

Corruption, organized crime and the bright side of subversion of law<sup>☆</sup>Astrid Gamba<sup>a</sup>, Giovanni Immordino<sup>b,d</sup>, Salvatore Piccolo<sup>c,d,\*</sup><sup>a</sup> University of Milan-Bicocca, Department of Economics, Italy<sup>b</sup> University of Naples Federico II, Department of Economics, Italy<sup>c</sup> University of Bergamo, Italy<sup>d</sup> CSEF, Italy

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## ABSTRACT

We study an enforcement model in which, as soon as a Legislator grants an amnesty to low-rank criminals cooperating with the justice, top criminals react by bribing public officials in order to avoid being sanctioned. We show that, to prevent this form of *subversion of law*, the optimal policy must grant leniency not only to low-rank criminals but also to officials who plead guilty and report bribe-givers. By doing so, the policy increases the conviction risk not only for top criminals but also for their soldiers. This higher risk increases the reservation wage that top criminals must pay in order to recruit soldiers and therefore reduces the crime profitability (the *bright side* of subversion of law).

## 1. Introduction

When Governments promote leniency programs to disrupt trust among criminal partners and stimulate cooperation between prosecutors and whistleblowers, top criminals may bribe law enforcers (police officers, prosecutors and judges) in order to *minimize* the risk of conviction not only for themselves but also for their soldiers, who may otherwise flip and turn informants. This form of ‘avoidance’ (Malik, 1990) or ‘subversion’ of the law (Glaeser and Shleifer, 2003) often hinders the policy’s beneficial effects.

Corruption and organized crime are deeply connected phenomena. Even if there does not exist a universally agreed definition of organized crime<sup>1</sup>, social scientists usually insist on the essential role played by corruption and the establishment of deep connections between criminal organizations and the public domain. Finckenaue (2005), for example, argues that “organized crime generally seeks to neutralize or nullify government by avoiding investigation, arrest, prosecution, and conviction through payoffs to the police, prosecutors and judges.”<sup>2</sup>

Surprisingly, in spite of the potential subversive role of corruption

little is known on the costs and benefits of leniency programs when corruption is a potential danger. How should these programs be designed when corruption can neutralize or even subvert their scope? Is it a good idea to grant amnesties also to corrupt officials who plead guilty and report bribe-givers? If so, how generous should these amnesties be? Understanding the mechanisms allowing governments to actually exploit subversion of law and possibly turn it into a new instrument to fight organized crime seems a crucial normative goal.

We study a simple game between a Legislator, a criminal organization and a continuum of public officials (prosecutors or other law enforcers) that are heterogeneous with respect to their moral cost of accepting a bribe. The Legislator, having forbidden some illegal activities, sets up a leniency program that grants reduced sanctions to law-breakers who plead guilty and cooperate with the justice. The criminal organization has a hierarchical structure and is formed by two mobsters who are in a ‘principal-agent’ type of relationship: a boss and his fellow (soldier). After the crime has been committed, the fellow can disclose his insider information (about the boss and his involvement into crimes) to the prosecutor and obtain as a reward a lighter sanction

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<sup>1</sup> See, e.g., Ianni and Ruess-Ianni (1976), Hagan (1983, 2006) and Maltz (1985, 1994).

<sup>2</sup> For the most recent conceptualizations of organized crime, see also Varese (2010), Hagan (2006), von Lampe (2001), and Albanese (2004). See also the definitions collected by von Lampe at the link [http://www.organized\\_crime.de/organizedcrimedefinitions.htm](http://www.organized_crime.de/organizedcrimedefinitions.htm).

chosen by the Legislator at the outset of the game. Yet to prevent such cooperation the boss may decide to capture the prosecutor who, upon accepting a bribe, may either acquit both criminals and face the risk of being charged for corruption, or self-report and induce both criminals to be convicted with a certain probability. As a reward for this, the official is charged a reduced sanction (also chosen by the Legislator at the outset of the game).

We show that policies that stimulate subversion of law — leniency programs — might have a bright side when enforcement is relatively weak. Specifically, we characterize conditions under which, to optimally deter crime, the Legislator designs a policy that purposefully encourages the boss to bribe the official. This objective is achieved by awarding an ‘excessively’ lenient amnesty to corrupt officials who report the bribe-giver (boss). Therefore, in order to minimize the equilibrium amount of crime, the Legislator is willing to tolerate some degree of corruption by designing a coordinated policy that grants an amnesty not only to low-rank criminals who turn informants, but also to corrupt prosecutors who self-report.

In this setting, the role of corruption is determined by the interplay among three effects that an increase in the official's amnesty generates on the organization's cost of committing the crime. Choosing a (relatively) high amnesty for self-reporting officials tends to increase the crime rate for two reasons. First, by reducing the official's expected sanction, a higher amnesty lowers the official's reservation bribe. Therefore, *ceteris paribus*, the boss has a greater incentive to capture the official (subvert the law) in order to avoid being sanctioned. Second, the implied higher rate of corruption also leads the fellow to blow the whistle less often because (when captured) the official files the case. This lower risk of conviction reduces the fellow's reservation wage and decreases the cost for the boss to recruit soldiers. Both these effects tend to reduce the cost of crime for the boss and determine the dark side of subversion of law.<sup>3</sup> However, by increasing corruption, a higher amnesty for the official also makes it more likely to convict the fellow when the official self-reports. This effect increases the fellow's reservation wage, since it increases his conviction risk, whereby increasing the cost for the boss to recruit soldiers: the *bright side* of subversion of law.

We show that this bright side bites if the fellow's conviction risk is relatively small when he remains loyal to the organization — i.e., when enforcement is relatively weak. In this case, the Legislator purposefully induces corruption in equilibrium by combining both policy instruments — i.e., leniency for the fellow and the official — which are complementary one to the other. In contrast, when enforcement is relatively strong, the net effect of an increase of corruption on the fellow's reservation wage is negative. Therefore, the Legislator prefers to choose a policy that does not induce corruption in equilibrium. In this case, only the fellow is allowed to blow the whistle.

These results hinge on the hierarchical structure typical of criminal organizations and then do not apply to crimes perpetrated by single offenders. In different contexts, other scholars have argued that corruption can have a positive impact on welfare (e.g., growth) by stimulating investment and facilitating transactions in countries with excessive regulation: it allows people to avoid ‘bureaucratic delay’ (Lui, 1985, among others). The channel we propose here is completely different since it is based on the effect that corruption has on the costs and benefits of criminal organizations.

On the normative ground, our analysis is related to the recent debate initiated by the Indian chief economic advisor Kaushik Basu, on harassment bribes and the social desirability of forms of asymmetric liability — i.e., legal mechanisms where bribe-takers are culpable but

<sup>3</sup> They are in line with the standard negative view of corruption. For example, in a context with harassment bribes, Shleifer and Vishny (1993) show that the illegality of corruption and the need for secrecy make it much more distortionary and costly than its sister activity, taxation. Hence, they explain why, in some developing countries, corruption is so costly to development. See also Mauro (1995) and Wei (2000).

bribe-givers have legal immunity (see, e.g., Basu, 2011; Basu et al., 2014; Dufwenberg and Spagnolo, 2015; Rose-Ackerman, 2010).<sup>4</sup> Differently from harassment bribes, where only two parties are involved, corruption is not the final offence in our framework but an *input* for a more dangerous crime, which involves the participation of more than two parties. In other words, while in the case of harassment bribes the offence materializes if and only if the public official accepts the bribe, in our model the execution of the crime may occur even in the absence of corruption. Moreover, the hierarchical nature of organized delinquency makes our problem different from a simple bilateral relationship. Therefore, it should not be surprising that our policy implications are quite different from Basu's proposal: in our framework, it is the bribe-taker who should be partially or even completely immune (provided he reports the bribe-giver). In addition, while Basu's argument does not require corruption to happen in equilibrium, in our model a salient feature of the optimal policy is that bribery occurs along the equilibrium path.

### 1.1. Related literature

Our analysis is related to the strand of literature on organized crime. Jennings (1984), Polo (1995), Konrad and Skaperdas (1997, 1998) and Garoupa (2000) started to model criminal organizations as vertical structures, whose bosses need to discipline their fellows with implicit rewards and credible threats (see, e.g., also Baccara and Bar-Isaac, 2008, who consider both vertical and horizontal organizations).<sup>5</sup> These models are silent on the role of leniency programs as a tool to generate conflicts within criminal organizations, which is instead the building block of our analysis.

The idea of applying leniency programs to fight organized crime builds upon the antitrust law enforcement literature which studies the effects of reduced sanctions on cartel formation in oligopolistic markets — see, e.g., Motta and Polo (2003), Spagnolo (2003, 2008), Rey (2003), Aubert et al. (2006), Chen and Harrington (2007), Chen and Rey (2013) and Harrington (2008).<sup>6</sup> The main difference between this literature and papers that deal with organized crime is that while cartels are horizontal institutions, criminal organizations are typically hierarchical.

The optimal design of leniency programs meant to fight organized crime and collective delinquencies has recently been discussed in Acconcia et al. (2014), who also provide an empirical analysis of the phenomenon, and Piccolo and Immordino (2017), who emphasize the benefits and the costs of these programs when whistleblowers have private information. None of these papers have discussed the effect of corruption on leniency.

Our analysis also shares important features with the literature on corruption. Stemming from Becker and Stigler (1974) the law and enforcement literature has acknowledged that bribery reduces punishment and thus deterrence. To contrast this fall in deterrence they propose the payment of efficiency wages to prevent bribe taking.<sup>7</sup> Bowles and Garoupa (1997) focus on the effects of bribery on the optimal allocation of public resources and they show that the maximal fine may not be optimal (see also Basu et al., 1992; Marjit and Shi, 1998; Chang et al., 2000; Garoupa and Jellal, 2002). Polinsky and Shavell (2001) consider the diminishment of deterrence caused by corruption (due to bribing by criminals) and by extortion of the innocent by enforcers.

<sup>4</sup> The idea behind Basu's proposal is simple: after the act of bribery is committed, the interests of the bribe-giver and the bribe-taker diverge owing to asymmetric liability. Indeed, the bribe-giver will be willing to cooperate in getting the bribe-taker caught. Anticipating this, the bribe-taker will not accept the bribe.

<sup>5</sup> See also Fiorentini and Peltzman (1995) and Mansour et al. (2006).

<sup>6</sup> Related and more recent models are offered by Harrington (2013), Sauvagnat (2014, 2015) and Silbye (2010).

<sup>7</sup> Besley and McLaren (1993) and Mookherjee and Png (1995) also propose efficiency wages to deter bribery.

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