

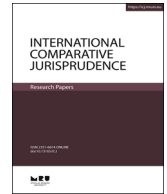
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## Combating corruption: The development of whistleblowing laws in the United States, Europe, and Armenia

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### ABSTRACT

Corruption is a persistent problem that plagues the world. It knows no borders. It is a problem facing post-communist countries as they transition to democracies and market economies, as well as established democracies and other regimes. While the causes of corruption are varied, the tools often suggested to combat corruption include expanded use of whistleblowing in terms of incentives to encourage it and laws to protect whistleblowers. This article examines the role of whistleblowing as a tool to combat corruption. It describes the law and role of whistleblowing in a comparative context, focusing on the United States, the European Union, and Armenia. The article then concludes with recommendations regarding how whistleblowing could be strengthened, especially in Armenia, as an example of a post-communist state, to be an effective tool for addressing corruption.

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### Introduction

Corruption is a persistent problem that plagues the world. It knows no borders. It is a problem facing post-communist countries as they transition to democracies and market economies (Liebert, Condrey, & Goncharov, 2013), but it is also one that confronts states within North America and Western Europe, including EU members, and those in Asia and South America (Rose-Ackerman, 1999). It almost seems that the latent causes of corruption are sown into human nature, with perhaps greed, ambition, and a desire for power being the psychological forces propelling it. Yet corruption is not simply a trait of the human psyche. Instead many institutional forces, such as bad governance, lack of transparency, flawed decision-making systems, and inefficiencies and scarcities are all offered as possible reasons for why corruption persists (Rose-Ackerman, 1999).

Luo defines corruption as an “illegitimate exchange of resources involving the use or abuse of public or collective responsibility for private ends” (Luo, 2005). Transparency International defines it as the “abuse of entrusted power for private gain” (Transparency International). World Bank (1997) declares corruption to be “abuse of public office for private gain”. The World Bank also notes that the concept “covers a broad range of human actions”. For the purposes of this article, ‘corruption’ is defined as any individual, collective, or structural act or process that permits the use of public authority or

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position for private gain. This definition captures the broad and many ways individuals and institutions abuse power and the public trust.

While corruption persists, so do efforts to root it out or eliminate it. A host of mechanisms and solutions to address it have included increased criminal prosecution for bribery and extortion, civil service and government pay reform, increased transparency and reporting, and improved governance (public and private) (Rose-Ackermann, 1999). But the tools often suggested to combat corruption include expanded use of whistleblowing in terms of incentives to encourage it and laws to protect whistleblowers. While whistleblowing alone is not a solution to corruption, it is one of the tools that can improve governance and create ethically and legally healthy organizations and governments.

This article examines the role of whistleblowing as a tool to combat corruption. Methodologically, it examines the law and role of whistleblowing in a comparative context, focusing on the United States, the European Union, and Armenia. The article then concludes with recommendations regarding how whistle blowing could be strengthened, especially in Armenia, as an example of a post-communist state, to be an effective tool for addressing corruption.

### **Whistleblowing: definition and justification**

Johnson (2003, p. 3) describes whistleblowing as a form of dissent that entails four characteristics. First, it is an individual act to make information public. Second, that information is disclosed to some outside of an organization party who make it public and part of a public record. Third, the information disclosed has to do with some non-trivial wrongdoing within that organization. Finally, the person making the disclosure is a member of that organization and not a journalist or general member of the public. In short, a whistle-blower is a person who exposes wrongdoing within an organization. While Johnson's definition is good, it does not capture all aspects of what whistleblowing is in that it neglects the aspect of the practice related to reporting and correcting corruption. This is the definition of whistleblowing adopted in this article: An act of an individual within a organization who discloses information in order to report and correct corruption.

In addition to the four characteristics that Johnson presents, there are two other possible attributes regarding the whistleblower. One, that person is primarily motivated by the desire to expose wrongdoing. The emphasis on the primary motive is important for two reasons. First, it excludes whistleblowing as primarily a vengeful act or done simply for embarrassing another. Second, it excludes individuals who potentially blow the whistle simply or solely for economic gain. However, to exclude all financial gain from whistleblowing is not appropriate. One because some individuals do blow the whistle and expose wrongdoing in part because they will receive some compensation or reward for doing so. Such rewards either compensate for the ostracization and loss of job opportunities many whistleblowers confront after going public, and because such incentives, as are increasing being offered in laws in countries such as the United States, incentivize individuals to look out for illegal or unethical behavior or otherwise create the conditions under which whistleblowing becomes possible.

Two, the individual blowing the whistle does so as a last resort. The hope or goal is that organizations can police themselves. By that, under normal circumstances organizations have internal checks to detect and correct illegal and inappropriate behavior and that there are mechanisms for individuals within organizations to report wrongdoings. Whistleblowing is meant as an alternative – it is another channel to use to report wrongdoings when internal chains of command or structures preclude or make difficult the ability to otherwise report or correct inappropriate behavior.

There are several arguments given to support the need for whistleblowing. First, as noted above, some organizations simply may be closed to, unwilling, or unable to address wrongdoing. Whether it be fears of retaliation, refusal to comply with the law, or other reasons, whistleblowing may simply be the only mechanism to expose and correct wrongdoing.

A second justification is that whistleblowing is a mechanism to correct or reform organizations. Organizations, public, private or NGOs can develop pathologies and do bad things. Whistleblowing exposes bad behavior with the goal that public exposure will force change. Whether whistleblowing has succeeded in producing reforms is a matter of debate. In some cases specific acts may be corrected through exposure but measuring whether overall whistleblowing really reforms organizations is difficult to ascertain. Third, whistleblowing, perhaps most importantly, seeks to expose serious bad behavior that either the public needs to know about or which needs to be halted and corrected. Exposing bribery, illegal surveillance, misuse of organizational resources, and illegal conspiracies all are acts that should be exposed and corrected. Finally, whistleblowing may be justified as a way of promoting justice in that wrongdoers are held accountable for their actions. For all of the above reasons, whistleblowing is increasingly seen less as an aberration or an evil and more as a necessary and critical component in policing unethical and illegal behavior.

Because of the increasing recognition that whistleblowing is one part of an overall set of tools to expose corruption, many countries and international organizations are adopting legislation that legalizes or encourages such behavior. These laws generally do several things. First, they may create processes or mechanisms to enable whistleblowing, especially anonymously, such as through hotlines. Second, the laws may require organizations to promote whistleblowing. Third, the laws may create financial incentives to encourage whistleblowing. Fourth, the laws may offer shields to protect whistleblowers from retaliation or reprisals. Overall, the justification for whistleblowing is that it is one tool that can be used to expose and combat corruption.

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