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# What makes corruption in the public procurement process awful?

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## Abstract

Corruption as a societal bane has afflicted homes, families, societies, businesses, governments and nations for ages. Some have traced it to the days of Adam. Under every culture, the phenomenon has been considered detestable although its exact definition has defied definite expression. Its pervasiveness has also been recognised by sociologists for ages. It has appeared in households, offices, churches, marriages and all facets of social endeavours and interactions. When corruption rears its ugly head in the process through which governments acquire goods, works and services for the purpose of running their business, it is highly unacceptable and particularly dangerous to such nations. But why is there the cause to worry about corruption? Why is corruption unacceptable? A theoretical basis is provided to elucidate societal abhorrence to corruption as it affects public procurement in particular using the deontologist-consequentialist dichotomised ethical and moral explanations. It has been concluded that corruption in procurement is awful not only because of its negative consequences but because it is inherently wrong, unethical, immoral and above all an illegality.

**Keywords:** Procurement corruption, Consequentialist view of corruption, Deontologist view of corruption

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## 1. Introduction

Very often, treatise and commentaries evaluating corruption have taken the position of lamentations on its existence and the need to fight it (Bayley, 1966). Yes, the identification of the existence of corruption is vital, much as proffering solutions is necessary. Yet if society is not aware of its devastating effect, actions to eliminate it may not be taken seriously. It is even more imperative to remain wary of the effects of corruption when it is realized that some believe that corruption may be beneficial in some developing nations (Bayley, 1966). An attempt to relieve the evil that corruption does is an important part of the whole effort to confront corruption in general and in the public procurement system in particular.

In this paper an attempt has been made to bring to the fore the theoretical basis for societal abhorrence to corruption as it affects public procurement under the following framework:

- i. The term corruption as restricted to public procurement has been defined giving typical examples.
- ii. An attempt has been made to theorize the good, the bad and the evil of corruption using the deontologist-consequentialist dichotomy to explain why corruption is abhorred. A discussion of the good or bad of corruption in procurement has been made along the lines of the two philosophical thoughts
- iii. It has been argued that the consequentialist approach to providing explanation to why corruption is considered abhorring is not sufficient in the face of the superior deontologist (duty-based) argument.
- iv. Conclusion has been reached that even if corruption is claimed to have sometimes yielded some benefits, the consequentialist approach will make corruption look worse by the sheer numbers of the ills associated with it. However, corruption should be seen as awful not only because of its consequences but more importantly, because it is simply unethical, immoral and/or unlawful.

## 2. What is corruption in public procurement?

The term corruption has defied a uniform accepted definition (Samura, 2009). Depending on the intended dimension, form, type or degree the term corruption has been used to describe various incidence of waywardness affecting life in several spheres, manifesting itself in social, economic, business and public relations. It has found different expressions among cultures, nations and disciplines such that different cultures and societies may perceive corruption in different ways (Samura, 2009).

This writer recognises the existence of various concepts and definitions of corruption in different cultures, political ideologies and disciplines. No matter the approach used by the beholder, corruption in general is an all-encompassing feature of the broad anti-social activity of fraud afflicting all societies. However, in this article corruption is being discussed as it affects day to day managerial and economic transactions, with particular reference to how it occurs in public procurement.

The term has been used to represent a wide range of activities through which people entrusted with a form of authority exploit same for self-centred ends (as cited by Crumbley et al., 2007 and Mustapha, 2010).

Such vices as bribery, kickbacks, nepotism, cronyism and clientelism, theft of resources, conflict of interest, abuse and manipulation of information, discriminatory practices and waste and abuse of resources have been often cited as examples of corruption (Anon, 2009a). Mould-Iddrisu (2010) has provided a wider dimension to these examples by including any act, “irregular, unethical, immoral or illegal”, that enables individuals or groups to take undue advantage of their positions or relationships against the rights and interest of others. In public procurement, the perpetrators of corruption, normally participants in the system either as contractors or employees of the procurement entity, exploit their position, role, influence, power or authority in the organization or in a particular situation to wrongfully and unlawfully obtain benefits for themselves or other persons, as opposed to their duty to their employer and/or their responsibility to others (Wells, 2004).

The definition of corruption as “abuse of entrusted power for personal gain” contrasts with the popular definition endorsed and used by the World Bank {i.e. corruption is “the abuse of public office for private gain” (McCusker, 2006; Anon, 2006a). The later appears to limit corruption to public officers. Whilst this later definition appears to exclude abuses by those outside the public officer bracket, it is known that in many cases the public sector officials may require the active collaboration of private sector officials or individuals to implement public procurement corruption schemes. In some cases it may even take place on the blind side of the public official. For example, a typical public procurement corruption scheme, bid-rigging by cartels, may occur among private sector officials to the exclusion of public sector officials. Coenen (2009) says corruption is not an exclusive preserve for the officials from the public sector entities, as it can and does take place in the private sector with full participation of private sector officials. And according to Thai (2009) recent corruption scandals involving the private sector render the definition which seeks to limit corruption to public sector officials controversial. Perhaps it is for this reason that a standard definition for corrupt practice, adopted by the Asian Development Bank (ADB) defined corruption to include listed corrupt practices engaged in by any party (either public or private) to influence the action of any other party (Anon, 2007). This definition is that adopted by the pan-continental development banks for Asia, Europe, America and the International Monetary Fund and the World Bank in 2006 (Anon, 2006b).

The operational definition in this work adopts the definition as has been applied to public procurement by Kolstad et al. (2008) which includes both public officeholders and the private sector officials who abuse entrusted power for personal gain, because of its comprehensiveness. The Kolstad et al. (2008)’s definition is clearly in line with that of the pan-continental banks referred to earlier (Anon, 2007; Anon, 2006b). According to Kolstad et al. (2008) a tenderer who conspires with an official of another company to fix the outcome of a tendering process should be counted as equally corrupt. Thus, Kolstad et al. (2008) admit and capture “private-private corruption” in their definition.

As applied to public procurement, corruption includes the gamut of practices engaged in by the participants in the procurement process through which means they can wrongfully and illegally exploit their positions of trust for private and selfish gains. Corruption in procurement therefore may include and indeed may transcend such corrupt practices as conflict of interest, bribery, embezzlement, kickbacks, tender rigging, contract splitting, illegal gratuity, extortion and the like.

Kolstad et al. (2008) and Søreide (2005) distinguish between two forms of corruption, using the level of authority from which the practice is being perpetrated as the basis. One is termed political corruption (grand corruption), perpetrated at the top governmental levels by people who take decisions that lead to changes in policies, laws, rules and regulations which eventually affect the allocation and use of resources. The class of people in reference here consists of “politicians, government ministers, senior civil servants and other elected, nominated or appointed senior public office holders” (Kolstad et al., 2008). This is the class responsible for the promulgation of the public procurement law, and the creation of the related policies, rules and regulations. For example, to further their corrupt designs and intentions the political class may not be interested in promulgating laws or making policies that would curb corruption in procurement. In extreme cases they may actually make laws that would facilitate corruption.

On the other hand bureaucratic corruption (petty corruption) is perpetrated by the bureaucratic class and public administration employees whose responsibilities are the implementation of policies, laws, rules and regulations made by the politicians and top officials (Kolstad et al., 2008). For example, the bureaucrat who implements the laws and policies could skew the implementation process for personal gains. The corrupt public administration staff or official may favour the beneficiary using preferential treatment and inappropriate or unacceptable “ways and means”. In some cases, rules, regulations and control procedures may be perverted, ignored or even broken allowing the person who pays bribe to defraud the public whilst he looks the other way.

The dividing line between political corruption and bureaucratic corruption may sometimes be blurring, especially at certain fringes of officialdom where top civil servants advise on policies which they also help to implement. The difficulties are also complicated by the clear fusion of and the inter-relationship between the two. Political corruption and bureaucratic corruption are therefore inter-related. Although Kolstad et al. (2008) differentiate between the respective causes and effects of political corruption and bureaucratic corruption as a fact they admit that there is evidence of a positive relationship between the two. Moreover, in many instances it is difficult for any side to succeed in a scheme without the active connivance of the other party. The irony of this relationship is that very often, especially in Ghana, politicians are blamed and receive the flak for corruption although the bureaucrats could be willing partners in the perpetration of the problem. In Ghana and Africa in general corruption is rife and abounds within the public service and among politicians.

### **3. Theoretical underpinnings for the evaluation of corruption**

What action is wrong or right has been argued from two separate philosophical ends: the Consequentialist and Deontologist. Traditionally, when philosophers discuss what action is good or bad they may end up in either of these camps. While some philosophers, the consequentialists, think the end justifies the means, others, the deontologists, are of the opinion that what is wrong is wrong irrespective of the benefits associated with it. In this paper, I discuss the good or bad of corruption in procurement along the lines of the two philosophical thoughts.

To the Consequentialist, eventually what constitutes the right action is to be determined by the consequences of that action. Conceptually, the consequentialist approach is in tow with the maxim, “The end must justify the means” (Bentham, 2001). For example, all societies consider lying as immoral and under certain circumstances lying may even be considered illegal, like in the case of perjury. However, the consequentialist would consider lying to save life as morally right. In practice, consequentialism has underpinned certain actions. For example, the consequentialist concept may be brought to bear in deciding to amputate the gangrenous leg of a diabetic to save the life of its owner. When applied to the society, a concept of consequentialism, utilitarianism, sees the right action as that which is intended to benefit as many people as possible. This means the action is justified which benefits the greater number of people. The pioneering classical advocate of utilitarianism is Jeremy Bentham (Bentham, 2001).

On the other hand, to the Deontologist, the best consequences may not always be right because morality may constrain the promotion of what is considered as overall best consequences. Something which is wrong is wrong whether or not it can benefit whoever. The corollary of this is that a right is right irrespective of its negative results. There is something in any action which makes it wrong or right. This is governed by morality and it is the moral duty of the actor to take actions which are right and to refrain from actions which are wrong. The deontological ethics has been also referred to as duty-based, obligation-based or rule-based ethics, because it is based on the need to observe one’s duty (Waller, 2005). Thus, deontologists are interested in “duty” rather than the circumstances or outcomes as reasoned by consequentialists (Flew, 1979).

Classical proponents of deontological thought often carried in the literature include Immanuel Kant who argued in his theory of ethics that what constitutes the right action is that which is in consonance with one’s duty (Kelly, 2006). Modern-day deontologists include such men as Nagel, Scanlon, Scruton and Kamm (Anon, 2012).

#### **4. Corruption may be awful because of its consequences: the good, the bad and the ugly sides of corruption**

The reasons why corruption is considered as a plague are numerous, depending on the approach of the beholder. From the “consequentialist” point of view, it is the likely negative consequences of corruption which may make it bad. Corruption could be regarded as offensive because it can have negative impact on growth, development and the general well-being of the society. For example, corruption in public procurement may affect quality and cost of doing government business with dire consequences on development, growth and eventually the quality of life. The fundamental assumption of this perspective is that corruption could lead to bad consequences and if it does it should be avoided. A problem with corruption identified by Søreide (2005) is that it tends to place personal interest of perpetrators, who are mainly public officials, above public welfare. The damage caused by this misuse is in how it distorts choices and priorities in public spending, ending up with inefficiencies (Søreide 2005; Samora 2009). Corrupt officials may ignore projects with real development priorities in favour of projects of less developmental

consequence because of their intention to maximise personal gains (Mustapha, 2010; Samora, 2009; Omeje, 2008).

The giver of bribe in a public procurement process sees bribe as cost of business. He therefore normally would inflate price by the cost of bribe and consequently increase public expenditure. On the other hand he may compromise quality to fund the bribe (Søreide, 2005). Moreover, as preference is given to projects more likely to produce opportunities for corrupt practices, allocation of public resources may be dictated by objectives falling outside the public good (Søreide, 2005). According to Kramer (2009) corruption is the most formidable obstacle to development enabling the selection of incompetent contractors, the inflation of cost of contracts, and the poor or non-performance of contracts. From this position, corruption may be despised because of its perceived bad consequences. Logically, by the consequentialist reasoning, if corruption can be identified with benefits then it should be accepted as good.

All over the world countries have suffered from the negative effects of corrupt practices in public procurement (Wittig, 2005). As indicated by Anon (2009b) even countries with long history of abundant laws on public procurement are not exempted from the risk of corruption in procurement as it can take place even in the European Union services. Writing about corruption in procurement in the United States, which claims foremost good governance, Davidson (2008) remarked that corruption in the public procurement system have always been around (the past and present), predicting their presence in the future. In Ghana it has been estimated that as much as 10% of the total expenditure on infrastructural projects is committed annually to bribery and corruption (Short, 2010). The cost of corruption in procurement is, therefore, speculated to be colossal. Certainly, corruption is a developmental problem, having been presented as “major obstacle to socio-economic growth and political stability affecting all countries” (Mould-Iddrisu, 2010).

However, it is acknowledged that the question as to whether corruption in general has an undesirable consequence has not been consistently answered empirically (Kolstad et al., 2008). For example empirical findings from the overabundance of studies on the relationship between corruption and economic growth have been inconsistent. While some researchers assert that corruption has a negative impact on, and it is bad in the long term, for economic growth and sustainable development, others are of the opinion that corruption could be beneficial for economic growth.

Some proponents of the later opinion have sought to justify corruption with the argument that corruption can facilitate faster action in state bureaucracy and by implication, has the potential of improving the efficiency of an economic agent and thereby eventually promote economic growth. In some cases bureaucratic requirements and ill-conceived regulations may be exploited by corrupt officials to squeeze bribes. Non-conformists end up spending more and getting delayed but a bribe given at the “right” place to the “right” person may facilitate things (Johnson et al., 2009). Indeed, some studies have shown that corruption could promote growth (Johnson et al., 2009). This thought is corroborated by Rock and Bonnett (2004) who found that corruption could partly explain economic growth in the transitional economies of East Asia like China, Indonesia, Thailand and Korea.

Sindzingre and Milelli (2010) have argued that the conventional wisdom of development economics literature that corruption is usually detrimental to economic growth may be challenged by the fact that some



of these so called Asian Tigers experienced growth in the midst of corruption. They find problems linking corruption to economic retardation when the sub-Saharan negative experience is contrasted with the positive experience of the East Asia although they attribute the inconsistencies to inappropriate methods of measurement and the failure to account for contextual influences across countries and regions resulting from particularities of history, economic structures, political economy and specific institutions. Moreover, Méndez and Sepúlveda (2006) obtained results that indicated that in the long-term corruption promoted economic growth at low levels of corruption. In the study of Glaeser and Saks (2006) there was no significant evidence to show that corruption retarded growth in the U.S.

On the other hand the proponents of the negative opinion have claimed that corruption retards economic growth and development through its dampening impact on domestic and foreign investment, its increasing effect on cost of production, misallocation of national resources (effect of rent-seeking activities of top officials), fomenting inequality and poverty, and the introduction of uncertainties into the decision making process among others (Johnson et al., 2009; Ahlin and Pang, 2008; Aliyu and Elijah, 2008; Ndikumana, 2006; Akai et al. 2005; Svensson, 2005; etc.).

Ahlin and Pang (2008) demonstrated from a sample of 71 countries that corruption control measures could help in the promotion of economic growth in the countries sampled. The corollary of this finding is that where corruption control measures are unavailable, growth could be retarded. When Aliyu and Elijah (2008) studied the impact of corruption on economic growth in Nigeria from 1986 to 2007, they found corruption to have a direct negative effect on economic growth and indirectly through rent induced capital expenditure projects.

At the micro level Fisman and Svensson (2007) found that bribery payment had similar impact like taxes on Ugandan firms, with increase in the bribery rate giving rise to a reduction in firm growth. However, whilst Svensson (2003) and Fisman and Svensson (2007) obtained result indicating negative consequences of corruption at the micro-level, Svensson (2005) could not establish a positive relationship between corruption and growth at the macro-level. Therefore it can be seen that gaps exist between findings from studies of effects of corruption at micro and macro-levels to render generalised conclusions in this area problematic (Kolstad et al., 2008).

Similarly, evidence exists to support the claim of economic distorting effects of corruption in developing countries (Fisman and Svensson, 2007; Olken, 2007). Moreover, Johnson et al. (2009) concluded that corruption had a considerable depressing effect on economic growth in some states in the US although they admit that corruption may have varying effects on different countries. When Nguyen *and* van Dijk (2010) analysed the relation between corruption and growth for private firms and state-owned enterprises in Vietnam they concluded that corruption slowed down the growth of Vietnam's private sector, but was not harmful to growth in the state sector. It is interesting to note that their results led them to suggest that improved local public governance was a factor in dealing with corruption and stimulating economic growth.

Incidentally, the results of Méndez and Sepúlveda (2006) that found corruption to promote economic growth at low levels of corruption in the long-term, also found it to be harmful at high levels of corruption.

It is known that capital expenditures, normally forming the bulk of the public procurement outcomes, are relatively more vulnerable to corruption than recurrent expenditures (Balioune-Lutz and Ndikumana, 2008; Aliyu and Elijah, 2008). Balioune-Lutz and Ndikumana (2008) found corruption to undermine growth through its negative effect on domestic investment. However, they found that it affected public and private investment in different ways. They claimed that corruption has positive and negative effects respectively on the former and the later. In their opinion corruption dampens private investment through its increasing effect on indirect production costs when it mimics tax on investment and by raising doubt over expectations of returns to capital.

Despite the few inconsistencies stated above, one logically plausible conclusion that can be drawn from the ever increasing volume of literature on the relationship between corruption and economic growth is that corruption is clearly a major factor that obstructs economic development and in the process dampens economic growth. Such is the way corruption is seen that it has now become a world-wide factor in policy formulation (Aliyu and Elijah, 2008). Indeed in developing countries it is a critical factor when determining measures for economic growth and sustainable development (Aliyu and Elijah, 2008).

But the issue here is: if corruption can sometimes yield some benefits, then, the consequentialist argument cannot always hold in condemning corruption. Therefore using that argument in the evaluation of corruption as awful could lead to unfair, unreasonable, indefensible, illogical or even absurd conclusions. Kolstad et al. (2008) find consequentialism as a factor in evaluating corruption as fundamentally flawed and objectionable as it essentially implies that corruption is acceptable once evidence can be adduced to demonstrate that it can lead to payback which prevails over the cost (Kolstad et al., 2008). In other words corruption could be justified in the cases cited above where it appears to have been associated with good results. They think that the problem with corruption may arise even if it does not have negative effect on growth and development, because it is ethically objectionable, fundamentally wrong and immoral (Kolstad et al., 2008). An alternative theory must therefore be used to explain why corruption is awful. Thus the deontological arguments have been cited as the reason why corruption is detestable.

## **5. Corruption is bad even if it proves beneficial: the deontological basis for evaluating corruption**

An alternative to the consequentialist approach to the evaluation of corruption is to take the deontological approach (viewing corruption as wrong for being at variance with one's duty) as suggested by Kolstad et al. (2008). From the deontological point of view, corruption is a breach of the corrupt person's duty.

The duty-based approach to evaluating corruption is based on the deontological concept. Viewed from the "duty-based" perspective, officials and agents when given an entrusted authority owe it as a duty not to engage in corrupt practices because corruption is intrinsically ethically wrong and immoral even if it can be associated with whatever beneficial consequences (Kolstad et al., 2008). The duty-based approach to the evaluation of corruption is the main rationale for the societal abhorrence of corruption the world over (Kolstad et al., 2008). In this regard, corruption is bad whether it yields positive results or not.



In terms of deontological approach, corruption assumes a “moral and ethical dimension, which may be translated into legal provisions in various ways” (Kolstad et al., 2008). In this regard, the deontological evaluation of corruption has found expression in anti-corruption laws, policies and regulations.

In public procurement, corruption is not acceptable (not only for its negative consequences) but because it is a clear violation of the principle of equal treatment to the extent that it may lead to the award of contract on the basis of a subjective factor or even bribe, kickback or cronyism (Arrowsmith, 2011). The equal treatment principle, observed under EU procurement regulation, requires that procurement officials are duty bound to ensure that comparable situations are not given different treatment whilst different situations are not given the same treatment, unless an objective explanation can be provided for such discrimination (Arrowsmith, 2011). It appears to me that this position is in line with the duty-based approach suggested by Kolstad et al. (2008). Almost every procurement law, policy or regulation takes steps to outlaw corruption. What this means in effect is that corruption is illegal. It can therefore be safely concluded that corruption is considered bad because it is an illegality.

Following from this argument, several international models of good public procurement principles, policies, regulations and best practices established by reputable world organizations, Governments and Aid Agencies have established anti-corruption public procurement integrity benchmarks representative of societal responses to corruption in public procurement. Examples of these models are the UNCITRAL model law, European Commission Rules, the World Trade Organization (WTO)’s Agreement on Government Procurement, World Bank procurement guidelines, NAFTA procurement rules, Organization for Economic Co-operation and Development (OECD) procurement principles, the International Monetary Fund (IMF), the United States Agency for International Development (USAID) procurement rules, GTZ, Millennium Challenge Accounts (MCA) procurement rules, Danish International Development Agency (DANIDA) procurement rules, the African Development Bank (ADB) procurement rules, the DFID procurement rules and the United Nations Development Programme (UNDP) procurement rules.

## **6. Conclusion**

Two complementary theoretical expositions have been used to explain why corruption may not be good for the public procurement system, namely, the consequentialist and deontological positions. It has been argued that if corruption is to be abhorred because of its consequences, then it can also be argued that corruption may be considered desirable since sometimes it may yield good consequences. It has been further argued that, even in the midst of doubts as to whether or not corruption retards economic growth and development, considering the importance of public procurement to the societal good, the benefits of any doubt should be thrown on the side of caution to the extent that, although corruption can yield some benefits which in certain cases may override the bad, it is unacceptable and must be avoided like plague. Out of the abundance of caution therefore, it would be safer to conclude that corruption is bad for the public procurement system irrespective of its consequences because it constitutes a breach of the corrupt official’s duty to his employer, it is illegal, immoral, unconventional and against the public good.

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