

Disentangling anti-corruption agencies and accounting for their ineffectiveness

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Abstract

Purpose – The purpose of this paper is to provide an adequate account of anti-corruption agency (ACA) ineffectiveness and propose the kind of ACA that would hold the promise of success. The paper draws on legitimacy theory, legal process and the notion of integrity of purpose.

Design/methodology/approach – This paper contextualizes the establishment and proliferation of ACAs; explores different ways of conceptualizing them; examines the broad range of factors that have underpinned ACA ineffectiveness and utilizes both legitimacy theory and the notion of the integrity of purpose.

Findings – The one-ACA-model-fits-all approach in corruption-control has been an abysmal failure. Disentangling the reasons for ACA ineffectiveness reveals various endogenous and exogenous factors. It also emphasizes the crucial importance of integrating both legitimacy theory and integrity of purpose in a revamped ACA concept that meets the corruption-control challenge.

Practical implications – It is possible to design and implement an effective ACA by avoiding various factors that have been shown to seriously undermine corruption control efforts by also drawing on legitimacy theory, legal process and integrity of purpose.

Social implications – Corruption in both the public and private sectors cannot be controlled in isolation from other socio-economic problems. An effective ACA is one that fosters integrity and is considered legitimate by its stakeholders.

Originality/value – While there have been some articles the past two decades discussing the effectiveness of ACAs in particular countries, this is the first paper to account for the overall ACA ineffectiveness also using legitimacy theory, legal process and integrity of purpose to revamp the ACA concept.

Keywords Effectiveness, Legitimacy theory, Integrity, Anti-corruption agencies

Paper type General review

Introduction

Corruption is a very ancient and global phenomenon (Bosman, 2012) and the carcinogenic nature of corruption is well-expressed in the 2004 United Nations Convention against Corruption (UNCAC) that came into effect in December 2005. It states on Page 3 of the “preface” that:

Corruption is an insidious plague that has a wide range of corrosive effects on societies. It undermines democracy and the rule of law, leads to violations of human rights, distorts markets, erodes the quality of life and allows organized crime, terrorism and other threats to human security to flourish. This evil phenomenon is found in all countries—big and small, rich and poor—but it is in the developing world that its effects are most destructive.

The catastrophic consequences of corruption are well documented (Kaufmann, 2009; Krambia-Kapardis, 2016, pp. 30-32; Tanzi, 1998, pp. 582-583; Transparency International’s 2016 Corruption Perception Index report). The fact that corruption has existed since time



immemorial, that no society is free from corruption, and the corrupt have become more sophisticated to the extent that a country's law-enforcement agencies experience great difficulties in successfully prosecuting complex corruption cases, does not mean that a society is at the mercy of corruption and it cannot be controlled. As the United Nations Development Programme (UNDP), 2005 report on *Institutional Arrangements to Combat Corruption* concludes, "[...] with the appropriate institutional and legislative measures, corruption can be kept within acceptable limits" (p. 21). Corruption, of course, is also both politically destabilizing and economically and socially harmful (Rose, 2015, p. 4). Let us next focus on anti-corruption agencies (ACAs). Regarding the question why ACAs should be studied, de Sousa (2010) maintains this should be done for a variety of reasons, including the fact that: they are relatively new but increasing in number and, also, they are single-issue (i.e. combat corruption) in an effort by governments to address some of the limitations of law enforcement agencies by emphasizing not only the investigation, prosecution and punishment of corrupt persons especially in the public service but also corruption prevention and public education programs.

Contextualizing the establishment and proliferation of anti-corruption agencies

In the 1970s and 1980s, donor countries, prosperous developed democracies, were very keen to support the establishment of ACAs in developing countries in Africa (e.g. in 1994 Botswana's Directorate on Corruption and Economic Crime) and Asia to fight corruption. ACAs have more recently been established in some developing African countries plagued with internal strife (e.g. Kenya's Anti-Corruption Commission, 2009). However, the notion of an ACA is by no means new and ACAs in the form of commissions of enquiry, and special branches within police forces were forerunners ACAs (de Sousa, 2010). Furthermore, it was in the aftermath of World War II that the first ACA was established in Singapore in 1952 (Corrupt Practices Investigation Bureau), in Malaysia in 1967 (Anti-Corruption Agency) and Hong Kong's Independent Commission against Corruption (ICAC) in 1974. de Sousa (2010) also points out that those early agencies were created either by European colonial powers in an effort to improve the image of the colonial administrations they were leaving behind or by newly independent governments in the southern hemisphere such as the one in Singapore in their effort to ensure that self-determination was free from the corrupt colonial administration (pp.5-6). Also, often donor countries' initial enthusiasm for anti-corruption support in developing countries often diminished, creating sustainability problems (Transparency International (TI), 2007). Of course, corruption has never been a problem only for developing countries as they struggled on the world arena in the period after gaining independence.

In countries such as Australia and Malta, ACAs were established in 1988 in response to major scandals and a crisis (e.g. the *Independent Commission against Corruption* (ICAC) in New South Wales and the Maltese *Permanent Commission against Corruption*). The end of the cold war and the collapse of the Soviet Union by 1990 saw the establishment of ACAs also in developed countries (e.g. in 1993 France's Service Central de Prevention de la Corruption (SCPC)) and in new ex-Soviet bloc democracies aspiring to join the European Union such as Lithuania's *Special Investigation Service ((STT) de la Corruption* in 1997, Croatia's *Office for the Prevention of Corruption and Organised Crime* (USKOK) in 2001, Latvia's *Corruption Prevention and Combatting Bureau* (KNAB) in 2002 and Romania's *National Anti-corruption Directorate* (DNA) in 2002.

By the early 1990s, the climate was conducive for the proliferation of ACAs because:

The focus on good governance and the rise of democracy and empowerment of civil society that resulted from it created hope for a more open and transparent society, in which corrupt practices would no longer be tolerated (UNDP, 2005, p. 3).

ACAs were established with corruption-control as their goal (Smilov, 2010, p. 7). For Quah (2015), control of corruption is one of six indicators of the quality of governance in a country, the others being: voice and accountability, political stability and absence of violence, government effectiveness, regulatory audit and, finally, rule of law. However, in many countries worldwide, it has been accepted that the main problem of governance is corruption and not so much inefficient public services, poverty and unemployment (p.68). Not surprisingly, perhaps, there are very few examples of successful ACAs because, as Passas (2010) emphasizes, they have not been part of well-designed anti-corruption and governance strategies (pp. 2-3) despite the fact that such anti-corruption strategies are mandated by UNCAC.

In view of the vast array of different cultures and traditions worldwide, it is not surprising that there is great diversity of ACAs which, in the words of Passas (2010, p. 1), include some that:

- have achieved some successes but also others that have failed;
- some with synergies with other domestic agencies while others are isolated;
- some better resourced and more effective than others; and
- some that enjoy political will and some that do not.

In addition to the ACA features just mentioned, the question of how effective an ACA has been in curbing corruption cannot be properly answered without knowing the aims the ACA was established to achieve and with what powers and resources.

Ways of conceptualizing anti-corruption agencies

Functions

Usually, national legislation establishing an ACA state its aims; thus, one can conceptualize ACAs in terms of their stated *functions*. In fact, UNCAC requires Member States to have two types of anti-corruption prevention bodies:

- (1) corruption-prevention ones; and
- (2) entities specialized in combating corruption through law enforcement.

For its part, the OECD (2013) report urges countries to address the full range of anti-corruption functions in establishing or strengthening existing ACAs, namely: anti-corruption policy development, co-ordination, monitoring and research on corruption; prevention of corruption; anti-corruption education and awareness-raising; and, finally, investigation and prosecution of corruption-related crime (pp.11-12). Finally, the 2005 UNDP report on *Institutional arrangements to combat corruption* lists the following *five key functions* that can be assigned to an ACA: investigation, prosecution, education and awareness-raising, prevention and coordination but acknowledges that most ACAs concentrate on three functions, namely prevention, investigation and education (p.6). Thus, an ACA must be assessed on whether it has achieved its stated aim(s), also considering whether it has been resourced accordingly.

Models

Models provide one way of conceptualizing and, thus, assessing the effectiveness of ACAs. In his 2004 World Bank Institute report on ACAs, Heilbrunn (2004) put forward four different models:

- (1) the *universal model*, best exemplified by Hong-Kong's Independent Commission Against Corruption (ICAC), which has three functions, namely investigative, preventative and communicative;
- (2) the *investigative model*, typified by Singapore's small centralised investigation Corrupt Practices Investigation Bureau (CPIB) which had a mandate to investigate allegations of corruption and prepare cases for prosecution;
- (3) the *parliamentary model* epitomized by the New South Wales ICAC in Australia that emphasizes the prevention of corruption but also includes an investigation unit and a legal unit, a corruption prevention, education and research unit and a corporate and commercial services unit; and
- (4) the *multi-agency model* that encompasses a number of distinct offices/agencies but which are combined together to fight corruption, best exemplified by the USA where the emphasis on prevention by the Office of Government Ethics is complemented by the Justice department's investigation and prosecution functions.

Another way of classifying ACAs is in terms of *dichotomies*.

Watchdog versus guard dog anti-corruption agencies

Utilizing a classification more in terms of "functions", Kuris (2015) divides ACAs into "watchdogs" and "guard dogs" (and illustrates with examples). A *guard dog* ACA is a law-enforcement agency with strong investigative powers and is exemplified by Hong Kong's Independent Commission against Corruption (ICAC) and New York's Department of Investigation, Indonesia's Corruption Eradication Commission (KPK) and Croatia's office for the Suppression of Corruption and Organized Crime (USKOK).

In contrast, *watchdog* ones have more limited powers to curb corruption and have to do with collecting witness testimony, subpoenaing documents, issue reports and hold public hearings. Examples of watchdog ACAs are the Office of the Inspector General of Massachusetts, the USA, Ghana's Commission on Human Rights and Administrative Justice (CHRAJ) and Slovenia's Commission for the Prevention of Corruption (CPC). Kuris (2015) urges a government considering establishing a "guard dog" ACA to first of all make sure it "has the resources, controls, and institutional support necessary" for such an ACA. However, Kuris warns that either type of ACA "can be either docile and impotent or assertive and ineffective" (p.126). Having the powers to curb corruption does not necessarily mean an ACA will be effective in doing so. As Kuris (2015) argues, contrary to expectation, an ACA with law-enforcement powers may well turn out to be ineffective because: of political pressure as in the case of Kenya; or because it was created in response to domestic or foreign pressure as a façade without the resources and the political will to function effectively, as in the case of Malawi and Sierra Leone (Kpundeh, 2004); or, finally, because partners in the police, judiciary, or government undermine the work of the ACA instead of supporting it, as in the case of Lithuania (Kuris, 2012). Interestingly, there is the example of a preventive ACA, that has shown to be effective, for example, Slovenia's Corruption Prevention Commission (CPC), which exposed deep-seated corruption among political and economic elites in the country, resulting in demonstrations as a result of which the government had to resign Kuris (2013b).

Guard dog ACAs may well fail to control corruption effectively (Kuris, 2015, pp. 129-131) because they have: to manage high constituent expectations; operate in a legal process deliberately constructed to make criminal investigations arduous and inconspicuous; and, finally, face politicization (i.e. pressured by the government to target opposition politicians,

as happened in Poland and Bangladesh – [Hough, 2013](#)). Interestingly, if they resist politicization, then they face pushback, that is, the government limiting the agency's powers, resources, budget, independence and even getting rid of its leadership and so forth. [Kuris \(2015\)](#) concludes that a guard dog ACA that is accountable but, also, invulnerable to pushback and protected by strong internal controls and enjoying strong and continuous material and political support “can achieve substantial and lasting results” (p. 134). Similarly, [Kuris \(2015, p. 134\)](#) rightly argues, for a watchdog ACA to be effective against corruption it needs to invest resources in research and communications, have strong partnerships inside and outside the government who will act upon the agency's findings and to respond strategically to particular corruption problems. In agreement with [OECD \(2013\)](#), Kuris goes on to conclude that neither guard dogs nor watchdogs are inherently superior and “ultimately, neither watchdogs nor guard dogs can defend a home on their own [. . .]” (p. 134) but can “only play a role in a broader anti-corruption system with many partners that require support from judiciaries to audit bodies” (p. 134).

Regional/local versus national anti-corruption agency

Sub-national or local ACAs are not as common as national ACAs ([Transparency International, 2007](#)) and a lot of what we know about ACAs comes from national ones. Interestingly, the same report cites two examples (Miami-Dade County, the USA, and New South Wales in Australia) that indicated some promising evidence of their success. Thus, effectiveness does not depend on whether the ACA is regional/local or national. [Passas \(2010\)](#) argues that national ACAs “are better resourced and more effective than others” (p. 1).

Temporary versus permanent

While ACAs are by definition durable bodies, according to [Kuris \(2015, p. 127\)](#), *temporary* ACAs can be effective as demonstrated by examples in the USA, including the Ward Commission in Massachusetts in the late 1970s and the New York's Commission on Government Integrity in the early 1980s that curbed corruption in such corruption-plagued sectors as public procurement and construction ([Salkin and Kansler, 2012](#)).

Trichotomies

In his analysis of the anti-corruption agencies of four Asian countries, [Quah \(2007, pp. 73-74\)](#) identifies *three patterns of corruption control*:

- (1) No specific agency is tasked with the enforcement of anti-corruption legislation. This is what Mongolia initially did in 1996 and left the enforcement of the laws enacted to the police, the General Prosecutor's Office and the Courts. Mongolia established an Anti-Corruption Agency in 2006.
- (2) Several anti-corruption agencies enforce anti-corruption legislation. To illustrate, in India, the Central Bureau of Investigation, the Central Vigilance Commission and the Anti-Corruption Bureaus and Vigilance Commissions at the state level enforce the *Prevention of Corruption Act*. Likewise, in the Philippines, 18 different agencies enforce various anti-corruption laws since 1950.
- (3) An anti-corruption agency is tasked with the enforcement of anti-corruption legislation. This is best typified by Singapore's Corrupt Practices Investigation Bureau (CPIB) since 1952 and also by the case in Malaysia (1967), Hong-Kong (1974), Thailand (1975), Korea (2002) and Indonesia (2003).

The OECD, 2013 report assessed 19 ACA case studies under the following tripartite classification:

- *Multi-purpose bodies*: Hong Kong, China, Singapore, Latvia, Lithuania, Poland, Indonesia and Botswana.
- *Law-enforcement bodies*: including specialized police and prosecution services: Spain, Romania, Azerbaijan, Croatia, Norway and the UK.
- *Policy co-ordination and prevention bodies*: France, Slovenia, FYROM, Serbia, the USA and Brazil.

The OECD classification could, of course, also come under “functions”. At the same time, as Kuris (2015, p.127) points out, as in the case of Croatia’s KSKOK, an ACA may be established as a multi-purpose one like Hong-Kong’s ICAC but in due course those in charge of it run it as a prosecutorial agency, allocating its investigatory and educational functions to other government entities (Kuris, 2013a). The preceding discussion of different ACA classifications shows that whether they have accomplished their goals does not depend so much on their structure and functions alone. Therefore, attention next turns to the issue of ACA effectiveness.

Anti-corruption agency’s lack of effectiveness in curbing corruption

Anti-corruption agency effectiveness: prerequisites and evaluations

The establishment of an ACA is not a panacea for solving the problem of corruption but an ACA could go a long way towards achieving the goal of corruption control if several considerations are heeded. Alas, it is impossible to ascertain in a concrete way the costs and benefits of the establishment of an ACA, especially as there is no reliable measure of the corruption phenomenon itself and no consensus about the concept of ‘effectiveness’ itself, let alone the criteria by which to measure it accurately (Transparency International, 2007).

Constraints in ascertaining ACA effectiveness notwithstanding, the fact remains that “overall, ACAs worldwide have fallen short of high expectations” (p.126) because of public mistrust, not being adequately resourced, internal scandals, mismanagement and by being co-opted by politicians (Heilbrunn, 2004). It also needs to be emphasized that, as Doig *et al.* (2005, p. 5) stress, the general lack of “success” of anti-corruption commissions (they examined five African countries: Ghana, Malawi, Tanzania, Uganda and Zambia) is closely linked to how they are funded and what is expected of them by those who provide the funding. Doig *et al.* (2005) argue that:

The future purpose and roles of ACAs will not achieve “success” until they are funded at the right time, for the right activity and at a level appropriate and commensurate with the scale and performance standards to be achieved (p. 10).

One way of measuring success is how high a Commission’s investigation can reach. An example is Fiji’s independent commission, which was set up by the leaders of the military coup who launched a “clean-up campaign” (Larmour, 2010) and the investigations reached “up to ministerial level” (Passas, 2010, p. 1).

As would have been expected, the criteria listed by the United Nations Convention Against Corruption (UNCAC), the Council of Europe, UNDP (2005, pp. 21-22) and Transparency International (2007) for effective specialized anti-corruption bodies include: political and operational independence; comprehensive legal frameworks; specialization; adequate training and resources; strong political support at the highest levels of government; adequate financial, human and technical resources and organizational

capacity; operate under exemplary leadership of the highest integrity; have adequate powers of investigation; have a coherent and holistic strategy for combatting corruption; focus on prevention, investigation and awareness raising; and have the support of the public at large. UNDP also notes that it is essential that there be both a systematic, comprehensive and long-term approach as well as effective channels and mechanisms to ensure cooperation and coordination between the various institutions involved in corruption control. TI also highlighted that employees and the Commissioners ought to have the passion and commitment to achieve the ACA's mission.

Evaluations of national anti-corruption agencies

Quah's (2015) assessed the anti-corruption effectiveness in five Asian countries in terms of the six indicators mentioned above and concluded that the political will of the government and the favorable political context accounts for Singapore's CPIB's (1952) effectiveness in contrast with the prevailing political climate in other Asian countries. More specifically, in the Philippines (Office of the Ombudsman (1989)) and Taiwan (Agency against Corruption (2011)), the inadequate funded and staffed multiple competing agencies render anti-corruption ineffective. In China, political leaders use corruption to attack their opponents, while, also, the Central Commission for Discipline Inspection (1978) does not prosecute but disciplines corrupt communist party members (Guo and Songfend, 2015, for reform suggestions for China). Finally, in Japan, the lack of political will to attack structural corruption has reduced significantly the effectiveness of the Special Investigation Department of the Public Prosecutor's Office in Tokyo, Osaka and Nagoya in fighting the "rotten triangle" of corrupt politicians, bureaucrats and businessmen (pp. 156-157). Quah also goes on to note that:

In the final analysis, the critical factor determining the effectiveness of an anti-corruption strategy in a country depends on whether the political leaders and citizens are prepared to implement the necessary measures to address the causes of corruption (p.157).

Elaborating on how political will is "almost everything, in this long and arduous road to relative success", Yak (2013) makes it abundantly clear that from the point of view of the Director of Singapore's exemplary CPIB "political will provides the foundation for all anti-corruption efforts [...] (p.230). The diachronic success of Singapore's CPIB has been attributed by Yak (2013) to the three broad strategic objectives: continuously improve operational effectiveness; be proactive through superb intelligence craft; and support operations through learning and innovation and associated human resource programs – undoubtedly a very tall order for most other countries as the international lack of ACA effectiveness attests. Yak also describes (p. 232) his notion of an essential framework, the "Temple of Corruption Control" (shrouded by a halo known as "good governance"), that comprises four pillars resting on the foundation provided by "political will", namely: "effective anti-corruption agency", "effective laws", "effective adjudication" and "effective administration and other best practices".

Evaluations of the international experience concerning the effectiveness of ACAs[1], in reducing corruption, shows that "overall results remain disappointing; with intentions still outnumbering accomplishments and tangible successes remaining sparse" (UNDP, 2005, p. 3). It has also become obvious that establishing an ACA, however noble the motives for its establishment and whatever its powers and resources may be, it is not sufficient by itself to control corruption adequately in the public and private sector. Despite their structure, powers and functions (see below), generally speaking, the great majority of ACAs have been ineffective in achieving their stated goals because: they do not exist in a vacuum and the

fight against political corruption, for example, is a matter of politics (Smilov, 2010, p. 70). Similarly, there is a discrepancy between the expected results and what ACAs can realistically achieve given that they often suffer from such constraints as insufficient powers, lack of adequate resources, cultural difficulties in exposing corruption through complaints, inadequate cooperation and support by other government departments and being undermined by politicians. It would not be an exaggeration to say that “disappointment and scepticism have taken over the once motivated anti-corruption industry” (de Sousa, 2010, p. 11). In fact, the UNDP (2005, p. 5) report concluded that “there are actually very few examples of successful independent anti-corruption commissions/agencies”.

The preceding discussion leads to the conclusion that it is the environment of corruption in a given country and whether it is conducive or largely tolerant of corruption that it is the main factor which best explains the ACA ineffectiveness. Writing about Nigeria’s anti-corruption struggle 1999-2017, Ocheje (2017) reminds us that:

The factor constraining the effectiveness of laws in the fight against corruption are to be found not in the laws, but in the larger societal matrix of resilient social norms and institutions that comprise the country’s corruption environment (p.1).

Consequently, without instigating social change by engaging broadly with the environment, corruption control efforts cannot succeed. Irrefutable evidence in support of Ocheje’s policy recommendation is to be found in the least corrupt countries. In fact, an examination of the effectiveness of ACAs would not be complete without an attempt to answer the question why some countries have traditionally enjoyed very low corruption levels.

Anti-corruption effectiveness in the least and the most corrupt countries

An examination of ACA effectiveness would benefit by a comparison of basic characteristics of the lower-ranked (i.e. those with high levels of perceived corruption) and higher-ranked countries (i.e. those with low levels of perceived corruption), as far as an international index of corruption is concerned. This is not to ignore the fact that existing well-known measures of corruption such as Transparency International’s ‘Corruption Perception Index’ (CPI) or the World Bank’s ‘World Governance Index’ (WGI), the World Bank’s International Country Risk Guide (ICRG) and the Quality of Government (QoG) by the Gothenburg University’s Quality of Government Institute are *indirect measures*. In 2016, the five lower-ranked countries in TI’s CPI for 176 countries are: Yemen (172), Syria (173), North Korea (174), South Sudan (175) and Somalia (176) with a score of 10/100. According to TI, people in these countries are tragically deprived of well-functioning and trustworthy public institutions like the police and judiciary. Even where anti-corruption legislation exists, it is ignored or circumvented. People often are confronted with bribery and extortion and have to be content with basic services that have been crippled by the misappropriation of funds, the violation of human rights, social exclusion and face indifference by officials when they ask the authorities to set a wrong right again.

The five higher-ranked countries in the 2016 CPI are: Switzerland (5), Sweden (4), Finland (3), New Zealand (2) and Denmark (1) with a score of 90/100. Higher-ranked countries tend to have higher degrees of press freedom, access to information about public expenditure, stronger standards of integrity for public officials and independent judicial systems. However, as TI points out, high-scoring countries “are not immune to closed-door deals, conflicts of interest, illicit finance, and patchy law enforcement that can distort public policy and exacerbate corruption at home and abroad”[2]. Let us next take a close look at the three least corrupt countries in the world – Denmark, New Zealand (NZ) and Finland.

Focusing on *Denmark*, according to [Johnston \(2013\)](#), the Gothenburg University Quality of Government Impartiality Index suggests a list of factors that may well curtail corruption in the country: “small social scale, a homogeneous population, competitive politics and extensive international connectedness” (p. 23). Johnston also maintains that corruption is very low in Denmark:

- Because of “soft controls values, a working consensus, an emphasis on fairness, and common social goals” (p. 23).
- There is the possibility that an advanced market society like Denmark does not so much control corruption but reduces incentives for engaging in it, as a result of business friendly policies and institutions.

In other words, the very low level of corruption is attributable to Denmark being small, prosperous and well governed.

Considering *Finland* next and drawing on [Salminen \(2013\)](#), it is a small, politically stable and homogeneous country with a strong legalistic tradition where the gap between the State and civil society is not a serious problem. Finland is characterized by effective mechanism for promoting integrity and preventing corruption by means of good anticorruption legislation, good administration, integrity of civil servants and civil society organizations. More specifically, good governance and good administration are underpinned by such ethical values as justice, equality, integrity, openness, lawfulness, trustworthiness, expertise and a public service ethos based on service-orientation while shame and the threat of a ruined reputation are used to prevent corruption. [Salminen \(2013\)](#) concludes that integrity violations and intentional corruption is indirectly controlled by emphasizing the values of good governance trust, equality and fairness. For Salminen, “openness” appears to be the cure for corruption.

In answering the question what explains NZ’s “clean and green corruption-free image” (p. 109), [Gregory and Zirker \(2013\)](#) emphasize NZ’s *egalitarian ethos* (p. 114) and the following features of the country:

- the strong Calvinist culture which values thrift, hard work and social cohesion;
- high levels of social capital, reciprocal bonds of collective cooperation and high levels of interpersonal trust;
- the fact that social “respectability” has been highly valued and, consequently, for a long time the social and political climate in the country was highly conformist;
- the fact that the responsibilities and moral obligations of public servants are much greater than those of other citizens;
- in 1962, NZ introduced the institution of the Ombudsman and opened up official information to the public in the early 1980s; and
- the commitment to impartiality and the rule of law in the administration of public policy has always been very powerful.

It can be seen that the plausible explanation put forward by [Gregory and Zirker \(2013\)](#) for NZ’s very low corruption is a narrative that synthesizes in a cohesive way historical, social, political and cultural dimensions. Let us next examine the overall lack of ACA effectiveness using legitimacy theory, legal process theory and the notion of ‘integrity of purpose’.

Anti-corruption agencies and legitimacy theory

A precondition for the effectiveness of an ACA is that it must have the confidence and support of the public at large, raising the issue of legitimacy. An important concept in an era when governments in general and ACAs in particular seek legitimacy, the public wish to see as rightful the powers possessed and exercised by ACAs in the name of anti-corruption and, also, want their legitimacy to be sustained and cultivated over time (UNDP, 2005). To establish its authority, an ACA must have not only sufficient powers but it must also be seen as fair and legitimate. The legitimacy of an ACA can be called into question by such considerations as the lack of integrity by its staff, inefficiency and or ineffectiveness in curbing corruption or lack of clarity in its purposes. Moreover, legitimacy must be developed with different audiences whose expectations may vary and even contradict – the public, other government integrity institutions, politicians, political parties and the mass media.

Legitimacy has been defined by Suchman (1995, p. 574) as “a generalized perception or assumption that the actions of an entity are desirable, proper, or appropriate within some socially constructed system of norms, values, beliefs, and definitions”. A critical aspect of legitimacy is an organization’s performance in accordance with societal expectations (Rindova *et al.*, 2005). For Rose (2015, p. 28), “legitimacy may be defined as the justification of authority, or the right to rule”. Furthermore, “the concept has both a normative and a sociological or descriptive meaning” (Rose, 2015, p. 28) where for the normative perspective, legitimacy depends on authority, transparency, expertise. For the sociological or descriptive perspective, legitimacy depends on the subjective views that stakeholders hold about an institution’s authority.

Rose (2015, p. 33) has proposed two categories of legitimacy in the anti-corruption context:

- *input-based legitimacy* (where transparency and inclusiveness or participation are relevant factors); and
- *output-based legitimacy* where the effectiveness of an ACA is the most relevant factor.

The present article approaches ACA legitimacy from a normative perspective and focuses on *output-based legitimacy*, as a measure of effectiveness of ACAs. The general lack of output-based legitimacy goes a long way in explaining why the ACA concept itself has lost much of its appeal over the years. Of course, the gradual decline of ACA acceptability presents anti-corruption researchers with the challenge of proposing widely acceptable and more effective conceptualizations of corruption-control.

Anti-corruption agencies and legal process theory

Transparency International-Australia is of the view that Australia needs a broad-based ACA as part of an “enhanced multi-agency strategy to ensure a comprehensive approach to corruption risks beyond the criminal investigation system, and support stronger parliamentary integrity” (Griffith University, 2017, p. 4), thus raising questions about the institutional design of a Federal ACA. The discussion paper on a Federal ACA for Australia expresses the opinion that, “questions of institutional design are best answered if informed by an overarching theory of the role and interaction of public institutions, and of integrity institutions specifically” (p. 7). Thus, the “legal process theory”, a school of thought introduced by American scholars in the mid-twentieth century (Hart and Sacks, 1994), is considered in context of the role and capacity of official institutions to function

harmoniously in tandem with other institutions in achieving their goals and, thus, gaining legitimacy through fidelity to properly established and targeted procedures.

Drawing on legal process theory, the authors of the Griffith University and Transparency International Australia (2017) report asserted that a theory of *integrity of purpose* with “a vision of how accountability institutions can be designed so as to fulfil their roles through simultaneous pursuit of substantive mandates and respect for institutional and systematic boundaries” (p. 7) ought to apply when developing an ACA. The said aim is achieved when governance institutions work together to create a doctrine of coherence and, thus, fostering integrity. As emphasized in the report, an effective ACA is one that also ensures the protection not only of the rights of those who are affected by its work but, equally important, ensures its own integrity as an institution, thus guarding against an ACA compromising its own integrity of purpose (p. 13).

Conclusions

It is impossible to ascertain accurately the costs and benefits of the establishment of an ACA, especially in the absence (a) of a reliable measure of the corruption phenomenon itself and (b) the lack of consensus about the concept of “effectiveness” itself, let alone the criteria by which to measure it accurately. The establishment of an ACA is not a panacea for solving the problem of corruption as there are serious constraints in ascertaining ACA effectiveness. “Overall, ACAs worldwide have fallen short of high expectations” (Heilbrunn, 2004, p. 126), while “disappointment and scepticism have taken over the once motivated anti-corruption industry” (de Sousa, 2010, p. 11), raising the questions about the integrity and legitimacy of such agencies. One consequence of the general failure of ACAs is that many countries continue as corrupt as ever despite the anti-corruption effort and, even worse, the efforts to control corruption in some of these countries has made it more entrenched (Kpundeh, 2004-cited by Persson *et al.*, 2010). In addition, the public and media support for ACAs has declined as the legitimacy of the State is nowadays more likely to be contested.

The ACA overall lack of effectiveness had been largely preordained because of a broad range of limiting factors. Those factors relate to:

- questionable motives internationally by western governments and big corporations in lobbying to create instruments to safeguard their financial interests in predominantly developing countries that have, in turn, led to the adoption of the “one-ACA-model-fits-all” approach and the establishment of ACAs in various countries (Rose, 2015);
- dubious motives by politicians in establishing or co-opting an ACA; and
- a mismatch between ACA designs and realities on the ground that go a long way towards accounting for the overwhelming disappointment with ACAs.

The search for answers to the question what best explains the institutional failure of ACAs cannot but include the fact that in many countries worldwide, it has been accepted that the main problem of governance is corruption and not so much inefficient public services, poverty and unemployment. This raises the question whether corruption can be curbed in isolation from other socio-economic problems.

Nevertheless, the very few successful ones such as Singapore’s CPIB, Hong Kong’s and New South Wales, ICAC show that an ACA could go a long way towards achieving the goal of corruption control if several requirements are met, including sustained strong bi-partisan political support, support by other relevant domestic agencies, adequate funding, sufficient

resourcing, competent management, independence, specialization, adequate training, and public trust. For Quah (2015):

The critical factor determining the effectiveness of an anti-corruption strategy in a country depends on whether the political leaders and citizens are prepared to implement the necessary measures to address the causes of corruption (p. 157).

What is needed, however, for a future ACA to curb corruption effectively is that it be designed integrating “integrity of purpose” and to work well with other governance institutions to create a doctrine of coherence, thus creating integrity and, in turn, ensuring legitimacy.

Also, one cannot but also agree with Ocheje (2017) that, without instigating social change by engaging broadly with the environment, fighting corruption will not succeed. Irrefutable evidence in support of Ocheje’s policy recommendation is to be found in the three least corrupt countries Denmark, Finland and New Zealand. Thus, an open and transparent ACA working together with other institutions to create a doctrine of coherence, and thus, fostering integrity will be considered by the stakeholders as legitimate. We can see that there is by now sufficient knowledge and experience to utilize and make an ACA effective in curbing corruption in a country, presenting a challenge for researchers, politicians and the public alike.

Notes

1. See OECD, 2013, for a review of such specialised institutions in 19 countries.
2. Corruption Perception Index released, February 25, 2017 available at www.riskcompliance.biz/news/transparency-internationals-2016-corruption-perceptions-index-released-3/ (accessed 30/1/2018)

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