

25 Malfeasance in contemporary democratic societies

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1. Factors contributing to political and economic malfeasance

The transition to democracy and a market economy. The collapse of the Berlin Wall in 1989 symbolically ushered in a new era in Europe's history. Since 1961, the Wall had divided not only East and West Berlin, but also the German nation and, in fact, the whole European continent. The Wall's physical demolition set off a process of far-reaching political and economic transformations. These changes were an expression of spontaneous popular support for a civilisation based on the liberal model of an open civic society (in terms of the political order) and capitalist market economy (in terms of economics). In 1989, Central and Eastern Europe turned to the West and the West opened up to the East.

For many opponents of Communism, the event epitomises the triumph of modern liberal democracy. The resulting substantial rise in the influence of the liberal approach to politics (democracy) and to economics (capitalism) was certainly warmly welcomed by its proponents. Paradoxically, however, the situation not only failed to put an end to discussions on democracy but made the debate even more heated. This is true, naturally, for those societies that had been subject to socio-economic transitions. The construction of a democratic political order and a capitalistic market economy, after all, is not limited to legislative changes (and the replacement of the most fundamental legal instruments: the Constitution). Rather, it involves the gradual acceptance by a society of the principles of democratic life and the rules governing market economies. In other words, the building of public awareness, attitudes, and ways of thinking, and the acceptance of and conformity to democratic standards are all of equal importance. In conclusions, Central and Eastern European societies, including those of the Baltic states, are learning the rules of democracy.

Factors behind malfeasant behaviour. The process of political and economic readjustment toward the Western European model of civilisation is not free of the difficult and complex problem of malfeasance that accompanies such changes. Social lawbreaking, especially those plaguing political and economic systems, can obviously also be found in societies with much longer democratic traditions. A case in point is the numerous financial and political scandals over inappropriate support extended to political parties in Germany, Italy and France (e.g. the German CDU of the 1980s, the so-called "Flick scandals", and the "secret accounts" affair involving the former Chancellor Kohl). Democratic institutions, especially those established to protect the transparency of public life (equality under the law, openness, social regulation of political and economic activities) fall short of efficiently preventing undesirable and destructive behaviour. Needless to say, law enforcement in societies that have only begun to

build their democracies presents much more of a challenge than in societies that have become politically and economically stable. This is due to a number of reasons.

First, any reform of a legal system leads to transitional states and the emergence of numerous loopholes that encourage circumvention of the law. Second, post-communist societies have not yet sufficiently embraced democratic standards and principles. The principle of respect for the law is yet to take root. Problems with abiding by the law are a legacy of communism, where the law was an instrument of control and repression of society. Furthermore, institutions set up to monitor and enforce the law are still largely ineffective. The main reason for the escalation of lawbreaking (observed not only in countries that have recently begun building their democratic orders) lies in the condition of the state, ungovernability in general, or the inefficacy and inefficiency of the governing process. The primary problem is the dishonesty of the state representatives and its apparatus of power. Political scandals involving corruption of state officials, abuse, favouritism, dealings with organised crime, etc., all contribute to undermining the social order. The responsibility of state officials and politicians extends beyond the immediate effects of their actions. The symptoms of malfeasance observed in governmental and political circles have a strong impact on social life overall. First of all, they severely undermine the social credibility of political elites. Further, numerous examples of abuse of the law in political spheres provide an excuse for indulging in similar practices in other areas of social (and economic) life. The illegal and unethical ways of ruling politicians weaken the will to respect the ethical and legal principles of democracy in the remaining areas of social life.

Needless to say, the ungovernability of the state in general is the main cause of malfeasance, and specifically of corruption, in all types of societies. Political and economic lawbreaking should therefore be seen as a symptom of a diseased state. Their chief causes are flaws in the political and economic system and low ethical standards in politics.

2. The meaning and scope of malfeasance

The most common association of malfeasance is with crime. Such an association, however, is incorrect. Crime encompasses all acts committed in violation of the law. By definition, such acts are considered to be acts of malfeasance. The notion of malfeasance, however, is much broader. It comprises actions violating socially sanctioned and generally respected rules of participation in public, i.e. political and economic life. Malfeasance encroaches upon the established social order, which, obviously, rests on the law, violations of which are punishable. Yet, the social order is not limited to the rule of law. It also includes customary and ethical principles not governed by law. The legal, ethical and customary principles upheld by a given society determine the choice of aims (and means of meeting such aims) to be realised by actions taken in the public interest. In other words, these principles indicate what types of behaviours on the part of participants in the public life will be socially approved and which will be viewed as improper, reprehensible or harmful.

A prerequisite to participation in the collective life of a democratic society is adherence to at least the most important social rules and standards (especially ethical ones). We can thus speak of a mutual social responsibility, as the principles of social co-existence rest on the assumption and expectation that they will be generally respected.

The rise of malfeasant behaviour, the regular infringement upon those social standards and principles considered to be of particular importance, may lead to anomie, a disintegration of

the social order and especially of standard behaviour. The lack of respect for the most important and socially recognised values leads to a rise in reprehensible actions (as seen from the point of view of social interests) designed to promote the interests of an individual or group at the expense of (violating or restricting) the rights of other participants in collective life of society. By the same token, the rise of phenomena considered to be a malfeasance contributes to a gradual erosion of specific standards and principles. The mechanism here is that, as a result of increasingly common violations of rules, actions that conform to the rules in force become ineffective. In such a situation, success in achieving one's goals becomes contingent upon an ability to adjust one's behaviour to the ways of other participants in social life. An individual faced with choosing the means for achieving his or her goals will have to choose between honesty and effectiveness. In some countries in which state officials are especially corrupt, unofficial price lists are prepared of fees charged for specific favours. As a consequence, all persons refusing to give bribes must brace themselves for a long wait for a decision and uncertainty as to its outcome. An example of this is the operation of customs offices in many post-communist countries. Having one's goods expeditiously passed through customs often requires bribing customs officers, whose working speed depends directly on the amount of bribes they have received.

As mentioned earlier, malfeasant behaviour violates the social principles of participation in public life. Such behaviour undermines the system of social standards and principles and, as such, is anti-social (also in the sense that particular benefits are obtained by some at the expense of other participants in social life). In defining the concept of malfeasance, one should add certain qualification, as not all departures from standard behaviour meet the criteria of being malfeasance. Let us consider three fundamental issues.

First, the notion of malfeasance refers to violations of particularly important standards. These include legal and ethical standards, especially those at the foundation of the democratic order, both political and economic, and social life in the broad sense of the word.

Second, we should consider the extent of the social harm: material damage, the sense of harm resulting from infringements upon one's personal property, a sense of unfair and inequitable treatment, the lack of access to social institutions, the resulting failure on the part of the state to perform its obligations to its citizens, e.g., from the foot dragging of officials, the inaccessibility of welfare, inadequate health care, violations of civic rights, etc.

Third, we should consider the scale of the phenomenon. Common violations of and disregard for particular rules are likely to qualify as malfeasance. Minor isolated incidents of fraud, abuse, embezzlement, petty bribes, concealment of essential information, etc., do not have a significant impact on the life of society at large. On the other hand, one could metaphorically compare the problem to an infectious disease, which, if contracted by a large proportion of the population, even if the virus is not particularly vicious, creates a problem whose extent qualifies it as malfeasance.

In conclusion, in view of the above observations, we may define malfeasance as actions taken by participants in social life that undermine important, socially sanctioned and recognised behavioural standards and principles; the commonness of the malfeasance and the extent of the resulting social harm may qualify such actions as particularly detrimental. It is worth noting that this definition needs to be set in a specific cultural context, as local and historical differences result in different views on the significance of a specific state of affairs. These views do not refer to official statements confirming the need to uphold certain values but rather to actual attitudes. A good example illustrating this issue is views on the equality of the genders. Despite the constitutionally imposed equality in the rights of men and women (e.g. in the labour market), until recently such equality was only theoretical in many democracies

(and is to this day in candidates for accession to the European Union). The principle of equal pay for equal work, as expressed in the European Social Charter, Convention No. 100 of the International Labour Organisation, and art. 119 of the Maastricht Treaty of 1991, is not respected. Only recently has popular opinion conceded that sex discrimination constitutes malfeasance. It is therefore through social discourse that the line between what does and does not constitute malfeasance is defined.

Despite a certain confusion over the definition of malfeasance, it is possible to point to phenomena that definitely qualify as malfeasance. These include corruption, favouritism (and its special-case variety: nepotism), white-collar crime, the so-called “grey zone”, organised crime, and various forms of discrimination, especially on the grounds of sex, age, ethnic origin, sexual orientation, and religious and other beliefs.

3. Corruption

It is commonly believed that corruption (from Lat. *corruptio*, depravity, bribery) is one of the most dangerous social diseases. Corruption is difficult to detect and eliminate, as both parties have a vital interest in concealing the matter. All participants give a high priority to maintaining confidentiality and taking any precautions necessary. The fundamental difficulty with exposing an instance of corruption lies in the fact that its victims: individuals, institutions, competing companies, or the public at large, are usually unaware that such an abuse has taken place. The victim, therefore, makes no attempts to prosecute a claim, the incident is undetected, and any countermeasures are greatly obstructed.

The most common definition of corruption as the taking advantage of public office for personal, partisan or other political interests, does not include some important aspects. The definition is too broad as it applies to situations in which specific persons use their posts to achieve personal benefits (use the company car for personal matters, have employees of a construction company in which they are directors refurbish their apartments free of charge, etc.). Although harmful to the company, actions of this type do not meet the description of corruption.

In defining corruption, several issues should be taken into account. The central attribute of corruption is a secretive understanding between two participating parties wherein one (the corruptee) agrees to commit an act of abuse for a specified compensation, whereas the other (the corruptor) stands to gain benefits at the expense of other individuals and entities. The corrupted party commits acts of abuse by using its post in a state agency, a political party, association, foundation, financial institution (e.g. a bank, insurance company), competing company, etc. Most frequently, such abuse involves a violation of legal, moral or customary standards, company regulations or the non-performance of a contract or obligations.

An important element of corruption is its ability to spread fast and unchecked. Corruption is often likened to a cancer that systematically destroys healthy tissues, symbolising a specified aspect of social life. In a “disease-ridden” social organism, nothing works the way it should.

Corruption may assume various forms. We commonly speak of bribery, i.e. a situation in which payment for a favour takes the form of a material benefit (money, gifts, services). In European law, both those giving and accepting bribes are deemed to constitute an offence. Corruption seen as an understanding assumes two aspects, active and passive, which correspond to the roles assumed by the parties to such an understanding. Passive corruption is the acceptance of a bribe, whereas active corruption is perpetrated by persons who sidestep

legal (moral, regulatory, customary) procedures in pursuit of specific benefits (such as scarce resources or a position) at the expense of others.

Can corruption be classified as malfeasance? As mentioned earlier, malfeasance encompasses actions contributing to the abrogation of certain social standards and principles. Hence, malfeasance takes place whenever participants in social life pursue certain (desired) results in a manner that constitutes a gross violation of socially recognised principles. Any escalation of corruption impairs the effectiveness of actions in adherence to such principles. In other words, each successive infringement upon the legal, moral and customary standards of honest conduct undermines (i.e. results in breaking or avoiding) such standards. Corruption, therefore, may justifiably be described as malfeasance, as it is based on negating the socially significant values of equality, freedom, and fair competition, and, by spreading fast, may cause fears of having safety and law and order compromised in a given state.

“Corruption takes many forms and is a universal cancer”, said Peter Eigen, Chairman of Transparency International (TI), the world’s leading anti-corruption organisation. The disease spreads both in politics and in the economy. Economic corruption violates the principles of equal opportunity and fair competition. If, for example, contracts in tenders are awarded to a company that had curried favour with the decision-maker, the quality of the offers and guarantees of performance are no longer a consideration. The resulting decision may compromise the company’s interests or, in the case of governmental procurement, the public good. While insistence on increasing competition among other market players leads to higher profits, a corruptive environment effectively frustrates this purpose of competition, as the principles of competition are replaced with the rule of connections.

High corruption rates are commonly noted at the point of contact between the world of politics and business. This is where lobbying takes place. Lobbying can be defined as the formal use of people or groups to represent the interests of companies, capital groups and professional associations to political, governmental, judicial and local authorities so that influence is exerted to obtain favourable legislative solutions and specific decisions. The extent of such influence and the methods of exerting it follow clearly defined rules. Lobbying has become a means for increasing the participation of broader social groups in the governing of a state. Lobbying provides organised groups of citizens with a voice in the political discourse. Seen in this light, lobbying may be viewed as an instrument for strengthening democracy.

The countries of Central and Eastern Europe have only recently set off on their way to creating the legal foundations for lobbying. In the absence of experience, traditions and most importantly, legal frameworks to support and accommodate lobbying, such actions are often corrupt. Most attempts at influencing decision-makers are made by handing over cash, sponsoring foreign travel, exchanging favours, offering posts on boards of directors, and giving valuable gifts. Interest groups finance individuals or political parties in exchange for promises to pass favourable legislation or to have certain regulations adopted by state administration agencies.

Corruption in political circles is believed to pose a particular threat to democracy. Representatives of the legislative and executive branches of government should remain independent, because only then will they be capable of reaching autonomous and sovereign decisions in the best interest of society at large. In reality, however, especially in Poland, political elites are increasingly distrusted. Such a lack of public trust is due not only to the popular perception of politicians as highly corrupt. It has been justified by high-profile cases of ties discovered between politicians and the criminal underworld. Poland is a particularly disgraceful example of this, as within a period of just a few weeks in late April and early May of 2001, two government officials were found to have maintained relations with

organised crime. One of them was a member of the legislature (a former senator), the other, a member of the executive branch and, until recently, the Minister.

Corruption is continuously monitored by the international organisation Transparency International, established in 1993 as a global coalition for combating corruption. TI maintains National Offices in 77 countries of the world. Its International Secretariat is located in Berlin. In 1995, TI presented its first Corruption Perception Index (CPI), which constitutes a ranking of countries in terms of the perception of corruption therein by public sector officials and politicians. Recently published ranking for 2000 was prepared on the basis of 16 surveys conducted by 8 independent institutions. The surveys provide insights into the degree of corruption as perceived by business people, the general public and corruption specialists. TI is well aware that the CPI is limited to describing passive corruption. In 2001, TI has launched a comprehensive study of forms of bribery (active corruption). As a result, the Bribe Payers Index (BPI) was established to supplement the CPI. In addition, TI has begun preparing a Global Corruption Report.

Table 10. The Corruption Perception Index for the Baltic States as of 2000. The ranking shows countries in the order from least to most affected by the corruption problem (1 indicates a low level of corruption and 87 a high one).

Country	Corruption Perception Index
Finland	1
Denmark	2
Sweden	4
Norway	6
Germany	1
Estonia	27
Czech Republic	42
Belarus	43
Lithuania	43
Poland	43
Latvia	57
Russia	82
Ukraine	87

4. Counteracting corruption

Counteracting corruption requires action in at least three areas: prevention, education, and disclosure and elimination of corruptive practices. Prevention involves the removal of sources of corruption, especially by passing good laws and promoting effective initiatives by state governments, central and local administration and non-governmental organisations. The goal is to clean up laws, regulations and procedures that encourage corruptive dealings. It is essential to eliminate legal loopholes, ambiguous regulations and situations in which officials are given complete discretion in their decisions. The public sector formula needs to be scrutinised by introducing a uniform system for public procurement and by restoring controls over the work of state officials. Anti-corruption legislation needs to be supported with unambiguous executive regulations. New regulations are needed to govern conflicts of interest involving state officials and their families. The criminal code needs to provide for the option of procurement and other operational methods in all cases of suspected corruption. A transparent act on partisan finance is required to ensure tighter controls over the sources of financing for political activities. Streamlining is needed in state agencies

and offices to eliminate cases where feet dragging and poor work organisation keeps clerks from handling their responsibilities in a timely fashion, causing many customers to resort to bribery to expedite their cases.

Another way of combating corruption, namely through public education, is a form of prevention. The idea behind educational efforts is to influence citizens' behaviour by building citizen responsibility, spreading moral standards, promoting respect for the law and fostering the principles of harmonious social co-existence. Deeply-rooted moral convictions, high standards of

political ethics, an awareness of threats related to corruption, respect for democratic principles, and a sense of solidarity and shared responsibility are all fundamental values whose popularisation in a given society is likely to lead to success in eliminating corruption.

A key element of such public education is a discipline that is relatively new, namely business ethics. Business ethicists reflect economic environments in terms of moral beliefs. By demonstrating that economies are arenas of interplay of values that are not only economic but also ethical, business ethicists demonstrate that the accountability of participants in economic practices is broader than previously believed. In addition to economic accountability, which extends mainly to the financial standings of companies, such participants have a social responsibility for all stakeholders, i.e. all persons affected in any way by the business activities of their companies. Such stakeholders include employees, shareholders, managers, customers, competitors, suppliers, local communities, local authorities, financial institutions, social organisations, and the natural environment. Companies are responsible to all such groups for acting fairly and in accordance with binding legal and ethical principles. Further, business ethicists reveal flaws in the business environment, highlighting the harmful social effects of abuse, embezzlement, tax fraud, white collar crime, especially in the insurance and banking sectors, and raising issues related to the "grey zone" in the market. Inclusion of business ethics in school and college curricula may greatly help raise public awareness in terms of such issues.

A third area for combating corruption is the disclosure and elimination of corruptive practices. The key to the success of such efforts is ineffective justice system, strong tax and customs police, and efficient supervisory bodies. It should be noted, however, that institutions established to curb crime often fall victim to the very problem they were intended to remedy. A case in point is the Russian or Polish police, whose susceptibility to corruption and various forms of abuse and ties with organised crime are a well-known fact.

5. Favouritism and protection

Another form of corruption is patronage and protection extended in exchange for money (Lat. *protection* cover, defence, aid, support extended by influential individuals). One form of corruption involves attempts to cajole an influential person to extend preferential care to a protégé in return for financial benefits and the consent to such practices. The subject matter



Figure 99. The Nordic countries are least affected by corruption. A central street in the city of Stockholm. Photo: Katarzyna Skalska

of a transaction is care (e.g. the furthering of a political or professional career) provided to a person regardless of his/her qualifications, potentials, abilities, etc. The notion of corruption does not apply to favouritism and patronage provided free of charge. In such a case, the reason for extending care to a given individual is not financial gain but rather appreciation of such an individual's qualifications, personality and other strengths. A belief that a person has earned recognition and should be placed in a position suited to his/her qualifications may, of course, result from an uncritical view of a protégé's personal qualities. Such actions involve improper and groundless favouring of a protégé at the expense of others, e.g. other candidates for a given position. Whereas protection may take the form of a small favour, it is always a way of treating selected persons in a preferential manner.

Favouritism that does not involve a monetary payment sometimes takes the form of an exchange of favours (where the persons involved exchange benefits accessible to them by virtue of their respective posts, social positions, capacities, etc.). Such exchanges often take the form of what is commonly known as "connections". The term accurately describes situations where a person receives preferential treatment merely due to having his case processed by a friend or a relative who is "in the right place". Such protection may involve a long chain of connections between friends and relatives who pass on requests for patronage. In such a case, the person choosing to favour a requesting party does it because of his or her ties with the protégé.

At times, influential people take to promoting their own family members. This type of patronage is referred to as *nepotism* (Lat. *nepos*, nephew, grandchild). Such practices are particularly common in small family operations. Family relations within a company may be resented both by employees, who often come to believe that relatives of an executive or an owner go unsupervised and violate rules with impunity while other personnel are discriminated against (e.g. by being barred from promotions to positions set aside for relatives). Nepotism within a company is likely to affect it in a negative way.

Favouritism (in the context of the society at large) is malfeasance in the case of appointments to public office. Two types of charges may be brought here: first, the charge of extending preferential treatment to certain individuals; and, second, the charge of creating a so-called "protective umbrella", which impedes control over the performance of responsibilities entrusted by the public to an official. In such a case, the social effects of appointing unqualified individuals to public offices of high responsibility, e.g. in state administration, may be especially harmful. Such situations take place every time a state government is replaced. The political group that wins an election replaces the ruling elite based primarily on partisan affiliations rather than competence. Frequently, then, excellent officials with an impeccable record of success in management end up removed from office for purely political reasons. Moreover, if power is assumed not by the winning party but rather a coalition, the factions involved engage in struggle over the distribution of posts in the government. They negotiate and often fight fiercely over access to power and influence over various aspects of social life, especially the economy. Any disclosures of such behind-the-scenes dealings result in a negative perception of political elites. The fact that the principle of favouritism is commonly practised by political groups justifies, to a certain extent, public distrust toward the ruling circles.

6. Discrimination

The equality of all citizens under the law is a fundamental principle of democracy. Thus, a democracy will not be complete as long as one social group or another is denied access to its

basic rights. Modern-day democracies formally guarantee equality for all citizens within the provisions of a primary legal instrument: the constitution. As mentioned earlier, when discussing negative elements in modern-day democracies, we need to focus primarily on the actual level of lawfulness. Consequently, we should take a particular interest in democracies' ability to sanction and enforce a constitutional right to equality. Why do such great differences exist between legislative provisions and the actual state of affairs in some countries?

One should take note here of two crucial questions. One regards, in particular, countries undergoing systemic transitions in which one of the aspects of democratising social life is the elimination of differences in the treatment extended to their citizens. In many cases, such a process applies not only to legislative reforms but also to financing efforts aimed at removing actual barriers to equal access to social institutions.

A dramatic example here is the situation of disabled people. The legacy of communism includes architectural barriers to individuals with disabilities, denying them access to participation in social life: moving along streets, using public transport and entering cultural institutions, offices, clinics, schools, universities, etc. A separate and very important issue is the inability of disabled people to perform work due to an insufficient number of workplaces suited to accommodate them. In view of the commonly accepted belief in the value of work, we should realise that people with disabilities are kept from achieving the satisfaction of pursuing their professions or vocations, participating in the collective effort of contributing to the common good and enjoying personal independence.

The key obstacle in the above case is undoubtedly the financing of projects designed to remove the above-mentioned barriers. As few repair programs are being launched and the amount of funds in the budget allocated to social projects is being increasingly curtailed, such inequalities are becoming even more pronounced and entrenched.

The state's financial inability to counteract social inequality can also be seen in such other areas as social care extended to the families of persons employed at restructured state enterprises and counteracting the impoverishment of populations in areas of high unemployment. The central responsibility here is to recognise the extent of a state's responsibility toward citizens and formulate an adequate social policy.

In addition to problems with financing programs aimed at limiting inequalities, there is another important reason for which some citizens are treated differently than others. This applies especially to discrimination on the grounds of sex, opinions, ethnic origin, sexual orientation and age. Differences in the treatment received by representatives of such groups stem from such attitudes such as sexism, xenophobia and intolerance. Improvements in the actual situation of the affected groups depend primarily on successfully changing opinions, which usually occurs very slowly (the issue of public education!). Additionally, proper regulations are needed to ensure that frequently violated laws are properly enforced. Constitutional guarantees of equality should be translated into executive orders. The case of Sweden whose laws protect sign language is worth noting here.

A number of other detailed laws protecting equality have also been passed in member countries of the European Union. Once candidate countries ratify such laws as required, inequalities will certainly be reduced. They will not, however, be fully removed, as can be seen in the case of women in the European Union labour market. EU women are commonly employers' second choice; they receive less pay, are promoted slower and dismissed more often, and are more likely to work part time. This also refers to countries where much of the female population is well educated.

7. Economic malfeasance – corporate crime

Corporate crime is against the law. The European Union has created a whole catalogue of corporate crime. These include cartel crime, fraudulent practices, illegal profiting by multinational companies from differences between rules in specific countries, abuses in the supply of goods and in connection with domestic and international subsidies, computer crime, formation of fictitious companies, falsifying balance sheets and other accounting records and reports, financial market fraud, violations of safety regulations and jeopardising employee health by companies, crimes against consumers, unfair competition and advertising, tax crime, counterfeiting of money and securities, banking and stock exchange crime, and crime against the natural environment.

Business crime can be found in all countries and is unlikely ever to be fully eradicated. Prevention of business crime involves the use of methods similar to those used in counteracting corruption. Well prepared laws that are free of loopholes, clear and precise executive regulations, and effective justice systems are the principal weapons in the fight against crime. An important role is also played by business ethics, which supports legal regulations. It should be noted that business ethics is becoming increasingly important. More and more companies, especially reputable ones, are committing themselves to adhere to the principles of honesty and fair competition. Ethical programs and vocational codes are being developed, and international projects aimed at regulating business conduct are being drawn up. The global trend towards scrutinising business operations in terms of ethics is symptomatic of certain changes in the views of politicians and business people.

Firstly, there is an increasing recognition of the threats posed by corporate crime. As the world's economies become more globalised and domestic economies become more integrated, rising business crime rates in a particular region are no longer a local problem. Thus, crime needs to be combated simultaneously at the national and international level.

Secondly, economies have become the most important area of social life. Since the bulk of civilisational changes take place in the economy, the economic sphere is more responsible for the future shape of the world. Today's economies shape cultures, as the value systems, attitudes, rules of conduct and principles of operation applied in the corporate world trickle into other areas of social life. In effect, the weaknesses and malfeasance of the corporate world become the weaknesses and malfeasance of modern-day societies.

Thirdly, it has become more and more obvious that economic and legal regulations applied in the economy are an inadequate tool for counteracting unethical and illegal practices.

Organised crime. In discussing threats posed by business crimes, particular attention should be given to organised crime. Crime organisations are commonly involved in smuggling, drug trafficking, prostitution and extortion. They use the latest electronic equipment, transportation and highly qualified experts (specialising in a range of "useful" fields from chemistry to banking and law). One of their common practices is to establish relations with the highest-ranking officials in ministries, the police, customs offices and municipal authorities. Such contacts are an insurance policy for the members of crime organisations, especially the ringleaders. Corrupt state officials not only help commit crimes by pointing out criminal opportunities, concealing evidence, and establishing contacts, but also by warning criminals of planned police operations or inspections. Organisations that have expanded widely and built up extensive networks of connections with the world of business and politics are referred to as states within a state. As to the extent of financial losses that states incur as a result of such illegal operations, only ballpark estimates can be provided.

The grey zone. Another form of malfeasance takes place in the so-called “grey zone”, i.e. the area of economic practice where companies operate on the peripheries of lawfulness, posing as legal organisations but using (illegally and unethically) opportunities not to perform their financial obligations to the state. The most common examples of grey zone crime are tax fraud, customs duty evasion, operating on the black market for labour, and abuse (extortions) targeted at insurance companies (with reference to mandatory employee insurance). The common feature of all such acts is perpetrators’ maintenance of appearances of legality. Companies, for instance, pay their federal taxes but use all available loopholes to reduce their tax liability. In the case of evading import duties, the value of goods is commonly underestimated by declaring lower-than-actual quantities or untrue types of goods (in the latter case, also by taking advantage of differences in tariffs on particular goods). Employment crimes include fictitious contracts with employees showing lower-than-actual amounts of compensation and stating working time as part-time in the case of full-time workers. Such falsifications allow employers to save on mandatory social insurance premiums, which are reduced if lower pay is reported. Abuse aimed at insurance companies includes cases of false worker’s compensation claims for employees falsely reported as incapable of working. The larger the gray zone, the larger a state’s financial losses in connection with such forms of abuse. Yet, both the extent of the problem and the size of such losses are difficult to estimate.

What is the European Union?

Sverker Gustavsson, updated by Li Bennich-Björkman

The European Union, consisting of fifteen member countries in Western and Southern Europe, is an interesting example of a constitutional construct that does not fit into any of the three categories of con-federal, federal or unitary-state systems. It is far more effective regarding direct effect than most con-federative structures. But it is not at all as strongly organised in terms of representational compromise as a federation that would allow for revenue raising and revenue-redistribution on a European scale. And it is extremely far from the characteristics of a unitary-state. The following is an outline of the constitutional construct of the European Union:

Member countries: Belgium, Denmark, France, Germany, Greece, Great Britain, Ireland, Italy, Luxembourg, The Netherlands, Portugal, Spain, Sweden, Finland and Austria.

Summit meetings. The European Council, consisting of the Prime Ministers, meets twice a year on an inter-governmental basis. Decisions in that context require unanimity.

The major legislator, **the European Council of Ministers**, consists of one minister from each member country. Decisions are taken sector by sector according to a supra-national principle, i.e., a mix of unanimity and qualified majority according to a modified one-state-one-vote scale ranging from 10 votes for the largest countries to 2 votes for the smallest countries. The meetings are headed by a minister from the chair country.

Independent Source of Initiatives: 20 commissioners with their staffs are at the administrative heart of the Union. The five larger countries have two commissioners each, and the ten smaller countries have one each.

General Assembly: the 626 members of the European Parliament are directly elected. The legislative powers of the Parliament have grown considerably during the 1990s and the Parliament functions today as a co-legislator with the Council of Ministers in at least 25% of the decisions. The changing role of the Parliament is the single most important transformation of the EU institutional infrastructure that has taken place over the last decade.

Rule-adjudicator. The European Court of Justice in Luxemburg consists of 15 judges each of whom is appointed for a six-year term of office.

Budget about 1.2 % of the total GNP of the member countries. The revenue is primarily used for agricultural and regional policies. The percentage should be compared with the 40 to 60 % tax level in each of the member states. For the time being it is an open question, whether the European Union will develop in the direction of a federation marked by majority rule and a truly representational compromise as its solid political foundation and thus able to redistribute with direct effect. It may also develop, although it is probably less likely, in the direction of a more loosely organised confederative structure with a corresponding weakening of the principle of direct effect. Obviously, that has to do with the number of member-states. At present, an enlargement of the Union involving the Baltic States, Poland and other Eastern European countries appears to be truly underway. The summit meeting in Gothenburg in June 2001 gave some hope for those awaiting the first wave of admittance in 2004. Not only will a future EU membership impact the candidate countries. The consequences of the enlargement on the decision-making procedures within the Union is a hot topic and generates suggestions for major reforms, including flexible integration, and "a Europe á la carte", the aim of which is to enlarge the variation in the speed by which member countries integrate politically and economically. Meanwhile, the Union is slowly moving in a direction that strengthens federalism. The growing importance of the Parliament and the expansion of the realm for majority decisions in the Council of Ministers are among such steps.
