

Poulsen's book is an immense contribution to a more fulsome portrait of investment law. It will become the standard account of why developing states bound themselves to a worldwide web of investor protections and, by implication, why it is a problem that they are so bound. It is now time to rationally consider whether to unbind states from these constitution-like commitments. This might seem like an implausible feat. However, there are paths to adopt alternative strategies (as borne out in South Africa), which are not out of proportion to the benefits to be gained and based upon better information.

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doi:10.1093/ejil/chx017

Marco Arnone and Leonardo S. Borlini. **Corruption: Economic Analysis and International Law**. Cheltenham, UK: Edward Elgar Publishing, 2014. Pp. 630. £112.50. ISBN: 9781849802666.

In the last 20 years, there has been a veritable explosion of academic literature on issues of corruption from a variety of disciplines including economics, law, political science and sociology. Our collective academic understanding of corruption has been greatly enriched, and this knowledge has opened new pathways to experimenting with various anti-corruption reform measures. But, in some respects, we are still at a nascent stage in finding effective ways to control corruption globally. The book under review, *Corruption: Economic Analysis and International Law*, by the late Marco Arnone and Leonardo Borlini is an important step in helping to advance our understanding, in particular, of the complex adverse economic effects of corruption and the challenges and limitations of international law in helping to reduce corruption.

Early in their book, the authors introduce us to the reality that corruption is 'a multi-faceted phenomenon' that is so deeply rooted in all modern societies that parts of it are often considered 'normal' (at 1).¹ Along with many other commentators, the authors correctly assert that 'corruption is one of the most serious challenges to modern economic systems and societies' (at 19). But the authors also point out that the claim that corruption is one of the world's most serious challenges is frequently made but seldom illustrated and documented, and, as a result, it lacks power 'to evoke interest because of overuse' (*ibid.*). This book sets out to correct that problem.

While legal experts largely tend to rely on prohibitions and sanctions as primary instruments to combat corruption and, thus, often are 'at a loss in dealing with [corruption's multi-disciplinary] complexity', the authors (an economist and a law professor) decided to investigate corruption by focusing on the relationship between the economic aspects of corruption and the applicable rules of international law (at 8). The book is thus built on the premise that the combination of legal and economic analysis may shed light on the challenges corruption poses to the rule of law and good governance in a democratic society and, at the same time, assist in the assessment as to what extent various international legal instruments may help in the fight against corruption. The authors demonstrate how, over time, the rationale of the anti-corruption movement gradually expanded from safeguarding fair competition to an agenda focused on development and good governance.

¹ A good example is the extent to which large-scale political campaign funding is lawful in many countries, although it is an inherently corrupting influence.

The book is divided into two parts, consisting of five sections and 17 chapters. The first part examines the enormous economic and social costs of corruption, while the second part assesses the benefits and shortcomings of different international legal instruments aimed at curbing corruption. In the first part, the authors rely not only on existing economic literature exploring the impact of corruption on markets and economies but also engage in empirical research built upon a wide set of data collected by the World Bank Group, the International Monetary Fund (IMF) and the World Economic Forum (WEF), covering most of the jurisdictions in the world.² The first three sections (Chapters 1–7) set out the impact of corruption on firms, markets and macro-economic performance; on corporate finance and financial markets as well as on institutions and governance. The authors argue that identifying the key economic incentives, determinants or drivers of corruption is an essential step in instituting effective economic and legal regulation of corruption.

The book starts with a refutation of the arguments that have been made by some economists that corruption is beneficial because it greases the wheels of business, reduces transaction costs and lowers the cost of capital. The authors demonstrate that the harm done by corruption is enormous, and they agree with Nouriel Roubini that, when corruption extensively penetrates public and private realms, uncertainty rises in the financial system, nullifies the correct functioning of the market mechanism in this inherently unstable sector and leads to potentially destructive consequences for the entire economy.³

Special attention is given to the effects of corruption on competition. The authors emphasize that in markets tainted by bribery participants act differently than they do in legal and transparent markets. In particular, market actors that are located in jurisdictions with low penalties or poor anti-corruption law enforcement, as well as actors with good political connections, have an inherent advantage and can afford to take bigger corruption risks. Furthermore, large corporations, which have better access to legal and accounting professionals, benefit from lower transaction costs and thus are 'better placed' than small and medium-sized enterprises when it comes to bribery. Another perverse aspect of the 'bribery market' is that foreign companies will usually have more resources to offer larger bribes than domestic market participants can offer.

Using data from more than 150 jurisdictions, the book demonstrates a strong positive correlation between competitive and well-regulated markets and their lower levels of corruption (at 42–43). The authors state (and corroborate with empirical evidence) that functioning markets based on open competition diminish the occasions to extract bribes, thereby reducing the level of corruption. The authors recommend that unduly excessive regulation should be dismantled, since chaotic and overly burdensome regulations generate incentives for bribery as a means to bypass bureaucracy and cut red tape. The empirical analysis done by Arnone and Borlini on the positive correlation between the efficient regulation of competition, competitiveness and lower levels of corruption is original and supports the recent initiatives undertaken by some international institutions, including the Organisation for Economic Co-operation and Development, on the link between corruption and anti-competitive behaviour.⁴

With regard to the impact of corruption on macro-economic performance, Arnone elaborates on both empirical data and existing literature in order to demonstrate, mostly in terms of indirect causation, that corrupt markets lose competitiveness, do not attract as much international

² Part I is mainly written by Marco Arnone. Leonardo Borlini co-authored Part I, Chapter 1; Chapter 2, sections 2.1, 2.2, 2.3, 2.4.2, 2.4.4; Chapter 3, sections 3.3.2, 3.7; Chapter 7, section 7.4.1.2.

³ N. Roubini, 'The Shadow Banking System is Unravelling', *Financial Times* (21 September 2008).

⁴ See Organisation for Economic Co-operation and Development (OECD), '2014 OECD Global Forum of Competition Discusses the Fight against Corruption', available at www.oecd.org/competition/fighting-corruption-and-promoting-competition.htm (last visited 29 November 2016).

capital investment and are marked by lower growth (at 72–73). Corruption not only reduces public revenue (at 74–85) but also negatively affects allocative decisions of governments, causing them to favour projects that have the greatest opportunities for government corruption, thus compromising growth (at 75–83) and reducing public investment in areas of greatest need such as education and health (at 69–73). The authors offer a thought-provoking and initially counter-intuitive thesis that, during the economic cycle, the increasing profit potential in the growth phase leads to an intensification of corruption, whereas the later recession slims down profits and thereby destabilizes corrupt networks. If subsequent independent research proves this hypothesis to be correct, it would put to rest the often-cited argument that economic crises pressure companies into bribery because businesses need to win contracts to survive.

The second section of the first part of the book looks at the impact of corruption on financial markets and instruments, an area that until now has been explored by economic doctrine only sporadically.⁵ The effects of corruption on financial performance of companies is considered by looking first at share returns for a sample of 1,058 industrial companies in the Eurozone between 1996 and 2006 and then looking at micro-finance institutions in Asia, Africa and Latin America. This part concludes with section 3, which deals with the role that corruption plays in the erosion of public governance, accountable institutions and the rule of law. Chapter 7 provides an analysis of the extensive economic literature that demonstrates that countries with poor institutional governance are also the countries with high levels of corruption (153–179).

The second part of the book, written by Borlini, looks at the birth and evolution of the global anti-corruption legal standards, analyses international legal instruments aimed at curbing corruption and indicates their major benefits and limitations. To link it with the first half of the book, Borlini discusses three emblematic cases of transnational and national corruption in Chapter 8. The *TSKJ Consortium* case, involving the bribery of Nigerian officials by a group of American, Italian, French and Japanese companies for access to the country's liquefied natural gas sector, shows the need for effective international cooperation among the relevant domestic investigative and law enforcement authorities (case summarized at 195–201). The second case involved the Oil-for-Food Program, which ended with a scandal when information surfaced regarding illegal oil smuggling and kickbacks paid to Saddam Hussein and certain UN officials (case summarized at 184–195). This case exemplifies the necessity for the applicability of anti-corruption legislation to officials of international organizations as well as the crucial importance of due diligence performed by financial intermediaries and the need for more effective sanctions to 'guarantee the proper functioning and full transparency of the operation they are supposed to monitor and filter' (at 195). The third case is the Fininvest scandal in Italy, which involved the bribing of a judge of the Court of Appeal to render a favourable judgment in a large commercial dispute involving control of the influential Mondadori publishing group (case summarized at 204–206). This decision was indirectly favourable in significant ways to Fininvest, which was owned by the prime minister's family. The case demonstrates the importance of complementing criminal sanctions against corruption with effective civil remedies for corrupt behaviours.

The authors note that the number of recent large-scale corruption cases that could be used for illustrative purposes 'appears uncountable' (at 83). For example, the recent political and economic meltdown in Brazil arising out of the Petrobras scandal could be seen as another current example of the impact of grand corruption. The case studies presented in the book have been carefully selected to point to the most significant gaps that the system of international treaties and the mechanism of international cooperation need to fill to account for the diminishing importance of national boundaries and the rising inadequacy of unilateral domestic remedies

⁵ The effects of corruption on financial markets are analyzed in a guest chapter written by Carlo Bellavite Pellegrini and Laura Pellegrini.

as tools for the elimination of corrupt practices (at 183–189). Furthermore, the circumstances of the *TSKJ Consortium* and the *Oil-for-Food* cases, together with their consequences for Nigeria and Iraq, allow the reader to connect some of the economic arguments and conclusions from the first part of the book with the legal analysis set out in the second part.

The remaining section of the book (Chapters 9–17) shifts to an examination of the international conventions and other legal instruments for the control and regulation of corruption and the major issues and challenges in enforcing these legal norms. The 1977 US Foreign Corrupt Practices Act (FCPA) is analyzed in Chapter 9 since it was, and still is, the catalyst for all of the other regional, international and multilateral agreements on corruption.⁶ These subsequent international instruments analysed in Chapter 10 include the Inter-American Convention against Corruption, the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (Bribery Convention), the African Union Convention on Preventing and Combating Corruption, the United Nations Convention against Corruption (UNCAC), the WTO Plurilateral Agreement on Government Procurement (GPA), a number of European Union conventions and directives as well as some rules and incentives developed by major international financial institutions to direct and constrain behaviour of economic agents – for example, the 2010 Agreement for Mutual Enforcement of Debarment Decisions signed by the African Development Bank Group, the Asian Development Bank, the European Bank for Reconstruction and Development, the Inter-American Development Bank Group and the World Bank Group.

Chapter 10 is central to the second part of the book as it allows the reader to fully grasp the high level of complexity and the lack of coordination among different international anti-corruption instruments and initiatives that started to emerge in the late 1990s. Here, Borlini adopts the perspective and tools of a public international law scholar, makes references to the customary rules on treaty interpretation and the mechanisms for the international supervision of the implementation of the treaties. The author also scrutinizes the role played by major international financial institutions, including the Financial Action Task Force in combating corruption, which he considers to be as important as the adoption of international treaties (at 529). This aspect is particularly commendable given the scarcity of existing literature on this matter. The book provides valuable insight into the role of financial institutions, such as the IMF. Their main functions are related to macro-economic surveillance, lending to countries experiencing balance of payment problems and capacity development, but their focus traditionally has not been explicitly on combating global corruption. Borlini also offers an enlightening analysis of the World Bank's Governance and Anticorruption Strategy (at 271–303). Taking into account the fact that public procurement accounts for a substantial portion of government expenditure and remains a high-risk area for corruption, a full analysis of the potential impact of the WTO GPA on the fight against corruption and promotion of good governance would have enriched this chapter.

The remaining Chapters 11–17 of the book are devoted to a detailed and insightful horizontal analysis of the most challenging issues in the effective regulation of corruption, both domestically and transnationally. This part of the book will be of special interest to legal scholars and practitioners in the sphere of international law. In these chapters, Borlini offers a very helpful comparison of substantive and procedural rules provided for in the aforementioned treaties, indicates their strengths and weaknesses, evaluates their impact on the state parties' legislation and makes suggestions as to their possible further amelioration (at 311–523). The book further addresses the imposition of effective sanctions, both criminally and civilly, the severity and typology of such sanctions, the importance of preventive measures, limits on national jurisdiction that impedes the investigation and prosecution of transnational corruption, the importance of robust systems of transnational mutual legal assistance and extradition, the ineffective

⁶ Foreign Corrupt Practices Act, 15 USC § 78dd-1.

regulation of financial institutions and active programmes for the recovery of corrupt assets. Borlini also deals with the controversial issue of the financing of political parties. Borlini notes that, notwithstanding some promising proposals made during the negotiations of the Bribery Convention and the UNCAC, the lack of effective international regulation in this area is 'one of the main shortcomings affecting the international criminal apparatus against corruption' (at 344). The author uses the *Dumez Nigeria Ltd* case (at 378), the Brazilian *Mensalão* scandal (at 410) and the case involving Vladimiro Montesinos Torres, former chief of the Peruvian National Intelligence Service (at 493–495) to demonstrate that, despite its limitations, the international anti-corruption legal framework is already bearing some fruit.

Borlini argues that it is becoming impracticable to fight global corruption using domestic legislative and law enforcement tools and that internationally a 'more cooperative legal strategy probably represents the most effective response to de-localized criminal phenomena' (at 394). Recognizing the limits of national anti-corruption measures, particularly those derived from criminal law, Borlini includes a chapter in the book on the 'internationalization' of preventive and non-criminal related measures (at 418–442). The author concludes that prevention has lately become an important complementary tool to prosecution through criminal law. He also notes the importance of effective legal protection of whistle-blowers in both the prevention of corruption and its successful investigation and prosecution when it does occur (at 429–436).

This part of the book, moreover, contains a valuable comparative study of the follow-up mechanisms provided for in various anti-corruption treaties. These are depicted as peculiar examples of international supervision, which, in Antonio Cassese's words, provide states with a 'new system of inducing compliance with international law' and, thus, constitute a flexible means to prevent disputes among the parties to an international treaty.⁷ The author notes that while the Council of Europe's Group of States against Corruption is a reasonably effective initiative, the tools for monitoring the implementation of some other treaties, including the UNCAC, need improvement. Yet he concedes that international compliance-monitoring bodies sometimes have limited scope for frank assessments and criticisms since the reviewing countries may be hesitant to impinge on the sovereignty of powerful states or to criticize powerful states who may retaliate in one form or another.

Finally, in the afterword to the book, written after Arnone's death, Borlini draws various connections between their research on the economic and institutional costs and the effects of global corruption and the current successes and shortcomings that still exist in international anti-corruption instruments. One shortcoming is the failure until very recently to firmly situate corruption in the human rights forum. Borlini correctly emphasizes that by 'creating and crystallising fundamental inequalities', corruption adversely affects civil, economic and social human rights (at 170–173).⁸ Corruption is not a simple monolithic issue. On the basis of an impressive amount of data, extensive empirical research and literature review, the authors successfully clarify the complexity of corruption. The authors have solidly rooted their research in a robust understanding of the various socio-economic costs and institutional consequences of corruption, and they have fostered a vivid dialogue between the economic and legal parts of their research, allowing the reader to grasp the extent and limits of the present-day understanding of corruption as well as of the tools available and necessary to combat it. The authors are to be congratulated for producing a detailed and illuminating book on the economic impact of global corruption and on the importance of using economic analysis as a tool to understand and

⁷ A. Cassese, *International Law* (2nd edn, 2005), at 291.

⁸ See Rose, 'The Limitation of a Human Rights Approach to Corruption', 65:2 *International and Comparative Law Quarterly* (2016) 405. See also A. Peters, Corruption as a Violation of International Human Rights, MPIL Research Papers 2016-18 (2016).

shape the reform of international legal instruments dealing with corruption. Even those who have been researching corruption for a long time will find original ideas and new approaches in this book.

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doi:10.1093/ejil/chx016