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Between Technical Expertise and Wise Counseling: The Role of Law Firms in the Implementation of Anti-Corruption Norms in Singapore

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Abstract:

The role of private actors in the production and the implementation of collective norms has grown to an important issue of social-scientific inquiries over the last decades. This has notably been investigated trough the analysis of Public-Private-Partnerships (PPP). While some scholars have found that private actors play a steady-increasing role in the production and the implementation of collective norms, others in turn argue that the state is still the key actor of policy processes. Meanwhile, no attention has been paid to the role of private actors in places where the state is still the major actor of social regulation. This paper helps to shed a light in that blind spot of the literature by examining the role of law-firms in the implementation of anti-corruption norms in Singapore. Drawing on empirical observations made in the process of anti-corruption in Singapore, the author raises a major hypothesis about law-firms and the implementation of collective regulatory norms, namely that these private actors play a key role regarding whether and how business organizations comply or not with national and international anticorruption norms. The paper is thus a new input for scientific investigations into this domain, which in turn will contribute to a better understanding of the role of private actors in the production and the implementation of public policies.

Keywords: Singapore – Anti-Corruption norms – Implementation – Law-firms

Introduction

Policy implementation can be understood as the art of bringing social actors (be it single individuals or legal entities) to comply with political decisions meant as collectively constraining norms (see Pressman and Wildavsky, 1979).

In that sense, the task of implementing national and international norms is often considered as the exclusive affair of state actors. This is particularly true for the enforcement of international agreements against corruption, as most international conventions, especially the OECD Convention on Combating Bribery of Foreign Public Officials (OECD, 1997) and the United Nations' Convention Against Corruption (UNO, 2003), explicitly delegate that duty of implementation to the signatory states. Indeed, those international conventions invite the signatory states to carry out the implementation of the agreed prescriptions in accordance with their national legal principles. Therefore, bringing both single individuals and legal entities to comply with international and national prescriptions regarding the fight against corruption is largely expected to be the task of state actors.

However, the reality of the implementation process is not always in conformity with this expectation, as combating corruption is ultimately a collective action that potentially involves all type of social actors, with or without state authority (OECD, 2010; Persson *et al.*, 2013). In some cases, the process is obviously and diversely carried out by a myriad of actors including state agencies, members of the civil society as well as multi-lateral agencies and international organizations. In other cases, state actors actively seek the monopoly of the process in every single aspect.

The latter scenario is particularly the case in Singapore. There, the state has notoriously conquered an all-encompassing role in organizing and regulating social life, which eventually leaves non-state actors with no room for autonomous initiatives (Tremewan, 1994; Rodan and Hugues, 2014). However, and despite the obvious will of the Singaporean state to be the Alpha and Omega of social regulation (including the implementation of international anti-corruption norms) in its jurisdiction, there are still social spaces where its action is subsidiary to that of private actors, namely the internal spheres of private business organizations. And that is precisely the focal point of this article.

Based on empirical observations and semi-structured interviews with actors of the Singaporean business sector, this article outlines how a set of private actors, namely law-firms, unexpectedly play an important role in the implementation of national and international anti-corruption norms in Singapore.

Theoretically, the article anchors in the academic debates on the role of private actors (as opposed to state actors) in the production and the enforcement of collective norms (Josselin and Wallace 2001; Peters *et al.*, 2009; Vogel, 2009; Stone, 2013). The first part thus exposes the theoretical background by summarizing the debates on the public-private nexus in contemporary policy processes, as well as presenting the major international anti-corruption conventions and the customs of their national implementation. The subsequent part is dedicated to the presentation and analysis of the anti-corruption process in Singapore. Building on the role played by law-firms in the implementation of anti-corruption norms in that country, the article raises a major hypothesis that goes beyond the single case of Singapore, namely that law-firms play a key role regarding whether and how business organizations comply (or not) with national and international anticorruption norms. This hypothesis is a new input in the academic debates and, as such, a contribution for further scientific investigations into policy implementation processes.

Theoretical Background

Over the last decades, the role of private actors in the production and the implementation of collective norms has grown to an important issue of social-scientific inquiries. As a part of the broader debate on policy implementation (Pressman and Wildavsky, 1979; Mazmanian and Sabatier, 1981), the role of private actors has notably been investigated trough the analysis of the public-private nexus in contemporary policy processes, also known as Public-Private-Partnerships (Osborne, 2000; Bovaird, 2004; Martinez *et al.*, 2007; Hodge *et al.*, 2010). Subsequent debates were particularly focused on the comparative roles of private and public actors in front of policy issues such as human rights, public security, fighting corruption or protecting the environment.

While some scholars have found that private actors play a steady-increasing role in the production and the implementation of collective norms regarding such issues (Rhodes,

1996; Strange, 1996; Ronit, 2001; Vogel, 2008, Abbott and Snidal, 2009; Peters *et al.*, 2009), others have argued that despite the increasing importance of private actors, the state is still the key actor of policy processes (Evans and Rueschemeyer, 1985; Adler and Haas, 1992; Ruggie, 2004). These two positions are synthesized by contributions arguing that "civil regulation" (Cutler *et al.*, 1999) does not replace state authority (Vogel, 2009; Haufler, 2003). It can compensate for some of the shortcomings of national and international governance in some places and sometimes, but it is never a complete substitute for the more effective exercise of state authority (Vogel, 2009: 153).

In the global process of combating corruption, this median position has led certain scholars and international organizations to actively call private actors, transnational business organizations in particular, to participate to a collective action against corruption (OECD, 2010; Pieth, 2012; Norton Rose Fulbright, 2014b) by adopting voluntary regulatory standards (Hess, 2009; United Nations Global Compact, 2011). Consequently, this set of private actors has recently received a growing attention in the literature, most of the works focusing on how they concretely contribute to the production and the implementation of national and international anti-corruption norms (Vaz Ferreira and Costa Morosini, 2013; Obidairo, 2013; United Nations Global Compact, 2011).

However, and while focusing on which standards have adopted by this set of private actors, those works systematically assume that business organizations automatically have the necessary know-how for producing and enforcing internal norms and procedures that are congruent with external anti-corruption principles issued by public authorities. In so doing, they totally ignore the set of actors that concretely "help" business organizations (and individuals within them) to comply with national and international anti-corruption principles: law-firms. The latter are companies specialized in the commercialization of technical expertise on law. They offer their know-how on legal issues to various social actors ranging from governments to business organizations (including local and multinational corporations).

According to Heineman Jr. *et al* (2015: 9), lawyers play three distinct but overlapping roles in society: first of all, they are technical experts who give their clients access to the complex machinery of law; second, they act as wise counselors who help their

clients to understand not only what is legal, but also what is right in a particular situation; finally, and given the previous cited roles, they turn out, in certain situations, to effectively be the final decision makers on important matters involving complex considerations beyond the law.

As law firms are usually set up as collectives of legal professionals with diverse specializations, they are themselves concentrates of those three overlapping roles of lawyers in various domains of social activities. Therefore, the organic constitution of such private actors as technical experts on law, wise counselors and effective leaders enables them to provide a package of legal services to various social actors anywhere and any when. Particularly, these legal intermediaries eventually play a decisive role in the implementation of public norms within business organizations, as most of these organizations resort to their services under conditions of uncertainty (IBA, OECD and UNODC, 2013).

This acknowledgement takes the theoretical debates on the production, the coordination and the implementation of public policy (Adler and Haas, 1992) a step further towards micro-analyses which eventually focus on single private actors – be it collective entities or individuals – and examine how they comply with legal and conventional regulations such as anti-corruption norms.

Regarding the latter issue, and for the better understanding of how business organizations participate to the collective action against corruption, one needs to recall the customs of implementing international anti-corruption norms at national levels.

The customs of implementing international anti-corruption norms at national levels

The major international anti-corruption conventions – especially the OECD Convention on Combating Bribery of Foreign Public Officials (CCBFPO) and the United Nations' convention against corruption (UNCAC) – explicitly delegate the task of implementing their norms to the signatory states. For instance, the OECD convention stipulates that the concrete enforcement of its principles and recommendations lies in "the fundamental nature of national regimes of prosecutorial discretion" (OECD CCBFPO: Article §5). As for the UNCAC, it holds that "each State Party shall take the necessary measures, including legislative and administrative

measures, in accordance with the fundamental principles of its domestic law, to ensure the implementation of its obligations under this Convention" (UNCAC: Article §65).

Consequently, the task of implementing international anti-corruption agreements at national levels has initially been considered as the exclusive duty of the State as the upholder of public authority. However, the state-regulation of private behaviors is now known to have its limits (Obidairo 2013: 169-208). Consequently, and particularly within business organizations where the employment environment is said to have a stronger and more immediate influence over the effective conduct of individuals than the State (Stone, 1980), the implementation of anti-corruption norms is more and more seen as a collective action which does not only concern state-actors, but equally non-state-actors (Pieth, 2012). The latter conception has particularly been encouraged by international organizations and agencies in the past few years (See UN Global Compact, 2010; ASEAN CSR Network, 2014). Via the promotion of the civil society's role in matters of global governance (OECD, 2003; UNO, 2004), private actors such as NGOs and business corporations are believed to be the decisive vectors of anti-corruption norms to the end targets – single individuals – and consequently expected to play a key role in that process (Ukase and Audu, 2015).

However, and beyond any wishful thinking regarding this set of actors and the process of combating corruption, the concrete expressions of their handlings in this sense are still to be highlighted and contrasted with those of the State as the official and legitimate designer of public norms. The case of Singapore helps to take a step into this direction.

Empirical observations: the monopoly of the State in social regulation and the shadow role of law-firms in the process of combating corruption in Singapore

The process of combating corruption in Singapore is historically led and dominated by state-actors, namely the Prime Minister's Office (PMO), the Monetary Authority of Singapore (MAS), the Auditor General's Office (AGO), the state-courts, and especially the Corruption Practices Investigation Bureau (CPIB). This has been so since the People's Action Party (PAP) came to power in 1959 (Ah Leak, 1999).

The dominant role of state-actors in the process of combating corruption in Singapore

Before the advent of the PAP rule in 1959, the anti-corruption process in Singapore goes back to the colonial period, when the laws of the Straits Settlements, issued by the British colonial administration, forbade public servants to take any gratification other than the legal remuneration foreseen for an official act (Government of the Colony of the Straits Settlements, 1920). Accordingly, in 1871, the penal code explicitly made corruption punishable with a fine or with imprisonment up to three years, or with both (Article §161). In 1937, the colonial administration went a step further by issuing the Prevention of Corruption Ordinance (POCO) and by creating a corresponding Anti-Corruption Branch (ACB) within the criminal investigation department of the Singapore police (Quah, 2009). Some years later, in 1952, the ACB was transformed into the Corruption Practices Investigation Bureau (CPIB) and made completely independent from the police.

However, the historical process of combating corruption in Singapore came to a critical juncture when the PAP took over the political lead of the country. According to the country's former Prime Minister Lee Kuan Yew, the PAP-government resolutely set out to have a clean administration when they took office in 1959:

> "*We were sickened by the greed, corruption, and decadence of many Asian leaders. […] We had a deep sense of mission to establish a clean and effective government. When we took the oath of office at the ceremony in the city council chamber in June 1959, we all wore white shirts and white slacks to symbolize purity and honesty in our personal behavior and our public life.*" (Lee Kuan Yew, 2000: 157-158)

Consequently, and from there onwards, the PAP-government tightened the legal framework incrementally. The political leaders first changed the relevant laws, replacing the 1937 POCO by a new Prevention of Corruption Act (POCA) in 1960. In so doing, they widened the definition of corruption and rendered unnecessary for the authorities to prove that a person who accepted a bribe was indeed able to carry out the required favor. Moreover, and from then on, the courts were allowed to treat proof that an accused was living beyond his or her means or owned a property that his or her income could not explain as corroborating evidence that he or she had accepted or obtained a bribe (Lee Kuan Yew, 2000). Furthermore, the CPIB, as the special

governmental agency for matters of public integrity, became the only organ allowed to investigate and prosecute corruption affairs in Singapore. Its powers were revised and extended as far as to include arrest, search and investigation of bank accounts and bank books of suspected persons and their relatives.

As the PAP-government associated corruption with communism which they politically opposed, their fight against corruption was also a fight against the communists. They thus adopted every thinkable measure to make sure corruption (and communism) had no room to flourish anymore in the country. This also meant a lot of political limits on personal behavior imposed by the State, which included interfering in the private lives of citizens (Tremewan 1994: 2-3). In that process of tracking corrupt practices (and political oppositions), the CPIB became the eyes and the arms of the PAP-government in imposing their particular conception of the ideal society in Singapore.

It is that setting that has been underlying the Singaporean anti-corruption process for decades, with the related measures being continuously updated to always and adequately respond to the metamorphoses of corruption practices. Consequently, and up to date, the government of Singapore claims the monopoly of the State in formulating and enforcing anti-corruption norms, with an extensive legal framework as well as an almighty enforcement agency. With the powers to deter or detect and punish those who are prone to corruption, the CPIB – and thus the State of Singapore – has been successful in producing consent and compliance among the population.

However, this apparent monopoly of the State over the process of combating corruption in Singapore is rather subsidiary within business organizations where law firms, in collaboration with compliance departments, are the ultimate rule makers.

In the shadow of state-actors, the role of law-firms in the implementation of anti-corruption norms in Singapore

Implementing anti-corruption norms means bringing people (and what-ever legal entity they belong to) to conform to the legal prescriptions in this regard, to avoid doing what is legally defined as corrupt practices. However, people don't necessarily and automatically know all the laws in their country, which is one of the reasons why most professions need some minimal standardized procedures, to make sure people

conform to the laws while doing their jobs, even if they are not aware of the existing laws. Standardized professional procedures are thus what people usually know best, because it is what they concretely learn and apply day after day, in the framework of their professional activities.

Regarding the implementation of legal norms issued by the public authorities, this means that, at least within business organizations where people are more oriented towards their standardized professional procedures, it is not the State which directly and ultimately brings single individuals to conform to its norms, but the standardized professional procedures. However, and even if the state can constrain companies to adapt their standard procedures to its legal framework, those procedures are usually set up not by the employees who use them every day, but rather by technical experts on law. Such experts are appointed by the companies to draw up the procedures according to their specific businesses.

As professional lawyers are usually the set of social actors who have that technical expertise (Heineman Jr. *et al.*, 2015), the final implementation of state-norms at the individual level within business organizations depends on the lawyers appointed to draw up or update the standard professional procedures within the company. This is particularly true in Singapore where a couple of law firms have conquered the monopoly of legal services for commercial businesses, including on matters such as ethics and anti-corruption[1]. Even though there are many law firms in Singapore[2], those who specialize in the prevention and the management of what is also called "white collar crimes", including bribery and corruption as well as money laundering and financial fraud issues, are less than a handful because the domain has proven to be quite a niche in which it is difficult to be. The couple of law firms which has the monopoly of activities around that niche, notably *Norton Rose Fullbright*[3], sell their technical expertise to draw up standard professional procedures and, at the same time, they offer their counsel as to how their clients can cope with some business constraining regulations without really infringing them.

[1] See http://www.nortonrosefulbright.com/sg/our-services/business-ethics-and-anti-corruption/
[2] See http://www.lawsociety.org.sg/About-Us/General-Statistics
[3] See http://www.nortonrosefulbright.com/sg/

In that sense, the ever-increasing importance of business ethics has opened a large field of activities for such law firms and given them the ultimate important role in the implementation of national and international norms regarding the fight against corruption. Indeed, the expected standards in terms of business ethics, including anti-corruption, have changed significantly since the 1990s. As a result, an ethical failure within a business organization nowadays can cause significant civil and criminal damages for the organization and for the individuals working for it. To protect themselves from such harmful eventualities, business organizations systematically resort to the technical expertise of law firms, as a major part of their internal risks management (Norton Rose Fulbright, 2014a).

With their set of specialists in every single domain of legal rules, law firms have globally become crucial for various enterprises, with a wide range of activities corresponding and responding to the ever-wider developments in the legislative landscape. Given the fact that most ordinary people generally do not know the contents of all national laws and international anti-corruption conventions related to their daily activities, not to say the sporadic changes in the legal framework, they consequently and usually do not know what is the right thing to do to avoid breaking the law while carrying on their activities. That is why most business enterprises resort to the "help" of law firms to manage that uncertainty (IBA, OECD and UNODC, 2013).

In that regard, the practices of the law firms are particularly focused on designing and implementing "adequate" procedures and guidelines for and within business organizations. They design and review structured compliance systems in accordance with legal rules, which include developing adequate compliance programmes and standards of professional behaviour within business organizations (codes of conduct and other internal guidelines), as well as they examine material compliance aspects in company transactions. They lead corporate investigations when needed, they suggest disciplinary action against employees at fault (giving a blame or a fine, terminating the contract or reporting to the public authorities), and they represent clients in cases of public investigations.

Moreover, law firms also provide their clients – domestic and international businesses – with "wise" counsel in relation to internal and government-led regulations and

investigations, delivering tailor-made and up-dated advice: they advise companies' directors on strategic issues such as new acquisitions and joint ventures, but also on matters concerning their clients' reputation such as measures for compensation of negative externalities coming from their activities – damages to third parties, for instance – and remuneration systems, especially the admissibility and compatibility of such systems with compliance guidelines and the companies' specific mission statements. Furthermore, they draft tailor-made toolkits to prepare their clients for any dawn raid by public officials, including emergency plans and training for clients' employees.

While carrying out such activities, law firms impose themselves as inescapable interpreters and translators of legal norms for specific social actors, namely for business organizations and individuals within them. Regarding corruption practices, they eventually determine if it is necessary that the CPIB, for instance, should be contacted for the official investigation of a specific case within a business organization, and when this should be done. In certain circumstances, and according to their previous examination of the problematic situation and the alternative solutions, they tell their clients when it is preferable to *deal* with the public authorities. In such cases, however, they prepare the report for the clients and tell them what to do.

On another side, and sometimes, law firms also collaborate with the public authorities by helping them to design their prevention campaigns towards business organizations. In that respect, they provide the public authorities (for instance the CPIB) with support on what proper compliance programs ought to look like and give them ideas on how to spread this message within the private sector in Singapore, including helping to potentially organize some events where the authorities can speak to the compliance community – the heads of the compliance departments of business organizations – and share with them their thoughts on what they expect from them.

In the end, this pivotal role of law firms acting like a buffer between the public authorities (as the legitimate rule makers) and business organizations (as particular rule takers) leads to the fact that the ultimate degree of compliance with legal anti-corruption norms within business organizations strongly depends on the law firms as inescapable co-designers, interpreters and translators of legal norms.

Discussion and conclusions

As private actors with technical expertise on international and national legal frameworks across the world, law firms have become key actors for every significant social activity. They have especially become inescapable in the domains of governance and trade.

As most business organizations resort to their services under conditions of uncertainty, this particular set of private actors also assumes the role of wise counselors for their clients, which can bear some conflict of interests. Indeed, as the law firms are basically profit oriented associations, they are just pursuing their proper interests by counseling their clients in ways that also benefit them. Therefore, it is probable that the advice given to business organizations, as well as the technical expertise offered to them by the law firms that counsel them, are not only meant to strictly conform to the state-regulation regarding the commercial activities of the business organizations. It is probable that the advice of the law firms to business organizations is not just about how to comply effectively with the laws as wished by some international organizations (see IBA, OECD and UNODC, 2013), but also consist of telling their clients how to bypass the system and circumvent the business constraining parts of the legal framework and the related controls by the public authorities. This has notably been outlined in a recent investigation by the European Parliament on the role of advisors and intermediaries in the schemes revealed in the so called "Panama Papers" (European Parliament, 2017: 18-27).

However, and at least in the domain of anti-corruption regulation in Singapore, it is obvious that the law firms controlling the niche of "business ethics" are *in fine* the set of private actors that determine the extent to which business organizations (and single individuals within them) comply with national laws and international principles against corruption. Even though the State of Singapore generally claims the legitimate monopoly over the regulation of the society and particularly over the process of combating corruption in the country, it turns out that, at least for and within business organizations, the compliance with public norms is actively mediated by law firms as private actors.

Now, as the law firms observed in Singapore are global players who carry out the same activities in several other countries across the world, their obvious influence on the production and the implementation of anti-corruption norms is probably also valid for other countries where these law firms are active.

Linked up to the academic debates about the role of private actors in the production and the implementation of collective norms, this insight gained in Singapore is a major hypothesis that can contribute to refine the debates. The hypothesis is all the so more consistent as law firms, beyond the ones active in Singapore, are present in almost every country with a liberal market economy. This article is thus a new input for scientific investigations into the domain of policy production and implementation. In turn, such investigations will contribute to a better understanding of the role of private actors in the production and the implementation of public policies, even in societies where the State still plays a major role.

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