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SINTRAEMCALI

Anti-corruption as Class Struggle

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Abstract

World Bank inspired analysis of corruption in the public sector is coloured by the underlying push for market solutions. Behind its criminology lies neo-liberal political economy. In this case study the forms of white-collar crime within the EMCALI municipal services corporation are identified, as are the remedies to counteract them. A significant new ingredient is present: the workers in the state sector. The trade union SINTRAEMCALI adopted anti-corruption as an integral component of its broader campaign to stop privatisation, thus planting the germs of an alternative social vision. This has consequences for the issue of agency in combating white-collar crime: the state or social movements?

“the non-ruling factions of the French bourgeoisie cried: *Corruption!* The people cried: *Down with the big thieves! Down with the assassins!*” (Marx , [1850] 1978: 50-51)

Introduction

World Bank inspired analysis of corruption in the public sector is coloured by the underlying push for market solutions. Behind its criminology lies neo-liberal political economy.

In this case study the forms of white-collar crime within the EMCALI municipal services corporation are identified, as are the remedies to counteract them. A significant new ingredient is present: the workers in the state sector. The trade union SINTRAEMCALI adopted anti-corruption as an integral component of its broader campaign to stop privatisation, thus planting the germs of an alternative social vision. This has consequences for the issue of agency in combating white-collar crime, the state or social movements?

Theories of Public Sector Corruption

International Context and Working Definition

The issue of corruption is a top agenda item in the international community. The ‘corruption eruption’ marked by a series of conferences in the late 1990s has since worked its way through the international institutions, and in 2003 the General Assembly adopted the *United Nations Convention against Corruption*:

“a) to promote and strengthen measures to prevent and combat corruption more efficiently and effectively;

(b) To promote, facilitate and support international cooperation and technical assistance in the prevention of and fight against corruption, including in asset recovery;

(c) To promote integrity, accountability and proper management of public affairs and public property.” (UNODC, 2003: 2)

Although the emphasis is on action by signatory states, the Convention encourages civil society actors to assist in the fight against corruption as well.

The Convention does not offer a definition of corruption, although the above quoted purposes combine important elements. Corruption is a contested concept, and the literature is full of definitional debates. A working definition used by the World Bank that corruption ‘is the abuse of public power for private benefit’ has the advantage of simplicity, if not completeness. As Tanzi (1998: 564) points out, corruption also exists in private corporations, e.g. in procurement activities, and in state regulated private sector activities.

The World Bank’s Rent-Seeking Paradigm of Corruption

The theoretical foundation of what was to become the World Bank’s approach to corruption in underdeveloped countries was established by Krueger (1974)¹, according to which rent seeking occurs when an interest group tries to gain access to state protected monopoly profits to gain an income that could not be obtained on the open market. In Krueger’s conception rent-seeking diverts resources from productive activities to unproductive ones, and therefore carries a social cost.

Rent-seeking involves a range of practices such as lobbying for the interests of a private group that are legal, if not always moral. In this paradigm, corruption occurs when rent-seeking steps from legal lobbying into illegal forms of using public office for private gain. Other work leading this field fits squarely in the rent-seeking paradigm. Rose-Ackerman, for example, distinguishes between “productive economic activity and unproductive rent seeking” (1999: 2) – see also (Klitgaard, 1998; Tanzi, 1998; Mauro, 2002). These works from the ‘organic intellectuals’ of the World Bank and IMF are carried out in the context of the pro-privatisation policies of these institutions.² They are also in line with the modernisation paradigm of development: the view is that of the reformer overcoming traditional and cultural obstacles to efficient modernisation. The blatant anti-social results of wholesale privatisation in Russia and Eastern Europe obliged a modification of the view, and from 1997 onwards there was a new emphasis on improving how privatisation was to be carried out by getting the regulating institutions right. This policy shift to a post-Washington consensus was reflected in the academic literature on corruption, taking into account the need to establish a credible privatisation process – “privatization is both an anti-corruption reform and a new potential source of corrupt gains” (Rose-Ackerman, 1999: 42). Stiglitz’s admission is more forthright –

¹ Krueger was appointed chief economist at the World Bank in 1981, and later became First Deputy Managing Director at the IMF.

² Rose-Ackerman was attached to the World Bank’s Private Provision of Public Services Unit.

“Russia provides a devastating case study of the harm of privatization at all costs” (2002: 58).

Why does corruption matter? A developing country may be caught in a ‘corruption trap’ in which illegal actors have a comparative advantage, encouraging excessive public investment and reducing total investment. Corruption acts as a tax on foreign direct investment, discouraging its entry (Rose-Ackerman, 1999: 2, 3). It is at this point especially when, like rent-seeking, corruption becomes an obstacle to development, viz. the entry of multinational capital, that it becomes “too important a phenomenon to be left to moralists” (Ruggiero, 2000: 110).

How to reduce corruption? Attempts at reform are on the basis of controlling rent-seeking behaviour. This is summed up by the notion that “Corruption equals monopoly plus discretion minus accountability” (Klitgaard, 1988). It follows from this that systemic corruption can be reduced by introducing competition to eliminate monopoly; by regulation to limit the discretionary powers of officials, and by mechanisms of accountability to achieve transparency. Structural reforms aimed at rationalising the role of the state, increasing the reliance on market-based pricing and creating a sound regulatory environment should contribute to growth directly, and indirectly by lowering the incidence of corruption. (Mauro, 2002)

Moving from the economics of corruption to its mode of operation, the literature generally follows Klitgaard’s descriptive model of principal-agent-client. The principal is essentially the executive of the state – the government, the agent is an agent of the state - the officials in its bureaucracy, and the client is the private third party. A corrupt exchange, e.g. bribe, takes place between agent and client. The principal must evaluate costs and benefits of different anti-corruption measures (Klitgaard, 1988). Note that to effect organisational changes to the system, the principal is the active policy agent.

There are two problematic issues for this perspective, even within its own terms. Firstly, there is the issue of political agency. Low level corruption can be considered as a breach of contract between the agent and the principal (Colombatto, 2001). The principal-agent-client model implies top-down solutions to corruption, which becomes complicated when the corruption is top down, i.e. the commanding principal presides over and benefits from a corrupt system. This has led to the notion of state capture, that is:

“the actions of individuals, groups, or firms in both the public and private sectors to influence the *formulation* of laws, regulations, decrees, and other government policies

to their own advantage as a result of the illicit and non-transparent provision of private benefits to public officials” (Gray, Hellman and Ryterman, 2004: 10).

But this is incomplete to cover the range of top-down corruption, which in its extreme form is far more than influence, as demonstrated in those kleptocracies (e.g. Mobutu’s Zaire, Duvalier’s Haiti, Stroessner’s Paraguay) where corruption is *organised* from the top. Here, the state is an instrument of looting society in the interests of a ruling clique (Rose-Ackerman, 1999: 114-121; Bayart, Ellisand and Hibou, 1999). In a kleptocracy, enterprises may be public or private, serving to generate income for a faction, rather than the needs of capital as a whole or society as a whole.

Rose-Ackerman distinguishes the supply side and demand side of the bribery “market”, both of which can be dimensioned in terms of their degree of monopoly. She identifies the case of the bilateral monopoly, where bribe recipients concentrated at the top of the political structure face a private monopoly, e.g. where there is economic dependency “on the export of one or two minerals or agricultural products” such that “the country becomes an appendage of the large investor” (ibid.: 122). Another case occurs where the state is weak and monopoly economic power lies outside it, such that “the private power dominates the state, buying the cooperation of officials” (ibid.: 123). It would seem that the principal-agent-client model is limited in scope, it does not fit the latter case at all, where powerful corporations or the Mafia are not the clients, but in effective command of a client state.

The second issue is the extension of the rent-seeking paradigm of corruption from the economic and political into the social domain. The modernisation-developmental challenge provides new motivation for studying corruption as a harmful social problem. The notion of limiting the discretion of state agents is close to the Weberian view that the state bureaucracy should function according to universal rules. But in a corrupt, rule-breaking environment no individual official will cease being corrupt unless there is trust that the others will do likewise - even if there is a general benefit in so doing, there is no individual incentive. Mauro observes that “some countries appear to be stuck in a bad equilibrium characterized by pervasive corruption with no sign of improvement” (2002: 3). As well as this ‘bad equilibrium’ vicious cycle, there may be a ‘good equilibrium’ of low corruption and high growth, setting off a virtuous cycle. Policies of good governance need to be found to shift a country trapped in one cycle to the other.

The theory of corruption is increasingly linked to the theory of social capital. The usage by the World Bank (2004) oscillates between social capital as resource (attribute of individual or

family) and social capital as social trust (quality of a wider social group). This definitional tension is developed into a distinction between *bonding* social capital and *bridging* social capital. *Bonding* social capital refers to “tight-knit, homogeneous groups of people that provide important safety nets for one another in times of crisis”. *Bridging* social capital refers to “horizontal networks of more heterogeneous people or groups that enable members to access additional, diverse resources and information”. Furthermore social capital is, according to the World Bank, “a resource which can be used for good or bad”. Bad social capital “can serve perverse functions leading to nepotism, corruption, ethnocentrism, mafias and/or stringent social controls”. Interestingly, the notion of *perverse* social capital originates in Colombia (Rubio, 1997).

How does the concept of social capital inform theoretical understanding of corruption? Della Porta finds that political corruption operates through informal norms, reciprocity and networks. She links the effective workings of this ‘bad’ social capital with the ‘bad equilibrium’ condition, connecting the social malaise with a sub-optimum economic state. Della Porta finds an association between high levels of corruption and low satisfaction with democracy. Corruption is both a cause and an effect of poor government performance,

“Lack of confidence in government actually favors corruption insofar as it transforms citizens into clients and bribers who look for private protection to gain access to decision-makers.” (2000: 205)

‘Bad’ social capital and political corruption are seen here as characteristic of *disaffected* democracies.

Critique and the Basis for an Alternative Paradigm

From the critical criminology perspective, Ruggiero observes that corruption resembles some forms of corporate crime in that they are apparently victimless crimes. In an analysis of political and administrative corruption in Italy, he considers key issues of impunity and the commodification of rights that are germane to this investigation (Ruggiero, 2000: Chapter 7).

This work notwithstanding, it has to be admitted that theoretical critique of the dominant rent-seeking / privatisation / bad social capital paradigm of corruption is in its infancy, and has not yet matured into a full grown alternative interpretive paradigm. Two lines of critique have been adopted. One is to expose the neo-liberal interests driving the dominant discourse on

corruption; as done comprehensively and convincingly by Williams and Beare (2003). The other line of critique is focussed on the World Bank version of the concept of social capital. Fine (2001) argues that a disciplinary colonisation of social science is taking place, and calls for a rejection of social capital as bridgehead of the invasion. Schuurman's critique is more adaptive, he wishes to explore "the politico-emancipatory potential" of the disputed concept of social capital, arguing that the concept may be turned towards "possibilities of reconnecting the social with the political" (2003: 989,1008). This chapter will employ the case study to explore Fine and Schuurman's suggestions, and to see if 'social capital' in modified form warrants the proposed rehabilitation.

However questionable the motives behind the turn of the international organisations to this phenomenon, one cannot argue that corruption is not a pressing problem in the Third World. A critique of the dominant discourse on corruption is necessary but insufficient, given the phenomenon's presence. Transparency International's Global Corruption Index is based on aggregates from various northern based surveys. It has clear groupings with OECD ('First World') countries clustered around the top positions as least corrupt, the next band occupied by Eastern Europe and unusual mini-states ('Second World') and the long tail of corrupt countries – the forever last Third World (Lamsdorf, 2004: 284 -286).

Another source of empirical evidence, a victimisation survey carried out in nine underdeveloped countries in 1992, reports that consumer fraud is the most commonly experienced crime, followed closely in most cases by corruption by government officials. Significantly, the indices for these two forms of 'white-collar crime' were both much higher than reported in official criminal statistics. While attempts are made by states to make it invisible, corruption is not a victimless crime in these societies. It goes to the heart of the form of relation between state and society in the underdeveloped world. The report's authors comment:

"Both victimisations indicate much more than the sheer sphere of conventional crime; they speak about development itself, of the citizens' position vis-a-vis government and commercial/service activities, the lack of consumer/client and citizen protection, and the ways in which people go about, or are made to go about, in satisfying their needs and rights." (Zvekic and Alvazzi del Frate, 1993: 58)

The report sketches a scene worse than disaffected democracy, societies where the general populace suffers predations by those in official public and private institutions. White-collar predation may even be a characteristic feature of underdevelopment.

There is some evidence that the level of administrative corruption is inversely related to the salaries of public sector officials in the Third World. Although this correlation does not establish causation, researchers have cited the cases of three countries (Ghana, Peru and Uganda) where increased salaries to tax collectors was followed by increased tax revenues (Van Rijckeghem and Weder, 1998).

Turning to research of the Latin American experience, Saba and Manzetti review the rapid, wholesale and corrupt privatisations by Menem in Argentina in the early 1990s. They argue from the standpoint that “one of the most troublesome aspects of these corrupt practices is the damage they wreak on public support for the market reforms required for economic growth and investment” (1997: 355). They advise that “transparency is the best safeguard against arbitrary decisions and administrative abuses”, concluding “the association between civilian government and corruption is unfortunate wherever it occurs. Again, there is nothing inherently wrong or corrupt with free-market economic policies” (ibid.: 366). The problem is not with the policy but in its manner of implementation.

This faith in the efficacy of privatisation *so long as it is transparent* is contentious. According to another researcher corruption has increased across the region since 1980, the very period of neo-liberal reforms “during which bureaucrats and politicians disposed of huge portions of public property, often with limited transparency” (Weyland, 1998: 108). Weyland suggests the role of the mass media in determining the transparency of the political process has become critical. He argues that the demise of traditional parties means that neo-populist leaders have increased incentives to corrupt practices, they have to raise the funds to pay for sympathetic media exposure. Instead of being a factor for transparency and hence tending to reduce corruption as per the Klitgaard thesis, the role of the corporate media has been questionable. On the one hand there has been greater exposure of corruption scandals, but the media has been gaining considerable income from corrupt political leaders. There is evidence of corporate media deals with politicians in Costa Rica, Guatemala and Uruguay where discounts reached 95 percent (Casas-Zamora, 2004: 49-50).

It seems transparency, as with every element in the equation $\text{corruption} = \text{monopoly} + \text{discretion} - \text{transparency}$ ($C=M+D-T$), cannot be read at face value without substantive analysis of the exercise of the power relations involved. Moreno argues that in Argentina and other developing countries there is a different problem to resolve:

“How can citizens control the corruption of high officials? ...One of the keys to controlling and preventing corruption is to detect the influence of the political system. In a regime of hegemonic power (HP) there are no independent powers but a monopoly power (M); the law is not carried out except with the discretion of those who hold authority (D) and freedom of the press and information are restricted, thus affecting transparency (T).”³ (cited in Ariza Ruiz, 2001: 519)

Hence we have $HP=M+D-T$, from which Moreno deduces that *corruption is none other than hegemonic power*. We have seen that Dieterich views corruption functioning as an informal system that extends the formal, legal system of class power. That is, corruption serves as an *additional* access to privilege in an already polarised class society. Its *informality* as a system is the product of a contradiction between formal democracy and real class antagonism. The strong implication here, that is lost entirely in the rent-seeking paradigm, is that *to challenge corruption is also to challenge one of the means by which the dominant class exercises its power*. This is demonstrated by the case study and is, I will argue, the kernel of an alternative theory.

Theorisation of Corruption in Colombia

While corruption in Colombia has certain unusual aspects, that very fact has brought forth a literature that deserves wider consideration for a theory of corruption.

The first factor to consider is the connection between the drugs economy and corruption. Once it took hold as part of a vicious spiral, the violent narcotics industry has been one of the major factors feeding the high level of corruption in Colombia. Drugs money buys a lot of local government favours, induces police indifference, blinds the eyes of bureaucrats, colours judges' wisdom and primes presidential election campaigns - see (Thoumi, 1994).

The second factor has been the lack of an effective institutional political opposition whose absence generates a pact of silence providing fertile grounds for corruption (Ulloa, 1997: xiv), or to put it another way, political exclusion prevents transparency. Colombia's form of 'hegemonic power' is deeply affected by the geographic limits of the state, its lack of control

³ “¿Cómo hacen los ciudadanos para controlar la corrupción de los altos funcionarios? ... Una de las claves para controlar y prevenir la corrupción es detectar la influencia del sistema político. En un régimen de poder hegemónico (PH) no hay poderes independientes sino un poder monopólico (M); no se cumple la ley sino la discrecionalidad de los que detentan la autoridad (D) y se restringe la libertad de prensa y la información afectando la transparencia (T)”

over parts of the national territory reinforcing its oppressive character in those parts it does control, where it is experienced as an “hegemonic, autistic and exclusive power”⁴ (Ariza, 2001: 519). This leads on to *el clientelismo*, clientelism - the informal and illegal yet widely practised subversion of the formal election system by politicians retaining loyalty through deal-making and vote buying, of which Colombia is a prime example (ibid.: 521-522). These procedures have been legitimised over decades of what is called a stable democracy, with profound consequences for human rights.

The third factor closely related to corruption is impunity, so much so that Arila depicts them as Siamese twins. There is 97 percent conviction failure rate of crimes committed in Colombia. The concept of impunity includes not only failure to punish, but use of the law to protect special interests. The combined problems of corruption and impunity, or ‘unjust justice’, present a determinant, strategic element amongst all of Colombia’s social problems, according to a major review:

“When justice does not function, someone usurps its functions, in the majority of cases, to exercise them for private benefit. Due to the incapacity of the judicial apparatus, offences become profitable and the rates of criminality rise... If the state, through the branches of public power, provides the bases for imparting justice, that is to say it legislates, executes and applies justice – what happens when the state is corrupt?”⁵ (Amaya, 2001: 25-26)

There is an outline emerging of a corrupted state’s relationship with society that does not quite fit any of the cases depicted by Rose-Ackerman. In part, there has been evidence of a Mafia-dominated state. In part Colombia behaves as a kleptocracy, as we shall see specifically at local level, meanwhile in many respects and increasingly it conforms to the ‘bilateral monopoly’ situation in its relations with multinational capital. All of these forms involve state capture and corrupt practices harmful to the common good. It is as though there has been a succession of parties queuing up to take advantage of the Colombian state and use it as an instrument of plunder.

⁴ “un poder hegemónico, autista y excluyente”.

⁵ “Cuando la justicia no funciona, alguien usurpa sus funciones, en la mayoría de los casos, para ejercerla en beneficio privado. Debido a la incapacidad del aparato de justicia, el delito se torna rentable y crecen los índices de criminalidad... Si el Estado, a través de las ramas del poder público, provee las bases para que se imparta justicia, es decir, legisla, ejecuta y aplica, ¿qué sucede cuando es corrupto?”

Rose-Ackerman brings out an issue that is not elaborated theoretically in the rent-seeker framework, the distinction between political monopoly and economic monopoly. This is a real point of focus in the Colombian case. In one view “political capitalism” predominates over Colombia’s economic regime, that is a form of capitalism where profits are obtained from state privileges and not through competition in the market. A variant of this is that there is such a proliferation of ‘rent-seeking’ entrepreneurs and other citizens that Colombia forms a “sociedad rentista”, which can be translated as either *financier* society or *rentier* society (Carvajal and Carvajal, 2002: 517-518).

Corruption and Privatisation in Colombia

Corruption Surveys

Transparency International’s *Corruption Perceptions Index 2003* ranks Colombia 59th out of 133 countries (Lamsdorf, 2004: 284). A joint World Bank / Colombia government survey found that over 50 percent of state contracts contain a bribe element, averaging 19 percent of their value, and that 11 percent of all state resources are diverted from their official destination (Vicepresidencia de la República, 2002: 4). The report found widespread administrative corruption, which it saw as regressive, with 14 percent of the income of the poor going to paying bribes (ibid.: 26). Perhaps surprisingly, the survey diagnosed capture of the state by private interests as “the most extensive and relevant form of corruption in Colombia”.⁶ The most corrupt of all entities is the National Congress. Private interests working from within the highest levels of the state sector affects the formulation of policy, but also the politicisation of appointments in the public administration is seen as having a strong correlation with corruption (ibid.: 5).

The survey reports low credibility for the state’s fight against corruption, with a view that citizens watchdog bodies are needed to augment the state’s own control institutions (ibid.: 52-55). Finally, it recommends political reform as the extent of corruption effects the very legitimacy of the state, adding a deep note of concern that confronting the issue of governance “poses the most difficult challenges”⁷ (ibid.: 56).

The Privatisation of Utilities in Colombia

⁶ “aparece como la forma de corrupción más extendida y relevante en Colombia”.

⁷ “se plantean los desafíos más difíciles”.

The Inter-American Development Bank (IDB) considers Colombia to be an excellent example of the issues involved in the reform of the water and sewerage sector. At the beginning of the twentieth century most utilities in Colombian cities were privately owned. In a process riven with conflict, from the 1920s onwards these were taken into local state ownership, and then in the 1950s the government purchased most of the remaining services given, “the precarious conditions in which the services were provided and the lack of investment” (Avendaño and Basañes, 1999: 219).

For these IDB authors, the reason that private capital had not invested and kept services in adequate condition is not the inherent limits of profitability, but “the limited institutional framework” of the time. Thus the interest in Colombia’s institutional reforms, would they provide the regulatory conditions for private provision of public utility services?

The 1991 Constitution had encouraged private participation, but had not established a regulatory framework. This was enacted through the residential Public Utilities Law (Law 142) of 1994 that abolished the government monopoly in public service provision. Law 142 created the new category of public utility enterprise that would provide residential public services under contractual terms. The law established new regulatory bodies to set prices, including subsidies for low-income groups. In effect Law 142 established the outputs that had to be achieved. State corporations would operate under commercial pressure, if they could not perform to meet the service delivery criteria, they would be privatised (Interview with Union Adviser).

According to Avendaño and Basañes (1999: 222), the public sector utilities had up to the 1980s been controlled by the local political class, and were inefficient and inadequate. They cite five cases of urban centres in northern Colombia where provision was part-privatised in the early 1990s. By 1997 the water delivery system coverage varied between 56 percent and 94 percent, while the sewerage system coverage was from only 23 percent to 68 percent of the relevant populations. The first form of private participation was under management contracts, considered to be an unsatisfactory ‘half way house’ (ibid.: 242). The period 1990-1997 saw a push for not just private sector management, but full control and effective ownership of the utility infrastructure. Avendaño and Basañes main concern is that government discretion to vary the terms that private capital invests in the sector should be severely limited, i.e. once private capital calculates that a profitable long-term investment can be made, it is allowed to realise that investment. One can see how the pro-privatisation argument draws sustenance from the common points it shares with the literature on corruption, particularly the Klitgaard

thesis that monopoly needs to be broken and that rules limiting discretion are essential. The neo-liberal project in Colombia was being prepared to enter a new phase.

The Issues at Stake – Research Questions

The dominant literature assumes privatisation. The question asked is how state assets and public services can be privatised without inflaming corruption. The converse is barely asked, viz. is it possible to tackle corruption while keeping services public? The original assumption of agency, that anti-corruption policies will come from the state principal, e.g. through a government-led reform programme, has been challenged. Contributors increasingly look to outside agents to improve governance - the international institutions, augmented by a degree of citizen participation. It is not clear where this process leads and what its limits are in terms of national sovereignty. Should there be an ‘anti-corruption’ model taking such additional variables into account?

But none of the literature considers the possibility that state sector workers are an actor. In terms of the economic theory they are viewed as another privileged interest group, rent-seekers. What does it mean for the model when a rent-seeker takes action against corruption? The World Bank’s social capital thesis makes arbitrary distinction between ‘good’ and ‘bad’ social capitals. While a corrupt network may be normatively explained in terms of ‘bad social capital’, to extrapolate this to label groups working against privatisation becomes blatantly apologetic. Can the social capital thesis be reinterpreted to explain the forces operating in an anti-privatisation struggle?

SINTRAEMCALI’s Fight against Privatisation

EMCALI Corporation

Cali is a city of 2.2 million people in the south west of Colombia, lying on the Cauca river that runs northwards to its eventual outlet several hundred kilometres downstream in the Caribbean. The Cauca valley is traditionally the site of sugar cane plantations, and Cali retains a strong Caribbean flavour in its vibrant culture. The poor *barrios* of the *ladera* cluster on the Andean mountainsides flanking the west of the city, and on its eastern side lies Agua Blanca – a city within the city of some 600,000 poor. Most of the housing in these areas was built with their own hands by displaced people.

EMCALI Municipal Corporation of Cali supplies electricity, water, telecommunications to Cali and the surrounding areas. The corporation was formed in 1931 and has 1.6 million

customers using one or more of its services, generating an annual income of 1.2 billion pesos, around US \$480 million.⁸ Colombia's urban neighbourhoods are officially graded in six social strata according to the quality of housing, ranging from level 1 (very poor) to level 6 (the rich). There are also 'level zero' zones (new arrivals, the *invasiones* with hand built dwellings and no facilities) and even a 'level sub-zero', which refers to the destitute and homeless (Interview with Youth Worker). This is important for public utility providers like EMCALI, because the higher the level, the higher the prices for services - a progressive consequence of the 1991 Constitution. To illustrate this, in March 2002 EMCALI's domestic electricity charges were 77 pesos, 93 pesos and 131 pesos per kilowatt-hour to level 1, 2, and 3 households respectively (up to a limit of 200 kilowatt-hours a month); 155 pesos to level 4 and 186 pesos per kilowatt-hour to households in levels 5 and 6 (*Diario Occidental*, 2002).

EMCALI scores well on indicators such as percentage of the population covered by each service, hours of service, costs for the services, quality of service. The profile of telecommunications services is 24 percent commercial, 10 percent to social strata 5 and 6, and the remainder to social strata 1, 2, 3 and 4, including public telephones. This 66 percent the union calls '*telefonía social*' - a social telephone service. EMCALI claims to provide the best quality drinking water in Colombia, and amongst the best in Latin America. Maintenance costs for drainage are high in Cali, representing about 50 percent of the charges.

SINTRAEMCALI – an example of 'social movement unionism'

SINTRAEMCALI, Sindicato de Trabajadores de EMCALI, is the trade union that organises EMCALI workers. It has two thousand eight hundred members, with a high level of unionisation, over 95 percent in the non-management grades. The union has a developed social outlook. Attached to the union's office is the Instituto SINTRAEMCALI, which provides evening classes up to secondary completion for the workers' children, as well as technical training. The union's team of economic and technical advisers worked on a strategy to keep EMCALI in the public sector. Detailed preparation helped the union's argument against privatisation of the services its members provide in the economic and technical domains, as well as the socially and ethically. SINTRAEMCALI argues that in EMCALI the public has a technological platform that can be used for the social benefit and the economic profit of Cali and the region. In 2001 the union expanded its Human Rights Department,

⁸ In Colombia a billion is a million million. Exchange rate used is a rough average for 2002: 2,500 pesos to 1 US \$.

which started to do human rights training courses with the participation of a widening regional network of trade unions and social movements.

The union's strategy for opposing privatisation hinged on the idea of uniting with the community, and it has employed a range of tactics to further this, including voluntary work brigades, community surveys, and outreach education programmes. SINTRAEMCALI's own members are accustomed to mobilisation and use militant direct action tactics. The union has built up a network of regional, national and international alliances. In other words the union is an advanced example of what is known in the literature as 'social movement unionism', comparing with similar developments in underdeveloped countries (Novelli, 2003).

The final element in the union's strategy to defend the public sector, upon which this study focuses, is defence through transformation, that is by fighting corruption and, as its struggle developed, other forms of economic misdemeanour in the corporation.

History of an Anti-Privatisation Struggle

The question of EMCALI's privatisation had been on the agenda from the mid-1990s. Cali's council decided in 1996 that it was going to restructure EMCALI's three main functional areas - water, electricity and telecommunications -into three independent entities. SINTRAEMCALI interpreted this as a prelude to privatisation, as each separate unit would be more saleable to multinationals specialising in that sector. The union had already developed a direct action culture; its members were involved in a series of occupations from 1994 onwards. The union built up its campaign and in September 1998 it occupied production plants and the main administrative building demanding reintegration under one corporation, which after days of negotiations it won (Interview with Union Adviser).

Maintaining EMCALI as a multi-service provider remained an issue between the two sides. Up until 1999 Cali's city street lighting had been free, but the Mayor introduced charges and handed over the service to a private company. The union held a nine-day strike and conducted city-wide demonstrations, attracting fifteen to twenty thousand participants on its marches. In February 2000 a council sub-committee voted 4 to 3 against the Mayor's proposal to privatise EMCALI. But the argument did not end there. The city was polarised into two camps. The Mayor and his supporters argued that EMCALI could only go forward with private investment. The union and its supporters argued that for EMCALI to be viable its onerous and corruptly engaged debts had to be cancelled or otherwise alleviated. Just over 29 percent of

the corporation's income went on debt payments in 2002, the union projected this would rise to 39 percent for 2003 (SINTRAEMCALI, 2003b: 23).

In April 2000 Cali's Mayor took EMCALI corporation out the hands of his own locally appointed management board and placed it under the direct control of the national Superintendent of Public Domestic Services (SSPD). The SSPD national director announced that there would be no more state funding for EMCALI (*El Pais*, 2000b). The union argued that these measures illustrated a policy of weakening EMCALI, preparing to terminate its protected status under Law 142 as a state enterprise, as designated by the corporation's full title EMCALI EICE (State Industrial and Commercial Corporation). The superintendent's advisory team reported in September 2000, recommending that the telecommunications arm should be sold off, and the remaining services (electricity, water and sewerage) be run as a concession. By February 2001 the union's telecommunications workers were in dispute, trying to block the selling off of the public telephone system to the private company that employed security guards to take away the money, but with no trained engineering staff (*El Espectador*, 2000).

In the meantime SINTRAEMCALI had launched an anti-corruption offensive against the former management board and their allies in senior management posts in the corporation. Based on evidence presented to a public hearing, on 12 June 2000 the Prosecutor General punished nine officials and opened corruption investigations against another 24 individuals, including former members of the management board, two former directors, managers and the ex-Mayor. A sum of 26 thousand million pesos (over US \$10 million) was involved. The punishments varied from 5 days loss of wages to 60 days suspension from work – there were no custodial sentences (Procuraduría General de la Nación, 2000; *El Pais*, 2000a; *Revista Valle 2.000*, 2002). But there was an immediate backlash against the union. Its president, Alexander Lopez, was forced into temporary exile after a failed assassination on 14 June - the third attempt on his life (*Diario Occidente*, 2000). "They want to kill me because I defend public services", he later said (Higginbottom, 2000).

This was in the year following President Pastrana's agreement with the IMF, and besides the government was under pressure to find more disposable assets to help finance Plan Colombia. There was a strong push to carry through more privatisations. In October 2000 the government sold off Carbocol, Colombia's coal corporation, for US \$ 383 million. Then Pastrana announced that EMCALI was definitely going to be privatised. Lopez addressed a meeting of union members via international video link, they decided to take strike action against the privatisation threat at a time to be decided (*ibid.*).

Another possibility emerged. Some officials at different levels of the public service opposed the government's privatisation policy. Cali's *Personer'a* (local government ombudsman) complained that privatisation of street lighting had caused a deterioration in the service and demanded its reinstatement to EMCALI. Minister of Labour Angelino Garzon, a dissident voice in Pastrana's Conservative government, appointed an investigating commission that recommended, on a majority verdict, against privatisation. Most telling of all, the nation's Controller General publicly rebuked the SSPD for the manner of its intervention in EMCALI, which had not been devoted to the corporation's recovery, but had "sharpened the crisis, and will increase pressure for liquidation and privatisation" (*El Espectador*, 2000).

The second official appointed by the SSPD as Director of EMCALI turned out to be strongly in favour of keeping the corporation in the state sector, and was sympathetic to SINTRAEMCALI's aims. In mid-2001, with Lopez back in Colombia and with the old guard swept away, the replacement acting Director was able to appoint his preferred senior managers, who began working in close cooperation with SINTRAEMCALI and the workforce in an emergency programme to recover the corporation and save it from privatisation. Their PARE (literally STOP) programme was run by an internal coalition of progressive managers and the union. A series of initiatives had brought the corporation under near workers control. From July 2001 the workforce and management worked together feverishly to demonstrate practically that their corporation was viable on an ongoing basis: *provided* that it did not have to continue paying off the onerous debts incurred by the previous corrupt administration. They estimated that they would only have until the end of the year to achieve this objective (Interview EMCALI Managers).

The PARE programme was not allowed that long. The Pastrana government announced that it was going to replace EMCALI's Managing Director with an executive from the Spanish multinational FENOSA. The union called a general meeting of all its members. The workers decided that if the government tried to implement its decision they would take direct control of the corporation (Interview Alexander Lopez I). Pastrana backed off, but it was no more than a reprieve.

On 24 December 2001 the union learnt that the SSPD was going to appoint a replacement Director of EMCALI, a man with previous experience in the corporation, and who had also been charged with corruption. The union assessed that this signalled a decision to press ahead and privatise, and it responded by occupying EMCALI's main administrative building, the CAM tower on 25 December. Cali's working class communities mobilised support

demonstrations and food, and other trade unions surrounded the CAM tower to prevent its repossession by force. A month on, and with matters apparently at stalemate, a team of volunteers from SINTRAEMCALI and social movement activists took over the SSPD headquarters in Bogotá on 28 January 2002. It was an audacious move. The situation was immediately very tense as anti-riot police and snipers trained their sights on the occupiers in the SSPD building. The support alliance, especially at this point international protests, was energetic enough to hold off a massacre. The next day the Pastrana government backed down and offered a deal guaranteeing no privatisation, no price increases and agreeing to set up an anti-corruption commission.⁹ The union, the community and their growing international network were jubilant. A popular mobilisation to defend public services had struck a victory against neo-liberalism (Novelli 2003; Interview with Alexander Lopez II).

Lopez stood as a candidate for the Social and Political Front and was elected to Congress for the department of Valle del Cauca in March 2002. Uribe came into the presidency in August that year. Despite the 29 January 2002 Agreement, Uribe made clear that the future of EMCALI was to be re-opened. He denied the advances achieved by the PARE programme, stopped the process of worker and community participation and pointedly consulted only with the Chamber of Commerce and private business interests. The nub of Uribe's proposal *Todos Ponem*¹⁰ was to set up a 'Social Capitalisation Fund' that would hand overseeing powers *to a board of the corporation's creditors*. The Fund was almost a debt for equity swap, except without the swap, giving control over the corporation in proportion to debt held. As a cover, EMCALI's users could also buy their way into the Fund, but only by paying a supplement on their tariff to pay for their shares, up to 2 percent of the total and which in any case would have secondary voting status.

The Social Capitalisation Fund would rationalise all debts, and thus would act as EMCALI's sole creditor. In the words of the Superintendent's proposal, the Fund:

“will have intervention rights in the administration of the corporation, through conditions and agreements. To be included in privileged debt contracts between EMCALI and the Fund are: investment decisions, debt and operations contracts for the business units.”¹¹ (SSPD, 2003: 12)

⁹ Full title 'Agreement of National Government, Municipal Government, SINTRAEMCALI and Community representatives for the Saving and Strengthening of EMCALI EICE ESP'.

¹⁰ 'Everyone Lends a Hand'

¹¹ "El Fondo será el único acreedor de Emcali y tendrá ingerencia en la administración de la empresa, a través de las condiciones y pactos que se incluyan en los contratos de deuda

The arrangement gives the creditors powers close to full ownership. EMCALI's service infrastructure remains formally in the public sector, but it is directly accountable to finance.

Uribe demanded the union renounce rights that it had negotiated in its Collective Agreement. SINTRAEMCALI agreed to forfeit some rights, but insisted on an 'integral solution' which renegotiated or otherwise alleviated the corporation's debts, especially to creditors on the Termocali and PTAR contracts which the union argued had been corruptly entered (see below). Negotiations began in early 2003 in an atmosphere of brinkmanship. Uribe became personally involved. There was a televised confrontation between him and SINTRAEMCALI's new president Lucho Hernández, when Hernández pointed out that the President of the Republic had lied. Uribe demanded an apology, but Hernández stuck to his version, which was confirmed in the press as true (*El Pais*, 2003b; *El Tiempo*, 2003b).

Public complaints forced the suspension for 90 days pending judicial action of another SSPD appointed Managing Director of EMCALI, due to "presumed irregularities in the processing of contracts" (*El Tiempo*, 2003a). This incident suggests that the union and community alliance is sufficiently strong to achieve some transparency and influence events. The *Todos Ponen* accord was implemented on 5 May 2004, but it has not done away with fundamental antagonism between the state and SINTRAEMCALI. On the day that the deal was signed, street fighting between riot police and EMCALI workers flared up once again (SINTRAEMCALI, 2004).

Comparison to other struggles against privatisation

The water war in Cochabamba Bolivia took place after the service was privatised, and in response to the subsequent tripling of prices. The opposition alliance included a wide range of people as consumers, and small peasant water producers whose livelihoods were threatened, but was not initiated by unionised workers in the industry (ODG, 2005). Similarly, the eruption of protest against privatisations in Argentina was post the event, and based in the consumer community (Green, 2003).

In Colombia the privatisation of public services has been on a piecemeal, regionalised basis. By 2000, some 60 percent of services were privatised. Again, popular opposition came in

privilegiada que subscriban Emcali y el Fondo: decisiones de inversión, endeudamiento y contratos de operación de los negocios.”

response to loss of jobs and price increases (Pulido, 2003). These circumstances meant that workers and citizens in Colombia's three main cities, Bogotá, Cali and Medellín could look to the rest of Latin America and the Caribbean north of their own country to see the likely consequences of privatisation, and prepare accordingly.

SINTRAEMCALI's fight against privatisation has distinct characteristics. It was launched to *prevent* anticipated consequences. The union was in a central position in the anti-privatisation alliance with the community. The early alert provided an opportunity to block privatisation, whilst challenging corruption from inside the corporation even before a sell off took place. This atypicality provided laboratory like conditions to expose corrupt practices that are more normally kept hidden.

Economic Offences and Union Counter-strategies

'Politiquería' and Indebtedness

Colombians refer to *politiquería*, a syndrome of corrupt politics where the political class feeds itself with the spoils of office. *Politiquería* combines both political corruption and administrative corruption as customarily defined. The two party factions within the dominant class milked the region's biggest corporation, in Cali *politiquería* functioned as a local kleptocracy.

Under Liberal Party control between 1995 and 1997 EMCALI's board of directors routinely helped themselves to 15 percent commissions on contracts (Edwards, 2003: 37). Of greater long-term cost, in just three years EMCALI's debt rose threefold without any evident increase in its plant or facilities. The Liberal Mayor Mauricio Guzman was at the centre of using EMCALI to extract finance. The funds for phantom projects were navigated through EMCALI, although they have nothing to do with its functions. A notorious case concerns Cali's bridges, construction projects used to skim off so much money that the local joke is "we *caleños* have the most expensive bridges in the world"¹² (Interview EMCALI Managers). Although Guzman was later imprisoned as a result of the Proceso 8.000 investigation into the Cali drugs cartel funding of President Samper's election campaign in 1994, what is

¹² "los caleños somos una población toda vez que tenemos los puentes mas costosos de todo el mundo, se necesita mucha imaginación y creatividad para hacer puentes intransitables a ese costo"

remarkable is the lack of control from national or international watchdogs as the debts shot up.

The Conservative Mayor Ricardo Cobo who took over in 1998 had two advantages. He had married into the Lloreda family, the local grandees with money from sugar, owners of the regional daily newspaper *El Pais* and much else besides. A Conservative had won the presidency, Andres Pastrana, whose Minister of Education was also a Lloreda. Pastrana presided over a torrent of corruption, as later press reports revealed. With these protections in place, “pilferage turned to plunder” (Edwards, 2003: 38).

But even this was not the end of it, for the illegal corruption had incurred a legally enforceable indebtedness - that grew and grew, until it came to take over EMCALI completely.

Enter the Multinationals

Termoemcali

Termoemcali was formed on 22 December 1994. The principal shareholders were JMC Cauca Valley Inc - a US company formerly known as Boston Energy, with a 93 percent stake - and EMCALI, that had 7 percent of the shares. Termoemcali was set up to operate a 220 M watt thermoelectric generating plant. The main contract was linked in to a Protected Price Agreement (PPA) signed on 8 May 1995 that stated that EMCALI would buy electricity at US 4 cents per kilowatt-hour. Another company, Intergen Management Services Ltd Colombia (a subsidiary of the US corporation Bechtel) was commissioned to build and operate the plant, which came on line in July 1999, at a total cost of US \$215 million. EMCALI financed the original estimate of \$165 million by floating bonds in the US, and was obliged to procure additional loans to meet the \$50 million cost overrun. The Controller General pointed out that at an installation cost of \$919 per kilowatt this generator capacity was “excessively costly” compared to other generators. But worse was to come, wholesale market prices for electricity were significantly lower than the minimum agreed prices in the PPA. For example, in May 2000 the PPA price for Termoemcali’s electricity was 111 pesos per kilowatt-hour, while the open market price was just 40 pesos per kilowatt-hour. EMCALI would have to pay about US \$9,400 *extra* daily for taking Termoemcali’s output. Under the terms of the PPA, EMCALI has in any case to continue paying US \$4.5 million Termoemcali

a month whether or not it is buying any output (EMCALI, 1994; Termoemcali, 1994; Contrólería 2000: 12; *Diario Occidente* 2003).

For the private investor, a PPA eliminates risk and ensures a continuing guaranteed return on the investment. But for the municipal corporation Termoemcali had become an expensive white elephant, a plant that generated no electricity or income, only costs. Why had such a one-sided contract ever been signed in the first place? A strong clue lies in the circumstance that ownership of Termoemcali had passed to a new consortium that was made up EMCALI (43 percent), Intergen (54 percent) and Corporación Financiera del Pacífico (3 percent) – headquartered in the Cayman Islands. Edwards (2003: 38) notes this last company disappeared in 2000 with all of its principals censured and fined for financial irregularities. The perpetrators of the deal seem to have evaporated, while Bechtel is left collecting the money every month. Not surprisingly, SINTRAEMCALI and many others demand that the PPA be cancelled as an unfair contract (Hernández, 2003).

PTAR

The Planta de Tratamiento de Aguas Residuales (PTAR) sewerage treatment plant at Cañaveralejo is a high technology automated operation, using methane gas taken off in early stages to power the final processing (Interview EMCALI Managers). The plant was built by a consortium including the Japanese corporations Mitsubishi Suido and Tokyo Engineering, plus Norberto Odebrechi (Brazil) and Degremont (France), financed with a loan to EMCALI from the Japanese government backed development bank JBIC. The initial loan of US \$75 million spiraled up to a final US \$165 million (Edwards, 2003: 38; *El Pais*, 2003c).

Late in 2000 Cali's Municipal Controller initiated an action without precedent in the city's history and froze the personal assets of 53 citizens under investigation for their role in the PTAR contract. The enquiry went back to 1991 – 1995, and monies paid out for advice and inventory management during the design stage of the PTAR project. Corrupt practices included overcharging for site clearance, and multiple consultancies invoicing for the same design study (Interview Union Adviser; Edwards, 2003: 38,47).

Despite its high cost, PTAR will only process 40 percent of Cali's waste water output. The union argued that since most of the benefit from the plant will be for the four departments downstream, the government should honour a commitment to that 80 percent of the construction cost comes from national funds (SINTRAEMCALI, 2001a). For its part, the government insists that PTAR's running costs of \$10 million a year be covered by increases in water charges to the *caleños* of 15 percent to 35 percent.

Unregistered Use – Tapping of Electricity and Consumer non-payment of bills

At the other end of the scale of economic offences, it is not unusual in the very poorest areas for whole blocks to hook up to the electric mains and tap off supplies. This is a dangerous practice; fires occur and can quickly destroy dwellings. This is truly a collective form of law breaking by those living on the margins, beyond the limits of regulation. The other forms of illegal electricity consumption are individual. Either by-passing the seal on the electricity meter or not paying the bills.

These types of ‘offences’ evoke a mixed and even contradictory response from EMCALI and its workers. As an *economic* entity EMCALI needs to maximise income from its customers. *Socially*, most of its workforce and SINTRAEMCALI as a union are sympathetic to the sections of *desplazados* who simply cannot afford to pay. The union developed a differential response to these problems. As part of its strategy of working with the community, SINTRAEMCALI started doing voluntary work brigades, or community *mingas*.¹³ These were weekend events, where once a month SINTRAEMCALI members and other workers provided free services to a selected neighbourhood. While work teams were fixing drains and wiring, SINTRAEMCALI also sent out other teams to carry out a detailed census of all electricity use in the zone, checking on meters and any signs of illegal consumption. This had been approved in advance with local community leaders, but nonetheless the census teams were anxious in case they met opposition.¹⁴

The leaflet distributed by SINTRAEMCALI to the community literally reflects the two sides of this relationship. One side calls the attention of the local people:

“Take advantage, if you have damages and complaints about water, sewerage, electricity, telephones then call ... Besides, there will be a day of health, hairdressing, cultural activities and lawyers advice. We await you and count on your presence.”¹⁵
(SINTRAEMCALI, 2001b)

¹³ The term *minga* resonates with associations, it means both work team and a group who come together to help someone in the community, e.g. to repair a house.

¹⁴ Meeting Note, 21 February 2001

¹⁵ “Aproveche; si Usted tiene daños y quejas en acueducto, alcantarillado, energía, teléfonos, informe a los teléfonos ...Además habrá una jornada de salud, peluquería, actividades culturales y asesoría de abogados”.

And, on the other side,

“Friend User,

Avoid snags, and future punishment – even imprisonment for one to four years. Take advantage of the Community Minga that the EMCALI workers will carry out to be connected legally to public services. Remember that Article 26 of the new Criminal Code states that ‘any clandestine mechanism to alter water, electric or telecommunications metres or a fraudulent connection will incur prison from one to four years and fines from one to a hundred minimum salaries’.

Join with us, the workers of EMCALI EICE are your friends”.¹⁶

The union adopted the position that as a human right all homes should receive basic electricity whether or not they could afford to pay. It helped blocks that had tapped in illegally to make a safe connection through a common metre, while at the same time negotiating with the council that subsistence consumption in these zones be paid for out of municipal funds as a form of special relief (Interview Community Leaders).

Under the PARE, there was a renewed drive to encourage customers to pay their bills promptly appealing to good will order to help defend EMCALI as a public corporation. In the electricity branch specialist work-units “to recover non-technical losses” worked systematically. The teams targeted businesses and residences of all social strata, keeping detailed records of actions taken (EMCALI, 2001).

Inflated Operating Costs

Operating costs at EMCALI were inflated by a range of different practices that can be grouped under the headings of procurement and inefficiencies.

Procurement

¹⁶ “Amigo Usuario: Evite inconvenientes, sanciones en el futuro y hasta prisión de uno a cuatro años. Aproveche la MINGA COMUNITARIA que realizarán los trabajadores de EMCALI para que se conecte de manera legal en los servicios públicos. Recuerde que el nuevo Código de Procedimiento Penal, en su Artículo 256, establece que ‘cualquier mecanismo clandestino que altere los CONTADORES de agua, energía y telecomunicaciones o una conexión fraudulenta incurrirá en prisión de uno a cuatro años y multas de uno a cien salarios mínimos’. Acérquese, los trabajadores de EMCALI E.I.C.E., Somos Sus Amigos.”

Procurement is the classic area for corrupt practices. For years management corruption artificially inflated operating costs through over billing and fraudulent sub-contracting.

According to the Prosecutor General, EMCALI had made around 40 contracts on political recommendations rather than objective grounds, and large sums of money had been paid to unregistered organisations. Between 1998 and 1999 the directors of EMCALI's telecommunications arm spent over US \$30,000 on themselves, had signed a series of overpriced contracts, and one contract for \$210,000 of fictitious services. The electricity managers had entered contracts for \$3 million without budgetary clearance, while the water section managers specialised in sub-contracting out work that could have readily been done by the permanent workforce (Procuraduría General de la Nación, 2000).

Under the PARE programme this problem was addressed in two ways. Firstly, managers were appointed strictly according to their technical capacity. Technically competent workers replaced nearly all of the dismissed corrupt managers. The worker-managers were on the same salaries as they previously earned, and were meanwhile expected to take on managerial responsibility. This had the side effect of saving on managers' salaries, but the connection between managers and workforce working together was far more significant for morale. Secondly, great efforts were made to avoid sub-contracting with the target of eliminating it completely from operational areas such as cuts, suspensions, reconnections, re-installations, fraud detection and the installation of new clients. This process threw up interesting contradictions. The workers agreed to avoid unnecessary overtime, and accept flexible working, in part so that they could be re-deployed to tasks that might otherwise go to sub-contractors (Interview EMCALI Managers).

Efficiency gains

While avoidable inefficiencies and waste are not by definition corruption, it might be considered there is an overlap at the lower end of corrupt practices, e.g. using corporation petrol for private trips or negligence in fuel use. It would seem likely that in work environment where managers are believed to be on the graft, the workforce might feel it acceptable to take whatever perks it can. The new union/management team endeavoured to change such attitudes through the PARE programme. The workers cooperated in avoiding wasteful practices, fuel consumption for example was cut by 42 percent, and the use of the corporation's mobile phones was reduced to a minimum. Many of the workers involved themselves in the *minga* voluntary work teams visiting communities once a month. There was

an ongoing political dialogue led by the union to change the work culture, to really work for the service of the community. A new ethic was being engendered.

Manipulation of Assets and Liabilities

Non-payment of debts by State Bodies.

EMCALI has had difficulties in getting state entities that are clients to pay their debts as customers. According to one manager, “they are trying to push EMCALI into debt while we are trying to save it from being in debt”. (Interview Union Adviser)

Asset Portfolio

As well as the Termoemcali contracts, the contracts with two other generators Termocauca and Termopacifico were on remarkably favourable terms to the suppliers. SINTRAEMCALI further alleges that there have been irregularities in the purchase of top of over-priced shares in other businesses and buildings.

Padded Retirement Scheme

EMCALI had set up a pension fund for its employees. There have been three major issues in dispute. SINTRAEMCALI negotiated early retirement for workers in hazardous jobs, 15 years service for sewerage workers, and after 20 years for others. This early retirement package has been a permanent point of attack against the union, especially in the Lloreda family's press (*El Pais*, 2002a; 2003a).

The story has another side. Crooked managers had used the fund for buying influence, setting up false entitlements and retiring their cronies early. The national government has not accepted its statutory commitments. The combined effect is that every year EMCALI paid US \$3 million more into the pension than it should. The new managers approached Minister of Labour Garzon and agreed a complete check of the pension portfolio, eliminating those who had no right to a pension with the aim of establishing an honestly administered fund (Interview EMCALI Managers).

Dubious Debts

In the years 1992 to 1997 the basic rate of interest varied between 5 and 10percent, and yet EMCALI's debts were contracted at interest rates of 20-25percent. There is some indication that although cases involving loan debts and contracts with multinationals involve sums larger than procurement irregularities by a factor of ten or more, suspected corruption has been harder to prove evidentially as in illegal action, although the costs are all the greater. The union tends to mix this category of offences in with its general denunciation of aggressors against the corporation. It presents external debt payments, internal debt payments and payments to major suppliers alongside the payments to Termoemcali as financial aggression that is destabilising EMCALI by taking a projected 69 percent of its income. SINTRAEMCALI urges renegotiation of EMCALI's debt, which it sees as a culmination of disastrous decisions by previous managers combined with government policy (SINTRAEMCALI, 2003b: 24).

Anti-corruption as Class Struggle

SINTRAEMCALI has a carefully controlled process of handling allegations of corruption. The union set up its own specialist unit – an Anti-Corruption Commission – to investigate and document corrupt practices. Complaints from the public or workers are evaluated and documentation is collected. Only then are the complaints passed to lawyers for advice. If there is merit in the complaint then it is passed to EMCALI to resolve through its own internal procedures, or to the competent state authority. The post-1991 Constitution had created three national departments with the remit to investigate and control other branches of the state.

Between 1999 and 2001 the union presented evidence concerning cases dating back to 1995. The money lost to EMCALI totalled 846 thousand million pesos, about US \$338 million (SINTRAEMCALI, 2002). If one averages this loss to corrupt practices over a six-year period, it amounts on average to about one sixth of the corporation's operating income. Cali's Contraloría wrote to SINTRAEMCALI in March 2002 confirming that it was processing 82 cases of corruption referred to it by the union (Contraloría, 2002). The General Prosecutor wrote to SINTRAEMCALI in May 2002 confirming that his office was processing 149 complaints that it had received concerning corruption of the EMCALI managing board, managers and officials (Procuraduría General, 2002).

The union has a sophisticated and class conscious differentiation in its strategies. It is possible to summarise by tabulating, in ascending order, see Table 7.1.

Table 7.1: Type of Offence and Union Action

Type of Offence	Responsible	Union Remedial Action	Comment
Waste	Workforce	Waste and Efficiency targets	Change of attitude
Tapping of electricity	Poor Communities	Joint Area Programmes	Requires Co-operation with City
Non-payment of bills	Poor Communities	Locally specific mingas, reminder of law - "Conscientisation"	Differentiated Response
	Small Businesses, Commerce, Residents	Energetic debt collecting	
	State Bodies	Public Lobbying	
False supply invoices	Management Board/ Local Politicians	a) Exposure and active denunciation of vested interest; b) Pass evidence to state control authorities	a) Uncovering of evidence b) Trigger for security problem?
Commission on bids	Management Board/ Local Politicians		
Fictitious or unnecessary pensions	Management Board/ Local Politicians		
Unreasonable Loans	Multinational company and local consultants	a) Exposure and active denunciation of vested interest;	
One sided contracts	Multinational company and local consultants	b) pressure to renegotiate	<i>a la Enron</i>

A wide range of economic misdemeanours that affected the viability of the corporation were addressed, only some of which could be described as crimes of the powerful. The union had a sophisticated and differentiated set of responses, according to the type of offence and the type of offender responsible. The union's elected leadership was acting a principal agent against corruption and white-collar crime. The fight against corruption built up and reached a highpoint under the PARE programme, the phase during which the workers were most empowered within the corporation. This process was ejecting corrupt practices, and attitudes that accepted them, was in its substance a *recapture* of the state corporation in the public interest. It was informed by a broader vision of social justice. These ethical practices gave the union, despite a campaign to stigmatise and criminalise it, a claim to the moral high ground and it attracted allies and support on that basis. Anti-corruption had been adopted as a front of class struggle.

The Criminalisation of Social Protest

Violations Against SINTRAEMCALI

“The watchword of the multinationals and their supporters has been that you have to liquidate the trade unions, that is *to liquidate trade unionists.*” (Interview Union Adviser)

Many SINTRAEMCALI members have been arrested for participating in occupations, in 1996 alone 600 were punished, in 1997 300 were punished of whom 22 were imprisoned. 55 union members have been charged with rebellion. Away from major events and clashes with official state forces, the forms of harassment against the union include heavy surveillance of its leaders and their families. The principal leaders operate with armed body guards, and move home periodically. Constant death threats by telephone and warning cards (in the form of invitations to their own funeral) are sent to individuals. Sixteen people, either union members, community members connected with the anti-privatisation campaign, or members of the immediate families of either of these categories, have been assassinated. It is not the focus of this case study to document this phenomenon, as it effects all Colombia’s social movements and was examined in the case study on SINALTRAINAL - although see (Hernandez, 2004; Higginbottom 2004) for reports. What concerns us here is any connection between exposure of the corrupt practices, the fight against privatisation and the criminalisation of social protest.

Through its anti-corruption campaign the union is condemning its condemners. But in this context this is not a technique of neutralisation of the dominant social morality, rather a conscious rejection of it. Two opposite discourses are competing in the public domain, both trying to portray their opponents as the criminals. Community groups working with SINTRAEMCALI (2001c) put on their leaflets “To privatise EMCALI is to rob the people.”¹⁷

¹⁷ “Privatizar a EMCALI es Robar al Pueblo”

Evaluation of representativity in sector

EMCALI as a corporation provides similar services to those offered by public corporations in other major cities. The services in Bogotá are separately supplied, whereas the city of Medellín also has a multi-service corporation - Empresa Pública de Medellín (EPM). EPM exemplifies a contrasting approach within the public sector to EMCALI. The corporation is headquartered in a high-tech computer controlled 'intelligent' building, it has expanded operationally by aggregating up smaller state suppliers in other regions. EPM is an example of high commercialisation, and projects itself much more like a multinational than a conventional public sector supplier. One possibility to keep EMCALI in the public sector is to merge the two corporations, or form an alliance between them (Interview EMCALI Managers).

Similar corrupt practices in the setting up of one-sided electricity supply deals are the cause of public scandal in the TermoRio case, and outrageous pension fraud occurs elsewhere as in the Folconpuertos scandal (*Portafolio*, 2003a; *El Tiempo*, 2004). Other public utilities unions have experienced similar repression when they resist privatisation, as with the telecommunications workers union SINTRATELEFONOS and the electricity workers union SINTRAELECOL (Interview SINTRATELEFONOS Leader; Interview Group of CUT Unions and NGOs). In these respects it is therefore valid to generalise from the SINTRAEMCALI case although, as already commented, there are special circumstances in the case concerning the union's advanced capacity in implementing an alliance with the community.

Theoretical Observations

State Dualities and Dualities within the State

Santos (2001) analyses the duality of the state and its chameleon like character when dealing with "civilised zones" and "savage zones" of Colombia's acute social *apartheid*. These observations concern the state's juridical and repressive arms. But here we are discussing a branch of the state carrying out social functions. By the nature of its services the utility corporation and its workers may enter all zones. The workers providing domestic utilities and their relation with the "savage" zones may be much less distant and antagonistic to the local community than the police entering those same areas. In this respect at least, the state is not

a unified entity, rather there is differentiation and even conflict within it. The duality within the state comes to the fore in this case study.

Turning rent-seeking wisdom on its head

The case study shows that concern to stop corruption need *not* by definition be subsumed under the driver of privatisation. On the contrary, in this example anti-corruption was used as a major means to defend state sector provision of public services. Unionised state sector workers have been treated as another ‘rent-seeking’ special interest group, seeking to defend privilege. But the case study turns this conventional wisdom on its head. The corrupt want to privatise as a means of continuing their privileges, while the union encourages vigilance against corruption because it robs public funds, and undermines its vision of co-operation with the community.

The case study also challenges assumptions about monopoly. What is the character of the monopoly that induces corruption? It is not monopoly as a service provider – but the monopoly of management control over the service. We have found that corruption as an informal system of the local politically dominant class. The problem is monopoly of political power rather institutional monopoly.

The IMF/World Bank ‘rent-seeking’ view of corruption is concerned with removing barriers to the penetration of international capital, so that finance may lay hold of the apparatus and infrastructure that others had controlled (and milked through corrupt means). The means for this are not public mobilisation against corruption but pressure on the elite. So there is anti-corruption from above and anti-corruption from below. But the World Bank needs a domestic base to maintain social control and implement its programme; this determines the form and sets a limit on the thoroughness of the World Bank's anti-corruption drive.

Can two bads make a good? Beyond the social capital thesis

The necessity to invoke perverse or bad social capital to explain a range of (what the ascribing author considers to be) harmful phenomena is the *reducto ad absurdum* of the entire social capital thesis.

SINTRAEMCALI has demonstrated enormous resourcefulness and extensive networking capacity, these could be considered illustrative of ‘bonding social capital’ and ‘bridging social

capital' respectively. Its antagonistic attitude to the privatisation project would be considered an example of 'bad' social capital. At the same time the local elite's milking of EMCALI illustrates another example of informal connections being used to perverse ends. In these terms the anti-corruption fight was a clash between two bad social capitals. This illustrates a deep flaw in the social capital thesis, the vacuous and moralistic labeling of 'good' and 'bad' social capitals. The designation seems class based or politically determined, and recalls all the problematic features of labeling deviancy, with the addition of a spurious patina of considered social scientific authority.

Let us turn to consideration of the possibility of social capital being shaped for an emancipatory project. The emancipation seems to have been given a non-socialist character in advance by Schuurman, who tells the reader (four times) that socialism is dead. One has to question whether emancipatory social capital is being suggested as an acceptable alternative to unacceptable socialism. A basic problem here is sharing the assumption that social attributes have to be *capital* to be of any worth. Capital is a social power that augments itself, feeding on its own investment. This notion can be treated as mere tautology, except that closer inspection reveals that capital feeds off the labour of others. The working class, at least the one under discussion, does not have any capital, therefore by definition under these terms it cannot be of any worth. Social capital is a loaded concept, with built in success for some and failure conditions for others - which takes us back to the inevitable asymmetry between good and bad social capital. Indeed, there is a confusion of capital with class here. Recalling Dieterich's suggestion that corruption and disappearances occupy a similar space as informal systems of privilege, one could likewise consider parallels in the struggles against disappearances and corruption. In Latin America and elsewhere it is the victims' families who have led the campaign against disappearances. An historic memory has been consciously recovered, with national variations, but also as a continental movement. Why not a historic memory of struggles against corruption, as part of a collective class-consciousness fighting privatisation?

Just as poor remakes of old film classics reveal a hidden benefit, at least they can be thanked for leading the viewer back to the original, so we can say of the 'bad social capital' thesis. The acquired social capital needed to participate in corruption is reminiscent of the differential association learning of white-collar crime as in Sutherland. And is it not part of the class formation of a 'lumpen-bourgeoisie'? If so, then as the forms of dependency evolve so will the forms of corruption that need to be learnt as hidden class practices.

There is an interesting coincidence in the terminology for the board of creditors in the case study, the Social Capitalisation Fund. Here again the working class, whether as producer or consumer of public services, is allowed a presence, but one which is subordinate and marginal by design. Social Capitalisation is socialised capital, that is capital acting as the public decision making power on behalf of society. And not just any capital, but finance – the multinational beneficiaries of one-sided contracts, internal and external bankers. The Social Capitalisation Fund is a retrospective legitimisation of the previous corruption, if not the individuals then its product as an informal system that ended up handing formal control of public service to private interests.

If one were to generalise the proposition, it is that social movements are seeking emancipation *from* socialised capital, not with social capital.

Impunity and Active Citizenship – the limits of the principal-agent-client model

At first sight the case conforms to the principal-agent-client model. We have identified conditions of mutual interest in the privatisation project leading to a degree of collusion between principal (as in national government) and agent (as in local *politiquería*). But there is instability in the role of principal, between local elite, national government, national control authorities and so on. There are similar issues with the agent and client roles. As agents, the senior EMCALI managers were very close indeed to their political masters, who are both principals and clients. These are not however objections in principal to the model.

The real objection is the mixing up of this model with identifying the forces against corruption. Minimally, a distinction can be drawn between a corruption model and an anti-corruption model. A recurring theme in the reform literature on corruption is the gap between good intentions and deeds. This is seen as an *implementation* problem. But the issue goes deeper, especially in a country like Colombia. What if the principal, agent and client all collude and mutually support each other in a system of impunity? To end corruption requires either the system to breakdown or a challenge from without. Transparency International's solution to this problem is to promote 'active citizenship', and quotes Juan Tokatlian,

“Besides a consistent state policy to fight corruption it also takes strong civic involvement, to control, curb and warn against corruption before it takes place. Without active citizenship, corruption will be even more widespread.” (cited in Luzzani, 2002: 182)

Active citizenship nonetheless plays a supplementary role, a walk-on part that is not built into the model. Whereas in the case study, the *main* anti-corruption force has been an alliance of state sector workers and active citizens.

The Commodification of rights

In the normative sense, access to domestic utility services is considered a human right. Certainly access to the consumption of drinking water. So too is the complement, access to drains and sewerage, as becomes obvious on wet Andean mountainsides where poor dwellings are permanently endangered by mudslides. We have seen that the Colombian Constitution provides for a state of social right and that, as a consequence, the state regulates a progressive pricing policy. But even with this formal state protection, the most marginalised in society do not have their rights to water respected. A significant proportion cannot afford electricity even at subsidised prices.

The situation becomes qualitatively worse once privatisation threatens. The Inter-American Development Bank (IDB) said that EMCALI must be privatised at the very point when honest managers of the corporation were pointing out that current income was covering current costs (Edwards, 2003: 39). The commodification of rights is both a consequence and cause of corruption.

The latent role of the public sector technocracy

One cannot say that the role of the bureaucracy is ambiguous. For years senior managers in EMCALI colluded in corruption, and were in favour of privatisation. And yet there was another section or element of public service managers and officials, the technocracy for want of a better term, who believe in public service principles and reject corrupt use of public funds. One could describe this as a latent force which SINTRAEMCALI's policy of mobilisation helped bring into active play. The senior management of EMCALI who took over after the corrupt managers were removed explained their philosophy before introducing the plan to save the corporation. They explained that while in the neo-liberal doctrine capital and labour are in competition, with capital trying to use labour to create profit, the relationship within EMCALI is different. The 'public capital' of EMCALI is used to complement the efforts of labour within a common mission to provide public services. The directors are opposed to privatisation, because they believe that public capital and labour need to be applied together for the benefit of the whole community, not to any particular interests

(Interview EMCALI Managers). The union SINTRAEMCALI continues to argue for appointment of middle and senior managers in EMCALI by merit (SINTRAEMCALI, 2003c).

If the bureaucracy has a double role, to implement the official rules *and* the unofficial demands for privilege of the dominant class, only exceptionally will officials break with this dual system. These exceptions are all the more important, as they provide a channel of information to the real workings of the system.

Contesting the Modernisers' Corruption Theory

In the case study concerned with privatisation, corruption had saddled EMCALI with a crippling debt, but in investigating the inter-relation between corruption and indebtedness we need to analyse which is cause and which is effect.

According to the modernisation paradigm corruption is an *obstacle* to incoming investment from the multinationals. According to the dependency paradigm, the most dangerous aspect of corruption is that it *lets in* the multinationals on advantageous terms, allowing them to take over a country and its resources. What are the roots of corruption according to these competing conceptions? For Rose –Ackerman the fundamental motivator is self-interest:

“Critics call it greed. Economists call it utility maximization. Whatever the label, societies differ in the way they channel self-interest. Endemic corruption suggest a pervasive failure to tap self-interest for productive purposes” (1999: 3).

The best to be hoped for are institutions that can only channel the pre-given self-interest. But this approach is reductive and individualistic, and fails to capture the sociological relations of class and power that overdetermine any individual predilections. In the case study example two social groupings engaged in a fight over the future of the same corporation but acting in very different ways, the one avaricious, the other public spirited. This difference cannot be reduced down to individuals but concerns the social formation of the groupings.

The basis of a more consciously sociological concept of corruption is given as “a perversion of power” (Brasz, 1970 [1963]: 41). Let us fuse this with Dieterich’s analysis, and formulate corruption as “an informal system perverting state power to private advantage”. By informal we mean indefensible, illegal, secret. But informality in all these respects is contingent. On so

many occasions a blind eye is turned and impunity is the norm. Such a definition is not specific enough however. On this definition corruption would be no different to, say, informally practiced extra-judicial killings or other repressive actions. Corruption refers to the powers or capacities of those in the formal bureaucratic apparatus, rather than (e.g.) the military. Corruption is an informal system misusing the state's executive power or bureaucratic apparatus to private *economic* advantage.

Why are punishments for corruption so light? The easiest explanation is that the perpetrators and the judges come from the same class - they are, after all, 'one of us', as per Sutherland's wider comment on the attributes of white-collar crime. This seems inadequate. For the sake of the legitimacy of the system, corrupt behaviour cannot be legally sanctioned in a democracy, and yet the possibility of such behaviour needs to be kept around, on standby for such times as may be useful. Hence punishment is meant to neither deter the practice, nor to rehabilitate the offender. Rather it is an inducement to potential corrupt actors to learn better how to avoid being caught.

Consider this discussion in relation to the overall thesis attempting to construct a theory of crimes of the powerful in the dependency paradigm. Corruption's place and definition in the modernisation paradigm, has itself evolved. Since (Kreuger, 1974) rent-seeking theory is the basis of the economic *neo-liberal* theory of corruption. Corruption as part of import-substituting state needs to be swept aside as a barrier to trade and investment. In the late 1990s social capital was taken up as part of the post-Washington consensus to get the institutions right, neo-liberalism in a velvet glove. Once multinational capital moves in and takes a hold, another face is appearing. Moving in the early years of the twenty first century to the neo-conservative phase, which is ever more frank about the use of state power, we can expect both the tolerance of corruption and its theoretical contours to shift towards a more permissive stance.

What would be the constituents of a theory of corruption in the dependency paradigm? First of all that corruption is not simply an inherited attribute of traditional society, but is related to contemporaneously acting forces of underdevelopment; secondly corruption is an expression of dependency; and thirdly that it is in some way functional to capital reproduction, and to social control of the subordinate classes.

To satisfy these requirements one would expect corruption to change its form in relation to the form of underdevelopment. This is illustrated in Colombia's case, where the hybrid manifestations of corruption express the country's hybrid forms of underdevelopment (part

latifundista, part semi-industrialised and both coming under the domination of finance capital). Corruption as a product of underdevelopment can accept deficit causation - e.g. the relative poverty of public officials for administrative corruption, state services less than demand (Ulloa, 1997: 85) -and especially sees inequality as a stimulus to corruption.

As regards dependency, the local ruling class will only get away with corruption in so far as this is subservient, acceptable to and serves (or at least is not against) the interests of multinational capital. Corrupt practices do not only occur in Third World, dependent nations. As Ruggiero (2000) points out in his comparative study of three Western European states - Italy, France and the UK - each country finds its own nationally characteristic forms of corruption. Nor can it be assumed that all forms of corruption are the same in all Third World countries without, again, considering the national specifics. There is, nonetheless, an important path to explore. To what extent are the corrupt practices revealed in this case study common to Third World countries, and in some way constitutive of their dependent condition? In this regard it is worth highlighting two elements in the case study that are generalised.

The nefarious Power Purchase Agreements (PPAs) can be found operating on private supply projects in at least eleven Third World countries, in Africa, Asia and Latin America. The multinationals involved come from rich First World countries (US, France, Norway, United Kingdom, Japan, Germany and Switzerland) whose states in many cases sponsor the projects through export guarantee funding (Bosshard, 2002). Perhaps the most notorious case is Enron's Dabhol power plant in Maharashtra, India, which threatened to send the state government into bankruptcy (ibid.: 13; Prashad, 2002: 100-105). Bosshard comments that the common features of PPAs include lack of competitive bidding, lack of rational planning, cronyism and corruption, the risk of insufficient demand, high exchange rate risks, high cost of private power and cronyism and corruption (2002: 9).

The PPA practice is so widespread that there must have been some process whereby power supply multinationals within the pro-privatisation business community learnt how to set up such one sided deals. A corruption inducing commercial practice has been diffused internationally, independent of national characteristics. One could call this the globalisation of white-collar crime, except with the proviso, as we have noted, that the principal beneficiaries are (First World) multinationals, whereas the victims are the public in Third World countries, and the agents are those officials induced to agree the PPAs. Here we have a strong example of the functionality of corruption for economic profitability, and hence the clear rationale to the private corporation of pursuing such a policy, despite harmful consequences to the public.

Is there a further demand side aspect to this beyond the corruption of decision making officials? It is almost more shocking to consider that the officials could have signed *without* any corrupt exchange taking place. It may well be that the original attraction of a private international supplier is connected with the technological prowess of the corporation. Lack of industrial technical capacity (apparent or real) weakens the local state authority in its negotiations. In other words there is a suggestion of a relationship between technical incapacity and proneness to corruption that would require further research to explore. Nonetheless, this aspect of the case study, reinforced by evidence from similar international experiences, prompts a serious reflection on the 'lumpenbourgeoisie' thesis. The thesis should be interpreted by the historically constituted conditions of its environment of dependency on the one hand, and domination on the other. It may also be that the PPAs and other such one sided agreements induce particularly *entreguista* or 'comprador' forms of corruption, encouraging a 'lumpenbourgeoisie' faction or tendency that allies with the multinationals to sacrifice national private production as well as the public interest.

The second element that deserves closer consideration because of its general implications is the role of the international financial institutions, that is, the World Bank and the Inter-American Development Bank (IDB). Is corruption functional to multinational capital? Neo-conservatism accepts some forms of administrative corruption as part of the necessary costs, the *faux frais*, of a domestic support alliance. It is primarily interested in state capture, in the sense the overall shaping of national policies in the multinationals' interests.

Privatisation and the threat of popular democracy

The fight against corruption is also a fight for democratisation. There are *two* discourses in this respect. In the Colombian context the reforming conception of the active citizen is to invigilate the state of social right in which the state is the guarantor of domestic services, whether they be sourced from state or private corporations (Ulloa, 1997: 56-59). The EMCALI anti-privatisation struggle revealed another, more participatory conception. Primarily because it created a more direct social contract between service providers and consumers, requiring trust and accountability on both sides; a social contract that does not require the mediating intervention of the official state apparatus. The superstructure of the official system was being by-passed, the more its intermediation had become corrupt and dysfunctional to service delivery, i.e. the more parasitic it became.

Is it an example too far? SINTRAEMCALI's network of relations with other social movements has started to create counter hegemony to the power of the local state. Its partial victories have been at great cost and in any case a part of an ongoing social class struggle.

The neo-liberal agenda is to strip the state of public services, while retaining its coercive power. The converse option, to strip the state of its coercive power while retaining its public services is more rarely posited. This fight to keeping the public sector, and to keep it clean of corruption, is an ethical class struggle, an advanced process that has pushed the envelope of possibilities to the limit. It is an example of the potential of popular democracy as an emancipatory project. A popular democratic alliance to get rid of corruption is an alliance for social justice without declaring either for or against socialism. An alliance in which, contrary to the active citizenry model, the social movement is central rather than peripheral.

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