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BOOK REVIEW

CORRUPTION AND MISUSE OF PUBLIC OFFICE

Colin Nicholls QC, Tim Daniel, Alan Bacarese, James Maton and Professor John Hatchard, (3rd edn, OUP 2017) lxxviii and 934.

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The well-documented rise in corruption at national and international levels has demanded increasing attention from governments, civil society and the legal profession across the globe. Thus, this volume has doubled in size since the first edition in 2005. As Lord Phillips explains in his Foreword, "This is not because corruption is necessarily on the increase, although the latest report from Transparency International records a perception that this is indeed the case. It is because of an increase in the measures that are being taken both in this country and around the world to root out and stamp out corruption." [1] The scope of the volume is impressively wide in both its jurisdictional coverage and in the variety and complexity of the topics addressed. Thus, we find a detailed treatment of the relevant domestic law, both civil and criminal, of the United Kingdom, of international and regional anti-corruption initiatives and of corruption laws of selected common law, civil law and other jurisdictions.

The primary focus of the work is on developments in the United Kingdom, which, to quote Lord Phillips again, "has established itself as second only to the United States in its efforts to combat domestic corruption and to encourage international cooperation in this field."[2] Part I of the volume contains a detailed analysis of the Bribery Act 2010, which came into force in 2011. For the tortuous process leading to the reform of the UK's bribery law, the authors refer the reader back to the earlier editions which should be retained for this purpose. One of the most problematic areas of the new legislation relates to the creation of a separate offence of bribery of a foreign public official. The Act does not provide a defence in such circumstances of, for example, duress. UK travellers to Africa are familiar with the police roadblock which can only be passed by payment of a small "facilitation" payment. Such payment would constitute an offence under UK law, mitigated by the exercise of prosecutorial discretion in

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[1] Colin Nicholls QC, Tim Daniel, Alan Bacarese, James Maton and Professor John Hatchard, *Corruption and Misuse of Public Office* (3rd edn, OUP 2017) vii.

[2] Ibid.

according with Guidelines which militate against prosecution in such circumstances. The authors stress that the Act, which is quite short, can only be understood and applied in the context of the extensive Guidance published by the Ministry of Justice and that produced by the Director of the Serious Fraud Office (SFO) and the Director of Public Prosecutions (DPP). Helpfully, these documents are reproduced as appendices to the volume. A novel feature of the law introduced subsequent to the Bribery Act is the "Deferred Prosecution Agreement" (DPA) introduced by the Crime and Courts Act 2013. DPAs provide a mechanism whereby an organisation can avoid prosecution for certain economic or financial offences (including those involving corrupt practices) by entering into a court-supervised agreement on negotiated terms with the prosecutor. The authors emphasise the importance of judicial oversight of this novel process and they provide useful summaries of recent cases of which the most spectacular and controversial involved payments by Rolls Royce to the SFO of £500 million in respect of the company's egregious criminality over decades, Part II deals with a vital element in combating corruption - effective measures for the recovery of the proceeds of crime. The authors provide a chapter of international case studies relating to both criminal and civil proceedings in the UK and elsewhere. These provide a sorry record of the large-scale robbery of state assets by such notorious ruling families as those of General Abacha in Nigeria, of President Chiluba of Zambia and of President Suharto of Indonesia.

Part I of the volume contains a full treatment of the common law offence of misconduct in public office and the tort of misfeasance in a public office. Public concern in the UK over evidence of misconduct by police officers led to the creation of a corruption offence specific to the police by the Criminal Justice and Courts Act 2015. Whether this measure reflects a decline in standards of police conduct or rather the uncovering of malpractice which has always existed maybe a matter for debate. However, the authors feel justified in including a chapter on the regulation of conduct in public life generally, while admitting that "twenty years ago it would have appeared strange that a book on the law of corruption and misuse of public office should include a chapter on integrity in public life."[3] However, since the 1990s, allegations of "sleaze," particularly in respect of the conduct of members of parliament (expenses and cash for questions) have led to serious public concern about standards of public life in the UK. The authors trace the various measures that have been taken to regulate the conduct of parliamentarians, ministers, civil servants and judges. It is worth noting in a comparative Commonwealth context that the enactment of the Recall of Members of Parliament Act in 2015 follows a precedent from

[3] Ibid 398.

other Commonwealth jurisdictions such as Kenya and Uganda. The authors also address the issue of standard setting in the private sector. The purpose is to provide information as to existing standard setting in initiatives, both international and national, without attempting, as the authors admit, "to evaluate their effectiveness."[4] Perhaps inevitably in a work of this kind, attempting to cover so much ground, information tends to take precedence over analysis. Perhaps in a future edition the authors might manage to condense some of the detail and thereby provide room for a concluding chapter which might attempt the formidable task of evaluation of the effectiveness of the measures described. However, the authors' response would no doubt be that in what is primarily a practitioners' text, there is no room for "academic" analysis.

This edition contains in Part III a new chapter on combating corruption in sport, which has been a source of frequent scandals in recent times. Such corruption can take a number of different forms –corruption within international sporting bodies such as FIFA and IAAF, match-fixing and illegal gambling, doping and other sporting corrupt practices. Dealing with such issues has required the creation of a complex regulatory framework based on a variety of international initiatives. Again, useful case-studies are provided. Those who lament the scale of corruption in sport in recent years may take comfort from evidence that it has existed for at least 2,800 years. Statues to the gods outside the ruins of the ancient Olympic stadium in Greece were paid for by athletes and coaches who were caught cheating.[5]

Part IV is devoted to a detailed account of international and regional anti-corruption initiatives including the United Nations Convention against Corruption and regional measures such as the African Union Convention on Preventing and Combating Corruption. Those who regard the Commonwealth as playing a significant role in world affairs will be gratified by the inclusion of a section on Commonwealth initiatives in combating corruption, in particular the provision of technical assistance to the small and developing states that make up the majority of the organisation's membership.

Part V displays the broad scope of the work by describing the corruption laws of jurisdictions other than the UK, It is appropriate that most detailed treatment is accorded to US law, since the Foreign Corrupt Practices Act has just passed its fortieth anniversary and has proved to be "the most significant anti-corruption law that applies to international business." [6] A representative selection of common law jurisdictions includes some of the most and some of the least corrupt countries in the

[4] Ibid 448.
[5] Ibid 502.
[6] Ibid 674.

world. The civil and other jurisdictions included have a comparable range – Brazil, China, France, Russia, South Africa and the United Arab Emirates. In relation to each of the jurisdictions, the legal framework is described, with key cases on enforcement. The latter expose the extent of corruption, often involving serving or former heads of state, in, for example, Nigeria and Brazil. Part V also contains an examination of off-shore financial centres, so often the repository of the fruits of the corrupt practices described in this volume.

The concluding Part VI acknowledges the role of civil society organizations (CSOs), operating at international, regional and national levels, in making an invaluable contribution to supporting good governance and the fight against corruption. In emphasising the constructive role of CSOs in partnering governments and the private sector, in particular by providing information, research capacity and publicity to support anti-corruption measures, the authors may help to defuse the suspicion of CSO activity often manifest in governmental and business circles.

Apart from the appendices of UK instruments already referred to, the volume benefits from a comprehensive index which greatly enhances the utility of the work for the busy practitioner. No practitioner today can afford to be without a knowledge of the issues covered by this book in such an impressive fashion. This suggests that the law students of today need a good grounding in corruption issues as part of professional training. If the authors are looking for another project, they might consider producing a slimmed down (and cheaper!) volume which would provide a basis for teaching courses on corruption as part of the academic or practical stage of legal training.