
Whose Game? FIFA, Corruption and the Challenge of Global Governance

Sahiba Gill,* Edouard Adelus** and Francisco de Abreu Duarte***

John Sugden and Alan Tomlinson. **Football, Corruption and Lies: Revisiting 'Badfellas', the Book FIFA Tried to Ban**. New York: Routledge, 2017. Pp. 290. \$58.95. ISBN: 9781138681774.

David Conn. **The Fall of the House of FIFA: The Multimillion-Dollar Corruption at the Heart of Global Soccer**. New York: Nation Books, 2017. Pp. 328. \$27.00. ISBN: 9781568585963.

Heidi Blake and Jonathan Calvert. **The Ugly Game: The Corruption of FIFA and the Qatari Plot to Buy the World Cup**. New York: Scribner, 2015. Pp. 480. \$24.95. ISBN: 9781501131493.

Bonita Mersiades. **Whatever It Takes: The Inside Story of the FIFA Way**. Cheyenne: Powderhouse, 2018. Pp. 472. \$20.00. ISBN: 9780999643105.

Jamil Chade. **Política, Propina e Futebol: Como o Padrão FIFA Ameaça o Esporte Mais Popular do Planeta** [Politics, Bribes, and Football: How FIFA Standards Threaten the Most Popular Sport on the Planet]. Rio de Janeiro: Objetiva, 2015. Pp. 336. \$42.00. ISBN: 9788539007042.

Abstract

The present review essay provides an analysis of the Fédération Internationale de Football Association (FIFA) from the point of view of global governance. Through a review of five books on corruption in FIFA, written for a general audience, the essay describes FIFA as an

* JD degree, New York University School of Law, USA. Email: sahiba.k.gill@gmail.com.

** Trainee lawyer at the Paris Bar, France; LLM degree, New York University School of Law, USA. Email: edouard.adelus@gmail.com.

*** PhD candidate, European University Institute; LLM degree, New York University School of Law, USA; Associated Research Fellow, Lisbon Centre for Research in Public Law, Law School, University of Lisbon, Portugal. Email: francisco.abreu.duarte@gmail.com.

institution of global governance in which several forms of corruption are widespread among its member organizations and confederations and within the FIFA leadership. This review essay uses the accounts of corruption in FIFA that these books provide to argue that corruption helps solve coordination problems in FIFA by coordinating divergent interests, allocating or distributing funds and allowing for a network of diverse and diffuse actors to fundamentally shape global football. The systemic use of bribing and the exchange of political favours and other means of informal allocation of power are more than mere spontaneous illegalities; they represent an informal, but systematic, means of governance in FIFA. We argue that the February 2016 FIFA reforms fell short of addressing this activity. The reviewed books all call for governing FIFA in the public interest, and the essay presents some pathways to reform and potential replacements for the use of corruption with the aim of returning the game to the general public.

1 Introduction

The five books reviewed in this review essay are written for a general audience about the corruption in the Fédération Internationale de Football Association (FIFA), the international governing body of football. They focus on the recent history of corruption in FIFA, including the 2010 vote for the 2018/2022 World Cups, which was mired in widespread accusations of corruption, and the USA's May and December 2015 indictments of a total of 29 present and former FIFA officials for corruption in the organization including racketeering, wire fraud and money laundering, conducted through the US banking system.¹ These books are as useful for describing acts of corruption in FIFA as they are for beginning to analyse the underlying causes of this corruption through the lens of global governance.

Corruption has led FIFA into a protracted crisis that reached its peak from 2010 to 2015. In November 2010, FIFA officials and journalists alleged corruption in the host bids for the 2018/2022 World Cups, which had been scheduled for the following month. Immediately thereafter, two FIFA officials who were among the subjects of the allegations, Amos Adamu and Reynald Temarii, were banned from the World Cup vote, which Russia and Qatar won against strong candidates such as the USA and England, furthering suspicion of misconduct. Barely six months passed before another scandal in May 2011, when Jack Warner (a FIFA Executive Committee member and then president of the Confederation of North, Central American and Caribbean Association Football [Concacaf]) allegedly helped Mohamed bin Hammam of Qatar (a FIFA Executive Committee member and then president of the Asian Football Confederation [AFC]) offer cash gifts worth US\$40,000 each to members of the Caribbean Football

¹ US Department of Justice, 'Nine FIFA Officials and Five Corporate Executive Indicted for Racketeering Conspiracy and Corruption' (27 May 2015), available at www.justice.gov/opa/pr/nine-fifa-officials-and-five-corporate-executives-indicted-racketeering-conspiracy-and.

Union (CFU), a group within Concacaf, just two weeks before bin Hammam was to run for FIFA president against incumbent Sepp Blatter, who had been elected in 1998. By July, FIFA had banned both Warner and bin Hammam from football for life. In the following years, FIFA attempted to establish accountability for alleged misconduct; the FIFA Ethics Committee, created in 2006 and reformed substantially in 2011, investigated the 2018/2022 World Cup host vote as well as new allegations from Concacaf Secretary General Chuck Blazer about a US \$10 million bribe from South Africa to Warner and himself in exchange for a vote in favour of South Africa.

But, as the US arrests in May and December 2015 would reveal, FIFA had already been fundamentally compromised at its highest levels. Incumbent FIFA president Blatter was re-elected for his fifth term within weeks of the first US arrests in May on the strength of his popularity within FIFA, but due to the external pressure from the public for high-level accountability for the conduct leading to such arrests, Blatter nevertheless resigned. In 2016, the FIFA Ethics Committee banned Blatter from football for eight years (which was reduced to six years after appeal²) for an improper payment of £1.35 million to Michel Platini, president of the Union of European Football Associations (UEFA). Soon after, the Swiss authorities started investigating payments that Blatter made to himself and to two FIFA officials, which they had unilaterally approved for themselves as members of the Compensation Committee. Such high-level corruption in FIFA has roots that stretch back decades. The Concacaf and South American Football Confederation (CONMEBOL) sports marketing schemes that led to the US arrests date back to the 1990s. In 1974, when FIFA first began selling its own media rights to sports marketers, then FIFA president João Havelange was the leader who initiated these marketing schemes, beginning at the FIFA level; Concacaf and CONMEBOL leadership, including Havelange's son-in-law, then replicated it in their respective confederations. Likewise, even if bin Hammam was caught for handing out envelopes of cash to CFU representatives in 2010 during his FIFA presidential candidacy, the practice was not new. The night before his first presidential election in 1998, Sepp Blatter allegedly delivered envelopes of cash to the Confederation of African Football (CAF) representatives in order to secure their votes the next day.

Accordingly, the books reviewed here cover the corruption in FIFA from its historical origins to the most recent scandal in order to capture the organization's 'culture of corruption', a phrase the US Department of Justice used to indicate not only the scale of wrongful acts in FIFA but also the organizational impunity for them that has spanned decades. *The Fall of the House of FIFA: The Multimillion-Dollar Corruption at the Heart of Global Soccer* by David Conn and *Football, Corruption and Lies: Revisiting 'Badfellas', the Book FIFA Tried to Ban* by John Sugden and Alan Tomlinson document the 'culture of corruption' through each major era of modern FIFA history until the present day. Conn is a sports journalist covering football who writes primarily for *the Guardian* in the United Kingdom (UK), while Sugden and Tomlinson are sociologists whose book is a re-publication of their

² Court of Arbitration for Sport (CAS), *Joseph S. Blatter v. Fédération Internationale de Football Association (FIFA)*, Case no. CAS 2016/A/4501, 5 December 2016, para. 318.

2003 book *Badfellas: FIFA Family at War*, one of the first academic studies of corruption in FIFA. *The Ugly Game: The Corruption of FIFA and the Qatari Plot to Buy the World Cup* by Heidi Blake and Jonathan Calvert and *Whatever It Takes: The Inside Story of the FIFA Way* by Bonita Mersiades both provide insider scoops on the 2018/2022 World Cup host votes. *The Ugly Game* is based on several thousand personal records of Mohamed bin Hammam that were anonymously leaked to the authors, who were journalists at the *Sunday Times* in the UK. *Whatever It Takes* was written by a member of the Australian 2018/2022 World Cup bid team about the bidding process in which she participated. Both books depict a strategy to win the World Cup bid that consisted of gifts and bribes by FIFA member associations, confederations and, in some cases, states. Finally, written in Portuguese by Brazilian journalist Jamil Chade, *Politics, Bribes, and Football: How FIFA Standards Threaten the Most Popular Sport on the Planet* focuses on the long legacy of corruption in Brazilian football. Despite its success on the football pitch, Brazilian football has been overrun with widespread corruption met with domestic and FIFA-level impunity, to which the public responded with mass protests before the 2014 FIFA World Cup in Brazil.

For global governance, the ‘culture of corruption’ depicted in these books gained new significance when FIFA initiated governance reforms after the May 2015 US arrests. At the time, many observers were optimistic about FIFA’s ability to reform and placed hope for change in the new FIFA president, Gianni Infantino, who FIFA elected in an Extraordinary Congress in February 2016. At the same Extraordinary Congress, FIFA passed a slate of reforms by amending its constitutive document, the FIFA Statutes, a step that confirmed the high expectations of many.³ But at its ordinary Congress just months later in May 2016, FIFA defanged its reforms significantly. The original February 2016 reforms had given hiring and firing power over members of the independent committees – a new Audit and Compliance Committee and Governance Committee, as well as the existing Ethics Committee – to the 211-member FIFA Congress, the legislative body of FIFA. This had been a significant improvement from the pre-2015 FIFA Statutes, which had required the members of the Ethics Committee to come from outside football but gave hiring and firing power over them to the highly political 25-member FIFA Executive Committee. But, at the ordinary FIFA Congress in May 2016, FIFA returned hiring and firing power over the members of the independent committees to a political body: the 37-member FIFA Council, which was the post-reform successor to the FIFA Executive Committee and was understood to be heavily under FIFA president Infantino’s control. Domenico Scala, chair of the Audit and Compliance Committee, resigned in response. At the next ordinary FIFA Congress in May 2017, FIFA ousted the chairman of the Governance Committee and the chairmen of the investigatory and adjudicatory chambers of the Ethics Committee, which prompted several other Governance Committee members to resign as well.⁴

³ FIFA Statutes: Regulations Governing the Application of the Statutes (2018 FIFA Statutes), Standing Orders of the Congress, August 2018, available at <https://resources.fifa.com/image/upload/the-fifa-statutes-2018.pdf?cloudid=whhncbdzio03cuhmwfxa>.

⁴ N. Pillay, M.P. Maduro and J. Weiler, ‘Our Sin? We Appeared to Take Our Task at FIFA Too Seriously’, *The Guardian* (21 December 2017), available at www.theguardian.com/football/2017/dec/21/our-sin-take-task-fifa-seriously.

In the few months from February to May 2016 when the new independent committees had been insulated from political control, their members had clashed with Infantino on several issues.⁵ Infantino wanted more than the two million Swiss francs that the Audit and Compliance Committee had recommended he be paid based on non-profit and corporate industry standards. The Ethics Committee was investigating Infantino for improperly accepting flights on private jets and for also improperly influencing the election of the president of CAF. Against the recommendations of the Governance Committee, Infantino had pushed for Vitaly Mutko, the Russian Football Union president, to be allowed to serve on the FIFA Council even though he simultaneously served as minister of sport of Russia and had been banned by the International Olympic Committee for having aided the Russian doping programme for the Olympics, both of which could be considered to have placed him in contravention of FIFA regulations.

By contrast, after they were brought under political control in May 2016, the independent committees took decisions that aligned with the preferences of FIFA's leadership. The Ethics Committee cleared Infantino of wrongdoing in August 2016. FIFA retained Mutko on the FIFA Council until March 2017; when the Governance Committee blocked his re-election, FIFA replaced the committee leadership, as discussed above. The striking reversals indicated that the FIFA leadership had retained significant power to avoid decisions with which it disagreed. Though the governance reforms had been in the public interest, FIFA, nevertheless, had been able to undo them because FIFA's governance structure did not guarantee the global football-watching public a voice in decision-making, and reputational harm no longer appeared to be a threat that would prompt FIFA to act in the public interest.

How FIFA should be governed is directly addressed in the books under review, each of which conclude in their closing chapters that football should be governed in the global public interest. As several of the books note, when international football competition began, amateur ideals of fair play and sportsmanship governed the pitch. As FIFA began to pursue advertising partnerships with major brands like Coca-Cola, public-minded ideals continued to matter. Brands like Coca-Cola wanted to be associated with global football as a symbol of global cooperation built on universal equality among countries and their players. In the 1990s, this vision blossomed as major clubs increasingly recruited worldwide so that their teams represented the best talent in the world, at the same time as new and existing media markets were expanding to most countries and FIFA was taking steps to guarantee equal minimum funding to member associations. The objective of FIFA became 'to improve the game of football constantly and promote it globally in the light of its unifying, educational, cultural and humanitarian values'.⁶ International sports-governing bodies like FIFA are still expected to respect core principles of law, including the rule of law, the separation of powers, transparency, accountability and democracy.⁷

⁵ Gianni Infantino asked for the Governance Committee to allow Russian Vitaly Mutko, head of the Russia World Cup Organizing Committee and Minister of Sports, to continue to serve in the Fédération Internationale de Football Association (FIFA), though, as a Russian government official, he was no longer eligible under the 2018 FIFA Statutes.

⁶ 2018 FIFA Statutes, *supra* note 3, Art. 2.

⁷ See M. Peith, *Governing FIFA*, 19 September 2011, at 17–19, available at www.fifa.com/mm/document/affederation/footballgovernance/01/54/99/69/fifagutachten-en.pdf.

Meanwhile, global football's public viewership exploded through the expansion of media markets worldwide. The global football-watching public is the fundamental reason for FIFA's major source of revenue through the sale of media rights to its games. According to FIFA estimates, over 1.1 billion people watched the final match of the 2018 FIFA World Cup in Russia live.⁸ As media markets expanded from the 1970s onwards, global football became a quasi-public good. Football itself remains non-rivalrous and non-excludable since anyone with an improvised ball can play. Of course, tickets to live matches or television and Internet subscriptions for full matches remain private goods. Yet, increasingly, watching games and accessing scores has become available almost for free to anyone with a mobile Internet connection or to anyone who can access games that are shown on the street or in a bar or restaurant.

But, as the fights over FIFA governance reforms show, how to govern FIFA in the global public interest remains an unanswered question. Even after reforms, neither FIFA nor its 211 member associations or six continental confederations are required to or for the most part choose to include external stakeholders like football fans in their governance structure.⁹ With this in mind, we review these books in search of the role of governance in the 'culture of corruption' in FIFA, a culture that spans the globe and governs one of humanity's favourite sports. In Part 2, we analyse this culture within FIFA, describing FIFA's evolution from an amateur association to a multi-billion-dollar enterprise. In Part 3, we consider how corruption has functioned as an informal governance tool in FIFA and how the February 2016 FIFA reforms addressed it. Finally, in Part 4, we evaluate whether and how FIFA governance can be reformed to better consider the global football-watching public.

2 FIFA and the 'Culture of Corruption'

A State Power and the Expansion of Global Football

The modern history of FIFA begins with the spread of the football organization globally in the post-war period. In 1944, FIFA had 60 member associations; by 1964, it had more than doubled in size to 123, 32 of which joined between 1960 and 1964, as previously colonized states gained independence.¹⁰ As John Sugden and Alan Tomlinson observe, the bare bones of the football association existed: a president, running FIFA out of a home in Zurich, and his staff (at 49). In response to growing administrative needs, FIFA did create formal governance bodies. The 1961 FIFA Extraordinary Congress revised its Statutes to create a general secretariat and Executive Committee,

⁸ FIFA, *2018 FIFA World Cup Russia: Global Broadcast and Audience Summary* (2018), at 5, available at <https://resources.fifa.com/image/upload/2018-fifa-world-cup-russia-global-broadcast-and-audience-executive-summary.pdf?cloudid=njqsntrvdvqv8ho1dag5>.

⁹ 2018 FIFA Statutes, *supra* note 3, Art. 11(1).

¹⁰ Eisenberg, 'Political Ignorance to Global Responsibility: The Role of World Association Football', 39 *Journal of Sport History* (2005) 379, at 384.

which held the fullest powers of administration and management, including selecting the World Cup host country, beginning in 1970.¹¹ Nevertheless, as Sugden and Tomlinson write, it was an era of making key decisions in football in smoke-filled back rooms (at 24).

In 1974, building on his own strength as president of the Brazilian Football Association – and with the support of Brazilian football legend Pelé – João Havelange won the FIFA presidency on a platform of distributing funds to under-developed football associations, which were concentrated in Africa and Asia. Although Havelange had personal charisma and flashy tactics, both Conn and Sugden and Tomlinson consider his political strategy within FIFA to be the root of his success. The Havelange strategy was to play into the structure of FIFA. FIFA member associations were by this point the FIFA president's electoral constituency; they had needs, and they also elected the FIFA president. In such a system, Havelange simply needed to deliver for his constituents, which were heavily concentrated in South America, Africa and Asia, in order to rise to power.

In turn, the new FIFA member associations had organized themselves to develop significant power within FIFA, thanks to its governance structure, as Conn and Sugden and Tomlinson both highlight throughout their analyses. Discussed in more detail below, the basic structure of FIFA was composed of four bodies: a Congress with representatives from every member association, a president, an Executive Committee with members appointed by continental confederations and a general secretariat, which oversaw day-to-day business. In the Congress, FIFA represented football states according to the one country-one federation-one vote system, which was consistent with international bodies like the United Nations General Assembly in which sovereign states each have one vote.¹² As in other institutions, this structure gave small states – for example, Trinidad and Tobago – the same power in the FIFA Congress as major states like France. This was checked slightly in the Executive Committee, in which FIFA allocated seats to its member confederations for them to fill.¹³ But disproportionate representation remained an issue. For example, CONMEBOL and Concacaf each had three Executive Committee members, but CONMEBOL has 10 member associations and Concacaf has 41, meaning that despite CONMEBOL's members having larger football programmes, Concacaf had greater representation within the FIFA Congress, which translated into greater influence. This dynamic was key to the system that Havelange used to win loyalty by distributing funding to new member associations.

¹¹ Homburg, 'Financing World Football: A Business History of the Fédération Internationale de Football Association', 53 *Zeitschrift für Unternehmensgeschichte* (2008) 33, at 54, 57.

¹² Eisenberg, *supra* note 10, at 381.

¹³ One Executive Committee member was elected by the four British member associations; three members by the South American Football Confederation; four members by the Asian Football Confederation; eight members by the Union of European Football Associations; four members by the Confederation of African Football; three members by the Confederation of North, Central American and Caribbean Association Football; and one member by the Oceania Football Association. See FIFA Statutes: Regulations Governing the Application of the Statutes (2015 FIFA Statutes), Standing Orders of the Congress, April 2015, Art. 30, available at www.fifa.com/mm/document/affederation/generic/02/58/14/48/2015fifastatutesen%5fneutral.pdf.

In each of their books, Conn and Sugden and Tomlinson confront whether the ‘culture of corruption’ in FIFA stems from the ‘cultures’ of corruption outside it. Sugden and Tomlinson suggest that it does. In their chapter ‘Politics of the Belly’, they explain that CAF has become a key power bloc in the organization because of ‘quasi-feudal traditions’ of power in Africa in which the few have command over scarce resources and extort the many who want to gain access to them. According to these authors, this so-called ‘politics of the belly’ in Africa explains why CAF member associations leverage scarce resources over which they have command and sell their votes to the highest bidder (Sugden and Tomlinson, at 108). In the concluding chapters of his book, Conn argues against this view, pointing out that the corruption in FIFA began not in Africa but, rather, in Germany and Switzerland in deals with European sports marketing companies, made to enrich FIFA leadership and its constituents (at 274). Conn has the better argument, based on the evidence in the books reviewed. By 1974, the structure of FIFA gave voice to new constituencies with little to no budget or organizational history, and, therefore, power in FIFA depended upon gaining their votes and satisfying their interests (*ibid.*, at 58). As the largest confederation in FIFA, CAF was a key voting bloc on this logic alone. In explaining the rise of Havelange, even Sugden and Tomlinson point to FIFA’s structure and corruption in Europe, beginning with the sports marketing companies, as the beginning of corruption in FIFA (chs 3–4).

B Global Capital; Global Football

FIFA is a non-profit organization registered as a Swiss *verein*, which permits it to pursue commercial activity only in pursuit of its non-profit goal.¹⁴ In its modern history, FIFA’s pursuit of its non-profit goal – ‘to improve the game of football constantly and promote it globally in the light of its unifying, educational, cultural and humanitarian values’¹⁵ – has been inextricably tied to the injection of capital into the game. For Havelange, gaining revenue for FIFA was essential in order to deliver on his election promise to expand the game globally – to fund new member associations and to expand the World Cup to 24 countries in 1982 (Conn, at 49). Conn notes that European member associations would have preferred to keep FIFA under their control, but, once Havelange became president, with the backing of Africa, Asia, and South America, governing football ‘for the world’ would require more commercialization. The amateurism would need to become professionalism (*ibid.*, ch. 4). Both Conn and Sugden and Tomlinson write that doing so was essential for Havelange to meet his campaign promises (*ibid.*; Sugden and Tomlinson, at 50). Furthermore, it was now possible to sell the FIFA World Cup as a more lucrative product. Sports marketing advertisers like Adidas were developing a model of exclusive sponsorships of players and tournaments, creating an opportunity for FIFA to sell advertising rights. Increasing television penetration meant that FIFA could sell television rights for its matches at significant value as well.

¹⁴ Swiss Civil Code, 10 December 1907, revised 1 January 2019, Art. 60.s.

¹⁵ 2018 FIFA Statutes, *supra* note 3, Art. 2.a.

Soon after his election in 1974, Havelange began partnering with sports marketing firm West Nally to sell rights to the FIFA World Cup. In different ways, both Conn and Sugden and Tomlinson show how advertisers, who had recently discovered the basics of what came to be modern sports advertising such as sponsorships and advertisement placements, encouraged FIFA to expand global football to new constituencies and thereby open new advertising markets in the process. Conn highlights that FIFA undertaking a coordinated global football development programme, as such, only began in 1975 when Coca-Cola not only sponsored the programme but also provided key infrastructure for outreach through their distribution networks rather than through the domestic football associations (at 46). As Sugden and Tomlinson write, West Nally came up with the first 1977 FIFA World Youth Championship, for which it was able to get Coca-Cola as a sponsor, which was the precursor to Coca-Cola sponsoring the 1978 World Cup in Argentina (at 50–52).

Dealing with sports marketing companies was arguably the first major source of corruption in modern FIFA. Conn and Sugden and Tomlinson include interviews with Patrick Nally, founder of West Nally. Conn includes Nally's explanation of his business partner Horst Dassler's strategy to give side payments to FIFA, ensuring that its officials would remain loyal (at 271). The strategy worked. When Dassler split from West Nally and formed International Sports Leisure (ISL) with Japanese firm Dentsu in 1982, FIFA gave ISL exclusive control over its rights until ISL's bankruptcy in 2001. As Conn and Sugden and Tomlinson both detail, bankruptcy proceedings for ISL meant that their financial relationship with FIFA was revealed in court, which became a major force for accountability for past corruption (Conn, at 150–151; Sugden and Tomlinson, ch. 1). By 1998, Sepp Blatter, who had first negotiated the Coca-Cola sponsorship of development programmes and overseen football development under Havelange as his secretary general, had been elected FIFA president. But Blatter faced re-election in 2001, 11 members of the FIFA Executive Committee filed a criminal complaint for mismanagement against him in the Swiss court, which the Swiss prosecutor ultimately declined to investigate after reaching a settlement with FIFA (Conn, at 150–153; Sugden and Tomlinson, at 15). Blatter won re-election that year, and no one was ultimately held accountable for the alleged conduct (Conn, ch. 10). FIFA has not sought repayment from the officials who were known to have been paid bribes (*ibid.*, at 152). The ISL case is among the clearest examples of corruption in FIFA, plain self-dealing at the cost of funds contractually due to FIFA.

However, venality in FIFA is not always so straightforward. For example, the books reviewed frequently observe the spending habits of FIFA officials to highlight the distance between the masses who watch football and the elite cadre running it. By the late 1990s, football media rights had increased in value exponentially, flooding FIFA with capital (Conn, at 58).¹⁶ Sugden and Tomlinson observe that FIFA had become associated with luxury; FIFA members earned high salaries and honorariums, and FIFA events – for which FIFA, its confederations or member associations, typically paid

¹⁶ Homburg, *supra* note 11, at 33.

expenses – were hosted at luxury hotels, executive lounges and high-end restaurants (see, e.g., ch. 12; Mersiades, chs 6, 8; see also Blake and Calvert, at 40, 133). Both books dedicated to the host vote for the 2018/2022 World Cups highlight that gifts to FIFA officials – considered to be of token value and, therefore, permitted by the FIFA Statutes – included luxury goods worth at least several thousand dollars (see, e.g., Mersiades, chs 4, 14). However, extravagant football-related spending does not necessarily entail corruption if FIFA can justify its expenses in good faith as being related to its non-profit goal of improving and promoting the sport. It requires close parsing to understand due and undue influence in FIFA. As discussed below, the line between them is often unclear.

C The Money of FIFA Is Your Money?

Conn observes that when current FIFA president Gianni Infantino took office in February 2016 and told the FIFA Congress that ‘the money of FIFA is your money’, he continued a commitment to distributing funds within FIFA that had begun with Havelange but which had escalated heavily under Blatter as FIFA revenues increased exponentially in the late 1990s (at 241). Specifically, Blatter accelerated a new aspect of corruption, not as clear as the acceptance of media bribes or favours: the use of development funds. When elected as FIFA president in 1998, Blatter began the Financial Assistance Programme (FAP) to distribute US \$250,000 annually to each member association (Conn, at 60, 63); as of 2014, the programme also paid US \$5.5 million annually to each confederation under the Confederations Development Programmes.¹⁷ Blatter also started the Goal Programme, which provided discretionary funds to member associations; by 2014, the Goal Programme had spent US \$284 million on 668 projects, including 191 new football association headquarters and facilities in Africa and 158 in Asia (Conn, at 62). In the 2011–2014 financial cycle, development-related expenses included a ‘World Cup bonus’ of US \$1.05 million to each member association and US \$7 million to each confederation.¹⁸

Both Conn and Sugden and Tomlinson acknowledge that development funds were subject to some corruption, but they disagree about the extent of this corruption. Conn acknowledges that the decision about how to spend much of the money was made without consulting member associations. For example, bin Hammam, as head of the Goal Programme under Blatter, decided that Goal funding should be spent on building a ‘house of football’ for each member association. As a construction magnate himself, bin Hammam argued that real estate would have a lasting impact on member associations, unlike football support programmes (Conn, at 63–64). Conn observes that, strengthened by football development funding from FIFA, Cameroon reached the World Cup quarter finals in 1990 and that, in Afghanistan and Somalia, there

¹⁷ See J. Ruggie, *For the Game, For the World: FIFA and Human Rights* (2016), at 16, 17, available at www.hks.harvard.edu/sites/default/files/centers/mrcbg/programs/crri/files/Ruggie_humanrightsFIFA_reportApril2016.pdf.

¹⁸ *Ibid.*

were football pitches and organized teams, including, in Afghanistan, for women (*ibid.*, at 51, 65–66). Yet Sugden and Tomlinson point out that the 1990 Cameroon national team barely had a single decent football to use at their pre-World Cup training camp; even though FIFA had distributed funds to the Cameroon member association for the team's preparations, the money had never reached the players (at 112). Indeed, the team had to strike before their first World Cup game to guarantee the Cameroon member association would pay their salaries at all (at 112). According to Conn, such cases are exceptional. Based on various audits and interviews with former independent governance officials like Mark Peith and Domenico Scala, Conn writes that the Goal Programme was not a slush fund diverted for purely political gain (at 63–69). It is unclear from the books whether this characterization extends to FAP, to the funds that the member associations received from confederations or to all development funds in FIFA. But, in large part, it appears that FIFA's discretionary football development funds – the Goal Programme, in particular – were largely spent on the development projects to which they were supposed to go, even if such spending was, as Domenico Scala described it, 'a system of patronage in which the president distributed money to the electorate' (Conn, at 67).

However, FIFA member associations and confederations have additional sources of income over which FIFA exercises less oversight. Evidence shows that the confederations and member associations spent separate development funds on other confederations and member associations for personal and political reasons. Each confederation had access to funds separate to those to which FIFA contributed. In *The Ugly Game*, Heidi Blake and Jonathan Calvert expose thousands of financial transactions made by Mohamed bin Hammam. From 2008 to 2010, bin Hammam was on a campaign to gain influence in FIFA as he envisioned becoming a candidate for the presidency and actively, though discreetly, supported Qatar's bid to host the World Cup. Empowered by 13 bank accounts, including his AFC account, he gave personal gifts worth millions of dollars and all-expenses-paid trips to the leadership of member associations in Asia and Africa (Blake and Calvert, at 71). Although bin Hammam did not use the Goal Programme funds that he controlled, he did hire a former Goal Programme staffer to use their Goal Programme connections to funnel gifts from bin Hammam to key players in African football (*ibid.*, at 65). Though accounting records described FIFA-related transactions as being for vague but legitimate purposes such as 'business promotion', 'retention' or 'overheads', related email exchanges explicitly describe the same transactions as personal spending.

Furthermore, when member associations did not want to ask directly for personal spending, requests for development from funds outside the Goal Programme were often used as a thin pretence. The South African government and its football association's 2010 World Cup bid committee allegedly laundered a US \$10 million bribe to CFU during the bid process as an 'African Diaspora Legacy Programme' (*ibid.*, at 207, 217). Blake and Calvert describe Qatari football officials offering US \$1 million to the son of the Nigerian football association president to sponsor a dinner at the 2010 World Cup in South Africa celebrating the greats of African football; though the dinner happened, it ultimately had no official sponsor (at 127–130, 152). Conn and Blake and

Calvert describe the Nigerian football federation president asking for US \$800,000 to build four artificial pitches in his country – an ostensible development project – but requesting that the money be paid directly to him, a tell-tale indicator that the request was for personal funds (Conn, at 83; Blake and Calvert, at 338). Furthermore, Blake and Calvert find bin Hammam paying for explicitly business expenses such as cars on the implicit understanding that the payments were personal gifts (e.g., at 74, 291).

This distinction is important because the books reviewed tend to use a broad brush to paint development funding as being widely misused. However, there are notable distinctions between FIFA-funded development, where the graft seems limited, and confederation-funded development, where the graft seems more common, based on the books reviewed. Nevertheless, ultimately, the responsibility lies with FIFA for two reasons. First, the confederations' money came in part from FIFA, which suggests that either FIFA funds were directly misused by the confederations or, at a minimum, that they expanded the confederations' budgets, thereby freeing up funds for corruption. Second, according to the FIFA Statutes, the FIFA Code of Ethics applies to confederations and member associations as much as it does to FIFA itself; when confederations and member associations breach the FIFA Code of Ethics, FIFA is responsible for taking appropriate action.¹⁹

D Calling Foul?

Knowing that some – though not all – of FIFA's development funding was systematically misused, the books reviewed disagree on the impact of this graft on FIFA governance. Most agree that because FAP and the Goal Programmes were presidential programmes, they helped Blatter win re-election as incumbent in 2002, 2007, 2011 and 2015. Conn describes corruption in FIFA as a form of patronage politics in which development funding was offered to member associations in exchange for votes, which created political rewards for spending on football development. For example, to win election to the FIFA presidency, Blatter had to commit to outspend his rival candidate Lennart Johansson, then the president of UEFA, who had made a big commitment to football development in Africa through the Meridian Convention, a memorandum of understanding between UEFA and CAF whose status was akin to a private contract (Sugden and Tomlinson, at 86).²⁰ By contrast, Sugden and Tomlinson highlight that votes were not only exchanged for development funds to member associations but also for direct personal payments, as when Blatter allegedly sent envelopes of cash to CAF representatives the night before the 1998 FIFA presidential election. Similarly, Blake and Calvert observe that bin Hammam sought personal benefit from his position as head of the Goal Programme when he sought votes – whether for Qatar's World Cup bid or for his own FIFA presidential campaign – at the same time that he was able to distribute Goal Programme funding, a situation that Blake and Calvert call a conflict

¹⁹ For the member associations' obligations, see 2018 FIFA Statutes, *supra* note 3, Art. 14. For the confederations, see Art. 22.3.

²⁰ Though the authors cite the Meridian Convention, the Convention is no longer publicly available in full text and so it cannot be referenced.

of interest (ch. 4). Overall, the books reviewed suggest that patronage politics on legitimate football promotion is not alone enough to reach the highest levels within FIFA, which entails personal spending on key constituencies, whether or not it is disclosed as such.

Doing so was facilitated in large part by the pre-reform FIFA governance structure, which concentrated power in the FIFA president and Executive Committee. Before the February 2016 reforms, FIFA had two standing bodies – the FIFA president, which ‘represent[ed] FIFA legally’,²¹ and the FIFA general secretariat, the ‘administrative body’²² that was supervised by the president.²³ The FIFA president had presiding power over the Congress, the Executive Committee of FIFA and any committees he chaired.²⁴ However, the FIFA president’s main source of power was the Executive Committee, which held all power to pass decisions on all cases not within the ‘sphere of responsibility of the Congress’ or reserved for any other body.²⁵ Though it met only twice a year, the Executive Committee controlled FIFA’s revenues – its sale of media rights, the regulations for its international matches and competitions and the selection of the World Cup host – and its budget, including development funding. Furthermore, the Executive Committee also controlled the internal regulations of the organization.²⁶ Although the FIFA Congress was the ‘supreme and legislative’ body,²⁷ it was required to meet only once a year and had limited powers, including to elect the FIFA president and to admit new FIFA member associations.²⁸

This concentration of power in the FIFA president and Executive Committee made decision-making in FIFA opaque, as illustrated through the disagreement between *The Ugly Game* and *Whatever It Takes* about how and why the FIFA president and Executive Committee members voted in the 2018/2022 World Cup vote. Most notably, *The Ugly Game* depicts bin Hammam’s documented spending from 2008 to 2010 as a ‘plot to buy the World Cup’. In *Whatever It Takes*, Bonita Mersiades disputes this interpretation, noting that *The Ugly Game* documents payments by bin Hammam to only two Executive Committee members, Jack Warner and Reynald Temarii; most of the documented payments were to football leadership outside the Executive Committee, who did not vote to determine the host of the World Cup (ch. 1). Instead, Mersiades characterizes the payments as serving to assist bin Hammam’s political campaign for FIFA president, and not the Qatari bid for the World Cup. We think that Mersiades’ view seems too narrow. It is true that bin Hammam was not personally involved, for example, in setting up a notorious dinner between UEFA president Michel Platini, French President Nicolas Sarkozy, then Qatari Crown Prince Tamim bin Hamad al-Thani (now the Emir) and then Qatari Prime Minister Sheikh Hamad bin Jassim bin Jaber al-Thani,

²¹ 2015 FIFA Statutes, *supra* note 13, Art. 32.1.

²² *Ibid.*, Art. 21.3.

²³ *Ibid.*, Art. 32.2.b.

²⁴ *Ibid.*, Art. 32.4.

²⁵ *Ibid.*, Art. 31.1.

²⁶ *Ibid.*, Art. 31.10.

²⁷ *Ibid.*, Art. 21.1.

²⁸ *Ibid.*, Art. 22.1, Art. 25.

in which President Sarkozy made clear to Platini that Qatar would make major investments in French football, which Sarkozy wanted, if Platini voted for the Qatari World Cup bid.²⁹ However, Blake and Calvert document bin Hammam personally helping facilitate a deal for Qatar to sell natural gas to Thailand at a renegotiated price that was more favourable to Thailand in order to secure the vote of Thai Executive Committee member Worawi Makudi for the Qatari bid (ch. 10). Furthermore, bin Hammam hosted several other Executive Committee members – CAF president Issa Hayatou from Cameroon, Amos Adamu from Nigeria, Jacques Anouma from Ivory Coast and FIFA president Sepp Blatter himself (Blake and Calvert, at 26, 108). Though different from his broad-based appeals to Asian and African member association heads based on giving personal gifts, bin Hammam still took significant steps to influence FIFA Executive Committee members.

If a pattern can be drawn from the differences depicted in *The Ugly Game* between spending on Executive Committee members – who could vote for the World Cup host – and on FIFA Congress members – who could not – it is as follows. Executive Committee member votes for the World Cup host went to the highest bidder, which benefited those football associations whose governments, like Qatar, were willing to support their bid through investment in Executive Committee members' states. FIFA Congress member votes for FIFA president would be won with a candidate's commitment to FIFA member associations that the candidate would be willing to spend on them in the long term, which was typically indicated through financial payments or in-kind gifts made by the candidate to leadership of member associations. In *The Ugly Game*, email correspondence from FIFA officials to bin Hammam requesting such bribes provides evidence of this pattern (Blake and Calvert, ch. 13). In sum, the way to have enough power in FIFA to help win a World Cup bid or to contest the FIFA presidency was to have a position in FIFA that facilitated spending money on others in strategic ways. This is made possible not only by having access to the capital to do so but also by having the knowledge about who to pay and how.

E Back to the Beginning?

Aimed at a football-watching audience, the books frame their own critique of corruption in FIFA in large part through a prism that football fans can intuitively understand: the decline of sportsmanship as a value in football administration. At times, Mersiades and Sugden and Tomlinson all lament that football management is increasingly dominated by businessmen at the expense of sportspeople. However, Conn points out that the amateur roots of the football administration were themselves a cause of corruption in FIFA since it was expected that people would work 'for the love of the game', which prompted them to ask for special favours rather than a professional salary (at 272). Conn is less concerned with the loss of amateurism than with the loss of honesty; by focusing on Michel Platini and Franz Beckenbauer, national football icons in France

²⁹ Dupré, Mandard and Lemarié, 'Le déjeuner à l'Elysée qui a conduit le Mondial au Qatar', *Le Monde* (4 December 2015).

and Germany respectively, he does not express disappointment that they turned into football businessmen but, rather, that they became corrupt ones (see, e.g., chs 15, 17). In the latter half of his book, Conn describes these men as examples of fallen heroes who need not have been so, pointing out that it has only taken a few ‘honest souls in the room’ to create accountability for major FIFA scandals by whistle-blowing on their supervisors (at 111).

In the background, the books are also concerned about subtler but fundamental shifts in the administration of football. Authoritarian state powers like Qatar, Russia and Thailand can spend without accountability on football – whether directly in funding their countries’ member associations or their confederation or indirectly by offering business deals to key decision-makers in FIFA. Even democratic countries such as Brazil can have their institutions tested when facing the golden opportunity of hosting a World Cup (Chade, ch. 11). Mersiades observes that the Australian bid was hampered as much by limited funds as by accountability to the Australian government, which poured roughly AUS \$40 million into the bid that could not be used for certain personal gifts or trips, requiring the Australian bid to fundraise for a second pool of money to operate ‘the FIFA way’. Football Federation Australia (FFA), which was unfamiliar with FIFA power politics, had to hire multi-million-dollar consultants to advise them on who to influence and how. As Mersiades illustrates, proxy influence within FIFA is not enough to compete with the direct influence of FIFA power players like bin Hammam.

Finally, Conn highlights that reform processes before 2016 were of limited use in deterring the ‘culture of corruption’. Blake and Calvert and Conn alike note that Blatter had power over the Ethics Committee to request investigations and sanctions against his opponents. In Blake and Calvert’s view, this resulted in Blatter initiating an investigation into the 2018/2022 World Cup bidding procedures after bin Hammam publicly criticized him (at 137). As Conn points out, this also facilitated the Ethics Committee swiftly suspending bin Hammam from football for giving cash gifts to CFU members during his presidential campaign against Blatter (at 121–122). FIFA first adopted a FIFA Code of Ethics in 2004, and, in 2006, it created an Ethics Committee. In 2011, following the 2018/2022 FIFA World Cup votes, FIFA consulted Mark Peith to recommend governance reforms.³⁰ In his report, Peith recommended, *inter alia*, that the Ethics Committee be made more independent of the Executive Committee,³¹ which FIFA implemented.³² Eventually, Peith called this a mistake, a sort of ‘own goal’ for Blatter because the independent Ethics Committee ultimately banned him from football for life (Conn, at 241). But it took time for Blatter’s reforms to catch up with him. UEFA blocked significant parts of the Peith reforms, such as term limits for the FIFA president and integrity background checks by FIFA for Executive Committee members (Conn, at 242). In 2014, Blatter announced he would run for another term as FIFA

³⁰ Peith, *supra* note 7.

³¹ *Ibid.*, at 23–25.

³² 2015 FIFA Statutes, *supra* note 13, Art. 63.

president, contributing to Peith stepping down from his role at FIFA, saying that ‘our work was useless’ if there is no accountability at the top for previous mistakes (*ibid.*, at 165). Even after the independent Ethics Committee began taking up cases, Conn conveys disappointment with their results. In April 2013, the adjudicatory chamber of the Ethics Committee found that it did not need to rule on the pre-existing factual finding that Havelange and others had paid bribes to sports marketer ISL because Havelange and others had resigned from football in the interim (*ibid.*, at 159). The adjudicatory chamber also found no evidence that Blatter knew about the bribes to ISL, which Conn observes seems implausible (*ibid.*, at 161). In November 2014, the adjudicatory chamber found that the confirmed malpractice by bids for the 2018/2022 World Cups had not compromised the integrity of the outcome (*ibid.*, at 166).

Although the books paint an exhaustive portrait of FIFA’s governance flaws, one question remains unanswered in all of them: why has FIFA resorted to corruption? Has it only been driven by the quest for personal gain by a few influential power brokers in FIFA, or are there structural incentives for FIFA to use corruption in order to perform its task of administering global football? In the next section, we analyse how corruption has served structural governance purposes in FIFA.

3 New FIFA?

A Uses of Corruption

When FIFA announced its new Statutes in February 2016, the FIFA leadership was in tatters. Many members of the FIFA Executive Committee, including Blatter, were no longer in power to perpetuate the system that maintained their control over FIFA. Yet even without the grip of the old leadership, FIFA had sustained a ‘culture of corruption’ over almost 40 years, even as global organized football kept growing worldwide. FIFA managed to expand the game in part because it could coordinate decision-making on the important issues within its purview: who should run FIFA, which tournaments to host, when and where, what rules to create for team and club management including player transfers, how to make money from organized football and how to spend revenues to promote football development.

Corruption has certainly played a role in this evolution. Though the ‘culture of corruption’ has harmed FIFA – for example, by diverting organizational funds for personal use – it has also helped it coordinate global football. Though football itself is free, global football among countries and their club teams, all playing according to one set of rules and broadcasting games worldwide, requires major organization. It is this use of corruption, as an organizational tool, that the books under review often forget. Below, we identify three coordination problems – the ‘politics’ problem, the ‘distribution’ problem and the ‘outsiders’ problem – that corruption helps address.

First, corruption has helped FIFA member associations overcome the ‘politics problem’ – namely, by coordinating existing divergent interests among sovereign states. FIFA member associations represent their country’s domestic interests. Just as sovereign states compete and cooperate in the world order for scarce resources, so too

do FIFA member associations (especially in the realm of international sport, which states typically consider an arena to express cultural or national pride). Havelange's early and insightful solution, as Conn and Sugden and Tomlinson note, was to limit competition among states by making money widely available and ensuring it came with little or no accountability for how it was spent. Later on, corruption helped states build alliances in selecting World Cup hosts as well. Choosing a World Cup host depends on more than which country will bring in the most money for FIFA. Because of the symbolism of the World Cup, intangible factors like soft power and football strength play a role as well, but can lead to divisions among member associations. For example, FIFA enacted an informal rule that the same continent (and therefore, confederation) cannot host two consecutive World Cups, which means that in any given World Cup year, the eligible continents (and confederations) may have several constituent member associations bid for the same World Cup, as happened in 2010. Blake and Calvert detail how, in 2010, bin Hammam negotiated a continental pact with his fellow AFC Executive Committee members, who were from South Korea and Japan. Qatar, South Korea and Japan were all bidding from Asia for the 2022 World Cup; bin Hammam secured an agreement that, if their bid failed in one of the early voting rounds, they would back the other Asian bids in the later rounds (at 179). Bin Hammam could only secure the agreement by doing an earlier favour for the South Korean member of the Executive Committee, Chung Mong-joon, by facilitating payments to member associations through AFC funds to help Chung's re-election campaign for the FIFA vice presidency (Blake and Calvert, ch. 8). Though the informal agreement violated FIFA's bidding guidelines, it helped coordination among would-be rivals, encouraging friendly relations in football.

Second, corruption has helped avoid first-order questions about development funding in football – the 'distribution problem'. Conn and Sugden and Tomlinson address early disputes between Europe and Africa over whether FIFA should be engaged in significant development funding (Conn, ch. 3; Sugden and Tomlinson, ch. 3). But, once FIFA decided to fund development significantly, hard questions arose about how such funding should be spent. These questions are not amenable to expert answers. Answers depend on input from those actually affected by football development spending to identify needs and funding priorities. But FIFA avoided soliciting input from stakeholders. In some cases, they made top-down decisions, like deciding every member association should get its own 'house of FIFA'. More often, FIFA and its confederations gave funds and delegated decision-making about priorities to member associations, even as they knew that there was little accountability at the member association level for whether the funds were spent as stakeholders would like or need. As Chade observes, in Brazil, this means that football development in one of the world's great football powers remains heavily underfunded, while its leadership has managed to siphon off millions for their own personal use (ch. 14).

Finally, corruption has facilitated FIFA's engagement with a network of diverse and diffuse actors – what we have named the 'outsiders problem'. Certain actors are barely represented within FIFA but have significant power within football. For example, in the governance structure of FIFA, financially powerful clubs such as Real Madrid or

Manchester City have no formal representation in FIFA but, nevertheless, have significant influence over UEFA. The governments of Qatar and Russia are not formally represented in FIFA, but, through their influence over their domestic federations, they have significant voice as well. Sugden and Tomlinson show that by keeping power concentrated in the FIFA president and the Executive Committee until the February 2016 reforms, FIFA facilitated a decision-making structure that rewarded informal consultation and negotiation among a few decision-makers, conducted in large part through in-person meetings at events worldwide throughout the football calendar. Private jets, lavish dinners and club seats at football matches have made these meetings an opportunity for influence peddling through offers by attendees to host each other, provide access to special perks and pay for each others' expenses. Pre-reform, the FIFA Statutes prescribed no decision-making procedures for the Executive Committee, which did not publish the minutes of its meetings.³³ As the books reviewed show, at a given football event, it was likely that there was a mix of FIFA officials and relevant other important actors from businesspeople to politicians amongst the participants, all attending to influence each other.

B February 2016 Reforms

One way to assess whether the February 2016 reforms were adequate in reforming FIFA (even before they were amended in May) is to question whether they constitute an alternative to corruption in addressing these three coordination problems. The February 2016 reforms are composed of several different elements. The first major component was an intended redistribution of power among the FIFA bodies. All of the bodies were retained in the post-reform Statutes except for the FIFA Executive Committee, which was abolished and replaced with an expanded 37-member FIFA Council.³⁴ Simultaneously, three-term limits were established for the presidency,³⁵ the FIFA Council members³⁶ and members of the judicial bodies.³⁷ The statutory roles of the bodies were changed; although the FIFA Congress remains the 'supreme and legislative body',³⁸ the FIFA Council was renamed the 'strategic and oversight body',³⁹ the general secretariat was made the 'executive, operational and administrative body'⁴⁰ and the FIFA president now represents FIFA 'generally' instead of legally,⁴¹ while FIFA's secretary general is described as the 'chief executive officer (CEO) of FIFA'.⁴² However, the distribution of functions remains largely in place. The powers of the FIFA Congress

³³ Only the minutes of Congress' session were dealt with in the 2015 FIFA Statutes, *supra* note 13, Art. 25.2.

³⁴ FIFA Statutes: Regulations Governing the Application of the Statutes (2016 FIFA Statutes), Standing Orders of the Congress, April 2016, Art. 33–34, available at https://resources.fifa.com/mm/document/afederation/generic/02/78/29/07/fifastatutsweben_neutral.pdf.

³⁵ *Ibid.*, Art. 33.2.

³⁶ *Ibid.*, Art. 33.3.

³⁷ *Ibid.*, Art. 52.6.

³⁸ *Ibid.*, Art. 24.1.

³⁹ *Ibid.*, Art. 24.2.

⁴⁰ *Ibid.*, Art. 24.3.

⁴¹ *Ibid.*, Art. 35.1.

⁴² *Ibid.*, Art. 37.1.

remain the same,⁴³ though it is worth noting that after 2010, the FIFA Statutes had been amended to give the FIFA Congress the power to vote for the World Cup host.⁴⁴ The FIFA Council retains first decision-making powers over almost all of the major areas of FIFA decision-making – budget, development spending, FIFA Governance Regulations, FIFA Code of Ethics and selling rights to competitions and events. It also ‘oversees the overall management of FIFA by the general secretariat’⁴⁵ and enjoys hiring and firing power over the FIFA general secretariat in its day-to-day performance.⁴⁶

This governance structure remains vulnerable to the FIFA Council’s consolidating power just as the FIFA Executive Committee did before the reforms. From a ‘constitutional’ perspective, there is no system of checks and balances among the FIFA bodies. The FIFA Congress, for example, as the ‘legislative’ body, could have been given the power to make ‘standards, policies and procedures’ that would have been implemented by the general secretariat under the Council’s supervision, but the FIFA Statutes give that power to the Council. In the current structure, the FIFA Council simultaneously makes the rules, oversees their implementation and issues the FIFA Governance Regulations that allocate power to the general secretariat.⁴⁷ Arguably, FIFA has aimed in part to remodel its governance structure consistent with corporate models rather than with state governance structures, for instance explicitly making the Secretary General CEO; implicitly, the FIFA Council can be considered to be the FIFA Board of Directors and the FIFA Congress to be FIFA owners or stakeholders. But, even on a corporate governance model, FIFA remains vulnerable to mismanagement. The FIFA Congress is composed of member associations that typically do not represent all of the stakeholders involved in organized football. Unlike in most corporate settings, maximizing stakeholder value in FIFA cannot be approximated through valuations of shares or media rights because FIFA is a non-profit, a Swiss *verein*, entrusted with improving and promoting football. This creates a fundamental principal–agent problem. In theory, the FIFA Congress should hold the FIFA Council accountable to act with loyalty in the interest of FIFA’s non-profit purpose. In practice, the FIFA Council has the power to capture the interests of the FIFA Congress, which it has done under the guise of football development, undermining the system of incentives at the heart of good corporate governance. Furthermore, based on the description of how FIFA does business that the books provide, the FIFA Council, with its small group of football elites able to strike deals in person at football-related events or at private meetings, is better equipped to run FIFA ‘day to day’ than the general secretariat, whose role has traditionally been to implement the decisions of the FIFA leadership without exercising significant discretion. Unless FIFA plans to change how it does business, the FIFA Council retains a practical advantage in maintaining dominance within FIFA, supported by its strength within its governance structure.

⁴³ *Ibid.*, Art. 28.2.

⁴⁴ See 2015 FIFA Statutes, Art. 31.9.

⁴⁵ *Ibid.*, Art. 34.3.

⁴⁶ *Ibid.*, Art. 34.9.

⁴⁷ *Ibid.*, Art. 34.11.

The second major component of reform was the creation of independent checks on power within FIFA. In the February 2016 reforms, FIFA required its Governance Committee,⁴⁸ Finance Committee⁴⁹ and Development Committee⁵⁰ to be at least half comprised of independent members; the Audit and Compliance Committee members must all be independent.⁵¹ The Governance Committee is tasked with conducting eligibility checks on FIFA body members to ensure that they do not have improper conflicts of interests.⁵² In addition, the Governance Committee, Audit and Compliance Committee and the judicial bodies were all made answerable to the FIFA Congress rather than to the FIFA Council (which Infantino convinced the FIFA Congress to change in May 2016, as explained above).⁵³ In February 2016, the hope was that if given time to take root, these independent systems would have increased accountability for corruption in FIFA. At the time that he was dismissed, Ethics Committee investigatory chamber chair Cornel Borbély said that he was in the middle of hundreds of cases, some against senior FIFA officials, including Infantino himself. For the FIFA Council to have asserted hiring and firing power over independent committees meant a return to key features of the pre-reform period, in which there was a blatant conflict of interest in the administration of FIFA justice, and, as Conn writes, the Ethics Committee pulled punches against top FIFA leadership.

C Past the Goal Post?

Even if all the February 2016 reforms had remained in place, they still did not provide alternatives to corruption for football actors to coordinate. To solve the ‘politics problem’, FIFA officials would have needed the FIFA Statutes to create a legitimate ‘currency’ in which they could trade. For example, legislative influence in the FIFA Congress, as the ‘supreme and legislative body’, could have provided such a currency. In legislatures, members typically have full power to legislate on a wide range of issues, can trade votes on different pieces of legislation, can exchange support for certain priorities within a piece of legislation and can develop expertise to gain higher-level positions or hold hearings to raise attention on a given issue. This range of potential actions facilitates trading among legislators in legitimate legislative influence.⁵⁴ However, as discussed above, the post-reform FIFA Congress remains an underused forum for political action.

To solve the ‘distribution problem’, FIFA would need to adopt a policy that confronts the trade-offs involved in spending, that solicits feedback from stakeholders about how to spend the money received and that enforces the proper use of funds. However,

⁴⁸ *Ibid.*, Art. 40.1.

⁴⁹ *Ibid.*, Art. 41.2.

⁵⁰ *Ibid.*, Art. 42.1.

⁵¹ *Ibid.*, Art. 51.2.

⁵² *Ibid.*, Art. 40.4.

⁵³ *Ibid.*, Arts 40.1, 51.3, 52.5.

⁵⁴ See, e.g., G. Wawro, *Legislative Entrepreneurship in the U.S. House of Representatives* (2001).

the new FIFA development plan, FIFA Forward,⁵⁵ largely avoids doing any of this. It increases funding to member associations and to confederations and reinforces accountability for operational costs; FIFA Forward requires member associations to sign a contract with FIFA with a strategy for football development for two to four years, all association-specific projects must be in the contract and member associations must report to FIFA on their progress in order to get future funds. For associations to get the full US \$500,000 to cover operational costs, they have to meet certain requirements, such as having women's professional and youth leagues. Furthermore, each member association must undertake an independent financial audit of FIFA Forward funds. However, as before, while FIFA Forward funding may be well used, the remainder of an association or confederation budget, free from these constraints, may not be (though post-reform, all member associations and confederations must commission an independent audit of their overall spending).⁵⁶ Furthermore, the increase in funds to FIFA members and confederations means that these bodies may comply with the new conditions placed on their funding – for example, having women's football leagues – without cutting into their existing budgets, which may already be bloated from pre-existing corruption. Finally, member associations may re-assign all or part of their FIFA Forward programme funds to other member associations or confederations so long as they inform FIFA. As the books under review show, funding from confederations to member associations or among confederations or associations is a key source of corruption in FIFA.

Furthermore, FIFA has not made it mandatory that football stakeholders with an interest in how development funds get used have any voice in their spending. Instead, decisions are made through consultation with FIFA and its experts. In the new Statutes, one major opportunity for a stakeholder voice is the new Human Rights Policy.⁵⁷ As Chade observes, one major group without a voice in FIFA comprises those who face human rights abuses associated with FIFA conduct, such as those evicted for the construction of stadiums, labour abuses during their construction, players who are unpaid or would-be players trafficked through the promise of playing professional football. In the 2016 report *For the Game, for the World: FIFA and Human Rights*, John Ruggie, author of the United Nations Guiding Principles for Business and Human Rights⁵⁸ and hired by FIFA as a consultant, recommended that 'FIFA should establish formal structures for regular engagement with key stakeholders about human rights risks across its activities and events'.⁵⁹ Critically, this engages stakeholders only with regard to human rights abuses – so, for example, if players are not being paid or if

⁵⁵ FIFA, 'FIFA Forward Development Programme', available at www.fifa.com/development/fifa-forward-programme/index.html.

⁵⁶ 2016 FIFA Statutes, *supra* note 34, Art. 14.1.a.

⁵⁷ FIFA, FIFA's Human Rights Policy (2017), available at https://resources.fifa.com/mm/document/affederation/footballgovernance/02/89/33/12/fifashumanrightspolicy_neutral.pdf.

⁵⁸ United Nations, Guiding Principles on Business and Human Rights: Implementing the UN 'Protect, Respect and Remedy' Framework (2011), available at www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf.

⁵⁹ Ruggie, *supra* note 17, at 31.

youth or women are being discriminated against in the allocation of member associations' resources, they may have a right to be consulted under the Human Rights Policy – but not if they simply want to articulate preferences about spending priorities. Nevertheless, the Human Rights Policy is important because it establishes the norm of consulting with stakeholders, a key value that is absent from FIFA's decision-making procedures, and because FIFA has expressed an intent to ensure that the policy apply to FIFA member associations and confederations. FIFA has done so through its own policy, for which FIFA's Secretary General is responsible, since respect for human rights is not a mandatory component of member association and confederation statutes.⁶⁰

Finally, to solve the 'outsiders' problem, as discussed above, the general secretariat would have to be empowered to shift how FIFA coordinates with global football actors: away from informality and towards regular decision-making procedures. It is not clear that FIFA has attempted such a shift, but there is no significant evidence in the books – or in the documents publicly available on the FIFA website – indicating that they have.

4 For the Game? For the World?

The books reviewed here all call for FIFA to be governed in the public interest. As discussed above, throughout FIFA's modern history, stakeholders' voices have been excluded and their interests captured. However, the books identify several different stakeholders in FIFA who vary significantly. This is where Chade's analysis provides a different angle in viewing FIFA's impact on member associations and their countries. Chade writes about football fans in host countries who face human rights abuses, such as mass evictions, that were associated with hosting the 2014 World Cup in Brazil. He observes that, in states without the opportunity for public voice in government, the decision to host a World Cup has disastrous consequences. He illustrates this point with absurd examples of the consequences of Brazil's World Cup – for example, the Local Organizing Committee (LOC) choosing to build one World Cup stadium in Manaus, a town in the middle of the Amazon region with dangerously high temperatures, which is now facing unbearable maintenance costs (over 700,000 Brazilian reais or US \$185,500 per month) and no longer hosts matches (Chade, ch. 13). The Mané Garrincha Stadium in Brasilia, also built for the 2014 FIFA World Cup in Brazil, now serves as an office building for the regional administration offices, and its car park functions as a garage for the buses of the city. All of this because FIFA did not give stakeholders – as human rights holders, as football fans, as Brazilian citizens – a voice in FIFA to counter special interests. Mersiades addresses the challenges for states like Australia whose bids tend to have fewer government resources to devote to World Cup bids than non-democratic ones and in which those funds that are available are pulled directly from taxpayers to which the government is accountable. As the 2018/2022

⁶⁰ For member associations, see 2018 FIFA Statutes, *supra* note 3, Art. 14.1.a; for confederations, see Art. 22.3.

bidding process might have suggested, in a bidding process that rewards the highest bidder, non-democratic states that can spend heavily without accountability are better positioned than democratic ones. Similarly, Conn points out that the stake of football fans in their sport is symbolic: because they believe in the principles of fair play that govern football on the pitch, they believe that the same rules should apply off it. Both Conn and Sugden and Tomlinson highlight the particular disadvantage that players in the global South face when their only funds for football come from FIFA, and FIFA is not holding their member associations accountable to ensure that the funds actually reach them. The 'public' interest covers all of these issues. But, as the 'public' are outside the FIFA governance structure, the only way forward for reform is to continue to push legal challenges that promote better governance generally.

Overall, the likelihood of a major US or Swiss prosecution in the future remains limited. Major prosecutions like the US prosecution covered decades-long multi-million-dollar schemes of corruption in FIFA, and it is unlikely that CONMEBOL and Concacaf have engaged in corruption to such an extent that they would open themselves up to liability in the USA – at least, so far. Switzerland has amended the Swiss Criminal Code with a bill known as 'Lex FIEA'. Among other changes, Switzerland can now unilaterally indict persons for corruption of a private individual acting in an official capacity.⁶¹ Switzerland has opened criminal investigations over the sale of World Cup media rights against the head of the Paris Saint-Germain Football Club and the Qatari media group beIN media, Nasser Al-Khelaifi, but no further action in the investigation has been made public.⁶² At the state level, it is also possible that states may file prosecutions against their FIFA member associations or conduct by FIFA that falls within their jurisdictions. There is some hope for state-level accountability; at the time of writing, France had held Michael Platini in custody for questioning in a criminal investigation regarding alleged conduct related to the 2018/2022 World Cup host bids; he was released without charge. However, Chade reminds readers forcefully that the Brazilian courts have not acted against corruption in Brazilian football despite decades of widely known corruption in the sport. Until 2016, CONMEBOL headquarters also enjoyed diplomatic immunity in Paraguay, which is where its headquarters are located.

However, there are several venues beyond states where FIFA may be challenged on corruption and governance grounds. First, FIFA officials or stakeholders could file an internal complaint with FIFA's Ethics Committee, with ultimate appeal to the Court of Arbitration for Sport (CAS). The FIFA Ethics Committee has jurisdiction over disputes among FIFA and its member associations, confederations, leagues, clubs, players, officials, intermediaries and licensed match agents on issues other than the Laws of the

⁶¹ A. Gamalski, 'Ending Swiss Secrecy: Switzerland's Lex FIEA', *Michigan University College of Law International Law Review* (15 February 2018), available at www.msuir.org/msuir-legalforum-blogs/2018/2/15/ending-swiss-secrecy-switzerlands-lex-fifa.

⁶² A. Lewis, 'Swiss Prosecutors Open Investigation into Paris Saint-Germain's Qatari Chairman Nasser Al-Khelaifi', *CNN* (13 October 2017), available at <https://edition.cnn.com/2017/10/12/football/nasser-al-khelaifi-paris-st-germain-fifa-criminal-proceedings/index.html>.

Game.⁶³ Although member associations are allowed to restrict this definition,⁶⁴ FIFA has only excluded disputes arising from the Laws of the Game, suspensions (not doping related) of up to four matches or three months and when an arbitration clause is otherwise applicable.⁶⁵ Currently, within the FIFA Statutes, there are several articles on which further legal development through judgments on complaints would be useful. One major area is determining what constitutes a breach of several of the Code of Ethics requirements, such as the prohibition on ‘undue’ gifts.⁶⁶ The second major area is determining the proper roles of the FIFA bodies. For example, was it within the FIFA Statutes for Infantino to fire members of the Audit and Compliance and Ethics Committees while they were investigating him? Is the FIFA Council adequately delegating powers to the general secretariat as required under the FIFA Statutes? Filing a complaint could be an opportunity to raise attention on a given governance issue in FIFA, and, with the right civil society support, to leverage the threat of reputational harm to prompt FIFA to act.

However, there are several challenges in pursuing this avenue of action. First, the complainant would have to be a FIFA official or ‘relevant stakeholder’, which would require finding an insider willing to challenge FIFA’s leadership. Even if a complaint was filed, the investigatory chamber of the Ethics Committee has discretion over whether to pursue an investigation after a complaint.⁶⁷ If the case were to go up to the FIFA Appeals Committee and eventually reach the CAS for final determination, there are several risks. First, the CAS specializes in *lex sportiva*, not administrative law, meaning that the case could be outside its competence. Second, this could lead to a ruling that affirms the FIFA leadership’s preferred interpretation of the FIFA Statutes. Third, CAS decisions are not necessarily public, meaning that FIFA could largely bury the ruling and limit it to its facts, undermining its effect as case law within FIFA, especially if the threat of reputational harm, as has been the case in the past, is not an adequate sanction to change FIFA’s behaviour.

Second, FIFA could be challenged under European Union (EU) law for anti-competitive behaviour. The famous *Bosman*⁶⁸ case in the Court of Justice of the European Union (CJEU) historically held that UEFA was generally subject to EU law – namely, to its fundamental freedoms – and that it could not unilaterally restrict the movement of players through its regulations. Furthermore, the specificities of competition law and the jurisdiction of the European Commission⁶⁹ over FIFA’s activities have been

⁶³ 2018 FIFA Statutes, *supra* note 3, Art. 54.

⁶⁴ CAS, ‘Code of Sports-Related Arbitration’ (2019), Art. R47, available at www.tas-cas.org/fileadmin/user_upload/Code_2019__en_.pdf.

⁶⁵ 2018 FIFA Statutes, *supra* note 3, Art. 58.3.

⁶⁶ FIFA, Code of Ethics: 2018 Edition (2018), Art. 20, available at <https://resources.fifa.com/image/upload/fifa-code-of-ethics-2018-version-takes-effect-12-08-18.pdf?cloudid=uemlkcy8wwdtlll6sy3j>.

⁶⁷ *Ibid.*, Art. 58.2.

⁶⁸ Case C-415/93, *Bosman* (EU:C:1995:463).

⁶⁹ The body in charge of conducting the competition law policies in the European Union according to the Treaty on the Functioning of the European Union (TFEU), OJ 2012 C 326/47, Art. 105.

considered applicable by the CJEU, as the *Piau* case⁷⁰ clarified, and ‘that FIFA’s members are national associations, which are groupings of football clubs for which the practice of football is an economic activity. These football clubs are therefore undertakings within the meaning of Article 81 of the Treaty Establishing the European Community and the national associations grouping them together are associations of undertakings’.⁷¹ The case concerned Laurent Piau, an agent for French football players, who argued for the incompatibility of the FIFA Players’ Agents Regulations (more precisely, the obligation of taking a written exam to obtain the necessary license imposed by FIFA) with EU law – namely, by abusing its position of economic strength as an economic player.⁷² Although the Court refused such an assertion, there was still a general acceptance that EU competition law could in fact be applicable to FIFA, even if in that specific case there had been no abuse of its economic position. Similar competition law venues have been tried recently, challenging FIFA’s Regulations on Working with Intermediaries.⁷³ Under EU competition law, FIFA activities could be controlled by one of two provisions – either Article 101 of the Treaty on the Functioning of the European Union (TFEU), dealing with illegal agreements between undertakings, on the basis of specific FIFA regulations that distort the free market rules,⁷⁴ or Article 102 of the TFEU, which is the basis of its abuse of its strong position in the football market through corruption (as was the case in the *Piau* case with a ‘collective dominance’ scenario).⁷⁵

5 Conclusion

It is worth noting that only some corruption involves FIFA as a market player selling media rights – in particular, taking of bribes from sports marketing companies. After the 2015 arrests in Zurich, this form of corruption may not continue. If it does, competitor sports marketing companies or purchasers of media rights from these sports

⁷⁰ Case T-193/02, *Piau* (EU:T:2005:22) and the subsequent appeal judgment in Case C-171/05, *Piau* (EU:C:2006:149).

⁷¹ Treaty Establishing the European Economic Community 1957, 298 UNTS 3.

⁷² The Court no doubt will qualify FIFA as such an economic player, even if it is not directly involved in buying or selling players: ‘The fact that FIFA is not itself an economic operator that buys players’ agents’ services on the market in question and that its involvement stems from rule-making activity, which it has assumed the power to exercise in respect of the economic activity of players’ agents, is irrelevant as regards the application of Article 82 EC, since FIFA is the emanation of the national associations and the clubs, the actual buyers of the services of players’ agents, and it therefore operates on this market through its members.’ *Piau* (2005), *supra* note 70, para. 116.

⁷³ See the analysis by Kirwan, ‘Levelling the Playing Field: Remuneration Caps, EU Competition Law and Article 7(3) of the FIFA Regulations on Working with Intermediaries’, 15 *Hibernian Law Journal* 43, at 43–66.

⁷⁴ For a complete analysis, see Marmayou, ‘EU Law and Principles Applied to FIFA Regulations’, 1 *International Sports Law and Policy Bulletin* (2015) 71.

⁷⁵ TFEU, *supra* note 69. One big obstacle with this action, in practice, would be precisely to define what type of relevant market FIFA participates in – an exercise that is often difficult in multi-business enterprises such as FIFA.

marketing companies would be in a position to challenge FIFA under EU law – which could be done, rhetorically, for the benefit of football fans, to whom higher prices are passed on. However, such companies with business interests in FIFA may prefer to avoid litigating against it due to the risk of harming those interests.⁷⁶ Such interests will be significant; after all, FIFA holds a monopoly over rights to the world's most popular game.

The books reviewed here show the challenges of a global governance structure like FIFA. In an organization that produces a pseudo-public good and is non-profit – yet which is run by a private entity without accountability to key stakeholders – the misaligned incentives are clear. In large part, the enduring popularity of football is FIFA's saving grace – audiences will always watch football, and, therefore, FIFA's media rights will always be valuable. As many do now, global football fans separate the beautiful game on the pitch from the ugly game behind it. But, as the books reviewed here remind, organized global football, especially the World Cup, still clings to a symbolic role in global soft power politics as an emblem of global cooperation by fair and equal rules. Inevitably, that role will fade if those entrusted to administer football cannot be inspired by those same lessons of fair play.

⁷⁶ See, e.g., the 2015 complaint from Football Players Worldwide regarding the new player transfer market system, which stated: '[T]his action is designed for the benefit of all, including the hundreds of millions of football fans who've been betrayed by the irresponsible administration of the transfer market.' 'FIFPRO Legal Action against FIFA Transfer System', *Football Players Worldwide*, available at www.fifpro.org/news/fifpro-takes-legal-action-against-fifa-transfer-system/en/.