Corruption and State Capture: An Analytical Framework

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This paper offers a brief outline of the conceptual issues associated with the analysis of corruption and the development of the concept of state capture. The aim is to provide a framework to help those with experience of particular states or enterprises to formulate a model of the forces at work within their particular case, and to develop from this proposals for corruption control reforms.

The paper offers a written introduction to the proposed workshop on state-capture and the public/private interface for the IACC Meeting in Prague, October 2001. The session will be divided into three sections - a brief introduction based on this paper, followed by the presentation of a series of case studies in which presenters use the framework to help identify the dimensions of capture and corruption associated with their particular case. To date we anticipate case study material relating to the involvement of western firms in state capture in CEE and CIS states; Russian involvement in capture in the Ukraine; capture and corruption in relation to oil and armaments in CEE and CIS states. The final section will return to the case studies to explore the potential for government building reforms to reduce the impact of corruption and capture, alongside reforms in western states and in international agreements which can reduce the vulnerability of CEE and CIS states to trans-national capture and corruption.

This paper is divided into two major sections - the first on corruption and state capture, the second on the dimensions of political rule - and a brief final section suggesting ways in which the framework can be deployed in relation to case studies.

Section I:

a. Defining Corruption:
We have a case of corruption when:

1. a public official (A), acting for personal gain,
2. violates the norms of public office and
3. harms the interests of the public (B)
4. to benefit a third party (C) who rewards A for access to goods or services which C would not otherwise obtain.

Activities which meet all four criteria are corrupt, although there are also many cases where only three of the four criteria are met but where we nonetheless view the action/relationship as corrupt. For example, in a kleptocracy there may be no C benefiting, yet few doubt that such a regime is corrupt. Or, the benefit to C may be something to which C has a right, but where the public official levels a tax on access. The public interest component may also work in the opposite direction: a policeman may be bribed so as to induce him to act in a way that is in the public interest (for example, bribing to overlook the presence of Jews in the house when he is under a legal obligation to report them to the authorities for deportation). The private gain aspect is complicated by cases where the pay-off is not private but political - campaign contributions, traded political support, electoral or log-rolling deals. Equally, a public official may act to avoid certain costs rather than to incur certain benefits. Finally, there may also be a hierarchy in the goods that the official trades, which may lead to certain actions being classified as something other than corrupt. For example, while an official who trades state secrets is engaged in treason. In this case, the heavier offence (treason) trumps the lesser - but we may still want to distinguish between those who commit treason corruptly (for personal gain), and those who do so because of ideological commitments. In the latter case, the first criterion for corruption is not met and the third is disputed.

What remains central to corruption is the implied construction of public office which identifies the character and extent of, and the responsibilities associated with the relationships between A, B and C. The distinction between A-led and C-led types of corruption, with A-led involving the public official
imposing the terms on C (from extortion to informal 'taxation'), while in C-led the relationship is reversed (from bribery to systematic subversion of the political domain), underlines the centrality of public office: A-led corruption does not always require a C, but C-led does require an A (although A may be subject to threats or intimidation rather than being bribed).

The triadic relationship (even if it is not always present) is significant in marking the difference between cases of fraud and embezzlement (where A simply steals from the state), and cases of corruption more properly understood, where the exercise of power (i.e., A's power or authority over B) is perverted. Corruption is, by definition, more systematic than embezzlement or theft from the state - it involves a decay in the procedures of politics, a corruption of the nature of the political process. And that extra dimension is essentially a function of A's gain involving the subversion of official procedures so that the outcome of the process benefits C rather than B (or C at increased cost).

This definition departs from the view that A's behaviour must break the law to be corrupt. It does so because it recognises that there are cases where A and C can conspire to subvert the political process so as to introduce laws which entrench A and/or C's corrupt gains. This is one reason why legal definitions of corruption fail to capture some of the worst cases of corrupt activity. It is also a basis for recognising that corrupt transactions can, in effect, become institutionalised in the state and economy.

b. Regulatory and State Capture

Regulatory capture concerns cases where the regulations and regulators for an industry are rendered subordinate to the interests of the industry, with the consequence that regulation is designed and operated primarily for the benefit of the industry. Where A (a regulatory unit) is established to regulate and control industry in the public interest, it is captured when its activity falls under the influence of groups or individuals within the industry which it is supposed to regulate. Regulatory capture is not necessarily illegal, nor is it necessarily corrupt. It is corrupt only where the regulators and/or those who pass the regulation they enact, serve the interests of the industry (C) because of a bribe, inducement or threat. Such cases need to be demarcated sharply from those in which there is a process of interest representation in the design of legislation. For example, in the UK, much legislation in relation to special needs groups (such as those with disabilities etc.) is very dependent on consultation with group members and their families. Moreover, neo-corporatist practices of interest-intermediation gives those involved a considerable say in the policies which then frame their actions. This is not corrupt because it does not involve the payment of incentives to A. Nor does it involve capture as it is part of a legitimated process of representation, bargaining and compromise in the policy process. Capture, properly, concerns the loss of independence on the part of the regulatory or policy making organ to the industry over which has regulatory authority.

State capture extends the concept from domination of agencies by their industries, to domination of state institutions by individuals or groups in pursuit of their private interests, while narrowing it to refer to 'the illicit provision of private gains to public officials via informal, non-transparent, and highly preferential channels of access, (or) through unclear boundaries between the political and business interests of state officials.' (A-C in Transition p. 3) State capture, then refers to the actions of individuals, groups or firms in both the public and private sectors to influence the formation of laws, regulations, decrees and other governmental policies (i.e., the basic rules of the game) to their own advantage by means of illicit and non-transparent provision (of) private benefits to public officials. (p.1.).

In the World Bank's Anti-Corruption in Transition report, a distinction is drawn between state capture and administrative corruption - where the latter denotes 'the intentional imposition of distortions in the prescribed implementation of existing laws, rules, and regulations to provide advantages (to C) as a result of the illicit and non-transparent provision of private gains to public officials. (2) This underlines the basic distinction that the EBRD and WB work aims to highlight, between corrupt activity which subverts the implementation of rules, procedures and practices, and corrupt activity which subverts the basic rules of the political system. This distinction is intuitively plausible and powerful. Moreover, the reports stress the way that politicians and state officials can

1 Technically, 'illicit' is an obstacle to a clear understanding, since precisely what we want to be able to capture are cases where the law is the creature of non-state interests and it is restrictive to assume that there was some initial instance of rule breaking. Underlining in quotation added.
themselves be either agents or targets of capture. They are targets of capture insofar as they occupy public office which others try to subvert - they are agents when they subvert their own role or suborn others to influence legislation in ways which directly or indirectly benefit them personally.

The Bank's report goes on to suggest distinctions between the types of institutions which are captured (the executive, legislature, judiciary, or independent regulatory agencies), who is doing the capturing (private firms, interest groups, political leaders), and the type of benefits provided to public officials (bribes, equity stakes, informal control rights). The last two of these categories can be further expanded: as Hellman's work has shown, capture can occur across state boundaries, by foreign firms and investors, or by the activities of foreign governments; and we must recognise the extent to which corrupt transactions and capture can be effected or sustained through the use of the use of or threatened use of violence and the marketing of 'protection'. 'Throffers' - a combination of threat and offer (do x and you'll get y, fail to and we'll impose sanction z), are a powerful and often highly efficient type of incentive for groups working in areas where they either control the law or its enforcement, or where this is in disarray. It is worth noting that we would not expect to be able to expand the range of captured institutions, simply because the definition of capture limits its scope to institutions which have an independent rule or law-making function. In so far as a case involves only the implementation of a law, it is a case of administrative corruption. Two further distinctions concern the depth of the penetration of the institutional structure of the state, and its duration. Buying a Member of Parliament's vote on a single issue is less corrosive than being able to design and have passed a law (depth). And always being able to buy a vote or have a law passed is more corrosive than if one can only do so only exceptionally (duration). These distinctions might be characterised as between deep and shallow, entrenched and occasional capture. These distinctions will be associated with the others we have drawn. For example, where capture is deep and entrenched it is less likely to rely on substantial direct payments to officials, and more likely that it will be a part of a network of relationships and exchanges in which monetary exchange plays a lesser role.

c. Bi-lateral Relations, Networks and Domination

Is the relationship between captor and captured an asymmetric one? The term 'capture' suggests asymmetry but this sits uncomfortably alongside a language of rent-seeking and associated neo-classical terminology. It is worth clarifying this.

The term 'capture' is meant to convey a shift in control from A to C. There is however, an ambiguity about what or whom is captured. Formally, the object of capture is the law, policy or regulation, not the law or policy maker or regulator - it aims for the artefact, not the agent who produces the artefact. At the same time, the agent is a public official and in so far as his/her behaviour is subverted so that s/he no longer fulfils the requirements of this office, then it makes sense to think of it as the capture of a component of the law making process. Again, however, this is not equivalent to the capture of the agent. C may secure the compliance of a series of agents in the law making process through bi-lateral (symmetric) financial transactions which are one-off, but in this case the capture really does seem restricted to the artefact produced. But the experience of many states is that capture goes further by establishing an asymmetric relationship between A and C - with A acting in a predatory manner in relation to members of the public who use the services of A's office, or C controlling A's actions on an iterated basis, or with A and C locking themselves into a more permanent and stable relationship. Deep, entrenched capture is where an office and its regulatory or law-making powers become wholly subordinate to the private interests of some individual, group or organisation.

This tendency to shift from bi-lateral exchanges which change control of artefacts to more systematic forms of domination of agents and processes is in part a function of the illicit character of the exchange. Unlike market transactions, the agents are unable to advertise their goods and their demands. Nor are they (for the most part) in a position to disclose or terminate their transactions with the other - in the sense that any illicit transaction creates a history which neither side has an interest in disclosing, but which gives each some sanction against the other's defection in future transactions, creating the basis for a network of longer term relationships. In relationships in which corrupt demand meets corrupt supply, and in which there is subsequently informational symmetry between A and C (in that both have evidence of the wrong-doing of the other), differential ability to control other dimensions of the political process (such as the media, police, prosecution service or judiciary) and/or differential ability to make credible threats or use violence can dramatically distort the symmetry of the exchange, and thereby the price of the 'goods' and the ease with which they can be obtained, leading to systemic patterns of domination.
Section II
a. The Independence of Public Office

Corruption involves the subversion of the proper exercise of public office. There are two components to this.

The first concerns the standards by which we judge that the exercise is in some way improper. One way of identifying this standard is by reference to the norms and expectations which exist within the public domain and are publicly legitimated concerning the manner in which office should be exercised and the grounds on which public officials should properly decide issues of policy under their remit. The non-corrupt exercise of public office does not mean an exercise which is not subject to any influence, so much as an exercise in which influence is legitimated and regulated in accordance with a shared (usually publicly legitimated) normative system. One dimension on which political authority can go rogue is where it is exercised with no reference to any public normative system - which is how we should understand tyranny. (And it may be that, with Weber, the state begins as a body of armed men, able to impose control on a population, and then seeks to secure that control through legitimation). In most modern states, however, there is some conception of public office and of the norms for its exercise - and it is these which are subverted by corruption and state capture. That said, the boundaries between influence and corruption or capture are not always clear. Nor does every state draw those boundaries in the same way, and the fact of that difference can complicate both the identification of corrupt practices and the development of responses to them.

The second implicit component relates to the view that public office plays a distinctive and independent role in outcomes in the political process. That is, that public office has a basic independence in the exercise of its responsibilities. Independence can be characterised negatively as a lack of dependence, or positively as public office having a high level of authority. We can represent the lack of dependence in terms of those in public office (or in broader terms, the state) having the capacity to make and implement policy without being hostage to other political, social or economic forces within (or outside) the state.

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<th>Determines policy</th>
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<td>Yes</td>
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<td>Implements Policy</td>
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<td>Yes</td>
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Clearly, in most modern states the choosing of policy and its implementation operates within a range of constraints which state managers (politicians and bureaucrats) must face. The state lacks authority in a domain if policy or implementation is subordinate to some individual, group, or organisational interest. The three heteronomous forms of state identified clearly face such constraints in an overwhelming form, but the activities of autonomous democratic states are also bounded. They are bounded, for example, by the need to secure public recognition of their right to determine policy and to secure the compliance of their citizens. They are also bounded by the need to provide for access, participation and representation to groups and individuals within the political process. Indeed, the greater the authority of public officials, the more likely they are to be the focus of lobbying and political pressure. Since democratic states face a relatively autonomous realm of civil society in which groups have every interest in seeking to direct the state's activities to serve their own interests, state autonomy will inevitably be a matter of degree - or of directional tendency. Agencies with power will attract lobbying so as to influence their actions to the benefit of the lobbying groups. Depending on the extent of vertical consolidation their autonomy may then be threatened. The degree of vertical consolidation is essentially a function of the degree to which the institutions and procedures of the state command legitimacy independently of the extent to which the outcomes are seen as benefiting a particular group or groups.  

2 Low levels of consolidation result in self-interest maximising strategies in relation to rules

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2 Vertical consolidation concerns the extent to which 'every actor's decision making is constrained by higher-order decision-making rules, i.e., rules which are not at the disposition of the actor himself, but to which the actor can refer as a license for or legitimation of his own decision making.' (Offe, 30).
and procedures on the part of those dealing with the political process, which can destabilise the agencies authority and ability to command compliance.

For example:

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Autonomy → attracts lobbying and pressure
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strong vertical consolidation ← weak vertical consolidation
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acceptance of the lobbying leads to attempt to use resistance
↓
fairness of the outcome desired outcomes illicit influence/corruption to policy implementation
↓
increasing public support for state institutions against sectional interests falling confidence in the state

↑
influence capture embattled
↓
establishing the constraints which their formal role places on the ends and interests it is legitimate for them to pursue in the exercise of their office.
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Legitimacy of rules, procedures and institutions is, then, essential for public office to sustain its independence and authority. Nonetheless, the need to secure legitimacy also imposes constraints on what the state can do: the price of authority is that power is constrained.

### b. Authority, Access, Accountability

A democratic political system must be able to exercise authority over its citizens. Democratic states claim the right to regulate the conduct of citizens, and claim that citizens have a corresponding duty to comply with their commands. In claiming that right, and its derived duties, the state characteristically claims to serve the broader public interest, in the name of which individual interests can legitimately be over-ruled or discounted. On occasion this legitimates the use of force against citizens, and the coercive capacity of the state may be central to its ability to produce a stable social and economic order. Nonetheless, the state moves closer to the ideal in so far as it can command the compliance of its citizens in the pursuit of the interests of the community without recourse to the exercise of such powers. Public officials have a derived authority in their office which defines their responsibilities to the public and identifies the constraints which their formal role places on the ends and interests it is legitimate for them to pursue in the exercise of their office.

At the same time, modern democratic systems were, for the most part, introduced in response to demands from below and to establish countervailing powers to existing political élites. That is, they were introduced to increase the authority of political systems vis-à-vis their subjects by extending to them citizenship and rights of access and by entrenching the accountability of those in public office to the public in whose name they serve. In moving in this direction, democratic theory tended to encourage states to believe that increased access and accountability was compatible with increased political authority. That said, states have travelled distinct historical paths and have emerged with very different structures of authority and forms of access and accountability - ranging from presidential to parliamentary systems, and with multiple variants along the continuum. These 'types' dramatically influence the legitimate avenues open to citizens and other participants within the political system, as well as expressing certain fundamental values about the nature of the public interest and its pursuit. For example, we can contrast the highly centralised quasi-presidentialism of the 5th Republic with the US Presidential system. In the former, the emphasis is on the sovereignty of the nation, and the aim is to protect the institutions of the state from political interests in the community. In contrast, the US produced a highly constrained Presidential system in which extensive authority was retained both by the legislature and by the states. Moreover, it was accepted from the beginning that the interests of the people should be represented as fully as possible, with the result that access has been built in on the ground floor of the political system and Washington has became the Mecca of the professional lobbyist.
Both access and accountability have other dimensions that may be less conducive to supporting authority and legitimate government. For example, corruption can be understood as just another form of access to political authority, and every political system faces the difficulty of establishing which forms of access are to be regarded as acceptable and which not. This is not simply a culturally relative matter of describing what is regarded as acceptable within a given political system - although that is important, it is also the case that certain legitimated forms of access may have a de-stabilising or corrupting impact on the political system. (Consider, for example, the vexed question of political finance in the United States). For any political system, then, we need both to know what the rules of the game with respect to access are, what types of influence these avenues permit within the system, how far these are compatible with sustaining the independence of public office, and what types of corrupt influence or capture are most likely to be sought within the system. Such factors will have an impact on the degree of “vertical consolidation” within any given system - that is, the extent to which people's political participation is constrained by higher order decision rules - and we need to assess how far procedures and norms are taken as legitimate constraints on people's political behaviour, how far the political culture of the state is one in which trust in procedures is low rather than high, and whether formal procedures are systematically undercut by informal means of interest representation and negotiation. We also need to be clear about such issues from a range of perspectives - firms, public servants, politicians, ordinary citizens, etc., - so as to be able to see how far there are shared perceptions and whether some areas of the public political culture might be more or less robust than others.

The dimension of accountability is similarly complicated. While the value of accountability is that it requires those in authority to justify and to take responsibility for the acts they undertake in the name of the public, institutionalising answerability can have a number of disadvantages. For example, systems of accountability must be able to command a similar degree of vertical consolidation as systems of access. The process of holding people accountable must respect the authority they exercise and acknowledge the responsibilities they have. To allow people to challenge decisions simply because they do not like them would threaten to destroy the authority of the system and turn bureaucratic accountability into a contest of conflicting interests. Also, if we distinguish formal accountability (systems for checking that the formal requirements of one's role have been performed satisfactorily) from political accountability (mechanisms for expressing public or political judgments of satisfaction with the service provided by public officials), we can see that slippage from formal to political accountability can radically weaken the authority of the political system and open up the system to a range of destructive forms of political pressure. Essentially, it would change the incentives for public servants from those designed to ensure that they do their job, to ones which are designed to ensure that they satisfy the demands of the public or their political masters - thereby undercutting any claims to independence or professionalism. Similarly, the aim of accountability is not always clear. Rigorous accountability designed to ensure that public servants have to give a full and detailed account of each aspect of their activity to a superior (and each superior to their superior, etc..) would create bureaucratic collapse, just as the complete absence of accountability mechanisms is likely to cause difficulties. But the mean between such extremes is not easy to hit. And political systems vary widely from those which work from a basic presumption of integrity on the part of public officials and look for ways to support that integrity, to those which start from a presumption that public officials need incentives and sanctions to ensure they comply with their formal responsibilities. Moreover, different political systems take different views of the relationship between public officials and politicians, with some allowing senior civil servants a political role and others restricting them to a narrower formal remit, and they also differ over how far those who play a political role must also be subject to political as well as formal accountability. These differences also influence judgments about integrity and the need for incentives and mechanisms of formal and political accountability.

In assessing any political system we need to ask how far governmental institutions can command vertical consolidation, so that access to the political system is formally regulated through legitimate channels, what components of accountability exist within the political system, and whether these support vertical consolidation rather than weakening it (as when formal systems of accountability overwhelm bureaucratic efficiency, or when formal accountability is supplanted by political accountability).
Section III
Analysing corruption and capture

I have sketched in outline the different dimensions of influence, corruption and capture (summarised in Appendix 1) and a view of the nature of public office and the various dimensions (especially on issues of access and accountability) along which states may differ from each other. There is no single right way of arranging democratic representation, of setting up a series of channels of communication between holders of public office and interests and organisations within the community (and from outside), or of establishing the accountability of office holders to their managers, to the politicians who direct the work of their ministry or agency, or to the public at large. Different states, with different histories, and different political cultures, have made different choices about how to proceed on these and other related issues and they face correspondingly distinct pressures and different problems with corruption and capture. The answer to political corruption is not to make all states have the same structures, but to identify the patterns of representation, access, accountability and authority within a given state and the ways in which interests can legitimately be represented within the system, and to assess the manner, extent, and depth to which existing institutional arrangements and procedures are currently subverted by certain individuals, groups or organisations, and the degree of depth of this subversion. The objective of this session is to encourage a discussion of case studies of corruption and capture within this broad framework.

In addition, given that the discussion will include a significant focus on international aspects of state capture, we are concerned to analyse the points of contacts between firms, governments, and international organisations from the west, and the often rather fragile political and economic structures of (in particular, but not exclusively) CEE and CIS states, and to ask how far some dimensions of state capture may be susceptible to direct influence by government action against firms within western states themselves. We also hope to address the effectiveness of existing legislation and controls on cross-national corruption and capture.

Finally, our concern in the third and final part of the session is to identify the potential for which can counteract the deeper subversion of public office. The first part of the discussion will focus on reforms needed within states suffering from internally driven forms of capture and corruption. The second part of the discussion will assess reforms needed in relation to areas of international economic and political activity in trans-national corporations and western states which become involved in capture and corruption activities. In both cases, questions will be posed on the priority to give to access, accountability, or authority when building institutions that can resist corruption, and the extent to which choices among the three must be made depending on country context.
## Appendix A

### Influence, Corruption and Capture

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<th>Targets</th>
<th>Influence</th>
<th>Mechanisms</th>
<th>Capture</th>
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<td><strong>Policy Agenda via Political Advisors</strong></td>
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<td><strong>Implementation via Police</strong></td>
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### Agents of Influence and Subversion

**Individuals**
- Private Inds.
- Officials (A-Led)
- Politicians

**Intra-State Groups:**
- Gangs
- Firms
- Political Factions
- Local/Regional groups
- State-based factions (A-led)
- Party Organisations

**Inter-State:**
- Foreign Firms
- Foreign Govts
- Int Orgs

### Means of influence, resistance and subversion:

**Refusal**
- Non-compliance/free-riding
- Active resistance

**Influence**
- Lobbying
- Negotiation
- Regulatory Capture

**Corruption**
- Bribery
- Blackmail
- Threats/throffers
- 'Ownership' of officials

**State Capture**
- Bribery
- 'Ownership' of politicians
- Control of regulatory agencies
- Violence and Intimidation

**International State Capture**
- Bribery
- Military threats
- Trade threats
- Aid/Investment sanctions