

4th Portsmouth Law School / European University
Institute Conference June 2019

CALL FOR PAPERS

CORRUPTION, DEMOCRACY AND HUMAN RIGHTS

Exploring new avenues in the fight against corruption.

Thursday 20th – Friday 21st June 2019

European University Institute, Florence

KEYNOTE SPEAKERS

- MARK PIETH, Professor of Criminal Law and Criminology at the University of Basel; former Chair of the OECD Working Group on Bribery; Co-initiator of the Wolfsberg Banking Group and the World Economic Forum's Partnering Against Corruption Initiative (PACI).
- ANNE PETERS, Professor for Public International Law and Constitutional Law, Director of the Max Planck Institute for Comparative Public Law and International Law, Heidelberg; former President of the European Society of International Law.

CONFERENCE THEME

The current legal framework for combatting corruption is mainly focused on the prevention and prosecution of transactions tainted by bribery or other corrupt practices. The persistence of corruption on a global, but also on a European level suggests, however, that this transactional approach is merely tinkering with symptoms rather than addressing the root cause of corruption. The purpose of this conference is to evaluate the current legal framework and investigate whether the creation of a legal nexus between corruption, democracy and human rights could help to overcome present problems and challenges.

Over the last fifty years, the legislative effort made to combat corruption on an international, regional, and national level has been considerable. In 1999 The OECD Convention on Bribery came into force. In 2002 the Council of Europe's Criminal Law Convention against Corruption took effect, followed a year later by the Council of Europe's Civil Law Convention against Corruption and in 2005 the United Nations Convention against Corruption (UNCAC). The EU has developed an anti-corruption monitoring and reporting mechanism and published their first report in 2014. Many national legislators followed this trend and have implemented anti-corruption provisions into their domestic laws. In recent years self-regulation initiatives in the private sector have also started to emerge, for example the Extractive Industries Transparency Initiative (EITI).

However, statistical data indicates that despite this legislative effort, corruption remains a significant problem. The Special Eurobarometer on Corruption, published in October 2017, concludes that although the nature and scope of corruption varies from one EU Member State to another, it harms the EU as a whole by lowering investment levels, hampering the fair operation of the Internal Market and reducing public finances. The European Parliament's study on Corruption in the European Union of the same year estimates that the GDP of the European Union suffers direct and indirect losses from corruption of 179 to up to 990 billion Euros a year. Recent cases of bribery, corruption and embezzlement of public funds involving the public sector on a European level illustrate the above statistical findings. For example, the Novartis price fixing scandal, which involved several top politicians in Greece, costing the state 3 billion Euros during the crucial period of 2006-2009. The case of the commodity trader Glencore, which was fined in 2012 by a Belgium court for having bribed EU officials in exchange for sensitive market data. Or the scandal around the M4 subway line in Budapest. According to the OLAF report on this case, more than half of the nearly 2 billion Euros invested by the European Union were spent inappropriately. Even during the course of this

year Europe was struck by cases of corruption. In April 2018, an internal inquiry revealed strong suspicions that several members of the Council of Europe's parliamentary assembly were involved in vote rigging. In June 2018, Spain's then Prime Minister, Mariano Rajoy, was ousted after the Spanish High Court found that Rajoy's Partido Popular has benefited from a large kickback-for-contract scheme.

This raises the question as to whether the current legal framework and its application is working. Traditionally, corruption is defined as the abuse of power for personal gain, which includes a variety of illicit practices, such as bribery, embezzlement of funds, collusion and clientelism. Almost all international conventions as well as national laws focus either on preventing or on penalising corrupt transactions, which stem from such abuses. They are therefore merely treating the symptoms but are missing 'the disease'. The principle-agent theory sees an imbalance of power at the core of all these facets of corruption; sometimes combined with the fact that corruption is endemic in certain areas and that illicit practices are the expected collective default behaviour. This justifies the thesis that legislative efforts should concentrate not only on transactions tainted by corruption, but also on enabling the break-down of power imbalances in order to have a sustainable effect – on a European level all the more so in view of the emerging democracy and rule of law crises and the growth of executive power. The establishment of a legal nexus between corruption, democracy and human rights could allow such a bottom to top approach which addresses the root cause of corruption rather than its symptoms.

The conveners welcome papers that fit broadly within the theme of the conference, but in particular invite papers that relate to one or more of the following interrelated themes.

1. Problems and challenges in design, implementation and political content of the current international, regional and national legal framework

The conference theme sets up the tentative hypothesis that the current anti-corruption initiative has a too narrow focus on regulating and monitoring transactional processes. A legal response is at present usually triggered if the existence of a tainted transaction comes to light. Individuals and corporations are then held liable, their profits are disgorged and corporations might even face disbarment. In addition, there is a trend for the development of preventative measures that go beyond prosecution – for example declaration of income and life style checks of public officials. But these measures also focus on the deterrence of individual corrupt transactions. This raises the question as to whether the growing legal framework remains inefficient because it is designed to combat corrupt acts deriving from power imbalances rather than the power imbalances themselves. This stream invites a discussion on current challenges and limitations of international, regional and national legal instruments and strategies that are required to address these deficiencies.

2. Corruption and democracy

A second stream focuses on the apparent interdependence between corruption and democracy. Power imbalances originating from or amplified by an erosion of democracy and the rule of law arguably enable or advance corrupt practices in the public sector. They regularly also lead to growing executive power. Civil and political rights, such as the right to free elections, access to independent, impartial courts and the right to a fair trial become endangered. With rising levels of corruption, politicians are often caught up in situations where the need to preserve their position of power overrides all interests of the state or its citizens. Plutocratic trends will emerge leading to the neglect of social responsibility and a widening gap between the rich and the poor. Should the legislative approach for combating corruption therefore centre more around the consolidation and facilitation of democracy and civic engagement rather than on criminalising corrupt practices? Anti-corruption legislation could be more directly connected to specific threats to democratic structures, such as electoral malpractice, including illicit campaign funding, dependencies in the judiciary, an over powerful executive and so forth. Enhanced access to information

and participation in administrative processes, such as public budgeting as well as a solid protection of a free press and individual whistleblowers in the public and private sector might further this bottom to top approach to break down power imbalances. The digitalization of the administration and the development of eGovernments might also help to decentralize power and to reduce the 'human factor' as a risk for corruption.

3. Corruption and human rights

In a third stream of the conference the relationship between corruption and human rights in its broadest sense will be explored. Corruption correlates often not only with democratic deficits but also with human rights violations, inadequate protection of social rights and a lack of equality. To cite one instance, according to the EU Anti-Corruption report 2014, the bulk of bribery in countries with a poor score occurred in the health sector. Such findings allow us to draw a connection between the prevalence of corruption and a concrete risk to social rights, for example the right to health. An increase in corruption usually also correlates with and a decrease of income equality which furthers wealth gap and endangers social justice. This calls into question whether corruption in the public sector can be reframed itself as a violation of human rights for which the state can be held responsible. If this is possible, then the current legal framework for combating corruption could be complemented with an additional bottom to top instrument. Individuals and pressure groups could hold states accountable in national but also in international courts for failing to protect their citizens from corruption. Taking this thought further, the possibility or the necessity for the creation of a separate human right to a corruption free society has to become subject to discussion and could be examined again.

ATTENDEES AND SPEAKERS

Interested participants should submit an abstract of no more than **500 words** to corruption2019@port.ac.uk.

The deadline for submission of abstracts is 26th February 2019.

All abstracts will be reviewed by the conveners and selections will be announced by 31st March 2019. Full papers of no more than 10000 words (including footnotes) should be submitted by 15th May 2019.

Formal registration for the conference will be possible from mid-May via the conference webpage. Participants will be responsible for their own travel and accommodation expenses.