

US and world's legal profession must address serious governance failings, says Paul Volcker

By Rebecca Lowe and James Lewis

While viewing itself as an exemplar of the rule of law, America is in reality suffering from widespread and growing corruption, failures of governance and a 'distorted political process' overly dependent on wealthy funders, says Paul Volcker, former Chairman of the Federal Reserve.

'The successful attack on corruption depends upon a strong sense of rule of law, but it's equally true that widespread corruption makes a strong rule of law an impossible dream,' Volcker told a packed audience of lawyers at the IBA's Annual Conference in Boston. 'You carry the full weight of a long respected and honoured tradition. If we fail to maintain an effective rule of law and a strong defence against corruption, two sides of the same coin, then you can hardly escape complicity.'

The former Fed Chairman launched the Volcker Alliance in New York City earlier this year to help improve the implementation of public policies. 'There's plenty of debate about what governments ought to do on grand policy,' he said, and quoting from Thomas Edison, emphasised that 'vision without execution is hallucination'. He added: 'Too often it shows up in poor performance. It all feeds the sense that government can't be trusted.'

According to the most recent Gallup poll, only a quarter of Americans now believe corruption is 'not widespread' in their country. Volcker blamed the collapse in confidence on 'heavy campaign spending' and urged the audience to help mend the broken system: 'Should we be satisfied that we live with a really effective rule of law, when the perceived need for heavy campaign spending has come to dominate our political process? We let those financing practices infringe in a very basic way upon the rule of law, with its sense of even-handedness and openness. Does it not breed behaviour that is accomplished by any reasonable definition of corruption?'

Elizabeth Rindskopf Parker, former General Counsel of the CIA and NSA, echoed Volcker's remarks in an interview with *IBA Global Insight*. Voicing concerns about the lack of congressional checks on the executive, particularly concerning security and law enforcement, Parker was forthright with her criticism. 'I do not think our congressional mechanisms work well,' she said. 'Why don't they work well? One answer – maybe the main answer – is that the representatives don't have enough time to focus on this. They are too busy raising money for their next election.'

According to Stephen Zimmermann, Director of Operations for the World Bank's Integrity Vice Presidency, lack of trust in public institutions makes anti-corruption policies particularly challenging to enforce. 'If the public does not have confidence in their courts and their prosecutors and their investigators, it is very difficult to get over that hump and begin effective efforts to combat corruption,' he said, speaking alongside Volcker.

With a mandate to investigate fraud and corruption in Bank-financed activities, Zimmerman was well placed to judge corporate conduct across the world – and businesses in the US and other developed nations were far from blameless, he stressed. 'In my experience, while many of the western companies are able to say "we rank high on the Transparency International Index, we have no or very minimal corruption in our countries", we often don't see the same behaviour in the developing world,' he told the assembled lawyers. 'The companies that may behave with greater integrity in their own countries sometimes feel a little more free to engage in corrupt activities in the developing world.'

Others had more faith in corporate and state governance, however. Robert Khuzami, former Director of the US Securities and Exchange Commission (SEC) Division of Enforcement and former General Counsel of Deutsche Bank, maintained that US regulators and prosecutors were doing an effective job in holding the corporate world to account. While he conceded fraudulent activity was widespread during the financial crisis, he believed the SEC and law enforcement authorities now had it under control.

‘We still face the sad fact that in the US, the perception of our own citizens of corruption has increased... Only a quarter of Americans themselves believe that corruption is “not widespread” in our country’

Paul Volcker

Former Chairman of the Federal Reserve (1979–1987)

Excerpt from Paul Volcker's keynote speech at the IBA Annual Conference in Boston 2013 (2:19)

‘You’d be foolish to think we are going to return to a time where all products offered by financial institutions are simple enough so that any investor can understand them,’ Khuzami, now a partner in Kirkland and Ellis's Government & Internal Investigations Practice Group, told *IBA Global Insight* in Boston. ‘But that doesn’t mean fraud and wrongdoing has to be part and parcel of that. I think the challenge the SEC has – and one that it has really met – is to bring in-house the kind of expertise it needs to really understand the markets and the products.’

When asked about the potential pitfalls of regulatory capture – when regulatory agencies come to be dominated by the industries they are charged with regulating – Khuzami mounted a passionate defence. Despite having come from Deutsche Bank, at the SEC he brought a record number of cases against high ranking officials, he said. Regulators also face ‘very strict ethical and recusal restrictions’ on them when they leave, he added, under threat of criminal sanction – and, more importantly, they are viewed by companies as ‘ambassadors for compliance and lawfulness’.

‘These people can walk into the CEO’s office and say, I used to work at the SEC, I’m telling you that if we do this, this is what may well happen. And that person has credibility and stature in a way that others may not,’ he said. ‘It’s not that I don’t understand the criticism [...], but the benefits to having people come in and out of government are so significant, with the right ethical restrictions on the way out, that I think on balance the system works extremely well.’

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