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Immunity or Impunity?

The effects of immunity provisions on national levels of control of corruption

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Abstract[1]

Immunities or jurisdictional privileges provide persons or groups of persons some degree of protection against civil or criminal rules that do not apply to all citizens. However, immunities can also be used by public officials as a shield from liability for criminal offences, including corruption. For this reason, international bodies have been pushing, over the past two decades, for a set of legal standards to ensure that immunity does not translate into impunity. The international standards and best practice can be summarised in the following four recommendations promoted globally:

1) Reducing the range of officials provided immunity;
2) Reducing the scope of criminal offences for which immunity can be invoked;
3) Introducing clear guidelines and procedures for lifting immunities;
4) The specification of a time limit for the duration of legal protection.

This study tests empirically whether these legal standards are associated with better control of corruption in practice. The results show weak to no evidence that the set of international standards recommended to countries around the world are associated with better control of corruption. The only evidence of this association, albeit only significant at the 90% level of confidence, is that immunity provisions for MPs which are aligned with international standards are associated with lower levels of bribery. Furthermore, case studies from Greece and Belgium have shown that impunity can be countered without legal changes and that a practice of impunity can be observed even in countries that have robust legal frameworks.

[1] A shorter version of this working paper, mostly contained in the literature review section, was first published by Transparency International's Anti-Corruption Helpdesk.

Table of Contents

Abstract 2

Introduction 5

Immunity for public officials 6
Types of immunity provisions 6

Control of corruption 7
Corruption risks associated with immunity for public officials 8

International standards and recommendations on immunity provisions 9
Council of Europe 9
United Nations Convention against Corruption (UNCAC) 10

Combating corruption through legal interventions 11

Constructing an index to measure the quality of immunity provisions 11
Index of Immunity Provisions – Descriptive Statistics 12
Immunity Provisions for MPs – descriptive statistics 15

Testing the relationship between the quality of immunity provisions and control of corruption 16
Quantitative analysis 16
Case Studies: Greece and Belgium 21

Limitations 23

Conclusion 24

Bibliography 25

Appendix 1: Immunity Protections for MPs and Ministers. 29
Apendix 2: Group of States against Corruption Recommendations on immunity provisions 30

Introduction

In 1982, Pablo Escobar, one of the most murderous criminals and narcoterrorists in recent history was elected to Colombia's House of Representatives. Election to the highest chamber of his nation represented both a political aspiration for Escobar and an insurance policy to shield him from prosecution or extradition to the United States; a high profile case of parliamentary immunity being used to evade criminal liability. However, one need not look back as far as 1982 to find such an example on the international stage. In 2006, an Egyptian MP used his immunity to protect himself from legal sanctions after the customs service found 1700 kilograms of Viagra imported illegally under the name of his company (The Economist, 2016). In Mexico in 2010, a newly elected member of the Chamber of Deputies with an outstanding warrant for his arrest, managed to evade police checkpoints and secretly enter Parliament to take the oath, thus ensuring immunity from prosecution or arrest (CNN, 2010). Such examples are countless, and given the secretive nature of crime, most of them are not even known or documented yet.

When confronted with instances like those described above one wonders whether immunity as a legal concept makes sense at all, particularly since it has been used to engender impunity for serious crimes and it jeopardises a basic human right such as the right of access to justice for victims. The answer lies in one of the cornerstones of modern democracies – the separation of powers. Politicians require a degree of independence to ensure the unimpeded performance of public functions and to be protected from targeted prosecutions or political persecution. Immunity therefore enables a better diversity of opinions and approaches in public policy and at times could be instrumental in matters as important as keeping democracy alive in the face of governments with authoritarian tendencies.

By juxtaposing the sins and virtues of immunity provisions, a clear tension emerges: on the one hand politicians need independence to fulfil their public functions and on the other hand they ought to be held accountable for wrongdoing. The incredibly diverse provisions one can find at the national level illustrate the result of this tension perfectly. Some countries provide immunity only for votes and opinions cast in parliament, others for any crimes committed during the term of the official function, others provide no immunity at all and others provide absolute immunity for life for any crimes. Some countries make exceptions to the immunity provisions when the subject is caught in the act of committing the crime, or for serious crimes such as murder, treason or in many cases also corruption. The possibility, authority and procedures to lift a politician's immunity are also regulated very differently in different contexts.

For those interested in the causes of corruption, the natural question that follows is whether this degree of legal protection enjoyed, and at times abused by politicians, is associated with higher levels of corruption due to the culture and practice of impunity that it engenders. This is an important question, because as this study will show, most countries in the world provide some degree of immunity protection for politicians. International and inter-governmental organisations such as the United Nations (UN), the Council of Europe (CoE) and the Organisation for Cooperation and Security in Europe (OSCE) have promoted standards and best practices for immunity provisions to ensure those provisions do not create corruption risks through a culture and practice of impunity. Therefore, the question whether immunity provisions are associated with national levels of corruption is also an important question to test empirically, given the time and resources that go into amending immunity legislation for the purposes of controlling corruption.

Immunity for public officials

Immunities or jurisdictional privileges provide persons or groups of persons some degree of protection against civil or criminal rules that do not apply to all citizens (UNODC, 2009; Venice Commission, 2014). In criminal law, immunities are considered exceptions to the compulsoriness of criminal law, whose final effect is to exclude the coercive State power (Iovene, 2017).

Immunity provisions help ensure a better separation of judiciary, executive and legislative powers. They are in place to ensure the unimpeded performance of public functions and to avoid targeted judicial proceedings or political persecution.

The first registered cases of legal protection for public functions date as far back as the Roman Republic where it was punishable by death to attack citizens participating in tribunes of the people or to hinder their functions (Venice Commission, 2014). The real codification of immunities for politicians started in the late 17th century, when the Bill of Rights passed by the British House of Commons proclaimed that "the freedom of speech and debates or proceedings in parliament ought not to be impeached or questioned in any court or place out of Parliament" (Joint Committee on Parliamentary Privilege, 2013, p.7). Exactly 100 years later, the duly ratified American constitution extended an exemption from arrest to Senators and Representatives "during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place" (Congressional Research Service, 2017, p.138). Two years later, the French Constitution, mandated "The representatives of the nation are inviolable; they cannot be enquired of, accused, or judged, at any time, with respect to what they may have said, written, or performed, in the exercise of their functions of representatives" (National Assembly of France, 1791).

Today, most countries around the world provide some degree of legal protection for public officials. The Organisation for Security and Cooperation in Europe (OSCE), in its recent Handbook on Fighting Corruption, lists the following legitimate purposes for immunity provisions (OSCE, 2016, p.194):

- to ensure that the elected representatives of the people can speak in the legislature without fear of criminal or civil sanctions (including claims for defamation.)
- to protect elected representatives from being arbitrarily detained and prevented from attending the legislature; and
- to act as a shield against malicious and politically motivated prosecutions.

Types of immunity provisions

The types and scope of immunity provisions vary across countries and jurisdictions. One crucial distinction can be drawn between jurisdictions that provide immunity for public officials only for acts committed in the course of the performance of their function (**functional immunity**), and jurisdictions which extend immunity for any acts committed by public officials, whether they are directly related to their official function or not (**absolute immunity**) (UNODC, 2017). The United Nations Office on Drugs and Crime (UNODC) highlights absolute immunity as the type most likely to be invoked in the context of criminal proceedings for corruption offences (*Ibid*.). Among countries that provide their officials with functional immunity, two further categories can be observed: non-liability and inviolability. **Non-liability** is a type of functional immunity which provides legal protection for opinions and votes cast in parliament. Non-liability applies almost exclusively to MPs and does not cover other categories of public officials. It is otherwise known as **narrow immunity.** The other type of functional immunity, known as **inviolability**, extends legal protection to public officials not only for opinions and votes cast, but also for any acts they perform in their function. As a wider provision, inviolability can be extended not just to MPs but also to heads of state, ministers and other public officials.

Control of corruption

Corruption is commonly defined as a misuse of public office or entrusted power for private gain (Rose-Ackerman, 1999). One of the first models which can be used to explain the decision to engage in misuse of public office comes from the field of the economics of crime. Economist Gary Becker has argued that the probability for criminal or illegal acts to happen is a function of the probability for the perpetrator to be caught and the penalty imposed (Becker, 1968). That definition can be expressed in the following equation:

This equation implies that to reduce the probability of criminal acts taking place, the policy maker should either invest in resources to improve crime detection or to increase the penalty administered if caught. Corruption occurs only where a personal benefit is expected, typically in the form of wealth, political power or social status (Kurer, 2015). Therefore, a further implication of Becker's formula is that individuals will weigh the expected costs and personal benefits before engaging in corruption. Consequently, corruption at the individual level is explained not due to different basic motivation from person to person but rather because of the difference between benefits and costs (Becker, 1968, p. 176).

An extension of Becker's theoretical foundations uses principal-agent theory to explain corrupt behaviour. According to this theory, there is an honest principal who has to ensure that their agents act with integrity. Susan Rose-Ackerman (2011) and Robert Klitgaard (1988), view public officials as self-interested utility maximisers who will engage in corruption whenever the opportunity arises, therefore it falls on the principal to limit the ability of the agent to engage in corruption. Klitgaard expressed this theory in terms of the below equilibrium equation (Klitgaard, 1988, p. 75):

Corruption = Monopoly + Discretion-Accountability

The main implication of this equilibrium model is that a policy maker who is interested in fighting corruption (the principal) should limit monopoly and discretionary power over their agents and increase accountability mechanisms. The principal can be a superior of the agent, like a prime minister to a minister or it can be the parliament as a whole to each MP. The major flaw with this formula resides with the assumption that an honest principal does exist and has the right incentives to prevent the agent from engaging in corruption. This assumption may hold true in some cases and mostly in countries that have low levels of corruption, however in settings where corruption is endemic and seen as the rule of the game, finding principled principals is the first challenge. In highly corrupt countries, even people who regard corruption as morally wrong are likely to take part, either because they either have no incentive to refrain from corruption or doing so would be costly to them (Della Porta & Vannucci, 1999; Karklins, 2005). Therefore, control of corruption – especially in the public sector – can not be simply promoted through robust vertical accountability mechanisms. There is a range of other factors that come into play, such as the quality of public sector management, the nature of accountability relations between the government and citizens, the legal framework, and the degree to which public sector processes are accompanied by transparency and dissemination of information (Shah, 2007, p.236). There is wide agreement among large swathes of the academic literature that control of corruption occurs when public policies are formulated and implemented in a universalistic, impartial and impersonal way (Mungiu-Pippidi, 2006; Rothstein & Teorell, 2008). Reflecting this more holistic understanding of corruption, not at the individual level but rather as a social allocation model, Alina Mungiu-Pippidi (2015) has proposed a further update to the equilibrium formula, conceptualising control of corruption as a balance of constraints and opportunities.

Under constraints, this model includes legal deterrents such as an effective judiciary able to enforce legislation and a body of effective and comprehensive laws as well as normative constraints such as societal norms that endorse ethical universalism though public opinion, media, civil society, critical citizens and voters. (*Ibid*.)

Under the opportunities proposed by this model, discretionary power resources include not only Klitgaard's monopoly power but also privileged access through status groups, negative social capital networks and cartels. Furthermore, opportunities for corruption include material resources such as state assets, discretionary budget spending, foreign aid, natural resources, public sector employment and preferential legislation to influence markets (*Ibid*.).

This equilibrium model is then expressed with the following equation (*Ibid*.):

Control of Corruption
= Constraints (Legal+Normative)
– Opportunities (Power Discretion+Material Resources)

Corruption risks associated with immunity for public officials

Whilst immunity provisions help ensure the separation of powers and a functioning democracy, they can pose serious corruption risks. The independence required to ensure the separation of powers can come at the cost of reduced accountability for public officials. The obvious link between immunity and corruption stems from a shift in the cost-benefit analysis that a public official makes when engaging in a corrupt act, as described by Becker's formula earlier (Becker, 1968). Immunity provisions, when applied to corruption cases, minimises the cost to almost zero, therefore always yielding a net gain in the cost-benefit analysis of engaging in corruption. Similarly, if we introduce immunity provisions into Klitgaard's formula (Corruption = Monopoly + Discretion – Accountability), we would expect to observe that immunity from prosecution substantially reduces the value of accountability, therefore invariably leaving the equation skewed towards a positive value of corruption, assuming that there is at least some level of discretion, if not monopoly power.

Finally we can see very clearly the connection between immunity and control of corruption from Mungiu-Pippidi's (2015) equilibrium formula (Control of Corruption = Opportunities - Constraints (**Legal** + Normative). Providing immunity protection to public officials removes the legal constraint from the equation, thus reducing the expected value for control of corruption. Having analysed the theoretical connection between corruption and immunity provisions for public officials it is clear that this relationship, at least in theory, holds across different models developed since the 1960s.

Indeed, UNODC states that investigations into high-level corruption may be significantly impeded by public officials invoking their political immunity. For this reason, the UNDC claims, it is not unusual for immunity from prosecution to be perceived as the main cause for increased corruption levels (UNODC, 2009). Some politicians themselves have singled out immunity provisions as one of the causes of corruption and impunity. In 2017, the Ukrainian President submitted to the Parliament a draft law on the abolition of parliamentary immunity. In an accompanying statement he said "The immunity of people's deputies has long turned into a guarantee of impunity" (President of Ukraine, 2017).

International standards and recommendations on immunity provisions

International standards and benchmarks have been emerging in the last two decades to ensure that immunity provisions do not pose a threat to the prevention, investigation and adjudication of corruption. The first measures were proposed by the Council of Europe's (CoE) Programme of Action against Corruption in 1996, followed a year later by their Resolution on the Twenty Guiding Principles for the Fight against Corruption. The ratification of the United Nations Convention against Corruption (UNCAC) in 2003 and subsequent resolutions in 2009 and 2015 took these benchmarks beyond the European context, providing a framework and technical assistance for reform around the world.

Council of Europe

Guiding Principle 6 (GP6) of the Council of Europe Resolution on the Twenty Guiding Principles for the Fight against Corruption (Council of Europe Committee of Ministers, 1997, p.1) states that countries should "limit immunity from investigation, prosecution or adjudication of corruption offences to the degree necessary in a democratic society." Based on this broad principle, the CoE Group of States against Corruption (GRECO) started evaluating whether its members (48 European states and the United States of America) were conforming to GP6 in law and in practice. Successive rounds of evaluations conducted between 2000 and 2006, and then again between 2011 and presently, identified gaps in their member countries' legal frameworks as well as in the application of existing legislation. GRECO has made over 50 recommendations on the immunity regimes of 42 countries since 2000. The recommendations fall under four general clusters:

1) **Reducing the range of officials provided immunity, in some cases including election candidates, civil servants and heads of government agencies.**
2) **Reducing the scope of criminal offences for which immunity can be invoked.** For example, exceptions should apply to legal protection if the public official is caught in the act of a crime (*flagrante delicto)*.
3) **Introducing clear guidelines and procedures for lifting immunities**;
4) **The specification of a time limit for the duration of legal protection** in the case of absolute or personal immunity. For example, it is recommended that former ministers should not be immune from prosecution for acts they committed during their time in office.

The third recommendation urging GRECO member states to introduce clear guidelines and procedures for lifting immunities is by far the most common. More than half of the countries (23 out of 42) received this recommendation from at least one GRECO round of evaluation. That is more frequent than all other clusters of recommendations on immunity legislation taken together.

In 2014, the European Commission for Democracy through Law, otherwise known as the Venice Commission, drafted a set of criteria and guidelines on the lifting of parliamentary immunity for Council of Europe (CoE) member states. The Venice Commission provided specific recommendations that fall under non-liability of opinions and votes cast in Parliament and inviolability of the person of a Member of Parliament. The Venice Commission deemed it appropriate that legal protections for opinions and votes cast in Parliament should be granted to MPs in CoE member states and indeed around the world, since this guarantees freedom of opinion and speech for elected representatives of the people (Venice Commission, 2014). On the other hand, the report concluded that "rules on parliamentary inviolability are not a necessary part of modern democracy. In a well-functioning political system, members of parliament enjoy adequate protection through

other mechanisms, and do not need special immunity" (Venice Commission, 2014, p.30). The other mechanisms mentioned above refer to the due judicial process available for all citizens despite their occupation. In countries where protection of parliament from undue pressure or harassment from the executive or judiciary is not guaranteed, the Venice Commission regards inviolability as being justifiable. However, it also strongly recommends that such provisions ought to be "subject to limitations and conditions, and there should always be the possibility of lifting immunity following clear and impartial procedures" (Venice Commission, 2014, p.30).

The Venice Commission also emphasises that whilst there are no common international or European rules that prohibit inviolability, this type of immunity does impinge on the principle of equality before the law. Following this line of reasoning, GRECO provided the following guidance in an evaluation report for Montenegro:

"Inviolability should be lifted in all cases in which there is no reason to suspect that the charges against the MP concerned have been politically motivated: immunity cannot be tantamount to a shield protecting any MP from exposure to the general criminal law that applies to all citizens." (GRECO, 2015a, p.19)

United Nations Convention against Corruption (UNCAC)

Article 30 paragraph 2 of UNCAC states "Each State Party shall take such measures as may be necessary to establish or maintain, in accordance with its legal system and constitutional principles, an appropriate balance between any immunities or jurisdictional privileges accorded to its public officials for the performance of their functions and the possibility, when necessary, of effectively investigating, prosecuting and adjudicating offences established in accordance with this Convention," (UNODC, 2004, pp.22-23).

The UNODC recommends the following five criteria be taken into account in order to ascertain whether an appropriate balance is reached between immunities granted for the performance of the functions of public officials and the need to effectively investigate, prosecute and adjudicate corruption offences (UNODC, 2017, pp.108-109):

1) The percentage of immunities that have been lifted in recent years;
2) The circle of persons enjoying immunity or privileges, which should not be too broad, but reasonably compact and clearly defined;
3) The scope of immunities afforded (whether immunity is functional or absolute, whether it is restricted to the raising of criminal charges or extends to the preliminary and investigative stage, etc.);
4) The procedure for lifting immunities should be clearly regulated but should not be too cumbersome or unwieldy, should not cause excessive delays or the loss of evidence and should not impair the application of the offences established in accordance with the Convention;
5) The limitation of immunity to the period of time public officials hold public office, and the possibility of conducting criminal proceedings after the cessation of immunity.

Comparing the most frequent GRECO recommendations to the above criteria set out of by the UNODC it is clear there is almost perfect overlap and therefore one can make the claim that these provisions are, by now, accepted and promoted globally as benchmarks for what immunity regimes should look like.

Combating corruption through legal interventions

As previously outlined, the rationale behind recommendations to reduce the scope of immunity protection rests on the theory that corrupt behaviour can be attributed to the cost-benefit calculation that public officials conduct when engaging in corrupt acts. This theory, in turn, relies on the assumption that the rule of law is observed and that there exists an independent and impartial judiciary, which is capable of prosecuting and sanctioning corrupt public officials. However, this assumption does not always hold true and in the absence of proper rule of law, legal reforms are not likely to yield better control of corruption. In contexts of poor rule of law we observe acute problems of impunity and selective legal enforcement (Mungiu-Pippidi & Dadašov, 2017). The 2007 edition of the Global Corruption Report provided an analysis of corruption in the judiciary and concluded that, at the time, bribes taken by judges and undue political influence over the judiciary were the main reasons for the culture of impunity in many countries, including Mexico, Panama and Pakistan (Transparency International, 2007). Whilst international benchmarks such as those cited above from UNCAC and the Council of Europe provide important examples of institutional and legal frameworks, it is important to recognise that every national context has its own structures that need to be built upon or given time to evolve before they can accommodate best practices that work elsewhere (Andrews, 2008). The late institutionalist economist Douglas North put this succinctly when he wrote that: "different institutional structures in governments will yield different results" (*Ibid*., p.398). GRECO itself concluded in an evaluation report for Greece that "the implementation of the relevant international instruments cannot *per se* constitute an effective strategy for fighting corruption. The first step should be to admit the existence of the phenomenon of corruption and assess its scale, the reasons for it, its impact etc."(GRECO, 2002, p.17). Finally, Mungiu-Pippidi warns against conflating goals with tools. She emphasises that the value of laws and institutions is purely instrumental and they should not be construed as benchmarks in themselves since we do not actually know if a certain law or institution is a sufficient or necessary condition for the goal of effectively combatting corruption (Mungiu-Pippidi & Dadašov, 2017). This study will attempt to build up on that idea and contribute to the literature by testing whether the tool of reforming immunity regimes is associated with the goal of controlling corruption.

Constructing an index to measure the quality of immunity provisions

The first step in testing the association between control of corruption and the quality of immunity provisions is to operationalise and measure the latter concept. To that end, an **Index of Immunity Provisions** (**IIP)** will be constructed. The IIP measures compliance of national legislations with international standards and best practices as put forward by the UNODC, Council of Europe, OSCE and other international organisations. Therefore, the quality of immunity legislation will not carry a normative value as to the appropriateness of the legal provisions for any given context, rather it will refer to the extent to which immunity provisions in each country are aligned to the identified international norms. The IIP includes information on the scope of legal protection, time limit to the provision of immunity and the existence of clear and simple rules to allow authorities to lift immunity when necessary. The data is extracted from a systematic assessment conducted by the World Bank in 2013 on the so-called public accountability mechanisms, including an assessment of the immunity legislation across over 80 jurisdictions (World Bank, 2013). The World Bank devised a scorecard, which includes 41 Actionable Governance Indicators (AGI). Each of these AGIs is formulated as a binary (Yes/No) question. For the purposes of constructing the Index of Immunity Provisions to reflect international recommendations, standards and best practices, 18 relevant

AGIs have been identified, six for each category of public officials: heads of state, ministers and members of parliament. The AGIs chosen to construct the IIP, as shown in Table 1, are:

1) Are there exceptions to immunities in cases of *flagrante delicto*?
2) Are there exceptions to immunities for serious crimes?
3) Does the law specify a limited duration of immunity?
4) Does the law specify procedures for revocation of immunity or impeachment?
5) Is a supra-majority required to lift immunity?
6) Are there coordination requirement for more than one authority in order to lift immunity?

The table below shows an example of a fictional country with a scorecard across the six dimensions of the IIP. The first four dimensions are scored with a 1 if the answer to the question is "Yes" and 0 if the answer is "No", because these are positive indicators recommended by international organisations. The last two dimensions are negative indicators because international norms caution against them, therefore the scoring is inverted for these two dimensions resulting in a 1 if the answer is "No" and a 0 if the answer is "Yes". A simple arithmetic average is then computed for each public official category column, whereby a country that meets all requirements across all categories of public officials would receive a score of 1. The total IIP is a simple arithmetic average of the scores of the three categories of officials. In the case illustrated in Table 1, the score for the quality of immunity legislation for the head of state, ministers and members of parliament are respectively 0.167, 0.67, and 0.5, which results in a total score of 0.44. Importantly, all countries that do not provide legal protection for one of the three categories of public officials are given by default a score of 1, as this situation implies the lowest degree of special protection possible.

Table 1

Dimension	Heads of State		Ministers		MPs		Overall IIP
	Response	Score	Response	Score	Response	Score	
Exception (Flagrante)	No	0	Yes	1	Yes	1	
Exception (Serious Crimes)	No	0	Yes	1	No	0	
Immunity Duration	No	0	Yes	1	Yes	1	
Procedures for lifting immunity	Yes	1	Yes	1	Yes	1	
Supra-majority required	Yes	0	Yes	0	Yes	0	
Coordination required	Yes	0	Yes	0	Yes	0	
Total		0.167		0.67		0.5	0.44

Index of Immunity Provisions – Descriptive Statistics

Most countries provide some form or degree of legal protection for a limited number of state officials or politicians. The first row of the table below indicates the number of countries, out of 87 surveyed, which have immunity provisions in their national legislation, either at the constitutional level or in any other relevant legal source. The next six rows indicate the number of countries,

which have specific legal provisions regarding each of the six dimensions used to construct the Index of Immunity Provisions. As explained in the methodology section, these dimensions are selected to reflect the legal provisions prescribed by international organisations as best practice and standards.

Table 2

	Public Officials		
Dimension	**Head of State**	**Ministers**	**MPs**
Immunity enshrined in Law	66	41	83
Exception (*Flagrante Delicto)*	10	12	51
Exception (Serious Crimes)	26	9	19
Time Limit	34	17	38
Procedures in Place	25	14	41
Supra Majority Required	20	7	11
Coordination Required	17	12	33

The first finding is that there are substantial differences between the number of countries that provide immunity for their heads of state, ministers and members of parliament. Out of 87 countries analysed, 83 of them provide immunity for their MPs and only 41 countries provide immunity for their ministers. The only four countries from the sample that do not grant legal protection to their MPs are Botswana, Honduras, Malawi and Mauritius. Mauritius is furthermore the only country in the sample where ministers enjoy immunity but members of parliament do not. Historically, immunity protections have been given to members of parliament, in order to ensure that kings and courts would not interfere with the work of the elected representatives of the people. MPs, particularly those from the opposition parties, remain to this day susceptible to political persecution and legal harassment in many countries. When it comes to heads of states, the number of countries providing immunity is less informative, particularly given that around 10 percent of the countries in the sample are monarchies. Given immunity provisions granted to members of parliament are the focus of this study, the more granular statistics on ministers and heads of state will not be analysed further.

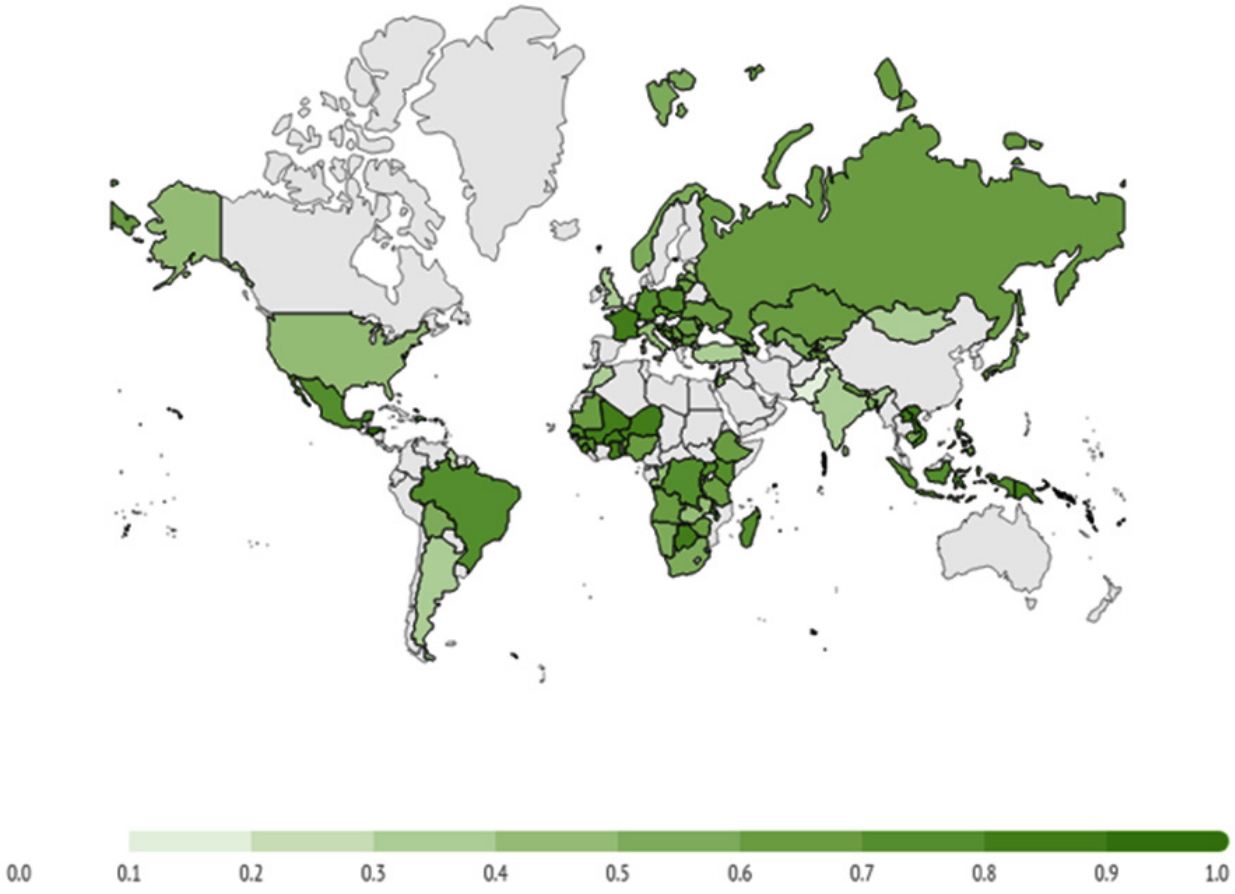
There are three main categories of legal provisions that the IIP dimensions capture: 1) scope of legal protection, 2) time limit and 3) relevant procedures for the lifting of immunities. In terms of the scope of legal protection for parliamentarians, the table shows severe deficiencies in many countries, where there are no exceptions to immunity for MPs in cases when they are caught committing a crime (*flagrante delicto*) or more broadly for charges related to serious crimes, which in most countries includes corruption. Only 51 out of 83 countries that provide immunity for their MPs make exceptions for cases when parliamentarians are caught in the act of committing a crime. Even fewer, 19 jurisdictions, envisage exceptions to immunity from prosecution for serious crimes. This means that in the vast majority of countries in the sample (64 out of 83), MPs can use their parliamentary immunity to avoid criminal liability for crimes including corruption, unless the chamber authorises its revocation.

When it comes to the time limitation of legal protection, whilst the majority of countries provide immunity for life, this is not as alarming as one might expect. In some cases from the selected sample, immunity is only granted to MPs for opinions expressed and votes cast in Parliament, known as non-liability. It is therefore entirely acceptable that such protection be granted for life. This clause may be problematic insofar as MPs could in theory take bribes to vote one way or

another and shield themselves from liability though this type of immunity. However, the act of receiving a bribe is separate from the act of voting, therefore MPs that are found to accept bribers for votes casted or opinions expressed in parliament can be tried and charged for the former act rather than the latter.

Finally, the summary table shows that only around half of the countries (41 out of 83) have detailed procedures in place for revoking MPs' immunities. These procedures can include the responsibility of Parliament to provide reasons for their decision to lift or not to lift the immunity of one of its members. This deficiency in the legislation means parliamentarians have more leeway to interpret the law politically and to turn the vote meant to lift the immunity of an MP into a political process. This is arguably one of the biggest problems with immunity provisions, and one that is difficult to resolve simply through more comprehensive laws. Two procedures that can hinder or delay the process of lifting a parliamentarian's immunity are the requirement of a supra-majority (such as three-fifths or two-thirds of MPs) and the required coordination of two or more institutions for the immunity to be revoked. From our sample, only a minority of countries still have these legal provisions in place, 11 of which require supra-majorities and 33 which require coordination of institutions. As explained in the methodology section, these two dimensions are also scored inversely in the IIP, where the presence of a provision requiring supra-majority or coordination is marked with a 0 and the lack thereof is marked with a 1.

Index of immunity provisions (Overall), 2013



Scale ranges from 0 (high protection awarded to public officials by law) to 1 (low protection awarded to public officials by law).

Author's own map. Based on World Bank Data Public Accountability Mechanisms data - https://datacatalog.worldbank.org/dataset/public-accountability-mechanisms

The above table contains information that is useful for the purposes of understanding the context surrounding scope and nature of immunity regimes around the world. In order to run inferential analysis to explaining the association between immunity legislation and corruption, the six lower rows were aggregated into a single score, quantifying the quality of legislation. As this study aims to explain whether and how legal protection may lead to corruption, and as outlined earlier in the introduction and methodology section, for the purposes of this work good quality legislation is considered one that provides minimal or no special protection for politicians, and bad quality legislation is one that provides total or nearly irrevocable legal protection. This is not a normative stance on immunity legislation, which has very valid reasons for being in place in myriad contexts. In many countries, it is indeed this legal protection that enables opposition politicians to fight for democracy and good governance. Therefore, whilst a score of a full one means there are no legal barriers to the prosecution of politicians, depending on the context, it could also mean the legislation is not conducive to a healthy democracy. The map below shows the overall Index of Immunity Provisions around the world. The scale progresses from 0 (poor quality legislation) to 1 (high quality legislation).

We observe from Table 3, below, that MPs have the lowest mean score of the three groups of politicians. The standard deviation for the quality of immunity provisions for MPs is significantly smaller than the two other groups, meaning that immunity legislation for MPs is more similar in different countries around the world, compared to the regime of immunities for ministers and heads of states.

Table 3

Descriptive Statistics for Index of Immunity Provisions (IIP)

Statistic	N	Mean	St. Dev.	Min	Max
IIP - Overall	85	0.629	0.176	0.167	1.000
IIP - Head of State	85	0.580	0.287	0.000	1.000
IIP - Ministers	85	0.751	0.287	0.167	1.000
IIP - MPs	85	0.555	0.198	0.167	1.000

Immunity Provisions for MPs – descriptive statistics

To get a better understanding of what types of legislation leads to different scores, and to observe which countries perform best and worst in the IIP and why, we will explore the top 5 countries with the highest score of IIP for MPs and the 5 bottom countries in the same index.

As illustrated in Table 4, below, Mauritius, Honduras, Malawi and Botswana received full scores of 1 due to the fact that neither of these countries provide any special legal protection for their members of parliament. In the case of Romania, MPs are granted immunity, however exceptions apply in cases of *flagrante delicto* as well as acts not connected with their votes or political opinions. However, the decision to lift immunity for search, arrest or detention for any parliamentarian rests with the parliament. Furthermore, Romania receives more points for not requiring a supra-majority (two thirds or more) in order to lift immunity for any member of parliament. Finally, the Romanian legislation satisfies the prescription of limiting legal protection only for the duration of the parliamentary term. All of these countries, despite providing either no protection or, legally speaking, very limited protection, are ranked either as medium or poor in terms of their control of corruption, based on terciles computed from the World Bank Control of Corruption Index (World Bank, 2016).

Table 4

5 Countries with best Immunity Provisions score for MPs

	Country	Immunity for MPs	Control of Corruption
1	Mauritius	1	medium
2	Honduras	1	poor
3	Malawi	1	poor
4	Botswana	1	medium
5	Romania	0.833	poor

Table 5

5 Countries with worst Immunity Provisions score for MPs

	Country	Immunity for MPs	Control of Corruption
1	Pakistan	0.167	poor
2	Cambodia	0.167	poor
3	Estonia	0.167	good
4	South Africa	0.167	medium
5	Vanuatu	0.333	medium

As illustrated in Table 5, above, Pakistan, Cambodia, Estonia and South Africa are at the bottom of the table in terms of quality of immunity legislation for MPs. Both supra-majorities and coordination of two or more bodies is required to lift immunity for members of parliament in these countries, with the exception of Vanuatu. In Pakistan, Estonia, Vanuatu and South Africa no exceptions apply for cases when members of parliament are caught in the act of the crime or for serious crimes, whereas in Cambodia there are exceptions for cases of *flagrante delicto* but no exceptions for serious crimes. Judging by these findings, it is clear these countries have serious deficiencies in their regime of immunities and it seems appropriate that they receive very low scores in the Index of Immunity Provisions for MPs. However, through these five cases, we observe that they are drawn from the entire range of control of corruption terciles. Pakistan and Cambodia perform poorly, South Africa and Vanuatu have scores close to the average and Estonia scores well in terms of control of corruption.

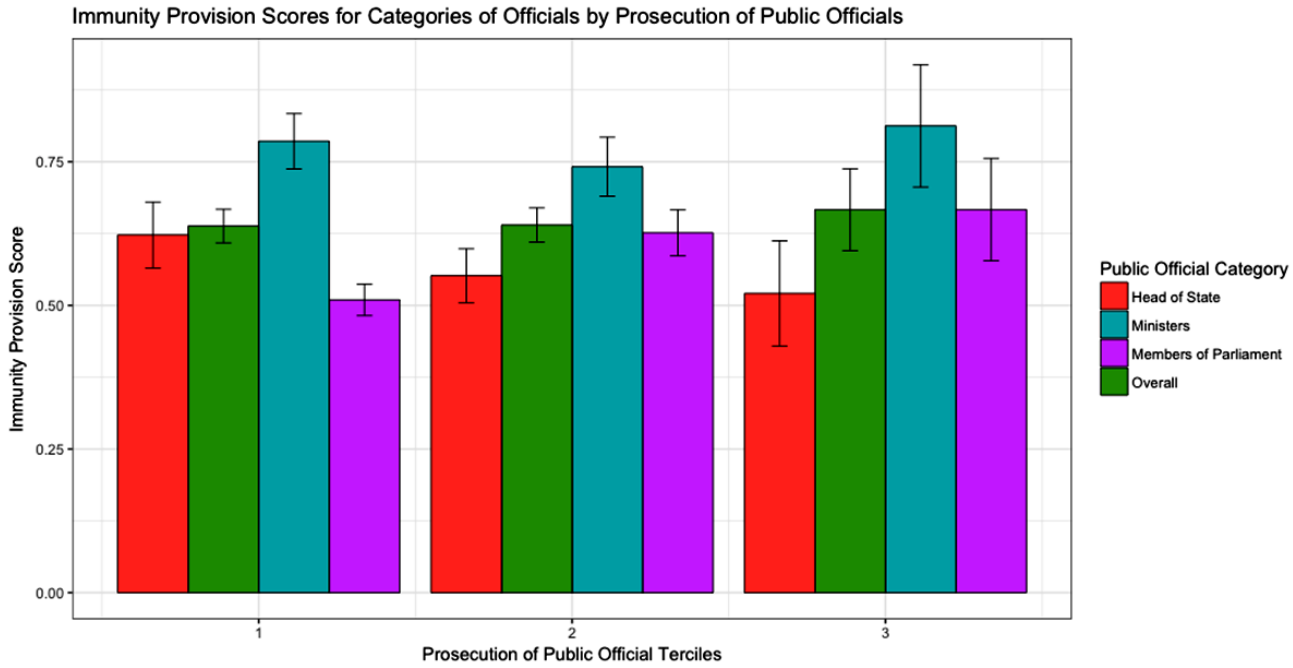
Testing the relationship between the quality of immunity provisions and control of corruption

Quantitative analysis

Starting to answer the research question on whether the quality of immunity legislation is associated with national levels of control of corruption we turn to a comparison of mean scores of the Index of Immunity Protections, overall and across the three categories of public officials. Figure 2 below shows that mean scores across the three terciles of effective prosecution for public officials

are statistically indistinguishable, with the exception of the Immunity Provisions score for MPs. We observe a small but statistically significant difference in the mean IIP MP score between the first and second terciles of effective prosecution of public officials and between the first and third. However we see no statistically significant difference between the second and the third terciles. This means that countries which perform poorly in effectively prosecuting public officials tend to have slightly lower quality immunity provisions for members of parliament than other countries.

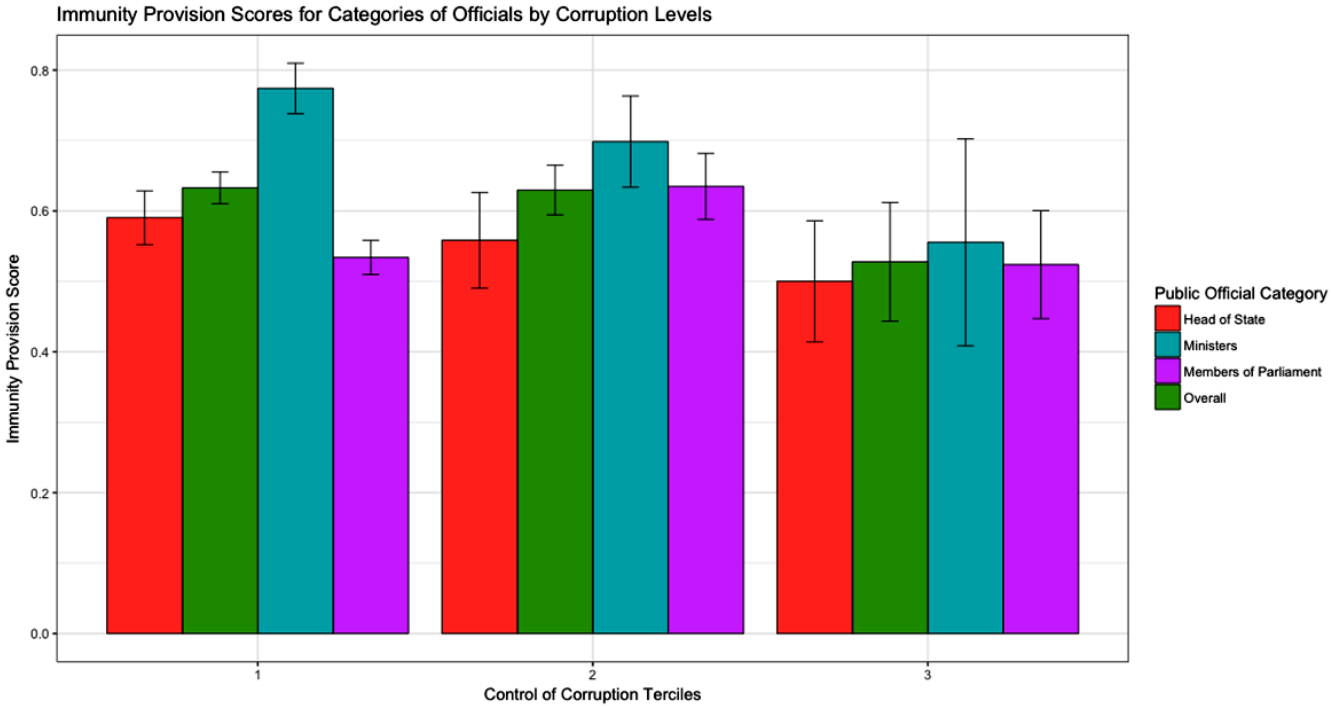
Figure 2



We observe very similar results when comparing IIP mean scores across different terciles of control of corruption, shown in Figure 3 below. The IIP mean scores are statistically indistinguishable from one another across groups of poor, medium and good control of corruption, with the exceptions of the MP dimension of the IIP index. The mean score for MPs immunity provisions in countries with poor control of corruption is lower than in those with medium level control of corruption. These results show there could be an association between the quality of immunity provisions for MPs on the one hand and the effective prosecution of public officials and control of corruption, on the other.

The only statistically significant difference was observed in the mean score for the Index of Immunity Provisions for MPs between countries with poor control of corruption and countries with medium control of corruption, but no difference between poor and good control of corruption or medium and good control of corruption. This means that many countries which have achieved good control of corruption have done so even without having laws in line with global integrity standards and benchmarks when it comes to immunity legislation. This is in line with findings from the EuroPam Project database, which shows that countries like Denmark and Norway, which have developed some of the cleanest standards of governance, score very poorly on the quality of anti-corruption provisions such as laws on political party financing, financial disclosure and conflict of interest (EuroPam, 2018).

Figure 3



Whilst comparing the country averages of the quality of immunity provisions across different groups of low, medium and high control of corruption and effective prosecution of public officials gives an indication of the general direction of the relationship, there may be a plethora of intervening phenomena that are driving that relationship. In order to control for these intervening variables, the IIP score will be plugged into a regression model in an attempt to measure the marginal effect of the IIP score on national levels of corruption. For the dependent variable of control of corruption, the primary indicator used will be the World Bank Control of Corruption estimate (World Bank, 2016). This Control of Corruption Index is a composite indicator obtained through the aggregation of expert assessments on public sector corruption. To ensure that the model specification is robust across different variables measuring corruption, the World Economic Forum Global Competitiveness Report sub-indicators on diversion of public funds and undocumented payments (bribery), will be used as alternative dependent variables (World Economic Forum, 2017).

In order to control for other factors beyond immunity provisions, independent variables will be added, based on Mungiu-Pippidi's (2015) model of constraints and resources for corruption and specifically drawing heavily on indicators used in the construction of the Index of Public Integrity (Mungiu-Pippidi & Dadašov, 2016).

Based on the *administrative burden* dimension of the Index of Public Integrity, I have constructed a similar variable which contains three indicators taken from the World Bank's Ease of Doing Business Report (The World Bank, 2012). The first indicator, *dealing with construction permits*, captures the median duration that local experts indicate is necessary to obtain a permit to build a warehouse. The second indicator measures the *number of taxes that businesses have to pay each year*. The third indicator measures the *number of procedures required to start a business* (The World Bank, 2012). Given that the three indicators are measured in different units, we transform each value into a z-score and obtain an aggregate value by taking the simple arithmetic average of the 3 z-score values for each country. The resulting variable is a proxy for administrative burden, which represents opportunities or resources for corruption.

There is a wealth of literature that suggest a strong association between natural resources in a country and its domestic level of corruption (Elbahnasawy & Revier, 2012; Leite & Weidmann,

1999). This phenomenon is known as the resource curse. Our model will control for this resource for corruption by introducing an independent variable, which measures total natural resource rents as a percentage of the GDP. This includes rents from oil, natural gas, coal, minerals and forests (World Bank, 2012). The estimates of natural resources rents are calculated as the difference between the price of a commodity and the average cost of producing it (World Bank, 2011).

On the opposite side of resources, in the equilibrium model, stand the constraints for corruption. For the purposes of this study, three constraints have been selected. The first, aimed at controlling for variation among countries in the observation of rule of law will be captured by the variable of *judicial independence*, compiled by the World Economic Forum. The association between corruption and judicial independence is well documented in the academic literature (Ades & Di Tella, 1999; Glopen, 2014). When courts and prosecutors are influenced by political pressure or financial inducements, impunity for crimes including corruption is rife and the justice is dispensed selectively (Mungiu-Pippidi & Dadašov, 2017). The second constraint is captured by *budget transparency* and is compiled by the International Budget Partnership. There is strong evidence that open and participatory budgeting processes lead to lower opportunities for corruption (Cimpoeru & Cimpoeru, 2015).

Normative constraints to corruption will be captured in this model through an indicator of *freedom of the press*, taken from the organisation Freedom House (2012). A growing body of research suggests that a free and independent media can act as a normative constraint against corruption, through reporting cases and manifestations and galvanising public opinion against it (Brunetti & Weder, 2003; Camaj, 2013; Lederman, Loayza, & Soares, 2005).

Finally, the Human Development Index (HDI) is a very useful proxy to control for structural factors that are associated with corruption, which go beyond short and medium term policies and reforms. The HDI captures life expectancy at birth, expected years of schooling, mean years of schooling and gross national income per capita (UNDP, 2012). The HDI by itself explains nearly half the variation in control of corruption (Mungiu-Pippidi, 2015, p. 91).

The formal econometric equation used to test the research question can therefore be expressed as follows:

$$\widehat{CoC_i} = \alpha + \beta_1(IIP) + \beta_2(red_tape) + \beta_3(\log(nat_resources)) + \beta_4(jud_ind) + \beta_5(free_press) + \beta_6(open_budget) + \beta_7(HDI_2012) + \varepsilon$$

To ensure that the model specification is robust across different dependent variables measuring corruption, the covariates are regressed against the World Bank Control of Corruption Index and the World Economic Forum Executive Opinion Survey score on *bribery* and *diversion of public funds*. The bribery variable has been transformed by taking the logarithm of each score, in order to normalise the distribution and comply with the required assumptions of linear regression models. The regression analysis includes six models, across the three dependent variables described above and two key explanatory variables. The first variable to be tested is the MP dimension of the Index of Immunity Provisions, followed by the overall Index of Immunity Provisions.

Table 6

OLS Regression Results

	Dependent variable:					
	COC2012	log(bribery)	div_funds	COC2012	log(bribery)	div_funds
	Overall			Members of Parliament		
	(1)	(2)	(3)	(4)	(5)	(6)
iip	0.383	0.130	0.241			
	(0.248)	(0.111)	(0.389)			
mp				0.370	0.170*	0.325
				(0.224)	(0.099)	(0.352)
red_tape	-0.148**	-0.062**	-0.184*	-0.135**	-0.057**	-0.174*
	(0.063)	(0.028)	(0.099)	(0.063)	(0.028)	(0.098)
log(nat_res)	-0.016	-0.012	-0.014	-0.017	-0.012	-0.014
	(0.036)	(0.016)	(0.057)	(0.036)	(0.016)	(0.057)
jud_ind	0.370***	0.125***	0.709***	0.372***	0.127***	0.712***
	(0.053)	(0.023)	(0.083)	(0.052)	(0.023)	(0.082)
free_press	-0.017***	0.001	0.002	-0.018***	0.0001	0.001
	(0.003)	(0.001)	(0.005)	(0.003)	(0.001)	(0.004)
open_budget	-0.005*	-0.001	-0.011**	-0.005*	-0.0005	-0.011**
	(0.003)	(0.001)	(0.004)	(0.003)	(0.001)	(0.004)
HDI_2012	2.223***	0.642***	1.955***	1.927***	0.523***	1.730**
	(0.423)	(0.189)	(0.664)	(0.422)	(0.186)	(0.662)
Constant	-2.245***	0.352*	-0.361	-1.982***	0.428**	-0.223
	(0.446)	(0.199)	(0.700)	(0.380)	(0.168)	(0.595)
Observations	59	59	59	59	59	59
R^2	0.865	0.680	0.718	0.866	0.689	0.721
Adjusted R^2	0.846	0.636	0.679	0.847	0.646	0.682
Residual Std. Error (df = 51)	0.318	0.142	0.500	0.317	0.140	0.498
F Statistic (df = 7; 51)	46.670***	15.452***	18.565***	46.995***	16.129***	18.800***
Note:						*p<0.1; **p<0.05; ***p<0.01

The results show that neither the overall Index of Immunity Provisions score, nor the sub-component for members of parliament are statistically significant predictors of control of corruption, bribery or diversion of public funds at the conventional significance level of 0.05. If we were to relax the significance level to 0.1, only the quality of immunity legislation for MPs is statistically associated with corruption. Even so, the regression coefficient for the IIP for MPs is only statistically significant in model number 5, which uses bribery as a dependent variable and explains around 74 percent of the variation in bribery rates. If we take the results of this simple OLS regression at face value, this would mean that countries which comply with more of the international standards regarding immunity provisions, which are included in the IIP, have low-

er bribery rates. However we cannot assign causality though this statistical model, therefore it would not follow that the fulfilment of an additional dimension from the IIP in any given country would necessarily lead to lower bribery rates.

Furthermore, only the quality of legislation for MPs is associated with a specific manifestation of corruption such as bribery. Given that this result is not corroborated by other models and that the level of significance is 0.1, it could be that these results are not robust and therefore should be treated with caution.

All control variable coefficients, with the exception of natural resource rents are statistically significant in most models, which provides an indication of the validity of the equilibrium model employed. Furthermore, formal statistical tests (reported in Appendix 3) suggest that the OLS regression assumptions of heteroscedasticity, skewness and kurtosis are respected and the variance inflation factor values suggest that there is no multi-collinearity between the variables.

Case Studies: Greece and Belgium

The two studies presented below seek to examine whether good quality immunity legislation is a necessary and/or sufficient condition for better prosecution of corruption and therefore lower levels thereof. The selection of the two case studies was based on information provided in all 108 GRECO evaluation and compliance reports since 2000 that contain conclusions, recommendations and progress reports on immunity legislation. Greece was chosen as one of the only countries that has provided data on the number of requests to lift MPs immunities and the number of such requests accepted by parliament. The second case study is Belgium and is selected because of the anomalous sequence of GRECO evaluations. The first GRECO report in 2000 deemed immunity legislation to be appropriate, however subsequent reports found irregularities in practice despite no legal changes taking place in the intervening period. The case of Greece will therefore help to determine whether legal provisions were a **necessary condition** to improve the practice of revoking MPs immunities. The case of Belgium will be used to assess whether the law was a **sufficient condition** to prevent immunity from being abused by allegedly corrupt politicians.

In Greece, the president, ministers, members of parliament and the ombudsman enjoy immunity from prosecution (GRECO, 2002). Immunity for MPs is enshrined in the Constitution, where articles 61 and 62 ensure non-liability and inviolability respectively. Article 62 states that MPs cannot be prosecuted arrested, imprisoned or otherwise confined without Parliament's approval (GRECO, 2002). Judicial inquiry, preliminary judicial inquiry or preliminary examination do not require parliamentary authorisation (European Commission, 2014). The procedure for lifting an MPs immunity is relatively cumbersome. The Prosecutor of the Supreme Court has to submit a request to the President of Parliament, who in turn sets up an internal parliamentary committee to assess the strength and credibility of the evidence presented by the prosecution. Ultimately, the plenary of the Parliament has the prerogative to decide within a three-month period whether the evidence presented is strong enough to justify the revocation of an MPs immunity (Androulakis, 2016). A European Parliament research centre noted in 2012 that Greece has one of the most restrictive practices in terms of approving requests for the revocation of immunity for MPs (Office for Promotion of Parliamentary Democracy, 2012). This behaviour has been attributed to an "unreasonable solidarity between politicians" and a "reluctance [of MPs] to vote for the lifting of the parliamentary immunity of their colleagues" (Androulakis, 2016, p. 2; Damaskou, 2012, p. 17). In other words, lifting the immunity of MPs is essentially a political decision as long as it rests with parliaments. Both GRECO and the European Commission have noted with concern that the procedure of lifting immunities by Parliament allows for broad scope and discretion as parliament is not required to provide reasons for the decision taken to not waive a parliamentarian's immunity (GRECO, 2002, p. 24, European Commission, 2014).

The Greek case can shed light on whether good quality immunity legislation is a necessary condition for more effective prosecution of political corruption. To that end, the percentage of accepted requests for lifting MPs immunities will be documented, followed by tracing any relevant legal changes that may have affected that ratio.

Between 2004 and 2009 the Greek Parliament approved 13% of the 86 requests to lift immunities. In the period between 2010 and 2014, it approved 45% of the 211 requests (GRECO, 2015b). Since 2015, 32% of the 55 cases requested have been accepted (GRECO, 2018a). The results suggest that there has been a substantial increase in the percentage of requests accepted before and after 2009. Comparing that ratio in the two periods of 2004-2009 and 2010-2014 we see an almost three-fold increase in the percentage of requests accepted by parliament to revoke immunity for MPs.

Despite discussions since 2002 about amending the regime of immunities in Greece, no such changes have taken place, neither at the constitutional level nor in other legal sources. In 2011, a special procedure was introduced for the prosecution of parliamentarians, mandating that such investigations be conducted by a President of the First Instance Court. These investigations are also given absolute priority and must be carried out within four months (GRECO, 2015b). However, this legal provision only applies once parliament has decided to lift an MP's immunity and therefore would have no bearing on the increased ratio of accepted requests for immunity revocation. Maria Gavounelli, a member of the European Commission Expert Group on Corruption has confirmed that there has been no legal change that could have triggered the increased number of accepted requests for immunity revocation (M. Gavounelli, interview, 9 March, 2018).

As shown by the data above, the Greek parliament dramatically increased the number of accepted requests for immunity revocations from around 2009 on. Having proven that this shift was not driven by legal interventions, the most plausible alternative remains a shift in the incentives of parliamentarians to protect their colleagues. The riots in December 2008 followed by mass protests in January 2009 were in part fueled by frustrations with high levels of corruption in Greece. John Karamichalis (2009) argues that corruption and bribery scandals among high-ranking government officials and the fact that all three branches of government had been tainted by some form of abuse of power for private played an important role in the 2008/2009 riots and subsequent protests. Similarly, Michalis Psimitis (2011) has attributed the protest cycle of Spring 2010 in Greece partially to political corruption. He argues that corruption was the master frame of the protest cycle and quotes protesters standing outside the Greek parliament chanting: 'we are tens, we are many, today we will all get into the Parliament' and 'Burn, burn the brothel called Parliament' (cited in: Psimitis, 2011, p. 198). One would imagine that any MP sitting in the Greek parliament, hearing these threats from protesters and mobs who had indeed broken in and occupied public institutions in the past, would be less keen on protecting corrupt MPs who were one of the very reasons why people were up in arms.

Whilst the evidence provided here is insufficient to claim whether the protest movement certainly caused the change, this case shows clearly that amending the national regime of immunities was not necessary in order to have more immunity revocation requests accepted. However, it does not preclude the possibility that better legislation may have led to even better outcomes.

In Belgium, the monarch, members of the federal assemblies, ministers and their state secretaries enjoy immunity from prosecution. Articles 58, 59 and 120 of the Belgian constitution regulate immunity provisions for members of parliament. They enjoy guarantees in relation to prosecution and arrest except for cases when caught in the act of committing a crime. In order for their immunity to be lifted and allow for normal legal proceedings, the prosecution ought to apply for parliament's authorisation. The application requested to lift an MPs immunity must satisfy three conditions: 1) it must be of a serious nature, 2) it must be sincere and not dictated by political considerations, 3) it must have sufficient gravity to justify disrupting the normal course of its work (GRECO, 2000).

In the first Evaluation Report for Belgium, GRECO (2000, p.13) concluded that "The system of immunities in Belgium and the mechanisms for obtaining waiver of immunity, whether diplomatic, parliamentary or appertaining to members of executive bodies, do not seem to impede disproportionately the conduct of inquiries, prosecutions and the sentencing of the persons concerned." In order to conclude that good quality legislation is sufficient for effective prosecution of corruption, particularly in a country that observes rule of law like Belgium, we would expect to see that immunity for MPs is always lifted when the prosecution makes such requests. However, in a subsequent evaluation, GRECO discovered that Parliament had declined to lift the inviolability of two members suspected of corruption (GRECO, 2014). The first case concerned the use of a municipal employee for an election campaign by a parliamentarian also holding a mandate as a local representative. The second case concerned possible manipulation of a public procurement contract. The justification given by parliament for not lifting their immunities was that both alleged acts were of a trivial character. Based on these findings, GRECO recommended that the appropriate measures be taken in order that parliamentary inviolability is invoked in practice only for acts having an obvious connection with parliamentary activity and to introduce criteria for waiving immunity which do not constitute an obstacle to the prosecution of corruption-related acts by parliamentarians (GRECO, 2014). The first part of that recommendation recognises that whilst the law may mandate for inviolability to be invoked only for acts having an obvious connection with parliamentary activity that has not always been the case in practice. This case illustrates that good quality legislation was not a sufficient condition to ensure the effective prosecution of cases of corruption, even in an old democracy with good enforcement of the rule of law.

The cases of Greece and Belgium are instructive when considered together. In the case of Greece, GRECO has concluded that part of the reason why the Parliament rejects the majority requests for the revocation of MPs immunities is because it is not required to provide a reason for such a decision and that there are no clear criteria guiding that decision (GRECO, 2015b). In the case of Belgium, parliament is indeed required to provide a reason for the decision of revoking immunities or not and there are three criteria on which that decision ought to be based upon. However, even in the presence of such legal requirements the Belgian parliament took the decision to not lift the immunity of two MPs accused of corruption. The danger with always prescribing legal solutions is that of infinite legal iteration, a situation in which lawmakers come up with new laws to fight corruption and the perpetrators of corruption come up with new ways to circumvent them, resulting in a perpetual game of catch-up, where the corrupt are always one step ahead. That is not to say laws do not matter – they are the bedrock of modern and impersonal governance –however new laws should only be introduced when based on a solid theory of change and empirical evidence. It could be that new laws are not needed but instead new norms that ensure existing laws are upheld. In the case of Greece, what could have triggered the increase in the number of accepted requests to lift immunity after 2009 could have been the popular response against the political and financial elites. Politicians may have felt that they could not keep protecting their fellow MPs due to the popular discontent and the threat of electoral accountability in action. This hypothesis remains to be tested; however what is clear is that the change in the practice of lifting immunities in Greece was at least partially driven by normative change instead of a legislative agenda.

Limitations

There are four key limitations to this study. Firstly, the statistical model does not track the covariance of immunity legislation and corruption over time. For this reason, the general findings rely on a simple and unsophisticated OLS cross-sectional regression. Therefore, all results of the quantitative analysis are merely associational. We cannot draw inferences on what we would expect to

observe in terms of control of corruption if countries decided to amend their immunity legislation and improve their Index of Immunity Provisions score.

Secondly, once all covariates are introduced to the econometric model, the sample becomes very small with only 59 countries. This does not allow for the proper exploration of interaction effects, for example the role that rule of law plays on the effectiveness of immunity provisions on control of corruption. The small sample size could also result in higher standard errors and therefore hiding potentially significant associations between variables.

Thirdly, the lack of systematic data on the number of requests made by national prosecutors to their respective parliaments to lift MPs' immunities and the number of such request authorized by parliaments presents a key challenge to anyone who is interested in assessing the impact of immunity provisions on the prosecution of politicians.

Finally, the two case studies were selected with the aim of illustrating cases where laws were not necessary or sufficient to affect change in practice. Whilst there were no evident cases among GRECO country reports of immunity legislation having an effect on better prosecution of corruption, this information may not be available as a result of the lack of data. Therefore, the two case studies are simply examples and have no inferential leverage on answering the broader research question.

Conclusion

Immunity provisions for high-ranking public officials are a standard feature of modern states and are necessary to ensure the separation of powers. However, there is a fundamental tension between the independence of public officials from undue external pressure and effective accountability mechanisms which ensure their actions are scrutinised and when properly adjudicated. International bodies such as the UN have gone as far as singling out immunity provisions as one of the main drivers of grand corruption, and international benchmarks have been emerging over the past two decades prescribing what domestic immunity regimes should look like.

This line of reasoning assumes that impunity is a function of legal provisions, rather than more systemic power dynamics, such as negative social capital networks and status groups. At the very least, these international benchmarks assume that there are certain universal legal features which are needed to fight impunity and corruption. This study has attempted to empirically test that assumption and has found almost no evidence that the set of international standards recommended to countries around the world are associated with better control of corruption, however more research is required to confirm these findings. Further research could focus on two particular strategies. The first strategy would be to construct the Index of Immunity Provisions as a time series variable in order to be able to track changes in legislation over time. These changes in legislation can then be compared to our variables of interests such as control of corruption, bribery, prosecution of public officials and so on. The second stream of potential further research would be to identify other cases similar to Greece, where there was an increase in the ratio of accepted requests to revoke MPs immunities and to interrogate the reasons behind these changes through interviews with MPs, causal process tracing or other qualitative and quantitative causal methods.

There are two main conclusions that can be drawn from this study. The first is that simply exporting legal provisions on immunity for public officials to countries around the world is not likely to work as an anti-corruption and impunity reducing strategy. Laws can never factor in every potential wrongdoing and corrupt officials are likely to find creative ways around new laws, leading to an endless cycle of legal changes that do not address the root causes of corruption.

The second conclusion is that, as suggest by Mungiu-Pippidi (2017), the best anti-corruption tools are those which do not rely on the government alone, rather they cut across state and society. In

the Greek case, society took to the streets and demanded an end to the abuses of the corrupt elites, which may have yielded the only substantial, observable and documented improvement in the number of lifted immunities across all GRECO evaluations since 2000. That is not to say that protests are necessarily the answer, however involving citizens, civil society and media in an open discussion about immunity and how it is being used and abused, could shift the incentives MPs have to turn legitimate legal protection into a shield from criminal liability.

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Appendix 1: Immunity Protections for MPs and Ministers[2]

Country	Immunity granted to: Ministers	MPs	Country	Immunity granted to: Ministers	MPs
Albania	✓	✓	Malawi	✗	✗
Angola	✓	✓	Mali	✗	✓
Argentina	✓	✓	Mauritania	✗	✓
Armenia	✗	✓	Mauritius	✓	✗
Azerbaijan	✓	✓	Mexico	✓	✓
Bangladesh	✓	✓	Moldova	✗	✓
Benin	✗	✓	Mongolia	✓	✓
Bolivia	✓	✓	Montenegro	✓	✓
Bosnia	✓	✓	Morocco	✓	✓
Botswana	✗	✗	Namibia	✓	✓
Brazil	✗	✓	Nepal	✓	✓
Bulgaria	✗	✓	Niger	✗	✓
Burkina Faso	✗	✓	Nigeria	✗	✓
Burundi	✗	✓	Norway	✗	✓
Cambodia	✗	✓	Pakistan	✓	✓
Congo, DR	✗	✓	Palau	✗	✓
Congo Republic	✓	✓	Papua New Guinea	✗	✓
Croatia	✗	✓	Philippines	✓	✓
Czech	✗	✓	Poland	✓	✓
Dominican Republic	✓	✓	Romania	✓	✓
Estonia	✓	✓	Russia	✗	✓
Ethiopia	✓	✓	Senegal	✗	✓
Fiji	✗	✓	Serbia	✓	✓
France	✗	✓	Sierra Leone	✗	✓
Gambia	✗	✓	Slovakia	✗	✓
Georgia	✗	✓	Slovenia	✗	✓
Germany	✗	✓	Solomon Islands	✓	✓
Ghana	✗	✓	South Africa	✓	✓
Guinea	✗	✓	SriLanka	✓	✓
Guyana	✓	✓	Taiwan	✗	✓
Honduras	✗	✗	Tajikistan	✗	✓
India	✓	✓	Tanzania	✗	✓
Indonesia	✗	✓	Timor Leste	✓	✓
Italy	✓	✓	Tonga	✓	✓
Japan	✓	✓	Turkey	✓	✓
Jordan	✓	✓	Uganda	✗	✓
Kazakhstan	✗	✓	Ukraine	✗	✓
Kenya	✗	✓	United Kingdom	✓	✓
Kyrgyz Republic	✓	✓	United States	✓	✓
Lao	✗	✓	Uzbekistan	✗	✓
Latvia	✗	✓	Vanuatu	✓	✓
Lithuania	✓	✓	Vietnam	✗	✓
Macedonia	✓	✓	Zambia	✓	✓
Madagascar	✗	✓	Zimbabwe	✗	✓

[2] Individual country reports can be found here: http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTPUBLICSECTORANDGOVERNANCE/0,,contentMDK:23352107~pagePK:148956~piPK:216618~theSitePK:286305,00.html

Apendix 2: Group of States against Corruption Recommendations on immunity provisions

Country	Recommendations regarding immunity protection				
	Reduction in the list of categories of officials covered	Reduction of the scope of immunity (flagrante delicto, serious crimes etc.)	Introduction or improvement of guidelines for the lifting of immunity	Limiting Duration of Immunity	Other
Albania	✔	✔			
Andorra					
Armenia	✔				
Austria			✔		
Azerbaijan	✔		✔		
Belarus					
Belgium		✔			1)Ensure that immunity is invoked only for acts connected to parliamentary activity; 2) ensure that criteria for waiving immunity do not constitute an obstacle.
Bosnia and Herzegovina	✔		✔		Ensure that the legal framework is clear and understood by practitioners and the public at large.
Bulgaria	✔		✔		
Croatia			✔		
Cyprus					
Czech Republic			✔	✔	
Denmark					
Estonia					
Finland					Finland should consider limiting the scope of immunity granted, to exclude acts of corruption and to simplify the procedure for lifing their immunity. These points were not official recommendations given the low level of corruption in Finland.
France					Clarify the conditions for submitting requests for the lifting of immunity, for all practitioners of criminal justice likely to submit such requests.
Georgia	✔	✔	✔		
Germany					
Greece			✔		

Country	Recommendations regarding immunity protection				
	Reduction in the list of categories of officials covered	Reduction of the scope of immunity (flagrante delicto, serious crimes etc.)	Introduction or improvement of guidelines for the lifting of immunity	Limiting Duration of Immunity	Other
Hungary			✔	✔	Ensure that procedures to lift immunity do not hamper criminal investigations in respect of corruption related offences.
Iceland					
Italy			✔		
Ireland					
Latvia			✔		The system of administrative immunities for members of the Saeima should be abolished.
Lithuania			✔		
Luxembourg					
Macedonia			✔		Amend the national legislation to ensure that the procedure for deciding on immunities of members of Government is not be carried out by the Government itself
Malta					
Moldova			✔		
Monaco		✔	✔		Abolish practice which requires judicial authorities to obtain athorisation at several levels in order to prosecutee and try Monegasque civil servants and administrative or military employees.
Montenegro			✔		
Netherlands					
Norway					
Poland	✔	✔	✔		
Portugal			✔		
Romania	✔		✔	✔	
Russia	✔		✔		

Country	Recommendations regarding immunity protection				
	Reduction in the list of categories of officials covered	Reduction of the scope of immunity (flagrante delicto, serious crimes etc.)	Introduction or improvement of guidelines for the lifting of immunity	Limiting Duration of Immunity	Other
Spain					
Sweden					
Switzerland					Ensure that the equirement for prosecuting authorities to request authorisation to bring criminal proceedings against federal employees does not constitute an obstacle to the effective prosecution of corruption.
Turkey	✔		✔		
Ukraine			✔		Consider introducing measures to esnure the securing of evidence in situations where persons enjoying immunity are caught in the act of committing a serious crime, including corruption.
United Kingdom		✔			
United States of America					
Total	10	6	23	3	11