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From Petty Corruption to Criminal State: A Critique
of the Corruption Perceptions Index as Applied
to the Post-Communist Region

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Abstract

Offering a decent database easily applicable to cross-country comparison, Transparency International's Corruption Perceptions Index (CPI) has been widely used as a variable for showing the level of corruption. However, surveys of its sources are based on presumptions which mainly apply to bottom-up forms of corruption, namely free market corruption and bottom-up state capture, and therefore it is insufficient for assessing the state of a country plagued by top-down types of the former. We provide an analytical framework that distinguishes four levels of corruption and draws on the experience of the post-communist region. Using this framework to analyze the CPI's survey questions, we explain why the index provides a blurred picture of the region. 'Big data' evidence for top-down corruption in Hungary is also presented, signifying the need for a more refined index.

Keywords: corruption, state capture, criminal state, CPI, Hungary.

Should one want to study the variety of corrupt practices, few regions can offer examples as amply as the post-communist one. Indeed, these more than two dozen countries, from Eastern Europe to East Asia, provide particularly fertile ground for corruption due to their difficult past. Communist regimes that rose to power in 1917 and after 1945 halted – and, where it had begun or been developed, reversed – a process which could have resulted in an essential feature of Western societies: *the separation of the three types of social action*. *Political action*, ‘embedded in a state structure and [...] legitimate authority [as well as] rule-bound power for giving orders and extracting resources’; *market action*, ‘recognized by the contract-based pursuit of acquisitive interests within the framework of legal rules that specify’; and *communal action*, ‘defined by a sense of reciprocal obligation among persons who share significant markers of identity and cultural belonging [such as] family, religious group, locality, and so on’ – these types, delineated by Offe (2004) and having become separated in a long evolutive process in the West, were united in a single neo-archaic form by communist regimes that abolished private property, the private sphere, and autonomous communities. And, where the separation of social activities is rudimentary, one typically sees, instead of formalized, impersonal networks, informal and personal relations coming to dominate (Ledeneva, 2018; Zhu, 2018).

Informality being a norm does not simply imply endemic corruption vis-à-vis the situation in the more or less democratic states which have been developed since the regime change. It means we have to rethink a basic presumption of corruption research: that corruption is to be understood as a form of *deviance* which governments and formal institutions attempt to eliminate in pursuit of effective and more rational governmentality (Baumann, 2017; Fougner, 2008) – for the former implicitly assumes the supremacy of the formal over the informal; that is, that public officials act and think *primarily* in accordance with their legal position and illegal ‘abuses of power’ happen only *secondarily*. In an environment of informality, the situation can be reversed: primarily informal networks can take over formal institutions and operate them as façades for power and wealth accumulation (Baez-Camargo and Ledeneva, 2017; Hale, 2015; Jancsics, 2017). This way, corruption may become not a deviance but a *constituting element* of a particular system (Magyar, 2016).

This whole new level of corruption surpasses both free market (everyday or petty) corruption and state capture, for *it conforms to a top-down, rather than a bottom-up, fashion*. No wonder global corruption indicators like Transparency International’s (TI) highly popular Corruption Perceptions Index (CPI) are unable to assess it. The CPI is a good example of a corruption index, which we chose to evaluate especially because it is a composite index that aggregates data from several other indexes, all of which dominantly assume the principle of corruption-as-deviance. This can be seen, as we will show, from their survey questions. The former usually refer to either *corruption in general*, which blurs everything from occasional bottom-up to systemic top-down cases, or *corruption in the form of private bribes*, which appear only with bottom-up corruption. Consequently, while the CPI is an extraordinarily important tool and has been of good use to scholars and decision makers, it inaccurately measures the situation in countries where corruption has developed to higher levels than the authors of the survey questions presume.

Our main research aim is to point out the weaknesses of the CPI and of the Western mainstream corruption research it represents.¹ Accordingly, we first review the CPI and the related literature, after which we present our own typology of corruption, developed with the help of a new analytical framework. This is used to point out the structural differences between (1) the bottom-up phenomena TI regards as corruption, and (2) top-down corruption patterns. Big data evidence for a top-down pattern, namely the existence of a criminal state, is presented for the case of Hungary. Finally, the paper concludes by making a couple of suggestions for future corruption research.

We should introduce two caveats before we begin. First, what we present for post-communism in general and Hungary in particular is a objective sociological description. It intends to make no ethical judgment, and we presume that some governments are actually led by informal, private interests, not some peculiar vision of the public good, because this perspective has greater explanatory power (that is, it enables us to create models which can explain more of the known phenomena than some vague rationale for the former such as ‘building a national bourgeoisie’).² Second, we do not expect the CPI to present a detailed sociological account in a single variable. Rather, we believe that the scholars who develop the CPI should pay attention to higher level forms of corruption too, to improve the validity of both its ratings and relative country rankings.

1. Transparency and corruption: The hidden presumptions of the CPI

The CPI measures not corruption itself but the *perception* of corruption; that is, whether survey respondents believe that the corrupt phenomena they are asked about are prevalent in their country. However, to construct such a survey, one must first define corruption to know what phenomena one should ask about. Transparency International³ starts from the following general definition of corruption: ‘the abuse of entrusted power for private gain’ involving ‘public officials, civil servants or politicians’ (TI, 2012). More specifically, TI (2018a) lists the phenomena the CPI attempts to capture. These may be divided into three groups. First, there are *general instances* of corruption where it is not specified who initiates the abuse or whose private gain is served. These include ‘diversion of public funds,’ and ‘prevalence of officials using public office for private gain.’ Second, there are *specific instances* like ‘bribery,’ ‘meritocratic versus nepotistic appointments in the civil service’ and ‘state capture by narrow vested interests.’ Finally, the largest group of features the CPI focuses on is *institutional guarantees*: ‘ability of governments to contain corruption,’ ‘adequate laws

¹ For a mainstream typology of corruption, see Vargas-Hernández (2010).

² While lecturing, we have been criticized by TI’s scholars on the basis that we should not claim that the Hungarian government aims primarily at power and wealth accumulation because the prime minister has provided loftier explanations, including the one we quote here (and which we rule out in favor of stronger models). Yet we do not deny the importance of ideology in *political communication*; that is, in winning over the support of people for such schemes.

³ Indeed, TI is a very decentralized organization and there are many different views among TI’s researchers and organizations in each of its countries of operation. When we talk about ‘TI’ in the paper, we refer to that part of Transparency’s research team which develops and publishes the CPI.

on financial disclosure,' 'legal protection for whistleblowers [and] journalists,' or 'access of civil society to information on public affairs.'

What these three categories have in common is the above-mentioned presumption of corruption as a form of deviance. The approach understands the state by its formal identity: as dominantly an institution for the public good, with some subordinates who deviate from that goal and abuse their position by requesting or accepting bribes and appoint cronies without a legitimate basis. Accordingly, private influence over the content of laws and rules, which is 'state capture,' and influence over their implementation, which is 'administrative corruption,' are the two forms of abuse considered therein (Knack 2007: 2). Also, the questions in the third category imply that the state actually wants to persecute corruption – only it may not have the 'ability' to do so, or it lacks the formal rules which otherwise would overrule informal impacts in general.

It is in accordance with this view that TI makes recommendations for countries, suggesting that formal rules should be tightened for public officials and loosened for civil society (TI, 2018d).⁴ Besides focusing on what is formal, it is also typical that these recommendations are directed toward the government. By all means, the idea is less that politicians will take on the recommendations as a form of help in fighting corruption, but it is rather believed they will need to implement them because, if they do not, international actors, countries and global investors will not cooperate with the regime in question (Davis, Kingsbury and Merry, 2012; Fougner, 2008; Hansen, 2012; Löwenheim, 2008). Indeed, the CPI has been a major force for putting corruption on the political agenda, and international actors do take it seriously and anti-corruption measures have been implemented in several countries since TI started to raise its voice (Andersson and Heywood, 2009; TI, 2018c). Yet, whether the recommended changes in formal rules are efficient depends on, first, whether the law indeed has supremacy and, second, whether the recommendations tackle the forms of corruption actually prevailing in the given country. It should also be mentioned that there have been countermeasures against TI as well: in certain places, like Putin's Russia and Orbán's Hungary in the post-communist region, the NGO was identified as a foreign agent and its activity has been openly dismissed by the government as interfering with national sovereignty (Novak, 2017; TI, 2013).

Despite clarity about how TI views the relationship between corruption and the state, it is dubious whether the CPI actually measures factors according to those presumptions. There are two reasons for such skepticism. First, there is no obvious consistency between the definitions of corruption used by the CPI's sources (Andersson and Heywood, 2009: 753–754). Although some of them make it rather clear what experts should assess when they are asked about corruption, many contain only one or two questions about the subject and use more vague or unclear wording. One can argue that this is actually useful since respondents can thereby include in their general assessment a variety of local corrupt practices that TI does not explicitly consider (Ledeneva, Bratu and Köker, 2017: 4). Indeed, the approach is likely to contribute to the plausibility of the suggestive picture the CPI offers about the overall

⁴ Indeed, as a reviewer pointed out, TI also gives suggestions to private actors such as NGOs and journalists. Yet we focus on TI's notion of formality in general and of the state in particular.

corruption level of the target under investigation. But, at the same time, the lack of consistency introduces uncertainty into the CPI's results.

The second reason why the CPI might not be commensurate with TI's intentions relates to the methodology it applies for addressing perceptions. One popular claim has been that the CPI indeed inaccurately measures corruption because, instead of using hard data about actual *cases of corruption*, it relies on *perceptions of corruption*, which depend on the subjective views and knowledge of respondents (Andersson and Heywood, 2009: 752–753; Campbell, 2013; Charron, 2016; Kenny, 2006; Lambsdorff, 2006; Olken, 2006). However, TI (2012) is right to argue that official sources about reported bribes or the number of prosecutions implemented cannot say anything about *successful instances* of corruption (that is, cases when law enforcement did not react). Alternatively, the CPI could also build on case studies and legal analyses of institutions. Although there is utility in such models composed of a mosaic of such pieces of research, country experts as well as businessmen who are in a position to notice corruption should have sufficient knowledge about their countries, so surveying them should give a more realistic picture about the corruption level than hard data (cf. Hamilton and Hammer, 2018). Still, it is important to keep in mind the limitations posed by the survey method; namely, that what we want to ask in the surveys and from whom depends on our sociological understanding of corruption.

2. Corruption in post-communist countries: An analytical framework

When assessing the status of corruption in the post-communist region, it can be highly beneficial to break with the underlying presumptions of the CPI. The most misleading of all these is the *a priori* treatment of formal institutions as the norm. It should neither be thought that the state is necessarily a victim of corruption, nor that informal influence over formal institutions is only occasional and/or linked to the action of particular individuals or groups within the state. Indeed, as we shall show in the fourth part of this paper, none of these presumptions hold in the case of Hungary, which indicates they should not be taken for granted.

To create an analytical framework which can be used as basis for cross-country comparison in general and the CPI in particular, we must keep in mind the global range of this index. For even if it is created for the proper analysis of post-communist regimes, the framework must be able to encompass corruption in Western countries as well. Such a wide scope is essential also for clarifying the differences between Western types of corruption, which the CPI generally measures, and the types of corruption which are more common in the post-communist region.

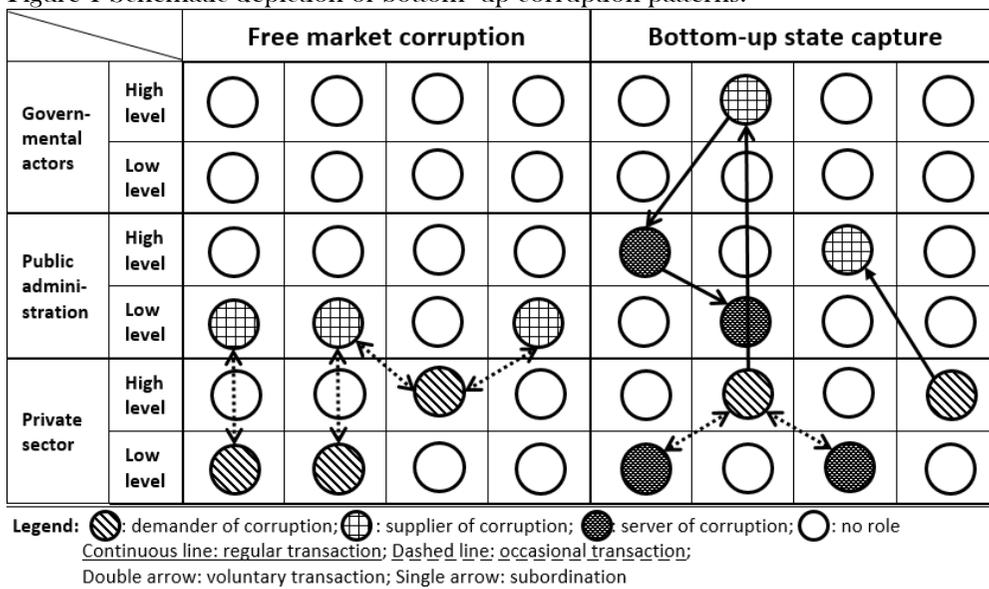
An analytical framework must conceptually delimit the range of phenomena it aims at capturing. For this purpose, we need not change TI's well-established definition of corrupt practices (that is, 'the abuse of entrusted power for private gain.') This means we are solely interested in how the public sector, i.e. political power, is used to attain illegitimate gains. The inclusion of purely private phenomena, as some have suggested (Hough, 2016), is logically possible but unnecessary in the post-communist region, where the rudimentary separation of the spheres of social action has resulted in a high number of government-enmeshed private sectors by Western standards (Karklins, 2005; Lane, 2007).

Next, we need to undertake *sociological disaggregation* of the general definition to isolate its structural elements, which can then be used as the dimensions of the analytical framework. As corruption is, above all, a form of action and cooperation between people, the structural elements can be found by focusing on, first, *the actors* who take part in corruption and, second, the *type of connections* between these actors.

As for the former, we may differentiate three general levels of actors: *private sector-*, *public administration-*, and *governmental actors*. The latter two levels are both part of the public sector, yet their differentiation is crucial. Public administration (bureaucracy) only implements the law, enforces it, and takes part in the regular operation of state institutions, whereas governmental actors make the law and regulate public administration. All three general levels can be further disaggregated into sublevels but here the only distinction we shall make is between *low- and high-level* actors. In the private sector, low level means the ordinary citizen, or small- and medium-sized enterprises, while high level means major entrepreneurs. (If a major entrepreneur routinely colludes with governmental actors, they may also be called an *oligarch*, cf. Magyar, 2016: 75-77.) In public administration, we define low-level actors as administrators whose task is to be in direct, day-to-day contact with private citizens. High-level actors are the bosses of these administrators; i.e., the heads of governmental departments or leaders of state enterprises who regularly remain in the background from the citizens' point of view. Finally, among governmental actors low level refers to regular members of the legislation or the regulatory bodies of local governments who are not part of the executive branch. The executive, in turn, includes the high-level actors of national or local government, like mayors, the prime minister, or the head of state. (Governmental actors include elected officials or people appointed by them, such as non-partisan ministers or under-secretaries.)

Turning to *the types of connections* between these actors, there are three dimensions by which we can classify the former. First, *the actor's role* in corruption: they can be the *demandeur*, who initiates the corrupt transaction; the *supplier*, who abuses their public position; or the *server*, who is a subordinate with the task of carrying out or facilitating the corrupt transaction (cf. Gambetta, 2002). The second dimension is the *regularity* of connection; that is, whether such transactions between certain actors are made routinely or only occasionally. Finally, every connection between people is either voluntary, between equal parties, or takes the form of subordination, where the will of one party dominates that of the other in the transaction.

Figure 1 Schematic depiction of bottom-up corruption patterns.



Having defined both the actors and the types of connections between them, we can draw up the analytical framework. In Figure 1, the set of circles represent the actors in an ideal-type regime and, with shading and arrows, we have attempted to capture two ideal-type *corruption patterns* – that is, identify which actors from which level have what connection to each other. These schematic depictions should not be understood in an exclusive manner (for instance, by imagining that free market corruption must involve an elite private actor who is connected to two non-elite public administrators; the case that is depicted). Rather, the relationships are to be seen as *examples* of corruption patterns that demonstrate the associated typical structure and forms of transactions.

While it is logically possible to delineate a high number of different corruption patterns in our analytical framework, here we define only four. These are the most prevalent types in, first, TI’s Western-based understanding of corruption and, second, the countries of the post-communist region.⁵ The first pattern we depict is *free market corruption*, which is the form TI is mostly concerned with. Here, private interests hold illegitimate sway in state and local government decisions concerning the allocation of resources, procurements, concessions, and entitlements. As a result, illegal barter deals are concluded between discrete private actors and members of public administration at various levels of seniority. Free market corruption consists of a series of individual phenomenon: an official responsible for a decision accepts or requests financial or other benefits for handling a case in a manner advantageous to the private actor. A regime may be considered *corrupt* if there is a high occurrence of such incidents or if civil administrative or business matters can only be managed through *bribes*. However, it must be noted that these actions classified under the

⁵ In our forthcoming book on post-communist regimes, six forms are differentiated, two of which are now excluded for the sake of brevity.

pattern of free market corruption are *occasional*; that is, happen case-by-case when one decides to take part in a corrupt transaction, and are not organized as a group function on either side. Also, instances of free market corruption are *voluntary* on both sides of the deal. From this perspective it is indifferent whether bribes are requested by members of the public administration or the latter are simply willing to accept them. The *corrupt service* is supplied by members of the public administration who abuse their position, whereas the private actors who accept it have a demand for such transactions. Both parties are free to reject the offer of a corrupt service, although an honest private actor may find themselves in a disadvantaged position vis-à-vis corrupt private actors if they do so.

The term ‘free market’ as specified in the name for this pattern refers to the fact, first, that it contains voluntary transactions and, second, that it is also *competitive*. As for the latter, where both corrupt supply and demand are widespread, private actors can compete in terms of the size of bribe they offer, and public actors in the amount they ask for (Diaby and Sylwester, 2015). In more monopolistic examples, like that of a public procurement tender, only private actors can compete and the public actor can reap higher rents. Naturally, the illegal nature of such transactions constitutes a structural gap between corrupt supply and demand which often necessitates the existence of a so-called *corruption broker*, who makes a functioning corruption market possible (Jancsics, 2015).

Bottom-up state capture means what TI as well as corruption literature simply refer to as ‘state capture’ (Hellman, Jones and Kaufmann, 2003). In this case, corruption vertically reaches the higher layers of the public sector, namely governmental actors, and begins to show signs of a regular nature. The collusion of actors becomes more complex, not only on the side of the corruption supply but also on the side of corruption demand, given that the partners in corruption from the private sector are in many cases oligarchs or criminals from the organized underworld. We need to distinguish between these two groups: while criminal organizations carry out illegal ‘economic’ activities supported by illegitimate access, oligarchs, on the contrary, are usually engaged in lawful economic activities, but mostly with illegitimate access.

In spite of its regular nature, bottom-up state capture can be rightfully diagnosed when only some segments of public authority are captured, not the governmental structure *in its entirety*. Also, at this level, *political competition* may still continue. The transfer of political power is still possible under constitutional circumstances, and oligarchs still maintain their relative autonomy as they are not irrevocably tied to specific political actors. In fact, the relationship between these two actors can be described as one of *subordination* (Figure 1) for the will of the oligarch overrules that of the politician who becomes dependent on their financier – hence they are captured.⁶

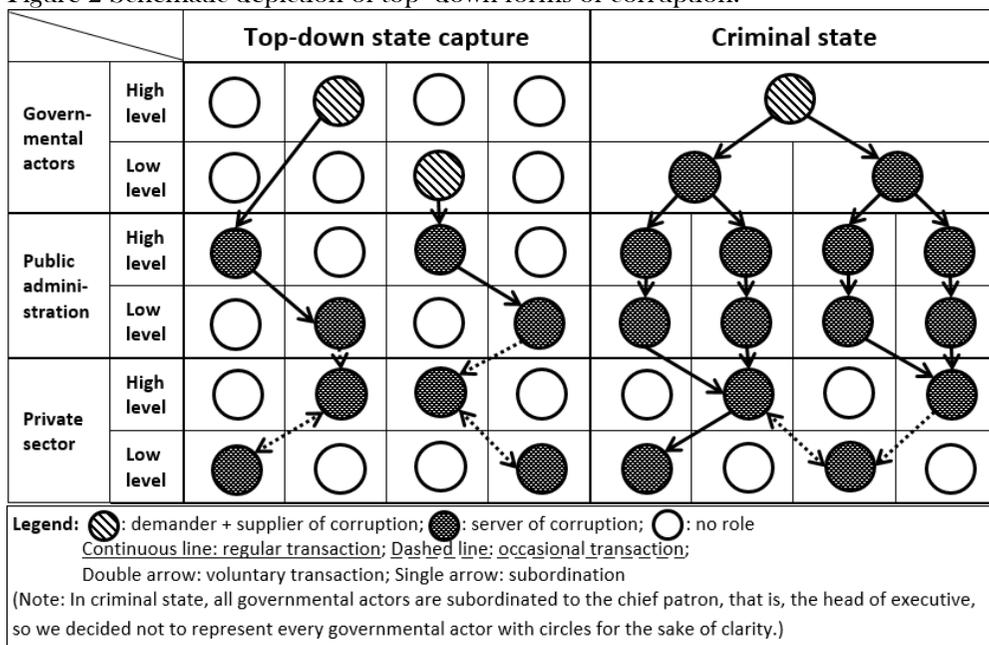
During bottom-up state capture, *servers* of the corrupt transaction enter at both the private and the public administration level. As for the former, servers are subcontractors or suppliers of the oligarch who enter into occasional and voluntary business relations with the latter (and are beneficiaries of the oligarch’s illegitimate

⁶ For more on such dependence using the example of the anomalies of party financing in Hungary, see Magyar (2016: 6–10).

market position). People in public administrations are in a subordinate position to governmental actors for they are state employees and can be removed if they fail to comply with the formal rules (laws) or the informal commands of politicians.

Both free market corruption and bottom-up state capture contain bottom-up forms of corruption. In such cases, the demander of the corrupt service is situated in the private sector whereas the supplier is either in government or the public administration. In turn, we now depict two top-down forms of corruption in Figure 2; namely *top-down state capture*, and the *criminal state*. In these forms, the roles of supplier and demander are merged: it is the governmental actor who abuses their office and this is done for their own gain. Other beneficiaries, namely those in friendly or (quasi) kinship relation with the actor, are sometimes dubbed ‘cronies,’ the relationship constituting so-called ‘crony capitalism’ (Djankov, 2015; Sharafutdinova, 2010; CRCB, 2016b). TI itself used this latter term for Viktor Orbán’s Hungary in the 2016 CPI report (TI, 2017). However, in the post-communist region, such corrupt relationships are not voluntary and without subordinate relations, as the term ‘crony’ (‘friend’ or ‘pal’) would typically imply. Instead, these informal ties of relationship tend to be organized into patron-client patterns of subservience; that is, *patronal networks* (Eisenstadt and Roniger, 1980; Hale, 2015). As opposed to traditional networks of *patronage* where actors, in spite of their great disparity in wealth, are engaged in a fundamentally voluntary and mutually beneficial relationship with each other (Boissevain, 1966), in patronal politics the governmental actor is dominant and subordinates actors on the levels below them creating *informal networks* which take over formal institutions and use them as façades.

Figure 2 Schematic depiction of top-down forms of corruption.



In the case of *top-down state capture*, patronal subordination extends mainly to people in the public administration. Similarly to bottom-up state capture, this form is also partial: one ministry or a subdivision of a local government is turned into a racket by its leader who, as a patron, fills up the hierarchy of his domain with his clients. This process may be called *patronalization*, which leads to the captured part of *the state apparatus beginning to be operated by the informal network* which systemically operates through informal rules instead of formal ones. Also, the top-down nature changes the medium of corrupt exchange: while in the case of bribery we can speak of *kickback money* offered by a private actor to a public one to abuse their position, now we can speak of *protection money* requested from the subordinated servers of the patronal network.

Still, top-down state capture faces several limitations due to the fact that the patron does not possess the monopoly of political power (Wedeman, 2018). The ability of the former to use the government is limited: they rule over only a certain part of the state and cannot patronalize other parts. First, this makes linked corruption activity, in which the cooperation of several state institutions would be necessary, less attainable. Second, the patron's position is dependent on political events. An opposition victory can easily remove them, making it practically impossible to further sustain their patronal network. This is particularly true in post-communist countries where competition between political parties is indeed often a façade for competition between patronal networks (Hale, 2015: 66-76). Finally, the lack of a power monopoly means that the patron can hardly disable institutional checks. Constitutional limits on power concentration as well as effective law enforcement have the ability to contain informal networks and prevent the patron from yielding exclusive political power and making the entire state their private domain (Hale, 2011; Zhu, 2017, 36-39).

The final type of corruption we identify is the *criminal state*. Our terminology is similar to that of Friedrich's (2009), although he narrows the meaning of 'criminal state' to states which commit crimes against humanity. In contrast, we call a state criminal if it features a pattern of top-down corruption based on, first, informality and patron-client relations, just like top-down corruption and, second, the possession of unconstrained political power. The latter enables the head of the executive, the *chief patron*, to disable checks and balances and *turn the state into the business venture* of their patronal network, managed through the instruments of public authority.⁷

This pattern of systemic corruption, while not included in the scope of the CPI *per se*, has been noted by local TI organizations. TI Hungary, for instance, uses the terms 'reverse' or 'political' state capture to describe this phenomenon (TI, 2018e). We reject this conceptualization for two reasons. First, use of the terms 'reverse' or 'political' are applicable to any top-down form of corruption, and we may differentiate two of these on the basis of a qualitative (as well as quantitative) change in the pattern of corruption. Second, 'capture' in our understanding is *always partial*, for if we did not understand capture this way, and claimed that state capture can be partial

⁷ The definition of criminal state is similar to that of the 'mafia state' of Magyar (2016), but it is not identical to it. As we explain in a forthcoming book, there can be criminal states which are not mafia states, as the corruption pattern of a criminal state is only one of the four components of a mafia state. To mention just one other component now, to be a mafia state a country also needs to be a clan state. Cf. Wedel (2003).

as well as total, this would lead to a confusing situation in which almost any autocracy or dictatorship that replaces a democratic establishment could be described as a situation of state capture.⁸ Also, we want to avoid conflating the case when oligarchs capture certain parts of the state – a bottom-up corruption pattern – with the case when it is the ruling elite that turns the entire state into a criminal organization – a top-down pattern of corruption. Such conflation has been typical in the literature (e.g. Innes, 2014) but we believe that, practically, if the definition of capture is narrowed down to partial cases beforehand, this should result in a clearer and firmer distinction between the two situations in general and Western and post-communist forms of corruption in particular.

The criminal state is built by the development of a so-called *single-pyramid patronal network*. First, actors from the public administration are deprived of their autonomy to make corrupt offers to private actors or accept bribes in exchange for favorable treatment. Rather, they are subordinated to the chief patron's will and treat favorably those who are appointed from above; i.e. the clients of the chief patron. Second, a single pyramid means that the multi-pyramid scheme which characterizes the politically competitive landscape of party state corruption comes to an end. When a regime may be described as having the criminal state pattern of corruption, this implies that political opposition, including formal parties and NGOs, have been repressed and essentially turned into what all formal institutions are to the informal network: façades.

Third, the building of the single pyramid network extends to the private sector as well, as subjugated by the legislative and regulatory means the chief patron now disposes of. Drawing upon their monopoly of power, the chief patron breaks down the relative autonomy of major entrepreneurs and oligarchs, aiming to discipline, domesticate and settle them into their own chain of command (Lansky and Myles-Primakoff, 2018). As opposed to state capture, when the oligarch is the capturer and the politician is captured, the term 'oligarch capture' would be a more fitting description for this reversed situation in the criminal state. A network of subcontractors and suppliers extends this patron-client relationship to the lower reaches of the private sector as well, which also means that protection monies are collected from both high- and low-level private actors.

A summary of the main characteristics of the four types can be seen in Table 1. The main point we want to make is that corruption may take a top-down form in post-communist countries. Such cases are not characterized by the bottom-up process of private actors approaching the political sphere with their claims, but rather it is the political regime that milks private actors as well as taxpayers by way of contracts and, in the case of a criminal state, by privileges obtained from its subjugated oligarchs. Furthermore, we have added the dimension of the nature of corruption to the table, extending a continuum from the small-scale, low-value transactions of private actors and low-level members of state bureaucracy in free market corruption –

⁸ True, capture must also be informal/illegal by definition because it involves collusion, but even this criterion is met by several cases of autocratic turnover which overrode much of the existing legal corpus.

that is, *petty corruption* – to the large-scale, high-value transactions of governmental actors in a criminal state – that is, *grand corruption* (Moody-Stuart, 1997).⁹

Table 1: Main characteristics of the four corruption patterns.

	<i>Nature of corruption</i>	<i>Direction of corrupt action</i>	<i>Distribution of corrupt transactions</i>	<i>Form of corrupt networks</i>	<i>Economic nature of corruption</i>	<i>Entry of suppliers / servers</i>	<i>Regularity and scope of corrupt action</i>	<i>Medium of corrupt exchange</i>
Free market corruption	Petty corruption	Bottom-up	Non-centralized	n.a.	Competitive	Voluntary	<i>Ad hoc</i> and partial	Kickback money
Bottom-up state capture		Bottom-up	Moderately centralized	Parallel verticals	Oligopolistic / locally monopolistic	Coercive / voluntary	Temporary / permanent and partial	Kickback money
Top-down state capture		Top-down	Partially centralized	Parallel verticals	Oligopolistic / locally monopolistic	Coercive	Permanent and partial (vassal chains)	Protection money
Criminal state	Grand corruption	Top-down	Centralized	Single vertical	Monopolistic	Coercive	Permanent and general (vassal chains)	Protection money

Alternatively, the concept of ‘kleptocracy’ has been offered to describe the pattern we define as the criminal state (Walker and Aten, 2018; Lanskoj and Myles-Primakoff, 2018). However, as Wedeman (2018: 89) explains, kleptocracy in the recent literature has been dominantly used to define a ‘more decentralized and oligopolistic’ system of corruption wherein ‘[the] chief of state and his inner circle do not control [...] oligarchs [...] but instead run their own shadowy “business” empire while playing oligarchs against one another and taking a cut of their gains.’ This model does not fit the criminal state pattern we describe. Rather, kleptocracy refers to a specific form of top-down state capture where the head of state wants to abuse state power for his private gain but is limited in opportunities. Also, we would argue that etymologically the term ‘kleptocracy’ is broader than the ‘criminal state,’ for the latter more obviously refers to the case when the entire state is subjugated and run as a criminal organization, whereas a kleptocracy only means that elected leaders are primarily interested in stealing.

Describing the state of affairs when the entire public sphere is treated as a private dominion, scholars have also offered the Weberian term ‘neopatrimonialism,’ or ‘sultanism’ (Fisun, 2012; Guliyev, 2011; Szelényi, 2016). However, the use of such

⁹ We are indebted to József Péter Martin from TI Hungary for calling our attention to this distinction. Also, see Transparency International’s definition of ‘grand corruption’ in TI (2016b).

terms confuses openly admitted, legitimate lordships with essentially informal and *illegal* systems which operate among the façades of democratic institutions. As opposed to a traditional patrimonial regime in which political power ‘indeed operates primarily on the basis of discretion,’ without formal limits and not requiring reaffirmation from its subjects (Weber, 1978: 229), a democratic system has an elected leader whose tasks and authority are strictly delimited by the constitution. When the chief patron builds a single-pyramid patronal network and informal rules are respected over formal ones, lawfulness is violated – which is the reason why the former disables institutional checks and neutralizes law enforcement bodies, such as the office of the public prosecutor (Magyar, 2016: 50–51).

Second, constitutions usually declare the supremacy of law, and authoritarian governance is sometimes explicitly forbidden. For example, Article (C) Section (2) of Hungary’s Fundamental Law reads as follows: ‘No one shall act with the aim of acquiring or exercising power by force, and/or of exclusively possessing it.’ A criminal state clearly fails to meet such a constitutional criterion, for the chief patron acts with the aim of possessing power exclusively (Vörös, 2017).

Third, besides using the bloodless means of public authority, a criminal state also commits isolated violations of the law which take the form of linked actions of corruption (Magyar, 2016: 260–267). Linked actions combine acts that are unlawful in and of themselves (extortion, fraud and financial fraud, embezzlement, misappropriation, money laundering, insider trading, agreements that limit competition in a public procurement or concession procedure, etc.) with acts that are not unlawful in and of themselves (motions submitted by independent parliamentary representatives, instigation of tax audits, etc.). Thus, accusations of criminality may be made not from an external moral position but according to existing criminal law. This legitimizes, first, calling such state of affairs illegal and, second, treating it as a form of corruption instead of just a peculiar means of governance.

3. The detuned detector: The limited scope of the CPI’s sources

The fact that TI views corruption as a form of deviance limits the CPI’s ability to generate a reliable picture regarding the prevalence of the various types of corruption, particularly top-down forms. These data sets still offer partial insight into the extent of corrupt transactions that are initiated by private actors, possibly under coercion, and indicate whether these grow into the stage of partial state capture on a systemic basis. But they do not provide a picture of the situation when the initiator of a corrupt transaction is neither a company, nor a low- or mid-level actor in a public authority with the potential to extort, but the criminal state itself. In an environment dominated by the single-pyramid patronal network, it is rather politically-controlled enterprises than oligarchs who hold the state captive, and then collect tax and protection money from private actors and the public authority that they have designated. To offer an example: the CPI surveys entrepreneurs about whether they have to bribe officials to ‘get things done’; for example, to win a public procurement tender. But this way the survey disregards situations such as when the entrepreneur *does not even have the chance to bribe anyone* for the winners of public procurement processes are already decided at the top and public officials must simply ratify the chief patron’s chosen client as winner. Indeed, such cases are a blind spot for surveys based on the principle

of deviance, such as the CPI. To substantiate our point, we analyzed the questionnaires from the independent surveys of 2017 that the CPI was composed of (TI, 2018b). What we were interested in was seeing, for each survey, which questions referred to which corruption pattern according to our analytical framework. We excluded one survey, that of the African Development Bank Country Policy and Institutional Assessment (AFDB) for this only examined African countries outside of the post-communist region we speak about. The results for the remaining 12 sources can be seen in Table 2.¹⁰

Table 2: CPI sources with corruption types in focus.
(Source: Authors' compilation on the basis of TI, 2018b)

<i>Source</i> *	<i>Type of respondents</i>	<i>Number of questions (total)</i>	<i>Number of questions referring to...</i>				
			<i>Corruption in general</i>	<i>Free market corruption</i>	<i>Bottom-up state capture</i>	<i>Top-down state capture</i>	<i>Criminal state</i>
BF (SGI)	Experts	1	1	-	-	-	-
BF (TI)	Experts	2	1	1		-	-
EIU	Experts	8	6	1	-	1	
FH	Experts	10	8	1		1	
GI	Experts	1	-	1	-	-	-
IMD	Businessmen	1	1	-	-	-	-
PERC	Businessmen	1	1	-	-	-	-
PRS	Experts	1	-	1	-	-	-
WB	Experts	3	2	-	1	-	-
WEF	Businessmen	6	-	6	-	-	-
WJP	Experts	4**	-	2	2		
VDEM	Experts	4***	-	2	2		

*We use the abbreviations used by TI (2018b).

** The source description mentions 53 questions but specifies only the four categories into which they were grouped.

¹⁰ There is no need to elaborate on the intricate method TI uses to aggregate these indexes at this point, for we are interested in how raw data is collected, not how it is used. On the latter, see TI (2018b).

*** The source description mentions that there were more questions but their results are aggregated into four indexes.

As TI's sources did not base their surveys on our analytical framework, it is understandable that some items do not clearly refer to one certain pattern of corruption but rather to elements which may appear in, or institutional checks which may be effective against, more than one pattern. Consequently, we pigeonholed the questions as follows:

- *Corruption in general.* We included questions here in two cases. First, when the wording was very vague, not specifying the meaning of corruption (any more than the general definition). Examples: 'To what extent are public officeholders prevented from abusing their position for private interests?' (BF (TI)), 'Is the country's economy free of excessive state involvement?' (FH), 'How do you grade the problem of corruption in the country in which you are working?' (PERC). Second, we included here the questions which referred to phenomena which may exist in various (bottom-up as well as top-down) patterns of corruption. Examples: 'Are public funds misappropriated by ministers/public officials for private or party political purposes?' (EIU), 'Is the government free from excessive bureaucratic regulations, registration requirements, and other controls that increase opportunities for corruption?' (FH), 'Bribery and corruption: Exist or do not exist' (IMD).
- *Free market corruption.* Here, we counted questions which referred specifically to bribes required by, or given to, public officials by private actors. Examples: 'Is there a tradition of a payment of bribes to secure contracts and gain favours?' (EIU), 'Experts are asked to assess: The risk that individuals/companies will face bribery or other corrupt practices to carry out business' (GI), 'In your country, how common is it for firms to make undocumented extra payments or bribes' (WEF).
- *Free market corruption and bottom-up state capture.* We counted questions as referring to these two types if they did not specify the structure of corruption but made it clear they perceive the phenomenon as bottom-up. Examples: 'To what extent does the government successfully contain corruption?' (BF (TI)), 'Has the government implemented effective anti-corruption initiatives?' (FH).
- *Bottom-up state capture.* The question we included here referred specifically to large entrepreneurs (oligarchs) who buy influence in the governmental sphere. Example: 'Each of three dimensions should be rated separately: [...] (c) state capture by narrow vested interests' (WB).
- *Bottom-up and top-down state capture and criminal state.* Here we included survey items which asked experts to assess whether governmental actors in the executive or legislative branch use their office for private gain. Examples are the expert assessments asked by WJP and VDEM.
- *Top-down state capture and criminal state.* Questions were put into this category if they referred to top-down forms of corruption, or at least inquired about circumstances which would increase the probability of this. Examples: 'Is there a professional civil service or are large numbers of officials directly

appointed by the government?’ (EIU) and ‘Does the government advertise jobs and contracts?’ (FH).

The results substantiate our claims about the limitations of the CPI. On the one hand, there is inconsistency in the definition of corruption and the scope of the surveys, ranging from asking one general question about corruption to a whole host of questions referring to specific phenomena or actors. On the other hand, the strongest emphasis is put on corruption in general as well as bottom-up versions of corruption, particularly bribes given by firms to public actors. In terms of numbers, we can see that 8 out of 12 surveys dealt with such cases only. Also, in the remaining four surveys, the average proportion of items which may have yielded specific answers to whether corruption involves top-down state capture or the criminal state level was only 37.5 per cent – and even those questions focused either only on jobs and contracts offered by the state or the presence of corrupt executive/legislative actors which makes it impossible to distinguish between the two top-down types (and, in some cases, between them and bottom-up state capture). The idea of top-down patterns of corruption, and specifically of patron-client networks, is entirely missing from the surveys.

One can argue that the emphasis on ‘corruption in general’ is indeed a solution to this issue, for country experts can include top-down patterns in their country assessment. However, the problem is not that the CPI does not capture these patterns *per se*, but that this method *blurs* different corruption types, or rather countries which are plagued by top-down and bottom-up patterns of corruption. Indeed, our findings suggest the existence of an uncomfortable situation whereby, for instance, a country with endemic free market corruption can be given the same CPI score as one with top-down state capture, or a country with bottom-up state capture the same as a criminal state. Moreover, as a matter of fact, criminal states such as Russia or the post-communist nations of Soviet Central Asia are located at the bottom in terms of TI’s country rankings, while Hungary, which is also a criminal state, is ranked as mid-range, in front of Bulgaria or China which are not criminal states in the above-explained sense.¹¹ Such outcomes that result from unsophisticated inquiries into corruption undermine the validity of TI’s country rankings, which do not give the different corruption patterns different weights according to their level of development.

4. The unseen face of a criminal state: Evidence from Hungary (2009–2015)

To show the relevance of the detuned nature of the CPI, we offer evidence from post-communist Hungary of a top-down pattern of corruption: a criminal state. We claim this situation has been mismeasured by the CPI, along with that of countries like Russia and those in Central Asia which are too contaminated by corruption to be analytically fitted into top-down patterns. We focus on a specific period in Hungary,

¹¹ In Bulgaria, there is no single-pyramid patronal network (but rather competing patronal networks), whereas the Chinese state is led by a formal, bureaucratic patronal network legally, not an informal, corrupt one illegally (Wedeman, 2018).

between 2009 and 2015, using big data analysis of phenomena which points to symptoms particular to the presence of a single-pyramid patronal network.

The reason we choose Hungary as a case study is twofold. First, Hungary is a post-communist country which underwent, in the above-mentioned period, an autocratic turn (Kornai, 2015; Krasztev and Til, 2015; Bozóki and Hegedűs, 2018). This is important because it meant that the country's leadership met the most important prerequisite of a criminal state: a monopoly on political power. No actor had such power in 2009 but this was obtained by Viktor Orbán after he won a constitutional majority in 2010. We hypothesized as early as 2011 that Orbán used this power to build a single-pyramid patronal network (Magyar, 2011), and now we intend to verify this statement through empirical analysis. This leads us to the second reason we selected Hungary as a case; namely, that unlike in Russia or countries in post-Soviet Central Asia, big data about public procurements in Hungary is available. The big data research done by István János Tóth of the Corruption Research Center Budapest CRCB (2016a) offers a unique opportunity within the post-communist region to detect signs of a top-down pattern of corruption in the form of a database that analyzes over 120,000 public procurement procedures between 2009 and 2015. In Hungary, along with the end of the shortage economy following the change of regime in 1989, the common corruption typical of the 'third economy' (Juhász, 1981) became less prominent and also decreased in matters of public administration. The terrain for corruption was mostly concentrated in areas regarding decisions about privatization, state procurement, and the disbursement of EU funds from 2004 onwards. It was here that the centralization of the decentralized system of corrupt transactions and expropriation through a politically-controlled enterprise witnessed significant change after 2010, when Viktor Orbán and his party Fidesz won a two-thirds supermajority in the Hungarian parliament. It is no longer economic actors who bid against each other in corrupt transactions, but the new political elite, the single-pyramid network that designates in advance on different levels those who are eligible to win government and EU tenders. The lower level of the apparatus is paid for in positions, not by 'corrupt concession rights' (Magyar, 2016: 143-149 and *passim*).

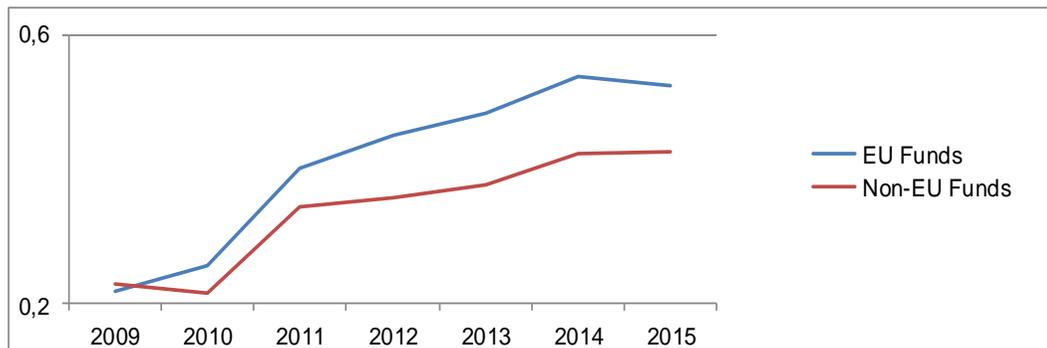
Elaborating on this point, we can see that municipal institutions and authorizations have undergone state centralization and become subject to political monitoring from higher-up to such an extent that the freedom of low-level corruption has been appropriated from them, and the right to exercise it granted instead to the central authority (Hegedűs and Péteri, 2015; Magyar, 2016: 131-132). For major investments, however, the government has nearly unlimited power to officially designate investments of economically-strategic importance, or prioritize them for national security reasons. These priority projects are exempted from regular public procurement procedures, and in 2016 the government gave itself the direct authority to approve tenders exceeding 300 million forints.

Assessing CRCB's data for the 2009-2015 period, we can first see a drastic increase in the corruption risk after 2010.¹² As can be seen from Figure 3, the risk indicator for public procurements related to EU funds which was 0.21 in 2009 had

¹² 'Corruption risk' is a proxy measure that refers to the prevalence of conditions which make corruption possible or likely. According to CRCB, these conditions are a lack of competition and a lack of public notice.

grown to 0.4 by 2011, and peaked at 0.54 in 2014. However, though this fact in itself permits the assumption of a systemic, qualitative change in public procurement, in theory it could also be explained simply by the extent of the occurrence of common corruption or state capture, both centrally directed and non-organized.

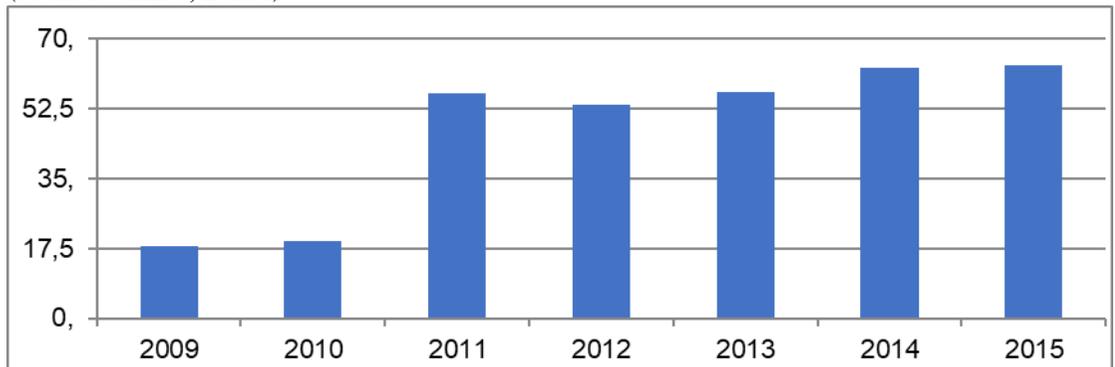
Figure 3: Corruption risk in public procurement, 2009-2015 (N = 118.843).
(Source: CRBC, 2016a)



Explanation: The value of the corruption risk indicator is '0' if there has been some type of strong competition during the public procurement process, and the latter was preceded by notification, and '1' if the public procurement was implemented without notice and without competition. A value of 0.5 was assigned if only one factor - either competition or notice - was lacking.

Second, the change in the proportion of non-advertised invitations to tender appears to be disproved by the existence of individual offenders, which supports the theory of a corruption service provider that is not centrally directed. CRCB data shows that while less than one-fifth of all invitations to tender were unadvertised in 2009, the proportion had become more than four-fifths by 2015 (Figure 4). Such a dramatic increase in the rate of unadvertised tenders would necessitate decisions from the mid-level of public administration apparatus at a minimum. At the very least, it can be understood as an evolutionary phase of state capture, since the bulk of non-advertised public procurements presume the existence of smoothly-operating channels of corruption.

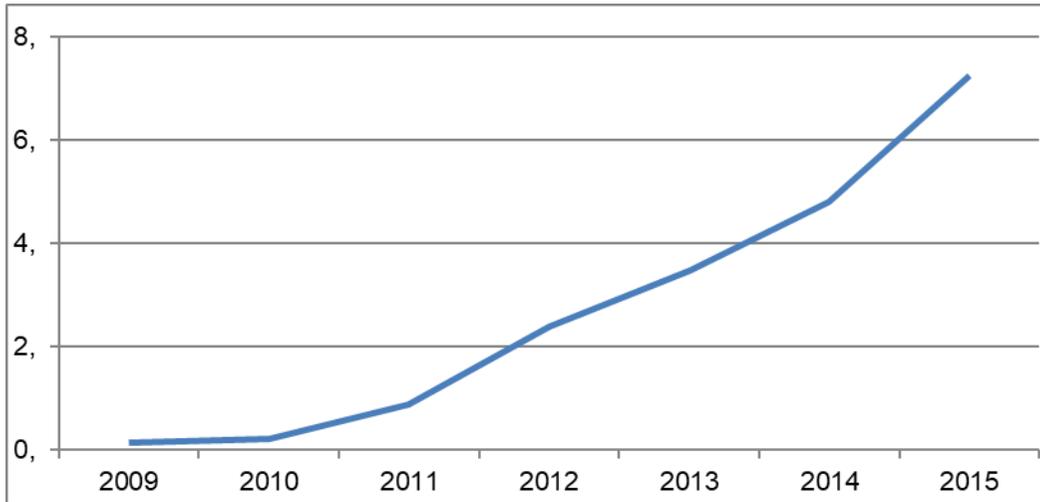
Figure 4: Proportion of public procurement lacking advertised tenders as a percentage of all public procurement, 2009–2015 (N = 121.849).
(Source: CRBC, 2016a)



On the economic side, an examination of overpriced public tender bids suggests a difference between bottom-up state capture and the criminal state in relation to advertised and non-advertised public procurement. Indeed, the decision as to whether tenders should be advertised or non-advertised, or whether open, negotiated, or restricted tenders should be specified for EU or state funds, are decisions made at the level of governmental actors. If the government finds that certain types of public procurement result in significant overpricing and partial deals, then it theoretically possesses all the necessary means to be able to steer tenders in the direction of an open and advertised application process. Considering that submission deadlines can be unrealistically short even for advertised tenders, it can be concluded that some mechanism has allowed the eventual winners to receive regular information required for the tender submission before notification of the former is posted. This could even be called ‘tender shorting.’ Moreover, this situation exists even before a discussion about invitations to tender and technicalities that are tailor-made for individuals or companies. The technicalities are in fact nothing more than tender personalization, involving use of the technical requirements of a tender to outline the specifics of a bid that has already been selected to win. This involves not a series of isolated incidents, but a wide-scale practice approved from the top.

However, this phenomenon might still fit the pattern of bottom-up state capture, as the collusion of the tender writer and assessor on the one hand and the applicant on the other could be sufficient. Yet out-of-control overpricing, as demonstrated in Figure 5, which has raised the proportion of overpriced bids by 140–320 per cent in the bulk of the cases examined, cannot be explained through the concept of partial, bottom-up state capture.

Figure 5: Price distortion in Hungarian public procurement, 2009-2015.
(Source: CRCB, 2016a)



Explanation: Mean squared error (MSE) of contract prices of Hungarian Public Procurements according to the theoretical (Benford) distribution by year, first digits, 2009-2015, N = 123,224.

Prices for public procurement contracts show a much stronger level of distortion in 2015 than at any time prior. This process so greatly distorts bids from normal market prices that it cannot be explained simply by qualitative improvements or just the extent of corruption. Its scale likewise cannot be explained by an increase in the role of inherently more corrupt product markets within all public tenders. The increase in corruption is thus not the result of a spontaneous process.

Indeed, we argue that *out-of-control overpricing* can only occur under certain conditions. A centralized guiding hand and resolve are required to monitor and coordinate the stages of tailoring project planning, invitations to tender, and assessment by a specific person/company. It must also ensure that those eliminated from the tender are unable to win appeals, while also guaranteeing that inspection and law enforcement agencies are unable to levy sanctions on the writers and assessors of the tenders because of their biased decisions. This also means that the managing and supervising public authorities must go beyond actively coordinating the activity of the actors in public administration in a way that guarantees the private use of the funds obtained through the tenders. In this case, they simultaneously also eliminate free market corruption: after all, it is not the assessor, but the review and managing agencies in their totality that award the winner of the tender. The assessor is no longer bought off, but rewarded by being able to retain his or her status.

This type and size of rent collection is only possible with a centrally-controlled, state-run criminal organization, namely the operation of a criminal state. Thus, while earlier data about corruption risk or non-advertised tenders involved only proxies and were not evidence of corruption, the scale of overpricing can serve as an indicator of the functioning of this top-down pattern. Using this method, we can already distinguish - in a way that would be impossible from looking at the CPI data - this regime from other, more ordinary, corrupt regimes. For the former, corruption is an

essential element that defines the system, while for the latter it is only an unpleasant side effect.

Conclusion

In its content, the CPI index of Transparency International shows a clear Western bias. It is based on the presumption that corruption involves deviance from formal state functioning, or the good governance of Western-type liberal democracies (cf. Andersson and Heywood, 2009: 750–752). Taking a closer look at related surveys reveals that they mainly focus on private bribes and give a general picture of the level of corruption which aggregates different understandings – and, indeed, different patterns – of corruption in a unsystematic, uncontrolled manner. Not considering the possibility of top–down patterns of corruption or informal patronal networks using formal state institutions as a façade results in the mismeasurement of countries where such patterns are prevalent, such as in Hungary and other countries in the post-communist region.

In words, TI's officials have noticed that corruption can also take a top–down pattern. In 2015, the executive director of Transparency International Hungary said that 'a centralised form of corruption has been developed and systematically pursued' (TI, 2016a) and TI scholars have used the terms 'crony capitalism' and 'political state capture' to conceptualize this situation. While this is an important step forward in the apperception of the operation of a criminal state, it still perpetuates misunderstanding. The term 'crony' in the context of corrupt transactions assumes parties or partners of equal rank (even if acting in different roles) and implies voluntary transactions – occasional, though repeatable – that can be terminated or continued by either party at their convenience. The term 'political,' on the other hand, overgeneralizes and does not distinguish between two top–down corruption patterns, namely top–down state capture, and the criminal state. Also, in both cases the approach misses the most important feature of top–down patterns of corruption in the post–communist region: the presence of involuntary, patron–client relations.

The implications of our paper can be divided into three areas. In the first place, there are implications concerning the CPI as such. We argue that, while we do regard the CPI an important measure and a good proxy for the corruption climate in general, it could be improved in the following ways. First, its validity would increase if the definitions of corruption used in its surveys were consistent. This is important, first, to be able to tell what the index measures exactly, and second, to be able to give *specific* recommendations for reducing corruption on the basis of the *specific* patterns prevalent in the country in question. Second, the surveys could be based on the analytical framework we have proposed if they included items about phenomena particular to top–down corruption patterns. For example, the existence of top–down state capture and the criminal state could be better assessed by inquiring about the presence of competition among corrupt actors, or about the autonomy of oligarchs and public actors in making corrupt offers. Also, it could be asked explicitly who initiates the corrupt exchange; that is, whether the demander is situated in the private or the public (administrative or governmental) sector. Finally, an end should be put to the emphasis on bribery and 'corruption in general' in the CPI's source surveys. Instead, inquiries about bottom–up and top–down cases should be balanced. This

would be instrumental for better measuring the level of all forms of corruption in the post-communist region, as well as other regions where patronalism as well as top-down patterns of corruption are presumably prevalent (Hale, 2015: 466-471).

The second group of implications is related to more general corruption research. We believe that our analytical framework and corruption typology could be used for comparative analyses as well as case studies, and corruption researchers should be able to assess in countries other than Hungary the bottom-up and top-down forms we have distinguished. Finally, the third group includes implications for anti-corruption measures. As we mentioned in the literature review, one of TI's recommendations for countries with a bad ranking is the tightening of the formal rules for public officials. However, while this may be of use if there is endemic free market corruption in a polity – that is, when corruption indeed involves deviance in state functioning – such a measure would either make no change or even reinforce a criminal state – that is, when corruption is a constitutive element of the system. For cases of the latter kind, such as in Hungary, recommendations should not be made that concern the ruling elite but rather (a) toward private actors and civil society, who can perform the function of watchdog *within the country*, and (b) toward non-criminal governments which can develop *outside the country* more targeted ways to attack single-pyramid patronal networks. One example of an effective targeted attack mechanism is the famous Magnitsky Act, by which the US government is authorized to deny visas and freeze the foreign assets of certain people who belong to criminal states (Magyar, 2016: 283-290).

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