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BOOK REVIEWS

Marco Arnone, Leonardo S. Borlini, *Corruption – Economic Analysis and International Law*, Cheltenham, Edward Elgar Publishing, 2014, ISBN 9781849802666
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The Oxford Dictionary provides the following two principal definitions of the term 'corruption': 'dishonest or fraudulent conduct by those in power, typically involving bribery', and 'the action or effect of making someone or something morally depraved'.[1] Indeed, the Latin etymology of the word does not leave much room for doubt: forged by the merger of *cum* (with) and *rumpo* (to break), the general idea is that of *breaking* (someone's will, the quality of an idea, or a thing) *with* the use of something inappropriate, irredeemably depraving or degenerating the original.[2]

In the legal world, the concept of corruption generally refers to a public official's loss of impartiality and conscious departure from a conduct otherwise expected to happen, toward anyone, in accordance with a defined standard or procedure. The discriminating favor of the public official toward a particular instance, tied to an unjust profit for both the corruptor and the corrupted, violates the fundamental principle of equal treatment that regulates the relationship between the state and its citizens, and it is thus criminalized.

Corruptive practices adjust to the economic and social reality in which they are performed. Their existence depends, also, on the design of the crime of corruption within domestic legal systems – and, most notably, the judicial pace and effectiveness of enforcement (for the sanction to be carried out against its agents). Effectiveness refers, however, also to the idea of a proper economic assessment of the damage suffered by the third parties and the state by reason of the crime committed. Unfortunately, at both domestic and international level, it sometimes happens that notwithstanding the plain recognition of an illegitimate conduct, the adjudicators are not entirely prepared to weigh its economic impact according to sound economic

1 See, www.oxforddictionaries.com/definition/english/corruption.
2 The word, derived from Latin, found its way in English through the equivalent French term; the opposite concept is that of 'integrity', from Latin *in* (non) and *tangere* (to touch), for which both English and French lack an equivalent adjective; Spanish, Portuguese, and Italian have 'integro' or 'entegro'; English and French use another derivation, 'entire', for other purposes, while the opposite of corrupt are two other Latin terms, 'incorruptible' and 'honest'.

standards and rationales.[3] A proper understanding of the intertwining of legal and economic assessments, nevertheless, not only is essential for today's adjudicators, but also a tool for proper policymaking.

'Corruption: Economic Analysis and International Law', by M. Arnone[4] and L. Borlini,[5] is a book that offers a comprehensive review of the concept of corruption, under both its economic and legal appreciation and implications. The authors, with their outstanding experience, draw on an impressive amount of data. Next to the thorough economic rationale, the international legal approach allows the reader to grasp the extent (and limits) to which the international community today understands corruption, as well as the tools available (and those further desirable) to fight it. The book builds on economic and legal literature on corruption, as well as the major results produced in terms of policy and treaty making at the international level.

The first part of the book, devoted to the examination of corruption under the economic perspective, provides, thanks also to the comparative methodology adopted, a detailed yet clear illustration of the actual damage corruptive practices produce in the economic system (and society). Corruption is reviewed in relation to both its micro- and macro-economic impact on the economic cycle, as well as on corporate finance and financial markets at large. In this respect, of interest is the proposed solution to fight corruption, in contexts where it is highly diffused, by means of an increasing resort to microfinance.

The second part of the book centers on the international anti-corruption legal framework so far established. The analysis reviews, firstly, concrete legislative instances and practices; it then shifts to the international law making in the field, and illustrates concrete examples of the fight against transnational bribery. The authors find the emergence of a global consensus on the understanding of corruption and – admittedly, to a lesser extent – the methods to fight it, including transnational cooperation. Under the jurisdictional perspective, such convergence is evident in that 'the provisions on jurisdiction are extremely similar in terms of structure and

3 Cf., the difference between what was claimed (US$11.5 million) and what was awarded (US$95.000) by the International Court of Justice to Mr. Diallo, for which Guinea exercized diplomatic protection against Congo in the *Case Concerning Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, Compensation owed by the Democratic Republic of the Congo to the Republic of Guinea, Judgment of 19 June 2012, [2012] ICJ Rep. 324. More specifically, the Court awarded US$85.000 for 'non-material injury' as 'established even without specific evidence' and 'rest on equitable considerations'; US$10.000 was instead awarded for Mr. Diallo's loss of personal property, based on 'equitable considerations' rather than specific evidence; striking is the Court's consideration that 'Mr. Diallo lived and worked in the territory of the DRC for over thirty years, during which time he surely accumulated personal property'. For a general assessment of the economic assessments of international court and tribunal, see J. Pauwelyn, *Use, Non-use and Abuse of Economics in WTO and Investor-State Dispute Settlement*, in J. Huerta-Goldman, A. Romanetti and F. Stirnimann (eds.), *WTO Litigation, Investment and Commercial Arbitration – Cross-fertilization and Reciprocal Opportunities* (2013).

4 Marco Arnone (1968–2012), Ph.D. (Pavia) and MSc (Warwick) in Economics. Dr. Arnone was the Director of the Centre for Macroeconomics and Finance Research (CEMAFIR) of Milan, Italy. IMF economist at the Monetary and Financial System department, and at the African department.

5 Leonardo Borlini, Ph.D. (Bocconi), LL.M. (Cantab.), BA in Economics (Bocconi). Assistant Professor of International and EU Law and Research Fellow at the Baffi Center on International Markets, Money and Regulation at Bocconi University (Milan, Italy); former member of the Italian delegation for the OECD Working Group on Bribery. Consultant for the IMF, the World Bank, and the Italian Competition Authority.

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contents'.[6] In relation to the understanding of the substantive notion of corruption internationally, the authors note that '. . . there now exist a sort of "hyper norm", or, in other words, a global standard repudiating corruption that transcends national boundaries and forms a global consensus on the criminalization of transnational bribery'.[7] Such finding, to be certainly shared in principle, is also evident, e.g., in the reasoning of an international investment tribunal called to ascertain whether a 'gift' to a state president, legitimate under domestic law, could nevertheless be qualified as a violation of a customary norm banning corruption internationally.[8]

The authors' hypothesis is based on the documented evidence that corruption is directly responsible for the erosion of the rule of law in democratic societies. They thus suggest to increase the accountability of the public sector, in the form of enhanced independence (*i.e.*, ability to be different from, and indifferent to, political and economic corruptive influences), autonomy, and competence. Arnone and Borlini further suggest that 'deterrent civil remedies, complementary to penal sanctions, can be highly effective in big corruption cases'.[9] Conversely – yet, realistically – they concede that the creation of internationally-established compliance-monitoring bodies, empowered to effectively prevent corruptive practices, is unfeasible, inasmuch as it impinges on the sovereignty of states and their wish to avoid the negative publicity a poor performance record would result in.

Ultimately, the authors convincingly argue that a global common standard in fighting corruption has been achieved through the 'plethora of treaties and other [international] tools' which, in turn, have contributed to produce 'a minimum standard in the international rules for several of the main elements of the current international anti-corruption strategy'.[10] Nonetheless, the international instruments to serve the actual fight against transnational corruption are still relatively limited, as well as the level of inter-state cooperation. The current framework thus appears to leave the burden of advancement in the field on the international adjudicators (even incidentally, as it may happen in commercial or investment arbitration). Indeed, the authors acknowledge that several past breakthroughs have been reached through extensive jurisdictional interpretations in transnational corruption cases, by means of bold teleological interpretive approaches and daring readings of the principles of effectiveness and implied powers. The expansion of commercial and investment arbitration as method to settle disputes between states and private parties, moreover, increases the chances for arbitrators – and counsels – to have to consider, in a more or less explicit fashion, a question of alleged corruption. Occasionally, an even perfunctory investigation on contract negotiations and the 'intention of the parties' result

6 P. 381.
7 P. 308.
8 *World Duty Free Company Limited v. Republic of Kenya*, ICSID Case No. ARB/00/7, Award, Oct. 4th, 2006, paras. 130 ff.; see also *Inceysa Vallisoletana S.L. v. Republic of El Salvador*, ICSID Case No. ARB/03/26, Award, Aug. 2nd, 2006, paras. 190–252. Both awards, nevertheless, have not escaped criticism: by elevating corruption as a 'general principle' and by making reference to specific -yet different- instances of other general principles, they failed to identify clear boundaries as to its extent. For a critical perspective of the Tribunals' reasoning, see, e.g., A. Kulick, *Global Public Interest in International Investment Law* (2012), 322–4.
9 P. 436.
10 P. 310.

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in discoveries which may delay or disrupt the arbitral process. For different reasons, all sides involved (arbitrators, counsels and parties) most times would rather avoid to deal with the elephant in the room. When this is not the case, this book may come in valuable, as it not only provides for an exhaustive description of the corruption phenomenon in both economics and law, but it also reviews all international relevant legal sources on the topic, drawing on concrete case-law, and actively proposing the authors' reading of legal principles through sound economic considerations.

The book could also be instrumental to policymakers, as it may help them in discharging their service at both a domestic and international level, increasing their awareness on a topical issue where economic and legal considerations are inextricably linked. On the one hand, as noted, legislators – as well as adjudicators – occasionally fail to properly address the link between the legal principle and its economic rationale or implication; on the other hand, the existence of a rich web of already agreed international rules – that has become, or is on the way to become, an international principle – risks sometimes to be erroneously overlooked, discarded, or outright neglected.

As the authors remark in their conclusion, corruption is a complicated phenomenon. The fight against this 'societal disease' requires proper investigation of its causes, effects, and costs. Nowadays, corruption represents one of the most serious distortions of the well-functioning of markets, as it creates and crystallizes asymmetric business environments where outsiders are either excluded *ex ante* or forced to exit. In addition, corruption generates closed social systems where the instances of those unable to assert sufficient influence, or enjoying enough visibility, are left without representation.

The joint economic and legal analysis allows the authors to authoritatively state that 'globalization is the possibility of de-localizing almost instantaneously activities for illicit purposes'.[11] Nevertheless, they also point that it is not all dark out there, as 'the increased probability that corruption eludes state control and its effect spill over and resonate throughout the world economy has urged a response by the international community'.[12] As such, it appears that there is a possibility, over the years to come, that states will ultimately find a way to strengthen the international legal framework and instruments for an effective cooperation to fight transnational corruption.

For the time being, this book offers a high quality review of economics, law, and case law in the field.

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11 P. 525.
12 Ibid.

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