AND, INJUSTICE FOR SOME: CORRUPT EXCHANGE AND THE RISK-AVERSE OFFICIAL

Gary E. Marché
Rogers State University

Abstract

Although corruption and optimal law enforcement literature have addressed the effects of corruption, little has been done to analyze the decision to become corrupt. For example, little is known about risk-preferences and how they might affect the nature of a corrupt exchange scheme. To answer this question, a theoretical analysis is developed that considers the non-coercive incentives and circumstances necessary for a law enforcement official, assumed averse to criminal risk, to choose a corrupt exchange with organized crime that involves murder. Risk-aversion and the severity of the crime involved are shown to reduce the likelihood of detecting the corruption scheme and murder is shown to be optimal. Corruption schemes involving less risk-averse offenders are analyzed and compared.

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I. Introduction

Porta and Vannucci (1999) model corruption and corrupt exchange within the context of a market for political rents. The benefit-side of a corrupt exchange is considered. Rose-Ackerman (1999) views corruption as

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an outgrowth of incentive systems and monopoly interests. An institutional context is developed within which opportunities for corrupt exchange exist. Bac (1998) analyzes corruption within the institutional structure of public organizations and indicates how supervision, supervisor procedures, penalties and bribes, and organized corruption are interrelated. Circumstances that affect the corruption choices of a "street-level" bureaucrat are considered. Wells (2003) indicates that accountants, when suspecting corruption, can seek observable indicators of corruption schemes such as bribery and kickbacks, economic extortion, conflicts of interest, and illegal gratuities. Individual motives to corruption suggest greed and specific processes and roles. Behavioral clues that may suggest the presence of corruption are discussed. Optimal law enforcement literature such as Polinsky, et. al. (2001) indicates the interrelationship between deterrence and the effects of corruption that include extortion, framing, and risk bearing.

These analyses leave the question of how risk-preferences are related to types of corruption and crime unanswered. Moreover, these analyses consider relatively common forms of corruption and corrupt exchanges that do not involve more severe forms of crime such as murder. The effects of different preferences for criminal risk are not examined. By default, corrupt decision makers may be assumed risk-neutral. The purpose of this analysis is to examine the relationship between the decision to become corrupt, the severity of criminal acts that might be involved, the corresponding risk preferences, and the related crime characteristics.

A. Criminal Success and Risk-Preference

Psychologists and economists (Rietz, et. al., 1998) consider sensation and risk seeking behaviors to generally mean the same thing and that, for a given individual, they are stable. To gamble for criminal gains, risk seekers (who are assumed rational) require only that their odds for success lie somewhere between zero and those of a fair gamble. In other words, the inducement to a criminal gamble requires an odds threshold that is less than a fair gamble. As risk-seeking gamblers, such offenders will more often lose and encounter police and the criminal justice system. Therefore, risk-seeking criminal offenders are over represented among the incarcerated. Criminal justice officials who believe that the incarcerated represent an unbiased sample of the criminal population may assert that criminals appear to prefer risk.

Experiments with rats such as Battalio, et. al. (1985) find a tendency toward risk aversion toward food pellets. Given that risk aversion is a survival characteristic of rats, the most successful individuals and criminal offenders may also be those who avoid risk. Property owners, for example, avoid the risk of their house burning down by transferring that risk to an insurance company. Successful criminal offenders may also be those who avoid the risk of crime. Crime benefits and criminal risk can be avoided by buying "crime insurance." Crime insurance transfers the risk of crime to professional criminals who assume the risk of committing a crime. The offender who is averse to the risk of crime can safely gain the benefits from crime. The price of crime insurance is that the risk-avoiding offender must pay by doing something that benefits the professional criminals who committed the crime. This is a form of "corrupt exchange."

B. Corrupt Exchange, Risk-Preference, and Crime Severity

Individuals seeking to benefit from serious crimes are able to transfer the risk of committing a crime to other professional offenders with different degrees of success. Robert Becker (2000) indicates that an acceptable bet for risk averse individuals is one that requires a better chance at the top prize than a fair gamble offers. Severe criminal sanctions suggest that a risk-avoiding offender would require a significant *odds premium*. In other words, a risk-avoiding criminal will try to transfer the risk of committing a severe crime such as murder to the greatest degree possible and thereby obtain the greatest *odds premium*.

Less successful attempts to transfer criminal risk suggest less risk-averse or even risk-seeking behavior. Because President Nixon's "white-house plumbers" were originally tasked with plugging information leaks related to national security, the "plumbers" were easily connected to the President. Finding it impossible to cover up subsequent investigations of "plumber" criminal activity because he failed to transfer the risk sufficiently, Nixon resigned. The possibility that someone would seek to avoid losses by less completely transferring risk suggests that they are relatively less risk-averse. In President Nixon's case, less risk-aversive behavior probably occurred because president Nixon felt entitled to cover up security leaks and, therefore, that initial "plumber" activities would not be considered severe offenses.

Individuals can be risk-averse but face alternatives that involve particular circumstances that imply a preference for risk. For example, a loss avoidance scenario can arise in which a criminal choice may avert a large loss. According to Rabin (1998), since individuals have diminishing valuations of wealth far from a given bench

mark or norm, facing a large loss of wealth implies the individual prefers risk over this range of their utility function. The objective of loss avoidance may simply induce otherwise risk-averse individuals to gamble for criminal gains. For example, offenders who would seek to avoid losses from an impending divorce may be apprehended when they hire, or try to hire, a hit man because they leave easily observed connections among conspirators.

II. Risk-Aversion, Circumstances, and Actor Characteristics

A. Actor Characteristics and Mob Preferences

This paper first considers offenders who remain averse to criminal risk under all circumstances and conditions that are related to their corrupt acts. Such offenders must transfer all criminal risk through a corrupt exchange to other professional criminals. Transfers involve only an exchange of criminal favors. No money changes hands and no observable connection between parties is likely. A corrupt exchange scenario is developed that is consistent with behavior that is consistent with strong preferences for risk-aversion and with authoritative literature on organized crime and corruption.

As Dugan and Levitt (2002) indicate, "Because of corruption's illicit nature, those who engage in corruption attempt not to leave a trail. As a consequence, much of the existing evidence on corruption is anecdotal in nature." However, Dugan and Levitt (2002) refer to corruption in Sumo Wrestling. Influencing match outcomes is less severe than murder. A private citizen who pays for "crime insurance" for murder by transferring money or something tangible creates an observable linkage with other offenders carrying out the offense. Such a linkage reveals preferences for some

degree of criminal risk. On the other hand, a police or judicial official who pays for "crime insurance" by tipping off or otherwise assisting organized crime or any public official who directs business toward organized crime leaves a much less observable linkage among conspirators. Preferences for avoiding criminal risk are consistent with this scenario. Unless a private citizen can find a way to reduce detection among conspirators sufficiently such that they could be considered highly risk-averse, unconditionally risk-averse offenders involved in corrupt exchanges and severe crimes appear more likely to be public officials.

Fiorentini and Peltzman (1995) suggest that more effective deterrence activities increase the incentives for organized crime to invest in corruption and manipulation of deterrence agencies themselves. Organized crime benefits from corrupt public officials such as those in law enforcement. According to Marjit and Shi (1998), if corrupt law enforcement officials can manipulate the probability of detection of crime, crime can never be controlled. An example of an effective investigation that used electronic surveillance to probe the connection between the Chicago and Kansas City mobs and their skimming of Las Vegas casinos was FBI operation Strawman in the 1970s (see, for example, Thompson, 2004 or Hall, 1996). Let us assume that in response to FBI operation Strawman in Kansas City during the 1970s mobsters in Kansas City and Chicago now seek a corrupt public official in law enforcement that can help them reduce or eliminate the effectiveness of further surveillance and investigation.

B. Public Official Characteristics

A criminal justice official is dating his secretary and likely to be sued for divorce by his wife. If sued for divorce, the criminal justice official expects to lose

wealth. The probability that the lawsuit will occur is assumed greater than zero. If organized crime successfully carries out the murder of the criminal justice official's wife, the criminal justice official will avoid material and psychic losses. In exchange for the murder, the law enforcement official is expected to provide investigation details to organized crime members. The choice to enter into the corrupt exchange with organized crime is assumed free of any type of coercion.

C. Risk-Averse Preferences and Related Circumstances

Circumstances perceived as propitious by a risk-averse criminal justice official contemplating the decision to engage in a corrupt exchange that results in the murder of his wife include the following. First, criminal offenders may have established their reliability in previous contract murders. For example, Allen May (2000), indicates that a the U. S. Senate committee on Organized Crime had identified Nick Civella in 1969 as being a principal member of the Kansas City Crime Family. Using tactics from undercover operation Strawman in Kansas City, the FBI picked up information through electronic surveillance that Civella and several others were involved in a gambling conspiracy involving the Kansas City and Minnesota Super Bowl. Civella and Sol Landie, a prominent local gambling figure, were indicted. Subsequent to their indictment, prosecutors gave Sol Landie immunity from prosecution for his testimony before a grand jury. Allen May states that, "In November 1970, four black men invaded Landie's home on the pretense of robbing him. Landie was murdered and his wife viciously raped by the intruders. The men were soon arrested and it was revealed that they were hired to kill Landie because of his testimony." For reasons not specified, Nick Civella was never sent to

trial on the original gambling charge or for the murder of Sol Landie. Moreover, there is no additional information involving the whereabouts or any legal consequences related to the four hit men who were arrested for the murder of Sol Landie. The use of experienced subcontractor murderers such as these by organized crime to carry out the murder of the risk averse criminal justice official's wife would be less likely to leave an observable connection between the criminal justice official and organized crime. Although some type of warning or message is sometimes an objective, Diego Gambetta (1996) makes it clear that the primary objective in mafia executions is to maximize efficiency.

A "code of silence" is a second reason for using organized and professional criminals to carry out crimes such as murder. Enforcing a "code of silence" among their members decreases criminal risk. Breaking the code means death. According to Witkin and Creighton (1994), even street gangs enforce such a code and this is one of the reasons that homicide clearance rates have steadily decreased since 1960. Professor Gerard Lynch (1987) indicates that the President's Commission on law Enforcement and Administration of Justice reports that "organized criminal groups are known to operate in all sections of the Nation" and that the structure and workings include "codes of silence." For a risk-averse law enforcement official, a code of silence would be an attractive consequence of the decision to enter into a corrupt exchange with organized crime.

A third circumstance likely to be attractive to the risk-averse law enforcement official is that there may be other corrupt criminal justice officials working with the FBI who will be in a position to obstruct justice. In a newspaper article, Jeff Donn (2002) states that "… one former FBI agent, John Connolly, has been convicted of racketeering and obstruction of justice … (and) had accepted bribes from the informant they were protecting.

Connolly . . . is accused of tipping Bulger and Flemmi (Boston's Winter Hill gang leaders) off to FBI investigations against them, information the government alleges led to three slayings . . ." Throughout the 1980s, state police tried to build a case against Stephen Flemmi and Bulger, but the pair was always one step ahead of them. The reason: Boston agents tipped them off, testimony in recent criminal cases has revealed." Flemmi was eventually arrested, Bulger fled and remains at large as one of the FBI's Top Ten Most Wanted criminals. Garuopa (2000) also shows that by gaining political influence through corruption, organized crime is welfare diminishing because it can then profitably increase the number of criminal offenses. Thus the corrupt criminal justice official may be joining forces with others who are corrupt and who will conspire to commit many more crimes.

Polinsky et. al, (2001) points out that (this type of) "corruption remains socially undesirable even if the fine can be raised to offset the deterrence-diluting effects of corruption. For example, if citizens tend to be risk-averse, innocent citizens who make extortion payments, or who are framed, still bear risk as a result of corruption." The criminal justice official in this example may actually assume that some innocent citizen will be framed for the murder of his wife.

A fourth risk reducing circumstance is that FBI profilers may become involved in trying to solve the murder of the criminal justice official's wife. Since the criminal justice official will benefit from the murder of his wife, local police may give the criminal justice official a polygraph examination. The action of giving the polygraph will indicate that the criminal justice official has a motive. However, a local police unit without investigative experience with sophisticated, experienced, and professional criminals will be unable to effectively investigate this type of crime and will assume a different

crime type. The polygraph examiner will consequently ask irrelevant questions and fail to detect deception by the criminal justice official. Political pressure to solve an important case that is without leads may cause FBI profilers to become involved in the investigation. Profilers will have to gamble on any number of assumptions about motive and crime type. Based upon additional assumptions that may be faulty, FBI profilers will develop statistically based profiles that extrapolate on biased data (see Turvey, 1999 and Marché, 1998) that contain little or no information about relatively more successful, risk-averse offenders.

One last circumstance that might encourage a risk-averse criminal justice official contemplating corruption is that the criminal justice official's means of payment to organized crime involves political and professional connections. If those connections can be exploited to the benefit of organized crime, then it follows that they can also be used to thwart or hamper any investigation into the criminal justice official's culpability in the murder of his wife. Exploiting connections may be easier in smaller cities and towns. David Bellis, in Alexander and Caiden (1985), argues that corruption in small cities or towns is common. Moreover, Fiorentini and Peltzman (1995) point out that social relations take a while to form and that small towns without social mobility and without competing police authorities provide ideal circumstances for corrupt relationships between bureaucrats and citizens.

III. Model Development

A. Variable Definitions

The criminal justice official's decision to engage in the corrupt exchange with organized crime and murder his wife will rest on the following variables:

W = the criminal justice official's initial wealth endowment. W > 0 must be assumed or wealth loss would be irrelevant.

p = the probability of an event (divorce) leading to a loss to the criminal justice official in the amount of L (where it is assumed that $p \geq 0$)

L = amount of wealth loss to the criminal justice official. $L \leq W$ is assumed.

G = gains (or rents) to the criminal justice official that result from the commission of a crime such as the murder of his wife. Effectively, G represents the dollar amount of insurance coverage.

CG = the premium cost C paid for G dollars worth of insurance.

The premium cost C is equal to the dollar value of the private "corruption" cost for insurance coverage G. CG includes all efforts to appear legitimate or innocent before and after receiving gains G as well as fulfilling all requirements of the corrupt exchange such as providing insider information to organized crime. It assumed that the criminal justice official incurs no psychic cost from feeling guilty or disloyal (or that any such costs are offset by psychic gains).

B. Net Costs and Benefits

Risk of apprehension for the crime of murder is given by k. With k = 0, the odds premium is at its maximum. As in G. Becker (1968), the expected value of criminal gains is EG = kU(G – f) + (1-k)U(G), where G is gains, f is the cost of punishment, and U is the utility function. Setting k = 0, EG = U(G) and criminal gains (or rents) G appear sure to accrue from the murder of the criminal justice official's wife.

An examination of net costs and benefits yields similar information. Loss L is assumed limited by the initial wealth stock W of the criminal justice official. In contrast, G is not a bounded lump sum. In addition to preventing wealth losses equal to L, the murder creates circumstances that are more favorable to organized crime. This is because the criminal justice official must pay for the crime insurance, or corrupt exchange, by tipping off organized crime. Some of the increased organized crime rent may accrete, directly or indirectly, to the corrupt criminal justice official. Consequently, G is a potentially unlimited series of gains g_j where $G = \sum g_j$. For the corrupt criminal justice official, the net gain (rent) from murdering his wife is therefore $G - L \geq 0$.

Andrianova (2001) points out that the level of corruption gain (G) is a deciding factor in maintaining a bad reputation, such as incurring costs CG. Therefore, the private cost of G worth of insurance to the corrupt criminal justice official is equal to the private cost of criminal association or CG. Since CG is limited to include corrupt acts and to appear innocent, it is likely that, even in the event of a murder, G > CG or G – CG = (1 - C)G > 0. In other words, net gains from murder must be expected. Consequently, the net private cost of the criminal association for a corrupt criminal justice official is CG – G = (C – 1)G < 0.

Some might argue that CG could be more for an elected official than for one who is appointed, or for a private citizen. After all, re-election appears to place an extra emphasis on the appearance of propriety. Perhaps this would be less of a problem for appointed officials or for private citizens who are less likely to be publicly scrutinized. However, several examples draw this hypothesis into question. For example, recently convicted U. S. Congressman Jim Trafficant's well-established connections with organized crime did not seem to reduce loyalty among his political constituency.

In another example, even though the circumstances of White House counsel Vince Foster's death seemed highly suspicious (see Scalice, 1995), his death was eventually ruled a suicide based only on the circumstantial evidence of being treated for depression. Yet, no one in the Clinton White House, including his alleged boyhood friend, President Bill Clinton, demanded there be any further investigation. In fact, "the Clinton White House" expressed relief in response to hearing the final ruling. Will suspicious circumstances and Vince Foster's death really matter in any future election bids of former "Clinton White House" members who were Foster's former associates or, because he was the brother of one of the FBI's most wanted fugitives, James (Whitey) Bulger, was William Bulger's image more at stake? According to a CNN.com (2003) report, William Bulger was forced to resign as president of the University of Massachusetts because of a "calculated Political assault." On the other hand, this same report implies that William Bulger could easily have avoided being forced to resign if he had appeared more concerned about his brother's crimes and urged his brother to surrender.

Perhaps elected officials are not so easily scrutinized and face the same costs of corruption (CG) as appointed or other private citizens because elected officials may have a constituency more concerned with a political agenda. Moreover, constituency members may find it more in their political interest to shield their elected political representative from criminal investigation. In the Foster case, there is ample evidence of attempts to shield the White House from criminal investigation. For example, an infamous 60 Minute interview with Mike Wallace about the Vince Foster death investigation is referenced by articles titled "Mike Wallace's Fake Foster Probe" (Irvine and Goulden, 1995) and "Wallace and Ruddy: a journalistic drive-by shooting" (Murdoch, 1995). Shielding is unnecessary if there is nothing to shield.

C. Expected Cost and the Corrupt Exchange Decision

Net costs and benefits strongly show that a corrupt exchange between a risk-averse criminal justice official and organized crime that involves murder appears rational but is such a choice also optimal? As in Varian (1984), the first-order condition of the utility maximization problem for the criminal justice official is:

$$\max pU(W - L - CG + G) + (1-p)U(W - CG) \quad (1)$$

After taking the derivative with respect to G and setting it equal to zero we have:

$$pU'(W-L+G^*(1-C))(1-C)-(1-p)U'(W-CG^*)C=0 \quad (2)$$

Rearranging terms gives,

$$[W'(W-L+(1-C)G^*)]/[U'(W-CG^*)]=[(1-p)C]/[C/1-C] \quad (3)$$

If the loss-producing event (suit for divorce) does not occur, the private cost of criminal association for the criminal justice official is only CG. The criminal justice official may be providing insider information to organized crime at any time and at little personal cost. Costs increase if defending his or her image and reputation by having to explain an apparent connection with organized crime is required. In any case, CG > 0 is reasonably assumed. Given this, the *expected cost* of the corrupt exchange to the corrupt criminal justice official is:

$$-p(1-C)G+(1-p)CG<0 \quad (4)$$

In other words, the *expected cost* of criminal association and a corrupt exchange for a criminal justice

official is less than zero because G has no upward bound, CG has an upward limit, and (1 – C)G >0.

Assuming the corrupt official faces the worst case scenario such that the expected cost of the corrupt exchange is equal to zero we get

$$-p(1–C)G+(1–p)CG=0 \quad \text{or} \quad (1 – p)CG = p(1 – C)G \tag{5}$$

Substituting (5) into the first - order conditions for utility maximization produces the unconstrained maximum

$$U'(W – L + (1 – C)G^*) = U'(W – CG^*) \tag{6}$$

If the criminal justice official is strictly risk-averse so that $U''(W) < 0$, the acceptance set of the corrupt criminal justice official is convex and optimizing behavior is implied such that

$$\begin{aligned} W – L + (1 – C)G^* &= W – CG^* \\ - L + G^* - CG^* &= -CG^* \\ L &= G^* \end{aligned} \tag{7}$$

Thus, even in the worst case scenario in which criminal gains (rents) G are limited to avoiding wealth lose L, a risk-averse criminal justice official will agree to buy G dollars worth of crime insurance in the form of a corrupt exchange with organized crime. The loss avoiding crime may be the murder of the criminal justice official's wife and the corrupt exchange may entail the criminal justice official paying for the "crime insurance" by informing organized crime about investigations. It is assumed that the murder carries no risk of criminal sanction and that the criminal justice official suffers no remorse. As in Polinsky et. al., (2001), it is assumed that all risk of criminal sanction is born by "third party" citizens who may be framed for the crime.

IV. Less Risk-Averse Officials

An expected utility function for any type of crime or corruption scheme can be adapted from Gary Becker's (1968) general model for crime and Ehrlich's (1996) supply of offense function. Ehrlich (1996) adds the individual's cost of acquiring criminal gains. Combining Becker's (1968) and Ehrlich's (1996) functions, the expected utility of any corruption scheme S can be written as

$$EU_s = pU_s(G - C - f) + (1-p)U_s(G - C) \tag{8}$$

where U is the utility function, G is gains (psychic, emotional, and material), C is the individual cost of acquiring the loot, p is the risk of apprehension and punishment, and f is the level of punishment for the crime. The opportunity cost of the corruption scheme S is the expected opportunity cost of legitimately acquired gains (Y) where

$$EU_l = U_l(Y) \tag{9}$$

For a particular corruption scheme (S) to be perceived as rational, $S(EU_s – EU_l) > 0$ is required. If the official or other individual acts as though s/he is less risk averse such as being more careless in carrying out the scheme, then behavior consistent with preferences for less risk-aversion can be inferred. For convenience, assume risk-neutrality. The lower risk premium required means that EU_s is reduced. This occurs because risk (p) in equation (8) is increased. If the crime involves severe consequences such that punishment (f) remains high, it is unlikely that such a scheme will be perceived as a rational alternative. Assuming psychic and emotional gains are constant for a given corruption scheme, compensation for increased risk (p) requires increased

emphasis on increasing material gains in G. Moreover, since G is net of the individual cost C of acquiring them, C may be minimized. Minimizing the individual cost of acquiring gains from corruption suggests that corrupt individuals will tend to involve themselves in simpler schemes or that their individual role will be reduced such that a greater proportion of the corruption process is undertaken by others.

V. Conclusion

Risk aversion, risk transfer through corrupt exchange, and criminal success appear interrelated. A person who appears averse to criminal risk, even pious, can optimally choose corruption and murder. Criminal risk can be transferred from a public official (or other individual) to professional criminals in a manner analogous to buying insurance. The transaction is a form of corrupt exchange. It is conceivable that professional offender groups who accept criminal risk in exchange for some type of "fee" may range from local criminal gangs to State security agencies.

Criminal risk-aversion requires a higher risk premium to gamble on the success of any corruption scheme. Lower risk premiums are associated with a lower level of certainty and, all else equal, the more likely that the corruption scheme will be detected. It is reasonable to expect that corrupt exchange schemes with greater detection risk will involve crimes less serious than murder, emphasize material gains, or require that corrupt officials play a relatively smaller role in corrupt activities.

There may be clues to detecting a corrupt exchange between organized crime and highly risk-averse public or criminal justice officials that involve highly serious crimes such as murder or treason. Crime benefits accrue for an apparently risk-averse offender and, in

exchange, some form of non-monetary payment is made to those carrying out the crime from which benefits accrue. Public officials benefiting from crime will exhibit little or no genuine interest in having the crime investigated. Moreover, corrupt public and law enforcement officials may rely on political and professional connections to thwart subsequent investigation or to aid in lowering the private cost of appearing corrupt. Related to lowering the cost of appearing corrupt, it follows that if confronted by evidence linking the risk-averse crime beneficiary (or beneficiaries) to the corrupt exchange, effort will be made, through political or professional connections, to discredit such evidence. A corrupt public or law enforcement official may also discredit evidence and lower the private cost of appearing corrupt by appearing pious or self-righteous. It is also possible that the desire for the highest possible risk premium and the lowest cost of appearing corrupt may lead risk-averse and corrupt public officials to engage in some types of manipulative actions prior to a beneficial criminal event that would hamper a subsequent criminal investigation. Risk-aversion and risk transfer to professional offenders means that corrupt officials will have an alibi. Minimizing the cost of the public official appearing corrupt and increasing the risk premium nearer to certainty suggests that professional criminals will stage the crime scene to appear so as to appear as another and more common crime type (e.g., suicide, or murder- robbery, etc).

Risk-averse criminal conspirators are expected to be more sensitive to punishment than apprehension risk (see Becker, 1968). Thus, when confronted with evidence that cannot be easily discredited, and assuming no diplomatic immunity or other effective shielding, corrupt public officials may be relatively more willing to cooperate with authorities if the level of punishment can be negotiated.

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Gary A. Marché is Professor of Economics at Rodgers State University.

Dr. Gary E. Marché
Rogers State University
1701 W. Will Rogers Boulevard
Claremore, Oklahoma 74017
gmarche@rsu.edu