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SYMPOSIUM: CASE STUDIES IN CORRUPTION AND ANTI-CORRUPTION

Introduction: Towards a Better Understanding of Corruption and Anti-Corruption

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Abstract

Despite widespread interest in corruption and how to root it out, the problem continues to grow. Anti-corruption strategies and methods have proved ineffective in achieving lasting reductions in corruption. Anti-corruption academic research has not been free of criticism, and part of the problem is its emphasis on macro-level analysis. The case studies in corruption and anti-corruption in this Symposium focus on specific areas that have received surprisingly little attention in the literature: the effectiveness of political finance supervisory bodies; the impact of European Union post-conditionality on anti-corruption efforts; and the increased use of the Foreign Corrupt Practices Act (FCPA) in shaping the way that corruption is conceptualised and combated on a global scale. Together, the articles in this Symposium offer some novel insights and approaches to the issue of how best to understand and assess different ways of addressing corruption in specific sectors which have received insufficient attention in the literature to date.

Keywords Political corruption; anti-corruption; anti-corruption research; political financing supervisory bodies; European Union post-conditionality impact; Foreign Corrupt Practices Act

There has been no shortage of academic research on the topic of corruption, with new books and articles being published on a seemingly never-ending basis. Yet, for all the interest in the issue and how to root it out – not just from academics, but also policy makers, international financial organisations, dedicated anti-corruption agencies, civil society organisations, investigative journalists – it appears that the problem of corruption continues to grow, reflected in ever more protests around the globe against venal politicians and public officials. The other side of the coin of this seemingly inexorable trend is the persistent difficulty in formulating effective anti-corruption strategies and methods which are not either resisted or ineffective in their implementation and effect. As Johnston (2014: 1) points out, whilst the anti-corruption movement enjoys broad support and can claim results in terms of better analysis of the problem and increasing public awareness about it, ‘lasting reductions in corruption have been elusive’, especially in areas where it is needed most.

Mark Pyman (2017), a long-term anti-corruption practitioner who has been closely involved in the work of Transparency International and was until recently one of three international members of the independent Anti-Corruption Commission in Afghanistan, has bemoaned the ‘unhelpful nature of anti-corruption research’, observing plaintively that ‘[s]urely, researchers know more than just how to explain the problem?’ Against Pyman, it might be argued that we cannot address a problem until we fully understand it – and, for all the efforts dedicated both to analysing and combating corruption over recent decades, there remain core questions that we are not yet able to answer satisfactorily. Amongst these, surprisingly enough, is what we even mean by the term ‘corruption’: despite the widespread

use of the formulation that it is ‘the abuse of power for private gain’, or some close variant thereon, such a definition can encompass so many different forms of activity that it is unhelpful as a guide to practical action.

The three articles in this symposium do not seek to address the fundamental question of what we mean by corruption, nor do they offer practical guidelines for how best to combat it – in whatever guise it happens to take. Instead, they seek to focus on areas that have received surprisingly little attention in the extensive literature on corruption since it emerged as a ‘global issue’ in the mid-1990s. The significance of their contributions lies in a combination of suggestions for new approaches to analysing corruption and attention to issues that have largely been ignored in existing studies, offering a basis to further our understanding of what might and might not work in attempting to reduce the spread of corruption. In that sense, they should also be of potential value to anti-corruption practitioners.

One of the articles seeks to assess the impact of specific measures or interventions. In an innovative analysis, Luís de Sousa (2018) develops a framework for gauging the effectiveness of political financing supervisory bodies (PFSBs), specialised agencies charged with overseeing the implementation of rules relating to party and campaign financing. As he shows, the number of these bodies has grown significantly during the past two decades, although they vary in their precise format and functions. Placing particular emphasis on PFSBs in six European states (France, Germany, Latvia, Portugal, Slovenia and the United Kingdom), de Sousa develops an index of enforcement capacity to explore how effective these bodies are in practice. His analysis demonstrates significant differences in detection, disciplinary and preventive powers across the six cases and highlights the need for a more nuanced understanding of the relationship between the institutional forms of PFSBs and other enabling factors that can help them achieve their ends.

In an article that looks at the impact of European Union post-conditionality on anti-corruption efforts, Gabriela Borz (2018) utilises a stimulus-response model to assess their effectiveness in Bulgaria and Romania. Focusing on the continued impact of recommendations tied to the EU accession of these two countries in 2007, as well as the long-standing work of the Group of States Against Corruption (GRECO)¹, Borz makes an argument for the potential efficacy of so-called ‘soft governance’. She suggests that, contrary to some existing assumptions that external recommendations and criticisms are not helpful in reducing corruption, if they are supported by internal commitments – especially when reinforced by civil society pressure – they can indeed have a positive impact. Borz argues that national responses, triggered by the actions of the EU in setting out conditionality requirements, helps explain why apparent back-sliding appeared greater in Bulgaria than in Romania. It could be argued that her emphasis on the importance of civic engagement finds some support in the mass protests in Romania in early 2017 (the biggest since 1989) that forced the government to drop plans to soften the definition of abuse of power and agree to a national referendum on fighting official corruption² -- although no date was set for it. Moreover, parliamentary bills seen as weakening anti-corruption efforts prompted further protests in early 2018.³ None the less, the future anti-corruption trajectory of these two states will provide an important test of the EU’s capacity to continue to exert meaningful influence.

A shift of geographical focus can be found in the article by Ellen Gutterman (2018), that looks at the increased use of the path-breaking US Foreign Corrupt Practices Act⁴ (FCPA) and how it has helped to shape the way that corruption is conceptualised and combated on a global scale. Gutterman provides a clear account of how the FCPA, first introduced in 1977 and amended in 1988 and again in 1998, has been increasingly enforced by the Department of Justice (DOJ) and the Securities and Exchange Commission (SEC), with its focus extending well beyond US national boundaries. Some of the cases prosecuted,

such as that involving the French firm Total SA in 2013, have involved only the most tenuous links with the USA's national jurisdiction. A key insight of Gutterman's analysis is that the dramatically increased enforcement of the FCPA may be contributing to undermining the broader anti-corruption agenda. Three reasons account for this: first, the very narrow understanding of corruption encompassed within the FCPA, which is effectively restricted to transactional bribery; second, a focus on US strategic trade issues rather than explicitly anti-corruption concerns in the way it has been enforced; and, third, its potential threat to legitimacy through both the normative principles upon which it rests and a lack of accountability mechanisms to challenge its conception of how the global enforcement of anti-corruption should be managed. These are telling arguments, that chime with growing concern about so-called 'governance by indicators' (Cooley and Snyder 2016; Engle Merry, Davis, and Kingsbury 2015; Davis, Fisher, Kingsbury and Engle Merry 2012).

Taken together, the articles in this symposium offer some novel insights and approaches to the issue of how best to understand and assess different ways of addressing corruption. They do not seek to offer all-encompassing or overarching theories, but instead focus on specific factors or sectors, be those specialised agencies, regulatory frameworks or other initiatives. Too much work on corruption to date has focused on macro-level analysis, seeking to use some inadequately specified understanding of the concept to serve usually as a dependent variable explained by a host of 'structural' factors (GDP, institutional shortcomings, regulatory frameworks, and so forth) that are usually pitched at the level of the nation state. Whilst such work has helped us to understand broad patterns of corrupt practice, and where it is most deeply embedded, it is less helpful for identifying what to do about it. If a key driver of levels of corruption is geographical location, for instance, there is not much that can be done about that. More useful, therefore, is to ask questions about what *can* be done, and at what kind of level. That means moving away from macro-level analyses and

narrowing down to more specific, or granular, questions. The articles here seek to do just that in various ways, and thereby provide us with a better understanding of specific aspects and dimensions of what can appropriately be described as a ‘wicked problem’ (Rittel and Webber 1973: 155).

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Notes

¹ Council of Europe, Group of States against Corruption, at: <http://www.coe.int/en/web/greco> (accessed 28 April 2017).

² The Guardian, 'Romanian parliament approves anti-corruption referendum', *The Guardian*, 13 February 2017, available at: <https://www.theguardian.com/world/2017/feb/13/romania-approves-anti-corruption-referendum> (accessed 28 April 2017).

³ OCCRP, 'Romanians March Against Corruption Bills', *Organized Crime and Corruption Reporting Project*, 22 January 2018, available at: <https://www.occrp.org/en/daily/7539-romanians-march-against-corruption-bills>.

⁴ *A Resource Guide to the Foreign Corrupt Practices Act* (2012) available at: <https://www.sec.gov/spotlight/fcpa/fcpa-resource-guide.pdf> (accessed 28 April 2017).