption undermines efficiency, but efficiency may not be possible in the absence of corruption in an emerging market. For these reasons, international regulation or standards may be contraindicated, and political corruption can only be addressed at the local level, taking into consideration local economic realities.

What do we mean by corruption? International Monetary Fund Director of Fiscal Affairs Vito Tanzi has defined corruption as “noncompliance with the principle of the arms-length relationship.” In other words, any relationship other than an arms-length relationship between private actors and government officials is corrupt. The ideal then is a market of strangers who deal with each other indifferently, influenced only by reason, not personal loyalty. Community or family norms are incompatible with this atomistic model of society.

There are two objections to this conventional analysis. First, as an empirical matter, there is some question whether all forms of corruption have detrimental effects on economic growth. In some Asian countries, such as South Korea, fantastic economic growth was facilitated—or at least not prevented—by a culture of doing business based on personal relationships and bribes. Not all corruption has the same effect on capital formation and growth, so long as government does not act in a predatory fashion.

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