



Guest Editorial

There is a broad agreement in the literature about the detrimental consequences of corruption. In particular, the research shows that corruption undermines development and economic growth, the legitimacy of a state and trust in institutions, and increases social inequalities etc.¹ The scholarship is however less unanimous on specific ways of how to counteract corruption, while increasingly questioning direct anti-corruption measures and their unintended impact.²

Empirical research shows that after decades of global anti-corruption efforts, the number of success cases that managed to reduce levels of corruption remains extremely limited.³ Thus, corruption researchers often deal with the question of why anti-corruption reforms fail.⁴ The main lesson learned so far is that there is no “one size fits all” solution for good governance.⁵ The success of anti-corruption efforts highly depends on the context that defines many different determinants specific to the particular place and time.

The fifth issue of the Kyiv-Mohyla Law and Politics Journal, “Legal and Political Challenges of Anti-corruption Activities,” aims to explore different manifestations of

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- ¹ Nicholas Charron and Bo Rothstein, “Regions of Trust and Distrust: How Good Institutions Can Foster Social Cohesion,” in *Bridging the Prosperity Gap in the EU: The Social Challenges Ahead*, ed. Ulf Bernitz et al. (Cheltenham, Northampton: Edward Elgar, 2018), 220–42; Eugen Dimant and Guglielmo Tosato, “Causes and Effects of Corruption: What Has Past Decade’s Empirical Research Taught Us? A Survey,” *Journal of Economic Surveys* 32, no. 2 (April 2018): 335–56, <https://doi.org/10.1111/joes.12198>; Bo Rothstein and Marcus Tannenber, *Making Development Work: The Quality of Government Approach*. (Stockholm: Swedish Government Expert Group for Aid Studies, 2015), http://eba.se/wp-content/uploads/2015/12/Making_development_work_07.pdf.
- ² Staffan Andersson and Paul M. Heywood, “Anti-Corruption as a Risk to Democracy: On the Unintended Consequences of International Anti-Corruption Campaigns,” in *Governments, NGOs and Anti-Corruption: The New Integrity Warriors*, ed. Luís de Sousa, Peter Larmour, and Barry Hindess, Routledge/ECPR Studies in European Political Science 55. (New York, NY: Routledge, 2009); Oksana Huss, “Corruption, Crisis, and Change: Use and Misuse of an Empty Signifier,” in *Crisis and Change in Post-Cold War Global Politics*, ed. Erica Resende, Dovidé Budryté, and Didem Buhari-Gulmez. (Cham: Palgrave Macmillan, 2018), 97–128, https://doi.org/10.1007/978-3-319-78589-9_5.
- ³ Alina Mungiu-Pippidi, *The Quest for Good Governance: How Societies Develop Control of Corruption*. (Cambridge, United Kingdom: Cambridge University Press, 2015).
- ⁴ Anna Persson, Bo Rothstein, and Jan Teorell, “Why Anticorruption Reforms Fail-Systemic Corruption as a Collective Action Problem,” *Governance* 26, no. 3 (July 2013): 449–71.
- ⁵ Tanja A. Börzel, Andreas Stahn, and Yasemin Pamuk, “The European Union and the Fight against Corruption in Its near Abroad: Can It Make a Difference?,” *Global Crime* 11, no. 2 (April 28, 2010): 122–44.

corruption and the development of anti-corruption policies in a time of international and public pressure for reform. Each article of this issue unfolds a respective context in its own way, while identifying which contextual factors are crucial and which ones are secondary in order to improve a respective system of governance.

Exploring the context often requires moving beyond the institutional framework of the state and facing a variety of contexts on **local levels of governance**. While the national state has for a long time been the central unit of analysis in corruption research, recent studies are increasingly interested in the regional perspective.⁶ In the current volume, articles by Max Bader et al. and Gabriella Gricius explore the particularities of corruption and anti-corruption outside the capital of Ukraine. Ukraine poses an interesting case to research corruption: Despite several revolutionary upheavals, a strong civil society, and the democratic change of political elites in power, the level of corruption in the country remains constantly high. In addition, active decentralization reform and the ongoing war in Eastern Ukraine have led to the allocation of public funds from the capital to the regions, which increases corruption risks. While most of the recent research focuses on anti-corruption activities in Kyiv, both above-mentioned articles provide unique and valuable insight into the particularities of (anti-)corruption in the rest of the country.

Bader et al. in their article “Anti-Corruption Activism in the Regions of Ukraine: Pathways to Impact” analyze the effectiveness of bottom-up anti-corruption activism across Ukraine. They complement the considerable body of literature on the role of civil society in anti-corruption policies, while taking a local perspective on the issue. Bader et al. rely on substantial empirical data, based on 242 semi-structured interviews with anti-corruption CSOs in the regions of Ukraine. The authors highlight three challenges to anti-corruption activism: First, the lack of capacity in terms of financial and human resources; second, the lack of credible base support; and third, the lack of political will.

Gabriella Gricius explores the relationship between corruption, governance, and stability in the unique context of the de-facto Donetsk “People’s Republic” and Luhansk “People’s Republic” states. In the article “Corrupting or Stabilizing: The Political Economy of Corruption in Donbas’s “People’s Republics” the author applies the framework of a war economy, a shadow economy, and a coping economy to discuss the role of corruption in the life of the de-facto “republics.” Gricius demonstrates that petit corruption fulfils stabilizing functions under conditions of institutional fragility in both “republics,” while the rule of grand political corruption in the “DNR” is rather destabilizing.

The next two articles, by Bruna de Castro e Silva and Stoyan Panov, tackle the legal aspects of anti-corruption on **the transnational level**. In the last two decades, the global

⁶ e. g. Maria Carreri, “Can Good Politicians Compensate for Bad Institutions? Evidence from an Original Survey of Italian Mayors,” *SSRN Electronic Journal*, 2018, <https://doi.org/10.2139/ssrn.3239492>; Charron and Rothstein, “Regions of Trust and Distrust: How Good Institutions Can Foster Social Cohesion”; Clara Volintiru et al., *Preventing Corruption and Promoting Public Ethics at the Local and Regional Level in Eastern Partnership Countries* (Brussels: CoR, 2017).

agenda around corruption issues has rapidly evolved. Most international organizations took a normative position towards corruption and elaborated conventions (e. g. Council of Europe, UN), recommendations (e. g. OECD, EU), and peer review mechanisms among states (e. g. GRECO and OECD ACN) that are meant to guide governments in their anti-corruption activities. In the course of these developments, the articles in this volume enrich the discussion about the shift of the paradigm from non-mandatory global anti-corruption norms to transnational legally binding enforcement and jurisdiction over anti-corruption.

In the article 3 “Humanizing (Anti-)Corruption: The socio-legal values of a human rights-based approach to corruption” Bruna de Castro e Silva addresses the question of the socio-legal value of a human rights-based approach to corruption in the context of the recent doctrinal debate of when exactly a particular corrupt act can be technically considered a human rights violation.⁷ In order to answer this question, the author compares legal reasoning in three jurisprudences on the matter of economic and social rights. She conducts a content analysis of whether a particular human rights violation was caused by corruption or by other types of behaviors. Although it remains difficult to establish causality between a corrupt act or omission as a violation of international human rights, the author argues that there are interconnected and mutually reinforcing socio-legal values in applying a human rights lens to combating corruption. In particular, human rights language is a tool of legal empowerment, ultimately leading to social transformation. Accordingly, the human rights-based approach to corruption under certain conditions can legally empower the disadvantaged through the use of international human rights law.

The article 4. “The EU’s Trifecta Mechanisms: Analysis of EU’s Response to the Challenges to the Rule of Law and Corruption” by Stoyan Panov aims to identify and analyze the key mechanisms available to the European Union (EU) for maintaining the rule of law and combatting corruption, two goals that can be difficult to achieve in the complex, multi-layered EU political and institutional structure. In face of the backsliding in the rule of law in some Central and Eastern European States such as Hungary, Poland, and Romania, the central question of the author is how to protect European financial interests from national judicial systems or public authorities that become corrupt, lack independence, or are generally ineffective. The author examines the framework and effectiveness of the triangulation of three primary mechanisms currently planned on the EU level through the lens of legal constitutionalism. The author first critically engages with the existing framework for the enforcement of

⁷ Kevin E Davis, “Corruption as a Violation of International Human Rights: A Reply to Anne Peters,” *European Journal of International Law* 29, no. 4 (December 31, 2018): 1289–96, <https://doi.org/10.1093/ejil/chy074>; Franco Peirone, “Corruption as a Violation of International Human Rights: A Reply to Anne Peters,” *European Journal of International Law* 29, no. 4 (December 31, 2018): 1297–302, <https://doi.org/10.1093/ejil/chy069>; Anne Peters, “Corruption as a Violation of International Human Rights,” *European Journal of International Law* 29, no. 4 (December 31, 2018): 1251–87, <https://doi.org/10.1093/ejil/chy070>.

common values through prevention and sanctioning under Article 7 of the Treaty of the European Union (TEU). The second mechanism examined is the new European Public Prosecutor's Office that has not yet been studied extensively. Finally, the author analyses the possibility of EU sanctions in the form of a suspension of EU funds in order to protect the EU budget in cases of a deficiency in the rule of law. The author uses two case studies to demonstrate the recent application of the proceedings under Article 7 TEU against Poland and Hungary, which are ongoing issues. Based on the two very current examples, which have yet to be fully addressed at the EU level, article provides some useful insight into both the new regulation and Article 7, including their potential limitations.

Next to the local and transnational levels, the analysis of corruption on **the national level** remains important, especially for comparative corruption research. The following two articles deal with European countries, while analyzing the role of corruption perception and corruption tolerance for the **norms and values in a society**. In her article "The Influence of Public Corruption and Human Values on Trust in the Police: A European Cross-National Perspective," Sabrina Pfister conducts a cross-national analysis to explore the relation between corruption and trust in public institutions. In particular, the author examines the explanatory power of perceived public-sector corruption at the contextual level and personal human values at the individual level to explain the variation in trust in police in 23 European countries. Her research shows that trust in police forces erodes in the face of perceived public-sector corruption, while individual values are playing a subordinate role.

Although the level of corruption in Sweden and Iceland is considerably lower in a global comparison, Erlingsson and Krinstisson draw several important lessons from a comparative analysis of these countries. In the article "Exploring Shades of Corruption Tolerance: Tentative Lessons from Iceland and Sweden" the authors first show that the tolerance of corruption is significantly related to the actual level of corruption. The authors then ask what influences the tolerance of corruption in order to explore explanatory mechanisms behind it. One important finding is that the authors reject the widespread hypothesis about the "purity of the people" and the "corrupt elite," and by implication, question the "power corrupts"-hypothesis. Moreover, their data show that civil servants tend to be less tolerant towards corruption than the general public and politicians. This leads to the assumption that administrative norms can provide an important defense against patronage and clientelism. In addition, the timing of when state-capacity and representative democracy, respectively, were consolidated, seem to be significant. In other words, the authors suggest that if a country democratized before bureaucratization (like Iceland), political norms that implicate greater tolerance of corruption prevail. If bureaucratization comes before democratization, as in the case of the historically strong bureaucratic state of Sweden, administrative norms and lower tolerance of corruption seem to prevail.

The article by Thato Toeba considers the contextual aspect of state-society relations in order to explain dysfunctionalities of Anti-Corruption Agencies (ACAs) in Southern Africa. The author provides **a link between global and local levels** of analysis, while

arguing that ACAs are blueprints of international best practices, but do not reflect the political realities they are placed in, which makes them ineffective. The article proposes a new and ambitious framework of Context and Relevance and Resonance for analyzing the workings of anti-corruption agencies and applies this framework to analyze the case of Lesotho. Essentially, this framework aims to contextualize the uses and abuses of ACAs in a given context, by linking the policy and organizational model of ACAs that is essentially transnational (as the author remarks) with local political economy and domestic actors.

Finally, the article “The Kremlin’s Malign Legal Operations on the Black Sea: Analyzing the exploitation of Public International Law against Ukraine” by Brad Fisher raises the issue of lawfare or Malign Legal Operations (MALOPs) as the root of contemporary hybrid warfare. Although not directly related to traditional forms of corruption, this concept indicates the abuse of a legal system (national or international) to manipulate public opinion, legitimize violence, and delegitimize the counterpart in a conflict by means of disinformation. In other words, if successful, this tactic circumvents international law and justifies the use of force while discrediting the very institutions that are intended to delimit acceptable and legal actions. The author applies a constructivist approach to explore the concept of MALOPs through an analysis of Russia’s rising belligerence towards Ukraine in the Black Sea region. An important contribution of this study is the detailed explanation of the strategy and mechanisms of how the international legal system can be manipulated for geopolitical gain.

Summarizing, the volume allows for identifying several tendencies in research regarding the legal and political challenges of anti-corruption activities. First, in addition to the (cross-)national analysis of (anti-)corruption, there is an increasing interest in regional and local particularities. Second, there is a shift from a normative anti-corruption agenda of international organizations towards transnational manifestation of binding anti-corruption norms and mechanisms. Third, the successful transfer of global anti-corruption norms and mechanisms to the local level is only possible under conditions of the proper identification of state-society relations. Although this finding is not new in the academic literature, empirical findings show that there is a lack of systematic context assessment when implementing top-down anti-corruption institutional measures. This is why the research providing appropriate analytical frameworks for systematic context assessment remains important. Fourth, as top-down anti-corruption institutions and policies of a state mostly prove to be dysfunctional in a context of systemic corruption, it is worth shifting the research focus towards bottom-up society-driven anti-corruption activism. This kind of research takes place on the cutting edge between social movement, civil society, and corruption research, raising questions about advocacy strategies, political roles, and the legitimacy of anti-corruption activism. Fifth, recent anti-corruption research goes far beyond the issue of legal norms and formal institutions. The analysis of corruption tolerance, its perceptions, and the link to societal trust in institutions suggests that the issue of corruption can be rooted deeply in society’s history and values, which requires rather indirect anti-corruption measures with a long-term perspective. Finally, a broader

conceptualization of corruption such as *lawfare* can be analytically useful to explain the abuse of the international legal order for one-sided geopolitical gains, and can enrich the literature on conflicts and hybrid warfare.

In addition to the number of innovative analytical questions and interesting findings provided above, this volume provides a unique variety of analytical frameworks to study (anti-)corruption due to its rich interdisciplinary perspective, with contributions from political science and regional studies, as well as from law, economics, and sociology. Another strength of interdisciplinarity is its methodological pluralism: the issue includes qualitative (Bader et al., Gricius) and quantitative analysis (Pfister), legal (Castro de Silva, Panov) and discourse analysis (Fisher), as well as mixed methods (Erlingsson and Kristinsson).

The issue gathered contributions presented at the Fourth Interdisciplinary Corruption Research Forum, “Varieties of (Anti-)Corruption: Learning From the Past for the Future,” held on June 13–15, 2019 at the National University of Kyiv-Mohyla Academy, Ukraine, with the support of the International Renaissance Foundation. The Forum was organized by the Anti-Corruption Research and Education Centre (ACREC) in partnership with the Interdisciplinary Corruption Research Network (ICRN). ACREC is a research center that carries out educational and scholarly activities and brings together domestic and foreign researchers and practitioners in the field of corruption prevention and counteraction. ICRN (www.ICRNetwork.org) is an international, interdisciplinary network of junior scholars (mainly PhD and post-doc) researching corruption and related issues.

Acknowledgements

Kyiv-Mohyla Law and Politics Journal would like to thank Kyiv office of Baker McKenzie for continuous support of our journal. A word of appreciation also goes to law firm ANTE for their support of this issue. Additional thanks go to Kyiv-Mohyla Law School second year students Anton Makhno, Dmytro Soldatenko and Maria Skoropad for their valuable editing assistance. We also thank all anonymous reviewers for their valuable and constructive feedback.

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