SOWING INTRIGUE AND MISTRUST
HOW TO BREAK JUDICIAL CORRUPTION OFF FROM THE INSIDE

PATRICIO ALVARADO LUZURIAGA
Universidad Católica de Santiago de Guayaquil.

RESUMEN
Este artículo avanza la idea de que la corrupción judicial se puede destruir desde adentro. La idea es que, dado que los acuerdos corruptos no son exigibles legalmente y las partes dependen exclusivamente de la confianza, los responsables de las políticas públicas deben tratar de destruir esa confianza. Este documento sugiere que una forma de hacerlo podría ser a través de un mecanismo de recompensa, donde el denunciante recibe una cantidad que excede el potencial pago del soborno. También permite a los abogados o jueces fingir un soborno para atrapar al que lo acepta. Esta última parte es fundamental para que las partes corruptas no puedan saber si están tratando con un soborno "auténtico" o con alguien que solo está tratando de obtener una recompensa. Bajo esta incertidumbre, la corrupción ya no es racional, y su impulso se diluye. Sin embargo, para que esto funcione en la práctica, se deben cumplir algunas condiciones empíricas. Este artículo presenta una metodología con la cual probar su existencia en la comunidad legal ecuatoriana. Se obtuvieron algunas encuestas de práctica, a modo de ejemplo. Sin embargo, los resultados no deben tomarse como concluyentes sino como meras referencias. Es necesario realizar un estudio a gran escala para obtener resultados confiables.

PALABRAS CLAVE: judicial, corrupción, soborno, recompensa, delator.

ABSTRACT
This paper advances the idea that judicial corruption can be torn apart from the inside. The insight is that since corrupt deals are not legally enforceable and parties rely exclusively on trust, public policy makers should aim to destroy that trust. This paper suggests that a way to do it could be through a reward mechanism, where the whistleblower is awarded an amount that exceeds the potential payoff of the bribe. It also allows lawyers or judges to fake a bribe to catch the one who accepts it. This last part is fundamental for corrupt parties wouldn't know if they are dealing with an "honest" briber or with someone who is just trying to get a reward. Under this uncertainty, corruption is no longer rational, and its drive is diluted. However, for this to work in practice, some empirical conditions must be met. This paper advances a methodology with which to test their existence in the Ecuadorian legal community. A few practice surveys were obtained, as a mean of example. However, the results should not be taken as conclusive but as mere references. A large-scale study needs to be conducted in order to obtain reliable results.

KEYWORDS: judiciary, corruption, bribe, reward, whistleblower.

RECIBIDO: 6/06/2019
ACEPTADO: 15/06/2019

CORRESPONDENCIA:
palvarado.luzuriaga@gmail.com

INTRODUCTION

This paper is about using rewards and Game Theory to break up corruption from the inside. In this paper, we will use the definition of corruption set forward by Transparency International, a worldwide private organization devoted to studying corruption since 1993. They have issued the "Corruption Perception Index" since 1995 to the date (the most recent in 2015), the world's most influential research on corruption. They define corruption as: "the abuse of an entrusted power for private gain." However, that definition, as pointed out by Roser-Ackerman is problematic in the sense that the power could have been taken by force, not necessarily "entrusted". This situation has happened in countries with non-democratic regimes which are, nonetheless expected to act on behalf of the people's best interests (Cuba with Fidel Castro for example; or Chile with Augusto Pinochet are a couple of examples) (Rose-Ackerman & Palifka, 2016).

As explained by Rose-Ackerman, corruption is a principal-agent problem (Rose-Ackerman & Palifka, 2016). Indeed, for corruption to take place, we need an agent who deceives and a principal who is deceived. The agent is supposed to perform a task in a certain way for the benefit of the principal. This mandate and its conditions could be imposed either by law or by a contract. This agent could be a police officer, the head of a contracting authority under public procurement law, a judge or any other private or public person with sufficient power to decide (directly or indirectly) in the interest of the other corrupt party. The principal, in this context, could be the populace (as in the case of police officers and judges), the State, the shareholders of the company or any other individual, group or entity who the agent is supposed to act on behalf of.

It is important to distinguish the different scenarios where corruption can take place. Let's take for example a couple of driver's license applicants. The first one does not comply with the legal requirements to obtain it, while the second one does. The first applicant could bribe the officer to get the license, which is a benefit that he is not legally entitled to. The second applicant could consider bribing the officer to get faster that benefit that he is actually entitled to, without going through all the paperwork and tests that he is required to prove his driver skills. In a third scenario, our second applicant could be confronted with a corrupt officer who asks him some money to issue the license, which otherwise, he would have gotten without the need to pay a bribe.

Corruption also takes place in the judicial field. This specific type of corruption takes place between a judge (or any other judicial authority, like a public prosecutor for example) and a lawyer (or occasionally the party directly). It constitutes a breach of the judge's public mandate to decide cases exclusively on the merit of law. It may or may not harm the other party because, as in the case of the driver's license used above, it could be the case that the party who arranged the case with the judge was legally entitled to win the case. In this case, the party who is harmed is, oddly, the one who paid the bribe to get what he was legally entitled to.

Several causes have been appointed for this misconduct of the agent. Serra, for instance, refers to historical causes (colonial heritage is highly correlated with corruption), religious causes (countries where population is mostly Protestant, are reported to have less corruption) and political causes (countries, where democratic institutions are and have been strong and stable for long periods, score very well on corruption indexes) (2006). Also, many scholars have studied the economic factors that eases corruption (the International Handbook on the Economics of Corruption is one of the most influential works in this regard). We can highlight: a) the need to align the economic incentives of both the agent and the principal; and b) the importance of the institutional design as a factor that may as well facilitate or dissuade corruption (Kaufmann, Kraay, & Mastruzzi, 2006).

The consequences of corruption can be more or less obvious. Stiegler suggests some that are rather straightforward such as overpriced government contracts (which could cause less public goods or services provided), civil servants being selected for reasons different than their merits (which could result in a poor quality in the provision of public services) (Stiegler, 2011). However, there are some other consequences that require deeper analysis, such as the hypothesis suggested by Depken, who proves with empirical evidence that high corruption levels cause the corresponding State bonds interest rates to be higher (Depken & LaFountaine, 2006).

An even more complex issue is the academic debate between the correlation between corruption and low rates of growth. It could be the case that the low rates of growth cause corruption since people, under the strong economic pressure, start seeking rents in illegal ways. But, it could also be the case that corruption causes low growth rates because it scares away potential investors who have no certainty to undertake important economic activities under the extreme uncertainty posed by high corruption rates. Both hypotheses are plausible, and the definitive answer is yet to be found (Kaufmann et al., 2006).

We encounter possible solutions to corruption from many different disciplines: morals, law, economics, sociology, just to name a few. This paper will focus on the ones advanced by the most influential scholars in economics, which includes a brief analysis of the economic incentives behind bribery and extortion (albeit corruption can take very different forms apart from bribery and extortion) from the game theoretical approach.

The economic model of bribery and extortion has several elements, which are: the briber, the bribee, the bribe, a possible intermediary, the probability of getting caught and each player's payoff. But the most important element to highlight is that it is a contract. Hence, it demands the acquiescence of both parties. However, since it involves an illegal transaction, it is non-enforceable. All that parties have is trust.

This characteristic turns bribery into a cooperative game, i.e. where both players can make the most out of it if (and only if) they cooperate. Cooperation, in this context, entails not accusing each other before the authorities, who can impose severe penalties upon them. This cooperation reduces the chances of getting caught since public prosecutors will need information to take the corrupt parties into court and impose a sanction.

Hence, rational parties will cooperate while trying to get the most surplus out of the transaction; unless the State changes the rules of the game through regulation. But, how can these rules be changed to turn this cooperative game into a non-cooperative one?

First, we need to understand that a bribe is, bluntly put, a bilateral voluntary transaction. As in every voluntary transaction, parties agree to its terms when they are beneficial for both of them; i.e. when they both get a surplus out of it. At this point, it is useful to rely on Cooter and Ullen's bargaining theory, which explains that (ideally) whenever a voluntary exchange takes place, a *cooperative surplus* is generated (Cooter & Ullen, 2013). So, for example, if person A, who values his computer at USD $250, is trying to sell it to person B, who values it at USD $400; both parties could agree to set the price at USD $325 (for instance). Person A will be very happy to sell his computer at USD $325, after all, he values it at USD $250; on the other hand, person B will be very happy to buy the computer at USD $325, after all, he thinks it costs at least USD $400. Both parties win if the transaction is completed.

The same happens with a bribe. Judge A knows that there is a (big or small) chance to get caught and face a (big or small) penalty if he takes the bribe. So, we could say that the price of the bribe for Judge A is a function of the probability of getting caught and the penalty. The penalty could consist of a fine or imprisonment; in the latter case (imprisonment) each has a preference towards it, and that preference could be translated into monetary value as if an individual had to decide: how much will he be willing to pay to avoid X time in prison. If he is rational, he won't take the bribe if it's not large enough to overmatch an amount equal to the size of the penalty multiplied by the probability of getting the penalty (the latter is called the expected penalty).

Now, the briber also faces a similar calculation. The maximum amount that the briber is willing to pay is a function of both: the potential gain from the judicial decision and the probability of getting caught multiplied by the size of the sanction (the latter is also called the expected penalty or sanction). The briber could also serve time in prison if he is caught. In this case, just as with the judge, the amount of his expected sanction will also depend on the amount that he is willing to pay in order to avoid prison (Cooter & Ullen, 2013).

So, under these considerations, a compelling economic solution is straightforward: reduce the pay-off of corruption so that it wouldn't be rational for parties to participate in it. There are several ways to achieve this objective, which can be logically inferred from the fact that whenever there is surplus to be made by both parties, corruption will arise. These ways are:

- Increasing the penalty
- Increasing the probability of getting caught
- Reducing the gain (the size of the bribe and/or the private gain).

Although the other possibilities are equally promising with the goal of reducing corruption, this paper will focus on the ways to increase the probability of getting caught. To achieve

this objective, it is vital to understand that it is a crime that leaves little or no trail at all; and the little trail it leaves behind is extremely difficult to track. Its effects cannot be seen directly in the world.Although something can be done with audits, they are costly (because of the fees that are paid to the auditors and because of the resources they take away from the ongoing enterprise). In any case, audits are neither perfect nor immune to corruption themselves. It could be the case that auditors are bribed to hide or distort their findings.

The other mechanism to detect corruption is by whistleblowers. Whistleblowing can be defined, according to Transparency International as: "the disclosure of information related to corrupt, illegal, fraudulent or hazardous activities being committed in or by public or private sector organizations – which are of concern to or threaten the public interest – to individuals or entities believed to be able to effect action." (Transparency International, 2013). Their importance in the battle against corruption rests on the fact that they are the single most important source of information or sometimes even the only one. Without their support, most crimes would go unnoticed and unpunished, which creates a pernicious feedback loop for other potential wrongdoers. As first-hand witnesses, they hold key information and evidence for prosecuting corruption-related crimes.

But there are a few problems that prevent whistleblowers from coming out and give out the information they hold. To start with, whistleblowers can face severe retaliations like being blacklisted, sued, fired from their jobs or even get killed (Transparency International, 2013). However, the retaliation taken and the seriousness of it depend on the socio-cultural environment where the whistleblowing takes place. This question is an empirical issue that needs to be determined for every region, country, and city.

Another problem that whistleblowers face is the direct costs of their report. After filing the report, someone has to make sure that the report is actually taken seriously by prosecutors; that someone does something about it. Usually, this requires hiring a lawyer or using his valuable personal time to put some pressure on the public prosecutor. Also, we must consider the time that it will take for him to go to court and testify against the accused. Moreover, even with all this effort, nothing guarantees that the reported briber or bribee will actually be convicted.

Besides that, unless a whistleblower is offered leniency in exchange for his report, he will not provide information that leads to his own conviction. That simply wouldn't be rational. Nevertheless, one who has taken part of a bribe or extortion holds the most important first-hand information. By prosecuting and convicting even the ones who come out and report their own bribe or extortion, we are foregoing the possibility to know most of the crimes.

When facing all these difficulties, a rational potential whistleblower will surely question himself if it is worth to file the report. After all, he won't be getting anything in exchange: only costs and hardship. Thus, if we want whistleblowing to occur, we have to release whistleblowers from these burdens and make it profitable, even for the bribers and bribees themselves.

In this line, Cooter and Garoupa propose a "disrupting mechanism" to end bribery and extortion. According to them, offering sufficiently high rewards and offering leniency to the first one who reports the bribe creates an irresistible incentive for briber to betray the bribee and vice versa. It actually could give rise to a race to be the first one to report the corrupt transaction and get all the money and the judicial leniency. With all these incentives, it would be irrational not to report the other party. Consequently, the briber cannot trust the bribee and vice versa. Hence, the game cannot continue (Cooter & Garoupa, 2014).

In this model, the first step would be to offer whistleblowers a reward that is high enough to overcome: 1) What he is foregoing: i.e. the bribe (in the case of the judge), or the potential gain (in the case of the corrupt lawyer or party); and 2) The costs that he will need to incur in to process the report before the competent authorities. As pointed out by Cooter and Garoupa, this reward should be awarded only if the information actually leads to a conviction. Otherwise, it would incentivize the provision of false or misleading information just to get the reward (2014).

The second step would be to protect whistleblowers from possible retaliations. This measure could be particularly difficult when the corruption is systemic. Corruption is said to be systemic when it affects even the highest hierarchies of multiples State entities that are vital for democracy (Kaufmann et al., 2006). If the judges and prosecutors who are supposed to sanction corruption are corrupt themselves, there is little we can do from the law enforcement perspective. Sadly, this seems to be the case in the countries that are highly affected by corruption (Transparency International, 2015).

The third step would be to grant leniency (through a mandatory legal provision) to every whistleblower who provides useful information that leads to the actual conviction of the other party who participated in the bribe. As stated before for the rewards, it is imperative to grant leniency only to those whose report led to an actual conviction. Some may argue that showing leniency to criminals is against basic universal principles of justice. Criminals should be punished, even when they confess. However, we must accept that this is a trade-off situation. Leniency is necessary if we want to shed light on these crimes, who otherwise would go unnoticed. However, leniency itself is not sufficient; it must be accompanied by a high enough reward in the terms and conditions analyzed before.

What those authors are proposing is to create a prisoner's dilemma between the briber and the bribee. With all these incentives, a rational briber might want the bribee to believe that he is willing to cooperate, although it is not economically convenient, but loyal to do so. The same applies to the bribee who will get the most out of the bribe if he convinces the briber that his offer is an "honest" one, and then betray him by reporting the case to the authorities to receive both leniency and a big reward. If that is what both parties are seeking, then it wouldn't be rational to trust each other.

Of course, this is not a perfect recipe. Even if we ensure protection to whistleblowers, some other difficulties may arise. The first issue with the reward would be that if the

report is made after the money has been handed and the fraudulent (or legal) public service, license or decision has been delivered, chances are that the quality of the evidence is not compelling. Usually what the courts would have under these circumstances is a testimony of someone who claims to have bribed an official judge or authority and the decision issued by that authority in the case. The problem is that the evidence linking the decision with a bribe is weak. The corrupt official, judge or authority may as well claim that the decision was taken without a bribe involved.

In order to avoid the problem described above and build stronger evidence, it might be necessary to allow the potential briber or bribee to report the case before it takes place. By doing that, we would allow the competent authorities (judges or public prosecutors) to monitor the whole process and gather perfect, compelling and, above all, valid evidence to convict the criminal. Someone may counterargue that the briber (potential whistleblower) could as well record the phone calls and private conversations himself, but that is considered illegal evidence in some jurisdictions because it was obtained by committing a straight violation of the right to privacy. Also, in favor of this procedure, is the fact that if we act after the corrupt transaction has taken place, the State (and indirectly the society) might need to incur in high costs to undo the wrong acts and leave things as they were before the bribe.

Another advantage to this turn would be that the uncertainty raised by the powerful incentives to betray would create the sensation of being watched the whole time. It could be the case that the other party chose to report the intended bribe to the competent authority and now all the briber's actions are being recorded as evidence for his conviction. It could also be the case that the briber himself decided to report his actions to the authority and now the potential bribee is being watched; it could be a fake bribe. In both cases, corrupt parties wouldn't know if it is safe to accept the offer or even talk about it because they could be being observed and recorded. The changes on human conduct when we perceive that we are being watched, have been documented profusely by a behavioral scientist.

A common problem in both models, the one suggested by Cooter and Garoupa and the one that I am suggesting is that the accused party could claim to have been "entrapped." Entrapment occurs when a public official persuades someone into committing a crime that, otherwise, he wouldn't have committed himself. Entrapment makes the whole evidence and process invalid from its roots. But entrapment occurs only when the public official coerces the potential bribee, threatens him or persists hardly until finally making him accept the corrupt offer. Of course, the model does not intend to turn honest citizens into corrupt ones to take them to jail, but rather to identify corrupt actors who actually performs corrupt actions under ordinary circumstances.

A second problem common to both models is that a corrupt judge would not want to be spotted as a whistleblower, for this would mean the end of his "career" in corruption. Since judges and lawyers are "repeat players" i.e. actors who see each other from time to time to play the same game (Galanter, 1974), if one of them "betrays" the other, the traitor

will receive the reward, but he will also forego his potential profit from future corrupt transactions. So, if a judge is rational he wouldn't risk being spotted as a non-trustworthy whistleblower, unless: a) The potential reward is big enough, and/or b) The possibility of being recognized by the relevant community as a whistleblower is low. Again, the presence and intensity of these factors are empirical issues that may vary from group to group.

In order to assess the effectiveness of this model, several empirical premises need to be tested. Do people feel safe when reporting a bribe? Do they feel that their report will be taken seriously by the competent authorities? Would lawyers file more reports against corrupt judges if they were offered a reward? How high should that reward be? Is it true, as posed by Cooter and Garoupa, that corrupt judges and lawyers (as repeat players) would not participate in such a reward program because they would be foregoing future corrupt profits?

- Research topic. The research topic of this study is judicial corruption.
- Research problem. The research problem of this study is that judicial corruption is a sensitive type of corruption that affects legal certainty and hinders the effectiveness of public policies. Besides, its effects on the business environment have significant social, economic consequences.
- Research question. The following is a descriptive research question that aims to picture the reality about the potential advantages and shortcomings of the model described in the introduction:

How are lawyers and judges, in the Ecuadorian context, expected to behave when confronted with the reward program posed by the author?

METHODOLOGY

Basically, what we need to know is whether this program would achieve its intended results or not. That is if judges and lawyers would be willing to report bribes and extortions in exchange for a reward; and why. So, a questionnaire was conducted by the author among lawyers and judges from Ecuador to gather this information.

The questionnaires were designed in electronic format, through the free online tool Google Forms. Then, the questionnaires were distributed online through social networks (mainly Facebook and messaging apps). From this, it can be expected that most of the participants answered the survey from their smartphones at the time they considered appropriate. Hence, ecological validity is assumed. However, this very mechanism could have caused a systematic bias in the sample, since people who use social networks are different from the ones who do not.

Due to the scale and limitations of the survey, only friends of the researcher and friends of friends were targeted. The group includes (mainly) young (25-30) lawyers from the UCSG (Universidad Católica de Santiago de Guayaquil) and professors from UEES (Universidad de Especialidades Espíritu Santo, Samborondón).

Another questionnaire was designed, using the same instrument, to target judges in Ecuador. The questions included in this one were similar, with some necessary variations in the question's framing. The group includes only judges from Guayaquil. Neither the lawyers nor the judges were offered anything in exchange to answer the questionnaires.

THE QUESTIONNAIRE

The questionnaire for both lawyers and judges has 4 different sections. In the first one, we aim to gather information on the extent of corruption by asking an approximate percentage of cases that each lawyer considers that has been affected by judicial corruption. Then, we ask how many of those cases have been reported to the disciplinary board of the judiciary or to a public prosecutor. Afterward, we surveyed the reasons why participants decided not to file a report on the cases presumably affected by judicial corruption.

The second section was designed to gather information on whether lawyers would be willing to file a report (that otherwise they wouldn't) if they were given a generous reward in exchange. We asked about two different programs: in the first one, lawyers are offered a reward for reporting the judge that requests a bribe; in the second one, lawyers are offered a reward to propose an undercover (fake) bribe to the judge, just to trial and convict him if he decides to take it.

The third section surveys some of the plausible reasons why lawyers would decide not to take part in those programs. Some questions cover for example: the fear of threats to their personal safety, the plausible negative perception that other lawyers would have against the one who participated in one this programs, and whether or not they consider that participating in one of these programs would compromise all future rewards (because no one would trust them anymore).

Finally, the last section consists only of an open question about the participants' general perceptions about rewards and judicial corruption. In this section, partakers were allowed to give a detailed explanation on why they think that these programs could work or not. This question was used as a mean to get some new and fresh insights that the researcher may not have considered.

CONCEPTUAL MODEL

RESEARCH RELATIONSHIPS

This study is not intended to prove causality. There is no control group to isolate the effect of any specific variable on the outcome (in this case, the outcome is judicial corruption). This is a descriptive study about whistleblowers. It aims to gather information on lawyers and judges' feelings about getting a reward for reporting judicial corruption. Still, some of the information gathered could be useful to design a study whose goal could be to uncover the causes of judicial corruption.

THEORETICAL AND OPERATIONAL POPULATION VS SAMPLE

In this study, the theoretical population is lawyers and judges from Ecuador. The operational population is constituted by lawyers and judges from Guayaquil. The actual sample for lawyers comprises 25 attorneys from Guayaquil. Their mean for the participants' ages is 28 (27,91), the median is 28, the mode 28 as well, with a standard deviation of 2,369. Three participants whose ages were 60, 52, and 60, were excluded because they were considered outliers. 64% of participants were men while 36% were women. 92% of participants practice law in Guayaquil.

The one described above can be defined as a convenience sample because participants were not selected randomly. Also, the number of participants is limited, and it does not resemble the actual proportion of male and female lawyers of the theoretical population. Additionally, 92% of them practice law in Guayaquil, whilst Guayaquil gathers only 25% of lawyers nationwide. Furthermore, the mean for the age of the sample is 28, which does is not representative of the national average.

All these flaws could stem from the method chosen to collect questionnaires. Undoubtedly, they diminish the external validity of the study as the sample is not representative of the theoretical population. Measurement validity and the reliability of the study, however, is deemed high for the reasons explained above.

The researcher also tried to reach judges from Ecuador, but a reasonable number of participants could not be attained. The main reason is that the new judicial policy effective since 2013 impedes the general public to get in contact with judges (except in formal hearings). A specific authorization from the Judiciary Administrative Direction is needed in order to conduct such a survey among judges, which could not be obtained due to time constraints. Nevertheless, the researcher managed to get 9 questionnaires answered by judges from Guayaquil, which does not make for a usable sample. Instead, due to this limitation, the research design was changed to interviews; thus, 2 interviews were conducted.

Nevertheless, from the data collected from lawyers and judges, we can already see some patterns emerging. The findings are, at least, motivating, for they show an important tendency that needs to be confirmed (or falsified) with a large-scale study that corrects the flaws described above.

RESULTS SECTION

1. CORRUPTION AND ITS DETECTION

According to the data gathered, lawyers considered that, on average, around 30,8% of their cases had been affected by corruption. Although, it is intriguing that the standard deviation of this variable is 30,91 which is explained by the fact that the mode is 0, but 7 lawyers mentioned that they consider that the percentage of cases affected by corruption is above 50%.

From all the lawyers who considered to have been affected by judicial corruption, most of them (56%) never have filed a report against the judge. In the rest of the cases,

lawyers answered to have filed a report in about 2% to 10% of the cases (supposedly) affected by judicial corruption.

To survey about the possible causes for not filing a report, participants were given an assertion to which they had to reply with a number from 1 to 5, depending on how they felt about it (1: Totally disagree – 5: Totally agree). The **first** statement was "I don't file the report because I will have to deal with the same judge again and he will get back at me.". 64% of lawyers agree with this statement: 52% selected 5, 12% selected 4, 20% selected 3 and 16% selected 1. The **second** one read: "I don't file a report because authorities will not take proper action upon my report.". To this claim, 52% of lawyers answered that they agreed: 36% selected 5, 16% selected 4, 16% selected 3, 20% selected 2 and 12% selected 1. The **third** one read: "I don't file a report because I feel that there is no gain for me," to which most lawyers (56%) agreed: 28% selected 5, 28% selected 4, 16% selected 3, 12% selected 2 and 16% selected 1. To the **fourth** statement: "I don't file a report because I lack sufficient evidence," most lawyers (56%) replied that they agreed: 40% selected 5, 16% selected 4, 20% selected 3, 16% selected 2 and 8% selected 1. And to the fifth claim: "I don't file a report because I fear for my personal safety" most lawyers (60%) answered that they agreed: 20% selected 5, 4% selected 4 16% selected 3, 20% selected 2 and 40% selected 1.

2. WILLINGNESS TO PARTICIPATE IN THE PROGRAMS

In general terms, lawyers showed a positive willingness to participate in both of the programs described. For question number 4, 71% of participants said they would, and 29% said they would not. The question read as follows:

Some countries, such as Singapore, South Korea, and Poland have adopted a program that grants rewards to lawyers who report corrupt judges. Would you report more cases if you were given a reward for every conviction that is achieved?

For question number 6, the acceptance was not as high. Most lawyers (60%) replied that they would participate in such a program, while 40% said they wouldn't. The question read as follows:

Singapore adopted a program that allows lawyers to offer a fake bribe (under surveillance of the competent authority) just to trial and punish the judge that accepts the offer. All this, in exchange for a monetary reward. Under authorization of your client, knowing that this implies that the case will be reassigned to another judge, would you participate in such a program?

In this context, participants were asked how much they would grant as a reward for those who participated in the program described in question 4. The average was USD $9.8995,83. However, the most revealing fact is that most respondents (44%) answered that they would grant him "What he would have earned as legal fees, but at least USD $2.500". For the program described in question number 6, the average was a bit higher: USD $11.956,52, but as in the last question, 48% of the participants answered that they would grant him "What he would have earned as legal fees, but at least USD $2.500".

3. REASONS FOR NOT TO PARTICIPATE

Afterward, lawyers were asked to answer how strongly they agree or disagree with statements about the reasons for not to participate in the program.

The **first** statement read: "Attorney Alvarez's life (the one who reported the judge who requested a bribe) is now in danger." To this claim lawyers showed an unclear preference towards a positive answer (40% said they agreed). The complete results were: 24% selected 5, 16% selected 4, 40% selected 3, 8% selected 2 and 12% selected 1.

The **second** assertion read: "People will think that attorney Alvarez (the one who reported the judge who tried to bribe him), is a disloyal scoundrel." Most lawyers (64%) replied that they disagreed with this claim: 24% selected 5, nobody selected 4%, 12% selected 3, 24% selected 2 and 40% selected 1.

The **third** statement read: "Attorney Garcia's life (the one who offered a bribe and then reported the judge who accepted it) is now in danger.". In this question, participants did not show a clear preference, for, in a scale of 1 to 5, most of them (44%) selected 3. The rest of the answers were: 20% for 5, 8% for 4, 12% for 2 and 16% for 1.

The **fourth** claim read: "People will think that attorney Garcia (the one who offered a bribe and then reported the judge who accepted it), is a disloyal scoundrel." In this statement, we can also see an unclear tendency among lawyers to disagree. 24% selected 5, 4% selected 4, 24% selected 3, 16% selected 2 and 32% selected 1.

The **fifth** statement read: "Generally, I know if the other party's attorney is reputed to be corrupt." Most lawyers (76%) agreed with this claim: 52% selected 5, 24% selected 4, 20% selected 3, nobody selected 2 and 4% selected 1.

The **sixth** assertion read: "Generally, I know if the judge who hears my case is reputed to be corrupt." The results for this claim were similar to the previous question. A total of 76% of lawyers agreed with this statement: 52% selected 5, 24% selected 4, 16% selected 3, no one selected 2 and 8% selected 1.

The **seventh** statement read: "Corrupt lawyers won't report corrupt judges, not even for a high reward." An overwhelming majority of respondents (76%) answered that they agreed with this statement: 64% selected 5, 12% selected 4, 8% selected 3, 8% selected 2 and also 8% selected 1.

The **eighth** claim read: "My client would authorize me to report the judge who requested money to decide his case." Most lawyers (a total of 56%) agreed with this claim: 32% selected 5, 24% selected 4, 24% selected 3, 20% selected 2 and no one selected 1.

The **ninth** statement read: "In the future, no judge would trust corrupt offerings neither from attorney Alvarez nor Garcia." An overwhelming majority of lawyers (84%) agreed with this statement: 64% selected 5, 20% selected 4, 4% selected 3, 4% selected 2, and 8% selected 1.

The **tenth** statement read: "If this rewards program was to be applied, corrupt lawyers wouldn't know if it is safe to try to bribe a judge." Most lawyers (76%) agreed with

this statement: 56% selected 5, 20% selected 20, 16% selected 3, no one selected 2 and 8% selected 1.

The **final** claim was: "If this rewards program was to be applied, corrupt judges wouldn't know if it is safe to accept bribes from lawyers." A total of 84% of participants agreed with this claim: 48% selected 5, 36% selected 4, 12% selected 3, no one selected 2, and only 4% selected 1.

4. COMMENTS FROM THE PARTICIPANT LAWYERS

Participants were asked to give their opinion on the proposed rewards program. Several important insights were provided. One respondent pointed out that corrupt lawyers and corrupt judges have known each other for a long time. Therefore, it is highly unlikely that they would betray each other. Their strong and long-standing beneficial relationship sets a safe environment to agree on corrupt transactions.

Another remarkable comment states that most corruption is related to politics. Powerful politicians exercise a lot of pressure on judges with credible threats. The most common threat is to file a disciplinary report on the judge to remove him (on the basis of any made-up accusation). As reported by the anonymous respondent, these powerful politicians exercise some form of control inside the disciplinary board of the judiciary; therefore, it is not likely that reporting the extortion to another judge serve as a way out of the corrupt cycle. The survey does not contain a question on this regard, so it is not possible to confirm or falsify this claim.

THE QUESTIONNAIRES FOR THE JUDGES

As reported above only 9 judges took part in the study. Therefore, no useful information could be gathered. Nevertheless, it is noteworthy that 6 out of 9 said they wouldn't participate in the first reward program (the one that offers a reward for reporting actual bribe from lawyers) and **not even a single judge** said that he would participate in the second program neither (the one that consists of a simulated request for a bribe to catch corrupt lawyers).

The researcher decided to interview two judges to get insights on the detection of judicial corruption. They asked not to be identified in the study and decided to undergo the interview under that condition. The first one (judge A) said that corruption does not have the same dynamics since the Directive Council of the Judiciary decided to change the way that judges and judicial assistants interact with the public. Now, lawyers, parties, and the general public can only reach the ground floor of the building, where they are assisted by non-legal support personnel (not a member of the court that hears his case) through several front desks. They listen to the lawyer and take the message to the corresponding court; sometimes, they even allow a supervised phone call to the clerk of the court that hears the case if they consider that the situation justifies it. Other than that, direct contact between lawyers and judges (and judicial assistants) is strictly forbidden, it can only take place in official hearings, judge A explained.

Ever since the open-doors policy was abolished the type of corruption one could normally expect is not the same, said judge A. "You don't see anymore the two-penny shameless scoundrel wandering around the court house's halls, trying to buy and sell judicial decisions. But it is not like there is no more judicial corruption; it is just that the negotiation or bargaining center has moved to hotels' lobbies and luxury restaurants. Corruption now takes place at a higher level. I am currently working in a safe environment. I feel like I am doing my thing, without being bothered by anyone.", stated judge A.

Judge B, on his side, said that he considers that neither of the programs would work because the environment inside the courthouse, among lawyers, would not allow it. "Everybody knows everything around here. It's not like you can report a corrupt lawyer and go unnoticed. I don't think that any of my colleagues would be willing to do; I wouldn't do it myself. You would be spotted as a rat, and you might have problems in the future. That's how things work around here. Besides, I don't think that it is legal for judges to have another source of income rather than his own salary", explained judge B.

DISCUSSION SECTION

The data reveal that 20% of respondents were never affected by judicial corruption. However, 28% said that they considered that they had been affected by corruption in more than 50% of their cases. This variance may have a good explanation; perhaps because the index of perceived corruption varies depending on the field of law each lawyer practices. However, the survey did not collect information on this regard, so it is not possible to explain the variance by controlling for "field of expertise."

The fact that more than 50% of lawyers affected by judicial corruption has never filed a report against the supposedly corrupt judge; and that the rest has only done so in an extremely low percentage of cases (from 2 to 10%), tells us that there is a systemic problem. Neoclassical law and economics theory predicts that rational agents would never perform actions that do not report enough benefits. In consequence, if someone decides to file a report it is because the benefit gained is greater than the costs. If that is not the case, the report will not be filed.

The premise advanced by Cooter and Garoupa (*who state that lawyers would not report a corrupt lawyer in exchange for a reward and leniency because they are so-called "repeat-players"*) is not confirmed by the results of this study. Indeed, they suggested that one of the reasons why lawyers would not report corrupt judges is because they encounter each other time after time. Results show that lawyers do believe that: 1) The report will not be duly processed; and 2) They will encounter the same judge again in the future, hearing a different case; 3) The judge will get back at him to take revenge for the report. However, most lawyers who consider that the same judge will get back at them in future cases, are still willing to report the judge in exchange for a reward. 17 lawyers said that they would participate in the first reward program. From them, 11 said that they agree (answered 4 or 5) with the referred statement (the reported judge will get back at them in future cases).

An independent sample t-test was conducted to compare the variance between the group of lawyers who said they would participate in the first reward program (the one that offers a reward for reporting corrupt judges) and those who said they would not participate (group 1 and group 0, respectively). The result showed that the variance of both groups was not significant (0,154). Therefore, we conclude that the assumption of equal variance is not violated in this case. The t-test itself for "equal variances assumed" showed a significance level of 0,474, which shows us that there is no statistically significant difference between the two groups compared. For lawyers surveyed, the fact that they will encounter the same judge again in future cases and that it could get back at them is irrelevant for deciding their participation in the first reward program (**chart 1**). The researcher also calculated the effect size for this $t^2/[t^2+(N1+N2-2)]$, and the result was 0,0235, which means that only a 2,35% of the variance can be explained by whether the lawyers would participate or not in the program.

The results were similar when comparing the same variable, but this time with respondents' participation in the reward program 2 (the program that offers a reward for simulating a bribe to catch corrupt judges). The ones who said that they would participate, constitute group number 1, and the ones who said they would not participate, constitute group number 0. The Levene's test was significant (0,006). Therefore equal variances were not assumed. The t-test itself for "equal variance not assumed" was 0,006 which is significant (**chart 2**). We can conclude that there is a significant statistical difference between the two groups. The size effect was calculated, and the result was 0,2966 which means that fact that the respondent willingness to participate in the second program accounts for 29,66% of the variance. Indeed, the mean for those who said that would participate in this program is 3,27 and 4,70 for the ones who said that they would not participate. Lawyers who do not wish to participate, tend to strongly agree with the statement "I don't file the report because I will have to deal with the same judge again and he will get back at me."

This result, however, does not necessarily mean that lawyers would not participate in the program because they fear that the judge will retaliate in future cases. If this was the case, that result would have appeared with the first reward program as well. This difference could be explained due to the fact that some people are willing to participate in the first program, but no in the second one (this was the case for 4 participants).

A similar test was conducted to compare the variance between the group 1 and group 0 for participants' agreement with the statement: "I don't file a report because authorities will not take proper action upon my report.". For reward program number 1, the Levene's test was not significant (0,669), and the T-test was not significant either (0,387). We can conclude that there was no statistically significant difference between the ones who answered that they would participate in the program 1 and those who answered that they wouldn't (**chart 3**). For the second reward program, the results were also alike, the Levene's test was not significant (0,374), and the T-test was not significant either

(0,231) (**chart 4**). Lawyers' participation in both programs does not seem to be influenced by the probability that authorities won't take proper action upon their report.

The researcher wanted to survey if lawyers fear for their personal safety after reporting a corrupt judge. To this end, three independent but similar questions were asked. The first one asked lawyers to express their agreement with this statement: "I don't file a report because I fear for my personal safety." 60% of respondents disagree with the statement. The second question asked lawyers to express their agreement to with this claim: "Attorney Alvarez's life (the one who reported the judge who requested a bribe) is now in danger." And the third statement read: "Attorney Garcia's life (the one who offered a bribe and then reported the judge who accepted it) is now in danger.". No clear preference arose from the data, as most respondents answered 3 on a scale from 1 to 5 (see results section). The researcher ran a Cronbach Alpha test to measure the reliability of the answers given to this variable, and a coefficient of 0,859 was obtained.

The second round of statements (question 9) aimed to gather information about the possible reasons why lawyers would not participate in the program. Some results can be interpreted as supporting the claim that the application of both reward programs could be successful among lawyers (some of them were analyzed earlier). For example, the fact that lawyers think that their colleagues who report corrupt judges are not disloyal scoundrels is a positive sign that there could be social norms towards fighting corruption off. Social norms are a powerful informal incentive to act. Their existence would drive the program for good.

Another example is the fact that according to lawyers, their clients would approve their participation in these programs, which is positive since the client's consent is crucial for this program to success. Furthermore, respondents said that they consider that if this program was to be implemented, lawyers and judges would not feel safe to offer or request a bribe anymore. This is exactly what the program aims to achieve: to create intrigue and mistrust among. The sole fact that lawyers feel this way about the possible implementation of the program signals that the program would achieve its primary objective just by its mere enactment.

Notwithstanding, not everything is favorable. Some questions in this section were designed to measure how well lawyers know each other's reputation. This is important to measure Cooter and Garoupa's assertion, that rational lawyers would not participate in the reward program because if they ever accepted a reward, they would be spotted by other lawyers and judges; hence, they would forego future corrupt profits. Indeed, according to these questions, lawyers know each other very well. They claim to know when a judge or another lawyer has a reputation for being corrupt. They also agree with the premise that a corrupt lawyer won't report a corrupt judge, which assumes that they know each other. This poses difficulties for the implementation of the program. Nevertheless, the extremely high willingness to participate showed by participants in the corresponding questions seems to indicate that lawyers neglect Cooter and Garoupa's assertion.

These findings seem to support the idea that Ecuadorian lawyers are willing to report corrupt lawyers (be it in program 1: 71% of support; or program 2: 60% of support). The fact the reported judge could get back at them and that authorities might not take proper action upon the report does not seem to influence their willingness to participate. These are promising results that envision a plausible successful application of both the program; at least from the side of lawyers (very few judges said they would participate in the programs).

CONCLUSIONS

This paper started with the idea that judicial corruption can be torn apart from the inside. The insight is that since corrupt deals are not legally enforceable and parties rely exclusively on trust, public policy makers should aim to destroy that trust. This paper suggested that a way to do it could be through a reward mechanism, where the whistleblower is awarded an amount that exceeds the potential payoff of the bribe. It also allows lawyers or judges to fake a bribe to catch the one who accepts it. This part is fundamental for corrupt parties wouldn't know if they are dealing with an "honest" briber or with someone who is just trying to get a reward. Under this uncertainty, corruption is no longer rational, and its drive is diluted.

This small-scale research shows promising results upon its application. The most important result is that a vast majority of lawyers are willing to participate in the programs (judges, however, unanimously refused to participate in the second program). This seems to be the case even for lawyers who answered that one of the reasons for not to report a corrupt judge is that they fear that the judge could get back at him in future cases and that authorities will not take proper action upon their report.

Nevertheless, one problem that was not touched upon in this paper is the topic of funding. Theoretically, not many corruption cases would take place after the enactment of this program (so is predicted by economic theory and the results of this study). Therefore, not many rewards would need to be handed over. For the cases that do occur, judicial policy makers could study the possibility of using insurance policies. This possibility, however, is beyond the scope of this paper.

BIBLIOGRAPHICAL REFERENCES

Cooter, R., & Garoupa, N. (2014). A Disrupting Mechanism for Bribes. *Review of Law and Economics*, *10*(3), 241–263.

Cooter, R., & Ullen, T. (2013). *Law and Economics* (6th ed.). Boston: Addison-Wesley.

Depken, C., & LaFountaine, C. (2006). Fiscal Consequences of Public Corruption: Empirical Evidence from State Bond Ratings. *Public Choice*, *75*, 126.

Galanter, M. (1974). Why the "Haves" Come Out Ahead: Speculations on the Limits of Legal Change. *Law and Society Review*, *9*, 95–160.

Kaufmann, D., Kraay, A., & Mastruzzi, M. (2006). *International Handbook on the Economics of Corruption*. Northampton: Edward Elgar. Retrieved from http://books.google.com/books?hl=es&lr=&id=P60nmWlJWEoC&pgis=1

Rose-Ackerman, S., & Palifka, B. (2016). *Corruption and Government, Causes, Consequences, and Reform* (2nd ed.). New York: Cambridge University Press.

Serra, D. (2006). Empirical determinants of corruption: A sensitivity analysis. *Public Choice*, *126*(1–2), 225–256. https://doi.org/10.1007/s11127-006-0286-4

Stiegler, C. (2011). Offering Monetary Rewards to Public Whistleblowers: A Proposal for Attacking Corruption at Its Source. *Ohio State Journal of Criminal Law*, *9*, 815.

Transparency International (2013). *International Principles for Whistleblower Legislation*. Berlin. Retrieved from http://www.transparency.org/whatwedo/publication/international_principles_for_whistleblower_legislation

Transparency International (2015). Corruption Perception Index 2015. Retrieved January 1, 2016, from http://www.transparency.org/cpi2015