

## **Regulation and corruption: claims, evidence and explanations\***

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### **Introduction and aims**

Definitions of public sector corruption abound but, at its most general, corruption is considered to be the abuse of government resource or power for private gain, an illegal exchange (Varese, 2018). Critical to this definition is the view that corruption is itself a by-product of high levels of government activity and regulations (Holcombe and Boudreaux, 2015). At the most abstract level, any form of government intervention creates opportunities for corruption, even if we assume that the government intervenes to correct market failures (Acemoglu and Verdier, 2000) and not to further the career of bureaucrats and politicians (Shleifer and Vishny, 1994). This is because, in order to correct market failures, the government needs bureaucracies to make decisions. This generates opportunities for public managers to demand bribes or be corrupted (Acemoglu and Verdier, 2000). In economic models with some heterogeneity among bureaucrats, this principal–agent problem originates a misallocation of resources and increases the size of the bureaucracy.

Yet, this does not mean that the larger the size of the state, the higher corruption levels are – although some econometric estimates suggest greater government intervention implies higher levels of corruption (Goel and Nelson 2010). For example, in Acemoglu and Verdier’s model the causal force behind corruption is not the government. Markets do not perform efficiently all the time, and governments rightly intervene. But, corruption ‘emerges as an unpleasant side effect of necessary intervention’ (Acemoglu and Verdier, 2000: 196). Thus, corruption is an empirical manifestation of the trade-off between market failure and government failure. It is also wrong to assume that bribes internalize the costs that regulations impose on economic agents, an argument aired by political scientist Samuel Huntington in 1968 (see also Dreher and Gassebner, 2013; Leff, 1964), because, as the then IMF (International Monetary Fund) economist Vito Tanzi (1998) explained, if rules are used to extract bribes, more rules will emerge, and this will not be good for growth.

Rather, the literature suggests that the *type of overall approach to markets and the economy* matters – and specifically that corruption is more closely associated with the degree

of state regulation of private business activity as opposed to the level of public spending (Hopkin and Rodriguez-Pose, 2007). Regulations and anti-corruption measures – the classic responses of governments and international agencies – aim to ‘reduce the opportunity structures for corruption and to punish deviant and unlawful [behaviour] through the implementation of an integrated set of measures’ (de Sousa, 2010: 8). Yet, these measures often backfire. The presence of regulation – especially poorly designed or burdensome rules – results in activities aimed at reducing compliance and administrative costs or, better still, generating rents (McChesney, 1987; Stigler, 1971). The causal story goes thus: control the size of the regulatory state and we limit corruption.

In one of the first cross-country studies of corruption (this *American Economic Review* paper is still authoritative), Ales and di Tella (1999: 992) find that ‘corruption is higher in countries where domestic firms are sheltered from foreign competition by natural or policy induced barriers to trade, with economics dominated by a few number of firms, or where antitrust regulations are not effective in preventing anticompetitive practices’. A simple illustration of the causal story comes from the cross-country econometric evidence of correlation between number of days to start a business and the frequency of bribes (Rose-Ackerman and Palifka, 2016: 68, using Schwab’s data from the Global Competitiveness Report 2013–14). Although correlation is not causation, this relationship is often interpreted to show that ‘red tape encourages bribery and the expectation of bribes encourages red tape’ (Rose-Ackerman and Palifka, 2016: 69). Moving from empirics to theoretical explanations, Guriev (2004) has demonstrated that the equilibrium level of red tape is above the social optimum.

Regulation in this chapter is understood to cover public rules that impose a certain behaviour on citizens or firms. These rules are issued by the state, regional authorities, agencies, and public bodies in general. They take the form of primary or secondary legislation, as well as guidelines that impose requirements not originally contemplated by legislation. Given this broad definition of regulation, the latter meets corruption in four classic situations, sometimes intertwined (Rose-Ackerman and Palifka, 2016: 53): (a) regulation-imposed compliance and administrative costs that an actor does not want or cannot pay. In this case, a bribe is paid to a public officer to lower the cost of regulation; (b) a citizen or firm wants to engage with an activity that is considered illegal by regulation and punished with sanctions. This can be the main activity of the agent or a secondary activity, for example the illegal disposal of toxic waste is not the main activity of the firm producing waste. In this

situation corruption enables illegal activity to carry on unsanctioned; (c) the bureaucracy has discretion in allocating a benefit that is valuable to individuals using criteria other than willingness to pay – for example, when public managers determine if someone is eligible for a benefit like subsidized price of fuel; and (d) officials deliver regulation in a situation where they can shirk because either they are only minimally monitored or they have low pay scales (often both). In these cases, corruption is a system of incentive bonuses for the officials to do their job. Apart from this day-to-day low-level corruption, there is an opportunity for grand-scale regulation-driven corruption in procurement, privatization and the award of important concessions – think of the licence to broadcast nationwide or the construction of a subway in a capital city (Rose-Ackerman and Palifka, 2016: ch. 3).

Another assumption we make is that most people do not act corruptly on moral grounds, but rather because of habit, necessity and opportunities (costs and benefits). Hence we see both public managers and individual agents (firms and citizens) as *corruptible* rather than inherently corrupt (Rose-Ackerman and Palifka, 2016: 52, citing Miller’s 2006 survey of the Czech Republic, Slovakia, Bulgaria and the Ukraine). Accordingly, we are interested in how regulation (the alleged source of corruption) and policy instruments (the cure for the disease) trigger or hinder the mechanisms of corruptibility rather than investigating the moral grounds that certainly exist but apply only to a minority of actors. In short, there are several studies on corruption and regulation. This literature is dominated by the rent-seeking, principal–agent inspired definitions of corruption. When we turn to public administration and political science, what goes on inside the public administration is the core to the causal link between regulation and corruption.

The chapter is structured as follows. First, we set the scene with a broad account of how regulation and corruption as a topic is treated in the social science literature, pointing out the dominance of economics. We then drill down on public administration and political science, highlighting three key lessons generated there. The central message of the literature is that we know regulation and corruption are linked. However, it is incredibly hard to model theoretically and unpick empirically the causal relationship. This makes policy design to mitigate the effects of regulation similarly difficult. This takes us to our final substantive section where we enter a new approach to the analysis of the regulation–corruption relationship.

### Who does what in the field?

We want to know what public administration scholars say about regulation and corruption. To get at this contribution, we first need to get a sense of what this research field looks like. Let us then start with a wide review of the literature before zooming in on public administration. A bibliographic search of ‘corruption AND regulation’ produces one headline finding: studies exploring the links between these are dominated by economics. Of the 891 results, 254 are classified in the economics category, as compared to 91 and 50 for political science and public administration respectively (see Table 7.1 for a breakdown). Collapsing these two fields results in 125 outputs, 92 of which have been published since 2008. This domination in terms of quantity feeds through to citations as well: 8 articles in economics have over 100 cites and 23 have over 50. In political science we find one article with over 100 cites – see Treisman’s (2007) review of the cross-national empirical evidence on the causes of corruption – and eight reach 50 cites. The picture is worse still in public administration. When we isolate the 50 outputs here, we find the top article has 23 cites (Hopkin and Rodriguez-Pose, 2007).

**Table 7.1** ISI search results, ‘regulation AND corruption’, May 2018

Field	Number of articles
Economics	254
Business	94
Political Science	91
Law	86
Management	67
Criminology Penology	54
Public Administration	50
Business Finance	49
Environmental Studies	46
Planning Development	46
Social Sciences	45
Interdisciplinary	

What does all this mean substantively? Because the field is dominated by economics, we find a strong representation of articles based on either formal models that tend to conclude that regulation is a cause of corruption or empirical large-n studies. Thinking about the latter, because these large-n studies necessarily need large datasets, if you are a reader willing to explore this field, you are bound to get immediately into a lot of economics and a lot of papers using the same data. Specifically, there is a concentration on indicators like those of Transparency International (TI) and the World Bank – in particular its Business and Environment Enterprise Survey (BEES) and World Business Environment Survey (WBES) – which are not random and concern only the *perceptions* of corruption. In these studies, there is a fairly even split on whether regulation is a cause or effect of corruption.

To untangle causation, and uncover what might be going on in the black box that lies between regulation and corruption, we need to know much more about what is actually happening inside government. In short, we need public administration scholarship. Yet, in the highly cited studies of economics, you must get to a certain level of sophistication before you encounter the workings of public administration. Moreover, if your question is design-oriented, asking what kind of policy instrumentation works better against corruption, you need to scratch beneath the surface . . . a lot! But, we are getting ahead of ourselves. Next, we explore what political science and public administration studies tell us about the causal effects of regulation on corruption. We present three main claims: more regulation leads to more corruption; bad regulation leads to more corruption; and, anti-corruption programmes lead to more corruption.

### **Public administration research**

#### More regulation leads to more corruption

The defining argument of the literature is that regulation, and associated tools of new public management such as privatization and commercial procurement of public services, offer government and business elites opportunities for corruption. While the definition of corruption in the social sciences is fairly clear, corruption exists at different levels and takes different forms. There is low-level corruption: where regulation can make a public benefit scarce or hard to get even if on paper not scarce. Public managers have discretion if their bosses cannot check whether or not unqualified applicants get the benefit. Another case is when public managers can impose costs instead of distribution benefits, here inspectors may

or may not report a breach of regulations. Alternatively, we can speak of grand corruption when the whole public sector, or significant parts of it, is organized as a rent-extraction machine, for example economic activities connected to public transportation (building motorways, bridges, major works in the construction industry) or private interests are able to shape the institutional rules through private payments to officials and, in doing so, ‘seize’ or ‘capture’ the state (Hellman et al., 2000; Stigler, 1971). Large projects and large transfers of assets may contain regulations that encourage this rent-extraction process, for example by making corrupt behaviour difficult to detect.

Key authors in this regard are Lambsdorff (2002, 2006) and Treisman (2000, 2007: 212–13), whose reviews and analysis link costly or ‘intrusive’ regulation and corruption (both according to subjective and experience indexes of corruption). Lambsdorff (2002, 2006) outlines a sophisticated way of thinking about how regulation interacts with corruption, reminding us that causation is more circular than uni-directional. Rather than treating regulation as our starting point, we should look at the role of corruption in the rise of rules. Regulation may be motivated by corrupt officials who deliberately create monopolies and labyrinthine regulations so complex that bribery is the only way to short-circuit the system. After initial success, the corrupt official may then add in administrative delays as part of increased rent-seeking: ‘. . . bureaucratic personnel may deliberately slow down service after the initial payoff and create more red tape in order to establish additional inducements for others to make payments or to raise the ante’ (Rose-Ackerman, 1978: 90 citing Gardiner and Olson, 1974: 196; for a similar argument also see Tullock, 1989). The literature is replete with famous case studies that unpack not only the corruption opportunities of regulation but the corrupt intentions *behind* regulations (Coolidge and Rose-Ackerman, 1997; De Soto, 1989; McChesney, 1997).

This is complicated further by the effect of distrust in societies (often with high corruption). Here, we rehearse an important argument: if people do not trust, they demand more regulation and more sanctions or coercive instruments to pull free-riders into line (Aghion et al., 2010; Harring, 2016; Pinotti, 2008). The paradox is that in low-trust countries individuals demand more government regulation even if they know their government is corrupt! Trust originates in decisions about civic-ness made in families.

Empirically, these arguments that regulation as an iatrogenic intervention – a cure that exacerbates the disease – are not without problems, of course. Lambsdorff (2006) notes that

regulation levels explains only part of the variability across countries. A recurring theme in some of this literature is that as soon as we add other variables, the causal linkage between state intervention and corruption breaks down. Moreover, we might question some of the data operationalization in this regard. For example, Treisman (2000) uses the Institute for Management Development (IMD) index subjective assessment of intervention.

Moving towards solutions, is de-regulation an effective option? Fazekas (2017) notes that we lack systematic evidence on whether deregulation really hinders corruption. To explore this, he turns to types of regulations and how they may have an impact on different types of corruption. Like other studies, this article differentiates between types of corruption: petty corruption and high-level corruption. The data show a heterogeneous impact of deregulation on the two types of corruption. Contrary to conventional wisdom (see Djankov et al., 2002), for Fazekas deregulation of business starts-up can facilitate corruption – this is because it facilitates the process of rent-extraction by ruling elites. However, if deregulation constrains elites, like in the case of ease of contract enforcement, this can effectively reduce government favouritism. Although this critique of the conventional claim made by international organizations (that is, easing business start-ups is generally a good way to reduce corruption) is conditional on the data used (more on data below), what is relevant for our discussion is the set of policy implications. Indeed, the policy implications of this type of analysis point towards targeted and context-sensitive approaches. These are two important keywords that current and future research carried out by public administration scholars should embrace totally: targeted policy instruments and context-sensitive design. We will build on these later in the chapter.

To go back to our analysis of the literature, much also depends on the level of bureaucratic discretion. In Rose-Ackerman's (1986) ground-breaking analysis, unconstrained bureaucracy with wide-ranging discretion produces 'laziness, inaccuracy, and corruption' (1986: 132; see also Dery, 2002; Emrich-Bakenova, 2009). Here, we see the classic principal-agent logic at work: granting officials and agencies too much independence creates opportunities for, at best, shirking and, at worst, corruption (often in the forms of preferentialism or bribery) (Beazer, 2012; Duvanova, 2012). Duvanova (2017) provides an instructive example from Kazakhstan where she compares the building codes of two provinces. The code in Kostanai is over 11 000 words in length and provides unambiguous technical specifications that must be met. In contrast, Kyzylorda's code is half the length and details no precise standards or enforcement instruments. Thus, the potential for discretion is

fundamentally shaped by the presence or absence of regulatory standards, benchmarks, monitoring mechanisms and targets. They determine officials' ability to offer their own interpretations. Such discretion is often especially high when countries and their economies are in transition (for example, see Liou (2017) for a similar argument in relation to China during years of economic reform when monitoring of local officials was lax and Innes (2016) on EU accession countries in the 1990s).

Linked to this, the locus of regulation – that is, level of government – appears to mediate the incidence of corruption. Does corruption increase if we bring the responsibility for regulation down to the level of regions and subnational authorities? Shall we delegate regulation to independent authorities in order to mitigate corruption? So far, the consensus is that shifting power downward is not 'a generally feasible solution' (Rose-Ackerman, 2006: 38; Woodruff, 2006) given the contested nature of the empirical evidence.

The conditioning influence of perceptions is another key theme in public administration and political science. The field is marked by clear disagreements about the efficacy of top-down versus bottom-up approaches. One of the most prevalent criticisms is that even when institutional reforms have been made, people still may not *perceive* that there is a level and fair playing field (Brock, 2018) or decreases in levels of perception may only be slight (see, for example, Iniguez (2017) on Ecuador). For example, Di Tella and MacCulloch (2006) in their analysis of Latin America, unlike many others, do not look at the day-to-day experience of corruption. Instead they focus on perceptions, no matter what the experience may be. One curious finding is that while business managers often say that corruption is a way to get around inefficient regulations and barriers to market operations, for citizens corruption is a way to avoid compliance with legitimate laws or regulations and to impose more costs on the public. In short, citizens refuse to believe regulations are rent-seeking devices. Because this attitude lowers the public perception of business and private economic activities, it also diffuses among those who believe that corruption is everywhere and the tendency to find socialism attractive.

#### Bad regulation produces more corruption

The second major claim of the public administration-facing literature is that it is not the level of regulation that is the problem, but rather the fact that some type of regulation is particularly 'bad'. At a basic level, regulations may be misunderstood or unknown to officials

(Kurniawan et al., 2017 on Indonesia). In their analysis of 26 African countries, Lambsdorff and Cornelius (2000) find corruption is positively correlated with the degree to which the regulations are vague. This should make us think about the way in which regulations are delivered, otherwise how do we know that a regulation is vague or not? In such cases, we have a problem of analytical or communicative capacity gaps. Most obviously, turning to possible solutions, inspectors and street-level bureaucrats play a crucial role in identifying and mitigating this lack of clarity.

Alternatively, regulatory structures may simply be out of date (see Lambsdorff, 2002: 116) or unfit for purpose. In a recent article, Ramio (2017) suggests public institutions in Spain can be made less permeable to corruption with the design of a new regulatory framework for public service provision tailored to the ‘network management of public services’ (2017: 1) that sees services procured from and provided by a multiplicity of public, private and third sector actors (for a similar argument on public appointments in Spain see Cerrillo-i-Martinez, 2017).

Djankov et al. (2002) help finesse the argument that some types of red tape are more detrimental than others. Specifically, the estimated costs of starting a business and number of regulatory procedures are found to correlate strongly with perceived levels of corruption (on the TI index, but recall what we said about Fazekas above). Finally, the causal relationship depends on the independence of prosecutors. In this field, it is common to distinguish between *de facto* and *de jure* independence. Van Aaken et al. (2010) show that, in their sample of 78 countries, *de facto* independence decreases corruption, but formal independence has little impact.

#### Anti-corruption measures create more corruption through regulations

Since the 1980s and 1990s, we have witnessed the global growth of anti-corruption agencies (ACAs) – for example, the United Nations Convention Against Corruption (UNCAC), the International Association of Anti-Corruption Authorities (IAACA) – and instruments. The failure of many ACAs has been well-documented (Batory, 2012; de Sousa, 2010; Prasser, 2012). Capacity problems, and the likelihood that weakness will be deliberately built in to an agency’s design, stack the decks against success.

Anti-corruption measures can also involve layering on more regulations. The EU has been especially particularly proactive in this regard. The first major move in 1995 was to launch its protocol to address the embezzlement of EU funds. The Convention of the Protection of Material Interests of the European Communities (EU Convention) includes coordinated penalties and definitions prescribed for corruption and financial fraud. In 2003, efforts were extended by the Council of Europe to combat corruption in private and non-profit sectors,<sup>3</sup> and in 2008 the Council created a network to boost cooperation between member states combating corruption in public procurement. In 2011, the Commission stepped up its efforts further still with proposals on the harmonization of prevention laws, and since 2013 has reported every two years on each member state's corruption profile.

Yet, these efforts are often ineffective. Regulatory complexity created by the layering of anti-corruption measures, and the impact of economic forces in procurement, imply the possibility of relapsing back to pre-anti-corruption measure days (see Ayhan and Ustuner, 2015 for a recent example from Turkey). In such instances, the pull of long-established informal rules and codes embedded in everyday life is especially strong (on China see Gong and Zhou, 2015; on Central and Eastern European countries see Wallace and Latcheva, 2006).

Bratu's (2017) study of Romania offers an original analysis of how anti-corruption programmes are spawned. Her analysis is sociological but her argument speaks eloquently to public administration scholars and policy analysts. Anxieties about corruption in Romania have transformed EU development and cohesion policy into a problem of fighting corruption and protecting the monies of the EU. So, we have a complete recategorization of a policy – from development policy to anti-corruption. But, the story goes on, anti-corruption comes with its own heavy regulatory framework (as we have seen above). This regulation layering raises the cost of applying for EU funding – small firms are excluded and only the best-organized firms can access EU funding for projects. Other firms hire specialist consultants that translate the language of EU formalities and regulations into the language that economic operators understand. Eligibility evolves into a production factor (to use Bratu's metaphor (2017))! The whole system becomes heavily regulated and makes non-compliance harder to detect because the bar is raised: more specialism and more 'entrepreneurs' allow local actors to fund their activities even if these activities do not really produce development and cohesion. Not only does the cost of corruption on a day-to-day basis rise, but more

worryingly the whole policy is in the end ‘corrupted’ in the sense that under these conditions public policy does no longer reach its objectives.

### **Designing meta-regulation**

Where do these three claims, and the sobering lessons provided by contrasting empirical analyses, really take us? If we think in terms of policy design, we still lack any robust, widely shared causal theory of the relationship between regulation and corruption. Distinguishing between good and bad regulations and anti-corruption measures cannot be effected without any clarity about what is driving corruption in the first place (see Rose-Ackerman, 2006: 6 on this circularity). To get beyond this impasse, we must look beyond the total numbers of regulations or the pages in given code. An original way to recast the debate, although it may not provide the final answer on the claims about causality, is to raise the question: where does regulation come from? It certainly comes from a process through which regulations are appraised, designed, enter into force, are delivered and recalibrated through judicial review. This is where public administration scholars encounter the vast territory of administrative law – and more specifically the subset concerned with rule-making. Within administrative law, there is a whole set of rules that discipline the life cycle of regulation. These are rules about rules, or meta-regulation (see Radaelli, 2007 for various definitions).

Thus, when we look back at the claims about too much regulation or regulatory quality, this approach points us towards the instrumentation of meta-regulation. Rule-making is regulated by different administrative procedures. These procedures are incarnated in policy instruments. We are moving the causal chain one step deeper by arguing that regulatory quantity and quality depend on the design of policy instruments of meta-regulation. It follows that the cross-country variation in the causal effects of regulation and corruption depends on how these policy instruments work. Do they trigger social mechanisms that effectively make the bureaucracy accountable to the general public or special interests that should be enfranchised in rule-making? Or, do they push the bureaucracy towards capture by a single interest? Whose preferences does public administration internalize when rules are designed, appraised and delivered? Following Terry Moe (1984), the instruments that design rule-making bring in good regulation by changing the structure of rule-making itself – to repeat one more time, through the adoption of instruments we regulate rule-making.

What are these meta-regulatory policy instruments, then? The list, arguably, is not exhaustive, but it includes consultation (or, in the vocabulary of the North-American literature, notice and comment); substantive judicial review; freedom of information Acts (FOIA); ombudsman; regulatory impact assessment (RIA); plus more general high-level transparency principles contained in administrative law.<sup>9</sup> These instruments trigger one of the following instruments, or combine them:

1. 1. Impose obligations on regulators even in the absence of pressure from principals or stakeholders, or
2. 2. Enfranchise interests and make sure that special values are not violated: for example, economic analysis is protected by RIA, the rule of law is sheltered by judicial review. These ways the protected interests can pull fire alarms when their preferences are at risk of being violated (Damonte et al., 2014), or
3. 3. Increase the overall level and quality of information and transparency available in the system.

Our causal narrative rests on the following propositions. First, the instruments work together, hence we should model the causal effect of the whole policy instrument mix on corruption as outcome. It is the overall design that has causal effects (Damonte et al., 2014). Second, this causal effect works through mechanisms that make the bureaucracy accountable to a narrow or wide set of actors . Third, it is the accountability relationship at the stage of rule-making that has a special place in the production of corruption. In fact, it is when a rule is formulated or delivered that bribes are paid and corrupt exchanges take place. By working together, the instrumentation of meta-regulation can either make a special interest in control of rule-making (this can also be the public managers themselves) or make the bureaucracy respond to a plurality of interests. We can see now that the issue is no longer one of constraining bureaucracy or giving it discretion. Neither is it an issue of the political principals being able to force on the bureaucracy their preferences. It is an issue of whether by design rule-making generates accountability to a pluralist constellation of interests that have a special place in a political system (the citizens, the rule of law, science, but also the elected politicians and the economic actors affected by regulation). If this is correct, we would expect cross-national variation on this crucial issue or dimension (for preliminary evidence see Damonte et al., 2014). The effects on the outcome of corruption should be

determined by this variation. This brings us to our final questions: to examine this variation, how shall we model causality? And, what type of data are available?

### **Measures and design**

The design of causality (or, in our case, what we have in mind when we think about regulation *explaining* corruption) and empirical observations (data, measures, and so on) are the two big elephants in the room when it comes to measuring the relationship between regulation and corruption. For example, if we argue that meta-regulatory policy instruments hinder corruption, we immediately face an issue of explanation. How do we model causality in our research design? If the argument is that the effects on corruption are generated by a constellation of regulatory policy instruments (a policy mix, as we said), then we have to model causality accordingly. It is reasonable to theorize that what matters is not the single effect of an instrument (for example, a bivariate correlation between consultation and corruption, and more generally co-variational research designs), but the combined effect of the whole rule-making instrumentation.

We argued above that the policy mix imposes obligations on the regulators (and public bodies more generally) as well as supporting specific rights (to access, to information, to notification, and so on) of citizens and, in some cases, the regulated entities (be it a company or someone who wants to open a new shop). The accountability mechanism triggered by obligations and rights should limit the possibility of corrupt exchanges and keep the bureaucracy out of any significant capture. This depends on how the instruments interact or, in other words, on the efficiency of the policy design. The most reasonable solution is to model causal explanation as configurational. There is logically a finite number of configurations of conditions (FOIA, RIA, consultation, and so on) that is associated with the outcome corruption. Empirically, we observe only a subset of these logically possible configurations across countries or regions that represent our population. Within this subset, we find how the difference in outcomes is explained by conditions (Ragin, 1997; Schneider and Wagemann, 2012).

Because this research design is rooted in an understanding of causality that comes from the theory of sets, rather than the central limit theory in statistics, there is no issue of statistical threshold that the explanation must meet not to be rejected. An original combination of instruments may be effective in controlling corruption even in just one

country. It will not be neglected as it would have been in a statistical model. It may be a unique case where context (one of the two keywords we talked about above) has particular effects on the mechanisms of corruption. It can be a case from which we can still extrapolate useful lessons for targeted approaches – as opposed to one-size-fits-all ‘best practice’.

Further, the research design allows for equifinality – meaning that the same mechanism can be triggered by different pathways or combinations of individual instruments (‘conditions’ in the language of set-theory). For example, accountability to the general public can in one country be delivered via the freedom of information regulations, but in other countries the same mechanism can be generated by open and systematic consultation of the public.

And yet, what about the problem of confounders? How do we know that a given causal relationship between regulation and corruption is not confounded by the presence of a third important variable (the electoral system, the level of decentralization, the quality of public administration, and so on) that we have not included in our model? If we rely on classic econometric techniques, there are technical fixes like instrumental variables but in the end what makes the difference is the quality of theory. We can only control for variables we have thought about in our theoretical approach to the problem of corruption (Radaelli and Wagemann, 2018). If we adopt a set-theoretic research design and embrace multiple conjunctural causation there is less knowledge, because in this field the discussion on omitted conditions that may affect the outcome is relatively new and has meanings that are not the same as classic econometric reasoning (Radaelli and Wagemann, 2018).

Finally, no matter how well we calibrate our research design to allow for the correct inferences to be drawn from empirical observations, we still face the challenge of how to measure corruption across countries. We have already mentioned measurement issues in the field. A vast literature has raised pretty fundamental doubts on the validity of the most common cross-country indicators like TI’s Corruption Perception Index (CPI) (Heywood and Rose, 2014). Unfortunately, as we have already seen above, this is one of the indicators most often used in cross-country research.

Are we condemned to use datasets we have little confidence in just because they are the only ones that allow for cross-country analysis? Others have looked instead for alternatives, especially objective measures. By their very nature, objective measures do not have the bias of perceptions-based indicators. To illustrate, Golden and Picci (2005) have

used the gap in physical infrastructure (a given level of infrastructure should exist given the level of capital outlay, if it is not there it must be because of corruption). In a recent contribution, Escresa and Picci (2017) construct a measure based on the geographical distribution of public managers involved in cross-border corruption cases – the Public Administration Corruption Index (PACI).

Another approach to objective measures is to look at single bidding in competitive markets as a proxy of favouritism in public procurement (Fazekas, 2017). Building on this argument, Fazekas and Kocsis (2017) provide a measure of ‘corruption risk’ based on 1.4 million public procurement contracts to identify the single bidders in high-cost public procurement. This objective measure is used together with subjective measures, precisely the European Quality of Government Index (EQI), by Bahur and Charron (2018). The study by Bahur and Charron is not on corruption. But, it has the merit of drawing our attention to regional measures, thus breaking down with the assumption that corruption is best measured at the national level. This seems to us important for future research: it should not be taken for granted that cross-country empirical analyses should be carried out at the national level. The regional level can provide valuable lessons.

A radical approach is to switch from corruption to integrity measures. The index of public integrity<sup>6</sup> covers the dimensions of judicial independence, administrative burdens, trade openness, budget transparency, e-citizenship and freedom of the press. The research design would then be empirically tested by considering measures of regulation and integrity rather than regulation and corruption. However, in this particular index of integrity, regulation is on both sides of the equation so to speak, since administrative burdens are a component of the regulatory costs. The measure is also too heterogeneous (it includes freedom of the press and independence of the judiciary) to be used with validity in studies of the causal effects of regulation.

Although the debate on measuring corruption is lively, there is no clear convergence. To establish the exact meaning of corruption in a given social setting and achieve strong construct validity, one has to go in the field and look at how communities socially construct corruption. For example, Mancini et al. (2017) have documented the variety of representations of corruption in the British, French and Italian press. Bratu and Kažova (2018) have exposed metaphors of corruption in seven European countries tracing the news media for ten years. One can even go deeper than the media, and draw on political

ethnography and practice tracing to find when and how a community defines a certain behaviour as corrupt or acceptable (Blundo and De Sardan, 2006; Bratu, 2017). Methodologically, this type of research will benefit from practice tracing (Pouliot, 2014).

However, practice and meaning-tracing has obvious limits when one is interested in cross-national research. Then one needs data that are available in time-series and for many countries. For us, the most coherent response is to generate new data that respond both to the research questions about corruption and regulation we want to address, and second, reflect faithfully the understanding of causality (statistical or set-theoretical, for example) embodied in the research design.

## **Conclusions**

Public administration is a lens to critically observe three claims made about regulation and corruption. One is that too much regulation produces corruption. Another is that it is the quality of regulation or certain types of regulation (such as administrative burdens triggered by regulations) which creates opportunities for corruption. The third is that in the attempt to curb corruption, new regulatory measures may exacerbate the problem rather than curing it. The field is still dominated by economics and by a small number of cross-country indicators of corruption, hence the role of public administration up until now has been to bring context and targeted approaches to bear on the three causal claims. Not necessarily should we focus on the national context, regional analyses can be instructive too.

To make further progress, we have argued that public administration should pay more attention to the policy instruments that discipline rule-making. This requires innovations in how we conceptualize these policy instruments or rule-making procedures. We have made the case for considering the whole policy mix or constellation as the correct unit of analysis to explore causal effects on outcomes on corruption. This also requires a critical reconsideration of how we model causality, and to the mechanisms through which we theorize an effect on corruption. Finally, the state of play concerning the available measures of corruption is not encouraging. We need to break the chain between measures that are increasingly questioned and the fact that we use these very measures because they are the only ones available for cross-country research. This can be done by going back to studies of the local context tracing the meanings and the practices where corruption emerges socially, or

by designing our own data so that they reflect more accurately our research design and questions.

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<sup>1</sup> We searched the Social Sciences Citation Index (SSCI) (Web of Science) in May 2018 for the topic ‘regulation AND corruption’, 1991–2018. We excluded conference proceedings and editorials from the results.

<sup>2</sup> We rely on 20 studies from the political science and public administration Web of Science search. These 20 were left once we sifted out studies concerning regulation of corporate corruption, political party regulation, campaign advertising and those using regulation in the vernacular. In addition, we draw on some well-known chapters and book-length studies that contain some discussion of regulation and corruption. Note, our focus on regulation and corruption means some important volumes are set to one side – for example, Rothstein and Varraich (2017).

<sup>3</sup> Council Framework Decision 2003/568/JHA of 22 July 2003, pp. 54–6.

<sup>4</sup> Council Decision 2008/852/JHA of 24 October 2008, pp. 38–9.

<sup>5</sup> We are exploring these instruments in the project PROTEGO, funded by the European Research Council.

<sup>6</sup> <https://integrity-index.org/>