

Special Issue
Ethical Challenges of Corrupt Practices

Ethics and Corruption: An Introduction to the Special Issue

By Peter Graeff*

Abstract

Corruption necessarily involves particularistic advantages at the expense of the society as a whole. It might be, however, misleading to assume these implications are *a priori* negative. The moral assessment of corrupt practices depends on contemporary ethical standards, which differ from country to country and undergo change over time. As a result, some practices labeled as corrupt might become legitimate while others turn from legitimate actions to offenses. When ethical dimensions are considered, corrupt practices reveal an inherent tension between particularistic and universalistic normative standards. Particularistic standards belong to the person-specific obligations and the expectations of actors involved in corruption. These necessarily clash with universalistic standards, which are valid and applicable for everyone and are usually approved by legal provisions or codes of conduct. As a result corrupt exchanges reveal both positive social features between corruption partners—such as mutual trust—and negative societal ramifications—such as disadvantages of non-involved actors. Corrupt partners behave fairly and honestly with respect to their partners but unfairly and dishonestly with respect to anyone else.

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A. Norms and Moral-Trade Offs

A clear-cut incident of corruption is a simple case: A person in a position of trust or authority abuses that position for his or her own gain, mostly for the benefit of a third person or another party.¹ This offense damages victims who often do not know about the corrupt act. The norm that the “abuse of power is prohibited” usually stands as a part of every legal system. Transgressing this norm is considered a crime and is prosecuted. The rationale behind penalizing corruption as a crime results from its damage in society which is partly intangible—as in a lack of trust in authorities—and partly substantial—when there are aftermaths that were not intended by the corrupt persons. Corruption may also cause damage in people’s lives where no one would expect it. Ambraseys and Bilham² find that about eighty-three percent of all persons who die in collapsed buildings during an earthquake are citizens of countries with a relatively high level of corruption. This result coincides with the fact that the construction industry is one of the parts of the global economy that experience the highest frequency of incidents of corruption. Some corrupt constructors accept a low quality of building material and thus increase the probability of fatalities by catastrophes.

Even if the negative consequences are obvious and there is ample need for laws and rules to regulate or prohibit such a behavior, in many cases, how people should avoid corrupt behavior might not be so clear. In the legal sense, corruption and ethics are related to each other by questions of what people ought to do. From a meta-ethical perspective, acting legally does not necessarily mean that people act good or bad simply by keeping the law. Some laws may contradict human rights or general moral standards. Even when its conduct is in line with the national law, a government might abuse its position in such a way that it violates human rights or basic freedoms.

As to corruption, the contradiction between group standards and general standards is particularly important. A conflict may arise due to the trade-off of loyalty toward different reference groups such as family, friends³, or a club, and general legal standards. The same applies in business. For example, an employee goes to a foreign business partner to conclude a contract, which will greatly benefit his company. If there is a clear company-specific code of conduct prohibiting any bribing of business partners, this normative guideline might conflict with normative expectations of foreign partners who might wait

¹ For bribe givers who intend to benefit their company or organization, see generally, Markus Pohlmann, Kristina Bitsch, & Julian Klinkhammer, *Personal Gain or Organizational Benefits? How to Explain Active Corruption*, in this special issue of the *German Law Journal*.

² See Nicholas Ambraseys & Roger Bilham, *Corruption Kills*, 469 NATURE 153, 155 (2011).

³ See Holger Niehaus, *Donations Granted Amongst “Friends” in Public Office—Kindness or Corruption?—There Ain’t No Such Thing as a Free Lunch*, in this special issue of the *German Law Journal*.

for gifts or other signs of approval of their economic closeness. The employee's colleagues and superiors might implicitly support corrupt activities which lead to fixing the contract because they are benefiting as free-riders if these illegal activities are not discovered. Implicit expectations to apply undue practices pose a problem for firm agents if they have to deal with different aims, interests, and expectations.⁴

This example shows that there are different norms, and valid standards of behavior that refer to different levels of norms. Moral decisions for or against corrupt practices usually include those different levels when the interests of social reference groups—such as the working team or the family—and the interests of a firm or a state are considered. Moral decisions may turn in favor of one group—e.g. referring to particularistic norms of a working team—at the expense of the organization or general laws. Those corruption situations are no longer clear-cut cases with simple incentive structures. Ethical considerations dealing with those situations must reflect the different standards and may no longer refer to a simple good or bad dichotomy.

As one could assume that people prefer to live in buildings of untainted quality, one would suggest that the absence of corruption is a preferable situation. The question of how corruption can be curbed remains crucial. One immediate answer to this question is the strengthening of legal regulation.⁵ Prominent corruption cases with a lot of suspects usually trigger the call for stricter or broader laws about corruption, like what has happened in the Siemens corruption scandal. Such a process of ethical adjustment, in which norms and regulations are being reconsidered and matched with new standards, might reflect an important societal step forward. It remains unclear, though, whether these ethical dilemmas will be actually solved. Existing high moral standards might not apply to potentially corrupt actors if they orient themselves to rather particularistic group-norm standards. Dungan, Waytz, and Young show that many people behave as moral hypocrites.⁶ Such people apply moral values and high moral standards when judging others, but do not apply those standards to their own behavior. As corruption is necessarily a situation in which double standards are applied, ethical dilemmas might not be relieved by setting higher or clearer universal rules. Curbing corruption thus becomes a trade-off between situations in which people treat others fairly and situations in which

⁴ See Peter Graeff, *Im Sinne des Unternehmens? Soziale Aspekte der korrupten Transaktionen im Hause Siemens*, in *DER KORRUPTIONSFALL SIEMENS: ANALYSEN UND PRAXISNAHE FOLGERUNGEN DES WISSENSCHAFTLICHEN ARBEITSKREISES VON TRANSPARENCY INTERNATIONAL DEUTSCHLAND 151* (Peter Graeff, Katharina Schröder & Sebastian Wolf eds., 2009).

⁵ Under certain circumstances specific provisions of anti-corruption measures are not desirable, see Sebastian Wolf, *Dark Sides of Anti-Corruption Law: A Typology and Recent Developments in German Anti-Bribery Legislation*, in this Special Issue.

⁶ See generally James Dungan, Adam Waytz & Liande Young, *Corruption in the Context of Moral Trade-Offs*, 26 J. INTERDISC. ECON. 97 (2014).

people unduly favor others due to personal loyalty.⁷ This is tantamount to the clash of universal and particular norms.

B. The Special Issue

This interdisciplinary *German Law Journal* special issue brings together contributions by legal scholars, sociologists, political scientists, economists, and philosophers. The selected Articles analyze corrupt practices with regard to ethical and moral positions or implications. Some contributions deal with normative conflicts and moral consequences that occur in corrupt exchanges, and others focus on ethical issues of corruption prevention or practical consequences of normative conflicts. The clash of particular and universal norms runs like a golden thread through the papers of this issue. Several contributions explore the demarcation of particular and universal norms.

The first three contributions to this issue focus on a legal approach to analyzing ethical problems in conjunction with corruption. They try to address the central ethical challenges when legal aspects are concerned. As a consequence, they imply not only different ethical positions about corruption—and reasons and ways of curbing it—but also fathom the ideas of legal scholars between the poles of empirical-oriented argumentation and a purely normative line of argumentation.

Sebastian Wolf explores in his Article the dark sides of anti-corruption laws. While laws against corruption try to curb corrupt practices generally, in practice, they often fail to do so. Moreover, they may also have unintended side effects. Wolf suggests a typology which compiles negative and unintended side effects and through this provides a systematic view of the critical comments on anticorruption laws. When laws are designed, arranged, and implemented, so many things may go awry that it might be better in particular situations that no or only narrow anti-corruption laws exist. With this interesting proposition, Wolf extends the boundaries of ethical issues of corruption. Corruption with its negatives and potential benefits might be assessed within a bigger societal context, in which the acceptance of a certain level of corruption might be a valid option.

Anna Cornelia Rink also tackles questions regarding anti-corruption measures. She takes a stance against authors who argue that international anti-bribery standards should not be applied to “non-Western” countries because of potential “moral/legal imperialism.” This line of argumentation holds that strict criminal laws with a Western notion of law do not meet the business and societal standards in several countries, such as most parts in Africa or Asia. Rink argues that there already is a comprehensive legal framework on the international level, which allows the reconciliation of criminal law and country-specific

⁷ For a perspective that tries to transcend the logic of economic exchange, see Verena Rauen, *Corruption: Uncovering the Price of Normative Morality and the Value of Ethics*, in this Special Issue.

social conditions, or social morals. The courts in each country play a crucial role in this process, as they are able to adapt to the country-specific requirements when foreign bribery should be combated. Whether universal and particularistic norms actually fit to each other, is a problem for the authorities, which put the country-specific legal framework into action.

Holger Niehaus also fathoms the boundaries of universalistic and particularistic norms. He addresses the case of the former German federal president Christian Wulff, who was accused of acceptance of undue benefits, to explore the blurred area between private and non-private activities of public officials. In this, he details a severe problem of legal practice, namely to find an adequate treatment of minor offenses, which are usually allowed for private individuals—such as gift-giving—but not for public officials. He stresses the importance of the general public faith in the integrity of public administrations. Thus, he derives a clear statement about the priority of universal norms when corruption or questionable exchanges of benefits are concerned.

While the first three Articles apply a legal perspective to ethical issues of corruption, the remainder deals with various, discipline-specific perspectives.

In their review Article, Eugen Dimant and Thorben Schulte compile empirical research findings from psychology and criminology and, in particular, from economics. For explaining corrupt behavior, they develop an interdisciplinary concept that incorporates individual approaches, but also social aspects such as norms, values, and education, as well as other aspects like institutional, political, or geographic conditions. They conclude that corruption is caused by a multitude of mechanisms, which belong to the individual and the collective levels. They also suggest, however, that moral issues are important to understand the prevalence of corruption incidents on the individual or the collective levels.

By referring to the early work of sociologist Niklas Luhmann, Markus Pohlmann, Kristina Bitsch, and Julian Klinkhammer provide a new theoretical framework, which is applied to bribe givers. By introducing the concept of “useful illegality” to corruption research, they shift the perspective from an individual to an organizational level. Their in-depth of analysis of two prominent corruption cases—*Siemens* and *Telekom*—exemplifies the importance of particularistic, mostly “unwritten” rules and norms which are being borne by highly loyal behavior of employees to their employer. Moreover, their results dilute the economic normative assessments of corruption as they show that corrupt incidents do not only happen due to a lack of compliance management or not sufficiently incentivized employees. In fact, some corrupt agents feel a “moral duty” to provide “advanced payments.”

In her philosophical Article, Verena Rauen frames the ethical problems of corruption in a theoretically-inspiring manner. She defines corruption as an unethical exchange in which moral values are traded for marketable prices. Her aim is to overcome the logic of

economic exchanges by which corruption is usually perceived within academic literature. Like all other authors in this special issue, she refers to specific particularistic norms—a moral order of corrupt actors—to characterize corrupt exchanges. In her paper, she exceeds the scope of ethical analysis that is usually done in literature by pointing out that there are ethical correctives regarding corruption which are not based on economic exchange principles.

This special issue shows that ethical perspectives on corruption are multifaceted and not restricted to a certain scientific discipline. Since a multitude of scientific disciplines contribute to corruption research, they also enrich the ethical assessment of corrupt practices by implying normative and empirically-based arguments. As the clash between group-oriented norms and general norms will not vanish in the future, the debates about the assessment of corrupt practices will continue. The adjustment of existing norms and legal systems is a perpetual process that needs to be reflected in the scientific literature. This special issue is an attempt to do so.