Editorial: Corrupting Democracy? Interrogating the Role of Law in the Fight against Corruption and its Impact on (Democratic) Politics

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Corruption and its conceptual pendant, anti-corruption, represent a prototypical hard case for both the rule of law and for democratic politics. As the diverse set of contributions to this Special Issue illustrates, different forms of corruption remain as prevalent and deeply embedded in political, legal, and economic practice as does the widespread concern with its consequences and the consistently high level of public attention (anti-)corruption episodes command. Indeed, corruption has become a dominant theme in contemporary political discourse across the globe and it has often (been) turned into a privileged cipher for the generalized critique of the political status quo, whether in (so-called) mature or emerging democracies, or in hybrid or autocratic regimes.

Yet, despite its discursive ubiquity, driven, in part, by its central position in the global 'good governance' agenda and the latter's manifold echo chambers, corruption has been hard to pin down: its concretizations are always local and highly context-specific, its definition and application to particular types of conduct is almost always politically contested, and its root causes often point to deep history and the very fabric of a particular polity. The law, in general, and legal (anti-)corruption regulation, in particular, has, therefore, not

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just been the formal framework within which corruption is defined and anti-corruption measures are implemented, but it has, more generally, often also been used to paint over the lack of societal or even just political consensus over what corruption is, where its causes lie, and how it should be dealt with.

As such, corruption has invariably instigated not merely a legal but a *legalist* response in which complex socio-economic structures and the political practices they have engendered over time are instantiated and reified as a set of administrative and, increasingly, criminal offenses. What is more, in many (if not all) places it is the operators of the law and especially the courts who have put themselves at the forefront of the anti-corruption agenda, often representing themselves as untouched by the corruption of 'the system' (aka 'normal politics') and, thus, as harbingers of a new (and presumably better, 'cleaner') politics. Yet, while such anti-corruption legalism can have highly destabilizing (side-)effects, it often resonates as much with public opinion as with multilateral aid and cooperation conditionalities and it, thus, tends to be endowed with considerable degrees of legitimacy.

This dialectic of (anti-)corruption does not only play out differently in different settings but is also perceived and understood in distinct ways. While the global good governance and rule of law promotion agenda provides the basic vision and legal toolbox of streamlined anti-corruption instruments, it interacts with local contexts in complex ways and produces intended and unintended consequences that are often ambivalent and that may be evaluated by different actors as progressive, regressive or, indeed, as both.

This Special Issue with its six differently 'toned' but equally engaging contributions on Brazil (and South America, in general), China, Nigeria, South Africa, and South Korea, seeks to illustrate this predicament across the wide spectrum of global ((anti-)corruption) experiences. Hence, in the opening piece, "Coordinating the Enforcement of Anti-Corruption Law: South American Experiences", *Kevin Davis, Guillermo Jorge* and *Maíra R. Machado* frame the so-called modular approach to anti-corruption enforcement in the context of South America, an approach inspired by the Brazilian experience of coordinating multiple institutions in enforcing anti-corruption legal arrangements that would present the benefit of avoiding issues of merely transplanting Global Northern arrangements to the Global South; this narrative is then complemented specifically for the Brazilian scenario around the notorious (anti-corruption) Operation Car Wash in *Maria Paula Bertran* and *Maria Virgínia Nasser*'s contribution on "Whistleblowing to a Latin tune: the adaptation problems of the OECD/FCPA paradigm in environments with disseminated corruption through the lenses of the Odebrecht case in Latin America" which zooms in on three tools shared by the OECD Convention and the U.S. Foreign Corrupt Practices Act to fight corruption globally – protection to whistleblowers, prosecutorial discretion, and different forms os negotiated justice – and which problematizes that drive to incorporate the OECD/FCPA framework to Latin American countries; *Ugochukwu Ezeh* then takes the story to Nigeria, Africa's largest economy yet long beset by corruption allegations and argues in his piece "'Our Enemies Are Swindlers'! Conceptualising Anti-Corruption Legalism as a Securitising Device" that corruption in Nigeria has been constructed as a security problem

mediated by anti-corruption legalism, with both operating as counterproductive approaches that undermine democratic values, political accountability mechanisms and independent constitutional institutions; *Rimdolmsom Jonathan Kabre* then turns further South and into the legal process itself in his discussion on "The Interplay between International and National Institutions in Fighting Corruption: Lessons from the Piero Foresti, Laura de Carli & Others v. The Republic of South Africa's Case" in which he explores the interplay between international and domestic institutions in fighting counsel corruption, with a focus on the recent experience of an investment tribunal in South Africa; the focus then shifts to Asia, from where *Su Bian* in his contribution on "More Discretion, Less Law: Exploring the Dilemmas in the Recent Anticorruption Reform in China" reflects on the stakes of the recent Chinese scheme to fight corruption in light of the promotion of the rule of law in the country, a scheme that focuses on the establishment of a generalized supervisory power over public functionaries in relation to (anti-)corruption; last (but not least), *Gwendolyn Domning* introduces the South Korean scenario in her "Challenging the power of the prosecution? The first phase of the establishment of the Corruption Investigation Office for High-ranking Officials in the Republic of Korea", which sets out the analysis of the creation of a new anti-corruption institution in South Korea as a crucial part of a broader process of building state legitimacy in the country.

These diverse contributions represent *VRÜ/World Comparative Law's* mission extraordinarily well, as they do not just showcase the constitutional experience of a cross-section of the Global South but also make that experience productive for the global discussion on the case in point, namely what the law does to corruption and vice versa. To be able to compile this cross-section and to show how (anti-)corruption works on diverse local grounds has been the objective of this Special Issue and the expectation horizon within which authors and editors have worked since the Call for Papers went out in February 2020. Yet, in the meantime the world and with it this venture were beset by the extraordinary conflagration of the Covid-19 pandemic which not only upset academic working routines and skewed publication timelines, but which, with nearly four million dead and many more suffering from the pandemic's long-term consequences, has also represented an existential challenge for most of us. The primary focus became, thus, to persist and to manage to bring the Special Issue to conclusion despite and against what seemed at times to be overwhelming odds – indeed, the contributors also represent a cross-section of pandemic experiences across the globe and it was by no means foreseeable whether all would be able to conclude their texts. That they were all able to do so is quite miraculous, that they did do so under the circumstances humbles us and elicits deep gratitude. In this sense, this is, indeed, a rather special Special Issue and we hope that both its substance as well as the spirit of its production may inspire the readers of *VRÜ/World Comparative Law*.