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THE ABANDONED TRUSTEES

Explaining Corruption in Local Government

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ABSTRACT

This paper engages in the debate about how different ways of organizing relations between politicians and bureaucrats affect corruption. Research has established robust correlations between the political autonomy of bureaucracy and low corruption, on both national and regional levels, but there are few studies that explore the causal mechanisms linking these two phenomena. We do so by comparing public procurement processes in two similar Spanish cities, interviewing all important actors. We show that relatively independent bureaucrats—so-called trustees—can act as checks to prevent political moral hazard. Yet, in order for this to occur, other institutions must support the trustee, such as a merit-based human resources policy, rules, and standard operating procedures, transparency and independent watchdogs. There is thus no silver bullet to defend us against corruption, but having these mechanisms in place makes it much more costly for politicians to opportunistically bend public procurement processes to favour bribe-paying contractors.

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Introduction

Is it possible to inhibit corruption by way of institutional design? Recent papers indicate that political institutions can indeed hinder corrupt behavior. Rothstein and Teorell (2008) suggest that when *impartial* government authority is established through institutional design, much is won for the general public. Acemoglu and Robinson (2012) propose that political institutions that are at the same time *inclusive* of outside groups and constrain politicians offer economic prosperity and popular opportunities, while North, Wallis and Weingast (2009) argue that, what they call, *open* access social order is an antidote against over-privileged elites. Yet which concrete institutions make governments “impartial”, “inclusive” or “open”?

Most scholars, either explicitly or implicitly, consider that institutions common in liberal democracies limit corruption. And traits of liberal democracies and lower levels of corruption do indeed correlate (Goldsmith 1999; Sandholtz and Koetzle 2000; Paldam 2002; Lederman, Loayza and Soares 2005), especially when systems are unitary and parliamentary (Gerring and Thacker 2004). However, new democracies (Montinola and Jackman 2002), democracies with low political competition (Treisman 2000; Lambsdorff 2006), and sometimes even consolidated democracies (Mungiu-Pippidi 2013; Rose-Ackerman 1996) may suffer systematic corruption. By concentrating their analytical power on political institutions, these studies overlook an important factor to curb corruption: the bureaucracy. Civil servants are scarcely mentioned in most comparative studies, and sometimes it is even considered that a large bureaucracy or heavy regulation in itself fosters corruption (Lambsdorff 2006).

Researchers have, however, become more and more interested in the empirical association between bureaucratic structures that separate the careers of bureaucrats and politicians, on the one hand, and the inhibition of corruption, on the other (Charron and Lapuente 2013; Rauch and Evans 2000; Dahlström, Lapuente and Teorell 2012). The main causal argument builds on Gary Miller’s (2000) claim that elite groups generally have incentives to enrich themselves and their clique at the expense of general welfare if they are unconstrained, but that an independent bureaucracy can serve as a counterbalance (Miller and Whitford 2016). Independent bureaucrats are “trustees” (Knott and Miller 2008) that do not merely act as agents of the principal (elected officials) but are responsive to the interests of the ultimate beneficiaries (society at large). Yet we lack empirical studies that ex-

plore the particular mechanisms through which trustees check politicians – and vice versa – in operation. This is the goal of this article.

In order to identify the particular checks through which trustees and politicians control each other, we focus on the public procurement practices in two Spanish municipalities in the region of Madrid that have similar socioeconomic, cultural, and political characteristics – and to which, because of anonymity reasons in order to conduct the interviews, we refer to as *Rotten Apple* and *Honest Trier* in this article. *Rotten Apple* is notorious because its elected local politicians took part in a major corruption network of bribe-paying contractors in exchange for public contracts at a cost to public coffers estimated at €449m (*El País* 2015). Conversely, *Honest Trier* is a well-known case of “transparency and good governance” (*La Vanguardia* 2014).

These are our main results. In *Rotten Apple*, both elected politicians and local officials enforced decisions that were dubious from an economic or legal point of view and used every legal gap to overcome the checks of the trustees (i.e. nationally recruited civil servants) that, *de jure*, all Spanish municipalities have. In strong contrast, *Honest Trier* trustees managed to keep elected politicians at bay preventing collusive deals. We empirically identify three distinct theoretical mechanisms through which trustees minimize corruption risks: professionalism (merit-based human resources policy); rules and standard operating procedures; and transparency and independent watchdogs. It must be said that the newly elected government of *Rotten Apple* after the May 2015 elections has aimed at replicating this trustee relationship by advancing in all three mechanisms.

The article is organized as follows. The next section develops the theoretical argument on how adding trustees to the principal-agent relationship reduces corruption opportunities. The following section presents the research strategy – the comparison of two very similar neighboring cities of Madrid (i.e. *Rotten Apple* and *Honest Trier*) with polar corruption problems – and the qualitative methodology – based on 22 interviews with key actors from the political principal (i.e. elected officials), its agents (i.e. local government officials), and the trustees (i.e. nationally selected civil servants placed on the local government). Discussion of findings and conclusions follow.

Principal, agents, trustees, and their roles in corrupt networks

The starting point of our theory is what we could refer to as the “nuanced” institutionalist approach to good government – i.e. that institutional mechanisms to curb corruption can never eliminate the opportunities for abuse completely. Institutions can minimize, but never eliminate, corruption. There is always a margin of maneuver for opportunistic behavior among decision-makers (Falaschetti and Miller 2001), but the existence of professional bureaucrats may reduce it. Dahlström, Lapuente and Teorell (2012) adapt this idea to explain cross-national differences of corruption, showing that countries with professional bureaucrats whose careers do not depend on their political superiors have lower levels of corruption than those where public administrations have more at-will appointed bureaucrats.

The key question is thus whether the public employee becomes an “inhibitor or instrument of political moral hazard” (Knott and Miller (2008, 388-392). If public employees are *agents* of their political *principals*, they can become instruments of politicians’ opportunistic actions. If, on the contrary, public employees are *trustees* who are not directly accountable to their political *principals*, a policy domain can be insulated from political moral hazard and the trustee can help to safeguard the general interest. Trustees thus behave on behalf of the ultimate *beneficiaries* (which include the principal as well as a wider group, such as the electorate or a higher level of government) and are not subject to the control of the principal (Pettit 2012). Unlike agents, trustees do not merely take orders from their political masters, but act, in the words of Hood and Lodge (2006, 2), as “independent judges of the public good.” In this, admittedly stylized, way of thinking, the trustee needs to show a different set of preferences from the principal and have decision authority to serve as a guarantor of the principal’s credible commitment. The relationship between the principal and the trustee cannot be elastic and amenable to change when the context or the circumstances change.

Independent central banks, as non-majoritarian institutions, are examples of trustee institutions since they are not controlled directly by politicians but are instead independently acting in the interest of the electorate (Majone 2001). Independent central banks require credible commitment to keep monetary policies away from political pressures. This is acquired by institutional independence and a meritocratic recruitment of bankers (Nistotskaya and Cingolani 2016). The independent central bank is the trustee with a monopoly over the monetary policy, while the agent (the government) exerts the fiscal policy of taxation and spending. The economic policy reflects the joint action of

the trustee and the agent. This independent role of the trustee first appeared in the business firm with the use of accountants and auditors, whose demand increased at the end of the XIX century with the increasing complexity of the corporate world in England. Gradually, the auditor's independence was accredited by a society of accountants so that the principal of the firm could trust in the managers and employees (Watts and Zimmerman 1988), and the business owner could thus claim the full residual. In the public sector, there is a group of public servants (auditors, inspectors, and comptrollers) that perform this fiduciary role on behalf of the beneficiary, the electorate.

A successful principal-trustee relationship requires establishing constraints that serve dual purposes: to check the rent-seeking capacity of principals and the agents directly accountable to them as well as to monitor the behavior of trustees. According to Knott and Miller (2008), these constraints are three: professionalism, transparency requirements and watchdogs, and rules and standard operating procedures. Jointly, they limit the ability of the political principal (i.e. elected officials), its agents (i.e. political appointees), and the trustee (i.e. autonomous bureaucrat) to interfere in each other's domains, and they work to the advantage of the beneficiary (the electorate) without needing to specify the particular policy outcomes to be achieved with any of these constraints. The goal of this article is to identify whether, and how, these three mechanisms operate in the real world. Before doing so, we will look at how they work at the theoretical level.

Professionalism is, according to Freidson (2001: 9), an ideal type where the organization, monitoring, and control over work are realized by the occupation and its particular rules. Miller and Whitford (2016, 8) write that "Bureaucrats who can claim that they are 'above politics' – that is, uninfluenced by the partisan considerations that drive their political masters – can use that claim to gain leverage." Being part of a profession does just that. Professionalism is the consequence of highly specialized work that is not accessible to those lacking proper training and experience and cannot be carried out in a standardized form. Extending Freidson's concept for doctors and teaching staff to the trustee relationship, the trustee exerts his 'independent' power as a consequence of his mastery of a particular field or profession and enjoys a career independent from other groups of the agent (politicians and professional bureaucrats). This implies that the personnel policy of trustees regarding recruitment, promotion, rewards, and dismissals has to be isolated from politicians in order for them to perform this role.

Watchdogs and *transparency requirements* may constrain the work of inspectors and auditors, especially when they are located in the organizations that they control. External “watchdogs” are entrusted to check that trustees (and also the constituent members of the agent) are within the limit of the law. Therefore, an adequate job of the watchdogs will ensure that the trustee can perform his activities independently. However, as suggested by Knott and Miller (2008), an issue in the role of these watchdogs in the form of General Accounting Offices (United States), Audit Commission (in the United Kingdom between 1983 and 2015), and *Cour des Comptes* in countries like France, Spain or Italy is the extent to which their independence is secured, and not mediated by the legislative, which can be dominated by the executive in parliamentary democracies.

Transparency has the potential to curb corruption in individual countries or in cases of lower levels of government (Russian Regions in Podkolzina et al. 2011; Municipalities and States in the United States Cordis and Warren 2014). However, comparative research plays down the role of transparency in itself as insufficient (Lindstedt and Naurin 2010). Lindstedt and Naurin (2010) distinguish between transparency controlled by the agent itself (for instance a ministry or a local authority under supervision) and transparency under the control of an external actor (i.e. a higher level of government or independent inspectorate). For the former, the same authority will itself impose a more transparent behavior by sharing information on its activities, which entails an obstacle for corruption practices. For the latter (i.e. watchdogs), transparency depends on the information that audit commissions make available to the public in general and to the judiciary in particular regarding misbehavior on the part of the local authorities. It is therefore expected that enhanced transparency will jeopardize corrupt behavior. Furthermore, transparency as a constrainer of corruption should be complemented by the publicity condition (i.e. “...the information made available [...] must stand a reasonable chance of actually reaching and being received by the public” (Lindstedt and Naurin 2010, 302) and the accountability condition (i.e. sanctions must be available to the citizens in order to change the behavior of the principal).

Rules and *standard operating procedures* constrain the operations of the trustees and offer protection from the interference of the principal. If ‘red tape’ is annoying for the time waste it entails, it also offers the potential to limit the exercise of moral hazard. Procedures help to keep arbitrariness of politicians at bay. As McCubbins, Noll and Weingast (1987) suggest, administrative procedures induce compliance, without using the resources of political actors, by limiting the range of feasible policy actions of the agent. They may solve two problems of political control: they reduce informa-

tional disadvantages of the principal and enfranchise the constituents of the agent in decision-making, which make the agent responsive to the stakeholders they deal with. Administrative procedures are used by the legislative and executive to retain control of how outcomes are achieved and ensure that processes will have equal effect on stakeholders that will be enfranchised by the procedure. These administrative procedures then tie the hands of agents and trustees.

In light of this theoretical discussion, our expectation is that when those settings (in our case, local governments) where these three mechanisms – professionalism, rules and standard operating procedures, and transparency and independent watchdogs – are in place, public procurement will exhibit fewer instances of corruption than those settings in which those conditions are not activated; consequently, it is not a balance of agents and trustees who take the major decisions on public procurement, but solely agents.

Research Strategy

The purpose of this study to isolate effects of bureaucratic structures on corruption and, more specifically, to analyze interactions between the politicians and bureaucrats involved. We have described above that previous studies in this field (e.g. Charron and Lapuente 2013; Rauch and Evans 2000; Dahlström, Lapuente and Teorell 2012) point out, also providing quantitative tests with macro variables, that the actors will behave very differently depending on the roles designated to them by the institutional design. Yet we lack qualitative accounts that show the theoretical mechanisms in action – that is, that connect one aggregate variable (e.g. low meritocracy in an administration) with another (e.g. high corruption). In particular, we expect that, in cases where politicians and bureaucrats have a straightforward principal-agent relation, they will not counterbalance each other, and a higher corruption risk therefore follows, while in cases where the bureaucrats have a more independent trustee role, politicians and bureaucrats will be more inclined to mutually check each other. Moreover, again based on the research cited above, we expect that the degree of professionalism and transparency, and how standard operation procedures are designed, will influence the extent to which trustees dare to act.

To fulfill this purpose, we would like to find decision processes that involve corruption risks in two cases where, ideally, only our variables of interest vary in a most-similar cases design (Gerring 2007, 131). For doing so, we first focus on Spanish local governments from the same region (Madrid).

This allows us to control for the main alternative explanations of corruption, such as the legal tradition, the political institutions, and the level of socio-economic development (La Porta et al. 1999; Treisman 2000). In addition, most corruption in Spain is local and has been on the rise, and there is also remarkable variation across municipalities (Jiménez, Villoria and García Quesada 2012; Hay Derecho 2015). The 46 recorded cases of local corruption before 1999 jumped to 288 and 408 respectively during the terms 1999-2003 and 2003-2007 (Costas-Pérez Solé-Ollé and Sorribas-Navarro 2012), and there are currently over 600 municipalities under investigation for corruption allegations, including 40 among the 110 largest Spanish municipalities (Hay Derecho 2015).

The literature points out the lack of administrative counterbalancing powers to all-powerful mayors as one of the factors explaining the wave of corruption cases in Spanish municipalities. It has been noted that Spain has a strong-mayor type of local government (Lapuente 2009; Jiménez, Villoria and García Quesada 2012), where the mayor, unlike its Northern European counterparts, has become the *de facto* chief administrative officer (CAO) of the local government (Mouritzen and Svava 2002). Spanish mayors therefore accumulate more powers and lack the professional checks imposed over them in other local government regimes, such as the council manager, where the mayor and elected councilors form the “board of directors”. These relatively higher powers have been linked to corruption through mechanisms in which the mayor becomes the main agenda setter (Costas-Pérez, Solé-Ollé and Sorribas-Navarro 2012, 471), decision-maker on the level of transparency of the policy-making process (ibid. 472), and main actor for hiring, firing, and promoting local officials (Lapuente 2009). Yet these factors concur in all Spanish municipalities and thus cannot account for the variations in corruption levels between the two cases we have chosen.

We then narrow our research to corruption in public procurement. For, although many corruption cases during Spain’s economic and building boom in the early years of the 21st century are related to town planning policies (Jiménez, Villoria and García Quesada 2012, 363; Costas-Pérez Solé-Ollé and Sorribas-Navarro 2012), according to the judiciary sentences (Hay Derecho 2015), public procurement concentrates the greatest number of cases of corruption.

For the purpose of this article, we frame the actors involved in the public procurement process as follows. First, we have the *beneficiaries*, which represent the society at large, including the higher levels of government (regional and national) that supervise local authorities. Second, the *principal* is identified with the mayor and the councillors from the governing party. The principals are, accord-

ing to the 2007 Contract Act¹ (art. 320), the ones responsible for taking the political decisions in the local government. The Contract Act does not mandate a politician to chair the procurement board; however, this is customary in small and medium size municipalities. This composition already reveals the potential for influencing a rather technical board. The council may include more councilors of the ruling party and/or one (or several) from the opposition as well as high officials from the line departments involved in the bid.

Third, the *agents* are the public employees hierarchically dependent on the political principals. This category includes both relatively autonomous civil servants as well as staff under labor contracts. Both may take part in the procurement process by drafting the technical requirements of the bid (for instance, the architect) or the administrative prescriptions (chief of the procurement's office, also the secretary of the procurement board without voting rights). Both are subject to a merit based recruitment process, although with loopholes as criticized by some authors (Cuenca 2013a, 2013b), and only local civil servants have tenure. Compared to other central levels, the municipalities have an overwhelming majority of staff contracted under labor legislation (58.3% against 26.8% in central ministries (MHAP 2015: 29, 32) which convert them into potentially more docile agents. The proportion of labor contracts in municipalities grew from 30.3% in 1975 to a peak of 78% in 2004 (Cuenca 2013a).

Fourth, the *trustees* are the '*habilitados nacionales*', nationally recruited civil servants who monitor the legality of municipal administrative acts: the financial internal auditor (*Interventor*) and the legal advisor (*Secretario*). They are appointed to the municipalities by regional government and are subject to the personnel policy of the city council for some issues (performance related pay, permits, compatibility with other activities among others). They also take part in the procurement board.

The Rotten Apple and the Honest Trier

To protect the anonymity of interviewees, we refer to the two cities we analyze as the *Rotten Apple* and the *Honest Trier*. They are most-similar cities in a large number of variables. They are both middle class residential municipalities around the Madrid metropolitan area, with an income per capita of 21,000 euro (*Rotten Apple*) and 23,000 euro (*Honest Trier*) and a population of 70,000 and 22,000 inhabitants respectively. The local economy is mostly based on services (60 per cent in *Rotten Apple*

¹ Royal Legislative Decree 3/2011 approving the consolidated text of Act 30/2007.

and 90 per cent in *Honest Trier*). Politically, their electorates are similar, and both cities are strongholds of Spain's conservative party in the national elections. Since 1993, the *Partido Popular* has consistently gained over 45 per cent of the vote in the national elections in both municipalities, while the social democratic *PSOE* has always lagged behind with a significant difference, and a percentage of votes ranging between 20 and 40 per cent. Regarding the local government, center-right parties have governed both municipalities during the last two decades (*Honest Trier* since the 1995 local elections and *Rotten Apple* since 1999).

Yet they are very different when it comes to corruption. The *Rotten Apple* has received wide coverage in the press due to corruption scandals related to procurement, which have taken the mayor, one councilor, the chief architect, and the head of the procurement office to court. In this city, the kickbacks-for-contracts scheme was so systematic that politicians had set a standardized bribe of 2 percent of the public contracts (*El País* 2016). The *Honest Trier* has not been involved in corruption scandals related to procurement or any other matter in recent times and was granted an award for its transparency policy.

An important caveat is in order here. There is a turning point in 2015 when a new independent political group took office in the *Rotten Apple*, precisely on an electoral platform based on the fight against corruption. The new political party formed a minority government with six councilors (in a council of 25), and advocated a more transparent policy and an absolute clamp down on corrupt practices in public procurement. This change provides us with ample opportunity for a temporal analysis, too. Therefore, we divide the case of the *Rotten Apple* in two, which we refer to as the *Rotten Apple I*, with the corrupt municipal government, and the *Rotten Apple II*, after the break. In sum, this article explores, first and foremost, the cross-sectional variation between *Honest Trier* and *Rotten Apple I*, but also the cross-time variation between the *Rotten Apple I* and *Rotten Apple II*.

Interviews

We carried out 22 interviews between October 2015 and March 2016 with the main actors of the procurement process (see Appendix I). An agreement with the mayor of our two cases municipalities provided the first route to contacting actors of the procurement process. Thereafter, the selection of respondents followed the chain sampling technique that is also known as snowball sampling, which entails that interviewees recruit or recommend other relevant interview partners (Guest, Bunce and Johnson 2006). This strategy was adopted given that it was initially impossible to

find out who had been involved in procurement. The selection of new respondents stopped as soon as data saturation was achieved, that is, as soon as the interviews would no longer provide new data for the development of conceptual categories (Francis et al. 2010).

The interviews (see Appendices II and III) lasted on average one hour, were transcribed verbatim and coded with Atlas Ti (see Appendix IV). We organized the data into categories in order to identify patterns and relationships among them (McMillan and Schumacher 1993, p. 479). The process of coding was developed in three phases. Through open coding, we marked and labelled text fragments under a specific code. Axial coding helped us to reorganize the codes, by combining and disaggregating them as appropriate. Finally, selective coding helped us to establish relations and patterns through a process of ‘constant comparison’. The citations or examples used in the next section represent the general findings, except when explicitly stated that an example or citations represent an atypical finding.

Findings

We expect municipal governments following the tenets of principal-agent thinking (*Rotten Apple I*) to allow corrupt activities because agents have an incentive to either turn a blind eye or directly engage in self-dealings themselves. On the contrary, municipal governments structured following the principal-trustee theory (like *Honest Trier* and *Rotten Apple II*) should be better prepared to deter corrupt behavior since the trustees are only indirectly accountable to the political principal and serve a larger beneficiary. The main purpose is however not only to establish this relationship—others have done that before us (Dahlström, Lapuente, Teorell 2012; Miller and Whitford 2016; Rauch and Evans 2000)—but rather to study the details of the interactions between the different actors, and how professionalism, rules, and transparency can interact in positive and negative ways. This section is therefore divided into four sub-sections where we first describe the institutional set-up and then turn to discussing the professionalism, rules, and standard operating procedures and the role of transparency and independent watchdogs respectively.

Principal, agents and trustees of the procurement board in Rotten Apple and Honest Trier

As mentioned above, Spain’s Contract Act of 2007 leaves room for discretion in the configuration of the procurement board. In the corrupted city council, the composition of the procurement board varied from situations I to II. In *Rotten Apple I*, the mayor, later imprisoned for corruption,

mandated a composition of the board with four *agents* and two trustees. If we should describe the roles of the most important actors: the *agents* were three councilors from the governing party and a contracted staff from the area of procurement (selected by the principal in a non-competitive process according to several interviewees). As customary, the two *trustees* were the mandatory legal advisor and the financial internal auditor. In *Rotten Apple II*, the elected mayor after the corruption scandal set a more plural procurement board with the mayor, two councilors from his party, and eight councilors from the opposition parties, the two compulsory trustees, and the secretary of the board as a local civil servant without voting rights. In *Honest Trier*, the composition of the board had only councilors from the governing party before 2015, and it added a councilor from the opposition (on a rotating basis among the opposition) with voting rights.

The overwhelming majority of agents in the procurement board of *Rotten Apple I* determined the outcomes of the bidding process. The *agents* are unlikely to restrain the will of the *principal* when voting on a decision. The situation in *Rotten Apple I* was quite archetypical of the conduct in situations of the majority of agents as lamented by one trustee:

“When politicians had an absolute majority accompanied by docile agents, they submitted a proposal to the Local Assembly and did not check any of our observations” [I-11, similarly I-12 and I-15].

Professionalism

The legal advisor and the financial auditor that perform the functions of a *trustee* in Spanish municipalities act partly as Pettit (2012) suggests when they behave on behalf of the beneficiaries (which include the principal and a wider group, like society for instance, or a higher level of government). The *principal* may exert some pressure and control on the trustee, however, which hampers their roles (Pettit 2012). For instance, trustees lack sufficient resources, particularly in small municipalities, to engage in a full internal auditing exercise that goes beyond checking up the legislation and the existence of budgetary appropriations:

"What is normally monitored? To check the existence of the required documents: the specification of technical details, the clauses... one takes a superficial look at the documents because it cannot be done otherwise" I-2 (See also I-17, I-1).

Another typical pressure is time to move the procurement files forward. A slow procurement process may cause the budget to remain unspent; but, at occasions, time pressure is applied so that the internal auditor cannot study the detail of the whole process and illegal acts can be concealed:

“The time pressure is the way to push you and make you lose track of things. Moreover, there are technical specifications that are far more complex than others [...]; the law gives you 10 days but they ask you to deliver your report before, and actually you cannot devote 10 days to one single issue because everything is urgent” I-11 (also I-6, I-12).

Time pressure and lack of resources to engage in proper auditing are similar in our both case studies; however, the dependence of the trustee on the mayor is not experienced in the same way in *Rotten Apple I* and in *Honest Trier*. In *Rotten Apple I*, the pressure on the trustee is felt in different forms. First, one trustee needed psychological treatment:

“In 2013, I had to do his work and mine, and then came the Punica corruption scandal, I ended up suffering it and had to take a four-week leave without pay; I was burnout because of physical exhaustion, because of the high workload and the pressure they put us here” (I-11).

Second, non-collaborative *trustees* were replaced when on holiday by *agents* who would please the needs of the *principal* regarding some procedures for which the trustee presented objections or even tried to stop the process as a trustee asserted:

“They asked me to do a technical report, I left the draft before the Christmas holidays, because there were things that were not according to the initial technical proposal and when I came back I found another report completely different from mine, approved by my substitute. She had been temporarily appointed, which is a detestable legal figure, [...] which means hiring someone with the only requirement that she is sufficiently capable, [and] the problem is that ‘capable’ has been interpreted in a very lax way” (I-10, also corroborated by I-11 and I-12 and also other examples from I-6 and I-8).

Furthermore, objections to any part of the procurement process were superseded by the mayor with the approval of the council, which is legal, according to the Contract Act. In the procurement board, the majority of the ruling party would approve the process and this would be further endorsed by the council in its regular session. Therefore, the internal auditor would lack a powerful

weapon to veto the process (I-11 and I-7). If nobody pays attention to these objections, they may remain hidden in the procedure unless the fiscal attorney from the judiciary or the National Audit Commission decides to investigate a particular contract or the contracts of a particular year:

“If there is an unfavorable report, it stays on the record but nobody does anything about it; sometimes the financial auditor and the legal advisor may open the report again, but this implies a waste of energy [...], nobody does anything” (I-8). Finally, although not experienced in *Rotten Apple*, trustees depend on the mayor for performance bonus and other perks (I-1 and I-17).

In *Honest Trier*, however, the performance of trustees and politicians has been different. First, the trustees of the municipality have created a self-protected team, who support each other in their decisions regarding particular matters (independently corroborated without being prompted by I-5, I-6, and I-14). Their position is very stable, and the trustees have occupied their posts over the last 10 to 20 years, unlike the high rotation rate experienced in *Rotten Apple*. Furthermore, none of the trustees were replaced by an agent when on holiday (I-14, I-5, and I-5). Second, if a trustee makes an objection to the procurement proceedings, the politicians will stop the process until the problem is solved and will not overrule the trustee by casting a vote in the council, as one politician from the opposition admitted:

“The current governing coalition says they will not go against the technical reports; even when a project was welcomed by all political groups, the Mayor said: ‘No, because there is a negative report by the legal advisor.’” I-15.

Rules and Standard Operating Procedures

The detailed Contract Act 2007 has 334 articles and foresees the different ways in which the rules and procedures could potentially constrain moral hazard from any of the actors. However, these rules seem not to be sufficient, mainly for two reasons. First, a certain cooperation between the agent and the principal cannot go undetected without proper investigation techniques, only under the domain of the judiciary. Second, even a detailed process can be tweaked to the advantage of the principal deeming the trustee powerless or even ignorant of what happened.

The procurement process and the rules work differently in *Rotten Apple* and *Honest Trier*. In *Rotten Apple*, all interviewees and also the judiciary proceedings asserted the cooperation of the chief archi-

tect with the successful bidder as well as the cooperative role played by the chief of procurement. Another assistant of the chief architect used to rank the different bids according to the technical specifications of the bid and would select the “pre-selected” bidder without being able to see any wrongdoing (I-9 and documentation provided by him). Smart engineers and architects can play with the formula that “objectively” assesses the economic value of the bids, and this would also give advantage to a particular bidder (see Fueyo 2013). On other occasions, the chief of procurement (also indicted) was the collaborating agent, temporarily replacing the trustee. All this wrongdoing was impossible to detect unless phone lines were intervened as manifested on several occasions by all the interviewees from the Regional Audit Commissions (I-17, I-20, I-22 and I-22). Finally, in a serious corrupt case, the trustee was given less than the 10 mandatory days for his report and failed to identify an unlawful contract clause as well as the fact that the same representative signed the bids for three companies. In general, all interviewees from *Rotten Apple* gave examples of how the process was repeatedly subverted, showing that, even if rules and standard operating procedures can indeed support the trustee, such arrangements can be circumvented.

Honest Trier, however, did not subvert the processes in a way that would lead to corrupt practice. Although one of the politicians of the opposition criticized the government for having abused contracts that were under 18,000 euros, for which a competitive process is not needed, a report from the Regional Audit Office said that the council had done more competitive contracts than required by the legislation. The audit of the Regional Audit Office did not reveal major wrongdoings, and interviewees from the agent, the trustee and the opposition party were not able to identify a major and systematic subversion of the processes.

The Role of Transparency and Independent Watchdogs

Transparency has become a buzzword to shield a public institution against corruption. Following Lindsted and Naurin (2010), we distinguish transparency of the local authority (i.e. the same agent under scrutiny) from external transparency (i.e. coming from the watchdog).

Internal transparency implies uploading detailed information on bids and bidders in the municipal websites and including representatives of the opposition in the procurement board among the most typical solutions. In the *Rotten Apple I*, transparency was very low since the opposition was absent from the procurement board. Furthermore, at times, the process was divided between different technical staff so that no trustee had an overview of who was doing what (I-9) or the documenta-

tion from the proceedings was hidden so that wrongdoing would go further undetected (I-5). Therefore, not only was information not published on the web, but it was also deliberately concealed from the staff of the organization. In contrast, the procurement board of *Honest Trier* publicly opens the envelopes with the different bids and any member of the public can attend. The opposition has voice and voting rights in the procurement board.

This strategy changed after 2015 and marks the transition from *Rotten Apple I* to *Rotten Apple II*. First, the information in the bids is currently uploaded on the municipal website. In addition, the mayor of *Rotten Apple II* included the whole opposition in the board (composed now of 10 politicians); this is even more than *Honest Trier*, which offers one vote to the opposition parties on a rotating basis. Although politicians (I-15, I-16, and I-19) are happy with this arrangement, other members of the board in *Rotten Apple II* think plurality may have gone a bit too far, since it converts a technical instrument (the board) to a “mini” parliament. For instance, members of the opposition voted against a bid for buying flowers for the Easter processions of the Catholic Church on the grounds that this was not ideologically acceptable (I-18, I-19), politicizing an issue in the procurement board. In general, interviewees from both cities were in favor of enhanced transparency in the process but also sceptical that bad governance could be prevented with more transparency by itself. The cases of the *Rotten Apple I* would probably have been minimized with the availability of more information, but the “many eyes” *à la* Bovens (2007, 455) would not have prevented the shady deals between the principal (councillors or the mayor) and the agents (local officials) favoring certain private contractors.

The “watchdogs”, Regional Audit Commissions (RAC), are also actors that may enhance the transparency of the procurement; however, they turned out to be less relevant than expected. RAC’s role depends on the mandate, design, and resources granted by the regional parliaments. The Madrid RAC is especially ineffective for two main reasons (I-17, I-21 and I-22). First, the decision as to whom to audit lies basically on the commissioners who, in turn, are appointed by the regional Parliamentary majority. Consequently, there is room for conveniently targeting the municipalities subject to auditing. For instance, *Honest Trier* (with a different color of political party from the majority in the regional Parliament) was subject to an audit in 2012. However, the *Rotten Apple* (from the same political party of the Parliamentary majority) was not a target of the RAC during the last 16 years for which information is available. Second, the resources to carry out the audit are limited,

with only four staff members to audit 9,000 contracts, and they can only deal with 70 procurement boards each year out of the several thousands in the region.

All in all, we see again that, although transparency and watchdogs are indeed valuable tools for fighting corruption, they are not bulletproof techniques. Corrupt actors can bend the rules and use loopholes so that trustees' oversight is less powerful than it could be.

Conclusion: The Abandoned Trustees

Most of the literature on sub-national variations in corruption has focused on explaining regional differences, such as between Flanders and Wallonia in Belgium or between Northern and Southern regions in Italy (Tabellini 2010, Charron and Lapuente 2013). Yet corruption in Western Europe seems to be a phenomenon to a great extent linked to local, rather than regional, governments, both in countries ranking highest in quality of government, such as Sweden (Andersson 2008, Erlingsson, Bergh and Sjölin 2008), as well as in the countries that rank lowest, such as Spain (Jiménez, Villoria and Garcia Quesada 2012) or Italy (Drapalova 2016). Due to the closeness to local business, contractors, and developers, local politics can easily generate “danger zones” (Andersson 2008, 193) for corruption, which may degenerate in “crony collusion” (Drapalova 2016, 38) between local politicians and entrenched businesses.

There are thus reasons to expect that corrupt practices are both present and unevenly distributed in countries. This article has used this variation and compared two municipalities, which we choose to call *Rotten Apple I* and *Honest Trier*, from the same Spanish region. They share the same features to promote or prevent moral hazard on the part of agents and have displayed contrasting levels of corruption, with one city having many of its officials being indicted by the judiciary. Moreover, we also exploit temporal variation in one of the cases and compare *Rotten Apple I* with *Rotten Apple II*. Our main findings are three. First, as expected from much previous research, we show that a trustee can independently act on behalf of the general welfare and the beneficiary and against the welfare of the agent, and other groups would be more successful in promoting good governance. Although the Spanish system of trustees fits most features delineated by Pettit (2012) and Hood and Lodge (2006), it fails in the fundamental aspect and gives the mayor power to determine some personnel issues that affect trustees at the local level. *A de facto*, not *de jure*, professional independence of trustees seems to be a necessary condition for preventing corruption abuses.

Secondly, and maybe even more important, our analyses reveal that, in order to do so, other institutions empowering her to act must support the trustee. And although all these institutional arrangements can indeed be circumvented, as shown by the case of *Rotten Apple I*, having them in place makes it much more costly to do so. In this context, the advocated separation within the agent part (the electorate being the principal) between elected politicians and a professional bureaucrat does not materialize and cannot suffice to stop moral hazard (Miller and Whitford 2016). This was more problematic in *Rotten Apple*, since it had a higher proportion of contract staff and several interviewees mentioned that the recruitment process was often rigged. Under these circumstances, a proper trustee system, as proposed by Knott and Miller (2008), is even more needed.

And, third, our analyses also show that the institutional design of the trustee system is never perfect and inevitably opens for some bad governance practices. In other words, the willingness of the actors, and not only the institutional setting, also matters. A greater willingness of the principal (the mayor) in *Honest Trier* to respect the role of the trustees and a higher stability and cohesiveness of the trustee team in *Honest Trier* helped the city to build a virtuous cycle of good governance in procurement. *Rotten Apple I*, however, showed that the principal with cooperative agents maximized his benefits and the legal system offered enough gaps to allow overcoming the obstructing capacity of the trustees.

These findings are in line with other research in the area of corruption in Spain. For instance, Viloria (2015) points at the mayors as a source of corruption due to the monopolistic power they enjoy. Urquiza (2005) offers reasons as to why the opposition parties are not fit to constrain the mayor and avert corruption cases. And Cuenca (2013a, 2013b) notes that almost two thirds of the local authorities are subject to a questionable merit-based recruitment process. All these results reinforce the thesis that non-merit based recruitment may be a potential for promoting or allowing corruption in public sector organizations (Dahlström, Lapuente and Teorell 2012; Rauch and Evans 2000).

In sum, administrative procedures in Spain are insufficiently designed as they depend too much on an honest principal—the major—and, without supporting structures, the trustees do not always perform their monitoring duties because the personal costs for doing so, such as harassment, and the loss of career opportunities are too high. Therefore, in the Spanish system of today, the princi-

pal must accept the constraints of the trustee without circumventing her through the process. Yet this is, of course, not sufficient since its solution derives from the same source of moral hazard, which is fought through more and better controlling mechanisms.

Both for Spain and any other country experiencing endemic problems of corruption in certain administrations, a more well-functioning system would instead give strong incentives to the principal to credibly commit to a trustee system (Miller and Whitford 2016). There are, however, three main flaws with such an argument as well: i) the perfect legal self-enforcing machinery that does not need the intervention of human agency is virtually impossible to achieve (Hood 1986); ii) there are municipalities that have been included in highly corrupted networks and others remain away from these scandals; and iii) a proper system of checks and balances requires more resources and relational distance that cannot always be present, in particular in small environments, unless there are radical changes to the system. This article therefore underlines, again, that there are no perfect systems, but that the institutional design can make it more or less costly to enter into corruption, and more or less costly to be the individual exposed to corrupt behavior, which is the case when the trustee is abandoned by the system.

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Appendix I: Interviewees that participate in the procurement board

- 1- Trustee – big municipality
- 2 – Procurement head – big municipality
- 3 – Legal adviser – big municipality
- 4 – Trustee, Honest Trier
- 5 – Trustee, Honest Trier
- 6 – Agent, Legal adviser, Rotten Apple
- 7 – Agent, Legal adviser, Rotten Apple
- 8 – Trustee, Rotten Apple
- 9 – Agent, technical staff, Rotten Apple
- 10 – Trustee, Rotten Apple
- 11 – Trustee, Rotten Apple
- 12 – Trustee, Rotten Apple
- 13 – Agent, technical staff, Honest Trier
- 14 – Trustee, Honest Trier
- 15 – Politician - opposition, Honest Trier
- 16 – Politician - opposition, Honest Trier
- 17 - Watchdog, procurement auditor – Region 1
- 18 – Politician - government, Rotten Apple II
- 19 – Politician - government, Rotten Apple I
- 20 - Watchdog, procurement auditor – Region 2
- 21 Watchdog, procurement auditor – Region 3
- 22 Watchdog, procurement auditor – Region 4

Appendix II: Interview guide for the staff of the procurement board (with some adaptations for trustees, principal and agents)

The process

1. From the contracts used most frequently at the City Hall, which ones offer more possibilities for inappropriate behavior? And what are the most relevant legal loopholes regarding those?
2. What parts of the process are more vulnerable to inappropriate behavior?
3. What process is more vulnerable to improper behavior?

Upon execution of the contract

4. Are there contractual modifications after awarding it? What is the monetary proportion of these modifications?
5. Is there a person who is responsible for the execution of each type of contract? Who and what type of control is performed?
6. How often is sanctioned the breach of contract?

The actors and their ability to denounce incorrect or suspicious practices

7. Who is usually part of the procurement board?
8. Overall, how are the relations between trustees (habilitados) and the government team? Technical staff and habilitados? Technical staff and the government team?
9. Are there votes to award the contract in the sessions of the procurement board? What are usually the results of the vote? Are there dissenting opinions and how are they recorded?
10. Are the minutes of the procurement board published? How?
11. In cases of corruption, what actors are often involved? How can you report on these cases?
12. In cases of suspected malpractice, who intervenes to question it, how?

Appendix III Interview guide interviewees from the Regional Audit Commissions (RAC)

1. In your experience, what makes possible the corruption in local government procurement?
2. Does the RAC detect corruption in procurement? In what areas of activity / types of contracts / procurement phases do you usually detect more cases of corruption?
3. Is there more corruption in local procurement than in other levels of government (e.g. regional)? Why?
4. What is the relationship between external and internal oversight bodies in the field of control of procurement and in general?
5. What is the role of the RAC in auditing irregularities in procurement?
6. How many times has the RAC initiated a criminal case as a result of an audit report?
7. How does the sanctioning procedure work in the event that the bidders do not meet the terms of the contract (usually the deadlines)?
8. What are best practices in the municipalities to minimize the risks of corruption?
9. Is it possible to minimize the risk of corruption through the current legislation?
10. How does the RAC decide whom to audit?

Appendix IV: Codes used in this text

Regional Audit Commission	Monitoring
	Impact
	Relationship with municipal financial auditor
	Politicization
Agents	Collaboration with principal
	Dependence
	Recruitment
Contract	Capacity of control
	Deficiencies
	Monitoring
	Corruption
	Legislation
	Procurement board composition
	Voting
	Technical prescriptions
	Standardization
	Sanctions
Trustees	Replacement
	Dependence
	Lack of resources
	Independence
	Irrelevance
	Truth to power
	Relational distance to politicians
Principal	Impunity
	Moral hazard
Other	Municipal size - Impact