

ISSUES IN ANTI-CORRUPTION LAW:

DRAFTING IMPLEMENTING REGULATIONS FOR ANTI-CORRUPTION CONVENTIONS IN CENTRAL EUROPE AND THE FORMER SOVIET UNION

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INTRODUCTION

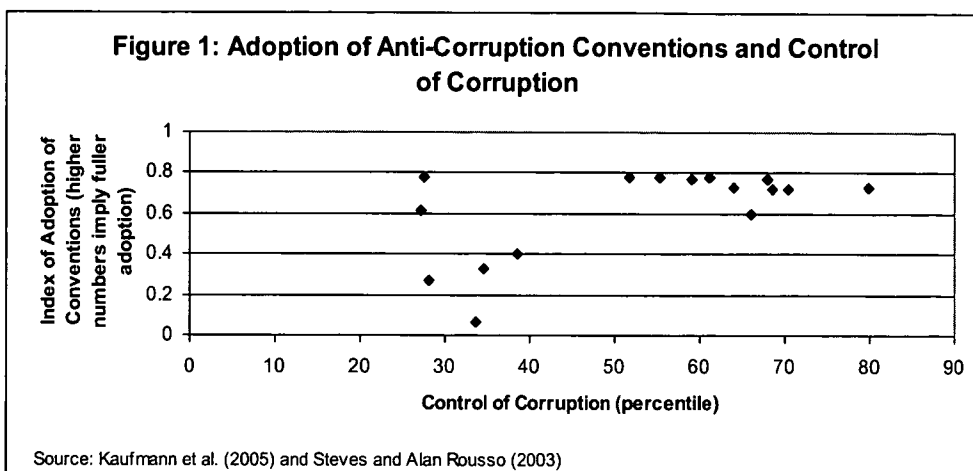
For over ten years, organizations such as the Organization for Economic Cooperation and Development, the Council of Europe, and the United Nations have been helping developing countries adopt legal measures to fight corruption. The various anti-corruption conventions signed by a wide number of countries represent perhaps the most common element of such work.¹ Yet, the adoption of the anti-corruption conventions has had a questionable impact on reducing corruption. Indeed, the limited empirical studies available point to little, if any, correlation between the extent to which several Central and Eastern European countries have adopted conventions against corruption and reductions in perceived corruption levels in that country.² Qualitative studies of work on anti-corruption from the region also fail to find any significant relationship between the adoption of legislation aimed at reducing corruption and more corruption related detections and prosecutions.³ While ratified by national parliaments, these anti-corruption laws are not being implemented in executive agencies most prone to corruption – particularly the traffic police, the

1. Each of these organizations have promulgated numerous conventions introducing provisions with the aim of reducing corruption. For example, the Council of Europe has promulgated at least 4 conventions aimed at fighting corruption – a criminal law convention, Criminal Law Convention on Corruption, January 27, 1999, ETS No. 173, a civil law convention, Civil Law Convention on Corruption of 1999, ETS No. 174, a convention on international legal assistance in criminal matters, Convention on the Legal Status of Migrant Workers, ETS No. 93, and a convention on the confiscation of the proceeds of crimes such as corruption, Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism, ETS No. 198. The UN and OECD also have encouraged the adoption of a number of conventions and recommendations. A detailed discussion of these conventions would take this paper well outside its main argument and I refer the reader to Professor Henning's paper for a background on these conventions. Peter Henning, *Public Corruption: A Comparative Analysis of International Corruption Conventions and United States*, 18 ARIZ. J. INT'L & COMP. L. 793 (2001).

2. For one such study, see Franklin Steves & Alan Rousso, *Anti-Corruption Programmes in Post-Communist Transition Countries and Changes in the Business Environment, 1999-2002* (Eur. Bank for Reconstruction & Dev., Working Paper 85, 2003), available at <http://www.ebrd.com/pubs/econo/wp0085.pdf>.

3. See generally JAMES ANDERSON AND CHERYL GRAY, WORLD BANK, ANTI-CORRUPTION IN TRANSITION 3: WHO IS SUCCEEDING... AND WHY? (2006), available at <http://siteresources.worldbank.org/INTECA/Resources/ACT3.pdf>; Frank Emmert, *Administrative and Court Reform in Central and Eastern Europe*, 9 EURO. L. J. 3 (2003).

police, customs, and tax inspectors.

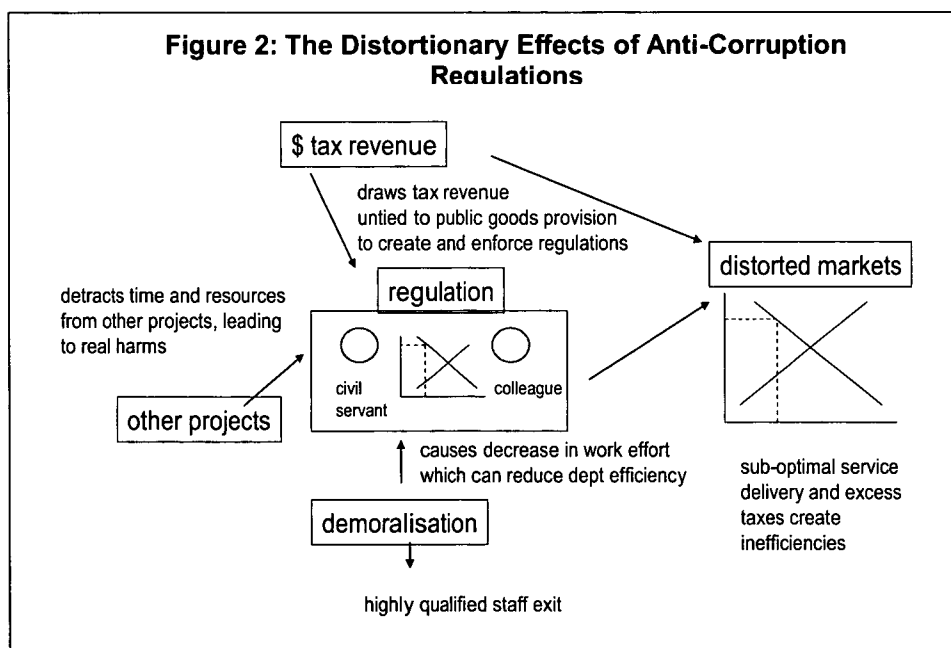


Using a law and economics approach to anti-corruption regulation, this paper seeks to provide an answer to the following question: “how should executive agencies in many Central European and Former Soviet countries write anti-corruption regulations?” Executive agencies should write regulations, using economic theory as a guide, such that the social benefits of anti-corruption regulation outweigh the social costs. The first section of this paper will address the importance of anti-corruption regulation—showing why anti-corruption legal work has not yet succeeded—and the reasons why the current “let’s regulate” approach may be ill-conceived, because such an approach ignores the costs and benefits of regulation. The second section deals with the assignment of liability for corruption offences—showing how the allocation of liability should follow the cost-benefit principle applied in this paper. The third part of the paper looks at the financing of anti-corruption work, showing how to provide incentives to encourage corruption fighters to work harder and whistleblowers to blow the whistle. The fourth section looks at the issue of jurisdiction, showing how the assignment of the prosecution of non-criminal corruption cases to various government agencies can speed up processing times and decrease processing costs. The fifth section provides the rationale for using regulatory instruments as a strong complement to the legislative approach (namely just implementing more detailed anti-corruption acts). The final section recaps the argument that anti-corruption regulations that implement the international anti-corruption conventions and national legislation should generate positive social welfare (namely, their benefits should exceed their costs). Given the newness of the topic (and space limitations), the paper provides a particularly polemic approach to the topic—leaving a more balanced and critical review of the topics for future work.

THE IMPORTANCE OF ANTI-CORRUPTION REGULATION

The question of anti-corruption regulation raises immense interest in

policymaking circles because the current approach is not working well for most of Eastern Europe. Figure 1 plots a variable which Steves and Rousso use to measure the extent to which several Central and Eastern European countries have adopted anti-corruption conventions against the extent to which “public power is exercised for private gain, including both petty and grand forms of corruption.”⁴ As shown in comparison (by a widely cited variable which Kaufmann *et al.* refer to as “control of corruption”)—which is a rank list of countries according to the perceived effectiveness of executive agencies in fighting corruption—this figure shows no correlation across countries between the extent to which a country adopts anti-corruption conventions and the ability of its public administrators to fight against corruption.⁵ Indeed, if a general trend is discernible in the data, public administrations of countries who have adopted anti-corruption conventions tend to be *more* affected by corruption.



A main reason for the under-effectiveness of these laws rests in the fact that, while being ratified by national parliaments, legislation is not being implemented in executive agencies most prone to corruption—particularly traffic police, the police, customs, and tax inspection agencies. Executive agency-level implementation – in the form implementing regulations – has not occurred in many Eastern European countries for (at least) two reasons. First, the development and application of many of the legal principles that help

4. DANIEL KAUFMANN ET AL., WORLD BANK, GOVERNANCE MATTERS: AGGREGATE AND INDIVIDUAL GOVERNANCE INDICATORS FOR 1996-2005, 4 (2006), available at http://siteresources.worldbank.org/INTWBIGOVANTCOR/Resources/1740479-1150402582357/2661829-1158008871017/gov_matters_5_no_annex.pdf.

5. *Id.* at 38.

insure civil servant accountability (and that prosecutors or instructing judges rely upon in trial) remains less advanced than in developed Organization for Economic Co-Operation and Development (OECD) countries. In these under-developed countries, resort to civil law, administrative law, criminal law, and contract law is difficult and costly. Unlike in OECD countries, in cases where the law is silent, no jurisprudential tradition helps inform public administrators (or the administrative judges who must decide on the legality of their decisions) to make the decisions that contribute to an effective “stock” of regulation.⁶ Second, the provisions in these conventions often do not take into account the political or economic costs involved in implementing the provisions of the anti-corruption laws these countries ratify. Many of the points—related to the criminalization of bribery, the cleaning of party finance, and international asset seizure—prove expensive to implement and run against the interests of parliamentarians or executive agencies.⁷

As Eastern European countries begin to draft and adopt implementing regulations for international anti-corruption conventions, an incentive-based approach to fighting corruption will produce superior results to an approach based on *ad-hoc* regulations because *regulations distort both the public and private sectors*.⁸ In many cases, coordination or cooperation failures between civil servants create situations where executive regulation can improve productivity in anti-corruption work.⁹ However, as shown in Figure 2, in many cases, these regulations fail to stop the behaviour they target while simultaneously introducing a wide range of real costs (such as monitoring and enforcement costs) and economic costs (tied to the opportunity cost of doing something else). These anti-corruption regulations, which often create a divergence between actions the civil servant would normally take and the action he or she is required to take, will detract the civil servant’s attention from other (potentially more productive) tasks.¹⁰ Anti-corruption regulations cost money—money

6. Explaining the existence of legislation and regulatory instruments as the result of costs and benefits represents a fascinating (and under-developed) area of legal scholarship. For more on the costs of bringing various cases to trial, see Simeon Djankov et al., *Courts*, 118 Q. J. ECON. 453 (2003).

7. At the risk of appearing immodest, Prof. Kasemets and I sketch these arguments in an earlier paper. Bryane Michael & Aare Kasemets, *The Role of Incentive Design in Parliamentary Anti-Corruption Programmes*, 13 J. LEGIS. STUD. 280 (2007).

8. Many executive agencies in Eastern Europe and the Former Soviet Union have chosen to fight corruption through the adoption of agency-level codes of conduct, conflict of interest rules, asset declaration rules, and broader party finance reform (among the literally hundreds of other executive level regulations ranging from the amount of money civil servants are allowed to carry in their pockets to the number of receipts they must produce for work-related expenses). Passing a regulation represents an instinctive and visceral reaction to a problem in the public sector. For an extremely insightful view of such a phenomenon in a US perspective, see FRANK ANECHIARICO & JAMES B JACOBS, *THE PURSUIT OF ABSOLUTE INTEGRITY: HOW CORRUPTION CONTROL MAKES GOVERNMENT INEFFECTIVE* (1996).

9. I do not address the role of the corruption of the regulatory structures themselves—or the regulator’s role in combating such corruption. For a broader exposé, see Anthony Ogus, *Corruption and Regulatory Structures*, 26 L. & Pol’y 329 (2004).

10. All regulation is not harmful; as regulations prohibiting civil servants from collecting bribes clearly detracts the civil servant’s interests away from such activities and increases overall productivity. However, regulations which force the civil servant to engage in filling out paperwork or change work location every 6 months (just for the sake of doing so) clearly imposes costs which may be larger than the gains from reducing corruption.

required to talk about them, to write them down and to implement them. These regulations can often distort markets, not only because they restrict civil servants' freedom of movement but also because they impose an extra tax burden on society. *A departmental regulation aimed at reducing corruption must balance the corruption reducing effects that rule will have with the distortionary effects on the public management environment and private markets.*¹¹

In Eastern Europe, executive agencies are rapidly adopting anti-corruption regulations that may be more distortionary than socially productive. Figure 3 shows simple statistics summarizing the extent and impact of many anti-corruption regulations in the Eastern European and Former Soviet region.¹² In several of the Nice accession round countries (Hungary, Poland, Latvia, and Lithuania), executive agencies have already been writing regulations that adopt EU decisions or help these agencies comply with *acquis* obligations.¹³ Recent accession round countries (Romania and Bulgaria) have only started to come to terms with many of the regulatory principles that are common to the older EU member states.¹⁴ Several former Soviet states (Armenia, Georgia, and Russia) predictably still—despite years of consultants' advice—have not established a relatively well-founded regulatory base, owing in part to numerous revisions in their anti-corruption legislation. In cases where regulations have been adopted in these former Soviet countries, they often impose more social costs than benefits—reflecting reliance on the “stick” of administrative punishments instead of the “carrot” of civil servant incentives.

11. As this is a paper on the legal aspects of anti-corruption regulation, I ignore the obvious observation that regulation must also seek to promote justice.

12. A consistent (and convincing) measure of law enforcement institutions remains sorely lacking in the field of law and economics. For recent attempts, see generally Maria Dakolias, *Methods for Monitoring and Evaluating the Rule of Law*, in *APPLYING THE “SECTORAL APPROACH” TO THE LEGAL AND JUDICIAL DOMAIN 9* (Ctr. for Int'l Cooperation ed. 2005) 2005, available at http://www.cilc.nll/Conference_publication_2005.pdf.

13. Unfortunately, the most recent comparative analysis of legal work on anti-corruption policy in the region derives from an Open Society Institute study from 2002. OPEN SOCIETY INSTITUTE, *MONITORING THE EU ACCESSION PROCESS: CORRUPTION AND ANTI-CORRUPTION POLICY* (2002), available at <http://www.eumap.org/reports/2002/corruption>.

14. In 2007, the Commission found numerous shortcomings with both Romania's and Bulgaria's adoption of measures aimed at reducing corruption. Press Release, European Union, Key Findings of the Progress Report on the Cooperation and Verification Mechanism with Bulgaria (June 27, 2007), <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/07/261&format=HTML&aged=0&language=EN&guiLanguage=en>; Press Release, European Union, Key Findings of the Progress Report on the Cooperation and Verification Mechanism with Romania (June 27, 2007), available at <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/07/262&format=HTML&aged=0&language=EN&guiLanguage=en>.

Figure 3: Estimates of Anti-Corruption Regulatory Impacts on Eastern European and Former Soviet Countries

Country	Level "Stock" of Regulation (1 to 5)	Level impact (-5 to 5)
Armenia	1	-1
Bulgaria	3	0
Georgia	1	-2
Hungary	4	3
Latvia	2	1
Lithuania	2	3
Poland	3	2
Romania	2	0
Russian Federation	2	-3

Source: author.

Such data show that right-regulating is clearly more important than under or over-regulating. More regulation does not produce more effective reductions in corruption (as Figure 1 showed at an international level). Instead, anti-corruption regulations should be incentive compatible—creating incentives for civil servants to follow them. Regulations should allocate liability (or legal responsibility for damages arising from corruption) to civil servants in such a way so that civil servants have the incentive to avoid corrupt situations as well as to report potential corruption in their workplace.

REGULATIONS AIMED AT ALLOCATING LIABILITY FOR CORRUPTION OFFENCES

One area where such right-regulating helps create incentive compatibility lies in the way that the executive agency allocates liability for non-criminal cases of corruption. When more than two parties participate in corruption, the distribution of liability between conspirators and accomplices must be addressed (as the international conventions mentioned above provide absolutely no guidance in this area). Corruption often involves only two parties because incentives are to keep the transaction secret. However, in many circumstances, bribes are often centralized within the agency, with agents handing over part or all of the revenue collected to their superiors.¹⁵ Corruption chains exist in the government involving accessories to a crime (those who actively collect a share of the bribes) and complicity in a criminal offense (those who know about corrupt colleagues).

In some cases, the superior can be liable for corruption offenses of

15. For a (somewhat outdated) description of the phenomena in Eastern Europe, see Andras Sajo, *Corruption, Clientelism, and the Future of the Constitutional State in Eastern Europe*, 7 E. EUR. CONST. REV. 37, 39-41 (1998).

subordinates if he or she failed to exercise sufficient oversight. In other words, if an inspector working at Sofia airport takes a bribe in order to help a naughty American tourist avoid paying taxes on five cartons of cigarettes, the inspector's boss would likely be partly responsible for not keeping a closer eye on the inspector. Yet, even if the superior exercises reasonable oversight over employees, he or she may still be prosecuted under the various forms of *respondeat superior* existing in various legal codes in many of the countries in Eastern Europe and the Former Soviet Union. *Respondeat superior*—an Anglo-Saxon phrase used to describe a concept that applies to both common law and civil law legal systems—literally means “let the boss answer (for the offense).” At first glance, Eastern European countries should obviously punish the bosses of corrupt civil servants (after all, they were not exercising sufficient oversight over their employees). Yet the strengthening of *respondeat superior* would have negative effects on the level of detected corruption. On the one hand, increased senior responsibility provides senior officials with more incentives to detect and prevent corruption. On the other hand, criminal sanctions imposed against the senior official make him or her less likely to investigate vigorously (as he or she would also face penalties).

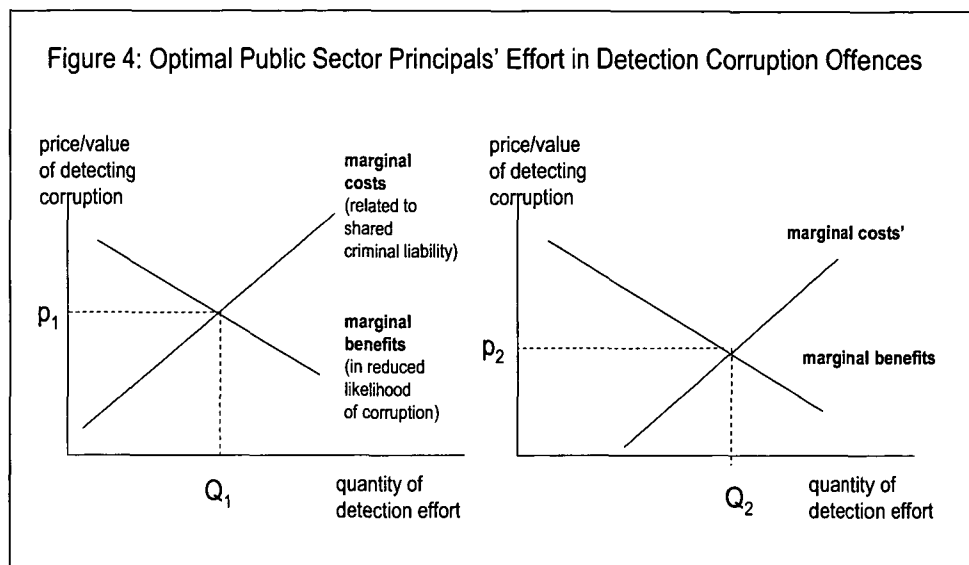
These two contradicting factors can be analysed using economics. Figure 4 shows the amount of detection effort and the value of such effort.¹⁶ Panel (a) shows increasing marginal costs of engaging in detection efforts, since the principal shares criminal liability with the agent. Marginal benefits decrease as the probability of finding cases of corruption falls—with more and more furtive glances over the shoulders of the boss' employees helps prevent potential cases before they become serious. Given some level of marginal costs and benefits, superiors will exert an optimal level (or quantity) of detection effort—given at Q_1 —at some particular social cost and benefit (described in the Figure as p_1).¹⁷ Panel (b) depicts the situation—still contrary to the administrative traditions of most of the countries in the region—where superiors may face less (or no) liability in cases where they found corruption in their own staff. In such a case, the overall cost of detection decreases and the level of detection effort increases from Q_1 to Q_2 as the marginal costs of detecting corruption fall for all levels of detection effort.¹⁸ *A more forgiving policy toward public sector principals can have*

16. The economic analysis of anti-corruption work remains controversial (on the grounds that the main function of law remains to promote justice, with only a weak consideration of the cost involved). For readers interested in the economic analysis of corruption, see generally Bruce L. Benson & John Baden, *The Political Economy of Governmental Corruption: The Logic of Underground Government*, 14 J. LEGAL STUD. 391 (1985). Naturally, Becker remains the canonical reference for this kind of analysis. See generally Gary Becker, *Crime and Punishment: An Economic Approach*, 76 J. OF POL. ECON. 169 (1968).

17. For reasons that are too lengthy and tangential to my argument, I will not explain why the social marginal cost of detecting corruption in theory (and possibly even in practice) equals the marginal social benefit. The reader may consult the final chapters of any basic microeconomics textbook for such a rationale. The representation (and quantification) of a level or quantity of detection effort also represents a potential problem for such a simple analysis. Skeptical readers may refer to authors cited below such as Shavell and Polinsky. See *infra* at note 27.

18. In cases of partial administrative indemnification where the superior would still face some sanction (though softer than currently the case), the superior's marginal cost curve would also shift out. As a result, further detection effort would also shift out the superior's marginal benefit curve—making further detection effort more beneficial. As such a situation does not change the “message”

the counter-intuitive effect of decreasing corruption.



Thus, executive agencies in many of the countries in the region should establish a regulatory list test establishing when a superior (or colleague) may—to the social profit—escape the punishment inherent in his or her administrative relationship with a corrupt official. The international conventions take an unclear position on the exact extent to which the failure to monitor subordinates (or even other colleagues) constitutes punishable complicity. As shown in Figure 4, provisions providing for an escape from the liability inherent in a principal-agent (or duty of care) relationship may result in more anti-corruption detection effort by civil servants. Yet civil servants of any rank should not obtain blanket immunity from prosecution (as Figure 4 also shows that passing through some liability may increase the superior's marginal benefits of exerting detection effort).

A legal test should be in place at the regulatory level to determine whether an individual's detection effort qualifies for exclusion from a disciplinary or administrative prosecution.¹⁹ Figure 5 shows the two basic ingredients for such

Figure 5: A Two Part Complicity Test for Administrative Corruption Cases

1. Did the accused accomplice (superior) likely know about the corrupt transaction(s) of his or her subordinates?
2. Did corruption by the accomplices' subordinates result in significant harms to individuals not party to the corrupt transaction (or expose such individuals to such harms)?

of Figure 4, I leave out these details to keep the argument simple.

19. Such a test would only apply to disciplinary or administrative prosecutions, as criminal cases follow already well-defined rules of procedure.

a regulatory test. The first part of the test establishes whether the superior exerted sufficient effort in detecting corruption among his or her subordinates (or peers). If the superior likely knew about the corruption of his or her subordinates, then the person clearly either served as a direct accomplice or engaged in an inefficient level of detection effort (thus being guilty of negligence).²⁰ The second ingredient in the test—a typical harms test—basically establishes jurisdiction over the person's case. If the accomplice (the superior) proved negligent (as exercising insufficient detection effort) and that negligence resulted in serious harm to others or the agency with which he or she works, then criminal or civil liability ensues.²¹ Regulatory jurisdiction (and thus the test contained in Figure 5) would clearly be unavailable to members of the agency's disciplinary committee if significant harm ensued from the superior's lack of detection effort.

Regulatory jurisdiction—and the jurisdiction of corruption cases in general—serves as one of the key drivers of the marginal costs and benefits of anti-corruption work in Eastern Europe. As shown in the first section of this paper, the international conventions—with their stress on the criminalization of corruption—have proved ineffective in fighting corruption. In the second section, I argued that anti-corruption law—regulations in particular, but legislation as well—should result in excess social benefits (compared with the costs of writing and enforcing anti-corruption law). In this third section, I tackled a specific legal concept (complicity and the responsibility of a civil servant's superiors) in order to show how regulation that takes into consideration regulatory costs and benefits can lead to more effective anti-corruption work in Eastern Europe. Throughout the article, I have discussed the non-criminal investigation and prosecution of corruption (and the regulations that may support such a process). What determines whether a corruption case should be classified as a criminal—rather than administrative or disciplinary—offense?

AGAINST CRIMINALIZATION? JURISDICTION FOR ANTI-CORRUPTION OFFENCES

The international conventions against corruption as embodied in the United Nations, Council of Europe and Organization for Economic Cooperation and Development ("OECD") have increasingly pushed for the criminalization of

20. The word "likely" in the test poses difficulties for any disciplinary committee. In practice, the committee might use a two step approach to establish likely guilt. First, the committee would establish the optimal level of detection effort (naturally in approximate and qualitative terms) provided by the incentives the superior faced. Second, if the superior had incentives to engage in a relatively high level of detection effort, then the disciplinary committee should establish guilt based on what the Anglo-Saxons refer to as the "balance of probabilities." Under a balance of probabilities test, if the accused accomplice had a 51% probability (as judged by the disciplinary committee) of knowing about the corruption of his or her subordinates, then the accused would be found guilty of negligence.

21. As in cases of theft or other offenses, a particular level of harm often determines whether an offense is statutorily defined as criminal or civil. The most obvious measure of harm in cases involving bribery consists of the financial value of the bribe involved. In the early stages of using this test, judges and administrators may interpret the phrase "significantly adversely" and, over time, embody their deliberations in the anti-corruption law as a threshold level.

bribery and corruption. Such a push for criminalization stems from the common practice among developed OECD countries with effective judicial systems to treat corruption as a crime. However, in countries with weak judicial systems, the criminalization of corruption offenses (as imposed by these international conventions) poses serious problems for successfully prosecuting corruption offences.²² Criminal cases require extensive (and expensive) investigation by the police and/or prosecutor's office (depending on the country). Yet, these government services severely lack budgetary resources—and high levels of corruption in their judicial system further reduces the likelihood of successful prosecutions of corruption in other sectors. Moreover, (as previously discussed) as superiors are legally and administratively responsible for the corrupt activities of their subordinates, high-level officials have been unwilling to strenuously investigate complaints about corruption—in order to avoid prosecution themselves!

Two other arguments militate against the blanket criminalization of corruption in Eastern Europe and the Former Soviet Union. First, the amount of proof required for a successful criminal conviction reduces the range of cases that criminal investigators pursue. Many times, investigators decline cases because they do not believe that they will be able to collect enough evidence to convince a court beyond a reasonable doubt about the suspect's guilt. Administrative sanctions against corruption based on a balance of probabilities standard for successful conviction can, in certain circumstances, provide greater deterrence against corruption than the ostensibly stronger criminal standard, which requires proof beyond a reasonable doubt.²³ Second, by increasing the penalties for bribery, criminalization can increase the equilibrium bribe payment. Obviously, bribees need to "price in" the additional costs they face if they should be detected (in serving prison time). Less obviously, once a bribe has been offered, the civil servant bribee can blackmail the briber up to the point where the bribe paid equals the money value of criminal sanctions against the briber. In many cases, a suspect will pay any amount to avoid serving a jail sentence in a Tbilisi, Vilnius, or Budapest prison.²⁴

The difficulty of prosecuting corruption under a criminal burden of proof—as well as the large number of mitigating circumstances (which corrupt civil servant defendants can use as reasonable and reliable defenses)—suggests that other jurisdictions may provide higher benefit and lower cost venues for adjudicating corruption related cases.²⁵ Figure 6 shows three levels of potential

22. Some authors paint a rosier picture of the role of the anti-corruption conventions in changing legal approaches to fighting corruption. See Steven Salbu, *A Delicate Balance: Legislation, Institutional Change, and Transnational Bribery*, 33 CORNELL INT'L L.J. 657, 660 (2000).

23. For years (and particularly inspired by the UK's treatment of corruption), legal scholars have considered the relaxation or reversal of the burden of proof in corruption cases. See generally Ndiva Kofele-Kale, *Presumed Guilty: Balancing Competing Rights and Interests in Combating Economic Crimes*, 40 INT'L LAW. 909 (2006).

24. While this paper focuses on the economics of anti-corruption, the economics of corruption itself has blossomed into a wide and interesting field. For a classical reference, see generally SUSAN ROSE-ACKERMAN, *CORRUPTION AND GOVERNMENT: CAUSES, CONSEQUENCES AND REFORM* (Cambridge University Press 1999).

25. Very few legal scholars have focused on secondary or delegated legislation aimed at fighting corruption. For one notable exception, see Benjamin B. Wagner & Leslie Gielow Jacobs,

“seriousness” (or responsibility) existing in the law of each country in the region (albeit in a highly disarticulated form, which appears in different parts of each country’s law). As shown in Figure 6, each level of jurisdiction (“responsibility” in simpler terms) corresponds roughly with the harms (or potential harms) attendant with each type of corruption-related offense. In most of the countries in the region, various executive agencies (such as customs, police, or others) may investigate or deal internally with between five and twenty cases of corruption per month (naturally Russia as a large country will deal with more cases than Latvia). Whereas before, internal investigators dealt with cases themselves (for better or worse), legislative changes in all countries in the region have resulted in these agencies “passing over” case files to the criminal investigators. Such legally mandated “passing the buck” may explain—in part—why the international conventions are failing to help reduce corruption in Eastern Europe.

Figure 6: The Harms and Standard of Evidence Required for Corruption Remedies

	Evidence requirement	Types of remedies	Advantages
Managerial (defined in Agency’s Law or Code)	Suspicion of corruption.	Written warning, reassignment, pass to administrative or criminal levels.	Failure to prosecute opens to administrative and criminal liability.
Administrative (defined in Admin Law)	Balance of probabilities.	Warning, reassignment, fine, firing.	Failure to detect large numbers gives administrative court liability, contributory factors/ accessory to a crime.
Civil (defined in Civil Code)	Depends on legal tradition.	Payment of damages and compensation.	Addresses economic harms, provides for deterrence that jail time does not.
Criminal (defined in Criminal Code)	Beyond a reasonable doubt.	Fine, censure, prison.	If criminal prosecution does not succeed (because of corruption in judiciary), then rely on two other levels to obtain partial prosecution.

Note: For each Code, please see www.legislationline.org.

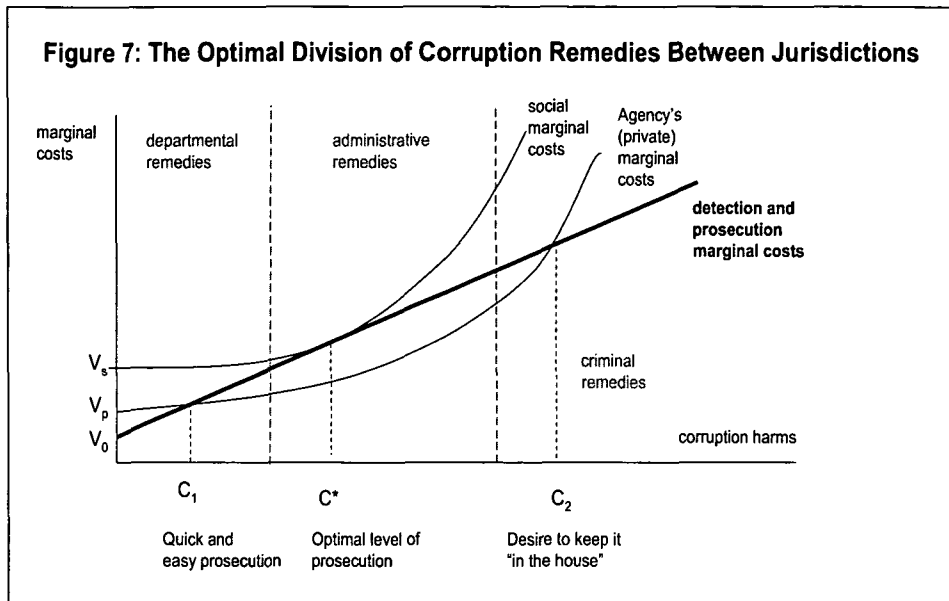
Criminal investigators and prosecutors should only be involved in corruption cases

*in Eastern Europe when the benefits to society of treating the case as a crime exceed the costs.*²⁶ First, petty corruption cases should not receive the same time and resources as grand corruption. Governments, like individuals, face budget constraints and when their expenditures exceed their income, they go bankrupt. Second, in a system where over-regulation causes incentives for the majority of the population to be corrupt, the criminalization of everyone is tantamount to the creation of a nation of outlaws. Third, “devolving” investigatory and prosecutorial powers to executive agencies—particularly law enforcement agencies with already existing legal powers in these areas—can both create anti-corruption competencies throughout the government as well as reduce the cost of anti-corruption work, since an investigator in the Internal Affairs Department of Customs is likely to earn less than the Chief Inspector in the Ministry of Interior.

A proper anti-corruption regulation clearly assigns jurisdiction over corruption cases to the least-cost, highest-benefit jurisdiction. Managerial responsibility aims at tackling incentives leading to corruption and small corruption offenses. Managerial jurisdiction results in cheap investigations, which require little formality. Administrative responsibility applies a civil law burden of proof (allowing executive agency’s services to deal with high risk areas of corruption where obtaining proof is difficult or expensive). Administrative cases can be processed quickly and the relatively light penalties make bribing administrative judges generally unprofitable. Criminal responsibility applies all the standard procedures as envisioned in the criminal code (and to the extent applicable the anti-corruption law).

Yet, because of differences between the social and agency-level harms involved in corruption cases, strong incentives exist to misallocate jurisdiction over corruption cases. Figure 7 shows the logic behind the misallocation of cases (a phenomenon that most actual investigators and prosecutors in Eastern Europe and the Former Soviet Union complain about often). The heavy upward sloping line in Figure 7 represents the agency’s inherent or “technical” marginal costs of prosecuting corruption cases. Bigger corruption cases—namely those cases involving more money or more economic harm—require more investigatory and prosecutorial resources. Huge cases like the Siemens corruption scandal require more resources than cases involving small €5 notes slipped to a doctor. To start even the most basic case requires some investment of resources, labeled as V_0 .

26. Many critics would argue that justice has no price. However, these critics often live in societies whose justice systems are well-financed. In middle and lower-income countries, unfortunately, economic choices must be made about the ways in which scarce resources are used. The critics’ refusal to address the economics of an issue related to justice has resulted in long queues on court dockets, long waiting times in filthy jails, and a court system concentrating opportunities for bribe payments around criminal prosecutors and judges.



Corruption comprises an economic activity involving negative economic externalities. Namely, the social harms arising from corruption exceed the private harms to individuals or the Agency affected. The Customs Agency may lose €10 million in collected revenue from under-valuation due to the payment of bribes, but the economic distortions those bribe cause on other traders (more efficient traders losing contracts, becoming unable to obtain imported inputs and so forth) can easily exceed €100 million. Figure 7 shows the gap between these social and private (namely Agency-level) harms by two upward curving marginal cost curves. The Agency's managers will want to "take care of" low value anti-corruption cases themselves because they see that their capacities of investigation and prosecution equate with the level of harm to the Agency (as shown by point C_1 in Figure 7). At point C_1 though, the social harms present much greater losses to society than agency's managers internalize. At the other extreme, large corruption cases can be tackled by an agency-wide special task force. As represented at point C_2 , the agency has probably lost a large amount of revenue due to a particular case of corruption and seeks either restitution or at least public recognition for prosecution corruption among its own ranks. Yet, again, the corruption case generating harms represented by C_2 in Figure 7 represents a case where the agency should turn the case over to criminal investigators and prosecutors.

Anti-corruption regulation should provide for agency-level jurisdiction over corruption cases only when their marginal costs equal the social marginal benefit of prosecuting these cases at the agency-level instead of at the criminal level. As shown in Figure 7, an administrative level prosecution—involving the Agency's disciplinary committee or an administrative tribunal hearing—should ensue when the cost to the administrative instance of hearing the case equals the harm the case poses to society (and not just the Agency itself). In the case shown in Figure 7, *despite any provisions in the law, managers will have incentives to*

claim jurisdiction over cases which they should refer to the Internal Affairs Department (or the relevant Agency-wide disciplinary committee) as well as claim jurisdiction over cases which should be turned over to the police.

Without the proper form of anti-corruption finance, agencies will not have the incentives to assign corruption cases to their optimal jurisdiction.²⁷ As shown in Figure 7, the disparity between social and agency-level costs and benefits will prevent agencies from working in the overall interest of the country. Individuals responsible for fighting corruption in an executive must be provided with incentives in order to exert sufficient effort in investigating corruption and/or turning over the case the highest-benefit, lowest-cost jurisdiction. The social benefits will accrue as additional resources—either in the form of increased taxes or as the result of confiscated proceeds from corruption. Clearly, these resources should be allocated in order to encourage (or provide incentives) for anti-corruption work, leading to a discussion of anti-corruption finance.

ANTI-CORRUPTION FINANCE: CREATING INCENTIVES TO EXPOSE CORRUPTION

The social benefits of fighting corruption—which translate into financial benefits like more taxes and the confiscation of the proceeds from corruption—should be used to encourage further anti-corruption work. At present, anti-corruption programs in all the countries in the region are grossly under-financed. Latvia, Lithuania, Hungary and Poland have received large amounts of (unsustainable) anti-corruption donor assistance. Romania and Bulgaria have received less (though partly because of the large amounts of other finance aimed at accession, which would have had indirect impacts on corruption). Georgia, Armenia and the Russian Federation have funding for a wide-variety of *ad hoc* donor supported programs. In all these countries, actual budgetary allocations of anti-corruption work are usually determined on an historical basis (looking at last year's budget and adding a bit). Yet none of these approaches follows an incentive based approach, leaving corruption fighters with few incentives to go chasing bribe takers. Promising anti-corruption fighters the same amount of money every year (or a bit more) does not motivate them to work harder.

27. Authors writing on issues related to the optimal level of law enforcement frequently omit any discussion of incentives and finance. See generally A. Mitchell Polinsky & Steven Shavell, *Corruption and Optimal Law Enforcement*, 81 J. OF PUB. ECON. 1 (2001).

Figure 8a: The Case for Performance-Based Anti-Corruption Budgets

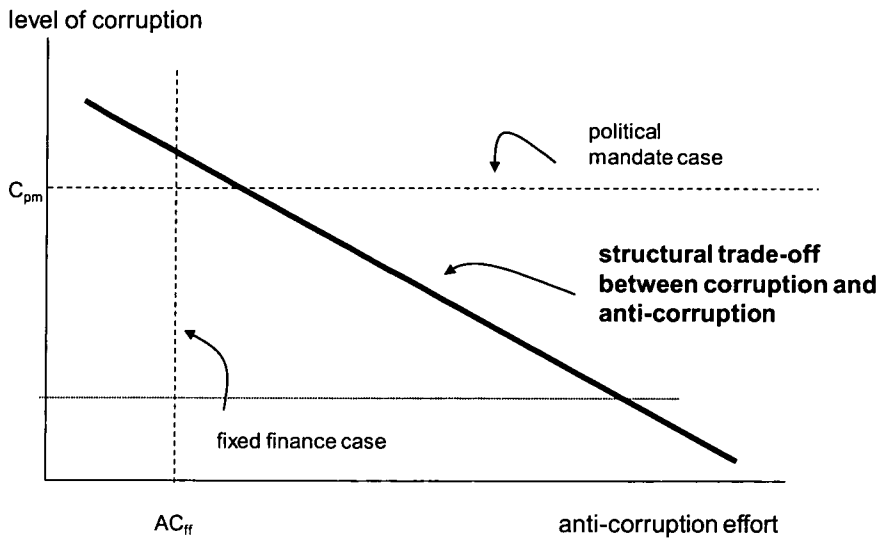
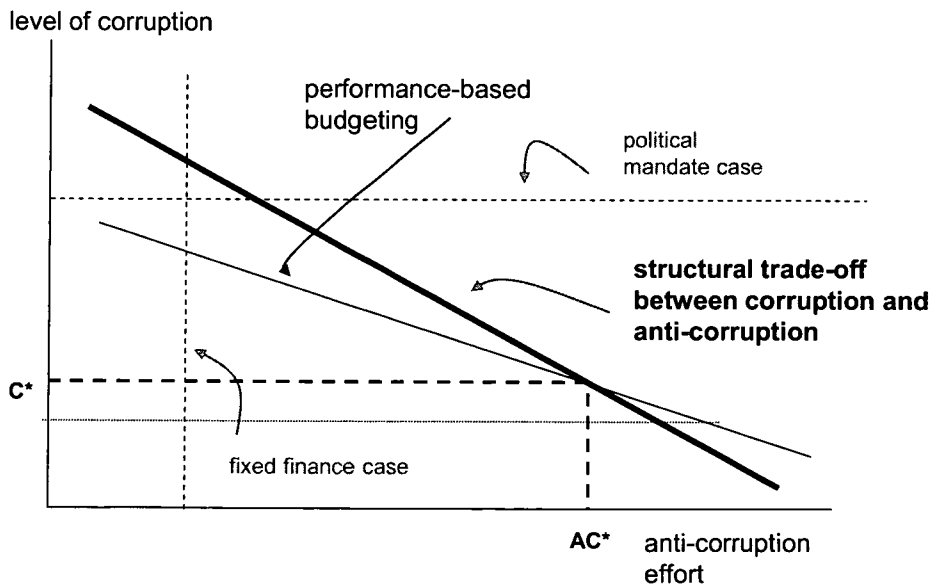


Figure 8b: The Case for Performance-Based Anti-Corruption Budgets



Theory suggests that performance-based budgeting provides the strongest incentives for reducing corruption. Figure 8a shows a number of anti-corruption budgetary finance rules. The figure shows the structural (or naturally inherent) relationship between the level of corruption and the corresponding anti-corruption effort as a heavy downward sloping line and

three different anti-corruption financing rules.²⁸ In the case of a fixed budget to a department (such as the Internal Affairs department of a Ministry of Interior), the anti-corruption level of effort is fixed by the department's line-item budget for anti-corruption work. Such funding, depicted as a vertical line, establishes a fixed level of anti-corruption work—regardless of the level of corruption. Georgia, Armenia and the Russian Federation represent countries where such an approach remains dominant. In the case where funding is given based on political events (a general outcry against corruption) or based on the administratively perceived need for anti-corruption funding, funding is tied to a particular level of corruption that may not correspond to the amount of actual anti-corruption work required in the department. Such funding—depicted as a horizontal line and labeled as the “political mandate case”—often only occurs at high levels of corruption (as governments tend not to fund anti-corruption where no apparent need exists). Lithuania represented an early example of such an approach (though recently, anti-corruption finance has become more like the fixed-finance case). Poland, Hungary and Latvia have, depending on the point in time, have all seen anti-corruption budgetary allocations wax and wane with popular perceptions of corruption (with relatively little impact on reducing actual corruption).

Tying anti-corruption budgets to performance helps allocate resources to agencies which can best use them.²⁹ Figure 8b shows an example of such a rule and the optimal level of anti-corruption effort for an agency working on fighting corruption. A performance-based finance rule would provide funds to agencies to the extent that they demonstrated that they have reduced corruption (thus the negative slope of the line). Clearly, when anti-corruption investigators or other law enforcement officials are able to reduce more corruption (per unit of effort) than the resources they require as part of their salary, they should receive more funding (as represented by a steeper sloping structural trade-off line as compared with the money given by the performance-budget rule). When these corruption busters receive more compensation (per unit of effort), then the value they generate in corruption busted, then they should receive marginally less funding. Clearly, the intersection of each financing rule with the structural trade-off determines the equilibrium level of corruption and anti-corruption. Under the assumptions of the simple model presented in Figure 8, a performance-based budgeting rule will result in the highest amount of long-run, sustainable anti-corruption effort.³⁰ In this case,

28. The downward sloping heavy set line represents a structural relationship (or overall technical efficiency) gauging the extent to which cops on streets, public auditors slouched over desks, and others help dissuade people from engaging in corruption or help prosecute them. For the purposes of this article, such “technical efficiency” represents know-how, skills, and other exogenously given non-incentive based attributes.

29. Increasing evidence suggests that law enforcement officials respond to high powered incentives they are given. See Luciana Echazu & Nuno Garoupa, *Corruption and the Distortion of Law Enforcement Effort*, AM. L. AND ECON. REV. ADVANCE ACCESS, January 4, 2010, 17-18, available at <http://aler.oxfordjournals.org/cgi/reprint/ahp020v1>.

30. While a discussion of comparative statics involving Figure 8 extends beyond the bounds of this paper, the reader can see that the slope of the financial rule between corruption and anti-corruption must be greater than the slope of the structural trade-off between these two variables (in order to guarantee continued investment in anti-corruption).

over time, funding is expected to converge to the level corresponding with the structural trade-off. *In practice, in all the countries in Central Europe and the Former Soviet Union, governments follow the opposite logic – restricting funding as anti-corruption work becomes more successful (on the grounds the problem is less pressing relative to other problems). Such funding rules provide anti-corruption departments with incentives to avoid fighting corruption (and in theory to contribute to corruption).*³¹

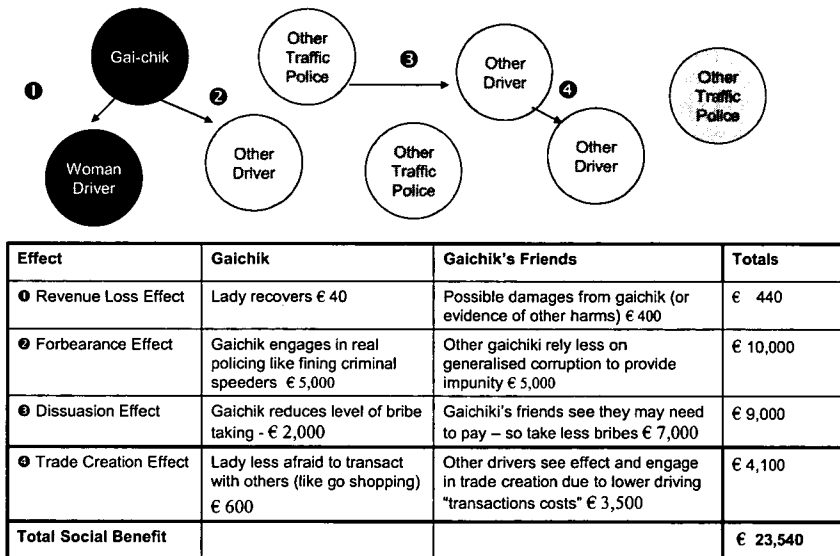
Qui tam rewards serve as another example where anti-corruption regulation may lead to strong incentives to fight corruption.³² *Qui tam* legal provisions, which allow any individual to sue the government on behalf of the interests of the government, serve as a bounty for corrupt officials and businessmen.³³ The reward for individuals reporting cases of corruption would be related to the benefit to society (known as the social benefit) that such *qui tam* denouncement produce. For example, suppose a police officer offers to “ignore” a driving offence commitment by a middle-aged Russian woman driver on the streets of Moscow in exchange for €40 (the offense could be real or a false rent-seeking accusation). How much money should the Russian state pay the woman to denounce the police officer (called GAI-ishnik in Russian because the letters for the traffic police are GAI)? Clearly the reward needs to be sufficient enough for the woman to risk her safety (in fear of potential retaliation by the GAI-ishnik). Figure 9 shows that the woman can be offered up to a sum (€23,540), which at first glance seems exorbitant given the miniscule €40 bribe requested by the GAI-ishnik. While the numbers in the example portrayed in Figure 9 are examples (used only for the sake of illustration), they demonstrate a simple idea from economic theory—that the social benefits of fighting corruption significantly exceed private (or individual) costs to contributing to the fight against corruption. If individuals could share part of that social benefit (as personal compensation), then strong incentives would produce a much larger volume of investigations and prosecutions in the countries in the region.

31. In many OECD member countries (particularly the ones with relatively low levels of corruption), government departments—through budgetary bargaining, outsourcing and other methods—have some tie (albeit relatively weak) between the contribution their anti-corruption efforts make to the state budget and their budgetary allocation for the year. Such a mechanism represents an indirect “bounty” system such as the one discussed more directly in the text.

32. I treat the issue of *qui tam* as a regulatory issue rather than as a legislative issue for two reasons. First, most EU member states politically find *qui tam* unpalatable—excluding the possibility of *qui tam* friendly legislation in the near future. As such, a regulatory “surrogate” (relying on legislative provisions that would offer regulators room for maneuvering) would be the best present strategy for adopting *qui tam*-like instruments in the EU. Second, in many EU member states, a set of rewards and benefits can be discretionarily conferred at the executive agency level which would replicate a *qui tam* reward.

33. The actual effect of these bounties will depend on the extent to which corrupt officials and businessmen can “price in” the bounty and the increased probability of being caught during the bribe negotiations. If they can pass through these costs, then *qui tam* provisions may only serve to further redistribute income instead of lead to a reduction in the incidence of bribery. For a game theoretic discussion of the design of such a system, see Robert Cooter & Nuno Garoupa, *The Virtuous Circle of Distrust: A Mechanism to Deter Bribes And Other Cooperative Crimes* 13 (2 Berk. L. & Econ. Working Papers, 2000), available at <http://escholarship.org/uc/item/83c0k3we>.

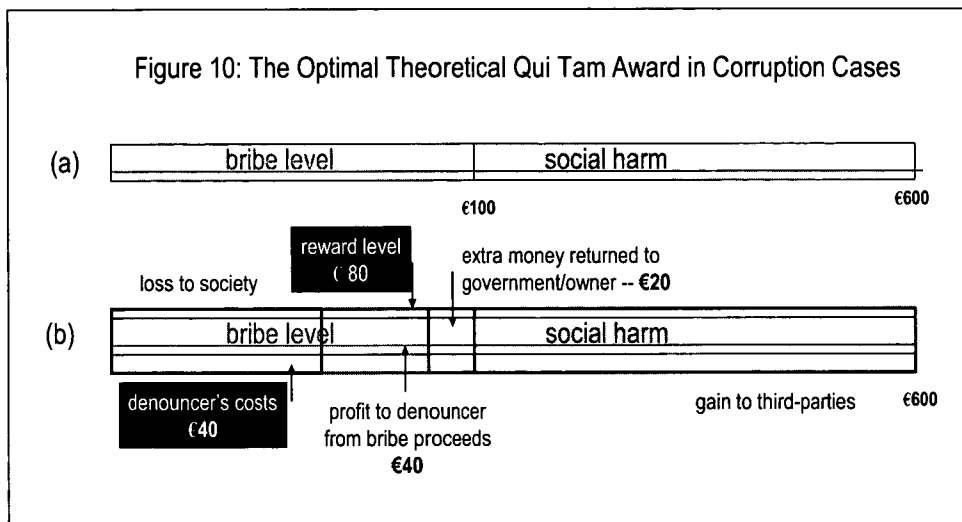
Figure 9: Calculating the Social Gain of a *Qui Tam* Accusation by a Muscovite Woman against a GAI-chik



How much money should the government of Lithuania, Hungary, or Russia (among others) pay denouncers of corruption as *qui tam* rewards? Figure 10 illustrates the logic more fully.³⁴ Panel 10(a) shows—on a simple line—the costs and benefits involved in a simple bribery case in which a third-party denounces a corrupt official in exchange for a reward. The panel shows the bribe level (on a line such that positions to the right represent higher bribe amounts) and the corresponding amount of social harm. For example, a person bribing a customs officer may pay €100, which causes €600 in harm to other businesspeople (who lose sales). Panel (b) shows a reward level that is higher than the whistle-blower's costs (such a reward must always be higher, otherwise the whistle-blower has no incentive to denounce corruption). For example, of the €100 bribe, the denouncer may receive €80 and cost the denouncer €40 in time and effort to find and report this incidence of bribery. At the level of rewards and costs portrayed in panel (b), the loss to society of corruption is represented only by the denouncer's costs (as the other harms are recoupable). The denouncer's profit is represented by the difference between the reward level and the denouncer's costs. The government compensates the victims directly harmed by the corrupt act—representing a gain to these victims (as society now avoids this social harm and possesses the extra resources in order to make these compensations). Parties who are indirectly harmed will benefit from the discontinuation of corruption (as shown by the area shown in

34. The use of *qui tam* legal provisions to provide high-powered incentives to fight corruption remain one of the most exciting research areas of anti-corruption policy. See generally Aaron Petty, Note, *How Qui Tam Actions Could Fight Public Corruption*, 39 U. MICH. J.L. REFORM 851 (2006).

Panel 8(b) as “gain to third parties”) as €500 in this particular example.



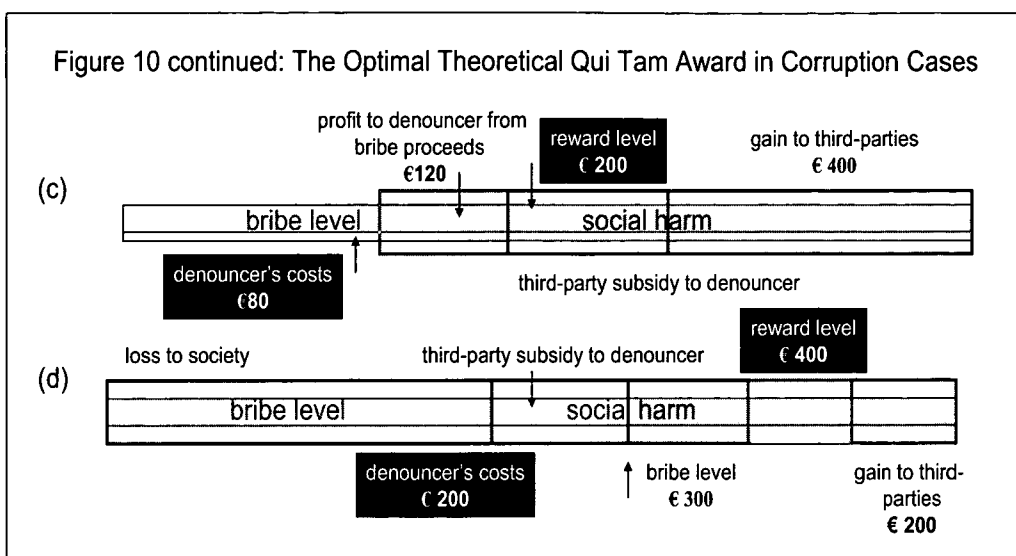
In cases where the reward requested by the denouncer exceeds the amount of money involved in the bribe transaction, some victims who are indirectly harmed will have incentives to make a Pareto-improving payment to the denouncer.³⁵ In panel (c), the denouncer's costs are less than the bribe paid, though the reward is much higher. Thus, the denouncer may incur €80 in costs (for example) and receive a reward of €200 (which is less than the €600 in overall harm to all producers). As a result, part of the denouncer's bounty will be paid by individuals directly harmed by the bribe and partly by individuals indirectly harmed. However, because the reward is less than the overall gain accruing to third-parties, some of these third-parties will benefit.³⁶ Panel (d) depicts the situation where the denouncer's costs are higher than the amount involved in the bribe transaction. For example, the denouncer may incur €200 in costs and receive €400 in rewards, though only €300 in bribes was paid. In this case, as long as the reward paid is less than the value of the overall harm to society, third-parties will benefit by contributing to the denouncer's bounty. In this case, third-parties (or society as a whole) compensate the denouncer and third-parties gain less than when smaller rewards are paid.³⁷

35. In theory, individuals who are indirectly harmed will make Pareto-improving payments to the denouncer. Usually in practice, however, these third-parties are completely disassociated with the corruption case (and often unable to understand the harms that they experience). Thus, compensation to the denouncer based on overall social gain comes from the government budget. In theory, third-parties who are most harmed by bribery would be those parties most willing to pay compensation to the denouncer. However, even in theory, the policymaker will, only with extreme difficulty, predict which third-parties will benefit most from the discontinuation of corruption (and ask for contributions from these specific individuals).

36. In theory, in the presence of low transaction costs, third-parties who are harmed by corruption can form a coalition or class-action in order to divide the gains relatively equally amongst themselves.

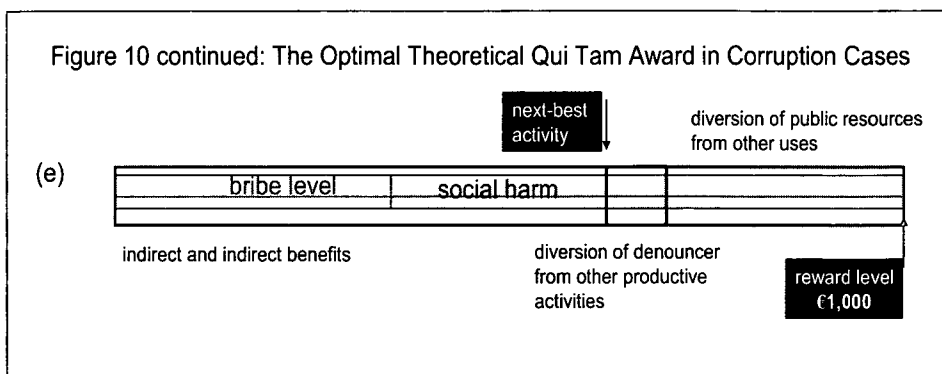
37. As an interesting aside, in the case where no detection or prevention is attempted, the bribe represents a simple redistribution of resources between briber and bribed (thus no economic loss occurs, except for the harms to third-parties). In the case where a bounty-hunter attempts to collect

Figure 10 continued: The Optimal Theoretical Qui Tam Award in Corruption Cases



In cases where the reward is set too high, it can distort incentives, causing *qui tam* provisions to do more economic harm than good. Panel (e) shows the case where the reward paid to the denouncer is higher than the direct or indirect harms of bribery. In this case, the government must use resources from other activities in order to compensate the denouncer, resulting potentially in lower social returns to other activities. Because the denouncer will have an opportunity cost (such as working in a company), the reward could distort the individual's incentives, resulting in this individual moving away from other productive activity.

Figure 10 continued: The Optimal Theoretical Qui Tam Award in Corruption Cases



Effective anti-corruption regulations provide the same kinds of incentives to civil servants to denounce corruption (and to increase work effort aimed at investigating corruption). However, paying civil servants to do their duty potentially creates negative incentives within the public sector because of the

two negative effects describes in panel (e), namely distorting the civil servant's time and government resources. As discussed above though, it is possible to design a compensation package which provides blunted financial incentives (in the form of promotion or perquisites) without diminishing incentives to comply with work obligations. Thus, *the optimal high-powered incentive scheme aimed at encouraging civil servants to actively fight corruption blunts the incentives paid to civil servants to the point where the temptation to divert one's time and government resources into the investigation and prosecution of corruption offences that have low expected return are minimized.*³⁸

PUTTING IT DOWN ON PAPER: DRAFTING AGENCY ANTI-CORRUPTION REGULATIONS FOR CENTRAL AND EASTERN EUROPEAN COUNTRIES

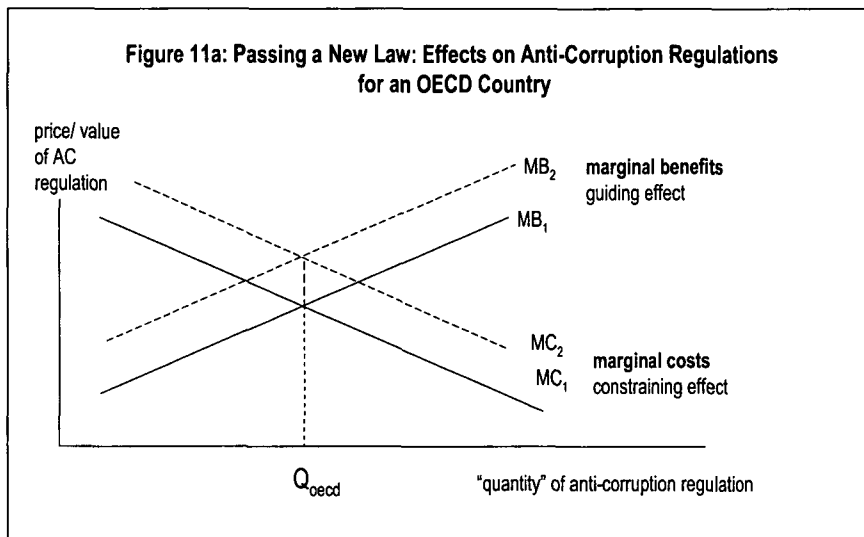
All of the issues presented in this paper can be brought together in an Eastern European executive agency's regulations that implement the national anti-corruption law (and thus the CoE, UN and OECD international conventions against corruption). National legislation provides general principles and guidelines that the police, customs, minister of health and other executive agencies must implement. For example, according to legislation in place in all the countries in the region, executive agencies must provide mutual assistance to other countries in international corruption cases. However, national legislation purposely leaves a large amount of regulatory discretion to executive agencies to implement each article of anti-corruption law as they see fit.³⁹

Anti-corruption regulations-like the legislation that provides the over-arching principles for such regulation writing-should strike a balance between defining more clearly the operating methods of implementing legislation and the constraints those regulations pose on an agency's staff in taking bribes (or engaging in corruption). Figure 11a shows the way in which these two effects determine the level of anti-corruption regulations in a country (taking a relatively low corruption OECD member state as an example). In the figure, as executive agencies pass more and more pages of anti-corruption regulations, the cost per page falls (the as the main issues can be tackled in a few pages). Additional pages (or separate instructions) serve to "tighten the screws" around civil servants-constraining them less and less and reducing less corruption on the margin. Figure 11a depicts these downward sloping marginal

38. The optimal payment, which will be less than the equilibrium payment that equals the private plus social costs imposed by a particular corrupt transaction, will clearly depend on the civil servant's income elasticity of labor supply and the extent to which the civil servant internalizes the externality through a public service motivation or altruism. For empirical estimates of such a public service motivation, see Philip E. Crewson, *A Comparative Analysis of Public and Private Sector Entrant Quailty*, 39 AM. J. OF POL. SCI. 628, 636 (1995). Such a payment will necessarily reduce the resources available to compensate victims of corruption crimes and other corruption offenses.

39. I use the term "anti-corruption law" because the various pieces of legislation governing the ways that a country fights against corruption vary enormously across countries. Countries such as Latvia and Lithuania, for example, rely mainly on a specific anti-corruption piece (as a single piece of legislation). Other countries, such as Russia (until recently) have relied on various legal provisions scattered across the Criminal Code, Administrative Code, Public Procurement Law, and various other pieces of legislation.

costs as MC_1 . On the other hand, more pages of anti-corruption regulations add precision, outline complicated procedures for tackling corruption and can even serve as a useful surrogate for legislation (when such legislation is extremely vague). Figure 11a shows these upward sloping marginal benefits as the curve MB_1 . Naturally, an executive agency will write anti-corruption regulations until the cost per page (or instruction) of writing these regulations equals the benefit in fighting corruption. In other words, the marginal costs of regulation equal the marginal benefits at an optimal “quantity” (as measured in pages, number of instructions or some proxy measuring the quality of regulation writing) depicted in the figure as Q_{OECD} .

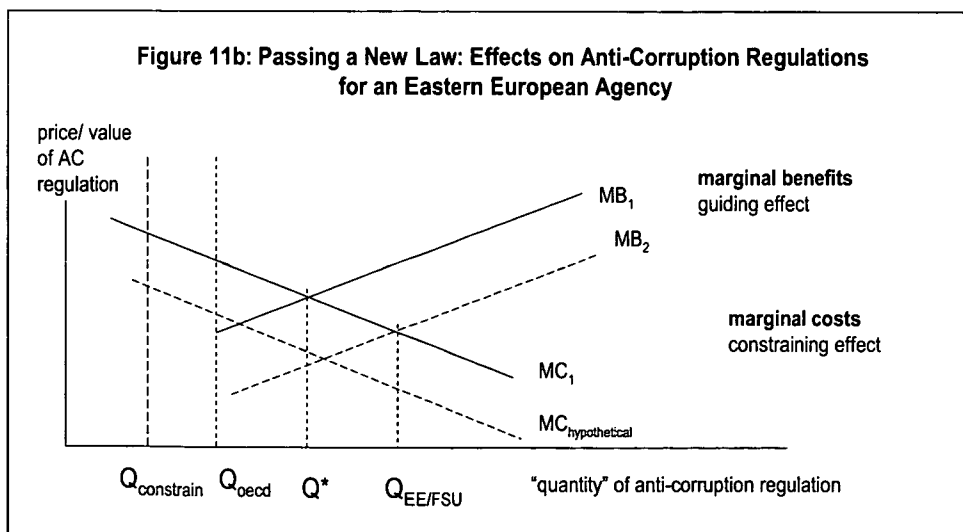


For OECD member countries (countries with already relatively low levels of corruption), the effects of passing more anti-corruption laws only causes agencies to rewrite their already existing regulations. The marginal benefits of their present regulations decrease (as the guidance offered by legislation replaces the guidance to officers previously offered by Agency-level regulation). Figure 11a shows such an effect as a shifting in of the marginal cost curve to MB_2 . However, the costs to the Agency of their regulations on the books increases as new regulations come into force that replace the “tired and true” ways these agencies developed over decades to fight particular types of corruption in their ranks. While the exact effect on the “stock” (or “quantity”) of regulations will depend on particular details, the level of regulations should stay about the same. In my own reviews of regulations from police departments in the USA, France and the UK, after the wave of legislative changes took place in the early part of the 2000s, the predictions of Figure 11a seem relatively sound.

For countries in Eastern Europe and the Former Soviet Union (such as Georgia, Armenia, Hungary and so forth), the quantity also remains the same—because of Agency budget constraints. Figure 11b shows the quantity of anti-corruption regulations and the costs and benefits of adjusting to legislative

changes in these Eastern European and Former Soviet countries. Anti-corruption legislation in the countries in the region (with the exception of perhaps Romania) is more abstract and less well-defined than in other countries. These laws tend to be shorter, the wording more diffuse and the principles (while often the same), stated in more ambiguous language. As such, the marginal benefit of anti-corruption regulations should increase as new anti-corruption legislation passes the Duma (Russia), Seimas (Lithuania), Országgyűlés (Hungary) and so forth. Figure 11b shows the optimal level of anti-corruption regulation in the region at $Q_{EE/FSU}$ —well above the optimal level in OECD member countries. Legal departments should have the incentives to work vigorously on new and more specific anti-corruption regulations.

However, because of rigidities in legal institutions in many of the countries in the region, the quantity of anti-corruption regulations remains well below the optimal level—or even completely unchanged. In theory, the marginal costs of engaging in anti-corruption regulation should fall because of “better” legislation. However, in practice, most Eastern European states (and particular those in the Former Soviet Union) leave regulations in place. Their legal departments function poorly (if at all) and staff working in these legal departments have no incentives to draft revised regulations (given broader problems with the public sector pay and promotion framework). As such, marginal costs should—hypothetically—shift inward (as shown by the $MC_{\text{hypothetical}}$ line). In practice, though, the equilibrium level of regulation, in the absence of resource constraints and responding only to incentives, would be at Q^* . However, these countries have, in practice, a much lower “quantity” of anti-corruption regulations. A visit to a customs office in Tbilisi, Riga, or St. Petersburg will reveal regulations consisting of only a few pages and written in very informal language. Naturally, the necessary regulations remain poorly written (or unwritten) because legal staff (what few work in the agency) are not paid enough. In other words, resource constraints keep the level of anti-corruption regulations at $Q_{\text{constrain}}$.



The suggestions made in this paper should, in part, help the countries in the region raise their anti-corruption regulations toward the optimal level. In the first part of the paper, I looked at the types of “value-subtracting” regulations and proposed the adoption primarily of welfare-improving regulations. The second section looked at ways of improving compliance with anti-corruption regulations through designing incentive compatible regulations (particularly those that allocate legal liability for corruption offenses at the non-criminal level). The third section looked at cases where the agency specifically should adopt the regulations described in Figure 11. The agency should, following the thesis provided in this paper, be assigned jurisdiction over a non-criminal corruption case when the social benefits outweigh the costs. The fourth section noted that providing agency-level anti-corruption fighters with the incentives to investigate and prosecute cases requires finance tied to performance. Namely, an agency’s budget for fighting corruption (whether in the form of salaries to members of an Internal Affairs unit or simply for printing posters) should be tied to the spending agency’s effectiveness at fighting corruption. Rewards can incentivize civil servants as well as private citizens—as seen in the case of *qui tam* rewards. Through incentive-based mechanisms, the countries in the Eastern European and Former Soviet region can improve the regulatory quality (and quantity) of their anti-corruption instructions, orders, and decrees.

CONCLUSIONS

Through incentive-based mechanisms, many countries in Eastern Europe and the Former Soviet Union can improve the regulatory quality (and quantity) of their anti-corruption instructions, orders, and decrees.⁴⁰ Regulations should create social value instead of simply adding “busy work.” Fewer police, customs officers, doctors and other executive agency staff will take bribes if they are exposed to greater legal liability and if they have other financial deterrents. Executive agencies in countries like Russia, Bulgaria, and Armenia—and the other countries in the region—should take greater jurisdiction over non-criminal corruption cases. Keeping the processing “in-house” can significantly lower costs and raise financial collections (as well as mitigate social harms) of corruption affecting these agencies. These agencies should be allocated budgets to fight corruption—not based on the amount of money they received the previous year—but based on their proven efficiency at “catching bad guys” (or preventing incentives from arising that creates these bad guys in the first place). *Qui tam* rewards offer one example of a mechanism that can use economic incentives to dissuade bribe-taking by customs officers, traffic police and other members of executive agencies. While the 1990s and 2000s represented a

40. Such a view hopes to make a contribution to the literature by diverting attention away from strictly legislative changes. For an excellent analysis of such changes occurring in the Eastern European and Former Soviet region, see Beverley Earle, *Bribery and Corruption in Eastern Europe, the Baltic States, and the Commonwealth of Independent States: What is to be Done?*, 33 CORNELL INT’L L.J. 483, 492-509 (2000).

beginning for anti-corruption regulation, many countries in the region will need to do much more work to adopt the instructions, decrees, orders and other regulations needed to implement national anti-corruption laws and actually fight corruption.