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[Global Corruption Report 2007] Bribes, Punishment and Judicial Immunity

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10 Bribes, punishment and judicial immunity

Ernesto Dal Bó, Pedro Dal Bó and Rafael Di Tella¹

During the height of the Argentine crisis of 2002, amid crowds of furious protesters shouting '*que se vayan todos*' (Spanish for 'let them all go') against a political class perceived as deeply corrupt and self-serving, the IMF requested that the country pass an immunity law for central bank directors. Since this would extend the protection already enjoyed by politicians from judicial investigations of misconduct to members of an institution at the centre of the country's financial crisis, this appeared to be an incomprehensible proposal. In the timid debate that followed, it was argued that, while possibly detrimental to fighting corruption, such laws were necessary for the sound functioning of the financial system. For those seriously concerned with reducing corruption, however, this presents a legitimate question: Are immunity laws an obstacle in reducing corruption?

The short answer we offer in Dal Bó et al. (2006) is that not only do immunity laws not hinder the fight against corruption, but that, under some conditions, they actually help. To understand this, we must first accept that influence is carried out not only through bribes and lobbying, but also through threats and punishment.

Political influence in the real world

During their first week in office, Colombian judges and other public officials involved in the anti-drug war often receive a message asking '*Plata o plomo?*' It reminds public officials that there is an alternative to fighting drugs and receiving *plomo* (Spanish for lead, as in bullets), which is not fighting drugs and receiving *plata* (Spanish for silver or money, as in a bribe). The literature on political influence cannot explain this phenomenon, as it concentrates almost exclusively on bribes, presenting the policymaker as an auctioneer who receives alluring 'bids' from one or more interest groups.² Since the overwhelming evidence on influence reflects the simultaneous use of both positive and negative incentives (including violence, legal harassment and smear campaigns) in the real world, this is a big limitation to our understanding of influence. In order to make some progress towards a more realistic understanding

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2 See e.g. D. Baron, 'Service Induced Campaign Contributions and Electoral Competition', *Quarterly Journal of Economics* (1989); G. Grossman and E. Helpman, 'Protection for Sale', *American Economic Review*, 84(1994); T. Groseclose and J. Snyder, 'Buying Supermajorities', *American Political Science Review*, 90(1996); E. Dal Bó, 'Bribing Voters', Oxford University Working Paper (2000).

of political influence, we build a model where groups attempt to influence policies using both bribes *and* the threat of punishment. We show that this more realistic model leads to interesting and testable predictions about the quality of a country's public officials and also helps us to better understand the role of some institutions, such as those granting politicians immunity from legal prosecution.³

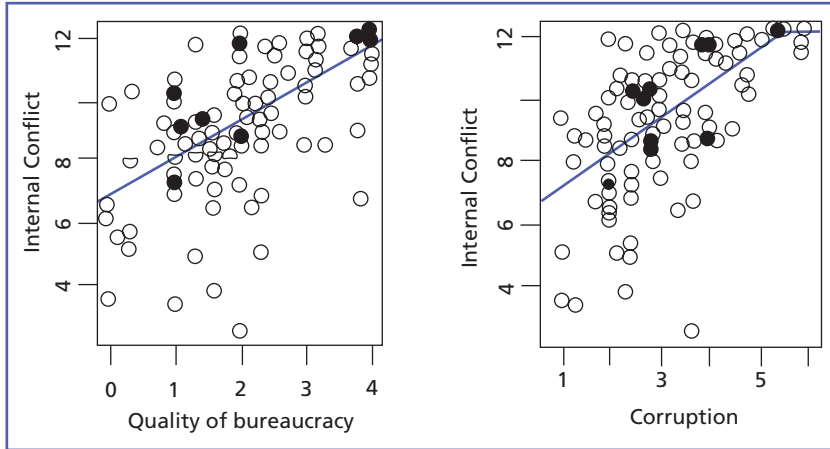
The model has two stages. In the first, citizens with different abilities decide to enter public life depending on the total expected payoff (including all bribes and threats) received by public officials. In the second stage, the official is influenced by a pressure group that has access to both methods of influence (bribery and threat of punishment) in order to obtain a given favour or resource. While bribes may increase the expected payoff to public officials, threats definitely lower the attraction of entry into public office, introducing a *negative* payoff for entry. These assumptions imply that in a world where the pressure group has access to both bribes and threats, the quality of public officials falls relative to that in a world where bribes are the only avenue of influence. This is because in a world where *plomo* is present, payoffs for public service are lower, driving away high-ability individuals who are more likely to find attractive jobs in the private sector.

The cheaper the access to threats (e.g. the less expensive it is to hire thugs, manipulate the judicial system or influence the media), the greater the number of pressure groups who can afford to influence public officials (via both bribes and threats) in the *plata o plomo* arena. A further effect of cheaper threats is that there is a higher likelihood of pressure groups using the *plomo* route of influence as a substitute to the *plata* route, further lowering payoffs for public officials and in turn, the quality of individuals in public office. Therefore, a testable prediction from this model is that *more violent countries – where threats are cheaper – will have worse politicians and more corruption*.

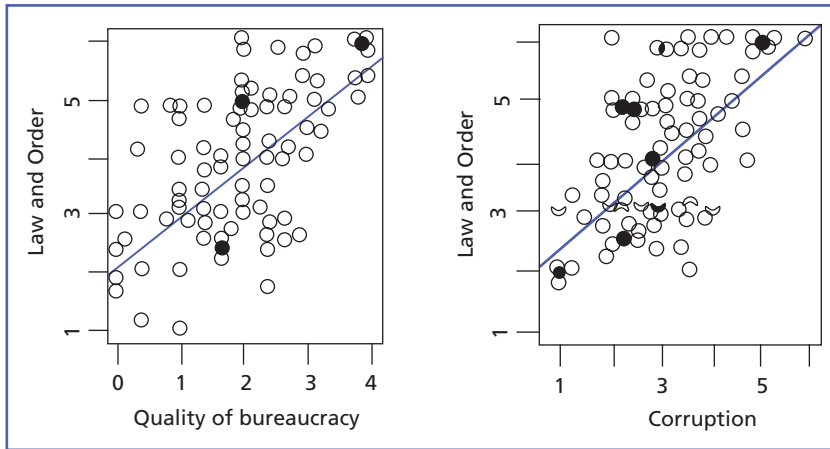
This prediction does not appear far-fetched. The following panels show correlations between corruption, the quality of public bureaucracy, and two different proxies for the level of violence in the country: (i) the intensity of internal violent conflict, and (ii) the prevalence of law and order. These correlations are computed on indices produced by the International Country Risk Guide for 145 countries between 1994 and 2001. The measures of internal conflict and corruption are in fact measures of how good a grade a country obtains. Thus, a high index of internal conflict means a peaceful country, and a high index of corruption means the country has clean practices. As is clear, countries with lower grades in terms of proxies for violence (i.e. the conflict and law and order indices are lower) display both worse grades in terms of corruption (a lower corruption index, indicating more corruption) and worse grades in terms of public bureaucracies, indicating bureaucracies of lower quality.

3 See *American Political Science Review* Vol. 100, No. 1 (February 2006) for the full version of this model.

(i) Internal conflict



(ii) Law and order



Moreover, countries might be trapped in a vicious cycle, where in an environment of cheap *plomo*, low-ability people take up public office. Since these low-ability individuals are incapable of altering the undesirable environment (e.g. by providing tighter law enforcement to limit the use of threats), good candidates stay away from politics and the bad conditions are perpetuated.

Judicial immunity

The *plata-plomo* model can be further extended and applied to official immunity. As explained above, the granting of immunity to the president and board of directors of the Central Bank of Argentina was the key request of the IMF during negotiations in 2002 in the context of the economy's collapse. Given the weakness of the country's judicial institutions,

banks affected by the decisions of the Central Bank found it easy to initiate legal actions against bank regulators.⁴

Note that one possible form of attack is to accuse an official of corruption. In countries with weak judicial systems, it is hard for the unjustly accused officials to prove their honesty. Thus, an honest official will fear such bogus accusation for fear of loss of reputation, loss of future employment opportunities, high costs of a legal defence, and the possibility of jail time. Thus, in relation to our model, immunity has two effects. On the one hand, it benefits honest officials by insulating them from judicial actions manipulated by a pressure group. On the other hand, it makes corrupt officials less accountable to an independent judiciary.

The model shows that when justice is relatively ineffective (which means that the likelihood of the justice system detecting corruption is low, and its ability to discard politically motivated accusations is also low), immunity has a greater effect on protecting the honest politician from false accusations than on sheltering the corrupt politician from true justice. A society with a bad judiciary *may be able to improve the quality of politicians and reduce the amount of corruption by granting immunity to officials*. When justice is relatively *effective*, an increase in immunity has a higher effect on sheltering the corrupt politician than on protecting the honest one, hence increasing state capture.

An important question is how a country with high corruption and bad officials can change for the better. Our basic model emphasises that gradual restrictions on the scope for private coercion (for instance, through better judiciary and independent media) will gradually reduce corruption and improve the quality of politicians. The idea that countries might be trapped in an undesirable equilibrium of cheap *plomo* and low-quality politicians suggests the possibility that crackdowns may take the system from a bad equilibrium to a good one, permanently improving matters. In terms of granting immunity to officials, this study shows that tradeoffs to increased immunity may exist, and whether or not it is appropriate to grant immunity would depend a lot on the general situation of justice in the relevant country.

⁴ See W. Bernhard, 'A Political Explanation of Variations in Central Bank Independence', *American Political Science Review*, 92(2) (1998).