THE ROUTLEDGE HANDBOOK OF ANTI-CORRUPTION RESEARCH AND PRACTICE

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Chapter 2

THE LEGAL AND REGULATORY ENVIRONMENT OF ANTI-CORRUPTION

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THE LEGAL AND REGULATORY ENVIRONMENT OF ANTI-CORRUPTION

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Introduction

Corruption inflicts damage on society and the environment, imposes costs on business, and degrades the lives of those who experience it. Repudiation of corruption profoundly influences the legal and regulatory environment intended to control it. This body of laws and regulations intended to control corruption, in its whole often called the global anti-corruption regime, defies succinct explanation. Two aspects contribute to its complexity. First, it is made up of many different threads, each interacting with the others. Second, the regime continuously evolves, becoming more sophisticated and more integrated.

This chapter does not predict future changes within the global anti-corruption regime. Instead, it endeavors to unweave the interwoven threads of the regime, so that the reader can better understand the construction of the whole. Those threads include local law, international agreements, administrative bodies and rules, and civil society. No governing body coordinates these threads, but together they create a web of rules, regulations, standards, and norms that operate to curb the damages inflicted by corruption.

Corruption

The word "corruption" avails itself of many definitions. Political scientists such as Arnold Heidenheimer and Michael Johnston (Heidenheimer et al. 1988; Heidenheimer and Johnston 2017), or Ulrich von Alemann (2004) find myriad definitions and understandings. Practitioners, however, have coalesced around a standard understanding, which can be summarized as "the abuse or misuse of authority or trust, for personal-oriented reasons instead of the reasons for which authority or trust were granted." Versions of this definition are used by organizations ranging from international financial institutions such as the World Bank (1997, 8) to civic nonprofits such as Transparency International (2023).

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Corruption inflicts significant harm. As the then-Secretary-General wrote in the preface to the United Nations Convention Against Corruption,

> Corruption is an insidious plague that has a wide range of corrosive effects on societies. It undermines democracy and the rule of law, leads to violations of human rights, distorts markets, erodes the quality of life and allows organized crime, terrorism and other threats to human security to flourish.
>
> (Annan 2004, iii)

Corruption is associated with lower levels of health among all age groups and genders (Witvliet et al. 2013). Corruption has a "quantitatively important" effect on poverty (Gupta, Davoode, and Alonso-Terme 2002, 37), and negatively affects overall economic growth, an effect independent of corruption's negative effect on inward investment and other relationships (Swaleheen 2011; Brada et al. 2019). Corruption raises the cost of conducting business, and business firms that pay bribes are less competitive (Nichols 2012). Corruption is also associated with profound environmental degradation (Krishnan, Thompson, and Lim 2013). Predictably, people who live with corruption report less happiness than those who live with less corruption (Li and An 2020; Tavits 2008). Similarly, "[t]he higher the level of corruption, the lower the reported subjective well-being. The substantive effect of corruption on well-being is sizable" (Tavits 2008, 1623).

Corruption presents singular challenges to those tasked with its detection and prosecution. In the first place, corrupt activities do not occur in the open. The victims of violent crimes are usually painfully aware of the crime, suffering immediate and painful damage from the commission of the crime. Similarly, victims of many property crimes suffer the effects of those crimes almost immediately. On the other hand, all of the immediate parties to corrupt activities are usually culpable: the bribe-payor and payee, the nepotist and the beneficiary, the colluding and embezzling parties. The victims of corruption—such as business firms that compete fairly, users of government services, and society in general—are usually not present when corrupt acts occur, and have little, if any, means to detect a corrupt act. Those with actual knowledge of the act have usually participated in it, either directly as corrupt actors or indirectly through association with those actors, and have reason to hide their activities from the public. As Alexandra-Codruța Bîzoi and Cristian-Gabriel Bîzoi note, corruption "occurs in the shadows" (2023, 4).

Second, corrupt actors—particularly those involved in large-scale corruption—often hide their activities through extremely convoluted financial structures. The Odebrecht scheme illustrates this complexity. Construtora Norberto Odebrecht S.A., the largest construction firm in Latin America, created a secret division within its complex corporate structure; this division used "a complex network of shell companies, off-book transactions and offshore bank accounts" to pay bribes across Latin America and the Caribbean (Shiel and Chavkin 2019). This complex structure was discovered by accident by Brazilian prosecutors investigating low-level money laundering (Campos et al. 2021). The subsequent investigation, coordinated for more than three years among agencies in Brazil, several other Latin American countries, and the United States, required the services of hundreds of financial and legal experts—resources that would exceed the capacities of many polities.

The global anti-corruption regime is a response to this exceedingly damaging and complex phenomenon. A pivotal moment in the formation of this regime occurred when then-President James Wolfensohn addressed the Governors of the World Bank Group in 1996. Wolfensohn

brushed aside the political niceties that had prevented the Bank from addressing corruption and issued a bold challenge: "[L]et's not mince words: we need to deal with the cancer of corruption" (2005, 50). Wolfensohn went on to lay out some of the principles that remain part of the Bank's anti-corruption program, and that shape the global anti-corruption regime: primacy of national action but broad support for international undertakings, development of industry standards and cooperation, and complete intolerance of corruption in projects involving the World Bank. Wolfensohn's direct challenge unleashed a torrent of research on the nature and control of corruption, research that contributes to the formation of the global anti-corruption regime (Bismuth, Dunin-Wasowicz, and Nichols 2021). The Bank's activities have played an "instrumental" role in shaping the regime (Fjeldstad and Isaksen 2008, xi). The global anti-corruption regime, however, extends far beyond the practices of the World Bank. Understanding that regime begins with understanding the local laws.

Local Laws

Laws prohibiting corruption are as old as law itself. Although only fragments of the text have survived, stories surrounding the Code of Urukagina (2370 BCE) suggest that corruption control had a central position in the Sumerian city-state Lagash's legal system (Everest-Phillips 2019). Through the oldest Mesopotamian legal system whose text survives, the Code of Hammurabi (1754 BCE), the emperor Hammurabi empowered a judiciary and then "did all in his power to prevent bribery and corruption among the judges" (Yankwich 1930, 36). The Tang Code (624 CE), and the legal codes of the Chinese dynasties that followed, contained extensive provisions prohibiting corruption (Liu 2015, 8).

Today, every country in the world prohibits corruption. The Penal Code Act of South Sudan, the newest member of the United Nations, contains at least 19 articles that deal with public sector corruption, and six that include corruption in the private sector.[1] Chapter Eleven of the Penal Code of Iran, the oldest country in the world, criminalizes bribery, usury, and fraud.[2] The least densely populated country in the world, Mongolia, criminalizes corruption.[3] So too does Monaco, the most densely populated.[4]

These laws, for the most part, reflect the definition of corruption that is embraced by practitioners. The criminal laws of Colombia, for example, define bribe solicitation as the abuse of an office by inducing another to pay, or promise to pay.[5] Under Colombia's laws, "direct bribery" occurs when someone with authority receives or is promised something of benefit in exchange for delaying or avoiding an official act,[6] and "indirect bribery" occurs when someone with authority receives or is promised something of value in exchange for actually exercising their authority.[7]

Some local laws extend beyond the definition. Corruption regulations often include, for example, restrictions on gifts (Berdnikova 2015). Public officials in the Philippines, for example, may

> not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan or anything of monetary value from any person in the course of their official duties or in connection with any operation being regulated by, or any transaction which may be affected by the functions of their office.[8]

Gifts do not fall within the general definition of corruption, because the mere conferral or receipt of a gift itself does not involve any abuse or misuse of authority or trust.

Some local laws also require reporting sources of wealth and punish unexplained wealth (Boles 2014a). India, for example, holds a public servant criminally liable if they

> or any person on [their] behalf, is in possession or has, at any time during the period of [their] office, been in possession for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to [their] known sources of income.[9]

Unexplained wealth, like gifts, by itself does not fall within the general definition of corruption because it, too, does not constitute abuse or misuse of authority or trust. Nonetheless, the enactment of such laws by polities around the world "has skyrocketed" (Boles 2014a, 849).

In sum, local laws universally criminalize corruption. For the most part, the activities prohibited by these laws fall within the definition of corruption shared among practitioners. At the edges, however, local law often includes behaviors that do not fall within that definition. Neither gift receipt nor unexplained wealth, by themselves, constitute corruption, but both are plausibly related. Their inclusion in local anti-corruption legal regimes reflects the difficulties in detecting corruption, and a desire to avoid the profound damage inflicted by corruption.

An important subset of local laws approach corruption control more comprehensively. Rather than only imposing punishment *after* corrupt activities occur, these laws impose a requirement on business firms to implement anti-corruption programs *before* corrupt acts occur. The most explicit directive to do so issues from the United Kingdom's Bribery Act.[10] The United Kingdom enacted the Bribery Act in response to criticism by the Organization for Economic Cooperation and Development (OECD) that the United Kingdom had not done enough to satisfy requirements imposed by international agreements, discussed in the next section of this chapter (Warin, Falconer, and Diamant 2010). The Bribery Act has largely supplanted the United States' Foreign Corrupt Practices Act as the baseline local law to which transnational firms must adhere (Brewster, Rachel, and Dryden 2018, 225; Salbu 2018, 528).

The Bribery Act creates four criminal offenses. Two of these simply recalibrate domestic bribery, and the third criminalizes the payment of bribes to foreign officials. The fourth adopts a different approach. It starts by penalizing business firms if associated persons engage in bribery:

> A relevant commercial organisation[11] ("C") is guilty of an offence under this section if a person ("A") associated with C bribes another person intending –
>
> (a) to obtain or retain business for C, or
> (b) to obtain or retain an advantage in the conduct of business for C.[12]

The Act goes on, however, to create an affirmative defense:

> it is a defence for C to prove that C had in place adequate procedures designed to prevent persons associated with C from undertaking such conduct.[13]

Most observers consider the combination of these provisions to create a requirement that business firms create and implement antibribery programs (see Puri and Nichol 2015; Salbu 2018; Warin, Falconer, and Diamant 2010).

The British Ministry of Justice has promulgated a guideline outlining in broad strokes the characteristics of anti-bribery programs that satisfy this requirement. The Ministry organizes these guidelines around six principles. The Ministry first suggests proportionality: that the "procedures to prevent bribery by persons associated with it are proportionate to the bribery risks it faces and to the nature, scale and complexity of the commercial organization's activities" (Ministry 2011, 21). The second requires commitment from leaders: that "[t]he top-level management of a commercial organization (be it a board of directors, the owners or any other equivalent body or person) are committed to preventing bribery" (Ministry 2011, 23). The third involves risk assessment: that the firm "assesses the nature and extent of its exposure to potential external and internal risks of bribery on its behalf by persons associated with it" (Ministry 2011, 25). The fourth requires due diligence: the firm must "appl[y] due diligence procedures, taking a proportionate and risk based approach, in respect of persons who perform or will perform services for or on behalf of the organization, in order to mitigate identified bribery risks" (Ministry 2011, 27). The fifth has to do with the communication of programs: the firm must seek "to ensure that its bribery prevention policies and procedures are embedded and understood throughout the organization through internal and external communication, including training" (Ministry 2011, 29). The sixth and last imposes an ongoing requirement to monitor: that the firm "monitors and reviews procedures designed to prevent bribery by persons associated with it and makes improvements where necessary" (Ministry 2011, 31). Throughout, the program and procedures must be "clear, practical, accessible, effectively implemented and enforced" (Ministry 2011, 21).

The United States' Foreign Corrupt Practices Act does not impose a requirement to create and implement an anti-bribery program. The manner in which the Department of Justice handles most cases, however, creates strong incentives to implement such programs. Most investigations pursuant to the Foreign Corrupt Practices Act do not result in trials but instead are resolved through Non-Prosecution Agreements or Deferred Prosecution Agreements (Koehler 2015). The existence of an effective compliance program constitutes a critical factor used in deciding whether to decline or merely defer prosecution (Yockey 2012). The existence of an effective antibribery program also substantially reduces penalties imposed on violative business firms (Smith 2016). Thus, while not universal, local laws such as the Bribery Act and the Foreign Corrupt Practices Act contribute an important strand of the global anti-corruption regime: business firms must not only avoid paying bribes but must also implement effective antibribery programs.

As demonstrated by the United Kingdom Bribery Act, international agreements have profoundly influenced local law. Those agreements also constitute a critical component of the global corruption regime and must be included in any description of that regime.

International Conventions

In the 1970s, the local laws of only two countries prohibited the payment of bribes to foreign officials. Sweden's law garnered little attention and is often forgotten when people recount the history of the global anti-corruption regime. The law promulgated by the United States, on the other hand, attracted substantial attention. Enactment of the United States' Foreign Corrupt Practices Act coincided with the "Watergate" revelations of domestic corruption and wrongdoing in its government, but the legislative history of the law, which begins before the Watergate revelations, demonstrates a legislative concern with foreign relations, global leadership, and especially with the damage inflicted by corruption on markets and the global

market system.[14] The Secretary of the Treasury went so far as to say that the "preservation of the free enterprise system" hung on enactment of the Act.[15]

After enactment of the Foreign Corrupt Practices Act, the United States Congress continued to worry about damage to market integrity. Thus, when amending the Act a decade after its enactment, the legislature instructed the Executive Branch to "pursue the negotiation of an international agreement, among the members of the Organization of Economic Cooperation and Development."[16] The executive branch readily engaged in the instructed negotiations.

An international agreement, however, did not appear for almost a decade, and when it did, it was neither in the OECD, nor at the instigation of the United States. Instead, newly democratic countries in Latin America, particularly Venezuela—a then-new, but vibrant democracy scarred by corruption in its banking industry—drove the negotiation and adoption of a convention (the United States, in contrast, hesitated because it had concerns regarding the effect of some provisions on presumptions of innocence). The Inter-American Convention Against Corruption,[17] promulgated by the Organization of American States in 1996, requires members to criminalize transnational business bribery, and also requires signatories to cooperate with one another in the investigation, apprehension, and prosecution of persons and entities that pay bribes. It also requires members to decline requests for asylum by corrupt leaders, and to honor actions to extradite those officials for prosecution. Pursuant to the Inter-American Convention, transnational business bribery soon was criminalized by local laws throughout almost the entirety of the Western Hemisphere.

Soon after adoption of the Inter-American Convention, members of the OECD took similar action. Battered by their own corruption scandals, worried by endemic corruption in neighboring regions freshly emerging from authoritarian regimes, and deeply concerned about the viability of the market system, the OECD adopted the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.[18] Like the Inter-American Convention, the OECD Convention requires members to criminalize transnational business bribery and to cooperate with one another in the investigation and prosecution of bribery cases. Given its prominence and the fact that its members are involved in most of the transnational business activity around the world, many scholars describe the OECD Convention as having fundamentally transformed the global legal landscape with respect to corruption (see, e.g., Hess and Dunfee 2000, 602).

Other organizations and regional blocs have followed the OAS and OECD. In the late 1990s, the Council of Europe and the European Union each promulgated conventions that required members to criminalize certain forms of transnational bribery, and to cooperate with relevant bodies in the detection and prosecution of those bribes.[19] In 2003, the African Union concluded its Convention on Preventing and Combatting Corruption,[20] which requires members to criminalize bribery in all forms as well as illicit enrichment, confiscate and repatriate the proceeds of corruption, encourage civil society and the media to join in combatting corruption, cooperate with one and with international bodies in detecting and prosecuting corruption, and adopt strong but fair prosecutorial processes. More recently, the League of Arab States has adopted the Arab Anti-Corruption Convention,[21] which requires members to criminalize all forms of public and private sector bribery, and cooperate with one another in detection and prosecution.

The United Nations has promulgated perhaps the most comprehensive international agreement regarding corruption. The Convention Against Corruption[22] eschews definition and approaches corruption broadly rather than focusing solely on bribery. The Convention

sets out detailed provisions requiring signatories to take action to prevent corruption. It further requires signatories to criminalize corruption, including transnational corruption, and to enforce those laws. The Convention also sets out provisions requiring cooperation among signatories in detection, information exchange, prosecution, and asset recovery. More than 190 parties have signed the Convention, including polities that are not members of the United Nations, such as the State of Palestine and the European Union.

These international conventions are inextricably intertwined with local law; as Matt Vega notes, many of their provisions create general requirements that have effect when parties enact specific laws of their own design (Vega 2009, 435). Parties have fulfilled their requirements to varying degrees and with varying degrees of commitment, but more than 50 countries now criminalize transnational business bribery, and that number is growing.

The effect of these conventions consists of more, however, than the laws enacted by parties. Countries now cooperate with one another in detecting, investigating, and prosecuting corruption in ways not even considered a few decades past (Lohaus 2019). They also work with civic organizations and business organizations, each of which have ground-level experience with corruption. The conventions also send a clear message regarding the unacceptability of corruption as a matter of public policy, and thus connect the global anti-corruption regime to individual persons throughout the world.

Arbitration

A description of the global anti-corruption regime must include special mention of transnational arbitration. Christopher Drahozal and Richard Naimark estimate that almost 90 percent of international business contracts contain clauses referring disputes to arbitration (2005). Arbitral tribunals are aware of the international condemnation of corruption, especially business bribery. Allegations of bribery, in turn, "are the leading ground for invoking the principle" in arbitration that any given contract should not be enforced on public policy grounds (Kaiser 2013, 201).

The non-enforcement of contracts tainted by bribery has a long history in arbitration. In 1963, Judge Gunnar Lagergren considered the requested enforcement of a contract procured through corruption. Judge Lagergren's long career intertwined law with public policy; he presided over the Court of Appeal for Western Sweden, administered the Royal Court of Sweden as Marshall of the Realm, served as a judge on the European Court of Human Rights, and later presided over the Iran–U.S. Claims Tribunal. In the case before him, Judge Lagergren observed that:

> Whether one is taking the point of view of good governance or that of commercial ethics it is impossible to close one's eyes to the probable destination of amounts of this magnitude, and to the destructive effect thereof on the business pattern with consequent impairment of industrial progress. Such corruption is an international evil; it is contrary to good morals and to international public policy common to the community of nations.[23]

Business firms that pay bribes, therefore, "have forfeited any right to ask for assistance of the machinery of justice."[24] This line of arbitral thought, still used by some panels today, denies even so much as access to arbitration to business actors who have paid bribes (Halpern 2016).

Another line of arbitration decisions relies on the principle that agreements to arbitrate are separable from otherwise unenforceable contracts to allow hearings on disputes in which bribery is alleged. Access to arbitration, however, has not worked to the benefit of bribe-paying actors. The prevailing doctrine has been most forcefully articulated by the arbitration panel in *World Duty Free Company Ltd v. Republic of Kenya*:

> [B]ribery is contrary to the international public policy of most, if not all, States or, to use another formula, to transnational public policy. Thus, claims based on contracts of corruption or on contracts obtained by corruption cannot be upheld by this Arbitral Tribunal.[25]

In other words, these arbitral panels will extend their jurisdiction over disputes, but if the panel finds that bribery involved in the formation of the contract at issue, then the contract will be held to be voidable. Thus, under either the Lagergren or *World Duty Free* lines of reasoning, arbitration tribunals will not uphold contracts tainted by bribery (Craig 2010; Reeder 2016).

Arbitration tribunals contribute in other ways to the tapestry of legal activities that make up the global anti-corruption regime. Arbitration tribunals, for example, may investigate and rule upon allegations of corruption in any transaction involved in a dispute, and often automatically do so when they observe "red flags" in the activities of the actors (Low 2021). Tribunals may, in fact, investigate the possibility of corruption on their own initiative; if they fail to investigate and the occurrence of bribery is found in later proceedings, a national court may legally disregard a tribunal's decision (Cremades and Cairns 2003; Gaillard 2019). In an extensive study of international arbitral proceedings, Olivier Caprasse and Maxime Tecqmenne found that in the years since the *World Duty Free* decision,

> arbitrators have come to rely more heavily on their discretion over evidentiary matters in order to contribute to the fight against corruption. This trend has materialized not only in relation to the arbitrators' growing reliance on their investigative powers, but also their acceptance of more flexible means of evidence for the purpose of demonstrating the reality of corrupt practices.
>
> (2022, 519)

The rules and processes employed in international arbitration to deal with corruption have not yet settled into one comprehensive corpus. International arbitration, however, remains thoroughly committed to uphold public policy, which condemns corruption (Valle and Schilling de Carvalho 2022). The rules and processes of international arbitration, therefore, constitute a vital and evolving piece of the global anti-corruption regime.

Administrative Rules and Processes

Administrative rules and processes also contribute to the makeup of the global anti-corruption regime. National governments and international organizations alike promulgate rules that directly address corruption in their procurement and contracting processes. As with arbitration, most of these rules address corruption, usually in the form of bribery, by business actors, usually in connection with the procurement of goods or services (Boles 2014b).

The central governments of many countries have rules that prohibit a person or business firm that has engaged in bribery from entering into further business relationships with that government. The federal government of the United States, for example, debars bribe-paying businesses and persons from any government relations or business.[26] The European Union also debars bribe-payers from further engagement with the administrative bodies of the Union.[27] The United Kingdom separated itself from the European Union but has adopted similar rules debarring business firms that have engaged in corruption anywhere in the world.[28] Many other governments have adopted similar rules (Williams-Elegbe 2020).

International organizations also promulgate rules that trigger investigation of corruption and debar bribe-paying business actors. The World Bank Group, for example, which consists of the International Bank for Reconstruction and Development, the International Finance Corporation, the International Development Association, the International Centre for Settlement of Investment Disputes, and the Multilateral Investment Guarantee Agency, investigates claims of bribery in any project that involves one of its bodies. The Integrity Vice Presidency division of the World Bank actively investigates and holds hearings on such claims. If bribery is found to have occurred, then the responsible person or firm is placed on an embargo list and may not become involved in any project involving the World Bank Group (Castellano 2016; Manacorda and Grasso 2018). The International Monetary Fund and each of the regional development banks have similar processes, and maintain similar lists; reciprocal agreements among these institutions result in cross-debarment of bribe-paying business actors (Williams 2007; Dubois 2012).

Debarment is meant to protect the integrity of the contracting entity, be it a country or an organization, and is not necessarily meant to punish wrongdoers (Williams-Elegbe 2020). Nonetheless, debarment from contracting with entities with the economic heft of the United States government or the World Bank Group can impose significant costs on and challenges to a business actor (Schoeni 2016). The rules and processes for debarment related to corruption, therefore, "have not been without effect on business practices" (Carrington 2012, 40). Administrative rules, therefore, must be included in the rich tapestry that makes up the global anti-corruption regime.

Administrative institutions also play a significant role in the global anti-corruption regime. In particular, many polities create and deploy independent anti-corruption agencies as part of their corruption control efforts (Bautista-Beauchesne 2022). These agencies take on several tasks with respect to corruption control. Hong Kong's much lauded Independent Commission Against Corruption, usually called ICAC, illustrates these functions. Hong Kong created ICAC in 1974, in the wake of a police scandal and growing resentment at corruption in government agencies (Johnston 1999). Resentment of corruption had grown so furious that the British Crown feared popular revolt against its rule in the colony.

ICAC investigates and prosecutes acts of corruption within Hong Kong (Quah 2021). ICAC's mandate extends, however, well beyond the enforcement of anti-corruption laws and regulations. ICAC's mandate also includes reducing opportunities for corruption, largely through examining and improving the procedures used in government offices. ICAC evaluates procedures for clarity, efficiency, transparency, and accountability, and works with officials in each office to improve any procedures found to be deficient. ICAC conducts training seminars and provides resources for answering questions. ICAC also encourages the creation of "Integrity Steering Committees" in every office, which provide leadership in combatting corruption, and which work cooperatively with ICAC (Kwok-chung 2009).

ICAC also undertakes general education projects. ICAC offers seminars and presentations to students and the general public (Johnston 2022). These educational programs include instruction on compliance but also emphasize the damage inflicted by corruption and the social benefits accrued through cooperation in controlling corruption. These educational programs help to strengthen cultural responses to corruption, and lay strong foundations for cooperation in corruption control (Johnston 2022; Scott and Gong 2018).

Michael Johnston warns that in order to succeed, anti-corruption agencies "must be integral parts of much more comprehensive anti-corruption efforts and receive sustained support both from leadership and within civil society" (2022, 110). Administrative bodies such as the ICAC do not operate in isolation. These bodies are intertwined with, and contribute to, the global anti-corruption regime and other actors associated with that regime.

Civil Society and an Anti-corruption Culture

Law and regulation are not applied in a vacuum; the societal context of the global anti-corruption regime has a profound effect on its nature and operation. A multitude of actors contribute to the context in which the global anti-corruption regime has thrived, ranging from members of society in general to nonprofit organizations with global reach.

Social condemnation of corruption extends as far back in time as legal proscription. In reviewing foundational works of the Hindu faith, Upendra Thakur finds "drastic punishment" for bribe-seekers and payers (1979, 14). Mencius, an iconic follower and teacher of Confucianism, teaches that "[a] fully righteous person would also recognize that it is just as shameful to accept a large bribe as it is to accept a small bribe, and so would refuse to accept either" (Van Norden 2014). The Pentateuch, shared by Judaism and Christianity as the Torah or the first five books of the Christian Old Testament, frequently proscribes and condemns corruption with passages such as "you shall take no bribe, for a bribe blinds the clear-sighted and subverts the cause of those who are in the right."[29] The Holy Qur'an of Islam bluntly states that "Allah does not like corrupters."[30]

Today, regardless of cultural or moral heritage, members of society continue to condemn corruption. In survey after survey, respondents identify corruption as a serious problem that requires repair.[31] Even in endemically corrupt polities, people despise corruption; as Tom Donaldson and Tom Dunfee point out, participation in corruption is not the same as an embrace of corruption (1999, 226). Indeed, no survey has yet found a broad embrace of corruption as a preferred means of interacting with governance or forming relationships.

Members of civil society have formed countless organizations dedicated to fighting against corruption. At the global level, Transparency International commands perhaps the most attention. Transparency International was formed in 1993 by a group of internationally active development specialists, some of whom had left World Bank Group institutions, frustrated by corruption's undermining of their projects. Transparency International grew to become the world's largest and best-known anti-corruption organization. Its growth intersected with growing social condemnation of corruption: "The most significant social factor contributing to TI's early recognition was the popular movements against corruption in so many countries" (Galtung and Pope 1999, 263).

Although not an intergovernmental agency, and thus not a forum for the negotiation of international conventions, Transparency International provides detailed advice to nations, polities, and industries on standards, legal frameworks, and enforcement mechanisms—in

other words, on the building blocks of the global anti-corruption regime. Transparency International "has been an important agent of change" and will continue to have influence as the legal and regulatory environment continues to grow (Wang and Rosenau 2001, 31).

The United Nations Global Compact, a global consortium of business firms committed to implementing United Nations goals, challenges fellow "companies to develop policies and practices to address corruption" (Boles 2021, 359). Business organizations indeed contribute to the global anti-corruption regime, not just by working with governments and other organizations in the creation of local laws but, in fact, by developing their own standards and rules for behavior (Duvanova 2007). This type of private regulation has a complex relationship with government regulation but clearly does have a place in the regulatory constellations that govern business (Malhotra, Monin, and Tomz 2019).

The Asociación Panameña de Ejecutivos de Empresa (APEDE) exemplifies the influence that private regulation can have on business actors. APEDE is comprised of established business leaders in Panama. It has relationships with the government of Panama but is independent. More than a decade ago the leadership of APEDE realized that corruption threatened economic growth in Panama and the future growth of business firms. After lengthy consultation with its membership as well as local and international advisors, APEDE issued a code of conduct, the Pacto Ético Empresarial de Panama. Compliance with this code was voluntary, but APEDE provided education and compliance tools, and business managers met regularly to discuss their progress in compliance. APEDE also promoted a cultural shift in Panama's business environment. A meaningful number of leading Panamanian business firms adopted the code and cooperated with APEDE in promoting compliance (Nichols 2004). Although Panama still faces many difficulties, it has been promoted off of the "grey list" of high risk and non-compliant countries.

The International Organization for Standardization, better known by the initials ISO, may soon replicate this feat on a global scale. The ISO is best known for establishing physical standards, such as standard threading for screws or standard calibration for thermometers, which have attained global authority over the last 75 years. More recently, the ISO has developed standards for management practices, related to issues such as quality, auditing, environmental practices, and in ISO 37001, anti-bribery. ISO 37001 requires a business firm to adopt codes of conduct, training, governance structures, and monitoring mechanisms designed to reduce opportunities for bribery (Nikolaos and Bourassa 2021). Unlike APEDE's Pacto Ético Empresarial de Panama, ISO 37001 was not created to fit a specific country, it was instead created for general application throughout the business world. Because it is intended for such broad application, third party auditors have been authorized to certify that a business firm meets the requirements of ISO 37001 (Orozco 2020).

Organizations of smaller scale than Transparency International or the ISO and with less business orientation than APEDE also contribute to the global anti-corruption regime. These organizations often act as means for holding government and business actors accountable (Berdou and Shutt 2017). The I-Paid-A-Bribe campaign, for example, provides online platforms in almost a dozen countries that enable anonymous reporting by individual members of society of the solicitation of bribes by government officials, as well as the amount requested and other information (the sites also allow persons to report and praise officials who do not solicit bribes). The first incarnation of I-Paid-a-Bribe, rolled out in India, published hundreds of thousands of reports on individual acts of corruption. The comprehensive data gathered by the platform allowed corruption investigators to create maps showing the intensity and types of corruption (Ramanna and Tahilyani 2014). More pertinently, the pressure

generated by the disclosure of so much information about corruption contributed to reforms in at least two government agencies in India (Messick 2015).

In general, civil society and organizations offer substantial resources and expertise. As the United Nations Office on Drugs and Crime observes, "The role of the private sector in preventing, detecting and prosecuting actors involved in corrupt practices cannot be underestimated" (2006, 252). Each type of organization brings different strengths and valuable experience. Business associations have actively engaged with the issue of corruption, provide invaluable information regarding the nature of bribery, and have created rules and procedures that shape the behaviors of business actors (Duvanova 2007). Anti-corruption organizations have spent years studying the nature of corruption in a given polity, produce tools for compliance, and propose legislation and other rules (Sampson 2012). Local organizations gather fine-grained information, and can hold local businesses and governments accountable (Paterson, Changwony, and Miller 2019). "A consensual relationship between the private sector and national authorities is, thus, instrumental to the effective fight against corruption and its adverse consequences" (UNODOC 2006, 152).

Conclusion

The legal and regulatory environment addressing corruption, often called the global anti-corruption regime, resembles a rich tapestry. No single body directs the operation of the regime, but the strands of the regime interweave to create a coherent body of roles and rules pertaining to corruption. International agreements require signatories to criminalize transnational bribery and to cooperate with one another in the detection and prosecution of corruption. Local law, international norms, arbitration rules, administrative rules, and business standards prohibit corrupt acts, particularly the offer or payment of bribes, and require business firms to implement effective anti-corruption measures. Local governments and administrative bodies investigate and prosecute corruption, and contribute to a culture committed to controlling corruption. Myriad intergovernmental, transnational, and local organizations also contribute to that culture, as well as independently monitoring the behaviors of individuals, business firms, and governments. The global anti-corruption regime also provides a role for individual people, in holding all actors accountable to standards of honesty and integrity.

Notes

1 Penal Code Act, 2008, ch. VIII, ch. XXIV, 1 *Gazzette* no. 1 (February 10, 2009).
2 Majmuahi Qavanini Jazai [Code of Criminal Laws] 1417 [1996], arts 588–596.
3 Law of Mongolia on Anticorruption, Turiin medeelel 23 (July 8, 2006).
4 Law 1.362 du 3 août 2009 modifié par la loi 1.503 du 23 décembre 2020 sur la lutte contre le blanchiment d'argent, le financement et la corruption terroristes, modifiés par la loi no. 1 520 du 11 février 2022.
5 Código Penal art. 404.
6 Código Penal art. 405.
7 Código Penal art. 406.
8 Code of Conduct and Ethical Standards for Public Officials and Employees, Rep. Act No. 6713, § 7(d).
9 The Prevention of Corruption Act, No. 49 of 1988, § 13.
10 Bribery Act 2010 (UK), c 23.
11 The Act defines a commercial organization as "(a) a body which is incorporated under the law of any part of the United Kingdom and which carries on a business (whether there or elsewhere),

(b) any other body corporate (wherever incorporated) which carries on a business, or part of a business, in any part of the United Kingdom, (c) a partnership which is formed under the law of any part of the United Kingdom and which carries on a business (whether there or elsewhere), or (d) any other partnership (wherever formed) which carries on a business, or part of a business, in any part of the United Kingdom." Bribery Act 2010 (UK), c 23, § 7(5).

12 Bribery Act 2010 (UK), c 23, § 7(1).
13 Bribery Act 2010 (UK), c 23, § 7(2).
14 U.S. Congress, House of Representatives, Committee on Interstate and Foreign Commerce, *Unlawful Corporate Payments Act of 1977: Report (to Accompany H.R. 3815)*, 95th Cong., 1st Sess., 1977, H.R. Rep. No. 95–640; U.S. Congress, Senate, Committee on Banking, Housing, and Urban Affairs, *Domestic and Foreign Investment Improved Disclosure Act of 1977: Report (to Accompany S. 305)*, 95th Cong., 1st Sess., 1977, S. Rep. No. 95–114.
15 *Lockheed Bribery: Hearings Before the Senate Committee on Banking, Housing and Urban Affairs*, 94th Congress 11 (1975) (statement of William E Simon, Secretary of the Treasury).
16 Foreign Corrupt Practices Act Amendments of 1988, 15 U.S.C. § 5003(d).
17 Inter-American Convention Against Corruption, 29 March 1996, Senate Treaty Document No. 105-39, O.A.S.T.S. B-58.
18 Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, 21 November 1997, Senate Treaty Document No. 105–43.
19 Criminal Law Convention on Corruption, 27 January 1999, E.T.S. No 173; Convention on the Fight Against Corruption Involving Officials of the European Communities or Officials of Member States of the European Union, 1997 O.J. (C 195) 2.
20 Convention on Preventing and Combating Corruption, July 1, 2003, 43 I.L.M. 5.
21 Arab Anti-Corruption Convention, December 21, 2010.
22 United Nations Convention Against Corruption, October 31, 2003, 2349 U.N.T.S. 41.
23 ICC Case No. 1110, Award ¶ 20 (1963).
24 ICC Case No. 1110, Award ¶ 23 (1963).
25 *World Duty Free Company Ltd v. Republic of Kenya*, ICSID (W. Bank) Case No. ARB/00/7, Award (4 October 2006), ¶ 157.
26 *Federal Acquisitions Regulations System – Causes for Debarment*, 48 C.F.R. § 9.406-2.
27 Council Directive 2004/17/EC, 2004 OJ (L 134); Council Directive 2004/18/EC, sec. 2, arts. 45, 1(b) OJ (L 134).
28 Public Contracts Regulations, February 5, 2105, SI 2015/102.
29 *Exodus* 23:8.
30 *Qur'an* 28:77
31 See, for example, the "barometers" published by Transparency International, which report the findings of global surveys, as well as large surveys in Africa, Asia, Europe, Latin America, and the Middle East. The barometers are at www.transparency.org/en/gcb.

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