A Game Theoretic Analysis of the Inter-American Convention against Corruption

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ABSTRACT

This paper uses game theory to understand why members of the Organization of American States adopted the Inter-American Convention against Corruption of 1996 (IACAC), and why this ambitious international convention has apparently failed to curb demand side corruption in Latin America. The crux of the argument is that the IACAC has been ineffective, largely because the payoffs that drove its adoption are not aligned with the payoffs of the government officials tasked with upholding its obligations. Domestic enforcement efforts have failed to reduce the demand for bribes. Latin American states should consider exogenous and multilateral enforcement strategies, such as leveraging the enforcement regime under the United States’ Foreign Corrupt Practices Act, to create a credible threat of sanctions.

KEYWORDS: Anti-corruption treaties, game theory, collective action
1. Introduction

Recent corruption scandals across Latin America have put the fight against corruption back on centre stage in the region. In Guatemala, President Otto Pérez Molina resigned after facing charges of “corruption related to a customs fraud ring that gave discounts on import tariffs to companies in exchange for kickbacks” (Luhnow 2016). In Brazil, President Luiz Inácio Lula da Silva faces charges of illicit enrichment in connection with a “giant graft scheme at Petrobras,” the country’s national oil company (Romero 2016). U.S. authorities have indicted Honduran Vice President Jaime Rosenthal on money laundering allegations “in the midst of widespread corruption scandals plaguing the Honduran government” (Ahmed 2015). And, with corruption allegations swirling around Argentina, newly elected President Mauricio Macri proclaimed, “Corruption kills,” and vowed to tackle the problem (Bio 2016). Indeed, corruption is an international problem that demands coordinated solutions.

This essay uses law and economics to analyse efforts to fight transnational corruption through collective action in the Western Hemisphere, namely through the Inter-American Convention against Corruption of 1996 (IACAC). The first section sets the foundation for the economic analysis of transnational corruption, emphasising the particular problems of public or demand side corruption. The second section introduces game theory to analyse how the United States’ Foreign Corrupt Practices Act of 1977 (FCPA) contributed to the IACAC’s development within the Organization of American States (OAS). The third section argues that the IACAC has failed to eradicate demand side corruption, largely because the payoffs that motivated Latin American governments to ratify the convention are not aligned with the payoffs of the government officials tasked with upholding its obligations. The final section proposes more robust exogenous and multilateral enforcement strategies, such as leveraging the FCPA’s enforcement regime, to align payoffs and deter demand side corruption.

2. Demand side corruption and its economic consequences

Corruption is a significant barrier to economic growth, distorts open markets and undermines democratic accountability and the rule of law (Bowles 2000). The most pernicious form of transnational corruption is overseas bribery, which typically involves unauthorized payments by
multinational companies to government officials, including employees of state-owned companies, in exchange for commercial contracts, access to valuable resources, entry into profitable markets or exemption from costly regulations (OECD 2016). The World Bank estimates that about five percent of the world’s exports – $50-80 billion a year – is siphoned off by corrupt officials in developing countries (Moss 1997).

On the demand side, the takers of bribes are usually bureaucrats who act as agents of their respective governments (Rose-Ackerman 2010). The principal is the citizenry, represented by democratically elected officials who are responsible for supervising the agents. An imperfection of this principal/supervisor/agent relationship is that elected officials may shirk their duty to monitor and disclose acts of corruption, and instead collude with the corrupt bureaucrats (Tirole 1986). In an ideal world, bureaucrats would seek to maximize social welfare “so that their objectives would be perfectly matched with those of society” (Ades and Di Tella 1997). In practice, however, “bureaucrats have, like most other economic actors, an agenda of their own, and monetary income is certainly one of the arguments of their objective function” (ibid).

Not all economic views of corruption are negative. The traditional economic debate compares corruption either to throwing sand into the gears of a country’s economic engine or adding grease to its otherwise truncated bureaucratic machinery (Svensson 2005). For example, where corruption is allowed, officials may generate bureaucratic hurdles to demand bribes (Myrdal 1968). On the other hand, where delays and obstacles are a result of “hyperactive social planners,” corrupt bureaucrats may improve social welfare because they help companies avoid cumbersome regulations and because the bribe serves as a reward for underpaid yet efficient bureaucrats (Leff 1964). The latter is the “minority view” (Bowles 2000), but some bureaucrats may nonetheless espouse it. The growing consensus, however, is that corruption hampers economic growth, and is a second-best solution for conducting business in a free and open market (Rose-Ackerman 1997).

Empirical research supports the claim that corruption adversely affects investment, productivity and socio-economic growth (Rose-Ackerman 2010). Corruption reduces incentives for investment because it increases the costs of entering a market. One study using the Business International indices of corruption found that “a one-standard-deviation improvement in the
corruption index causes investment to rise by 5 percent of GDP and the annual rate of growth of GDP per capita to rise by half a percentage point” (Mauro 1997). In another study, corruption was negatively correlated with levels of development, as measured by the level of income per capita or years of schooling for persons over 25 (Ades and Di Tella 1997). In other words, higher rates of corruption were linked to lower levels of development. Lastly, the misallocation of “public procurement contracts through a corrupt system may lead to inferior public infrastructure and service” (Mauro 1997). Government officials may select the lowest quality bidder or may allow the circumvention of regulatory safety requirements in exchange for a bribe. The detrimental effect on infrastructure, in turn, further reduces incentives to invest in the country both by foreign and domestic companies. As governments in the Americas internalized these adverse effects, fighting corruption emerged as an important political and economic strategy.

3. The global corruption game and the shift towards international collaboration

Game theory provides a helpful modelling technique for analysing transnational corruption, because overseas bribery often involves few players and the optimal choice for one player depends on the other players’ choices (Cooter and Ulen 2012). The most relevant work in this field is Tarullo’s essay (2003) on the enforcement of the Anti-Bribery Convention of the Organisation for Economic Co-operation and Development of 1997 (“OECD Convention”), an international agreement that focuses on eliminating supply side corruption in overseas transactions.

Tarullo tracks the payoffs that led the United States to enact the FCPA and that drove OECD member states to adopt the OECD Convention. He explains why, more than a decade later, the United States was the only country to prosecute overseas bribery seriously, putting U.S. companies at a disadvantage relative to foreign competitors. To address that imbalance, Tarullo proposes multilateral prosecutorial mechanisms to enforce the OECD Convention across contracting states. Building on Tarullo’s framework, this section analyses the payoff structures that affected the adoption and implementation of the IACAC, beginning with a review of how the FCPA set the stage for the internationalization of the fight against corruption.
3.1 The United States’ unilateral fight against overseas bribery

Before the FCPA, no country criminalized or sanctioned overseas bribery. On the contrary, many countries recognized tax deductions for overseas bribes as a cost of doing business (Bowles 2000). Demand side governments often lacked the political will and institutional know-how to combat public corruption. Absent moral constraints, multinational companies and government officials had strong incentives to be corrupt.

Tarullo (2003) characterizes companies vying for government contracts as players in a prisoner’s dilemma, each company relying only on its own beliefs of what other companies will do. Government officials also act based on what they believe other players will do. Following Tarullo’s assumptions, Figure 1 demonstrates how, in a non-regulated environment, bribery is the dominant strategy for U.S. and foreign companies, as well as for government officials (lower right quadrant in Scenario A).

**Figure 1: Bribery game between multinational companies and government officials**

<table>
<thead>
<tr>
<th></th>
<th>Scenario A: Foreign Company Bribes</th>
<th>Scenario B: Foreign Company Does Not Bribes</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Gov’t Official Refuse Bribe</td>
<td>Take Bribe</td>
</tr>
<tr>
<td>U.S. Company No Bribe</td>
<td>4, -2</td>
<td>0, 2</td>
</tr>
<tr>
<td>Bribe</td>
<td>4, -2</td>
<td>3, 4</td>
</tr>
</tbody>
</table>

Scenario A depicts the situation in which a U.S. company knows that its foreign competitor is a committed briber, and Scenario B presents the situation in which the foreign company is a committed non-briber. Economic rents from winning a government contract are set at [8] units above those available if a company pursued a different business opportunity, such as a non-government contract (ibid). Bribes are fixed at [2] units (ibid). Bids for large government contracts typically involve two or three companies, and their competitive advantages cancel each other (ibid). Thus, the probability that either company will win the contract is set at [.5] representing a 50 percent chance of winning the bid (ibid).
In theory, whether the government official is a bribe taker or not, U.S. and foreign companies would be better off if they were cooperative non-bribers (upper quadrants in Scenario B). The expected payoff for each company would be $[4]$ units (i.e., the economic rents from the contract $[8]$ discounted by the chance of winning the bid $[.5]$). In that situation, the government official could expect $[0]$ units of gain, because neither company would offer a bribe. Although companies could reasonably achieve this outcome through a process of repeated games whereby they could signal to each other their intent to cooperate, the competitive and random nature of international bidding makes it difficult to achieve this outcome independently (ibid). A similar payoff emerges if the government official refuses to take bribes (left quadrants in both scenarios). The government official would be giving up $[2]$ units only if one of the companies were willing to bribe. There, the official’s opportunity cost would be $[-2]$ (left quadrants in Scenario A and lower left quadrant in Scenario B).

By contrast, if the government official takes bribes, the payoff structure changes for the official and the companies. The official can expect a payoff of at least $[2]$ units as long as one of the companies is a briber (upper right quadrant in Scenario A and lower right quadrant in Scenario B). A U.S. company that abstained from bribing would risk losing the contract to a bribing competitor. In that situation, the U.S. company’s payoff would be $[0]$ because the briber would win the contract (upper right quadrant in Scenario A). Conversely, the bribing company could expect to gain a payoff of $[6]$ if the U.S. company did not bribe (i.e., the economic rents from the contract $[8]$ minus $[2]$ units for the bribe without discounting for the risk of losing the bid). Given this asymmetric outcome, companies are better off bribing and securing a potential payoff of $[3]$ units, i.e., $[8]$ units of expected rents minus the cost of the bribe $[2]$ discounted by the probability of winning the bid $[.5]$ (lower right quadrant in Scenario A), rather than risk losing the contract. Knowing that companies are in this prisoner’s dilemma, the government official’s dominant strategy is also bribery, especially if he does not fear any sanctions.

This dynamic began to change in the mid-1970s when, as a result of the Watergate Scandal, the American public learned that U.S. companies were engaged in rampant corruption at home and abroad (Glynn, Kobrin and Naim 1997). As an “exporter” of democracy and free market economics, the United States could not accept the increased reputational costs of allowing overseas bribery.
Spurred by foreign criticism and domestic outrage, the United States pioneered the fight against overseas bribery by enacting the FCPA (Glynn, Kobrin and Naim 1997). The FCPA criminalized overseas bribery, and required stricter accounting and internal controls. For the most part, the FCPA did not affect companies outside the United States.

Members of the business community and some commentators argued that the FCPA would put U.S. companies at a serious disadvantage in overseas markets, because it only addressed the supply side of corruption and subjected only U.S. companies to legal liability for a reportedly widespread practice (ibid). U.S. companies would have to withdraw from some markets altogether, because it would be impossible to compete without bribing (Spalding 2010). In Latin America where the United States had traditionally been the most important trade partner, U.S. companies were under increasing pressure from European and Chinese competitors that could continue to bribe with impunity (ibid). The FCPA also increased the costs of doing business abroad for U.S. companies, because they were now forced to spend more on compliance and monitoring measures or risk costly investigations and prosecution (Vardi 2010). In essence, the United States shifted the costs of overseas bribery to U.S. companies, altering their incentives to bribe (Tarullo 2003).

Under Tarullo’s assumptions, U.S. companies calculate the costs of an FCPA violation, discounted by the probability of detection and prosecution, at [-10] units. U.S. companies could now expect the highest payoff only if foreign competitors and government officials became cooperative non-bribers (the upper left quadrant under Scenario B), an unlikely result since U.S. companies had to factor in potential sanctions from an FCPA violation while foreign competitors and government officials could engage in corrupt acts outside the FCPA’s purview. To address this imbalance, the United States successfully lobbied OECD member states to adopt the OECD Convention, hoping to impose FCPA-type sanctions on foreign companies and make non-bribery the dominant strategy for all supply side players (ibid). However, as Tarullo explains, the OECD Convention has failed to curb overseas bribery because the payoffs that motivated OECD member states to adopt the convention were not aligned with their payoffs for enforcing it.
The experiences with the FCPA and the OECD Convention highlight the challenges in combating overseas bribery only from the supply side. Effective strategies to defeat overseas bribery must also address demand side corruption (Beets 2005).

3.2 Moving towards international cooperation in the fight against demand side corruption

By the 1980s, the belief that corruption was a significant barrier to economic growth gained momentum in developing countries (Bowles 2010). In Latin America, a surge of democratization brought to power new governments that made fighting corruption an important part of their political platforms (Glynn, Kobrin and Naim 1997). César Trujillo, an economist who was elected president of Colombia in 1990 and OAS secretary general in 1994, stated: “It is obvious that corruption is an evil that undermines the legitimacy of institutions and the rule of law. It has many social costs and harms development and economic growth” (Gaviria Trujillo 2004).

Latin American states chose to tackle corruption through the OAS. In 1992, an Argentine legal expert raised concerns over corruption’s ill effects and proposed treating it as an international problem (ibid). By April 1994, the Chilean delegation requested that the issue of “Probity and Civic Ethics” be included on the agenda of the General Assembly, which established a working group to study the issue within the Permanent Council (ibid). While a few member states argued against international cooperation, the majority recognized that fighting corruption required collective action (Gaviria Trujillo 2004).

The United States welcomed Latin America’s interest in the issue. At a press briefing in 1994, Vice President Al Gore said that fighting corruption in the region “was an issue pushed on the agenda by Latin American countries” and that the United States was “very supportive of their initiative” (U.S. Newswire 1994). Less than two years later, a “record breaking speed” for a multilateral convention, 21 countries signed the IACAC on March 29, 1996 (Gaviria Trujillo 2004). By 2004, all member states, except Barbados and Cuba, had ratified the convention.

The IACAC was the first international anti-corruption agreement. It criminalized active and passive bribery (art. VI), transnational bribery (art. VIII), and illicit enrichment (art. IX), signalling a

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1 The original quote in Spanish states: “Es evidente que la corrupción es un mal que mina la legitimidad de las instituciones y el Estado de derecho, tiene enormes costos sociales y afecta el desarrollo y el crecimiento económico.”
shift in the way Latin American governments calculated their payoffs from corruption. Figure 2 illustrates the payoffs that motivated OAS member states to adopt the IACAC. The model maintains Tarullo’s assumption that U.S. companies internalized the United States’ payoffs under the FCPA as a cost of [-10] units. Conversely, it assumes that Latin American states expected to gain [10] units of socio-economic rewards from adopting and implementing the IACAC. Implementation costs are set at [4] units, including [2] units to negate the bribe plus another [2] units of administrative costs. This model assumes that companies outside the United States continue to bribe.

**Figure 2: Corruption game between Latin American states and U.S. companies**

<table>
<thead>
<tr>
<th>U.S. Company (supply side country)</th>
<th>Latin American states (demand side countries)</th>
</tr>
</thead>
<tbody>
<tr>
<td>No Bribe</td>
<td>Anti-corruption: 4, 6</td>
</tr>
<tr>
<td>Bribe</td>
<td>Corruption: 0, -12</td>
</tr>
<tr>
<td></td>
<td>-10, 6</td>
</tr>
<tr>
<td></td>
<td>-2, -12</td>
</tr>
</tbody>
</table>

Under these assumptions, Latin American states could expect a gain of [6] units from implementing anti-corruption measures effectively, i.e., the socio-economic rewards from reducing corruption [10] minus the costs of implementing anti-corruption measures [-4] (quadrants on the left). U.S. companies would also benefit from effective demand side anti-corruption programmes because it would level the playing field with foreign competitors (upper left quadrant). However, if OAS member states left demand side corruption unaddressed, their payoffs decreased significantly. Latin American states would lose the [2] units diverted from public coffers in the form of bribes, and would forego the opportunity to gain [10] units of socio-economic rewards for a net loss of [-12] units (quadrants on the right). That outcome would also hurt U.S. companies because it leaves them choosing between losing lucrative government contracts and risking FCPA sanctions. Thus, the dominant strategy for Latin American states and U.S. companies became cooperative non-bribery and the IACAC was a product of that strategic outcome.

Leaders from different sectors celebrated the new convention with enthusiasm. The Secretary General of the OAS exalted the convention as the most important step in fighting corruption at the
international level (Gaviria Trujillo 2004). In the United States, the American Bar Association endorsed the IACAC with limited reservations and urged all OAS member states, including the United States, to sign and ratify it quickly (Low 1997). Commentators were also optimistic about the IACAC’s potential to combat corruption.

4. Assessing the IACAC’S effectiveness

March 2016 marked the IACAC’s 20th anniversary, and the precise impact of this innovative convention is still unclear. The surreptitious nature of corruption makes it difficult to measure actual corruption rates (Mauro 1997). Nonetheless, studies suggest that, while progress is trending in a positive direction, corruption in Latin America is still a widespread problem (UNDP 2012). In its 2015 Corruption Perception Index, Transparency International (2016) ranked most Latin American countries near the “Highly Corrupt” end of the spectrum and concluded that the region has a “serious corruption problem”.

To date, research has revealed only one empirical study that specifically evaluates the IACAC’s effectiveness. Altamirano (2007) analysed the impact the IACAC has had on corruption perceptions and risk levels in four member states: Guatemala, Honduras, Jamaica, and Trinidad and Tobago. She found that these countries’ scores on perception and risk indexes did not improve, and in some instances actually worsened, after ratification. Implementation through domestic legislation and anti-corruption programmes did not lead to better outcomes. She posited that the IACAC has not been effective at reducing actual corruption because it failed to create a credible threat of sanctions for public officials.

This paper’s game theoretic analysis supports Altamirano’s hypothesis. Figure 1 above shows that individual government officials have much to gain from taking bribes when they do not perceive any credible threat of sanctions. Figure 2 illustrates that the payoffs that motivated the IACAC’s adoption are not aligned with the government officials’ payoffs as depicted in Figure 1. Aligning those payoffs will be the key to unlocking the IACAC’s full potential.
5. **Recommendations: moving towards exogenous, multilateral enforcement strategies**

Consistent with the IACAC’s call for “coordinated action” (Preamble), contracting states should consider more robust exogenous and multilateral enforcement strategies to combat demand side corruption.

First, domestic anti-corruption programmes present serious challenges in developing countries. Becker and Stigler (1974) promoted the idea of paying bureaucrats more, especially those in areas prone to higher incidences of corruption. But raising wages sufficiently high to deter grand corruption requires significant resources (Ades and Di Tella 1997). Others have proposed punishing corrupt government officials by taking away a percentage of their pension (ibid). Offenders’ names could also be reported on government or third-party websites, affecting their career prospects and reputations (ibid). However, it can be difficult to identify the performance measures that should trigger the specific incentives or penalties (ibid). Moreover, these programmes require compliant, non-corrupt supervisors to implement them effectively (ibid).

Alternatively, some economists have proposed market-based solutions, arguing that bureaucratic performance depends on the market structure of the bureaucracy itself (Svensson 2005). This approach calls for making institutions more open and competitive. The classic example is decentralizing a government agency that provides a public good such as a passport or permit. If an individual can obtain the same service from multiple decentralized agencies, then corrupt bureaucrats would have to compete with each other to capture a potential bribe. This competition would make it more difficult to collude, thus pushing the price of bribes down to an efficient level, possibly zero (Ades and Di Tella 1997). However, redesigning bureaucracies to act more like competitive firms requires more resources and expertise than many developing countries can provide. Such institutional transformations would take time and large upfront investments without any guarantees of success. Also, institutional designs without supervision from outsiders do not necessarily eliminate the risk of collusion (Tirole 1986), which makes domestic enforcement less likely and, therefore, less credible.

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2 For an example of a website that permits individuals to report petty corruption, see India’s [www.ipaidabribe.com](http://www.ipaidabribe.com).
One way to eliminate the principal/supervisor/agent problem is to introduce enforcement mechanisms that are outside the control of domestic government officials. Antoci and Sacco (1995) analysed the effects of using “an external, incorruptible supervisor” to monitor public officers in contract bidding games and concluded that, “if pushed far enough,” such monitoring significantly reduces the probability of corruption even when companies continue to bribe.

Currently, the United States provides the most active enforcement regime against international corruption (OECD 2016). In its 2015 Year-End FCPA Update, the U.S. law firm Gibson Dunn (2016) noted that “the stakes for multinational companies have never been higher.” The fact that U.S. companies have strongly opposed the FCPA is also evidence that it presents a credible threat of sanctions. Choi and Davis (2014) analysed FCPA actions from 2004 to 2011 and found that U.S. authorities are using the FCPA to sanction U.S. and foreign companies with particular emphasis “on firms that do business in poor countries with weak legal institutions.” Thus, to the extent that U.S. authorities are already playing the role of “an external, incorruptible supervisor” on the supply side of corruption, they could work with Latin American states to leverage the FCPA’s extraterritorial reach to target demand side corruption as well. For instance, the United States could pursue foreign government officials who facilitate or conspire to carry out corrupt transactions in violation of the FCPA. Latin American states could agree to extradite their government officials to the United States pursuant to article XIII of the IACAC, which provides “the legal basis for extradition with respect to any offense” established in accordance with the convention’s provisions including article VI(e)’s prohibition against the “participation as a principal, coprincipal, instigator, accomplice or accessory after the fact . . . or in any collaboration or conspiracy to commit” such offenses.

Another approach could be to create a new multilateral anti-corruption enforcement regime modelled on the United States’ international antitrust enforcement programme (Justice.gov 2015). Under the International Antitrust Enforcement Assistance Act, U.S. authorities may share evidence with their foreign counterparts for the purpose of enforcing foreign antitrust laws pursuant to mutual assistance agreements. Similarly, U.S. authorities could share evidence with Latin American counterparts in accordance with article XIV of the IACAC, which calls for “the widest measure of mutual assistance” with regards to “investigation and prosecution” and “the widest measure of
technical cooperation on the most effective ways and means of preventing, detecting, investigating and punishing acts of corruption.” Latin American states could go a step further and implement legislation directing their courts to accept as *prima facie* evidence any U.S. judgment or settlement of an FCPA investigation implicating their government officials in acts of corruption. Domestic prosecutors could rely on those cases to bring charges against suspected bureaucrats in domestic court. The burden would then shift to bureaucrats to disprove the allegations.

For an added layer of external pressure, the United States could link these multilateral enforcement efforts to the IACAC’s peer review Follow-Up Mechanism (MESICIC) in the same way the United States coordinates with the OECD and the International Competition Network in the context of antitrust enforcement initiatives. The United States would notify the MESICIC of any FCPA judgment or settlement, and Latin American states who failed to investigate any allegations lodged against their government officials in those proceedings would have to justify such failure during their periodic review.

Figure 3 shows the shift towards non-bribery that occurs when government officials perceive a credible threat of sanctions under an external enforcement regime (upper left quadrant). Bribes remain at [2] units, and the threat of external sanctions for corruption is set at [-10] units to mirror the costs of an FCPA violation. A country’s socio-economic rewards from eliminating corruption stay fixed at [10] units. An external enforcement strategy should also result in some savings for Latin American states, at least initially, because the threat of sanctions would be high enough to deter government officials from taking bribes without needing to spend an additional [2] units to negate the bribe. Thus, Latin American states would only incur administrative costs of [-2] units, rather than the [-4] units needed to implement domestic anti-corruption programmes.

**Figure 3: Enforcement game between Latin American states and their government officials**

<table>
<thead>
<tr>
<th>Gov’t Officials (agents)</th>
<th>No Bribe</th>
<th>Bribe</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>0, 8</td>
<td>-10, 8</td>
</tr>
<tr>
<td>Latin American states (principal)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>External Enforcement</td>
<td>-2, -14</td>
<td>2, -14</td>
</tr>
<tr>
<td>Domestic Enforcement</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Under these assumptions, if Latin American states continue to pursue domestic enforcement efforts without success, they can expect a payoff of [-14], i.e., [-4] units of implementation costs minus an opportunity cost of [-10] from foregoing the benefits of eliminating corruption (quadrants on the right). By contrast, if Latin American states pursue external enforcement strategies, they can expect a payoff of [8] units, i.e., [10] units for effectively reducing corruption minus the [2] units of administrative costs (quadrants on the left). The dominant enforcement strategy for Latin American states is clear: external enforcement provides the strongest payoffs in the short run.

Once bureaucrats see external enforcement as a credible threat, they will recalculate their payoffs and internalize the cost of sanctions. Even though they could gain [2] units from taking bribes under a domestic enforcement regime, they would refuse bribes and prefer a payoff of [0] to avoid the credible threat of incurring [-10] units of costs under an external enforcement regime. Finally, the payoffs of both the Latin American states and their bureaucrats would be aligned with those of the United States and their companies.

Expanding the FCPA’s enforcement regime may raise difficult questions related to extraterritorial jurisdiction, national sovereignty and political will. However, OAS member states are already experimenting with exogenous and multilateral enforcement strategies. Most states have ratified the Inter-American Convention on Mutual Assistance in Criminal Matters to “render to one another mutual assistance in investigations, prosecutions, and proceedings that pertain to crimes over which the requesting state has jurisdiction” (art. 2). The Hemispheric Information Exchange Network for Mutual Assistance in Criminal Matters and Extradition has been in development since the year 2000 (Oas.org 2012). And, in 2004, the process of Meetings of Ministers of Justice or Other Ministers or Attorneys General of the Americas recommended that OAS member states “review their legal regimes to extradite and provide mutual legal assistance with respect to corruption offenses” (OAS 2004).

For a more concrete example, in 2006, Guatemala launched an “unprecedented” programme to fight public corruption within its territory (Cicig.org 2016). It asked the United Nations to establish an independent team of foreign prosecutors, known as the CICIG. At that time, Guatemala’s Vice
President Eduardo Stein explained his frustration with relying solely on domestic anti-corruption programmes: “Asking the justice system to reform itself was like tying up a dog with a string of sausages” (The Economist 2011). Although the CICIG has received mixed reviews, in four years it successfully prosecuted four out of five cases implicating previously “untouchable” persons (ibid). In 2013, at the invitation of Guatemala’s then-president Otto Pérez Molina, the CICIG extended its mandate for another two years (CICIG 2013). Currently, it is investigating and prosecuting corruption charges against Pérez Molina who, in an ironic twist, is now denouncing the CICIG’s involvement: “We want independent judges. It’s really frustrating to see judges who are afraid of the pressure exerted by CICIG” (Reynolds 2015).

Honduras has also asked foreign prosecutors for help (The Economist 2011), a big step for a country that, until recently, did not extradite its citizens. Now, Honduras may likely extradite former Vice President Jaime Rosenthal to the United States to face various criminal charges, including corruption-related offenses (Wilkinson 2016). While asking for outside help is legally and politically complicated, Latin American states are already demonstrating a willingness to explore external enforcement strategies to gain the social and economic benefits of eliminating public corruption.

6. Conclusion

Corruption harms a country’s socio-economic development, distorts trade and undermines democracy and the rule of law. Overseas bribery of government officials is one of the most pernicious forms of corruption. Despite the IACAC’s ambitious goals, it has failed to curb demand side corruption in Latin America because domestic implementation and enforcement programmes do not create a credible threat of sanctions. To deter bribe taking, the United States and Latin American states should adopt exogenous and multilateral enforcement strategies, such as leveraging the FCPA’s enforcement regime across the region. The credible threat of sanctions created by such programmes would likely deter bribe-taking and reduce demand side corruption.
References


